

19866

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY

J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES R. BYERS,

APPELLANT

Appellate Case #2011-190694

RECORD ON APPEAL

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

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

(VOLUME I)

10 B E F O R E:
11 THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.

12
13
14 A P P E A R A N C E S:
15 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
16 MATTHEW KENDALL, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE
18 WILLIAM RHODEN, ESQUIRE
19 ATTORNEY FOR THE DEFENDANT
20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	C.D.		109
4	S-2	DRUGS		204
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1 (PROCEEDINGS, APRIL 19, 2011)

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

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

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

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

12 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

9 Okay. Thank you. Be seated.

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

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

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

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

21 Did y'all give me a witness list?

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

23 THE COURT: I got it.

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

1 Jason Burgess with the sheriff's department.

2 Chris Wyatt with the sheriff's department.

3 Michael Owensby. Is Mr. Owensby present?

4 MS. LESKANIC: No, Your Honor.

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

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

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

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

17 MS. LESKANIC: No, Your Honor.

18 THE COURT: The defendant?

19 MR. RHODEN: No, sir.

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

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

1 question relates to you or who you know.

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

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

5 JUROR NUMBER 29: Yes.

6 THE COURT: In what way?

7 JUROR NUMBER 29: Cousins. Second cousin.

8 THE COURT: Second cousin?

9 JUROR NUMBER 29: Yes.

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

13 JUROR NUMBER 29: No, sir.

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

16 Yes, ma'am.

17 JUROR NUMBER 60: Juror 60, Kathy Mullinax.

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

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

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

24 JUROR NUMBER 60: No, sir.

25 THE COURT: Thank you. Be seated.

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

2 Yes, sir.

3 JUROR NUMBER 67: I know Mr. Wyatt of the

4 sheriff's office.

5 THE COURT: Your name and number?

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

7 THE COURT: You know Mr. Wyatt?

8 JUROR NUMBER 67: Yes.

9 THE COURT: How do you know him?

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

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

13 JUROR NUMBER 67: No.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am?

16 MR. RHODEN: What number was that?

17 THE COURT: 67.

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

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

22 JUROR NUMBER 73: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

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

1 Phillips.

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

4 JUROR NUMBER 86: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NUMBER 81: 81, Nancy Sereno.

8 THE COURT: What was Your number?

9 JUROR NUMBER 81: 81.

10 THE COURT: All right.

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

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

15 JUROR NUMBER 81: No, sir.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

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

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

23 JUROR NUMBER 68: No.

24 THE COURT: Thank you. Be seated.

25 Yes, ma'am.

1 JUROR NUMBER 21: Number 21, Sandra Ellison.

2 THE COURT: You say 21?

3 JUROR NUMBER 21: 21.

4 THE COURT: Yes.

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

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

11 JUROR NUMBER 21: I think it might interfere.

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

14 JUROR NUMBER 21: Okay.

15 THE COURT: Yes, ma'am.

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

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

21 JUROR NUMBER 104: Yes, sir.

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

25 Yes, ma'am.

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

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

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

8 THE COURT: Okay.

9 JUROR NUMBER 78: So it would not affect.

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

12 JUROR NUMBER 78: No, sir.

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

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

16 JUROR NUMBER 82: Mr. Owensby was --

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

19 JUROR NUMBER 82: Huh?

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

21 JUROR NUMBER 82: 82.

22 THE COURT: You know someone that I introduced?

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

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

1 department?

2 MS. LESKANIC: No, sir.

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

5 JUROR NUMBER 82: Yes.

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

8 All right. Juror number 82.

9 JUROR NUMBER 82: Yes, sir.

10 THE COURT: That's Mr. Sheppard.

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

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

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

18 JUROR NUMBER 82: Yeah.

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

20 JUROR NUMBER 82: Yes, sir.

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

24 JUROR NUMBER 82: Yes, sir.

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

1 from service in this case.

2 Yes, ma'am.

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

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

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

11 JUROR NUMBER 20: No, sir.

12 THE COURT: Okay. Thank you.

13 Does anyone else need to respond to that question?

14 (No response)

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

23 All right. Yes, ma'am.

24 JUROR NUMBER 21: 21, Sandra Ellison.

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

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

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

7 Yes, ma'am.

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

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

12 JUROR NUMBER 20: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

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

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

20 JUROR NUMBER 108: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

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

25 THE COURT: Did you say 33?

1 JUROR NUMBER 33: 33, yes.

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

4 JUROR NUMBER 33: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

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

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

13 JUROR NUMBER 51: No, sir.

14 THE COURT: Thank you. Be seated.

15 Yes, sir.

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

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

21 JUROR NUMBER 9: No, sir.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

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

1 maintenance.

