

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY,
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-001742
Lower Court Case No. 2015-CP-32-1885

JUAN ARROYO, #354538,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	10-GS-47-07
	)	
Juan Rodolpho Arroyo,	)	
et al.	)	
<u>Defendants.</u>	)	

February 17, 2011
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

Stacy L. Sheppard, RPR
Circuit Court Reporter

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I N D E X

WITNESSES

DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

NO.

DESCRIPTION

ID. EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 February 17, 2011.)

3 **THE COURT:** Will you come forward please,
4 Mr. Hunt?

5 This is case number 2010-GS-47-07. It's a
6 State Grand Jury case. Mr. Hunt, I understand that
7 some of these defendants speak Spanish and do not
8 speak English. Is that your understanding as well?

9 **INTERPRETER:** That's correct, Your Honor.

10 **THE COURT:** And you've been brought in possibly
11 to serve as interpreter in the case; is that
12 correct?

13 **INTERPRETER:** Yes, sir.

14 (The Interpreter was duly sworn by the
15 Court.)

16 **THE COURT:** Mr. Hunt, if I say anything
17 incorrectly, you correct me, please.

18 You are certified by Court Administration as an
19 interpreter in the languages of Spanish -- to
20 interpret Spanish to English and English to Spanish.
21 You've served as an interpreter in the state courts
22 in South Carolina numerous occasions. You've served
23 in trials and pleas in courts over which I presided
24 translating English to Spanish, Spanish to English.
25 You have a degree from Clemson University in

1 Spanish. You have your own company which provides
2 translation services. All that correct?

3 INTERPRETER: That's all correct, Your Honor.

4 THE COURT: And do you have any relationship of
5 any kind with any of the defendants in the case?

6 INTERPRETER: No, Your Honor.

7 THE COURT: Do you have any relationship that
8 you know of with anyone else in the case?

9 INTERPRETER: No, sir.

10 THE COURT: Have you attempted to communicate
11 with these individuals?

12 INTERPRETER: Yes, Your Honor.

13 THE COURT: And have you appeared to have any
14 difficulty in communicating with them?

15 INTERPRETER: No, sir.

16 THE COURT: Have they appeared to have any
17 difficulty communicating with you?

18 INTERPRETER: No, sir.

19 THE COURT: And you're willing to serve as an
20 interpreter from Spanish to English and English to
21 Spanish in this case?

22 INTERPRETER: I will.

23 THE COURT: All right. Do you swear or affirm
24 that you will translate verbatim Spanish to English
25 and English to Spanish so that the defendants will

1 have the benefit of knowing what is being said in
2 court and we'll have the benefit of knowing what
3 they might say?

4 INTERPRETER: I do.

5 THE COURT: Thank you. All right. Which four
6 -- is it four?

7 INTERPRETER: There are three defendants that
8 speak Spanish, Your Honor, Mr. Garcia De Dios, Mr.
9 Guerrero-Flores, and Mr. Hernandez Robles.

10 THE COURT: I may have to get you to give me
11 those two -- Mr. Garcia...

12 INTERPRETER: Garcia De Dios.

13 THE COURT: Gadiel Garcia De Dios?

14 INTERPRETER: That's correct.

15 THE COURT: And who is the second one?

16 INTERPRETER: Francisco Guerrero-Flores.

17 THE COURT: And the third?

18 INTERPRETER: Manuel Hernandez Robles.

19 THE COURT: And do you have the headsets
20 available?

21 INTERPRETER: No, Your Honor. I'm sorry. I
22 didn't realize there were multiple defendants.

23 THE COURT: Are they seated together?

24 INTERPRETER: They are except for Mr. Garcia De
25 Dios. Perhaps he could switch places with someone

1 and I could speak loud enough for all of them to
2 hear.

3 **THE COURT:** Y'all get with him and get them
4 situated so that they'll have the attorneys and the
5 interpreter together, if you would, please.

6 While they're doing that, I'm assuming there's
7 no objection from any of the attorneys as to the
8 qualifications of the interpreter. If anyone has
9 any, I'll get you to voice it.

10 Hearing none, the Court finds beyond a
11 reasonable doubt that Mr. Hunt is qualified as an
12 expert to translate from English to Spanish, Spanish
13 to English. He has no interest in the case. He's
14 not related to any of the individuals in the case.
15 Thank you.

16 Okay. Mr. Hunt, can you translate from that
17 position so that the three of them can hear you?

18 **INTERPRETER:** Yes, Your Honor. They said they
19 can hear me okay.

20 **THE COURT:** All right. Thank you. If you'll
21 begin then, please.

22 All right. Ladies and gentlemen, thank you
23 very much for coming in today. We're going to go
24 through a process of seeing what issues need to be
25 resolved.

1 I'm going to ask you all to help me out,
2 because of the large number of people that we have,
3 I need to make sure that any of the attorneys who
4 speak, that you identify who is speaking before you
5 talk. Even though I may have known you for 20
6 years, when you reach my age, sometimes those names
7 don't jump straight into your brain. And so if I
8 can just get all of you, if you would, announce your
9 name if you're going to speak.

10 And the first thing I want to do is to find out
11 who is here and who represents which defendant or
12 defendants. And if I mispronounce these names,
13 please understand I do not know Spanish and I'm sure
14 I'll probably mispronounce many of them, so don't
15 hesitate to correct me.

16 Is Jose Juan Garcia Robles in the courtroom?
17 Jose Juan Garcia Robles?

18 (There was no response.)

19 **THE COURT:** Is Francisco Guerrero-Flores in the
20 courtroom?

21 **MR. JOHNSON:** I represent him, Your Honor. I'm
22 Ola Johnson. Michael Chesser is working as an
23 interpreter.

24 **THE COURT:** Okay. Thank you, Mr. Johnson. So
25 you have a different interpreter?

1 **MR. JOHNSON:** Michael Chesser is interpreting
2 so that I can have a private consultation with my
3 client.

4 **THE COURT:** Where is your client?

5 **MR. JOHNSON:** Seated here to the left by
6 Mr. Hunt.

7 **THE COURT:** Do you need to move over there?

8 **MR. JOHNSON:** Well, if he's interpreting for
9 him now, I'm comfortable with that, Your Honor, but
10 outside the hearing I just want to be able to talk
11 to my client.

12 **THE COURT:** Mr. Chesser, do you want to move
13 over there?

14 **MR. CHESSER:** Your Honor, I feel like if we're
15 both talking, we'll be talking over each other.

16 **THE COURT:** I'm not saying to talk. I'm asking
17 you if you want to be over there so you can hear.

18 **MR. CHESSER:** Your Honor, I will do that. I'm
19 confident in the interpreting abilities of the
20 qualified interpreter, but I'll sit over there just
21 in case.

22 **THE COURT:** Juan Rodolpho Arroyo.

23 **MS. CHAPMAN:** Your Honor, Debbie Chapman for
24 Mr. Arroyo. It has Victor Li. It's my
25 understanding there's going to be an order of

1 substitution or motion for substitution of counsel,
2 but I'll be representing Mr. Arroyo.

3 THE COURT: All right. Thank you, Ms. Chapman.
4 Gadiel Garcia De Dios, also known as Andres
5 Sandavol. Who represents him?

6 Mr. Hunt, would you ask this gentleman if he
7 has an attorney?

8 MR. DUNCAN: Judge, that's Katherine Landess
9 that's on the placard.

10 THE COURT: Manuel Hernandez Robles.

11 MR. SWARAT: Your Honor, Tav Swarat. And I was
12 appointed to represent Manuel.

13 THE COURT: Joshua Griffin.

14 MR. MADSEN: Robert Madsen. And I represent
15 Joshua.

16 THE COURT: Thank you.
17 Alfredo Perez-Perez. He has not been arrested
18 yet.

19 THE CLERK: He's a fugitive, Your Honor.

20 THE COURT: Bobby Burroughs.

21 MR. WILLIAMS: Your Honor, I'm Theo Williams
22 and represent Bobby Burroughs.

23 THE COURT: Thank you.

24 Kenneth Andrews.

25 MR. MCCAULEY: Your Honor, John McCauley here

1 on behalf of Mr. Andrews.

2 THE COURT: Thank you.

3 Brainen Borchers.

4 MR. DUNCAN: Jack Duncan for Brainen Borchers,
5 Judge.

6 THE COURT: Barbara Breitenbach.

7 MS. BENEVENTO: Ali Benevento, Your Honor. I
8 was appointed to represent Ms. Breitenbach.

9 THE COURT: Is she back there with you?

10 MS. BENEVENTO: She's right here, Your Honor.

11 THE COURT: Okay. Thank you. I just wanted to
12 make sure she was here.

13 William Christopher Brown.

14 MR. STOCKHOLM: Gene Stockholm, Your Honor. I
15 was appointed to represent Mr. Brown, and he's
16 present.

17 THE COURT: Michael Rion Byrd.

18 MR. FINNEY: Jerry Finney, Your Honor, for
19 Michael Rion Byrd.

20 THE COURT: All right. So Mr. Farley does not
21 represent him?

22 MR. FINNEY: That's correct, Your Honor. And
23 we filed that substitution of counsel order today.

24 THE COURT: Edgar Allan Craig.

25 MR. RIKARD: Robert Rikard for Mr. Craig, and

1 he is present, Your Honor.

2 THE COURT: Thank you.

3 Wendy Annette Craig.

4 MR. BOLEN: Richard Bolen for Ms. Craig. She's
5 not present, Your Honor. She's actually bedridden,
6 but I'm here representing her.

7 THE COURT: Are you retained or appointed, Mr.
8 Bolen?

9 MR. BOLEN: I was appointed, Your Honor.

10 THE COURT: Ian Matthew Craven.

11 MR. MATHEWS: Ken Mathews, Your Honor, for Ian
12 Craven.

13 THE COURT: Thank you.

14 James Adam Gleaton.

15 MR. BREIBART: Your Honor, I'm Richard
16 Breibart. I was appointed to represent Mr. Gleaton.
17 And, of course, Mr. Mobley will also be representing
18 him.

19 THE COURT: All right. Derrick Mobley. Thank
20 you.

21 Jeremy Lewis Gray.

22 MR. MALDONADO: I apologize, Your Honor.
23 Senator Creighton Coleman is in session. He wrote
24 us a letter and then I believe he -- he also asked,
25 and the Attorney General's Office agreed, that Mr.

1 Gray would be allowed to go to Florida for
2 treatment.

3 THE COURT: So Mr. Gray is in Florida, as far
4 as you all know, for medical treatment?

5 MR. MALDONADO: For drug treatment, yes, Your
6 Honor.

7 THE COURT: And Mr. Creighton is excused
8 because he's in the Legislature?

9 MR. MALDONADO: Yes, Your Honor. Mr. Coleman.

10 THE COURT: I'm sorry. I apologize.
11 Mr. Coleman.

12 Larry Allen Hourihan.

13 MR. HARVEY: Your Honor, Mr. Hourihan is here.
14 I'm Jonathan Harvey. I represent Mr. Hourihan.

15 THE COURT: Thank you.

16 Lisa Amanda Londono.

17 MR. SOLTIS: Stephen Soltis for Ms. Londono.

18 THE COURT: Thank you very much.

19 Peter Turanec.

20 MR. MOORE: I'm Jahue Moore. I represent Peter
21 Turanec.

22 THE COURT: Anselmo Ismael Villalobos-Alcala.

23 MR. MALDONADO: Your Honor, the last four were
24 just indicted on Tuesday and haven't been served on
25 this, so we were hoping to bring them over, but --

1 **THE COURT:** Let me call just to make sure
2 they're not here anyway: Jorge Luis
3 Gutierrez-Iberra; Joel Munez Martinez, also known as
4 Noel Adan Verdin-Aldama; Bart Jason Tanner.

5 (There was no response.)

6 **THE COURT:** All right. Have all of these
7 individuals who are here been arraigned?

8 **MR. MALDONADO:** Yes, Your Honor.

9 **THE COURT:** Other than getting the interpreter
10 appointed, what is it that we need to do?

11 **MR. MALDONADO:** Your Honor, just for the
12 record, Bob Maldonado for the Attorney General's
13 Office. We have a proposed scheduling order with
14 the dates left blank for Your Honor to fill in. We
15 just needed to get the dates scheduled to get this
16 case on track. If Your Honor would allow me to
17 approach.

18 **THE COURT:** I've got a copy of it. You mean
19 the scheduling order?

20 **MR. MALDONADO:** Yes, Your Honor.

21 **THE COURT:** I may need your clean copy before
22 you leave, but -- they say it's been e-mailed to me.

23 All right. What else is it that we need to do?

24 **MR. MALDONADO:** Just the scheduling, Your
25 Honor.

1 **THE COURT:** Any of the defendants wish to be
2 heard about scheduling?

3 **MR. RIKARD:** Robert Rikard. I just want to
4 point out, Your Honor, the only documentary
5 discovery we received we received today, so if you
6 wouldn't mind taking that into account since we
7 don't have any input into the scheduling order. I
8 would hate to have to do something from 90 days from
9 now. It may -- as far as I know, it may take 90
10 days to have my client come read the discovery
11 because I don't know what's on the disk.

12 **THE COURT:** All right. Let me just read this
13 out, what they've got as blanks: The first blank
14 they have is a date by which the defendants are to
15 notify the Clerk of the State Grand Jury of whether
16 there's an intention to enter a guilty plea. The
17 next date they have is a confirmation day to sign up
18 the plea to anybody who may want to issue a guilty
19 plea. The next date they have would be hearings to
20 accept the guilty pleas, if there are any. The next
21 date they have are motions to be filed with the
22 Clerk of the State Grand Jury. It says, Motions
23 deadline, I assume. And then a date for the hearing
24 on outstanding motions, and then a date for trial.

25 Obviously, it probably would be in everybody's

1 best interest to let you all know my experience.
2 I've done several State Grand Jury cases, but I've
3 never done one with this number of defendants. I've
4 never done any case with this number of defendants.
5 And I suspect that scheduling may be somewhat
6 difficult with this number of attorneys and
7 defendants and interests that in some ways would
8 conflict completely and some ways would conflict in
9 part and in some ways may be in harmony with other
10 defendants.

11 I can -- as far as 90 days, Mr. Rikard, I think
12 you're absolutely right, that's probably extremely
13 optimistic as far as any kind of scheduling would
14 go.

15 MR. RIKARD: As I understand it, this is a
16 rolling discovery, that we're going to be getting
17 more that just hasn't even been put on the disk yet.
18 It's further complicated by the fact that I don't
19 speak Spanish, and I understand that there are large
20 volumes of recorded telephone conversations on the
21 disks we received today that are in Spanish, so I'm
22 going to have to deal with that as well.

23 So it's not your typical criminal case that we
24 can look at a quarter inch of discovery and then
25 give our client good advice as to whether they

1 should plead guilty or not guilty because I think
2 it's going to take a lengthy discovery process to
3 even figure that fundamental question out.

4 **THE COURT:** Mr. Maldonado, go ahead.

5 **MR. MALDONADO:** Thank you, Your Honor. If it's
6 helpful, I believe, according to Mr. Parks, that
7 Court Administration has set aside two dates, one
8 July 25th with Your Honor and another in September
9 12th.

10 **THE COURT:** They got McMahon September the
11 12th.

12 **MR. MALDONADO:** Yeah. I believe they were
13 trying to switch that with you at a future date.
14 But what we were possibly proposing is maybe having
15 the July date might be a plea week for any of these
16 defendants that might plead, and then maybe the
17 September date would be the ultimate trial date, and
18 then basically, I guess, work backwards from that
19 trial date to set up the rest of the dates.

20 **THE COURT:** Okay. My question, I guess,
21 initially is this: Why am I not setting a date by
22 which you have to give them discovery?

23 **MR. MALDONADO:** Your Honor, we just had a
24 problem with the phone calls because this was a
25 wiretap case, and we can get them all by next week.

1 It was just -- it's very voluminous. And the
2 program -- it's also a different testy program.

3 THE COURT: A different what kind of program?

4 MR. MALDONADO: It's just testy. Sometimes it
5 just doesn't work well and it crashes is basically
6 what I'm saying. So we're just trying to get it so
7 that everyone can use it. And we've got most of it
8 already on the disk that they have. The rest of it
9 we'll have by next week.

10 MR. SOLTIS: Stephen Soltis, Judge. So that
11 means by next week, we're going to get the balance
12 of the discovery?

13 MR. MALDONADO: That's correct.

14 THE COURT: That's what he said. I'm going to
15 have some follow-up questions, I think.

16 MR. SOLTIS: Thank you, Judge.

17 THE COURT: Mr. Bolen.

18 MR. BOLEN: Your Honor, as an appointed
19 attorney, I was wondering is it possible to make an
20 application now for an order to provide us with a
21 translated or -- a translation and a written version
22 of these calls so that I don't have to -- have to
23 apply to get that or have a bunch of private
24 attorneys pay to do it and then provide it to us?

25 THE COURT: I think you're going to have to

1 send me an order, but, yes, sir.

2 MR. STUMBO: Judge, David Stumbo, from the
3 Attorney General's Office. It's my understanding,
4 from the agents in this case, that all that's
5 already been done in terms of the translation and
6 transcription of these phone calls and that will be
7 part of the discovery in this case, and that's one
8 of the reasons why the volume is so large, and so
9 that -- that is in process at this point. My
10 understanding is that it's already been transcribed.

11 THE COURT: Well, if any of the attorneys want
12 to double check the translation, I would be happy to
13 entertain any motions that you all may wish to
14 submit ex parte or otherwise.

15 MR. RIKARD: My only question was, we may be
16 able to obviate a need for that if they have a
17 certified -- if it was an agent that translated it,
18 obviously, we're going to have problems with that.
19 If it was a certified translator such as these
20 gentlemen here, that would probably save some time
21 and expense in having our own translators. But,
22 obviously, if you have a narcotics officer that also
23 speaks Spanish saying, this is what this
24 conversation says, unfortunately, while I have no
25 reason to doubt them, I can't rely on it.

1 **MR. MALDONADO:** No, Your Honor. My
2 understanding, though, it is not going to be an
3 exact word for word. Unfortunately, we can't --
4 couldn't have done that. These are weeks of phone
5 calls. Basically, what it was, the translation
6 service was doing it real time. So it is not going
7 to be exact word for word. It is very -- maybe 95
8 percent, but it is, you know, the exact
9 word-for-word translation, it's not going to be
10 precise on that.

11 **THE COURT:** But what does it say? Does it say
12 inaudible or does it say we're just making this part
13 up or what does it say?

14 **MR. MALDONADO:** Your Honor, there are times
15 when they refer to things in code, like they call
16 the drugs, for example, pizza and tacos, that they
17 will say they order -- this person is ordering drugs
18 calling tacos, so they have --

19 **THE COURT:** Wait a minute now. They're
20 interpreting taco meaning drug?

21 **MR. MALDONADO:** Yes, Your Honor. It's pretty
22 clear that that's what's going on, but there are
23 instances like that when in -- in the translations.
24 We're not certifying that these are -- what I'm
25 saying, we can't certify they're a hundred percent.

1 This was real time and they were just translating as
2 fast as they could. But there is written
3 transcriptions for this stuff so that the lawyers
4 can figure out what's going on and get a better idea
5 of, you know, maybe they need to focus in on certain
6 calls and get that transcribed in more detail, but
7 it is --

8 MR. STUMBO: Judge, if I may interject, I'm
9 told by the agents that this is a company that is
10 contracted with the United States Government that is
11 a certified translation agency. It's not a
12 governmental agency. They contract with this agency
13 and they are certified. There again, I'm just
14 getting involved in this case, Judge, but my
15 understanding is it's a legitimate outfit.

16 THE COURT: I'm not questioning the legitimacy
17 of it. It seems to me that even though this is
18 rather cumbersome and burdensome -- and maybe we can
19 expedite this by just communicating with the
20 attorneys by e-mails and try not to create issues
21 where no issues exist -- it seems to me that the
22 first thing I need to do is for you all to get the
23 information to the defense counsel and then they can
24 look at it and listen to it and see if there's an
25 issue. But if somebody somewhere is saying taco

1 means drugs, we've got a question. It may mean
2 that, but that's not a translation, that is --

3 MR. STUMBO: Interpretation.

4 MR. RIKARD: It's a suggestion.

5 MR. MALDONADO: We're not offering the
6 transcription as evidence; we're just using this as
7 an aid. Obviously, this is, you know, then they
8 can --

9 MR. RIKARD: If they'll stipulate they won't
10 offer the transcripts as evidence, we can probably
11 just go ahead and move right along.

12 MR. STUMBO: Judge, I think we can --

13 MR. BREIBART: I'm not --

14 THE COURT: Hold on a second.

15 Mr. Breibart.

16 MR. BREIBART: I apologize.

17 THE COURT: Go ahead, Mr. Breibart.

18 MR. BREIBART: I apologize.

19 THE COURT: You don't need to apologize. What
20 do you need to tell me?

21 MR. BREIBART: I apologize for interrupting
22 this gentleman.

23 Your Honor, if -- the federal is replete in
24 Fourth Circuit that whether it's admissible or not,
25 if it's attempting to be used for any purpose of any

1 time whatsoever, that you cannot have a subjective
2 interpretation, or some, We think it means X rather
3 than Y. So just at the start, with all due respect
4 to the Court --

5 THE COURT: No, I think we're in agreement,
6 Mr. Breibart.

7 MR. BREIBART: -- I take extraordinary
8 exception to that being necessarily used for any
9 purpose.

10 THE COURT: Well, let me see if -- and I'm
11 cutting you off, so you let me know, I'll let you
12 start right back up. I don't see how we're going to
13 get much further today than give the defense the
14 stuff that you're going to give them and let them
15 look at it and tell me if they feel that it's a
16 problem. And whether it's admissible or not is a
17 completely irrelevant issue to me at this point
18 because I've got Brady matters. And even if it's
19 exculpatory, they're entitled to it.

20 So I'm not suggesting that you all are in any
21 way fabricating anything or trying to make something
22 where something doesn't exist, but I need to know if
23 the other side wants the Court to try to make a
24 decision on that or not. Not that, but on whether
25 there's an issue or not.

1 **MR. MALDONADO:** Yes, Your Honor. I think the
2 translations will just be helpful to them. If they
3 have a problem, we can address that at a future
4 time. It will be very helpful to them, I believe.
5 But as far as a 100 percent word-for-word
6 translation, it would be hugely expensive, and just,
7 for the Court's knowledge, it would be huge. And if
8 that's the way we need to go, you know, Your Honor,
9 then --

10 **THE COURT:** Well, I can't try people, and I
11 don't -- if I'm going to be put in a situation
12 somewhere down the road where I've got to decide if
13 somebody goes to prison for the rest of their life
14 or a substantial portion of it, I've got to make
15 sure that that is done fairly as best I can.

16 Mr. Breibart, had you finished?

17 **MR. BREIBART:** I did.

18 **MR. STUMBO:** Judge, I can assure you, and I've
19 only been there a month at this point, I was over
20 here before, these folks and our -- Ms. Douglas, our
21 paralegals, our investigators are working very hard
22 and they have been working very hard to get this
23 stuff into their hands and they're in the process of
24 that. Judge, I think we can cross some of these
25 issues, cross those bridges when we can get to it.

1 **THE COURT:** If anybody is getting the opinion
2 that I think anybody is not doing their job, I'm
3 giving the entirely wrong impression. All I'm
4 saying is it seems kind of ludicrous to me to start
5 talking about a trial date. I mean, I might as well
6 pick, what's the date the Mayans say the earth's
7 going to end, December the, what, 2012? I mean, I
8 might as well just go to Nostradamus and try to pick
9 a date.

10 Right now I think I just need to get this
11 information over to them, and if we can continue
12 doing statuses -- if everybody's got an attorney and
13 it's just a purely administrative matter, then I
14 don't have to drag everybody into court every single
15 time and the attorneys can advise their clients
16 about what's going on administratively. And we can
17 set, after there's been a reasonable time for the
18 defense attorneys to review the materials and see if
19 they want to check behind this or deal with that and
20 decide whether they want to go into some sort of
21 plea negotiations with the State or not, but I don't
22 know how I'm going to get, and you all help me
23 because I'm asking for help, how am I going to get
24 past just give them the information and let's see
25 where we go from there, sort of like a first

1 appearance?

2 MR. STUMBO: Correct, Judge. And from my
3 discussions with Mr. Maldonado and our other staff
4 that are working this case up, it will be within the
5 next week to two weeks and we'll have the discovery
6 fully disclosed that we have. The trial date that I
7 think that -- Court Administration has given us a
8 week in September.

9 THE COURT: Let me tell you what I've seen, and
10 the Clerk of the State Grand Jury can correct me.
11 July 25th, 2011, they have assigned me State Grand
12 Jury here in Lexington. And then September the
13 12th, they have a State Grand Jury term with Judge
14 McMahon in Lexington. And then seems like there's
15 one more -- yeah, November the 14th, they have a
16 State Grand Jury term with Judge McMahon in
17 Lexington. Those are -- none of those, obviously,
18 are back to back weeks. None of those are the same
19 judge except the two with Judge McMahon.

20 I think we can reasonably say that September
21 the 12th, 2011, as Mr. Maldonado said, might be a
22 reasonable date to try to plan to do any guilty
23 pleas that anybody may want to enter into. And I
24 think we can start setting up some discovery
25 deadlines for the State. And then I guess you all

1 may have some issues.

2 Do we need to address any issues about the
3 confidentiality of anything that's produced? Aside
4 from that, I'm struggling to know what else we can
5 do today.

6 MR. MALDONADO: I think we -- it would be a
7 good idea to reiterate the disclosure order that was
8 signed that any of this information is to remain in
9 the attorneys' offices and not given to their
10 clients. It needs to be within their control at all
11 times, but I understand about the rest of it, the
12 scheduling is --

13 THE COURT: So how much time, realistically, do
14 you need to turn over the materials that you have?

15 MR. STUMBO: Beg the Court's indulgence, Your
16 Honor.

17 (Pause.)

18 THE COURT: And let's assume that every
19 defendant has done a Rule 5 and Brady type motion
20 and you've got to get that information, too.

21 MR. RIKARD: Can I just point out something,
22 Your Honor?

23 THE COURT: Sure.

24 MR. RIKARD: My client was arrested in October
25 of 2010. It's now four months later and today we

1 get a disk that I assume is the discovery. And I'm
2 not faulting at all, other than all I'm hearing is
3 all the problems they've had with translation.

4 I mean, this is the State Attorney General's
5 Office of the State of South Carolina. They have a
6 lot more resources than my little law office and if
7 they're having these monumental problems with
8 interpretation and transcripts and other things, I
9 don't think it's fair for my client to have to go
10 spend 10-, 20-, 30-, \$40,000 to what I'm hearing is
11 transcribed things that are not transcribed to what
12 they think.

13 **THE COURT:** Well, Mr. Rikard, why don't I let
14 you see what they give you and then I might agree
15 with you that we need to go this route or that
16 route. Right now I just think I'm guessing.

17 **MR. RIKARD:** I agree. And that brings up my
18 next point is, does Your Honor have some time to
19 have another status conference, say, 30 days after
20 we get the final discovery to come back and if we
21 have motions regarding those types of issues?

22 **THE COURT:** I will make time.

23 **MR. RIKARD:** And it's something we can perhaps
24 even do over the phone or I don't know.

25 **THE COURT:** Well, my suggestion earlier, it

1 might have not been communicated, is that -- I have
2 everybody's e-mail address -- I'm assuming you all
3 are talking about disks and things, that you already
4 are communicating by e-mail -- that I have
5 everybody's e-mail address and that these
6 administrative matters, we can discuss in joint
7 e-mails. If there is a conflict between defendants
8 now, we're going to get into some issues there, I
9 understand that, but as far as just general
10 concepts, that we can communicate, and you all can
11 let me know, I need a hearing on such and such
12 issues.

13 But I'll give you a time -- we'll set a
14 tentative time, Mr. Rikard, before you all leave and
15 let you all try to pencil that in about getting back
16 together, okay.

17 MR. RIKARD: That'll be great.

18 MR. BREIBART: Your Honor.

19 THE COURT: Go ahead, Mr. Breibart.

20 MR. BREIBART: Your Honor, I'm happy to be
21 appointed in this case and whatever Your Honor
22 rules, for the record, I'll adequately represent my
23 client; certainly, will abide by the confidentiality
24 rules.

25 In the handout I received today, it explained

1 that I would have to pay or my client would have to
2 pay for the discovery or visit the office of the
3 Attorney General. I have no problem -- I'm stating
4 for the record, I actually represent this gentleman
5 and I'm already -- I'm instructed to be -- I'll pay
6 for it. Having said that, if -- worried about the
7 confidentiality of bringing people over there to
8 look at things that may or may not be whatever, I
9 don't think it's appropriate that there be a charge
10 to someone to view that effectively.

11 **THE COURT:** Let me see what they say. You've
12 got something I haven't even seen.

13 **MR. MALDONADO:** Your Honor, that's not an issue
14 in any -- well, any of the appointed attorneys,
15 we're not charging -- is not going to be charged.

16 **THE COURT:** Does that answer your question,
17 Mr. Breibart?

18 **MR. BREIBART:** Certainly does.

19 **THE COURT:** And if any of the other attorneys
20 have an issue with funding, let me know.

21 All right. Is there any defense counsel that
22 wishes to be heard about any of the handouts you've
23 been given today, any of the materials you've been
24 given today?

25 No problem with anything other than what's

1 already been pointed out?

2 Do any of the defendants anticipate at this
3 point hiring an attorney, switching attorneys? Now,
4 you're not bound by this, but I just would like to
5 know if any of you who have appointed counsel are in
6 the process of trying to retain counsel.

7 (Pause.)

8 THE COURT: Mr. Johnson, yes, sir.

9 MR. JOHNSON: Your Honor, in response to your
10 last question, I believe my client has a response to
11 that.

12 THE COURT: All right. Mr. Hunt.

13 MR. CHESSE: Your Honor -- well, that's fine.

14 INTERPRETER: I believe I'm going to hire an
15 attorney.

16 THE COURT: Okay. Let me make sure -- this is
17 Francisco Guerrero-Flores?

18 INTERPRETER: Yes, sir.

19 THE COURT: Does he have any idea when he may
20 have an attorney hired?

21 INTERPRETER: I'm working on that.

22 THE COURT: Mr. Hunt, please tell him that if
23 he hires a private attorney, to notify the State
24 Grand Jury Clerk immediately, notify Mr. Johnson
25 immediately and notify the Attorney General's Office

1 immediately. We want to make sure that whatever is
2 sent out goes to the right person. Does he
3 understand?

4 INTERPRETER: Yes.

5 THE COURT: And unless and until he hires an
6 attorney, Mr. Johnson represents him. Does he
7 understand?

8 INTERPRETER: That's good. Thank you.

9 THE COURT: Tell him Mr. Johnson would have to
10 be relieved by the Court if he hires an attorney.
11 Does he understand?

12 INTERPRETER: Yes.

13 THE COURT: Ask him if the attorney he is
14 contemplating is licensed in South Carolina?

15 INTERPRETER: Yes, I believe so. He's been to
16 my home before. John Delgado.

17 THE COURT: Well, if he hires Mr. Delgado,
18 Mr. Delgado will certainly know what to do about
19 notifying the Court. Thank you.

20 The next chambers week is May the 2nd.

21 MR. RIKARD: Then maybe e-mail is a good idea.

22 THE COURT: I can find time to work hearings in
23 if I have to. I'm just saying the Monday and
24 Tuesday of May the 2nd, I want all of you to pencil
25 those days out, if possible. The judges have

1 mandatory training conferences Wednesday, Thursday
2 and Friday of that week -- my law clerk just
3 corrected me, I'm sorry. I tried to do a
4 spreadsheet, that was a mistake. March 21st is a
5 chambers week.

6 Did you all ever tell me how much time you
7 needed? You were still talking I think.

8 MR. STUMBO: Judge, I think by the end of next
9 week, we can have everything in -- just to explain
10 what I've been told about this: The wire audio --
11 the audio recordings of these wiretaps probably will
12 take up -- right now I say, probably, they take up
13 14 disks.

14 THE COURT: CDs or DVDs?

15 MR. STUMBO: DVDs. Fourteen DVDs, Your Honor.
16 It's very voluminous. Now, everything else,
17 reports, pictures, labs, everything else in this
18 case that's on paper essentially, my understanding
19 from Ms. Douglas, is about four to five disks.
20 Everything on the four to five disks should be
21 disclosed by next week.

22 Now, the copies of the 14 audios, we have those
23 available now if anybody needs to come listen to
24 them, but obviously making copies of those is very
25 time consuming, Your Honor, so it may take a little

1 bit longer to get the audios.

2 THE COURT: So the audios are not on the 14
3 DVDs?

4 MR. STUMBO: That's correct. The
5 transcriptions, Your Honor, is what is on the 14
6 disks not the audios. I misspoke.

7 THE COURT: I thought that's the opposite of
8 what she just said.

9 MR. MALDONADO: Reverse that, Your Honor. The
10 14 are the audio.

11 MR. STUMBO: And, Your Honor, those are
12 available now, you know. If any of these attorneys
13 need to come listen to them this week, they can do
14 that, but I think that's where the problem is lying
15 in terms of the volume.

16 THE COURT: All right. Let's say this, and
17 I'll hear anybody out that wants to be heard out:
18 February 28th, that's a Monday, have those DVDs
19 delivered to the defense attorneys. Okay?

20 MR. STUMBO: That would be a week from Monday.

21 THE COURT: You said next Friday. I'm giving
22 you another few days. Did I misunderstand you? I'm
23 just -- that's the end of the month, so that -- say
24 February 28th.

25 The chambers week is March the 21st. Unless

1 you all hear differently from me, I want to meet
2 with the attorneys on March the 21st, let's say, at
3 10:00 a.m. in this room. If you want your clients
4 here, that's fine; if you don't, I don't think they
5 have to be here necessarily. I want to hear any
6 issues that you all think -- you can give me a heads
7 up in advance of that. I might be able -- we might
8 be able to move through it quicker.

9 Something else?

10 **MR. RIKARD:** I want to make sure I understand
11 because I -- I think they have DVDs they're going to
12 give us that have discovery, they were going to give
13 us anyway. I think they've got another 14 DVDs that
14 they're going to keep that have recorded phone calls
15 on them that they're saying we can come listen to
16 them. Are you ordering them to also give us --

17 **THE COURT:** I thought they were giving all of
18 it to you.

19 **MR. RIKARD:** According to the letter, I've got
20 to pay \$25 for that privilege of listening to these
21 wiretaps, which brings up another discovery issue.
22 If I'm retained, I've got to ask my client if he
23 wants to pay, according to my rude calculation, \$450
24 to purchase discovery from the State of South
25 Carolina in this case, which is the first time I've

1 ever had to purchase discovery in a criminal case,
2 unless I've missed one.

3 THE COURT: Is Mr. Rikard correct or not about
4 the --

5 MR. STUMBO: About paying, Your Honor?

6 THE COURT: Yes.

7 MR. STUMBO: There again, I'm getting used to
8 the grand jury procedures, Your Honor, but my
9 understanding is they have charged retained
10 attorneys \$25 per disk in the past on State Grand
11 Jury cases and those that are appointed, obviously,
12 are not charged. That's been the practice. And,
13 essentially, what happens is the disks are delivered
14 along with an invoice to the retained attorneys,
15 Your Honor. So it's not as if they have to pay the
16 money up front before they get it. That's my
17 understanding.

18 THE COURT: How many hours of audio are we
19 talking about listening to?

20 MR. STUMBO: Hundreds of hours, Your Honor,
21 according to the agents.

22 THE COURT: Mr. Rikard, what's your client
23 charged with other than conspiracy?

24 MR. RIKARD: He's charged in the main
25 conspiracy counts. I just got a superseding

1 indictment today. I don't think he's charged in any
2 of the new counts. He's charged with -- let me just
3 make sure -- just a conspiracy count, Your Honor.

4 THE COURT: All right. Well, how many retained
5 attorneys are in the case? One, two, three, four,
6 five, six. Thank you.

7 I'm going to order them to distribute those
8 audio DVDs to the retained attorneys. And if
9 anybody wants to take me up to the Chief, go ahead.

10 MR. BREIBART: Your Honor, I'm Richard
11 Breibart. I may have misunderstood Mr. Stumbo. Is
12 it my understanding that the 14 DVD tapes are going
13 to be available on February the 28th?

14 THE COURT: I just ordered them to give you
15 everything they have on DVD by February 28th. And
16 if y'all want to go start listening to them now,
17 they said they're available.

18 MR. BREIBART: Thank you.

19 THE COURT: But I don't know that you want to
20 go listen to hundreds of hours of tapes or
21 recordings. And if they're in Spanish -- this is
22 going to be an extremely expensive trial. I mean,
23 this is going to bankrupt some budget somewhere. I
24 don't know how to deal with it and account for due
25 process and fairness. I just have to do what I

1 think is right. I don't think you can charge
2 somebody criminally and then say, here's the
3 evidence and it's in a different language, some of
4 it, and it's also using code words and you bring all
5 of your people to our office or either you pay \$25
6 for a DVD. I just think that's unfair,
7 fundamentally unfair. I'm sorry.

8 Anything else?

9 That's the only dates I'm setting. Leave that
10 week -- what Mr. Parks just explained to me, which
11 makes a whole lot of sense, is they have to request
12 these State Grand Jury terms way in advance. So
13 those terms that they have for Judge McMahon, he
14 doesn't actually have a State Grand Jury case
15 assigned to him. They were anticipating that it
16 would be assigned to one or the other of us so
17 they'll switch later on. So the first one of those
18 weeks is -- that I'm already assigned to is July
19 25th. Y'all keep that week open -- do you have
20 something, Mr. Moore?

21 **MR. MOORE:** No, sir, Your Honor.

22 **THE COURT:** And I want to talk to y'all the
23 week of the 21st and see where we're going, the
24 attorneys. I can't fill out this order other --
25 beyond what I said.

1 Anybody else want to talk to me?

2 MR. HARVEY: Your Honor, Jonathan Harvey. I
3 just want to make sure on the date. March 23rd,
4 2011, 10:00 a.m., we need to be back in the
5 courtroom?

6 THE COURT: 21st. You got to be somewhere?

7 MR. HARVEY: No, sir. I just needed to know
8 the right date.

9 THE COURT: I assume we're going to do an order
10 which will be sent to all of you. That's a Monday.
11 Anybody know of a conflict?

12 MR. RIKARD: I know to the delight of many of
13 these folks, I will not be here because I will be
14 out of state, but I will send one of my law
15 partners.

16 THE COURT: Mr. Moore.

17 MR. MOORE: No, sir. Judge Allen is going to
18 shoot me if I don't go handle this case.

19 THE COURT: Well, I might be a better shot than
20 him.

21 Thank you very much, folks. We'll draft an
22 order and get it to you. Thank you.

23 (The proceedings were concluded for February
24 17, 2011.)

25

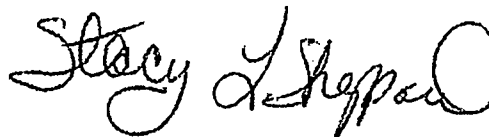
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 17th of February, 2011.

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

October 19, 2015

A handwritten signature in cursive script that reads "Stacy L. Sheppard". The signature is written in dark ink and is positioned above the printed name and title.

Stacy L. Sheppard, RPR
Circuit Court Reporter

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State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	10-GS-47-07
	)	
Juan Rodolpho Arroyo,	)	
et al.	)	
<u>Defendants.</u>	)	

March 21, 2011
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

Stacy L. Sheppard, RPR
Circuit Court Reporter

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

2 David M. Stumbo, Deputy Assist. Attorney General
3 Attorney for the State

4 Ola A. Johnson, Esquire
5 Attorney for Defendant Francisco Guerrero-Flores

6 Debra R. Chapman, Esquire
7 Attorney for Defendant Juan Rodolpho Arroyo

8 Creighton B. Coleman, Esquire
9 Attorney for Jeremy Lewis Gray

10 Drelton "D.J." Carson, Jr., Esquire
11 Attorney for Defendant Manual Hernandez Robles

12 Robert M. Madsen, Public Defender
13 Attorney for Defendant Joshua Griffin

14 Robert T. Williams, Sr., Esquire
15 Attorney for Defendant Bobby Burroughs

16 John J. McCauley, Esquire
17 Attorney for Defendant Kenneth Andrews

18 John E. Duncan, Esquire
19 Attorney for Defendant Brainen Borchers

20 Alexandra M. Benevento, Esquire
21 Attorney for Defendant Barbara Breitenbach

22 Gene Stockholm, Esquire
23 Attorney for Defendant William Christopher Brown

24 Jerry L. Finney, Esquire
25 Attorney for Defendant Michael Rion Byrd

26 Marion M. Moses, Esquire
27 Attorney for Defendant Edgar Allen Craig

28 Richard L. Bolen, Esquire
29 Attorney for Wendy Annette Craig

30 Ken Matthews, Esquire
31 Attorney for Ian Matthew Craven

32 Richard J. Breibart, Esquire
33 Derrick E. Mobley, Esquire
34 Attorneys for James Adam Gleaton

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I N D E X

2

WITNESSESDIRECT CROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 March 21, 2011.)

3 **THE COURT:** All right. Thanks to everyone for
4 coming in today. I understand the clerk's taken the
5 role. And once again, we're on the record, so I
6 need for you to identify yourself as you speak.
7 When we last met, my recollection is that there was
8 an issue about turning over materials. And I need
9 to know, I guess, first of all, if there are any
10 disputes related to the materials that were turned
11 over and whether anything being claimed as not
12 having been turned over. Does that make any sense?

13 **MR. DUNCAN:** Jack Duncan, Your Honor. For the
14 record, and this is not a dispute, not for
15 Mr. Stumbo, because I was out of town for five days
16 last week, but I found about five pages of material
17 -- this issue will come up, I'm sure, with other
18 defendants -- that concerned my client that was
19 heavily redacted. And I had sent a letter saying,
20 are they going to voluntarily turn that over? So I
21 guess this is something that is going to affect just
22 about everybody.

23 **THE COURT:** All right. Thank you.

24 **MR. MADSEN:** Judge, Rob Madsen for Joshua
25 Griffin. I've got one disk that is labeled Amapola

1 Negra, in parentheses Black Poppy Disk 2, but did
2 not receive anything that was associated with that
3 that said Disk 1, which I'm assuming if this is disk
4 2, there is a disk 1 out there.

5 Additionally, I received two disks that are
6 phone conversations that the files have a dot DBF
7 that I cannot open and don't know how to open or
8 what program needs to be utilized to open those.

9 **THE COURT:** Dot DBF?

10 **MR. MADSEN:** Correct. And the outside of the
11 disks are listed Phone Conversations, but I haven't
12 been able to open them with any kind of media
13 player.

14 **THE COURT:** Okay. Anybody else have any
15 discovery issues?

16 **MS. CHAPMAN:** Judge, Debbie Chapman for Juan
17 Arroyo. I guess it's an issue. Judge, I don't know
18 if you've seen the disks. I mean, there's just a
19 ton of them. Just to give you an example, I brought
20 them.

21 There's no directory. There's -- matter of
22 fact, I talked to the agent this morning. Judge,
23 there's a bunch of unidentified Hispanic males that
24 I'm sure I'm not the only one, but I was in question
25 as to, is that my client or is that somebody else?

1 They did give me some direction on where to go,
2 but, Judge, there's no search engine on any of these
3 disks that you can go in and type your client's name
4 and say, hey, I'm on page 1,020. There's none of
5 that. You have to go manually and read every single
6 one of these disks to even get an idea of where
7 you're going. And if your client's unidentified and
8 he's being a target in that specific day, you don't
9 know that it's your client. That would be -- I just
10 think it would be helpful if we had some kind of
11 directory or somewhere to point us where to go.

12 **THE COURT:** Thank you, ma'am.

13 Anybody else?

14 **MR. JOHNSON:** Your Honor, I just wanted to ask
15 about a listing of a CI buy, September 29th, and
16 there was no disk for that. I didn't know if that
17 was going to be provided. It was listed in the
18 report, but it's not on a disk.

19 **THE COURT:** A CI buy on what day?

20 **MR. JOHNSON:** September 29th, Your Honor, 2010.

21 **THE COURT:** And what did you say about it?

22 **MR. JOHNSON:** There's no disk for that. All
23 the other buys are dated on the disk and it's
24 written on the disk, but there's nothing for
25 September 29th. And it's not on the letter turning

1 over the discovery, so -- it's not missing from the
2 -- the package just apparently wasn't sent. They --

3 COURT REPORTER: I couldn't hear what you said.

4 MR. JOHNSON: The letter from the AG's office
5 didn't include -- it did not mention the September
6 29th buy, but the actual report, the original
7 discovery disk, it has a listing of buy dates and it
8 put September 29th in there as a buy date. So I was
9 just wondering if the AG's office was going to turn
10 that over.

11 THE COURT: Anyone else have any issues to
12 start off?

13 All right. Mr. Stumbo, what about the
14 redactions?

15 MR. STUMBO: Your Honor, I know that there's a
16 number of redactions on here, and I consulted with
17 our agents. I believe they're probably related to
18 confidential informants, to wit -- at this point, to
19 which we are continuing to try to maintain
20 confidentiality of their identities at this stage of
21 the proceedings. That would be our issue on
22 redactions, Your Honor.

23 Certainly, we realize, at some point in this
24 case before headed to trial on any one of these
25 defendants, that that would be information that we

1 would disclose pursuant by, I assume, a Diamond
2 motion at that point, Your Honor.

3 But at this stage, Your Honor, I believe we
4 would be entitled to maintain the confidentiality of
5 some of the informants. I don't know if all of
6 them -- I think the identities of some of the
7 informants are not confidential for a variety of
8 reasons and that has been disclosed. There are some
9 that may still be working, Your Honor, and we need
10 to maintain their confidentiality at least at this
11 point.

12 There were a number of confidential informants
13 involved in this case. It's not -- it's a two-year
14 investigation. I think some were utilized by the
15 DEA signed up under federal agreements, some were
16 utilized by SLED and some were utilized by local law
17 enforcement that was involved in this investigation.

18 We would certainly maintain that we -- no
19 question, if we're headed towards trial on this, as
20 we approach the trial, we will disclose the identity
21 of those informants if they're involved as witnesses
22 in those trials.

23 **THE COURT:** Mr. Duncan, does it just look like
24 their names are redacted or what's --

25 **MR. DUNCAN:** Your Honor, for instance, on some

1 of the DEA Form 6's, they have a directory and
2 they'll have the names of, you know, on page 939 and
3 it has my client, Brainen Borchers, and then it's
4 all blacked out, and then it has 13 or 14 other
5 names. So it's information specifically about him.
6 It doesn't indicate -- there's no indication that
7 it's just a name.

8 I mean, there are instances where, for
9 instance, on 935, it says, Heroin user slash buyer,
10 subject noted in, and there's two lines blacked out.
11 So I don't know if that's a name or not. Names of
12 agents are blacked out and the dates of reports are
13 blacked out.

14 **MR. STUMBO:** Your Honor, Mr. Duncan, we can get
15 with him, and I -- as he was, I was out of town in a
16 trial all last week, so I haven't received his
17 letter yet. I'm sure it's waiting on me back at the
18 office. I'll be glad to get with him. And if
19 there's anything that we feel like is not sensitive
20 information that we can turn over to him now, it's
21 in the reports, we can work with him on that, that's
22 not a problem.

23 **THE COURT:** Well, just by a show of hands, how
24 many other attorneys have that issue? Four, five,
25 six, seven.

1 **MR. STUMBO:** I think all the redactions are
2 just in the DEA portion, Your Honor. My
3 understanding, the other confidential informants
4 have already been disclosed that worked on the local
5 levels. That's something, obviously, I need to sit
6 down with DEA agents on and figure out if they still
7 need to retain the confidentiality of those
8 particular individuals, they may not, but I need to
9 know, obviously, for the defense attorneys that have
10 a need for that information, where we could go to
11 exactly in the discovery to look for those names,
12 Your Honor.

13 **THE COURT:** What about Mr. Madsen's issue? Do
14 you know if he was not given the disk?

15 **MR. STUMBO:** Your Honor, my understanding on
16 that one is there was a disk that was handed out, a
17 copy of one disk for each attorney, at the last
18 status hearing that we had that was disk number 1 in
19 this case and I think that's the one he's referring
20 to, because subsequent to that, we sent everything
21 else out through the mail pursuant to Your Honor's
22 order by the end of that next week.

23 My understanding, I think that's what he's
24 talking about, that first disk that was passed out
25 in court that day. Did you receive a copy that day?

1 **MR. MADSEN:** I got one that was blank and
2 didn't say anything on the outside, if that's
3 supposedly disk 1 because it was PDF files, but
4 there wasn't anything to indicate that that was disk
5 1.

6 **MR. STUMBO:** That is disk 1. That was what was
7 handed out on the first day.

8 **THE COURT:** All right. What about his other
9 issue that it's in a format that he can't open, DBF?

10 **MR. STUMBO:** I'll have to look into that, Your
11 Honor. I'm not sure what file attachments those
12 are. And my agents right now aren't real sure which
13 ones he's talking about. If he can maybe get with
14 me after this hearing and we can pop that disk in
15 and see what he's talking about there. We'll be
16 glad, there again, to work with him on that.

17 **THE COURT:** Any other attorneys have problems
18 opening the disks?

19 **MR. JOHNSON:** Your Honor, that disk that I had
20 a problem with was labeled -- that was Phone
21 Conversation. I assumed it was number 2, but it was
22 one of the phone conversations.

23 **THE COURT:** What did you say, Mr. Johnson?
24 What phone conversation?

25 **MR. JOHNSON:** There are two disks entitled

1 Phone Conversation and it was one of those, but I
2 have no idea if it was one or two and I couldn't
3 open it. And, basically, I assume that the Black
4 Poppy disk was the second discovery disk.

5 And also just for the record, Your Honor, if
6 you want me to continue, there's another disk, it's
7 entitled, it says, (803) 600-0621, but on the AG's
8 letter, it has (803) 600-0671. I'm assuming that
9 was just a misprint, that they intend that to be
10 that same disk, but I just want to confirm because I
11 know phone numbers are different. It operates and I
12 can open it, but it's just listed differently. And
13 other than -- that was listed as number six on their
14 letter.

15 Other than that, the number 1 disk entitled
16 Discovery Disk 2, I'm assuming that's the Black
17 Poppy disk that Mr. Madsen mentioned.

18 **THE COURT:** Do you know if there was an
19 incorrect designation or not, Mr. Stumbo?

20 **MR. STUMBO:** Let me check on that, Your Honor.

21 (Pause.)

22 **MR. STUMBO:** Your Honor, I don't know at this
23 time. There again, I can get with Mr. Johnson right
24 after this hearing and we'll try to sort that out.
25 I don't think any of the issues I've heard so far,

1 something we can't get together on and sort out.
2 There again, being today's the first time I've heard
3 a lot of these, you know, it should not take us long
4 to track these down and straighten those issues out,
5 Judge.

6 **THE COURT:** All right. What about Ms.
7 Chapman's issue about the volume of these materials
8 and the inability to access specific clients?

9 **MR. STUMBO:** As to Ms. Chapman's issue, I don't
10 know if there's any way -- I'll say this: I know
11 most computer programs, Adobe, Acrobat, Microsoft
12 Word, and a lot of these documents are PDF documents
13 which you open in Adobe. I know you can do a search
14 in Adobe for any particular name if that's the
15 concern. What she's saying is --

16 **MS. CHAPMAN:** I tried that, Your Honor, and
17 that doesn't work.

18 **MR. STUMBO:** I don't know if we have the
19 licensing rights to put a search engine on discovery
20 disks. I don't know if that's even within our
21 capabilities to be honest with you. I can look into
22 that.

23 **THE COURT:** What about conversations where
24 people are not identified as to who's speaking? I
25 mean, is there not a report to go along with...

1 **MR. STUMBO:** There are numerous reports, Your
2 Honor, referencing back to the wiretaps and
3 conversations. There again, the volume of it -- if
4 it is an unidentified male, and I'll check with my
5 agents on this, I'm assuming we didn't know who the
6 unidentified male was at the time and may not know
7 even to this day.

8 **THE COURT:** I thought y'all told me last time
9 we were here that you had transcripts.

10 **MR. STUMBO:** We do, Your Honor. I think that's
11 what she's talking about.

12 Does it say unidentified male on the
13 transcript? Is that what you're referring to?

14 **MS. CHAPMAN:** There is. And, I mean, there's
15 some incident reports that they purchased from an
16 unidentified Hispanic male.

17 I haven't been through all the disks, Judge,
18 but -- because it's quite a handful. I just haven't
19 been through them all, but there's no way to search
20 it. There's not a search engine to -- it would just
21 be helpful if we had some kind of idea like -- and
22 let me give you an example: When I talked to the
23 agent this morning -- evidently, it concerns
24 different counties -- I was told my guy was just
25 Myrtle Beach, so at least that gives me an idea that

1 I don't need to be looking in Lexington for my
2 client through all these disks.

3 I just think it would be helpful if we had some
4 kind of directory or who it pertains to for a
5 client. And I think it would also help, with the
6 time factor that all of us are under, if we kind of
7 know where to go.

8 **MR. STUMBO:** Judge, I'll say this: Our guys
9 are going to be as available as they can be and
10 we're going to be as available as we can be to help
11 facilitate the organization of it. I don't know --
12 there again, the search engine, I think that's
13 probably out of the question. I don't know how -- I
14 don't know if we're capable of putting search
15 engines -- those are typically licensed by a
16 particular company. I don't know if the State owns
17 a search engine.

18 **THE COURT:** Well, I guess my question is more
19 basic than that. Before you had search engines, I
20 was practicing law. Aren't you going to have to
21 have some indication to put up a case as to who's
22 talking on what particular conversation and who's
23 saying what and where it happened and when it
24 happened and all of that? There's going to have to
25 be some sort of organization of the material.

1 **MR. STUMBO:** Yes, sir, Your Honor. And I
2 think, from the indications that I'm getting, and
3 there again, from the amount that I've read on the
4 case so far, there are unidentified males, Hispanic
5 males, early on in this investigation that are on
6 some of the tapes that we still don't know who they
7 are, Judge. I mean, you know, there was indicted in
8 this case the individuals that we could identify.
9 So I think there were numerous, hours and hours of
10 wire tape that were converted into transcripts where
11 we still don't know who those males are.

12 Now, if we subsequently found out who the
13 unidentified males were, we have reports, we have
14 other evidence that comes later that says, okay, now
15 we know who was on this tape, but it's not
16 necessarily -- when they were transcribed, Your
17 Honor, they may still have been unidentified. Does
18 that make sense? And you may have to go to a
19 different report to reference back as to who that
20 unidentified male is if we know at this point.

21 **THE COURT:** How many pages of transcripts are
22 there?

23 **MR. STUMBO:** Thousands, Your Honor.

24 **THE COURT:** Thousands as in 3,000? Thousands
25 as in 10,000?

1 Mr. Madsen.

2 MR. STUMBO: I can't give you an exact number
3 right now.

4 MR. MADSEN: Judge, by my direct account, we
5 have eight disks, which are indicated as line
6 sheets, with numbers 47,534 pages. I believe, that
7 that's what Ms. Chapman is referring to.

8 THE COURT: 47,000- --

9 MR. MADSEN: -534, if my calculator was
10 working.

11 THE COURT: Those are the transcripts or that's
12 everything?

13 MR. MADSEN: Those are just -- those are eight
14 disks that I received that each of the disks has a
15 phone number on the outside, and inside they are
16 designated as line sheets, which appears to me to be
17 transcripts of telephone conversations. There is
18 another, I believe, seven video disks and 19 audio
19 disks. Now, whether the line sheets of that 47,000
20 pages line up with those audio disks, I haven't
21 gotten that far yet.

22 THE COURT: Do you know, Mr. Stumbo?

23 MR. STUMBO: Your Honor, I can't just, off the
24 top -- we're talking 47,000 pages worth here. I
25 will say this, and this is one thing that Agent

1 Rushing just indicated to me, a number of the wires,
2 conversations, ultimately were things that they used
3 -- sometimes to make controlled buys were part of
4 those wire conversations. Sometimes, Your Honor,
5 they were used as information for probable cause to
6 get another wire established to a different phone.

7 And one of the things that's unique about this
8 case, Your Honor, is they would switch phones every
9 so often. So the phone line for this dispatcher
10 that was dispatching out the heroin buys, that
11 number didn't stay the same over the course of this
12 investigation. So there were multiple wiretap
13 applications based on if there was a new number and
14 they obtained a new number from the other phone
15 conversation that that was going to be the new
16 number, well, they would have to get -- use that
17 information on that wire's PC for the new wire.

18 So not every unidentified male, Hispanic male,
19 on these transcripts is a defendant in this or a
20 named charged defendant in this case, but my
21 indication from these guys is if they were, that's
22 all tied back together later through reports in
23 preparation for charging in this case.

24 And we turned over everything, Judge. That was
25 what we were ordered to do. We turned over all

1 47,000 pages of transcripts related to the wire, and
2 I think we -- that was nonnegotiable. But that
3 being said, Your Honor, I don't know that every
4 transcript was typed up in light of us knowing who
5 those people were -- every single person on the
6 tapes were.

7 It was a very sophisticated operation. They
8 were changing out every so often so they wouldn't
9 get caught. It was one thing that necessitated the
10 wiretap in this case to keep up with that, Judge,
11 quite frankly.

12 **THE COURT:** Well, have the federal authorities
13 made charges?

14 **MR. STUMBO:** They have not, Your Honor.

15 **THE COURT:** Why not?

16 **MR. STUMBO:** That's a good question, Judge.
17 They allowed us to work this case. And the DEA
18 agent is involved with SLED Agent Rushing and
19 Mr. Burke -- and Agent Burke, but they haven't
20 chosen to charge this case.

21 **THE COURT:** Okay. Well, that's probably a very
22 unfair question. I think I need to talk to
23 Mr. Patton Adams in the Office of Indigent Defense
24 because I think we're going to bankrupt them.
25 Forty-seven thousand pages of materials.

1 MR. STUMBO: That's correct, Judge.

2 MR. DUNCAN: Your Honor, Jack Duncan. There
3 are about 3,000 pages of reports that's separate
4 from the 47,000.

5 MR. STUMBO: This is a two-year investigation
6 that involved multiple agencies, that involved --

7 THE COURT: I understand.

8 MR. STUMBO: And they ended up charging 24
9 people in this case.

10 THE COURT: I understand. I'm not being
11 critical; I'm being factual. In order to represent
12 someone, the attorney is going to have to review
13 50,000 pages of documents, perhaps.

14 MR. STUMBO: Well, Your Honor, one thing --

15 THE COURT: If you gave me -- I don't know how
16 much 50,000 pages looks like.

17 MR. STUMBO: I imagine it would be quite
18 expensive to print all of that out, Your Honor.

19 THE COURT: The printing is one thing; the time
20 is the other. I don't know -- okay. Well, that's
21 why I had you all here to find out what I'm dealing
22 with.

23 MR. STUMBO: Judge, if I may add this on that
24 issue, I think this may be an appropriate time to
25 add this: There are -- many of the defendants

1 involved in this case may only be involved in a very
2 small portion of that discovery. It is very
3 voluminous. Now, we gave --

4 **THE COURT:** That's the point Ms. Chapman is
5 trying to make.

6 **MR. STUMBO:** What I'm telling you, Judge, is
7 this: I raise that not to send them on a wild goose
8 chase, I raise that to tell you that we're available
9 to point them in the right direction, but it may
10 take us physically sitting down at a conference
11 table and saying, all right, these three disks
12 involve your guy and the rest of you, you don't have
13 to worry about it. And that may be what it takes
14 here, Judge. I'm not -- I'm just suggesting here
15 that we will make ourselves available.

16 **THE COURT:** Well, I guess my question is --

17 **MR. STUMBO:** We're not trying to hide anything.

18 **THE COURT:** Hold on. Everybody calm down.

19 I guess my question is if they already know
20 that, why they haven't said that? I mean, why would
21 you give somebody -- from a perspective, just
22 financially, just as a gatekeeper financially of
23 this, if the prosecution knows that only three pages
24 out of 50,000 relate to a particular client, then
25 why turn over 50,000 pages of documents and not tell

1 the lawyer, these are the three pages that relate to
2 your client?

3 Put something in writing so that we don't have
4 to pay an attorney that's appointed to search
5 through all those materials, that's my -- do they
6 have to do further study or are they in a position
7 to sit down and have those meetings now? And if
8 they are, then I think the thing for me to do is to
9 say, all right, I want you all to set up a meeting
10 with each individual attorney and tell them what
11 they need to know about this discovery material.

12 MR. STUMBO: Your Honor, I think that's
13 probably the only way that we will cut to the chase
14 on a lot of the individual defendants. I agree with
15 that.

16 The reason why we gave them all of it, Judge,
17 is because they're all charged with conspiracy. So
18 technically --

19 THE COURT: No, no, no. You missed my point.
20 Go ahead, Mr. Stumbo. I cut you off. Go ahead.

21 MR. STUMBO: And, Your Honor, I don't mean to
22 be short about it, but at the end of the day, I
23 think if we did not turn over everything and we have
24 them charged with a conspiracy that they're involved
25 in that is over a long period of time, I don't know

1 that I'm not violating Rule 5 by not giving it to
2 them, and I may be wrong about that.

