

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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SC Court of Appeals

Appellate No.: 2017-000281

The State of South Carolina

Respondent

Vs.

Jawan Rayel White

Appellant,

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

STATE)

VS.)

JAWAN RAYEL WHITE)

COURT OF GENERAL SESSIONS

2012-GS-26-01319

MOTION FOR A NEW TRIAL

RECEIVED

FEB 16 2017

SC Court of Appeals

Facts

In 2011, the United States Drug Enforcement Agency, the DEA, was building a case against the Defendant, Jawan Rayel White (hereinafter Defendant), through the use of a federal confidential informants (hereinafter Federal CI) whom was acquainted with Defendant. The DEA informed the Fifth Circuit Drug Enforcement Unit (hereinafter DEU) of their interest in the Defendant in order for the DEU to continue the investigation. The DEA advised the DEU that the Defendant intended to purchase a large quantity of heroin. The Federal CI negotiated a deal with the Defendant to purchase four (4) ounces of heroin for a price of Ten Thousand 00/100 (\$10,000.00) dollars.

In August, 2011, the DEA arranged a meeting between the Defendant and a DEU informant (State CI). The plan was for the Federal CI to introduce the State CI to the Defendant as a heroin supplier for the large drug sale. On August 16, 2011 the Federal CI, the State CI and the Defendant met at Broadway at the Beach, in order to make introductions, become acquainted, and arrange the later drug sale. Prior to the meeting the State and Federal CIs met with Agent Randy Miller of the DEU in order to fit State CI with an audio and video recording devise to record the meeting.

Once the introductions took place, the Defendant informed the State CI that he did not have the Ten Thousand 00/100 (\$10,000.00) dollars needed for the sale. The State CI refused to do the sale of heroin for less than four (4) ounces. After some deliberation, the Defendant agreed to call the State CI once he was able to acquire the funds necessary to by the drugs in the drug sale. Three (3) days later, on August 19, 2011, the Defendant called the State CI to inform him that he, the Defendant, was ready to make the purchase. Further, they agreed to meet the next day at the Coastal Grande Mall to execute the drug sale.

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Before the State CI met with the Defendant, he once again met with Agent Miller to be fitted with an audio and video recording device to record the events of the sale and to pick up four (4) ounces of imitation heroin (113.4 grams). Once the State CI had the imitation heroin he went to the Costal Grande Mall to meet the Defendant. DEU agents were positioned in various spots around the meeting point, where they could converge on the Defendant as soon as the signal was given that the sale was complete.

Once the signal was given and the sale was complete, the Defendant was arrested for trafficking heroin twenty-eight (28) grams or more, in violation of South Carolina Code Ann. 44-53-370(e)(3)(c). The Defendant was arraigned and assigned representation by the Public Defender's Office. The Defendant was represented by John Hilliard at trial.

The State called the Defendant's case to trial on June 13, 2013. The Defendant was not present on the day of the trial. The State moved to proceed with the trial in the Defendants absence, which was granted. During the "trial in absentia" hearing, the State called three witness: Heather Lewis, Assistant Clerk of Court for Horry County Circuit Court; Annie Ayers, an employee of the Fifteenth Circuit Solicitor's Office; and Roy Hemingway, Deputy Sheriff with the Horry County Sheriff Department.

Lewis testified to the authenticity of a certified copy of the Surety Bond Order that had been executed before the Defendant's release on bail for the trafficking charges. The Security Bond Order was entered into evidence without objection. The acknowledgement section of the Surety Bond Order was read into the record as follows:

"I understand that if I violate any provision of this order a warrant will be issued for my arrest. I understand and have been informed that I have a right and obligation to be present at trial, and should I fail to attend that trial the Court ... the trial will proceed in my presence."

Next, the State called Ayers. Ayers testified that she obtained a valid subpoena and mailed it to the Defendant at the address identified on the certified Security Bond Order. A copy of the subpoena was admitted into evidence without objection. Finally, the State called to Officer Hemingway. Officer Hemingway testified that he called out the Defendant's name on the courthouse steps three times, and that there was no response. Attorney Hilliard declined to cross-examine any of the witnesses the State called in support of its motion to try the Defendant in absentia.

The Court found the Defendant was notified he would be tried in his absent should he fail to appear for trial when summoned, and that the Defendant was sent notice of the actual trial date as a result of the subpoena that was mailed to him at the address identified on his Surety Bond Order. Therefore, the trial proceeded in the absence of the Defendant.

At the conclusion of the evidence and closing arguments, the Court charged the jury on trafficking in heroin, twenty-eight grams or more pursuant to South Carolina Code Ann. 44-53-370, as follows:

Now the Defendant is charged with trafficking in heroin. The State must prove, beyond a reasonable doubt, that the Defendant knowingly sold, manufacture, cultivate, delivered, purchased, brought into this State, provided financial assistance or otherwise aided, abetted, **attempted or conspired to sell, manufacture, cultivate, deliver, purchase or bring into this State**, and was knowingly in actual or constructive possession, knowingly attempted to become in actual or constructive possession of heroin.

In order to find the Defendant guilty the State must also prove, beyond a reasonable doubt, that the amount of the heroin, or any mixture containing heroin, was twenty-eight grams or more. Under trafficking in heroin, twenty-eight grams or more, **the presence of only imitation heroin at the transaction is irrelevant if the State proves, beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight grams of real heroin.** (*emphasis added*).

The jury returned a verdict of guilty at the conclusion of deliberation.

Analysis

The Defendant argued three (3) issues to the Court in a Hearing held on September 14, 2016:

1. A new trial should be granted on the ground that the jury charge for trafficking in heroin, twenty-eight grams or more, was erroneous and had the potential to confuse the jury on the underlying factual bases of the state's case;
2. A new trial should be granted on the ground that defendant was denied the right to confront his accusers under the confrontation clause of the Constitution of the United States.

3. A new trial should be granted on the ground that defendant was tried in absentia in violation of his right to be present under the sixth amendment of the Constitution of the United States; and

After hearing from both the Defendant and the State, the Court denies the Defendant's motion for a New Trial.

The Defendant's first argument was that a new trial should be granted on the ground that the jury charge for trafficking in heroin, twenty-eight (28) grams or more, was erroneous and had the potential to confuse the jury on the underlying factual bases of the state's case. The Court instructed the jury:

"Under trafficking in heroin, twenty-eight grams or more, the presence of only imitation heroin at the transaction is irrelevant if the State proves, beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight grams or real heroin." (Emphasis added)

Defendant argues that he could not be charged with trafficking four (4) ounces (113. grams) of heroin as a result of purchasing four (4) ounces of imitation heroin from an undercover agent because no evidence was presented to support a charge of conspiracy. Additionally, Defendant argues, correctly, conspiracy between an undercover informant and the Defendant cannot constitute as a conspiracy.

The heroin trafficking statute makes it illegal to conspire **or** attempt to sell, manufacture, cultivate, deliver, purchase, or bring heroin into South Carolina. The intent of the Defendant is a factor in determining whether the Defendant attempted to traffic heroin.

In State v. McCluney, 361 S.C. 607, 606 S.E.2d 485 (2004), McCluney and two other people attempted to purchase cocaine from a police informant. The cocaine provided to McCluney was an imitation cocaine substance. The Supreme Court of South Carolina, reversing the Court of Appeals, held:

"Trafficking is not limited to the substantive offenses of purchasing, possessing, and selling large amounts of controlled substances. Conspiring and attempting to do those acts also constitute trafficking. The part of the trafficking statute pertinent to this case is as follows: "Any person who knowingly... *attempts[] or conspires* to ... purchase ... ten grams or more of cocaine ... is guilty of a felony which is known as `trafficking in cocaine. (*emphasis added*).

The Court of Appeals errantly focused on the facts that only imitation cocaine was present at the transaction and that purchasing imitation cocaine does not constitute trafficking. In doing so, the court relied heavily on *Murdock v. State of South Carolina*, 311 S.C. 16, 426 S.E.2d 740 (1992), which is irrelevant to Respondent's case.

The court should have focused on the State's evidence that Respondent conspired and attempted to purchase real cocaine. Section 44-53-370(e) (2) plainly states that conspiring and attempting to purchase ten grams or more of real cocaine constitute trafficking. The presence of only imitation cocaine [361 S.C. 610] at the transaction is irrelevant to Respondent's intent and thus irrelevant to the State's conspiracy and attempt arguments..." 361 S.C. 607, 609-610.

In the present case the Defendant attempted to purchase four (4) ounces of heroin. The Court charged the jury, to paraphrase, the presence of imitation heroin is irrelevant if the state proves the Defendant conspired or attempted to purchase more than twenty-eight (28) grams of real heroin. It is clear the Defendant attempted to purchase well over twenty-eight (28) grams of heroin, by the fact that the Defendant first met with the State CI, did not have adequate funds to purchase the drugs, however called the State CI later after raising Ten-Thousand 00/100 (\$10,000) dollars to complete the transaction. The fact that there was not a conspiracy is moot.

Additionally, in determining the Court's decisions regarding jury instructions, the standard of review is an abuse of discretion standard. "An appellate court will not reverse the trial court's decision regarding jury instruction unless the trial court committed an abuse of discretion. *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30,33 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." *Id.* "A trial court must charge the current and correct law." *Wells v. Halyard*, 341 S.C. 234, 237, 533 S.E.2d 341,343 (Ct. App. 2000). Here the Court instructed the jury on the law as it was written by the legislature. The instructions were supported by the evidence presented by both the Defendant and the State.

For the foregoing reasons, I find that charging the jury, pursuant to South Carolina Code Ann. 44-53-370(e)(3)(c), was not erroneous, nor had the potential to confuse the jury.

The Defendant's second argument is that a new trial should be granted on the ground that Defendant was denied the right to confront his accusers under the confrontation clause of the Constitution of the United States. Defendant argues that the State CI was allowed to

testify to conversations that he had with the Federal CI, and that the introduction and publication of the video tape of the August 16, 2011 meeting at Broadway at the Beach constitutes testimony by the Federal CI, which the Defendant was not able to cross. Defendant argues that the introduction of the evidence was not permissible hearsay, with no exception to the rule or otherwise.

The Court would state that objection to this evidence on this ground was made initially by the Defendant in his motion for a new trial. No such objection was raised at trial. It is a well settled matter of Criminal Procedure that a motion for a new trial may not raise a new evidentiary issue for the first time. State v. Holmes, 320 S.C. 259, 266, 464 S.E.2d 334, 338 (1995). Therefore, Defendant's objection to this evidence is unpreserved and not properly before this Court.

Defendant's third argument is that a new trial should be granted on the ground that defendant was tried in absentia in violation of his right to be present under the Sixth Amendment to the United States Constitution. Defendant argues Rule 16 of the South Carolina Rules of Criminal Procedure states that:

Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that **such person has received notice of his right to be present** and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Defendant argues that there was no testimony given regarding whether the Defendant received notice of his trial date, only that a subpoena had been mailed to Defendant. However, Defendant argues that there were no questions asked concerning whether Defendant "received" the subpoena, or even if the subpoena was returned to sender.

Defendant's argument fails. As stated above, on the day of the trial the State produced three witnesses: Mrs. Lewis, Mrs. Ayers, and Officer Hemingway. Mrs. Lewis testified to the authenticity of a certified copy of the Surety Bond Order. The Security Bond Order was entered into evidence and the acknowledgement section of the Surety Bond Order was read into the record as follows:

"I understand that if I violate any provision of this order a warrant will be issued for my arrest. I understand and have been informed that I have a right and obligation to be present

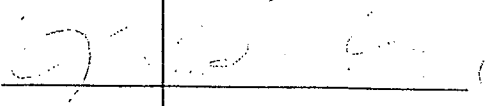
at trial, and should I fail to attend that trial the Court ... the trial will proceed in my presence."

Mrs. Ayers testified that she obtained a valid subpoena and mailed it to the Defendant at the address identified on the certified Security Bond Order. A copy of the subpoena was admitted into evidence. Additionally, Officer Hemingway testified that he called out the Defendant's name on the courthouse steps three times, and that there was no response.

