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ANDERS
NO DEFENDANT'S BRIEF
ORIGINAL

STATE OF SOUTH CAROLINA

No Respondent's Brief Filed

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HONORE T. DAVIS,

APPELLANT

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF HORRY	)	(11-GS-26-01518)
	)	
STATE	)	
	)	
VERSUS	)	TRANSCRIPT OF RECORD
	)	
HONORE T. DAVIS	)	October 11, 12, 13, 2011
	)	Conway, S. C.
	)	
	)	

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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

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I N D E X

October 11, 2011

JURY SELECTION (NOT TRANSCRIBED - JURY SELECTION FORM ATTACHED)

(NO BATSON MOTION WAS MADE.)

JURY OUT/ON RECORD

5

WITNESSES

DIRECT

CROSS

RD

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MR. RICHARDSON

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JEREMIAH BEAM

MR. RICHARDSON

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MR. DIGGS

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DONNA BELL

MR. RICHARDSON

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MR. DIGGS

85 (NONE)

LISA FLOYD

MR. RICHARDSON

85

MR. DIGGS

97 (NONE)

END DAY

I N D E X

October 12, 2011

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JURY IN

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END DAY

I N D E X

October 13 2011

SENTENCING

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VERDICT/SENTENCING

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Photo		23
S-2	Photo		23
S-3	Photo		23
S-4	Photo		23
S-5	Video		20
S-6	Drugs (010763)/D.E.U. 11-015-2/Lab #L1101121)	97	
	ITEM 1 (4.26 grams or 65.73 grains)		
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JURY OUT/ON RECORD

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1 (THE FOLLOWING TAKES PLACE ON OCTOBER 11, 2011, AFTER
2 QUALIFICATION OF THE ENTIRE JURY VENIRE, AFTER VOIR DIRE OF
3 THE VENIRE FOR THE SELECTION OF A JURY PANEL FOR THE TRIAL OF
4 THIS PARTICULAR CASE, AND OUTSIDE THE PRESENCE OF THE JURY
5 SELECTED FOR THE TRIAL OF THIS PARTICULAR CASE.)

6 (A JURY SELECTION FORM WAS PREPARED IN THIS CASE AND IS
7 ATTACHED HERETO.)

8 THE COURT: All right. Is there any objection to the
9 jury as empaneled from the State?

10 MR. RICHARDSON: None from the State, Your Honor.

11 THE COURT: From the Defense?

12 MR. DIGGS: No.

13 THE COURT: Very good. I find the jury has been
14 properly empaneled pursuant to Batson versus Kentucky and
15 J.E.B. versus Alabama.

16 (THE FOLLOWING TAKES PLACE AFTER BRIEF OPENING REMARKS
17 BY THE COURT, AND OUTSIDE THE PRESENCE OF THE JURY.)

18 THE COURT: All right. From the State's perspective,
19 any matters that we need to address at this point in time?

20 MR. RICHARDSON: Your Honor, I notice on the Indictment
21 it appears that a CDR code is improper on there. It's
22 actually listed -- I'm sorry -- the CDR code is proper on the
23 Indictment. It's for a second offense.

24 On the original Warrant it was for a first offense, and
25 that's just the way the Warrant printed out. The CDR code is

1 3015, which is possession with intent, or distribution second
2 offense, Your Honor.

3 THE COURT: All right. Hold on one second, please.

4 I'm sorry. Is there anything wrong with the Indictment?

5 MR. RICHARDSON: No sir. No sir. I just wanted to
6 make there wasn't a question. Originally -- and the Defendant
7 has been provided the Indictment at arraignment. I just
8 wanted to make sure there wasn't a question, Your Honor.

9 THE COURT: No. It's 30-15-4453-375(B)(2).

10 MR. RICHARDSON: Yes, Your Honor.

11 THE COURT: Is there any question about that, Mr.
12 Diggs?

13 MR. DIGGS: No sir.

14 THE COURT: All right. Very good.

15 All right. From the Defense's perspective, any issues
16 or matters that you need to raise at this point in time before
17 the jury comes in?

18 MR. DIGGS: Nothing from the Defense, Your Honor.

19 THE COURT: All right. Very good.

20 All right. Let's take a short break, let the jury
21 select their foreperson, and then we will come back in and get
22 started with the trial in this matter.

23 MR. RICHARDSON: Your Honor, just -- and Mr. Diggs has
24 watched the video as well. Whenever we go to pull the video
25 up it takes a couple of minutes to load. I just want you to

JURY OUT/ON RECORD

7

1 be aware that -- there's not a glitch, it just takes a minute.

2 THE COURT: All right. That's fine. That's great.

3 All right. Thank you.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: All right, for your information, gentlemen,
7 the jury has selected Juror Number 179, Mr. William F. Jarman,
8 as the Foreperson in this particular jury.

9 MR. RICHARDSON: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 All right, is the State ready for the jury to come in?

12 MR. RICHARDSON: Yes sir, Your Honor.

13 THE COURT: And the Defense?

14 MR. DIGGS: Yes, Your Honor.

15 THE COURT: All right. Very good. Ask the jury to
16 come in, please sir.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 MR. RICHARDSON: Your Honor, may we approach briefly?

20 THE COURT: Absolutely.

21 MR. RICHARDSON: I just want ---

22 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

23 THE COURT: All right, Mr. Jarman, you have been
24 selected by the jurors in this case to be the foreperson in
25 this particular jury; is that correct?

JURY IN/SWORN
STATE'S OPENING (RICHARDSON)

8

1 MR. JARMAN: Yes sir.

2 THE COURT: All right. Very good.

3 All right, Mr. Jarman and Ms. Rabon, the two seats that
4 y'all are occupying right now, if y'all will always occupy
5 those seats when you come back from the jury room.

6 (THE FOLLOWING TAKES PLACE AFTER THE JURY WAS SWORN,
7 AFTER A BRIEF STATEMENT BY THE COURT TO THE JURY, AND WITHIN
8 THE PRESENCE OF THE JURY.)

9 THE COURT: All right, Solicitor.

10 MR. RICHARDSON: Folks, on January 28th, 2011, the
11 Defendant was cold-busted, plain and simple, cold-busted when
12 he walked into the Sav-Mart in Myrtle Beach, South Carolina,
13 two officers coming in right behind him. He knew they were
14 behind him and he tossed his drugs into a frozen food cooler.
15 Simple.

16 You are going to hear testimony from the stand that back
17 on January 28, 2011, officers were at the Sav-Mart there in
18 Myrtle Beach, about 6th Avenue, on Kings Highway, on unrelated
19 matters. They were in a Crown Victoria Ford, Crown Vic, had
20 lights in it; unmarked otherwise, and the Defendant pulled
21 into the Sav-Mart; they were in police uniform, he hurried on
22 in the store just ahead of them. I'm going to attempt to show
23 you a video where you can see the Defendant open that frozen
24 food cooler and toss something in there. And you will hear
25 from those same officers that searched in that store for about

JURY IN/SWORN
STATE'S OPENING (RICHARDSON)

9

1 twenty minutes, about twenty minutes with other agents, agents
2 of the Fifteenth Circuit Drug Enforcement Unit.

3 After twenty minutes they go and they look at the video.
4 It's just what John Madden tells us to do, go look at the
5 video. When they do they find out where the -- where the
6 Defendant dumped his dope.

7 You are going to see the pictures where they located the
8 crack cocaine, right there in the cooler, right on top.
9 Officer Beam of the Fifteenth Circuit Drug Enforcement Unit is
10 going to tell you how he took that dope, packaged it in a Best
11 Kit, sent it off for analysis so we could find out exactly
12 what it was. We had a good idea what it was, but we wanted to
13 make sure. That's our job.

14 And you are going to hear from the chemist, the Horry
15 County Drug Laboratory. She is going to give her expert
16 opinion that what was found in that cooler, what was packaged
17 in that Best Kit and sent to her for analysis is five and a
18 half to six grams of cocaine base, or crack cocaine.

19 It's plain and simple. And at the end of this case the
20 Judge will tell you, he'll give you a charge saying that, if
21 someone possessed more than a gram of cocaine base, all right,
22 you can infer the intent is not to use it, but to distribute
23 it. Folks, we don't have over just one gram, just over two
24 grams; we are over five grams of crack cocaine. There can be
25 only one inference to draw there, the intent is to distribute,

1 so it's a simple case, folks.

2 When the Defendant threw that dope, with the police on
3 his heels, and they found it, he was cold-bused. I'm going to
4 ask you to return a verdict of guilty at the end of this case.

5 Thank you.

6 THE COURT: All right, Mr. Diggs.

7 MR. DIGGS: May it please the Court.

8 THE COURT: Yes sir.

9 MR. DIGGS: One thing you can always be sure of is,
10 there is nothing that simple. You are here as a juror,
11 collectively as a jury, to tell us what the facts of this case
12 were, and a lot of times in opening statements you hear
13 attorneys tell you what some of the facts are, but not all the
14 facts. And low and behold, you hear all the facts and it's
15 something completely different; it's not simple at all.

16 What the Solicitor gave you was a snapshot, what
17 happened on that particular occasion, occasion within a few
18 minutes time. What's critical in this case is the context.
19 Why was he there doing that? You are probably thinking, well,
20 the evidence is going to be, he's selling this stuff and he
21 dropped it off there and he got caught. When you hear this
22 case from the witness stand, and the evidence, I'm going to
23 ask you, and I think -- or I believe everybody involved in
24 this case would say the same thing, including His Honor, don't
25 make up your minds until you have heard all of the evidence in

DEFENDANT'S OPENING STATEMENT (DIGGS)

11

1 the case, and the instructions on the law, because all of the
2 evidence in this case, and the instructions on the law, are
3 going to determine what your verdict should be, not the first
4 witness, or the first video, or something like that. That's
5 part of the State's case. Someone has to present evidence
6 first, and someone has to go last, and in this process the
7 Solicitor goes first and then we go, if we choose to, last,
8 and so it would be a disservice to the process if you allowed
9 yourself to make up your minds now, before you had a chance to
10 even hear what the other evidence might be, and I submit,
11 there is going to be other evidence, because collectively, you
12 are going to need to know, the jury is going to want to know
13 the context of this event, and under the law of the State of
14 South Carolina is there a crime here that has been proven by
15 the State, or is there a defense that the law, the same law
16 that makes it illegal, the same legislature, the same law,
17 says well, in that circumstance then, he's not guilty.

18 This is an important day. Look at my client. That's
19 Mr. Davis. And I'll guarantee you there have been few days in
20 his life that have been as important as this one. If the
21 Solicitor had his way -- not just -- I'm not making it
22 personal -- but the State would say, alright, Mr. Defendant,
23 you are guilty; we are going to put you in prison. But in our
24 system we have a check, a check that's comprised of citizens
25 that collectively form a jury, and it has the power, under our

1 system, to say, wait a minute State of South Carolina, we need
2 to hear some evidence first, and we need to make the decision
3 first, and we say what the facts are in this case, not, with
4 all due respect, the State of South Carolina. And that's your
5 job.

6 We appreciate -- Mr. Davis appreciates your being here.
7 We will use as little of your time as necessary. We will show
8 everything we believe we need to show, but we are not going to
9 waste your time. We will get directly to the point, and
10 please, listen to all of the evidence, not just what the State
11 has to say so you get a snapshot of what happened, but in the
12 context, all of the evidence in the context of what happened
13 leading up -- and what could provide some explanation for why
14 it was happening.

15 Thank you very much. And at the end of the evidence I'm
16 going to speculate here, that there is going to be some doubt
17 in your mind about whether a crime has been committed in this
18 case, and whether it's simple, and decide, wait a minute, it's
19 not simple at all; when we look at all of the evidence and all
20 of the law that's been instructed the man is not guilty.

21 And we appreciate your time. Thank you very much. Mr.
22 Davis appreciates it, and we do too, and we would thank you in
23 advance for listening to us, and allowing us to have our say
24 in this process as well.

25 THE COURT: All right, Solicitor, your first witness,

DANIEL A. ROBERTS - DIRECT BY RICHARDSON

13

1 please sir.

2 MR. RICHARDSON: Yes sir, Your Honor. The State would
3 call Officer Daniel Roberts.

4 THE COURT: All right, sir. Please come around to be
5 sworn, sir.

6 DANIEL JAMES ROBERTS, being first
7 duly sworn, testifies as follows:

8 DIRECT-EXAMINATION BY MR. RICHARDSON:

9 Q. Officer Roberts, I mean, could you tell us all a little
10 bit about your place of employment, how long, and in what
11 capacity?

12 A. Myrtle Beach Police Department, currently with the
13 Street Crimes Unit, and I've been with the Myrtle Beach Police
14 Department for approximately four years.

15 Q. And is that your entire span in law enforcement?

16 A. Correct. Yes sir.

17 Q. Okay. And the Street Crimes Unit, what -- what is
18 that?

19 A. Typically we work drugs, we work prostitution, and you
20 could consider us a vice squad, technically.

21 Q. So basically Myrtle Beach's vice squad.

22 A. Correct.

23 Q. And whenever you are operating and your task is Myrtle
24 Beach Street Crimes Officer, do you wear a normal uniform,
25 plain clothes, what?

1 A. Typically we wear plain clothes, day to day.

2 Q. And do you ever assist other agencies?

3 A. Yes sir. We assist the Fifteenth Circuit Solicitor's
4 Drug Enforcement Unit on a pretty regular basis.

5 Q. Let's go back. January 28th, 2011, I think you said
6 you had been employed at Myrtle Beach for about four years.

7 A. Yes sir, roughly four years.

8 Q. So you were employed back in January of this past year.

9 A. Correct. Yes sir.

10 Q. On January 28th, this year, were you -- did you ever
11 come into contact with the Defendant?

12 A. Yes sir, I did.

13 Q. Tell us what led up to that, if you could.

14 A. We were there to assist the Fifteenth Solicitor Circuit
15 Drug Enforcement Unit on an unrelated matter, and we
16 eventually ended up arresting the Defendant.

17 Q. Okay. So you were there to help the Fifteenth Circuit
18 Drug Enforcement?

19 A. Correct. Yes sir.

20 Q. And whenever you say there, where is that?

21 A. It was the Sav-Mart. It's on Kings Highway in Myrtle
22 Beach, about 6th Avenue North.

23 Q. And what county is that in?

24 A. It's in Horry County.

25 Q. Simple question. I've just got to get it out of the

1 way.

2 A. Yes sir.

3 Q. What time of day was it?

4 A. It was approximately fourteen hundred hours, about 2
5 P.M..

6 Q. It was in the afternoon.

7 A. Correct.

8 Q. Now, describe the Sav-Mart for us, if you could.

9 A. It's a small business, gas station. There is one door
10 leading into the front of the business. Typically everyone
11 walks in that entrance.

12 Q. Okay. So it's a convenience store.

13 A. Correct. Yes sir.

14 Q. Any gas pumps or anything outside?

15 A. Yes sir. Outside, there are.

16 Q. And on 17, on Kings Highway, is it on the beach side,
17 or away from the beach?

18 A. It is on the east side of Kings Highway, which is the
19 beach side of Kings Highway.

20 Q. Heading toward the ocean.

21 A. Correct.

22 Q. The set-up there, take us through that afternoon. What
23 were you doing?

24 A. We were there to assist the Fifteenth Solicitor Circuit
25 Drug Enforcement Unit. We were on an unrelated matter. We

1 arrived. We were told the -- what vehicle the Defendant would
2 be in. We had a brief, and went out to the location,
3 conducted surveillance. The Drug Enforcement Unit advised us
4 that the Defendant was at the location, gave us the vehicle
5 description.

6 At that time myself and Officer Arroya, who were in a
7 Crown Vic, a police Crown Vic -- it's was unmarked but it did
8 have blue lights -- we were also wearing our tactical vest
9 which said "Police" on it, and we had our badges visible.

10 At that time we were advised by the Drug Enforcement
11 Unit that the Defendant was on the scene. We then crossed the
12 street and observed the Defendant exiting his vehicle and
13 approaching the entrance to the store.

14 At that point we went inside and detained the Defendant.

15 Q. So y'all crossed the street on foot?

16 A. No sir. We were in the vehicle.

17 Q. Now you said the Defendant went inside the Sav-Mart,
18 correct.

19 A. Correct. Yes sir.

20 Q. How far ahead of you -- and y'all went in as well,
21 correct.

22 A. Correct. Yes sir.

23 Q. How far ahead of you was the Defendant when he went in
24 the Sav-Mart?

25 A. He -- he made it to about the third aisle before we

DANIEL A. ROBERTS - DIRECT BY RICHARDSON

17

1 actually entered the store, but we could see him walking up to
2 the store, in a hurried manner, looking over his shoulder.

3 Once we got inside the store he was already toward the -
4 - toward the rear of the business, near the drink cooler, and
5 actually picking up some drink while he was in there, and at
6 that point we detained him.

7 Q. Okay. And the person you detained that day, no doubt
8 about it, is the Defendant, Honore Davis.

9 A. Correct. Yes sir. Yes sir.

10 Q. Now, the vehicle that he was in, where -- that he had
11 been in ---

12 A. Right.

13 Q. ---Where was that located?

14 A. It was on the south side of the Sav-Mart, parked.

15 Q. Was anyone else in that at that point?

16 A. I believe there was a female still inside the vehicle.

17 Q. You detained the Defendant inside the Sav-Mart.

18 A. Correct. Yes sir.

19 Q. And what do you do after that?

20 A. We put him in handcuffs, and at that point he was
21 turned over to the Drug Enforcement Unit who interviewed him,
22 or patted him down, or whatever they did. Myself and PFC
23 Arroya pretty much remained inside the store.

24 Q. So you pretty much remained inside. You handed him
25 off.

- 1 A. Correct. Yes sir.
- 2 Q. And then you went back to the store?
- 3 A. Right.
- 4 Q. How long were you there at the store?
- 5 A. I'd say roughly a half an hour.
- 6 Q. Half an hour or so. Now, when -- did there come a time
- 7 when other officers entered the store?
- 8 A. Yes sir.
- 9 Q. Who all were those officers?
- 10 A. It was myself. PFC Arroya was there, Agent Beam, Agent
- 11 Howlett, Agent Miller, and Agent Curry, I believe, and we also
- 12 had another supervisor from the Street Crimes Unit show up,
- 13 Sergeant Tony Allen.
- 14 Q. Y'all were inside the store and Agent Beam came in.
- 15 A. Correct.
- 16 Q. What was the purpose -- did you know what the purpose
- 17 was for the agents and the other officers coming in the store?
- 18 A. Yes sir. To pretty much take custody of Mr. Davis.
- 19 Q. Were they searching for anything?
- 20 A. Yes sir. Drugs. Crack cocaine specifically.
- 21 Q. All right. Now, did there come a time -- you said
- 22 y'all were there for about a half hour of so.
- 23 A. Yes sir.
- 24 Q. How long did that search go on?
- 25 A. I want to say it was twenty -- twenty something

DANIEL A. ROBERTS - DIRECT BY RICHARDSON

19

1 minutes.

2 Q. Did there ever come an aha in that search?

3 A. Yes sir. We eventually decided to check the video from
4 the -- the instore video from the Sav-Mart.

5 Q. That's the security video.

6 A. Correct. Yes sir.

7 Q. Upon checking the security video, what did you do?

8 A. I checked the security video and on the video I
9 observed the Defendant walking into the store, looking over
10 his shoulder. He saw us coming in. At that time he went down
11 to about the third aisle, made a left, and while looking over
12 his left shoulder he reached with his right hand into like an
13 ice cream cooler, slid it open -- you could clearly see him
14 slide it open -- and drop something inside.

15 After observing that I walked over to the cooler and
16 found a loose off-white rock-like substance I believed to be
17 crack cocaine, as well as a packaged, in a clear plastic bag,
18 off-white rock-like substance.

19 Q. I'm going to show you what's been previously marked for
20 identification and State's Exhibit 5. If you will take a look
21 at State's 5, do you recognize State's 5?

22 A. I do, sir, yes.

23 Q. And how do you recognize State's 5?

24 A. I've seen it. I've seen the video. I've seen this
25 disk here.

1 Q. Can you tell it from the markings?

2 A. Correct.

3 Q. And upon viewing State's 5, does it fairly and
4 accurately represent or depict what went on inside the store
5 that day?

6 A. Yes sir, it does.

7 Q. And is this the security video you viewed back on
8 January 28, 2011?

9 A. Yes sir, it is.

10 MR. RICHARDSON: Your Honor, at this time the State
11 would seek to introduce State's 5 and publish it.

12 MR. DIGGS: We don't have any objection.

13 THE COURT: All right. So State's 5 is in evidence,
14 and you may publish it:

15 (SECURITY VIDEO ADMITTED INTO EVIDENCE AS STATE'S
16 EXHIBIT NUMBER 5.)

17 THE COURT: You may publish it.

18 MR. RICHARDSON: Yes sir, Your Honor.

19 Q. Now Officer Roberts, this takes a couple of minutes to
20 load, correct..

21 A. Correct. Yes sir.

22 Q. And there are two clips on there?

23 A. I believe so. Yes sir.

24 (PUBLISHING STATE'S EXHIBIT NUMBER 5.)

25 Q. Now Officer Roberts, this isn't quite the same quality

DANIEL A. ROBERTS - CROSS BY DIGGS

21

1 we see on TV, is it?

2 A. Not quite.

3 Q. Now Agent Roberts -- or Officer Roberts, prior to
4 getting started here, is there -- you have viewed the video --
5 is there a particular area of interest that we should pay
6 attention to?

7 A. Yes sir. The bottom right-hand corner there's a
8 cooler. That's the cooler that contained the narcotics we
9 located.

10 Q. The cooler facing that open aisle?

11 A. Correct. Yes sir.

12 Q. Agent Roberts, can you identify the man in the tank
13 top?

14 A. Yes sir. That's the Defendant, Mr. Davis.

15 Q. Officer Roberts, did you take a look at the other video
16 in that CD.

17 A. Yes sir, I did.

18 Q. And the second video is more of a larger view of the
19 store?

20 A. Correct.

21 Q. Officer Roberts, that gentleman in the balaclava, or
22 ski mask, who is that?

23 A. That is Agent Beam, sir.

24 MR. DIGGS: I'm sorry.

25 MR. RICHARDSON: Agent ---

1 A. Agent Beam.

2 Q. Officer Roberts, that gentleman you are talking to
3 right there, could you identify him?

4 A. Sir, that was the manager of the store.

5 Q. Officer Roberts, I know it was a tedious process
6 watching that video did you see anybody else touch that
7 cooler?

8 A. No sir. No.

9 Q. And when we didn't see officers inside, where were you
10 guys?

11 A. The majority of the time we were in that middle aisle
12 where we actually detained Mr. Davis, believing that the
13 narcotics would probably be somewhere around there until we
14 decided to look at the video and found otherwise.

15 Q. And where was it where you went to go look at the
16 video?

17 A. It was just inside the store, right behind the counter
18 there.

19 Q. So you would not have appeared on video when you were
20 watching the video.

21 A. That is correct. I would have been off -- off camera.

22 Q. Let me show you what's been previously marked as
23 State's 1, 2, 3 and 4 for identification. See if you can
24 recognize these items.

25 A. This is the front entrance to the Sav-Mart.

1 Q. First of all, do you recognize these photographs?

2 A. Yes sir, I do.

3 Q. And how do you recognize these photographs?

4 A. You showed them to me.

5 Q. And you were there that day.

6 A. Correct.

7 Q. That is, January 28th, 2011.

8 A. That is correct.

9 Q. Do they fairly and accurately depict the door as you
10 encountered it that day at the Sav-Mart?

11 A. Absolutely.

12 Q. And that's 1, 2, 3 and 4, correct?

13 A. Correct.

14 MR. RICHARDSON: Your Honor, I have given Defense
15 Counsel the opportunity to review these items. I would seek
16 to submit them into evidence, produce them to the jury.

17 THE COURT: Any objection?

18 MR. DIGGS: No sir.

19 THE COURT: All right. They are in evidence without
20 objection. You may publish them to the jury.

21 (PHOTOGRAPHS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBERS 1, 2, 3, AND 4.)

23 Q. Officer Roberts, Number 1. Can you tell us what we are
24 seeing here?

25 A. That's going to be the front entrance to the store.

1 That's where we entered. That's where the Defendant entered
2 on that day.

3 Q. Any other side doors or anything?

4 A. No sir.

5 Q. Now, State's Number 2. Would you tell us what's in
6 State's Number 2?

7 A. That's going to be the aisle where Mr. Davis walked
8 down and opened the cooler. The cooler is in the lower right-
9 hand corner.

10 Q. The one y'all wish y'all would have searched first.

11 A. Correct. Yes sir.

12 Q. And which cooler was it?

13 A. It will be the top one here.

14 Q. It's the last cooler.

15 A. Correct. Yes sir.

16 Q. And State's Number 3.

17 A. This is going to be the box that the narcotics were
18 actually located on. It's a little Banquet food box, frozen
19 meal.

20 Q. And that was inside of the cooler. Officer Roberts,
21 that was inside of that cooler.

22 A. Oh, yes sir. Correct.

23 Q. Finally, State's Number 4. Could you tell us what that
24 plastic piece is.

25 A. That's going to be a clear plastic bag which contained

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1 an off-white rock-like substance.

2 Q. And that day, was that the only drugs that you saw?

3 A. No sir. There was also a loose -- a loose piece, a
4 loose chunk there.

5 Q. You assistance with the Fifteenth Circuit Drug
6 Enforcement Unit, and your apprehension of the Defendant, is
7 that pretty much -- and the search of the store, that pretty
8 much details your involvement.

9 A. That is correct. Yes.

10 MR. RICHARDSON: All right. Officer Roberts, if you
11 would just answer any questions that Mr. Diggs may have.

12 A. Yes sir.

13 THE COURT: Cross-examination.

14 MR. DIGGS: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. DIGGS:

16 Q. Officer Roberts, who asked you to be there? What -- in
17 fact, why were you there?

18 A. We were there to assist Agent Beam.

19 Q. Okay. And is Agent Beam in the courtroom?

20 A. Yes sir, he is.

21 Q. Where is he?

22 A. The gentleman with the blue tie.

23 Q. Who does he work for?

24 A. The Fifteenth Circuit Solicitor's Drug Enforcement
25 Unit.

1 Q. All right. He doesn't work for the City of Myrtle
2 Beach.

3 A. Technically he does. He's a Myrtle Beach Police
4 Officer, but he's attached to the Drug Enforcement Unit as an
5 agent.

6 Q. All right. Who was the other officer there when you
7 took my client into custody there in the store? Saw two
8 individuals. One was you.

9 A. Correct.

10 Q. And who was the other one?

11 A. The other would be PFC Richard Arroyo, and he is ---

12 Q. He's the other gentleman seated in the back.

13 A. Correct.

14 Q. In the front actually.

15 A. Correct.

16 Q. Okay. Now, when you took my client into custody you
17 didn't actually fill out the arrest warrant for his arrest,
18 did you?

19 A. I did not, no.

20 Q. And do you know who did that?

21 A. I believe -- I don't know off the top of my head, no.

22 Q. All right. And can you tell me why you didn't do it?

23 A. It wasn't a case -- wasn't my case.

24 Q. All right. It was a situation where you were simply
25 assisting other officers, and that's it.

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1 A. That is correct.

2 Q. And again, for my information, who were your -- who
3 were you assisting?

4 A. The Fifteenth Circuit Drug Enforcement Unit.

5 Q. All right. These two gentlemen here.

6 A. Correct. This gentleman here, Agent Beam, and the
7 other agents that were there.

8 Q. All right. And to your knowledge they would have been
9 the ones that filled out the arrest warrant and took it to the
10 Judge or the magistrate.

11 A. That is correct.

12 Q. And authorizing, judicially, the police, or law
13 enforcement, to take my client into custody.

14 A. That is correct.

15 Q. Okay. Now, did you have any involvement with my client
16 other than pretty much what we saw on video?

17 A. No sir. I just assisted in detaining him, and
18 transferring him to the Drug Enforcement Unit.

19 Q. And just listen to my question, and you don't need to
20 go beyond it, but did you have any involvement with my client,
21 in any manner, prior to the request by these gentlemen seated
22 here, to assist them in taking my client into custody?

23 A. Prior to this, no.

24 Q. You basically -- would it be fair to say you don't know
25 anything about him, or this case, other than what you were

1 involved in that day.

2 A. We had a briefing prior to going out and conducting the
3 operation, but ---

4 Q. All right, but that briefing would be based on -- they
5 gave you information that you were told.

6 A. Correct.

7 Q. And certainly did not consist of information that you
8 observed, correct?

9 A. Correct.

10 Q. And who gave you the briefing?

11 A. It would have been Agent Beam, the Drug Enforcement
12 Unit.

13 Q. All right. And so if I wanted to talk about that
14 briefing in terms of where he got his information, he would be
15 the one I would want to talk to.

16 A. Correct.

17 Q. Okay. Did Agent Beam have legal authority, to your
18 knowledge, if you know, to arrest my client?

19 A. Yes sir.

20 Q. Would it be asking you to speculate if I were to ask
21 it, and why did he go ahead and get you involved?

22 A. Just as assistance ---

23 Q. All right. Just to have ---

24 A. ---Manpower..

25 Q. Okay. How many officers were there? When we were

1 looking at those videos ---

2 A. Right.

3 Q. ---People kept coming and going, and might be a little
4 bit difficult to distinguish between the officers and the
5 customers ---

6 A. Uh huh (indicating positive)

7 Q. ---But about how many officers were there? By the time
8 y'all left how many had shown up to look around and do
9 searches, and that kind of thing?

10 A. I think, in total, it was seven officers and agents.

11 Q. Seven. Were they all -- other than these two
12 gentlemen, were they like Myrtle Beach police officers?

13 A. Myrtle Beach Police were myself, PFC Arroyo, and
14 Sergeant Tony Allen showed up afterward. He was in the full
15 Myrtle Beach uniform.