3 **THE COURT:** No, sir. My criticism, if you take
4 it as a criticism, is not that you turned over all
5 the materials, but that in doing -- I guess --
6 here's an Edgefield redneck way to express this: If
7 all I've got to do to meet my obligation is read the
8 Cliff Notes, then why am I going to read War and
9 Peace?

10 **MR. STUMBO:** I agree, Your Honor. There again,
11 though, I think if I turn over half of it, then I
12 get later, oh, the State's hiding the ball; they're
13 not giving us everything.

14 **THE COURT:** I'm not saying you don't have to
15 give them War and Peace. I'm just saying if all --
16 what I'm hearing you say is they don't really need
17 to go through all of this, but then I'm hearing you
18 say, but I've got to give it to them. So then that
19 puts them in a position of saying, well, we will
20 just trust the State. And --

21 **MR. STUMBO:** There again, we're perfectly
22 willing to meet with each and every one of these
23 attorneys. And I'll sit down with my agents and
24 we're going to figure out how we can help them.
25 We're willing to do that, Judge.

1 I just don't think we've reached the point with
2 them -- I don't know if I've received a request from
3 any one of the 24 lawyers yet until today to sit
4 down with the discovery and figure out what they,
5 you know --

6 THE COURT: I don't know that any of them knew
7 what your response was going to be, though.

8 MR. STUMBO: Yes, sir. Well, we'll be glad to
9 meet with them, Judge, and point them in the right
10 direction.

11 THE COURT: Okay. Well, that may be the
12 direction we have to take.

13 And, Mr. Johnson, you've been standing a long
14 time. What do you need?

15 MR. JOHNSON: I just wanted to point out, we
16 talked at the first hearing about the accuracy of
17 the translation. And I think another issue, why do
18 it 27 times when it can be done once accurately?
19 And obviously -- I mean, I don't claim to speak
20 Spanish, but it appears that there was a translation
21 that's just not accurate in some cases. So is the
22 AG's office going to provide a single thorough
23 translation of everything that's accurate?

24 And in addition to that, I think there's some
25 text messages and there's an English translation,

1 but no Spanish original I think. I may be wrong
2 about that, but if that's the case, I just want to
3 bring that up as well. And that's all I have,
4 Judge.

5 **THE COURT:** There's English translation, but
6 they did not provide you with a copy of the text
7 printed out in Spanish?

8 **MR. JOHNSON:** I think there were some text
9 messages and they sent us translations, but I
10 couldn't find the original text messages. So
11 there's -- we're having to totally rely upon the
12 English version. I may be wrong about that, but I
13 think that's what I saw. I was sort of passing out
14 that after reviewing 5,000 pages, but I think that's
15 what I saw. And then the accuracy of the
16 translation itself on the audio as it's typed up,
17 I'm not an expert, but I -- as we talked about last
18 time, the AG's office said, This was real time, so
19 it's not -- we're using -- we're replacing actual
20 words with our interpretation of that code word
21 meant drugs and this meant that.

22 So, you know, I would just ask is the AG's
23 office going to sit down and create one final
24 version that's accurate and then provide that to all
25 of us? Or is that our job to go and find an

1 interpreter and notify OID that we've got to go
2 through everything and do our own translation?

3 MR. STUMBO: Your Honor, my understanding from
4 the agents is that the -- those that were doing the
5 interpreting of these tapes were under contract with
6 the government, were certified. We can provide, you
7 know, there again, if we know exactly what point --
8 what points of contention there are, we can go back
9 through it and have those that actually translated
10 it come in and sit down with the attorneys and
11 explain to them their translations.

12 My understanding from the agents is they're
13 certified translators and they translated it the
14 best that they could. Obviously, any time you have
15 translations in real time, there may be -- just like
16 in a court reporter as good as Ms. Sheppard is at
17 transcribing, I'm sure there's time where we have
18 some discrepancies. So I think that's what the
19 discrepancy is, Judge.

20 These were certified qualified translators.
21 And if there is a point of contention Mr. Johnson
22 has, we can obviously sit down with a translator --

23 THE COURT: But is he going to have to go
24 through 50,000 pages of --

25 MR. JOHNSON: That's my point, Judge. We don't

1 know if the mistakes are there until I go through
2 everything with an interpreter after the AG's office
3 admitted at the prior hearing that there some times
4 when they took words and they put in their own
5 interpretation as that's code word for this. So now
6 I'm forced to hire someone and I guess turn them
7 into a millionaire by paying them to go over
8 everything.

9 **MR. DUNCAN:** Your Honor, Jack Duncan. I think
10 it would help for some of this if we had the names
11 of the interpreters, the translators, and their
12 organization. I mean, with all due respect, there's
13 a certified interpreter within a hundred yards of
14 this courtroom who speaks Puerto Rican Spanish and
15 my Mexican clients can't understand him.

16 **THE COURT:** Mr. Soltis.

17 **MR. SOLTIS:** Judge, Stephen Soltis. So are we
18 getting the Cliff Notes?

19 **THE COURT:** I don't know.

20 **MR. STUMBO:** Judge, if I could address one
21 issue at a time, Mr. Duncan's issue. According to
22 my agents, that on the line sheets that have the
23 translations, the name of the translator should be
24 there in the materials. And, there again, you know,
25 we can put Mr. Duncan in contact with that person,

1 that shouldn't be a problem to do that, but the
2 names should be in the discovery that's already been
3 turned over, the person that did the real time
4 translation.

5 **THE COURT:** All right. Well, let me ask a
6 question, and if it can't be answered or you don't
7 want to answer it, that's fine. I mean, I'm
8 assuming that there are probably different levels of
9 complicity that are alleged by the State, that you
10 have certain defendants that are higher up the food
11 chain than others. And maybe what I need to do is
12 to start focusing a lot of the attention on some
13 cases and do a triage of what I need to try to focus
14 the resources on.

15 I've never, as I mentioned in the last meeting,
16 I've never been in any kind of proceeding with this
17 many people involved in it. We'll wade through it
18 some sort of way. I'm wondering if I have to just
19 ask the Chief Justice to take me off of court and
20 give me this.

21 I'm not being facetious about notifying the
22 Commission on Indigent Defense because I think what
23 Ms. Chapman's going to have to do, if I was in her
24 shoes, is ask the Court to provide some sort of
25 media specialist who can come up with some

1 explanation of what this material is, what it
2 involves and how it can be searched or not searched.
3 If I get 20 requests for that and I approve 20 media
4 specialists, we've got some serious money.

5 But I tell you what, give me -- anybody else
6 want to chime in anything? Just give me like a
7 five-minute break and then I'll come back and give
8 you all some directives where I think we can go.
9 And in the five-minute break, if you want to talk,
10 that'll be great. I'll be open to suggestions.
11 I'll be back on the bench in five minutes. Thank
12 you.

13 (Brief Recess.)

14 **THE COURT:** Anyone else want to chime in?

15 **MR. MOSES:** Judge, Marion Moses for Edgar
16 Craig.

17 **THE COURT:** Yes, sir, go ahead.

18 **MR. MOSES:** Just kind of adding on to what Ms.
19 Chapman kind of started with the search engine
20 trying to find names and things like that, we don't
21 even have so much as like an index or a table of
22 contents or anything like that. With 50,000 pages
23 of discovery, I think it would be very helpful to
24 have like a table of contents, an index of some sort
25 to kind of indexing me through all this stuff.

1 They obviously created these disks. They
2 obviously created these reports. They know what's
3 on them. They know what they handed us. We ought
4 to know what they handed us without having to go
5 through 50,000 pages.

6 **MS. CHAPMAN:** And, Judge, Debbie Chapman, if I
7 can just add one other thing: On this discovery,
8 Judge, I don't know, maybe I'm spoiled because I've
9 done a bunch of cases in the federal system, these
10 pages aren't even numbered. The disks aren't
11 numbered 1 through 19 or 1 through 47. But if you
12 just reach in, pull out a disk, you're not real sure
13 you know what you're printing and how all this is
14 going to fit into the big scheme of things. I mean,
15 there's just really no order at all.

16 Matter of fact, I was looking through mine,
17 there's disk 1, disk 2. Well, I've got several disk
18 1, disk 2. I don't know which one goes to disk 1.
19 I'm going to have to go through sort it all out.
20 And I'm just going to tell you, very time consuming.
21 And then probably, maybe for future or whatever, it
22 might be helpful if the discovery pages were
23 numbered.

24 **MR. JOHNSON:** Judge, I just want to say
25 briefly, I kind of forgot this earlier: There are

1 some pages that you can't read on the incident
2 reports, I think in the original discovery disks,
3 but throughout there are just pages that were
4 scanned, copied in and there's -- you can't read
5 them at all. I just wanted to point that out, if
6 that's something to require them to kind of recopy
7 some pages for us.

8 (Pause.)

9 **THE COURT:** So how are they organized?

10 **MR. STUMBO:** Your Honor, I have -- all the PDF
11 documents should be on -- which is the scanned in
12 paper copies of the reports and that sort of thing
13 -- all of those should be on the ones that are
14 labeled Black Poppy Disk 1, Disk 2. And I think the
15 ones that were handed out at the hearing last time
16 may not have had that label, but any disk that was
17 handed out at the first hearing, which we just
18 handed out one, was disk 1 of this material.

19 **THE COURT:** Well, how is the material organized
20 within what's being given to the attorneys? How is
21 it -- am I dealing with a situation -- please don't
22 take this the wrong way. I don't mean it this way.
23 I'm trying to get my head wrapped around it. You
24 all know the old adage is that somebody demands
25 discovery, you give them -- and it's in a civil

1 context -- you give them discovery or you ride up
2 with a U-Haul truck full of stuff and dump out 35
3 boxes and then they've got to sort through them to
4 find what in those boxes is significant.

5 Now, am I dealing with a situation where y'all
6 just drove the U-Haul truck up or am I dealing with
7 a situation where it's organized, indexed or not?
8 I'm not clear on this at all.

9 MR. STUMBO: Your Honor, in the letter that was
10 sent out, there is listed the -- essentially, the
11 disks that were sent. Number one says, Discovery
12 disk 2. That involves the scanned in copies of
13 reports, of labs, anything that was paper in this
14 case that needed to be scanned and handed over in an
15 electronic form instead of having a stack of papers.

16 THE COURT: But they relate to every case or
17 they relate to some of the cases or --

18 MR. STUMBO: There's hundreds of pages of
19 incident reports, supplementals by all the agents
20 that are involved in this, Judge. And all those
21 should be on those first two disks.

22 Judge, I'm counting, and I had counted these
23 up, this stack of disks is all individual, either
24 audio or video, undercover buys. That's all that's
25 on these -- this stack of disks that's part of this.

1 **THE COURT:** Okay. But how are they organized
2 within -- do I have War and Peace -- say it's 2,000
3 pages of War and Peace. Do I have them numbered 1
4 through 2,000 or do I have them just I start with
5 page 60 and I've got to find page one?

6 **MS. CHAPMAN:** There's no page --

7 **MR. STUMBO:** Your Honor, these are video and
8 audio, these particular disks, Judge. And I can
9 pass them up. I just separated out --

10 **THE COURT:** I can't --

11 **MS. CHAPMAN:** Judge, I'll be glad to show you
12 what they sent me. I brought the box.

13 **THE COURT:** I'm looking at disks -- as far as I
14 know, I'm looking at Prince disk, since he's going
15 to be in Columbia tonight.

16 **MR. STUMBO:** I mean, Your Honor, I can show you
17 what's labeled on the disk. It says, Undercover buy
18 9/24 of '09. I don't know how much more clear we
19 can make what's on this disk, Judge. This is an
20 undercover buy in this case that occurred on
21 September 24th of '09. Every disk in here is the
22 same way.

23 **THE COURT:** What you got, Mr. Moses?

24 **MR. MOSES:** Judge, I think what you've got is
25 War and Peace, not bound, not anything, spread out

1 in the box and we've got to pick it up and put it
2 together to read it correctly. And there's no
3 indexing.

4 I understand what Mr. Stumbo's saying as far as
5 the -- it's labeled, Controlled buy on such and such
6 date. It doesn't have anything to do with who or
7 what or where or anything.

8 **THE COURT:** All right. The one thing I am
9 certain of is I've got reasonable people on both
10 sides. We're going to work through this. So, I --
11 I mean, I'm confident we can work through it. It's
12 just a matter of us getting, I guess pun intended,
13 on the same page.

14 **MR. STUMBO:** Your Honor, you know that I will
15 work with each one of these attorneys. I will sit
16 down with them, I will give them whatever they ask
17 for. I'm not hard to work with. I know a lot of
18 you guys -- I used to work with some of these guys
19 over here. They know I'm not hard to work with. So
20 instead of us maybe making, you know, just
21 uninformed comments at a hearing like this, I think
22 if we sit down individually with these guys, most of
23 these issues are going to work themselves out,
24 Judge.

25 And it's organized like this, the best way I

1 can describe it is this, Judge: The agents started
2 this investigation back in 2009. They indicted this
3 case in front of the State Grand Jury in the fall of
4 2010. So in that year and a half, you have numerous
5 buys, numerous reports. And it's typically
6 organized on here -- for example, the undercover
7 buys are all labeled by date. And they run from
8 September of '09 all the way through -- I think most
9 of them are in 2009, Judge, but in September,
10 October, November of 2009. And it's organized
11 better than telling you on the disk which buy it
12 was.

13 We can get down to the details on a lot of
14 these guys in our individual meetings with them.
15 And I think what they're looking for in terms of
16 their particular client, we can direct them to it,
17 Judge.

18 MR. MOSES: Judge, which brings me to the
19 point, and I think kind of the main point why we're
20 here today, obviously nobody's making any personal
21 attacks towards the Attorney General's Office or
22 Mr. Stumbo in any lengths. I think what we're
23 addressing is the large volume of what we're dealing
24 with and the scheduling order that we're here to
25 talk about today which calls for July 25th pleas,

1 September 12th trial and a November 14th trial.

2 And given the volume and the state that we find
3 ourselves in here today with discovery and trying to
4 get organized and get on the same page, which I
5 truly believe we will and can certainly work with
6 Mr. Stumbo in that regards, I just think, as far as
7 the timing and the scheduling order, I see this as
8 an overwhelming amount of material. And I just
9 don't see us being ready by July the 25th to go
10 through all this material and talk intelligently
11 with our clients and determine whether we want to
12 accept a plea offer or go forward or anything like
13 that.

14 So I think part of the reason we're here today
15 is to talk about the scheduling order as well. I
16 don't know if we'll have time by July 25th to get
17 all that done.

18 **THE COURT:** Here's what I want you all to do:
19 Mr. Stumbo, I want the Attorney General's Office by
20 the end of the week to have provided me a list of
21 individual meetings with each attorney. I can just
22 arbitrarily say them. Like I said, I assume there's
23 some sort of hierarchy and you all may already be in
24 some sort of discussions with some of these people.
25 I've got five pages of names of clients and

1 attorneys and I want them to be put on a list with
2 the dates and when you all are going to meet to go
3 through each individual problem. And then I want,
4 from both sides, a communication in writing or
5 e-mail form indicating what problems you see with
6 discovery.

7 As far as the scheduling order that I issued, I
8 have no confidence that that scheduling order is
9 going to remain, but right now, we just won't mess
10 with it. All right?

11 Mr. Moses, I agree with everything you've said
12 so far, but it may be that there's somebody, in the
13 whole scheme of things, that some proposition will
14 be made to, they'll accept it and the attorney will
15 feel that they can adequately go forward without
16 having to go through every single page of material.

17 Now, I want that done by Friday. It's a
18 chambers week. Can you do it?

19 **MR. STUMBO:** Yes, sir. I think we can actually
20 talk to the attorneys that are here today and maybe
21 we can go ahead and set some meetings today.

22 **THE COURT:** Sir?

23 **MR. COLEMAN:** Yes, sir. Creighton Coleman for
24 Jeremy Gray. There's a list of meetings and
25 appointments that require the Attorney General's

1 Office to contact us for a mutually convenient time?

2 THE COURT: No, sir. I meant for them to get
3 with the attorneys and come up with a mutually
4 convenient time. That's a good point. And you all
5 may -- in that discussion, some of you may feel like
6 you don't need to talk but a few minutes, some of
7 you may need to talk for a long time, some of you
8 may be joined together and meet at once. I'm going
9 to leave that up to you because you all know your
10 case much better than I.

11 I want some sort of explanation, Ms. Chapman,
12 so that I can go to a federal judge or somebody in
13 the federal system and ask them how they typically
14 deal with situations such as this, if I can do that.
15 I think I'm permitted to talk to judges without
16 violating any ethical issues. I can't talk to legal
17 experts outside of judges, but I think I can talk to
18 a judge to maybe get some sort of guidance on how
19 they handle large cases. Of course, having a 400
20 case work load as opposed to a 4,000 case work load
21 is part of that. But if you can just, I don't mean
22 spend a whole bunch of time, but if you can help me
23 in some way and just communicate, whatever you send
24 to me, send it to the AG's office --

25 MS. CHAPMAN: I'll be more than happy to do

1 that, Your Honor.

2 **THE COURT:** -- to spot these issues. And I'll
3 let everybody know what I'm doing in that regard and
4 what I found out.

5 With regard to the DBF file issue, Mr. Madsen,
6 can you report to me as to whether that's an issue
7 or a nonissue after you meet with them?

8 **MR. MADSEN:** Yes, sir.

9 **THE COURT:** With regard to the translation
10 issue, Mr. Johnson, I honestly don't know. I think
11 that's what we talked about a lot at the first
12 meeting was the fact that it puts the defense
13 attorney in a very difficult situation to say that
14 I'm going to rely upon what the other side says is
15 accurate, and Mr. Duncan's point is that may not be
16 any -- it may not be any intention for it to be
17 inaccurate, it may be just a difference in the
18 translation.

19 I mean, I've been around long enough that I've
20 seen all kind of things. You know, my good friend,
21 Jim Johnson, who's no longer with us, tried a case
22 in Laurens one time, it was a civil case, and they
23 brought the interpreters in. And the defense
24 attorney happened to bring an interpreter, even
25 though they sort of agreed, the defense attorney

1 brought his own interpreter and quickly realized
2 that the translation that was being given from the
3 witness was completely inaccurate. And then it
4 turned out that the witness was not the person who
5 the witness claimed to be, that the person who had
6 actually been injured in that automobile wreck had
7 taken off to Mexico and left a very good civil claim
8 there that nobody wanted to abandon that was still
9 in the United States. And so, literally, what they
10 did was they brought in a ringer, and the ringer and
11 everybody else wound up in prison.

12 So I've seen it all and I -- no, I haven't, I
13 haven't seen it all. But I've been around long
14 enough to know that due diligence requires certain
15 things. And even in situations where you've got
16 that on one extreme and then on the other extreme,
17 you've got somebody who just speaks a Puerto Rican
18 dialect as opposed to a different dialect, we just
19 need to work that out, but I don't think we're going
20 to work it out today.

21 There's going to have to be some means of being
22 able to communicate with the Court and among each
23 other related to these documents and identify them
24 for any kind of record that might be made similar to
25 a Bates stamp. I mean, there's going to have to be

1 some way devised where when someone indicates, we're
2 talking about page number, that that is a unique
3 designation for a specific page. And so there's
4 going to have to be some sort of index developed or
5 some sort of mechanism. And I'm not telling any of
6 y'all anything you don't know.

7 I think the only starting point -- the only
8 thing I can do right now is just fire the starting
9 pistol, so here we go. I want y'all to meet. I
10 want y'all to identify the problems you see at that
11 point and we'll go from there.

12 Now, we have one other issue. And I did not
13 realize this until just a moment ago, so I apologize
14 for springing it on you. I did not make the
15 connection because I honestly thought that I was
16 getting inmate communications from somebody in the
17 Edgefield County Jail. It turns out that it's one
18 of the defendants here. Mr. Soltis, it's your
19 client, Lisa Amanda Londono.

20 **MR. SOLTIS:** She had communications with you,
21 Judge? I apologize for it. The first I --

22 **THE COURT:** Well, let me just tell you: She
23 apparently opened or got somebody to open a Yahoo
24 account and is e-mailing me.

25 **MR. SOLTIS:** Maybe we should have her index

1 stuff for us. I'm sorry, Judge. I will discuss
2 that with her.

3 THE COURT: Well, it came -- I will -- I think
4 I said last time I want everybody's e-mail
5 addresses. And I'll distribute it to you,
6 Mr. Soltis. It's just a plea to let me out of jail.
7 I mean, that's what it is. It's an attachment to
8 something and the e-mail -- I almost didn't open it
9 because I was afraid it might be a virus or
10 something attached to -- in the attachment, but it
11 turns out that's what it is. It was a letter from
12 Ms. Londono.

13 Anybody got anything else?

14 Folks, I'm sorry to have to bring you in like
15 this, but I'm in unchartered waters here. So I
16 appreciate it. I appreciate the information, and
17 we'll be in touch. Thank you.

18 (The proceedings were concluded for March
19 21, 2011.)
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 21st of March, 2011.

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

October 19, 2015



Stacy L. Sheppard, RPR
Circuit Court Reporter

1 State of South Carolina
2 County of Lexington Court of General Sessions
3
4

5 State)
6)
7 v.) Transcript of Record
8 Juan Rudolpho Arroyo) 10-GS-47-007
9 Defendant.)

10
11 November 10, 14 - 15, 2011
12 Saluda, South Carolina
13 Lexington, South Carolina

14 B E F O R E:

15 The Honorable William P. Keesley, Judge; and a
16 jury.

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

18 David M. Stumbo, Deputy Assist. Attorney General
19 Jonathan D. Waller, Assist. Attorney General
20 Attorneys for the State

21 Debra R. Chapman, Esquire
22 Attorney for the Defendant
23
24

25 Stacy L. Sheppard, RPR
Circuit Court Reporter

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1 (The following proceedings were held on
2 November 10, 2011, in Saluda, SC.)

3 **THE COURT:** Does he speak English?

4 **MS. CHAPMAN:** Yes, he does, Your Honor.

5 **THE COURT:** All right. What do y'all have?

6 **MR. STUMBO:** Thank you, Your Honor. We're here
7 today on indictment 2010-GS-47-07. This is the
8 State Grand Jury indictment of the State Grand Jury
9 case as we know code name of Black Poppy.

10 Your Honor, Mr. Arroyo here is represented by
11 Ms. Chapman. We intend to call counts one and
12 counts -- and count four of this indictment Monday
13 in Lexington for our term of court next week. Count
14 one is the overall conspiracy count of the
15 indictment, which includes Mr. Arroyo along with
16 about 24 other individuals, some of which have
17 already pled guilty in front of Your Honor, others
18 of which are going to be tried. Mr. Arroyo is the
19 first one that we're going to try on this conspiracy
20 indictment.

21 Furthermore, Your Honor, on count four, it
22 alleges trafficking in heroin between 14 and 28
23 grams. It involves an incident on April the 29th,
24 2010. It was a controlled buy conducted by the
25 investigators in this case with Mr. Arroyo. We

1 intend to call this indictment as well in
2 conjunction with the overall conspiracy in this
3 case.

4 Ms. Chapman has filed two pretrial motions with
5 the State Grand Jury's Clerk's Office, Mr. Park's
6 office. She has filed a motion to suppress the
7 defendant's statements. She also has filed a notice
8 of a Rule 6 objection related to the chain of
9 custody issues.

10 Your Honor, Ms. Chapman and I have been in
11 constant communication about this case. I think we
12 have come to a resolution on most of the motions and
13 I'm going to turn it over to Ms. Chapman, let her
14 put the items that she needs to put on the record
15 here today, Your Honor.

16 **THE COURT:** Yes, ma'am.

17 **MS. CHAPMAN:** May it please the Court, Your
18 Honor. Mr. Stumbo is correct. But, Judge, I have a
19 few other issues that I would like to put on the
20 record concerning what he said. Counts one and
21 four, Judge, as you know, this was also a wiretap
22 case and we had -- I was going to file a motion to
23 suppress the wiretaps, but in talking to Mr. Stumbo,
24 count one and count four, they were -- we have
25 agreed that there will be no mention of wiretaps

1 during the trial.

2 MR. STUMBO: And that's correct, Your Honor.
3 The evidence that we intend to present at trial is
4 not reliant on the wiretap evidence in this case.

5 MS. CHAPMAN: Or derived from wiretaps.

6 MR. STUMBO: Correct. And one of the things we
7 discussed was ultimately, in terms of Ms. Chapman's
8 client, Mr. Arroyo, there was an investigation
9 pending on him by the Horry County narcotics
10 officers before the investigators from SLED and the
11 DEA got involved in this case and obtained the
12 wiretaps for the beach. So, essentially, this
13 controlled buy on April 29th was not in any way
14 connected to the wiretaps in this case.

15 As far as the conspiracy indictment, there is
16 evidence in the conspiracy that, there again, is not
17 derived in any way from the wiretaps. Some of the
18 other counts that Mr. Arroyo is named in the
19 indictment are -- the evidence in those counts are
20 tied to the wiretaps, Your Honor, and that's why we
21 want to put that on the record here today, but we
22 don't intend to offer any of that in evidence
23 derived from or related to the wiretaps in this
24 case.

25 THE COURT: Yes, ma'am. What else?

1 **MS. CHAPMAN:** Judge, also, I was going to file
2 a motion for the grand jury material, but I talked
3 to Mr. Stumbo. He's going to make that available to
4 me tomorrow.

5 Judge, there is -- of course, I'd like to know,
6 and I think Mr. Stumbo supplied most of the
7 information, but also a motion to reveal the CI and
8 all documents. I know that there is one CI who is a
9 federal inmate. I know there's the proffered
10 agreements. I don't have a rap sheet on him. I
11 know there's a plea agreement. If at all possible,
12 I would like to have those materials.

13 **MR. STUMBO:** And, Your Honor, we intend to turn
14 over a full CI packet to Ms. Chapman Monday morning
15 before we strike a jury.

16 **MS. CHAPMAN:** That's fine, Your Honor.

17 And then, Judge, I guess the other thing I'd
18 like to take up: My client was born in Mexico;
19 however, Judge, he's lived in the United States for
20 22 years, and he graduated high school. He attended
21 elementary school, middle school and high school
22 here.

23 Judge, it's my understanding, and I've had no
24 problem in speaking with him, he speaks very good
25 English. However, I didn't want an issue to come up

1 later that Spanish was his native language and that
2 a translator had not been provided for him during
3 the trial. I talked to him about that. He says he
4 does not need a translator. However, Judge, I will
5 tell you there is a video that I anticipate the
6 State playing that is in Spanish and that we will
7 need a translator to translate that transcription.
8 But, Judge, out of an abundance of caution, I would
9 like you to at least talk to my client about going
10 forward without a translator during this trial.

11 **THE COURT:** All right. Are you Juan Rodolpho
12 Arroyo, sir?

13 **DEFENDANT:** Yes, sir.

14 **JUAN RODOLPHO ARROYO,**
15 having been duly sworn, testified as follows:

16 **THE COURT:** You can have a seat, just speak out
17 loudly for me, all right?

18 **DEFENDANT:** Yeah.

19 **THE COURT:** Where did you go to high school?

20 **DEFENDANT:** Abraham Lincoln High School.

21 **THE COURT:** Where is that?

22 **DEFENDANT:** Los Angeles, California.

23 **THE COURT:** You took classes where the classes
24 were taught in English?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** And you graduated from high school?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** How long have you been speaking
4 English?

5 **DEFENDANT:** Eighteen years.

6 **THE COURT:** How old are you?

7 **DEFENDANT:** Twenty-eight.

8 **THE COURT:** And Ms. Chapman said you've been in
9 the United States for 22 years?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Do you feel you have any difficulty
12 understanding English?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** During this entire process when
15 you've been arrested and talking to your lawyer and
16 all of that, have you ever had any difficulty
17 communicating with anyone?

18 **DEFENDANT:** No, sir.

19 **THE COURT:** Can you read English as well?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** The tests you took in high school
22 were given to you in English?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Do you have a driver's license?

25 **DEFENDANT:** No, sir.

1 **THE COURT:** Have you ever had one?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** In the United States?

4 **DEFENDANT:** Yeah. Yes, sir.

5 **THE COURT:** Did you take the test in English?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** All right. Mr. Arroyo, you have a
8 right to have a certified interpreter provided for
9 you. It will not cost you anything. The State will
10 pay for it, if you want one. Do you understand?

11 **DEFENDANT:** Yes, sir. I do not need one, sir.

12 **THE COURT:** So you're willing to waive that?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Is that your own decision, made of
15 your own free will?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you want me to ask him anything
18 else? Do you want to put anything else on the
19 record?

20 **MS. CHAPMAN:** Other than, Your Honor, I've been
21 representing him for, I don't know, almost a year.
22 He's had no problem going over the discovery with
23 me. He's understood me. We've talked at length
24 about this case and about going to trial. I think
25 he understands his rights. He understands all the

1 penalties that are associated with this charge. So,
2 Judge, other than that --

3 **THE COURT:** Well, it's obvious he's fluent in
4 English.

5 **MS. CHAPMAN:** He is.

6 **THE COURT:** You all need to check to see if I
7 need any written forms where he's waiving it. He's,
8 in my view, freely, knowingly, voluntarily and
9 intelligently waived his rights to have a
10 translator. He doesn't need one. He's fluent in
11 English. He can speak it and he can write it. He's
12 graduated high school. His tests were given to him
13 in English. His classes were taught in English. He
14 had a driver's license at one point in time. He
15 obtained that by taking a test that was given to him
16 in English. He's had no difficulty communicating
17 with anyone concerning his case. So I think he's
18 made a free, knowing, voluntarily and intelligent
19 decision to waive a translator, except on the issue
20 of the video tape.

21 Now, you all need to have somebody for that.

22 **MR. STUMBO:** That's correct, Your Honor. And
23 Mr. Parks and I talked about that very issue this
24 morning. We will have a court certified translator
25 on standby for Tuesday and Wednesday of next week

1 when we anticipate playing the video tape.

2 THE COURT: Okay. What else do you have,
3 Ms. Chapman?

4 MS. CHAPMAN: Judge, the only other issue to
5 take up is a motion to suppress the defendant's
6 statements. Judge, there is a post-arrest statement
7 that happened on 8/2 of 2010. Judge, I've talked to
8 my client about it. Matter of fact, I've spoken to
9 him several times about this statement. And after
10 speaking with him, I don't believe I have any
11 grounds to portray to the Court to have that
12 statement suppressed. I've asked him if he was
13 coerced, he said no. I asked him if he was
14 threatened, he said no. He was read his Miranda
15 rights not once but twice. And, Judge, he says the
16 statement -- that was his statement. So, at that
17 time, I would withdraw that part of my motion to
18 suppress.

19 However, Judge, there is another statement that
20 was made by a proffer.

21 THE COURT: Made by what?

22 MS. CHAPMAN: A proffer agreement. And that
23 was an agreement between my client and the State
24 that as long as he told the truth during -- in what
25 I call a debriefing, those statements would not be

1 used against him.

2 Judge, I think it is the State's plan to
3 introduce his proffer. And at this point, until
4 someone can say that Mr. Arroyo lied and he didn't
5 tell the truth to the government, which they have
6 and reserved the right to a polygraph in the
7 proffer, I don't believe that statement can be used.

8 **THE COURT:** All right. We need to have a Denno
9 hearing on this statement whether he indicates -- in
10 my view, whether he indicates he doesn't have a
11 problem with the August 2nd, 2010, statement or not.

12 **MR. STUMBO:** That's my view, Your Honor. I
13 think -- I believe we can do that Monday. It should
14 be a very short Denno hearing.

15 **THE COURT:** That's fine. But, I mean, the
16 State's got the burden of proof.

17 **MR. STUMBO:** Yes, sir.

18 **THE COURT:** And if the State can't establish by
19 the greater weight of the evidence that his
20 statement was properly obtained under Jackson versus
21 Denno, then whether he admits that it was or not is
22 irrelevant. The State's got the burden of proof.

23 **MR. STUMBO:** Right.

24 **THE COURT:** Now, what about this proffer?

25 **MR. STUMBO:** Your Honor, just, first of all, as

1 to the August 2nd statement, we were prepared to put
2 up evidence today, but we obviously can do that -- I
3 know y'all have a lot to do in court today -- we can
4 do that Monday morning, that's not a problem.

5 **THE COURT:** I don't care. I'm here to work.

6 **MR. STUMBO:** Yes, sir. We can do either one.
7 My officer who did give Miranda, Agent Jack Rushing
8 from SLED, is here in the courtroom, and there again
9 we can do that.

10 However, as to the proffer statement, which I
11 think maybe is the more contentious argument here
12 today, Judge, and I have a copy of -- the original
13 copy of the proffer if Your Honor would like to see
14 it while we're discussing this, if I may approach.

15 **THE COURT:** Yes, sir.

16 **MR. STUMBO:** Your Honor, this proffer was
17 executed on June 8th, 2011. As you can see, it's
18 signed by me and it's signed by Mr. Arroyo. It is
19 also signed by Ms. Chapman.

20 Your Honor, pursuant to this proffer,
21 Mr. Arroyo gave a full debriefed statement to our
22 investigators in this case, Agent Burke, Agent
23 Rushing, Agent Hardin, who are in the courtroom here
24 today.

25 Your Honor, it is the State's position, first

1 and foremost, as to this proffer, that we had
2 Mr. Arroyo in court in -- the term of court we had
3 September. We brought him back to court in October.
4 Last month, Your Honor, we brought two defendants in
5 this case over to plead guilty in front of Your
6 Honor and give statements on the record; we brought
7 Mr. Arroyo over again at that point.

8 Part of our requirements under his proffer
9 agreement is that he give full testimony at our
10 request on the record, and that's not specifically
11 written in the agreement, Your Honor, what exactly
12 we wanted him to do. We asked for full corporation
13 and if need be, testimony in open court against any
14 and all co-defendants in this case.

15 When we brought him to court in September and
16 we brought him back to court in October, it was our
17 intention, Your Honor, to essentially examine him on
18 the record as to the things that he had already told
19 the agents for purposes of having that testimony
20 sworn under oath and, for lack of a better term,
21 Your Honor, more useful and usable to the State
22 later in potential trials against co-defendants.

23 It's our position, Your Honor, that his refusal
24 to give those statements in court that day under
25 oath violates his obligation under the proffer to be

1 fully cooperative with the State. And it's our view
2 that in light of that rejection of our requirement
3 that he do that -- that the proffer is a contract,
4 in our view, between us and Mr. Arroyo -- he's
5 broken that contract. And we would represent to the
6 Court today, it's our position that the statements
7 he gave under the proffer agreement are fair game to
8 be used in court.

9 **THE COURT:** All right. Do I need to hear this?

10 **MS. CHAPMAN:** Judge, on page one of this, it
11 clearly states in bold letters, This is not a
12 cooperation agreement, period. And, Judge, it's
13 not. My reading of it, and it says, He must -- on
14 page two, first paragraph, third line from the
15 bottom of that paragraph -- He must also testify
16 fully and truthfully before any grand juries and at
17 any trials or other proceedings if called upon to do
18 so by the State.

19 Well, Judge, what he's talking about is we
20 brought him over thinking it was going to be a plea
21 hearing, Judge. He didn't plea. I don't believe
22 that is -- he hasn't been asked to testify against
23 any -- at a grand jury or at any trials yet. Judge,
24 he's just decided to exercise his right to go to a
25 jury trial.

1 And if you skip down to the middle of the page
2 on page two, it's says, Provided that Mr. Arroyo is
3 truthful as described above, the remaining terms of
4 his agreement are as follows: No statements can be
5 used against him in any criminal case except for as
6 provided herein.

7 Judge, if he takes the stand and he lies, I
8 think this proffer comes in, but it doesn't preclude
9 him from exercising his right to a jury. I think
10 they would -- it's their burden to prove that he
11 lied to them and then I think the statement could
12 come in.

13 And the testimony is in paragraph number three,
14 if he testifies materially different from any other
15 statements made or information provided during this
16 proffer, they may cross-examine him concerning any
17 statements made. But at this point, Judge, I don't
18 believe he's breached this at all. I think he only
19 breaches it if he lies and they find out about it.
20 And they're protected, they've got a paragraph in
21 here that they can polygraph him. And they clearly
22 say that if he fails the polygraph, that constitutes
23 a breach of the agreement. Him exercising his right
24 to a jury trial without proving that he lied to them
25 is not a breach.

1 **THE COURT:** Anything else?

2 **MR. STUMBO:** Your Honor, just to point to Your
3 Honor's -- the first paragraph on page two, not the
4 first full paragraph, but right above that, it says,
5 He must testify fully and truthfully before any
6 grand juries and at any trials, and it says, Or
7 other proceedings --

8 **MS. CHAPMAN:** Or other proceedings.

9 **MR. STUMBO:** -- If called upon to do so by the
10 State.

11 And I would say that our requirement that he
12 testify, when we brought him to court in September
13 and October, was a failure to fully testify in court
14 at those -- at what I would consider "an other
15 proceeding". Even if he didn't plead guilty that
16 day, I believe under the proffer agreement, we could
17 still examine him on the record in court as to the
18 things he had already said to these officers and he
19 refused to do so.

20 And, Your Honor, clearly I think we could offer
21 him a polygraph today and he could come in and take
22 the polygraph. I think that's a secondary issue to
23 this.

24 **THE COURT:** You just brought him to court. He
25 thought he was -- he thought he was going to plead

1 guilty. When he got there, he changed his mind, did
2 not want to plead guilty.

3 MR. STUMBO: Correct.

4 THE COURT: But you said, We still want him to
5 go on the record and testify about all these things
6 we want to ask him about.

7 MR. STUMBO: No, I did not specifically say
8 that, Your Honor, but that was part of the reason
9 for bringing him to court was to get that testimony.

10 THE COURT: So what you're saying is because he
11 did not plead guilty, you think you can introduce
12 all of this stuff that was obtained through the
13 proffer agreement?

14 MR. STUMBO: No, that's not what I'm saying,
15 Your Honor. I think we can require him to give that
16 testimony whether he pled guilty or not under this
17 proffer.

18 THE COURT: I've never seen that in 33 years.
19 I've never seen a defendant brought to court and
20 said, Now, you get on the record and testify, and
21 there's no plea going on and there's no trial going
22 on. So you got to explain to me how you can do
23 that.

24 MR. STUMBO: Well, I think in conjunction, Your
25 Honor, with us holding court for State Grand Jury

1 that week, we could -- it's just like I can recall
2 times in the Solicitor's office when we didn't have
3 a plea, I made an offer for PTI for a particular
4 defendant and then we just had an allocution of
5 statements against co-defendants on the record, but
6 we didn't have a plea, we didn't have a trial.

7 So I know I have done that when we didn't have
8 a plea or a trial, Your Honor. In other words, in
9 exchange for us putting an individual in PTI, we
10 would bring them on the record to testify under oath
11 as to things that they would testify to against the
12 co-defendant.

13 **THE COURT:** Sounds like a deposition in a
14 criminal case to me is what you're trying to do
15 against an accused. I don't see where he's violated
16 the plea agreement.

17 Now, he may and you may be able to get
18 something in, but right now, no, it doesn't give you
19 -- in my view, based on what y'all are telling me, I
20 haven't heard what the statements are, I hadn't
21 heard any testimony, I've just heard argument, but
22 based on what I've heard so far, he can show up at
23 court and say, look, I'm not going forward with my
24 plea; y'all will have to try me. And if he puts up
25 inconsistent evidence with what he told the

1 officers, what I'm hearing Ms. Chapman saying, she
2 agrees that you can then ask him about what he's
3 told the officers, but you can't -- you can't put
4 that up in your case in chief, I don't think.

5 MR. STUMBO: Okay. I understand the Court's
6 ruling. Thank you, Judge.

7 THE COURT: Do y'all need to make this part of
8 the record? So a copy of it needs to be run.

9 Mark that as a court's exhibit.

10 (Court's Exhibit Number 1, proffer
11 agreement, marked for identification.)

12 MR. STUMBO: Your Honor, just as a follow-up,
13 before we move on to the next issue for that --
14 Ms. Chapman and I have discussed this -- we intend
15 to polygraph Mr. Arroyo pursuant to this proffer and
16 if he is untruthful in anything, that will be
17 something we can take up next week.

18 THE COURT: Is he going to consent to a
19 polygraph?

20 MS. CHAPMAN: No, Judge, he's consenting to it.

21 THE COURT: All right.

22 MS. CHAPMAN: Judge, the last motion that I
23 have, and I think this is worked out between me and
24 Mr. Stumbo, I would just like a copy of -- I know
25 there's a co-defendant that's coming in -- I think

1 he's going to supply that to me, his plea agreement
2 and what he pled to.

3 Judge, also that co-defendant, when he pled,
4 and I think it was at the end of October, gave a
5 statement in open court concerning my client. And
6 I've talked to Mr. Stumbo about that. I was not
7 present for it and he informed me about it. And
8 it's my understanding that the court reporter is
9 going to give us that testimony. I would need it
10 for his cross-examination.

11 **MR. STUMBO:** That's correct, Your Honor.
12 Ms. Sheppard is preparing that transcript for me and
13 I think we'll have it pretty soon, according to what
14 she's told me, and that obviously will be available.

15 **THE COURT:** Okay.

16 **MS. CHAPMAN:** And then, Judge, just one more
17 question: I would like to inquire, because I know
18 Your Honor, in some e-mails, had a previous
19 engagement on Tuesday, my client's father has flown
20 in from California for this trial and I just kind of
21 wanted to be able to at least tell my family
22 members, some of them will be traveling from Myrtle
23 Beach, as to when do you think we're going to start?
24 I personally think this is a two-day trial.

25 **THE COURT:** I intend to draw a jury Monday

1 morning, do any pretrial motions we have and start
2 the case Monday afternoon. If you need me to try to
3 be there Tuesday morning, I can. I just have to be
4 at the Capital no later than 12:30. How long they
5 keep me is up to them. They could waive the
6 hearing, I don't know. They will not know
7 themselves until that day.

8 If they call me and waive the hearing, I can
9 just keep going Tuesday, but if they do not call me
10 -- this hearing is for re-election. I've been told
11 by the Judicial Merit Selection Committee to be --
12 for permission to be in Columbia at the Capital no
13 later than 12:30 on Tuesday. I've met with the
14 staff member last week and he told me what I just
15 told y'all about that they may waive mine, but they
16 won't know until the last minute because there's a
17 movement not to waive any of them.

18 But if you all want to start Monday, go Tuesday
19 morning, recess, take a long lunch and come back, I
20 can probably do that. If you want to just skip
21 Tuesday, I can do that. If you want to -- I mean,
22 I'm open for suggestions. It doesn't matter to me.

23 **MR. STUMBO:** Judge, we're fine with coming in
24 Tuesday morning until you need to leave.

25 **THE COURT:** Just don't do me like they did me

1 last time. I mean, I'll never get over that.

2 MS. CHAPMAN: What was that so I won't do it?

3 THE COURT: I told them I had to be at the
4 Capital for my election and they would not stop, and
5 I missed my own election. It was embarrassing. I
6 was the only judge who didn't get there. When I got
7 there, the doors were locked and so -- the members
8 of the Legislature saw me there, but apparently
9 thought I didn't care enough to go up.

10 MR. STUMBO: Well, Judge, you give us a time.

11 THE COURT: I gave them a time last time. I'm
12 just telling you, don't do that to me. I'm not
13 going to let it happen to me again.

14 MR. STUMBO: I wouldn't do that to you, Judge.

15 THE COURT: That's ridiculous. I mean, I told
16 those folks weeks in advance that I had -- the only
17 thing I had to do was be out of there at a certain
18 time. And, of course, they called the biggest case
19 they have and bring the most people in and the most
20 victims and everybody else.

21 I'll shut up. You can tell I'm still upset
22 about that.

23 MR. STUMBO: Was that me, Judge?

24 THE COURT: No. It was your former boss.

25 MS. CHAPMAN: Judge, I don't mind picking it

1 back up till Wednesday. To be honest with you, if
2 I'm going to get the materials on the CI and the
3 plea agreement, I'm going to need time to look at
4 those if he's going to give them to me on Monday.
5 So I certainly wouldn't mind -- and I think we could
6 -- if we had a full day Monday and came back
7 Wednesday, I think we could finish it up.

8 **THE COURT:** You know you're not going to have a
9 full day Monday. You're going to have jury
10 qualifications and jury selection. We can play it
11 by ear as far as I'm concerned. Y'all tell me it's
12 a two-day trial. The only conflict I have is that
13 day.

14 Now, if I get in there and it goes haywire,
15 they may say come back here Wednesday, but right now
16 nothing has shown up.

17 **MR. STUMBO:** Your Honor, I think we can play it
18 by ear. And, you know, Tuesday morning, you know
19 you have to be there at 12:30, we'll shut down at
20 11:00, that's not -- that shouldn't be a problem.

21 **THE COURT:** All right. The only other problem
22 I have is next Friday night.

23 **MR. STUMBO:** I do have some witnesses coming
24 from Myrtle Beach, but, you know, they're pretty
25 flexible. They're law enforcement witnesses, so it

1 shouldn't be a problem.

2 **THE COURT:** Once we start, I am happy to work
3 except when I have to go to the Capital and come
4 back. Any other time, I'll be happy to work.

5 What else do y'all have? Does that help you,
6 Ms. Chapman, or not?

7 **MS. CHAPMAN:** It does, Your Honor.

8 **THE COURT:** Y'all get together and decide, just
9 tell me what you want to do.

10 **MR. STUMBO:** Okay. We'll talk about it, Judge.
11 Monday morning we should have a solid plan ready to
12 go.

13 Your Honor, the only other thing, I think
14 Ms. Chapman did file a Rule 6 motion. Just to put
15 on the record, we intend to have everyone in the
16 chain of custody on the drugs that are going to be
17 introduced in court. Those are the witnesses coming
18 from Myrtle Beach, but they will be here for
19 testimony.

20 The only other thing I have, Judge, in regards
21 to this case is just, as I indicated before, we're
22 going to -- we intend to call counts one and counts
23 four of this indictment. The other remaining counts
24 of the indictment that charge Mr. Arroyo, which are
25 count -- it's count five, which is a trafficking

1 heroin, count -- excuse me, Your Honor -- count six
2 and count seven of the indictment, so count six and
3 seven we are not calling at this time. And we just
4 reserve the right, obviously that we're not
5 intending to resolve those at this trial next week,
6 we would reserve the right to call those later.

7 **THE COURT:** Is there any issue about that?

8 **MS. CHAPMAN:** No, Your Honor, except for he
9 said he was planning on the 8/2, I don't know what
10 count that was, the 8/2 incident when he was
11 arrested. Judge, it's my understanding there were
12 some drugs that were found on that date when he was
13 arrested and that none of that is going to be
14 brought up. We're just going to -- 4/29 to the day
15 he was arrested, and I would assume they're going
16 for the post-arrest statement.

17 **MR. STUMBO:** That's correct. That's the
18 statement we discussed earlier. And the way it will
19 be presented, Your Honor, is just that he was
20 arrested for this other drug activity, this other
21 buy, and that he gave a statement post-arrest, not
22 drugs they found on that day.

23 **THE COURT:** Do you want to do this Denno
24 hearing now?

25 **MS. CHAPMAN:** Judge, I think it would be really

1 quick.

2 MR. STUMBO: I think we can go ahead with that,
3 Judge.

4 THE COURT: Call your witness.

5 MR. STUMBO: Your Honor, the State calls Agent
6 Jack Rushing to the stand.

7 JACK YOUMANS RUSHING, III,
8 having been duly sworn, testified as follows:

9 THE CLERK: Please state your name.

10 THE WITNESS: Jack Youmans Rushing, III.

11 COURT REPORTER: Would you spell your middle
12 name?

13 THE WITNESS: Youmans, Y-O-U-M-A-N-S.

14 DIRECT EXAMINATION

15 BY MR. STUMBO:

16 Q Morning, Agent Rushing. Where do you currently
17 work?

18 A I work for the South Carolina Law Enforcement
19 Division, better known as SLED.

20 Q How long have you worked with SLED?

21 A I've been with SLED since 1999.

22 Q And has that been your entire experience in law
23 enforcement or did you work somewhere else prior to
24 that?

25 A No, sir. In 1995, I became a certified police

1 officer. I initially worked for the House of
2 Representatives, Sergeant at Arms Office.

3 Q And from there, you went to SLED?

4 A Yes, sir.

5 Q Okay. Did you go through the academy?

6 A Yes, sir.

7 Q All right. Did you take certification and
8 classes and training in how to interview potential
9 suspects in criminal cases?

10 A Mostly on-the-job training, yes, sir, but I
11 have been through, you know, basically, a technical
12 class, so, yes, sir.

13 Q And, Agent Rushing, what were you taught in
14 those classes to do before you interview a suspect
15 in a criminal case?

16 A You mirandize them.

17 Q When you say mirandize them, you mean read them
18 their rights so to speak?

19 A Yes, sir.

20 Q And do you do that before you interview any
21 potential suspect in a criminal case?

22 A Yes, sir, in custodial interviews, yes, sir.

23 Q Okay. Now, are you the lead case agent in the
24 Black Poppy investigation that we're here on today?

25 A Yes, sir.

1 Q Did you interview Juan Arroyo, the defendant,
2 pursuant to your investigation in this case?

3 A Yes, sir, I have.

4 Q Okay. What day did you arrest the defendant?

5 A Pardon me. You asked me what day I arrested --

6 Q Yeah. What date was he arrested in this case?

7 A He was arrested on August the 2nd, I believe.

8 Q Okay. And that was pursuant to a traffic stop;
9 is that correct?

10 A Yes, sir.

11 Q And where was that traffic stop?

12 A It was in the Georgetown County area, South
13 Carolina.

14 Q Now, after the traffic stop, where was he
15 taken?

16 A He was taken to a -- it's a satellite office of
17 the Georgetown County Sheriff's Office.

18 Q Okay. Did you read Mr. Arroyo his rights at
19 any time during this time period?

20 A Yes, sir, I did.

21 Q Okay. When did you read him his rights?

22 A To the best of my memory, I know I read them to
23 him once back at the satellite office at the
24 Georgetown Sheriff's Office before any questions
25 were asked of him.

1 Q Okay. And how do you read a defendant their
2 rights? Where do you read them from?

3 A I have a card in my wallet that I keep with me
4 that I use to read to the defendant.

5 Q Do you have that card with you on the stand?

6 A Yes, sir, I do.

7 Q Okay. Could you read the card as you read it
8 to the defendant the day of his arrest?

9 A Yes, sir. This is a suspect's rights, Miranda
10 warning: Number one, you have the right to remain
11 silent. Number two, anything you say can and will
12 be used against you in a court of law. Three, you
13 have the right to talk to an attorney and have him
14 or her present while you're being questioned.
15 Number four, if you cannot afford to hire an
16 attorney, one will be appointed to represent you
17 before any questioning, if you want. Number five,
18 you can decide, at any time, to exercise these
19 rights and not answer any questions or make
20 statements. Number six, do you understand the
21 rights I have explained to you? Number seven,
22 having these rights in mind, do you wish to talk to
23 us now?

24 Q And you read that card in that same manner to
25 this defendant on August 2nd, 2010?

- 1 A Yes, sir.
- 2 Q Okay. Did he, at any time, exercise his right.
- 3 to remain silent?
- 4 A No, sir, not to my knowledge.
- 5 Q Did he ever exercise his right to a lawyer?
- 6 A No, sir.
- 7 Q Did he waive his rights and speak to you that
- 8 day?
- 9 A Yes, sir.
- 10 Q Okay. Did you ever coerce him in any way?
- 11 A No, sir.
- 12 Q Did you threaten him in any way?
- 13 A No, sir.
- 14 Q Did you withhold food or drink from him to wait
- 15 him out that day?
- 16 A No, sir.
- 17 Q Did he, at any time, ask to speak to a lawyer
- 18 in the time you were with him that day?
- 19 A No, sir.
- 20 Q Did he freely and voluntarily waive his rights
- 21 that you read to him off that card and speak to you
- 22 that day and give you a statement?
- 23 A Yes, sir. To my understanding, he freely -- I
- 24 mean, yes, sir.
- 25 Q Was there anyone else present at the time?

1 **A** Yes, sir. I believe there were Agent Mike
2 Furgeson with the Drug Enforcement Administration,
3 DEA, and there was a Immigrations and Customs agent,
4 I believe, Moody, and a drug enforcement -- or a
5 drug task force agent, Ryan Wood, from the Fifteenth
6 Circuit.

7 **Q** Okay. Did Agent Furgeson ever threaten or
8 coerce Mr. Arroyo into making any statements?

9 **A** No, sir.

10 **Q** Did Agent Wood ever threaten or coerce
11 Mr. Arroyo into making any statements?

12 **A** No, sir.

13 **Q** Did Agent Moody ever coerce or threaten
14 Mr. Arroyo into making any statements in your
15 presence that day?

16 **A** No, sir.

17 **Q** Mr. Rushing, I'm going to hand you a document.
18 If you need it to refresh your memory, you may.

19 **A** (Witness reviewing document.)

20 **Q** Now, can you convey to the Court what
21 statements this defendant gave you that day after he
22 waived his Miranda rights?

23 **A** Do you wish me to read it?

24 **Q** Well, you can use it to refresh your
25 recollection.

1 A Okay. Essentially, he gave me information
2 after his Miranda. He provided that he did not have
3 a social security number. He gave me his address in
4 Myrtle Beach. He gave me his current cell phone
5 number. He provided a -- what he explained to me
6 was a ATIN number, which is a -- what he said he
7 used to pay taxes with.

8 He further went on to describe, you know,
9 another blue Nextel phone and a grey Verizon phone
10 that were in his possession at the time of arrest,
11 who gave them to him, the numbers that were stored
12 in those phones. He explained who this individual,
13 Hector, that he said that that contact H was the
14 number that he used to contact him. I asked him if
15 he -- if Hector is a person who Mr. Arroyo got the
16 heroin from and he said, yes. Asked him where he
17 met Hector to get the heroin, and he went on to
18 describe a location in some apartments near Coastal
19 Petro or Forest Brook Street in the Myrtle Beach
20 area, that he drove a black Dodge Durango that
21 morning to meet with him.

22 I asked him to explain the chain of events
23 from, basically, the time that he got out of bed
24 that morning until he was arrested and he basically
25 did that. Do you want me to go through the details

1 of that or no?

2 Q No. Let me follow that up.

3 So if you could, on the record, other than the
4 events of that day, the narcotics that he had on him
5 that particular day, what, if anything, did
6 Mr. Arroyo tell you about the organization that he
7 worked for?

8 A I want to make sure I understand your question.
9 Other than what he told me on this piece --

10 Q No. Other than the events of the day, the
11 traffic stop, the drugs that he had with him in the
12 car, other than those things that are part of what
13 he told you that day, what did he tell you about the
14 organization that he worked for?

15 A He gave the real names of some people that were
16 associated with this drug trafficking organization.
17 He talked about an individual who died of a drug
18 overdose in Charleston.

19 Q Did he give you the name of that individual?

20 A Yes, sir.

21 Q What was his name?

22 A Carlos Felipe, and it's Ramirez. He told other
23 information that he -- describing Hector, and his
24 real name is Jorge Carransa, that he's the person in
25 control of the organization since another individual

1 named Big Pelon went back to Mexico.

2 Q Let me slow you down there, Agent Rushing. You
3 said Jorge Carransa and then you said Big Pelon. Is
4 that the same individual or did he act -- identify
5 those two as two different people?

6 A Two different people. Jorge Carransa, he said
7 -- Arroyo said Hector's real name is Jorge Carransa
8 and that he is the person -- he meaning Hector or
9 Jorge Carransa is the person in control of the
10 heroin trafficking organization since Big Pelon went
11 back to Mexico. So there's actually two people.

12 Q Did he mention -- you said Big Pelon. Did he
13 give you a name associated with Big Pelon?

14 A All he knew -- all he mentioned here is -- or
15 what I have written here is that Big Pelon is also
16 known as Carransa. No further name for Big Pelon.

17 Q And he indicated that Jorge Carransa was
18 currently in control since Big Pelon had gone back
19 to Mexico; is that correct?

20 A Yes, sir. Furthermore, he mentioned an
21 individual -- or I asked him about who Little Pelon
22 was. He said Little Pelon is the guy who answers
23 the phone, dispatcher to coordinate the sale of
24 heroin in the Myrtle Beach area.

25 I had asked him to then explain what that

1 meant, explain the chain of command for the heroin
2 trafficking organization as he knows it, as Juan
3 Arroyo knows it. And Arroyo then explained that an
4 individual named Beto, B-E-T-O, is the main guy in
5 Mexico. He said Big Pelon is over Hector, and
6 Hector supplies Little Pelon, Felipe -- Felipe is --
7 I have in parentheses here, John and BaBa, B-A-B-A
8 -- in Charleston and Pilo's people in Columbia,
9 South Carolina. And then he furthermore said that
10 -- Arroyo said that he delivered heroin to
11 Charleston and Columbia. And I have an agent's note
12 here is that John's real name is Bart Tanner.

13 Q So just to wrap that up, the Hector individual
14 he identifies as supplying heroin to Little Pelon,
15 to Felipe --

16 A Yes, sir.

17 Q -- to BaBa and to who he knew as John?

18 A John.

19 Q In Charleston?

20 A Yes, sir.

21 Q Okay.

22 A And like I say, that's an agent's note as to
23 what John's real name is, Bart Tanner. In other
24 words, I knew that he --

25 Q And so, Agent Rushing, this defendant -- and is

1 this Juan Arroyo --

2 **A** Yes, sir.

3 **Q** -- sitting here at the table by Ms. Chapman?

4 **A** To the best of my knowledge, that's Mr. Juan
5 Arroyo.

6 **Q** This defendant told you that he had delivered
7 heroin to Charleston, South Carolina, as well for
8 the organization?

9 **A** Correct.

10 **Q** And he said that Beto was the guy that was in
11 charge in Mexico; right? That was his name?

12 **A** Yes, sir. Bito, Beto, B-E-T-O, that's my best
13 spelling.

14 **Q** Did Mr. Arroyo identify who his girlfriend was
15 in his statement?

16 **A** Yes, he did.

17 **Q** And who was Mr. Arroyo's girlfriend at the
18 time?

19 **A** Michele Denise Cansler, C-A-N-S-L-E-R.

20 **MR. STUMBO:** That's all the State has at this
21 time, Your Honor.

22 **THE COURT:** How long do you think your cross
23 will be?

24 **MS. CHAPMAN:** About three questions, Your
25 Honor.

1 THE COURT: Go ahead.

2 CROSS-EXAMINATION

3 BY MS. CHAPMAN:

4 Q Agent Rushing, are you familiar with the waiver
5 of rights form?

6 A Yes.

7 Q Did you have Mr. Arroyo sign a waiver of rights
8 form?

9 A No, ma'am.

10 Q Is there any reason why?

11 A Probably because I didn't have one available,
12 or my card was readily available.

13 Q But you did interview him at the Georgetown
14 Sheriff's Office; correct?

15 A I believe it's a satellite office, yes, ma'am.
16 I don't think it's like the official one downtown.

17 Q Did you have him sign any kind of
18 acknowledgment form that you read him his Miranda
19 rights?

20 A No, ma'am, I didn't.

21 Q Do you normally do that?

22 A I have done it in the past, yes, ma'am, but
23 most of the time it's from the card that I keep in
24 my wallet.

25 Q Okay. So most of them are oral statements?

1 A Yes, ma'am.

2 Q At any time, did you discuss with my client
3 about how much time he was looking at?

4 A I don't remember.

5 Q You don't remember telling him that he was
6 looking at 25 years if he didn't help himself?

7 A It's possible. I just don't remember that.

8 Q Did he appear nervous?

9 A Ma'am?

10 Q Did he appear nervous?

11 A Having to -- yes, I assume so. I mean, again,
12 it's been a while ago.

13 Q Would it be safe to say most people are scared
14 when they're arrested; is that not true?

15 A Correct.

16 MS. CHAPMAN: That's all I have, Your Honor.

17 THE COURT: Redirect?

18 MR. STUMBO: Just a couple, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. STUMBO:

21 Q Did Mr. Arroyo ever appear to not understand
22 his rights to have an attorney and to remain silent?

23 A No, sir.

24 Q Did he ever appear to not understand what you
25 were saying to him?

1 A No, sir, as far as comprehension.

2 Q Right.

3 A No, sir.

4 Q You verified his ability to speak English and
5 understand English?

6 A Yes, sir. And if you want me to go further
7 with that, I mean, he even further, after he told us
8 a few things, he agreed to ride with law enforcement
9 and actually, you know, physically identify people
10 later. So, I mean, if there was any doubt of
11 comprehension, I mean, he -- when we asked him that,
12 he obliged us by riding with us.

13 Q He was ready to cooperate beyond just the
14 statements he gave, but to identify other parties;
15 correct?

16 A Yes, sir.

17 MR. STUMBO: No further questions.

18 THE COURT: Recross?

19 MS. CHAPMAN: No, Your Honor.

20 THE COURT: Thank you, sir. You may step down.
21 Do you have other witnesses?

22 MR. STUMBO: Not for Denno, Your Honor.

23 THE COURT: Are you going to offer any
24 evidence?

25 MS. CHAPMAN: No, Your Honor.

1 **THE COURT:** If there's nothing further, the
2 Court finds that the State has met its requisite
3 burden of proof and has established that before the
4 defendant was asked any questions or subjected to
5 any type of interrogation by law enforcement, he was
6 properly advised of his constitutional rights and
7 given the Miranda warnings. Specifically, he was
8 told that he had the right to remain silent, that
9 whatever he said could be used in court, that he had
10 the right to talk to an attorney and have an
11 attorney present with him during any questioning,
12 that he had the right to have an attorney appointed
13 for him if he could not afford one, that he could
14 stop at any time and exercise his rights and request
15 an attorney, that he acknowledged his understanding
16 and that he waived his rights and gave a statement.