The Court, by the rules of South Carolina and in its discretion, may order a trial to be held in the defendant's absence upon the finding that the defendant was noticed that if the defendant failed to come to trial that he or she could be tried in their absence and that the defendant was noticed of the trial. In the present matter there was ample evidence showing Defendant had notice that if he failed to show up to his trial that he would be tried in absentia. Additionally there was evidence presented that Defendant had been subpoenaed to appear at the trial and did not come to court on the day specified. It was in the discretion and power of the court to grant the State's motion to try the Defendant in absentia.

For the Foregoing reasons the Court Denied the Defendants Motion for a New Trial.

DATED: 11-9-16
Conway, South Carolina


Larry B. Hyman, Jr.
Circuit Court Judge
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA

COURT OF HORRY

STATE

VS.

JAWAN RAYEL WHITE

COURT OF GENERAL SESSIONS

2012-GS-26-01319

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL

PERTINENT FACTS

The United States Drug Enforcement Agency (hereinafter, "DEA") was actively building a drug case against Jawan Rayel White (hereinafter, "White") through the use of one of their confidential informants (hereinafter, "Federal CI"), whom was acquainted with White. (Trial Transcript, State v. Jawan Rayel White, Indictment No. 2012-gs-33-01319, June 13-14, 2013, p. 7-8; hereinafter "Tr. p. ____"; Attached hereto as Ex. A) The DEA decided to abandon their case against White; however, they contacted the Fifth Circuit Drug Enforcement Unit (hereinafter, "DEU") to see if they would be interested in resume investigation, and building a local drug case against White, which the DEU agreed. (Tr. 7-8). The DEA informed the DEU that White was interested in purchasing a large quantity of heroin. (Tr. p. 7, 129-130). The Federal CI negotiated a deal with White to purchase four ounces of heroin for a price of Ten Thousand and 00/100 (\$10,000.00) Dollars (hereinafter, "Drug Sale"). (Tr. p. 97-98, 129). The DEU would enter the case through an introduction between White and a DEU informant (hereinafter, "State CI"). (Tr. p. 110). The plan was for the Federal CI to introduce the State CI as the

heroin supplier for the Drug Sale. The State CI and White were strangers, and had never meet or talked. (Tr. p. 94-95).

On August 16, 2011 the Federal CI, the State CI, and White meet at Broadway at the Beach, through a meeting arranged by the Federal CI. (Tr. p. 74-76, 95, 111-113). The Purpose of the meeting was to introduce the State CI and White so that they could become acquainted and make arrangements for the Drug Sale. (Tr. p. 110-1119). Prior to the meeting, the State CI and the Federal CI meet with DEU Agent Randy Miller (hereinafter, "Agent Miller") at a prearranged location so that the State CI could be fitted with an audio and video recording devise to secretly record the meeting. (Tr. p. 76-78, 111). Then the State CI and Federal CI rode together to meet White at Broadway at the Beach. (Tr. p. 95-96).

At the meeting, White informed the State CI he didn't have the \$10,000.00 needed for the Drug Sale. (Tr. p. 102, 113). The State CI refused to do the Drug Sale for anything less than four ounces. (Tr. p. 102, 129). The State CI had been instructed by Agent Miller or others at the DEU not to agree to any drug transaction with White for less than four ounces. (Tr. p. 129-130). It was agreed that White would call the State CI ounce he was able to raise the \$10,000.00. (Tr. p. 114).

On August 19, 2011 White called the State CI and informed him that he had raised the \$10,000.00. (Tr. p. 113-114). They agreed to meet the next day on August 20, 2011 at the Coastal Grande Mall to execute the Drug Sale. (Tr. p. 117-118).

Before the meeting with White on August 20, 2011, the State CI meet with Agent Miller and was fitted with an audio and video recording device to record the events of the Drug Sale. (Tr. p. 85, 117). The State CI was also provided approximately four ounces of

imitation heroin to make the Drug Sale. (Tr. p. 86, 114). The imitation heroin was prepared the Agent Miller and contained no illegal substances or properties. (Tr. p. 115, 131).

DEU agents were positioned in various spots around the location of the Drug Sale; they could converged on White and arrest him immediately after the State CI gave the prearranged sign that the Drug Sale was completed. (Tr. p. 113-114, 118-119). The Federal CI withdrew from the case, and was never seen after making the initial introduction between White and the State CI at Broadway at the Beach on August 16, 2011. (Tr. p. 98, 109-110).

White was arrested for trafficking in heroin, twenty-eight grams or more, in violation of 44-53-730⁽³⁷⁰⁾(e) (3) (c) of the Code of laws of South Carolina. (Tr. p. 7). White was arraigned and was assigned to be represented by the Fifteenth Circuit Public Defendant's Office. (See, Case History, South Carolina Public Index; attached here to as Ex. B). It appears that White was represent by multiple attorneys before finally being represented by John Hilliard (hereinafter, "Attorney Hilliard) at trial. (Id.). It also appears from the record that discovery requests and multiple supplemental discovery requests were made on White's behalf before the trial of the case. (See, Ex. B; see also, Tr. p. 13).

On or about March 19, 2013, the identity of the Federal CI was released to Attorney Hilliard after he had made a supplemental discovery request. (Tr. p. 9). The Identify of the Federal CI was not disclosed to Attorney Hilliard when first requested disclosure. (Tr. p. 6). The State gave multiple reasons why it could not disclose the identity of the Federal CI before it finally did, including stating that the Federal CI had

become an informant for the Federal Bureau of Investigations (FBI), and that the Federal CI was not a really witness in White's action so his identify didn't needed to be disclosed. (Tr. p. 6). When the State final disclosed the identity of the Federal CI, they simultaneously informed Attorney Hilliard that he had been deported or otherwise had left the country. (Id.). The Federal CI had been removed from the United States either by deportation efforts or voluntary relocation in August 2012, over a year following White's arrest and charge, and approximately 10 months before White's trial. (Tr. p. 6, 11-12).

The State called White's case to trial on June 13, 2013. (Tr. p. 5). White was not present on the day of his trial. (Tr. p. 15-23). The State moved to proceed with the trial in White's absence. (Id.). During the "trial in absentia" hearing, the State called three witnesses: Heather Dawn Lewis (hereinafter "Lewis"), Assistant Clerk of Court for Horry County Circuit Court; Annie Christina Ayers (hereinafter, "Ayers"), an employee of the Fifteenth Circuit Solicitor's Office; and Roy Hemingway (hereinafter, "Officer Hemingway"), Deputy Sheriff with the Horry County Sheriff Department. (Tr. p. 17-23).

Lewis testified to the authenticity of a certified copy of the Surety Bond Order that had been executed before White's release on bail for the trafficking charges. (Tr. p. 17-18). The Security Bond Order was entered into evidence without objection. (Tr. p. 18). The acknowledgement section of the Surety Bond Order was read into the record as follows:

I understand that if I violate any provision of this order a warrant will be issued for my arrest. I understand and have been informed that I have a right and obligation to be present at trial, and should I fail to attend that trial the Court ... the trial will proceed in my presence.

(Tr. p. 18).

Next, the State called Ayers. (Tr. p. 19). Ayers testified that she obtained a valid subpoena and mailed it to White at the address identified on the certified Security Bond Order: 1809 Railroad Avenue in Georgetown, 29440. (Tr. p. 20). A copy of the subpoena was admitted into evidence without objection. (Tr. p. 21).

Finally, the State called to Officer Hemingway. (Tr. p. 22). Officer Hemingway testified that he called out White's name on the courthouse steps three times, and that there was no response. (Tr. p. 22).

Attorney Hilliard declined to cross-examine any of the witnesses the State called in support of its motion to try White in absentia. (Tr. p. 17-22). Furthermore, Attorney Hilliard made not arguments against the State's motion, nor did he made a motion for a continuance. (Tr. p. 23).

The Court made a finding that White was notified that he would be tried in his absent should he fail to appear for trial when summon, and that white was sent notice of the actual trial date as a result of the subpoena that was mail to him at the address White identified on his Surety Bond Order. (Tr. p. 23).

White's trial proceeded in his absence. (Tr. p. 23). At the conclusion of the evidence and closing arguments, the Court charged the jury on trafficking in heroin, twenty-eight grams or more, as follows:

Now the Defendant is charged with trafficking in heroin. The State must prove, beyond a reasonable doubt, that the Defendant knowingly sold, manufacture, cultivate, delivered, purchased, brought into this State, provided financial assistance or otherwise aided, abetted, **attempted or conspired to sell, manufacture, cultivate, deliver, purchase or bring into this State,** and was knowingly in actual or constructive possession, knowingly attempted to become in actual or constructive possession of heroin.

In order to find the Defendant guilty the State must also prove, beyond a reasonable doubt, that the amount of the heroin, or any mixture containing

heroin, was twenty-eight grams or more. Under trafficking in heroin, twenty-eight grams or more, **the presence of only imitation heroin at the transaction is irrelevant if the State proves, beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight grams of real heroin.**

(Tr. p. 163).

The jury returned a verdict of guilty at the conclusion of deliberation. (Tr. p. 172).

ISSUES PRESENTED

- I. **A NEW TRIAL SHOULD BE GRANTED ON THE GROUND THAT THE JURY CHARGE FOR TRAFFICKING IN HEROIN, TWENTY-EIGHT GRAMS OR MORE, WAS ERRONEOUS AND HAD THE POTENTIAL TO CONFUSE THE JURY ON THE UNDERLYING FACTUAL BASES OF THE STATES CASE.**
- II. **A NEW TRIAL SHOULD BE GRANTED ON THE GROUND THAT DEFENDANT WAS DENIED THE RIGHT TO CONFRONT HIS ACCUSORS UNDER THE CONFRONTATION CLAUSE OF THE CONSTITUTIONS OF THE UNITED STATES**
- III. **A NEW TRIAL SHOULD BE GRANTED ON THE GROUND THAT DEFENDANT WAS TRIED IN ABSENTIA IN VIOLATION OF HIS RIGHT TO BE PRESENT UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

STANDARD OF REVIEW

"South Carolina's thirteenth juror doctrine is well established as the standard for granting a new trial in state law actions." Norton v. Norfolk Southern Ry. Co., 350 S.C. 473, 477, 567 S.E.2d 851 (S.C. 2002). The thirteenth juror doctrine is codified in Section 17-23-110 of South Carolina law. SC Code Ann. §17-23-110 (1976). Section 17-23-110 states:

All circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usual been granted in the courts of law of the United States.

The circuit court authority to grant new trials under the thirteenth juror doctrine is broad. "Traditionally, in South Carolina, circuit court judges have authority to grant a new trial upon the judge's finding that justice has not prevailed." Youmans v. Dept. of Transp., 670 S.E.2d 1, 5, 380 S.C. 263 (S.C. App. 2008). "Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion." (Id.), See also, State v. Miller, Opinion 4965 (S.C. App. 2012) (The trial court's grant of defendant's motion for a new trial was affirmed where a juror intentionally fail to disclose information requested during voir dire); State v. Guillebeaux, 262 S.C. 270, 607 S.E.2d 99 (S.C. App. 2004) (The appellate found abused of discretion where the trial court fail to grant defendant's motion for a new trial where a juror failed to disclose a social relationship with the State's chief witness); State v. Smith, 679 S.E.2d 176, 383 S.C. 159 (S.C. 2009) (The South Carolina Supreme Court upheld the trial courts grant of the defendant's motion for new trial where the testimony of the victim was corrupted by coaching from the victim's aunt).

"...[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality." Youmans v. Dept. of Transp., 670 S.E.2d at 5; citing, Worrell v. South Carolina Power Co., 186 S.C. 306, 195 S.E. 638 (1938). "The judge as the thirteenth juror 'hangs' the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the results of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be

served by requiring the trial judge to make factual findings.” Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265 (S.C. 1990).

“‘[T]he grant or refusal to grant a new trial is within the discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of discretion.’ (Citation omitted). ‘An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.’” State v. Smith, 642 S.E.2d at 630 (S.C. App. 2007) (Citations omitted).

ARGUMENT

I. A NEW TRIAL SHOULD BE GRANTED ON THE GROUND THAT THE JURY CHARGE FOR TRAFFICKING IN HEROIN, TWENTY-EIGHT GRAMS OR MORE, WAS ERRONEOUS AND HAD THE POTENTIAL TO CONFUSE THE JURY ON THE UNDERLYING FACTUAL BASES OF THE STATES CASE.