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

4 JUROR NUMBER 60: No, sir.

5 THE COURT: Thank you. Be seated.

6 Mr. Sheppard?

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

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

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

18 (No response)

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

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

5 You are juror number 9.

6 JUROR NUMBER 9: Yes, sir.

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

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

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

14 JUROR NUMBER 9: No, sir.

15 THE COURT: Thank you. Be seated.

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

20 Yes, ma'am.

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

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

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

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

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

8 JUROR NUMBER 78: No, I do not.

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

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

18 (No response)

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

21 MS. LESKANIC: No, Your Honor.

22 THE COURT: By the defendant?

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

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

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

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

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

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

16 THE CLERK: Juror 43, Shahram Lalianpour.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Swear the juror.

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

22 Juror 76, Carol Ruppe.

23 What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: What the says the defense?

1 MR. RHODEN: Swear the juror.

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

3 Juror 19, Angelia Dover.

4 What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. RHODEN: Please swear the juror.

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

9 Juror 9, Charles Cadenhead.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

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

15 THE CLERK: You may be excused.

16 Juror 48, Sherida Littlejohn.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Please swear the juror.

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

22 Juror 16, Dale Davis.

23 What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. RHODEN: Please seat the juror.

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

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

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

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

9 THE CLERK: Juror Number 88, Ricky Smith.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

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

15 THE CLERK: You have been excused.

16 Juror 17, Deborah Davis.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Please swear the juror.

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

22 Juror 57, Rhonda Morris.

23 What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. RHODEN: Please swear the juror.

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

3 Juror 26, Daniel Frye.

4 What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. RHODEN: Please swear the juror.

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

9 Juror 55, Clarence Mccraw.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

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

15 THE CLERK: You have been excused.

16 Juror 73, Vici Randolph.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Please excuse the juror from this
21 case.

22 THE CLERK: You have been excused.

23 Juror 83, Darrius Shippy.

24 What says the State?

25 MS. LESKANIC: Please excuse the juror from

1 service in this case.

2 THE CLERK: You have been excused.

3 Juror 87, Melody Smith.

4 What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. RHODEN: Please swear the juror.

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

9 Juror 95, Pamela Turner.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. RHODEN: Please swear the juror.

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

15 Juror 50, Josephine Lyons.

16 What says the State?

17 MS. LESKANIC: Please excuse the juror from

18 service in this case.

19 THE CLERK: You have been excused.

20 Juror 27, Craig Gaffney.

21 What says the State?

22 MS. LESKANIC: Please excuse the juror from

23 service in this case.

24 THE CLERK: You have been excused.

25 Juror 81, Nancy Sereno.

1 What says the State?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: What says the defense?

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

6 THE CLERK: You have been excused.

7 Juror 51, Curtis Martin.

8 What says the State?

9 MS. LESKANIC: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. RHODEN: Please swear the juror.

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

13 Juror 20, Patricia Dunn.

14 What says the State?

15 MS. LESKANIC: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. RHODEN: Please swear the juror.

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

19 THE COURT: This will be for the alternate.

20 THE CLERK: Juror 108, Larry Wood.

21 What says the State?

22 MS. LESKANIC: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. RHODEN: Please excuse the juror from this

25 case.

1 THE CLERK: You have been excused.

2 Juror 7, Benjamin Brackett.

3 What says the State?

4 MS. LESKANIC: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. RHODEN: Please swear the juror.

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

8 THE COURT: All right. Those who have been

9 selected I'll ask you to please go with the bailiff to a

10 jury room and I'll bring you back shortly to begin with the

11 trial.

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

13 THE COURT: Are there any matters that need to be

14 addressed regarding jury selection, by the State?

15 MS. LESKANIC: No, Your Honor.

16 THE COURT: By the defendant?

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

18 THE COURT: I'm going to ask y'all to step up

19 here, please.

20 (Whereupon, the lawyers approached the bench for

21 an off-the-record discussion)

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

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

1 THE COURT: Bring the jury back, please.

2 MR. RHODEN: Can we approach?

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

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

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

12 THE CLERK: Juror 35, Mark Hughes.

13 What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

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

17 THE CLERK: You have been excused.

18 Juror 68, Sylvia Phillips.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

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

23 THE CLERK: You have been excused.

24 Juror 28, Ronald Fegter.

25 What says the State?

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

3 THE CLERK: You have been excused.

4 Juror 60, Kathy Mullinax.

5 What says the State?

6 MS. LESKANIC: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. RHODEN: Swear the juror.

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

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

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

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

22 Thank you for your participation.

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

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

1 with me, please, ma'am.

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

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Bring the juror in.