17 The Court further finds that the statements
18 that were produced that were testified about today
19 were not the product of any improper influence, any
20 coercion, any threat, any force or fear, he was not
21 deprived of any essentials concerning food or drink,
22 not subjected to any type of atmosphere that would
23 be improper.

24 He never asked to speak to an attorney, never
25 attempted to exercise his rights. And his waiver of

1 Miranda and his constitutional right to remain
2 silent and his constitutional right to an attorney,
3 those were all done knowingly, intelligently and
4 voluntarily. He understands the English language.

5 The fact that his statements were not reduced
6 to writing and were not -- that his waivers were not
7 set forth on a waiver of rights form is not
8 controlling. It's just one factor that can be
9 considered. The Court has considered those things
10 and has still found that the State met its burden of
11 proof. Any nervousness he may have had certainly
12 does not rise to the level of overcoming his free
13 will. If a proper foundation is established at
14 trial, the statements will be admissible in
15 evidence.

16 Do y'all have anything else?

17 MS. CHAPMAN: No, Your Honor.

18 MR. STUMBO: Nothing for today, Your Honor.

19 THE COURT: So that's it?

20 MS. CHAPMAN: That should take care of all our
21 pretrial motions except for the statement by the
22 proffer.

23 MR. STUMBO: Your Honor, we can revisit that
24 Monday, depending on what happens with potential
25 polygraph, I think we can take that up Monday after

1 we draw a jury.

2 **THE COURT:** The jury comes in at 9:30.

3 **MS. CHAPMAN:** Thank you, Your Honor.

4 **THE COURT:** Thank you.

5 (The proceedings were concluded for November
6 10, 2011.)

7 (The following proceedings were held on
8 November 14, 2011, in Lexington, SC.)

9 **THE COURT:** All right. The jury panel is
10 qualified.

11 Ladies and gentlemen, the next stage in the
12 process is that we're going to turn to a specific
13 case and focus on that. I'll be asking you
14 questions. The process will seem very similar to
15 what we just went through, but the focus is going to
16 be different.

17 What I'm going to be doing is asking you
18 questions. The purpose of these questions is to
19 obtain from you information about any possible
20 connection you may have to the case or anyone in it,
21 any interest, bias, prejudice that you might have,
22 whether you or someone close to you has ever been
23 involved in a similar situation or there's something
24 about your situation that might in any way have an
25 impact upon your ability to be a fair and impartial

1 juror. If you keep in mind that the goal of all of
2 this is to have a jury serving that's fair and
3 impartial, I think the questions will make more
4 sense to you.

5 Remember that you're under oath. Remember that
6 if you have any doubt about whether any of these
7 things apply to you, you need to discuss that with
8 me and let me resolve the doubt. And remember that
9 if you ever want to come down front to discuss
10 anything, just feel free to let me know that you
11 prefer to talk about it down front.

12 All right. Mr. Attorney General, call your
13 first case.

14 **MR. STUMBO:** Thank you, Your Honor. If it
15 pleases the Court.

16 State calls indictment number 2010-GS-47-07,
17 that's an indictment for unlawful drugs, and it's
18 multiple counts, Your Honor. The State is calling
19 today, the State of South Carolina versus Juan
20 Rodolpho Arroyo. And this is counts one -- count
21 one of the indictment, which is for trafficking
22 heroin greater than 28 grams under a conspiracy
23 theory. The State's also calling count four of the
24 indictment, Your Honor, which is trafficking heroin
25 between 14 to 28 grams.

1 Your Honor, this indictment was returned as a
2 true bill by the State Grand Jury and filed with the
3 clerk's office on February 15th, 2011. The State's
4 ready for trial, Your Honor. If I may approach.

5 **THE COURT:** Yes, sir.

6 All right. Ms. Chapman, your client's been --
7 your client has been arraigned or waives
8 arraignment; is that correct?

9 **MS. CHAPMAN:** That's correct, Your Honor.

10 **THE COURT:** Thank you very much.

11 All right. Ladies and gentlemen of the jury
12 panel, please give me your attention. We're about
13 to qualify a jury to hear a case which is captioned,
14 The State of South Carolina versus Juan Rodolpho
15 Arroyo. Mr. Arroyo is charged in two separate and
16 distinct counts of an indictment that I'm going to
17 read to you. Each of these, as I indicated, is
18 separate and distinct, each has to stand or fall on
19 its own merit or lack of merit.

20 Mr. Arroyo is presumed to be innocent. It is
21 incumbent upon the State of South Carolina, having
22 brought these charges, to prove every essential
23 element of each offense charged beyond a reasonable
24 doubt.

25 In count one of the indictment, Mr. Arroyo is

1 charged with trafficking heroin greater than 28
2 grams. That indictment -- that count of the
3 indictment reads that Jose Juan Garcia Robles;
4 Francisco Guerrero-Flores; Juan Rodolpho Arroyo;
5 Gadiel Garcia De Dios, also known as Andres
6 Sandavol; Manuel Hernandez Robles; Joshua Griffin;
7 Alfredo Perez-Perez; Bobby Burroughs; Kenneth
8 Andrews; Brainen Borchers; Barbara Breitenbach;
9 William Christopher Brown; Michael Rion Byrd; Edgar
10 Allan Craig; Wendy Annette Craig; Ian Matthew
11 Craven; James Adam Gleaton; Jeremy Lewis Gray; Larry
12 Allen Hourihan; Lisa Amanda Londono; Peter Turanec;
13 Anselmo Ismael Villalobos-Alcala; Jorge Luis
14 Gutierrez-Iberra; Joel Munez Martinez, also known as
15 Noel Adan Verdin-Aldama; Bart Jason Tanner and other
16 persons whose names are known and unknown to the
17 State Grand Jury in Lexington County, South -- I'm
18 sorry -- Lexington County, Horry County, Florence
19 County and Charleston County, South -- Charleston,
20 South Carolina, during the period of time extending
21 from on or about, between September 9 -- I apologize
22 -- September 2009 to the present -- and the date of
23 the indictment is February 15, 2011 -- did conspire
24 to sell, manufacture, deliver, purchase or knowingly
25 become in actual or constructive possession or

1 knowingly attempt to become in actual or
2 constructive possession or provided a financial
3 assistance or otherwise aided, abetted or brought
4 into this state more than 28 grams of heroin, a
5 controlled substance under the provisions of section
6 44-53-110 et sequitur, South Carolina Code of Laws,
7 1976, as amended, such conduct not having been
8 authorized by law and such activity occurring and/or
9 having significance in more than one county of this
10 state or arising out of or in connection with a
11 crime having significance in more than one county of
12 this state. That's an indictment for trafficking
13 heroin greater than 28 grams under a conspiracy
14 theory.

15 Upon his arraignment on this charge, the
16 defendant, Mr. Arroyo, has entered a plea of not
17 guilty.

18 Mr. Arroyo is also charged in another count of
19 the indictment as follows: It's alleged that Juan
20 Rodolpho Arroyo did, in Horry County, on or about
21 April 29, 2010, sell, manufacture, deliver, purchase
22 or bring into this state or provide financial
23 assistance or otherwise aid, abet, attempt or
24 conspire to sell, manufacture, deliver, purchase or
25 bring into this state or knowingly become in actual

1 or constructive possession or knowingly attempt to
2 become in actual or constructive possession of more
3 than 14, but less than 28 grams of heroin, a
4 controlled substance under the provisions of section
5 44-53-110 et sequitur of the South Carolina Code of
6 Laws, 1976, as amended, such conduct not having been
7 authorized by law and such activity occurring and/or
8 having significance in more than one county of this
9 state or arising out of or in connection with a
10 crime having significance in more than one county of
11 this state. That is an indictment for trafficking
12 heroin greater than 14 grams, but less than 28
13 grams, which is alleged to have occurred on or about
14 April 29, 2010.

15 Upon his arraignment on this charge, Mr. Arroyo
16 has entered a plea of not guilty. He is presumed to
17 be innocent on both charges. It is incumbent upon
18 the State of South Carolina to prove every essential
19 element of each offense charged against him beyond a
20 reasonable doubt. Mr. Arroyo has no obligation to
21 prove anything at all.

22 Now, I'm going to be asking you some questions.
23 If any of these questions apply to you or you have
24 doubt about whether they apply to you, please stand.
25 And when I call on you, please identify yourself by

1 your name and your juror number, listen carefully to
2 the question I ask of you and answer that question.

3 All right. Is Juan Rodolpho Arroyo in the
4 courtroom?

5 **MS. CHAPMAN:** Yes, Your Honor.

6 **THE COURT:** Mr. Arroyo, I need you to stand and
7 turn around and face the jury so they can see you.

8 Thank you very much, sir. You may be seated.

9 Is there any member of the jury panel who is
10 related by blood or marriage or connected by
11 employment with the defendant in these cases, Juan
12 Rodolpho Arroyo; if so, please stand?

13 (There was no response.)

14 **THE COURT:** Mr. Arroyo will be represented by
15 Ms. Debra Chapman.

16 **MS. CHAPMAN:** I'm Debbie Chapman. I'm a
17 Columbia lawyer. I'm a private lawyer. I do
18 criminal defense. I have a solo practice. I also
19 -- and I live in Chapin. I have a married name of
20 McCaslin. So you may know me by Debbie Chapman or
21 Debbie McCaslin. Thank you.

22 **THE COURT:** Thank you, ma'am.

23 All right. The following persons have been
24 identified as potential witnesses for the State. If
25 any of these persons happen to be present in the

1 courtroom as their name is called, I need for that
2 person to stand and face the jury.

3 Now, ladies and gentlemen of the jury, if I
4 read out a name and the person's not here and you
5 know someone by that name or there's an issue
6 related to someone by that name and you need more
7 information about that person, just let me know and
8 I'll find out from the attorneys some more
9 identifying information about the person.

10 The potential witnesses for the State include:
11 Special Agent Jack Rushing, III, who is with SLED --
12 thank you, Agent Rushing -- Agent Adam Hardin, who
13 is with the DEA -- thank you, Agent Hardin --
14 Investigator Mike Burke of the Lexington County
15 Sheriff's Department -- thank you, Investigator
16 Burke -- Agent Ryan Wood is with the Fifteenth
17 Circuit Drug Enforcement Unit; Agent Mike Kitelinger
18 is with the Fifteenth Circuit Drug Enforcement Unit;
19 Lisa D.S. Floyd is with the Horry County Police
20 Department; Sharon Lilly is with the Horry County
21 Police Department; Agent David Moody is with
22 Immigration and Customs Enforcement, also known as
23 ICE; Agent Mike Furgeson is with the DEA, Federal
24 Drug Enforcement Administration; Bart Jason Tanner;
25 Michelle Cansler, C-A-N-S-L-E-R; Emigdio,

1 E-M-I-G-D-I-O, Penaloza.

2 MR. STUMBO: I think it's Penaloza.

3 THE COURT: Penaloza, P-E-N-A-L-O-Z-A.

4 Now, to the best of your knowledge, ladies and
5 gentlemen, are any of you related by blood or
6 marriage or connected by employment with any of the
7 potential witnesses for the State; if so, please
8 stand?

9 (There was no response.)

10 THE COURT: The State of South Carolina will be
11 represented by Assistant Deputy Attorney General
12 David Stumbo and Assistant Attorney General Jonathan
13 Waller.

14 MR. STUMBO: Thank you. We work for Attorney
15 General Alan Wilson, myself and Mr. Waller. Also
16 working with our office, who you'll see in the
17 courtroom this week, is Ms. Alice Douglas. She's
18 the young lady who's sitting here on the bench.
19 You'll see her in and out of the courtroom. She
20 also works with the Attorney General.

21 THE COURT: Thank you, Mr. Stumbo.

22 Ladies and gentlemen, do any of you, to the
23 best of your knowledge, know anything at all about
24 this matter? Has anyone talked to you about this
25 situation? Have you heard, seen or read anything

1 about it in any media outlet or through any media
2 outlet? Do you know anything whatsoever about the
3 underlying allegations or about this matter? If so,
4 please stand.

5 (There was no response.)

6 (Juror leaves the courtroom.)

7 **THE CLERK:** That's one of our jurors that went
8 out, Your Honor.

9 **BAILIFF:** Your Honor, she went to get a drink
10 of water. She'll be right back.

11 **MS. CHAPMAN:** Judge, may I approach right
12 quick?

13 **THE COURT:** Sure.

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

17 (Juror returns to the courtroom.)

18 **THE COURT:** What's your name, ma'am?

19 **JUROR:** Melissa Ricard.

20 **THE COURT:** Do you know your juror number?

21 **JUROR:** 87.

22 **THE COURT:** Ms. Ricard is juror number 87. She
23 was having trouble controlling her coughing. She
24 stepped outside. She heard -- she was in the
25 courtroom when the question was posed.

1 Ms. Ricard, are you okay?

2 JUROR: Yes, sir.

3 THE COURT: Are you able to go ahead?

4 JUROR: Yes, sir.

5 THE COURT: Now, do any of y'all know anything
6 at all about this matter; if so, please stand?

7 (There was no response.)

8 THE COURT: All right. Apparently, I missed
9 two potential witnesses. If these potential
10 witnesses are present, I need for that person to
11 stand as his or her name is called: Raymond
12 Gonzales -- Mr. Gonzales, would you come down here
13 for me -- and Martha Canas, C-A-N-A-S. Just turn so
14 the jury can see you. Would you just turn and face
15 the jury, please?

16 Thank you very much. You may return to your
17 seats.

18 Is there any member of the jury panel who is
19 related by blood or marriage or connected by
20 employment with Raymond Gonzales; if so, please
21 stand?

22 (There was no response.)

23 THE COURT: Any member of the jury panel
24 related by blood or marriage or connected by
25 employment with Martha Canas; if so, please stand?

1 (There was no response.)

2 **THE COURT:** Do any of you have any connection
3 of any kind or do any of your immediate family
4 members or any of your close personal friends have
5 any connection of any kind with the State Law
6 Enforcement Division, also known as SLED, the
7 Federal Drug Enforcement Administration, the
8 Lexington County Sheriff's Department, the Fifteenth
9 Circuit Drug Enforcement Unit, the Horry County
10 Police Department, Immigration and Customs
11 Enforcement or the South Carolina Attorney General's
12 Office; if so, please stand?

13 (Jurors stand.)

14 **JUROR:** I have a question, sir.

15 **THE COURT:** What's your name, sir?

16 **JUROR:** My name is Jack Carson, juror 33. This
17 year --

18 **THE COURT:** Hold on a second, please.

19 All right. Mr. Carson, go ahead.

20 **JUROR:** Pertaining to this year, my
21 brother-in-law lives in Gaston, South Carolina, had
22 a problem with alcohol one evening and started
23 destroying private property. Lexington County
24 Sheriff's Department was notified. They couldn't
25 catch him the two times. When he was on the

1 property the third time, the officer came back --

2 THE COURT: Wait a second. I think you need to
3 come down --

4 JUROR: Well, it's pertaining to he got
5 caught --

6 THE COURT: Wait a minute. Don't argue with
7 me.

8 JUROR: No, sir, I'm not.

9 THE COURT: Just come down front. I don't know
10 what you're about to say.

11 (The following bench conferences were held
12 on the record.)

13 THE COURT: Right here, Mr. Carson.

14 JUROR: He was caught on my mother-in-law's
15 property with \$600 cocaine possession, and I'm
16 pretty sure it was this year.

17 THE COURT: Okay. Is there anything about that
18 experience that would affect your ability to be a
19 fair and impartial juror in the case?

20 JUROR: No, sir. I just was bringing that up,
21 you said if -- anything about it, but I did know
22 about it when it happened.

23 THE COURT: You did the right thing. I just
24 need to ask you these questions. Do you have any
25 doubt at all about your ability to be a fair and

1 impartial juror in the case?

2 JUROR: No, sir.

3 THE COURT: Anything about the relationship or
4 experience with Lexington County Sheriff's Office
5 that affects your ability to be fair and impartial?

6 JUROR: No, sir.

7 THE COURT: All right. Thanks very much, Mr.
8 Carson.

9 Juror number 33, Mr. Carson's eligible to
10 serve.

11 BAILIFF: Number 134, Your Honor.

12 THE COURT: We're at the side. The attorneys
13 have been present the entire time. If you want your
14 client over here, he can come.

15 Mr. Mann?

16 JUROR: Yes, sir.

17 THE COURT: What's your situation?

18 JUROR: A neighbor of mine works for SLED, and
19 I know David Stumbo.

20 THE COURT: How do you know Mr. Stumbo?

21 JUROR: Attend the same church.

22 THE COURT: How would you describe your
23 relationship? Is it friends, acquaintances or what?

24 JUROR: Friends.

25 THE COURT: Friends? If you're on this jury,

1 would you be able to decide this case without regard
2 to what Mr. Stumbo may think of your decision?

3 JUROR: Uh-huh.

4 THE COURT: Sir?

5 JUROR: Yes, sir.

6 THE COURT: Would you be the least bit
7 concerned about the next time you saw him?

8 JUROR: No, sir.

9 THE COURT: So you can rule against his
10 position if the law and evidence support that?

11 JUROR: Yes, sir.

12 THE COURT: Any doubt in your mind about that?

13 JUROR: No doubt.

14 THE COURT: What about your neighbor that works
15 for SLED? Do you know what office?

16 JUROR: Governor detail.

17 THE COURT: Governor detail?

18 JUROR: Yes, sir.

19 THE COURT: And is there anything at all about
20 your relationship with him or with SLED that would
21 affect your ability to be fair and impartial as a
22 juror in the case?

23 JUROR: No, sir.

24 THE COURT: Got any doubt in your mind?

25 JUROR: No doubt.

1 **THE COURT:** So there's nothing about either
2 relationship that would in any way affect you or
3 cause you any concern about your ability to be fair
4 and impartial as a juror?

5 **JUROR:** No, sir.

6 **THE COURT:** All right. Thank you, sir. Have a
7 seat back there.

8 Did y'all have anything else you wanted me to
9 ask him?

10 **MS. CHAPMAN:** No. I'm sorry, Your Honor.

11 **THE COURT:** Mr. Mann is 134. He's eligible to
12 serve.

13 **BAILIFF:** Number 110, Your Honor.

14 **THE COURT:** Mr. Jowers, yes, sir.

15 **JUROR:** One of my daughter-in-laws is an
16 attorney with the Attorney General's Office, Your
17 Honor.

18 **THE COURT:** Step back over there for me a
19 second.

20 Do y'all want him set aside?

21 **MR. STUMBO:** Uh-huh.

22 **MS. CHAPMAN:** Yes, sir.

23 **THE COURT:** Mr. Jowers, I'm going to set you
24 aside. You're free to go. Thank you.

25 Mr. Jowers is 110. He's related to someone who

1 works in the Attorney General's Office. He's
2 excused.

3 BAILIFF: Number 184, Your Honor.

4 THE COURT: Ms. Richardson.

5 JUROR: Yes, sir.

6 THE COURT: What's your situation?

7 JUROR: A very close friend of mine works for
8 SLED. She assesses all of the concealed weapons
9 permits.

10 THE COURT: Is there anything about that
11 relationship that would affect your ability to be a
12 fair and impartial juror in the case?

13 JUROR: No, sir.

14 THE COURT: You can decide the case without
15 regard to what she may think of your decision?

16 JUROR: She doesn't need to know what my
17 decision is.

18 THE COURT: Would that enter into your mind?
19 Would you be concerned about her finding out?

20 JUROR: No, sir.

21 THE COURT: So is there any doubt whatsoever
22 about your ability to be fair and impartial as a
23 juror in the case?

24 JUROR: No, sir.

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

1 Ms. Richardson is 184. She's eligible to serve.

2 BAILIFF: Number 127, Your Honor.

3 THE COURT: Mr. Lott.

4 JUROR: I'm not sure if this makes any
5 difference, but I've got bail money posted for
6 somebody that's in an ICE investigation.

7 THE COURT: Would you mind telling me who the
8 person is?

9 JUROR: Carlos Rodriguez.

10 THE COURT: Do you know what he's charged with?

11 JUROR: Being in this country illegally.

12 THE COURT: But no other -- no crime?

13 JUROR: No.

14 THE COURT: Is there anything at all about your
15 relationship or experience with ICE that affects
16 your ability -- or with Mr. Rodriguez that affects
17 your ability to be a fair and impartial juror in the
18 case?

19 JUROR: No.

20 THE COURT: Any doubt in your mind?

21 JUROR: No doubt in my mind.

22 THE COURT: You can decide the case without
23 regard to any immigration issues that might exist?

24 JUROR: Yes.

25 THE COURT: You're confident of that?

1 JUROR: I feel confident, yeah.

2 THE COURT: Thank you very much.

3 Mr. Lott's 127. He's eligible to serve.

4 BAILIFF: Number 87, Your Honor.

5 THE COURT: Ms. Ricard.

6 JUROR: My brother-in-law worked for SLED in
7 narcotics and has recently become -- went into
8 investigation. I just want to make sure it was
9 okay.

10 THE COURT: Your brother-in-law worked in
11 narcotics at SLED?

12 JUROR: Yes.

13 THE COURT: And now he's gone back to
14 investigations?

15 JUROR: Yes.

16 THE COURT: What's his name?

17 JUROR: Travis Bass.

18 THE COURT: Does he live in the Midlands?

19 JUROR: Yes, sir. He works for Lexington
20 County.

21 THE COURT: He's assigned to Lexington County
22 primarily?

23 JUROR: Yes. And his wife, she also works for
24 Lexington County, but it's not for SLED.

25 THE COURT: Does she work for law enforcement?

1 JUROR: Yes.

2 THE COURT: Lexington County Sheriff's Office?

3 JUROR: She's inventory. I'm not sure exactly
4 what her title is, but her name is Rebecca Bass.

5 THE COURT: Do you think she works for the
6 sheriff's office?

7 JUROR: Yes.

8 THE COURT: In inventory?

9 JUROR: Yes.

10 THE COURT: Inventory like in the evidence room
11 or do you know?

12 JUROR: I'm not 100 percent sure.

13 THE COURT: I'm going to set you aside,
14 Ms. Ricard. You're free to go. You don't have to
15 come back. Okay?

16 JUROR: Thank you.

17 THE COURT: Thank you, ma'am.

18 87 is set aside on this case. She's related to
19 a SLED officer and a deputy -- or an officer with
20 Lexington County.

21 Your name?

22 BAILIFF: Number 133, Your Honor.

23 THE COURT: Reverend Maltby.

24 JUROR: Yes. I have several parishioners who
25 are in law enforcement, too, for Lexington County

1 Sheriff, but not any kind of close intimate
2 friendship, but I just wanted to be forthcoming with
3 that information.

4 THE COURT: Is there anything at all about the
5 relationship that affects your ability to be fair
6 and impartial?

7 JUROR: No.

8 THE COURT: You can decide the cases without
9 regard to what they may think of your decision?

10 JUROR: Yes, absolutely.

11 THE COURT: Do you have any doubt in your mind
12 about any of that?

13 JUROR: No.

14 THE COURT: Thanks very much.

15 Reverend Maltby is 133. He's eligible to
16 serve.

17 (The bench conferences were concluded.)

18 THE COURT: Do any of you live in close
19 proximity to the area of Lexington County where I-26
20 crosses 378 near the Lexington Hospital?

21 (Jurors stand.)

22 THE COURT: Y'all come down front, please.

23 Attorneys may join me on the side as well if
24 you like.

25 (The following bench conferences were held

1 on the record.)

2 BAILIFF: Number 109, Your Honor.

3 THE COURT: Ms. Jordan?

4 JUROR: Yes, sir.

5 THE COURT: Do you live kind of behind the
6 hospital?

7 JUROR: I live actually between 378 and Number
8 1, frontage road off of I-20, if that makes any
9 sense.

10 THE COURT: Yes, ma'am. You live about three
11 or four miles from 26?

12 JUROR: Yes, sir.

13 THE COURT: Okay. I don't think I need
14 anything else from you, Ms. Jordan. Thank you.

15 Ms. Jordan is 109. She's eligible to serve.

16 BAILIFF: Number 40, Your Honor.

17 THE COURT: Ms. Cooper?

18 JUROR: Yes, sir.

19 THE COURT: Mineral Springs Road, where is
20 that?

21 JUROR: About two-tenths of a mile from
22 Leaphart Road, which is less than five minutes from
23 Lexington Medical Center.

24 THE COURT: Do you know where the Food Lion is
25 right there down from the Lexington Medical Center

1 going toward town?

2 JUROR: Yes, sir.

3 THE COURT: How close are you to there?

4 JUROR: Five or six -- five miles maybe.

5 THE COURT: Okay. That's all I need. Thank
6 you, ma'am.

7 Ms. Cooper is juror number 40. She's eligible
8 to serve.

9 BAILIFF: Number 136, Your Honor.

10 THE COURT: Mr. Maroney?

11 JUROR: Yes, sir.

12 THE COURT: How close do you live to the
13 hospital, Mr. Maroney?

14 JUROR: About a mile and a half, two miles.

15 THE COURT: Which direction?

16 JUROR: Down 378 toward Lexington.

17 THE COURT: Past I-20 or not?

18 JUROR: No, sir.

19 THE COURT: So you live between I-20 and I-26?

20 JUROR: Yes, sir.

21 THE COURT: Do you or your family shop at the
22 Food Lion there?

23 JUROR: Yes, sir.

24 THE COURT: If information is developed here in
25 this case that the alleged transactions were in that

1 area, some of them were alleged to be in that area,
2 would that affect your ability to be a fair and
3 impartial juror?

4 JUROR: No, sir.

5 THE COURT: Have any doubt in your mind about
6 that?

7 JUROR: No, sir.

8 THE COURT: All right. Thanks very much.
9 Mr. Maroney is 136. He's eligible to serve.

10 BAILIFF: Number 203, Your Honor.

11 THE COURT: Mr. Smarr?

12 JUROR: Yes, sir.

13 THE COURT: How close do you live to the
14 hospital?

15 JUROR: I'm five minutes away.

16 THE COURT: Which direction?

17 JUROR: Towards Lexington, live off of Mineral
18 Springs Road.

19 THE COURT: So you live in the area between 20
20 and 26?

21 JUROR: Yes, sir.

22 THE COURT: Do you or your family shop at that
23 Food Lion, which is down from the hospital?

24 JUROR: No, sir.

25 THE COURT: That's all I need to know. Thank

1 you.

2 Mr. Smarr is 203. He's eligible to serve.

3 Yes, ma'am.

4 **BAILIFF:** Number 189, Your Honor.

5 **THE COURT:** Ms. Rose?

6 **JUROR:** Yes, sir.

7 **THE COURT:** How far do you live from the
8 hospital, Ms. Rose?

9 **JUROR:** I want to say three miles maybe.

10 **THE COURT:** Which direction?

11 **JUROR:** Toward Columbia.

12 **THE COURT:** Do you or anyone close to you that
13 you know of shop at the Food Lion that's near the
14 hospital out there?

15 **JUROR:** Yes, sir, we do.

16 **THE COURT:** You do?

17 **JUROR:** Yeah.

18 **THE COURT:** All right. If information is
19 developed in this case that the alleged transactions
20 or some of them took place in that area, would that
21 affect your ability to be a fair and impartial
22 juror?

23 **JUROR:** No, sir.

24 **THE COURT:** Have any doubt in your mind about
25 that?

1 JUROR: Huh-huh.

2 THE COURT: Thank you very much.

3 JUROR: Thank you.

4 THE COURT: Ms. Rose is 189. She's eligible to
5 serve.

6 (The bench conferences were concluded.)

7 THE COURT: Are any of you, any of your
8 immediate family members, any of your very close
9 personal friends employed in any capacity in law
10 enforcement or in the prosecution, in any agency,
11 federal, state, local, military; if so, please
12 stand?

13 (Jurors stand.)

14 THE COURT: Your name, please?

15 JUROR: Christine Greenwaldt.

16 THE COURT: Ms. Greenwaldt is juror number 80.
17 And what's your situation, ma'am?

18 JUROR: My cousin is in law enforcement.

19 THE COURT: What agency?

20 JUROR: I think Lexington County, I think.

21 THE COURT: Lexington County Sheriff's
22 Department?

23 JUROR: Yeah. I don't talk to her that often,
24 but she is in law enforcement.

25 THE COURT: So you don't really know what she

1 does?

2 JUROR: Like, I know she was a cop at one point
3 and then she was working on dispatch, and not quite
4 sure if she had something to do with SLED or not.

5 THE COURT: Is there anything at all about your
6 relationship with her or any experiences that would
7 affect your ability to be a fair and impartial juror
8 in the case?

9 JUROR: No, sir.

10 THE COURT: Do you have any doubt in your mind
11 about that?

12 JUROR: No, sir.

13 THE COURT: Thank you, ma'am.

14 Ms. Greenwaldt is juror number 80. Eligible to
15 serve.

16 Your name, please?

17 JUROR: Leigh Poole, 172.

18 THE COURT: Ms. Poole is juror number 172.

19 What's your situation?

20 JUROR: A close friend of mine is with the City
21 of Columbia.

22 THE COURT: Anything about your relationship
23 with the law enforcement officer that affects your
24 ability to be a fair and impartial juror in the
25 case?

1 JUROR: No, sir.

2 THE COURT: Any doubt in your mind?

3 JUROR: No.

4 THE COURT: And you're talking about the City
5 of Columbia Police Department?

6 JUROR: (Juror nodded head.)

7 THE COURT: She nods her head yes. Thank you.
8 172, Ms. Poole's eligible to serve.

9 Your name, sir?

10 JUROR: William Crout, 52.

11 THE COURT: Mr. Crout is juror number 52.
12 What's your situation, please?

13 JUROR: I have a cousin who's a detective at
14 the Myrtle Beach Police Department.

15 THE COURT: Myrtle Beach Police Department in
16 this case?

17 MS. CHAPMAN: They are.

18 MR. STUMBO: They are somewhat involved, Your
19 Honor. No witnesses will be called, I don't
20 anticipate, from that agency.

21 THE COURT: Mr. Crout, since I've got a large
22 number of jurors, I'm going to set you aside on this
23 case just in an abundance of caution. Okay? I'd
24 hate to get halfway into it and find out maybe there
25 was some connection. All right?

1 JUROR: Am I excused?

2 THE COURT: You're free to go. Thank you, sir.
3 You don't need any kind of slip for work, do you?

4 JUROR: No, sir.

5 THE COURT: Thank you.

6 52, Mr. Crout's excused from jury duty, set
7 aside on the first trial.

8 In the back, your name, sir?

9 JUROR: Robert Welborn, 232. My wife's
10 cousin's husband is employed by SLED.

11 THE COURT: Do you know what capacity?

12 JUROR: He's actually on the drug enforcement
13 team over there, I believe, Your Honor.

14 THE COURT: You're free to go, Mr. Welborn.
15 Thank you.

16 JUROR: Yes, sir.

17 THE COURT: 232, right?

18 JUROR: Yes, sir.

19 THE COURT: Thank you. 232, Mr. Welborn, is
20 set aside. He's related to a member of SLED drug
21 enforcement team.

22 All right. Are any of you members of any
23 organization which is dedicated to drug abuse
24 education, addiction education or awareness, that
25 would include organizations such as Just Say No or

1 the DARE program; if so, please stand?

2 (Juror stands.)

3 JUROR: I work for the department of alcohol
4 and --

5 THE COURT: I need your name first.

6 JUROR: Carolyn Chitwood, juror number 35. I
7 also work with the sheriff's daughter.

8 THE COURT: Ms. Chitwood is juror number 35.
9 You work for DAODAS?

10 JUROR: That's correct.

11 THE COURT: And what else did you say?

12 JUROR: I work with Michelle Nienhius Metts,
13 the sheriff's daughter in prevention. And I manage
14 some of the contracts that work with alcohol
15 enforcement team. We send people out to see if we
16 can catch underage drinkers and purchasers of
17 cigarettes. So I think I'll be prejudiced and I
18 think --

19 THE COURT: That's all you need to say. Don't
20 say anymore.

21 JUROR: And I know --

22 THE COURT: No, I said don't say anymore. I'm
23 not joking, folks. When I tell y'all to stop,
24 please stop. A wrong word said could cost thousands
25 of dollars and shut this trial down, so please stop

1 when I ask you to stop.

2 You're free to go, ma'am. Thank you.

3 35, Ms. Chitwood is set aside on the trial.

4 All right. Anybody else?

5 (There was no response.)

6 **THE COURT:** Okay. I'm going to try to fashion
7 these questions as broadly as I can, so please
8 understand I'm trying to cast a broad net here. And
9 we'll talk about this up front. We're not going to
10 talk about it in front of the whole group.

11 If there is anything at all about the nature of
12 the allegations themselves, that is trafficking in
13 heroin, if there's anything at all about the nature
14 of the allegations themselves that would or you have
15 some doubt about whether it would affect your
16 ability to be a fair and impartial juror in the
17 case; if any of you or anybody very close to you has
18 ever had any sort of problem, whether it's legal or
19 medical or otherwise, concerning addiction or abuse
20 of controlled substances or alcohol; if there's
21 anything at all about the fact that this case
22 involves allegations related to a controlled
23 substance, you need to talk to me about that.

24 So if anybody close to you has ever had a
25 problem with any type of addiction, if anything

1 about the nature of the case, the allegations in the
2 case might have an impact upon your ability to be a
3 fair and impartial juror, if you've got any concerns
4 about any of those kinds of things, you need to talk
5 to me.

6 (Jurors stand.)

7 **THE COURT:** Would y'all come down front,
8 please?

9 (The following bench conferences were held
10 on the record.)

11 **BAILIFF:** Number 218, Your Honor.

12 **JUROR:** My brother was addicted to crack
13 cocaine.

14 **THE COURT:** Hold on just a second. Let me get
15 to you. You're Ms. Thompson?

16 **JUROR:** Uh-huh.

17 **THE COURT:** Your brother was addicted to crack
18 cocaine?

19 **JUROR:** Yes. He's deceased now.

20 **THE COURT:** Did the addiction have anything to
21 do with his death?

22 **JUROR:** Yeah.

23 **THE COURT:** I hate to ask you --

24 **JUROR:** He had a liver transplant and liver
25 failure.

1 **THE COURT:** You understand the allegations here
2 deal with trafficking heroin?

3 **JUROR:** Uh-huh.

4 **THE COURT:** Is there anything about your
5 experience or the nature of the allegations
6 themselves that affect your ability to be a fair and
7 impartial juror in the case?

8 **JUROR:** No.

9 **THE COURT:** Do you have any doubt in your mind
10 about that?

11 **JUROR:** No.

12 **THE COURT:** So you can decide this case without
13 regard to your brother's situation?

14 **JUROR:** Uh-huh.

15 **THE COURT:** You're confident of that?

16 **JUROR:** Yeah.

17 **THE COURT:** All right. Thank you, ma'am.
18 Ms. Thompson, 218. She's eligible to serve.

19 **BAILIFF:** Number 57, Your Honor.

20 **THE COURT:** Ms. Davis?

21 **JUROR:** Uh-huh.

22 **THE COURT:** What's your situation, ma'am?

23 **JUROR:** I divorced my ex-husband for a
24 substance abuse problem. I went through a lot of
25 issues with him, his drug abuse. He both sold and

1 used.

2 **THE COURT:** Sold and used?

3 **JUROR:** Uh-huh.

4 **THE COURT:** Was he ever charged?

5 **JUROR:** Repeatedly.

6 **THE COURT:** Lexington County?

7 **JUROR:** Yes.

8 **THE COURT:** What drug?

9 **JUROR:** I don't even know.

10 **THE COURT:** Do you know about any heroin
11 involvement?

12 **JUROR:** I don't know. They got nicknames,
13 white powder. I don't know what that is.

14 **THE COURT:** All right. You understand the
15 nature of the allegations here?

16 **JUROR:** I do.

17 **THE COURT:** The defendant's charged with
18 trafficking heroin. You understand that?

19 **JUROR:** I do.

20 **THE COURT:** Is there anything at all about your
21 experience that affects your ability to be a fair
22 and impartial juror?

23 **JUROR:** I would think so.

24 **THE COURT:** You do think so?

25 **JUROR:** Yeah.

1 **THE COURT:** All right. That's understandable.
2 Ms. Davis, we're not going to have any other jury,
3 so you're free to go. If you need a slip for work,
4 just check with those ladies over there. Okay?

5 57, Ms. Davis, is set aside on this trial.
6 Yes, sir.

7 **BAILIFF:** Number 3, Your Honor.

8 **THE COURT:** Mr. Allen?

9 **JUROR:** I have a sister that's on crack
10 cocaine. I didn't know if that would be a...

11 **THE COURT:** You understand the nature of the
12 allegations here?

13 **JUROR:** Yes, sir.

14 **THE COURT:** You understand he's charged with
15 trafficking heroin?

16 **JUROR:** Yes, sir.

17 **THE COURT:** Is there anything about your
18 experience, your relationship with your sister that
19 affects your ability to be a fair and impartial
20 juror?

21 **JUROR:** No, sir.

22 **THE COURT:** Do you have any doubt about that?

23 **JUROR:** No, sir.

24 **THE COURT:** So you can decide this case without
25 regard to your sister's situation?

1 JUROR: Yes, sir.

2 THE COURT: Are you confident of that?

3 JUROR: Yes, sir.

4 THE COURT: Thank you very much.

5 Mr. Allen's juror number 3. He's eligible to
6 serve.

7 BAILIFF: Number 172, Your Honor.

8 THE COURT: Ms. Poole?

9 JUROR: Uh-huh.

10 THE COURT: What's your situation?

11 JUROR: My sister is a habitual user, probably
12 for the last ten years, from Ketamine to cocaine to
13 the most recent was the bath salts.

14 THE COURT: Do you know if she's ever used
15 heroin?

16 JUROR: I'm sure she has.

17 THE COURT: You understand the nature of the
18 allegations here?

19 JUROR: Yes.

20 THE COURT: You understand the defendant's
21 charged with trafficking heroin?

22 JUROR: Yes.

23 THE COURT: Is there anything at all about your
24 relationship or experiences with your sister that
25 affects your ability to be fair and impartial as --

1 JUROR: There might be.

2 THE COURT: Okay. I'll set you aside,
3 Ms. Poole. Do you need any kind of slip for work?

4 JUROR: No.

5 THE COURT: You're through. You're free to go.
6 Thank you.

7 Ms. Poole is 172. She's set aside on this
8 trial.

9 Yes, ma'am.

10 BAILIFF: Number 27, Your Honor.

11 THE COURT: I'm going to mispronounce your
12 name.

13 JUROR: Candy Buynack.

14 THE COURT: Buynack?

15 JUROR: Yes.

16 THE COURT: Okay. Ms. Buynack, 27, what's your
17 situation?

18 JUROR: My ex-husband was a heroin addict.

19 THE COURT: Would that affect your ability to
20 be fair and impartial?

21 JUROR: Yes --

22 COURT REPORTER: I'm sorry, I --

23 THE COURT: She said, Yes, she doesn't feel she
24 could be fair.

25 I'm sorry I have to ask you that, Ms. Buynack.

1 You're free to go. You're through.

2 Ms. Buynack's juror number 27. She's set aside
3 on this trial.

4 **BAILIFF:** Number 143, Your Honor.

5 **THE COURT:** Mr. McKnight?

6 **JUROR:** Yes, sir.

7 **THE COURT:** What's your situation?

8 **JUROR:** I have a cousin and this cop was
9 married to my cousin.

10 **THE COURT:** Wait a minute. Your cousin --

11 **JUROR:** I mean, excuse me. A cop married My
12 cousin and he --

13 **THE COURT:** So a cop married your cousin?

14 **JUROR:** Yes, sir. And he busted my other
15 cousin for drugs. I don't think I would be a good
16 drug case.

17 **THE COURT:** Busted your other cousin for drugs?

18 **JUROR:** Yeah.

19 **THE COURT:** So a cop married your cousin and he
20 busted another cousin for drugs?

21 **JUROR:** No, no. He didn't bust my cousin for
22 drugs. I don't want to deal with a drug case. I'd
23 rather do another case than a drug case.

24 **THE COURT:** You can't be fair and impartial for
25 drug cases?

1 JUROR: No. I -- it's...

2 THE COURT: That's fine. You're free to go.

3 Thank you. Do you need any kind of slip for work?

4 JUROR: No, sir.

5 THE COURT: You're free to go. Thank you, sir.

6 Mr. McKnight is juror number 143. He's set
7 aside on this trial.

8 BAILIFF: Number 181, Your Honor.

9 THE COURT: Mr. Ray?

10 JUROR: Yes, sir.

11 THE COURT: What's your situation?

12 JUROR: I have a close friend who's currently
13 in rehab.

14 THE COURT: Do you know what he's in rehab for?

15 JUROR: Prescription meds, alcohol, marijuana.

16 THE COURT: You understand the nature of the
17 allegations here?

18 JUROR: Yes, sir.

19 THE COURT: You understand the defendant's
20 charged with trafficking heroin?

21 JUROR: Yes, sir.

22 THE COURT: Is there anything at all about your
23 relationship with your friend that would affect your
24 ability to be a fair and impartial juror or your
25 experiences with him or her?

1 JUROR: I don't think so.

2 THE COURT: You do not think so?

3 JUROR: I don't think so.

4 THE COURT: Do you have any doubt?

5 JUROR: No.

6 THE COURT: So you can decide the case without
7 regard to your friend's situation?

8 JUROR: Yes.

9 THE COURT: You're confident you can be a fair
10 and impartial juror?

11 JUROR: Yes, sir.

12 THE COURT: All right. Thank you.

13 Mr. Ray is 181. He's eligible to serve.

14 BAILIFF: Number 167, Your Honor.

15 THE COURT: Mr. Pickel?

16 JUROR: Yes, sir.

17 THE COURT: What's your situation?

18 JUROR: In '98, I was injured in a car wreck
19 with a person that was under alcohol and marijuana,
20 and he was here illegally, jumped bail and was gone.

21 THE COURT: Any of that affect your ability to
22 be fair and impartial as a juror in this case?

23 JUROR: I've heard ICE mentioned, so, yes, sir.

24 THE COURT: Okay. Do you need any kind of slip
25 for work?

1 JUROR: No, sir, I don't.

2 THE COURT: You're free to go. Thanks very
3 much.

4 167, Mr. Pickel, is excused from this trial.

5 BAILIFF: Number 225, Your Honor.

6 THE COURT: All right. Ms. Wall?

7 JUROR: Uh-huh.

8 THE COURT: What's your situation?

9 JUROR: A close family member had a heroin
10 addiction problem that nearly tore our family apart.
11 I don't know if I can be impartial.

12 THE COURT: I'll set you aside on this case.
13 You're through with jury duty. Okay?

14 Ms. Wall's 225. She's excused from the trial
15 of this case.

16 BAILIFF: Number 145, Your Honor.

17 THE COURT: Mr. Medlock?

18 JUROR: Yes. My son, while at school, was
19 doing some things he shouldn't have been doing in
20 his apartment. The police officer --

21 COURT REPORTER: I'm sorry, I can't hear with
22 the papers flipping.

23 JUROR: My son, while he was away at school, he
24 was at a friend's apartment and doing things they
25 shouldn't have been doing with some other kids.

1 Police officer opened the door, took the whole
2 bunch. I ended up having to pay a lot of money to
3 have him -- to have it expunged from his record and
4 those types of things. I don't know the situation
5 in this case, but I kind of question some of that
6 teams -- teams being sent out to catch people
7 especially in college towns.

8 THE COURT: Okay. The defendant in this case
9 is charged with trafficking heroin. Is there
10 anything about your experience that affects your
11 ability to be fair and impartial as a juror in the
12 case?

13 JUROR: Well, other than my son was charged
14 with distribution even though he was just in a group
15 in an apartment, so I don't know how all that syncs
16 up.

17 THE COURT: Do you have any doubt about your
18 ability to be fair and impartial?

19 JUROR: I'm not sure. Yeah, I guess so.

20 THE COURT: Okay. I'll set you aside. You're
21 free to go. Do you need any kind of slip for work?

22 JUROR: No, sir.

23 THE COURT: Thank you.

24 Mr. Medlock's 145. He's set aside on this
25 trial.

1 Yes, sir.

2 **BAILIFF:** Number 114, Your Honor.

3 **JUROR:** Growing up in high school and college,
4 my mother was an alcoholic and was committed to a
5 facility for several weeks, but also I am a high
6 school coach and teacher for the past 35 years or so
7 and had a couple of students that were killed in car
8 accidents from drinking and driving. And I -- one
9 of the course -- well, two of the courses I teach
10 are driver education and personal health and health
11 education. So several years of teaching about use
12 of drugs and alcohol and so forth, so, you know, I
13 preach it pretty much all the time. Still coaching
14 and I'm not real big on...

15 **THE COURT:** Do you have some doubt about your
16 ability to be fair and impartial in this case?

17 **JUROR:** Well, yes, sir, I do. I would be more
18 prone to just the ability of having drugs at
19 present, that type of thing.

20 **THE COURT:** Okay. I'll set you aside. Thank
21 you very much. Do you need a slip for work?

22 **JUROR:** Probably a good idea.

23 **THE COURT:** Mr. Kleinfelder is 114. He's
24 excused.

25 (The bench conferences were concluded.)

1 **THE COURT:** Have any of you formed or expressed
2 any opinions about these cases; if so, please stand?

3 (There was no response.)

4 **THE COURT:** Are any of you aware of any
5 interest, bias or prejudice that you might have for
6 or against the State, for or against the defendant,
7 Mr. Arroyo, for or against anyone or any entity in
8 the case; if so, please stand?

9 (There was no response.)

10 **THE COURT:** Can each of you give both the State
11 of South Carolina and the defendant, Juan Arroyo, a
12 fair and impartial trial? If you know of any reason
13 why you cannot, please stand now.

14 (There was no response.)

15 **THE COURT:** Further questions from the State?

16 **MR. STUMBO:** Nothing further from the State,
17 Your Honor.

18 **THE COURT:** Further questions from the defense?

19 **MS. CHAPMAN:** No, Your Honor.

20 **THE COURT:** Thank you. The jury panel is
21 qualified.

22 (Pause.)

23 **THE COURT:** All right. The jury panel is
24 qualified. The strikes are five for the State, five
25 for the defense. Will y'all draw a panel for me?

1 (Pause.)

2 THE COURT: All right. Ladies and gentlemen,
3 the way that this is going to work is that the clerk
4 is going to call a name. Your names -- all the
5 names of the people who were qualified were in the
6 computer program, and the computer has randomly
7 selected the number of you. She will start down the
8 list beginning with number one that the computer
9 chose and if it's your name, you need to come all
10 the way down front. I need you to come down and
11 stand right there just like that facing back so that
12 I'm looking at your back.

13 When you get down here, the clerk will ask
14 questions of the State's attorney and the defense
15 attorney, and based on their responses, you will be
16 told either to have a seat in the jury box or to
17 return to your seat in the courtroom. That's why
18 you need to bring your personal belongings because
19 your next stop may be over here.

20 All right. Madame Clerk, give us a jury,
21 please.

22 THE CLERK: Yes, sir, Your Honor. Number 183,
23 Hattie Rhodan.

24 (Whereupon, Hattie F. Rhodan, a black
25 female, was called forward.)

1 THE CLERK: What say you for the State?

2 MR. STUMBO: Please present Ms. Rhodan.

3 THE CLERK: What say you for the defense?

4 MS. CHAPMAN: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 Number 230, Wyman Watts.

7 (Whereupon, Wyman E. Watts, a white male,
8 was called forward.)

9 THE CLERK: What say you for the State?

10 MR. STUMBO: Please present Mr. Watts.

11 THE CLERK: What say you for the defense?

12 MS. CHAPMAN: Please seat this juror.

13 THE CLERK: Have a seat in the jury box, sir.

14 124, James Livingston.

15 (Whereupon, James A. Livingston, a white
16 male, was called forward.)

17 THE CLERK: What say you for the State?

18 MR. STUMBO: Please present Mr. Livingston.

19 THE CLERK: What say you for the defense?

20 MS. CHAPMAN: Please seat this juror.

21 THE CLERK: Have a seat in the jury box, sir.

22 203, Eric Smarr.

23 (Whereupon, Eric M. Smarr, a white male, was
24 called forward.)

25 THE CLERK: What say you for the State?

1 MR. STUMBO: Please present Mr. Smarr.

2 THE CLERK: What say you for the defense?

3 MS. CHAPMAN: Please excuse this juror.

4 THE CLERK: Return to your seat, please, sir.

5 Number 131, John MacGillis.

6 (Whereupon, John D. MacGillis, a white male,
7 was called forward.)

8 THE CLERK: What say you for the State?

9 MR. STUMBO: Please present Mr. MacGillis.

10 THE CLERK: What say you for the defense?

11 MS. CHAPMAN: Please seat this juror.

12 THE CLERK: Have a seat in the jury box, sir.

13 53, Carole Crow.

14 (Whereupon, Carole A. Crow, a white female,
15 was called forward.)

16 THE CLERK: What say you for the State?

17 MR. STUMBO: Please present Ms. Crow.

18 THE CLERK: What say you for the defense?

19 MS. CHAPMAN: Please excuse this juror.

20 THE CLERK: Return to your seat, please, ma'am.

21 Number 136, Dwight Maroney.

22 (Whereupon, Dwight Maroney, a white male,
23 was called forward.)

24 THE CLERK: What say you for the State?

25 MR. STUMBO: Please present Mr. Maroney.

1 **THE CLERK:** What say you for the defense?

2 **MS. CHAPMAN:** Please seat the juror.

3 **THE CLERK:** Have a seat in the jury box, sir.

4 73, Christa Geib.

5 (Whereupon, Christa M. Geib, a white female,
6 was called forward.)

7 **THE CLERK:** What say you for the State?

8 **MR. STUMBO:** Please present Ms. Geib.

9 **THE CLERK:** What say you for the defense?

10 **MS. CHAPMAN:** Please seat the juror.

11 **THE CLERK:** Have a seat in the jury box, ma'am.

12 51, Timothy Crout.

13 (Whereupon, Timothy H. Crout, a white male,
14 was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. STUMBO:** Please excuse Mr. Crout from the
17 trial of this case.

18 **THE CLERK:** Return to your seat, please, sir.

19 92, Kristi Hornsby.

20 (Whereupon, Kristi M. Hornsby, a white
21 female, was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. STUMBO:** Please present Ms. Hornsby.

24 **THE CLERK:** What say you for the defense?

25 **MS. CHAPMAN:** Please excuse this juror.

1 **THE CLERK:** Return to your seat, please, ma'am.
2 194, John Russell.

3 (Whereupon, John D. Russell, Jr., a white
4 male, was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. STUMBO:** Please present Mr. Russell.

7 **THE CLERK:** What say you for the defense?

8 **MS. CHAPMAN:** Please seat the juror.

9 **THE CLERK:** Have a seat in the jury box, sir.
10 49, Peter Creighton.

11 (Whereupon, Peter J. Creighton, a white
12 male, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. STUMBO:** Please present Mr. Creighton.

15 **THE CLERK:** What say you for the defense?

16 **MS. CHAPMAN:** Seat the juror, please.

17 **THE CLERK:** Have a seat in the jury box, sir.
18 169, Stuart Platt.

19 (Whereupon, J. Stuart Platt, a white male,
20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. STUMBO:** Please present Mr. Platt.

23 **THE CLERK:** What say you for the defense?

24 **MS. CHAPMAN:** Please excuse this juror.

25 **THE CLERK:** Return to your seat, please, sir.

1 Number 40, Stephanie Cooper.

2 (Whereupon, Stephanie S. Cooper, a white
3 female, was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. STUMBO:** Please present Ms. Cooper.

6 **THE CLERK:** What say you for the defense?

7 **MS. CHAPMAN:** Please seat the juror.

8 **THE CLERK:** Have a seat in the jury box, ma'am.
9 199, Sandra Shaw.

10 (Whereupon, Sandra S. Shaw, a white female,
11 was called forward.)

12 **THE CLERK:** What say your for the State?

13 **MR. STUMBO:** Please excuse Ms. Shaw.

14 **THE CLERK:** Return to your seat, please, ma'am.
15 Number 12, Sheila Barrier.

16 (Whereupon, Sheila B. Barrier, a white
17 female, was called forward.)

18 **THE CLERK:** What say you for the State?

19 **MR. STUMBO:** Please present Ms. Barrier.

20 **THE CLERK:** What say you for the defense?

21 **MS. CHAPMAN:** Pleat seat the juror.

22 **THE CLERK:** Have a seat in the jury box, ma'am.
23 Number 209, Keith Steen.

24 (Whereupon, Keith W. Steen, a white male,
25 was called forward.)

1 **THE CLERK:** What say you for the State?

2 **MR. STUMBO:** Please excuse Mr. Steen from the
3 trial of this case.

4 **THE CLERK:** Return to your seat, please, sir.
5 192, William Ross.

6 (Whereupon, William R. Ross, a white male,
7 was called forward.)

8 **THE CLERK:** What say you for the State?

9 **MR. STUMBO:** Please present Mr. Ross.

10 **THE CLERK:** What say you for the defense?

11 **MS. CHAPMAN:** Please seat Mr. Ross.

12 **THE CLERK:** Have a seat in the jury box, sir.
13 Number 226, Cindy Wallace.

14 (Whereupon, Cindy M. Wallace, a white
15 female, was called forward.)

16 **THE CLERK:** What say you for the State?

17 **MR. STUMBO:** Please present Ms. Wallace.

18 **THE CLERK:** What say you for the defense?

19 **MS. CHAPMAN:** Seat the juror, please.

20 **THE CLERK:** Have a seat in the jury box.

21 **THE COURT:** Draw an alternate. Strikes are one
22 for the State, two for the defense.

23 **THE CLERK:** 218, Rhonda Thompson.

24 (Whereupon, Rhonda F. Thompson, a white
25 female, was called forward.)

1 **THE CLERK:** What say you for the State?

2 **MR. STUMBO:** Please present Ms. Thompson.

3 **THE CLERK:** What say you for the defense?

4 **MS. CHAPMAN:** Please excuse the juror.

5 **THE CLERK:** Return to your seat, please, ma'am.

6 Number 7, William Andrews.

7 (Whereupon, William D. Andrews, a white
8 male, was called forward.)

9 **THE CLERK:** What say you for the State?

10 **MR. STUMBO:** Please present Mr. Andrews.

11 **THE CLERK:** What say you for the defense?

12 **MS. CHAPMAN:** Seat the juror, please.

13 **THE CLERK:** Have a seat in the jury box.

14 **THE COURT:** Draw another alternate. Strikes
15 are one for the State, two for the defense.

16 **THE CLERK:** Number 189, Elizabeth Rose.

17 (Whereupon, Elizabeth E. Rose, a white
18 female, was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. STUMBO:** Please present Ms. Rose.

21 **THE CLERK:** What say you for the defense?

22 **MS. CHAPMAN:** Please seat the juror.

23 **THE CLERK:** Have a seat in the jury box, ma'am.

24 The second alternate, Your Honor.

25 **THE COURT:** Thank you.

1 Are there any matters to take up including
2 composition of the panel prior to the jury being
3 sworn? From the State?

4 **MR. STUMBO:** Nothing from the State, Your
5 Honor.

6 **THE COURT:** From the defense?

7 **MS. CHAPMAN:** No, Your Honor.

8 **THE COURT:** Thank you.

9 Ms. Rhodan, I want you to be the Foreman of the
10 jury. When you come back in, be the last one to
11 come in.

12 **FORELADY:** Okay.

13 **THE COURT:** You need to keep the seat on the
14 opposite end of the row you're on throughout the
15 trial, not right now, but just when you come back
16 in. The two alternates will sit in those seats back
17 there. It doesn't matter which ones.

18 The rest of you folks can sit anywhere in the
19 jury box that you like. I'm going to ask you,
20 though, if you're like every other jury I have and
21 some of you develop a favorite chair, that you
22 please not walk across one another. We had an
23 incident in the old courthouse where a lady broke
24 her ankle and I don't want that happening to you.
25 So if you have a favorite chair, step to the side

1 out here before you get in the jury box and space
2 yourselves accordingly and ask your fellow jurors if
3 you can have your chair. I'm not knocking folks
4 that do that. I sit in the same seat in church,
5 same seat my daddy sat in. So I understand favorite
6 chairs.

7 All right. I'm going to have to send you back
8 to the jury room in a few moments so that I can get
9 my bearings and find out the best course of action
10 as far as when we're going to get started and that
11 sort of thing. Before I send you back there,
12 though, I have to tell you that you are not to
13 discuss this case in any way at all, don't talk
14 about the people involved in the case, don't talk
15 about the type of cases it's alleged to be, do not
16 discuss this case in any way whatsoever.

17 If any of you have cell phones, I need to see
18 you turn them off. Did they take up your cell
19 phones?

20 All right. They're all turned off. All right.
21 I'll have to give you an instruction that the
22 Supreme Court has indicated we have to tell you
23 about cell phones when you come back, but I won't
24 read it to you yet. Just do not use your cell
25 phones in any way during this break. As soon as I

1 can, I'll get you back out here. I don't think
2 you'll be back there more than five to seven
3 minutes.

4 All right. Follow the bailiff, please.

5 (The jury retires to the jury room.)

6 **THE COURT:** All right. Ladies and gentlemen,
7 during the break, I checked with Judge McMahon
8 downstairs to make sure he did not have a trial that
9 required a jury and he said he does not, that he had
10 a civil case that settled, and he's doing guilty
11 pleas. And I checked with -- we have another kind
12 of court called transfer court where a magistrate
13 presides over cases that otherwise would be handled
14 by a circuit judge, and their cases apparently all
15 wound up pleading out.

16 So it is what I told you it was and that is
17 that if you were not drawn on this jury, we don't
18 have anything that requires your presence. I don't
19 know if you believe or disbelieve that the lottery
20 is a good thing, but you might have a good streak of
21 luck going for you if you want to go buy you a
22 lottery ticket. Some of you may be disappointed
23 that you didn't get chosen on the jury.

24 I want to thank you very much for your service.
25 It's very easy to find yourself in a dispute. If

1 you're ever in a dispute, you'll be very grateful
2 that folks like you took away from their day so that
3 they could come in and resolve our disputes in a
4 room like this and not like you're going to see a
5 lot of countries on your television screens tonight
6 how they're resolving their disputes. So I thank
7 you very much.

8 I used to give jurors an opportunity to have a
9 free shot at me for questions, comments, criticisms
10 or complaints. They've had a lot of problems with
11 issues, so basically we've been told that we should
12 avoid having contact with the jurors ourselves, but
13 if you have something you want to discuss with me,
14 you can write it down and I'll get back with you and
15 you can give it to the clerk. Otherwise, I'm not
16 going to take up anymore of your time. You are
17 through.

18 Now, let me tell you one thing, okay, before
19 you go, aside from thank you, which I've already
20 done, I know this wouldn't cross any of your minds,
21 but I have had in the past -- and I'm speaking to
22 the lowest common denominator of 20 years of jurors,
23 so please forgive me for insulting your
24 intelligence, I apologize -- I have had some people
25 in the past who get paid by their employers when

1 they're on jury duty and when I was able to turn a
2 jury loose on a Monday or a Tuesday, they took the
3 whole week off and then expected us to give them an
4 excuse. That won't happen. It's not going to
5 happen. If anybody tries to convince you that's a
6 good idea, please reject it out of hand. Your
7 excuse will only cover today.

8 You'll get a little check in the mail. It'll
9 be what I call Happy Meal money. It's not going to
10 be much at all. There will be a slip in there that
11 certifies that you were up here today, so you can
12 give that to your employer. If your employer won't
13 wait -- it usually takes about ten days from the end
14 of the term, which ten days from the end of the term
15 would be ten days from Friday. You might get it a
16 little quicker this time. If you need a slip sooner
17 than that, just check with these folks down here and
18 they'll get that for you.

19 All right. If you're here for jury duty,
20 you're free to go. Thank you.

21 (The remaining jury panel was excused.)

22 **THE COURT:** All right. Where do y'all want to
23 go from here? Do you want to break for lunch now?
24 Do you want to -- have I got any other pretrial
25 issues we didn't do last week?

1 **MS. CHAPMAN:** Well, Judge, there's a couple of
2 things that I've got on my mind.

3 **THE COURT:** Okay.

4 **MS. CHAPMAN:** First off, I think when we left
5 you last week in Saluda, the statement that my
6 client had given, the State Attorney General's
7 Office was going to polygraph him, that never
8 happened, Your Honor. So, at this point, I think
9 your ruling still stands from last week that that
10 statement is not admissible.

11 **THE COURT:** It does.

12 **MS. CHAPMAN:** Judge, the other thing, it's my
13 understanding that the State intends to call some
14 officers who are going to testify -- and I guess
15 it's a motion in limine that I'm making -- they're
16 calling them to testify about all this stuff that
17 happened in Columbia and Lexington and Charleston.
18 And, Judge, I just have a problem with it. And my
19 problem is is I don't want one officer on the stand
20 vouching for another officer, which I think it's
21 going to be hearsay.