In State v. McCluney, the South Carolina Supreme Court reversed the Court of Appeals ruling that the circuit court error in failing to grant McCluney’s motion for directed verdict at trial, where he was charged with trafficking in cocaine as result of purchasing 400 grams of imitation cocaine from a law enforcement agent posing as a drug supplier during a reverse-buy operation. 361 S.C. 607, 608, 606 S.E.2d 485 (S.C. 2004). The Court of Appeals held that McCluney could not be charge with trafficking in cocaine because imitations drugs could not be prosecuted under the preview of the trafficking statute. (Id. at 609). In its opinion reversing the Court of Appeals, the Supreme Court reasoned:

Trafficking is not limited to the substantive offenses of purchasing, possessing, and selling large amounts of controlled substances. Conspiring and attempting to do those acts also constitute trafficking. The part of the trafficking statute pertinent to this case is as follows: “Any person who knowingly... attempts[] or conspires to ... purchase ... ten grams or more of cocaine ... is guilty of a felony which is known as `trafficking in cocaine.

The Court of Appeals errantly focused on the facts that only imitation cocaine was present at the transaction and that purchasing imitation cocaine does not constitute trafficking. In doing so, the court relied heavily on *Murdock v. State of South Carolina*, 311 S.C. 16, 426 S.E.2d 740 (1992), which is irrelevant to Respondent's case.

The court should have focused on the State's evidence that Respondent conspired and attempted to purchase real cocaine. Section 44-53-370(e) (2) plainly states that conspiring and attempting to purchase ten grams or more of real cocaine constitute trafficking. The presence of only imitation cocaine [361 S.C. 610] at the transaction is irrelevant to Respondent's intent and thus irrelevant to the State's conspiracy and attempt arguments. Respondent was not entitled to a directed verdict.

(Id. at 609-610).

Here the Court correctly recognized that the only section of the trafficking in heroin statute applicable to White's conduct was the language that makes it is illegal to conspire or attempt to sell, manufacture, cultivate, deliver, purchase or bring heroin into this State, because as in State v. McCluney the reverse-buy by White involved imitation drugs. As a result the Court instructed the jury that:

Under trafficking in heroin, twenty-eight grams or more, the presence of only imitation heroin at the transaction is irrelevant if the State proves, beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight grams or real heroin.

(Tr. p. 163). However, this charge was confusing and misleading because it erroneously instructed the jury that it could find guilty through either "conspiracy or attempt" to purchase. (Id.). No evidence was presented to support a charge of conspiracy.

"A conspiracy is defined as the "combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means." S.C. Code Ann. § 16-17-410 (2003), See also, State v. Fleming, 243 S.C. 265, 133 S.E.2d 800 (S.C. 1963). However, a conspiracy can never be achieved between a defendant and

an informant. "This would contradict the rule that one cannot enter into a conspiracy with another who only feigns acquiescence in a crime; such as an informer or undercover agent." State v. Holmes, 277 S.C. 232, 233, 285 S.E.2d 353 (S.C. 1981) (citation omitted); See also, State v. Crocker, 621 S.E.2d 890, 366 S.C. 394 (SC, 2005); State v. Adams, 462 S.E.2d 308, 319 S.C. 509 (S.C. App., 1995); United states v. Chase, 372 F.2d 453 (4th Cir. 1967). However ... "participation of an undercover agent '[I]n conjunction with more than one person to violate a law...will not preclude a conviction of the others for a conspiracy among themselves.'" State v. Holmes, 243 S.C. at 234; Citing, State v. Wilkins, 34 N.C. App. 392, 238 S.E.2d 659, 665 (1977).

In the case at hand, the reverse-buy only involved White and the State CI and Federal CI. (Tr. p. 98, 11, 113). White was the only non-law enforcement agent involve in the Drug Sale. As a result, his conduct coupled with that of the State CI or the Federal CI could not have formed a conspiracy.

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." Cole v. Raut, 663 S.E.2d 30, 33, 378 S.C. 398 (S.C., 2008). "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jurys [sic] confusion affects the outcome of the trial. (Id.).

Here, there are only three possible scenarios that could explain the juries verdict:
(1) all twelve jurors could have individually concluded beyond a reasonable doubt that White "conspired" to purchased twenty-eight grams or more of heroin with no reliance

on the attempt language in the jury instructions; (2) all twelve jurors could have individually concluded beyond a reasonable doubt that White "attempted" to purchase twenty-eight grams or more of heroin, with no reliance on the conspiracy language in the jury instructions; or (3) all twelve jurors could have individually conclude beyond a reasonable doubt White was guilty, with some having been persuaded by the conspiracy language of the jury instructions and some having been persuaded by the attempt language in the jury instructions. If scenarios one or three occurred, the jury verdict was based upon an erroneous conclusion of law. Therefore, there is at least two-thirds (2/3) or sixty-six percent (66%) chance that the verdict was based upon an error of law.

II. A NEW TRIAL SHOULD BE GRANTED ON THE GROUND THAT DEFENDANT WAS DENIED THE RIGHT TO CONFRONT HIS ACCUSORS UNDER THE CONFRONTATION CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

In State v. Davis our State Supreme Court thoroughly explain the jurisprudence of the Confrontation Clause to the Sixth Amendment of the Constitution of the United States. The Court explained as follows:

Among other protections, the Sixth Amendment assures: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. The Sixth Amendment was incorporated and made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L.Ed.2d 923 (1965); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. California v. Green, 399 U.S. 149, 90 S. Ct. 1930, 26 L.Ed.2d 489 (1970); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct.App.2004). The primary interest secured by the Confrontation Clause is the right to cross-examination. Gillian at 450, 602 S.E.2d at 71 (citing State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Starnes v. State, 307 S.C. 247, 414 S.E.2d 582 (1991)); see also State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) (observing that specifically included in defendant's

Sixth Amendment right to confront a witness is the right to meaningfully cross-examine an adverse witness).

Certain hearsay statements traditionally have been admissible against a defendant even though the declarant was unavailable at trial and even though the defendant did not have a prior opportunity to cross-examine the declarant. Under *Ohio v. Roberts*, 448 U.S. 56, 100 S. Ct. 2531, 65 L.Ed.2d 597 (1980), abrogated by *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), hearsay statements were admissible if they bore "adequate indicia of reliability" — a test that could be met by showing the evidence (1) fell within a firmly rooted hearsay exception, or (2) bore particularized guarantees of trustworthiness. *Roberts* at 66, 100 S. Ct. 2531; *State v. Sanders*, 356 S.C. 214, 588 S.E.2d 142 (Ct.App.2003). However, in *Crawford*, the United States Supreme Court broke away from *Roberts* and radically changed the Confrontation Clause landscape.

* * *

In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), Michael Crawford was convicted of assault for stabbing Kenneth Lee, who allegedly tried to rape Crawford's wife, Sylvia. At trial, the State played for the jury Sylvia's tape-recorded statement to the police describing the stabbing. Sylvia did not testify at trial due to Washington's marital privilege, which "generally bars a spouse from testifying without the other spouse's consent." *Id.* at 40, 124 S. Ct. at 1357 (citing Wash. Rev. Code § 5.60.060(1) (1994)). This privilege, however, does not extend to a spouse's out-of-court statements admissible under a hearsay exception. Whether Crawford saw a weapon in Lee's hands was a critical fact for his claim of self-defense. Because Sylvia was unable to testify at trial, Crawford claimed the admission of Sylvia's statement was a violation of his federal constitutional right under the Sixth Amendment to be confronted with the witnesses against him.

Following *Roberts*, the trial court allowed Sylvia's statement on the ground that it bore guarantees of trustworthiness. The Washington Court of Appeals reversed. The Washington Supreme Court then reinstated the conviction, and the Supreme Court of the United States granted certiorari.

Justice Scalia, writing for the seven-Justice majority, announced a fundamental change in Confrontation Clause jurisprudence:

Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of "reliability." ... To be sure, the Clause's ultimate goal is to ensure reliability of evidence,

but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. Id. at 61, 124 S. Ct. at 1370 (emphasis added). Crucial to the Court's decision was its emphasis on testimonial hearsay. "[I]f the Sixth Amendment is not solely concerned with testimonial hearsay, that is its primary object, and interrogations by law enforcement officers fall squarely within that class." Id. at 53, 124 S. Ct. at 1365 (footnote omitted). Thus, [w]here nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law — as does Roberts; and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.

State v. Davis, 613 S.E2d 760, 764-766, 364 S.C. 364 (S.C. 2005).

Here, the Federal CI was allowed to testify at trial in White's case through the introduction and publication to the jury the video recorded meeting between White, the State CI, and Federal CI on August 16, 2011 at Broadway at the Beach. Furthermore, the State CI testified before the jury about conversations he had with the Federal CI:

Q. You and he (Federal CI) spent a good deal of time talking with one another; is that correct?

(Tr. p. 95-96).

A. From the station to Broadway.

Q. Right. The part that was skipped was you and him talking?

A. Yes.

Q. And he didn't tell you what caused him to be an informant for the government?

A. He was working for the government.

* * *

Q. He was working for the Government; do you know why?

A. No.

Q. He was not an employee of the government?

(Tr. p. 96).

A. What he told me was, he was working for the money.

Q. For the money?

A. That the government pays him.

* * *

Q. At the point in time that you met him he knew that it was four ounces for Ten Thousand Dollars; isn't that true?

A. That's what he told me.

Q. Right. The guy who the government paid told you that it was four ounces of heroin for Ten Thousand Dollars?

A. That's what he told me.

(Tr. p. 97).

* * *

INTERPRETER: He wanted only four ounces to begin.

Q. But it was the government-paid informant who told you that?

INTERPRETER: He gave the price because he didn't want to give me the four ounces.

Q. He was - - the government informant, the paid government informant was the one who had talked to Mr. White initially, is that true?

A. Yes.

Q. And he only brought you in to do the deal?

A. Yes, basically.

Q. And before any of this was done he had already gone and got his money and left town?

A. He is not from here. Somebody had to be there, so that's why they put me there.

(Tr. p. 98).

Furthermore, Agent Miller testified before the jury about conversation he had with persons in violation of White's right of confrontation under the Sixth Amendment:

Q. The very first time that you knew anything about this case it was a Ten Thousand Dollar Four-ounce deal; isn't that true?

A. The information that I had received was that there was a subject, Jawan White, looking for - - to purchase a large quantity of heroin. I was advised that - - it was explained - - I don't believe anybody knew what that large quantity was, but it's my understanding that the third party that introduced Adrian (State CI) to the - - to Jawan White, has stated that he does not deal less than four ounces of heroin. We had information that a subject was looking for a large quantity of heroin, which would have been Jawan White, and the informant was instructed to just advise that he does not deal in less than four ounces of heroin.

(Tr. p. 129-130).

The hearsay testimony given by both the State CI and Agent Miller were in violation of White's rights under the Confrontation Clause, because the declarants of the testimony were not available for cross examination by White, either before at the time of trial. Furthermore, the testimony was not permissible under an exception to the hearsay rule or otherwise admissible: See, Rules 801-806, SCRE.

III. A NEW TRIAL SHOULD BE GRANTED ON THE GROUND THAT DEFENDANT WAS TRIED IN ABSENTIA IN VIOLATION OF HIS RIGHT TO BE PRESENT UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Rule 16 of the South Carolina Rules of Criminal Procedure state that:

Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that **such person has received notice of his right to be present** and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

R. 16, SCRCrimP.

"A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence." State v. Ravenell, 387 S.C. 449, 692 SE2d 554 (S.C. App. 2010) (Citation omitted). "The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend." (Id.).

"The cardinal rule of statutory construction is that the intent of the legislature must prevail if it reasonably can be discerned from the words used in the statute. (Citations omitted). These words must be construed in context and in light of the intended purpose of the statute in a manner 'which harmonizes with its subject matter and accords with its general purpose.' (Citations omitted). The meaning of certain words can

be ascertained by reference to associated words in the statute. (Citations omitted). However, if the language is plain and unambiguous, we must enforce the plain and clear meaning of the words used. (Citations omitted). But if applying the plain language would lead to an absurd result, we will interpret the words in such a way as to escape the absurdity. (Citations omitted). A merely conjectural absurdity is not enough; the result must be 'so patently absurd that it is clear that the [General Assembly] could not have intended such a result.'" Cabiness v. Town of James Island, 393 S.C. 176, 712 S.E.2d 416 (S.C. 2011).