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

8 THE COURT: Please stand right there.

9 You are Mr. Lalianpour?

10 JUROR NUMBER 43: Yes, sir.

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

13 JUROR NUMBER 43: Yes, sir.

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

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

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

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

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

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

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

11 JUROR NUMBER 43: Yes.

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

15 JUROR NUMBER 43: You know, sometimes --

16 THE COURT: -- to help them out?

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

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

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

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

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

5 JUROR NUMBER 43: I --

6 THE COURT: Let me finish the question.

7 JUROR NUMBER 43: I'm sorry.

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

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

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

17 JUROR NUMBER 43: No, not those.

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

19 JUROR NUMBER 43: No, sir.

20 THE COURT: And Mr. Owensby.

21 JUROR NUMBER 43: No, sir.

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

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

24 THE COURT: Okay.

25 JUROR NUMBER 43: But the gentlemen that, you

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

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

6 JUROR NUMBER 43: No, sir.

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

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

12 THE COURT: It would be?

13 JUROR NUMBER 43: Yes, sir.

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

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

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

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

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

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

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

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

2 THE COURT: Okay.

3 Just stand there where Mr. Lalianpour was.

4 JUROR NUMBER 48: Right here?

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

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

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

8 You are Sherida Littlejohn?

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

10 THE COURT: "Shidra"?

11 JUROR NUMBER 43: Yes.

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

13 JUROR NUMBER 43: That's how my mother spelled it,
14 but everybody pronounce it like that because that's what it
15 look like, but that's not how it's pronounced.

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

17 JUROR NUMBER 43: Uh-huh.

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

19 JUROR NUMBER 43: Yes, sir.

20 THE COURT: Okay.

21 Ms. Littlejohn, after you were selected as a juror
22 in the case you also contacted the bailiff and indicated to
23 the bailiff that you needed to address a matter with me. We
24 addressed it here, but those discussions, while the lawyers
25 were present while I was discussing the issue with you, the

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

4 JUROR NUMBER 43: Okay.

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

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

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

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

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

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

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

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

1 correctly or --

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

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

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

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

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

12 JUROR NUMBER 43: No, sir.

13 THE COURT: No.

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

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

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

23 JUROR NUMBER 43: Yes, sir.

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

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

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

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

5 JUROR NUMBER 43: No, sir.

6 THE COURT: -- decision in this case?

7 JUROR NUMBER 43: No, sir.

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

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

11 THE COURT: Because what?

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

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

17 JUROR NUMBER 43: No, sir.

18 THE COURT: You don't?

19 JUROR NUMBER 43: No, sir.

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

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

1 No.

2 THE COURT: Ma'am?

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

4 THE COURT: Did you understand my question?

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

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

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

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

17 JUROR NUMBER 43: No, sir.

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

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

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

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

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

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

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

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

1 responses.

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

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

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

25 MR. RHODEN: Yes, sir.

1 THE COURT: You will agree with that?

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

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

8 MR. RHODEN: Okay. Thank you.

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

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

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

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

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

25 (No response)

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

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

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

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

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

9 Have a good lunch.

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

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

14 MS. LESKANIC: No, Your Honor.

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

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

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

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

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

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

6 MR. RHODEN: Yes.

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

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

11 THE COURT: Okay.

12 MR. RHODEN: Number two, or --

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

15 MR. RHODEN: Yes, sir.

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

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

21 MS. LESKANIC: Yes, Your Honor.

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

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

1 influence.

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

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

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

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

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

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

1 know who on this panel has.

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

7 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

4 MS. LESKANIC: Thank you, Your Honor.

5 (Off the record)

6 (Back on the record)

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

12 THE COURT: Well, who prepared the information?

13 GREG PHILLIPS: I did.

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

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

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

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

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

1 MS. LESKANIC: Yes, Your Honor.

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

4 MS. LESKANIC: No, Your Honor.

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

8 MS. LESKANIC: Yes, Your Honor.

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

12 MS. LESKANIC: Yes, Your Honor.

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

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

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

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

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

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

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

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

7 THE COURT: All right. Mr. Rhoden?

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

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

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

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

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

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

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

13 MR. RHODEN: I understand.

14 THE COURT: Okay.

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

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

21 MR. RHODEN: Yes, sir.

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

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

3 THE COURT: Well, of course --

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

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

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

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

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

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

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

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

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

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

6 THE COURT: All right. Mr. Rhoden?

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

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

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

14 MR. RHODEN: Yes, Your Honor.

15 THE COURT: All right.

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

21 THE COURT: Lalianpour?

22 MR. RHODEN: Yes, sir.

23 THE COURT: Okay.

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

1 JUROR NUMBER 43: Yes, sir.

2 THE COURT: Okay.

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

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

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

1 The point I'm making --

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

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

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

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

11 THE COURT: I think you are right.

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

1 each side having all their strikes.