22 If that's the way they're going to prove
23 conspiracy, then I would ask that their testimony be
24 limited to the things that they saw and participated
25 in personally. I've talked to Mr. Stumbo about

1 that. I believe he's in agreement with me.

2 **MR. STUMBO:** That's correct, Your Honor.

3 Ms. Chapman and I did discuss that issue in my
4 office on Friday. We will be calling investigators
5 to testify to things that they personally observed
6 in surveillance in this case regarding activity --
7 drug activity in part of their investigation that
8 they personally participated in. We're not going to
9 be calling for any hearsay in regards to that.
10 Obviously, if we do and Ms. Chapman objects, we
11 probably will be able to strike the question and
12 reframe it, Your Honor.

13 **THE COURT:** Well, is it relevant? I mean, does
14 it relate to this defendant?

15 **MR. STUMBO:** It is, Your Honor, in the sense
16 that the statement that he gave, the one that we
17 qualified during the Denno hearing in Saluda on
18 Thursday, this defendant confessed post-Miranda to
19 the officers that he had delivered heroin to
20 Columbia, South Carolina, and to Charleston, South
21 Carolina, which are the other areas named in the
22 conspiracy indictment in count one. And
23 essentially, Your Honor, we're going to give a
24 summation of the officers' activity investigating
25 the conspiracy in those areas which will be

1 corroborated later by his own statement. His
2 statement will be offered at the end of our case in
3 chief, Judge.

4 **THE COURT:** Well, how am I going to rule? I
5 mean, if I don't know how it's linked, how am I
6 going to know if it's relevant?

7 **MS. CHAPMAN:** Well, Judge, I'm going to tell
8 you, I've read my client's statement. He does say,
9 I think, in one brief sentence, that he drove to
10 Columbia. But the problem is is there's no
11 controlled buys or there's -- there's not anything
12 about Columbia other than my client's own statement.

13 Now, they do have a witness who can prove the
14 conspiracy from Charleston that is here to testify.
15 You know, I guess what I don't want to see happen is
16 that they present all this evidence about some huge
17 conspiracy that they don't have any evidence
18 whatsoever on my client.

19 **MR. STUMBO:** Your Honor, our connection here
20 is, there again, going to be the officers testifying
21 that in the early part of this investigation, here's
22 what they're personally observing and what they
23 investigated. And, obviously, later they were part
24 of the investigation that -- in the Myrtle Beach
25 area and were part of the investigation in which

1 Mr. Arroyo was arrested and confessed to delivering
2 heroin to Columbia as part of this conspiracy.

3 THE COURT: Well, Columbia's not even in
4 Lexington County. I mean, I know you have to prove
5 that it has significance in more than one county of
6 the state, but just saying that they delivered
7 heroin to Columbia is not enough. I mean, I'm
8 assuming there's more than one source of heroin in
9 the Columbia, South Carolina, metropolitan area.

10 Are you going to be able -- I'm not saying you
11 can or you can't. I'm asking is there going to be a
12 linkage between this defendant and the particular
13 activity that you're going to have these people
14 testifying about? If they're testifying about what
15 happened out there near the Food Lion on 378, there
16 has to be some sort of link between this defendant
17 and his co-conspirators and that activity, otherwise
18 it's not relevant.

19 MR. STUMBO: That's correct, Your Honor. They
20 are going to testify from beginning to end of this
21 investigation, how it started here and it led to
22 Myrtle Beach, that's correct, but ultimately if --
23 they're not going to be able to testify that he was
24 the one that brought the drugs on the dates that
25 they did the controlled buys in Columbia. We can't

1 show that, Your Honor, because he didn't come into
2 play until later, which he admitted to bringing
3 drugs to the Columbia part of this organization,
4 which is what they were investigating to start with.

5 **THE COURT:** Well, the allegation that relates
6 to Horry County is a specific date. The allegation
7 that relates to several counties including Lexington
8 is a period of time over a period of months.

9 **MR. STUMBO:** That's correct, Your Honor. And
10 he did not confess to a specific date that he
11 brought it to Columbia, but he said he delivered
12 heroin to Columbia.

13 **THE COURT:** Well, when you keep saying
14 Columbia, are you talking about West Columbia? Are
15 you talking about Richland County or Lexington
16 County or --

17 **MS. CHAPMAN:** Well, Judge, I'm going to tell
18 you, I'm sitting here looking at the statement. And
19 let me explain, this is not a statement by my client
20 that's dated, signed by him. This is, I guess, what
21 I would call a DEA -- it's just a summary of an
22 interview by Agent Rushing. There's not anything
23 signed or dated. And I would say that it's hearsay,
24 but all it says is Arroyo has delivered heroin to
25 Charleston and Columbia, South Carolina, period. It

1 doesn't name anybody he's delivered it to. There's
2 no facts. There's no street address.

3 Matter of fact, when you mentioned 378 and 26,
4 I was trying to figure out where you were going when
5 we were doing juror qualifications because I don't
6 know anything about a Food Lion and don't go -- Food
7 Lion, none of that has been in my discovery.

8 **THE COURT:** At every guilty plea they've done
9 so far, that's what they've said, that it happened
10 at -- that the buys took place at --

11 **MS. CHAPMAN:** Right. And, you know, I don't
12 have any discovery about anything in Columbia other
13 than what's in this summarization that's by Agent
14 Rushing, that is not signed or dated by my client.

15 **MR. STUMBO:** Your Honor, the entire first disk
16 that was handed to Ms. Chapman in discovery dealt
17 with incident reports, controlled buys,
18 surveillance, an -- and as Your Honor knows, there
19 was an enormous amount of discovery in this case.
20 Almost the entire first DVD that was handed to Ms.
21 Chapman in discovery deals with the investigative
22 part in Columbia, and much of that centered around,
23 there again, the controlled buys that were done over
24 in the West Columbia area, here in this area, Judge.
25 So Ms. Chapman does have that discovery --

1 **MS. CHAPMAN:** And, Judge, I'm not denying that.
2 The problem is is that none of it had to do with my
3 client.

4 **MR. STUMBO:** Well, Your Honor, the link will
5 come, obviously, through his own statement that he
6 brought it to this area and the officers -- which
7 will corroborate the officers' testimony that they
8 started with the investigation on buys here for
9 heroin, and ultimately it leads them -- the
10 investigation leads them back to Myrtle Beach, South
11 Carolina. It became very clear to them that that
12 was the source of supply after several months of
13 investigation. And that's what is encompassed in
14 count one of this indictment, and that's why it's
15 such a broad time range, Your Honor.

16 There again, if we didn't allege that
17 Mr. Arroyo, the defendant, was part of this overall
18 conspiracy that was supplying heroin to these four
19 specific counties in this state over that period of
20 time, we would not have named him in the indictment
21 as to having multicounty significance. And we're --
22 there again, we're bringing the Columbia evidence to
23 bare essentially because of the investigation done
24 in Lexington and Richland Counties.

25 **MS. CHAPMAN:** But, Judge, there is no evidence

1 of a Columbia that involves my client.

2 MR. STUMBO: And there again, Your Honor, it's
3 his own words. We are going to introduce the
4 statement that we discussed in Denno on Thursday
5 where he confesses to delivering heroin to Columbia,
6 South Carolina.

7 And there again, I don't know that Mr. Arroyo
8 had any idea where the county line was drawn. He
9 said he brought it to Columbia. And the agents will
10 testify that the only heroin cell that was run by
11 Mexican drug trafficking organization in Columbia
12 was the one that they investigated that was
13 connected back to Myrtle Beach.

14 THE COURT: The only one they caught.

15 MR. STUMBO: And, Your Honor, ultimately, I
16 think the elephant in the room here, and there again
17 we can discuss this outside the presence of the
18 jury, Ms. Chapman and I, over the past month, have
19 discussed this whole issue of there were eight
20 separate wiretaps in this case. Now, ultimately,
21 Your Honor, that was part of the investigation at
22 specific times in this case. The controlled buy
23 done with -- and we discussed this briefly in Saluda
24 on Thursday, but we really didn't flesh it out much,
25 Judge.

1 The reason that we're presenting the evidence
2 the way we intend to present it as to conspiracy in
3 this case, Your Honor, is because, quite frankly, we
4 had a, I guess, a gentleman's or gentle lady's
5 agreement with Ms. Chapman that we won't get in any
6 evidence that was derivative from the wiretaps
7 primarily because once that can of worms is open as
8 to Ms. Chapman's client -- which we're going through
9 this process with other co-defendants in this case
10 that are still pending, Your Honor. We anticipate,
11 we have not received yet, motions to suppress
12 evidence based on the wiretaps. And per the
13 statute, Your Honor, that stuff -- those motions
14 have to be argued in front of a panel at the Court
15 of Appeals not here.

16 Ultimately, we're calling only the indictments
17 that, in our estimation, we can prove under the
18 conspiracy and facts that are not derivative
19 necessarily from the wiretaps which makes the
20 wiretap issue as to Ms. Chapman's client moot on
21 these particular counts, Judge. And that's why we
22 intend to offer evidence of personal observations by
23 these officers in West Columbia. We have wiretap
24 calls out the, you know, out the roof from this
25 individual --

1 **MS. CHAPMAN:** Yeah, but I don't want Judge
2 Keesley basing his decision on how he's going to
3 rule on this knowing that there might be wiretaps.

4 **THE COURT:** I don't know how to rule except to
5 rule as issues come up. There has to be some link
6 to the conspiracy that's alleged in the -- in count
7 one and count four of the indictment.

8 Now, count four is Horry County and a specific
9 day as I've already mentioned. Count one references
10 a list of names of co-conspirators and states that
11 it occurred in Lexington County, Horry County,
12 Florence County and Charleston, South Carolina. So
13 the fact that the witness links Charleston may
14 certainly be relevant. If there is a conspiracy
15 that included any location in this indictment, then
16 that's one situation. If there's not, then I've got
17 to question whether it's relevant to the charge
18 that's made.

19 **MR. STUMBO:** And, Your Honor, just to be quite
20 frank with the Court, the way that we intend to link
21 Mr. Arroyo to the conspiracy or the part of the
22 conspiracy here in the Columbia area would be his
23 own statement, Your Honor. Short of getting into
24 all of the wiretaps and so forth and so on, that is
25 the link, Judge.

1 **THE COURT:** I'll just have to rule on it as it
2 comes up, that's all I know to do. And the problem
3 is if the statement of the defendant is last and you
4 say that's what's going to provide the linkage, then
5 I don't know what position I'm going to be in.

6 **MR. STUMBO:** Well, Your Honor, obviously it
7 could be suppressed at the end of the case, but I
8 think we have already gone through Denno. Ms.
9 Chapman doesn't -- and I believe this was
10 established in Saluda on Thursday, that she did not
11 really even challenge that it was coerced or
12 inadmissible.

13 **MS. CHAPMAN:** No. I'm not saying that it's
14 coerced or anything like that. You know, I'm just
15 wondering -- well, Judge, I guess what he's going to
16 do is put Agent Rushing on the stand and say, you
17 know, that my client gave him this statement or --
18 and I don't even think a statement because I think
19 it's just his summarization of what happened or what
20 he told him.

21 I don't know, Judge. I keep just going back to
22 hearsay.

23 I think this statement has to be in before they
24 can do Columbia, or I guess if they wanted to put an
25 agent on the stand and say our investigation started

1 in Columbia, I can just keep asking over and over
2 again it had nothing to do with Juan Arroyo, because
3 I don't believe that there could be any testimony
4 whatsoever that it didn't.

5 MR. STUMBO: And there again, Your Honor, in
6 candor to the Court, the only thing that will be
7 offered later to tie back to Columbia is the
8 defendant's own statements that he delivered heroin
9 to Columbia, and ultimately that will corroborate
10 the agents' testimony that over the course of this
11 investigation, this defendant was a co-conspirator
12 in the organization that operated in all four of
13 those counties.

14 I don't think -- I mean, but for his statement
15 admitting that he made deliveries to Columbia, I
16 would agree with Your Honor, I don't think we could
17 prove it, we could prove the relevance of it. But
18 it's the State's position that that's -- that
19 admission that he delivered heroin to Columbia for
20 the organization and that's the context he gives the
21 statement in in talking about the structure of the
22 organization in his statement, then that provides
23 the relevance and the link to the Columbia drug
24 trafficking organization. That's all we have
25 though, Your Honor, short -- and there again, we've

1 agreed not to get into the wiretaps and stuff.

2 But these officers are going to testify,
3 personally observed Mr. Arroyo ultimately in drug
4 activity down at the beach. They also personally
5 observed Mexican drug trafficking activity in
6 Columbia, and they were able, through the
7 investigation, to link all of it together, much of
8 which had nothing to do with the wiretaps. They
9 were surveilling people driving -- they were
10 following them on the interstate back down to the
11 beach, from here to the beach and back other
12 individuals that are named parties in the
13 indictment. So, Your Honor, that would be the link,
14 the personal observations of the investigators and
15 Mr. Arroyo's statement/confession that he was
16 delivering heroin to Columbia.

17 **THE COURT:** Well, you keep saying a location
18 and I keep saying a name. You know, if a murder
19 takes place in Richland Northeast and a murder takes
20 place at Columbiana Mall, you can't just come in and
21 say there was a murder at Richland Northeast,
22 there's got to be some link between the two. And
23 you keep talking about locations and I keep telling
24 you you've got to link names.

25 You've alleged a conspiracy. A conspiracy is

1 not with a place, it's with a person as you well
2 know. You've got to link these folks together. You
3 might not have to link all of them to every single
4 transaction, but there's got to be some link between
5 this defendant and the trafficking -- the heroin
6 transactions if you're going to be putting in
7 evidence about heroin transactions. That's all I'm
8 trying to say is that saying that there was heroin
9 coming in Columbia, I could -- I would bet the farm
10 on the fact that right now, as we speak, there's
11 heroin coming into Columbia, and everybody in this
12 case has been arrested.

13 Y'all have got to link those things up, that's
14 all I'm saying. And I don't know how I'm going to
15 rule until I hear what the evidence is. But just
16 putting an agent on the stand saying, we saw this,
17 we saw that, we saw the other, without a link to
18 that defendant, it is not relevant. And you're
19 telling me, we're going to eventually link it up.
20 I'm saying, okay, I'll have to hear it.

21 Now, you can tell me where I'm wrong, but I
22 just don't --

23 **MR. STUMBO:** No, you're correct, Your Honor.
24 And I think, there again, Ms. Chapman and I -- I
25 thought we did have an understanding on this, but I

1 don't -- I'm not blaming Ms. Chapman, maybe we
2 miscommunicated this. I understand her objections
3 to -- but, you know, my understanding was the
4 objection wasn't based on relevance, it was based on
5 potentially calling for hearsay if we introduced
6 evidence --

7 **THE COURT:** Well, I brought up the relevance.
8 You know, I wasn't trying to get involved in it. I
9 just was trying to anticipate what's coming up.

10 If the agent or the officer, the investigator
11 is testifying about something and it's based on
12 hearsay, then it's going to be subject to a hearsay
13 objection. It's got to fall within an exception if
14 you're going to be relying on a conspiracy as the --
15 as it not being precluded by hearsay. I've already
16 gotten reversed on that one time in McCormick County
17 where I relied on the Solicitor to tell me that it
18 was part of a conspiracy and the Supreme Court said
19 I erroneously relied upon that representation, and
20 they reversed the conviction.

21 You've got to link all that stuff together is
22 all I'm saying. I've said it enough.

23 I just need to bring this jury in. What time
24 do y'all want them back?

25 **MS. CHAPMAN:** I don't even know what time it

1 is.

2 **THE COURT:** It's 20 till 1:00.

3 **MR. STUMBO:** Your Honor, I have a couple of
4 witnesses that came in that I needed to, quite
5 frankly, sit down with over the lunch break. I may
6 need a little bit longer, Judge. If we could have
7 till at least 2:30.

8 **THE COURT:** All right. Bring the jury in,
9 please.

10 Statements, what I was talking about with
11 conspiracy, obviously have to be in furtherance of
12 the conspiracy. That was my downfall in my case
13 from McCormick. Because they were statements, they
14 had to be made in furtherance of the conspiracy not
15 to be precluded by hearsay.

16 **MS. CHAPMAN:** Judge, could I also ask that the
17 witnesses in this case be sequestered?

18 **THE COURT:** We'll deal with that in a second.

19 (The jury returns to the courtroom.)

20 **THE COURT:** All right. Ladies and gentlemen,
21 that took a little longer than I thought it would,
22 but I've got my bearings now I believe and I'm going
23 to let you go to lunch in a moment. You'll be on
24 your own for lunch. I really won't need you back
25 here until 2:30.

1 When you come back, do not come into the
2 courtroom. The bailiff will show you where to
3 report. You'll come to these glass doors over here.
4 It's a secured area so they'll have to let you in
5 and they'll have to let you out when you leave at
6 the end of the day, but they'll show you where to
7 report as you leave. So I need you back in the jury
8 room at 2:30 this afternoon.

9 Now, I have to give you some instructions
10 before I let you go. When you take your oath as
11 jurors, which you have not done yet, you're going to
12 be promising us that you are going to decide these
13 cases based on the evidence and the law, and those
14 things are going to come to you in the courtroom.

15 Now, I'm not telling you to leave your common
16 sense at home. I want you to use your common sense,
17 but basically I want you to understand that what you
18 will be deciding these cases on will be evidence
19 that's presented in the courtroom and the law which
20 I will tell you in this courtroom. So it's improper
21 for you to do things that we call independent
22 research.

23 Now, to give you an example of what I mean:
24 Don't go look up law. Once you find out where
25 events are alleged to have taken place, don't drive

1 out there and look around. Don't do any independent
2 investigation related to these cases in any way.
3 Don't go on the Internet and try to look up anything
4 about these cases or about the law that relates to
5 them. That's completely inappropriate. If you do
6 that, you're going to be violating your oath and
7 we're going to have a problem, a big problem. So
8 just resist that temptation. You are perfectly
9 equipped to do the job that you're going to be asked
10 to do.

11 And each person in this courtroom has a role to
12 play and you'll see that as we go along. And my job
13 is to decide the law that applies to the cases and
14 to tell that to the jury at the end of the cases.

15 One of my favorite expressions is that a little
16 bit of knowledge is a dangerous thing. And if --
17 the law is, you know, thousands and thousands of
18 rules. And part of the reason that they make people
19 go to school so long and study so hard and have so
20 much experience is because you have to understand
21 how these things fit together and you cannot take
22 them in isolation. So if you go and you look up a
23 perfectly valid principle of law, but you don't
24 understand that, yeah, but that only applies when
25 you got this or this, and there's an exception that

1 comes in place for the other and we're in a
2 situation where there's the other, then you have
3 completely misconstrued it, and you -- you just need
4 to follow the law as I give it to you.

5 Now, I'm going to tell you what has happened in
6 some other states. I don't know of any of this
7 happening in South Carolina, but the Chief Justice
8 has been proactive about it and she has come up with
9 some guidelines that we have to read to you. And I
10 want you to understand, I'm not wasting your time.
11 I'm not going to go over this again with you, but I
12 just want it to make sense to you as to why we tell
13 you all this stuff.

14 We tell you these things because it's really
15 been problems either in the courtroom I've presided
16 over or across the country. In some of these states
17 where it takes months or weeks to try cases
18 routinely, they run into a lot of problems with
19 people with social media and with smart phones and
20 with the Internet.

21 They've had jurors who are tweeting about cases
22 as the case goes on. So they'll leave the courtroom
23 and they'll go out and they'll just say, I can't
24 believe what the prosecutor just said. You know,
25 that's the same thing as talking about a case. You

1 can't do that. They'll say something about the
2 judge or they'll -- or write something or tweet
3 something about that or they'll put it on Facebook
4 or one of the other social media. Don't do that.

5 When the trial is over, you can do whatever you
6 want to do, but do not, during the trial, use any
7 social media to communicate anything about these
8 cases or anybody in them.

9 Now, you are not to discuss the case in any way
10 until I tell you to. So don't discuss this case
11 among yourselves in any way until the very end of
12 the trial when I tell you to begin your
13 deliberations. Don't discuss the case with family
14 members or friends or anybody else. You can tell a
15 family member that you're on the jury, but you
16 cannot tell them what the case is alleged to be
17 about or who's in it.

18 Those are hard instructions to follow, but you
19 have to follow them. The only other option I've got
20 is to put you in a motel room somewhere and we don't
21 want to do that. So I'm relying on you to follow
22 your oath.

23 If anybody does attempt to contact you and
24 discuss the case with you, you need to report that
25 to me at the first opportunity so that I can deal

1 with it.

2 I do not know if there will be any media
3 coverage of this trial, but if there is any and
4 you're exposed to it, get away from it, don't let
5 yourselves be exposed to it any further and then
6 report to me at the first opportunity what you may
7 have seen, heard or read through the media.

8 Now, I'm going to read to you what the Supreme
9 Court tells me I have to read: While you are
10 performing your jury service and until that service
11 is concluded, you are not to discuss the case with
12 others including other jurors except as authorized
13 by the Court. You're not to read or listen to any
14 news reports about the case. You're not to use a
15 computer, cell phone or other electronic device with
16 communication capabilities while attending a trial
17 or during deliberations. You can use those devices
18 during lunch breaks and extended breaks, but you
19 cannot use them to obtain or disclose information
20 that's prohibited. You cannot use a computer, a
21 cell phone or any other electronic device with
22 communication capabilities or any other method to
23 obtain or disclose information about a case when
24 you're not in court.

25 And information about a case includes, but is .

1 not limited to, the following things: Information
2 about a party, about a witness, an attorney or a
3 court officer; any news accounts of the case; any
4 information collected through juror research on any
5 topics raised or any testimony offered by a witness;
6 any information collected through juror research on
7 any other topic that the juror thought might be
8 helpful in deciding the case.

9 So I won't read that to you again. You get the
10 gist of what I'm trying to say to you.

11 All right. Folks, if you have some true
12 emergency that arises that prevents you from being
13 here, please have somebody call us and let us know
14 what's going on because I'll try to get to you as
15 close to 2:30 as I possibly can, but I cannot do
16 anything until I know where all 14 of you are. If
17 you're not here, I start sending people to find you,
18 so please make sure you're here at 2:30. If you
19 have a true emergency that prevents you from being
20 here, please let us know what's going on, have
21 somebody call the clerk's office.

22 All right. Any questions before I let you go?

23 As far as I know, we'll run a routine day which
24 means that we'll go until about 5:00, 5:30, if
25 everything's going according to plan. And in the

1 morning, we'll start up around 9:30. We'll go until
2 about 11:30 and then I have to leave to go to the
3 Capital. So I won't know until tomorrow what to
4 tell you other than that. That's what I think is
5 going to happen right now. I expect that you will
6 be here Wednesday. I don't know if you'll get the
7 case Wednesday or if it could go into Thursday.

8 All right. Thank you very much. I'll let you
9 know as we go along how things are progressing.
10 Follow the bailiff, please.

11 (The jury was excused for lunch.)

12 **THE COURT:** All right. Ladies and gentlemen,
13 if you're here, you need to wait around a few
14 minutes before you leave. And you need to
15 understand that the jurors -- you're not to have any
16 contact with them and you're not to be talking about
17 the case or anybody in it in such a way that a juror
18 can overhear what you're saying.

19 Please be very careful because the jury goes
20 back into this secured area, but they filter back
21 around into this common area. So they will be using
22 the same areas, the same elevators, the same parking
23 lots, they likely will go to restaurants that are
24 close by, so just be really careful that you don't
25 have any contact with a juror and that you're not

1 saying anything about the case or anybody in it that
2 might be overheard by a juror.

3 If you violate that and it's reported to me or
4 I see it happen, I can find you in contempt of
5 court, I can send you to prison for six months
6 without a jury trial. So please don't -- let's not
7 have that issue arise, so just be really careful.

8 Do you want to be heard on the sequestration
9 issue?

10 **MS. CHAPMAN:** I'm just asking that they be
11 sequestered, Your Honor.

12 **THE COURT:** Do you want to be heard,
13 Mr. Stumbo?

14 **MR. STUMBO:** Your Honor, we have three, I
15 guess, co-lead agents on this case, which I think
16 fall outside of the sequestration.

17 **MS. CHAPMAN:** Judge, I think that he can have
18 his lead case agent, especially if I'm going to have
19 all three of these agents testifying to the
20 conspiracy.

21 **THE COURT:** Choose one chief investigating
22 officer. That officer can remain in the courtroom
23 throughout the trial. The rest of them are
24 sequestered until they finish testifying.

25 **MR. STUMBO:** That would be Agent Jack Rushing,

1 Your Honor.

2 THE COURT: Thank you.

3 All right. Folks, can y'all be back here maybe
4 15 minutes before so if there are any issues we can
5 try to address them?

6 MS. CHAPMAN: Yes, Your Honor.

7 THE COURT: 2:15. Thank you.

8 (Whereupon, there was a luncheon recess.)

9 THE COURT: All right. As I understand it,
10 we're going to recess for the day and start back in
11 the morning.

12 Bring the jury in, please.

13 (The jury returns to the courtroom.)

14 THE COURT: Ladies and gentlemen, over the
15 lunch break, we've had something occur that's caused
16 us to have a change in plans. There's a young
17 attorney who many of us have worked with over the
18 years, some of us are very, very close to, and he
19 passed away, and because of that, I've told these
20 folks that I would recess for the day and start in
21 the morning at 9:30.

22 I cannot say it was unexpected. I don't think
23 anybody knew when it would happen. He's, I think,
24 39, got diagnosed with cancer and -- lung cancer,
25 but never smoked. But anyway, he's worked here,

1 he's worked in Aiken, he's worked with a good many
2 of us, and some folks are just pretty shaken up
3 right now.

4 So if you all will just indulge us. I've
5 talked to the attorneys about how they think that
6 will add to the length of the trial; they really
7 don't think it's going to add substantially to it.
8 I don't think the funeral is going to be until
9 Friday, but some of the folks in the case are close
10 enough to where they're actually involved in the
11 funeral arrangements. So if you all will just
12 indulge us, I will appreciate it, which means that
13 all I'm going to do is just ask you to be here in
14 the morning at 9:30.

15 Now, we'll go as long as we can, and I'll do my
16 business at the Capitol as quickly as I can and come
17 back. And I'm not going to place you under oath
18 until tomorrow because I don't want to take a chance
19 that we may not have some other issues. So if
20 you'll be here in the morning at 9:30, we'll plan to
21 get started right at 9:30. So I need you here on
22 time, please. And I'll keep you abreast -- as I
23 told you earlier, I'll keep you abreast of how
24 things are progressing. I still think you'll get
25 the case Thursday, Thursday morning probably, may

1 still get it Wednesday. All right?

2 Don't discuss the case; don't let anybody
3 discuss it with you. Stay away from the media. All
4 those admonitions that I gave you before lunch, they
5 apply. All right? Thank you very much.

6 (The jury was excused for the day.)

7 **THE COURT:** Court's in recess till 9:30 a.m.
8 Thank you.

9 **MS. CHAPMAN:** Thank you, Your Honor.

10 **MR. STUMBO:** Thank you, Judge.

11 (The proceedings were concluded for November
12 14, 2011.)

13 (The following proceedings were held on
14 November 15, 2011.)

15 **THE COURT:** State ready for the jury?

16 **MR. STUMBO:** Just one brief issue, Your Honor.
17 Based on our discussions yesterday on this matter,
18 Ms. Chapman and I've talked about this this morning,
19 I know we have not sworn this jury yet, there is one
20 name, on further reflection for me, that's a
21 co-defendant, cooperating co-defendant, in this case
22 that we'd like to add to our witness list.

23 **THE COURT:** What's his name?

24 **MR. STUMBO:** His name is Joshua Lee Griffin.
25 He's one of the co-defendants that's already pled in

1 this case and has cooperated and is currently
2 incarcerated in SCDC.

3 **THE COURT:** Do you want to be heard?

4 **MS. CHAPMAN:** For the record, Your Honor, I'm
5 going to object to it. As you know, Judge, the
6 discovery in this case was just huge. And by your
7 order, we met with the Attorney General's Office to
8 try to get the material that pertained particularly
9 to each of the lawyers' clients, and, Judge, I
10 haven't reviewed that. And, of course, I'll go by
11 your ruling, but, Judge, I would ask if you allow
12 him to testify, that I'd be given at least the
13 discovery that pertains to him and have the
14 opportunity to go over it.

15 **MR. STUMBO:** And, Your Honor, we have disclosed
16 all of the discovery related to Mr. Griffin. We
17 certainly can bring that out and highlight the, you
18 know, those particular statements that we intend to
19 elicit testimony on for Ms. Chapman. She has been
20 given discovery.

21 **MS. CHAPMAN:** But, Judge, honestly, for the
22 record, I do object. It seems like after I made my
23 motion yesterday, we're kind of regrouping here and
24 trying to go forward, and I think it might be kind
25 of prejudicial to my client.

1 **THE COURT:** Have you given her any plea deals
2 or anything like that?

3 **MS. CHAPMAN:** I got those yesterday on Bart
4 Tanner. I got his testimony that we had talked
5 about in Saluda on Bart Tanner yesterday.

6 **THE COURT:** I mean on Griffin.

7 **MR. STUMBO:** Your Honor, we've given, I know,
8 the proffered statement and all the statements --
9 the proffer deal and the statements on Griffin. As
10 far as the plea agreement, I know we can get that
11 very easily from the clerk's office. He just pled
12 guilty about a month ago.

13 **MS. CHAPMAN:** Well, Judge, I'd have to go back
14 through all these disks and find Josh Griffin and
15 all this other stuff because that wasn't what they
16 gave me when I met with them that pertained to my
17 client when I went to the Attorney General's Office.
18 So I would ask, if that's the case and the Court
19 allows it in, that, to save me the time of going
20 through 50 disks, that I'll have the opportunity to
21 find Josh Griffin. I didn't count on him. This
22 is --

23 **MR. STUMBO:** Your Honor, we will be glad to
24 provide that to Ms. Chapman, and we would not call
25 Mr. Griffin as a witness until late tomorrow or

1 possibly, if this case may push into Thursday
2 morning -- tomorrow afternoon or Thursday morning.

3 **THE COURT:** Anything else?

4 **MR. STUMBO:** No, sir, Your Honor.

5 **THE COURT:** All right. The objection's
6 overruled. I'll ask the jury if they have any
7 connection with Joshua Lee Griffin.

8 Defense ready for the jury?

9 **MS. CHAPMAN:** I am, Your Honor.

10 **THE COURT:** Bring the jury in, please.

11 (The jury enters the courtroom at 9:30 a.m.)

12 **THE COURT:** All right. Ladies and gentlemen,
13 the first order of business is that I have to have
14 you placed under the oath of a trial jury. I need
15 you to stand and raise your right hand, the clerk
16 will administer your oath.

17 (The jury was duly sworn by the Clerk of
18 Court at 9:32 a.m.)

19 **THE COURT:** All right. Ladies and gentlemen,
20 I'm going to tell you how the case is expected to
21 begin. I won't go through the whole procedure, but
22 I'll tell you a few landmarks you can look for as to
23 how we will get started, and then I'm going to give
24 you some instructions that you must follow
25 throughout the trial.

1 The way the case will begin is that the
2 attorneys will make their opening statements to you.
3 In opening statements, the attorneys are not
4 permitted to engage in what we call argument. An
5 opening statement is an introduction, an outline, an
6 overview. It cannot extend beyond that.

7 When the opening statements are finished, I
8 will call upon the attorney general to present the
9 State's evidence. The State brought these charges
10 and the State has the entire burden of proof. The
11 State has to prove every essential element of each
12 offense charged beyond a reasonable doubt. The
13 defendant is presumed innocent. So I'll recognize
14 the State to present evidence in an attempt to meet
15 its burden.

16 When the State finishes presenting its case in
17 chief, the attorney general will advise me that the
18 State rests. At that point, I'll have to send you
19 out of the courtroom and discuss some legal issues
20 with the attorneys. When you come back in after
21 that, I'll tell you where we go from there, but
22 that's how we're going to get started with the case.

23 Now, ladies and gentlemen, it's really
24 important that you understand a few things: First,
25 that oath that you just took was one in which you

1 promised us that you're going to decide these cases
2 based on the evidence and the law, so you need to
3 know where those things come from.

4 The law comes from me. It's my job to decide
5 what law applies to the case and tell it to the jury
6 at the end of the case. The evidence comes from the
7 sworn testimony of witnesses. Evidence also comes
8 in the form of exhibits. An exhibit can be anything
9 tangible that's marked in the record. It can be a
10 photograph, a map, a chart, an audio tap, a video
11 tape, anything tangible that's marked into the
12 record.

13 If something is an exhibit, you will have it
14 with you in the jury room when you go through your
15 deliberations. And the reason I'm telling you that
16 is because it's not unusual for an attorney to have
17 something like a small photograph and show it to a
18 jury from a distance or hand it into a jury box and
19 ask the jury to circulate it around so that the
20 jurors are having to try to look at this small
21 photograph while they're also trying to pay
22 attention to what's going on up here in the jury
23 box, so -- excuse me -- the witness stand. So just
24 understand that all the exhibits will be back there
25 with you when you decide the cases.

1 Now, what the lawyers say is not evidence. I
2 want you to pay attention to what the lawyers say,
3 they facilitate the introduction of the evidence,
4 but what comes out of their mouths is not evidence.
5 The evidence comes from the witnesses and the
6 exhibits.

7 Now, there is one exception to that rule about
8 what the lawyers saying not being evidence and if we
9 come upon it, I'll tell you about it, otherwise I
10 won't burden you with it.

11 It's also very important that you understand
12 that there are two judges in this courtroom. I'm
13 the judge of the law. As I've told you, my job
14 includes telling you the law at the end of the case
15 and deciding what law applies to a case. I also
16 preside over the case, which means I maintain order
17 and I rule on legal issues as they arise. So I'm
18 the judge of the law.

19 You're the other judge. And you must
20 understand that you are the only judge of the facts.
21 Only you get to decide such things as whether
22 evidence is believable or not. Only you get to
23 decide what weight, if any, evidence should have.
24 You're the sole judges of the facts. Those types of
25 decisions are entirely your prerogative and I will

1 not invade your province. You judge the facts; I
2 judge the law.

3 Now, while you've promised us that you're going
4 to decide the cases based on the evidence and the
5 law and you must do that, as I mentioned to you
6 yesterday, we want you to use your common sense. We
7 want you to use your sense of logic and reason and
8 your good judgment. It just makes good common sense
9 that you keep an open mind about the cases and you
10 don't make up your mind until you've heard all the
11 evidence and you know what law applies to the cases.

12 So there's the rule that I've already mentioned
13 to you that I have to repeat at this point, and that
14 is that you are not to discuss the cases in any way
15 among yourselves until I tell you to. Don't talk
16 about the cases with anyone, friends, family, anyone
17 at all, until the week is completely over and you've
18 been discharged from this jury. If anybody attempts
19 to contact you and discuss the cases with you,
20 report that to me so I can deal with it.

21 If there's any media coverage of the trial, get
22 away from it and report to me at the first
23 opportunity what you may have seen, heard or read
24 through the media.

25 Don't do any independent investigation as I

1 explained to you yesterday. I won't go through that
2 whole thing again.

3 Now, folks, the final thing I want to say is I
4 want to thank you. I'm not going to sit up here and
5 say that repeatedly because I think it cheapens it
6 when I do that. I am very mindful of the fact that
7 you have other places to be and other things to do,
8 and I'm very grateful that you're here with us to
9 help resolve the dispute that these folks have.

10 Now, all I can promise you is that I will do
11 everything in my power not to waste your time. You
12 will have hurry up and wait; I'm sorry, you will.

13 And I'm going to tell you that I've already
14 messed up. When I checked the schedule yesterday, I
15 realized that I have to be in Columbia earlier than
16 I thought I did, so we're not going to go
17 particularly long this morning. We'll take a break
18 and we'll start back after lunch.

19 But I promise you this: If you're ever waiting
20 on us, we're working. We're not going to be sitting
21 out here goofing around while you're back there
22 waiting on us. If you're waiting, we're working
23 trying to get you back out here so that we can move
24 on with the case. So thank you.

25 Now, ladies and gentlemen, there's one issue

1 that has come up that I need to cover with you and
2 that is that apparently there is a potential witness
3 whose name I did not read out to you yesterday. So
4 what I need to do is to remind you that you're still
5 under oath and ask you if any of you are related by
6 blood or marriage or connected by employment with
7 Joshua Lee Griffin; if so, raise your hand?

8 No hands are raised.

9 Do any of you have any connection of any kind
10 that you know about with Joshua Lee Griffin; if so,
11 raise your hand?

12 No hands are raised.

13 If Joshua Lee Griffin is added as a witness in
14 this case, would that in any way affect your ability
15 to be a fair and impartial juror; if so, raise your
16 hand?

17 No hands are raised.

18 All right. Ladies and gentlemen, I invite your
19 close attention.

20 Which of you is going to make the opening
21 statement? Mr. Waller, you're recognized for your
22 opening statement.

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

25 **THE COURT:** Yes, sir.

1
2 OPENING STATEMENT

3 MR. WALLER: Good morning, ladies and
4 gentlemen. Ladies and gentlemen, Juan Arroyo, the
5 defendant, in this case is a drug dealer. The
6 members of his organization are drug dealers. From
7 sun up to sun down, that's what they did, they sold
8 heroin. That was their sole purpose was to spread
9 poison throughout the state, the Columbia area, the
Myrtle Beach area and the Charleston area.

10 Now, you're going to hear from the Judge, from
11 us, the evidence in this case -- well, not the
12 evidence from the Judge. He told you before that
13 Juan Arroyo is charged with conspiracy to traffic
14 heroin from 14 grams to 28 grams and actually
15 trafficking heroin from 14 grams to 28 grams.

16 Now, the evidence is going to come from that
17 witness stand. It's going to come in the form of
18 exhibits. It's going to come in the form of
19 testimony.

20 You're going to hear from the investigators who
21 witnessed these transactions, who conducted
22 surveillance, who spent a great deal of time
23 attempting to discover who the members of this
24 organization were. You're going to hear from other
25 members of the organization who actually

1 participated in selling these drugs. You're going
2 to hear that the defendant, Juan Arroyo, delivered
3 heroin to Charleston. You're going to hear the
4 defendant delivered it to Columbia. You're going to
5 hear from an individual that purchased heroin from
6 Juan Arroyo. You're going to hear from the
7 defendant's girlfriend, lived with him at the time,
8 went with him when he sold heroin, distributed
9 heroin to different places, made trips for this
10 organization and generally moved in a position to
11 expand the organization, to further it.

12 And then you're going to get taken inside a
13 drug deal. You're going to see a video of an actual
14 drug deal go down involving the defendant, Juan
15 Arroyo, where he sells a large quantity of heroin to
16 a cooperating member working with the police.
17 That's on video. You're going to see all that.

18 Then, ladies and gentlemen, if that's not
19 enough information, you're going to hear from the
20 defendant's own mouth, statements that he gave where
21 he admits to being part of this organization, he
22 admits to selling heroin, he names members of this
23 organization, he gives the structure. You're going
24 to hear that.

25 Now, the Judge is going to tell you the State

1 has the burden of proof and we do. It's beyond a
2 reasonable doubt. Now, that doesn't mean any doubt
3 in your mind, but if, at the end of this case, you
4 have a clear and firm conviction that this defendant
5 is guilty, myself or Mr. Stumbo from our office is
6 going to come back before you, he's going to ask you
7 to return a verdict of guilty for these two charges
8 facing this defendant. Thank you.

9 **THE COURT:** Thank you, Mr. Waller.

10 Ms. Chapman, you're recognized for your opening
11 statement.

12 **MS. CHAPMAN:** May it please the Court, Your
13 Honor.

14 **THE COURT:** Yes, ma'am.

15 **MS. CHAPMAN:** Good morning, ladies and
16 gentlemen. I introduced myself to you yesterday.
17 I'm Debbie Chapman. I'm a sole practitioner. And I
18 represent Juan Arroyo.

19 Just to give you a little background on Juan,
20 he's 28 years old. Originally, he is from Mexico.
21 He moved to the United States when he was six years
22 old, moved to California. He went to elementary
23 school here. He went to middle school and he went
24 to high school in California. He moved to South
25 Carolina in the year 2001. He married, had two

1 children, divorced, and he's lived in Myrtle Beach
2 since that time.

3 And as the Judge told you, it is the State's
4 burden to prove to you beyond a reasonable doubt
5 that Mr. Arroyo is guilty. Reasonable doubt is like
6 a chain, a linked chain, strong -- reasonable doubt
7 is one of the -- it is the highest standard we have
8 in a courtroom. One weak link, you'd have to find
9 my client not guilty.

10 What I would ask that you do is listen to all
11 of these witnesses, listen to all their testimony,
12 look at all the evidence. This case is truly
13 important to my client and if you find that weak
14 link, you need to find him not guilty. Thank you.

15 **THE COURT:** Thank you, Ms. Chapman.

16 Call your first witness.

17 **MR. STUMBO:** Thank you, Your Honor. The State
18 calls agent Mike Burke to the stand.

19 **THE COURT:** Come around, please, to the clerk
20 to be sworn.

21 **MICHAEL BURKE,**
22 having been duly sworn, testified as follows:

23 **COURT REPORTER:** Please state your name and
24 spell your last name.

25 **THE WITNESS:** It's Michael Burke, B-U-R-K-E.

1 DIRECT EXAMINATION

2 BY MR. STUMBO:

3 Q Agent Burke, are you in law enforcement?

4 A Yes, I am.

5 Q What agency do you currently work for?

6 A I work for Lexington County Sheriff's
7 Department.

8 Q Okay. And do you work in conjunction with any
9 other task forces or agencies with the sheriff's
10 department?

11 A Yes, I do. I'm assigned to the narcotics
12 division at the Lexington County Sheriff's
13 Department. And I'm also assigned to the Drug
14 Enforcement Administration task force in Columbia.
15 And I work very closely with agents of the State Law
16 Enforcement Division, also known as SLED.

17 Q Okay. With those agencies, you mentioned the
18 Drug Enforcement Administration. I'm assuming by
19 that, you work as a narcotics agent?

20 A Yes.

21 Q Is that your primary role with the Lexington
22 County Sheriff's Department?

23 A Yes, it is.

24 Q And just give this jury a little bit of
25 background, Agent Burke. How many years have you

1 been in law enforcement?

2 **A** I've been in law enforcement just over 16
3 years.

4 **Q** And did you go through the academy?

5 **A** Yes, I did.

6 **Q** Did you receive other specialized training?

7 **A** Yes. I've received training in narcotics
8 investigation, undercover techniques, tactical
9 narcotics training, various other types of training
10 regarding narcotics and surveillance.

11 **Q** And how many years -- you said you've been in
12 law enforcement 16. How many of that 16 have been
13 as a narcotics investigator?

14 **A** I've been a narcotics investigator for just
15 over ten years.

16 **Q** And about how many cases do you think you've
17 worked, just a ball park figure?

18 **A** A couple hundred.

19 **Q** Now, if you could, tell us a little bit about
20 narcotics investigations. What are some of the
21 methods you use as an investigator to investigate
22 drug cases?

23 **A** The most common methods are, obviously,
24 physical surveillance, intelligence gathering. We
25 do use source of information from the community,

1 people who want to maybe call in anonymous tips or
2 actually be named and provide information of
3 activities they know to be going on in the
4 community.

5 We also use confidential informants. People
6 who are, more often than not, involved in the
7 activity, and whether they want to clear their
8 conscience or whether they've been arrested and want
9 to receive consideration for being arrested, they
10 actually end up going to work for us and actually
11 purchase drugs for us.

12 Q Okay. Tell us a little bit more about
13 confidential informants. You said that they may
14 work for you. Does that mean they get paid or
15 they're working off their charges or both?

16 A The two forms of consideration that they
17 receive, they could either be paid by us, which we
18 just pay them currency for -- we provide them money
19 for them to buy the drugs under our control. And at
20 the end of the deal, you know, we'll actually give
21 them, you know, some money for their time or their
22 effort. That's typically not for someone who is
23 facing charges.

24 For people who are more so facing charges, they
25 are working more so to get consideration for a

1 reduced sentence for what they're being charged
2 with.

3 Q Okay. So you use people who are actually
4 charged with drug charges to give you information
5 and work to get other --

6 A More often than not, yes.

7 Q That being said, what types of individuals do
8 you typically utilize as confidential informants?

9 A The people who are typically utilized as
10 confidential informants, they are actually involved
11 in the illegal activity. They are either drug users
12 or drug couriers. They could be money people for a
13 particular organization. There's a whole gamut of
14 duties within a drug trafficking organization, but
15 more often than not, we get the users and the
16 purchasers of drugs.

17 Q And let's talk a little bit more about the
18 surveillance. You said physical surveillance.
19 Describe that. What kind of surveillance would you
20 do in a drug case?

21 A Various times on a physical surveillance, we
22 could be actually on the ground, following people
23 around, find out where they go during the day, who
24 they meet with. We could actually have cameras
25 placed in various locations from a public location,

1 video taping activities at a particular location,
2 who goes, who comes, various things like that.

3 Q Okay. And what would the purpose of that be?
4 To connect people together?

5 A Absolutely. To connect them together, to find
6 out who's talking to who, find out who's associated
7 with who. And a good bit of the time, you can find
8 out kind of what roles people take in an
9 organization just by simply watching what their
10 actions are.

11 Q Okay. Getting back to the confidential
12 informants, when you say they work for you, what
13 kind of work would they do? Describe the kind of
14 work that a confidential informant would do.

15 A Typically, they gather intel and report intel
16 back to us or they can actually go and do a
17 controlled buy under our direction.

18 Q Okay. Let's talk a little bit about controlled
19 buys. Could you tell -- describe for this jury what
20 a controlled buy looks like?

21 A Typically, what a controlled buy is is agents
22 -- depending on what the level of the controlled buy
23 is, they will have to determine how many agents we
24 would use. There's one controlling agent for each
25 confidential informant, that -- that controlling

1 agent typically has a second agent to make sure that
2 all the Is are dotted, all the Ts are crossed to
3 make sure nothing's overlooked.

4 Typically -- a typical garden variety
5 controlled buy, we would meet with the confidential
6 informant at an obscure location, debrief the CI,
7 tell them exactly how we wanted the buy to be
8 conducted, search the CI, take everything out of
9 their pockets.

10 Sometimes they are subjected to a strip search
11 depending on the gender difference or the gender of
12 the agents and the confidential informant. The
13 reason for the search is twofold: One is for
14 protection throughout the deal to make sure that the
15 CI does not have any kind of weapons on him because
16 they are not law enforcement, they don't have the
17 powers of arrest. The second is to maintain the
18 integrity of the buy itself. We don't want to let a
19 confidential informant come in and bring his own
20 drugs to a drug deal that we're trying to purchase,
21 so we make sure that the CI does not have any drugs
22 or anything like that on him.

23 If the CI has any money, we typically take the
24 money and hold the money because the only money we
25 want the CI to have is the money we give them that

1 is recorded bills. We write the serial numbers down
2 so we can keep track of the money -- the funds spent
3 during the buy. We'll take their money to insure
4 that they don't buy any additional drugs other than
5 what we specify from the buy.

6 We will actually wire them up with an audio --
7 typically an audio and a video recording device so
8 that we can hear what's going on during the deal.
9 We may not always be able to see exactly what's
10 going on, but being able to hear the deal is twofold
11 also: One, the protection for the CI, and for the
12 evidence of the crime being committed.

13 After the purchase is made, we'll actually meet
14 back with the CI as soon as possible. We can't --
15 obviously, we can't go right into the target area
16 and get the drugs off the CI once he makes the buy,
17 but we'll actually try to keep as much eyes on the
18 location where the buy took place and try to stay in
19 some kind of communication. With cell phones now,
20 it's a lot easier to communicate with our CIs. I
21 think everybody in the world has a cell phone.

22 But as soon as the deal is done, usually we can
23 tell when they're in their car or far enough away
24 from the target area, we'll go ahead and make a call
25 to them or they -- typically, they'll be so keyed

1 up, they'll call us and let us know that the deal
2 went, and, you know, we'll follow them back to a
3 location well away from the target area and go ahead
4 and go through the same search procedures.

5 We'll recover the drug evidence from the CI, go
6 through the entire search procedures once again to
7 make sure that they haven't kept any of our evidence
8 for themselves for personal use or anything like
9 that, and actually have them give us a statement of
10 the events that took place that, you know, that we
11 may or may not have been able to see directly.

12 Q Now, if a confidential informant came back and
13 they'd actually bought more drugs for their own use,
14 you searched them and you found drugs --

15 A Right.

16 Q -- what would you do with that?

17 A Immediately take them to jail. They'd go to
18 jail.

19 Q And that evidence would not be used against
20 the --

21 A That's correct.

22 Q -- target; right?

23 A That's correct.

24 Q Agent Burke, do you or other agents you work
25 with ever work personally in an undercover capacity

1 going to make the buys yourselves?

2 A Yes. It's actually gotten a lot harder to do
3 that nowadays. The drug dealers have gotten a lot
4 more, we'll say, savvy I guess. They typically only
5 deal with people that they know to be into that type
6 of activity, whether they've actually seen them do
7 drugs or know them through someone else who has sold
8 them drugs or done drugs with them before.

9 Obviously, in an undercover capacity, we --
10 obviously, we're not allowed to do the drugs. We
11 can't test the drugs, not only does it mess our case
12 up, but it is extremely dangerous because you don't
13 know what you're putting in your system. I don't
14 know anybody that would really want to put that
15 stuff in their body anyway as far as law
16 enforcement. But it's just -- it's very much --
17 it's hard to do that anymore nowadays. So the use
18 of confidential informants have gotten more
19 increased importance.

20 Q Would it be fair to say that the dealers trust
21 the people that you're sending in more than they
22 would you coming in in an undercover capacity?

23 A Absolutely.

24 Q All right. How about a vehicle? If a vehicle
25 is used, would you search the vehicle as well?

1 A Yes, absolutely. For the same thing, any
2 weapons, any additional money, any other drugs that
3 may be secreted in the vehicle, anything like that.

4 Q Now, Agent Burke, were you involved -- did you
5 become involved in an investigation that included
6 this defendant, Juan Arroyo?

7 A Yes.

8 Q And all of the -- let me back up from that.
9 Where did that investigation start?

10 A That investigation began in West Columbia, in
11 Lexington County, South Carolina.

12 Q Okay. And what other areas of the state did
13 you personally participate in an investigation of
14 this case?

15 A Also the Myrtle Beach area, in Horry County,
16 and Charleston.

17 Q Now, what agents -- were you one of the lead
18 agents on this case?

19 A I was one of the three, yes.

20 Q Who were the other two agents that you worked
21 with?

22 A Agent Jack Rushing with SLED and Agent Adam
23 Hardin with the DEA.

24 Q Was this case just investigated on a local
25 level or was it a statewide investigation?

1 **A** It began as just a local level, but then moved
2 into a statewide investigation once we started
3 seeing the crossover of county lines in different
4 jurisdictions being affected.

5 **Q** And that was through the State Grand Jury;
6 correct?

7 **A** Yes, it was.

8 **Q** And do you have code names for State Grand Jury
9 cases?

10 **A** Yes.

11 **Q** And who names the State Grand Jury cases
12 typically?

13 **A** Typically, it's through the agents working with
14 the prosecutors of the State Grand Jury.

15 **Q** All right. Well, this statewide investigation
16 that included this defendant, what was that
17 investigation called?

18 **A** The investigation was named Amapola Negra,
19 which is translated into Black Poppy.

20 **Q** And why was it named Black Poppy?

21 **A** The heroin is derived from the poppy plants.
22 And, typically, when we first started the
23 investigation in 2009, the significant type of --
24 the most significant type of heroin that we were
25 seeing was the black tar brand of heroin.

1 Q Now, in the course of this investigation, Agent
2 Burke, could you give us -- you said 2009. What was
3 the timeframe of this investigation?

4 A The investigation -- we began the investigation
5 September of 2009, and we wrapped up the final
6 arrests in October of 2010.

7 Q So a little over a year --

8 A Yes.

9 Q -- investigation?

10 Was there a name for this -- you say there was
11 black tar heroin involved. Is there a name for this
12 organization that you developed through the course
13 of the investigation?

14 A Yes. Through the course of the investigation,
15 we identified the -- the overall leader of the
16 organization that was distributing the heroin
17 throughout the state was -- who we knew him as -- or
18 identified him as Carransa or also known as Big
19 Pelon.

20 Q And so you called it the Carransa or Pelon --

21 A Yes.

22 Q -- Drug Trafficking Organization?

23 And in the course of investigating the Pelon
24 Drug Trafficking Organization, did you conduct
25 eyeball or physical surveillance on targets?

1 A Yes. Yes, we did.

2 Q How many hours did you do? Just estimate.

3 A There were some days when we were doing
4 surveillance 16 to 18 hours a day, so whatever that
5 equates to after a year, year and a half.

6 Q So it would be fair to say hundred of hours?

7 A Hundred of hours, absolutely.

8 Q Did you conduct controlled buys in this case?

9 A Yes, we did.

10 Q Did you talk to confidential sources in this
11 case?

12 A Yes, we did.

13 Q What was the primary method throughout this
14 case of delivery of the heroin?

15 A What we had seen the -- during the controlled
16 buys, the heroin was actually packaged in small
17 balloons. Each balloon was about a tenth of a gram
18 at the time, and the price was \$20 per balloon.

19 The larger quantities, the method they used to
20 conceal the heroin, they had roughly one ounce --
21 about -- it was a little bit larger than a golf
22 ball. It was wrapped in plastic and black
23 electrical tape. Those one ounce balls of heroin
24 were actually placed inside of the grease tubes like
25 you buy at Wal-Mart. Super Tech was one of the

1 brands that we saw a lot.

2 They would take some of the grease out, put the
3 balls in the grease tube, and somehow they would put
4 the top back on the grease tube where you couldn't
5 even tell that it had been popped or opened. And
6 they would just transport it in a grocery bag or
7 just throw it in their trunk.

8 Q Did you personally observe and seize balloons
9 of -- the small balloons of heroin in this case?

10 A Yes.

11 Q Did you personally observe and seize the grease
12 tubes with the larger quantities in this case?

13 A Yes.

14 Q And were you personally involved in the
15 surveillance, the physical surveillance, in this
16 case in Columbia, Myrtle Beach areas?

17 A Yes.

18 MR. STUMBO: Beg the Court's indulgence, Your
19 Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 MR. STUMBO: No further questions at this time,
23 Your Honor.

24 THE COURT: Cross?

25 MS. CHAPMAN: I have no questions, Your Honor.

1 **THE COURT:** Thank you, sir. You may step down.
2 Call your next witness.

3 **MR. WALLER:** Your Honor, the State would call
4 Adam Hardin.

5 ADAM ROBERT HARDIN,
6 having been duly sworn, testified as follows:

7 **THE CLERK:** Please be seated and state your
8 name.

9 **THE WITNESS:** Good morning. My name is Adam
10 Robert Hardin.

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 **Q** Agent Hardin, where do you currently work?

14 **A** I'm currently a special agent assigned to the
15 Drug Enforcement Administration in Columbia, South
16 Carolina.

17 **Q** And how long have you been with the Drug
18 Enforcement Administration?

19 **A** I've been employed with the DEA for
20 approximately, almost eight years now.

21 **Q** What are your main duties at that agency?

22 **A** As a special agent, we investigate violations
23 of the Controlled Substance Act, individuals who
24 sell narcotics.

25 **Q** Okay. Go through your background a little bit,

1 if you would.

2 A Certainly. Prior to becoming a special agent
3 with the DEA, I worked as a diversion investigator
4 with the DEA investigating pharmaceutical controlled
5 substances, the distribution of those drugs. Prior
6 to that, I worked as a military intelligence analyst
7 assigned to the Federal Bureau of Investigation, the
8 U.S. Attorney's Office and the DEA.

9 Q What type of training have you had, specialized
10 training, with the Drug Enforcement Administration?

11 A I spent 19 weeks at the DEA academy in
12 Quantico, Virginia, where we're trained in drug
13 identification, criminal investigation, money
14 laundering and so forth.

15 Q Do you still go through trainings periodically
16 now?

17 A We do.

18 Q During your career, have you had an occasion to
19 investigate drug trafficking organizations?

20 A Yes, sir, I have.

21 Q Approximately how many?

22 A Oh, dozens, dozens.

23 Q Have you had an occasion to investigate
24 Hispanic drug trafficking organizations?

25 A Yes, I have.

1 Q Are you familiar, through your training, with
2 different types of heroin?

3 A I am.

4 Q Can you, I guess, please just give a, you know,
5 brief --

6 A Yeah. You have black tar heroin. You have
7 brown heroin. You have white heroin. The white
8 heroin is a powder substance and the brown can be a
9 powder substance as well. The black tar heroin is
10 sticky just as the name insinuates.

11 Q Are you familiar with -- you said you've been
12 trained. You can identify the different types?

13 A Yes, sir.

14 Q Did you have an occasion to participate in an
15 investigation dubbed Black Poppy?

16 A Yes, sir, I did.

17 Q Now, from your personal involvement, where did
18 that -- where did your involvement begin?

19 A In Columbia, South Carolina.

20 Q What -- did you participate in surveillance?

21 A I did.

22 Q And what did you see on that surveillance?

23 A In Columbia, South Carolina, we saw a group of
24 individuals selling user quantities of heroin here
25 in the Columbia, South Carolina area.

1 Q When you say selling it, how -- can you
2 describe --

3 A The heroin was packaged in balloons, tenth of a
4 gram balloons, depending on what the customer
5 wanted. They would meet with the driver -- or the
6 courier of the organization. The courier would hand
7 him the requested amount of balloons and the two
8 would depart, you know, exchange of money for the
9 heroin to take place and then the two would depart.

10 Q Did you see -- you said you saw how it was
11 packaged?

12 A Yes, sir.

13 Q Did you see -- did you have an occasion to see
14 -- you said it was packaged in balloons. Did you
15 have an occasion to see how it was packaged inside
16 the balloons?

17 A Yes, sir. It's wrapped in a tinfoil substance
18 -- tinfoil and then contained in a balloon. And
19 what typically happens with the couriers, they would
20 keep these balloons in their mouths so if stopped by
21 law enforcement, it would be easily swallowed to
22 avert law enforcement.

23 Q Now, through the course of this investigation,
24 did it lead you somewhere else in South Carolina?

25 A Yes, sir, it did.

1 Q Where was that?

2 A Myrtle Beach, Horry County, South Carolina.

3 Q Did you personally participate in the
4 investigation in Myrtle Beach?

5 A Yes, sir, I did.

6 Q What type of investigative measures did you
7 participate in in Myrtle Beach?

8 A I participated in the controlled purchase of
9 heroin.

10 Q Involving this defendant?

11 A Yes, sir.

12 Q Approximately how many?

13 A I participated in two controlled purchases on
14 one day, May 21st, 2010.

15 Q Was there any particular way that the heroin
16 was packaged in instances that you saw?

17 A Yes, sir. The way the heroin was packaged in
18 these instance was it was -- the purchases were for
19 larger than a tenth of a gram. These were ounce
20 quantity purchases of heroin. And the heroin was
21 wrapped in black electrical tape and --

22 MS. CHAPMAN: Judge, I'm going to object. My
23 client is not on trial for anything about May 21st.

24 THE COURT: Do you want to be heard?

25 MR. WALLER: Your Honor, we can strike that

1 question.

2 THE COURT: Anything else?

3 MR. WALLER: Beg the Court's indulgence one
4 second, please.

5 (Pause.)

6 MR. WALLER: Agent Hardin, who did you --

7 THE COURT: Wait just a second.

8 All right. Ladies and gentlemen, at this
9 stage, I'm going to instruct you to disregard any
10 testimony about a transaction or transactions on May
11 21st, 2010. I don't know if the State is intending
12 to assert that under count one of the indictment,
13 but count four of the indictment alleges an incident
14 April 29th, 2010.

15 Go ahead.

16 MR. WALLER: Agent Hardin --

17 THE COURT: Hold on.

18 MS. CHAPMAN: Judge, at that time, then I would
19 request that -- may I approach the bench?

20 THE COURT: Ladies and gentlemen, step in the
21 jury room, please. Don't discuss the case.

22 (The jury retires to the jury room.)

23 THE COURT: Agent Hardin, I need you to step
24 outside. Don't discuss your testimony with anyone,
25 please.

1 **THE WITNESS:** Yes, sir.

2 (Witness leaves the courtroom.)

3 **THE COURT:** Yes, ma'am.

4 **MS. CHAPMAN:** Judge, this is my problem is
5 that, and we even had a pretrial motion on this,
6 that he was going to be tried on the conspiracy and
7 the April 29th buy. Now, he just sat up here and
8 testified that he made two controlled buys on one
9 day, on May 21st, which includes the wiretaps. We
10 also agreed to keep out the wiretaps, that's why
11 these other charges were not coming in.

12 Now, the jury's already heard that there were
13 two other controlled buys on May 21st. This has
14 nothing to do with the conspiracy, that was not
15 going to be part of the conspiracy. And, at this
16 point, I'd ask for a mistrial because I don't
17 believe you can unring that bell. They've heard it.
18 And I know that when they go back, they're going to
19 say, well, there must have been two controlled buys
20 on May 21st because Agent Hardin testified to it.
21 So I would ask for a mistrial.