Here, no testimony was ever given regarding whether White received notice of his trial date. (See, Tr. p. 17-23). Ayers testify that she mailed a valid subpoena to the address identified in White's certified Bail Bond Order, however no question were ask whether Ayers received any confirmation that the subpoena was "received", or even if the mailed subpoena was not returned to sender. (Tr. p. 19-21).

Furthermore, the subpoena purported sent to White was defective in its service. Rule 13(b) of the South Carolina Rules of Criminal Procedure states that:

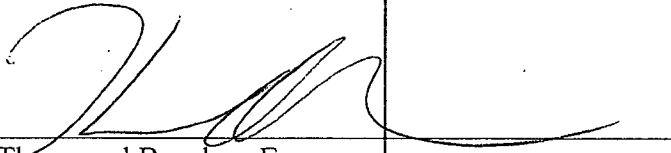
A subpoena may be served by the sheriff of any county in which the witness may be found, by his deputy or by any other person who is not a party and is not less than eighteen years of age. Service of a subpoena upon an individual may be made by delivering a copy to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service. Service may be made on any day of the week.

Rule 13, SCRCrimP.

CONCLUSION

Wherefore, based on the forgoing law and arguments, the Defendant prays that this Court will grant his motion for a new trial.

Respectfully submitted,



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April 28, 2016

STATE OF SOUTH CAROLINA)

COURT OF HORRY)

STATE)

VS.)

JAWAN RAYEL WHITE)
_____)

COURT OF GENERAL SESSIONS

Case No.: 2012-GS-26-01319

Motion to Reconsider Denial of
Defendant's Motion for a New Trial

FILED
HORRY COUNTY
2016 DEC -9 PM 2:00
CLERK OF COURT

I. STATEMENT OF THE CASE

On November, 21, 2016, the Court issued its Order denying Defendant's Motion for a New Trial (hereinafter "Order"). On November 29, 2016, the Horry County Clerk of Court served a copy of the filed-stamped Order on counsel for Defendant by email. The Defendant now timely moves for an order reconsidering its decision denying Defendant's motion for a new trial, within (10) of receipt of written notice of entry of the Order denying Defendant's motion for a new trial.

II. STATEMENT OF PERTINENT FACTS

The Court declined Defendant's argument that the jury charge constituted reversible error where the Court instructed the jury that, in a reverse imitation drug buy, "...the presence of only imitation heroin at the transaction is irrelevant if the State proves, beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight grams of real heroin." Although the Court agreed with the Defendant that the charge of conspiracy was legally impermissible because the buy involved Defendant and at least one confidential informant; however, it reasoned that the verdict is still valid because, "[t]he heroin trafficking statute makes it illegal to conspire

or attempt ..." to buy or sell heroin. The Court further reasoned in its Order deny Defendant's motion for a new trial that:

In the present case the Defendant attempted to purchase four (4) ounces of heroin. The Court charged the jury, to paraphrase, the present of imitation heroin is irrelevant if the state proves the Defendant conspired or attempted to purchase more than twenty-eight grams (28) of real heroin. It is clear the Defendant attempted to purchase well over twenty-eight (28) grams of heroin.... The fact that there was not a conspiracy is moot.

That is to say, the Court concluded that because the jury was charged with two theories of trafficking, conspiracy to traffic and attempt to traffic, under the heroin trafficking statute, the legally impermissible instruction on the jury on the conspiracy ground would not upset the general verdict where there was sufficient evidence to support a conviction on the remaining attempt to traffic ground.

III. LAW AND ARGUMENT

- A. Assuming there was sufficient evidence to support a finding that Defendant attempted to purchase over twenty-eight grams of heroin, the general verdict must still be set aside because the Stromberg rule requires that a general verdict be set aside where the jury was instructed on two or more disjunctive grounds of guilt and at least one of the instructed grounds was unconstitutional or legally impermissible.

In Stromberg v. People of State of California, the defendant was charged with violating a state statute which made it illegal to display a red flag, badge or banner in a public or private place for any of the following purposes: (1) displayed, as a sign, symbol, or emblem of opposition to organized government; or (2) was an invitation or stimulus to anarchistic action; or (3) was in aid to propaganda that is of a seditious character. 283 U.S. 359, 361, 51 S.Ct. 532, (1931) The trial court instructed the jury as follows:

[I]t is only necessary for the prosecution to prove to you beyond a reasonable doubt that said flag was displayed for only one or more of the three purposes alleged in said information, and it is not necessary that the

evidence show, beyond a reasonable doubt, that said red flag was displayed for all three purposes charged in said information. Proof, beyond a reasonable doubt of any one or more of the three purposes alleged in said information is sufficient to justify a verdict of guilty under count one of said information.'

Stromberg, 283 U.S. at 364. The defendant's challenge to the constitutionality of the statute was denied by the trial court, and the jury returned a general verdict of guilty.

On appeal, the California appellate court concluded that the first of the three unlawful purposes for displaying a red flag was unconstitutionally overbroad because it could prohibit constitutional protected speech. However, the appellate court concluded that the remaining two unlawful purposes for displaying a red flag were constitutional. The appellate court affirm the defendant's conviction on the ground there was sufficient evidence presented at trial to support the defendant's conviction on any one of the two remaining constitutionally, prohibited purposes for displaying a red flag. The California Supreme Court declined to hear the case on petition.

On appeal to the United States Supreme Court, the court reversed the judgment affirming the defendant's conviction and remanded the case for further consideration.

The Stromberg Court reasoned that:

The verdict against the appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in the statute, and the jury was instructed that their verdict might be given with respect to any one of them, independently considered, it is impossible to say under which clause of the statute the conviction was obtained. If any one of these clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. It may be added that this is far from being a merely academic proposition, as it appears, upon an examination of the original record filed with this Court, that the State's attorney upon the trial emphatically urged upon the jury that they could convict the appellant under the first clause alone, without regard to the other clauses. It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were

found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld.

* * *

The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside.

Stromberg, 283 U.S. at 367-370. (Emphasis added) See also, Zant v. Stephen, 462 U.S. 862, 881, 103 S.Ct. 2733 (1982) ("**One rule derived from the Stromberg case requires that a general verdict must be set aside if the jury was instructed that it could rely on any of two or more independent grounds, and one of those grounds is insufficient, because the verdict may have rested exclusively on the insufficient ground.** The cases in which this rule has been applied all involved general verdicts based on a record that left the reviewing court uncertain as to the actual ground on which the jury's decision rested."); Street v. New York, 394 U.S. 576, 585-588, 89 S.Ct. 1354 (1969) (A general verdict of guilty must be set aside if it can not be satisfied from the record that the verdict was not based upon the unconstitutional theory.); Williams v. North Carolina, 317 U.S. 287, 292, 63 S.Ct. 207 (1942) ("It therefore follows here as in Stromberg v. California, 283 U.S. 359, 368, 51 S.Ct. 532, 535, 75 L.Ed. 1117, 73 A.L.R. 1484, that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained."); Yates v. United States, 354 U.S. 298, 312, 77 S.Ct. 1064 (1957) ("Further, in order to convict, the jury was required, as the court charged, to find an overt act which was 'knowingly done in furtherance of an object or purpose of the conspiracy charged in the indictment,' and we have no way of knowing whether the overt act found by the jury was one which it believed to be in furtherance of the 'advocacy' rather than the 'organizing' objective of the alleged conspiracy.... In these

circumstances we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected.”).

Yates is also important because it was the first time that the court extended the Stromberg rule beyond unconstitutionally charged grounds. In Yates, the Stromberg rule was applied where one of the charged theories was not unconstitutional, but merely legal impermissible.

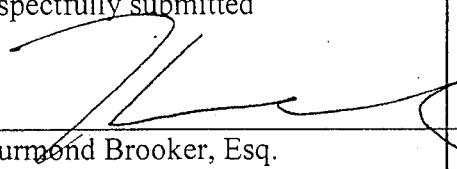
The Stromberg rule is applicable to the case at hand: a general verdict must be set aside where (1) the jury was instructed that it could find guilty on any of two or more disjunctive grounds; (2) one of the grounds charged to the jury was legally impermissible or unconstitutional; and (3) it can not be satisfied from the record that the verdict was not based upon the legally impermissible or unconstitutional ground. Here, the jury was instructed that they could find Defendant guilty if they found beyond a reasonable doubt that the Defendant conspired to traffic in heroin or attempted to traffic in heroin of twenty-eight grams or more. A general verdict was issued, finding Defendant guilty, with no indication as to whether the verdict was based upon the admitted, legally impermissible conspiracy theory or the attempt theory.

All three elements of the Stromberg rule are present in this case. Therefore, the verdict must be set aside.

IV. CONCLUSION

For the forgoing reasons, Defendant respectfully requests the Court reconsider its Order denying Defendants motion for a new trial, and set aside the general verdict of guilty in this action.

Respectfully submitted


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December 9, 2016

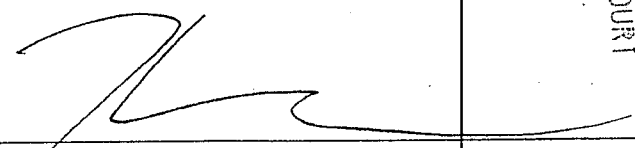
CERTIFICATE OF SERVICE

The below signed hereby by certifies that a true copy of Defendant's Motion to Reconsider Denial of Defendant's Motion for a New Trial, dated December 9, 2016 was serve by hand delivery on the below-addressed persons:

Gray Irvin, Assistant Solicitor
15th Circuit Solicitor's Office
1301 2nd Avenue
Conway, SC 29526

Florence, SC

December 9, 2016


Thurmond Brooker, Esq.

FILED
HORRY COUNTY
2016 DEC -9 PM 2:00
MELANIE J. JOHNSON
CLERK OF COURT

2500703

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (2012-GS-26-01319)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 JAWAN RAYEL WHITE) June 13, 14, 2013
8) Conway, S. C.
9)
10 B E F O R E:
11 HONORABLE LARRY B. HYMAN, Judge; AND A JURY.
12 A P P E A R A N C E S:
13 MARTIN SPRATLIN, ESQ.
14 ASSISTANT SOLICITOR FOR HORRY COUNTY
15 ATTORNEY FOR STATE
16 JOHN HILLIARD, ESQ.
17 ATTORNEY FOR DEFENDANT
18
19
20
21 DIXIE COX EUBANK
22 CIRCUIT COURT REPORTER
23 FIFTEENTH JUDICIAL CIRCUIT
24
25

1	<u>I N D E X</u>				
2	JURY VENIRE OUT/MOTIONS				5
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
4	HEAHER DAWN LEWIS				
5	MR. SPRATLIN	17			
6	MR. HILLIARD		(none)		
7	ANNIE CHRISTINA AYERS				
8	MR. SPRATLIN	19			
9	MR. HILLIARD		(none)		
10	ROY HEMINGWAY				
11	MR. SPRATLIN	22			
12	MR. HILLIARD		(none)		
13	RANDY SCOTT MILLER, JR.				
14	MR. SPRATLIN	24		33	
15	MR. HILLIARD		28		
16	COURT'S RULING				35
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21	DEFENDANT'S OPENING STATEMENT (HILLIARD)				67
22	JURY OUT/BREAK/JURY IN				70
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1	<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
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4	ADRIAN CHAVEZ			
5	MR. SPRATLIN	71		104
6	MR. HILLIARD		91	
7	RANDY SCOTT MILLER, JR.			
8	MR. SPRATLIN	105		133
9	MR. HILLIARD		127	
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11	JUNE 14, 2013			
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13	JURY IN/COURT TO JURY			
14	STATE'S SUMMATION (SPRATLIN)			140
15	DEFENDANT'S SUMMATION (HILLIARD)			150
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17	JURY OUT AT 10:10 AM/ON RECORD			165
18	JURY IN AT 10:50 AM/COURT			168
19	JURY OUT/ON RECORD			
20	JURY IN/COURT			
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22	JURY IN AT 12:05 PM			171
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25	SENTENCING			179

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I N D E X C O N ' D .