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

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

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

7 MS. LESKANIC: Yes, Your Honor.

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

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

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

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

5 THE COURT: On this point?

6 MR. RHODEN: Yes, sir.

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

13 THE COURT: That's true.

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

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

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

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

25 Is the defendant in jail or not?

1 (Whereupon, at 4:05 p.m., the jury panel returned
2 to open court to report the verdict)

3 THE COURT: Madam Forelady, have you and your
4 fellow jurors reached a unanimous decision?

5 JURY FOREPERSON: Yes, we have.

6 THE COURT: With respect to each indictment?

7 JURY FOREPERSON: Yes, sir, we have.

8 THE COURT: Have you indicated those decisions on
9 the back of the indictment?

10 JURY FOREPERSON: Yes, sir.

11 THE COURT: Did you sign your name as the
12 foreperson and date it?

13 JURY FOREPERSON: Yes, sir.

14 THE COURT: If you will please hand those verdict
15 forms up by way of the bailiff.

16 All right, you may publish the verdict.

17 THE CLERK: 2009-GS-11-1179, the State versus
18 James Ray Byers, Jr., indictment for distribution of crack
19 cocaine, the verdict is guilty. Signed by foreperson Carol
20 Ruppe.

21 As to indictment 2009-GS-11-1180, the State versus
22 James Ray Byers, Jr., indictment for distribution of crack
23 cocaine within one-half mile of school, the verdict is
24 guilty. Signed by foreperson Carol Ruppe.

25 Ladies and gentlemen of the jury, if this is the

1 verdict of you all, please indicate by raising your right
2 hand.

3 Thank you.

4 Does the defendant wish to have the jury polled?

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

6 THE COURT: Poll the jury, please, ma'am.

7 THE CLERK: Juror 76, Carol Ruppe, please raise
8 your hand. Is this your verdict?

9 JUROR NUMBER 76: Yes, it is.

10 THE CLERK: Juror 19, Angelia Dover -- please
11 raise your hand as I call your name. Is this your verdict?

12 JUROR NUMBER 19: Yes.

13 THE COURT: Juror 16, Dale Davis.

14 JUROR NUMBER 16: Yes.

15 THE COURT: Raise your hand, please.

16 Juror 17, Deborah Davis, is this your verdict?

17 JUROR NUMBER 17: Yes, ma'am.

18 THE COURT: Okay. Juror 57, Rhonda Morris, is
19 this your verdict?

20 JUROR NUMBER 57: Yes.

21 THE CLERK: Juror 26, Daniel Frye, is this your
22 verdict?

23 JUROR NUMBER 26: Yes.

24 THE COURT: Juror 87, Melody Smith, is this your
25 verdict?

1 JUROR NUMBER 87: Yes, ma'am.

2 THE COURT: Juror 95, Pamela Turner, is this your
3 verdict?

4 JUROR NUMBER 95: Yes, ma'am.

5 THE COURT: Juror 51, Curtis Martin, is this your
6 verdict?

7 JUROR NUMBER 51: Yes.

8 THE COURT: Juror 20, Patricia Dunn is this your
9 verdict?

10 JUROR NUMBER 20: Yes, ma'am.

11 THE COURT: Juror 7, Benjamin Brackett, is this
12 your verdict?

13 JUROR NUMBER 7: Yes, it is.

14 THE COURT: Kathy Mullinax, is this your verdict?

15 JUROR NUMBER 60: Yes, ma'am.

16 THE CLERK: Okay.

17 THE COURT: All right. Any other matters that
18 need to be addressed with the jury present?

19 MR. RHODEN: No, sir.

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

21 THE COURT: All right. Thank you, ladies and
22 gentlemen. That concludes your service. You are excused
23 for the balance of the afternoon. So for as any further
24 reporting is concerned, if you will call back after six
25 o'clock this evening to the number that you have on your

1 juror information pamphlet, you will receive that reporting
2 instruction.

3 Okay. Thank you again for your participation.
4 Have a good afternoon.

5 (Whereupon, at 4:10 p.m., the jury panel was
6 discharged)

7 THE COURT: Mr. Rhoden, did you have any matters
8 to address prior to the imposition of the sentence?

9 MR. RHODEN: Yes, Your Honor.

10 I would like to make on the same grounds set forth
11 in my motion for a directed verdict, we would move for a new
12 trial, Your Honor.

13 THE COURT: All right. That motion is denied.

14 Anything further on behalf of the State, as far as
15 imposition of sentence?

16 MS. LESKANIC: Yes, Your Honor.

17 The State did file a notice of life sentence
18 pursuant to Section 17-25-45, Section B. That was filed in
19 the Clerk of Court's office on March 17th, 2011. That was
20 served on the defendant while he was incarcerated at the
21 Cherokee County detention center. I have attached with that
22 motion his prior sentences that consists of at least two
23 prior serious offenses. Therefore, the State is seeking
24 life after this conviction.