16 Q. Okay. Now, do you have any knowledge about how my
17 client got to the store that day?

18 A. Yes sir. He arrived in a blue Ford.

19 Q. Okay. Was he driving, or do you know?

20 A. I do not know, sir.

21 Q. And was he alone, or was someone with him?

22 A. There was a subject in the vehicle.

23 Q. And do you know if it was man or a woman?

24 A. A female.

25 Q. Okay. Do you know what the relationship of those two

1 would be?

2 A. I do not, sir. No.

3 Q. Okay. Now, when you left that day did you go back and
4 do any paperwork, fill out any paperwork related to this
5 incident?

6 A. The only thing I would have done was filled out a
7 written statement for Agent Beam.

8 Q. Okay. So anything you did you provided to him?

9 A. Correct.

10 MR. DIGGS: Beg the Court's indulgence for just a
11 second.

12 THE COURT: Yes sir.

13 MR. DIGGS: Thank you very much, Officer Roberts.
14 That's all I have at this time.

15 A. Okay, sir.

16 THE COURT: All right, Solicitor, any redirect?

17 MR. RICHARDSON: Your Honor, if we may approach.

18 THE COURT: Yes sir.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 REDIRECT-EXAMINATION BY MR. RICHARDSON:

21 Q. Officer Roberts, real quick, Mr. Diggs asked you about
22 a legal authority to arrest. When you placed the cuffs on the
23 Defendant did you have a warrant on him at that point?

24 A. I didn't personally have it in hand, but it -- we knew
25 that there was a warrant on him.

1 Q. You were aware of it.

2 A. Correct.

3 MR. RICHARDSON: Thank you.

4 A. Yes sir.

5 MR. RICHARDSON: No further questions, Your Honor.

6 THE COURT: Anything on that particular question, Mr.
7 Diggs.

8 MR. DIGGS: No sir.

9 THE COURT: All right. You may step down, sir.

10 A. Thank you, sir.

11 MR. RICHARDSON: Thank you, Your Honor.

12 THE COURT: Do you wish this witness to be excused at
13 this time?

14 MR. RICHARDSON: I do, Your Honor.

15 THE COURT: Any objection, Mr. Diggs?

16 MR. DIGGS: I don't think so, Your Honor. We don't
17 object.

18 THE COURT: All right, very good. All right, sir, you
19 are released from your Subpoena. You may go back to your
20 regular activities.

21 A. Thank you, Your Honor.

22 THE COURT: All right. Solicitor, your next witness
23 then, please sir.

24 MR. RICHARDSON: The State would call Agent Jeremiah
25 Beam.

1 THE COURT: All right, sir. Please come up here to be
2 sworn, sir.

3 JEREMIAH BEAM, being first duly
4 sworn, testifies as follows:

5 DIRECT-EXAMINATION BY MR. RICHARDSON:

6 Q. Agent Beam, could you please tell us all where you are
7 employed.

8 A. Employed by the City of Myrtle Beach. Currently
9 assigned to the Fifteenth Circuit Drug Enforcement Unit,
10 commonly known as the D.E.U..

11 Q. And the Fifteenth Circuit Drug Enforcement Unit,
12 educate us a little bit. It's seem to be strange. We know
13 Myrtle Beach Police, we know Horry County Police. What is
14 that Fifteenth Circuit Drug Enforcement Unit?

15 A. We are a task force assigned to work both Horry and
16 Georgetown County. We work strictly narcotics, and do a
17 little bit of everything. We do long-term investigations,
18 short-term investigations, we do reverses where we actually
19 sell drugs to the bad guys. We do a little bit of everything.

20 Q. And in the course of your duties as an agent with the
21 Fifteenth Circuit Drug Enforcement Unit, did you have the
22 opportunity back on January 28, 2011, to come into contact
23 with the Defendant?

24 A. Yes sir, I did.

25 Q. Tell us about that situation, what time it arose, and

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1 all that.

2 A. Approximately about four o'clock in the afternoon we
3 were conducting investigation and came across the Defendant at
4 the Sav-Mart, which we observed there on the video.

5 Q. Now you said we, who is we?

6 A. Agents of the Drug Enforcement Unit, and we also had
7 the assistance of the Myrtle Beach Police, just for manpower
8 issues, to make sure we have plenty of bodies in place, you
9 know, help if needed.

10 Q. Now, Mr. Diggs had asked the question previously
11 about -- about meetings and whatnot. Did y'all have a brief
12 and -- you got some assistance with Myrtle Beach Police. Did
13 you have any kind of briefing there?

14 A. We had a very informal briefing. It's just to inform
15 agents that are helping us, kind of what we have going on,
16 some, you know, the players, you know, if we have warrants, if
17 we don't. Sometimes we need to fill them in about the
18 criminal histories, or if they are known to carry a weapon,
19 just try to make sure everybody stays on the same page.

20 Q. And the Sav-Mart ---

21 A. Yes sir.

22 Q. ---It's in the City of Myrtle Beach, in Horry County.

23 A. Yes sir. That's about 6th Avenue, in the City of
24 Myrtle Beach, Horry County.

25 Q. How did you arrive there?

1 A. Well, we had information that the Defendant was
2 possibly going to arrive at the Sav-Mart, so we set up
3 surveillance a little prior to the Defendant arriving.

4 Q. And were you in a marked vehicle?

5 A. I was actually in an unmarked vehicle. The only marked
6 vehicle we had on scene that day was the Crown Vic that
7 Officer Roberts told you guys about just prior.

8 Q. And they -- they were just marked with the lights.

9 A. They were the marked unit. We typically, in most
10 operations, like to have a marked unit. That way people can't
11 say I didn't know you weren't the police, or you know, that
12 way we have, you know, the blue lights presence.

13 Q. Now where were you situated? We've heard testimony
14 about where Officer Roberts was, but you.

15 A. I was riding with Agent Curry, who is also in the
16 D.E.U., and we were across the street near the Post Office,
17 which is on the other side of Kings Highway, directly across
18 from the Sav-Mart.

19 Q. And Kings Highway, a busy street.

20 A. Yes sir.

21 Q. So where did you first notice the Defendant?

22 A. Well, we observed the Defendant's vehicle traveling
23 eastbound, coming -- actually pass the Post Office heading --
24 basically went across Kings Highway, so it was heading in an
25 eastward direction across Kings Highway, and then pulled into

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1 the south side parking lot of the gas station.

2 Q. And y'all were situated in the parking lot at the Post
3 Office.

4 A. Yes sir.

5 Q. So did you begin pursuit at that point?

6 A. Well, we radioed out, let the --- obviously the officers
7 know that -- and we spotted the Defendant's vehicle that he
8 was known to operate, that was registered to the Defendant,
9 that we were familiar with. Radioed out. It took us a good
10 minute to get across. Due to traffic we just could not get
11 out. That's why Officer Roberts and Arroyo were the first
12 ones on the scene. That's why they were the only ones to go
13 in and we weren't on the scene initially. We were not able to
14 safely get across.

15 Q. And from your vantage point, what -- were you in a
16 position to be able to see Officers Arroyo and Roberts?

17 A. Time we got across they were exiting their vehicles and
18 getting out, basically going into the gas station.

19 Q. Were you able to observe the Defendant?

20 A. I did. We were able to observe him getting out.

21 Q. Tell us about that.

22 A. They parked, like I say, on the south side. When they
23 passed us we were able to tell it was occupied two times.
24 Couldn't tell, you know, who the other occupant was. We did
25 observe the Defendant driving. Stopped there at the

1 intersection, did see the Defendant get out of the car and
2 walk into the store, and that's when Officer Roberts and
3 Arroyo arrived.

4 Q. Describe how you walked into the store.

5 A. It was in a pretty quick manner. Agent Curry did
6 observe that he was looking over his shoulder, and saw him go
7 into the store in a hurried manner.

8 Q. Now, you had radioed Officers Roberts and Arroyo, you
9 are watching the Defendant. He gets out of his car and he
10 goes into Sav-Mart.

11 A. Yes sir.

12 Q. And you are trying to cross Kings Highway.

13 A. Yes sir.

14 Q. When you get across Kings Highway where do you go?

15 A. We all went inside. As we were approaching they were
16 actually coming out of the store. They already had him
17 detained, without incident, and were bringing him out.

18 Q. And that's pretty much what we saw on the video.

19 A. Yes sir.

20 Q. After you -- after the Defendant was brought out -- I
21 think the clock will tell us what time it is -- but some time
22 passed you find the suspected narcotics, correct?

23 A. Yes sir.

24 Q. What's going on in the meantime?

25 A. Well, we've got a lot going on. We are worried about a

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1 tow, we are worried about separating the two occupants, having
2 a chat with them, seeing what's going on. We are dealing with
3 the transport issues. We are dealing with a lot of other
4 issues, as well as trying to locate, you know, additional
5 narcotics that may or may not have been thrown down as the
6 Defendant was entering the store.

7 Q. Okay. So you are doing a general sweep search of the
8 area.

9 A. We are making sure, yes sir, that he didn't throw any
10 narcotics. Based on the quick, you know, entry, based on our
11 experience, it's common that people will hide narcotics, if
12 they have it, obviously if they know the police are coming, so
13 that's all we are doing. We are just checking to make sure
14 nothing was thrown down.

15 Q. Now Officer Roberts and Officer Arroyo, you saw them
16 that day, I mean, we saw them on the video. I know it was
17 kind of black and white. Can you describe how they were
18 dressed?

19 A. They had their tactical vests on, obviously, clearly
20 marked with "Police". They are wearing plain clothes, which
21 is usually bluejeans and a t-shirt, but they were clearly
22 identified as police.

23 Q. Generally known in Myrtle Beach to be police dress
24 wear.

25 A. Yes sir. That's very common for our Street Crimes

1 Units to always be dressed that way.

2 Q. Now you are searching the outside. You said you are
3 worried about a tow.

4 A. We are just trying to arrange a possible tow. I think
5 we ended up actually releasing the car. We were trying to
6 line up transport, you know, getting the Defendant to the
7 jail. We were just worried about a bunch of little things.
8 That's part of why there's so much activity going on there on
9 the video.

10 Q. And the car you are thinking about towing, what car is
11 that?

12 A. That was Defendant's blue Ford. It's an older model
13 Ford.

14 Q. And you say it's the Defendant's. Did you verify that?

15 A. Yes sir. We had prior knowledge, and it is -- it was
16 at the time registered to Mr. Davis.

17 Q. In his name.

18 A. Yes sir.

19 Q. So all this is going on. Then y'all go inside. We saw
20 you on the floor searching around.

21 A. Yes sir.

22 Q. Tell us what you were doing there.

23 A. We were just looking for anything he threw down. It's
24 an old store. We found all kind of stuff, I mean, cobwebs.
25 We found some stuff we initially thought possible were

1 narcotics, field-tested, was not drugs, but that's part of
2 what we were doing, is trying to look for whatever. We didn't
3 know if he threw down anything, if -- you know, we were just
4 trying to make sure we covered our bases, so that's why it
5 took, you know, so long. That's why we were taking
6 photographs prior to collecting.

7 Q. And so y'all are on that main aisle we saw.

8 A. Uh huh (indicating positive)

9 Q. Why was that?

10 A. Just trying to retrace, you know, the path, check -- I
11 think we checked the drink cooler where he was observed. You
12 know, we were just trying to backtrack.

13 Q. Okay. So y'all are just going reverse that -- reverse
14 back.

15 A. Yes sir.

16 Q. Whenever the Defendant was taken outside in handcuffs,
17 was he searched?

18 A. He was searched.

19 Q. And what, if anything, did you find on the Defendant?

20 A. We found no narcotics on his person. We did find a
21 currency of money located on his person, but no -- no drugs.

22 Q. How much money was it?

23 A. I believe it was Six Hundred and some odd dollars in
24 small denomination. That money was seized.

25 Q. Six Hundred and some dollars. Are you familiar with

1 drug practices in Horry County?

2 A. Yes sir.

3 MR. DIGGS: Your Honor, I'm going to object to that. I
4 mean, I understand the question is asked and answered, but
5 what the drug practices in Horry County have to do with this
6 case ---

7 THE COURT: I'm going to sustain the objection.
8 Sustain the objection.

9 MR. DIGGS: Thank you.

10 THE COURT: Proceed on, Solicitor.

11 MR. RICHARDSON: Your Honor, perhaps I was overbroad.

12 Q. Have you been working narcotics for a long period of
13 time?

14 A. Yes sir.

15 Q. Are you familiar with how narcotics are ingested?

16 A. Yes sir.

17 Q. Crack cocaine ---

18 A. Yes sir.

19 Q. ---Are you familiar with how it's ingested?

20 A. Yes sir.

21 Q. Typically, how is crack cocaine ingested?

22 A. Typically it's smoked.

23 Q. And smoked. Are you familiar with types smoking
24 devices used in the ingestion of crack cocaine?

25 A. Yes sir. Yes sir. Typically it's a stem or a pipe.

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1 Street term is a stem.

2 Q. In a stem or a pipe. What does it look like?

3 A. They vary. A lot of times they are a little glass
4 tubes, maybe just two to four inches. A lot of times they
5 have a little bit of Brillo in the end. It's a homemade --
6 basically a filter device, keep large portions of the crack
7 being -- to being held.

8 We've seen it in a can. I mean, there's all kind of
9 different, you know, homemade devices.

10 Q. And in your search of the Defendant did you find any
11 utensils you would commonly associate with the ingestion of
12 crack cocaine?

13 A. No sir.

14 Q. And how long have you been working narcotics?

15 A. About four years, four or five years. Aggressively
16 ever since -- you know, that's a passion. That's why I'm
17 lucky enough to be where I am, so, yes.

18 Q. And in your work as a narcotics agent for the Fifteenth
19 Circuit Drug Enforcement Unit have you arranged for purchases,
20 purchases of cocaine and cocaine base?

21 A. Yes sir, quite often.

22 Q. Are you familiar with the common prices here in Horry
23 County?

24 A. Yes sir.

25 Q. How long have you been familiar with those?

1 A. I mean it's -- it's fluctuates a little bit, kind of
2 like the stock market, but it's pretty much been the same ever
3 -- you know, ever since I've been in law enforcement. Supply
4 and demand has a little bit to say about it, but it's
5 typically, you know, about a Hundred Dollars a gram, just a
6 general ballpark figure.

7 Q. Of cocaine. Crack cocaine goes for about a Hundred
8 Dollars a gram.

9 A. Yes sir.

10 Q. And whenever you've utilized informants to purchase
11 cocaine base how is it purchased, typically?

12 A. Typically it's in, you know, Hundred, or a couple
13 Hundred Dollars quantities. Street level users typically
14 package sometimes in one package, but oftentimes in small
15 individual bags, just consistent for users.

16 Q. So you said a Hundred or Two Hundred Dollars so, a
17 gram, two grams.

18 A. Yes sir.

19 Q. That's been in your experience.

20 A. Yes sir. That's in my experience.

21 Q. Now, in this instance, on January 8th, (S.I.C.) 2001,
22 we saw the photographs being taken.

23 A. Yes sir.

24 Q. After those photographs were taken what happened?

25 A. We take the photographs and then I secure the evidence.

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1 It is my case, so for chain of custody issues I secured the
2 drugs. I conducted a field test just to make sure. It was
3 field-tested for cocaine, and it did test positive, then
4 secured it in a Horry County Best packet, which is just our
5 way of securing it, and we secured that packet at the M.L.
6 Brown, which is the Horry County Department, Property and
7 Evidence Section, and therefore it's sent off to the chemist,
8 basically, to do an actual test on it, to make sure that, in
9 fact, is cocaine or cocaine base.

10 Q. Okay. So in particular -- let's me show you what has
11 been marked as State's 6, for identification. Do you
12 recognize State's Number 6?

13 A. Yes sir.

14 Q. And how do you recognize State's Exhibit 6?

15 A. That is the cocaine base that we recovered.

16 Q. And how can you be sure that this is, indeed, the
17 cocaine base you recovered?

18 A. From the other side it's -- that's the Best packet.
19 That's what it was secured in. That's where I initialed it,
20 initialed and printed my name.

21 MR. DIGGS: Your Honor, I would object to the
22 characterization of the evidence as cocaine base unless this
23 witness is qualified, like as a chemist or some sort of
24 expert. He can say that's the stuff he found at the store,
25 but I would object to him testifying as to what it is.

1 MR. RICHARDSON: Your Honor, I'll rephrase that.

2 THE COURT: That would be fine.

3 Q. Suspected cocaine base.

4 A. Yes sir, suspected cocaine, yes.

5 Q. And that's what you found in that cooler, correct?

6 A. Yes sir, that is.

7 Q. Now, upon finding the cocaine base in the cooler, did
8 you run any kind of tests on the scene?

9 A. Not prior. Once we located it, we recovered it, and
10 sometime later, still on the scene, I did conduct a field
11 test.

12 Q. And what's a field test?

13 A. It's just a presumptive test, basically to -- it's, you
14 know, not a hundred percent, but it gives us a general idea
15 whether the substance, any substance, you know, cocaine,
16 heroin, marijuana, is actually what we think it may be.

17 Q. And I think you talked about it earlier, said you found
18 some stuff you thought was cocaine or cocaine base, and it
19 tested negative.

20 A. Correct.

21 Q. Now, what you found in the cooler, how did it test?

22 A. It did field-test positive.

23 Q. I'm going to show you what's been previously admitted
24 as State's Number 4. Now there I see one bag. Is that all
25 the cocaine base, or suspected cocaine base?

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1 A. No sir. There was also the bag, and there was a larger
2 chunk that was found a little bit lower on the turkey Banquet
3 frozen dinner.

4 Q. Let me show you what's been marked and identified, and
5 put into evidence as State's Number 3. Can you point out that
6 larger chunk?

7 A. Yes sir. It's a little bit lower. It's actually kind
8 of hard to see because it blends in with the white part of the
9 chicken there, but that is the chunk there, and that's the
10 single piece.

11 Q. And it looks different than the other chicken boxes.

12 A. Yes sir.

13 Q. And roughly hexagonal.

14 A. Yes sir.

15 MR. RICHARDSON: Your Honor, I'm going to give the jury
16 these if that's all right..

17 THE COURT: You can publish them. Yes sir, you may
18 publish them.

19 MR. RICHARDSON: Court's indulgence.

20 THE COURT: Yes sir.

21 Q. Agent Beam, is there looking on those photographs --
22 you told us a little bit about that Best baggie. I just want
23 to make sure we are sure on this. Once you found the
24 suspected cocaine base you said you took it and you did a
25 field test.

1 A. Yes sir.

2 Q. What did you do next?

3 A. After the field test we actually take it back to our
4 office. We don't typically drop it on scene. It's not a
5 controlled environment. It's not conducive -- you know, it's
6 just a -- it's a mess. We've got things going on. Took it
7 back to my office, our D.E.U. office. Once there, later that
8 evening, before going home, completed the Best packet, sealed
9 it, initialed it, and then later that evening dropped it at
10 the Horry County Property and Evidence Section for basically
11 safekeeping and later testing, if needed.

12 Q. Who took the suspected cocaine out of the cooler?

13 A. I did, sir.

14 Q. And once you took possession of it, did it ever leave
15 your possession?

16 A. No sir, not until I dropped it off at the County
17 Property and Evidence Section.

18 Q. And as you drop it off -- I know we kind of went over
19 this, but how do we tell one item you drop off from another?

20 A. Each Best packet has an individual number. We also
21 keep a tab, several tabs, but -- I've got a tab here -- but it
22 basically correlates to the Best packet. It shows -- it's got
23 a number that's on our tab and the Best packet tab, just to
24 make sure that it's the same Best packet.

25 Q. And it's kind of a tracking system.

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1 A. It is sealed to avoid tampering or anything like that.

2 Q. And how is it sealed?

3 A. We pull the tab off and then close it.

4 Q. So it's like an envelope.

5 A. It's got a real sticky -- it's real tough to get apart,
6 short of just cutting it.

7 Q. And upon it being in the Best bag how did -- what did
8 you do with it?

9 A. I dropped it off at the Horry County Property and
10 Evidence Section.

11 Q. Did you fill out any kind of documentation?

12 A. There's a Chain of Custody on the actual Best packet.

13 Q. And you dropped that.

14 A. I dropped that, and I'm pretty sure that when the P & E
15 technicians -- Property and Evidence -- they have to sign
16 also, and they continue the chain.

17 Q. And how do you drop it off? Is it just some kind of
18 bin or ---

19 A. It's a secure -- obviously you have to have secure
20 access so not anybody can just get in, but it was after
21 business hours. It was after 5 P.M., so yeah, there is a
22 little bin, or shoot, and you just drop it in there.

23 Q. Now once you drop the suspected narcotics into the bin
24 is there any way for you to access it?

25 A. No sir. I'll have to actually go back through them to

1 pull it back out, and actually have to sign for the Chain of
2 Custody.

3 Q. And after you dropped the suspected narcotics off, did
4 you ever deal with it again?

5 A. No sir.

6 Q. Till today.

7 A. Till today. Yes sir. I ---

8 Q. What did you do today?

9 A. I got it today from the Horry County Property and
10 Evidence for, obviously, the Court, and I had to sign for it,
11 indicating that I picked it up.

12 MR. RICHARDSON: Your Honor, I have no further
13 questions of the witness.

14 THE COURT: Cross-examination.

15 MR. DIGGS: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. DIGGS:

17 Q. Now, Agent Beam ---

18 A. Yes sir.

19 Q. ---How long have you been in law enforcement?

20 A. Seven years, sir.

21 Q. Seven years. And when did you get involved in the Drug
22 Enforcement Unit?

23 A. It's been about a year and a half, two years now, sir.

24 Q. All right. Now, this particular crack cocaine was
25 being delivered to your agent, correct?

1 A. To my agent.

2 Q. Agent. Your confidential informant.

3 A. Yes sir.

4 Q. Your agent. And it was being delivered because your
5 agent had asked that it be delivered to him, correct?

6 A. We did utilize a confidential informant.

7 Q. Yes. All right. And in -- when you were working on
8 this case you wrote up a report ---

9 A. I did.

10 Q. ---And gave it to the Solicitor ---

11 A. Yes sir.

12 Q. ---And he has given it to me. And you acknowledge in
13 that report, do you not, that your informant called my client
14 on a number of occasions.

15 A. Yes sir.

16 Q. A number of occasions.

17 A. They had communication, yes sir.

18 Q. And it was generally your guy calling my client saying,
19 can you get me some stuff, can you get me some stuff, correct?

20 A. We had conversations from both ways, but yes sir, we
21 did utilize a confidential informant.

22 Q. And would it be fair to say that, but for your
23 confidential informant calling my client repeatedly, we
24 wouldn't be here?

25 MR. RICHARDSON: Your Honor, it calls for speculation.

1 A. I can't answer that.

2 MR. RICHARDSON: Objection.

3 MR. DIGGS: I'd ask that he ---

4 THE COURT: I'm allow -- I'm going to allow the
5 question. He gave a response. We'll move along.

6 MR. RICHARDSON: Yes sir.

7 Q. All right. In fact, that six grams of crack cocaine
8 that you say was recovered that day ---

9 A. Yes sir.

10 Q. ---It was six grams because your man asked for six
11 grams; did he not?

12 A. No sir. Six grams was never mentioned.

13 Q. And were you a witness to all the conversations
14 involving your confidential informant?

15 A. No sir. The C.I. later stated that it was -- I don't
16 know how much money, but I don't think it was going to be six
17 grams.

18 Q. You don't think -- you don't know.

19 A. I can't remember, sir, without going through the
20 report.

21 Q. Okay. You are not telling us then that your
22 confidential informant didn't ask for six grams.

23 A. I don't know the exact amount.

24 Q. You don't know, but he could have.

25 A. He could have, yes sir.

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1 Q. And this confidential informant has been arrested,
2 correct?

3 A. I believe he has, yes sir.

4 Q. Yes. And he's working off charges, correct?

5 A. No sir. He was actually a paid informant.

6 Q. Oh, he was paid. Who was paying him?

7 A. Sir, we have some C.I.s that are working on charges,
8 and we have others that are being paid.

9 Q. All right. And this one was being paid by you.

10 A. Yes sir.

11 Q. And did you -- were you paying him per phone call, or
12 paying him per transaction?

13 A. They get paid by individual -- no, events. It's not --
14 -

15 Q. All right. And so if he doesn't bring about the
16 transaction he doesn't get paid.

17 A. It's a case by case basis.

18 Q. All right. Would your C.I. in this case have been paid
19 if he hadn't been able to convince my man to go ahead and get
20 some stuff for him?

21 A. I don't know. It didn't turn out that way, so I can't
22 answer that.

23 Q. All right. So we know now that my guy didn't
24 communicate with your man first.

25 A. Not first, no sir.

1 Q. All right. Your agent communicated with my man first,
2 right ---

3 A. Yes sir.

4 Q. ---Said did he want -- said, I want some crack cocaine,
5 right?

6 A. Yes sir.

7 Q. And he did that not only once or twice, but he called
8 him several times.

9 A. There were several phone calls.

10 Q. Yeah, several phone calls.

11 Do you know if my man ever said, no, I ain't doing it?

12 A. Not to my knowledge.

13 Q. All right. You have no idea, do you?

14 A. I do not know, no sir.

15 Q. All you know is, finally my man said, all right, I've
16 got the stuff. You don't know it's any different from that,
17 do you?

18 A. I know that he showed up where he said he would.

19 Q. All right. Don't you think it's important to know the
20 context of this particular transaction?

21 A. The C.I. was never in play. He was not on the scene.

22 Q. Yes, but for heaven sakes, he was going to meet my
23 client, wasn't he?

24 A. Yes sir.

25 Q. He just wasn't on the scene yet, right?

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1 A. Yes sir, that's correct.

2 Q. Why didn't you tell us that?

3 A. I just did, sir.

4 Q. Well, you didn't say anything about it when the
5 Solicitor was examining you, correct?

6 A. Yes sir.

7 Q. You did say it?

8 A. No sir.

9 Q. All right. So we know, but for your man going to my
10 man, calling him multiple times, asking for a specific amount
11 of crack cocaine, you don't have any evidence that would show
12 my man would have shown up that day trying to sell crack, do
13 you?

14 A. No sir.

15 Q. No, you don't. Now, in fact, you said, well, we have
16 an Arrest Warrant for him. Didn't you say that?

17 A. Yes sir.

18 Q. And that Arrest Warrant was for what?

19 A. It's for distribution of crack cocaine. I just wanted
20 to make sure I was okay to answer that before I did.

21 Q. Okay. And who did we distribute it to? Let me guess,
22 your man.

23 A. Yes sir. It was sold to a confidential informant.

24 Q. And this same one.

25 A. Yes sir.

1 Q. And how many times did your man call my man on that
2 occasion?

3 A. I don't know, sir.

4 Q. A number of times though, right?

5 A. There's always communication.

6 Q. Yeah. And you put that in your report. Okay. In
7 fact, what day was that?

8 A. The actual -- the first buy?

9 Q. Yes.

10 A. That was on January 14th.

11 Q. Okay. Now, do you know if my client was working at
12 that time?

13 A. I have no knowledge -- I believe he stated on the scene
14 that he was not. I believe he's employed now but ---

15 Q. You don't think he was working at that time?

16 A. I believe we found out on the scene on the 28th --
17 stated that he was not working.

18 Q. All right. So your testimony is, you found out he
19 wasn't working.

20 A. On the 28th I believe we discussed that, and to the
21 best of my knowledge -- I believe it came up when we were
22 inquiring about the quantity of money that was on his person.

23 Q. All right. And did you make any effort to find out if
24 he was working?

25 A. No sir.

1 Q. All right. Or make any effort to find out if there was
2 a legitimate reason for having that money on his person.

3 A. No sir. That's a civil issue and then ---

4 Q. Simple issue in what way?

5 A. A civil.

6 Q. Civil.

7 A. Yes sir. Like I say, we had a lot going on. Mr. Davis
8 was very upset, and it was not the time to try to conduct an
9 interview or gather additional information there.

10 Q. Well, if I had been harassing you, calling you on the
11 phone, trying to get you to bring me some crack, and then
12 whatever you finally did you got arrested you would be upset.

13 A. Well ---

14 Q. Correct. Is that fair to say?

15 A. He willingly came to the store. I wouldn't call it
16 harassment. Nobody forced him to show up.

17 Q. Well, you already said you don't know how many calls
18 were made; you don't know what was discussed, correct?

19 A. We had a C.I. ---

20 Q. So how are you in position to say it wasn't harassment?

21 MR. RICHARDSON: Your Honor, argumentative.

22 THE COURT: Sustained.

23 Q. Are you in a position to know whether there was
24 harassment?

25 A. No sir. I -- in my opinion, it was not harassment.

1 Q. Okay. But that's based on a limited amount of
2 information.

3 A. Yes sir.

4 Q. My client would be in a better position to testify
5 about that; is that correct, than you?

6 A. It's possible, yes sir.

7 Q. All right. Or your informant?

8 A. Yes sir.

9 Q. But you don't have him here, correct?

10 A. We still have contact with the informant if that's
11 needed.

12 Q. Well, we are not prosecuting the case.

13 THE COURT: Mr. Diggs, was that a question or a
14 statement?

15 Q. Correct.

16 MR. DIGGS: It's a question.

17 THE COURT: Frame it in the form of a question then,
18 please sir.

19 Q. We are not prosecuting the case; would you agree with
20 me on that?

21 A. I agree.

22 Q. All right. And this informant who had the numerous
23 telephone conversations with my client -- and by the way, did
24 you listen in on any of those conversations?

25 A. He was not on the scene with us that day.

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1 Q. All right. How about earlier?

2 A. Earlier when, sir?

3 Q. Did you ever record any of the telephone conversations
4 that your informant, your confidential informant, had with my
5 client?