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Affidavit of Donald Gilliard	16	
C-2	Acknowledgement of Receipt	138	
C-3	State's Requests to Charge #1	140	
C-4	Charge by the Court	166	
C-5	Note from the jury	168	
C-6	Defendant's Prior Record	180	
S-1	Surety Bond	17	
S-2	Subpoena	21	
S-3	DVD		79
S-4	DVD		89
S-5 (A)	Paper bag (previously containing imitation substance) - (NOT TO GO TO THE JURY)	122/167	
S-5 (B)	Imitation Heroin	122/167	
S-6	Photo		120
S-7	Photo		120
S-8	Photo		120

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1 (THE FOLLOWING TAKES PLACE AFTER JURY QUALIFICATION AND
2 OUTSIDE THE PRESENCE OF THE JURY VENIRE.)

3 (THE DEFENDANT IS NOT PRESENT DURING THIS TRIAL.)

4 COURT: Call the case.

5 MR. SPRATLIN: Your Honor, the State would first call -
6 - or next call the State of South Carolina, County of Horry
7 versus Jawan Rayel White, charged in indictment (2012-GS-26-
8 01319), with trafficking in heroin, more than twenty-eight
9 grams.

10 The State is present, Your Honor, and is ready to
11 proceed to trial.

12 COURT: All right. Let's hear the motions.

13 MR. HILLIARD: Judge, our first motion is a motion to
14 dismiss the charge based on the fact that the State has
15 deported an essential witness to the case, making the witness
16 unavailable for us to have to testify.

17 COURT: How long has the trial of this case been
18 pending?

19 MR. SPRATLIN: Your Honor, the arrest was made in
20 August of 2011. Mr. Hilliard has just joined the case, I
21 believe earlier this year.

22 COURT: Haven't there been several continuances granted
23 because of the Defendant's absence, and the Defendant
24 retaining new lawyers?

25 MR. SPRATLIN: Your Honor, Mr. Hilliard got on this

1 case -- I have a Rule 5 request -- or sent to him on September
2 -- actually that was the one that was sent to ---

3 COURT: Show me some authority for your position, Mr.
4 Hilliard.

5 MR. HILLIARD: Judge, I do not have a written case to
6 that effect. The case that I am familiar with is ---

7 COURT: Did you subpoena the witness?

8 MR. HILLIARD: I couldn't subpoena him, but the first
9 thing was that they weren't going to tell me who he was, and
10 so we wrestled with that for a bit, and then once they decided
11 to tell me who he was the next thing that happened -- he's an
12 informant. He's a Federal --- FBI informant -- so they took
13 the position that he wasn't really a witness, and they weren't
14 going to tell me who he was, so we wrestled about that for a
15 while. They told me who he was, but when they told me who he
16 was they also told me that he was deported, at the same time,
17 so the same time I find out who he is ---

18 COURT: What does he know about it? What do you
19 believe he knows about your case?

20 MR. HILLIARD: Well, there's -- there are three
21 recorded telephone conversations with the FBI informant, who
22 has been deported, and my client. The actual set-up was set
23 up by that individual. He's the one who -- who ---

24 COURT: What purpose would you use him in a trial?

25 MR. HILLIARD: He would -- I would use him in the trial

1 to -- our defense is the defense of entrapment, and entrapment
2 defense is essentially that it was his idea to put together
3 this four-ounce imitation heroin deal, and that he contacted
4 my client ---

5 COURT: Let me ask you this, Mr. Spratlin.

6 MR. SPRATLIN: Yes sir, Your Honor.

7 COURT: I know we try to protect the identify of
8 informants, but did you know he was going to be deported?

9 MR. SPRATLIN: Your Honor, he was -- the situation in
10 this case is that the DEA contacted our Fifteenth Circuit Drug
11 Enforcement Unit, and said that they had received information
12 that Jawan White, the Defendant in this case, was interested
13 in purchasing a large amount of heroin. They agreed to use --
14 allow one of the Federal CIs, working in with DEA, to
15 introduce Jawan White to the local CI, in this case, Mr.
16 Adrian Chavez, whose information and name was turned over in a
17 timely manner to the Defendant, I mean, to the Defendant --
18 defense attorney.

19 COURT: Who had the conversation with the Defendant?

20 MR. SPRATLIN: There was a -- there was some
21 conversation between the Federal CI and Jawan White prior to
22 any sort of transaction. There were recorded, entered into
23 evidence at Horry County PD. I provided those to Mr. Hilliard
24 in discovery in an over-abundance of caution.

25 COURT: Do you have the tape recordings of all those

1 conversations?

2 MR. HILLIARD: We have the tape recordings of three
3 conversations, but they are not in the position to tell us
4 whether those are the only conversations or not.

5 COURT: Well certainly they can.

6 Are those the only conversations?

7 MR. SPRATLIN: Those are the only conversations the
8 State is aware of, Your Honor. We don't -- the DEA was
9 working their own investigation. They do not have an interest
10 in pursuing the case against Mr. White. I believe that's why
11 they passed it along to the local agency, that being the
12 Fifteenth Circuit Drug Enforcement Unit.

13 COURT: And these, as far as the State of South
14 Carolina knows, are the only conversations?

15 MR. SPRATLIN: As far as the State knows, Your Honor.
16 And Your Honor, we did turn ---

17 COURT: He says that's all there is. Do you have any
18 information that there are more?

19 MR. HILLIARD: Well, the way the ---

20 COURT: Or are you saying there might possibly be more?

21 MR. HILLIARD: Well, if the weight of the conversations
22 are -- and he's got them here, and we've listened to them, but
23 the way the conversations are it doesn't appear to me, it
24 doesn't sound to me like it's the first time that these people
25 have talked. It's not, hey, how do you know me, hey, how do

1 you know -- you know, it's -- they are carrying on an ongoing
2 conversation that the way that it sounds to me, in listening
3 to the tapes, it sounds like they are carrying on an ongoing
4 conversation about something that they've talked about before,
5 and that is some drug transaction.

6 COURT: I believe, Mr. Hilliard, that your client has
7 waived his right to be present; is that correct?

8 MR. HILLIARD: Well, I've -- he's not here, and I can't

9 ---

10 COURT: How would you develop this -- this defense of
11 entrapment?

12 MR. HILLIARD: I can develop the defense of entrapment
13 through the use of the State's witnesses, and conversations
14 that took place.

15 COURT: What else do you have?

16 MR. HILLIARD: The one that's not here, the witness
17 that is the deported person. It's my belief, and based on
18 what I know about the thing that -- the Federal ---

19 COURT: When did you learn that he was deported?

20 MR. HILLIARD: The same day that I found out who he
21 was. That was ---

22 MR. SPRATLIN: Your Honor, it would have been -- it was
23 sent in discovery to Mr. Hilliard about a month after he got
24 involved in the case, that being sent on March 19th, 2013.

25 COURT: Why would you wait to bring this case until he

1 had been deported?

2 MR. SPRATLIN: Your Honor, the State did not wait to
3 bring this case until he had been deported. The State was
4 attempting to offer the Defendant the benefit of cooperating
5 with law enforcement. He had expressed interest numerous
6 times through his attorney at the time, Mr. James Galmore, who
7 was the Public Defender assigned the case, that he wished to
8 cooperate with law enforcement. For months we tried to get
9 the Defendant to cooperate and maybe help himself out of this
10 charge. He continued to not get in touch with Agent Randy
11 Miller. He -- we gave him his phone number numerous times.
12 Finally the State was in a position where we had to try the
13 case.

14 Mr. Galmore was originally the attorney on the case. We
15 noticed the trial. Mr. Galmore had never filed any
16 supplemental discovery motions. Mr. Hilliard comes on. Mr.
17 Hilliard does file the appropriate supplemental discovery
18 motions. We get in touch with the -- or Agent Randy Miller
19 gets in touch with the DEA agent who had originally mentioned
20 to him about Jawan White possibly looking for heroin, and gets
21 all this information from that DEA agent, and I immediately
22 turned it over to Mr. Hilliard.

23 MR. HILLIARD: I don't know when he was actually
24 deported. I'm looking ---

25 When -- when was he actually deported?

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1 **MR. SPRATLIN:** I don't have that information. I don't
2 even know if he has.

3 The State had no intention of ever calling this witness
4 to the stand. The State ---

5 **COURT:** Well, who knows whether he's been deported or
6 not?

7 **MR. HILLIARD:** They send me a paper that says he's been
8 deported from ---

9 **MR. SPRATLIN:** Your Honor, I believe -- from my
10 conversations I believe that -- we do believe he has been
11 deported. I don't ---

12 **COURT:** Well, the State of South Carolina certainly
13 didn't deport him; did they?

14 **MR. SPRATLIN:** We did not deport him. The Federal
15 Government -- to my knowledge he is no longer in the Country.
16 I don't know whether he was deported, voluntarily left the
17 Country; I have no idea how, but I do not have any idea where
18 he is now.

19 **MR. HILLIARD:** If you will give me just a minute to
20 find it there's a paper in my file that the Solicitor's Office
21 sent to me.

22 (MR. SPRATLIN AND MR. HILLIARD HAVE CONVERSATION OFF THE
23 RECORD.)

24 **MR. HILLIARD:** The alien departed the United States on
25 August the 16th -- August the 15th of 2012 (via Matamoros, MX

1 at 4:41 PM. Signed, Special Agent -- somebody ---

2 COURT: What's Matamoros, MX?

3 MR. HILLIARD: I guess that's a -- that's a departure
4 point in flight. But this is a US Immigration Customs
5 Enforcement Mandatory Tracking document that says that they
6 put him on an airplane August the 15th, 2011.

7 COURT: But there's nothing to indicate that he's been
8 deported. You have something that says that ---

9 MR. HILLIARD: That's what it says, Judge; it says he
10 left.

11 COURT: No, that's not what deported means. Has he
12 been deported, or has he just returned to Mexico?

13 MR. HILLIARD: Well, perhaps I jumped to that ---

14 COURT: If he was a DEA informant I very seriously
15 doubt he was deported; he was more than likely just sent back
16 home, or he returned to Mexico.

17 Mr. Spratlin, regardless of whether he was deported or
18 not what really concerns me is the fact that this name was not
19 turned over to the defense until apparently the witness had
20 departed the United States.

21 MR. SPRATLIN: Your Honor, that was not done
22 intentionally on behalf of the State; it was done when -- at
23 Mr. Hilliard's request. The State did not feel that that
24 witness was a necessary witness in this case, obviously, if we
25 are ready to go to trial without him.

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1 COURT: But he was withheld.

2 MR. SPRATLIN: He was not withheld, Your Honor; it was
3 never requested. The -- the information ---

4 COURT: Well, that makes a difference. Was it never
5 requested, or ---

6 MR. SPRATLIN: It was requested by Mr. Hilliard, and I
7 provided him with that information, I believe within a month
8 of him requesting it. I don't believe that ---

9 COURT: And he requested it after he had left; right?

10 MR. SPRATLIN: I'm sorry, Your Honor, after his --
11 after he had been assigned the case.

12 COURT: No, after the witness had left?

13 MR. SPRATLIN: Yes sir, Your Honor, after the witness
14 had left.

15 COURT: So Mr. Galmore, who was previous counsel, had
16 not made the request; is that correct?

17 MR. SPRATLIN: I am showing nowhere in my file that Mr.
18 Galmore ever made that request; he just filed standard Brady
19 motions. I think at that point we were still in plea
20 negotiations, and we hadn't gotten to the point of trial yet.

21 COURT: And you have turned over the -- the audio
22 tapes?

23 MR. SPRATLIN: Yes sir, Your Honor. There were three
24 audio tapes in discovery. Me, Mr. Hilliard, went and listened
25 to those audio tapes, along with Agent Miller, made a copy of

1 those audio tapes, and I sent it to his office.

2 COURT: Well, what did the audio tapes say?

3 MR. SPRATLIN: Your Honor, none of them a lot. It was
4 simple, short conversations about setting -- about where they
5 are going to meet, and that he is going to introduce him to
6 somebody. I believe that was it. If Mr. Hilliard has a
7 better recollection of that I would rely ---

8 COURT: What does it say, Mr. Hilliard, that leads you
9 to believe you have a valid defense of entrapment?

10 MR. HILLIARD: It's not so much what he says in the
11 recorded conversations; it's the fact that the conversations
12 are not the complete conversations, I don't think, Judge, of
13 what there is in the communication between the people.