25 THE COURT: All right. Mr. Rhoden, the solicitor

1 has indicated this they have filed a notice of an intention
2 to seek a life sentence pursuant to 17-25-45. Do you have
3 any objection to the imposition pursuant to that statute?

4 MR. RHODEN: Well, if I could think of a legally
5 sufficient objection I would make it, but it's my
6 understanding that it's mandatory. And I have reviewed the
7 record and I don't have any objections to the prior record.
8 I have checked that and it appears to be accurate, Your
9 Honor.

10 THE COURT: Okay. All right. Anything else you
11 need to tell me?

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

13 THE COURT: All right. Mr. Byers, is there
14 anything that you would like to tell me prior to the
15 imposition of sentence?

16 THE DEFENDANT: I just apologize for what
17 happened, sir.

18 THE COURT: All right. On indictment 2009-1179
19 and 1180, indictments for distribution of crack cocaine,
20 third or subsequent offense, and distribution of crack
21 cocaine within a half-mile of a school, the sentence of the
22 court is on each that you, James R. Byers, Jr., be confined
23 to the South Carolina Department of Corrections for the
24 period of your natural life pursuant to 17-25-45.

25 Mr. Byers, you have a right to appeal the verdict

1 of the jury and the sentence of the court. You must file
2 any notice of your intention to appeal those decisions
3 within ten days of today's date. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Good luck to you.

6 MR. RHODEN: All right. Thank you, Your Honor.

7 THE COURT: You got a probation matter?

8 PROBATION AGENT LAUTER: Yes, sir, he has four
9 years active time remaining.

10 THE COURT: Wait just a minute. We have got a
11 probation matter here.

12 PROBATION AGENT LAUTER: He would have four years
13 remaining active time on two probation cases. We were just
14 wanting to see if we could have them run concurrent to the
15 sentence.

16 THE COURT: Okay, any objection to hearing that
17 now?

18 MR. RHODEN: No.

19 THE COURT: These are the violations?

20 PROBATION AGENT LAUTER: Yes, being convicted
21 today.

22 THE COURT: Yeah. Do you waive the service to the
23 warrant or citation?

24 MR. RHODEN: Yes.

25 THE COURT: Have you talked to your client about

1 that?

2 (Off the record)

3 (Back on the record)

4 MR. RHODEN: He waives.

5 THE COURT: All right. I find the defendant has
6 willfully failed to comply with the conditions of the
7 probation. Revoke it and run it concurrent with the
8 sentences imposed today.

9 MR. RHODEN: All right. Thank you, Your Honor.

10 MS. LESKANIC: Thank you, Your Honor.

11 MR. KENDALL: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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

3

4 THE STATE)

5 -vs-)

6 JAMES RAY BYERS, JR.,)

7 DEFENDANT.)

TRANSCRIPT OF RECORD

2009-GS-11-01179

2009-GS-11-01180

APRIL 21, 2011

GAFFNEY, SOUTH CAROLINA

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B E F O R E:

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THE HONORABLE J. DERHAM COLE, JUDGE.

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

15

KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR

16

MATTHEW KENDALL, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

17

WILLIAM RHODEN, ESQUIRE

18

ATTORNEY FOR THE DEFENDANT

19

20

MICHAEL R. WATTS

21

CIRCUIT COURT REPORTER

22

23

24

25

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WITNESSES

PAGE

(NO WITNESSES CALLED)

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EXHIBITS

NO.	DESCRIPTION
CT-1	JUROR NOTE

ID.	EV.
4	

1 (PROCEEDINGS, APRIL 21, 2011)

2 (Juror Note marked as Court's Exhibit No. 1 for
3 identification).

4 THE COURT: Ready?

5 MR. RHODEN: Yes.

6 If it please the court.

7 THE COURT: Yes.

8 MR. RHODEN: This is on Mr. James Byers case that
9 we tried yesterday.

10 My understanding that after court basically broke
11 yesterday that one of the bailiffs found a note in the jury
12 room that I want to have marked and made part of the record,
13 and I would like to renew or make another motion for a new
14 trial.

15 As Your Honor knows, we had a very unusual jury
16 selection in this case. And, once again, I think that the
17 process should have been stopped and we should have chosen a
18 new jury.

19 And obviously this note is of some importance, in
20 that it certainly reflects that at least somebody in the
21 jury room had some concerns about guilt. So, therefore, I
22 would ask that that be made part of the record and that the
23 court grant a new trial in this matter.