6 A. I don't know if they were recorded from their first buy
7 or not. I know from the -- on the 28th, the day in question,
8 the C.I. was not in play.

9 Q. Okay. So -- well, he was in play -- he wasn't in play
10 yet, correct?

11 A. He was not on the scene. He was not going to
12 physically take part in the transaction.

13 Q. Yes, but he was -- he had told my client he was going
14 to be there, right?

15 A. Correct.

16 Q. And that's why my client was there, correct?

17 A. Correct.

18 Q. And but for your client, and that story he concocted,
19 my client wouldn't have been there either.

20 A. May or may not have.

21 Q. Okay. And that was a story that you asked him to
22 concoct; isn't that true?

23 A. Well, that's -- you know, it's a general area. It's
24 where they've met before, so that's what we decided on. It's
25 a safe public -- it's a public place, which helps us blend in,

1 and helps us safely do our ---

2 Q. Right. And your confidential informant wouldn't have
3 been there either if you hadn't asked him to.

4 A. He was not there.

5 Q. All right. He wouldn't -- he wouldn't have said he was
6 going to be there if you hadn't asked him.

7 A. No. He was acting on behalf of us. He was ---

8 Q. So my client was there because you tricked him.

9 A. We didn't trick him. He agreed ---

10 Q. Caused him to be tricked.

11 A. He agreed to show up to deliver crack cocaine.

12 Q. After you tricked him and said, look, we need you to do
13 this; bring us six grams of coke -- crack.

14 MR. RICHARDSON: Your Honor, he is misstating the
15 testimony at this point.

16 Q. Well ---

17 MR. RICHARDSON: I object to it.

18 THE COURT: I'm going to allow the -- I'm going to
19 allow the question.

20 Go ahead.

21 Q. What's incorrect about the way I just characterized the
22 situation?

23 A. Sir, we didn't -- we didn't, you know, trick him. If
24 he's not a drug dealer, if he cannot provide ---

25 Q. Right.

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1 A. ---Crack cocaine he wouldn't have showed up; he would
2 have told the confidential informant, no sir, you know, I
3 don't sell drugs; I can't facilitate that trade.

4 Q. You don't see other than the black and white. Either
5 he's a drug dealer or he's not.

6 A. Well, he agreed to sell narcotics to our C.I.. He
7 showed up.

8 Q. He eventually agreed. Don't you ---

9 A. He did agree ---

10 Q. ---Agree with that?

11 A. ---And he told us he would be at the Sav-Mart. He
12 arrived at the Sav-Mart, and attempted to conceal drugs upon
13 seeing police.

14 Q. We know this, he didn't call your man and say, look, I
15 have some crack I'm trying to unload; would you like some; I
16 know you've used it in the past, can't I give you some good
17 crack. That never happened, did it?

18 A. The C.I. called your Defendant.

19 Q. All right. Okay. And but for the C.I. calling him
20 this wouldn't have occurred.

21 A. May or may not have.

22 Q. May not have. But you've already said there's no
23 evidence to suggest otherwise, didn't you? All right. Okay.

24 Now ---

25 COURT REPORTER: Excuse me. What was your answer?

1 A. I don't -- no Ma'am.

2 MR. DIGGS: He shook his head like I don't know.

3 A. Yes, I just shook my head.

4 Q. Now Ms. -- there was a female in the car, correct ---

5 A. Yes sir.

6 Q. ---My client earlier.

7 A. Yes sir.

8 Q. And she was -- you talked to her there at the station;
9 did you not?

10 A. I don't know if we -- at the gas station?

11 Q. Yes.

12 A. Yes sir.

13 Q. And what did you find out about her?

14 A. That was his girlfriend, Ms. Waterman.

15 Q. And in fact, she was more than a girlfriend; wouldn't
16 you say?

17 A. Well, that's -- I didn't get into the whole, you know,
18 relationship.

19 Q. Hadn't they just had a baby?

20 A. They may have, sir. I don't recall.

21 Q. You don't recall discussing that? She didn't discuss
22 that with you?

23 A. Sir, we had a lot going on. There were several agents
24 that talked to her. I believe Agent Curry Mirandized her, and
25 talked with her at pretty good length while I was in the

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1 store, on the floor, and doing everything.

2 Q. And she wrote out a statement, didn't she?

3 A. She did. She -- she told us -- we asked for consent to
4 search the house. She said there was no more there. The
5 decision was made not to go to the house, not to go that
6 route.

7 Q. Did she tell you anything about her knowledge of the
8 drug -- of his alleged drug dealing, that being my client?

9 A. She made a post Miranda statement that she knew ---

10 MR. RICHARDSON: Your Honor, all this would be hearsay.

11 Q. Well, let me ask you this. You ---

12 THE COURT: Just stop for a second.

13 I'm going to allow the question. Mr. Diggs, ask the
14 question. Answer the question.

15 MR. RICHARDSON: Yes sir, Your Honor.

16 A. I believe she made a post Miranda statement knowing
17 that Mr. Davis sold drugs, but she had no part in it.

18 Q. All right. And he sold drugs, like today, or sometime
19 in the past?

20 A. I didn't get into all that. Like I say, she was -- she
21 was visibly upset. He was upset. She was not under arrest.
22 She was not the -- you know, a target of any kind of
23 investigation.

24 Q. Did you ever read the statement she wrote as part of
25 your investigation?

1 A. I believe Agent Curry got that. Sir, I don't know what
2 it says without ---

3 Q. Is Agent Curry here?

4 A. No sir.

5 Q. All right. This is your report; would you agree with
6 me; page five?

7 A. Yes sir.

8 Q. And let me draw your ---

9 THE COURT: I'm sorry, Mr. Diggs. What is that, sir?

10 MR. DIGGS: It's his report.

11 THE COURT: Okay. Very good. Thank you.

12 Q. And you wrote this.

13 A. Yes sir.

14 Q. And you refer, on page five of your report, to your
15 interview with Ms. --- with the female that was with my client.

16 A. Correct.

17 Q. And in that -- read me the last paragraph, if you
18 would. Just read it to yourself ---

19 A. Okay.

20 Q. ---Start -- starting here with "Waterman..." Let me
21 ask you to look at that paragraph where you are talking about
22 the interview with Ms. Waterman.

23 A. Yes sir.

24 Q. Let me just ask you to refresh your memory about that
25 interview.

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1 A. Yes sir.

2 MR. DIGGS: Just bear with me, Your Honor. I'll get it
3 in just a second.

4 THE COURT: Yes sir.

5 Q. All right. In that paragraph where you are recounting
6 there what Ms. Waterman said, does that help you recall what
7 she told you or your investigators ---

8 A. Yes sir.

9 Q. ---About my client's drug activity? What does she say?

10 A. She knew he sold drugs in the past, but she thought he
11 had stopped.

12 Q. All right, in the past. So unlike your original
13 testimony that she knew he sold drugs, you want to modify that
14 now to say, you knew that from past -- in the past, correct?

15 A. I believe she also made an oral statement prior, on the
16 scene, but that's fine. Based on my report, yes sir.

17 Q. All right. So we know now that my client used to sell
18 drugs, correct?

19 A. Yes sir.

20 Q. And in fact, a long time ago, wasn't it?

21 A. I don't know, sir.

22 Q. You don't know.

23 A. I don't want to speculate about, you know, when he
24 started and when he stopped. I don't -- you know, I ---

25 Q. All right. In fact, it was about ten years ago; wasn't

1 it?

2 A. Sir, I don't ---

3 Q. If you don't -- all right. Okay. You don't know.

4 A. I can speculate to my opinion.

5 Q. All right. Well, I don't want you to -- I mean, if you
6 have a reasonable basis, you know, upon which to form ---

7 THE COURT: Just ask your question.

8 A. I understand we did a controlled buy recently, before
9 this, where the Defendant did sell a quantity, so ---

10 Q. So ---

11 A. ---In my opinion, yes sir, he still sells ---

12 Q. He sold it to a man who called him repeatedly asking
13 him for the crack, at your request.

14 A. That's pretty common in the drug business. There's
15 multiple phone calls, multiple texts. It's very common.

16 Q. Then -- well, we are here on this particular case ---

17 A. Yes sir.

18 Q. ---On Mr. Davis' incident ---

19 A. Yes sir.

20 Q. ---Trying to determine if he's a drug deal or not,
21 correct?

22 A. Yes sir.

23 Q. All right. And so what's common -- well, I'll strike
24 that.

25 Okay, now, Ms. Waterman also says that she has a family

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1 with my client, doesn't she?

2 A. Yes sir.

3 Q. What does she say about that?

4 A. She's got five children at home; they were being
5 watched by her seventeen year old daughter.

6 Q. All right. And my client is the father -- is the dad.

7 A. I'm assuming so. I don't know for all.

8 Q. All right. So they've been more than a girlfriend,
9 correct?

10 A. If they have children, yes sir.

11 Q. All right. Do you know what your confidential
12 informant was charged with?

13 A. No sir. I don't know his entire past, you know.

14 Q. Do you know part of it?

15 A. No sir. We deal with multiple criminal, you know,
16 informants. Most have criminal histories. That's why most
17 are attempting to work off their charges.

18 Q. And working off their charges, would that include
19 calling up people, trying to entice them into getting
20 involved?

21 A. Sometimes informants make phone calls.

22 Q. Right.

23 A. You know, it's to see who is available, who is selling,
24 who is not, who is ---

25 Q. And sometimes they have to make multiple calls because

1 they get rejected initially; is that correct?

2 A. Sometime they don't get an answer. Sometimes they --
3 you know, it's just -- it's what happens. Sometimes they are
4 not available. Sometimes they call and find out they don't
5 get off work until ---

6 Q. All right. Agent Beam, just briefly, did you encounter
7 my client after his arrest?

8 A. Yes sir, we did.

9 Q. Tell us about that.

10 A. Had a complaint in the Windsor Green Subdivision, which
11 is in Carolina Forest, as property managers had received a
12 bunch of complaints involving drug sales, drug activity in
13 that area. We conducted an operation one evening, stopped
14 multiple vehicles, one being the Defendant's vehicle.

15 Q. Okay. And did you search his vehicle?

16 A. We did. We stopped him for illegal traffic offense,
17 ran our canine on the exterior of the vehicle, the canine did
18 alert to the presence of narcotics on the exterior of the
19 vehicle, which gave us probable cause therefore to search. We
20 did search the vehicle and the Defendant and his girlfriend.

21 Q. And other than the dog's testimony, did you find
22 anything of significance?

23 A. We did not find anything that night, no sir.

24 Q. Okay.

25 MR. DIGGS: That's all I have. Thank you.

1 THE COURT: All right. Before cross-examination y'all
2 come over here and talk to me for just a second.

3 MR. RICHARDSON: Yes sir, Your Honor.

4 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

5 THE COURT: Cross-examination -- I mean, sorry --
6 redirect.

7 MR. RICHARDSON: Thank you, Your Honor.

8 REDIRECT-EXAMINATION BY MR. RICHARDSON:

9 Q. First of all, let's go -- let's go in reverse. You
10 stopped the Defendant's car and you got a dog sniff on that
11 car.

12 A. Yes sir.

13 Q. In your experience dogs hit if there's been drugs in
14 the car previously.

15 A. Yes sir. Alerts to the presence of narcotics.

16 Q. Even if it's not in there anymore.

17 A. Correct.

18 Q. So he hit on some residue.

19 A. Marijuana sometimes can stay in there several weeks to
20 a month, is what I've -- what we know.

21 Q. But the dog that y'all use, is that the Fifteenth
22 Circuit's drug dog?

23 A. Yes sir. That's Agent Brown and his dog, Urie.

24 Q. And that dog has been through extensive training ---

25 A. Yes sir.

1 Q. ---To your knowledge?

2 A. Yes sir.

3 Q. You've worked with that dog before.

4 A. Yes sir.

5 Q. And in your experience has that dog been reliable?

6 A. Very reliable.

7 Q. And no doubt about it, in that instance that dog hit on
8 the Defendant's car.

9 A. Yes sir.

10 Q. But you didn't find any drugs in there at that point.

11 A. We did not. And just to clarify too, we were not
12 targeting the Defendant that evening. We stopped multiple
13 vehicles and conducted, you know, multiple stops, and canine
14 alerts as well.

15 Q. So it wasn't just him.

16 A. No. It was not personal. We weren't targeting Mr.
17 Davis at all, just trying to answer a complaint, basically,
18 from the Homeowners Association there.

19 Q. Mr. Diggs asked you about the C.I. you used.

20 A. Yes sir.

21 Q. And I'm sure everybody has seen something on T.V. or
22 read some kind of book where they talk about informants,
23 snitches. You said there's a difference between paid C.I.s
24 and those working charges off.

25 A. Yes. And we have all kind of C.I.s. We have some that

1 are paid, just want to do it to make money. We have some that
2 are working off charges. We have some that just want to be
3 good citizens, and they just want to -- always want to dabble
4 in police work.

5 MR. DIGGS: Your Honor, that goes beyond the scope of
6 what the cross-examination was, and I object to this line ---

7 THE COURT: I understand the objection. I'm going to
8 overrule the objection. I'm going to allow the State to
9 continue. You may proceed, Solicitor.

10 Q. In this instance you said this was a paid C.I..

11 A. This was a paid C.I..

12 Q. And what -- do you recall what that exorbitant fee you
13 paid this C.I..

14 A. He makes Forty Dollars for a simple buy, or for
15 assisting us. You know, it's not a large amount.

16 Q. And the amount of the buy, does he get a bonus if it's
17 more?

18 A. Yes sir. If it's trafficking weight, and an individual
19 drug, it's Forty additional Dollars.

20 Q. Okay. And six grams, is that trafficking weight?

21 A. No sir. Ten grams or more are trafficking.

22 Q. And Mr. Diggs asked about this C.I. being used
23 previously on, I believe January 14th ---

24 A. Yes sir.

25 Q. ---Buying from this Defendant.

1 A. Yes sir.

2 Q. At that point, how much did the Defendant (S.I.C.) buy?

3 A. It was over a gram, I believe, sir. One point four
4 five grams, approximate.

5 Q. One point four five, so a little bit less than six
6 grams.

7 A. Yes sir, less than six grams.

8 Q. And Mr. Diggs talked to you about all these calls.

9 A. Yes sir.

10 Q. You didn't witness any of these calls on the 28th.

11 A. I did not.

12 Q. And did you hear anything about ordering six grams?

13 A. No sir. No sir.

14 Q. What was the purpose for trying to get the Defendant to
15 the convenience store, Sav-Mart?

16 A. To effect the arrest. We had the active Arrest
17 Warrants in hand from the previous drug buy, so it was to
18 safely effect the arrest and to close out my case, to move on.

19 Q. And it is your case so, in your opinion, what was the
20 best way to get him to the Sav-Mart?

21 A. It was to lure him out. It was -- you know, we didn't
22 know exactly where the Defendant resided. We didn't want to
23 knock on the door, based on criminal history or just for the
24 officers' safety reasons, in any situation we want to do it
25 safely, and we determined that to be a safe manner, so we did

1 ask the confidential informant to try to lure him out.

2 Q. Mr. Diggs asked you about the Defendant's girlfriend,
3 or baby's mama.

4 A. Yes sir.

5 Q. She said they had been together three years.

6 A. I believe, yes sir.

7 Q. And she had five kids at home with her seventeen year
8 old daughter.

9 A. Yes sir.

10 Q. So all five of the kids -- you said you speculate they
11 are his, but probably not.

12 A. Yes. And I didn't get into all that.

13 Q. And she indicated she knew the Defendant had sold drugs
14 in the past.

15 A. In the past, yes sir.

16 Q. Mr. Diggs stopped you whenever you went into normally
17 what happens in the drug trade. In your experience is it
18 uncommon for there to be a large volume of calls between buyer
19 and seller?

20 A. Very common. And nowadays it's text messages a lot,
21 but it's very common. Sometimes it's about price, sometimes
22 it's about just -- you know, we call it drug dealer time, it
23 just typically does not go smooth. It's not -- you know, you
24 are not dealing with reliable people, usually. It's not --
25 you know, it's not a customer service business. It ---

1 **MR. DIGGS:** Your Honor, I object again, and I know the
2 Court made a ruling earlier, but I would ask that it be a
3 continuing ruling. What this witness has seen in the past,
4 and what he says in common practice just is irrelevant to this
5 particular transaction.

6 **THE COURT:** I appreciate that. I appreciate that, Mr.
7 Diggs. I understand that. I'm going to overrule the
8 objection. I'm going to allow the State to ask the question.
9 Thank you.

10 **MR. RICHARDSON:** Thank you, Your Honor.

11 Q. Now, when you bring a C.I. in, when you first approach
12 the C.I. how do they get the target?

13 A. How do they initially -- well, they usually -- we place
14 a phone call to see -- to make sure that they are available,
15 that it's going to be a go.

16 Q. Let me back up. How do they identify -- or how do you
17 identify from whom they can buy?

18 A. Well, we debrief a potential confidential informant.
19 They provide us names, phone numbers. A lot of times they
20 give us street names, is all people know nowadays, and they
21 tell us what they know about this individual, and our goal is
22 to try to identify them, to get a first name and a last name,
23 and to find out as much as we can about them, and then, you
24 know, if it's somebody we are interested in, if we can
25 identify them, if we think it's a good lead then we may pursue

1 that.

2 Q. So if I understand you correctly, initially the C.I.
3 gives you the name.

4 A. Right.

5 Q. In this instance, who gave you the name of Mr. Davis?

6 A. The confidential informant gave the name of Mr. Davis.

7 Q. And he said he could buy from him.

8 A. Said he could buy from him. Actually ran into him at a
9 -- the gas station, got a phone number, called me and said,
10 hey, I met a guy at a gas station; he said he would sell me
11 some crack cocaine.

12 Q. And where did he get that phone number from?

13 A. At a gas station.

14 Q. From whom?

15 A. From the ---

16 MR. DIGGS: Your Honor, I object. That's hearsay.

17 THE COURT: I appreciate that fact; however, you have
18 asked questions of this particular witness similarly on cross-
19 examination as to prior knowledge of -- but I'll require the
20 State to be more specific in his questions.

21 Thank you very much.

22 Q. Did you ever see that phone number?

23 A. He provided a phone number, yes sir.

24 Q. Did you ever see him dial that phone number?

25 A. Initially on the scene, no sir, on the 28th.

1 Q. Now I'm talking about in the past.

2 A. I don't know if he's ever dialed it. He might have on
3 the first buy. I cannot recall without reviewing the report.

4 Q. So you are having difficulty remembering at this point?

5 A. Yes sir.

6 Q. If you reviewed your report would it help refresh your
7 recollection?

8 A. Yes sir. And typically the phone calls are made in our
9 presence, especially for buys. A lot of times they are
10 recorded. I don't know if we had any recorded phone calls or
11 not. A lot of times, once the C.I. is wired up they are --
12 you know, we are close, but we are not close enough we are
13 going to be seen and burn the whole operation.

14 Q. And so the main purpose on the 28th was to serve the
15 Arrest Warrant on the Defendant.

16 A. Yes sir.

17 Q. And on the 28th was the Defendant paid?

18 A. Yes. The C.I. was paid, yes sir.

19 Q. I mean the C.I.. I'm sorry.

20 A. Yes sir.

21 Q. And how much was that?

22 A. Forty Dollars.

23 Q. Forty Dollars.

24 A. Forty Dollars.

25 Q. And it was your testimony that it would be Forty

1 Dollars whether it was a gram or six grams.

2 A. Or nine point nine grams.

3 Q. Or nine point nine.

4 A. Yes sir. That is our policy. That's ---

5 Q. And there were two amounts of suspected crack cocaine.

6 A. Yes sir.

7 Q. And did you weigh those at the scene?

8 A. At the office I did, yes sir.

9 Q. Okay. Was there one large and one small?

10 A. Yes sir.

11 Q. The small one, how much did it weigh?

12 A. It's approximately one point eight nine.

13 Q. One point eight nine at the scene.

14 A. Yes sir.

15 Q. And once again, how much did that C.I. buy on the 14th?

16 A. On the 14th it was one point four five, approximately.

17 MR. RICHARDSON: Thank you, Your Honor. No further
18 questions of this witness.

19 THE COURT: Any questions on those questions just asked
20 by the Solicitor?

21 MR. DIGGS: Your Honor, I don't have anything further
22 of this witness at this time; however, I would ask him to be
23 available.

24 THE COURT: I'm -- it's my understanding that he was
25 going to be present during the course of the trial.

25 DONNA BELL, being first duly sworn,

DONNA BELL - DIRECT BY RICHARDSON

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1 testifies as follows:

2 DIRECT-EXAMINATION BY MR. RICHARDSON:

3 Q. Good afternoon, or good evening, Ms. Bell.

4 A. Good evening.

5 Q. Where are you employed?

6 A. I'm employed at Horry County Police Department, in the
7 Evidence Department.

8 Q. And in the Evidence Department what do you do?

9 A. I'm an Admin. I key and release evidence.

10 Q. And tell us a little bit about the purpose of the
11 Evidence Department.

12 A. When we have officers that turns in evidence, either in
13 a -- you know, in a vault -- I mean, in a locker, and we take
14 it out and we key it in. It has a case number and we give it
15 labels, and we assign it to a shelf.

16 Q. Now, what agency -- with what agencies do you work?

17 A. We work Horry County Police Department and D.E.U..

18 Q. That's the Fifteenth Circuit Drug Enforcement.

19 A. Yes sir.

20 Q. Now, you said something about when they turn evidence
21 into a vault. How long have you been employed at the Evidence
22 Department?

23 A. I've been there since '08, April of '08.

24 Q. And you said something like I was about to say, about a
25 vault.

1 A. Yes sir.

2 Q. Tell me about the vault.

3 A. The vault is where, after we take the drugs out of
4 the -- if it's drugs, out of the lockers, the locked lockers,
5 we key them in, we give them our label, we check them out
6 first, and we seal them -- if -- now normally a Best Kit --
7 what this case is about is a drug kit, and it's in a sealed
8 plastic bag that you will probably see later, and we key it in
9 and we then -- we assign it to the vault, the drug vault, and
10 that's in a secure vault. No one is not allowed in it but
11 Crime Scene.

12 Q. Well, let's go back a little bit, narcotics evidence.
13 You're talking about Best Kits. Once the Best Kit is
14 completed what is done with it?

15 A. We ---

16 Q. Well, how do you get them?

17 A. The officer, either he drops it in the drop slot, as we
18 call the locker. If we are there then he gives it us -- you
19 know, he hands it to us, but not he does that.

20 Q. Okay. So during office hours it's a hand to hand
21 transaction.

22 A. Right. Yes sir.

23 Q. And if it's after hours they drop it in a mail slot.

24 A. Yes sir, in a secure department.

25 Q. Okay. And that mail slot, who -- I assume it's like a

DONNA BELL - DIRECT BY RICHARDSON

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1 post office box.

2 A. Yes sir.

3 Q. And so it goes up in the slot, and what happens after
4 it goes up in that slot?

5 A. When we come in the next morning we -- we look at it.
6 We take it out of the slot and then we -- you know, we check
7 it out, make sure it's sealed and everything, and then that's
8 when we do our, you know, routine of keying it in.

9 Q. And once the bag is dropped in that slot who has access
10 to it?

11 A. No one except my supervisor, my bossman, my co-worker,
12 and the Crime Scene Investigators has -- they have access to
13 the vault.

14 Q. And that would be your supervisor, Lori Rabon.

15 A. Yes sir.

16 Q. The boss.

17 A. Yes sir. Peter Cestare.

18 Q. Your co-worker.

19 A. Sharon Lilly.

20 Q. And Crime Scene. There's three of them, right?

21 A. Yes sir. There's Robbie Caulder, Jill Domogauer, and
22 Heather Brummett.

23 Q. I have difficulty with Jill's name too.

24 So they are the ones that have access to it.

25 A. Yes sir.

1 Q. And so, if I understand your testimony, once a Best
2 Kit, narcotics, have been dropped in the mail slot it stays
3 there until someone from Evidence retrieves it.

4 A. Right.

5 Q. And it's behind locked doors.

6 A. Yes sir.

7 Q. And the only ones that have access are the seven people
8 you named. I believe it's seven.

9 A. Now, in our office where the lockers are at, only Peter
10 Cestare, Lori Rabon, my co-worker and I are the only ones, to
11 my knowledge, has, you know, is allowed there.

12 Q. Okay. So four people ---

13 A. Right.

14 Q. ---Have access to a Best Kit.

15 A. Uh huh (indicating positive).

16 Q. Let me show you what has been previously marked as
17 State's Exhibit Number 6, see if you recognize that.

18 A. Yes sir, I do.

19 Q. And how do you recognize State's Number 6?

20 A. Well, we always recognize it by that case number, and
21 when we -- after we key it in -- this is what I was calling
22 the label. We assign it a label, and this is how we know that
23 that's it.

24 Q. And the label, you are talking about what's on the
25 outside of this Best Kit.

DONNA BELL - DIRECT BY RICHARDSON

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1 A. Yes sir. Well, really, this part right here is the
2 Best Kit, inside of this sealed ---

3 Q. Okay. So inside of the plastic kit.

4 A. Uh huh (indicating positive)

5 Q. So inside of this plastic bag is another plastic bag
6 with blue writing on it.

7 A. Yes sir. This ---

8 Q. And that's the Best Kit?

9 A. Yes sir.

10 Q. Okay. And you use these tracking numbers to keep up
11 with what evidence comes in when.

12 A. Yes sir.

13 Q. And you are saying that you do recognize State's Number
14 6 due to the label ---

15 A. Yes sir.

16 Q. ---And other document.

17 A. And the documentation.

18 Q. And what do you recognize State's Number 6 as being?

19 A. This is the Best Kit, and how we know too is by the
20 control number, 8010763. That's how we know that this belongs
21 to this chain of custody.

22 Q. Previously we had testimony about the mail slot, being
23 dropped in the mail slot.

24 A. Uh huh (indicating positive)

25 Q. Is there any way for you to tell when it was dropped in

1 the mail slot?

2 A. Normally I tell by that date that the officer puts
3 right there. That's how we know when it's been dropped in.

4 Q. And once it's dropped in the only people who have
5 access are the four people you have mentioned.

6 A. Yes sir.

7 Q. Did there ever come a time when you took into custody
8 that Best Kit?

9 A. Do what now?

10 Q. Did there ever come a time when you came into custody
11 of that Best Kit?

12 A. Yes sir. When I came in it was in the drop slot.

13 Q. And when was that?

14 A. January the 31st, '11.

15 Q. Okay. So January 28, 29th, 30th, 31st. So a Monday?

16 A. Yes sir. I believe so. I'm not really sure.

17 Q. And y'all don't work on the weekends.

18 A. Do what?

19 Q. Y'all don't work on the weekends?

20 A. No sir.

21 Q. When you got that -- so no doubt in your mind, this is
22 the Best Kit you picked up on January 31st, 2011.

23 A. Yes sir.

24 Q. And you can track it back to what was dropped by the
25 lab number ---

DONNA BELL - DIRECT BY RICHARDSON

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1 A. Yes sir.

2 Q. ---And by your label.

3 A. Right.

4 Q. Once you labeled that item what did you do with it?

5 A. After I labeled. In our system the officers, like
6 D.E.U., has like what they call a case number, like this one
7 is -- it would be DU 11015, and that's how we can locate it
8 too, and then by the number, by the item number and the
9 control number, that's how we can locate it, and by the
10 tracking number.

11 Q. And the Best Kit, was it sealed when you got it?

12 A. Yes sir. This right -- this was sealed. That's the
13 only way we will take it.

14 Q. Okay. So if it's been tampered with you wouldn't take
15 it.

16 A. No sir.

17 Q. If it wasn't sealed you wouldn't take it.

18 A. Right. If it's not sealed we contact ---

19 Q. You label it, you punch it in the computer for record
20 keeping.

21 A. Yes sir.

22 Q. What do you do then?

23 A. After I get through, you know, keying it in, then I put
24 it in that secure vault. Excuse me.

25 Q. And where is that secure vault located?

1 A. It's in our Lab Department, in the back of our office.
2 It's in a secure vault.

3 Q. And after you secure -- where did you secure it in the
4 lab?

5 A. When do I?

6 Q. Yes. Was it that same day, the 31st?

7 A. Yes sir.

8 Q. Did there ever come a time, after you secured it in
9 that vault, that you reacquired that number -- State's Number
10 6?

11 A. Right. The only time I go and pull this is when we get
12 a call from the Solicitor, or an e-mail saying that we need
13 Lisa Floyd, our drug analyst, to test it, and that's when I'll
14 go and pull it out the vault, and assign it to her.

15 Q. And did you ever pull State's Number 6 back out of the
16 vault?

17 A. Yes sir, I did.

18 Q. And when was that?

19 A. February the 15th, '11, at 9:42.

20 Q. 9:42.

21 A. Uh huh (indicating positive)

22 Q. And to whom did you give it?

23 A. I gave it to Lisa Floyd, our drug analyst.

24 Q. And is that the extent of your involvement with this
25 case?

DONNA BELL - CROSS BY DIGGS (NONE)
LISA FLOYD - DIRECT BY RICHARDSON

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1 A. Yes sir.

2 MR. RICHARDSON: Thank you, Ms. Bell. If you will
3 answer any questions Mr. Diggs may have.

4 THE COURT: Cross-examination.

5 MR. DIGGS: Your Honor, we don't have any questions at
6 this time.

7 THE COURT: All right, Solicitor, do you wish the
8 witness to be excused?

9 MR. RICHARDSON: I would ask that she be excused to
10 return to her duties, Your Honor.

11 MR. DIGGS: No objection.

12 THE COURT: All right, Ma'am, you are released from
13 your Subpoena. You may go back to your regular activities.
14 And just give the exhibit to the Solicitor. Thank you.
15 All right, next witness, sir.