14 COURT: And your client, if he had chosen to appear,
15 could say exactly what was said in the conversations, and that
16 witness would not be able to refute it if he was here. He
17 could say what he recalled hearing, and any other
18 conversations that he had with the -- that witness; couldn't
19 he?

20 MR. HILLIARD: Yes sir.

21 COURT: All right. I'm going to deny the motion for -
22 - for dismissal.

23 Let's go on to the next motion.

24 MR. HILLIARD: Thank you, Your Honor.

25 Judge, we have a Jackson v. Denno, I think, connected to

1 the ---

2 COURT: All right, before we do that let's -- let me
3 hear from the State as far as going forward without the
4 Defendant present.

5 MR. SPRATLIN: Yes sir, Your Honor. In order to
6 establish trial in absentia the State would first call the
7 Clerk of Court to the stand, Ms. Heather Lewis, who has just
8 stepped out of the Court for a minute.

9 COURT: She just stepped next door. I think she was
10 trying to track down the original indictment.

11 MR. HILLIARD: Judge, while we are -- while they are
12 doing that I would like to -- I have an Affidavit from one of
13 my employees that I would like to make part of the Court's
14 record in this ---

15 COURT: Okay.

16 MR. HILLIARD: ---In this case, about my attempts
17 regarding the case.

18 COURT: You attempt to locate who?

19 MR. HILLIARD: My client.

20 COURT: Okay.

21 MR. HILLIARD: And Judge, we had already talked about
22 this originally. I had attempted -- and I understand that
23 you've already ruled on this - but I had a contract with my
24 client that requires that he maintain contact with me in the
25 event that I'm going to be his lawyer, and he has violated

1 that contract. I ask to be relieved as counsel in the case,
2 and ~~Your Honor~~ has indicated that ---

3 COURT: No, I'm not going to do that.

4 MR. HILLIARD: ---That you are not going to do that, so
5 I won't belabor that point.

6 COURT: The last time your office talked with him was
7 March the 7th; is that correct?

8 MR. HILLIARD: Yes sir.

9 COURT: Let's make this a part of the record, Ms. Cox -
10 - I mean, Ms. Eubank.

11 (AFFIDAVIT OF DONALD GILLIARD MARKED COURT'S EXHIBIT
12 NUMBER 1, NOT TO GO TO THE JURY.)

13 MR. SPRATLIN: Your Honor, one thing we need to do
14 while we are waiting for the Clerk of Court is, the State
15 would ask for the Court's assistance in having a bailiff call
16 the Defendant's name three times on the courthouse steps, if
17 the Court feels that's appropriate.

18 COURT: All right, we are going to do that.
19 Mr. Hemingway, could you do it for the Court, please.
20 Give Mr. Hemingway his name.

21 MR. SPRATLIN: Your Honor, if I may, while we are
22 waiting, if I could hand up a copy of the State's witness list
23 ---

24 COURT: Okay.

25 MR. SPRATLIN: ---Potential witness list.

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1 COURT: All right, call Ms. Lewis.

2 MR. SPRATLIN: Thank you, Your Honor.

3 The State would call Ms. Heather Lewis to the stand on
4 this TIA motion.

5 HEATHER DAWN LEWIS, being first
6 duly sworn, testifies as follows:

7 DIRECT-EXAMINATION BY MR. SPRATLIN:

8 Q. Ms. Lewis, would you please state your full name for
9 the Court?

10 A. Heather Dawn Lewis.

11 Q. Please spell your last name.

12 A. L-E-W-I-S.

13 Q. Thank you. Where are you currently employed?

14 A. Horry County Clerk of Court.

15 Q. How long have you been working there?

16 A. A little over six years.

17 Q. Okay. Let me ask you, in the Horry County Clerk of
18 Court what's one of the things you do regards the bond forms?

19 A. We clock them, file them, the warrants.

20 Q. All right. Let me show you ---

21 MR. HEMINGWAY: No response.

22 (SURETY BOND MARKED STATE'S EXHIBIT NUMBER 1, FOR
23 IDENTIFICATION ONLY, NOT TO GO TO THE JURY.)

24 Q. Let me show you what's been marked, for identification
25 purposes, as State's Exhibit Number 1. Can you tell the Court

1 what that document is?

2 A. It's a Surety Bond form.

3 Q. Okay. Does it appear to be certified as a true and
4 accurate copy?

5 A. Yes.

6 Q. Been certified a true and accurate copy by your office,
7 the Clerk of Court?

8 A. Yes sir.

9 Q. All right.

10 MR. SPRATLIN: Your Honor, at this time I would tender
11 this into evidence as a certified -- as public document under
12 seal.

13 COURT: All right.

14 MR. HILLIARD: No objection, Your Honor.

15 COURT: All right. May I see the document?

16 MR. SPRATLIN: Yes sir, Your Honor.

17 The State would direct the Court to the top of page two
18 which states, in relevant portion, "I understand that if I
19 violate any provision of this Order a warrant will be issued
20 for my arrest. I understand and have been informed that I
21 have a right and obligation to be present at trial, and should
22 I fail to attend the trial the Court -- the trial will proceed
23 in my absence."

24 COURT: Where are you reading from there?

25 MR. SPRATLIN: It's at top of page two, Your Honor, the

1 acknowledgement.

2 COURT: Oh, the acknowledgement.

3 MR. SPRATLIN: Yes sir. Acknowledgement by the
4 Defendant. "It has been explained to me that if I fail to
5 appear before the Court as required a warrant will be issued
6 for my arrest."

7 Your Honor, specifically the State would direct the
8 Court to the second one of those acknowledgements, that the
9 Defendant understands that if he fails to appear at trial the
10 trial will proceed in his absence.

11 COURT: All right. And what about notice?

12 MR. SPRATLIN: Your Honor, I will call -- for notice I
13 call different witnesses.

14 COURT: All right. Very good.

15 MR. SPRATLIN: Your Honor, the State has no further
16 questions of Ms. Lewis at this time.

17 COURT: Any questions?

18 MR. HILLIARD: None, Your Honor.

19 COURT: You may step down.

20 MR. SPRATLIN: Your Honor, the State would next call
21 Ms. Annie Ayers to the stand.

22 ANNIE CHRISTINA AYERS, being first
23 duly sworn, testifies as follows:

24 DIRECT-EXAMINATION BY MR. SPRATLIN:

25 Q. Ms. Ayers, where are you currently employed?

1 A. The Horry County Solicitor's Office.

2 Q. What's your job there?

3 A. Victim Witness.

4 Q. All right. As Victim Witness what's some of your
5 duties in regards to sending notices out for trial?

6 A. For trials, we get the trial roster docket, and then I
7 send out the subpoenas for our team's cases that are listed on
8 there.

9 Q. All right. Was Jawan Rayel White one of those cases?

10 A. Yes.

11 Q. All right. Let me show you what's been marked as
12 State's Exhibit Number 2 for identification purposes at this
13 time. Do you recognize that document?

14 A. Yes.

15 Q. What is that document?

16 A. It is a Subpoena to Jawan White for trial June the
17 10th.

18 Q. What address is it sent to?

19 A. 1809 Railroad Avenue, in Georgetown, 29440.

20 Q. And how do you go about getting that to the Defendant?

21 A. Once I print them out I get them signed by the Clerk of
22 Court, and then I mail them off.

23 Q. And is that what you did in this case?

24 A. Yes.

25 Q. To your knowledge has there been any address changes,

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1 or changes of addresses filed by the Defendant, or on behalf
2 of the Defendant that you are aware of?

3 A. No sir.

4 Q. And to the best of your knowledge is that the address
5 that appears on his file?

6 A. Yes sir.

7 COURT: Where does it appear on the bond form?

8 MR. SPRATLIN: Your Honor, it appears on the second
9 page, right underneath that acknowledgement of Rights we read
10 earlier.

11 COURT: 1809 Railroad Avenue; is that correct?

12 A. Yes sir. Georgetown.

13 COURT: 29440?

14 A. Yes sir.

15 COURT: Very well. Thank you.

16 Q. And to the best of your knowledge that is, in fact, a
17 copy of -- a fair and accurate copy of the notice that you
18 sent to the Defendant?

19 A. Yes.

20 MR. SPRATLIN: Your Honor, at this time I would tender
21 that into evidence as State's Exhibit Number 2.

22 MR. HILLIARD: Without objection.

23 COURT: All right.

24 (SUBPOENA ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 2, NOT TO GO TO THE JURY.)

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1 **MR. SPRATLIN:** Your Honor, the last person the State
2 would call is Mr. Roy Hemingway, just to testify about calling
3 out the names three times.

4 **COURT:** Okay.

5 **ROY HEMINGWAY,** being first duly
6 sworn, testifies as follows:

7 **DIRECT-EXAMINATION BY MR. SPRATLIN:**

8 Q. Mr. Hemingway, where are you currently employed?

9 A. Horry County Sheriff's Office.

10 Q. What's your job duties there?

11 A. Deputy Sheriff, assigned courtroom security.

12 Q. All right. As the Deputy Sheriff courtroom security,
13 did you have a chance to call out the name of Jawan White
14 three times on the courthouse steps?

15 A. Yes, I did.

16 Q. When did you do that?

17 A. A couple of minutes ago.

18 Q. Was there any response given?

19 A. No response.

20 **MR. SPRATLIN:** Thank you, Your Honor. That's all the
21 questions the State has.

22 **MR. HILLIARD:** No questions.

23 **COURT:** You may step down.

24 All right, let's make these two exhibits that you've
25 introduced as 1 and 2 -- those are not for the jury.

1 MR. SPRATLIN: Yes sir, Your Honor.

2 COURT: What we are going to do is just have it for
3 identification, okay.

4 MR. SPRATLIN: Your Honor, the State would rest in
5 regards to trial in absentia, and at the appropriate time make
6 a motion to try the Defendant in his absence.

7 COURT: Let me hear from you, Mr. Hilliard.

8 MR. HILLIARD: Well, Judge, I'd rather we didn't, but I
9 don't know anything wrong with the procedure that he's
10 followed, and I recognize where we are, so ---

11 COURT: All right. Well, I find as a matter of fact
12 that the Defendant has received notice of his right to be
13 present at his trial, notice of his trial by mailing the same
14 to this address which he gave when he made his bond, and the
15 bond form contains a warning that he would be tried in his
16 absence if he failed to attend his trial, and he has signed an
17 acknowledgement of that warning which is found on the bond
18 here, so I believe it's proper to proceed in a TIA in that the
19 Defendant has waived his right, his Sixth Amendment Right to
20 be present.

21 MR. SPRATLIN: Thank you, Your Honor.

22 COURT: Okay.

23 MR. HILLIARD: Thank you, Your Honor.

24 MR. SPRATLIN: Your Honor, at this time should we
25 proceed with Jackson v. Denno hearing?

1 COURT: All right.

2 MR. SPRATLIN: Your Honor, the State would call Agent
3 Randy Miller to the stand.

4 RANDY SCOTT MILLER, JR., being
5 first duly sworn, testifies as follows:

6 DIRECT-EXAMINATION BY MR. SPRATLIN:

7 Q. Mr. Miller, where are you currently employed?

8 A. Myrtle Beach Police Department.

9 Q. How long have you been working there?

10 A. Eight years, about eight months.

11 Q. What's your current assignment?

12 A. Fifteenth Circuit Drug Enforcement Unit.

13 Q. How long have you been over at Fifteenth Circuit Drug
14 Enforcement Unit?

15 A. Two years, seven months.

16 Q. Okay. Let me ask you something. Back on August 20th,
17 2011, did you have a chance to come in contact with the
18 Defendant, Mr. Jawan White?

19 A. Yes.

20 Q. What was the nature of your coming in contact with him?

21 A. We had conducted a reverse operation for four ounces of
22 heroin, which on the 20th he was arrested for trafficking
23 heroin.

24 Q. Now when you say reverse buy of heroin, was any heroin
25 actually used in the reverse buy?

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1 A. No.