22 **THE COURT:** All right. Mr. Waller.

23 **MR. WALLER:** Your Honor, I misspoke. I did not
24 intend to get into that. I basically just wanted to
25 get out that he had participated in other controlled

1 buys.

2 Your Honor, I think it can be -- I think it was
3 just briefly mentioned. I think it can be cured, at
4 worse, with a curative charge. I do not think it
5 rises to the level of mistrial.

6 MS. CHAPMAN: Judge, may I be heard?

7 THE COURT: Yes, ma'am.

8 MS. CHAPMAN: Judge, two additional controlled
9 buys on one day I don't believe can be cured by a
10 curative instruction. That's pretty
11 straightforward.

12 MR. WALLER: Your Honor, he didn't specify as
13 to those two controlled buys that it was with on
14 that day that were with this defendant.

15 MS. CHAPMAN: I believe that he did. He said
16 he'd made two controlled buys on May 21st. And I
17 had to stop to think about it for a minute. I think
18 the next words out of his mouth, and I might be
19 wrong about it, was they were large quantities of
20 heroin and, Judge, that can't be fixed.

21 (Pause.)

22 MS. CHAPMAN: And, Judge, specifically,
23 specifically, I had asked for these pretrial motions
24 to make sure that this did not happen. The 5/21 buy
25 has to do with wiretaps. And, at that point, the

1 only one that was up for game that did not deal with
2 wiretaps was 4/29.

3 Well, I understand there's been no testimony
4 about a wiretap, but, Judge, two controlled buys in
5 one day on May 21st and then they're going to say,
6 oh, no, sorry, disregard that, again I just don't
7 think you can unring that bell with them.

8 **MR. WALLER:** Your Honor, May 21st, there was no
9 wiretaps involved at that time.

10 **MS. CHAPMAN:** Judge, that's not what he's on
11 trial here for today. And they're going to sit
12 there and think, well, if there was a 4/29 buy,
13 there must be a 5/21, two controlled buys.

14 **THE COURT:** Well, are you asserting that the
15 incident in May is part of count one or not?

16 **MR. WALLER:** Yes, Your Honor. It all goes to
17 the overall conspiracy.

18 **MS. CHAPMAN:** Judge, no.

19 **THE COURT:** Well, what agreement do you all
20 have? That's what I need to be clear on because --

21 **MS. CHAPMAN:** Well, Judge, like yesterday when
22 we talked about the conspiracy, they were going
23 to -- matter of fact, this is the reason they're
24 bringing in Mr. Griffin for -- to kind of link up,
25 put a name with Columbia to prove this conspiracy.

1 We were not going to mention anything, anything
2 about these other controlled buys, period, not to
3 prove a conspiracy.

4 They've got Bart Tanner is what I was told.
5 And I objected to even having Mr. Griffin. And Your
6 Honor let Mr. Griffin come in, that's how they were
7 going to tie up their conspiracy. The 5/21 buy,
8 there was going to be no dope in. It wasn't even
9 going to be mentioned, it was my understanding.

10 MR. STUMBO: Your Honor, if I can speak to the
11 agreement?

12 THE COURT: Yes.

13 MR. STUMBO: The wiretap that was executed as
14 to this defendant came into play by mid-June of
15 2010. We were not going to specifically go into the
16 May 21st buys, which are actually count five of the
17 indictment. We didn't call those for trial this
18 week.

19 Judge, we do feel like they're part of the
20 overall conspiracy in this case because it is within
21 the timeframe and it's unrelated, ultimately, to the
22 wiretap. So I don't think we violated our agreement
23 with Ms. Chapman.

24 Now, that being said, Your Honor, it was
25 inadvertent on the stand. I think Mr. Waller has

1 indicated that to Your Honor. We agreed that we
2 would focus on the April 29th buy at the beach and
3 then the overall conspiracy. So we're glad to have
4 that testimony stricken from the record. I don't
5 think it rises to the level of a mistrial on this
6 case, Your Honor. Ultimately, it can be cured.

7 As far as the jury knows at this point, one,
8 Agent Hardin didn't specify, I don't believe in his
9 testimony, that the May 21st buys were conducted
10 with this defendant. And the other point I was
11 going to raise, Your Honor, he did -- as far as they
12 know, we misspoke as to the date. You know, there
13 was an April 29th buy that this jury is going to
14 hear about. So, Your Honor, I certainly don't
15 believe it rises to the level of a mistrial.

16 MS. CHAPMAN: Well, Judge, I disagree with all
17 of that because this is my problem, and I do believe
18 it has something to do with the wiretaps, the 5/21
19 buy, because somehow Columbia found out about the
20 4/29 buy and then there was a traffic stop that had
21 to do with a buyer, a phone call is -- I think my
22 understanding from the way I read the discovery.
23 They end up hooking up with Horry County and finally
24 put all of that information together with their
25 wiretaps and everything else that my client must be

1 involved.

2 Now, Judge, I'm telling you our agreement was
3 not to mention this 5/21 buy. This was not supposed
4 to be part of how they were going to prove their
5 conspiracy, because if that's the case, I would have
6 moved to suppress the wiretaps because I don't know
7 if any of this is going to be -- could have been
8 suppressed.

9 THE COURT: All right. Well, you all are
10 talking about a lot of things. The issue about
11 Mr. Griffin, I've already ruled on that as you
12 noted. And Mr. Griffin is a named co-conspirator.
13 The remedy the Court would be willing to consider is
14 some sort of additional time for you to get the
15 information that you need on that issue.

16 Now, the issue that's before me deals with the
17 witness testifying about a transaction on May 21,
18 2010, actually two transactions. I disagree with
19 the State's description of it. Of course, I have
20 the benefit of not only my recollection, but the
21 rough notes of the real time.

22 And the questions that led into that: Did you
23 personally participate in the investigation in
24 Myrtle Beach?

25 Yes, sir, I did.

1 What type of investigative measures did you
2 participate in in Myrtle Beach?

3 I participated in the controlled purchase of
4 heroin.

5 Involving this defendant? Question.

6 Yes, sir.

7 Approximately how many?

8 I participated in two controlled purchases on
9 one day, May 21, May 21st, 2010.

10 That's what he said. He said he bought heroin
11 twice from this defendant on May 21st, 2010. That's
12 what I heard. That's what the real time notes say.

13 Then you asked about is there a particular way
14 that heroin was packaged in instances that you saw.
15 And he goes into describing that the purchase was
16 for larger than a tenth of a gram. They were
17 wrapped in black electrical tape. That's when the
18 objection came.

19 And I'd already seen that count five of -- I'm
20 sorry -- count six of the indictment is the count
21 that deals with May 21st, 2010, specifically. I
22 mean, if it falls within count one, then as a legal
23 matter, evidence about trafficking, distributing,
24 being involved in the transfer of heroin in Horry
25 County in May of 2010, would fall within the

1 going to talk about these other buys. And I believe
2 we put that on the record in Saluda last Thursday.

3 If the 5/21 buy is now going to be part of
4 their conspiracy, Judge, then I'm going to ask for a
5 recess if I don't get a mistrial and let me file a
6 motion to suppress.

7 MR. STUMBO: Your Honor, I don't think Ms.
8 Chapman's misstated anything. And I don't think we
9 have any disagreement quite frankly with what we've
10 agreed to and it's what we put on the record in
11 Saluda last week was essentially that because there
12 were wiretaps in Columbia that ended up connecting
13 the Myrtle Beach after this April 29th buy, that we
14 would just not call count five of this indictment
15 for trial, we would call count four.

16 That being said, Your Honor, I think we can
17 cure this by striking -- having the jury disregard
18 the testimony. I don't think that it's so
19 prejudicial ultimately to the case if we cure it by
20 having the testimony stricken from the record and we
21 proceed on the April 29th buy.

22 I don't think Ms. Chapman has misstated
23 anything. We agreed not to call the May 21st buy
24 and quite frankly not present that evidence. That
25 was inadvertently elicited on the stand, Your Honor.

1 We certainly did not intentionally do that. And we
2 would accept the Court's ruling on that matter. We
3 would ask Your Honor simply to cure it by striking
4 that testimony from the record and we can move on.

5 MS. CHAPMAN: Judge, I don't think it can be
6 cured. I mean, my client's on trial for his life,
7 literally. I just don't think that can be cured.
8 That's two complete buys that they've heard on a
9 totally separate day than what the Court has read to
10 them what he's on trial for, the conspiracy and the
11 4/29 charge. And then to add the 5/21 on top of it
12 and two additional buys, Judge, I just don't know
13 how that can be cured.

14 THE COURT: All right. Y'all give me a few
15 minutes to think about it. We're at ease. Nobody's
16 to discuss any of this with the agent. We're at
17 ease.

18 (Brief Recess.)

19 THE COURT: All right. Let me ask a few more
20 questions. I'm confused about the argument related
21 to the wiretapping. The State is saying that the
22 wiretapping did not start until June. So how is
23 this tied up in wiretapping?

24 MS. CHAPMAN: Judge, but the wiretaps were long
25 before June.

1 **THE COURT:** I'm sorry?

2 **MS. CHAPMAN:** The wiretaps started long before
3 June. They just started on my client's personal
4 phone on June. But the problem is is to link up
5 Columbia, Charleston and the beach, these wiretaps
6 have been going on for months. When they caught my
7 client on 4/29 on a controlled buy, there was no
8 wiretap. Horry County did that all by themselves
9 above and beyond the wiretaps. At that point, the
10 State Grand Jury, on 4/29, didn't use any wiretaps
11 to get to the beach to my client. So we agreed to
12 try him on the 4/29.

13 After 4/29, there starts a couple of events.
14 There's a car stop where they find heroin in grease
15 tubes. They hook up with Horry County. And the
16 question is is I believe on the 5/21 buy, they had
17 wiretaps to connect to my client.

18 So when I talked to Mr. Stumbo, because I was
19 going to move to have those suppressed, that we
20 decided to go forward on the 4/29 buy that had no
21 wiretaps and there would be no mention of the 5/21
22 buy, the 6/22 buy, there was another buy in there.
23 It's the other counts of the indictment.

24 We were not going to bring in that dope. We
25 weren't going to talk about it. We weren't going to

1 do any of that. And I think the record reflects
2 that because when I made a motion, and I put that on
3 the record in Saluda, but when I made my motion for
4 limine to make sure that these agents, I didn't want
5 them testifying to some big conspiracy and stuff
6 that they hadn't seen or anything else, and I had
7 talked to Mr. Stumbo, we were going to limit it to
8 what we had.

9 But after the hearing yesterday, they wanted to
10 add, because they needed a body for the conspiracy
11 for Columbia, Mr. Griffin, so that's how they were
12 going to prove their conspiracy. The 5/21 buy was
13 not to be involved in the conspiracy.

14 MR. STUMBO: Judge, I think if I can just give
15 a real brief timeline, it may clarify this a little
16 bit.

17 The Horry County -- the DEU agent from the
18 Fifteenth Circuit, Ryan Wood, conducts a controlled
19 buy with a confidential informant with this
20 individual on April the 29th, which is count four of
21 this indictment. About a week later, the first week
22 of May, I think it was May 5th or May 6th, the DEA
23 essentially links up -- the DEA or SLED agents link
24 up with the DEU down there at the beach and start
25 connecting the dots in this case, that's in early

1 May.

2 There's another buy done on May 21st that
3 involves the agents -- involves the agents that we
4 have in the courtroom, Mike Burke, Jack Rushing from
5 SLED, and Adam Hardin, who was on the stand, in May.
6 They had wiretaps on phones in Columbia starting in
7 March.

8 When we say that they didn't have a wiretap on
9 this defendant, they didn't have one until June the
10 17th, that is why there's this in between time where
11 there is some wiretap evidence in this case, but it
12 doesn't necessarily relate directly to this
13 defendant until June when they get another wiretap
14 order for his phone. I think that's the confusion
15 here. There was wiretap evidence in this case
16 before even the April 29th buy, but Agent Wood, who
17 conducted the controlled buy on April 29th, had no
18 idea of that evidence in Columbia.

19 **THE COURT:** But did you agree or the State
20 agree that there would be no mention of a
21 transaction on May the 21st, not to bring in the
22 drugs that were obtained at that time and not going
23 to mention it at all?

24 **MR. STUMBO:** Yes, sir.

25 **THE COURT:** Then you violated the agreement,

1 not intentionally, but you violated the agreement.

2 MR. STUMBO: We did, Your Honor, inadvertently,
3 and we would ask Your Honor to cure it. If we can't
4 cure it, we would accept Your Honor's ruling.

5 THE COURT: I can't cure it. I mean, the old
6 adage, cliché, about not being able to unring the
7 bell, I think applies here.

8 You've got a count for conspiracy. And to me,
9 the most direct evidence that someone could have of
10 a conspiracy is to actually put the drugs in
11 someone's hand and have them giving those drugs to
12 an agent of law enforcement. And it links up and
13 makes sense if you all picked the 29th because it
14 was just something that was done by the Fifteenth
15 Circuit on their own and it wasn't connected until a
16 later time, that that would be why the 29th was --
17 the April transaction was picked out and the May and
18 the August and all those other ones were left off.

19 All right. But I've got to make some
20 evaluations here. Let me -- y'all bear with me.
21 Just have a seat.

22 (Pause.)

23 MS. CHAPMAN: Judge, may we approach?

24 THE COURT: Yes, ma'am.

25 (Whereupon, a bench conference was held off

1 the record.)

2 THE COURT: Bring the jury back in.

3 (The jury returns to the courtroom.)

4 THE COURT: Ladies and gentlemen, an issue has
5 arisen that I have not been able to resolve in the
6 time that we've had. I was trying to figure out a
7 way to have you call in to see what time I needed
8 you back, but I think the best thing for me to do at
9 this point, even though it's going to inconvenience
10 you and I'm sorry, is just to ask you to be back
11 here at one o'clock.

12 Don't discuss the case in any way. You're on
13 your own for lunch until one o'clock. This is where
14 we were going to break anyway so I could leave.

15 And there's something I'm trying to lay my
16 hands on and I just can't find it because it's come
17 down within the last year. And sometimes when
18 things are recent, they're harder to find for some
19 reason, so. I know Judge McMahon will know what I'm
20 looking for off the top of his head, but I can't
21 think of -- he remembers things that I can't
22 remember. So I'm going to get the information from
23 him and I'll know what to tell you at 1:00.

24 So don't discuss the case. Remember all of
25 those admonitions. I need you in the jury room at

1 one o'clock. Thank you.

2 (The jury was excused for lunch.)

3 **THE COURT:** Would you all please be back here
4 at quarter till? I don't know if I'll be here at
5 quarter till 1:00, but I'll try to. Thank you.

6 **MR. STUMBO:** Yes, sir.

7 **THE COURT:** Bring that agent back in here
8 first.

9 (Witness returns to the courtroom.)

10 **THE COURT:** Agent Hardin?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** We're going to have to take a break
13 so I can go to Columbia. Don't discuss your
14 testimony with anybody during this break, all right?

15 **THE WITNESS:** Yes, Your Honor.

16 **THE COURT:** Thanks very much.

17 We're at ease.

18 (Whereupon, there was a luncheon recess.)

19 **THE COURT:** All right. The case that I was
20 trying to think of is State versus Parker. It's a
21 2011 case of the South Carolina Supreme Court. It's
22 cited at 391 South Carolina 606, 707 S.E.2d 799. It
23 dealt with a situation where a mistrial was declared
24 and then there was a subsequent retrial and the
25 double jeopardy clause was invoked.

1 And the language I was looking for related to
2 when there's action on the part of the prosecution
3 that prompts a mistrial. And in that particular
4 case, they found that in the first trial, the
5 prosecution had goaded, g-o-a-d-e-d, the defendant
6 or defense into moving for a mistrial. And, of
7 course, in that situation, double jeopardy can
8 arise. Normally, if it's a defense motion, double
9 jeopardy is not going to arise on retrial. There
10 has to be some indication of an intent on the part
11 of the prosecutor to subvert protections afforded by
12 the double jeopardy clause.

13 And I have deliberated over this, thought about
14 it the entire time I've been gone. And I really --
15 I'm really not particularly confident in what I have
16 to do. The defendant's on trial on two counts of
17 the indictment. One is a conspiracy in count one
18 which asserts widespread criminal enterprise
19 involving four named locations throughout the state.
20 And count four of the indictment alleges a specific
21 transaction on April 29, 2010, in Horry County. And
22 count six of the indictment deals with an Horry
23 County incident on May the 21st, 2010.

24 What I said to you all before the break, I
25 still feel, is that I don't know how I can unring

1 the bell on the prejudice that attaches from the
2 jury hearing about an incident in May of 2010. As I
3 stated to you that if that is going to be used as
4 evidence of count one, then I don't think there's a
5 mistrial issue. It could be used as part of the
6 proof from a legal standpoint.

7 However, my understanding is that it would
8 violate the agreement that the defense had with the
9 prosecution that this incident in May would not be
10 discussed. And if the incident in May is discussed,
11 it gets into issues related to discovery and
12 wiretaps. And if I recall from earlier hearings,
13 there were asserted to be about 50,000 pages of
14 discovery, most of which is in Spanish, which would
15 have to be addressed to the Court of Appeals, from
16 what I am told procedurally if that issue comes in.

17 The disadvantage I have is that we are so early
18 into the case, the presentation of the evidence,
19 that it's really hard for me to evaluate whether the
20 evidence against this defendant is going to be
21 overwhelming and the degree of prejudice that would
22 attach. But if you're alleging the conspiracy and
23 the defense is fighting the conspiracy, as I
24 indicated to you all before the break, it seems to
25 me that evidence that is direct in nature about an

1 actual transfer of heroin in one of the subject
2 counties during the relevant timeframe is extremely
3 strong evidence of involvement in the common scheme
4 or plan.

5 And as to count four of the indictment, it
6 interjects into the trial another bad act that, you
7 know, there's been no analysis as to whether that
8 prior bad act or subsequent bad act I guess it would
9 be, another bad act, would have been admissible had
10 it been called to the attention of the Court under
11 some sort of common scheme or plan analysis, any
12 sort of -- it's not a prior bad act, but akin to the
13 Lyle factors.

14 So there's a part of me that wants to say
15 evaluate the continuance -- ability to continue the
16 case and come back later and that just seems
17 completely impractical. I think that's -- we're
18 looking at a minimum of six months to keep the jury
19 on the hook and that just seems extremely
20 impractical and inappropriate.

21 I'm looking at whether I should just let the
22 case continue and take the motion under advisement
23 and then be in a better position to evaluate the
24 strength of -- the relative strengths of all the
25 different evidence and evaluate prejudice or just go

1 ahead and make the call now. I think I have to make
2 the call now.

3 In doing so, I also feel that I have to make
4 specific findings related to how this transpired.
5 It was a direct question by the prosecution and the
6 witness answered the question that was asked of him.
7 I have no way of knowing if that was -- the witness
8 was privy. He is a federal agent. I don't know if
9 all of these things were discussed with the
10 witnesses, but it is absolutely abundantly clear to
11 me that it was not an effort to goad the defense
12 into a mistrial motion.

13 I don't think the State wants the mistrial. I
14 think they want to go forward with the case. So I
15 don't find any prosecutorial misconduct. I think it
16 was inadvertent. A question was asked and the
17 answer was directly in response to the question, but
18 I don't think that the questioner and the witness
19 were on the same wavelength. And I certainly find
20 absolutely no indication that there was an
21 intentional effort to violate the agreement between
22 counsel for the State and counsel for the defense.

23 The determination of the Court is that the
24 evidence about a different drug transaction which
25 was said to be a direct transaction between the

1 witness and the defendant, it was said to be a
2 substantial volume, it was clear to me that it was
3 very damning evidence. And it's also clear, based
4 on what I've been told by counsel, that this was in
5 violation of their agreement not to go into what
6 occurred on May the 21st, 2010. The motion for a
7 mistrial is granted. Thank you.

8 (The Judge excused the jury.)

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10 END OF PROCEEDINGS
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 10th, 14th - 15th of November, 2011.

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

October 19, 2015



Stacy L. Sheppard, RPR
Circuit Court Reporter

State of South Carolina) In the Court of General Sessions
County of Richland) Fifth Judicial Circuit
2010-GS-47-00007

The State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Juan R. Arroyo,)
Defendant.)

October 31, 2012
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

Jonathon Walker, Esquire, Assistant Attorney General
Attorney for the State

Debra R. Chapman, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>

No Exhibits Introduced.

1 (PRIOR TO HEARING, DEFENDANT IS SWORN.)

2 MS. CHAPMAN: Judge, for the record he does speak
3 English fluently. He went to school here; he did
4 elementary school, middle school, and high school in the
5 United States.

6 THE COURT: Okay.

7 MS. CHAPMAN: There's not any need for a translator.

8 THE COURT: All right. Thank you.

9 All right. Yes, sir.

10 MR. WALKER: Thank you, Your Honor. Standing before
11 you is Juan Rodolpho Arroyo. He's charged with four counts
12 on indictment 2010-GS-47-07. We're here on his motion for
13 a bond reconsideration, I guess. He's represented by
14 Debbie Chapman.

15 THE COURT: All right, can you give me some
16 background?

17 MR. WALKER: Sure. This was a heroin trafficking
18 organization operating out of the Columbia area, the
19 Charleston area, and the Myrtle Beach area. Through the
20 course of the investigation, it was discovered that the
21 Myrtle Beach area was the -- basically the hub of
22 distribution for pretty much the entire Southeast.

23 This individual is charged in both the conspiracy
24 count -- this organization was moving extreme amounts of
25 heroin. He was charged in both the conspiracy, and he also

1 had three substantive counts of trafficking heroin. I
2 believe two were greater than 28 grams and one was 14 to 28
3 grams.

4 THE COURT: And he has been in -- okay, and where are
5 you -- who's assigned to, to this case?

6 MR. WALKER: Well, how do you mean? It's Judge
7 Keesley out of Lexington County.

8 THE COURT: Okay, and where is the case?

9 MR. WALKER: It is -- there are nine defendants left.
10 There is a pending motion to suppress the wiretap which has
11 -- it's in the Court of Appeals.

12 THE COURT: Oh.

13 MR. WALKER: And so we're kind of in a stall pattern
14 right now.

15 THE COURT: Okay.

16 MS. CHAPMAN: That is correct, Your Honor. Matter of
17 fact, he's been incarcerated for twenty-seven months,
18 Judge. I tried this case, I don't know, a year ago?

19 MR. WALKER: It's been about a year ago.

20 MS. CHAPMAN: I, I think a year and it ended up in a
21 mistrial, and he's been incarcerated for twenty-seven
22 months.

23 Judge, the other thing that I will let you know, there
24 is a hold on him. There is a federal detainer from ICE
25 because he is an illegal alien, and I explained that to my

1 client, but he wants a bond. The likelihood of him getting
2 out if you give him a bond is not very good, and I, and
3 I've explained that to him.

4 Judge, I will tell you he's been in the United States
5 for twenty-two years. He lived out in California. As I
6 stated, he went to elementary, middle school, high school.
7 He was married, had two -- he has two children. He's
8 currently divorced. He's always been employed. He was
9 employed as a carpenter.

10 And, Judge, again, I filed this motion because he's
11 just adamant I guess from sitting there for twenty-seven
12 months, and I can't say that I don't blame him. He wants a
13 bond.

14 And there is a motion to suppress wiretaps. It's
15 pending in the Court of Appeals. He's part of that.
16 Judge, we try to keep check on that. I don't believe it's
17 anywhere in the near future. I even spoke to the clerk
18 this morning of it being heard.

19 And, and again, there is a hold on him, but -- and he
20 understands that. So, we're just asking for a reasonable
21 bond.

22 THE COURT: All right. Yes, sir.

23 MR. WALKER: Judge, as she said, he's, you know, from
24 Mexico. He has a bond on him. He grew up in California.
25 He, he's facing, you know, four counts with a minimum of

1 twenty-five years apiece. Other than the fact that he's
2 been in jail, I don't see any change of circumstances.
3 Bond was originally denied. The state opposes any sort of
4 bond.

5 (A PAUSE.)

6 MR. WALKER: Judge, there's a term of court in --
7 scheduled in February in this case if the Court of Appeals
8 finishes with their review of the wiretap.

9 RULING OF THE COURT:

10 THE COURT: All right, what I'm going to do is I will
11 -- I'm going, I'm going to deny the, I'm going to deny the
12 motion, reconsider the bond.

13 After February, and I, and I'm wondering if -- because
14 he's -- we had this issue with the other case up in Green
15 -- with one of the cases in Greenville. I think once a
16 case starts, Judge Keesley is going to have to be the one
17 that retries it once you all hear back from ---

18 MR. WALKER: Yes, ma'am.

19 THE COURT: Being that he knows -- well, he's tried
20 the case. I'm guessing he knows more about it than I do.

21 MR. WALKER: Yes, ma'am.

22 THE COURT: And I guess and I know that he knows more
23 about it than I do. If he doesn't have a problem hearing
24 it, what I'm thinking is after February, that he can
25 reapply at that time ---

1 MS. CHAPMAN: Okay.

2 THE COURT: --- Ms. Chapman.

3 MS. CHAPMAN: Thank you.

4 THE COURT: Once we hear from the Court of Appeals
5 regarding the appeal. And it may be possible that Judge
6 Keesley can hear it. I think the way the order is written,
7 it says once the case has began, the trial has began, that
8 the -- that judge can ---

9 MR. WALKER: Yes, ma'am.

10 THE COURT: --- handle any issues of bond.

11 MR. WALKER: Yes, Your Honor.

12 THE COURT: All right?

13 MS. CHAPMAN: Thank you, Your Honor.

14 MR. WALKER: Thank you, Your Honor.

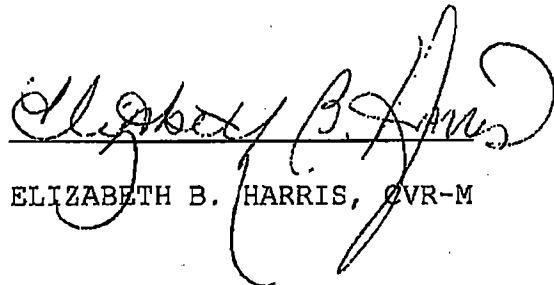
15 THE COURT: Thank you.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 31ST DAY OF OCTOBER, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

AUGUST 13TH, 2015

1 State of South Carolina Court of General Sessions
2 County of Lexington

3

4

5 State)
6)
7 v.) Transcript of Record
8 Juan Rodolpho Arroyo) 10-GS-47-07
9 Defendant.)

10

11

March 4 - 5, 2013
Lexington, South Carolina

12

13

B E F O R E:

14

The Honorable William P. Keesley, Judge; and a
15 jury.

16

17

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

18

Cary N. Goings, Assist. Attorney General
Curtis A. Pauling, III, Assist. Attorney General
Attorneys for the State

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Debra R. Chapman, Esquire
Bradley M. Kirkland, Esquire
Attorneys for the Defendant

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22

23

24

Stacy L. Sheppard, RPR
Circuit Court Reporter

25

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1 (The following proceedings were held on
2 March 4, 2013.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 we're going to change our focus now and we're going
5 to move from the more general to the more specific.
6 And what we're going to do is that I'm going to
7 qualify you to serve on a specific case. Much of
8 the procedure is going to be the same as what we
9 went through before.

10 I will qualify all of you. And if anybody is
11 disqualified from this particular case or excused
12 from this particular case, you'll be free to go.
13 But we will qualify everyone and then we will select
14 12 of you to serve as jurors and probably an
15 alternate or two and that's what we're going to do.

16 Now, remember what I told you, that you're
17 under oath, that you have an obligation to be
18 completely truthful and honest with me, that if you
19 have any doubt about whether any of these things
20 apply to you, you need to discuss it with me and let
21 me resolve the doubt, and that if I ever ask you
22 anything that you prefer to discuss more privately,
23 just let me know and we'll come down front and
24 handle it down front.

25 Now, I'm going to be asking you a series of

1 questions. These questions are designed to obtain
2 from you any possible connection you may have to the
3 case, the people in it, the type of case, whether
4 you or someone close to you has ever been through
5 anything that might affect your ability to be fair
6 and impartial.

7 Basically, what I want you to understand is
8 that the goal of this process is to enable us to
9 have a jury serving that is fair and impartial. So
10 if you keep that goal in mind, I think the questions
11 will make more sense to you.

12 The State is calling a case that is captioned
13 the State of South Carolina versus Juan Rodolpho
14 Arroyo. This indictment alleges the following:

15 That Juan Rodolpho Arroyo did, in Horry County,
16 on or about April 29, 2010, sell, manufacture,
17 deliver, purchase or bring into this state or
18 provide financial assistance or otherwise aid, abet,
19 attempt or conspire to sell, manufacture, deliver,
20 purchase or bring into this state or knowingly
21 became in actual or constructive possession or
22 knowingly attempted to become in actual or
23 constructive possession of more than 14, but less
24 than 28 grams of heroin, a controlled substance,
25 under the provisions of section 44-53-110 and

1 subsequent sections of the Code of Laws of South
2 Carolina, 1976, as amended, such conduct not having
3 been authorized by law and such activity occurring
4 and/or having significance in more than one county
5 of this state or arising out of or in connection
6 with a crime having significance in more than one
7 county of the state. That is an indictment for
8 trafficking heroin greater than 14 grams, but less
9 than 28 grams.

10 Now, you'll notice that I read to you that this
11 is alleged to have occurred primarily in Horry
12 County. I won't get too detailed with it, but
13 basically the venue of this case is here in
14 Lexington. This is a State Grand Jury case. It
15 falls under a specific statute and that's really
16 insignificant except that the State is going to have
17 to prove certain elements that I'll explain to the
18 jury at a later stage.

19 Now, this indictment is not evidence. An
20 indictment is nothing more than a charging paper.
21 It is the formal means by which someone is charged
22 and brought to trial.

23 Mr. Arroyo is presumed to be innocent. It is
24 incumbent upon the State of South Carolina having
25 brought this charge to prove every essential element

1 of the offense charged against Mr. Arroyo beyond a
2 reasonable doubt. You may not give an indictment
3 any evidentiary value. And, once again, Mr. Arroyo
4 is presumed innocent. He has no obligation to prove
5 anything at all.

6 I'll be posing questions to you. If any of
7 these questions apply to you or you have doubt about
8 whether they apply to you, please stand and listen
9 carefully to the question I ask of you and answer
10 the question.

11 Is Juan Rodolpho Arroyo in the courtroom today?
12 Mr. Arroyo, I need for you to stand and turn so the
13 jury can see you, please, sir.

14 Thank you very much. You may be seated.

15 Is there any member of the jury panel who is
16 related by blood or marriage or connected by
17 employment with the defendant in this case, Juan
18 Rodolpho Arroyo; if so, please stand?

19 (There was no response.)

20 **THE COURT:** Mr. Arroyo will be represented by
21 Ms. Debra Chapman and Mr. Brad Kirkland.

22 (Ms. Chapman and Mr. Kirkland stand.)

23 **THE COURT:** Thank you very much.

24 Now, the following persons have been identified
25 as potential witnesses for the State. As I call

1 their name, if that person is in the courtroom, I
2 need for that person to please stand and face toward
3 the jury: Investigator Ryan Wood of the Drug
4 Enforcement Unit.

5 **MR. GOINGS:** Not in the courtroom, Your Honor.

6 **THE COURT:** I'm probably going to mispronounce
7 the first name or perhaps the last name, Emigdio
8 Peneloza. It's spelled E-m-i-g-d-i-o, last name
9 P-e-n-e-l-o-z-a. Is that person in the courtroom?

10 **MR. GOINGS:** Not in the courtroom, Your Honor.

11 **THE COURT:** Sharon Lilly, Lisa Floyd.

12 All right. Are any of you related by blood or
13 marriage or connected by employment to any of the
14 potential witnesses for the State, to the best of
15 your knowledge; if so, please stand?

16 (There was no response.)

17 **THE COURT:** All right. The prosecutor for the
18 case is Mr. Cary Goings, Assistant Attorney General.
19 Do you have anybody assisting you, Mr. Goings?

20 **MR. GOINGS:** Yes, sir. Curtis Pauling from our
21 office is here and Kia Goins, our sec -- I mean,
22 paralegal with the AG's office.

23 **THE COURT:** So Mr. Pauling will be assisting
24 you as an attorney?

25 **MR. GOINGS:** That's correct, Your Honor.

1 **THE COURT:** All right. Thank you.

2 Ladies and gentlemen, do you know anything at
3 all about this matter? Do you have any knowledge
4 whatsoever about the underlying factual allegations?
5 To the best of your knowledge, have you heard, seen
6 or read anything through any news account? Have you
7 overheard any conversations? Do you have any
8 knowledge whatsoever about this matter; if so,
9 please stand?

10 (There was no response.)

11 **THE COURT:** Now, I've asked you if you're
12 related by blood or marriage to particular people,
13 the defendant, Mr. Arroyo, and any of the potential
14 witnesses for the State and I need to expand that
15 now and ask you this: If you've got any connection
16 of any kind with anybody that might be involved in
17 this lawsuit, you need to disclose that to us.

18 So, for example, if you're a friend, if you're
19 a neighbor, if you attend the same church or civic
20 clubs, if you're a current or former client of one
21 of these attorneys or anyone with whom they're
22 affiliated, if you've ever been on the opposite side
23 of the case represented by one of these attorneys or
24 anyone with whom they're affiliated, any kind of
25 connection of any kind -- any kind of connection --

1 that's redundant -- any kind of connection, please
2 let us know.

3 (Juror stands.)

4 **THE COURT:** What's your name?

5 **JUROR:** My name is Melba Elsey. And I have
6 known Kia Goins just on a friendship basis for a
7 number of years.

8 **THE CLERK:** She's juror number 79.

9 **THE COURT:** 79, Ms. Elsey, you have known
10 Mr. Goings?

11 **JUROR:** Ms. Goins, the paralegal.

12 **THE COURT:** And what's the nature of the
13 relationship? I'm sorry.

14 **JUROR:** We had a class, a fiction class,
15 together for about four or five years and just -- it
16 was a small group and we just got to know each other
17 and become good friends.

18 **THE COURT:** Is there anything at all about your
19 relationship or experience with the prosecuting
20 entity or anyone in it that would affect your
21 ability to be a fair and impartial juror in the
22 case?

23 **JUROR:** No, sir.

24 **THE COURT:** You can decide the case without
25 regard to what your friend may think of your

1 decision?

2 JUROR: Yes, sir.

3 THE COURT: Do you have any doubt whatsoever
4 about your ability to put aside your relationship
5 and decide the case based on the evidence and the
6 law?

7 JUROR: No doubt whatsoever.

8 THE COURT: All right. Thank you, ma'am.

9 Ms. Elsey is juror number 79. She's eligible
10 to serve.

11 Anybody else?

12 (Juror stands.)

13 THE COURT: Yes, sir, what's your name?

14 JUROR: Travis Goodman, number 97.

15 THE COURT: Mr. Goodman is juror number 97.
16 What's your situation?

17 JUROR: Kia and I went to high school together.
18 I don't know if she remembers. We were friends 20
19 years ago and I guess we're still friends now. I
20 haven't seen her in 20 years. No hard feelings.
21 But I do know Kia from high school.

22 THE COURT: Is there anything at all about your
23 relationship or experiences with anyone on the
24 prosecution side that would affect your ability to
25 be a fair and impartial juror in the case?

1 **JUROR:** No, sir.

2 **THE COURT:** Can you decide the case without
3 regard to what your friend may think of your
4 decision?

5 **JUROR:** Yes, sir.

6 **THE COURT:** Do you have any doubt at all about
7 your ability to put aside any relationship you may
8 have with anyone on the prosecution team and decide
9 this case based on the evidence and the law that's
10 presented? Do you have any doubt about that
11 ability?

12 **JUROR:** No, sir.

13 **THE COURT:** All right. Thank you, sir.

14 Mr. Goodman's juror number 97. He's eligible
15 to serve.

16 Anybody else?

17 (There was no response.)

18 **THE COURT:** All right. Specifically, do any of
19 you have any connection of any kind with the South
20 Carolina Attorney General's Office or anyone in it,
21 close friends, anybody works there that you haven't
22 already told us about?

23 (There was no response.)

24 **THE COURT:** Okay. Now, what agencies will be
25 involved in the testimony, Mr. Goings?

1 **MR. GOINGS:** The Horry County -- actually, it's
2 the Fifteenth Circuit. The Horry County Police
3 Department is the evidence custodian and chemist.

4 **THE COURT:** All right. So it's Horry County
5 Police Department and the Fifteenth Circuit Drug
6 Enforcement Unit?

7 **MR. GOINGS:** That's correct, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen,
9 do any of you have any connection currently or
10 formerly with the Horry County Police Department or
11 anyone in it; if so, please stand?

12 (There was no response.)

13 **THE COURT:** Do any of you have any connection
14 of any kind currently or formerly with the Fifteenth
15 Circuit Drug Enforcement Unit? The Fifteenth
16 Circuit, I believe, is Horry and Georgetown
17 Counties. If so, please stand.

18 (There was no response.)

19 **THE COURT:** All right. Have any of you or any
20 of your immediate family members ever been employed
21 in the field of law enforcement in any capacity at
22 any level, that would include federal, state, local
23 or military; if so, please stand?

24 (Jurors stand.)

25 **THE COURT:** I'm going to have to get y'all to

1 say your names and -- so we'll go one at a time.

2 Your name, sir?

3 JUROR: I'm juror 138. My cousin, Tracy
4 Morgan, is a deputy sheriff.

5 THE COURT: Wait a second. I'm sorry. I
6 should have explained this to y'all before. When
7 you say your name and your number, you've got to
8 give me time to find you, okay, because I write down
9 what you tell me.

10 138, Ms. Johns?

11 JUROR: Yes, sir.

12 THE COURT: And what's your situation?

13 JUROR: My cousin, Tracy Morgan, is a deputy
14 sheriff in Alabama.

15 THE COURT: He's a deputy sheriff where?

16 JUROR: He's in Alabama and he's a drug
17 officer...

18 THE COURT: Can you hear her?

19 COURT REPORTER: No, sir.

20 THE COURT: Drug officer -- your voice trails
21 off. He's a drug officer where?

22 JUROR: In Alabama.

23 THE COURT: Did you say a county?

24 JUROR: No. He lives in Alabama. You said
25 anybody that's related or a family member.

1 **THE COURT:** No, ma'am, you're answering the
2 question right. I just can't hear you. I didn't
3 hear what you said earlier. I'm sorry.

4 **JUROR:** He's in Opa, Alabama, the county.

5 **THE COURT:** All right. Now, is there anything
6 at all about your relationship with him or
7 experiences with him, anything whatsoever that would
8 affect your ability to be a fair and impartial juror
9 in this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Do you have any doubt in your mind
12 about that?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you, ma'am.

15 Ms. Johns is 138. She's eligible to serve.

16 Yes, sir.

17 **JUROR:** 207, Gerald Price. I have a niece that
18 works with the City of Columbia Police Department in
19 narcotics for several years. Her husband is with
20 the highway patrol.

21 **THE COURT:** And you're a retired deputy
22 sheriff?

23 **JUROR:** Right, 32 years.

24 **THE COURT:** Is there anything at all about your
25 relationship with your niece or her husband that

1 affects your ability to be a fair and impartial
2 juror in this case?

3 JUROR: No, sir. I'm an honest man.

4 THE COURT: All right. And is there anything
5 at all about your prior experience in law
6 enforcement that would affect your ability to be a
7 fair and impartial juror in the case?

8 JUROR: No, sir.

9 THE COURT: Do you have any doubt whatsoever
10 about any of those things?

11 JUROR: No, sir.

12 THE COURT: Thank you.

13 Mr. Price is 207, eligible to serve.

14 Over here on the wall.

15 JUROR: 144, Terry Killinger, former deputy
16 sheriff --

17 THE COURT: Wait a second. I apologize to you.
18 This list is so long, it takes me a while to find
19 y'all.

20 144. Go ahead, please.

21 JUROR: Former deputy sheriff with the
22 Orangeburg County SWAT operator, medic. I just left
23 in August.

24 THE COURT: Did you do drug cases?

25 JUROR: Yes.

1 **THE COURT:** Is there anything at all,
2 Mr. Killinger, about your experience, your
3 relationship with law enforcement that affects your
4 ability to be a fair and impartial juror in this
5 case?

6 **JUROR:** No, Your Honor.

7 **THE COURT:** Do you have any doubt whatsoever
8 about that?

9 **JUROR:** No doubt, sir.

10 **THE COURT:** Thank you.
11 144 is eligible to serve.

12 Next row. Your name, sir?

13 **JUROR:** Number 97, Travis Goodman.

14 **THE COURT:** Mr. Goodman is 97. Go ahead,
15 please.

16 **JUROR:** I have two first cousins in the
17 sheriff's department, one in Edgefield County, but
18 he's retired, one in Greenwood County. Two cousins
19 that are highway patrol officers.

20 **THE COURT:** Is there anything at all about your
21 relationship with those people that affects your
22 ability to be a fair and impartial juror in the
23 case?

24 **JUROR:** No, sir.

25 **THE COURT:** Any doubt in your mind?

1 JUROR: No.

2 THE COURT: Thank you, sir.

3 Mr. Goodman's 97, eligible to serve.

4 Yes, ma'am.

5 JUROR: Cathy Manz, number 166. My

6 husband's --

7 THE COURT: Wait a second. Ms. Manz is 166.

8 Go ahead, please.

9 JUROR: My husband's sister is a police officer
10 in Doraville, Georgia.

11 THE COURT: Anything at all about your
12 relationship with her or her experiences that
13 affects your ability to be a fair and impartial
14 juror in this case?

15 JUROR: No, sir.

16 THE COURT: Any doubt in your mind?

17 JUROR: No.

18 THE COURT: Thank you.

19 Ms. Manz is juror number 166 and eligible to
20 serve.

21 JUROR: I'm juror 269, Tammie Trynieszewski.

22 THE COURT: All right. Ms. Trynieszewski is
23 number 269.

24 What's your situation?

25 JUROR: I have two uncles retired police

1 officers from Oklahoma. One was canine.

2 THE COURT: Anything about your relationship
3 with them or their experiences that affects your
4 ability to be a fair and impartial juror in this
5 case?

6 JUROR: No, Your Honor.

7 THE COURT: Any doubt in your mind?

8 JUROR: No, sir.

9 THE COURT: Thank you very much.

10 269 is eligible.

11 Yes, ma'am.

12 JUROR: Number 79, Melba Elsey.

13 THE COURT: Ms. Elsey is 79. Go ahead, please.

14 JUROR: My daughter is a lieutenant with the
15 Richland County Sheriff's Department in the lab
16 department. And my son-in-law is a detective with
17 the canine division with Richland County.

18 THE COURT: Is there anything about your
19 relationship with them or their experiences that
20 affects your ability to be a fair and impartial
21 juror in this case?

22 JUROR: No, sir.

23 THE COURT: Do you have any doubt?

24 JUROR: Well, they're just such --

25 THE COURT: No, don't explain it, just tell me

1 if you have any doubt.

2 JUROR: No, sir.

3 THE COURT: Are you sure?

4 JUROR: I'm sure.

5 THE COURT: You want to expand your answer, you
6 need to come down front.

7 JUROR: Well, I mean --

8 THE COURT: I'm sorry. That was a statement.
9 If you want to tell me more, you need to come down
10 front.

11 JUROR: No, sir.

12 THE COURT: Are you sure?

13 JUROR: I'm good.

14 THE COURT: Come down front. I think the
15 lawyers want to hear what you want to say.

16 (Whereupon, the following bench conference
17 was held on the record.)

18 THE COURT: Okay. Ms. Elsey, what was it you
19 wanted to -- that I cut you off saying?

20 JUROR: Well, I mean, I just -- my son-in-law,
21 he's just such a strong drug advocate, you know.
22 And he's just a firm believer if there's any doubt,
23 whatever, that we need to go to the next level to
24 make sure that there's no doubt. And that's pretty
25 much -- he is pretty much after drugs most of the

1 time, that's what he does, a number of cases.

2 THE COURT: Would that be on your mind when
3 you're deciding this case?

4 JUROR: No, sir. No, sir. I'm an honest
5 citizen and I have my own principles and I can make
6 decisions on my own.

7 THE COURT: So you won't be concerned about
8 what he might think of your decision?

9 JUROR: No. No. I mean, if they find him
10 guilty, you know, if there's enough evidence or if
11 there isn't enough evidence, so that's what --
12 that's what my decision will be based on.

13 THE COURT: Any doubt at all about your ability
14 to be fair and impartial?

15 JUROR: No, sir.

16 THE COURT: Any doubt at all about your ability
17 to put aside how your son-in-law or your daughter
18 may feel about allegations concerning drugs?

19 JUROR: No, sir.

20 THE COURT: Thank you, ma'am.

21 Ms. Elsey is juror number 79. She's eligible
22 to serve.

23 (The bench conference was concluded.)

24 THE COURT: Yes, sir, what's your name?

25 JUROR: Brian Enell, juror number 80.

1 **THE COURT:** Mr. Enell's juror number 80.

2 What's your situation?

3 **JUROR:** I was a military police. Also, while I
4 was in the military police, I was on DST, Drug
5 Suppression Team.

6 **THE COURT:** What is that?

7 **JUROR:** Basically undercover police work buying
8 and selling drugs.

9 **THE COURT:** What's the acronym? Say it again.

10 **JUROR:** DST, Drug Suppression Team. I was a
11 member.

12 **THE COURT:** Is there anything at all about your
13 experiences that affects your ability to be a fair
14 and impartial juror in this case?

15 **JUROR:** No.

16 **THE COURT:** Do you have any doubt at all about
17 your ability to be a fair and impartial juror in
18 this case?

19 **JUROR:** No doubt.

20 **THE COURT:** Thank you, sir.

21 Mr. Enell's juror number 80. He's eligible to
22 serve.

23 Yes, ma'am.

24 **JUROR:** Paula Miller, 181.

25 **THE COURT:** 181, Ms. Miller. What's your

1 situation?

2 JUROR: My brother is a cop for Forest Acres.

3 THE COURT: Your brother is an officer for who?

4 JUROR: Forest Acres.

5 THE COURT: Is there anything at all about your
6 relationship with him or experiences that affects
7 your ability to be a fair and impartial juror in
8 this case?

9 JUROR: No, sir.

10 THE COURT: Any doubt in your mind?

11 JUROR: No, sir.

12 THE COURT: Thank you.

13 181 is eligible.

14 Anybody else?

15 (There was no response.)

16 THE COURT: Have any of you ever served in any
17 type of capacity as a volunteer or auxiliary member
18 for any law enforcement agency; if so, please stand?

19 (There was no response.)

20 THE COURT: Are any of you members of or
21 financial contributors to any organization that has,
22 as a primary purpose, the enforcement of criminal
23 laws or modification of current criminal laws?
24 Those would include organizations such as Mothers
25 Against Drunk Driving, Citizens Against Violence or

1 CAVE, or any antidrug or drug awareness program such
2 as the DARE program, Drug Abuse Resistance Education
3 program. If any of you are members of or financial
4 contributors to any such organization, please stand.

5 (Juror stands.)

6 JUROR: I'm number 79, Melba Elsey.

7 THE COURT: Yes, ma'am. Go ahead, please,
8 ma'am.

9 JUROR: I've been, I guess, what you would call
10 a contributor of MADD for about 15 years.

11 THE COURT: Anything about your relationship
12 with that organization or its philosophies that
13 affects your ability to be a fair and impartial
14 juror in a case in which it's alleged that the
15 defendant engaged in trafficking drugs?

16 JUROR: No, sir.

17 THE COURT: Anything -- any doubt about that at
18 all?

19 JUROR: No, sir.

20 THE COURT: Thank you.

21 79, Ms. Elsey, is eligible to serve.

22 Anybody else?

23 (There was no response.)

24 THE COURT: Have any of you ever been a member
25 of a neighborhood crime watch program; if so, please

1 stand?

2 (Jurors stand.)

3 THE COURT: Your name, please, ma'am.

4 JUROR: Donna Sutor, jury number, I think it's
5 257.

6 THE COURT: 257, Ms. Sutor.

7 JUROR: Yes, sir.

8 THE COURT: Are you still a member of an
9 organization for a crime watch?

10 JUROR: Yes, sir, founded our organization.

11 THE COURT: What organization?

12 JUROR: It's our neighborhood crime watch, yes,
13 sir.

14 THE COURT: Do you all meet with law
15 enforcement in any capacity for training or
16 reporting?

17 JUROR: We have quarterly meetings.

18 THE COURT: Quarterly meetings?

19 JUROR: Yes, sir.

20 THE COURT: And somebody from the sheriff's
21 department come meet with you?

22 JUROR: Yes, sir.

23 THE COURT: Is there anything at all about your
24 relationship with the law enforcement community that
25 affects your ability to be a fair and impartial

1 juror in this case?

2 JUROR: No, sir.

3 THE COURT: Any doubt in your mind?

4 JUROR: No, sir.

5 THE COURT: Thank you.

6 257 is eligible.

7 Yes, sir.

8 JUROR: 97, Travis Goodman. My Eagle Scout
9 project was a crime watch zone.

10 THE COURT: Eagle Scout?

11 JUROR: Yes, sir.

12 THE COURT: Was that in Lexington County?

13 JUROR: Newberry County, sir.

14 THE COURT: Anything at all about that
15 experience that affects your ability to be a fair
16 and impartial juror in the case?

17 JUROR: No, sir.

18 THE COURT: Any doubt in your mind?

19 JUROR: No, sir.

20 THE COURT: Mr. Goodman's 97. He's eligible to
21 serve.

22 On the aisle up here.

23 JUROR: Juror 269 Tammie Trynieszewski.

24 THE COURT: All right. Ms. Trynieszewski,
25 what's your situation?

1 **JUROR:** Member of neighborhood watch and crime
2 watch, but back in Oklahoma. I haven't been there
3 for two years.

4 **THE COURT:** You're very soft spoken, speak up a
5 little for me.

6 **JUROR:** I'm a member of crime watch and
7 neighborhood watch back in Oklahoma, but haven't
8 been active for two years.

9 **THE COURT:** And did you say where that was?

10 **JUROR:** Oklahoma.

11 **THE COURT:** Anything at all about that
12 experience that affects your ability to be fair and
13 impartial as a juror in the case?

14 **JUROR:** No, Your Honor.

15 **THE COURT:** Any doubt in your mind?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you.

18 269 is eligible to serve.

19 Yes, ma'am.

20 **JUROR:** Kathy Fudge, juror 86. I've been a
21 member of crime watch years ago in South Congaree in
22 our neighborhood and most recently at Harborside
23 Condominiums here in Lexington.

24 **THE COURT:** All right. So do you all meet with
25 law enforcement regularly?

1 **JUROR:** No, sir. We have enough coverage with
2 law enforcement thank goodness.

3 **THE COURT:** Is there anything at all about your
4 relationship with that organization or those
5 organizations that affects your ability to be fair
6 and impartial as a juror in the case?

7 **JUROR:** None at all.

8 **THE COURT:** Any doubt in your mind?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you.

11 86, Ms. Fudge, is eligible to serve.

12 Yes, ma'am.

13 **JUROR:** Juror 210, Gail Provost.

14 **THE COURT:** All right. Ms. Provost, 210, go
15 ahead, please.

16 **JUROR:** Neighborhood watch.

17 **THE COURT:** Still active?

18 **JUROR:** Yes, sir.

19 **THE COURT:** Do you all have regular meetings
20 with law enforcement?

21 **JUROR:** About once a year.

22 **THE COURT:** Anything at all about that
23 relationship or experience that affects your ability
24 to be fair and impartial as a juror in the case?

25 **JUROR:** No, sir.

1 **THE COURT:** 210, Ms. Provost is eligible to
2 serve. Thank you.

3 Do any of you have such strong feelings
4 regarding the use or sell of illegal drugs that that
5 might in any way affect your ability to be fair and
6 impartial in a case in which it's alleged that drugs
7 were used or sold; if so, please stand?

8 (There was no response.)

9 **THE COURT:** Do any of you have any personal
10 experiences, close family members, close friends,
11 you, yourself, anything in your personal experiences
12 in life that might affect your ability to be a fair
13 and impartial juror in a case in which a person is
14 charged with committing a crime; if so, please
15 stand?

16 (Juror stands.)

17 **THE COURT:** What's your name?

18 **JUROR:** Brandon Wingard, juror number 293.

19 **THE COURT:** Come down front, please.

20 (Whereupon, the following bench conference
21 was held on the record.)

22 **THE COURT:** Mr. Wingard's 293.

23 You have something in your personal experience
24 that affects your ability to be fair and impartial?

25 **JUROR:** Yes, sir.

1 **THE COURT:** You're free to go, Mr. Wingard.

2 You don't have to call in or come back.

3 **JUROR:** All right. Thank you.

4 (The bench conference was concluded.)

5 **THE COURT:** 293, Mr. Wingard, is set aside on
6 the trial of this case.

7 All right. You want me to ask number six?

8 **MS. CHAPMAN:** Can I approach just for a moment,
9 Your Honor?

10 **THE COURT:** Sure.

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

13 **THE COURT:** All right. Ladies and gentlemen,
14 I'm about through with these questions. The next
15 one I'm going to pose, I'm going to ask the
16 question, but we're not going to talk about it in
17 front of everybody else. I'll ask you to come down
18 front. We'll talk about it on the side.

19 Have any of you, any of your immediate family
20 members, anybody very close to you ever suffered
21 from any type of addiction or abuse problems related
22 to drugs or alcohol? Or, have any of you,
23 yourselves, any of you -- anybody close to you,
24 family member, friend, ever been the victim of
25 anything that had, as one of its core causes, a

1 history of alcohol or drug addiction or abuse? It
2 can be anything, it can be domestic violence, it can
3 be anything at all.

4 (Jurors stand.)

5 **THE COURT:** All right. Folks, we're going to
6 talk about these things on the side. Just form a
7 line for me and filter in.

8 (Whereupon, the following bench conferences
9 were held on the record.)

10 **THE COURT:** 166, Ms. Manz.

11 **JUROR:** Yes.

12 **THE COURT:** 166. What's your situation,
13 please?

14 **JUROR:** I had a close friend that died of
15 heroin abuse and alcoholism. I think it was in
16 2000. I lived in Maryland then. And my ex-husband
17 also was involved with heroin.

18 **THE COURT:** Tell me -- your ex-husband did what
19 now?

20 **JUROR:** He was involved with heroin also.

21 **THE COURT:** Was that in Maryland as well?

22 **JUROR:** That was also in Maryland, same time
23 period. It was one of my closest friends and
24 co-worker as well.

25 **THE COURT:** Ms. Manz, you understand that this

1 gentleman's charged with trafficking heroin?

2 JUROR: (Juror nodded head.)

3 THE COURT: Is there anything in your personal
4 experience that affects your ability to be fair and
5 impartial?

6 JUROR: It might.

7 THE COURT: I certainly understand. You're
8 through with jury duty. Do you need any kind of
9 slip for work to prove you were up here?

10 JUROR: No.

11 THE COURT: Thank you very much. You're free
12 to go.

13 166, Ms. Manz, is excused from jury duty.

14 BAILIFF: 128.

15 THE CLERK: 128, Ms. Hucks.

16 THE COURT: Ms. Hucks, what's your situation,
17 please?

18 JUROR: I had a cousin that was addicted to
19 alcohol. And he actually killed himself...

20 COURT REPORTER: I didn't hear the last part.

21 JUROR: He was addicted to alcohol and he drank
22 himself to death. And I currently have a brother
23 who has a fiancée who's addicted to pain medication.

24 THE COURT: You understand Mr. Arroyo is
25 charged with trafficking heroin?

1 JUROR: Yes, sir.

2 THE COURT: Is there anything at all about your
3 relationship with these folks, your experiences with
4 them, what you've seen or observed, have been
5 through that affects your ability to be a fair and
6 impartial juror in the case?

7 JUROR: No, sir.

8 THE COURT: Any doubt in your mind?

9 JUROR: No, sir.

10 THE COURT: Thank you very much.

11 Ms. Hucks is 128, eligible to serve.

12 Yes, ma'am.

13 BAILIFF: 31, Your Honor.

14 THE COURT: Ms. Brady.

15 JUROR: Yes.

16 THE COURT: 31. Go ahead, please.

17 JUROR: I had a younger brother that had an
18 addiction to drugs. And he, with a group, broke
19 into a home to steal, wanting to get drugs. That
20 was when he was a teenager, but he's 47 years old
21 now.

22 THE COURT: Is he clean now?

23 JUROR: Yes, has been.

24 THE COURT: Do you know if he used heroin or
25 not?

1 **JUROR:** He did not. I know he used lots of
2 stuff.

3 **THE COURT:** You understand Mr. Arroyo is
4 charged with trafficking heroin?

5 **JUROR:** Uh-huh.

6 **THE COURT:** Is there anything at all about your
7 experience or relationship with your brother that
8 affects your ability to be fair and impartial?

9 **JUROR:** No.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No.

12 **THE COURT:** Thanks, Ms. Brady.

13 31, Ms. Brady, is eligible to serve.

14 Yes, ma'am.

15 **BAILIFF:** 269.

16 **JUROR:** Tammie Trynieszewski.

17 **THE COURT:** Ms. Trynieszewski is juror number
18 269.

19 What's your situation?

20 **JUROR:** I have a stepson that's been in
21 trouble, in and out of the law for the last ten
22 years, all related to his drug abuse, began with
23 black tar heroin. He's tried to stay clean, but
24 it's been a hard road. I believe I can be impartial
25 because I don't know his circumstances. I don't

1 know anything about the case.

2 THE COURT: You understand he's charged with
3 trafficking heroin?

4 JUROR: Yes, sir.

5 THE COURT: Do you have any doubt at all about
6 your ability to be fair and impartial?

7 JUROR: No, I don't. I don't.

8 THE COURT: So you're confident you can put
9 aside your stepson's situation and decide --

10 JUROR: I believe I can, not knowing the
11 evidence and not knowing anything about him, I
12 believe I can.

13 THE COURT: Are you sure?

14 JUROR: Yes, sir, I am.

15 THE COURT: All right. If you have a problem,
16 you let me know, all right.

17 JUROR: I will.

18 THE COURT: Thank you.

19 269 is eligible to serve.

20 BAILIFF: 79, Your Honor.

21 THE COURT: Ms. Elsey.

22 JUROR: Yes, sir.

23 THE COURT: What's your situation?

24 JUROR: My stepson was charged with DUI when he
25 was in an accident, someone was killed. He served a

1 year in juvenile, whatever. And he has been on
2 pretty much every kind of drug there has been in
3 addition to all of that over the years.

4 THE COURT: Is he still using as far as you
5 know?

6 JUROR: Well, I think he is. He's in trouble
7 now. So, I mean, we thought everything had
8 straightened up, but he -- he's pending, he's in a
9 pending situation right now.

10 THE COURT: All right. You understand that
11 Mr. Arroyo is charged with trafficking heroin?

12 JUROR: Yes, sir, I do.

13 THE COURT: Is there anything at all about your
14 relationship or experiences with your stepson that
15 affects your ability to be a fair and impartial
16 juror in the case?

17 JUROR: Well, I mean, I've -- I will -- my
18 decision will be based on the evidence and how I
19 feel about that. I'm, you know, a strong advocate
20 of no drugs, but I'm still, you know, it's based on
21 evidence.

22 THE COURT: Do you have any doubt at all about
23 your ability to be fair and impartial as a juror in
24 this case?

25 JUROR: No, sir, I don't.

1 **THE COURT:** Thank you, ma'am.

2 Ms. Elsey is 79. She's eligible to serve.

3 **BAILIFF:** 86, Your Honor.

4 **THE COURT:** Ms. Fudge, what's your situation?

5 **JUROR:** My brother is currently homeless,
6 unemployed, his life pretty much destroyed by
7 alcohol and drugs. I don't even know where he is.

8 **THE COURT:** Do you know if any of those drugs
9 involve heroin?

10 **JUROR:** I do not know.

11 **THE COURT:** You understand Mr. Arroyo is
12 charged with trafficking heroin?

13 **JUROR:** Yes, I do.

14 **THE COURT:** Is there anything about your
15 relationship or your experiences with your brother
16 that affect your ability to be fair and impartial in
17 this case?

18 **JUROR:** No.

19 **THE COURT:** Any doubt in your mind?

20 **JUROR:** None.

21 **THE COURT:** Thank you.

22 Ms. Fudge is 86, eligible to serve.

23 **BAILIFF:** 111, Your Honor.

24 **THE COURT:** Ms. Harney?

25 **JUROR:** Yes.

1 **THE COURT:** 111, Ms. Harney. Go ahead.

2 **JUROR:** I have a stepson who's been in trouble
3 with drugs and the law since he was 14. He's now
4 25. He makes bad choices.

5 **THE COURT:** Do you know if any of the drugs
6 involve the use of heroin?

7 **JUROR:** No, not that I know of. It's mostly
8 been marijuana and alcohol.

9 **THE COURT:** You understand Mr. Arroyo is
10 charged with trafficking heroin?

11 **JUROR:** Yes.

12 **THE COURT:** Is there anything at all about your
13 relationship or experiences with your stepson that
14 affect your ability to be fair and impartial in this
15 case?

16 **JUROR:** Nothing.