16 MR. RICHARDSON: The State would call Ms. Lisa Floyd.

17 THE COURT: All right. Ms. Floyd, if you would come
18 around to be sworn, please Ma'am.

19 LISA FLOYD, being first duly sworn,
20 testifies as follows:

21 DIRECT-EXAMINATION BY MR. RICHARDSON:

22 Q. Ms. Floyd, would you please tell us about your
23 employment.

24 A. Yes. I work for the Horry County Police Department. I
25 run the regional drug analysis laboratory for the Fifteenth

1 Judicial Circuit.

2 Q. And how long have you been running that drug lab?

3 A. I was hired in September of 2002, and we opened the
4 laboratory in August of 2003.

5 Q. So eight years now. Eight years you've been running
6 that lab.

7 A. Yes.

8 Q. What training do you have in the field of forensic drug
9 analysis?

10 A. I underwent a fourteen week training program with the
11 Spartanburg County Sheriff's Office Laboratory, which is run
12 by a former SLED agent who was a trainer at the time that he
13 left SLED, and that involved learning about every type of
14 drug, how to test for every type of drug, pretty much just an
15 intensive course on every type of controlled substance and
16 prescription substances.

17 Q. And prior to that training, what's your educational
18 background?

19 A. I have a Bachelor of Science Degree in Biochemistry
20 from Clemson University, and approximately twenty-four hours
21 toward a Master's Degree from the same place.

22 Q. And so you've had the training from another drug
23 analyst certified by SLED?

24 A. Yes.

25 Q. And you've got your Bachelor of Science in Chemistry,

LISA FLOYD - DIRECT BY RICHARDSON

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1 and you've got work toward your Master's.

2 A. Biochemistry, yes.

3 Q. Biochemistry. I'm sorry. Have you taken any type of
4 examinations that qualify you as a certified drug analyst? Is
5 there any certification?

6 A. I was certified through the Spartanburg County
7 Sheriff's Office Laboratory.

8 Q. And they are adjunct to SLED when it comes to that?

9 A. Yes. We chose that laboratory because the chemist who
10 runs that laboratory had experience as a trainer in the
11 laboratory at SLED, and the chemists who were currently
12 working for SLED had not been certified as trainers at that
13 time.

14 Q. So you went to the top.

15 A. Yes.

16 Q. Now, since becoming a Forensic Drug Analyst for Horry
17 County -- and who do you do the drug analyses for?

18 A. For most of the agencies in Horry County.

19 Q. Estimate how many drug analyses have you done.

20 A. Between four and five thousand.

21 Q. And have you previously testified as a witness
22 certified to give their opinion in court with regard to
23 Forensic Drug Analyses?

24 A. Yes, I have.

25 Q. How many times?

1 A. Forty-one times.

2 Q. Forty-one times.

3 MR. RICHARDSON: Your Honor, at this time the State
4 would move to have Ms. Floyd admitted as an expert.

5 THE COURT: Do you wish to voir dire the witness or
6 challenge her qualifications?

7 MR. DIGGS: No, Your Honor, we don't.

8 THE COURT: All right. I'm going to qualify Ms. Floyd
9 to give her opinion in this particular matter.

10 You may proceed, Solicitor.

11 MR. RICHARDSON: Thank you, Your Honor.

12 Q. Ms. Floyd, you said the drug lab has been up and
13 running for about eight years now.

14 A. Yes.

15 Q. So you were -- are you the only Forensic Drug analyst
16 they have?

17 A. I am.

18 Q. My tongue gets tied late in the day. I apologize.

19 So you were working in that capacity back in February of
20 2011.

21 A. Yes, I was.

22 Q. Do you use any kind of specialized equipment in the
23 analysis of what is suspected to be drugs?

24 A. Yes, we do.

25 Q. Take us through that. Something comes into your

LISA FLOYD - DIRECT BY RICHARDSON

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1 office, how do you go through the analysis?

2 A. When I receive a Best Kit the first thing I do is
3 inspect it for any evidence of tampering, and if there is any
4 suspected tampering of course it would be rejected at that
5 point. I would not even accept it from evidence.

6 Assuming everything checks out okay then I would open
7 the case, and I would do what's called a presumptive test,
8 which just gives me an indication of what that substance might
9 be. Most of the time that's simply a color test. If you've
10 ever seen like a field test kit that an officer would use, it
11 just changes color based on certain properties of the
12 chemicals. And then at that point, based on what the
13 presumptive testing shows, then I do what's called a
14 confirmatory analysis, and that is using a gas chromatograph
15 with a mass selective detector, which is commonly referred to
16 as a GCMS, and it's simply a very common forensic tool that's
17 been used for at least a couple of decades for drug analysis.

18 Q. And you said you look to see if the Best Kit has been
19 tampered with, correct?

20 A. Yes.

21 Q. How can you tell if it's tampered with? Talk to us
22 about the Best Kit. How familiar are you with it?

23 A. May I see that?

24 Q. I'm going to hand you what's been previously marked as
25 State's 6, indicating that there is a Best Kit in there, if

1 that helps you explain it.

2 A. The inner bag that you see inside this clear plastic
3 bag is actually folded in half. There is a red adhesive strip
4 at the top that would indicate any kind of tampering if
5 someone tried to pull it back apart, and then there is also
6 these blue spiral lines all the way around both sides of the
7 bag, so if anyone tried to open it then at that point those
8 lines would be distorted to the point that it would be
9 obvious.

10 Q. And do you look for holes?

11 A. I do.

12 Q. And if some -- if you could tell if the Best Kit has
13 been tampered with what -- what do you do?

14 A. It would be rejected. It would not even be entered
15 into the laboratory for analysis.

16 Q. Okay. I'm going to show you, once again, what has been
17 marked as State's Number 6. Do you recognize State's Number
18 6?

19 A. I do.

20 Q. And what do you recognize State's Number 6 to be?

21 A. This was a case that I tested. My lab number L110121,
22 and it matches the control number and the Agency's case
23 number, which I hand wrote on there.

24 Q. Okay. From whom did you receive State's Number 6?

25 A. From Donna Bell.

LISA FLOYD - DIRECT BY RICHARDSON

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1 Q. And when was that?

2 A. If I may.

3 MR. RICHARDSON: If I could have the chain marked, Your
4 Honor.

5 THE COURT: Yes sir.

6 (CHAIN OF CUSTODY FORM ADMITTED INTO EVIDENCE AS STATE'S
7 EXHIBIT NUMBER 7, FROM IDENTIFICATION ONLY.)

8 Q. I would like to hand you what's been previously marked
9 as State's 7, for identification. Do you recognize State's
10 Number 7?

11 A. I do. That's the Chain of Custody bearing the same lab
12 number.

13 Q. And State's Number ---

14 MR. RICHARDSON: Your Honor, this is State's Number 7.

15 THE COURT: All right. Mr. Diggs, any objection to
16 State's Number 7?

17 MR. DIGGS: No sir.

18 THE COURT: All right. State's Number 7 is in evidence
19 without objection.

20 (STATE'S NUMBER 7 ADMITTED INTO EVIDENCE.)

21 Q. Looking at State's Number 7, can you tell me when you
22 received State's Number 6?

23 A. I received it from Donna Bell on February 15th, 2011.

24 Q. And when did you do your analysis?

25 A. The analysis was completed on March the 8th of 2011.

1 Q. Well, you received it from Ms. Bell on February 15th,
2 and you didn't do the analysis till March.

3 A. That's correct.

4 Q. What did you do with State's Number 6 in the in between
5 time?

6 A. It was stored in the laboratory. The laboratory itself
7 is built to the same specifications as the evidence vault.
8 It's eighteen inches of steel-reinforced concrete walls, and
9 only I and the Chief have access to it.

10 Q. So only two people have access to that.

11 A. Yes.

12 Q. And whenever you place something in that vault is it
13 still in the Best Kit?

14 A. Yes, it is.

15 Q. So in this instance, State's Number 6, when you placed
16 it in your vault it was still in the Best Kit?

17 A. Yes.

18 Q. Now, give you a hypothetical. Say you go to remove
19 something from the vault and it's been tampered with. What
20 would happen?

21 A. There really is no way for it to be tampered with once
22 I receive it, but if I noticed something perhaps that I did
23 not notice to begin with, again, it would not be analyzed, and
24 it would be immediately returned to evidence.

25 Q. And when was State's Number 6 removed from the vault

LISA FLOYD - DIRECT BY RICHARDSON

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1 for analysis?

2 A. I analyzed it on March the 8th of 2011.

3 Q. On March 8th, 2001 (S.I.C.) -- I know we've gone over
4 generally how you analyze suspected narcotics -- could you
5 tell us what was done?

6 A. When I opened this particular Best Kit I inspected it,
7 as I said, on all sides, and looked at the adhesive to make
8 sure that there was no evidence of tampering at that time, and
9 I indicated that there was not by actually writing my
10 initials, the letter "OK", and the date that I opened it,
11 along with the Agency's case number, and my lab number, and
12 that "OK" tells me that there was no evidence of tampering, so
13 I went ahead to analyzed it.

14 Q. And what steps did you take to analyze State's Number
15 6?

16 A. Once opened it was removed from -- the evidence inside
17 was removed from the packaging that it was in, and the
18 presumptive and confirmatory analyses were completed on it,
19 and then I also got a certified weight.

20 Q. And what weights did you come up with?

21 A. Item One was an off-white rock substance in impulse
22 sealed plastic. It was found to be cocaine base, which is
23 commonly referred to as crack cocaine. It was a weight of
24 four point two six grams, which is sixty-five point seven
25 three grains.

1 And Item Two was an off-white rock substance inside of a
2 corner bag, also in impulse sealed plastic. It was also found
3 to be cocaine base, or crack cocaine. It was in the amount of
4 one point two one grams, or eighteen point six seven grains.

5 Q. And this seems like a silly question. An impulse
6 sealed bag, what is that?

7 A. There's a -- there's two different types of plastic
8 sealers on the market. One is a heat sealer which simply uses
9 hot temperature to melt the plastic together. Another is --
10 uses electric current to actually weld the plastic together,
11 and this was impulse sealed plastic on the inside. So it was
12 in the impulse sealed plastic inside of the Best Kit.

13 Q. So the larger rock was in the impulse sealed bag,
14 correct?

15 A. They both were in impulse sealed plastic.

16 Q. Okay. But also in the smaller amount, you said that
17 was in a corner baggie as well.

18 A. Yes.

19 Q. And that corner baggie, what's that?

20 A. Simply the corner snipped off of a plastic bag.

21 Q. It's like a sandwich bag corner.

22 A. That's one example. Yes.

23 Q. Okay. The weights that you got, if there was a
24 difference in the weights that were found at the scene could
25 you account for that on cocaine base? Say an officer --

LISA FLOYD - DIRECT BY RICHARDSON

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1 hypothetically an officer gets, we'll say ten grams at a
2 scene, and you test it, does it normally come back the same,
3 or less, or can you form an opinion on that?

4 A. It's very rare that the weights are exact between what
5 the officer weighs and what I weigh. In part that can be kind
6 of for the difference in the scales, and then cocaine base ---

7 MR. DIGGS: Your Honor, this -- we object to what is
8 commonly done, what's normally done, that kind of ---

9 THE COURT: At this point in time I'm going to sustain
10 the objection.

11 Go ahead.

12 Q. If there were a difference in weights could you account
13 for that?

14 A. Yes.

15 Q. In your opinion, why could cocaine base be less
16 whenever you weigh it?

17 A. If it is moist at all when it's obtained certainly it
18 can lose moisture to the air. It can lose moisture to the
19 paperwork when it is submitted. When the officer submits it
20 there is a blue piece of paper that is submitted in there with
21 it, and quite often with the cocaine base the paperwork itself
22 will be moist when I pull it out.

23 Q. So some of the water gets out of it.

24 A. Yes.

25 Q. In this instance you've got your weight, and what did

1 you do next?

2 A. At that point it's repackaged. I use the zip-loc bags
3 with the red tops, and I label everything with the lab number,
4 item number, my initials and the date, and then it's all
5 placed back into this clear outer bag that you see, and then
6 my lab number, my initials, and the date that I analyzed it
7 are sealed into this bag.

8 Q. But to analyze it, the graf -- chromatograph.

9 A. Yes. The presumptive and confirmatory analyses were
10 both done.

11 Q. All right. And in this case, after you did both your
12 presumptive and your confirmatory tests, Item Number 1, what
13 did you find that to be?

14 A. Cocaine base, or crack cocaine.

15 Q. And how much?

16 A. Four point two six grams, or sixty-five point seven
17 three grains.

18 Q. And Item Number Two.

19 A. Was cocaine base, or crack cocaine, one point two one
20 grams, or eighteen point six seven grains.

21 Q. And so it is your opinion that he had one point two
22 grams of cocaine base, and four point two grams, roughly.

23 A. Yes.

24 Q. And these are the items you analyzed.

25 A. Yes, they are.

LISA FLOYD - CROSS BY DIGGS

1 Q. And State's Number 6, is it in substantially the same
2 condition as whenever you returned it to evidence?

3 A. Yes. I appears to be.

4 MR. RICHARDSON: Your Honor, at this time the State
5 would seek to introduce 6 into evidence.

6 THE COURT: Any objection to State's Number 6?

7 MR. DIGGS: No, Your Honor.

8 THE COURT: All right. State's 6 is in evidence
9 without objection.

10 You may proceed.

11 (DRUGS, ITEM ONE (4.26 grams or 65.73 grains), AND TWO
12 (1.21 grams or 18.67 grains) INTRODUCED IN EVIDENCE AS STATE'S
13 EXHIBIT NUMBER 6.)

14 Q. Ms. Floyd, did you do anything else with this case?

15 A. No. It was simply returned to evidence after being
16 tested.

17 MR. RICHARDSON: Thank you, Ms. Floyd.

18 If you will answer any questions Mr. Diggs may have.

19 THE COURT: Cross-examination.

20 MR. DIGGS: Your Honor, we don't have any questions.

21 THE COURT: Do you wish the witness to be excused,
22 Solicitor?

23 MR. RICHARDSON: I do, Your Honor.

24 THE COURT: Any objection?

25 MR. DIGGS: No sir.

1 **THE COURT:** All right, Ms. Floyd, you are released from
2 your Subpoena. You may go back to your regular activities.

3 Thank you.

4 All right, ladies and gentlemen, we are going to stop
5 for the evening. We will continue the trial tomorrow morning
6 at -- I'm going to have you back in your jury room at 9:30.

7 There are some motions and some other matters on some
8 other criminal cases that I have to dispose of tomorrow
9 morning before y'all arrive, and I hope to be done with those
10 by 9:30, so y'all make sure you are back in your jury room at
11 9:30.

12 Now, when you go home, and you see your husband, wife,
13 boyfriend, girlfriend, neighbor down the street, you can tell
14 them you are on a jury, but that's all you can say. You can't
15 talk about this case; you can't allow anybody to talk to you
16 about it. If they did they would -- I'm assuming
17 unintentionally -- but give you their opinion about the
18 matter, and they don't have one. In reality, y'all shouldn't
19 have an opinion about this case because you haven't heard all
20 the facts and evidence in this case. And until you hear all
21 the facts and evidence you should not have an opinion about
22 this particular matter, so don't discuss the case with anyone;
23 don't allow anybody to discuss the case with you. You may not
24 do any research on your own. You can't go look up anything on
25 the internet. You can't try and read about something that you

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1 might have a question about. You have to, and you must decide
2 this case solely and completely on the evidence you hear in
3 this courtroom, and from no other source. That's the only
4 thing you can make your decision on is what you hear in the
5 courtroom, nothing else.

6 So, with that I will release you, have you back tomorrow
7 morning at 9:30 in your jury room.

8 Thank you very much.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
10 JURY.)

11 THE COURT: All right. Anything further from the State
12 at this point in time?

13 MR. RICHARDSON: Your Honor, seeing as the case has
14 commenced the State would request that the Defendant be
15 remitted to the custody of the Sheriff's Department.

16 THE COURT: What's your position, Mr. Diggs?

17 MR. DIGGS: Your Honor, this individual, Mr. Davis, is
18 a local man. He has a local family. He certainly has not
19 indicated in any way to be -- he hasn't shown himself to be a
20 flight risk of any kind. He has -- we were trying to reach
21 him today because he was out in the field working.

22 He has a good job here. I've met with his employer.
23 His employer is on our witness list to testify in this case.

24 Your Honor, he understands that it would be a folly,
25 indeed, not to return to court. I would ask that he be

1 permitted to remain on bond.

2 We need him out, actually, because I want his assistance
3 in working with the witnesses that we are going to present
4 tomorrow.

5 THE COURT: All right. Mr. Davis, please stand, sir.

6 I am going to allow you to remain out on these
7 conditions. One, I'm giving you a direct order to appear back
8 in this courtroom by nine o'clock tomorrow morning. I
9 understand the jury is not going to be back here till 9:30. I
10 want you here by 9 A.M. tomorrow. There are some other
11 matters, and you can just have a seat in the back of the
12 courtroom, but you will be back here by 9 A.M..

13 If you do not appear a bench warrant will be issued for
14 your arrest. Further, this trial will continue in your
15 absence. The fact that you do not reappear will not stop this
16 trial. It will continue on, and it will go forward to it's
17 conclusion. If, at the conclusion of it, you have not
18 reappeared, and the jury returns a verdict of guilty the
19 sentence will be sealed, and after you are arrested the
20 sentence will be opened and imposed on you. Further, at that
21 point in time, if you have not reappeared, because I've given
22 you a direct order to do so, I will also hold a contempt of
23 court hearing. Through that I could send you to the
24 Department of Corrections for a period of one year. Even if
25 we go forward with the trial and they find you not guilty of

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1 the offense that does not defeat the contempt of court matter.
2 If you don't appear you have disobeyed a court order. I will
3 hold a hearing. If I decide to I can send you to the
4 Department of Corrections for a period of one year despite
5 whatever a jury might do on this particular charge. Do you
6 understand all these instructions?

7 MR. DAVIS: Yes sir.

8 THE COURT: Do you agree with them?

9 MR. DAVIS: Yes sir.

10 THE COURT: With that, and your understanding and your
11 agreement, I'll allow you to remain out, and have you back
12 here tomorrow morning, 9 A.M..

13 Thank you very much.

14 MR. RICHARDSON: Thank you, Your Honor.

15 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, OCTOBER 12,
16 2011, OUTSIDE THE PRESENCE OF THE JURY.)

17 THE COURT: All right, Solicitor, is the State ready
18 for the jury?

19 MR. RICHARDSON: Yes sir, Your Honor.

20 THE COURT: Defense.

21 MR. DIGGS: Yes sir.

22 THE COURT: Ask the jury to come in, please.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right, Solicitor, your next witness,

1 please.

2 MR. RICHARDSON: Your Honor, at this time the State
3 would rest.

4 THE COURT: All right. Very good.

5 All right, Mr. Diggs, any matters that you have as a
6 matter of law for the Court at this point in time?

7 MR. DIGGS: Yes sir.

8 THE COURT: All right. Very good.

9 Ladies and gentlemen, I was unaware that there were no
10 further witnesses by the State. I suppose I should have asked
11 that. I was not aware of that.

12 At any point in time when the State rests it's case,
13 whenever that is, there are, just as a matter of course, some
14 matters of law the Court has to take up. I have to freely
15 discuss those with the attorneys. They include a discussion
16 of the facts of the case, which obviously I told you, I will
17 not give you any indication what I believe the facts are.
18 That's your job and responsibility, so to accomplish this I'm
19 going to have to ask you to go back to your jury room for
20 about five minutes.

21 We will come back out and we will resume the trial.

22 Thank you.

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right, Mr. Diggs, let me hear from you,

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1 sir.

2 MR. DIGGS: Your Honor, we would that the case be
3 dismissed, simply because of a failure of proof on the part of
4 the Government, because what we would -- we were -- our
5 position would be, based on the evidence that was presented
6 from the stand in the State's case, that the State failed to
7 present enough evidence for the jury to conclude that my
8 client was predisposed to commit these acts, that he was
9 predisposed. That is independent of what the Government's own
10 actions were in this case, to bring him into the criminal
11 activity.

12 As far as I'm aware there have been some recent cases
13 since the Jacobson case in '92, but there's a good discussion
14 there about the Government's -- what the Government's role is
15 in prosecuting cases, that it's a necessary goal that they do
16 their job in an effective way, in an efficient way. Crimes
17 are committed, those crimes need to be prosecuted, but
18 sometimes the Government can simply be overzealous; they go a
19 little bit too far in order to effectuate the arrest and the
20 prosecution.

21 What we have here is evidence that was presented from
22 the State's witnesses that showed that the confidential
23 informant placed -- initiated these calls to the Defendant.
24 There was no evidence that my client ever initiated the call,
25 that he was out on the street selling drugs, that he was an

1 active drug dealer. There is no evidence -- this was crack
2 cocaine. There is no evidence that he was cooking crack, that
3 he was off preparing it, packaging it, doing all of these
4 things. He was merely a delivery man based on the reasonable
5 inferences that arise from the State's case. To comply with
6 this request, a repeated request that was made by the
7 Government's agent, that agent that was put up to this, and
8 who was paid, to bring my client back into the criminal
9 justice system when my client was involved in other things in
10 his life. He had a job, he has a new baby, things -- trying
11 to -- that show he was trying to move in a direction in his
12 life that was away from past drug activity.

13 The State tried to put a spin on it. For example -- an
14 example would be when Mr. Beam testified that Ms. Waterman
15 said well, she knew he sold drugs. That's just not an
16 accurate depiction or expression of what the actual statement
17 was. She stated, I knew he sold drugs in the past. And Your
18 Honor, given the totality of the circumstances that arise
19 based on the State's own case-in-chief, there's just not any
20 evidence to show that my client was predisposed to do these
21 things, and there is no evidence to suggest he would have done
22 them absent the involvement by the Government. He just simply
23 did not act, based on this evidence, independent of what the
24 Government did to set him up, and based on that ground, Your
25 Honor, we would ask for a directed verdict of not guilty in

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1 the case.

2 THE COURT: All right, Solicitor, your response.

3 MR. RICHARDSON: Your Honor, in the testimony yesterday
4 what was elicited as evidence of a prior distribution was to
5 the same C.I., but in that instance the Defendant distributed
6 approximately a gram and a half. In this instance, when he
7 was called to the location, he came with, not just a gram and
8 a half packaged separate and apart, but he had a separate
9 cookie of crack cocaine that was four point two grams, so
10 that's where the possession with intent lies, Your Honor.

11 The -- I believe the charge states that the fact that an
12 officer or agent merely presented opportunities for -- or
13 facilities for the commission of a crime is not entrapment.
14 That's what they did here. They provided the Defendant an
15 opportunity. They didn't go to his house; they didn't go put
16 gas in his car; basically they had a C.I. call him and say,
17 hey, can you bring me some crack, and he did that.

18 To believe -- the way Mr. Diggs would have us believe
19 would say that we couldn't run these narcotics operations
20 anymore; all we could do is go out and try and put cameras up
21 everywhere and try and catch people selling.

22 In this case, Your Honor, the Defendant had two separate
23 amounts. The inference weight is over a gram. He had two
24 separate amounts. One is a four point two cookie and one is a
25 -- I think it tested out at 1:25, that the history, limited

1 history, shows that that's what the C.I. bought before. The
2 C.I. would not have gotten any bonus for getting six grams
3 rather than one gram. He would have gotten a bonus of Forty
4 Dollars if he would have got over ten grams, but he didn't
5 order ten grams, so it boggles the mind why he would say he
6 wants six grams. It doesn't serve any purpose. It doesn't
7 show his history on buying from this Defendant.

8 Your Honor, the Defendant is predisposed to selling. He
9 was given an opportunity to come and sell, and he did just
10 that. He came to sell. When he had the police on his tail he
11 ditched the drugs. We are going there on inference, and on
12 his prior proclivity for dealing, Your Honor.

13 MR. DIGGS: Your Honor, just briefly. Jacobson itself
14 makes it clear, that the number of occasions is not the
15 question. It doesn't -- it's pretty irrelevant the number of
16 times. The question is the predisposition. And what we are
17 lacking in this case, it's a predisposition, evidence to
18 show -- in other words, this C.I. -- there is no evidence to
19 say, well, I know this man out there who is dealing drugs, and
20 we can catch him. My client -- there's no evidence in the
21 last significant period of time that he was involved in any
22 kind of drug deals, other than with this particular man who
23 called him on each occasion to try to bring him into the
24 activity.

25 THE COURT: Thank you. And I appreciate your

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1 arguments. Those are fine jury arguments, but the two
2 arguments by the Defense and State clearly show that there is
3 a factual dispute. Now that's not the standard. What the
4 standard is for a directed verdict is, defendant is entitled
5 to a directed verdict when the State fails to produce evidence
6 of the offense charged. I am concerned with the existence of
7 evidence, not with it's weight. I'm not judging credibility,
8 believability; I'm not weighing the evidence; that's the
9 jury's job. I'm concerned whether or not the evidence exists;
10 is the evidence here in the case. If there is any direct
11 evidence or substantial circumstantial evidence reasonably
12 tending to prove the guilt of the accused the case is properly
13 submitted to the jury.

14 I would grant a directed verdict motion when the
15 evidence merely raises a suspicion of the guilt of the
16 accused. The Trial Court should grant a directed verdict
17 motion where the jury would only be speculating as to the
18 guilt of the accused, or where the evidence is sufficient only
19 to raise a mere suspicion of guilt.

20 In this particular case it is clear that there were
21 prior dealings between the C.I. and this Defendant. Whether
22 or not they were instigated by the State, by phone calls by
23 the State, the facts in evidence show that the Defendant
24 willingly -- was not forced, was not coerced, nobody held a
25 gun to his head, he was not forced in any shape, manner or

1 form, he willingly brought drugs to a drug transaction
2 expecting to receive monetary compensation therefor.

3 MR. DIGGS: With all due respect, Your Honor, I ---

4 THE COURT: Distribution of the drugs. The
5 distribution of the drugs prior, he -- there was drugs that he
6 distributed, and he received money therefor in the prior
7 occasion.

8 MR. DIGGS: He's not ---

9 THE COURT: In this one -- we are talking about the
10 disposition, Mr. Diggs, prior disposition. He obviously did
11 it in the past. I understand it's with this C.I., but he
12 willingly did it.

13 Now, in this particular case there was no transaction
14 because he brought drugs to the location. That's what the
15 evidence suggests. That's what the evidence shows.

16 Now, for entrapment, for entrapment, what has to be
17 shown is, the crime was conceived and planned by an officer,
18 or someone acting as an agent of law enforcement, the officer
19 or the agent induced, solicited, proposed, initiated,
20 suggested or persuaded the defendant commit the crime; the
21 defendant would not have committed the crime without the
22 trickery, persuasion or fraud of the officer or the agent.
23 The State is required to prove, beyond a reasonable doubt, the
24 defendant was predisposed to commit the crime without the
25 inducement of the officer or the agent. Predisposed to commit

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1 the crime means that the defendant had the intent, the
2 purpose, readiness or willingness to commit the crime without
3 the inducement or persuasion of the officer or agent. The
4 fact that the officer or agent merely presented opportunities,
5 or facilities for the commission of the crime is not
6 entrapment.

7 That's the question, and that's the question for the
8 jury. It is not for the Court to decide and to weigh this
9 evidence. The evidence can be weighed by the jury on either
10 side. They could find that there is entrapment; they could
11 find that the defendant was predisposed. The evidence is
12 equally clear for the jury. They can believe either part of
13 it, but the evidence is clear that there was a prior
14 transaction between the parties. He has a prior conviction,
15 though in the past. There is -- and all this is solicited on
16 cross-examination. Most of it was solicited on cross-
17 examination, which is ---

18 MR. DIGGS: Well, we had ---

19 THE COURT: Mr. Diggs, we are not having a discussion
20 here. I'm explaining my reasoning, and then I'm going to
21 rule. I'm not -- we are not having a discussion, okay.

22 MR. DIGGS: I understand.

23 THE COURT: Thank you. You can sit down.

24 MR. DIGGS: Your Honor, could I ask one question? Was
25 that the Gaines case you were quoting from, or was that a

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1 general instruction, when you were talking about the elements
2 of entrapment? We can talk about that ---

3 THE COURT: I was setting forth the law of entrapment,
4 is what I was doing.

5 MR. DIGGS: Yes. I was simply asking where was the ---

6 THE COURT: I appreciate it. I was setting forth the
7 law of entrapment. Thank you, sir.

8 In this particular matter the Court finds that there is
9 direct evidence, and also substantial circumstantial evidence
10 that reasonably tends to prove the Defendant guilty of the
11 crime charged. Now, as to whether or not the jury believes
12 the evidence, as to whether or not the jury believes the
13 defense of entrapment, that, again, is going to a weighing of
14 the evidence. I find the evidence absolutely exists. There
15 is no question of that. The evidence exists in this case,
16 without question, therefore, directed verdict motion is
17 denied.

18 All right, Mr. Diggs, are you ready to call witnesses?

19 MR. DIGGS: Your Honor, could we take just a couple of
20 minutes before we bring the jury back in? We are ready, but I
21 want to just get a break.

22 THE COURT: All right. Five minutes. Thank you very
23 much.

24 MR. DIGGS: Okay. Thank you.

25 THE COURT: Be back in five minutes.

HONORE T. DAVIS - BY THE COURT

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1 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
2 THE PRESENCE OF THE JURY.)

3 MR. DIGGS: Judge, I was just stepping out. Can I have
4 about two minutes?

5 THE COURT: I'll -- yes sir, that's -- yes sir.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: Mr. Davis, if you would please stand, sir.
9 Madam Clerk, if you will place him under oath.