2 Q. Okay. And you said he was arrested?

3 A. That's correct.

4 Q. All right. When he was arrested what if any -- where
5 was he arrested at?

6 A. Coastal Grand Mall, in the City of Myrtle Beach, County
7 of Horry, around the Sears parking lot.

8 Q. All right. And when he was arrested what, if
9 anything, did you do, or tell him in regards to his rights?

10 A. Immediately after he was placed in handcuffs and
11 advised he was under arrest I read him his Miranda Rights.

12 Q. And what, specifically, did you tell him?

13 A. I typically read off of a sheet or a card, but
14 basically that he was under arrest, he had the right to remain
15 silent, anything he said could be used against him in a court
16 of law, he had the right to an attorney before any questioning
17 if he wished to have one, if he could not afford an attorney
18 one would be appointed to represent him without cost, if he
19 desired to answer any questions he had the right to stop at
20 any time.

21 Q. Now when you read him these rights did he, at any
22 point, tell you that he wished to speak with a lawyer?

23 A. No sir.

24 Q. Did he, in any way, insinuate to you that he wished to
25 speak with a lawyer?

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1 A. No sir.

2 Q. Did he, at any time, tell you that he didn't wish to
3 answer your questions?

4 A. No, he stated that he -- he would answer any questions
5 I had.

6 Q. Did he state that he wished to remain silent at all?

7 A. No.

8 Q. Did he give you any indication at all that he wished to
9 invoke any of his rights that you read to him?

10 A. No sir.

11 Q. All right. Now, Agent Miller, when you were reading
12 his rights, and before any statement was given to the
13 Defendant did you, or anyone in your presence, threaten the
14 Defendant in any manner?

15 A. No sir.

16 Q. Did you, or anyone in your presence, promise him any
17 sort of leniency in exchange for making a statement?

18 A. No.

19 Q. Based on your observations, and the way the Defendant
20 responded to you, did it appear that he understood what you
21 were saying?

22 A. Yes, he appeared to understand.

23 Q. Based on your observations did he appear to understand
24 the English language?

25 A. Yes.

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1 Q. At any point at any time during your questioning or
2 reading of his -- your right -- of his rights -- excuse me --
3 did he ask for clarification of anything?

4 A. No sir.

5 Q. In your experience as a law enforcement officer have
6 you had the opportunity to come into contact who are under the
7 influence of drugs or alcohol?

8 A. Yes.

9 Q. What are some of the signs that you look for to
10 determine if someone is under the influence?

11 A. Red, blood-shot eyes, slugged speech, unsteady on their
12 feet, overly talkative, fidgety, maybe acting slower than
13 normal, faster than normal, those sorts of things.

14 Q. Did the Defendant exhibit any of these signs to you?

15 A. No sir.

16 Q. Did you have any reason to believe that the Defendant
17 was not making an informed, voluntary waiver of his rights
18 based on ---

19 A. No sir.

20 Q. Any reason at all?

21 A. No.

22 Q. What did the Defendant say to you in regards to the
23 reason he was being arrested?

24 A. Basically I asked him, after reading him his rights,
25 why he came to the mall that day, and he had stated that he

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1 was there to purchase heroin from the informant. He didn't
2 refer to him as the informant, just he was close by, pointed
3 over in his direction. I asked him what he gave for the
4 heroin, stated money, I asked how much, Ten Thousand Dollars.
5 I said, was that the Ten Thousand Dollars that I recovered,
6 and he stated yes.

7 Q. Did he say how much heroin he was intending to buy?

8 A. Four ounces of heroin.

9 Q. Would that basically be the extent of his conversation
10 with you?

11 A. That was the extent of it.

12 MR. SPRATLIN: Thank you, Agent Miller. I have no
13 further questions. Please answer any questions Mr. Hilliard
14 may have.

15 COURT: Mr. Hilliard.

16 MR. HILLIARD: Thank you, Judge.

17 CROSS-EXAMINATION BY MR. HILLIARD:

18 Q. The -- where was he when you were asking him questions?

19 A. In my vehicle.

20 Q. So he was sitting in your car?

21 A. Yes.

22 Q. Were his hands handcuffed at that time?

23 A. He was handcuffed.

24 Q. And the imitation heron, where had -- had you moved it
25 at that point?

1 A. I secured it in my vehicle.

2 Q. Did you give him the opportunity to sign an Advisement

3 of Rights?

4 A. No sir.

5 Q. When you say that you advised him of his rights, do you

6 recollect whether you actually read those from a card, or did

7 you just do them from memory?

8 A. Yes sir, I remember I used a DEU Miranda Rights form

9 that I had inside my vehicle.

10 Q. And that form has a place for him to sign; right?

11 A. That's correct.

12 Q. But you didn't have him sign it?

13 A. No sir.

14 Q. Any reason you didn't have him sign it?

15 A. Just he was in handcuffs, and I only had a few

16 questions that I wanted to ask him. I had another agent

17 present when I -- I asked for another agent to be there, in

18 the presence, while I read him his -- or stated to him his

19 Miranda Rights. I said I only had a few questions I wanted to

20 ask him. I figured -- typically on scene -- we are still out

21 in the public. I wasn't going to un-handcuff him. If I

22 decided to sit down later and go into further questioning at

23 that point I would read him his Miranda Rights again, and

24 that's typically when I will have them sign, sign a Miranda

25 form.

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1 Q. Did you do that ever?

2 A. I believe he -- yes. That's -- it should be in the
3 case file, a signed Miranda form.

4 Q. And did he make an additional statement at that point
5 in time?

6 A. I believe at that point in time when I actually had him
7 sign the Miranda form I went into -- more in depth of any
8 contacts that he had, any associates related to drugs, nothing
9 further on this incident.

10 Q. Was -- the advisement of the Miranda Rights, was that
11 on a video tape? Was that video-taped at all?

12 A. No sir. My vehicle is not equipped with audio or
13 video.

14 Q. And who was the other person that was there with you?

15 A. Agent Jeremiah Beam.

16 Q. Is Agent Beam here with us today?

17 A. No sir.

18 MR. HILLIARD: That's all I have. Thank you.

19 COURT: Did the Defendant seem to have his faculties
20 intact when you discussed this with him?

21 A. Yes sir. Like I said, he didn't seem to be under any
22 form of -- he wasn't intoxicated at all. He spoke normal.
23 Stated that he understood his rights, stated that he wanted to
24 talk to him, that he was looking for help, which I got into
25 further after I had him sign the Miranda form. That was the

1 extent of our conversation at that time, for on-scene. Like I
2 said, he -- he was cooperative, and stated that he wanted to
3 speak with me.

4 COURT: All right. How long did the interview last?

5 A. Thirty seconds to a minute.

6 COURT: And that was the extent of it?

7 A. That was the extent of it. I just basically asked him
8 two questions of ---

9 COURT: Where were you?

10 A. In my patrol car, on-scene, at the Coastal Grand Mall.

11 COURT: Okay. And was he handcuffed?

12 A. Yes sir.

13 COURT: All right, sir.

14 MR. HILLIARD: Let me ask him if I ---

15 COURT: Either one of you.

16 BY MR. HILLIARD CONTINUED:

17 Q. You said that he said he wanted some help?

18 A. Right.

19 Q. So he was giving you a statement because he wanted some
20 help; is that correct?

21 A. He stated that he was -- he wanted to cooperate, and I
22 don't know if he said help or not, but that he wanted to
23 cooperate with me, would answer any questions in that manner.
24 I don't know if he said help.

25 COURT: Did you offer him any help, or any promises of

1 reward?

2 A. At that time I did not offer him any help as far as
3 cooperating, as like an informant or anything like that ---

4 COURT: Okay.

5 A. ---And like I said, I'm sorry for saying that. I don't
6 know if I said help, but basically wanted to cooperate with
7 us.

8 Q. If this is not a fair question just tell me, please.
9 Did you -- did you perceive from him that his willingness to
10 cooperate with you was based on the fact that he wanted some
11 help from you?

12 A. No, not at that time.

13 Q. He signed over the Ten Thousand Dollars?

14 A. No sir.

15 Q. He didn't sign over the Ten Thousand Dollars?

16 A. No sir. The informant signed over the Ten Thousand
17 Dollars.

18 Q. At that -- at that point in time the Ten Thousand
19 Dollars belonged to the informant?

20 A. The informant had con -- once I took possession of the
21 Ten Thousand Dollars, at that time, because it was given by
22 Jawan to the informant for the purchase of four ounces of
23 heroin technically it was in control of the informant because
24 it was handed to him. For that reason I had the informant
25 sign a consent form releasing the Ten Thousand Dollars to me.

1 MR. HILLIARD: Thank you, sir.

2 MR. SPRATLIN: Your Honor, real briefly on redirect.

3 REDIRECT-EXAMINATION BY MR. SPRATLIN:

4 Q. Agent Miller, you said that second statement that was
5 given at the police department with the signed Miranda form
6 that was -- that was not really regarding the case at issue
7 here; that was about some other stuff; correct?

8 A. That's correct.

9 Q. So it wasn't really relevant to the proceedings here
10 today?

11 A. No sir.

12 Q. But the first statement was the one you asked him in
13 regards to the events that we are here about today.

14 A. That's correct.

15 Q. And at that point you had read him orally his Miranda
16 Rights?

17 A. Yes sir.

18 Q. And he had stated to you that he understood those?

19 A. Yes.

20 Q. And at no point did you, or anyone in your presence,
21 offer him anything in exchange for cooperation?

22 A. No sir.

23 Q. And the informant agreed to sign over the Ten Thousand
24 Dollars?

25 A. That's correct.

1 Q. And again, that was because it had been given to him in
2 the transaction?

3 A. Yes, that's correct.

4 MR. SPRATLIN: Thank you. No further questions.

5 MR. HILLIARD: I don't have anything else.

6 COURT: All right. You may step down.

7 MR. SPRATLIN: Your Honor, the State would move to
8 amend the evidence per statement given to Agent Miller at the
9 scene of the incident. As you've heard, the Defendant was
10 advised of his rights under Miranda versus Arizona, he
11 voluntarily waived them, he was not threatened or intimidated
12 in any way, and was not promised anything in exchange for his
13 cooperation, he gave a voluntary statement, oral statement to
14 the officer. Any subsequent statements given, Your Honor, the
15 State does not intend to introduce at trial. We believe they
16 are basically extraneous to the events of the day, go into a
17 lot of depth, detail about the Defendant's drug connections,
18 so the State -- we don't feel it appropriate to present before
19 this jury on this charge, so we are not going to be moving to
20 introduce that statement, however, we would ask that if the
21 Defendant chooses to open the door for us that we be allowed
22 to go into it as well.

23 MR. HILLIARD: The only evidence that they have
24 regarding the volunteeriness of the statement and the
25 sufficiency of the Miranda Warning is the statement made by

1 the police officer, and his recollection that, if I'm
2 correct -- my recollection of what he said was, he believed
3 that he read it off the card. He didn't say he was certain he
4 read it off the card. He didn't have it signed. He had the
5 ability to have it signed. There is another witness. They
6 didn't choose to put up the other witness. We would ask you
7 to not allow the statement into evidence, Your Honor.

8 **COURT:** All right. I find that the statement was
9 made freely and voluntarily; it was made after a adequate
10 warning was given by the officer. The statement was taken
11 from him in a patrol car. I do take note of the fact that the
12 Defendant was handcuffed. Custody is one of the requirements
13 of even invoking the Miranda Warning, and I think under the
14 circumstances it was certainly reasonable for them to do that.

15 The officer testified that there were no promises of
16 leniency or help made to the Defendant. This interrogation
17 was only thirty seconds to a minute long, very, very short. I
18 don't find anything about the circumstances, taken as a whole,
19 or the conduct of the Defendant that would suggest that he was
20 not capable of making the statement at the time, or that any
21 of the surroundings -- or facts surrounding the statement were
22 such that he would be compelled to make the statement against
23 his freewill, and I believe it was made freely and
24 voluntarily.

25 **MR. SPRATLIN:** Thank you, Your Honor.

1 MR. HILLIARD: Thank you, Your Honor.

2 MR. SPRATLIN: Do you have -- are there any other
3 motions regarding the suppression or anything in that regards?

4 MR. HILLIARD: I don't have any.

5 COURT: All right. Let's bring up the jury.

6 MR. SPRATLIN: Yes, Your Honor. The State is ready to
7 proceed.

8 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
9 JURY VENIRE.)