24 THE COURT: Ms. Leskanic, would you like to be
25 heard?

1 MS. LESKANIC: Yes, Your Honor. Thank you.

2 That note was found by Wayne Ellis, one of the
3 bailiffs in the courtroom. He brought that note to my
4 attention after the jury left the jury room. He said he had
5 found it in there. He wasn't sure if it was something we
6 needed or not.

7 After I received the note, I brought it to the
8 attention of Mr. Rhoden and to the court's attention.

9 It is the State's position that Mr. Ellis could
10 have thrown it in the trash. That was something that the
11 jury used or did not use during their deliberations, and we
12 are not privy to the jury deliberation process. I don't
13 know who wrote the note. I don't know in what context it
14 was written, but it had to go along with jury deliberation.

15 Now, the jury was out for I believe four hours, or
16 more, so certainly they had issues to discuss, and the
17 matters written down on that note may have been issues that
18 they discussed, but at some point the jury reached a
19 unanimous verdict. They came out, they delivered that
20 verdict to Your Honor. Mr. Rhoden requested that the jury
21 be polled. Each member of the jury was polled by the clerk
22 of Court, Ms. McBee. And each answer that the verdict of
23 guilty was their verdict and was still their verdict at the
24 time they were in the courtroom.

25 During the course of the trial the jury did come

1 out with one question, so they understood the process of if
2 they had a question for the court, that they could write a
3 note and that Your Honor would respond to them. At that
4 time they told us that they were at 11 to 1 and requested
5 what they should do, and I believe Your Honor said that they
6 should continue to deliberate. Mr. Rhoden and I both
7 initialed that note showing that Your Honor had gone over
8 that question and matter with us prior to sending the note
9 back into the jury room. This piece of paper did not come
10 out to Your Honor. It was not something that we were to be
11 made aware of by the jury, because they certainly knew the
12 process of making us aware of any questions that they had.

13 So it's the State's position, with all due
14 respect, that this was trash that could have been thrown
15 away. Since it was brought to my attention, I should bring
16 it to the attention of the court, but I do not believe it's
17 relevant to any decision of the jury.

18 THE COURT: All right. Well, assuming for the
19 purpose of the motion that this was a note which was
20 prepared by one of the jurors in this case during the course
21 of their deliberations, the note does not in any way
22 indicate that the defendant has been denied any fundamental
23 fairness or that the jury has failed to follow the law.
24 Clearly jurors during the course of deliberations might make
25 notes. They might express their thoughts to themselves by

1 writing on a piece of paper. They may or may not share
2 those thoughts with other jurors. I'm not certain, but the
3 jurors in this case gave this case a considerable amount of
4 deliberation.

5 I don't know -- assuming this note was made by a
6 juror in this case, I don't know what point this note was
7 even made. It might have been the moment they walked back
8 into the jury room. As you have indicated, Mr. Rhoden, you
9 believe that this note indicates that at least one of the
10 jurors had some concern about the defendant's guilt. Based
11 upon the deliberations, I think all twelve jurors had
12 concern about the defendant's guilt. That's what they are
13 supposed to have. They are supposed to determine whether or
14 not a defendant has been proven guilty beyond a reasonable
15 doubt. They have an obligation to be concerned about
16 whether or not a defendant is guilty of a crime alleged
17 against them by the State. This jury, in my view, took that
18 seriously. They deliberated for several hours before
19 returning a verdict. And all twelve jurors indicated by
20 raising their hands that they confirmed their decision when
21 asked if this was their verdict when they found the
22 defendant guilty. They were also polled individually and
23 each juror indicated that finding the defendant guilty was
24 their decision and it was still their decision. And so I
25 see no reason to overturn the jury's verdict and grant a new

1 trial. So your motion for a new trial is, therefore,
2 denied.

3 MR. RHODEN: Will Your Honor make that part of the
4 record?

5 THE COURT: The note, it's already been marked as
6 a Court's Exhibit, placed in an envelope. It will be in the
7 record.

8 MR. RHODEN: All right. Thank you, Your Honor.

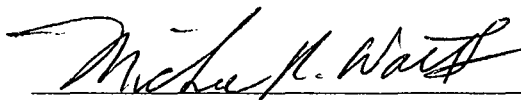
9 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 21ST day of APRIL, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 14, 2011