10 HONORE T. DAVIS, being first duly
11 sworn, testifies as follows:

12 BY THE COURT:

13 THE COURT: All right, Mr. Davis, at this point in time
14 I'm going to explain to you certain of your Constitutional
15 Rights. If you don't understand anything that we are talking
16 about I want you to let me know. You can raise your hand; you
17 can tell your attorney, but in some way indicate that you do
18 not understand. Are we clear about that?

19 MR. DAVIS: Yes sir.

20 THE COURT: All right. Very good. Now, as we have
21 indicated, we have reached the stage of the trial where you
22 can present a defense. You have, personally, the
23 Constitutional Right to claim the protections given to you by
24 the Fifth Amendment to the Constitution of the United States
25 of America. That Amendment states, in part, that no person

1 shall be compelled, in any criminal case, to be a witness
2 against themselves. That means nobody can make you testify in
3 this case. You are welcome to testify; you can testify if you
4 choose to do so, but nobody can make you do so; do you
5 understand that?

6 MR. DAVIS: Yes sir.

7 THE COURT: All right, sir. Now, if you decide to
8 testify you are going to be subject to the same rules that
9 govern other witnesses that you've seen in this trial. You
10 will be examined or questioned by your attorney. You will be
11 cross-examined by the State as to all matters the Court deems
12 relevant in this particular matter; do you understand that?

13 MR. DAVIS: Yes sir.

14 THE COURT: Now, Solicitor, regarding any prior record
15 of the Defendant, is there anything that the State intends to
16 cross-examine the Defendant on that?

17 MR. RICHARDSON: Your Honor, this is a little different
18 situation. This is the first time I've encountered entrapment
19 in a while. The Defendant has a '99 conviction for
20 trafficking in cocaine. He got a ten year sentence on that.
21 The State would just put in that that shows a predisposition
22 for his drug dealing.

23 He has a 2000 ABHAN. He got a ten year sentence on that
24 as well. They are both -- he was sentenced on the same day by
25 Judge King.

HONORE T. DAVIS - BY THE COURT

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1 THE COURT: All right. What's your position, Mr.
2 Diggs?

3 MR. DIGGS: Your Honor, you mean with respect to the
4 introduction of that record?

5 THE COURT: Yes sir.

6 MR. DIGGS: I don't have any objection to the drug
7 conviction. I would object to the ABHAN.

8 THE COURT: All right. What day did the -- what is the
9 date of the pleas or ---

10 MR. RICHARDSON: Here, Your Honor. I'll hand up to the
11 Court certified copies. I'm sorry, Your Honor, I only have a
12 certified copy of the drug conviction. If you will bear with
13 me I'll look at the ---

14 THE COURT: All right. Very good.

15 MR. RICHARDSON: He was sentenced to ten years
16 concurrent on March 9th, 2000.

17 THE COURT: All right. Very good. Hold on one second.

18 MR. RICHARDSON: The drug conviction was at the same
19 time, Your Honor.

20 THE COURT: All right. Very good.

21 That was assault and battery of a high and aggravated
22 nature.

23 MR. RICHARDSON: Yes sir. That's what is reflected by
24 the NCIC.

25 THE COURT: 2000. All right.

1 MR. RICHARDSON: Yes sir. Under the Common Law.

2 MR. DIGGS: Your Honor, I had -- well, I'll let you
3 finish.

4 THE COURT: And I'm sorry. Was he sentenced to an
5 active sentence, or was it a probationary period, or what was
6 the sentence?

7 MR. RICHARDSON: It was a ten year sentence to run
8 concurrently with the trafficking sentence, Your Honor.

9 THE COURT: All right.

10 MR. RICHARDSON: The only difference I would see is
11 that it would have been a non-violent parole eligible on the
12 ABHAN, and it would have been a no-parole on the trafficking,
13 because he pled to twenty-eight to a hundred if I recall
14 correctly.

15 THE COURT: And why would you say that the ABHAN would
16 not fall within Rule 609, Mr. Diggs?

17 MR. DIGGS: Your Honor, I can understand why the drug
18 conviction is admissible, from the State's perspective, but
19 it's a prejudicial -- I just don't think that the Court could
20 fashion an effective limiting instruction on the use of that
21 particular offense in this case. I think the prejudice would
22 be heavy, and ---

23 THE COURT: As to the ABHAN or the drug conviction?

24 MR. DIGGS: ABHAN.

25 THE COURT: All right. Very good.

HONORE T. DAVIS - BY THE COURT

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1 MR. DIGGS: It's just a totally different kind of
2 mindset, and ---

3 THE COURT: And I appreciate that. The Rule 609 says,
4 evidence that a witness other than -- I'm sorry -- they talked
5 about -- okay. "If the crime was punishable by death or
6 imprisonment in excess of one year under the law under which
7 the witness was convicted, and evidence that an accused has
8 been convicted of such crime shall be admitted if the Court
9 determines the probative value of admitting the evidence
10 outweighs the prejudicial effect to the accused."

11 And as far as the time limit, obviously, though the
12 conviction was over ten years ago the release from the
13 confinement does not -- you know, that extends it, so
14 obviously -- and in this matter, being sentenced to ten years
15 in 2010, the confinement falls after -- the release from
16 confinement falls after that, so it falls within the ten
17 years.

18 I find it falls within the construct of Rule 609, and as
19 to the drug case, obviously that's been brought up by the
20 Defense in it's cross-examination, so as far as the prejudice,
21 certainly at this point in time there is none to the Defendant
22 on the drug case, because it's a matter that has been brought
23 to the attention of the jury by the Defense, and it is
24 integral in their defense of entrapment.

25 As to the prejudice to the Defendant on the ABHAN

1 charge, besides it falling within the constricts of Rule 609 I
2 find that the probative value far outweighs any prejudicial
3 effect to the Defendant, and I'm going to allow the State to
4 question the Defendant about that, as far as whether or not
5 he's been convicted of those two crimes. If he admits that he
6 has been convicted of those crimes then obviously the State
7 will not be able to go any further in it's questioning of the
8 Defendant on those matters.

9 So, in this particular matter, Mr. Davis, if you decide
10 to testify I will allow the State to bring up your prior
11 record as the Court has indicated, and that is for the purpose
12 of credibility and believability, and only for that particular
13 purpose, and I will so instruct the jury.

14 If you decide to testify this decision has to be made by
15 you. You can talk to your attorney, receive advice from your
16 attorney or other persons you deem worthy of that, but it's
17 your decision. You have to make that freely, voluntarily,
18 intelligently made, and obviously knowing the protections
19 given to you by the Fifth Amendment to the Constitution of the
20 United States of America.

21 If you decided not to testify, if that was your choice,
22 I would instruct the jury that they can't give that fact any
23 consideration whatsoever; they can't talk about it in the jury
24 room; it's not part of this case, and they would not be able
25 to use it in any way in making their decision in this case.

HONORE T. DAVIS - BY THE COURT

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1 Now, it being left up entirely to you to decide whether
2 or not you want to testify, do you want to ask any questions
3 of your attorney at this point in time?

4 MR. DAVIS: Yes sir.

5 THE COURT: All right. Very good. Go ahead and ask
6 him.

7 (DEFENDANT IS CONFERRING WITH HIS COUNSEL.)

8 MR. DIGGS: Your Honor, whatever his decision is right
9 now, of course that remains open and he can change his mind at
10 the time.

11 THE COURT: Well, I'm assuming you are going to call
12 other witnesses ---

13 MR. DIGGS: Yes sir.

14 THE COURT: If he decides at that point in time not to
15 testify, or to testify, obviously he's certainly willing to do
16 so, but I want him to understand, you know, what his rights
17 are, and at this point in time let's clear this part up.

18 Mr. Davis, do you understand everything we've talked
19 about?

20 MR. DAVIS: Yes sir.

21 THE COURT: All right. Do you have any questions about
22 it, any questions that you need to ask?

23 MR. DAVIS: No sir.

24 THE COURT: All right. At this point in time do you
25 wish to testify in this particular matter?

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1 MR. DAVIS: No sir.

2 THE COURT: All right. Very good. All right.

3 Obviously, you know, the presentation of witnesses is up to
4 you and your attorney. If you are going to call other
5 witnesses before it would come time for you to testify or not
6 testify, and you decide to change your mind, you can certainly
7 tell your attorney at that point in time; you understand that?

8 MR. DAVIS: Yes sir.

9 THE COURT: All right. Very good.

10 All right, are you ready to proceed with your witnesses,
11 Mr. Diggs?

12 MR. DIGGS: Yes sir.

13 THE COURT: Ask the jury to come in, please.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right, Mr. Diggs, you may call your
17 first witness, sir.

18 MR. DIGGS: Your Honor, we would call Ms. Wanda
19 Waterman.

20 THE COURT: All right. Please come around to be sworn,
21 please.

22 WANDA GAIL WATERMAN, being first
23 duly sworn, testifies as follows:

24 DIRECT-EXAMINATION BY MR. DIGGS:

25 Q. Ms. Waterman, how are you this morning?

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1 A. I'm fine, considering the circumstances.

2 Q. I understand.

3 Let me ask you -- tell us a little bit about yourself.
4 Where do you live?

5 A. I live in the Carolina Forest area.

6 Q. How long have you lived in that area?

7 A. I moved there in April of this year.

8 Q. Okay. Are you a native of this area, Horry County?

9 A. I'm originally in Florence County.

10 Q. Florence. And how long have you lived in this area?

11 A. I've lived in Horry County well over five years.

12 Q. Okay. Now, you know Mr. Davis.

13 A. Yes, I do.

14 Q. All right. Tell us how you know him.

15 A. He's my boyfriend, currently, and he's the father of my
16 youngest child.

17 Q. All right. Let me ask you this. How long have you
18 known him?

19 A. About -- around four years.

20 Q. And since that time what has your relationship been
21 with him? Has it been a close relationship? Have you lived
22 with him? You see where I'm ---

23 A. Yes. We've lived together. It's been close. We
24 started out pretty close real fast, and I'd say about a month
25 into the relationship we moved in together.

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1 Q. All right. Now, I'm not asking you to repeat what he
2 said, or get into hearsay testimony, but generally, do you
3 know much about him?

4 A. I would like to say I do. I know a lot about him.

5 Q. And tell us what you know about him. You chose to have
6 a child with him.

7 A. He has his faults. He's not perfect. Has some temper
8 issues sometimes, but overall he's a pretty good guy. He's a
9 real good father. My children get along with him. I have
10 five kids, and he helped me raise my youngest one when I met
11 him, before we had our child together.

12 Q. All right. And how old is that child, not the baby but
13 the next one?

14 A. She will be four in November.

15 Q. All right. And again, for my clarification, you've
16 know him about four years.

17 A. Yes.

18 Q. All right. What else do you know about him, if
19 anything?

20 A. He has a past, I mean we all do, but I know he's a hard
21 worker. He's ---

22 Q. What do you know about his past?

23 A. I know that he used to sell drugs in the past.

24 Q. How do you know that?

25 A. He told me.

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1 Q. All right. What else do you know about that past?

2 A. Well, he was a hot-head back in the days.

3 Q. All right. Let's strike that. You say he used to sell
4 drugs. When was that? What time frame are we talking about?

5 A. Based upon what he told me it was well over ten years
6 ago.

7 Q. All right. Ten years ago. And did he get in trouble,
8 to your knowledge?

9 A. Yes. He went to prison.

10 Q. And how long did he stay in prison, if you know?

11 A. Roughly about eight and a half years.

12 Q. All right. Let me ask you this. Do you know how old
13 he is, Mr. Davis?

14 A. He's thirty-five.

15 Q. Thirty-five. And you've know him about four years?

16 A. Yes.

17 Q. Now, was he in prison when you met him?

18 A. No.

19 Q. All right. He had been released by that time.

20 A. Yes.

21 Q. And so by the time he was in his early thirties he was
22 out of prison; is that your understanding?

23 A. Yes.

24 Q. Okay. Now, while you were living with him did you
25 suspect him of being a drug dealer?

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- 1 A. No, I did not.
- 2 Q. All right. Did he ever cook crack in the house?
- 3 A. Absolutely not.
- 4 Q. Did he ever do cocaine in the house?
- 5 A. No sir.
- 6 Q. Now let me ask you this. Do the children live there in
7 your home?
- 8 A. Yes, they do.
- 9 Q. And was he in a role of father figure to your children?
- 10 A. Yes, he was.
- 11 Q. Did you approve of the role that he played in their
12 lives?
- 13 A. Yes, I approved of it.
- 14 Q. And did he work?
- 15 A. Yes. When I met him he was working at Pizza Hut, and
16 as -- is ---
- 17 Q. What was his job at the Pizza Hut? I'm sorry I
18 interrupted you.
- 19 A. Oh. I'm sorry. He worked in, I believe the cutting
20 table, the prep, and he did numerous things, from cooking,
21 sometimes cashiering. He had different roles in there.
- 22 Q. And did he do that on a regular basis?
- 23 A. Yes.
- 24 Q. Has there been a time -- and I'm not talking about
25 maybe temporary time, but in the four years that you've know

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1 him, has there been a time that he didn't work, or didn't --
2 refused to go to work?

3 A. No. I mean, he's always worked. We ---

4 Q. Based on your observations.

5 A. Yes. It was a period of time we had our own cleaning
6 business. I worked underneath my stepfather's business, and
7 we cleaned different buildings such as Hadwin-White, the car
8 dealership, so, I mean he did that while working at Pizza Hut,
9 so he kept a steady job.

10 Q. I understand. So he worked a couple of jobs ---

11 A. Yes.

12 Q. ---At the same time?

13 A. Yes.

14 Q. Now, did there come a time, if you know, when he left
15 the Pizza Hut and went into a new job?

16 A. Yes, it was.

17 Q. What -- tell us about that, when it happened, and what
18 it was.

19 A. Things got slow in the winter of last year at Pizza Hut
20 and you know, we were -- times were hard. I was nearing to
21 have my child, and I went on maternity leave at my job, and we
22 stopped with the business because it was so hectic with
23 keeping schedule with the kids, working at the Hadwin-White
24 cleaning, that business, so then he went to look for other
25 work, and someone that he knew worked at Coastal BioDiesel.

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1 Q. Coastal ---

2 A. Coastal BioDiesel.

3 Q. All right. What is that?

4 A. It's an oil company in Conway, where they get contracts
5 with different restaurants, businesses, and they take the
6 grease from -- the old cooking grease, and they filter it and
7 they sell it to different places, distributors, I guess, for a
8 number of uses for that oil, but you know, they basically pick
9 up the old cooked grease from different places and bring it to
10 the warehouse.

11 Q. All right, now, did he leave the Pizza Hut to go into
12 that job?

13 A. Yes, he did. He -- I think -- he was not at Pizza Hut
14 at the time, when he went to Coastal BioDiesel, but it was
15 like a short period.

16 I'm sorry. I'm trembling. It's cold in here.

17 Q. Yes. All right.

18 A. But yes, he did went there very shortly after working
19 at Pizza Hut.

20 Q. And he was working with you at the cleaning business.

21 A. Yes. We gave that up shortly before I had my daughter,
22 so I would say around November is when we stopped the cleaning
23 business underneath my stepfather.

24 Q. And how long had he worked with the Coastal BioDiesel
25 operation?

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1 A. He was there several months.

2 Q. All right. And did there come a time when he changed
3 from that position?

4 A. Yes. He stopped working ---

5 Q. Tell us about that.

6 A. Yes. He stopped working there, and he immediately went
7 to working -- doing the same kind of job with a different
8 company.

9 Q. All right. So he just moved from the Coastal BioDiesel
10 employer to a new job with a similar company.

11 A. That's correct.

12 Q. And did he -- do you know why he did that?

13 A. Different hardships at the job. He would come home and
14 tell me, you know, different instances of prejudices, and it
15 was a lot of controversy going on at that particular job, for
16 a number of reasons, so why he left that job.

17 Q. But for that, how did he feel about working in that
18 industry?

19 A. He loved it. I mean, for the first time in a long
20 time, you know, he came home dirty and mess up all the carpet,
21 and I was angry about that, but overall I mean, he enjoyed it,
22 he said, you know. It was the first time in a long time he
23 really felt happy, bringing home a full pay check and ---

24 Q. Okay. Now, when you were -- let's go to the day that
25 he was arrested in this case. Were you with him?

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1 A. Yes, I was.

2 Q. All right. There was some money that's been testified
3 about in this case. Do you know anything about that?

4 A. Yes, I do.

5 Q. Tell us what you know on that.

6 A. What I know is that the majority of that money that was
7 in his pocket that was taken when he was arrested was my
8 money.

9 Q. And why --- how was it your money?

10 A. Well, my children -- I have two sons. Their father is
11 deceased ---

12 Q. Okay.

13 A. ---And they receive two checks, Seven Hundred and
14 Ninety-Seven Dollars each, monthly, for survivor benefits.

15 Q. All right. And you used that to help pay the overhead
16 at home ---

17 A. Yes.

18 Q. ---For them. And was the money that was taken that day
19 the Social Security money for your children?

20 A. Yes, it was.

21 Q. Did you tell anybody? Did you tell the police officers
22 about that?

23 A. I told them about the money, and I told them that we
24 were on our way to go pay an electrical bill at Santee Cooper
25 when we got stopped.

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1 Q. All right. And did they give you your money back?

2 A. No, they did not, and I'm surprised to learn that the
3 amount has now decreased compared to what he had in his
4 pocket, compared to what they say they have confiscated from
5 him.

6 Q. How much did you give Mr. Davis that day to put in his
7 pocket?

8 A. He had nearly a Thousand Dollars.

9 Q. All right. And when you didn't get -- when you learned
10 the money was gone, how much did -- were you told was missing,
11 or was going to be taken?

12 A. I was not told about any amount that was in his pocket
13 until yesterday.

14 Q. All right.

15 A. And I believe it was a little over Six Hundred Dollars
16 that they reported he had on his possession, which was not
17 true.

18 Q. All right. Now, when you learned he had been arrested
19 for the drug deal in this case, what was your reaction with
20 respect -- you know, upon learning of that information?

21 A. Sir, I was in the car playing a game on my cellular
22 phone when he went into that store. In an instance I was
23 surrounded with cars, vehicles, police officers yelling,
24 cursing, screaming me to put my hands up, you know, get out of
25 the car. It was a rush. I didn't know what to expect. All I

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1 know he was going in the store. I told him to bring me a
2 drink when he got out, and to my knowledge we was leaving the
3 store and going to Santee Cooper to pay the electric bill, and
4 this is what happened.

5 Q. All right. Did you ever, in the four years that you
6 knew him, sit with him and talk about the future?

7 A. All the time.

8 Q. And what was in your mind as a result of your
9 conversations with him about the future of the two of you?

10 A. I mean, from my understanding -- we talked about
11 different goals we wanted. I wanted to be in paralegal,
12 wanted to go to -- do some classes there. He wanted to go to
13 culinary arts school. He wants to be a chef. And I was
14 looking forward for that to happen. I mean, we've had some
15 bumps, some ups and downs, all couples do, but overall I
16 believed at the time we were heading in that direction.

17 Q. All right. And you believe you knew him pretty well --

18 -

19 A. Yes, I do.

20 Q. ---After four years ---

21 A. Yes.

22 Q. ---In a relationship with him?

23 A. Yes. I can honestly say I feel I know him.

24 Q. All right. Do you -- did you see information when your
25 -- you know, in your home with him, that you were involved

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1 with a drug dealer?

2 A. No. He know I would never allow anything like that
3 into my home.

4 Q. All right. Did you think of him as a drug dealer?

5 A. No, I didn't.

6 Q. Okay. And when you were talking about -- in your
7 statement to police about you knew he was involved in selling
8 drugs, can you tell us that that was based on activities in
9 the past?

10 A. That was based upon what he told me, you know, his
11 reasons for going to prison and the life that he had well --
12 way before I met him.

13 Q. All right. And was that the man that you knew, the
14 drug dealing ---

15 A. No. I knew a sweet guy, rough on the exterior, soft in
16 -- on the inside, had some anger issues, but overall he was a
17 good person.

18 Q. Tried to built a family with you.

19 A. Yes.

20 Q. Working hard to support the family.

21 A. Yes sir.

22 Q. And had a desire to go to culinary school.

23 A. Yes, that's correct.

24 MR. DIGGS: All right. Beg the Court's indulgence for
25 just a second.

1 Q. Ms. Waterman, let me ask you about the night of the
2 arrest. Did anything unusual happen on that evening after Mr.
3 Davis was arrested?

4 A. The night of the arrest.

5 Q. The night after that arrest.

6 A. No sir.

7 Q. All right. We are not going to go any further.

8 MR. DIGGS: I appreciate it, Ms. Waterman. Answer any
9 questions that the Solicitor may have.

10 Thank you.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION BY MR. RICHARDSON:

13 Q. Ms. Waterman, you said that you had been with the
14 Defendant for four years.

15 A. Yes sir, nearly four.

16 Q. Okay. Y'all haven't been together the entire time
17 though, right?

18 A. No. We've had some broke ups.

19 Q. As a matter of fact, at the time of this arrest y'all
20 had broken up.

21 A. Yes. Actually we were in the middle of trying to
22 reconcile when the actions took place.

23 Q. And he wasn't living in your house at that point,
24 correct?

25 A. No, not at that time.

1 Q. How long had y'all been broken up?

2 A. Off -- which time? I mean ---

3 Q. Well, this time, back in January of 2008.

4 A. I'd say, not quite a week.

5 Q. What caused the break-up?

6 A. Fights, arguments. Like I said, he has a temper. He
7 likes to break things when he gets upset, and I usually would
8 call the police. I'm sure you have some police records where
9 I have made calls.

10 Q. Let's see. You said the Defendant went to work with
11 Coastal BioDiesel. When was that?

12 A. I can't give you the exact date when he started working
13 there ---

14 Q. Yes Ma'am.

15 A. ---But he was there for several months. But yes, it
16 was shortly after -- I believe -- I want to say -- estimating,
17 could have been somewhere in between January and February.

18 Q. Okay. So that's at Coastal BioDiesel somewhere in
19 January or February, maybe.

20 A. Yes.

21 Q. Was he working at Coastal BioDiesel whenever he was
22 arrested on this?

23 A. I'm not sure, to be honest.

24 Q. You told ---

25 A. I'm not really sure. I'm not sure if he was at --

1 still at Pizza Hut or Coastal BioDiesel.

2 Q. When he worked at Coastal BioDiesel did he work nine to
3 five or -- do you remember what his hours were?

4 A. Yes, cause I had to get up in the morning in order --
5 we had one vehicle at the time, and I would take him to work,
6 so normally he would be there somewhere between 7:30, 8
7 o'clockish, and sometimes he would get off -- it would be five
8 or six, so sometimes he would come pick me up and go back to
9 work, and I sat and wait, because it was a tedious process.
10 Some days they had to wait on the rig to come in and pick up
11 the oil, the cooking oil, clean up the warehouse, so he
12 probably worked some days between eight and twelve hours,
13 depending on what it was.

14 Q. Monday through Friday?

15 A. Yes, and some Saturdays.

16 Q. Okay. So if he worked at least till five o'clock in
17 the afternoon, Monday through Friday, and he was arrested at
18 4:30 on a Friday ---

19 A. Yes. I believe so. I don't know. I know it was in
20 the afternoon and I had to catch Santee Cooper.

21 Q. So it was a week day, definitely.

22 A. Uh huh (indicating positive)

23 Q. So, it would go to figure he wasn't working at Coastal
24 BioDiesel at the time.

25 A. He may not have been. Like I said, it was either there

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1 or Pizza Hut, one of the two. It was the end of January when
2 he was arrested, correct? I know somewhere in the 20th days
3 of January, so he probably still was at Pizza Hut.

4 Q. January 28th, I believe.

5 This Thousand Dollars that he got. When did he get that
6 money?

7 A. When did he get it? He got it from me. That following
8 day -- I went and cashed my childrens' Social Security checks,
9 I think a couple of days before that, and you know, like I
10 said, we only had one transportation, so that day was bill
11 paying day. And for some reason -- I mean, it was a sudden
12 incidents where we went somewhere, I think it was a local bar,
13 and one month I lost close to Nine Hundred Dollars, and from
14 that point on I said, when we go out, you know, I have to give
15 him the money to hold because he's good at keeping money, and
16 that's how that went, how he got into having my money. I gave
17 it to him.

18 Q. What time did he come by and pick you up?

19 A. Honestly I can't say, cause he was at the house that
20 whole entire day.

21 Q. He was at your house the whole entire day.

22 A. Yes. He came over, we talked, sat with the kids, you
23 know, the usual, watch television, and then when we got ready
24 to leave to come to Myrtle Beach when we left -- I want to
25 estimate and say it was around four when we left to go to the

1 beach.

2 Q. But you were with him all day that day.

3 A. That day, yes sir.

4 Q. Did y'all make any other stops on the way to the Sav-
5 Mart?

6 A. He made one stop to one of his friend's house. I
7 stayed in the car. It didn't take him long. He went in for a
8 couple of minutes and, besides going to the store where he was
9 arrested at, we left from the friend's house and he went to
10 the store.

11 Q. Okay. And did he have that cash on him at the time?

12 A. Yes, he did.

13 Q. He had that cash on him at the time.

14 A. I gave him the cash before we left the house.

15 Q. Okay. And that was about four o'clock ---

16 A. Yes.

17 Q. ---That y'all left the house -- that y'all left the
18 house. Where were you living at the time?

19 A. On Rockdale Street.

20 Q. Where is Rockdale Street located?

21 A. That's in the Carolina Forest area, right across
22 directly by the Wal-Greens.

23 Q. And where was the friend's house?

24 A. On the beach. It was -- I'm not sure of the exact
25 address, because I questioned about that at the day of the

1 arrest, but it's somewhere on the 4th North, little place,
2 them little small little apartments I believe.

3 Q. Some apartments on 4th Avenue North. How long did it
4 take y'all to get there?

5 A. From my home, with the traffic and -- I mean, I'd say
6 maybe twenty -- twenty minutes, give or take, cause I mean,
7 that's rush hour, during the time when we left. I remember it
8 was a lot of traffic, and ---

9 Q. So y'all went ---

10 A. ---It took us a little minute to get there.

11 Q. Took -- you left about four o'clock and it took you
12 about twenty, twenty-five minutes to get to the beach.

13 A. Somewhere in between there.

14 Q. So you went to the friend's house, and then he went
15 inside.

16 A. Yes, he went inside.

17 Q. And then he came back out.

18 A. He came back out and we went to the store from there.

19 Q. Did he tell you why he was going to the store?

20 A. No. I mean, I didn't question him. I know he goes in
21 the store -- we stopped several times at that store, and
22 different stores, and I just told him, bring me a drink when
23 he came back out, so he went in the store and I stayed in the
24 car.

25 Q. At any time did he tell you, said, man, I've got this

1 guy bugging me about some dope?a

2 A. No.

3 Q. Did he say, I can't get this guy off the phone; he's
4 just bugging me and bugging me about this dope?

5 A. No. He never said that.

6 Q. Did he seem irritated that day?

7 A. No. I mean, he was actually in a good mood, cause we
8 made plans for it on that day after we paid the bills that we
9 were going to take the kids out for a movie, you know. We
10 probably would have went to a bar a little later on that day,
11 but we had already made previous plans.

12 Q. Where was the Defendant staying? You said he had moved
13 out of the house a few days before. Where was he staying at
14 that point?

15 A. The last residence I knew that he was living at was at
16 the -- I want to say either Affordable Suites Hotel, or either
17 Micro-Tel. He had got a room. Every time we, you know, had
18 our little break-ups he would always get him a hotel room, but
19 it wouldn't be not too far from the house.

20 Q. Did you ever visit him at those hotel rooms?

21 A. It's been times, yes sir, I have.

22 Q. Sometimes. How about this time? Were you visiting him
23 at the hotel at that point?

24 A. Sometimes, here and there. I think I went there twice
25 before he started coming back to the house.

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1 Q. Have you gotten a copy of your statement you gave
2 police, your written statement?

3 A. No, I was never given one.

4 MR. RICHARDSON: If I could have that marked, please
5 Ma'am.

6 (STATEMENT OF MS. WATERMAN MARKED STATE'S EXHIBIT NUMBER
7 8, FOR IDENTIFICATION ONLY.)

8 Q. I'm going to hand you what's been previously marked as
9 State's Exhibit 8, for I.D., identification. Do you recognize
10 that?

11 A. Yes sir.

12 Q. And what do you recognize that to be?

13 A. That's the statement that I was asked to write at the
14 store the day of his arrest.

15 Q. And in that statement how long do you say y'all have
16 been broken up?

17 A. We recently broke up two days ago. That's right here.

18 Q. And so in those two days he was staying -- to the best
19 of your knowledge he was staying at the motel.

20 A. Yes.

21 Q. And you have your kids, and you are working too at the
22 time, correct?

23 A. No, I was not working. My last day of work was October
24 the 14th. That was approximately a month and a half before I
25 gave -- went in the hospital and gave birth to our daughter

1 that we have together.

2 Q. And you said he's stayed at Affordable Suites and
3 Micro-Tel before.

4 A. Yes, in the past. But he -- the last couple of times
5 that we had broke up he had gotten a room at Micro-Tel.

6 Q. And these -- these rooms, did they have little kitchen
7 area and stuff or ---

8 A. His room did not have a kitchen, you know, it just had
9 a mini-frig, and a microwave, I believe.

10 Q. And you can't remember exactly if you went to his hotel
11 room to go to this or not.

12 A. No. I did go there.

13 Q. You did.

14 A. Yes, I did.

15 Q. Did you search the entire place?

16 A. Did I search his place. No sir, it was no need to.

17 Q. So you couldn't tell if he had drugs there or not.

18 A. Not to my knowledge. I didn't see any laying out.

19 Q. You already talked to us about you had called police
20 before.

21 A. Yes, I have.

22 Q. Do you recall an incident back in September, Fall of
23 2010, when you called police?

24 A. Yes, I can.

25 Q. And I'm not going to ask you about the particulars of

1 that, but at that time did you have the opportunity to speak
2 with members of the Fifteenth Circuit Drug Enforcement Unit?