17 **THE COURT:** Any doubt in your mind?

18 **JUROR:** No doubt.

19 **THE COURT:** Thank you.

20 Ms. Harney is 111. She's eligible to serve.

21 **BAILIFF:** 39, Your Honor.

22 **THE COURT:** Ms. Campbell?

23 **JUROR:** Yes, sir.

24 **THE COURT:** What's your situation?

25 **JUROR:** I have an aunt that died from

1 complications due to decades of drug use. And I
2 have a cousin who is currently awaiting trial on
3 drug charges in Alabama.

4 THE COURT: Do you know if your aunt used
5 heroin?

6 JUROR: Not to my knowledge.

7 THE COURT: Do you know what charges are
8 against your cousin, what drugs?

9 JUROR: It was meth.

10 THE COURT: You understand Mr. Arroyo is
11 charged with trafficking heroin?

12 JUROR: Uh-huh.

13 THE COURT: Is there anything at all about your
14 relationship with either of those people that
15 affects your ability to be a fair and impartial
16 juror in this case?

17 JUROR: No, sir.

18 THE COURT: Any doubt in your mind?

19 JUROR: No, sir.

20 THE COURT: Thank you.

21 Ms. Campbell is 39. She's eligible to serve.

22 Yes, ma'am.

23 BAILIFF: 152, Your Honor.

24 THE COURT: Ms. Layfield.

25 JUROR: Uh-huh.

1 **THE COURT:** What's your situation?

2 **JUROR:** My brother's been charged with
3 possession of marijuana. And my sister is an addict
4 of prescription drugs and she's had treatment twice,
5 not for heroin.

6 **THE COURT:** Okay. You understand Mr. Arroyo is
7 charged with trafficking drugs?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Is there anything about your
10 relationship or experiences with your brother or
11 sister that affect your ability to be fair and
12 impartial in this case?

13 **JUROR:** I don't think so.

14 **THE COURT:** Do you have any doubt?

15 **JUROR:** No.

16 **THE COURT:** Thank you. Just have a seat back
17 there.

18 Ms. Layfield is 152. She's eligible to serve.

19 **BAILIFF:** 261, Your Honor.

20 **THE COURT:** Ms. Cureton -- no. 161?

21 **THE CLERK:** 261.

22 **THE COURT:** Okay. Ms. Taylor is 261.

23 What's your situation?

24 **JUROR:** I have two very close family members
25 that are drug addicts.

1 **THE COURT:** Do you know if either of them have
2 a problem with heroin?

3 **JUROR:** No.

4 **THE COURT:** You don't know or they don't?

5 **JUROR:** They don't.

6 **THE COURT:** You understand that Mr. Arroyo is
7 charged with trafficking drugs?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Is there anything about your
10 relationship or experiences that affects your
11 ability to be a fair and impartial juror in light of
12 the situation with your two family members?

13 **JUROR:** I think there is.

14 **THE COURT:** Okay. Ms. Taylor, you're free to
15 go. You're through. Do you need any kind of slip
16 to prove you were up here today?

17 **JUROR:** I'm sorry?

18 **THE COURT:** Do you need a slip to prove you
19 were up here today?

20 **JUROR:** No, sir.

21 **THE COURT:** All right. Thank you.

22 Ms. Taylor is juror number 261. She's set
23 aside from the trial of this case.

24 **BAILIFF:** 27, Your Honor.

25 **THE COURT:** Ms. Blevins.

1 JUROR: Yes, sir.

2 THE COURT: What's your situation?

3 JUROR: I have had a friend pass away from a
4 heroin overdose.

5 THE COURT: How long ago?

6 JUROR: 2009.

7 THE COURT: Was that here in Lexington County?

8 JUROR: No, it wasn't in Lexington County. He
9 had resided in Lexington County and then he moved
10 out of state.

11 THE COURT: So he died in another state?

12 JUROR: Yes, sir.

13 THE COURT: Do you understand that Mr. Arroyo
14 is charged with trafficking heroin?

15 JUROR: Yes, sir.

16 THE COURT: Is there anything at all about your
17 relationship or experience with your friend that
18 affects your ability to be fair and impartial in
19 this case?

20 JUROR: Yes, sir.

21 THE COURT: All right. Ms. Blevins, you're
22 through with jury duty. I appreciate it very much.
23 You're a bartender, so I assume you don't need a
24 slip to prove you were up here today.

25 JUROR: No.

1 **THE COURT:** Thank you.

2 Ms. Blevins is juror number 27. She's excused
3 from the trial of this case.

4 **BAILIFF:** 181.

5 **THE COURT:** Paula Miller.

6 **JUROR:** I was born to a drug addicted mother
7 and I was removed from her care when I was a small
8 child. And her actions led to my brother being drug
9 dependent now. He's actually been arrested in
10 Lexington County, not charged or convicted, but
11 arrested for drug trafficking in the past five
12 years.

13 **THE COURT:** Is your mother still alive or do
14 you know?

15 **JUROR:** Yes, she is.

16 **THE COURT:** Do you have any kind of
17 relationship with her?

18 **JUROR:** It's not a good one. And I now take
19 care of my brother because of his drug issues.

20 **THE COURT:** Is he in jail?

21 **JUROR:** No. He's clean.

22 **THE COURT:** You understand Mr. Arroyo is
23 charged with trafficking heroin?

24 **JUROR:** Uh-huh.

25 **THE COURT:** Anything about your experience that

1 affects your ability to be fair and impartial in
2 this case?

3 JUROR: I think I'm pretty biased.

4 THE COURT: That's certainly understandable.

5 All right, Ms. Miller, you're through with jury
6 duty. Do you need any kind of slip to prove you
7 were up here today?

8 JUROR: Yes, I do.

9 THE COURT: Check with those ladies over there.
10 Ms. Miller is 181. She's excused from jury
11 duty.

12 BAILIFF: 138, Your Honor.

13 THE COURT: Ms. Johns.

14 JUROR: Both my mother and my father and my
15 brothers are all alcoholics. My mother was a drug
16 addict, pill popper. She's tried to commit suicide
17 plenty of times. My oldest brother committed
18 suicide over alcohol and drugs.

19 THE COURT: You understand Mr. Arroyo is
20 charged with trafficking heroin?

21 JUROR: Yes, I do understand. That doesn't
22 have any affect. It was just a question that you
23 had asked throughout the period.

24 THE COURT: Yeah. I'm not through with my
25 questions yet. But you understand what he's charged

1 with?

2 JUROR: Correct.

3 THE COURT: He's charged with trafficking
4 drugs.

5 JUROR: Correct.

6 THE COURT: Is there anything about your
7 experience, your relationship with your mother,
8 father, brothers that affects your ability to be
9 fair and impartial?

10 JUROR: No.

11 THE COURT: Any doubt at all about your ability
12 to decide this case fairly and impartially?

13 JUROR: No.

14 THE COURT: So you can put aside all that
15 experience about drug use and decide this case based
16 only on the evidence and the law?

17 JUROR: I just base it off of what I've gone
18 through and the effects that it had and I believe
19 that I can decide fairly. I'm not the type of
20 person that just basically accuses...

21 COURT REPORTER: I can't hear you.

22 JUROR: I'm sorry. I basically don't accuse
23 people without the facts.

24 THE COURT: Okay. So if the facts were to come
25 out, and I don't know anything about the case, but

1 if the facts were to come out that you believe
2 showed that he may be involved with trafficking or
3 may be involved in drugs and I tell you that the
4 State has to prove beyond a reasonable doubt that he
5 was involved with drugs, you can decide this case
6 without regard to what your personal situation is?

7 JUROR: Correct.

8 THE COURT: Any doubt in your mind?

9 JUROR: No.

10 THE COURT: All right. Thank you, ma'am.

11 138, Ms. Johns is eligible to serve.

12 BAILIFF: Number 8.

13 THE COURT: Mr. Aull, number 8. What's your
14 situation?

15 JUROR: Well, I had a daughter that passed away
16 last April. She was -- the contributing factor was
17 alcohol. She was addicted. And my father also died
18 at 48 from alcoholism.

19 THE COURT: You understand, Mr. Aull, that
20 Mr. Arroyo is charged with trafficking heroin?

21 JUROR: Yes.

22 THE COURT: Is there anything about your
23 experience that affects your ability to be a fair
24 and impartial juror in this case?

25 JUROR: No.

1 THE COURT: Any doubt in your mind?

2 JUROR: Completely no doubt.

3 THE COURT: Thank you. Just have a seat back
4 there.

5 Mr. Aull is juror number 8. He's eligible to
6 serve.

7 BAILIFF: 198.

8 JUROR: Georgia Papay.

9 THE COURT: Ms. Papay is juror number 198.
10 Yes, ma'am.

11 JUROR: I'm not sure if this is related or not,
12 but I have a close relative that was arrested for
13 domestic violence due to alcohol. I didn't know.

14 THE COURT: No. You did the right thing by
15 talking to me. Is there anything at all about that
16 experience or your relationship with that relative
17 that affects your ability to be fair and impartial?

18 JUROR: No, sir.

19 THE COURT: Any doubt in your mind?

20 JUROR: Huh-huh. No, sir.

21 THE COURT: Thank you.

22 Ms. Papay is juror number 198. She's eligible
23 to serve.

24 BAILIFF: Number 97, Your Honor.

25 THE COURT: Mr. Goodman.

1 JUROR: Yes, sir.

2 THE COURT: What's your situation?

3 JUROR: My sister-in-law and brother-in-law
4 were arrested. It was an association with drugs,
5 but I don't know all the details of it, but I know
6 it was drug related.

7 THE COURT: Was that in Lexington County?

8 JUROR: I think it was. They move around a
9 good bit. It may have been Kershaw. I'm not sure.

10 THE COURT: You understand Mr. Arroyo's charged
11 with trafficking heroin?

12 JUROR: Yes, sir.

13 THE COURT: Is there anything about your
14 experience that affects your ability to be fair and
15 impartial?

16 JUROR: No, sir.

17 THE COURT: Any doubt in your mind?

18 JUROR: No, sir.

19 THE COURT: Thank you.

20 Mr. Goodman's 97, eligible to serve.

21 Yes, ma'am.

22 BAILIFF: 210.

23 THE COURT: Ms. Provost.

24 JUROR: Yes.

25 THE COURT: What's your situation?

1 **JUROR:** My father was an alcoholic and my
2 husband has two brothers that are alcoholics. My
3 father has since passed away about 30 years.

4 **THE COURT:** Is there anything at all about your
5 experience or relationship with those individuals
6 that affects your ability to be fair and impartial
7 in this case?

8 **JUROR:** No, sir.

9 **THE COURT:** Any doubt in your mind?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you.

12 Ms. Provost is 210. She's eligible to serve.

13 **BAILIFF:** 232.

14 **THE COURT:** Mr. Shealy.

15 **JUROR:** Sealy.

16 **THE COURT:** Sealy, I'm sorry. I apologize.
17 What's your situation?

18 **JUROR:** Just to get it on the record, my wife's
19 nephew, her sister's son, died last year as a result
20 of drug abuse, a long time abuser.

21 **THE COURT:** Do you know what drug or drugs?

22 **JUROR:** Numerous.

23 **THE COURT:** Any specific knowledge as to
24 heroin?

25 **JUROR:** No, sir.

1 **THE COURT:** You understand Mr. Arroyo is
2 charged with trafficking heroin?

3 **JUROR:** Yes, sir.

4 **THE COURT:** Is there anything about your
5 experience, your relationship with those individuals
6 that affects your ability to be fair and impartial
7 as a juror in the case?

8 **JUROR:** No, sir.

9 **THE COURT:** Any doubt in your mind?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you, sir.

12 Mr. Sealy is juror number 232. He's eligible
13 to serve.

14 (The bench conferences were concluded.)

15 **THE COURT:** Have any of you formed or expressed
16 any opinions about this case; if so, please stand?

17 (There was no response.)

18 **THE COURT:** Are any of you aware of any
19 interest, bias or prejudice that you might have for
20 or against the State, for or against the defendant,
21 for or against anyone or any entity involved in this
22 case; if so, please stand?

23 (There was no response.)

24 **THE COURT:** Can each of you give both the State
25 of South Carolina and the defendant, Mr. Arroyo, a

1 fair and impartial trial? If you know of any reason
2 why you cannot, please stand now.

3 (There was no response.)

4 **THE COURT:** Further questions from the State?

5 **MR. GOINGS:** None from the State, Your Honor.

6 **THE COURT:** All right. I feel like I've
7 covered one, two, three, four, five. Six was
8 withdrawn. I've covered eight and nine. I think
9 I've covered, with the general ones, seven. I'm not
10 going to ask ten. I'm not going to ask 11. If
11 y'all want to preserve this for the record, I'll be
12 happy to make this a court's exhibit. Any other
13 questions?

14 **MR. KIRKLAND:** No other questions that we have,
15 Your Honor; however, we would like to preserve it
16 for the record.

17 **THE COURT:** Okay.

18 (Court's Exhibit Number 1, defense request
19 for voir dire, marked for identification purposes.)

20 **THE COURT:** I didn't bring my notebook up. Is
21 five and five the strikes or is it five and -- do I
22 need to go get my notebook?

23 **MR. GOINGS:** You might need to get your
24 notebook, Your Honor.

25 **MS. CHAPMAN:** Because we were asking.

1 **MR. GOINGS:** I think it's five and ten, Your
2 Honor, because it's trafficking, Your Honor.

3 **THE COURT:** All right. Five and ten then.

4 **MR. KIRKLAND:** We'll agree to that.

5 **THE COURT:** All right. Ladies and gentlemen,
6 the jury panel is qualified.

7 Now, what we're going to do, the computer has
8 randomly selected you and we're going to call out --
9 do y'all need them to come forward.

10 **MR. KIRKLAND:** I think some people feel
11 uncomfortable, so I don't think we need them to
12 unless the prosecution does. They can stand in
13 place if they'd like to.

14 **THE COURT:** All right. Folks, if you hear your
15 name called, I need you to stand and wait until
16 you're told to be seated or to come forward, all
17 right.

18 Strikes are five for the State and ten for the
19 defense.

20 Madame Clerk, the agreement was we'd take that
21 list of 40, anybody that was set aside, you just
22 strike through them and you keep going down the
23 list. Do I have the list?

24 **THE CLERK:** Yes, sir.

25 **THE COURT:** All right. Give us a jury, please.

1 **THE CLERK:** Number 128, Amanda Hucks.

2 (Whereupon, Amanda Hucks, a white female,
3 stood.)

4 **THE CLERK:** What say you for the State?

5 **MR. GOINGS:** Please present Ms. Hucks.

6 **THE CLERK:** What say you for the defense?

7 **MS. CHAPMAN:** You can seat Ms. Hucks.

8 **THE COURT:** Ms. Hucks, I need you to come
9 forward and have a seat in the jury box. Bring your
10 personal belongings with you, please.

11 **THE CLERK:** Number 257, Donna Sutor.

12 (Whereupon, Donna M. Sutor, a white female,
13 stood.)

14 **THE CLERK:** What say you for the State?

15 **MR. GOINGS:** Please present Ms. Sutor.

16 **THE CLERK:** What say you for the defense?

17 **MS. CHAPMAN:** Please excuse the juror.

18 **THE COURT:** Just have a seat, please, ma'am.

19 **THE CLERK:** 97, Travis Goodman.

20 (Whereupon, Travis R. Goodman, a white male,
21 stood.)

22 **THE CLERK:** What say you for the State?

23 **MR. GOINGS:** Please present Mr. Goodman.

24 **THE CLERK:** What say you for the defense?

25 **MS. CHAPMAN:** Please excuse the juror.

1 **THE COURT:** Have a seat, Mr. Goodman, please.

2 **THE CLERK:** 79, Melba Elsey.

3 (Whereupon, Melba A. Elsey, a white female,
4 stood.)

5 **THE CLERK:** What say you for the State?

6 **MR. GOINGS:** Please present Ms. Elsey.

7 **THE CLERK:** What say you for the defense?

8 **MS. CHAPMAN:** Please excuse the juror.

9 **THE COURT:** Have a seat, please, Ms. Elsey.

10 **THE CLERK:** 117, Charles Hawley.

11 (Whereupon, Charles J. Hawley, a white male,
12 stood.)

13 **THE CLERK:** What say you for the State?

14 **MR. GOINGS:** Please present Mr. Hawley.

15 **THE CLERK:** What say you for the defense?

16 **MS. CHAPMAN:** Please seat the juror.

17 **THE COURT:** Come forward, please, Mr. Hawley.

18 **MR. KIRKLAND:** What number was that?

19 **THE COURT:** 117.

20 **THE CLERK:** Number 109, Dustin Harmon.

21 (Whereupon, Dustin C. Harmon, a white male,
22 stood.)

23 **THE CLERK:** What say you for the State?

24 **MR. GOINGS:** Please present Mr. Harmon.

25 **THE CLERK:** What say you for the defense?

1 MS. CHAPMAN: You can seat Mr. Harmon.

2 THE COURT: Come forward, please.

3 THE CLERK: 232, Robert Sealy.

4 (Whereupon, Robert B. Sealy, a white male,
5 stood.)

6 THE CLERK: What say you for the State?

7 MR. GOINGS: Please present Mr. Sealy.

8 THE CLERK: What say you for the defense?

9 MS. CHAPMAN: Please excuse the juror.

10 THE COURT: Have a seat, please, Mr. Sealy.

11 THE CLERK: Number 207, Gerald Price.

12 (Whereupon, Gerald M. Price, a white male,
13 stood.)

14 THE CLERK: What say you for the State?

15 MR. GOINGS: Please present Mr. Price.

16 THE CLERK: What say you for the defense?

17 MS. CHAPMAN: Please excuse the juror.

18 THE COURT: Have a seat, please, sir.

19 THE CLERK: 88, Frances Garris.

20 (Whereupon, Frances M. Garris, a white
21 female, stood.)

22 THE CLERK: What say you for the State?

23 MR. GOINGS: Please present Ms. Garris.

24 THE CLERK: What say you for the defense?

25 MS. CHAPMAN: Please seat the juror.

1 **THE COURT:** Come forward, please, ma'am. Have
2 a seat in the jury box.

3 **THE CLERK:** 34, Ciara Brooks.

4 (Whereupon, Ciara S. Brooks, a black female,
5 stood.)

6 **THE CLERK:** What say you for the State?

7 **MR. GOINGS:** Please present Ms. Brooks.

8 **THE CLERK:** What say you for the defense?

9 **MS. CHAPMAN:** Please seat Ms. Brooks.

10 **THE COURT:** Come forward, please, ma'am. Have
11 a seat in the jury box.

12 **THE CLERK:** 152, Nicole Layfield.

13 (Whereupon, Nicole K. Layfield, a white
14 female, stood.)

15 **THE CLERK:** What say you for the State?

16 **MR. GOINGS:** Please present Ms. Layfield.

17 **THE CLERK:** What say you for the defense?

18 **MS. CHAPMAN:** Please seat the juror.

19 **THE COURT:** Come forward, please, ma'am. Have
20 a seat in the jury box.

21 **THE CLERK:** 141, Ashley Jovanelly.

22 (Whereupon, Ashley F. Jovanelly, a white
23 female, stood.)

24 **THE CLERK:** What say you for the State?

25 **MR. GOINGS:** Please present Ms. Jovanelly.

1 **THE CLERK:** What say you for the defense?

2 **MS. CHAPMAN:** Please seat the juror.

3 **THE COURT:** Come forward, please, ma'am. Have
4 a seat in the jury box.

5 **THE CLERK:** 269, Tammie Trynieszewski.

6 (Whereupon, Tammie S. Trynieszewski, a white
7 female, stood.)

8 **THE CLERK:** What say you for the State?

9 **MR. GOINGS:** Please present Ms. Trynieszewski.

10 **THE CLERK:** What say you for the defense?

11 **MS. CHAPMAN:** Please excuse the juror.

12 **THE COURT:** Have a seat, please, ma'am.

13 **THE CLERK:** 80, Brian Enell.

14 (Whereupon, Brian M. Enell, a white male,
15 stood.)

16 **THE CLERK:** What say you for the State?

17 **MR. GOINGS:** Please present Mr. Enell.

18 **THE CLERK:** What say you for the defense?

19 **MS. CHAPMAN:** Please excuse the juror.

20 **THE COURT:** Have a seat, please, Mr. Enell.

21 **THE CLERK:** 198, Georgia Papay.

22 (Whereupon, Georgia M. Papay, a white
23 female, stood.)

24 **THE CLERK:** What say you for the State?

25 **MR. GOINGS:** Please present Ms. Papay.

1 **THE CLERK:** What say you for the defense?

2 **MS. CHAPMAN:** Please seat the juror.

3 **THE COURT:** Come forward, please, ma'am, and
4 have a seat in the jury box.

5 **THE CLERK:** 122, Kathryne Heron.

6 (Whereupon, Kathryne M. Heron, a white
7 female, stood.)

8 **THE CLERK:** What say you for the State?

9 **MR. GOINGS:** Please present Ms. Heron.

10 **THE CLERK:** What say you for the defense?

11 **MS. CHAPMAN:** Please seat the juror.

12 **THE COURT:** Come forward, please, ma'am. Have
13 a seat in the jury box.

14 **THE CLERK:** 113, Taylor Harris.

15 (Whereupon, Taylor L. Harris, a white
16 female, stood.)

17 **THE CLERK:** What say you for the State?

18 **MR. GOINGS:** Please present Ms. Harris.

19 **THE CLERK:** What say you for the defense?

20 **MS. CHAPMAN:** Please seat the juror.

21 **THE COURT:** Come forward, please, ma'am. Have
22 a seat in the jury box.

23 **THE CLERK:** 147, Robert Koch.

24 (Whereupon, Robert M. Koch, a white male,
25 stood.)

1 THE CLERK: What say you for the State?
2 MR. GOINGS: Please present Mr. Koch.
3 THE CLERK: What say you for the defense?
4 MS. CHAPMAN: Please seat the juror.
5 THE COURT: Come forward, please, sir, and have
6 a seat in the jury box.
7 THE CLERK: 144, Terry Killinger.
8 (Whereupon, Terry A. Killinger, a white
9 male, stood.)
10 THE CLERK: What say you for the State?
11 MR. GOINGS: Please present Mr. Killinger.
12 THE CLERK: What say you for the defense?
13 MS. CHAPMAN: Please excuse the juror.
14 THE CLERK: Have a seat, please, sir.
15 Number 8, David Aull.
16 (Whereupon, David R. Aull, a white male,
17 stood.)
18 THE CLERK: What say you for the State?
19 MR. GOINGS: Please present Mr. Aull.
20 THE CLERK: What say you for the defense?
21 MS. CHAPMAN: Please seat the juror.
22 THE CLERK: Come forward and have a seat in the
23 jury box, sir.
24 THE COURT: All right. Draw an alternate.
25 Strikes are one for the State, two for the defense.

1 **THE CLERK:** Number 39, Ashley Campbell.
2 (Whereupon, Ashley M. Campbell, a white
3 female, stood.)
4 **THE CLERK:** What say you for the State?
5 **MR. GOINGS:** Please present Ms. Campbell.
6 **THE CLERK:** What say you for the defense?
7 **MS. CHAPMAN:** Please excuse the juror.
8 **THE COURT:** Have a seat, please, ma'am.
9 **THE CLERK:** 111, Sue Harney.
10 (Whereupon, Sue P. Harney, a white female,
11 stood.)
12 **THE CLERK:** What say you for the State?
13 **MR. GOINGS:** Please present Ms. Harney.
14 **THE CLERK:** What say you for the defense?
15 **MS. CHAPMAN:** Please seat Ms. Harney.
16 **THE CLERK:** Come forward and have a seat in the
17 jury box.
18 That's the alternate, Your Honor.
19 **THE COURT:** Do y'all want more than one
20 alternate?
21 **MR. GOINGS:** The State's good with one, Your
22 Honor.
23 **THE COURT:** All right. Are there any matters
24 to take up, including composition of the jury prior
25 to the jury being sworn, from the State?

1 MR. GOINGS: None from the State, Your Honor.

2 THE COURT: From the defense?

3 MR. KIRKLAND: No, sir, Your Honor.

4 THE COURT: All right. Thank you.

5 All right. Ladies and gentlemen, I have to get
6 my bearings from the attorneys to tell me if there
7 are any pretrial issues that I need to address.
8 There usually are and so I'll need to talk with them
9 and find out what I may need to do that does not
10 require your presence. I'll bring you back in here
11 as quickly as I can and we'll let you go to lunch.
12 You'll be on your own for lunch and I'll tell you
13 when to be back.

14 Now, listen really carefully to me, please. Do
15 not discuss this case in any way among yourselves.
16 Later on I'm going to tell you very specifically
17 don't talk about this case at all among yourselves
18 until I tell you to, don't discuss the case with
19 family members or friends or anyone else. Again,
20 there'll be a more specific instruction about that.
21 If you've got cell phones, make sure they're turned
22 off, don't make any calls during this break.

23 Now, you'll go back here into this jury room.
24 You are not permitted to talk about the case. What
25 I do want you to do, without talking about the case

1 or anybody in it in any way, is to pick the person
2 that you want to serve as your foreman, whoever you
3 want to be the foreperson of the jury. It cannot be
4 the alternate, all right. So among the original 12,
5 you all pick a person and write that person's name
6 on a slip of paper. They'll give you something to
7 write with, all right.

8 Okay. Follow this bailiff here and he'll take
9 you back to the jury room.

10 (The jury retires to the jury room.)

11 **THE COURT:** Ladies and gentlemen, if you were
12 not selected for this jury, we don't need you
13 anymore for jury duty and -- just give me a second.
14 Remember what I said to the other group, you have an
15 exemption for three calendar years. So 2013, '14
16 and '15, if you get a notice to come to state court
17 jury duty, just let us know if you do not wish to
18 serve.

19 I used to always give the jurors an opportunity
20 to have a shot at me for questions, comments,
21 criticisms or complaints. I'd take my robe off and
22 come down there and y'all can have at me. But the
23 Chief Justice has told us to stop doing that, so I
24 stopped doing it. But if you have some real serious
25 issue that you think I should address, I'm pretty

1 easy to find on the Internet and you can write me
2 and send me a note.

3 Now, so far I've only had one note and that was
4 in Aiken County and that was from an actual trial
5 jury because some of them got upset because one of
6 the ladies on the trial jury was trying to push her
7 Avon products during the whole trial. Not much I
8 can do about that, that's kind of situational, but I
9 did forward it on to the chief judge in Aiken. And
10 I'd be happy to address any issues you all may have
11 as to how you think we might could do things better
12 or different or any problems you may have come
13 across.

14 All right. There will be a little slip in the
15 paper -- the envelope you get certifying you were up
16 here the day you were actually up here. Any of
17 y'all who get paid for jury duty by your employers,
18 we have had a couple instances in the past where
19 people decided to take the rest of the week off and
20 claim to the employer that they were on jury duty,
21 that won't work. It doesn't work. It's bad. So if
22 anybody tries to put that bug in your ear, resist
23 that, please.

24 It takes about ten days from the end of the
25 term for all the paperwork to get processed and

1 you'll get your Happy Meal check from the county.

2 Thank you very much. You're free to go.

3 Let me see the lawyers up here, please.

4 (The remaining jury panel was excused.)

5 (Whereupon, a bench conference was held off
6 the record.)

7 **THE COURT:** If the jury is ready, you can bring
8 them back in now.

9 (Pause.)

10 **THE COURT:** The jury selected Nicole Layfield
11 as the Foreperson, 152.

12 (The jury returns to the courtroom.)

13 **THE COURT:** Ms. Layfield, you're the Foreperson
14 of the jury. You stay in that seat throughout the
15 trial. The alternate stays in the end seat on the
16 back row throughout the trial.

17 Folks, I'm going to let you go to lunch. And
18 when you come back, I'm going to give you some
19 instructions. I'm just going to give you the
20 skeleton version of the most essential ones before I
21 let you go to the lunch break and then -- the ones
22 when you come back will be just as important. I'm
23 not saying these are more important than the others.
24 These are just the ones I got to do to get you
25 through lunch, all right.

1 Now, I need you back at 2:15. I'm going to
2 meet with the lawyers before then and deal with a
3 few issues and then we expect that we can get to you
4 at 2:15. When you come back, don't come through the
5 courtroom. The bailiff will show you, there's a
6 glass area over here, you come to that door. There
7 will be somebody there to let you in. It's a
8 secured area back here. So just -- I need you back
9 in the jury room at 2:15.

10 Now, normally, what we do with court is we go
11 until about 5:00, 5:30 with the jury, and that's
12 what I think is going to happen today. So we'll
13 probably try to get most, if not all, of the
14 evidence in today and continue tomorrow and you
15 should get the case some time tomorrow based on what
16 they're telling me.

17 Now, to reiterate what I told you before you
18 went back there, do not discuss this case in any way
19 among yourselves. It's perfectly fine for you to
20 tell a family member or a friend or somebody that
21 you're on a jury, but you cannot discuss this case
22 with anybody else until the week's over, you've been
23 discharged from jury duty. So, you know, you can
24 tell your boss, I'm on a jury. You can tell a
25 friend or a spouse, I'm on the jury, but you can't

1 say anything at all about the case, who's in it,
2 what kind of case it's alleged to be. You cannot do
3 that.

4 If anybody attempts to contact you and discuss
5 the case with you, please report that to me so that
6 I can deal with it.

7 I don't know of any media coverage associated
8 with this trial, but I never know what the media's
9 going to choose to pick up and what they're not. So
10 if there is any media coverage of the trial, get
11 away from it and report to me at the first
12 opportunity what you may have seen, heard or read
13 through the media.

14 You've been given those juror buttons. I know
15 they're not accessories you would choose for your
16 outfit. The reason you've been given those juror
17 buttons is, one of the primary reasons, is that if
18 somebody that is in any way involved in this case
19 were to have contact with you, if y'all were to have
20 a conversation and that were reported to me, it
21 might be perfectly innocent, I have to stop
22 everything we're doing, the trial just sits while I
23 go through a hearing to determine not only what
24 happened, but why it happened. So I've got to try
25 to read people's minds. If you've got that bright

1 red juror button on, then I know that the person who
2 was talking to you knew you were a juror, okay. So
3 that's why you're asked to wear them.

4 I insist that you wear them on the courthouse
5 property. It's better if you wear them if you're at
6 a local restaurant or something. People won't look
7 at you funny. They're used to seeing them I promise
8 you. But if you don't want to wear it at a
9 restaurant, I'm not going to make you. Just -- just
10 when you come back to the courthouse, the safest
11 thing is to get on the elevator and come straight
12 back here. If you're one of these early folks,
13 that's great, there'll be somebody here.

14 Now, you're going to be given an instruction
15 about cell phone use and about social media. Now,
16 what I just told you was you're not to talk about
17 the case with anybody and you're only to talk about
18 the case among yourselves when I tell you to and
19 you're not to talk about the case with anybody else
20 until the week's over.

21 Well, you can't go on Facebook and post
22 something about being on a jury. You can't tweet
23 something about being on a jury. That's the same as
24 if you walked out there in the front of the
25 courthouse and screamed it out to anybody that could

1 hear. So once the trial is over, you can do
2 whatever you like.

3 But I'm going to have to read to you something
4 about use of cell phones, smart phones, social
5 media. And I got to do it, I might as well do it
6 now, all right.

7 Now, this is what the Supreme Court says we
8 have to tell you: Until your jury service is
9 concluded, you're not to discuss the case with
10 others including other jurors except as directed by
11 the court. You're not to read or listen to any news
12 reports about the case. You're not to use a
13 computer, a cell phone or any other electronic
14 device with communication capabilities while
15 attending a trial or during the deliberations. You
16 may use those devices during lunch breaks or
17 extended breaks, but you cannot use them to obtain
18 or disclose information that's prohibited.

19 You're not to use a computer, a cell phone or
20 any other electronic device with communication
21 capabilities or any other method to obtain or
22 disclose information about a case when you're not in
23 court. And information about a case includes, but
24 is not limited to the following types of things:
25 Any information about a party, a witness, an

1 attorney or a court officer, any news accounts of
2 the case, any information collected through juror
3 research on any topics raised or testimony offered
4 by a witness, any information collected through
5 juror research on any other topic that a juror might
6 think would be helpful in the case.

7 Now, gets me to the last point. You're not to
8 do independent research. When you come back and you
9 take the oath of a trial jury, that oath is going to
10 be that you promise us that you will decide the case
11 based on the evidence and the law. And those things
12 are going to come to you in this courtroom. I'm
13 going to tell you the law. The evidence is going to
14 come from the witnesses and the exhibits. So don't
15 do independent research, don't go on the Internet or
16 to a law library and start looking up law, that's my
17 job to tell you the law.

18 Once you hear where something is alleged to
19 have occurred, of course, this is alleged to have
20 occurred in Horry County primarily, you don't go
21 there and look around. Don't do independent
22 research. Just avoid that, please. Don't look up
23 the law, don't look up anything related to anybody
24 in the case including a court officer like me, all
25 right.

1 Any questions before I let you go?

2 (There was no response.)

3 **THE COURT:** 2:15 in the jury room. Follow the
4 bailiff. Thank you. Don't discuss the case.

5 (The jury was excused for lunch.)

6 **THE COURT:** All right. Ladies and gentlemen, I
7 try to say this in every case, so please give me
8 your attention, it won't take but a moment. And I'm
9 assuming everybody in here can speak English because
10 I'm talking to the audience, too. If you can't,
11 somebody who can translate, please tell the audience
12 members.

13 **MS. CHAPMAN:** Judge, I think everybody speaks
14 English.

15 **THE COURT:** Okay. It's really important that
16 you not have contact with these jurors. And while
17 they go back out this way, they come right around
18 into the common areas, the same elevators, the same
19 entrances and exits that you use. If you go to
20 lunch, it's likely that you're going to choose a
21 restaurant that at least one of these jurors is
22 going to choose, so be careful.

23 The safest thing to do is to wait until they
24 clear out and they don't usually clear out quite as
25 quickly as you think they would. So look around,

1 check and make sure there's no juror within earshot
2 and don't be talking about the case in any way that
3 they can overhear.

4 And when I say talk about the case, I mean
5 don't talk about anybody in the case or any of the
6 facts alleged in the case. Anything at all related
7 to the case should be avoided. Just be real careful
8 with that because it really causes a whole lot of
9 problems if I have a juror contacted by somebody
10 associated with the case. And if I decide that
11 somebody has violated my directive, then I hold them
12 in contempt and then I can send that person to
13 prison for six months without a jury trial. So none
14 of us want that, just be careful.

15 I need the lawyers and Mr. Arroyo here at 2:00
16 p.m. Thank you.

17 (Whereupon, there was a luncheon recess.)

18 (State's Exhibit Numbers 1 through 14 were
19 marked for identification purposes.)

20 **THE COURT:** All right. What pretrial issues do
21 we need to address?

22 **MS. CHAPMAN:** Judge, I believe that would be
23 me.

24 Judge, first off, as you know, we tried this
25 case back in November 15th of 2011, so I kind of

1 wanted to make sure that the parameters are --
2 they're pretty much the same as we did back then
3 because he's indicted in the conspiracy to allege
4 multi-counties. We're not going into any of that
5 today. We're just going to try the April 29th, 2010
6 incident, period. Nothing else, nothing about
7 Charleston, nothing about Lexington County, just the
8 29th event that happened in Horry County. So I just
9 kind of wanted to put that on the record.

10 Judge, the other thing, when we were here on
11 November the 15th, if you remember, that case ended
12 in a mistrial. The reason being is it was our first
13 witness, the officer who took the stand ended up
14 mentioning something about Charleston or Lexington.

15 I have read the case law. I have been over it
16 with my client and I know what the law says that,
17 you know, the -- it was granted -- let me back up
18 just a second.

19 The mistrial was granted on my motion and you
20 did, correct me if I'm wrong, but I believe there
21 has to be some kind of prosecutorial misconduct or
22 something that you ruled on that was in bad faith.
23 Judge, I've talked to my client. He believes it is
24 prosecutorial misconduct and so I would make that
25 motion for a double jeopardy.

1 **THE COURT:** Mr. Attorney General.

2 **MR. GOINGS:** Thank you, Your Honor. If it
3 please the Court. On the first issue, yes, the
4 State only, at this point, plans to proceed on the
5 4/29/10 undercover buy. We will not mention
6 anything about any other buys that may have been
7 made against Mr. Arroyo or his participation in the
8 overall conspiracy.

9 As to the second issue, I don't believe there
10 was any intentional or bad faith on part of the
11 prosecution of the November 15th trial. Obviously,
12 that wasn't me and Curtis. But I believe the case
13 law says that you have to show bad faith or ill
14 intentions or some type of misconduct on the part of
15 the prosecution and that hasn't been done and,
16 therefore, it is not double jeopardy.

17 **THE COURT:** All right. Is there anything else
18 that needs to be put on the record related to the
19 granting of the mistrial, how it occurred, anything
20 like that? We've got everything we need on this
21 record of the prior record?

22 **MS. CHAPMAN:** That's correct, Your Honor.

23 **THE COURT:** Motion to dismiss the case based on
24 double jeopardy is denied.

25 All right. Now, with State Grand Jury cases,

1 there has to be a significance in more than one
2 county. Is that something you all have stipulated
3 to or is that -- because you say you're not going to
4 go into any of that --

5 **MR. GOINGS:** Your Honor, the case law is clear
6 that we only have to allege that in the indictment
7 and for the grand jury's sake. We don't have to
8 prove it at trial.

9 **MS. CHAPMAN:** That's correct, Your Honor. I
10 did that research.

11 And also, Your Honor, I will let you know the
12 other -- the balance of these charges, I guess, so
13 to speak, still hasn't been decided by the appellate
14 court as far as the wiretaps go and that's why we're
15 not mentioning that.

16 **THE COURT:** All right. Do you have something,
17 Mr. Kirkland?

18 **MR. KIRKLAND:** Yes, sir, Your Honor. The only
19 other issue that I know of is that we do have an
20 agreement as to the video tape in this case. And
21 the agreement is, and I want to make sure I put it
22 on the record so that there's no misunderstanding
23 down the road and, of course, the Attorney General's
24 Office can correct me if I have misunderstood our
25 agreement, my understanding is that they intend to

1 play the video that was recorded on the day of the
2 buy only. And I see him nodding so that appears to
3 be correct.

4 And my understanding is that since we had so
5 much trouble with getting a proper translation, that
6 we've decided to allow them to play the tape without
7 any sound whatsoever. So my understanding is that
8 the tape will be played in its entirety, however,
9 there will be no volume, no sound that the jury or
10 anybody else can hear while the tape is being
11 played. And I'll defer to them to make sure that
12 this is the agreement that we have.

13 MR. GOINGS: That is the agreement, Your Honor.

14 THE COURT: Okay. Anything else?

15 MR. KIRKLAND: That's all we have, Your Honor.

16 MR. GOINGS: Nothing from the State.

17 THE COURT: We're at ease until we have all our
18 jurors.

19 (Brief Recess.)

20 (The jury returns to the courtroom.)

21 THE COURT: Ladies and gentlemen, the first
22 order of business is that I need you placed under
23 the oath of a trial jury. I need you to stand,
24 raise your right hand, the clerk will administer
25 your oath.

1 (The jury was duly sworn by the Clerk of
2 Court at 2:22 p.m.)

3 **THE COURT:** Ladies and gentlemen, what I'm
4 going to do is I'm going to take about seven to ten
5 minutes and go over some housekeeping things with
6 you and give you some instructions that you need to
7 follow throughout the trial.

8 The first thing that's going to happen is that
9 you're going to hear the opening statements of the
10 attorneys. In these opening statements, the
11 attorneys are allowed to give you an introduction,
12 an overview, an outline of how they anticipate the
13 case will proceed. They are not permitted to engage
14 in what we call argument, so it's more of an
15 introductory process in the opening statements.

16 Once the opening statements are finished, then
17 I will call upon the State to present its evidence.
18 The State brought this charge and the State has the
19 entire burden of proof. The State has to prove the
20 guilt of the defendant, every essential element of
21 the charge made beyond a reasonable doubt. So I'll
22 recognize the State to present evidence in an
23 attempt to meet that burden.

24 When the State finishes presenting its case in
25 chief, the Attorney General's Office will advise me

1 that the State rests. At that point, whether you've
2 been in the courtroom for an hour or whether you've
3 been in the courtroom for ten minutes, I have to
4 send you out of the courtroom and talk about legal
5 issues with the attorneys outside your presence.
6 When you come back after that, I'll tell you where
7 we go from there, but that's what you can look for
8 as we get started.

9 Now, it's really important that you understand
10 a few things. First, that oath that you took was
11 one in which you promised us that you will decide
12 this case based on the evidence and the law. So you
13 need to know where those things come from.

14 As I mentioned to you at the outset before you
15 went to lunch, I tell you the law. It's my job to
16 decide what law applies to a case and instruct the
17 jury on the law. So the law comes from me.

18 The evidence comes from the sworn testimony of
19 witnesses. Evidence can also come in the form of
20 exhibits. Now, an exhibit can be anything tangible
21 that's marked in the record. It can be a
22 photograph, a video tape, a map, a chart, a
23 document, anything tangible that's marked into the
24 record. Now, if it's marked as evidence, then
25 generally you have that with you in the jury room

1 when you decide the case.

2 What the lawyers say is not evidence. I want
3 you to pay attention to what the lawyers say, but
4 understand that what comes out of their mouths is
5 not evidence. The evidence comes from the witnesses
6 and the exhibits.

7 Now, there is one exception to that rule about
8 what the lawyers saying not being evidence and if we
9 come upon it in this trial, I'll tell you about it,
10 otherwise I won't bother you with it. So you know
11 where the law comes from, you know where the
12 evidence comes from.

13 It's also important that you understand that
14 there are two judges in the courtroom. As I
15 mentioned to you, I'm the judge of the law. I tell
16 you the law at the end of the trial. I rule over
17 the trial as far as presiding and I decide legal
18 issues as they arise in a trial.

19 You really need to understand that you're the
20 other judge and that you are the only judge of the
21 facts. Only you are going to get to decide such
22 things as whether evidence is believable or not.
23 Only you get to decide what weight, if any, should
24 be put on any evidence. That's entirely your
25 prerogative and I'm not going to invade your

1 province.

2 Now, I want to give you a little example of how
3 our role's differ. And if you'll just bear with me
4 a few minutes, I think this does a pretty good job
5 of explaining how we've got two judges and how those
6 roles are different.

7 From time to time during the trial of this
8 case, there may be an occasion where one side or the
9 other feels that the opposing side is trying to put
10 something before the jury that doesn't fit within
11 the rules for the jury to consider. And if that
12 happens, these attorneys have taken an oath just
13 like you've taken an oath now and I had to take an
14 oath and we've all got to do our jobs for the system
15 to work, so the attorneys have to stand up and
16 object.

17 And what that calls upon is for me to rule
18 about whether that thing fits within the rules for
19 the jury to consider. So there's an objection made
20 and I will either overrule the objection and let it
21 come before you or I will sustain the objection and
22 it's not proper for you to consider, you disregard
23 it.

24 I want to make sure you understand that in
25 doing my evaluation, if I let something come before

1 you, it will not cross my mind to think about
2 whether that thing's believable or not because
3 that's your job. I won't give one second of thought
4 as to whether any weight should be given to that
5 piece of evidence because that's your job.

6 All I'm going to be doing is looking very
7 narrowly with tunnel vision to see does that thing
8 fit within the rules for the jury to consider. And
9 if I believe that it does, I let it come before you
10 and you decide whether it's believable and you
11 decide what weight, if any, it should have.

12 So you're the judge of the facts and I'm the
13 judge of the law. And no comment that I'm going to
14 make should be construed as any kind of comment on
15 the facts of the case. It's not my job.

16 Now, while you've promised us that you're going
17 to decide this case based on the evidence and the
18 law and you must do that, I'm not telling you to
19 leave your common sense at home. As a matter of
20 fact, I'm asking you to use your common sense, use
21 your sense of logic and reason and your good
22 judgment.

23 Now, it just makes good common sense that you
24 keep an open mind about the case and you don't make
25 up your mind until you've heard all the evidence and

1 you know what the law is. So that's why we have
2 that rule that I've mentioned to you, you're not to
3 discuss this case in any way at all among yourselves
4 until I tell you to. Wait till you got all the
5 information, wait till you got the law, wait till
6 you have the whole thing and you put it in context
7 before you start making any comments about the case.
8 So don't discuss the case with anybody else among
9 the jury until I tell you to and don't discuss the
10 case with anybody at all, family member, friend,
11 anybody at all, until you've been discharged
12 completely from the jury.

13 Now, again, I have to cover these things at
14 this point once again. If anybody attempts to
15 contact you and discuss the case with you, report it
16 to me so I can deal with it. If there's media
17 coverage, get away from it and report to me at the
18 first opportunity what you saw, heard or read
19 through the media. Remember that instruction I gave
20 you about independent investigation, don't do it,
21 don't look up law, don't do any independent
22 investigation.

23 Now, the last thing I want to say, I believe,
24 at this point, is thank you. Folks, I just never
25 have found it appropriate to sit up here and

1 repeatedly say thank you to a jury. And the reason
2 is not because of the lack of gratitude, it's
3 because I think it cheapens it. We all know you got
4 a summons. We all know you had an obligation to
5 meet. This group that came up here today met it
6 head on. Nobody tried to wiggle their way out of
7 it, I appreciate that. It means a great deal to
8 everybody in the courtroom.

9 It's easy to find yourself in a dispute. And
10 if you're ever in a dispute, you'll be very grateful
11 that we have folks like you that take away time from
12 everything else they have to do in their lives so we
13 can resolve our disputes and move forward. So thank
14 you.

15 Now, I can't promise you that there will be a
16 lack of hurry up and wait. If I had to guess, I can
17 promise you the opposite. But I can promise you
18 this, if you're waiting, we're working. There is
19 never going to be a time on my watch when we're out
20 here goofing off if you're back there waiting on us,
21 that will not happen. I know you've got other
22 places to be. I know you've got other things to do.
23 And while you may have to wait on us some, if you're
24 waiting, we're working. Thank you.

25 All right. Now, Lawrence, I don't know if you

1 can help with this or not, but I know we live in a
2 beautiful place that the weather changes a lot, it's
3 hot in here to me.

4 Computers run all these systems now, folks, and
5 we don't just go to a thermostat anymore and change
6 it. I always tell a jury some people are hot
7 natured, some people are cold natured, if you are
8 one of those extremes, you may want to bring a
9 jacket or something you can put on, take off,
10 whatever you need.

11 But can you get them to make a call about this?

12 **OFFICER:** I certainly will.

13 **THE COURT:** All right. I'm going to shut up
14 now.

15 Which of you is going to make the opening
16 statement?

17 **MR. PAULING:** I will, Your Honor.

18 **THE COURT:** All right. You're recognized,
19 Mr. Attorney General.

20 **OPENING STATEMENT**

21 **MR. PAULING:** Thank you, Your Honor. May it
22 please the Court.

23 On April 28th, 2010, an individual by the name
24 of Emigdio contacted a resident of 313 Cedar Street
25 in Myrtle Beach, South Carolina. In fact, Emigdio

1 actually went and met with that individual at his
2 home and he spoke with him about purchasing a
3 particular product. They discussed the type, they
4 discussed the price, \$1600. That was on April 28th,
5 2010.

6 The following day, April 29th, 2010, Emigdio
7 contacted that same individual at 313 Cedar Street
8 once again and arrangements were made actually for
9 him to purchase that product they had discussed.
10 During that time, though, the price went up, so he
11 actually had to purchase it for \$1800. Emigdio went
12 to 313 Cedar Street, spoke with that individual and
13 purchased that item. That particular item he
14 purchased is, approximately, 25 grams of heroin.

15 Now, this type of transaction is typical. It
16 occurs on a daily basis other places. The
17 difference about this transaction was that law
18 enforcement was able to monitor it because, see,
19 Emigdio was a confidential informant. The
20 individual that sold him the 25 grams of heroin, the
21 resident of 313 Cedar Street, sits here in this
22 courtroom, that individual is Juan Arroyo.

23 Soon after this particular incident, Mr. Arroyo
24 was charged, arrested and indicted for trafficking
25 heroin more than 14 grams, but less than 28 grams,

1 and that's why he's here today. That is what he
2 stands trial for today.

3 I'm Curtis Pauling. My co-counsel is Cary
4 Goings. We're with the South Carolina Attorney
5 General's Office. We're prosecutors there. It's
6 our duty, our job to prosecute crimes such as this
7 that occur within the State of South Carolina.

8 Now, while Mr. Arroyo is charged, has been
9 indicted with trafficking heroin, he's presumed
10 innocent. That's the way our justice system works,
11 that is how it's required. He comes in this
12 courtroom presumed to be innocent. The burden rests
13 upon our shoulders to prove to you beyond a
14 reasonable doubt that Mr. Arroyo did, in fact, do
15 what he's charged with, what he's been indicted for.

16 Trafficking heroin, and the Judge will explain
17 the law to you at a later point, but trafficking
18 heroin is essentially distributing an amount of
19 heroin, in this case, more than 14 grams, less than
20 28. That's what he's been charged with.

21 But how do we intend to prove our case? Well,
22 you're going to hear from several witnesses
23 throughout the day. You're going to hear from Agent
24 Ryan Wood. Agent Wood is with the Fifteenth Circuit
25 Drug Enforcement Unit.

1 He's going to come here. He's going to
2 testify. He's going to tell you about his
3 investigation. He's going to explain to you how he
4 came to know Emigdio. He's going to explain to you
5 the information that he received regarding Juan
6 Arroyo. He's also going to tell you about how he
7 prepared for that undercover deal on April 29th of
8 2010. He's going to tell you about the surveillance
9 that was done, how that deal was conducted and he
10 will tell you what he received after that
11 transaction occurred.

12 You're also going to hear from Ms. Sharon Lilly
13 from the Horry County Police Department. She's an
14 evidence tech there. She's going to explain to you
15 that once the evidence was sent to their lab or once
16 it got to her, how she secured it before it went to
17 the lab for testing. She'll tell you the procedures
18 they went through to document where that evidence
19 was, where it was placed, how it was maintained.

20 You're also going to hear from a Ms. Lisa Floyd
21 and now she's actually the evidence tech there. And
22 she will tell you what she went through, the
23 procedures she went through to actually test the
24 item that was received. And she's going to be the
25 one to be able to tell you what it was that

1 Mr. Arroyo sold to Emigdio.

2 And you're also going to hear from Mr. Emigdio,
3 Emigdio Penaloza. He was the confidential
4 informant. He's going to get up on the stand and
5 he's going to tell you how he came to know
6 Mr. Arroyo. He's going to tell you about how he
7 came to know Mr. Wood. And he's going to explain to
8 you what happened on April 29th of 2010, that
9 undercover deal. He's going to explain to you what
10 happened when he met with Mr. Arroyo and what he did
11 after the transaction occurred.

12 I've told you all that, what we intend to show
13 you, but what is your role? And I believe the Judge
14 has already told you that, that you're the fact
15 finder. The Judge rules over the law. There may be
16 times when we may have to have a bench conference
17 with the Judge or there may be objections and the
18 Judge is going to have to rule on those matters of
19 law. The 12 of you are going to have to decide what
20 happened on April 29th, 2010, at 313 Cedar Street in
21 Myrtle Beach, in Horry County. And just how do you
22 do that?

23 Well, the witnesses are going to come to this
24 box, they're going to swear to tell the truth, the
25 whole truth and nothing but the truth. And you're

1 going to hear them. You'll see them. And you have
2 to decide, listen to the testimony, listen to the
3 evidence, and you have to decide what happened on
4 April 29th of 2010.

5 Now, I will tell you that factually this case
6 is simple, but I'll also tell you that this case is
7 very important to the State. It's important to
8 Mr. Arroyo. I just ask that you pay very close
9 attention to the testimony and the evidence
10 throughout this trial.

11 I'd like to thank you in advance for your time
12 and for your service. At the end of this trial,
13 we're going ask you to return a verdict. We're here
14 seeking justice, nothing more and nothing less. And
15 at the end of this trial, we're going to ask you to
16 return a verdict that speaks justice.

17 **THE COURT:** Thank you, Mr. Pauling.

18 All right. Which of you is going to make the
19 opening statement?

20 **MR. KIRKLAND:** I am, Your Honor.

21 **THE COURT:** Mr. Kirkland, you're recognized for
22 your opening statement.

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

25 **THE COURT:** Yes, sir.

1 **MR. KIRKLAND:** I apologize. I'm taking allergy
2 medication, so I may have to take a drink of water
3 during this opening statement.

4 As you probably noticed when we were selecting
5 the jury, both sides have to agree on a particular
6 juror in order to put that juror in that box. And
7 that really says something about the jurors
8 themselves because these are people that we are
9 extremely confident have the abilities, have the
10 background to be an effective juror and the things
11 that it takes are relatively simple. You simply
12 want somebody that's going to be fair, obviously,
13 but you also want somebody that's going to be
14 willing and able to put in the work that is
15 necessary to be a juror.

16 A trial is not, at least for a jury, it is not
17 a spectator sport. It is not like watching a
18 television show or watching a football game. The
19 jury is actively involved in any trial.

20 I mean, to understand what your involvement is,
21 you kind of have to understand the constitutional
22 underpinnings of what a jury is and what your role
23 is. And I'm sure you learned about a lot of this
24 when you were in middle school or high school.
25 Actually, I've heard they don't even teach anything

1 like the constitution anymore, but hopefully some of
2 you will recall from your constitutional law
3 studies, that when the founding fathers, when the
4 framers were drafting the constitution, they were
5 extremely concerned that the government would become
6 too powerful and so they put a lot of limitations on
7 the government.

8 The most talked about limitation is when they
9 separated up the federal government into branches of
10 government and we have the legislative, executive
11 and the judicial branches. And those are three
12 branches serve to provide a check and a balance on
13 the other branches.

14 However, it is apparent from the constitution
15 that they did not feel that the government policing
16 itself was sufficient to ensure the rights of a
17 criminal defendant and so they added another layer
18 of review, another layer of constitutional rights
19 that are particular to a defendant. And, of course,
20 the constitutional right that I'm talking about is
21 that a defendant's entitled to a jury of his peers.

22 And it's very interesting because they didn't
23 simply appoint sort of a civilian type of oversight
24 committee. You hear that sort of thing in the news
25 all the time. They actually decided to do something

1 much more meaningful and they made the juror, as the
2 Judge was telling you, they made the jurors the
3 actual judges of the case. You are, as the Judge
4 told you, the judges of this case.

5 And I know that there's 13 here, but there's
6 one alternate. There are literally, in this room
7 right now, there are 12 judges plus Judge Keesley.
8 And what we expect of you as a judge is exactly what
9 anybody would expect of any judge, expect the judge
10 to be fair, to be honest and to follow the law.

11 But the founding fathers clearly realized that
12 the jurors, they had never been judges before and so
13 they put some guidelines, some constitutional
14 safeguards into the constitution to give you an idea
15 of how it is that you need -- what you need to
16 consider to make your decision about guilt or
17 innocence. And, in fact, the things that they put
18 in there, actually the rules that they put in the
19 constitution actually create an extremely active
20 role for a juror, for example, the State has the
21 burden of proof and they have the burden to prove
22 that the defendant is guilty beyond a reasonable
23 doubt.

24 Well, it sounds as if that that particular
25 burden rests entirely on the State and it doesn't

1 really involve the jury, but if you couple that
2 particular burden, if you couple it with the fact
3 that the defendant, as the Judge told you, has
4 absolutely no obligation to defend himself, he has a
5 right to remain silent, he doesn't have to testify,
6 he doesn't have to put up any evidence, he has no
7 obligation to participate in this process
8 whatsoever, but that doesn't change at all the
9 burden of the prosecution and so that places a
10 burden on the jury because the constitution never
11 envisioned that a criminal defendant had to prove
12 that they were not guilty.

13 The jury is who has to hold the State to their
14 burden. The defendant doesn't have to do it and,
15 quite frankly, the defendant can't do it. We're not
16 going to be back there in the jury room with you.

17 So the jury has the responsibility throughout
18 this trial of holding the State to their burden.
19 And how do you do that? Well, it's very simple.
20 You have to be skeptical of their evidence. You
21 have to think about what these witnesses are saying.

22 This is an extremely high burden. The burden
23 of proof of beyond a reasonable doubt is absolutely
24 the highest burden in the law in the United States.
25 And my understanding is it's the highest burden in

1 the entire world. There is no other standard of
2 proof that's higher anywhere in the world.

3 To give you an example or a better
4 understanding of what a burden of proof is, in a
5 civil case, for example, if you're suing somebody
6 over a contract action, the standard of proof is
7 preponderance of the evidence. And, basically, what
8 that is that's just a simple balancing. The judge
9 will tell the jury in a civil case that you balance
10 the proof that each side puts up and if the scale
11 slightly tips in favor of one party to the other,
12 then you find in favor of that party. Well, we know
13 that that's basically the 50/50 standard. I mean,
14 it's obvious that's what it is.

15 Above that standard, something called clear and
16 convincing evidence. This is the standard that DSS
17 has to meet if they're ever going to take somebody's
18 children away. And, obviously, that's a very high
19 standard. It's a high standard for a very good
20 reason.

21 This standard is above both of those standards.
22 We don't know where that falls on the range of 50/50
23 or 60/40, we're not sure where it falls, but we know
24 that it's the highest standard under the law. And
25 so the government will have that burden and they

1 will have that burden throughout the trial. And as
2 a juror, I submit to you, that it is your obligation
3 to hold them to the burden the entire trial. And I
4 think that the prosecution has already said
5 something to the effect of that they welcome the
6 burden.

7 So I don't want you to think even for a second
8 that there's anything un-American about holding the
9 government to this burden. It is absolutely the
10 single most American thing that you can do as a
11 juror. It is the foundation of our system. And so
12 when you're listening to the evidence, think to
13 yourself, does this particular witness have a motive
14 to lie? Are there any biases that a particular
15 witness has? I think that they're going to show you
16 a video at some point in time. Does the video, in
17 fact, show what they say that it shows? Take this
18 information that you're receiving, tear it apart in
19 your head, think about it.

20 The defendant simply doesn't have the same sort
21 of obligation that you do as jurors. And if you
22 keep this in mind, if you follow these obligations
23 set forth in the constitution, at the end of the
24 trial, you will go back there and you will debate
25 and you will discuss and you will point out the

1 things that you might have doubts about and you'll
2 all talk about it. And if you've done your duty
3 throughout the entire trial, there's no question
4 that you'll reach a just verdict.

5 Now, obviously one side or the other, you know,
6 one side's going to be happy and one side's going to
7 be unhappy with whatever verdict that you give.
8 Both sides are not going to be happy. However, I
9 assure you that if you follow these rules, if you
10 follow the instructions that Judge Keesley gave you,
11 if you take the burden seriously that you have as a
12 juror and hold the government to their burden, then
13 even if one side is unhappy, that side will respect
14 the verdict that you give. Both sides will respect
15 the verdict that you give. That is justice in the
16 United States and that is what is expected of you
17 and that's all that anybody asks of you. Thank you.

18 **THE COURT:** Thank you, Mr. Kirkland.

19 All right. Ladies and gentlemen, we're going
20 to take a ten minute break before we start the
21 presentation of the evidence. If you want to bring
22 some ice water in here or something, that's fine.
23 You have to keep your eyes open, okay.

24 They've already sent the e-mail. I think I'm
25 feeling colder air coming in. I hope I don't freeze

1 any of you, sometimes they go to the extremes. But
2 we'll take a ten minute break and then we'll get
3 started with the evidence. Don't discuss the case.
4 Follow the bailiff, please.

5 (The jury retires to the jury room.)

6 **THE COURT:** I'm sorry, but one of the jurors
7 was really fighting it.

8 **MS. CHAPMAN:** Green shirt?

9 **THE COURT:** Yes. She stayed awake, but she was
10 fighting it.

11 All right. We're at ease for ten minutes.

12 (Brief Recess.)

13 **THE COURT:** State ready for the jury?

14 **MR. GOINGS:** State's ready for the jury.

15 **THE COURT:** Defense ready for the jury?

16 **MS. CHAPMAN:** We are, Your Honor.

17 **THE COURT:** Bring the jury in.

18 (The jury returns to the courtroom.)

19 **THE COURT:** State will call its first witness.

20 **MR. GOINGS:** Pleases the Court, the State would
21 call Agent Ryan wood.

22 **THE COURT:** Come up to the clerk.

23 RYAN CURTIS WOOD,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Please state your full name for the

1 record.

2 THE WITNESS: Ryan Curtis Wood.

3 THE CLERK: Please be seated and adjust the
4 microphone once you're seated.

5 DIRECT EXAMINATION

6 BY MR. GOINGS:

7 Q Good afternoon, Agent Wood. How are you?

8 A Good, sir.

9 Q What do you do for a living, Agent Wood?

10 A Currently, I'm assigned to the Fifteenth
11 Circuit Drug Enforcement Unit in Horry County, South
12 Carolina, and there I'm an agent. I'm currently
13 employed through the City of Myrtle Beach as a
14 narcotics officer and they're the ones who put me on
15 this task force with the Fifteenth Circuit Drug
16 Enforcement Unit.