Michael R. Watts
Circuit Court Reporter

Cherokee County Courthouse

RANDOM STRIKE SHEET

77

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : 2009GS1101180

COURTROOM CTRM

DESCRIPTION : State vs James Ray Byars Jr

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	ERT	REMARKS
1 Lalianpour, Shahram	43	W	M	()	()	(✓)	(1) <i>seated</i> (1) <i>Did not serve</i>
2 Ruppe, Carol D	76	W	F	()	()	(✓)	(2)
3 Dover, Angelia M	19	W	F	()	()	(✓)	(3)
4 Cadenhead, Charles S	9	W	M	()	(✓)	()	D-1
5 Littlejohn, Sherida L	48	B	F	()	()	(✓)	(4) <i>Did not serve</i>
6 Davis, Dale E	16	W	M	()	()	(✓)	(5)
7 Smith, Ricky	88	W	M	()	(✓)	()	D-2
8 Davis, Deborah R Am	17	W	F	()	()	(✓)	(6)
9 Morris, Rhonda W	57	W	F	()	()	(✓)	(7)
10 Frye, Daniel L	26	W	M	()	()	(✓)	(8)
11 Mccraw, Clarence P	55	W	M	()	(✓)	()	D-3
12 Randolph, Vici L	73	W	F	()	(✓)	()	D-4
13 Shippy, Darrius T SR	83	B	M	(✓)	()	()	S-1
14 Smith, Melody W	87	W	F	()	()	(✓)	(9)
15 Turner, Pamela A	95	W	F	()	()	(✓)	(10)
16 Lyons, Josephine	50	B	F	(✓)	()	()	S-2
17 Gaffney, Craig L	27	B	M	(✓)	()	()	S-3
18 Sereno, Nancy M	81	W	F	()	(✓)	()	D-5
19 Martin, Curtis B	51	W	M	()	()	(✓)	(11)
20 Dunn, Patricia L	20	W	F	()	()	(✓)	(12)
21 Wood, Larry D	108	W	M	()	(✓)	()	D-1 alternate
22 Brackett, Benjamin A III	7	W	M	()	()	(✓)	(13) <i>alternate</i>
23 Hughes, Mark D	35	W	M	()	(✓)	()	D-1 alternate
24 Phillips, Sylvia L	68	W	F	()	(✓)	()	D-2 alternate

Cherokee County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : 2009GS1101180

COURTROOM CTRM

DESCRIPTION : State vs James Ray Byars Jr

Sorted by: Random Nbr

Trial

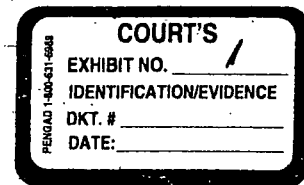
NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Fegter, Ronald S	23	W	M	(✓)	(✓)	(✓)	S-1 alternate
26 Mullinax, Kathy W	60	W	F	()	()	(✓)	(13) alternat
27 Scruggs, Charles J	80	W	M	()	()	()	
28 Greene, Joreckia B	28	W	F	()	()	()	
29 Smith, Bonnie B	86	W	F	()	()	()	
30 Jette, Sharon M	39	W	F	()	()	()	
31 Patterson, Roger L SR	64	B	M	()	()	()	
32 Teague, Susan P R	92	W	F	()	()	()	
33 Allum, Glenn W	1	W	M	()	()	()	
34 Mosteller, Johnny M JR	59	W	M	()	()	()	
35 Wilkins, Jerry D	105	B	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

- > She's key witness
- > She was too friendly w/police
- > She should have been more attentive to the specific details of her purchase, by showing more on the video.
- > The state did not prove, beyond a reasonable doubt, that James sold crack, which was then handled inappropriately.



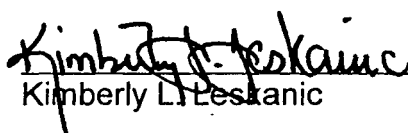
State v. James Ray Byers, Jr.
 Jury Trial: April 19-20
 2009-GS-11-1179
 2009-GS-11-1180

During the course of jury deliberations in this matter, a handwritten note was delivered to the Court from the jury. The note was reviewed by the Court in the presence of counsel for the state, Kim Leskanic, and counsel for the defense, William G. Rhoden. With the consent of counsel, the Court wrote a response on the note, the note was initialed by counsel, and the note was delivered by the bailiff to the jury. Following the verdict, the note could not be found.

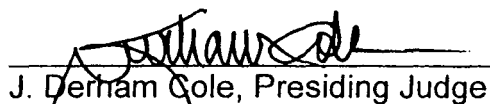
Counsel for the state and counsel for the defendant agree that the following constitutes the contents of the note and the court's response:

11 people have made up their mind and 1 person has made up theirs. We are hung. What do we do? [Jury]

Continue deliberating. [J. Derham Cole]

 4/21/2011
 Kimberly L. Leskanic

 4/21/2011
 William G. Rhoden


 J. Derham Cole, Presiding Judge

BRANDY W. MCBEE

2011 APR 21 P 1:39

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.

Court Reporter - REQUEST LETTER

APRIL 24, 2012

DAVID C. PHILLIPS, ESQUIRE
SCCID, APPELLATE DIVISION
COLUMBIA, S.C. 29211

IN RE: S.C. V. JAMES RAY BYERS

DEAR MR. PHILLIPS:

PLEASE BE ADVISED THAT I AM IN RECEIPT OF YOUR REQUEST FOR AN
EXPLANATION OF THE PROCEEDINGS IN THE ABOVE CASE.