3 A. Yes. They came to the house that day.

4 Q. And that was back, September of 2010, right?

5 A. Uh huh (indicating positive)

6 Q. Was the Defendant present at that point?

7 A. No, he wasn't.

8 Q. Do you recall what you told the police?

9 A. I didn't tell them anything. They asked me about did I
10 have any drugs in the house, if he would have any drugs where
11 would they be. I showed him -- I let -- took them into my
12 room. I showed them the empty drawers where he used to have
13 his clothes. He had a motorcycle and some Mo-peds out back.
14 They proceeded to go out there and check those things, the
15 items that he still had at my home, but I never told them
16 about any drugs in my home, drug selling, drug dealing or
17 anything at that time, because that was not tolerated in any
18 of my homes that we've ever lived in.

19 Q. But you told them if the Defendant had drugs that would
20 be in that position -- that place.

21 A. He asked me if he had any drugs where would he keep
22 them. I said, well, he keeps his things here; his clothes is
23 in the drawer, that he would have; this is where his clothes
24 would be; if you would like to check stuff that he's had here,
25 or have here, you can check it, but I have not seen any drugs,

1 and they did check those areas.

2 Q. And at that point the Defendant had moved out of the
3 house, correct?

4 A. Yes.

5 Q. But he took all of his belongings with him.

6 A. Not everything. There were still a few clothes here or
7 there, and like I said, he had a motorcycle, a Mo-ped, and
8 several other items out back in the shed.

9 Q. But he didn't have his wallet there.

10 A. He doesn't carry a wallet.

11 Q. But he had taken a lot of his belongings out.

12 A. Well, I packed most of his clothes. He took what I
13 packed.

14 Q. Now when y'all were together, when he was living there,
15 were y'all together twenty-four seven?

16 A. No sir, not the majority of the time. Like I said, I
17 worked at the time before October the 14th, and my job went
18 from anywhere between 8:30 to nine, to maybe five, sometimes
19 more on the weekends, depending on the situation at my job,
20 but the most of the time I'm at home with my kids, and when
21 I'm not at home with my kids he's at work. He worked at night
22 at Pizza Hut at that time, and I worked in the day, and
23 between our days off, you know, we went to little bars, drank,
24 had these ---

25 Q. So you don't know -- other than he told you he was

1 going to work you don't know what he was doing when he was
2 away from you.

3 A. I know when he was at work he was at work. I have gone
4 to his job. I've picked up pizzas for the kids on certain
5 days. When he was at work, he was at work.

6 Q. Okay. So when he wasn't working he was always with
7 you.

8 A. He was at home with the kids.

9 Q. But this day, January 28th, he didn't stay at home; you
10 had -- your seventeen year old daughter stayed at home to
11 watch the kids, right?

12 A. Yes, she was there.

13 Q. So she's available for babysitting too, correct?

14 A. She -- she would. She would babysit. She didn't have
15 a job at the time, and she was sixteen, so ---

16 Q. So if the Defendant needed to duck out he could.

17 A. Well, if I'm gone with the car, and we only had one
18 vehicle, sir, how could he?

19 A. You want to be able -- you said he was away from you at
20 that time. That vehicle was registered in his name, correct?

21 A. Yes.

22 Q. And that's his car.

23 A. Yes.

24 Q. When he moved to the hotel, who had the car?

25 A. He had the car sometimes. Sometimes he would leave the

1 car and catch a cab, but most of the times he had the car.
2 Before I allowed the Suburban to go back, when we did have two
3 vehicles, at the time he would have the Suburban, because we -
4 - he only got -- bought the little car that he has now because
5 we let the Suburban go back.

6 Q. You say you wouldn't tolerate drug dealing in your
7 house, correct?

8 A. Never.

9 Q. So if he was doing it it would go to figure he would
10 hide it from you.

11 A. I mean, if he was selling any drugs it would be
12 something hidden, cause he know I would never tolerate that.

13 Q. So when you told the police, to your knowledge he
14 stopped, he didn't make it -- he didn't make you aware, hey,
15 I'm selling drugs to get some money on the side.

16 A. No. He's never told me anything about any drug
17 selling.

18 Q. And y'all were very close.

19 A. To my knowledge, to our relationship we were. The only
20 time that we were not close is when we had our little
21 arguments and fights, and it's been -- like I said, I think
22 the longest break-up we had so far was about two weeks long,
23 but even in the two week stint we still saw one another.

24 Q. So y'all had been broken up for two days. So prior to
25 that, all of January, y'all were together.

1 A. Yes sir. I mean we just -- I gave birth to my daughter
2 December the 23rd ---

3 Q. Okay.

4 A. ---And he was at home helping with me. I had a
5 Cesarian Section, so he was basically the homebody for me
6 while I was in the bed recuperating and taking care of our
7 daughter. He was there feeding the other kids, cooking,
8 cleaning, the whole nine.

9 Q. And never at one time did he come to you and say, man,
10 this fool is sweating me for some drugs; I don't know what to
11 do.

12 A. Not once.

13 MR. RICHARDSON: I have no further questions.

14 THE COURT: Redirect.

15 REDIRECT-EXAMINATION BY MR. DIGGS:

16 Q. Ms. Waterman, did he ever say to you, you know what, I
17 sure would like to get back into the drug business?

18 A. No. He know I would have never allowed that. I mean,
19 when I met Mr. Davis -- I met him he was working at Pizza Hut,
20 and he was riding a bicycle. You know, I'd like to think that
21 he was the yen to my yang, and vice-versa. We encouraged one
22 another, even through our arguments and fights, and I
23 encouraged him to go out and get a permit, encouraged him to
24 go get a license, and then he eventually got a car.

25 Q. Did he have a predisposition, in your opinion, to sell

1 drugs at that time, a desire to sell drugs?

2 A. No, not at all, cause I always told him -- see, what
3 you don't understand, Mr. Diggs, is, from my background, and
4 where I come from -- you know, I was in a very established
5 elaborate relationship before I met Mr. Davis ---

6 Q. Yes Ma'am.

7 A. ---Everything was to my beck and call, I didn't have to
8 ask for anything, and I gave that all away for a guy on a
9 bicycle, working at Pizza Hut, and that only says because of
10 the potential, and his goals that I saw in him, his future,
11 and what he wanted to do with his life, and not once did he
12 ever indicate that he wanted to go out and sell drugs.

13 Q. All right. And that day that he was arrested, do you
14 remember when you first saw him that day?

15 A. Yes. He came to the house early that morning. He was
16 there all that day before we even left to go out to go pay
17 bills.

18 Q. Did you have any suspicion that he had drugs on him at
19 that time?

20 A. No sir, not at all.

21 Q. And he made this one stop, you say, on the way to the
22 store.

23 A. Yes. He stopped at a friend's house.

24 Q. All right. And he was there about two minutes.

25 A. No longer than five.

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1 Q. Okay.

2 MR. DIGGS: Thank you. That's all I have.

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

4 Your next witness, Mr. Diggs.

5 MR. DIGGS: Your Honor, Mr. Ervin Torres.

6 THE COURT: Please come around up here to be sworn,
7 sir. Thank you.

8 ERVIN TORRES, being first duly
9 sworn, testifies as follows:

10 DIRECT-EXAMINATION BY MR. DIGGS:

11 Q. Mr. Torres, how are you this morning?

12 A. I'm doing good. Thank you very much for asking.

13 Q. Okay. Tell us a little bit about yourself. Where do
14 you live, and tell us what you do.

15 A. Sure. I'm originally from New York City. I came here
16 nine years ago. I started working -- actually I retired from
17 the Marine Corp, and decided to go back to work, and I did
18 some work here for Coca-Cola. I worked for several other
19 companies here, and then went into the Coastal BioDiesel also.
20 And there I worked for two years.

21 Q. Did you go there -- was Mr. Davis there when you got
22 involved with Coastal BioDiesel?

23 A. He had just started getting there.

24 Q. Okay. Go ahead. I cut you off.

25 A. That's okay. That's okay. I worked there for almost

1 two years, and around June, early June this year, I decided to
2 open up my own business.

3 Q. And what kind of business did you get into?

4 A. It's basically the same thing. It's called Save the
5 Earth, and I do the same thing Coastal BioDiesel does. What I
6 do is, I will go out to restaurants. I buy the oil from the
7 restaurant, therefore recycling it and sending it out to get
8 biodiesel -- make it biodiesel, and I've been doing that now
9 for -- since June, and I ---

10 Q. All right. Let me ask you if you know Mr. Davis.

11 A. I do know him. I only know ---

12 Q. Tell us when it was you first met him.

13 A. I met him at Coastal BioDiesel, as he started -- when
14 he started.

15 Q. And tell us what you observed him -- was he working
16 there when you were working there?

17 A. He was, but I hardly ever observed him, because I've --
18 always going out, and he was always inside.

19 Q. Okay.

20 A. So I really didn't know too much of him then.

21 Q. All right. What kind of work did you do for them?

22 A. Coastal BioDiesel.

23 Q. Coastal BioDiesel.

24 A. I went out and also did -- go out to the restaurants,
25 get the oil, and then it back to get recycled.

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1 Q. Do y'all recycle it, or is that done somewhere else?

2 A. It's screened and processed here, and then it's sent
3 somewhere else to get processed as biodiesel.

4 Q. All right. And you say you made a decision in June ---

5 A. Yes sir.

6 Q. ---To start your own business ---

7 A. Yes sir.

8 Q. ---In that industry.

9 A. Yes sir.

10 Q. Tell us about that. Do you employ people, or if so how
11 many and ---

12 A. It's a one-man business. I have my own one truck, and
13 one day I asked Mr. Davis if he was willing to get a -- work
14 for me, because he was going through some issues in the other
15 company.

16 Q. Okay.

17 A. It wasn't not soon before that, and he said, well, you
18 know, I can't; let me stick around here see -- wait out, maybe
19 it will change. I guess it didn't, and one day he called me
20 up and he said if that offer was still open and I said, yes,
21 sure.

22 Q. Now the issues with the other company, do you know what
23 they were?

24 A. No sir. No sir.

25 Q. All right. How did you feel about putting him on with

1 your business?

2 A. Like I said, I've only met him through Coastal
3 BioDiesel, and he was a good worker. When I used to come in
4 he used to be the one that offload my oil into the containers.
5 So I do know that he is a great worker.

6 Q. All right, now, when you hired him, when you made a
7 decision to hire him, were you able to get closer to him in
8 terms of knowledge about how he performed his job?

9 A. Oh absolutely. By then he already knew the ins and
10 outs of the oil business.

11 Q. And is he a good employee, a good worker?

12 A. Absolutely.

13 Q. Let me ask you, did you pay him for his work?

14 A. Yes. Yes. Yes. Sure.

15 Q. How much does he ---

16 A. He takes home Five Hundred Dollars a week.

17 Q. Five Hundred a week.

18 A. Yes sir.

19 Q. All right. And is -- I want you to talk just a minute
20 about his dependability, his efficiency, that kind of thing.

21 Has he proven to be a dependable worker?

22 A. Absolutely. Honore is -- and I call him Ray -- but
23 he -- I don't have to ask much of him. He knows what to do.
24 He knows what time to get it and what time to bring it back.
25 There's very little I have to ask of him. I know he's a hard

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1 worker. That I can vouch for.

2 Q. All right. Now you mentioned that you own a truck.

3 A. Yes sir.

4 Q. Tell us about that vehicle.

5 A. It's a F350. It's a flatbed. On a flatbed we put a
6 taker, which is six hundred -- it holds six hundred gallons.
7 You will go out to the sites and you pump the grease until it
8 fills up, six hundred gallons. After it's filled up then we
9 go to a warehouse I have up in Longs, on Highway 90, and we
10 clean it and process it, and then within a month's time we
11 wait for the people that makes the biodiesel to come pick it
12 up, take and process it.

13 Q. Now does Mr. Davis ever drive that vehicle?

14 A. Yes, he does.

15 Q. How often would that be?

16 A. He drives it every day.

17 Q. Every day. In fact, he drove it yesterday, did he not?

18 A. Yes, he does.

19 Q. When he drives that vehicle what do you drive?

20 A. I have my own personal vehicle.

21 Q. Okay. Now, when he was arrested did you learn -- when
22 did you first learn that he had been arrested?

23 A. I technically -- I didn't know too much of his arrest,
24 even when he was in Coastal BioDiesel. I learned of it as it
25 got closer to the date, then he informed me of what was going

1 on, and that didn't make a difference to me. He still is a
2 great worker, and I was there to help him out in any way I
3 could.

4 Q. All right, now, did you -- let me ask you this. Were
5 you subpoenaed to be here today?

6 A. No sir.

7 Q. All right. Why did you come?

8 A. To support Mr. Honore ---

9 Q. And ---

10 A. ---And his family.

11 Q. And his family. Did he ever discuss to you about his
12 future?

13 A. Yes, he has.

14 Q. Did he ever discuss with you his past?

15 A. I don't go in the past.

16 Q. All right. But he talked to you about his future?

17 A. Yes. He did tell me about like his girlfriend says, he
18 likes to get into the culinary business.

19 Q. All right. Do you perceive him to be a drug dealer?

20 A. No sir, not in my eyes.

21 Q. I'm sorry.

22 A. Not in my eyes.

23 Q. How long were you in the Marines?

24 A. I did seventeen years.

25 Q. And in that time you -- I was going to ask you about

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1 being able to judge his lack of -- but I'm not.

2 In your opinion, would you continue to have Mr. Davis as
3 an employee of your company?

4 A. Absolutely. He gave me no reason not to be employed
5 with me.

6 Q. All right.

7 MR. DIGGS: Bear with me just a ---

8 A. Sure.

9 MR. DIGGS: Your Honor, beg your indulgence for just a
10 moment.

11 THE COURT: Yes sir.

12 MR. DIGGS: Mr. Torres, I believe that's all I have at
13 this time. Thank you.

14 A. Thank you.

15 MR. DIGGS: And I would ask you to answer any questions
16 Mr. Richardson has.

17 A. Sure.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION BY MR. RICHARDSON:

20 MR. RICHARDSON: Thank you for your seventeen years
21 service in the Marines.

22 A. Thank you, sir. Thank you.

23 Q. Now, you told Mr. Diggs that Save the Earth is your ---

24 A. Yes sir.

25 Q. Okay. That's your company name.

- 1 A. Yes sir.
- 2 Q. And it was a one-man job, just you.
- 3 A. Yes. Uh huh (indicating positive)
- 4 Q. So you were driving the truck, picking up, doing the
5 warehouse duties.
- 6 A. Correct.
- 7 Q. And then you hired Mr. Davis on.
- 8 A. Yes sir.
- 9 Q. And now it's a two-man job.
- 10 A. No. He goes on his own now.
- 11 Q. He goes out on his own.
- 12 A. Yes sir.
- 13 Q. So how many employees do you have?
- 14 A. It's just him and I.
- 15 Q. Okay. But it comes back to your company, correct?
- 16 A. Yes sir.
- 17 Q. So if he's gone it's back to a one-man job, right?
- 18 A. Yes sir.
- 19 Q. And that cuts the amount of work you can do in half ---
- 20 A. Yes sir.
- 21 Q. ---Or better than half.
- 22 A. Yes sir.
- 23 Q. You've talked about the Defendant's dependability. He
24 does what you ask of him.
- 25 A. Yes sir.

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1 Q. And you have the opportunity -- you said you didn't
2 really know him at Coastal.

3 A. No, not at all. I -- like I said, I used to go in
4 earlier than him. Only time I seen Mr. Honore was when I came
5 back to offload my truck, and therefore he was the one to
6 offload it and screen it and clean it.

7 Q. Okay. And you are saying that he was working at
8 Coastal BioDiesel when he was arrested.

9 A. Yes sir. Well, no, I don't know when he was arrested.
10 I'll be quite honest.

11 Q. In January of last year was he working at Coastal
12 BioDiesel?

13 A. I met him around -- around January or March, yes.

14 Q. At some time between January and March.

15 A. Yes. But never knew anything up with his arrest.

16 Q. So you didn't know him at the time of his arrest.

17 A. No. Well, I knew him on January. I don't know if he
18 was arrested then.

19 MR. DIGGS: Your Honor, just to correct the record. I
20 think the Solicitor misspoke. It was 2011. The Solicitor
21 said 2010, that he was arrested, last year.

22 THE COURT: All right. Very good.

23 Q. January 28, 2011.

24 A. Yes. See, I knew him then as Honore, working for
25 Coastal BioDiesel. I knew nothing of his records of being

1 arrested, never did. I knew of his arrest as the dates
2 progressed, like when he started working for me, then he told
3 me. I said, well, it don't matter, buddy; you are doing a
4 good job for me; you can continue on. And I want to say that
5 was around two months ago, to be quite honest, when all this
6 occurred.

7 Q. Okay. Okay. But he goes out on the truck on his own
8 now.

9 A. Yes. Not all the time. Every now -- I work two day --
10 two or three days a week with him. If we go out to like
11 Florence I'll go with him. If we go out to Charleston then
12 I'll go with him. Within the area -- because he knows the
13 area pretty much -- then he'll go on pretty much on his own.

14 Q. But he is trusted to do what he want -- what he needs
15 to do.

16 A. Right. But there's a route set. Like let's say Monday
17 we will do Myrtle Beach, Tuesday we will do North Myrtle
18 Beach, and then Wednesday we'll go out to Charleston, or a
19 Thursday. It all depends how the oil is.

20 Q. But he can make his own decisions on which ones to go
21 to.

22 A. Pretty much right now.

23 Q. He's capable of making his own decisions.

24 A. Pretty much, yes.

25 Q. And I'll be very brief. It's my understanding he went

1 to work sometime after June of 2011.

2 A. Late June. Around late June, it was, because I got all
3 my paperwork done to open my business around June 14th, so
4 around the late part of June.

5 Q. You did not know him at the time of his arrest on these
6 charges.

7 A. I did not.

8 Q. And if he is convicted and sent away, it's back to a
9 one-man job for you.

10 A. It will, absolutely.

11 MR. RICHARDSON: All right. Thank you, Your Honor. No
12 more questions.

13 THE COURT: Any redirect?

14 REDIRECT-EXAMINATION BY MR. DIGGS:

15 Q. Mr. Torres, just out of curiosity, if you were to lose
16 Mr. Davis as an employee, could you find another good
17 employee?

18 A. I'm hoping to.

19 Q. All right. You are not here ---

20 A. I hope not -- I hope that's not the case, to be quite
21 honest.

22 Q. Yes. I understand, but you are here to tell the truth.

23 A. And nothing but the truth.

24 MR. DIGGS: All right. Your Honor, I don't have
25 anything further.

1 THE COURT: All right. You may step down. I
2 understand you are not under subpoena so obviously you are
3 free to stay or go as you choose.

4 A. Thank you, sir.

5 THE COURT: Thank you.

6 All right. Next witness on behalf of the defense.

7 MR. DIGGS: Your Honor, if we could take just a break -
8 - a break for just a minute.

9 THE COURT: All right.

10 Ladies and gentlemen, we will take a short break, five
11 minutes.

12 Thank you very much.

13 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
14 JURY.)

15 THE COURT: All right, gentlemen, we will take a short
16 break for five minutes.

17 I know I didn't bring it up. Again, my normal course of
18 business is, when the jury leaves, if y'all would please
19 remain seated.

20 Okay.

21 MR. RICHARDSON: Yes sir. I'm sorry.

22 THE COURT: That's okay. Thank y'all.

23 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
24 THE PRESENCE OF THE JURY.)

25 THE COURT: Mr. Diggs, what's the State's position at

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1 this -- I mean, the Defense's position at this point in time?

2 MR. DIGGS: Your Honor, we would rest.

3 THE COURT: All right. Very good. I will certainly
4 ask you that question, and you can do that in front of the
5 jury, but so that we don't have to bring them in and send them
6 back out again immediately, if you would like to do you want
7 to renew your -- renew any motions at this point in time?

8 MR. DIGGS: Well, Your Honor, we would ---

9 THE COURT: And I'm sorry, before we do that. Is there
10 any reply testimony from the State?

11 MR. RICHARDSON: No sir, Your Honor.

12 THE COURT: All right. Very good.

13 All right. Go ahead, Mr. Diggs.

14 MR. DIGGS: Your Honor, we would renew -- I would
15 submit that the evidence corroborates -- Defense evidence
16 corroborates the argument that we were making at the close of
17 the State's case. There's just no evidence beyond the fact
18 that the act was committed. There's no evidence of propensity
19 on my client's part to do this thing beyond being enticed to
20 do so by the State's agents, the confidential informant, so we
21 would renew the motion for a directed verdict.

22 THE COURT: All right. Very good. Directed verdict.
23 Okay.

24 Regarding the Defense's renewed motion for a directed
25 verdict, I'm not going to repeat the law and the standard set

1 forth, but I will just reiterate that, and simply state that I
2 believe that there is direct evidence in the record; I believe
3 there is substantial circumstantial evidence, in addition, in
4 the record, that reasonably tends to prove the guilt of the
5 accused. I, with that, would find that the case is being
6 properly submitted to the jury for their determination as to
7 the weight of the evidence. The Court finds the evidence
8 exists. It's up to the jury to weigh the evidence, judge
9 credibility, believability, find that evidence which convinces
10 them of the truth, including the matters presented by the
11 Defense as to entrapment -- and we will talk about the charge
12 in just a minute -- but with that, I'm going to respectfully
13 deny the directed verdict motion.

14 Any other motions on behalf of the Defense?

15 MR. DIGGS: No, Your Honor.

16 THE COURT: All right. Very good.

17 All right. So that y'all have an idea of my intention
18 to charge the jury -- and before we do that, talk one second
19 about the verdict form. Is there any reason that the case
20 should not be submitted to the jury solely on possession with
21 intent to distribute cocaine base, for the jury to find him
22 not guilty or guilty of that crime? From the State?

23 MR. RICHARDSON: No sir, Your Honor.

24 THE COURT: All right. And from the Defense?

25 MR. DIGGS: No, Your Honor.

1 THE COURT: And I mean, it seems to flow logically from
2 the defense of entrapment that y'all have presented, but
3 obviously, with that, the Court would not be charging to the
4 jury the lesser-included offense of possession of cocaine
5 base, and that would be the Court's intention.

6 Do you understand that, Mr. Diggs?

7 MR. DIGGS: Yes sir.

8 THE COURT: All right. Very good.

9 All right. Let's talk about the charge. We would tell
10 the jury the things that we always talk to them about in every
11 case. The -- you know, there job is the judges of the facts,
12 the credibility, believability, two types of evidence, direct
13 evidence, circumstantial evidence, the law doesn't make any
14 distinction between the two, and a greater degree of certainty
15 is not required of one over the other, talk to them about
16 expert witness, or witness qualified to give their opinion, as
17 we did qualify one witness in this case to give her opinion.
18 I'll tell them they -- it's not -- because the Court qualifies
19 them doesn't give them any greater believability; they weigh
20 all the evidence the same, look at all the evidence the same.

21 As I told the Defendant in this matter, Mr. Davis, I'll
22 instruct the jury that the fact that he did not testify is not
23 a factor to be considered by them in their deliberations or in
24 their question of -- to find him not guilty or guilty, that
25 that's not part of the case, and they are not to talk about it

1 or use it in their decision-making.

2 Obviously will talk to them about the presumption of
3 innocence, talk to them about reasonable doubt, the kind of
4 doubt that would cause a reasonable person to hesitate to act,
5 charge them the law of possession with intent to distribute
6 crack cocaine, that the State has to prove, beyond a
7 reasonable doubt, the defendant had both the power and the
8 intent to control the disposition or use of the crack cocaine,
9 and possession could be either actual or constructive; the
10 State also has to prove, beyond a reasonable doubt, that the
11 Defendant intended to distribution the crack cocaine, and talk
12 about what distribute means, and also the fact that possession
13 of more than one gram creates an inference that the Defendant
14 possessed the crack cocaine with the intent to distribute; the
15 inference does not relieve the State from proving, beyond a
16 reasonable doubt, that the Defendant had the intent to
17 distribute.

18 Also, then I will charge to them the law of entrapment.
19 Now I read basically what my intention is as to the law of
20 entrapment earlier, and that being that the crime was
21 conceived, planned by an officer or somebody acting on behalf
22 of law enforcement, the officer or agent induced, initiated,
23 suggested defendant commit the crime, defendant would not have
24 committed the crime without the trickery, persuasion or fraud
25 of the officer, and the State is required to prove, beyond a

1 reasonable doubt, that the defendant was predisposed to commit
2 the crime without the inducement, giving them a definition for
3 predisposition; if you find the Defendant had a predisposition
4 without any Government inducement or influence to commit the
5 crime the defense of entrapment does not apply, and also end
6 with, if you find the Defendant was entrapped into committing
7 the crime you must find the Defendant not guilty.

8 That being my intentions as to the charge to the jury,
9 is there anything the State would like to add, change or
10 delete from that?

11 MR. RICHARDSON: No sir, Your Honor.

12 THE COURT: How about the Defense, Mr. Diggs?

13 MR. DIGGS: Your Honor, I think it sounds accurate.

14 THE COURT: All right. Very good.

15 All right, and the verdict form, gentlemen, that I've
16 had prepared basically just has the caption of the case. It
17 has possession with intent to distribute cocaine base, has on
18 it. On the charge of possession with intent to distribute
19 cocaine base we, the jury, by unanimous consent, find the
20 Defendant -- and it has, check one of the following boxes --
21 it's got a box for not guilty or a box for guilty -- and a
22 signature line for the foreperson, and to put today's date,
23 and that's all that's -- all that's on it, so -- and with
24 that, that would be the Court's instructions to the -- to the
25 jury in this matter.

1 Is the State ready to proceed with it's closing
2 arguments?

3 MR. RICHARDSON: We are, Your Honor. We would choose
4 to not open on the law, but to close.

5 THE COURT: All right. And Mr. Diggs, you are going to
6 require the State to open on the law in this matter, and then
7 have it's final argument after you argue?

8 MR. DIGGS: Your Honor, I'm not going to -- I'm not
9 going to require him to do that.

10 THE COURT: All right. Very good.

11 All right, so we will call -- and you are ready, Mr.
12 Diggs, for your argument to the jury in this matter.

13 MR. DIGGS: Yes sir.

14 THE COURT: All right. Very good.

15 MR. RICHARDSON: Your Honor, I do have one question.

16 THE COURT: Yes sir.

17 MR. RICHARDSON: I know you probably went over it on
18 the entrapment. Are you including the language, "In deciding
19 whether a defendant had any predisposition to commit the crime
20 you may consider evidence such as an existing course of
21 criminal conduct by the defendant similar to the crime, an
22 already formed plan by the defendant, or a willingness to
23 commit the crime charged as shown by the defendant's ready
24 response to ..."

25 THE COURT: Yes sir. That will be part of it.

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1 MR. RICHARDSON: Okay. I just wanted to make sure ---

2 THE COURT: That will be in there, but it will end as I
3 indicated ---

4 MR. RICHARDSON: Yes sir. Yes sir. I just ---

5 THE COURT: ---That if you find the Defendant was
6 entrapped into committing the crime you must find the
7 Defendant not guilty.

8 MR. RICHARDSON: Yes sir, Your Honor. Thank you, Your
9 Honor.

10 THE COURT: All right. Thank you.

11 Ask the jury to come in, please.

12 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, Mr. Diggs, what's the position
15 of the Defense at this point in time?

16 MR. DIGGS: Your Honor, the Defense has decided to rest
17 at this point.

18 THE COURT: All right. Very good.

19 And is there any reply testimony from the State?

20 MR. RICHARDSON: There will be no reply testimony, Your
21 Honor.

22 THE COURT: All right. Very good.

23 All right, ladies and gentlemen, you have heard all the
24 evidence to be set forth in this particular matter. That
25 obviously does not end this case. Where we are going to go

1 now is, we are going to have the closing arguments of the
2 attorneys. I remind you again that the closing arguments are
3 not evidence; they cannot be considered by you as evidence in
4 the case, but they are important. They are each side's
5 summation to you of what they believe the evidence has shown
6 to you during the course of the trial, and then ultimately
7 what they will be asking you to do as a result of your
8 unanimous verdict in this particular matter.

9 When we get done with that then I will give you the law
10 that you will use to apply to the facts that you find to be
11 true in this matter, and thereafter come up with your
12 unanimous verdict in this particular matter.

13 It's my expectation that, when we get to that point in
14 time, through the Clerk of Court's Office we've ordered lunch
15 for you, so hopefully it will be there for you at that point
16 in time. All right.

17 All right, Mr. Diggs.

18 MR. DIGGS: Thank you, Your Honor.

19 THE COURT: Yes sir.

20 MR. DIGGS: It's really hard to know where to start,
21 because we are in the courtroom; we are not on a political
22 soapbox, you know, about public policy, what we should do,
23 what he shouldn't do, when is this drug enforcement stuff
24 right, and when is it wrong. But I know what we have to do is
25 focus on this case, and look at this factual circumstance and

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1 the human beings that are involved here. They are all people.
2 We are all human beings, and Mr. Davis is no exception.

3 I want to argue a little bit, talk a little bit about
4 the inferences that we can glean, we can draw from the
5 testimony that was presented, and I would submit to you that
6 it is more complicated than initially stated by the State, by
7 the -- Solicitor Richardson. It's not as simple as saying,
8 well, we caught him; he did this; why did he do it.