17 Q And how long have you been with the DEU?

18 A DEU, been with them now since 2007.

19 Q So this will be your sixth year with the DEU?

20 A With the DEU.

21 Q How long have you been employed with the City
22 of Myrtle Beach?

23 A Since 2000, September of 2000.

24 Q Was that the first police agency you went to
25 after you went through the CGA -- CJA?

1 **A** Yes, sir.

2 **Q** So you did graduate from the Criminal Justice

3 Academy?

4 **A** Yes, sir.

5 **Q** So you've had, approximately, 13 years of law

6 enforcement experience?

7 **A** Yes, sir.

8 **Q** Was all of that with or being a narcotics agent

9 or --

10 **A** No. It began as a patrol officer in a patrol

11 car, did that for approximately four years. Then I

12 went into a unit called the street crimes unit which

13 also, basically, dealt with narcotics related

14 crimes.

15 **Q** And what are your duties as a, obviously, a

16 City of Myrtle Beach narcotics investigator and your

17 role as a DEU -- I mean, what is your primary

18 day-to-day activities?

19 **A** Day-to-day is we're constantly gathering intel

20 on narcotic related crimes in our area. We follow

21 up on those crimes by utilizing surveillance

22 tactics. What I mean by that is going out, if I get

23 a certain intelligence on a certain place, then I'm

24 going to go out and watch it first, see what I see.

25 Some of our surveillance is done through the

1 use of confidential informants, which we work with
2 those individuals pretty much on a daily basis.
3 From there, we'll investigate -- investigate those
4 crimes further to incorporate controlled drug buys.

5 And a controlled drug buy is where my agency
6 will provide the money to an informant and we will
7 then send that informant into a location, a known
8 drug location where he may purchase an amount of any
9 illegal drugs at that time and use our currency and
10 our funds. And most of those -- or, obviously, all
11 of those occasions, we have some sort of wire on
12 them at that time, anywhere from a video or an audio
13 wire. There's different little things we use.

14 Q Have you had any specialized training in the
15 area of investigation of illegal narcotics?

16 A Yes, sir. I've attended several training
17 classes dealing all with different types of drugs,
18 identifying drugs, how to investigate undercover
19 drug operations, things like that.

20 Q And, obviously, you've detailed -- you gave a
21 general description to the jury about your
22 background, your knowledge and your training and,
23 obviously, you've participated in the investigation
24 of illegal narcotics. How many cases do you think
25 you've probably done since 2007? I mean, not a

1 specific, but an estimate.

2 A Hundreds, I mean quite a bit.

3 Q And, obviously, you've told the jury a little
4 bit about conducting undercover investigations.

5 Over those hundreds of cases, do they usually
6 involve some type of undercover technique that you
7 use, whether it's a confidential informant or a
8 undercover agent?

9 A I would say, yeah, most of the time. There's
10 only several occasions where you may not use an
11 informant.

12 Q Now, did you have an opportunity to participate
13 in an undercover buy that took place on April 29th
14 of 2010?

15 A Yes, sir.

16 Q Were you the primary agent on that particular
17 undercover buy?

18 A Yes, I was.

19 Q During that undercover buy, were y'all using a
20 confidential informant?

21 A Yes, we were.

22 Q And who was that confidential informant?

23 A His name is Emigdio Penaloza.

24 Q And how did you come to know about Emigdio
25 Penaloza?

1 **A** I met Emigdio, I want to say, approximately
2 maybe a year before that, may have been less, during
3 an investigation of my own into him. Emigdio, at
4 that time, was a target of one of my investigations
5 and that investigation led to his arrest eventually.

6 **Q** Do you remember what you arrested Emigdio for?

7 **A** Yes, sir, cocaine possession.

8 **Q** And how -- let me ask you this: How much coke
9 were you buying or did y'all have on Emigdio when
10 y'all arrested him; do you recall?

11 **A** That we actually caught him with?

12 **Q** Or that he led you to on the day he was
13 arrested?

14 **A** Approximately 1,000 grams, which is one kilo,
15 one kilogram, which is approximately two pounds.

16 **Q** At that point in time, did Emigdio Penaloza
17 wish to cooperate with law enforcement in any way?

18 **A** Immediately upon his arrest.

19 **Q** And, in fact, when you arrested Emigdio, did
20 you actually catch him with a key or did he take you
21 to the key of cocaine?

22 **A** He actually helped us retrieve the key at
23 another location from another individual.

24 **Q** And is that the only time you used Emigdio
25 during your narcotics investigations?

1 **A** No. After that, he was officially signed up as
2 an informant and there we began working several
3 different cases making several different controlled
4 drug buys to different targets.

5 **Q** And we're going to get to the specifics of this
6 case, but just in general, is it uncommon for
7 individuals that you arrest in your narcotics
8 investigations to want to cooperate with law
9 enforcement and to work as a confidential informant?

10 **A** I would say about 99 percent of the time they
11 wish to work and they do end up working as an
12 informant.

13 **Q** And based on your general knowledge, why do
14 they want to cooperate with law enforcement?

15 **A** It will help them with their charges.

16 **Q** Did the cooperation that Emigdio gave to you,
17 not only including the key that he recovered that
18 day, but his ongoing help with law enforcement, did
19 that help him in the long run?

20 **A** Yes, I'm sure it did. Usually I tell -- tell
21 the individuals at the time, it's not my decision
22 what type of help you get. The help is going to be
23 out there. It depends on the work that they do
24 while they're in -- working with us. And I don't
25 have the authority to tell someone the exact help

1 they're going to get. It's my job just to do the
2 work with that individual or the informant. And
3 when we're done, I'll take everything together, turn
4 it over to the prosecution and then they get up with
5 the informant's defense attorney and then the judges
6 make the decision on how the help is distributed.

7 Q Now, as far as Emigdio is concerned, are you
8 aware -- obviously he was arrested by you. Do you
9 know if he was officially prosecuted and actually
10 received a sentence?

11 A I know that he was. I don't have any details
12 of that. He was actually prosecuted through the
13 federal government and he did receive a federal
14 sentence.

15 Q And all this help that Emigdio had given you
16 over the course of y'all's relationship where he was
17 signed up as a confidential informant, did all of
18 that information get to the prosecutors who was
19 handling Emigdio's case?

20 A Yes.

21 Q Now, specifically about the defendant, Juan
22 Arroyo, was this a particular individual that you
23 used Emigdio Penaloza's help on?

24 A Sir?

25 Q Did you use Emigdio to --

1 A Yes.

2 Q In your investigation of Juan Arroyo?

3 A Yes, I did.

4 Q All right. Now, how did you come to learn of

5 Mr. Arroyo?

6 A Through Emigdio. Emigdio called me one day and

7 stated if I knew this person, Juan Arroyo, and I did

8 not. He told me about him and said he'd known him

9 for a while and knew that he was involved in some

10 things.

11 Q Did he indicate whether or not he could

12 purchase any illegal narcotics from Mr. Arroyo?

13 A He believed that he could, if that's something

14 I wanted him to do.

15 Q And did you, in fact, want him to do that?

16 A Yes, I did.

17 Q And what type of illegal narcotics did you want

18 Emigdio or did Emigdio think that he could buy from

19 the defendant, Mr. Arroyo?

20 A He initially assumed he could purchase cocaine.

21 That was initially.

22 Q Did he ever come to the point where he thought

23 he could buy heroin from Mr. Arroyo?

24 A Yes.

25 Q Did y'all, in fact, set up a deal for him to

1 buy heroin from the defendant?

2 A Yes, we did.

3 Q Now, before we get into the specifics of that
4 undercover buy itself, obviously you said you used
5 Emigdio -- you said it was a year you knew Emigdio
6 prior to even learning about Mr. Arroyo?

7 A I don't have the exact date, so I'm not real
8 sure. I don't know the time that I arrested
9 Emigdio. I don't know that date.

10 Q Let me ask you this: Was the defendant,
11 Mr. Arroyo, the only person you used Emigdio to set
12 up basically?

13 A No.

14 Q Was Mr. Arroyo's investigation also part of the
15 information you sent to the prosecutors who would
16 prosecute Emigdio?

17 A Yes.

18 Q So they were aware of his help with setting up
19 the defendant when they sentenced him or when they
20 worked out any plea agreement with Mr. Emigdio?

21 A Yes. Uh-huh.

22 Q Did they also know about these other
23 individuals that Emigdio helped set up?

24 A Yes.

25 Q Now, let's go back to the actual 4/29 deal

1 itself. Obviously, there came a time where Emigdio
2 tried to purchase some heroin from the defendant.
3 When was the first meeting they had to discuss the
4 heroin transaction?

5 **A** The first meeting took place on the 28th, the
6 day before.

7 **Q** So April 28th of 2010?

8 **A** Yes, sir.

9 **Q** All right. And what happened during that
10 meeting?

11 **A** During that meeting, we were -- well, they
12 discussed the price and the type of product that
13 we'd be purchasing, which was a white powder heroin.
14 And the price was supposed to be \$1600 for,
15 approximately, 25 grams of heroin.

16 **Q** And where did that meeting take place?

17 **A** Inside Juan Arroyo's residence at Cedar Street.

18 **Q** Now -- and before we go into the specifics,
19 when you had a confidential informant, I know you
20 talked about it a little bit, you said your normal
21 process was it would be video taped?

22 **A** Yes.

23 **Q** All right. Was the -- actually, the drug buy
24 took place the next day on 4/29. Was it video
25 taped?

1 A Yes, video.

2 Q What other precautions or procedures do you go
3 through when you're conducting an undercover buy
4 with a confidential informant both prior to the
5 transaction taking place, during the transaction and
6 afterwards, just in general for right now?

7 A In general, we always -- first, we set a meet
8 location in a undisclosed area away from everyone.
9 We don't want to see -- the public see me meeting
10 with my informant. We try to keep that as secret as
11 possible. So we meet in a vacant parking lot, maybe
12 behind some vacant building or anywhere.

13 At that point, I'm always providing the money
14 for a buy, so I'll bring the money. That money is
15 taken out of our agency account. I photograph that
16 money and then I'll issue -- later on I'm going to
17 issue that to the informant.

18 Once the informant arrives to the -- to our
19 meet location, I immediately search him first and
20 then I search -- if they're in a vehicle, I will
21 search their vehicle.

22 Q Let me stop you right there. What's the
23 purpose of searching the confidential informant and
24 the vehicle upon their arrival?

25 A For this very reason, court and due to the fact

1 that, you know, I don't want them having any illegal
2 contraband on them, that way there's no, no way
3 around the fact that wherever I'm about to send him,
4 if he comes back with illegal narcotics, then that's
5 where he got them from. He didn't take them there
6 and they didn't come in his car. I searched
7 everything prior to and the only place he could have
8 purchased that was wherever I was going to send him.

9 Q Okay. And go ahead with the general aspects.
10 Obviously, you searched the --

11 A Yeah. We initially searched him, like I said,
12 and his vehicle. Once those are completed and
13 everything's clean, then I will go on and put a
14 video wire on that person, could be anything from a
15 button cam to a watch or anything that has the
16 capability of putting a small camera in it. Once we
17 do that, I issue the money. I turn on the video
18 recorder, at which time, I'm speaking and then I can
19 put a heading on it or whatever stating the date and
20 time.

21 Q Now -- and, obviously, at that point in time,
22 you send the CI off to wherever the planned location
23 is to meet for the target?

24 A Yes. I'll -- obviously, we're going over what
25 we're doing the whole time, where we're going, what

1 I expect of the -- of my informant when he gets
2 there, what I expect of him when he leaves, try to,
3 you know, just plan. And I tell him that, or her,
4 that I'm going to be in the area. I'm always going
5 to have eyes on you as best I can. Obviously, when
6 you go inside of a building, I can't see you then,
7 however, I'm going to be outside close by.

8 It's in a controlled setting. We usually --
9 you always have more than one agent there, sometimes
10 two, sometimes eight. It just depends, whoever's
11 available, who wants to help, but there's always
12 going to be more than one agent there and it's just
13 a -- safety purposes basically.

14 Once that takes place, the buy is then
15 initiated. So when I call -- I usually call it a
16 buy, but the controlled buy is initiated. I always
17 follow my informants to the location. I'll surveil
18 the area that they've entered. If it's a building,
19 if it's a parking lot, I can keep eyes on them the
20 whole time. Once they leave, I always tell my
21 informants to call me. You know, when you get out,
22 just call me. And then I'll follow them away.

23 We meet at another location. Sometimes it's
24 not the same location that I wired him up in. It
25 may be just another random parking lot in the area.

1 And then I'll go over what happened with the
 2 informant. They usually tell me from the time they
 3 stepped in the door, what happened. And, at that
 4 point, if they received any narcotics during the
 5 buy, I will take possession of those narcotics and
 6 then release the informant after he gives a
 7 statement. And then I'll re-search the informant
 8 and his vehicle before he's released.

9 Q Now, going to the specific transaction that
 10 took place on April 29th, 2010, obviously, you had
 11 testified previously that on April 28th, 2010,
 12 Emigdio goes over to the defendant's house and they
 13 plan the cost and the amount of heroin that's going
 14 to be purchased; is that correct?

15 A On the 28th, yes, sir.

16 Q And, obviously, we assume that -- I'll ask you,
 17 what day was the deal set up for?

18 A 29th.

19 Q Okay. And did you have an occasion to meet
 20 with Emigdio prior to that transaction taking place?

21 A Prior to the 29th?

22 Q Yeah, to give him the funds and wire him up?

23 A Yes.

24 Q All right. Take us from that point -- I mean,
 25 what happened when you got there? What did you do?

1 **A** That date we met at a parking lot within a few
2 miles from Mr. Arroyo's house on Cedar Street, met
3 with -- he had already talked to Arroyo --
4 Mr. Arroyo that day, my informant did, on the
5 telephone and they had set up a time that might be
6 good for them, around three o'clock I think it was,
7 So I met my informant around 2:00 or 2:30 that
8 afternoon, basically searched him when he got there
9 like I always do, searched his vehicle because he
10 did have a vehicle. Both were clean.

11 I then issued him the -- well, then I put on
12 the wire, which is a video wire only, only on the --
13 I think it was a button cam we used. And that's
14 basically a button like it sounds, looks just like a
15 button, has a camera in it. Once that is done, I
16 issued him the money. We went over our plans,
17 instructed him what to do, where to go, all that was
18 already discussed. And from there, once we were
19 ready to go, I started to follow him out towards the
20 house.

21 **Q** So just briefly, you didn't find anything on
22 him, his person or his vehicle when you searched
23 him?

24 **A** No, nothing.

25 **Q** He was wired with video?

1 A Uh-huh.

2 Q And then you send him to the buy location,

3 correct?

4 A Yes.

5 Q Where is the buy location going to be at?

6 A Cedar Street. I think it's 313 to my

7 knowledge.

8 Q And who was living there to your knowledge?

9 A Juan Arroyo and his girlfriend at the time,

10 Michelle.

11 Q All right. Now, what happened -- take us from

12 the time that the CI goes to Juan Arroyo's house,

13 did y'all follow and surveil the CI?

14 A Yes. From our first location where I wired him

15 and I followed him to Cedar Street to Mr. Arroyo's

16 residence. I then parked in eyesight, I don't

17 recall exactly the spot I was in, but I was within

18 eyesight of his vehicle, saw my informant walk out

19 and go to the front door.

20 Q And was the drug transaction that was supposed

21 to take place that day, did it actually occur at

22 this point in time?

23 A No. At that point, obviously, the informant

24 then called me pretty quick after he had arrived and

25 said that he -- that Mr. Arroyo was not at the

1 residence at that time. His girlfriend was there.
2 She said he ran to the store and that he should be
3 back shortly.

4 So we then left the area and I followed him to
5 another location. On the way, I called -- or we
6 spoke on the phone, obviously, when he called to
7 tell me that she {sic} was not there. I told --

8 MR. KIRKLAND: Your Honor, I would object to
9 the hearsay.

10 THE COURT: Do you wish to be heard?

11 MR. GOINGS: No, Your Honor. I'll rephrase it
12 so we don't talk about anything Emigdio says.

13 THE COURT: Sustained.

14 BY MR. GOINGS:

15 Q All right. So Emigdio calls you. Obviously,
16 the drug transaction couldn't take place?

17 A Correct.

18 Q And -- so y'all -- what do you do? Do you meet
19 with him again or do you send him on home? What
20 happened?

21 A Yeah. He calls me as he's leaving. I tell
22 him, okay, we're going to go to this spot because,
23 obviously, we were going to wait a few minutes. So
24 I chose a new spot up the road to meet in another
25 parking lot and told him to follow me there. And I

1 got in front of him and he followed me to the
2 location.

3 Q During this -- he's constantly wired with video
4 at this point in time, right?

5 A Uh-huh.

6 Q Did you maintain eyes on him during this whole
7 time from the time that he leaves you after you wire
8 him up and give him the funds until you meet back
9 with him at this second meeting spot after he goes
10 to Juan Arroyo's home and he's not there?

11 A Yes. While we were traveling -- I think while
12 we were traveling actually back to the second
13 meeting location once he left Juan Arroyo's house
14 the first time, I got in front of him because he did
15 not know which parking lot we were going to. And,
16 at that time, he got -- we got separated not far
17 from each other, but he got stopped at a red light.
18 I caught the green light, but I went up and I
19 basically waited on him to catch back up to me,
20 which wasn't more than a few seconds I would say, 30
21 seconds at the most. And then we pulled into the
22 parking lot together.

23 Q But no -- the drug transaction hadn't taken
24 place by this point in time?

25 A No.

1 **Q** So you get to this second meeting location, and
2 I don't want to know what Emigdio says, but,
3 obviously, y'all have a conversation. What is your
4 understanding of why the drug transaction didn't
5 take place?

6 **A** Because Mr. Arroyo was not home at that time.

7 **Q** All right. Did Emigdio ever call Mr. Arroyo in
8 your presence at that second location?

9 **A** Yes. We made a phone call or Emigdio made a
10 phone call and once he hung up the phone, he said
11 the price had changed.

12 **Q** So now -- what was the price for the
13 transaction?

14 **A** The original price was one thousand six
15 hundred --

16 **MR. KIRKLAND:** Your Honor, I don't know if this
17 is going to be hearsay or not, but it sounds like
18 we're talking about what this other person said. So
19 I would object to that.

20 **THE COURT:** Do you wish to be heard?

21 **MR. GOINGS:** No, Your Honor. I'll rephrase the
22 question.

23 **THE COURT:** Sustained.

24 **BY MR. GOINGS:**

25 **Q** Based on the conversation -- Emigdio calls Juan

1 Arroyo; is that correct?

2 A Yes.

3 Q In your presence?

4 A Yes.

5 Q All right. He hangs up and then you have a
6 conversation with Emigdio?

7 A Yes.

8 Q Based on those conversations, what was the
9 plan, at that point in time, on April 29th, 2010,
10 what were you going to do?

11 A Based off their conversation?

12 Q Yeah.

13 A I was going to lead him as he was going to
14 follow me in his vehicle. I was driving my vehicle.
15 We were going to go to the bank up the street.

16 Q Why were y'all going to the bank?

17 A We needed to retrieve 200 additional dollars
18 for the buy.

19 Q Because why?

20 A Because the price had changed.

21 MR. KIRKLAND: Objection, Your Honor, that's
22 hearsay.

23 THE COURT: Sustained.

24 BY MR. GOINGS:

25 Q So you had to go get 200 extra dollars for the

1 drug transaction; is that correct?

2 A Yes.

3 Q So now instead of -- how much funds does
4 Emigdio have on 4/29/10 to buy the 25 grams?

5 A I originally gave him 1600 the first time. And
6 when I got the \$200 out of the bank, that made his
7 total \$1800, \$1,800.

8 Q And did you give the extra \$200 to Emigdio?

9 A After I photographed it, yes, sir.

10 Q Now, after you met up with him at the second
11 location and before y'all went to the bank to get
12 the extra \$200, did you leave the video cam running?

13 A No, I did not. I turned it off based -- that
14 video itself does not hold, it's like a mystery how
15 much video it holds to me all the time, so I cut it
16 off to be sure that we were going to have video
17 during our buy. What we were doing at that point,
18 there was no need to video any of that. He was with
19 me. He was under my control and we were just doing
20 inhouse stuff getting the money.

21 Q Now, from the time that you cut the video off
22 until obviously, and we'll get to it in a second,
23 you turn it on again at some point in time, correct?

24 A Yes, I do.

25 Q All right. And you say this is when y'all went

1 to the bank to get the extra money?

2 A Yes.

3 Q During the time you turned it off and the time

4 you turned it back on again, did Emigdio, the CI,

5 ever leave your presence at all during that time?

6 A No.

7 Q He was with you the whole time?

8 A The entire time.

9 Q So was there an opportunity to get any objects

10 or any narcotics or anything else on his persons

11 {sic} or in his car during that gap of time where

12 the video's turned off and is turned back on again?

13 A No.

14 Q So, at some point in time, the drug transaction

15 is back on; is that correct?

16 A Yes.

17 Q You turn the video back on?

18 A Yes, I do.

19 Q And what happens next?

20 A Once I turn the video on, myself and the other

21 agent involved followed the -- followed Emigdio to

22 Juan Arroyo's house on Cedar Street.

23 Q Did you have -- did y'all maintain physical

24 eyes on him?

25 A Yes, I did.

1 Q During his travels to the defendant's house?

2 A Yes, I did.

3 Q And what did you do once he got out of the
4 vehicle when he arrived at Mr. Arroyo's house?

5 A I parked acro -- like, just down the road,
6 there's an apartment complex, I pulled in there. If
7 you go behind it like on the side of the parking
8 lot, you can see through the -- just right across
9 the street to his house. So I stayed there during
10 the whole time. Once he entered the home, I
11 couldn't see Emigdio anymore.

12 Q So you don't know what happens in the house?

13 A No.

14 Q While he's in there?

15 A No, I don't.

16 Q What happens next?

17 A He leaves and calls me as he's leaving and then
18 I follow him out. And I gave him instructions on
19 another parking lot to go to so we can meet and I
20 could take the video off of him and retrieve
21 anything.

22 Q Now, from the time he leaves the defendant's
23 home -- well, when he comes out, do you have eyes on
24 him?

25 A Yes. As soon as he enters his vehicle in the

1 yard of Mr. Arroyo's house and then I followed him.
 2 He came out, I think it's Cedar Street, and take a
 3 right on to 3rd Avenue and then he comes back out to
 4 Highway 501. At that time, I was in behind him once
 5 he passed me and then I got in behind him. Once we
 6 got out on the road, I told him on the phone, I was
 7 on the phone with him the entire time until we got
 8 to the new -- basically, to the new parking lot, I
 9 told him just to follow me just up the road. It was
 10 within a mile.

11 Q During this whole time that you traveled from
 12 the defendant's home until y'all met up in this
 13 parking lot or wherever it was, did you have
 14 constant eyes on your CI, Emigdio?

15 A Yes.

16 Q Did he make any stops or meet with anybody?

17 A No.

18 Q Did he have an opportunity to put anything in
 19 his car or receive anything from anybody else except
 20 for whoever was in the house at 313 Cedar Street?

21 A No.

22 Q Now, what do you do with the video once the
 23 drug deals are taken place?

24 A The video's extracted from the device onto a
 25 computer. At that point, we save it to a disk.

1 **Q** I'm going to show you what's been marked
2 State's 14. Have you seen the video concerning the
3 drug transaction that took place on 4/29/2010?

4 **A** Yes.

5 **Q** Is that a copy or a -- the -- how it is burned
6 to a disk from your computer system once it's
7 downloaded from the actual camera itself?

8 **A** Yes.

9 **Q** Has that been changed or altered in any way?

10 **A** No.

11 **MR. GOINGS:** Your Honor, at this point in time,
12 the State would introduce State's Exhibit 14 into
13 evidence.

14 **THE COURT:** Is there any objection?

15 **MS. CHAPMAN:** No, Your Honor.

16 **THE COURT:** Thank you. Mark it in evidence,
17 please, ma'am.

18 (State's Exhibit Number 14, DVD, admitted
19 into evidence.)

20 **BY MR. GOINGS:**

21 **Q** Now, you meet up with Emigdio at this meeting
22 location. What do you do at that point in time?

23 **A** At that time, I told Emigdio to tell me in his,
24 you know, what happened inside of the house. I
25 always do that, get a statement from them, a verbal

1 statement.

2 Q Let's stay away from anything he specifically

3 told you about what went on in the house. What did

4 you personally do once you met back up with your CI,

5 Emigdio?

6 A I retrieved a paper bag that had a tube in it.

7 Q And is this what Emigdio hands you?

8 A Yes.

9 Q All right. And based -- and where did Emigdio

10 get the tube from?

11 A Juan Arroyo.

12 Q I'm going to show you what's been marked

13 State's 11 and actually ask you to open it up and

14 look at the item that's contained within there.

15 A (Witness complies.)

16 Q Do you recognize that item?

17 A Yes, I do.

18 Q And what item is that?

19 A It's a grease tube container. It holds grease

20 of some sort.

21 Q Is that the item that you received from Emigdio

22 on 4/29/2010?

23 A Yes, it was.

24 Q Obviously, you open it on that particular

25 occasion, but other than that, is it in

1 substantially the same shape as it was when you
2 received it on 4/29/2010?

3 A Yes, other than a little -- looks like a little
4 damage there just being hit against something and
5 then this seal's broken from where I opened, got
6 into it.

7 MR. GOINGS: Your Honor, at this point in time,
8 the State would like to introduce State's Exhibit 11
9 into evidence.

10 THE COURT: Is there any objection?

11 MS. CHAPMAN: No, Your Honor.

12 THE COURT: Mark Exhibit 11 in evidence.

13 (State's Exhibit Number 11, grease tube,
14 admitted into evidence.)

15 BY MR. GOINGS:

16 Q So you get this grease tube from Emigdio?

17 A Yes.

18 Q And what do you do with it?

19 A I open it.

20 Q Do you take photographs while you're doing
21 this?

22 A Yes, sir.

23 Q At this time, I'm going to hand you what's been
24 marked State's 1 through 9. If you can just look at
25 those.

1 **A** (Witness complies.)

2 **Q** State's 1 through 9, were those photographs
3 that you took?

4 **A** Yes.

5 **Q** And do they accurately reflect the items that
6 you saw on that particular day?

7 **A** Yes, they do.

8 **Q** In the condition they were in on that
9 particular day?

10 **A** Yes.

11 **MR. GOINGS:** Your Honor, at this point in time,
12 the State would seek to introduce State's 1 through
13 9 into evidence.

14 **THE COURT:** Is there any objection?

15 **MS. CHAPMAN:** No objection.

16 **THE COURT:** Without objection, Madame Court
17 Reporter.

18 (State's Exhibit Numbers 1 through 9,
19 photographs, admitted into evidence.)

20 **BY MR. GOINGS:**

21 **Q** I'm going to show you specifically State's 1
22 and 2 and 3 and -- 1 through 4. Can you please tell
23 the jury what those are photographs of?

24 **A** This is a photograph of the tube that I just
25 presented.

1 Q And that was before or after you opened it?

2 A This is before I opened it.

3 Q Okay.

4 A 1 and 2.

5 Q And go ahead, what's State's Exhibit 3?

6 A Exhibit 3 is actually when I pulled the black
7 top off with the little plastic seal around it and
8 inside you can see pink grease.

9 Q What about State's Exhibit 4?

10 A Number 4 is I started taking the -- squeezing
11 grease out of it.

12 MR. GOINGS: Your Honor, at this point, we'd
13 like to publish State's Exhibit 1 through 4 to the
14 jury.

15 THE COURT: Yes, sir.

16 BY MR. GOINGS:

17 Q What is in State's Exhibit 5?

18 A 5 is when the grease was extracted from the
19 tube by squeezing it out. Inside the grease was a
20 black round-shaped ball. The next picture below it
21 is the black ball itself laying on some napkins that
22 I had in my car.

23 MR. GOINGS: Request to publish State's Exhibit
24 5 as well, Your Honor.

25 THE COURT: Yes, sir.

1 BY MR. GOINGS:

2 Q Now, State's Exhibit 6 and 7 and 8,
3 specifically in State's Exhibit 6, what are we
4 looking at there?

5 A Top picture on Exhibit 6 is the black ball on a
6 scale after we cleaned off the grease from it, so
7 you don't see any grease on it, but it's in the same
8 location as when we were opening the tube.
9 Underneath that is pictures when I got back to my
10 office and sliced a hole inside the black tape on
11 the exterior of this round ball and you can see a
12 white substance underneath the black tape.

13 Q State's Exhibit 7, what are we looking at
14 there?

15 A Top picture on number 7, I start unravelling
16 the black, it was black electrical tape and that's
17 what was on the outside of this ball. Underneath
18 the black tape was a, like a paper towel or napkin
19 and it was wrapped. And it had a very foul odor to
20 my -- I remember that distinctly.

21 Q And what about State's Exhibit 8?

22 A Number 8 is when you get underneath the paper
23 towel, you'll see then a clear plastic bag and it's
24 basically wrapped around a ball of white, off-white
25 powder. Both of those reflect that.

1 **MR. GOINGS:** Your Honor, at this point in time,
2 I'd like introduce State's Exhibit -- or publish
3 State's Exhibit 6, 7 and 8 to the jury.

4 **THE COURT:** Yes, sir.

5 **BY MR. GOINGS:**

6 **Q** All right. So you get the grease tube, you
7 open it up. You find this black ball of tape. You
8 cut it open, unravel it and you wound up with a
9 clear plastic bag still in a ball of some substance;
10 is that correct?

11 **A** Yes.

12 **Q** And these are all photos as you're doing them
13 on that particular day?

14 **A** Yes.

15 **Q** Now, what did you do with the final product,
16 shall we say, the plastic bag with the white
17 substance in it, what did you do with it?

18 **A** It was tied up. I untied it, got a hair piece
19 out from my test kit, just it's -- it's a field test
20 kit. And what that does is it shows you that it's
21 positive for the presence of heroin.

22 **Q** And I don't want to know what the results of
23 that was, but what would you do with the rest of it?
24 The rest of the ball, after you take your little
25 sample, what do you do with it?

1 **A** At that time, once I take off all the exterior
2 wrapping, I then place the -- just the clear plastic
3 bag holding the white powder, I take that and I heat
4 seal it inside of a clear plastic in my office. So
5 it's basically in a rectangular-shaped, clear
6 plastic bag at that point, is what I put that ball
7 into. And it's heat sealed on every side.

8 **Q** And what do you do with the heat-sealed
9 package? Or what did you do with the heat-sealed
10 package?

11 **A** At that time, I placed it in our DEU office
12 safe.

13 **Q** Now, let me ask you this first: During the
14 time that you open it up, you find this clear
15 plastic bag of a white substance, from the scene to
16 your office, did you have the sole possession and
17 custody of that material?

18 **A** Yes.

19 **Q** Was it altered, changed or -- in any way while
20 it was in your possession?

21 **A** No.

22 **Q** Then you say you take obviously -- you took a
23 sample for your -- and then you put the rest in a
24 heat-sealed plastic and stuck it in the DEU safe; is
25 that correct?

1 **A** Yes, sir.

2 **Q** During that time, except for the sample that
3 you took out, was it altered, changed in any way
4 while it was in your possession?

5 **A** No.

6 **Q** I'm going to show you what's been marked
7 State's Exhibit 9. What's that a photograph of?

8 **A** Number 9, both pictures reflect the clear
9 plastic bag containing the white powder, off-white
10 powder inside the heat-sealed bag that I placed it
11 into prior to putting it into our office safe.

12 **MR. GOINGS:** I'd like to publish State's
13 Exhibit 9 to the jury, Your Honor.

14 **THE COURT:** Yes, sir.

15 **BY MR. GOINGS:**

16 **Q** Now, do you fill out an evidence sheet when you
17 bring back evidence to the DEU?

18 **A** Yes, sir.

19 **Q** I'm going to show you what's been marked
20 State's Exhibit 12. Can you identify that document?

21 **A** Yes.

22 **Q** What is it?

23 **A** That is the, I guess, the carbon copy or one
24 copy, there's like five copies of one, but that's
25 our drug analysis laboratory chain of custody form.

1 **Q** And did you fill in that document when you
2 submitted that white ball that was sealed in the
3 heat-sealed plastic? Did you start that document?

4 **A** Yes, I did.

5 **Q** And, in fact, it shows, based on your signature
6 -- what did you do with it on 4/29/2010?

7 **A** On 4/29/2010, at approximately 2000 hours or
8 8:00 p.m., I dropped it inside the --

9 **MR. KIRKLAND:** Your Honor, it sounds as if he's
10 reading from a document that I don't believe is in
11 evidence.

12 **MR. GOINGS:** I apologize, Your Honor. Now that
13 he's identified this as an evidence chain of
14 custody, the State would like to introduce into
15 evidence State's Exhibit 12.

16 **MR. KIRKLAND:** May I look at that for a moment,
17 Your Honor?

18 **THE COURT:** Certainly.

19 (Pause.)

20 **MR. GOINGS:** Let me ask you this way -- the
21 State will withdraw trying to put this into evidence
22 at this point in time, Your Honor.

23 **THE COURT:** Okay.

24 BY MR. GOINGS:

25 **Q** Just read your -- your signature indicates what

1 on that particular form? What does it mean that you
2 did with that item?

3 A The day that I put it into the DEU office safe?

4 Q Yes. Was what date?

5 A 4/29/2010.

6 Q Okay. And this is the heat-sealed package that
7 State's Exhibit 9 depicts, correct?

8 A Yes.

9 Q The white ball in the heat-sealed plastic?

10 A Yes.

11 Q Now, why do you put it in a heat-sealed package
12 like that?

13 A Well, the heat-sealed package that I placed it
14 in prior to putting it in our safe is procedure
15 before I package it into Horry County Best Analysis
16 Drug Kit. Inside our drug kits, our analysis kits,
17 there is another bag and it has a sealable top on
18 it.

19 Inside that bag is, there's a number on the
20 exterior of that bag -- it comes in an envelope,
21 first of all, and it has the same number on the
22 outside of that envelope and then there's paperwork
23 also in there that depicts the same BEST kit number.
24 On that, you fill it out, put names, dates, you
25 know, case file numbers, everything's corresponding.

1 At that time, we put one of those pieces of
2 paper inside the BEST kit itself, the heat-sealable
3 bag that came with the kit. And then I take my
4 heat-sealed bag, place it into that new kit
5 heat-sealed bag and then on top of that is a
6 tamper-proof heat seal on that bag. At that point,
7 I stick it back in the kit envelope and I would
8 transport that to the Horry County Police Evidence
9 Facility.

10 Q And who retrieved this particular item out of
11 the DEU safe before it went to Horry County
12 evidence?

13 A I did.

14 Q And on what date was that?

15 A May 7th.

16 Q Of 2010?

17 A Yes, sir.

18 Q So from 4/29/2010 until May 7th, 2010, it
19 remained in the DEU safe; is that correct?

20 A Yes.

21 Q In this heat-sealed plastic that you put it in?

22 A That I put it in, yes, prior to putting it in
23 the kit.

24 Q So it's not in the BEST kit yet? It's just
25 in --

1 A Correct.

2 Q -- this little heat-sealed white plastic that

3 you put it in on 4/29/2010?

4 A Correct.

5 Q Now, when you got it out on May 7th, 2010, had

6 the heat seal been broken?

7 A No.

8 Q Did the item look as if it was the same as when

9 you put it in on 4/29/2010?

10 A Yes.

11 Q And who has access to the DEU safe?

12 A My two supervisors.

13 Q So during 4 -- from 4/29 to May 7th, 2010, when

14 you got it out, it hadn't been altered -- or the

15 heat-sealed package you know hadn't been altered,

16 changed or broken in any way?

17 A Correct.

18 Q And then you take it to -- you said you take it

19 to Horry County evidence?

20 A Yes. Horry County Police Department evidence.

21 Q Do you put it in a BEST kit prior to going

22 there or do you put it in the BEST kit when you get

23 there?

24 A Prior to. My office is maybe two miles away.

25 Q And I'm going to show you what's been marked

1 State's 10. And there's several items in here,
2 okay, so I'm going to ask you about a couple
3 specifically. The bag that is contained within this
4 bag that's got the, looks like, blue bordering
5 around it, what is that?

6 A That's a bag that comes in the BEST kits that
7 we put drugs in.

8 Q And did you actually put your heat-sealed
9 plastic in one of those bags on May 7th, 2010?

10 A Yes.

11 Q And is that the bag you put it in?

12 A Yes, it is.

13 Q How do you know that?

14 A By my name and date that I did it.

15 Q So when you take your -- that little
16 heat-sealed plastic, put it in this BEST kit, you
17 sign and date it on the day you did it; is that
18 correct?

19 A The day I seal this bag, yes, sir.

20 Q And when you say seal this bag, tell the jury
21 what you mean.

22 A Can I hold that or can we talk about this --

23 Q You can hold it.

24 A This is -- this bag here is folded over inside
25 this package right now.

1 **MR. KIRKLAND:** Your Honor, I believe he's
2 publishing an exhibit that I don't think has been
3 placed into evidence yet.

4 **MR. GOINGS:** I think he's identifying an
5 exhibit, Your Honor.

6 **MR. KIRKLAND:** Well, I think he needs to
7 identify it himself and then have it placed into
8 evidence and then he can publish it to the jury.

9 BY MR. GOINGS:

10 **Q** In general, tell how a BEST kit is sealed.

11 **A** At the top of the bag, the heat-sealable bag
12 that comes in the kit, at the very top, there's a
13 piece of paper you can tear off and underneath it's
14 sticky glue-like stuff and you cannot -- if it's
15 tampered with, you're going to know it basically.
16 It's a tamper-proof seal.

17 **Q** And what's the point of putting it in a
18 tamper-proof seal?

19 **A** To ensure that there's no tampering of the
20 evidence.

21 **Q** And I don't want you to show it to the jury,
22 but is this the particular BEST kit that you put
23 your heat-sealed plastic that contained the white
24 ball that you got from your CI on 4/29 of 2010, is
25 that the BEST kit that you put it in?

1 A Yes, it is.

2 Q And then what happens to this BEST kit?

3 A Once I'm completed filling it out and sealing
4 it --

5 Q That's correct.

6 A -- I take it to the Horry County Police
7 evidence facility.

8 Q And who do you hand it over to?

9 A Any evidence clerk that is working at that
10 time.

11 Q Do you know specifically who you handed this
12 BEST kit and this white ball that was in your
13 heat-sealed wrap, who you handed it to on that
14 particular day?

15 A That day I handed it to Ms. Sharon Lilly.

16 **THE COURT:** Sharon who?

17 **THE WITNESS:** Lilly.

18 BY MR. GOINGS:

19 Q And what do they do with it?

20 A (No response.)

21 Q You don't know?

22 A I don't know all their procedures, no, sir.

23 Q So you drop it off, they take it, they sign off
24 on the evidence custody form and then you're done?

25 A Yes, sir.

1 Q Let me ask you this: When you searched the CI
2 again, did he have the funds, the \$1800 that you had
3 given him --

4 A No, he did not.

5 Q -- for the drug transaction?

6 A No, sir.

7 Q It was gone?

8 A It was gone.

9 Q One last question, I think. Now, the video
10 that shows the drug transaction, you've watched it
11 and you -- it ends before the CI actually gets back
12 with you; is that correct?

13 A Correct.

14 Q And do you know exactly where it ends?

15 A I don't know the exact time or time stamp on
16 the video, but I know, during the video, it's when
17 he is driving back from -- after he leaves Juan
18 Arroyo's house the second time.

19 Q And do you know why it ended?

20 A Yeah. It was out of memory at that point.

21 Q So the video doesn't actually depict the CI and
22 you meeting back up face-to-face again?

23 A No.

24 Q But it does depict the entire transaction that
25 took place at Mr. Arroyo's residence and also has it

1 after the CI gets back in the car and leaves the
2 residence?

3 MR. KIRKLAND: Well, Your Honor, what the video
4 depicts, I think, is hearsay. He didn't make that
5 video.

6 MR. GOINGS: It ends before you get --

7 THE COURT: Hold on a second. You want to just
8 withdraw it or do you want to -- what do you want to
9 do?

10 MR. GOINGS: I mean, I think he's watched the
11 video. He can explain it to the jury and what part
12 it ends on.

13 THE COURT: Your objection is hearsay?

14 MR. KIRKLAND: Have they already placed it --

15 MR. GOINGS: I'm not talking about any
16 communications.

17 THE COURT: This video's in evidence, yes.

18 MR. KIRKLAND: Then I withdraw my objection.

19 THE COURT: Go ahead, Mr. Goings.

20 BY MR. GOINGS:

21 Q Does it show the whole transaction?

22 A Yes, it does.

23 Q And, actually, the CI's in his car on the way
24 back to the meeting spot when it ends?

25 A It actually shows him leaving and calling me.

1 And then when he's driving to the location where
2 we're going to meet, it cuts off.

3 Q And, again, your testimony was by that time,
4 you had eyes on your CI the whole entire time,
5 correct?

6 A Yes.

7 Q All right. After the transaction takes place
8 and he's in his car, you have eyes on him?

9 A Yes.

10 Q All right. So even if the video ends, you're
11 still physically surveilling him?

12 A Yes.

13 Q All right. At any point in time, did he stop,
14 meet with anybody or had an opportunity to get these
15 -- those grease tube -- the white powder that you
16 find eventually in the grease tube from any other
17 source?

18 A No. I followed him as soon as he pulled out of
19 the resident's yard and then I got in front of him
20 and we were together the entire time to our parking
21 lot.

22 MR. GOINGS: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (Pause.)

25 BY MR. GOINGS:

1 **Q** And all this happened in Horry County; is that
2 correct?

3 **A** Yes, in the city limits of Myrtle Beach inside
4 Horry County, South Carolina.

5 **MR. GOINGS:** No further questions, Your Honor.

6 **THE COURT:** All right. Folks, y'all have been
7 out here about an hour, so we'll take a ten minute
8 break and then get you back in here. Don't discuss
9 the case. Follow the bailiff, please.

10 (The jury retires to the jury room.)

11 **THE COURT:** During the break, you may step down
12 if you like, but you are not permitted to discuss
13 your testimony with anyone. You understand?

14 **THE WITNESS:** Yes, sir. I'm fine here.

15 **THE COURT:** Thank you. We're at ease for ten
16 minutes.

17 (Brief Recess.)

18 (Court's Exhibit Number 2, jury note, marked
19 for identification purposes.)

20 **THE COURT:** Defense ready?

21 **MS. CHAPMAN:** Yes, sir.

22 **THE COURT:** State?

23 **MR. GOINGS:** Yes, sir.

24 **THE COURT:** Bring in the jury.

25 (The jury returns to the courtroom.)

1 **THE COURT:** Cross-examination.

2 **MS. CHAPMAN:** May it please the Court, Your
3 Honor.

4 **THE COURT:** Yes, ma'am.

5 CROSS-EXAMINATION

6 **BY MS. CHAPMAN:**

7 **Q** Agent Wood, I'm Debbie Chapman. I think we've
8 met in the courthouse before?

9 **A** Yes, ma'am.

10 **Q** It's been a while back I believe.

11 **A** Yes, ma'am.

12 **Q** I just have a few questions for you. This drug
13 buy, it's your testimony on 4/29, is on video?

14 **A** Ma'am?

15 **Q** The 4/29 drug buy is on video?

16 **A** Yes, ma'am.

17 **Q** And you also testified that it is normal
18 procedure for you to search the CI and to search the
19 CI's car?

20 **A** Yes, ma'am.

21 **Q** I think I'd like for you to elaborate on that a
22 little bit for the jury and tell them exactly how do
23 you search a CI's car.

24 **A** How do I search their car?

25 **Q** Uh-huh.

1 **A** Every portion of their vehicle just -- I search
2 the interior, I search the exterior, lift the hood,
3 the trunk area, the back seat area, underneath the
4 back seat, in the doors, the door panels, visors and
5 anywhere -- anywhere anything can be hidden.
6 Usually there's a couple of us searching because
7 that is a lot to search.

8 **Q** But I'm talking about this 4/29. Was it just
9 you that searched the car?

10 **A** That was just me, yes, ma'am.

11 **Q** And it was the CI's car?

12 **A** Yes.

13 **Q** His own personal car that he brought to the
14 scene; is that correct?

15 **A** Yes.

16 **Q** And do you remember what kind of car that was?

17 **A** BMW.

18 **Q** And do you remember anything odd being in that
19 car that you searched?

20 **A** Anything odd?

21 **Q** Uh-huh. That he had in there?

22 **A** Not that I know of.

23 **Q** All right. That's fair enough. That wasn't on
24 the video tape, was it?

25 **A** What, me searching the vehicle?

1 Q Searching the car?

2 A No.

3 Q How about the search of the CI, is it on video?

4 A No.

5 Q So, really, the whole drug buy isn't on video

6 and the procedure that you've done?

7 A The drug buy is the procedure. Beforehand is

8 not.

9 Q Okay. And it's really important to search the

10 CIs and their vehicles beforehand, correct?

11 A Yes.

12 Q So they won't be sneaking drugs in their car

13 and blaming somebody else, correct?

14 A Yes, that's why I do it.

15 Q That's why you search. Now, let me ask you,

16 because I've looked at the video, and it's your

17 testimony that you had constant eyesight with the CI

18 the entire time?

19 A Until he reached inside the residence.

20 Q Right.

21 A And the portion that he was --

22 Q Obviously, you couldn't --

23 A Red light, the red light incident, but we

24 caught --

25 Q Well, I do want to talk about the red light

1 incident. How long do you think he was out of your
2 sight during the red light incident?

3 A I don't recall the amount of time, but it
4 wouldn't have been very --

5 Q Would it surprise you if I told you it was five
6 minutes?

7 A That would be too long. We didn't go five
8 minutes away. I don't -- not that I know.

9 Q And then there's a 50-minute break and it's
10 your testimony that's when you went to the bank,
11 correct?

12 A After I turned off the video recorder, yes.

13 Q And the CI followed you to the bank?

14 A Yes.

15 Q Did he go into the bank with you?

16 A I used the ATM on the outside of the bank.

17 Q The ATM?

18 A Yes.

19 Q And, what, did he park next to you?

20 A Yes. He parked right beside me and I actually
21 walked -- we parked right in front of the ATM and I
22 walked to the ATM.

23 Q All right. And after the buy's over with or
24 the alleged buy's over with and the CI walks out, he
25 gets into his car, and I see that on the video, it's

1 not maybe 30 seconds, maybe 45 seconds, the video
2 cuts off; is that a fair estimate?

3 A I don't know the exact time.

4 Q So this jury can't see you meeting the CI at
5 the prearranged meeting place?

6 A Correct.

7 Q That's not on the video?

8 A No.

9 Q They can't see the CI giving you the canister?

10 A Correct.

11 Q They can't see the search of the car?

12 A No, ma'am.

13 Q They're not going to see the search of the CI?

14 A No, ma'am.

15 Q And the 50 minutes, it's, I guess right now,
16 your say so as to whether you kept your eye on the
17 CI the entire time during that 50 minutes that it
18 took to go to the bank and to go to the ATM and also
19 a five minute delay that you got stopped at a
20 stoplight, correct?

21 A Like I said --

22 Q I estimate a five minute delay. I apologize.

23 A The delay was not...

24 Q All right. Well, you also testified, I don't
25 think you remembered exactly what your CI's state

1 charges were, is that correct, what you charged him
2 with originally?

3 A The state charge?

4 Q Uh-huh, your charge.

5 A No. My charge should be PWID cocaine,
6 possession with intent to distribute cocaine. No --
7 yeah. That was a confusing night.

8 Q But I thought your testimony was that he led
9 you to over a thousand -- a kilo of cocaine?

10 A He did.

11 Q He did. He wasn't charged with that?

12 A Not through the state.

13 Q Not through the state. That would be the
14 federal government who charged him?

15 A As far as I recollect, yes, ma'am. Federal
16 government, they adopted his case. So from there, I
17 don't know the exact charges or details of the
18 federal case.

19 Q Well, he signed a cooperating agreement with
20 you, did he not?

21 A Yes.

22 Q And he worked with you for probably a little
23 bit over a year by the time he was indicted
24 federally?

25 A Sounds about right. We worked together for

1 quite a while.

2 Q I think that's about right. And I think he was
3 charged with PWID distribution. Do you know what
4 that carries, time-wise?

5 A For?

6 Q PWID distribution of cocaine, possession with
7 intent to distribute cocaine.

8 A In the federal system?

9 Q No, in your charge.

10 A Not off the top of my head, no, ma'am.

11 Q Something like 15 years, does that sound about
12 right?

13 A I don't know. I usually look that sort of
14 stuff up at the time when I need to, so.

15 Q Okay. And in your contract that you had -- and
16 if you don't have a copy of it, I'll be glad to show
17 it to you -- that you have your CI sign, there's
18 certain things he can do and he can't do, correct?

19 A Yeah, that's -- I'd rather answer that once you
20 show me what I'm talking about.

21 (Pause.)

22 MS. CHAPMAN: Sorry, Judge, I thought I had it
23 right in my hand. I'll move on.

24 Q Do you remember having him sign it? I have
25 your worksheet I can hand up for you. Do you

1 remember him signing the agreement?

2 A I remember meeting with him to do the
3 agreement.

4 MS. CHAPMAN: I've got it. Judge, if I may
5 hand this up to him?

6 THE COURT: Yes, ma'am.

7 BY MS. CHAPMAN:

8 Q What's really important to me is paragraph
9 number 13.

10 A (Witness reviewing document.)

11 Q Did you make any recommendation to the federal
12 government on your CI's prosecution?

13 A What do you -- can you elaborate on what you
14 mean by that?

15 Q In paragraph 13, do you agree or the State
16 agrees to make some kind of recommendation to a CI
17 for the work that he has done --

18 A Uh-huh.

19 Q -- and it's been your testimony that he's done
20 several control buys for you. On his behalf, did
21 you make any recommendation to the federal
22 government?

23 A No. I gave everything to the federal agent in
24 charge of his case, works with Homeland Security
25 Investigations. He was very aware of what I did

1 with him and I just tell him what I did --

2 Q That's kind of like making a recommendation.

3 You're not going to tell him he did a really --

4 A Not in front of the court, though.

5 Q -- bad job or anything, did you?

6 A No. I told him what cases we had made while he
7 was working.

8 Q That he was a good CI or you just didn't say
9 anything about him?

10 A I just -- I simply state what cases we make,
11 that's really what --

12 Q Well, let me ask you this: Was he ever
13 prosecuted on your charges?

14 A No, because his case was adopted federally.
15 Once that happens, the solicitor's office in the
16 state...

17 Q Dismiss those charges --

18 A Dismisses his charges and the charges are
19 picked up by the federal government.

20 Q Yeah, they don't have to dismiss them. It's
21 separate jurisdictions, but, in this case, your
22 charges were dismissed probably about a year later
23 about the time the federal charges, I think, were
24 taken care of?

25 A Usually when they're indicted federally, yes,

1 ma'am.

2 MS. CHAPMAN: All right. If I could beg the
3 Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 MS. CHAPMAN: I believe that's all I have, Your
7 Honor.

8 THE COURT: Redirect.

9 MR. GOINGS: Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. GOINGS:

12 Q Agent Wood, let me first start off, obviously
13 you're in drug investigation, but do you have any
14 personal vendetta against the defendant, Mr. Arroyo?

15 A No, sir.

16 Q So when you say you searched the CI's car and
17 his persons before, even though it's not on video,
18 did you, in fact, search him and his car?

19 A Yes, I did.

20 Q Was there any illegal narcotics in his car or
21 the grease tube or the white ball that you
22 eventually found after the drug transaction took
23 place?

24 A No, it was not.

25 Q When you had to shut the video off and go to

1 the bank and cut it back on, you testified that
2 Emigdio never left your presence, you had eyes on
3 him; is that, in fact, the case? Did you have eyes
4 on him?

5 A Yes, I did. We talked the entire time.

6 Q Did anybody approach him, hand him anything?
7 Did he talk to anybody else or was handed anything
8 from anybody during this time?

9 A No.

10 Q And you testified that although the video ends,
11 you still had eyes on him after the transaction's
12 taken place from the time he gets in his car to the
13 time y'all meet up where he eventually hands you
14 these items. Did you, in fact, have eyes on him?

15 A Yes.

16 Q Did anybody approach him? Did he stop, talk to
17 anybody?

18 A No, sir.

19 Q Now, you were asked there at the end concerning
20 the fact that the charges that you had him on were
21 dropped by the solicitor's office and I want to ask
22 you a couple questions. You may know the answers or
23 not. Do you know was he charged with a conspiracy
24 offense by the feds or do you know that? When they
25 picked it up and it was adopted, was he charged with

1 trafficking by conspiracy?

2 **A** Yes.

3 **Q** All right. Would that cover your PWID charge?

4 **A** That would be above my PWID charge.

5 **Q** All right. And I'll ask it this way, and you
6 may not know the answer, if you have a person who's
7 charged with conspiracy to traffic and you have a --
8 you arrested him for PWID cocaine, and we're talking
9 about Emigdio.

10 **A** Uh-huh.

11 **Q** And the dates that the feds used for their
12 conspiracy charge covers the date your PWID cocaine
13 happens, can the state also prosecute that
14 individual if the feds are prosecuting him?

15 **A** I really don't know the answer -- I don't know
16 the answer to that question.

17 **Q** That's fine.

18 **MR. GOINGS:** I think that's all the questions I
19 have, Your Honor.

20 **THE COURT:** Thank you.

21 Recross.

22 **MS. CHAPMAN:** None, Your Honor.

23 **THE COURT:** Thank you, Mr. Wood. You may step
24 down.

25 Call your next witness.

1 **MR. PAULING:** The State would call Sharon
2 Lilly.

3 **THE COURT:** Come around, please.

4 SHARON TODD LILLY,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Please state your full name.

7 **THE WITNESS:** Sharon Todd Lilly.

8 **THE CLERK:** Ms. Lilly, if you would, have a
9 chair and adjust the microphone.

10 DIRECT EXAMINATION

11 BY MR. PAULING:

12 **Q** How are you doing, Ms. Lilly?

13 **A** Good.

14 **Q** Please tell the jury, ma'am, where you're
15 currently employed.

16 **A** Horry County Police Department, evidence
17 technician.

18 **Q** And how long have you been with the Horry
19 County Police Department?

20 **A** Five years.

21 **Q** And what capacity do you work at the police
22 department?

23 **A** I work inside evidence.

24 **Q** Are you an evidence tech?

25 **A** Yes, sir.

1 Q Ma'am, what are your duties as an evidence tech
2 there at Horry County?

3 A I log in the property and evidence that's
4 turned in by the officers and hold it for court.

5 Q And when you say the officers, officers such as
6 Agent Wood?

7 A Yes, sir.

8 Q And as it relates to drug evidence that your
9 lab receives, what's the process, procedures, the
10 steps you take in ensuring that that evidence is
11 properly documented and it gets to the place it
12 needs to get to for testing?

13 A We log it into the computer. We have a drug
14 vault that I place it in, it's a secure room. And
15 then whenever it's called for court, it'll be
16 tested, we pull it and I give it to Lisa Floyd to be
17 tested.

18 Q And you mentioned that you log it into a
19 computer. Is there also a written form that you
20 sign off on?

21 A There is a chain of custody, yes, sir.

22 Q A chain of custody form?

23 A Uh-huh.

24 Q How many people work in the area where you are?
25 Is it just you?

1 A Two other people.

2 Q Two other people?

3 A Yes, sir.

4 Q Okay. And you mentioned that you have a drug
5 vault. Who has access to that drug vault?

6 A The other two people, my supervisor and
7 co-worker.

8 Q Ms. Lilly, I'm going to want to focus your
9 attention --

10 MR. PAULING: May I approach the witness, Your
11 Honor?

12 THE COURT: Yes, sir.

13 BY MR. PAULING:

14 Q I'm going to show you what's been marked for ID
15 purposes as State's 12, as well as State's 10. I'm
16 going to ask you first if you recognize State's 12?

17 A I do.

18 Q And what is that, ma'am?

19 A That's a chain of custody for the drug kit that
20 Agent Wood turned in.

21 Q And does your name appear on that particular
22 chain of custody form?

23 A Yes, it does.

24 Q And what does -- I said, does your name appear.
25 Does your signature appear?

1 A Signature, yes.

2 Q Okay. And when was that ma'am?

3 A May the 7th, 2010.

4 Q And you signed that?

5 A I signed it then.

6 Q And what does your signature indicate as far as

7 what happened on May 7th of 2010?

8 A Agent Wood turning it into me that day.

9 Q And when you say turning it in, I'm going to

10 turn your attention to State's 10. Do you recognize

11 that particular item?

12 A Yes, sir. That is the drug kit he turned in on

13 that day.

14 Q That's the drug kit he turned in?

15 A Yes, sir.

16 Q And now was that item within that BEST bag,

17 that bag that's got the --

18 A Yes, sir. We have a --

19 Q -- border on it?

20 A We have a control number and the numbers match.

21 Q So that control number that's on State's 10

22 matches --

23 A The chain of custody.

24 Q The chain of custody form?

25 A Yes, sir.

1 Q Is there any other number that's on that form
2 that's also on -- on State's 12, that's also on
3 State's 10?

4 A At this time, there's a lab number on the outer
5 bag that's written. It was written by the chemist
6 after she tested the drugs and then she wrote that
7 number on the chain of custody.

8 Q And who is that chemist?

9 A Lisa Floyd.

10 Q You had mentioned May 7th of 2010. Does your
11 signature appear elsewhere on State's 12?

12 A Yes, sir. On July 27th, 2010, I pulled it from
13 the drug vault and gave it to Lisa Floyd to be
14 tested.

15 Q Now, from May 7th, 2010, until -- what was that
16 second date, ma'am?

17 A July 27th.

18 Q July 27th of 2010, was that evidence maintained
19 in the drug vault?

20 A Yes, sir.

21 Q When you received the evidence from Agent Wood,
22 you put it in the drug vault. While it was in your
23 custody, was it tampered with or altered or changed
24 at all?

25 A No, sir.

1 Q And once you'd taken it out to give to Lisa
2 Floyd on July 27th of 2010, did you examine it to
3 see if it had been tampered or altered at any point?

4 A I did.

5 Q And had it been?

6 A No, sir.

7 Q Now, you said on July 27th, that you signed it
8 out to Ms. Lisa Floyd?

9 A Yes, sir.

10 Q For analysis?

11 A Yes, sir.

12 Q Now, after it is -- do you take part in the
13 analysis process at all?

14 A No, sir.

15 Q Now, after it's analyzed, is that evidence
16 returned to --

17 A It is. She returns it into another -- it's in
18 another heat-sealed package and she returned it into
19 that to me.

20 Q Is it signed off on that she returns it?

21 A No, sir.

22 Q Why is that?

23 A It's just our procedure. We log it into the
24 computer with the lab number that she puts on it and
25 that's all we do. That's our procedure.

1 Q And as far as signing it out to go to court?

2 A It's signed out now for court, I did.

3 Q Say that again, ma'am.

4 A I logged it out this morning in the computer to
5 bring to court in my name.

6 Q But it wouldn't be in that form, but it was
7 logged out in the computer; is that correct?

8 A No, sir. It's in the computer.

9 MR. PAULING: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 BY MR. PAULING:

13 Q And, again, just so I understand, from the
14 point that it had been tested, it had been returned
15 and placed in the drug vault; is that correct?

16 A That's correct.

17 Q And then it would have been -- it was logged
18 back out this morning?

19 A Yes, sir.

20 Q On March 4th, 2013, to bring to court?

21 A Yes, sir.

22 MR. PAULING: I have no further questions, Your
23 Honor.

24 THE COURT: Thank you.

25 Cross.

1 **MS. CHAPMAN:** No questions, Your Honor.

2 **THE COURT:** Thank you, ma'am. You may step
3 down.

4 Call your next witness.

5 **MR. GOINGS:** Your Honor, may we approach real
6 quick?

7 **THE COURT:** Sure.

8 (Whereupon, a bench conference was held off
9 the record, in the presence of the jury, but out of
10 the hearing of the jury.)

11 **MR. GOINGS:** The State would call Lisa Floyd.

12 **THE COURT:** Come up to the clerk, please,
13 ma'am.

14 LISA FLOYD,
15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please state your full name.

17 **THE WITNESS:** Lisa Floyd.

18 **THE CLERK:** Please have a seat. After you're
19 seated, please adjust the microphone.

20 DIRECT EXAMINATION

21 BY MR. GOINGS:

22 **Q** Good afternoon, Ms. Floyd. How are you?

23 **A** Well. Thank you.

24 **Q** Ms. Floyd, can you please tell the jury -- well
25 let me ask you this: Were you once employed with

1 Horry County?

2 A Yes, I was.

3 Q And what was your employment status with them?

4 A I worked for the Horry County Police Department
5 from September of 2002 until September of 2012.

6 Q And in what role did you work with the Horry
7 County Police Department?

8 A I was a forensic drug analyst.

9 Q And just briefly for the jury, describe what
10 you do as a forensic drug analyst.

11 A I receive evidence for testing that's suspected
12 to be controlled substances or prescription
13 substances, test the evidence and then issue a
14 report.

15 MR. GOINGS: Your Honor, at this time, and I
16 believe without objection from the defense, we would
17 like to have Ms. Floyd qualified as an expert
18 witness in the analysis -- or forensic analysis of
19 illegal narcotics.