THEY ARE AS FOLLOWS:

THE JURY WENT OUT TO DELIBERATE. UNBEKNOWST TO ME, THE JURY SENT
BACK A NOTE TO THE JUDGE ABOUT THEIR DELIBERATIONS. THE JURY HAD
THE ATTORNEYS MEET IN HIS CHAMBERS TO DISCUSS THE NOTE. APPARENTLY
SOMETHING WAS WRITTEN ON THE NOTE TO CONTINUE TO DELIBERATE THE
CASE. THERE WAS NO ALLEN CHARGE GIVEN TO THE JURY. THE JURY
ARRIVED AT A VERDICT AND SENTENCE WAS IMPOSED. AS PER THE NEXT
DAY'S HEARING, THE NOTE WAS MARKED AS A COURT'S EXHIBIT AND PUT
IN THE RECORD. THERE WAS NOTHING PUT ON THE RECORD AT ALL
BETWEEN THE BEGINNING OF DELIBERATIONS AND THE VERDICT ABOUT THE
NOTE. SO, THEREFORE, THE TRANSCRIPT IS A COMPLETE TRANSCRIPT OF
THE TRIAL VERBATIM AS YOU HAVE IT.

THANK YOU.

MICHAEL R. WATTS
4809 EDGEWATER DRIVE
GAFFNEY, S.C. 29340

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

M131703

ACTION OF GRAND JURY

TRUE BILL

Odell Mickle
Foreperson of Grand Jury

Date: *10-29-09*

VERDICT

Guilty

Foreperson of Petit Jury *Carol O. Rupp*

Date: *4-20-11*

DOCKET NO. **03-GS-11-1179**

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2009

TERM

THE STATE
vs.

James Ray Byers Jr.

Indictment for

DISTRIBUTION OF CRACK COCAINE

SC Code: 44-53-375

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

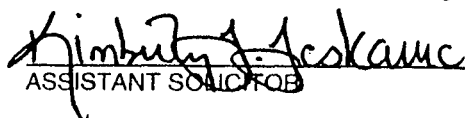
At a Court of General Sessions, convened on OCT 29 2009, the

Grand Jurors of Cherokee County present upon their oath:

DISTRIBUTION OF CRACK COCAINE
WITHIN ONE-HALF MILE OF PARK

That James Ray Byers Jr., did in Cherokee County on or about August 26, 2009, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a controlled substance, to wit: A quantity of Crack Cocaine, a schedule II controlled substance, in violation of § 44-53-445, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, within one-half mile of Mary Bramlett Elementary School, Gaffney, South Carolina, such distribution not have been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

M131704

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date:

10-29-09

VERDICT

Guilty

Foreperson of Petit Jury

Date:

4-20-11

Carl D. Ruppe

DOCKET NO. 09-GS-11-1180

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2009

TERM

THE STATE

vs.

James Ray Byers Jr.

Indictment for

DISTRIBUTION OF CRACK COCAINE
WITHIN ONE-HALF MILE OF
SCHOOL/PARK

SC Code: 44-53-445

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on OCT 29 2009, the

Grand Jurors of Cherokee County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

That James Ray Byers Jr., did in Cherokee County on or about August 26, 2009, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a schedule II controlled substance under provisions Code §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such distribution not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Cherokee

STATE

VS.

James R. Byers, Jr.

INDICTMENT/CASE#: 09-GS-11-1179

A/W#: M131703

Date of Offense:

S.C. Code §:

CDR Code #:

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

of the U.S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☒ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%) \$ \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ \$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \$56-5-2995 (DUI Assessment) \$12 \$ \$56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ \$14-1-212 (Law Enforce. Funding) \$25 \$ \$14-1-213 (Drug Court Surcharge) \$150 \$ \$50-21-114 (BUI Breath Test Fee) \$50 \$ \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 3% to County (if paid in installments) \$ TOTAL \$ Clerk of Court/Deputy Clerk Court Reporter: Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Cherokee

STATE

James R. Byrns, Jr.

INDICTMENT/CASE#:

09-GS-11-1180

AKA:

A/W#:

M131704

Race:

Sex:

Age:

DOB:

SS#:

Date of Offense:

Address:

S.C. Code §:

City, State, Zip:

CDR Code #:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☒ §17-25-45

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections☐ County Detention Center,

for a determinate term of

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.

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

2053
April 20, 2011

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/Deputy Clerk

Court Reporter:

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 27th, 2012


Dayne G. Phillips
Appellate Defender

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

ATTORNEY FOR APPELLANT