9 And I want to talk a little bit about some of the
10 inferences that we can draw here, that are reasonably
11 supported by what we have heard here. You've got a young man,
12 in his early twenties, growing up in this area, and he's
13 caught selling drugs, and he goes to prison, and he does
14 roughly -- he's sentenced to ten years imprisonment for what
15 he did, and you've got a situation where, in your early
16 twenties we all know you are doing stupid things, not fully
17 mature, but over the next ten years of someone's life there's
18 a pretty significant change in maturity. You go from that
19 young twenty -- early twenty something kid to becoming an
20 adult in your thirties, and that's what happened to Mr. Davis.

21

22 He grew up in prison, and he grew up -- he was in prison
23 because he was selling drugs, and what were we able to learn
24 about him after he got out of prison? It's really -- you
25 know, we don't have a video camera that followed him around,

1 but we know from an individual who knows him best, who has had
2 a child with him, who mentioned about dreams of the future
3 that they have. She didn't perceive this man as a drug dealer
4 any more. She knew he used to sell drugs a long time ago, ten
5 years ago.

6 What we know is that, for approximately four years after
7 he got out of prison Mr. Davis worked, legitimate jobs,
8 sometimes on occasion, a couple of jobs, to support the woman
9 that he loved, a family that he inherited, and a new baby that
10 was born just within the past year. He always worked hard.

11 His employer comes in, not because we subpoena him, but
12 this is a U.S. Marine, and seventeen years in the service, and
13 I would submit to you, he knows a bit about a man's character
14 and who he is. He saw a worker in Honore Davis. It's true he
15 hadn't known him long, not in terms of months or years, but if
16 you've worked with somebody out in a field over an eight hour
17 period, you know, an eight hour day, doesn't take many days to
18 get an understanding of whether they are productive, whether
19 they are reliable workers. And he was, to the point where,
20 when that United States Marine decided to open his own
21 business he relied on Mr. Davis, Honore Davis, to do the job
22 with him, as an employee. That is dependability. It's common
23 sense. You are not dealing with a slacker who is out trying
24 to sell drugs. I would submit to you, you are dealing with a
25 situation where the individuals put that part of their life

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1 behind them, any predisposition he had to do drug deals was
2 put behind him ten years ago.

3 The officer sat right there on the stand yesterday and
4 acknowledged, no, we don't really have any other evidence of
5 him doing this, except with our informant. Now think about
6 that. In four years the only evidence they have is the
7 involvement that their informant brought into the mix.

8 The State prosecution witness who admitted, the
9 investigating officer who admitted, agent who mitted --
10 admitted, we initiated the contact, we called Mr. Davis and
11 got him involved in this. In that situation it's a stark
12 contrast to a drug dealer on the street selling drugs, trying
13 to generate income for it, or from it. What we know, all we
14 know, is that Mr. Davis, for the last three years prior to
15 this incident, has been in a relationship with Ms. Waterman,
16 raising a family, and working one and two jobs. That's all we
17 know. No propensity at all to sell drugs, that we know.
18 There's no evidence that he had a propensity to do the drug
19 deals after he got out of prison. Three to four years, that's
20 what we know.

21 We've got the State's witness acknowledging that's all
22 we know. No, we don't -- we don't have any evidence, no
23 scuddle-butt on the street that this man is a drug dealer out
24 there; once a drug dealer always a drug dealer; we'll just get
25 him again. The evidence is that he was contacted by the

1 agent. Probably knew -- we don't have any evidence about it -
2 - but an agent, confidential informant, who probably knew
3 about Mr. Davis's past and said, well, I'll get some money; I
4 get paid for this; I'm going to work off some charges; I'll
5 see if I can't get him; I know he's got a past so we'll go
6 after him.

7 But we look at this and say, is there ever a time when a
8 person gets to change, when they get to grow up and say, look,
9 I'm not that person anymore. I submit to you, we heard
10 evidence that, hey, this is common practice; this is how we do
11 the -- do the deed, trick people into doing it, and set them
12 up, and I would submit that's one reason, maybe, there's so
13 many prison -- so many men in prison, because of that kind of
14 policy. We don't give people a chance. We don't give them a
15 chance. They get out of prison, a number of years under their
16 belt of doing the right thing, dedicating themselves to right
17 values, we can't -- the Government can't leave them alone. We
18 have the Government bring them back in. The drug dealers -- I
19 mean, he's got to do it, the C.I. has got to do it because
20 he's going to get paid, he's got to work off charges, he's got
21 to get credit for it. And with all due respect, the law
22 enforcement officers have to do it because they've got to
23 generate a justification for their pay.

24 We know from this evidence that Honore Davis wasn't a
25 drug dealer out there on the street. We know -- come on, we

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1 know that he went there on the way to the store that day with
2 Ms. Waterman, he stopped and got the drugs, he stopped and
3 picked them up; he didn't cook the crack; he didn't
4 manufacture it, because the informant asked for it, he stopped
5 off and got it, and he's going to bring it to him. And I
6 submit to you, but for what that informant did, we wouldn't be
7 here. If the Government had left Honore Davis alone we
8 wouldn't be here. If he's a drug dealer on the street we
9 don't need to set him up like was done in this case. We
10 didn't hear any evidence from the informant saying, look, this
11 man is out there dealing drugs. We didn't have anything. You
12 are left to guess about it, and that's not the way our system
13 works.

14 There is so much doubt in this case. For one thing,
15 there's no doubt about what I'm telling. You know what I'm
16 saying is the truth. Okay. There's a presumption of
17 innocence. Not only that, but you heard it from the stand.
18 I'm not making this up. The confidential informant calls Mr.
19 Davis and sets the whole thing in motion, calls him several
20 times. I'm not making that up. That's what the testimony is.
21 So, what evidence is there here that eliminates the doubt
22 that's raised by the truth that I'm telling right now in terms
23 of recounting the evidence. There's not any evidence.
24 There's no evidence of a propensity. And I keep repeating
25 that word because it's part of what the law is here. The

1 question is going to be his propensity to do this before
2 contacted by the agent, okay. I asked Ms. Waterman, well, is
3 he sitting around wanting to sell drugs; did he ever
4 reminisce, saying the good old days; I wish I was back in the
5 drug dealing business? No. We know that wasn't the case. We
6 know he was transformed, and he was becoming a manly man, the
7 difference between early twenties and early thirties. He had
8 transformed. That predisposition had gone.

9 But we, as a society, write the anomaly, just can't let
10 go. We want to put drug people in the prison, and so we
11 continue to chip away; let's get him again; we've got people
12 who need jobs, and who need these breaks on their sentencing,
13 and so forth, and so the informants go out and track someone
14 down like Mr. Davis, and they bring him -- trick him back into
15 the system. We know, everyone in this courtroom knows that,
16 if this confidential informant hadn't done what he did, Mr.
17 Davis would not be involved in drug deals. There is no
18 evidence to suggest that he was a drug dealer beyond what
19 happened in this case, and I submit to you, that is evidence
20 of a lack of propensity.

21 The Courts in this Country, this State and United
22 States, have all recognized that, and they've all said -- and
23 His Honor is going to tell you that, if someone is entrapped
24 into committing an offense they are not guilty, and if that is
25 the case you, as a sworn juror to follow the law, have to find

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1 him not guilty. Whatever the Court said about entrapment;
2 what is it? You might ask yourselves. I know I did, because
3 I'm an attorney, but I wondered what, specifically, is
4 entrapment, and we start talking about it, breaking it down,
5 understanding what it means.

6 Our Courts have said -- and of course the law is going
7 to be charged -- my argument is just that argument; this is
8 part of my argument -- but our Courts have said that
9 entrapment is available where there is conception and planning
10 of a defense by an officer, and is procurement of it's
11 commission by one who would not have perpetrated it except for
12 the trickery, persuasion or fraud of the officer. In this
13 context the confidential informant is an extension of the
14 officer, so the language applies. Commissioned by one who
15 would not have perpetrated it except for the trickery,
16 persuasion or fraud of the officer who tricked him. He is
17 sitting there minding his own business, raising a family,
18 trying to reestablish a life after a substantial amount of
19 time in prison, and we got tricked, and we got -- we have
20 fraud; we can't leave him alone and give him a chance to
21 succeed.

22 Being an ex-convict I would submit to you, it's hard
23 enough. Why -- why target him? Do we really think, based on
24 that evidence in this case, that he was a drug dealer still,
25 or was he tricked into doing this by an agent of the police

1 officer? That's what happened. That is the most reasonable
2 conclusion one could reach.

3 The burden of proof here is beyond a reasonable doubt.
4 It's the highest burden of proof known in the law in this
5 Country. There is plenty of doubt in this case, and that has
6 to be resolved in my client's favor if you have doubt. Now,
7 the State had, if you have doubt, you've got to reach a
8 verdict of not guilty. The State had it's opportunity here.
9 They could have brought in other witnesses. They could have
10 said, okay, Mr. informant, how do you know this man is dealing
11 drugs; tell us who has seen it; let's get some other
12 independent verification of his activity; let's show he's gone
13 back, fallen in -- even though it's been three or four years -
14 - let's show that he has fallen back into his old ways when he
15 was a kid in his early twenties. They could have done that
16 very easily. They didn't do it. They brought an officer in
17 who told you about a confidential informant, and he didn't do
18 that until I asked him about it. They didn't -- he didn't
19 talk about that. They wanted to give that one snapshot about,
20 oh yeah, here he is putting it in the freezer; he had the
21 stuff. They didn't want you to know where he got it, why he
22 got it, and the circumstances under which it was made
23 available at that time by my client. The reasonable
24 inferences require a not guilty verdict. If he's a drug
25 dealer they'll get him, but they will do it right, and they

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1 will have evidence against him beyond a reasonable doubt.

2 You know, it was interesting, one of the questions asked
3 of everybody this week about the jury service was who has been
4 a victim of a crime, in a generic kind of way, and I'm
5 thinking, my client, Mr. Davis, his intent was not to
6 victimize anybody. He helped that woman over there take on
7 the responsibility of raising a family after she lost a
8 spouse. I didn't ask her why he had passed away, but Mr.
9 Davis comes along in three or four years, three to four years,
10 takes on the role of a stepfather and father.

11 I would argue that the evidence falls short. I don't
12 blame anyone. You can't manufacture evidence. Thank heavens
13 we can trust our authorities not to do that. They are not
14 going to manufacture what they don't have, and that's why,
15 after they put up all that they have here, that they could, I
16 would submit to you the informant couldn't have added. They
17 would have brought him, or figured out a way to tell you about
18 it if it was there. The doubt compels a verdict of not guilty
19 here. There are no victims. There is nobody over there shot
20 up, or cut up, or near death that asks for justice, just my
21 client who sits there who was targeted by the police, and
22 tricked into doing drug deals that he had tried to put behind
23 him fifteen years ago. We didn't allow it. We don't need to
24 clean up the drug problem in our community, to the extent
25 there is one. -- I'm not speaking on that one way or the

1 other -- but it's not going to do anybody any good to put
2 Honore Davis in prison under the facts of this case. That's
3 why we have the legal burden, standard of proof to prove
4 beyond a reasonable doubt. They didn't prove it, because the
5 entrapment is quite clear when you look at this man's history
6 since he was released from prison. You don't work two jobs
7 successfully for three years and then fall back into a habit
8 of becoming a drug dealer, not unless you are tricked into it
9 by a Government agent.

10 So, I would submit that the verdict that's required here
11 is not guilty, because there's a reasonable doubt as to
12 whether or not this man was entrapped into this, whether he
13 would have been out there doing this thing but for the request
14 of the Government agents.

15 I appreciate your time. It was a short trial as far as
16 trials go. We are mindful of the time that all of our
17 respective jurors have, but I appreciate you listening, and
18 that's appreciated by myself and by Mr. Davis, because as we
19 said in our opening, this jury is the only thing that stands
20 between the State of South Carolina's decision that this man
21 is guilty, is the jury that comes here and listens to the
22 evidence and makes the final decision about it, so thank you
23 very much.

24 THE COURT: All right, Solicitor, closing argument.

25 MR. RICHARDSON: Folks, last weekend my little boys

1 plugged too much stuff into one outlet, and it flipped the
2 breaker, and it burned the outlet out, and low and behold, I
3 was stuck Saturday morning, wanting to watch College Football
4 Today, but no sir, I had to go get an outlet to install, make
5 sure the breaker was still off, didn't want to get popped.
6 But when I decided to go get that outlet, first of all, I had
7 to figure out where to go, so I said, hey, who has outlets.
8 Lowe's, because they sell home supplies. And my wife had
9 picked the -- I think it bone -- that I had to call and ask
10 them, do you have bone, three plug outlets, and Lowe's said,
11 hold on, put me on hold, they went and checked and they said,
12 yes sir, we do. And where did I go? I got in the car and
13 drove to Lowe's, because they have outlets, they sell outlets.
14 Last year I was going out to a conference in California. I
15 needed to fly out there cause it's a really long drive, and I
16 ain't walking, so I called U.S. Air on the phone, and what did
17 they do? They hooked me up with a flight, because that's
18 their job. And in just a short while I'm going to take myself
19 out to a restaurant, or I'm going to call Dominoes, and they
20 are going to bring me a pizza, because Dominoes delivers, just
21 like the Defendant, because selling crack is his job, and he
22 was making a delivery that day. Was it his only job? I don't
23 know. We know he wasn't another job on that Friday, back
24 January 28th, cause he was at home all day, but when the time
25 came for his second job, selling crack, he was ready, able and

1 willing to go to it, and he got caught red-handed, cold-
2 busted, in the freezer.

3 In a moment Judge John is going to give you what they
4 call jury charges, or instructions. He's going to remind you,
5 once again, you are the judges of the facts. He told you that
6 from the beginning. And you will take everything that you
7 heard from this witness stand, all this evidence that we put
8 in, and you'll get to weigh that evidence and find out what
9 your burden should be. But before you go and you weigh all
10 that evidence the Judge is going to give you the law, the law
11 that confines us to that evidence, how we make our decisions
12 on that. He's going to start out by telling you, when you put
13 a witness up on the stand it's up to you to judge the
14 credibility of the witnesses, something you do every day.
15 Somebody comes and tells you something, how do you know if you
16 can trust them or not, what have they got to gain by this?
17 The State put up law enforcement. Their job is to go out and
18 make arrests, and try and curtail this drug activity. Agent
19 Beam told you that's what the Fifteenth Circuit Drug
20 Enforcement Unit does, they try and knock off narcotics. The
21 Defense puts up witnesses, the mother of a child of the
22 Defendant -- she doesn't want to see him go to jail -- puts up
23 his boss. He doesn't want to go back to being a one-man show;
24 it cuts into his profits. And I don't doubt what they said.
25 He might be good at home. I don't know. Not there at home.

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1 I wasn't there at the drug deal, but I can tell you, law
2 enforcement has nothing to gain, no friends to reward, no
3 enemies to punish. The Defendant's side, have they got a
4 friend to reward? Were they able to tell us about what went
5 on that day? No.

6 The Judge is going to talk to you about the law of the
7 case, the law of possession with intent to distribute cocaine
8 base, or crack cocaine. He's going to tell you that I've got
9 to show you, one, the Defendant possessed the drugs. Well,
10 folks, we showed him throwing the stuff in the freezer, saw on
11 video. We have pictures of it. It's not a real close up
12 where you get to see the drugs actually land, but nobody else
13 goes in that freezer. That's why I showed that video to you,
14 for twenty minutes, and it was boring, and it was about the
15 fifth time I've watched it. It was tedious, but I wanted you
16 to see, there was only one person that opened that cooler and
17 threw something in. That was the Defendant. So he had
18 possession of it.

19 But we've also got to show you that he possessed it with
20 the intent to sell or distribute or deliver it. How do we
21 know that? Two ways. The Judge will tell you we can draw an
22 inference from the amount of weight. We've got two packages
23 of cocaine base there. One weighs one point two grams, I
24 think is what Ms. Floyd testified to. The other is a nice
25 size, what they call a cookie, and it's about four point two

1 grams. You break pieces of it off. One is packaged, ready to
2 sell right then and there. As a matter of fact, there was
3 testimony from the stand that in the prior transaction -- and
4 it was about comparable to the weight that was sold to the
5 C.I. -- so it's over a gram. You can draw an inference that
6 the intent is to sell, but also that bigger cooker, four point
7 two. All it takes for an inference that the Defendant had the
8 intent to sell it is if it's over a gram, but you have one,
9 two, three, four grams separate and away, so he's got that one
10 point two gram ready to sell there, the four point two to sell
11 later on. Folks, that's where your possession with intent to
12 distribute crack cocaine is. And as far as it being crack
13 cocaine, we heard expert testimony as to the weight, and what
14 it was.

15 And the Judge is going to talk to you about entrapment,
16 and you've heard it, and Mr. Diggs told you about it for quite
17 a while, but the Judge's charge is going to be pretty simple.
18 It's about a page -- page and a quarter, and ultimately it
19 comes down to one, did the police start this thing off, did
20 they entice the Defendant to come out and play. Yes, they
21 made the call. Did they ask him to do an illegal act? No,
22 they didn't. Does he have a propensity -- does the Defendant
23 have a propensity to engage in that kind of act? Because if
24 we call drug dealers, and they bring drugs, that's not
25 entrapment. You heard testimony that the confidential

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1 informant was given a phone number by the Defendant, at a gas
2 station. That phone number was called and drugs were asked
3 for.

4 A friend of mine told me, said, when it comes down to
5 confidential informants it's a lot like, if I want crack I'm
6 going to go to a crack dealer, just like you may have a
7 pharmacist. You get a prescription from a doctor, he tells
8 you to get some -- I don't know -- a Z-pack, you aren't going
9 to call your plumber and ask for it; you are going to call
10 your pharmacist, the man you've gone to for years. That's
11 what happened here. So this is not entrapment. The Judge
12 will tell you, to figure out whether the Defendant had a
13 propensity of not, in deciding whether or not the Defendant
14 had predisposition to commit a crime you can consider whether
15 or not the Defendant had a willingness to engage in the act,
16 and hit it with a ready response. In this case the crack was
17 ordered, he was ready to go. Folks, I dare say most people
18 you can say, go get me some crack cocaine, they will never be
19 able to find it, certainly not almost six grams of it, and be
20 ready to sell it to you, like that.

21 The Judge is going to talk to you about reasonable
22 doubt. That's a term that we've all heard, but what does it
23 mean? Plain and simple, folks, the Judge is going to tell
24 you, to prove someone guilty beyond a reasonable doubt the
25 State has got to give you evidence that leaves you firmly

1 convinced of the defendant's guilt. That's all. It's not
2 removing every stitch of doubt there is; it's evidence that
3 leaves you firmly convinced of his guilt. And to do that I am
4 confined, the State is confined; we have to give you the
5 confident, relevant, and admissible evidence. That is all I
6 can do as the State. My job is not to tell you to look left
7 while I "G" right; it's not to throw up smoke screens, it's
8 not to talk about public policy on drugs and hoping you will
9 be distracted. My job is to give you the relevant, competent
10 and admissible evidence, to help you render a true and just
11 verdict. Admissibility. We heard about scuttlebutt.
12 Scuttlebutt is not admissible. We want to tell you about the
13 facts of what happened that day, so let's examine the evidence
14 that we have.

15 On January 28, Myrtle Beach Police Department got their
16 informant to call the Defendant. They already had a warrant
17 for the Defendant's arrest for a prior distribution of cocaine
18 base, with this same informant, and the Defendant traveled out
19 to deliver exactly where they said they were going to be.
20 Folks, you've got to say something to get the Defendant out
21 the door. If I call Dominoes the pizza guy isn't coming out
22 if I tell him I need a bag of Fritos. He's going to bring me
23 pizza. The Defendant goes there. He notices the uniformed
24 officers outside, clearly marked police, in a Crown Victoria
25 that has lights in it. He sees the gig is up. He goes

1 inside, looks over his shoulder, and dumps the drugs. He
2 knows he is in the wrong at this point; he knows that he's
3 busted. Officers go inside, they arrest him on the previous
4 warrant, and they begin to search him, and they search the
5 wrong aisle for a while, but when they finally do locate the
6 drugs they take photographs; they take it up.

7 Folks, I want y'all to look at these exhibits. We are
8 talking about predisposition. Right here we have the rock to
9 be sold. That's the amount to come out to be about one point
10 two, one point two-five grams. Right here we have that other
11 cookie, separate and apart, not wrapped up, not packaged for
12 sale at that point, four point two grams, ready to break off
13 and sell to somebody else. That's the inference you can draw
14 from that.

15 The police took that into custody and charged the
16 Defendant. They talked to Ms. Waterman. She loves him. She
17 says, I know he used to sell drugs; I didn't think he did
18 anymore, but she gave you a reason why she didn't think he
19 sold drugs anymore; he wasn't bragging about it. He didn't
20 want to tell her. He would be kicked out of the house. He
21 was out of the house at this point. She dealt with law
22 enforcement before and they asked, you know, where would he
23 keep his drugs. She said, well, if he had drugs they would be
24 right here. So she had some knowledge that he might have
25 them around. She didn't tell the police, oh, no, no, no,

1 there are no drugs. His sole mate, his confidant that he's
2 living with, not once did he tell her, man, this fool is
3 sweating me for some crack cocaine; I don't know why he's
4 calling me; I'm not a drug dealer; why is he calling me. She
5 doesn't even know about this. Instead, he goes -- and whether
6 he picks up the crack cocaine that day and delivers it on the
7 way, I don't know. I don't know if he had it on him all the
8 time. I don't know if he stopped and got a pack of Kool-Aid.
9 We don't have videos of that. What we do know is that he
10 showed up, of his own volition, at any point could have turned
11 around, drove from Carolina Forest, down into Myrtle Beach,
12 twenty, twenty-five minutes, for one, and only one purpose, to
13 sell crack cocaine.

14 I dare say just about any of us, if a friend called us
15 and said bring me some crack, would say, you must be crazy,
16 not sure enough, I'll bring it. And he shows up there with
17 crack, ready to sell. Folks, it's simple, it really is
18 simple. I wish I could tell you a beautiful story to try and
19 make it all makes sense, but it's real simple, we go after
20 drug dealers. That's what the Defendant is, no more, no less.
21 We called him, just like I'm going to call Dominoes. He came,
22 and he delivered. Not only did he have one rock, that one
23 pizza, he had more ready to sell to somebody else, that four
24 point two grams, so he's a drug dealer. That's all you need
25 to know, folks, and that's what you need to come back with.

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1 He delivered the crack; you deliver your verdict, guilty of
2 possession with intent to distribute cocaine base.

3 Thank you.

4 **THE COURT:** All right, ladies and gentlemen, it's now
5 my duty and responsibility to give you the law that you are
6 going to apply to the facts that you find to be true in this
7 particular case. Now I told you at the very beginning that
8 you are judges of the facts, and I wouldn't indicate to you in
9 any way what I thought the facts of this case were, and I
10 believe that I have stuck with that, so in that same vein, if
11 you came into this courtroom with any preconceived ideas of
12 what the law is, what it ought to be, what it should be, what
13 you hoped it would be, you will disregard that. You will take
14 the law as I now give it to you, and apply it to the facts
15 that you find to be true in this particular case.

16 I told you at the very beginning one of your jobs as the
17 judges of the facts is to judge the credibility, and that is
18 the believability of the witnesses that came before you in
19 this particular case. Now, in determining the credibility and
20 believability of the witnesses you can believe one against
21 several, several against one; you can believe a portion of
22 what a witness says and disregard the remaining portion of it;
23 if you've got a good and sound reason for doing so you can
24 disregard, in it's entirety, the testimony of a particular
25 witness. I will remind you again I told you at the beginning,

1 it's something you do every single day of your life. When
2 somebody tells you something you are automatically judging
3 whether or not you believe them; you are using your good
4 common sense and your good judgment in analyzing the facts and
5 evidence presented here, and find that evidence which
6 convinces you of it's true. You can look at -- in looking at
7 the witnesses, whether they have exhibited to you any kind of
8 interest, motive, bias, prejudice they might have in giving
9 you the testimony they gave you from the witness stand, also,
10 how did they come about that information; where did they get
11 that information from that they gave you from the witness.
12 Your objective, ladies and gentlemen, is to find the truth.
13 It doesn't matter from what particular witness or evidence it
14 comes from, that's your job, is to find the truth.

15 You don't have any friends to reward; you don't have any
16 enemies to punish; your verdict can't be the result of any
17 kind of passion, prejudice or sympathy; it's got to be an
18 examination of the facts, find that evidence which convinces
19 you of it's truth, and then weigh that evidence against the
20 State's burden to prove the Defendant guilty beyond a
21 reasonable doubt.

22 In this case there was presented two types of evidence
23 that's presented in virtually every single case that's tried,
24 direct and circumstantial evidence. Now, direct evidence,
25 that's the testimony of a person who claims or asserts to have

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1 knowledge of a particular fact. Circumstantial evidence,
2 that's a chain of circumstances indicating the existence of a
3 fact. The Law doesn't make any distinction between the two, a
4 greater degree of certainty of one over the other is not
5 required; you weigh all the evidence; you look at all the
6 evidence presented and find that evidence which convinces you
7 of it's truth.

8 We had one witness in this case that I qualified to give
9 her opinion, sometimes call those expert witnesses. Normally
10 we don't allow people to give their opinion; they have to tell
11 you about what they know, what they saw, what they heard, not
12 their opinion, but some witnesses, by reason of their
13 training, expertise in a particular field will allow them to
14 give their opinion. Now, just because the Court allowed that
15 does not give them any special status, doesn't mean you
16 believe that person more than another. You weigh all the
17 evidence the same, you judge all the witnesses the same, you
18 find that evidence which convinces you of it's truth.

19 In this case the Defendant did not testify. I tell you,
20 and instruct you, that this is not a factor in this case.
21 It's not part of this case. You cannot use it in making your
22 decision. It is not anything that is proper for you to talk
23 about in your deliberations or in your consideration of the
24 burden in this particular matter.

25 This Defendant, every defendant, everyone charged with a

1 crime has the Constitutional Right to remain silent, and it
2 cannot be used against them in any way. I told you at the
3 very beginning, the Defendant doesn't have a thing to show to
4 you; doesn't have a thing to prove to you, because the State
5 has the burden of proof. The burden of proof is on the State
6 at all times to bring you the evidence for you to consider,
7 and for you to weigh whether or not the State has produced
8 sufficient evidence to convict the Defendant beyond a
9 reasonable doubt.

10 The indictment, the charge that brought the matter to
11 court, I told you the Defendant pled not guilty to that and
12 that put the burden of proof on the State of South Carolina to
13 prove the Defendant guilty beyond a reasonable doubt. In that
14 the defendant is presumed innocent of the crime for which they
15 are charged. Again, the defendant is never required to prove
16 anything, is certainly not required to prove themselves
17 innocent; the State has to prove somebody guilty beyond a
18 reasonable doubt.

19 The presumption of innocence that this Defendant and all
20 defendants have is likened to a robe of righteousness. It's
21 placed on the shoulders of the Defendant, and it stays on the
22 shoulders of the Defendant until the State rips that robe of
23 righteousness from the shoulders of the Defendant by evidence
24 which convinces you of it's truth, and by evidence that you
25 believe the State has carried it's burden to prove the

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1 Defendant guilty beyond a reasonable doubt. This isn't just
2 some legal theory or legal phrase; it's a substantial right to
3 which this Defendant, to which every American is entitled,
4 this presumption of innocence, unless you, the jury, are
5 satisfied from the evidence of the Defendant's guilty beyond a
6 reasonable doubt.

7 So, what's reasonable doubt? The kind of doubt that
8 would cause an ordinary, reasonable person to hesitate to act.
9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the Defendant's guilt. Now, there are
11 very few things we can know with absolute certainty, and the
12 law doesn't require the State of South Carolina to give you
13 that kind of proof. What is required is, if, based upon your
14 consideration of the evidence, all the evidence you've heard
15 in this case, the evidence you find to be true, you are firmly
16 convinced that the Defendant is guilty of the crime charged,
17 you must find the Defendant guilty. On the other hand, based
18 upon your view of the evidence, the evidence you find to be
19 true in this case, you are not firmly convinced that the
20 Defendant is guilty of the crime charged you must give the
21 Defendant the benefit of the doubt and find him not guilty.

22 The Defendant in this matter is charged with the crime
23 of possession with intent to distribute crack cocaine, so the
24 State has to prove, beyond a reasonable doubt, that the
25 Defendant possessed crack cocaine with the intent to

1 distribute. The prove possession the State must prove, beyond
2 a reasonable doubt, that the Defendant had the power and the
3 intent to control the disposition or use of the crack cocaine,
4 and possession can either be actual or constructive. Actual
5 possession means the crack cocaine was in the actual physical
6 custody of the Defendant. Constructive possession means the
7 Defendant had the dominion and control, or the right to
8 exercise the dominion or control of either the crack cocaine
9 itself, or the property on which it was found.

10 Now, mere presence at the scene where crack cocaine is
11 found is not enough to prove possession. Actual knowledge of
12 the presence of the crack cocaine is evidence that you may
13 consider in this particular matter, based upon your view of
14 the evidence. It's just simply an evidentiary fact that you
15 take into consideration along with all the other evidence, to
16 see if the State has proved the Defendant guilty of the crime
17 charged beyond a reasonable doubt.

18 The State also has to prove to you, beyond a reasonable
19 doubt, that the Defendant intended to distribute crack
20 cocaine. Distribute means to deliver other than by means of
21 dispensing a drug through such as a pharmacist or medical
22 doctor. Intent may be shown by acts of conduct of the
23 Defendant from which you could reasonably infer intent. In
24 determining whether the Defendant had the intent to distribute
25 the crack cocaine you consider all the surrounding

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1 circumstances the Defendant's alleged possession. You may
2 consider the amount of the substance alleged to have been
3 possessed, the manner in which it was allegedly possessed, the
4 place it was possessed, and any other factors you deem
5 important. You must find the Defendant did not intend to have
6 the crack cocaine solely for his own use or benefit.