20 MS. CHAPMAN: Without objection, Your Honor.

21 THE COURT: All right. She's recognized as an
22 expert in the analysis of forensic -- what did you
23 say?

24 MR. GOINGS: Forensic analysis of illegal
25 narcotics.

1 **THE COURT:** Forensic analysis of narcotics.

2 All right.

3 **MR. GOINGS:** Thank you, Your Honor.

4 BY MR. GOINGS:

5 **Q** If you would, for the jury, describe how you
6 become involved with a narcotics case. What
7 happens? When do you become involved in it?

8 **A** When the evidence department would bring me a
9 sealed drug test to test.

10 **Q** And did you have an occasion to test a specific
11 substance that was brought to you in this case?

12 **A** Yes, I did.

13 **Q** Specifically, I'm going to show you an item
14 that's been marked as State's Exhibit 10. When you
15 receive the drugs, what do they come in? I mean,
16 how are they delivered to you? What type of package
17 does it come in?

18 **A** They come to me sealed in a tamper-evident BEST
19 kit inside of a manila envelope.

20 **Q** And what do you do once you get that BEST kit?

21 **A** I would log it in. I would log the numbers
22 that are printed on the envelope, which is the
23 control number, and I would issue it a lab number at
24 that point. And I would also log the law
25 enforcement agency's case number as well.

1 **Q** I'm going to show you this item, which has been
2 marked State's Exhibit 10. Did you have an
3 opportunity to receive that item and review its
4 contents?

5 **A** Yes, I did.

6 **Q** And how do you know that?

7 **A** My initials, the letters O-K, the date and the
8 agency's law enforcement number are all written on
9 there in my handwriting.

10 **Q** Do you also sign off on the evidence sheet when
11 it's brought to you from the Horry County evidence
12 department?

13 **A** Yes. I sign a chain of custody form.

14 **Q** Is this, in fact, your signature on 7/27 of
15 2010?

16 **A** Yes, it is.

17 **MR. GOINGS:** Your Honor, at this time, I
18 believe all signatures have been identified on
19 State's Exhibit 12 and I would like to seek to
20 introduce that into evidence at this time.

21 **MR. KIRKLAND:** No objection, Your Honor.

22 **THE COURT:** When you asked her the question,
23 did you ask her about 12 or 10?

24 **MR. GOINGS:** 12.

25 **THE COURT:** All right. Without objection, mark

1 12 into evidence, please.

2 (State's Exhibit Number 12, evidence sheet,
3 admitted into evidence.)

4 BY MR. GOINGS:

5 Q So on 7/27/2010, Sharon Lilly brings you the
6 BEST evidence kit with the control number on it and
7 then you assign it a lab number; is that correct?

8 A That's correct.

9 Q And what's the lab number you assigned for this
10 particular BEST kit?

11 A It was L-100416.

12 Q And before we get into specifics, what's the
13 purpose of a BEST kit?

14 A The BEST stands for best evidence sampling
15 technique. It's simply a way to ensure the
16 integrity of the evidence before it's tested.

17 Q If you receive a BEST kit that you believe has
18 been tampered with or cut or that you have ill
19 feelings about, would you test the particular items
20 in that case -- in that kit?

21 A No. It would be immediately returned to
22 evidence.

23 Q When you received this particular BEST kit from
24 Horry County evidence, did you have any of those
25 problems?

1 **A** No, I did not, indicated by the letters O-K.

2 **Q** Where you initial it when you receive it, you
3 wrote O-K indicating that the BEST kit, based on
4 your knowledge, had not been tampered with and what
5 your visual inspection showed?

6 **A** Yes. The O-K would indicate that I found no
7 evidence of tampering.

8 **Q** And once you found it okay, you assign it a lab
9 number, put your signature on it, put the control
10 number on it, what do you do at that point in time?

11 **A** It's stored for testing at that point.

12 **Q** All right. And, obviously, we know you
13 received this on 7/27 of 2010. Do you know when you
14 actually performed your analysis on the contents
15 that was contained in that package?

16 **A** Yes. They were performed the following day on
17 July 28th of 2010.

18 **Q** And when you make -- you do your analysis, what
19 do you do? Do you cut open the BEST kit?

20 **A** I do.

21 **Q** When you cut open this BEST kit, do you recall
22 if it was another heat-sealed package, was also
23 there?

24 **A** Yes. There was -- appears a bag within a bag
25 inside the BEST kit itself.

1 Q And did you initial each of those bags?

2 A Yes, I did.

3 Q So we have a baggy. What did the baggy have in
4 it? Did it have the substance that you were going
5 to test?

6 A The substance itself was inside of, yes, what
7 appears to be a folded up baggy inside of a
8 heat-sealed plastic bag.

9 Q When you broke open the BEST kit on this
10 particular day, on 7/28/2010, was this -- obviously,
11 the BEST kit's heat sealed, correct?

12 A Yes, it was.

13 Q Was the individual white heat-sealed bag also
14 in the BEST kit still heat sealed?

15 A I didn't make any indication that it was not,
16 and had it not been, I would have.

17 Q So because you didn't make any indication that
18 it wasn't still sealed, it was still sealed at that
19 time?

20 A Yes.

21 Q And did you open that package on 7/28/10 as
22 well?

23 A Yes, I did.

24 Q All right. And what did you do from there once
25 you got to the substance?

1 **A** Any substance that's received is then subjected
2 to what's called presumptive testing. In this case,
3 it's a powder. So it would simply be a color test,
4 similar to what the officers use, field test kits,
5 just gives a color change that indicates the
6 possibility of the presence of a controlled
7 substance. And then what's called confirmatory
8 analysis is done at that point, which would actually
9 give an indication of the actual drug present, if
10 any.

11 **Q** And do you issue a report?

12 **A** Yes, I do.

13 **Q** I'm going to show you what's been marked
14 State's Exhibit 13. Do you recognize that document?

15 **A** Yes, I do.

16 **Q** And what is it?

17 **A** It is the report that I issued for this
18 particular case.

19 **Q** And is it signed by you?

20 **A** It is signed by me. And it bears the same
21 control number as the BEST kit, the lab number that
22 I assigned it, and the agency's law enforcement case
23 number as well.

24 **Q** And this report was issued on what particular
25 day?

1 **A** It was issued the day after testing, which was
2 July 29th of 2010.

3 **MR. GOINGS:** Your Honor, at this time, the
4 State would seek to introduce State's Exhibit 13
5 into evidence.

6 **THE COURT:** Show it to counsel.

7 (Pause.)

8 **THE COURT:** Any objection?

9 **MR. KIRKLAND:** No, sir, Your Honor, no
10 objection.

11 **THE COURT:** Mark 13 in evidence, please.

12 (State's Exhibit Number 13, drug analysis
13 report, admitted into evidence.)

14 BY MR. GOINGS:

15 **Q** Let me ask you this: After you performed your
16 test on the substance that was contained within the
17 BEST kit that was assigned lab number L-100416, what
18 was your findings?

19 **A** There was a tan powder substance present that
20 was found to be heroin in the amount of 24.78 grams,
21 which is 382.35 grains.

22 **Q** So your test showed presence of 24.78 grams of
23 heroin?

24 **A** That's correct.

25 **Q** Once you conduct your analysis, what do you do

1 with the drugs that you just tested?

2 A At that point, they're repackaged and sealed
3 into a heat-sealed outer envelope and that BEST kit
4 is folded in half and inserted in there along with
5 the actual drugs that were tested and any packaging
6 that would have come with them. And then I heat
7 seal my initials, the date and the lab number into
8 the top of the bag.

9 Q And what happens -- do you hold on to it in the
10 drug lab or do you take it back to evidence? What
11 happens?

12 A Typically, they're held on to until I have a
13 box full of evidence to return back to evidence.
14 And everything is logged onto one chain of custody,
15 everything that I've tested, usually about a month's
16 worth. And it's returned to them at that point.

17 Q And who has access to the drug lab?

18 A I did.

19 Q Anybody else?

20 A Not to my knowledge.

21 Q So while it's -- the drugs or the BEST kit or
22 after you -- even after you test it, while it's
23 secured in your facility, you only have access to
24 it?

25 A That's correct, yes.

1 **Q** I'm going to, again, show you what's been
2 marked State's Exhibit 10. This outer package that
3 all these materials are contained in, can you
4 identify that?

5 **A** The outer clear bag?

6 **Q** Yeah.

7 **A** Yes, I can. I -- as I stated, I put the date
8 that it was tested, my initials and the lab number
9 and heat sealed them into the top of the bag.

10 **Q** And are those your initials?

11 **A** Yes, they are.

12 **Q** And you sealed these back in the bag on
13 7/28/2010 after you conducted your analysis?

14 **A** That's correct. They were resealed the day it
15 was tested.

16 **Q** And this is the remaining heroin that was left
17 over after you conducted your analysis and found the
18 25.78 grams?

19 **A** That's correct.

20 **MR. GOINGS:** Your Honor, at this time, the
21 State would seek to introduce State's Exhibit 10
22 into evidence.

23 (Pause.)

24 **MR. KIRKLAND:** No objection, Your Honor.

25 **THE COURT:** Mark that in evidence without

1 objection.
2 (State's Exhibit Number 10, BEST kit,
3 admitted into evidence.)
4 MR. GOINGS: The State has no further
5 questions, Your Honor.
6 THE COURT: Cross.
7 MS. CHAPMAN: No questions, Your Honor.
8 THE COURT: Thank you, ma'am. You may step
9 down.
10 It's ten till 5:00. What do you want to do?
11 MR. GOINGS: We already have released our last
12 witness because he's going to take a little longer,
13 Your Honor. We'll come back in the morning.
14 THE COURT: All right. Ladies and gentlemen of
15 the jury, we're going to recess for the day. I need
16 you back, please, in the jury room in the morning at
17 9:30. Don't call that number that you were given,
18 just come in.
19 9:30 in the morning. I hope you have a
20 pleasant even -- oh, let me tell you, if you have
21 some true emergency that arises that prevents you
22 from being here, please have somebody call us
23 because we can't start until I account for all of
24 you. If you're not here, I have to send somebody to
25 find you, okay. 9:30 in the morning. Thank you.

1 (The jury was excused for the day.)

2 THE COURT: How many more witnesses?

3 MR. GOINGS: Just one, Your Honor.

4 THE COURT: This is the confidential informant?

5 MR. GOINGS: Yes, sir.

6 THE COURT: Y'all be careful as you leave that
7 you don't have contact with the jurors because they
8 probably go back to the jury room, get their stuff
9 and come out. The safest thing to do is wait a few
10 minutes before you try to go.

11 Court's in recess till 9:30 in the morning.

12 MR. GOINGS: Your Honor, just one other thing,
13 on the three witnesses who testified so far, they
14 traveled from Horry and Greenville, can they be
15 released from their subpoenas?

16 THE COURT: Is there any objection to the
17 witnesses being released?

18 MR. KIRKLAND: No, sir, Your Honor.

19 THE COURT: You're free to go. Thank you.

20 9:30 a.m.

21 (The proceedings were concluded for March 4,
22 2013.)

23 (The following proceedings were held on
24 March 5, 2013.)

25 THE COURT: State ready?

1 **MR. GOINGS:** State's ready, Your Honor.

2 **THE COURT:** Defense, are y'all ready?

3 **MS. CHAPMAN:** Yes, Your Honor.

4 (The jury enters the courtroom at 9:48 a.m.)

5 **THE COURT:** All right. Ladies and gentlemen,
6 good morning. We'll continue with the State's case.

7 Call your next witness.

8 **MR. PAULING:** Thank you, Your Honor. At this
9 time, the State would call Emigdio Penaloza.

10 **EMIGDIO PENALOZA,**

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Please state your name.

13 **THE WITNESS:** Emigdio Penaloza.

14 **THE CLERK:** Would you have a chair up there and
15 adjust the microphone, please.

16 **THE COURT:** Spell your first name for us.

17 **THE WITNESS:** Emigdio Penaloza.

18 **THE COURT:** Spell it.

19 **THE WITNESS:** E-m-i-g-d-i-o P-e-n-a-l-o-z-a.

20 **THE COURT:** That microphone does not work, we
21 found that out yesterday. Speak out loudly, okay.
22 The other ones work, but this one, for some reason,
23 is not working. We tried to get it fixed this
24 morning. We couldn't get it fixed yet.

25 **MR. PAULING:** Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. PAULING:

3 Q Mr. Penáloza, just make sure you speak loudly
4 so everybody on the jury can hear you, sir. But if
5 you could, tell the members of the jury where are
6 you from.

7 A I'm originally from Mexico.

8 Q Okay. How old are you, sir?

9 A Thirty-eight.

10 Q Thirty-eight. And how long have you been in
11 the United States?

12 A Twenty years.

13 Q Twenty years. And did you go to school here?

14 A Yes.

15 Q And as far as your educational background, if
16 you could tell -- did you graduate high school here?

17 A No. I graduated from Winston-Salem State
18 University in North Carolina.

19 Q Winston-Salem State University. And about when
20 was that?

21 A 1999.

22 Q Mr. Penaloza, back in 2009, where were you
23 living at that time, sir?

24 A 2009?

25 Q 2009.

1 **A** Myrtle Beach, South Carolina.

2 **Q** Myrtle Beach, South Carolina. Were you working
3 in that particular area?

4 **A** Yes, I was.

5 **Q** And what type of work did you do at that time?

6 **A** I was an electrical contractor.

7 **Q** An electrical contractor. So what did you do
8 as an electrical contractor?

9 **A** I did mostly new houses, residential work and
10 sometimes I did some small commercial jobs.

11 **Q** And do you know an individual by the name of
12 Agent Ryan wood?

13 **A** Yes, I do.

14 **Q** And if you could, tell the members of the jury,
15 sir, how do you know him? How did you come to know
16 him?

17 **A** Technically, he broke into my house and he
18 arrested me at my house.

19 **Q** What did he arrest you for?

20 **A** I was charged with conspiracy.

21 **Q** Conspiracy to do what, sir?

22 **A** To sell drugs.

23 **Q** What type of drugs?

24 **A** Cocaine I guess.

25 **Q** Cocaine?

1 A Uh-huh.

2 Q And when he approached you -- about when was
3 this? Was this in 2009?

4 A I think it was in 2009.

5 Q And when Agent Wood approached you at your
6 house, did you have cocaine there at that time?

7 A Yes.

8 Q Did you show him where cocaine was?

9 A Yeah. Yes.

10 Q And you said you were charged with conspiracy.
11 Was it conspiracy to traffic cocaine?

12 A Yes.

13 Q And were you prosecuted?

14 A Yes.

15 Q Was that the state or was that at the federal
16 level?

17 A My state charges were dropped, so they went to
18 federal.

19 Q Now, as far as Agent Wood is concerned, you
20 said that he approached you at your house. Did you
21 cooperate with him, with his investigation?

22 A Yes, I did.

23 Q And what did that entail, you cooperating?

24 A I mean, just pretty much answering all the
25 questions that they ask, you know, that's it.

1 Q Did he utilize you as a confidential informant?

2 A Later on, yes.

3 Q And I don't mean immediately after that same
4 day, but, at some point after that, after he
5 approached you, were you utilized as a confidential
6 informant?

7 A Yes.

8 Q And what did you do as a confidential informant
9 working with Agent Wood?

10 A Well, I knew a lot of people in town, so --
11 mostly Hispanics, so every now and then, he will,
12 you know, call me and he'll show me some pictures
13 and he'll ask me if I knew these people, where they
14 live, you know, who their friends were, things like
15 that.

16 Q And when you say in town, you're speaking of
17 Myrtle Beach, South Carolina?

18 A Myrtle Beach, South Carolina.

19 Q And before we get there, you said you were
20 prosecuted in federal court?

21 A Yes.

22 Q Did you have an attorney?

23 A Yes.

24 Q Okay. And now, what was your -- what was your
25 sentence in federal court, if you recall?

1 A I was one year and one day.

2 Q One year and one day?

3 A Uh-huh.

4 Q Do you recall what you were facing prior to

5 going to court? Did you plead guilty?

6 A I pleaded guilty, yeah.

7 Q Do you recall what you were facing before you

8 pled guilty?

9 A Well, they always give you these guidelines

10 where you can face anything from one year to 15

11 years to life. So, specifically, they told me I

12 could be facing from one to five years maybe. My

13 attorney also said that maybe because it was -- I

14 didn't have any criminal record, that maybe I would

15 just get probation.

16 Q Okay. And you went to federal prison, that's

17 correct?

18 A I went to a federal prison camp.

19 Q And now, when were you released from that

20 prison camp?

21 A It will be March of last year.

22 Q March of 2011 -- excuse me -- 2012?

23 A 2012, yes.

24 Q And now, are you currently on probation?

25 A Yes.

1 Q Do you know how long your probationary term is?

2 A Five years.

3 Q I want to take you back to -- that you were
4 testifying earlier about working with Agent Wood.
5 And you said that he would show you pictures of
6 individuals and ask you if you knew those particular
7 individuals.

8 A Yes.

9 Q Do you know the defendant, Juan Arroyo?

10 A Yes.

11 Q If you could tell the jury, sir, how do you
12 know Mr. Arroyo? How did you come to know him?

13 A I guess from working in construction and we had
14 some common friends as well.

15 Q You said working in construction. Did he do
16 electrical work as well?

17 A No. He did framing, concrete, different
18 trades.

19 Q So were there occasions that you worked on the
20 same job?

21 A Very seldom, I think.

22 Q And when I say the same job, I understand you
23 were doing electrical and he was doing other things,
24 but were there times when you were at the same job
25 site?

1 **A** Honestly, I don't quite remember, like,
2 specifically a time when we were on the same job,
3 okay. But when you do construction work, you know,
4 you kind of network yourself, you know, a lot of
5 people that do the same thing or a different trade.

6 **Q** Kind of run in the same circles?

7 **A** Yeah.

8 **Q** Okay. And other than in the construction
9 circles, did you ever see him in a social setting?

10 **A** Yeah, I think so. I think we used to meet at
11 the same club, you know, the same bar.

12 **Q** Okay. And do you recall what club or bar that
13 was?

14 **A** Could have been Tropical Beauties, maybe. I'm
15 not sure..

16 **Q** Was there any other club that you're aware of
17 that Mr. Arroyo would frequent?

18 **A** Specifically when?

19 **Q** In 2009 or 2010?

20 **A** No. It was like I didn't keep up with, you
21 know, with where my friends used to be at, you know.
22 It's just, I would just go out on my own and, you
23 know, my friends would come inside, you know, at the
24 same time.

25 **Q** And now, you said you did construction work

1 while you were in Myrtle Beach. Did you have any
2 other type of employment or any side jobs?

3 A No.

4 Q Are you aware of a club called Tequila Empire?

5 A Yeah. That club opened up in 2010, I think,
6 2010.

7 Q And had you ever been to that club? Do you
8 have any association with that particular club?

9 A I knew one of the -- the main partner of the
10 club and I knew some -- I knew some of the guys that
11 worked there.

12 Q Did you ever see Juan at that establishment,
13 Mr. Arroyo?

14 A A few times as a customer, yes.

15 Q And was he there by himself or was he with
16 others?

17 A He was there with his family and other people.

18 Q Now, you had mention that Agent Wood would show
19 you pictures of various individuals; is that
20 correct?

21 A Yes, that's correct.

22 Q At any point during the time that you were
23 working as an informant with Agent Wood, did he
24 present you a photo of Mr. Arroyo?

25 A Yes.

1 Q Do you know about when that was?

2 A I know it was during the time when the club was

3 opened back in 2010.

4 Q Okay. You said the club. You're talking about

5 this Tequila Empire?

6 A Yeah. Uh-huh.

7 Q That's the beginning of 2010?

8 A The club opened in February of 2010.

9 Q So it'd been around that time --

10 A It had to be somewhere around that time, yes.

11 Q And after you identified Mr. Arroyo, would you

12 explain to the jury -- what happened after that?

13 Did Agent Wood ask you anything about Mr. Arroyo?

14 A He asked questions about the people in those

15 pictures. Honestly, I didn't know most of them. I

16 just knew Mr. Arroyo and his family and that was it.

17 Q Now, did there ever come a time that you became

18 aware that you could perhaps do an undercover deal

19 with Juan Arroyo?

20 A Yes.

21 Q And if you could tell the jury, sir, how did

22 that come about?

23 A Well, most of the time, you know, Officer Ryan

24 will tell me a little bit about the people in those

25 pictures like what kind of activities they had,

1 things like that. So, I guess, he kind of
2 introduced me with the idea of, you know, getting
3 more information from this group of people, which
4 again I didn't know. I didn't know their names or
5 -- I just knew their faces.

6 Q And you knew Juan Arroyo?

7 A Yeah.

8 Q Did you have any discussion with Mr. Arroyo
9 regarding him supplying you drugs?

10 A When? Like...

11 Q In 2010 after Agent Wood -- after you'd
12 identified Juan Arroyo?

13 A Yes.

14 Q Okay. And if you can explain that to the jury.
15 How did that conversation come about?

16 A Well, part of the work that I did with Agent
17 Ryan was doing sometimes small buys from local
18 people, so he suggested that we did a buy from
19 Mr. Arroyo.

20 THE COURT: Speak up, please. Speak up louder.

21 THE WITNESS: He suggested that we do a small
22 buy from Mr. Arroyo.

23 MR. PAULING: Beg the Court's indulgence.

24 (Pause.)

25 BY MR. PAULING:

1 Q Mr. Penaloza, did you, in fact, participate in
2 an undercover deal with Mr. Arroyo?
3 A Can you repeat that again?
4 Q Did you participate in an undercover deal, drug
5 deal with Mr. Arroyo?
6 A Yes.
7 Q And was that on April 29th of 2010?
8 A That sounds right.
9 Q And prior to the deal, did you meet with
10 Mr. Arroyo? Did you meet with him on April 28th of
11 2010?
12 A The day before?
13 Q Yes, sir.
14 A Yes.
15 Q And if you could, just briefly describe that
16 meeting with Mr. Arroyo.
17 A We met and we talked about an exchange of, you
18 know, something, drugs. We talked about prices.
19 Q Where did you meet?
20 A At his house.
21 Q Was that at 313 Cedar Street?
22 A I remember the street name. I don't remember
23 the number.
24 Q Was it Cedar Street, though?
25 A It was Cedar Street, yes.

1 Q In Myrtle Beach?

2 A Yes.

3 Q And now, prior to you meeting with Juan Arroyo
4 at his house, had you discussed the meeting with
5 Agent Wood?

6 A The whole time, yes.

7 Q So he was aware you were going over there?

8 A Yeah.

9 Q And when you met with Juan Arroyo, you said you
10 discussed purchasing a particular drug?

11 A The idea was to buy cocaine, but he didn't have
12 anything. He didn't have any.

13 Q And so what did you agree to purchase from him?

14 A Then he mentioned that he did have heroin.

15 Q Heroin?

16 A Uh-huh.

17 Q And now, you had testified earlier that you
18 were convicted of conspiracy to traffic cocaine.

19 Had you ever dealt in heroin before?

20 A No.

21 Q And now, you said you came to a particular
22 price?

23 A Yes.

24 Q Do you recall what that price was?

25 A I think it was 1600.

1 Q Sixteen hundred dollars?

2 A For, I think, like 25 grams.

3 Q And after you had that discussion, heroin \$1600

4 for 25 grams, did you then leave his residence?

5 A Yes, I did.

6 Q Did you meet back up with Agent Wood?

7 A Yes.

8 Q And did you discuss the meeting that you had --

9 A Yes.

10 Q -- with Mr. Arroyo?

11 A Yes.

12 Q And now, the following day, April 29th of 2010,

13 did you meet with Agent Wood prior to going over to

14 Juan Arroyo's home?

15 A Yes, I did.

16 Q And were you fitted with video recording

17 equipment?

18 A Yes.

19 Q Agent Wood did that?

20 A Yes.

21 Q Okay. Now, prior to the deal, did he check you

22 for contraband?

23 A Yes.

24 Q And when I said did he check you, did he check

25 your person?

1 A My person and they searched the entire car, my
2 car.
3 Q Your car?
4 A My car.
5 Q And what type of car was that at that time?
6 A I was driving a BMW.
7 Q And as far as the -- you said you discussed the
8 price with Juan Arroyo, \$1600. Were you provided
9 money for that particular deal?
10 A Yes.
11 Q And who provided you that money?
12 A Ryan.
13 Q And -- now, after that, did you then proceed to
14 Mr. Arroyo's home?
15 A Yes.
16 Q And do you recall if Agent Wood followed you or
17 surveilled you, watched you?
18 A They always did.
19 Q Now, when you got to his home on April 29th,
20 was he there?
21 A He was there, but I don't remember exactly if
22 he was there the first time when I went there
23 because I always had problems reaching him by phone,
24 sometimes he wouldn't answer. So I don't remember
25 if he -- if he was there the first time that I went

1 there, maybe I went there, you know, a second time.

2 I don't know. I don't remember.

3 Q And before we get to the actual deal, when you
4 first got to his home, was he there?

5 A Yes.

6 Q Let me ask you this: At any point during the
7 transaction -- you said you had \$1600?

8 A I think he changed the price. I think we had
9 to go to the bank with Officer Ryan Wood because I
10 think he changed it from 1600 to 1800, so we had to
11 go back and get some extra money.

12 Q Because you only had 1600 that law enforcement
13 provided; is that correct?

14 A Yes.

15 Q So when you went to the bank, did you go inside
16 the bank or --

17 A No. I stayed in my car.

18 Q Okay. Were you near Agent Wood, though?

19 A Yeah.

20 Q And so he was the one who actually got the
21 money?

22 A Yes.

23 Q And now, once he provided you with the extra
24 \$200, did you then return to Mr. Arroyo's home?

25 A Yes.

1 Q And when you got there the second time, was he
2 there then?

3 A Yes.

4 Q And did you go inside at that point, inside his
5 home?

6 A I did.

7 Q Okay. And if you could, tell the jury how did
8 the deal take place. What happened once you got
9 inside Mr. Arroyo's home?

10 A I went inside. We talked for quite a few --
11 for some time. We were talking and then I gave him
12 the money and we exchanged -- we made a deal.

13 Q You said you gave him the money. Did you
14 simply hand it to him and say, here's 1800, or what
15 happened?

16 A I don't remember saying, here's 1800. I just
17 remember, you know, exchanging the money. He
18 counted the money.

19 Q He counted the money?

20 A He counted the money and then he gave me the
21 little tube.

22 Q Do you recall where he retrieved the, did you
23 say, the tube from?

24 A Yes.

25 Q Where did he get the tube from? Was he in the

1 house?

2 A He went outside, outside the house, came back
3 inside.

4 Q Then he handed you the tube?

5 A Yes.

6 Q Can you describe the tube?

7 A It looks like a, like a lubricant or some type
8 of oil for cars I guess.

9 Q And after he gave you that tube, did he tell
10 you anything about the tube?

11 A He just told me that the -- that's the way it
12 came all the way from Mexico.

13 Q Did you open it?

14 A No.

15 Q Well, how did you know that heroin was in it at
16 that time?

17 A Because he told me that it was there.

18 Q He told you it was there?

19 A Yes.

20 Q Okay. Did he tell you how to retrieve the
21 heroin out of the tube?

22 A I think he did, but I don't -- I'm not quite
23 sure.

24 Q And now, after you received the tube from him,
25 what did you do with it?

1 A Maybe we talked for a few minutes and after
2 that, I left. I left the house.

3 Q When you left, where did you go?

4 A I was supposed to meet Ryan back at the same
5 place. So as soon as I got out, I called Ryan over
6 the phone.

7 Q Agent Wood?

8 A Yeah.

9 Q And did you meet him?

10 A Yeah. Actually, he was driving by. He was
11 pretty close, so he kind of pulled up in front of me
12 and he told me to follow him, so.

13 Q So you followed him to the meeting location?

14 A Yes.

15 Q And once you got to the meeting location, what
16 did you do?

17 A I gave him the package and they did the same
18 thing they always do. They searched me and they
19 searched the car again, they took pictures, they
20 stopped the recording, that's it.

21 Q And they took the recording device from you?

22 A Yes.

23 Q Okay. Now, have you reviewed that recording,
24 that video?

25 A Not right on the spot, but later --

1 Q Well, I'm not asking you if you reviewed it
2 that day, but have you reviewed it?

3 A Yes.

4 Q Have you seen it?

5 A Yes.

6 Q And does it reflect the deal that happened on
7 April 29th, 2010?

8 A Yes.

9 Q Okay. At Juan Arroyo's home?

10 A Yes.

11 MR. PAULING: Beg the Court's indulgence.

12 THE COURT: Yes.

13 (Pause.)

14 MR. PAULING: Your Honor, at this time, I
15 believe that State's 14 that's in evidence, request
16 that we be able to publish this to the jury, Your
17 Honor.

18 THE COURT: Yes. Have y'all set up to do it?

19 MR. GOINGS: We think so, Your Honor.

20 THE COURT: All right. Ladies and gentlemen,
21 my understanding is that they're now going to show
22 you a video. There is no sound. It's just a video.

23 BY MR. PAULING:

24 Q Before we get started, Mr. Penaloza, I've got
25 one other question to ask you. You said you took

1 that grease tube back to Agent Wood?

2 A Yes.

3 Q And you were there when he opened it and
4 photographed it?

5 A Yes.

6 MR. PAULING: If I may approach the witness,
7 Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. PAULING:

10 Q Mr. Penaloza, I'm going to show you what's in
11 evidence as State's 11, sir. I'm going to ask you
12 if you recognize that particular item. You can take
13 it out.

14 A Yeah.

15 Q Do you recognize that, sir?

16 A Yes.

17 Q And what is that?

18 A It's the same tube.

19 THE COURT: I couldn't hear you.

20 THE WITNESS: It's the same tube.

21 BY MR. PAULING:

22 Q The same tube that Mr. Arroyo gave you on April
23 29th?

24 A Yes.

25 Q And that's the same tube that you handed over

1 to Agent Wood after the deal?

2 A Yes, it is.

3 MR. PAULING: Beg the Court's indulgence.

4 (Pause.)

5 (Whereupon, State's Exhibit Number 14 was
6 played for the jury. And during the playing of
7 State's Exhibit Number 14, the following occurred.)

8 Q Now, Mr. Penaloza, can you see the screen fine?

9 A Yes.

10 Q I'm going to ask you to kind of take us through
11 what's being shown here on the video. At this
12 point, sir, you have -- the recorder has already
13 been attached to you; is that correct?

14 A Yes.

15 Q Mr. Penaloza, we're going to let this play, but
16 this is from your vantage point; is that correct?

17 A Yes.

18 Q Now, Mr. Penaloza, that vehicle you just got
19 into, was that Agent Woods {sic} beside you?

20 A Yes.

21 Q You just stepped out of your car?

22 A Yes.

23 Q Okay. Now, Mr. Penaloza, at this point, sir,
24 where are you heading?

25 A I guess this is where I'm heading to his house.

1 **Q** When you say his house, who are you speaking
2 of?

3 **A** Mr. Arroyo's house.

4 (Pause.)

5 **MR. GOINGS:** Beg the Court's indulgence, Your
6 Honor.

7 **THE COURT:** Do y'all need to stop? Do you need
8 a break?

9 (There was no response.)

10 **THE COURT:** Do y'all need some time to get it
11 reset?

12 **MR. GOINGS:** Yes, Your Honor.

13 **MR. PAULING:** Yes, Your Honor.

14 **THE COURT:** Ladies and gentlemen, step in the
15 jury room. Don't discuss the case. And as soon as
16 they got it reset, we'll get you back out here.

17 (The jury retires to the jury room.)

18 **THE COURT:** During the break, if you want to
19 stay there, you may stay there. If you want to step
20 down, you may step down. But you cannot discuss
21 your testimony with anybody during the break, all
22 right.

23 Court's at ease. Thank you.

24 (Brief Recess.)

25 **THE COURT:** Ready for the jury?

1 **MS. CHAPMAN:** We're ready.

2 **THE COURT:** Do y'all need to say something in
3 front of the jury about skipping?

4 **MR. GOINGS:** I think how we were going to work
5 it, Your Honor, is have -- I'm just going to play
6 from where he goes in the house the first time,
7 Curtis is going to ask the witness that, play that
8 portion. Then at the end of that, he's going to
9 make a stipulation that we have agreed to skip the
10 rest of the first attempt and also tell the jury
11 that there's a six to seven minute time period where
12 the CI is waiting --

13 **THE COURT:** They're coming in.

14 (The jury returns to the courtroom.)

15 **THE COURT:** All right. Are we ready?

16 **MR. PAULING:** Yes, Your Honor.

17 **THE COURT:** Do you need to say anything?

18 **MR. PAULING:** No, Your Honor.

19 **THE COURT:** Go ahead.

20 (Whereupon, the playing of State's Exhibit
21 Number 14 was continued and the following occurred.)

22 **BY MR. PAULING:**

23 **Q** Okay. Now, Mr. Penaloza, if you could,
24 describe to the jury, sir, what is going on here.
25 Where are you at this particular time?

1 **A** I think I'm right outside his house,
2 Mr. Arroyo's house.

3 **Q** And who is that individual who's at the door?

4 **A** I think that's Mr. Arroyo's girlfriend.

5 **Q** And what are you doing now?

6 **A** I guess I'm going back to my car.

7 **Q** Was he there?

8 **A** He wasn't there.

9 **Q** Mr. Penaloza, we're going to pause it for a
10 moment.

11 **MR. PAULING:** Your Honor, the State and the
12 defense have reached a stipulation. We're going to
13 fast forward the video. There is a portion of the
14 video, I believe it's six to seven minutes, wherein
15 Mr. Penaloza and Agent Wood are not together, that
16 is in their respective vehicles, they are not right
17 there together for about six to seven minutes, and
18 we're just skipping forward that particular part.
19 But that's the stipulation between the State and the
20 defense.

21 **THE COURT:** Is that correct?

22 **MS. CHAPMAN:** That's correct, Your Honor.

23 **THE COURT:** All right.

24 **MR. PAULING:** And now we're fast forwarding to
25 the second attempt at Mr. Arroyo's home.

1 (Whereupon, the playing of State's Exhibit
2 Number 14 was continued and the following occurred.)

3 BY MR. PAULING:

4 Q Now, Mr. Penaloza, is that you again there,
5 sir?

6 A Yes.

7 Q And who is that that just opened the door, sir?

8 A That's Mr. Arroyo.

9 Q Now, Mr. Penaloza, what is going on right
10 there?

11 A I think this is the point where he's actually
12 counting the money.

13 Q Mr. Penaloza, can you tell what's happening
14 there?

15 A He's counting money.

16 Q Was it the same money you had given him?

17 A Yes.

18 Q Now, Mr. Penaloza, do you know what's going on
19 at that particular point?

20 A I think he goes outside.

21 Q Mr. Penaloza, can you explain what just
22 happened there, sir? What did you have in your
23 hand?

24 A At this point, he comes back inside and I'm
25 holding the tube that he gave me.

1 Q And was that the same tube -- was that the same
2 tube that you handed over to Agent Wood?

3 A Yes.

4 Q Now, Mr. Penaloza, the deal had already taken
5 place; is that correct?

6 A That's correct.

7 Q Had you already paid him the money, the \$1800?

8 A Yes. I'm heading out.

9 Q And when you say you're headed out, where are
10 you headed to?

11 A Back to the same place where I met Ryan Woods
12 {sic} at the beginning.

13 Q Agent Wood?

14 A Uh-huh.

15 Q Now, Mr. Penaloza, at that point -- had you met
16 back up with Agent Wood at that point?

17 A No, I'm on my way there.

18 Q Okay. Were you aware that the recorder had
19 gone off?

20 A No, I had no idea.

21 (Whereupon, the playing of State's Exhibit
22 Number 14 was concluded.)

23 Q Now, Mr. Penaloza, is the person you paid \$1800
24 for the heroin in this courtroom today?

25 A Yes, sir.

1 Q Is that the same person or the same person who
2 handed you that grease tube on April 29th, 2010, is
3 that person in the courtroom today?

4 A Yes.

5 Q And if you could, please, where is that
6 particular individual?

7 A Sitting right there.

8 Q And you say sitting right there, what is he
9 wearing, sir?

10 A A white shirt with a vest and a tie.

11 Q What color is the vest and tie?

12 A It's black.

13 MR. PAULING: Just for the record, Your Honor,
14 just ask that the record reflect that Mr. Penaloza
15 has indicated the defendant, Juan Arroyo.

16 THE COURT: So noted.

17 MR. PAULING: No further questions, Your Honor.

18 THE COURT: Cross.

19 MS. CHAPMAN: Yes, Your Honor. May it please
20 the Court.

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MS. CHAPMAN:

24 Q Mr. Penaloza, I'm Debbie Chapman. How are you?

25 A I'm good. How are you?

1 Q I hope I don't slaughter your name. I've tried
2 to practice it.

3 A Thank you.

4 Q Earlier you testified that Agent Wood, you met
5 him when he broke into your house. I'm assuming
6 your house was raided?

7 A Yes, technically, that's what I meant.

8 Q And that was back, if I'm not mistaken, it
9 should have been, like, July of '09?

10 A That sounds correct.

11 Q And those were the state charges that you had,
12 correct?

13 A Yes, ma'am.

14 Q Okay. And, at that time, you were charged with
15 distribution -- with intent to distribute cocaine?

16 A Conspiracy.

17 Q Conspiracy.

18 A Conspiracy.

19 Q And would you agree with me that you were
20 looking up to 15 years in jail on that charge?

21 A Again, you know, they have guidelines, so they
22 give you a minimum and a maximum.

23 Q I'm talking about the state charges. I hadn't
24 gotten to the federal charges.

25 A Oh, the state charges, I never got to that part

1 because I went to Conway the next day where they
2 took the picture, fingerprints and that was it. I
3 never --

4 Q And you signed -- I guess you signed a
5 cooperation agreement with Agent Wood; is that
6 correct?

7 A Yes, I did.

8 Q And in return for your cooperation, he agreed
9 to recommend some kind of sentence for you; is that
10 correct?

11 A That's correct.

12 Q And, obviously, your cooperation was to set up
13 drug deals?

14 A Yes.

15 Q And the more drug deals you set up, the better
16 deal you would get; is that correct?

17 A Yes.

18 Q How many drug deals did you do?

19 A Not many, maybe three, three, four.

20 Q And, at this time, you hadn't been indicted
21 federally yet; is that correct?

22 A No.

23 Q And then it was your testimony that Agent Wood
24 showed you some pictures, that was part of your
25 cooperation, of individuals?

- 1 **A** Yes.
- 2 **Q** They were drug dealers; is that correct?
- 3 **A** Yes, that's correct.
- 4 **Q** And you were a drug dealer?
- 5 **A** I wasn't a drug dealer. I just -- I met the
6 wrong people, okay. And I was asked by someone that
7 I knew to set up a meeting with someone from the
8 Latin, Mexican community, someone who could, you
9 know, sell a large amount of drugs.
- 10 **Q** Well, a thousand grams is a lot of drugs, would
11 you not agree with me? A thousand grams is a lot of
12 drugs, would you --
- 13 **A** That's a lot, yes.
- 14 **Q** And if you participated in a drug deal, you're
15 a drug dealer. You helped facilitate a drug deal;
16 is that correct?
- 17 **A** And you're correct. At the time,
18 unfortunately, I wasn't thinking correctly. I
19 thought that just by making a phone call, I was just
20 being a cool guy, you know.
- 21 **Q** That happens a lot.
- 22 **A** It happens a lot, yes, so.
- 23 **Q** And it's your testimony that Agent Wood showed
24 you a picture of Juan Arroyo?
- 25 **A** Yes.

- 1 Q And he wanted you to buy from Juan Arroyo?
- 2 A Yes.
- 3 Q And, obviously, buying from Juan Arroyo would
- 4 help reduce your sentence, correct?
- 5 A Correct.
- 6 Q But you weren't good friends with Juan, that
- 7 was your testimony earlier, correct?
- 8 A That I was --
- 9 Q He wasn't -- you weren't good friends with
- 10 Mr. Arroyo?
- 11 A No, we were good friends.
- 12 Q You are good friends?
- 13 A We were good friends, yes.
- 14 Q How long have you known him?
- 15 A Probably four, five years.
- 16 Q I thought it was your testimony you just worked
- 17 some construction with him every now and then, and
- 18 -- correct me if I'm wrong -- and, occasionally,
- 19 you'd see him out at a restaurant or a bar?
- 20 A Yes.
- 21 Q And that would be a good friend to you?
- 22 A No. I mean -- he meant that's how we started
- 23 getting acquainted.
- 24 Q Then y'all became good friends?
- 25 A And then we became good friends.

1 Q All right. Then some time in September of '09,
2 you were indicted federally, correct?

3 A Not in 2009. It didn't happen until 2011,
4 2010.

5 Q Let me refresh your memory here.

6 MS. CHAPMAN: If I may, Judge, if I could
7 approach.

8 THE COURT: Yes, ma'am.

9 BY MS. CHAPMAN:

10 Q This is your federal indictment.

11 A Okay.

12 Q And it's received and stamped by the federal
13 court on September the 22nd, 2009, correct?

14 A Okay. I don't know all the terminology, okay.
15 The indictment, is that the day when you get
16 sentenced?

17 Q No.

18 A When you get the charges?

19 Q When you're indicted, when the charges were
20 brought by the federal government.

21 A Okay. Then you're correct, 2009.

22 Q And you were charged with a conspiracy
23 involving five keys or more of cocaine?

24 A That's incorrect.

25 Q Well, look on count one of that indictment, if

1 you would, please.

2 A What part?

3 Q At the bottom of the first paragraph.

4 A Yeah.

5 Q So that's what you were charged with, correct?

6 A That's what I was charged for, okay, but

7 then --

8 Q Not what you pled to, but what --

9 A Yeah.

10 Q I think you might be getting a little bit ahead

11 of me, but I'm with you.

12 A Okay.

13 Q So you were charged by the federal government

14 in September of '09 --

15 A Yes.

16 Q -- for a conspiracy to distribute a controlled

17 substance involving five keys or more of cocaine?

18 A Yes.

19 Q And you would agree with me that that carries a

20 mandatory minimum of ten years to life in prison?

21 A Correct.

22 Q That's what you were originally charged with?

23 A Okay.

24 Q Then you signed a cooperation agreement and a

25 plea agreement with the federal government, did you

1 not?

2 A Yes.

3 Q And you agreed to cooperate with the federal
4 government?

5 A Yes.

6 Q And in order to get your sentence cut
7 federally, because you're looking at ten to life --

8 A Yes.

9 Q -- you need to cooperate. And, again, the more
10 drug deals you make, the better deal you get; is
11 that correct?

12 A That's correct.

13 Q And on top of that -- well, just let me give
14 you a copy of your plea agreement in case you have
15 any questions.

16 MS. CHAPMAN: If I may, Judge.

17 THE COURT: Yes, ma'am.

18 BY MS. CHAPMAN:

19 Q Just to refresh your memory. Paragraph eight
20 in that document I just handed you, which is your
21 plea agreement.

22 A Okay.

23 Q Okay. Is a cooperation paragraph, that you
24 agree to cooperate, testify in any trials, tell the
25 government of any criminal activities that you know

- 1 of; is that correct?
- 2 A That's correct.
- 3 Q And I want you to skip over to paragraph 11.
- 4 A (Witness complies.)
- 5 Q This paragraph says that if you provide
- 6 substantial assistance to the government, and
- 7 substantial assistance is decided by the government,
- 8 that they would move to reduce your sentence,
- 9 correct?
- 10 A Can you help me out finding that line, please?
- 11 Q Paragraph 11, it's about the middle -- you
- 12 might know it as a 5K1.1, paragraph 11.
- 13 A Okay.
- 14 Q This is the paragraph that the government
- 15 promises that if you cooperate to their
- 16 satisfaction, that they will reduce your sentence
- 17 under what we call a 5K1.1, that's the language that
- 18 they use, which is a downward departure.
- 19 A Correct.
- 20 Q And did you receive a downward departure?
- 21 A Yes.
- 22 Q And the government filed that motion on your
- 23 behalf?
- 24 A Yes.
- 25 Q And you pled to a lesser included offense,

1 correct?

2 A Yes.

3 Q If we look at the very front of this plea
4 agreement, you pled to 500 grams or more of cocaine,
5 correct?

6 A Yes.

7 Q And that sentence carries a mandatory minimum
8 of five years up to 40 years and four years of
9 supervised release, probation is another word for
10 it; is that correct?

11 A Correct.

12 Q And your testimony here earlier today was that
13 you were sentenced to one year and one day?

14 A Yes.

15 Q And do you know why you got the one day?

16 A The one day?

17 Q Uh-huh.

18 A Not really.

19 Q Anybody tell you that one day would get you
20 good time and you'd serve less than one year?

21 A Okay. Yeah, you're correct.

22 Q How much time did you serve in jail?

23 A Ten months.

24 Q Ten months. That's a long way from life to ten
25 months, isn't it?

- 1 A Yes.
- 2 Q That was a pretty good deal?
- 3 A Yes.
- 4 Q Let me ask you -- I want to ask you just a
5 couple of things. You testified that Agent Wood
6 searched your car?
- 7 A Yes, ma'am.
- 8 Q And you were present at the time that he
9 searched your car?
- 10 A All the time, yes.
- 11 Q Can you kind of describe to the jury how he
12 searched your car?
- 13 A They would open all four doors, trunk and
14 search inside on the back.
- 15 Q And can you describe how he searched your
16 person?
- 17 A Myself?
- 18 Q Uh-huh.
- 19 A Yeah. They would check my pockets, the way
20 they normally search an individual, you know,
21 patting.
- 22 Q Patting down and everything?
- 23 A Yes.
- 24 Q Did he look under the hood of your car?
- 25 A Um...

- 1 Q If you don't remember, that's fine.
- 2 A I don't remember.
- 3 Q Did he look under the dashboard; do you
- 4 remember?
- 5 A Oh, yeah, yeah, definitely, definitely.
- 6 Q And, at one point, we saw on the video, it
- 7 appears that you lost Agent Wood at a stoplight on
- 8 the way back; do you remember that?
- 9 A Yes. Yes, I do.
- 10 Q And do you remember sitting there waiting, you
- 11 were by yourself, the six to seven minutes?
- 12 A Yeah. He was in front of me, so he -- he was
- 13 able to go through the light and I caught the, you
- 14 know, the light on the red, so I had to stop.
- 15 Q So y'all were separated for --
- 16 A Yeah, we were separated.
- 17 Q -- and the government concedes, six to seven
- 18 minutes?
- 19 A Could be. I mean, I don't know how long it
- 20 takes to go -- for the light to change, but he was
- 21 right there, you know, right in front of me, so.
- 22 Q And when you went to the bank, the video was
- 23 cut off; is that correct?
- 24 A I can't remember.
- 25 Q That's fine. If you don't remember, say you

1 don't remember. But he went to an ATM machine?

2 A Yes.

3 Q Is your testimony. And you sat in the car?

4 A I was either sitting in the car or standing
5 outside the car, but, obviously, I was there.

6 Q And was Agent Wood watching you the entire time
7 that he was at the ATM machine?

8 A Well, he was not by himself. It was a team,
9 okay. So there were several other agents there, so.

10 Q Okay. Well, we hadn't heard that testimony.

11 MS. CHAPMAN: If I could just have just a
12 moment, Your Honor.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 BY MS. CHAPMAN:

16 Q Just one more question. Do you know how long
17 that Agent Wood searched your car before you left?

18 A You're talking about what day?

19 Q On the 29th.

20 A On the 29th?

21 Q Did it take him a long time or did he do it
22 kind of quickly?

23 A He didn't search, someone else did.

24 Q He didn't search the car?

25 A No.

1 Q Agent Wood did not?

2 A It was another agent.

3 Q It was another agent?

4 A Yeah. Like I said, there were, like, three,
5 four different agents. At times, there were, like,
6 two or three different police, you know, vehicles.

7 Q Okay. And do you remember them pulling the car
8 seats out or anything?

9 A Pulling the seats out?

10 Q Uh-huh.

11 A I wasn't paying attention because I was talking
12 to them and they were searching the car.

13 Q So the answer is not that you know of?

14 A No, not that I noticed, no.

15 Q And, again, it wasn't Agent Wood who searched
16 your car?

17 A No. No.

18 MS. CHAPMAN: That's all I have, Your Honor.

19 THE COURT: Redirect.

20 MR. PAULING: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. PAULING:

23 Q Mr. Penaloza, prior to this April 29th, 2010
24 deal with Mr. Arroyo, had you conducted other
25 undercover deals with Agent Wood?

1 **A** I think we did. I'm not really sure.

2 **Q** Was this the first undercover deal you had done

3 with Agent Wood at -- or any other law enforcement

4 agent?

5 **A** I think we had done one or maybe two.

6 **Q** Prior to Juan Arroyo, had you helped do

7 undercover deals with other individuals? Did you

8 help set up other people?

9 **A** I think just one individual. I'm not sure

10 about the dates.

11 **Q** Now, the April 29th deal, 2010, with

12 Mr. Arroyo, did you force him to sell you heroin?

13 **A** No.

14 **Q** Had you dealt with heroin before?

15 **A** No.

16 **Q** Had you seen heroin before?

17 **A** No.

18 **MR. PAULING:** No further questions, Your Honor.

19 **THE COURT:** Recross.

20 **MS. CHAPMAN:** No, Your Honor.

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

22 Any other witnesses for the State?

23 **MR. GOINGS:** The State rests, Your Honor.

24 **MR. PAULING:** Your Honor, at this time, if

25 there's no objection from the defense, we'd just ask

1 that Mr. Penaloza be released from his subpoena.

2 **MR. KIRKLAND:** No objection.

3 **THE COURT:** All right. He's free to go.

4 Ladies and gentlemen, I told you when the State
5 rests, I have to discuss legal issues with the
6 attorneys and I have to do that outside your
7 presence, so that's where we are right now. This
8 usually takes about 20 minutes. I'll go through
9 this with them, get to you as quickly as I can.
10 Don't discuss the case. Follow the bailiff, please.

11 (The jury retires to the jury room.)

12 **THE COURT:** Are there any motions?

13 **MR. KIRKLAND:** Yes, sir, Your Honor. The
14 defense would move for a directed verdict. We don't
15 believe the prosecution has presented any credible
16 evidence from which the jury can infer guilt.

17 I'll make just a couple of points. There was
18 discussion -- well, there was obviously video
19 evidence in this case. There was no video evidence
20 of the search of the car.

21 In fact, at this point in time, it appears that
22 the -- although the agent said that he was there by
23 himself, from what I recall, and that he searched
24 the car, according to the confidential informant,
25 some other person searched the car entirely. So I

1 don't even know that we have any credible evidence
2 at all that the car was searched. The person that
3 searched it doesn't even appear to have been here at
4 the trial.

5 The transaction is not clear on the video. I
6 don't think you see the confidential informant
7 handing whoever it was he handed the money to,
8 didn't see him hand the money to him. The video, as
9 was discussed, turns off prior to the confidential
10 informant reaching the meeting place and, therefore,
11 we don't know what the confidential informant was
12 doing during that period of time. There's a six
13 minute period of time on the video in which the
14 officers lost sight of the confidential informant.

15 The confidential informant has indicated on the
16 stand that he was facing a mandatory ten years to
17 life, that he had to cooperate to the satisfaction
18 of the government. He testified -- the confidential
19 informant testified that the agent approached him
20 about making a buy from Juan Arroyo. I think the
21 agent said the opposite. But my point is, Your
22 Honor, that the confidential informant knew that to
23 cooperate to their satisfaction, he would have to
24 make a buy from Juan Arroyo and so he had a motive
25 to not tell the truth, to make sure that buy

1 occurred because he was facing a life sentence and
2 he did not want to receive a life sentence.

3 And for those reasons, Your Honor, we believe
4 that the evidence that they presented was not
5 credible and a jury could not and would not infer
6 guilt. And that's the motion, Your Honor.

7 **THE COURT:** All right. Credibility is a jury
8 issue. Everything you've raised is a jury issue
9 that I can see. There's significant evidence to
10 allow the case to go to the jury.

11 Anything else?

12 (There was no response.)

13 **THE COURT:** Mr. Arroyo, I need to go over some
14 things with you now. I have to go over these things
15 with anybody who's on trial, whether they're on
16 trial for murder or for a traffic offense. I need
17 you to raise your right hand, please, because I need
18 your responses under oath.

19 JUAN RODOLPHO ARROYO,
20 having been duly sworn, testified as follows:

21 **MR. KIRKLAND:** Let me talk to him real quick
22 about what you're going to talk to him about because
23 he seemed hesitant.

24 **THE COURT:** Okay.

25 (Pause.)

1 **MR. KIRKLAND:** He's ready, Your Honor.

2 **THE COURT:** All right. Mr. Arroyo, the State
3 has rested. They put up their case in chief. And
4 the next thing that would happen is that you -- your
5 side would have the opportunity to present evidence
6 for the jury to consider. You understand where we
7 are in the trial?

8 **DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** Now, regardless of whether you put
10 up any evidence or not, the burden is always on the
11 State. You're presumed innocent and the State has
12 got to prove you guilty beyond a reasonable doubt.
13 You understand that?

14 **DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** Now, in a criminal court setting
16 like this, a defendant who's on trial may testify if
17 he wishes to testify, but he does not have to
18 testify. Do you understand?

19 **DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** So you can choose to testify or not
21 testify. You understand?

22 **DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** No one can force you to testify.
24 You have an absolute right to remain silent. And if
25 you choose not to testify, I'm going to tell that

1 jury they cannot hold your silence against you in
2 any way at all, that they cannot discuss it when
3 they're deciding your case and that it's not to
4 enter their minds in making the decision of whether
5 you're guilty or not guilty. Do you understand all
6 that?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** The decision about whether you
9 testify or not is your decision to make and yours
10 alone. You understand that?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Now, I expect that you might talk
13 to your attorneys, with family members or friends or
14 anybody whose opinion you value on important
15 decisions, but, ultimately, it's your decision, it's
16 your call. You decide whether you want to testify
17 or not. You understand that?

18 **DEFENDANT:** Yeah. I went over that with my
19 attorneys.

20 **THE COURT:** Okay. Does he have a prior
21 criminal record that would subject him to
22 impeachment?

23 **MS. CHAPMAN:** No, sir.

24 **MR. GOINGS:** No, sir, Your Honor.

25 **THE COURT:** Okay. Now, Mr. Arroyo, you're in

1 jail; is that correct?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Today have you had any kind of
4 medication or any substance that adversely affects
5 your thinking?

6 DEFENDANT: No, Your Honor.

7 THE COURT: So you're thinking clearly?

8 DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you suffer from any physical or
10 mental problems that affect your thinking?

11 DEFENDANT: No, Your Honor.

12 THE COURT: Have you understood everything I've
13 been over with you?

14 DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Has anybody attempted
16 to unfairly influence you to get you to testify or
17 not testify? In other words, has anybody forced you
18 to make this decision one way or the other?

19 DEFENDANT: No, Your Honor.

20 THE COURT: I'm going to give you a few minutes
21 to talk to your lawyers or if you need more than a
22 few minutes, you let me know, but right now what I'm
23 going to do is I'm going to find that you understand
24 that you have a right to testify, you have a right
25 not to testify. You understand that if you choose

1 not to testify, I'm going to tell the jury they
2 cannot hold your silence against you in any way.
3 You understand that the decision about whether you
4 testify or not is your decision to make and yours
5 alone, and that you've made your decision freely and
6 voluntarily and knowingly.

7 So I'm going to maintain those findings. If
8 anybody does attempt to improperly influence you or
9 does anything wrong, you let me know, all right.

10 **DEFENDANT:** Okay, Your Honor.

11 **THE COURT:** Thank you.

12 All right. We're at ease.

13 (Brief Recess.)

14 **THE COURT:** All right. Does the defense have
15 any evidence to present?

16 **MS. CHAPMAN:** No, Your Honor.

17 **THE COURT:** Mr. Arroyo, do you wish to testify?

18 **DEFENDANT:** No, Your Honor.

19 **THE COURT:** Is that your own decision?

20 **DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** You made it freely and voluntarily?

22 **DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** All right. Thank you. Have a
24 seat, please.

25 All right. Bring in the jury.

1 (The jury returns to the courtroom.)

2 **THE COURT:** All right. Ladies and gentlemen,
3 after conferring with the attorneys, it appears that
4 you now have all the evidence that you're going to
5 have to decide the case and I need to give you an
6 instruction. I need for you to listen very
7 carefully to this, please.

8 I emphasize to you, ladies and gentlemen, that
9 the fact that the defendant in this case elected not
10 to testify is not a factor to be considered by you
11 in any way in your deliberations and in your
12 consideration on the question of whether he is
13 guilty or not guilty. His decision not to testify
14 must not be considered by you in any manner
15 whatsoever against Mr. Arroyo. An accused has a
16 constitutional right to remain silent and the
17 assertion of that right cannot and must not be
18 considered by you in your deliberations.

19 Under the oath you've taken, you are to reach
20 no inference and you are to draw no conclusion
21 whatsoever from the fact that Mr. Arroyo elected not
22 to testify. His decision not to testify should not
23 be discussed by you in the jury room. It should not
24 even enter into your minds in making your decision
25 on the question of whether he's guilty or not

1 guilty. The burden of proof, as I've told you
2 repeatedly, is entirely on the State to prove every
3 essential element of the offense charged against the
4 defendant beyond a reasonable doubt.

5 So, the two stages that remain in the trial are
6 the closing arguments and the charge. The charge is
7 where I tell you the law.

8 We're at the close of all the evidence. I,
9 again, have to talk to the attorneys about some
10 legal matters, even though it's back to back, still
11 have the same procedure. And so what I'm going to
12 do is let you folks go on to lunch. You'll be on
13 your own for lunch and I'm going to give you an
14 extended lunch break because we're going to be
15 working on some things and I need you back here at
16 1:30.

17 You'll hear the closing arguments, I'll tell
18 you the law. If I don't change the draft I've got
19 up here, it's going to take me 16 minutes to tell
20 you the law. So you'll get the case this afternoon.

21 Hopefully, we'll be through with everything and
22 we'll be back from lunch by 1:30 as well. I think
23 there's no problem there, but I'll get to you as
24 close to 1:30 as I can. So, please, be back in the
25 jury room at 1:30. Don't discuss the case. Follow

1 the bailiff, please.

2 (The jury retires to the jury room.)

3 **THE COURT:** Are there any additional motions?

4 Do you need to renew anything at this stage?

5 **MR. KIRKLAND:** In an abundance of caution,
6 we'll renew all of our motions, Your Honor. I don't
7 think that I need to make a motion for a new trial
8 until a verdict is back, so I'll just renew all of
9 our motions at this time.

10 **THE COURT:** Again, it appears they're jury
11 issues and the motions are respectfully denied.

12 All right. Here's what I'm going to do: I'm
13 going to print out a draft of the charge. If you
14 all have specific things you want to talk to me
15 about, you can, but I found it's better if we talk
16 after you read what I intend to tell the jury
17 because you may be satisfied with what I've got.

18 The draft that I've got has a circumstantial
19 evidence charge in it. I don't know if you need
20 that or not, but it's in there. Everything else is
21 pretty straightforward. And I'll -- we can't print
22 from up here, so I have to get somebody else to
23 print it and give it to you. So I need the lawyers
24 to stay here until you have the draft of the charge
25 and the draft of the verdict form and then I want

1 you back here at ten minutes before the jury gets
2 here, let's say, 1:20, all right.

3 **MR. KIRKLAND:** Yes, sir.

4 **THE COURT:** We'll talk about the law then,
5 okay.

6 All right. Now, folks, remember what I told
7 y'all yesterday, give the jury a chance to clear
8 out, please. It's not a good idea for y'all to be
9 on the same elevators with the jurors, so just wait,
10 let them clear out, wait a few minutes. And then I
11 need the lawyers back here with the defendant at
12 1:20. Everybody else 1:30 is when we'll start back,
13 okay. Thank you.

14 (Whereupon, there was a luncheon recess.)

15 **THE COURT:** All right. As I understand it,
16 there was no need to talk about the proposed charge,
17 the draft that I gave you. And my understanding of
18 the evidence is that the only two options the jury
19 has is not guilty or guilty, and there's no question
20 about the weight, so the verdict form reflects that.
21 I don't know if y'all have seen the verdict form or
22 not, but you can look at it now or during the break.

23 (Pause.)

24 **MR. KIRKLAND:** That's fine with me.

25 **THE COURT:** And since the defense offered no

1 evidence, the defense will make the last argument.

2 So is the State ready?

3 **MR. GOINGS:** The State's ready, Your Honor.

4 **THE COURT:** Is the defense ready?

5 **MS. CHAPMAN:** We're ready.

6 **THE COURT:** Bring them in, please.

7 (The jury returns to the courtroom.)

8 **THE COURT:** As I told you before the break,
9 there are two stages that remain in the trial, the
10 closing arguments and the charge. The way the
11 closing arguments will go is that the State will
12 make the first closing argument and then the defense
13 makes the last closing argument.

14 I always take a break between when they finish
15 and when I start. Usually, it's a very short break,
16 but I always take some break to get set up and ready
17 to give you the charge. Sometimes I take a break
18 between the arguments of the lawyers, it just
19 depends on how things go. So we'll play it by ear.
20 I invite your close attention.

21 Which of you is going to make the closing
22 argument? Mr. Goings, you're recognized.

23 **MR. GOINGS:** Thank you, Your Honor. If it
24 pleases the Court.

25 **THE COURT:** Yes, sir.