7 Possession of more than one gram of crack cocaine
8 creates an inference that the defendant possessed the crack
9 cocaine with the intent to distribute. Now, this inference
10 does not relieve the State from proving to you, beyond a
11 reasonable doubt, that the defendant had the intent to
12 distribute. It's simply an evidentiary fact to be taken into
13 consideration by you, along with all the other evidence, and
14 given the weight you believe it should have.

15 In this case the Defendant has raised the defense of
16 entrapment. Entrapment is shown if, one, the crime was
17 conceived and planned by an officer, or someone acting as an
18 agent of law enforcement, two, the officer or an agent
19 induced, solicited, proposed, initiated, suggested or
20 persuaded the defendant to commit the crime, and three, the
21 defendant would not have committed the crime without the
22 trickery, persuasion or fraud of the officer or agent. The
23 State is required to prove to you, beyond a reasonable doubt,
24 that a defendant was predisposed to commit the crime without
25 the inducement of the officer or the agent.

1 Predisposed to commit the crime means the defendant had
2 the intent, purpose, readiness or willingness to commit the
3 crime without the inducement or persuasion of the officer or
4 agent. The fact that an officer or agent merely presents
5 opportunities or facilities for the commission of a crime is
6 not entrapment. If you find the Defendant had a
7 predisposition, without any Government inducement or influence
8 to commit the crime, the defense of entrapment would not
9 apply.

10 In deciding whether the Defendant had any predisposition
11 to commit the crime you may consider evidence such as an
12 existing course of criminal conduct by the Defendant similar
13 to the crime charged, an already formed plan by the Defendant
14 to commit the crime, or a willingness to commit the crime
15 charged as shown by the Defendant's ready response to the
16 inducement. However, if you find the Defendant was entrapped
17 into committing in the crime, you must find the Defendant not
18 guilty.

19 That, ladies and gentlemen, is the law that you are
20 going to apply to the facts and evidence you find to be true
21 in this particular case. Now, in this particular matter I
22 have prepared -- had prepared for you a verdict form for your
23 use, and it's very straightforward. Has the caption of the
24 case, State of South Carolina versus Honore T. Davis, has,
25 possession with intent to distribute crack cocaine base; on

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1 the charge of possession with intent to distribute cocaine
2 base we, the jury, by unanimous consent, find the Defendant --
3 and there's two choices; you've got to put one before the
4 other; don't assign anything to that -- not guilty or guilty.

5 So Mr. Foreman, when your jury has well and truly
6 deliberated in this matter, and reached it's unanimous
7 decision, you take the verdict form, you check the appropriate
8 block, whatever it is, you sign your name, put today's date on
9 there, knock on the door and let the bailiff know that your
10 jury has reached a unanimous verdict in this particular
11 matter.

12 Now I've said unanimous a bunch of times at the
13 beginning and now. It means exactly what you think it means.
14 It means twelve zero. It doesn't mean eleven on, ten two, any
15 combination thereof. When it's a unanimous verdict it must be
16 whatever the verdict is, not guilty or guilty. It has to be
17 the verdict of each and every member of the jury so, when you
18 sign your name, Mr. Foreman, that's what you are saying, all
19 twelve members of the jury agree that's their verdict, the one
20 that you checked on the verdict form.

21 All right, with that, Mr. Foreman, I'm going to ask you
22 to take your jury to the jury room in just a moment. Do not
23 begin your deliberations until the bailiff hands to you the
24 verdict form and the exhibits. When the bailiff hands the
25 verdict form and the exhibits to you then you can begin your

1 deliberations.

2 The -- as to the alternate -- and it's Ms. Rabon -- if
3 you would please stay with us while the remainder of the jury
4 retires. Thank you very much.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
6 JURY.)

7 THE COURT: All right. Is there any reason from the
8 State that the Court should not excuse the alternate at this
9 point in time?

10 MR. RICHARDSON: No sir, Your Honor.

11 THE COURT: And from the Defense?

12 MR. DIGGS: No sir.

13 (AT THIS TIME THE ALTERNATE JUROR WAS EXCUSED BY THE
14 COURT AND THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
15 THE ENTIRE JURY CHOSEN FOR THE TRIAL OF THIS CASE.)

16 THE COURT: Any exceptions, deletions or additions to
17 the charge from the State?

18 MR. RICHARDSON: No sir, Your Honor.

19 THE COURT: From the Defense?

20 MR. DIGGS: No sir.

21 THE COURT: All right.. Very good.

22 Gentlemen, if you will check with the Court Reporter,
23 make sure we have all the exhibits, and then we will be at
24 ease for the jury, till they reach a decision.

25 Thank you very much.

JURY DELIBERATION
JURY IN

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1 (AT THIS TIME THE EXHIBITS WERE REVIEWED AMONG THE COURT
2 REPORTER AND COUNSEL FOR THE STATE AND COUNSEL FOR THE
3 DEFENDANT. THE EXHIBITS WERE APPROVED BY ALL. THE EXHIBITS
4 WERE PASSED INTO THE JURY ROOM BY THE BAILIFF. THE JURY WAS
5 INSTRUCTED TO BEGIN DELIBERATION.)

6 (THE JURY BEGAN DELIBERATION AT 12:30 P.M. AND THE
7 FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY AT 1:40
8 P.M.)

9 THE COURT: I understand that the jury has returned a
10 verdict in this case. Is the State ready to receive it?

11 MR. RICHARDSON: We are, Your Honor.

12 THE COURT: Is the Defense ready to receive it?

13 MR. DIGGS: Yes sir.

14 THE COURT: All right. Very good.

15 Ask the jury to come in, please.

16 (AT THIS TIME THE AUDIENCE WAS ADMONISHED BY THE COURT
17 NOT TO SHOW ANY REACTION TO THE VERDICT OF THE JURY.)

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, Mr. Foreman, has your jury
21 reached a verdict in this matter?

22 FOREMAN: Yes sir.

23 THE COURT: All right. Very good. Would you hand the
24 verdict form to the Clerk, please sir.

25 All right. Will the Defendant please stand.

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1 Madam Clerk, you may publish the verdict.

2 DEPUTY CLERK OF COURT: Indictment number (2011-GS-26-
3 01518), State of South Carolina, County of Horry, versus
4 Honore T. Davis, on the charge of possession with intent to
5 distribute cocaine base we, the jury, by unanimous consent,
6 find the Defendant guilty.

7 Dated October 12th, 2011. Signed by the Foreperson,
8 William F. Jarman.

9 Ladies and gentlemen of the jury, if this is your
10 verdict so signify by raising your right hand.

11 (AT THIS TIME EACH AND EVERY JUROR AFFIRMED THE VERDICT
12 AS PUBLISHED BY THE RAISING OF HIS OR HER RIGHT HAND.)

13 THE COURT: The jury having affirmed their verdict by
14 raising their right hand, does the State wish the jury polled?

15 MR. RICHARDSON: No sir, Your Honor.

16 THE COURT: Does the Defense wish the jury polled?

17 MR. DIGGS: Yes sir.

18 THE COURT: All right, Madam Clerk, by number only,
19 would you please poll the jury.

20 (AT THIS TIME EACH AND EVERY JUROR WAS CALLED BY NUMBER
21 AND EACH AND EVERY JUROR AFFIRMED THE VERDICT AS PUBLISHED.)

22 THE COURT: All right, the jury having affirmed their
23 verdict, anything else as to the jury, from the Defense?

24 MR. DIGGS: No sir.

25 THE COURT: All right. Very good. Y'all can have a

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1 seat for the moment, please.

2 (AT THIS TIME THE JURY WAS EXCUSED BY THE COURT AND THE
3 FOLLOWING TAKES PLACE AFTER THE JURY WAS EXCUSED.)

4 THE COURT: All right, Mr. Diggs, any matters for the
5 Court at this point in time; any motions that you would like
6 to make?

7 MR. DIGGS: Your Honor, we would ask the Court to set
8 aside the verdict, grant a new trial in the case because of
9 the verdict being inconsistent, or contrary to the weight of
10 the weight in the case ---

11 THE COURT: All right.

12 MR. DIGGS: ---Reconsider also the motions that we made
13 during the course of the trial, grant a new trial on the basis
14 of those motions.

15 THE COURT: Thank you, sir. All right, regard the --
16 regarding the Defendant's motion for a new trial in this
17 matter, the Court having denied the motion for a directed
18 verdict, the proper motion as made by the Defense at this
19 point in time is for a new trial. I find in this particular
20 matter that there was competent evidence produced by the State
21 in this case, or competent evidence in this case that is
22 sufficient in this matter to sustain the jury's verdict. Even
23 if I disagreed with the jury's verdict it is not within my
24 prerogative or power to substitute my judgment. What I must
25 look for is whether or not there is competent evidence in the

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1 record that would sustain the jury's verdict. I do so find
2 that there is more than sufficient evidence, more than
3 sufficient competent evidence to sustain the jury's verdict of
4 guilty of the crime charged beyond a reasonable doubt in this
5 particular matter, and therefore respectfully decline to grant
6 a motion for a new trial in this matter.

7 Any further motions by the Defense at this time?

8 MR. DIGGS: Your Honor, we would ask before sentencing
9 that the Court delay sentencing till later this week. Let me
10 state that it's a wide, wide range of potential sentences in
11 this particular case. I think it would be advantageous for
12 the Court to have as much evidence as we could present to the
13 Court for consideration before the sentence is imposed in this
14 case, and maybe a day or two. I'm not suggesting beyond this
15 week, but later this week, so that we can meet with the family
16 -- I can meet with the family and maybe put together some
17 family members that could -- that do have an interest in
18 speaking with the Court prior to sentencing.

19 THE COURT: What's the State's position in that matter?

20 MR. RICHARDSON: Your Honor, this case has been
21 relatively short, however, it's been pending for nine months
22 now, thereabouts. The jury returned their verdict. The State
23 would like to go ahead with sentencing.

24 THE COURT: I'll be glad to have the issue of
25 sentencing come back up tomorrow morning at 9:30, but I am not

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1 going to allow the Defendant to be -- remain at large, or out
2 pending sentencing tomorrow morning. I will, and am going to
3 remand him to the custody of the Horry County Sheriff's
4 Office. I'll be glad for you to present whatever you would
5 like to tomorrow morning at 9:30 regarding sentencing. The
6 Court will delay sentencing till tomorrow morning ---

7 MR. DIGGS: Thank you, Your Honor.

8 THE COURT: ---At 9:30.

9 MR. RICHARDSON: Thank you, Your Honor.

10 THE COURT: Thank you very much.

11 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, OCTOBER 13,
12 2011.)

13 THE COURT: All right, Solicitor, be glad to hear from
14 you, sir.

15 MR. RICHARDSON: Thank you, Your Honor. At this time
16 we are back before the Court for the scheduled sentencing, the
17 Defendant having been found guilty on indictment number (2011-
18 GS-26-01518), State of South Carolina, County of Horry, versus
19 Honore Davis, the true-billed indictment for possession with
20 intent to distribute cocaine base, or crack cocaine, second
21 offense.

22 Your Honor, in this instance the State put forward that
23 the Defendant is -- presently, today, he's facing a sentence
24 of five to thirty years. He's got a separate distribution
25 case for which he would be facing ten to thirty years if tried

1 and convicted. He could be, at this point, served with the
2 intent to seek -- or notice of intent to seek life without on
3 that one if we sought to do so, Your Honor, as the Defendant
4 does have a prior serious offense of trafficking in cocaine,
5 and a second offense of PWID, counts as a second.

6 The Defendant was convicted back in 2000 for
7 trafficking, twenty-eight to one hundred grams, stemming from
8 a 1999 drug transaction where he sold trafficking weight in
9 cocaine, over twenty-eight grams. He got a ten year sentence
10 on that, Your Honor. He also got a ten year sentence
11 contemporaneously on a 1998 assault case. Those sentences
12 were handed down by Judge Howard King.

13 During the course of the trial we -- on the Defense
14 side, we heard that the Defendant had been a model citizen
15 since he had been out. He was released from custody ---

16 MR. DIGGS: Your Honor, I object to that. It was no
17 such testimony, and I think that the Solicitor is trying to
18 mock what the ---

19 THE COURT: I don't think he's trying to mock. I think
20 he is making an observation. It was certainly portrayed, at
21 least attempted to be portrayed to the jury that he had had
22 this problem where he was sentenced in 2000 and he hadn't done
23 a thing since 2000.

24 MR. DIGGS: We were trying to show -- and I think we
25 did show -- that he was not predisposed to committing this

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1 offense again.

2 THE COURT: I appreciate that, and I will be glad ---

3 MR. DIGGS: We would ---

4 THE COURT: ---For you to make your presentation. It
5 is now time ---.

6 MR. DIGGS: We would object to the characterization ---

7 THE COURT: I appreciate it. Thank you. I'm going to
8 allow the State to make their presentation, then you can make
9 your presentation.

10 Thank you very much.

11 Go ahead, Solicitor.

12 MR. RICHARDSON: Your Honor, as I stated, we heard
13 testimony about how long Ms. Waterman, one of the Defense
14 witnesses and the Defendant had been together, and I -- we
15 just went back and looks at the reports where officers had
16 been called out to the address of Ms. Waterman dealing, not
17 solely with Mr. Davis -- and they date back to July 4th, 2009.
18 There's a destruction of property complaint at that time. Ms.
19 Waterman listed her address as 14 Century Street; the
20 Defendant's address was listed off of Highway ---.

21 MR. DIGGS: Your Honor, we would object to the
22 information as not being relevant in this case.

23 THE COURT: It's -- this is sentencing. This is not
24 the trial ---.

25 MR. DIGGS: I understand.

1 THE COURT: ---Mr. Diggs, this is sentencing.

2 MR. DIGGS: Well, we object to it.

3 THE COURT: It -- the sentencing encompasses the prior
4 complete history of the Defendant, to give a picture of the
5 Defendant to the Court from the State and the Defense. I
6 appreciate your objection. Thank you very much.

7 Solicitor, continue.

8 MR. RICHARDSON: And Your Honor, I'll preface these --
9 I'll be discussing three separate incidents. Warrants were
10 not sought on any of these incidents at the request -- it's my
11 understanding, at the request of Ms. Waterman. Anyway, there
12 responded there. There was a damage to property. At the time
13 the Defendant stated that Ms. Waterman damaged his Play
14 Station, so he picked up the Play Station and threw it out the
15 window and hit a car window, damaging that. Again, in
16 January, 2010, at the same location, there on Century Street,
17 now the Defendant lists that as his address. There was a
18 family offense, non-violent listed. Ms. Waterman -- it boils
19 down to, they had a disagreement about -- she was going
20 somewhere, he was coming back. He told her, "Move out of my
21 way, bitch, before I kill you." September 9, 2010 -- we heard
22 a little bit about this, Your Honor -- officers responded to
23 Rockdale Street -- that was the current address at that point
24 for an aggravated assault report. Ms. Waterman stated the
25 Defendant -- she had got into it when -- while she was six

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1 months pregnant at the time. Ms. Waterman stated the
2 Defendant asked her who she was talking to on the cell phone
3 and then slapped her three times; Defendant walked back to the
4 front yard where he had friends waiting on him. Ms.
5 Waterman's older daughter went out to confront the Defendant,
6 and by Ms. Waterman's statement the daughter had a knife in
7 her hand, Ms. Waterman went out and took the knife away from
8 her and got in between them. At that time Ms. Waterman
9 stated, and her daughter stated that the Defendant had picked
10 up a set of jumper cables and whipped them at Ms. Waterman.
11 When officers arrived they noticed a six-inch red whelp on the
12 left side of Ms. Waterman's back. Ms. Waterman refused E.M.S.
13 treatment. It was during this incident where officers had
14 already started observing the Defendant, spoke to Ms.
15 Waterman, asked about where drugs might be in the house, and
16 that's whenever -- by the officers -- what the officers have
17 told me that she said, well, if he had some drugs they would
18 be right there, pointed to a dresser.

19 The Defendant goes by the street name of "Dog". Agents
20 Beam and Phillips of the Fifteenth Circuit Drug Enforcement
21 Unit, had been getting information on "Dog" for a long time.
22 Mr. Diggs brought up that there was not scuttlebutt.
23 There's plenty of scuttlebutt. That's not evidence we can
24 bring forward in court, but at sentencing I believe it's
25 proper. The reports that we had were that he was selling, not

1 from the house at Rockdale, but he -- Rockdale is located --
2 Rockdale Street, the address is located in between Legends
3 Drive and West Perry Road on 501, and West Perry Road is the
4 road that leads from the back side of Carolina Forest over to
5 Carolina Forest Main. The word was that he would go over to
6 the convenience store, the Scotchman there at -- on 501 off of
7 West Perry, and that's where the dealing would go on.

8 It was finally in January whenever Drug Enforcement Unit
9 had a C.I. that brought them the name of "Dog"; I can buy from
10 "Dog"; he has given me a number. And that's when they sold,
11 on January 14th, or bought -- bought a small amount of crack,
12 then went to serve that warrant.

13 The Defendant began serving that ten-year sentence on
14 the traffic charge March 9th, 2000. He received two hundred
15 forty-seven days credit. He came out December of 2007, or
16 early January of 2008. Myrtle Beach Street Crimes began
17 getting reports of "Dog" shortly after his release, Your
18 Honor.

19 You've heard all the other reports dealing with
20 altercations between he and Ms. Waterman. In December of 2010
21 the Drug Enforcement Unit received word from a separate Horry
22 County C.I. -- had nothing to do with this investigation, but
23 that C.I. was familiar with the Defendant, and stated that
24 that Defendant had bragged to -- bragged that the next time a
25 police officer came to his door he was going to shoot through

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1 the door.

2 Your Honor, that is one of the reasons that the officers
3 did this sting to arrest the Defendant outside of his home.
4 They had fear. This is not an individual that is deserving of
5 a lot of leniency. This Defendant is facing five to thirty
6 years. He received a ten year sentence and obviously did not
7 learn his lesson on that, Your Honor. The State would ask --
8 respectfully ask for at least a fifteen year sentence.

9 The Defendant was previously arraigned and offered to
10 plead to one count of distribution or possession with intent
11 to distribute second offense and receive the minimum, at that
12 time, of five years. The Defendant indicated that he would do
13 that when he was -- began to be arraigned before Judge Seals.
14 I believe that was in August. And at that time he came
15 forward the next month -- he was scheduled to plead in
16 August -- I'm sorry -- and at that time, on August 11th, 2011
17 he showed up stating he had retained Mr. Diggs at that point
18 and wanted to go forward to trial, which is his right, but he
19 had reneged on his promise to Judge Seals at that point, Your
20 Honor, otherwise we would have had this trial done before.

21 That would be the conclusion of the State's
22 presentation, Your Honor. The State would just implore you to
23 sentence the Defendant to what he deserves.

24 THE COURT: Very well.

25 All right, Mr. Diggs, I'll be glad to hear from you,

1 sir.

2 MR. DIGGS: Your Honor, we would ask for the five year
3 sentence because all of those incidents, to which we objected,
4 but which came into evidence anyway, occurred prior to the
5 offer of the State, in the amount of five years. The
6 Defendant hasn't done anything subsequent to that offer to
7 justifying any greater sentence other than going to trial, and
8 I would submit the Solicitor is trying to punish him for
9 exercising a basic Constitutional Right of having a right.
10 There was a legitimate defense in this case of entrapment, and
11 I would submit the Solicitor is incorrect when he says that
12 the conduct -- that he should get what he deserves when the
13 offer of five years was made to him prior to the trial of the
14 case.

15 Your Honor, this particular sentencing hearing, I would
16 submit there has to be some semblance of reliability and
17 fairness in a sentencing hearing. What the Solicitor has
18 stated is filled, it's rampant with hearsay, double hearsay,
19 uncorroborated allegations, none of which were prosecuted and
20 which resulted in any convictions other than the one drug
21 offense that the Solicitor spoke of.

22 We've been denied in this hearing the right of
23 confrontation of the -- in violation of the Sixth Amendment.
24 It's arbitrary and capricious in violation of the Eighth
25 Amendment, and it's violating due process under the Fourteenth

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1 Amendment, but nevertheless, Your Honor, you did hear the
2 case. We never said that Mr. Davis was a model citizen.
3 His -- Ms. Waters (S.I.C.), the mother of his baby, sat right
4 there on that stand and testified yesterday he had a temper.
5 She didn't try to hide that; we didn't try to hide it. What
6 we did try to show the Court was that, since this man was
7 convicted ten years ago, in his early twenties, of a drug
8 offense, that he had matured, and he had done well in prison;
9 he got a G.E.D. when he was incarcerated, and he's worked
10 hard, sometimes on two different jobs simultaneously to
11 support his family. That's undeniable. And Ms. Waterman was
12 here, she testified to that. She stated he had a temper, but
13 Your Honor, this is a man who matured, and who tried to do his
14 best since his release about four years ago, after an eight
15 and a half year prison sentence.

16 The issue in this case -- and Your Honor, what the
17 evidence showed in this case -- and I would submit, if the
18 State had evidence they could have shown it, they didn't.
19 What this Court heard, and what we, as the Defense, heard in
20 the case, was that the C.I. was asked -- now Mr. Richardson
21 just said they were given the name -- the police sent the
22 C.I.. The testimony was, we sent the C.I. over there to try
23 to get a drug deal done involving Mr. Davis. You know what is
24 remarkable in this case, Your Honor, is, no one -- if you look
25 at the report that was generated by the police in this case it

1 is pretty evident that when Mr. Davis was going to the store
2 with Ms. Waterman, and he made that stop and he came out after
3 a couple of minutes, the inferences are that's when he got
4 this crack cocaine; he didn't bake it at home; he didn't bring
5 it with him. Ms. Waterman certainly would have witnessed
6 something like that. He went in and got this crack, based on
7 the evidence in this case, from that gentleman, that friend
8 who gave it to him, and then, you know, that occurred just
9 minutes before he was arrested in the gas station there in
10 Myrtle Beach. What is remarkable, Your Honor, is no one ever
11 asked from the police department, where did you get this, and
12 to me that's remarkable. It indicates a lack of prioritizing,
13 in my opinion, I would respectfully submit, by the police
14 department. Why -- why pick on someone who is out there
15 working, trying to support a family, trying to rebuild his
16 life after a substantial prison stint. Why try to entice
17 him -- he's going to -- if you knew Mr. Davis, Your Honor, you
18 would know he's the kind of person that he -- you know, if he
19 perceives it in the world where he grew up that this is
20 something someone is asking him to do for assistance, however
21 wrong it is, it's difficult for him to say no. The police put
22 him in a position that, in my opinion, tricked him into doing
23 this, Your Honor.

24 The jury found him guilty -- and I'm not saying he's
25 not. I don't want to -- I don't want to challenge the verdict

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1 in that regard at this point. Your Honor, he would not be
2 here, I would submit, based on the evidence that we heard in
3 this courtroom had it not been for the police sending the
4 confidential informant to him to initiate the contact, and
5 then carry it on through with multiple telephone calls, to and
6 -- ultimately to effectuate the exchange that occurred in mid-
7 Jul -- in January, and then this particular instance in --
8 which was a follow-up by the same confidential informant to
9 that incident in the middle of January that occurred on the
10 28th of January, which was the offense that we were here for
11 yesterday, or this week.

12 Your Honor, the Legislature has looked at drug cases.
13 There is a wide range of sentencing discretion in the court in
14 this kind of case. Mr. -- notwithstanding what the Solicitor
15 says, with all due respect to the Solicitor, there is no
16 evidence from this witness stand that we can challenge, that
17 we can confirm, that suggests he was a drug dealer out in the
18 street. We do know that he was a working man; he worked in
19 that biofiltration industry, and he also assisted Ms. Waterman
20 in her cleaning business; he spent a lot of hours working.
21 Your Honor, the reasonable inference is, he didn't have a lot
22 of time to spend out on the street dealing drugs.

23 Your Honor, the Legislature has given the Court wide
24 discretion. It has determined that five years is sufficient,
25 it need not be any greater than that unless there are

1 circumstances that would justify it, and when they set that
2 five year minimum they knew that was for the second offense,
3 and so they took into account there had been a prior offense
4 by an individual.

5 Your Honor, Mr. Davis has demonstrated some good
6 character over the last four years since his release from
7 prison. He's made a good effort at becoming a different
8 person from that that he was in his early twenties when he was
9 trafficking in drugs.

10 Your Honor, one last thing. Ms. Waterman -- I spoke
11 with her twice this morning on the phone. She and her family
12 wanted to be here this morning. You had a chance to meet her
13 yesterday. She did want to be here this morning. The -- in
14 fact, I was going to give her a ride to ensure that she could
15 be here. When I spoke with her this morning she said, well,
16 Mr. Diggs, you don't need to come by here because I've got a
17 ride and we are going to be able to be there, but then just a
18 few minutes ago a got a message from her that that ride had
19 fallen through, and I talked to her and I said, well, it's too
20 late, I don't have time now to come back and get you, but I do
21 want the Court to know that his family stands with him, Your
22 Honor, they haven't abandoned him, that he's an important
23 member of their family. They love him. Ms. Waterman stated
24 to me, I want you to know, and I want you to tell the Court
25 and to tell Honore that she is with him to do this with him

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1 together. She loves him. They have a daughter that was just
2 born the past year. Your Honor, taking all of those things
3 into account I would argue that justice is served in this case
4 with the Legislature's approval of a five year sentence.

5 The State said early on in this case five years is
6 enough. They agreed to do a five year recommendation, and I
7 would argue that nothing really of substance has changed since
8 that offer was made other than going to trial.

9 Thank you, Your Honor, for listening to us.

10 I would ask Mr. Davis if he has anything to say. I
11 don't -- I don't know if he does, but I don't want to preclude
12 him from ---

13 THE COURT: Why don't you ask him, please.

14 Yes sir, Mr. Davis.

15 MR. DAVIS: Ain't nothing that I was going to say is
16 going to change what already happened. All I can say is, I'm
17 sorry, man; I'm not the person that everybody think I am. I
18 have -- I have changed when I was in the penitentiary the
19 first time. I just got in a situation where I was trying to
20 help a friend out, not knowing that he was going to put me in
21 this trouble. Had I known I was going to get in this trouble
22 I would have never did what I did, and I just come and ask the
23 Court that, can you please be as much lenient as possible so I
24 can get back to my family.

25 THE COURT: Thank you very much.

1 MR. DAVIS: Thank you.

2 MR. DIGGS: Thank you, Your Honor. That's all we have.

3 THE COURT: Thank you.

4 All right. Regarding (2011-GS-26-01518), State of South
5 Carolina, County of Horry, versus Honore T. Davis, regarding
6 the possession with intent to distribute cocaine base, second
7 offense, the Court takes into consideration what has been said
8 on the Defendant's behalf, and obviously what the Court heard
9 at trial. Further, I am stating for the record that I am not
10 taking into consideration any of the domestic issues that Mr.
11 Davis had with the mother of his child. That has nothing to
12 do with this drug case. That -- he's not here for criminal
13 domestic violent; he's not here for a crime of violence, so
14 I'm not taking that into consideration. That's not part of
15 this case in the Court's estimation.

16 What I am taking into consideration is the activity as
17 shown in court, and as set forth here by the record of Mr.
18 Davis. Clearly he committed the offense of trafficking in
19 cocaine, was sentenced for that by Judge King on March of
20 2000, had a sentence of over eight years, or he spent over
21 eight years of the ten years in the Department of Corrections.
22 For whatever reason Mr. Davis, even at the insistence of
23 someone who is suppose to be his friend, if that's what
24 occurred, decided that he wanted to engage in this criminal
25 activity again, and therefore the Court finds that an

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1 appropriate sentence in this matter is, the Defendant is
2 committed to the State Department of Corrections for a
3 determinant term of ten years.

4 Thank you very much.

5 MR. RICHARDSON: Thank you, Your Honor.

6 MR. DIGGS: Thank you, Your Honor.

7 THE COURT: Yes sir.

8 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 11th, 12th, and 13th days of October, 2011.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

January 13, 2012


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-GS-26-01518

The State of South Carolina

County of Horry

11H00382

COURT OF GENERAL SESSIONS

May, 2011 TERM

ARREST WARRANT NUMBER

M507984

CDR: 3015 44-53-0375 (B) (2)

DOA: 1/29/2011

THE STATE

vs.

ACTION OF GRAND JURY

Honore T Davis
B/M

TRUE BILL

DÖB: 1976-04-03
SSN: -

Foreperson of Grand Jury
Date:

APR 28 2011

ATTORNEY: Hazzard, Ronald W.

VERDICT

Indictment for

~~POSSESSION WITH INTENT TO
DISTRIBUTE
COCAINE BASE~~

Foreperson of Petit Jury
Date

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT
 POSSESSION WITH INTENT TO DISTRIBUTE
 COCAINE BASE

At a Court of General Sessions, convened on April 28, 2011, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
 COCAINE BASE

CDR: 3015 44-53-0375 (B) (2)

That Honore T Davis did in Horry County on or about January 28, 2011, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

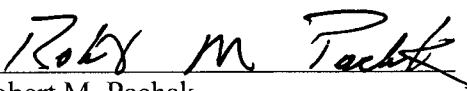
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREL
 FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

June 4th, 2012


Robert M. Pachak
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

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Richland County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

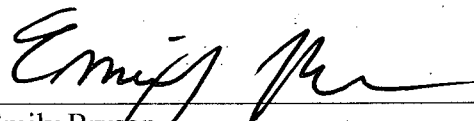
V.

HONORE T. DAVIS,

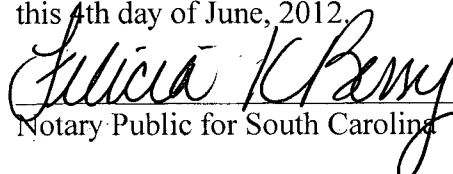
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 4th day of June, 2012.


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of June, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020

RECEIVED

JUN 04 2012

SC Court of Appeals