10 COURT: We are about to begin the trial of the case of
11 Jawan Rayel White. Mr. White is charged with the offense of
12 trafficking in illegal drugs, that being heroin.

13 Now, this is an unusual case in that Mr. White, while
14 having a Constitutional Right to be present at his trial -
15 that's protected by the Sixth Amendment of the United States
16 Constitution - has chose not to be present for his trial, and
17 that is certainly something that he can do, but I want to let
18 you know from the very beginning that that is not a matter
19 that you may consider in any way, form or fashion against Mr.
20 White. It raises absolutely no inference of guilt or anything
21 else, and I would ask that if you are selected on this jury
22 that you not even discuss that fact, that is, his absence
23 during the trial while in your jury room.

24 Mr. White is represented by his attorney, Mr. John
25 Hilliard, who is seated here at the defense table, and Mr.

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1 MR. SPRATLIN: Yes sir.

2 COURT: We didn't get them sworn.

3 (AT THIS TIME THE JURY WAS SWORN.)

4 COURT: And let me just say one other thing. If at any
5 time during the trial of this case you can't see, you can't
6 hear, somebody's got their back to you and they've got an
7 exhibit turned away from you, raise your hand, let me know.
8 Everything we do is for you. We want you to hear and see
9 everything. Just raise your hand and we will correct it.
10 Okay.

11 Mr. Spratlin.

12 MR. SPRATLIN: Thank you, Your Honor.

13 Good afternoon, ladies and gentlemen of the jury. As
14 the Judge said, I'm Martin Spratlin. I'm the prosecutor
15 assigned this case. I represent the State. My job is to come
16 here before you and present evidence to show you why the
17 Defendant is guilty, because the evidence the State is going
18 to show you that the Defendant is guilty.

19 The Judge told you a second ago what this case is all
20 about, and he read you what the Defendant is charged with, and
21 that is trafficking in heroin, more than twenty-eight grams.
22 There's going to be a couple of things that are going to
23 surprise you about this trial here today. Before you came
24 into this courtroom I'm not sure what you thought trafficking
25 was. I can tell you, before I became a lawyer I probably

1 would have thought of the movie Scarface as being what
2 trafficking is. But let me tell you, trafficking is not like
3 that; trafficking is not importing drugs from another country,
4 or bringing it home across nations and lines and all that kind
5 of stuff, rather, in South Carolina trafficking in heroin is
6 purchasing, attempting to purchase, or conspiring to purchase
7 a large amount of drugs. In this case we are dealing with
8 here we are talking about four ounces of heroin, which is
9 roughly a hundred and twelve grams, as you will hear today.
10 Just to put that in perspective, trafficking more than twenty-
11 eight grams, or possessing -- purchasing more than twenty-
12 eight grams, attempting to purchase, conspiring to purchase
13 more than twenty-eight grams is trafficking. Four ounces is
14 four times that amount, four times, so we are talking about a
15 lot of drugs here, ladies and gentlemen.

16 The second thing that's going to surprise you is that
17 you are not going to see any drugs here. What this operation
18 is, what this case is about, is what is called a reverse buy,
19 or a reverse sting operation. You are going to hear from
20 Agent Randy Miller with the Fifteenth Circuit Drug Enforcement
21 Unit, sitting at the table right next to me, a narcotics
22 officer with about eight years experience in law enforcement.
23 He's going to tell you what a reverse buy and a reverse sting
24 are. They are saying that. It's basically where law
25 enforcement receives information that someone is looking to

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1 purchase a large quantity of drugs. Rather than allow that
2 person to purchase a large quantity of drugs they -- law
3 enforcement arranges that, or an informant, or someone acting
4 as an agent of the State, to go and represent that they have
5 drugs to sell through that informant. Typically they take
6 imitation controlled substances, in this case they did it, In
7 this case, imitation brown powder heroin, four ounces of
8 imitation brown powder heroin. Once they could find an
9 informant, whose his name is Adrian Chavez - you are going to
10 hear it from Mr. Chavez today. He's going to tell you how he
11 took that four ounces of imitation heroin, how he -- how --
12 (unintelligible)

13 So in this case, as you will hear, law enforcement
14 received information that the Defendant, Jawan White, wanted
15 to purchase a large quantity of heroin. They set up a
16 meeting, a kind of to get to know you kind of meeting in
17 public, where the confidential informant working for Randy
18 Miller, Adrian Chavez, and another individual that knew the
19 Defendant. At that meeting it was agreed that the informant
20 working for Agent Miller was going to provide four ounces of
21 heroin to Jawan White for Ten Thousand Dollars cash.

22 You are going to hear how, two or three days after that
23 meeting was done Jawan White called Agent Chavez, the CI, CI
24 being confidential informant, and told Adrian Chavez that he
25 had the money, and was ready to go for the transaction. As

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1 you will hear, Adrian Chavez called Randy Miller. Randy
2 Miller got some imitation heroin. They set up a meeting.
3 They wired him with a video - both of these meeting are on
4 video, and you will get to see the video here today - wired
5 him with a video camera, sent him with the fake heroin to sell
6 it to Jawan White. And on August 20th, 2011, Jawan White
7 fully attempted, fully conspired to purchase four ounces of
8 heroin, gave Adrian Chavez Ten Thousand Dollars cash for what
9 he fully believed to be four ounces of black -- brown powder
10 heroin.

11 Now some of you may be wondering -- you are going to
12 hear today that, like I said, law enforcement did not use real
13 heroin in this transaction. Some of you may be wondering why.
14 You will hear it from Agent Miller how they can't use real
15 heroin, how you can't run the risk of putting real heroin out
16 on the street. What if he gets away with the real heroin?
17 That's why they use imitation drugs, ladies and gentlemen.
18 That's why they use imitation heroin. But the imitation
19 heroin, as you will find out today, does nothing to negate the
20 Defendant's guilt, absolutely nothing.

21 You are also going to hear what the Defendant intended
22 to do that day, ladies and gentlemen, not just from Agent
23 Miller, not just from Adrian Chavez, who sold him the
24 imitation heroin; you are going to hear what the Defendant
25 said, because the Defendant gave a statement. The Defendant

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1 gave a statement to Agent Miller. The Defendant said he was
2 there that day, when he was arrested, to purchase four ounces
3 of heroin for Ten Thousand Dollars.

4 Now, I suspect that you are probably going to hear some
5 stuff about entrapment today. That may be a word some of you
6 are familiar with. As you will find out, ladies and
7 gentlemen, this is not a case of entrapment. The State is
8 simply providing a means by which someone can commit a crime,
9 and preventing someone from committing a crime is not
10 entrapment. What you are going to find out today is that
11 entrapment basically has to overcome someone's will not to
12 commit a crime. They have to have no predisposition to commit
13 a crime in order for them to be entrapped by any agent of the
14 State, and the Judge is going to charge you on that, most
15 likely, later on. Rather, in this case, ladies and gentlemen,
16 the Defendant was ready, able, and willing to purchase four
17 ounces of brown powder heroin, and he did everything within
18 his power and control to purchase four ounces of brown powder
19 heroin. That is what makes him guilty of trafficking in
20 heroin more than twenty-eight grams, and that is why, at the
21 end of this trial, you are going to find him guilty.

22 Thank you, ladies and gentlemen.

23 COURT: Mr. Hilliard.

24 MR. HILLIARD: Thank you, Judge.

25 It's the end of the week and the Judge has said that he

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1 recognized some of the faces, and you probably didn't feel as
2 lucky as he indicated that you were, so maybe the lottery
3 ticket thing will work for you. I certainly hope that it
4 does.

5 We selected the twelve of you, thirteen, and are asking
6 you - and the Judge has instructed you - to do something
7 that's impossible. If you think about, in your common sense
8 and your ordinary life experience, if somebody tells you,
9 don't think about something it's impossible for you not to
10 think about it. In order for us just to get to even - Jawan
11 White is not here, and if you look around, I mean, the Judge
12 came, the court reporter came, the police came, I came, the
13 bailiffs, all kinds of people are here, looks like half the
14 world showed up for Jawan White's trial, but Jawan didn't
15 come, and so the Judge tells you, don't think about that. How
16 on earth can you not think about it? I certainly don't know
17 the answer to that question, but that -- the law requires that
18 you not think about it; the law requires that you not talk
19 about it in the jury room, don't discuss it, don't let it
20 enter your mind as you think whether or not the State has
21 proved him guilty. What? It can't even come into your
22 thoughts, but it's going to be there. How could you not be at
23 least a little bit angry with him for all of us having to be
24 here and him not come? Well, the reason that it is that way,
25 the reason that the law says that you can't think about it is

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1 because every individual is presumed to be innocent. The
2 Judge has indicated to you that the trial is a search for the
3 truth. Well, as you are searching for the truth you have a
4 legal framework that you use to go about that process - that's
5 the trial that we are engaged in now - the legal framework
6 involving the presumption of innocence, that is, where the
7 person who's accused doesn't have to prove anything, doesn't
8 have to come to the trial, and you don't think about those
9 things; he's presumed innocent. Right now, if we took a vote,
10 is Jawan White guilty or not guilty possibly all of you would
11 saw, we don't know yet, but that's not the right answer. The
12 right answer is, he's not guilty, because the Constitution
13 says he's not guilty; you haven't heard any evidence yet. So
14 when you go through this process we are going to ask you to do
15 that impossible thing that the law requires, and to not think
16 about that, not to take it into consideration, and the truth
17 that you are searching for, that the Judge was talking about,
18 is whether or not the State of South Carolina, through their
19 witnesses, and through their evidence, can prove, in fact,
20 that Jawan White has violated the law. They accused him, they
21 sent it to the Grand Jury; they had a piece of paper that says
22 what it is that he's alleged to have done, and the question
23 for the twelve of you, when you get to the end of it in the
24 deliberation process, is to decide whether or not they have
25 proved it.

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1 The Solicitor indicates to you that there is an
2 entrapment defense, and the Judge told you that nothing the
3 Solicitor says is evidence. Of course he also told you
4 nothing I say is evidence, so we'll let the evidence speak for
5 itself when it comes up from the witness stand. You can make
6 a decision in this case on evidence, you can make a decision
7 in this case on the absence of evidence. You are going to
8 know what the law is when the Judge charges it to you, but the
9 indictment sets out what Mr. White is accused of, and he's --
10 you know, the Solicitor indicates conspiracy, but the only
11 people involved in this case are Mr. White, who is the
12 accused, and the government, who is the accuser. That's the
13 only people involved in this case.

14 And there is no heroin. There is no heroin in this
15 case. This is a trafficking case with no drugs to traffick.

16 I thank you very much for being with us, and for
17 participating in this process. Again, I know it's late in the
18 day, late in the week. It is a burden on you, but it is -- we
19 are, in fact, grateful to you for being here with us. We will
20 ask that you pay close attention as the trial unfolds.

21 Thank you very much.

22 COURT: All right.

23 Mr. Ropp, let's give the jury a quick break before we
24 get into the evidence in this case. All right.

25 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE

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1 PRESENCE OF THE JURY.)

2 COURT: All right, Mr. Spratlin.

3 MR. SPRATLIN: Thank you, Your Honor.

4 The State would call it's first witness, Mr. Adrian
5 Chavez, to the stand.

6 Your Honor, Mr. Chavez is going to be using the
7 assistance of a court-certified interpreter testifying today.

8 COURT: All right. The interpreter must be sworn.

9 COURT REPORTER: And I need her name.

10 COURT: We need your name.

11 MS. BERROUET: It's Miriam, M-I-R-I-A-M Berrouet, B- as
12 in boy, E-R-R-O-U-E-T.

13 MIRIAM BERROUET, INTERPRETER, BEING
14 FIRST DULY SWORN, INTERPRETS AS FOLLOWS:

15 ADRIAN CHAVEZ, being first duly
16 sworn, testifies as follows:

17 DIRECT-EXAMINATION BY MR. SPRATLIN:

18 Q. Mr. Chavez, where are you originally from?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. Mexico.

22 Q. Okay. Do you speak English at all?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. A little.

1 Q. Is Spanish your first language?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. Yes.

5 Q. Is it sometimes easier for you to understand things in
6 Spanish rather than English?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. Yes.

10 Q. Is that why you are requiring the use of an
11 interpreter?

12 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
13 INTERPRETER STATES AS FOLLOWS:)

14 A. Yes.

15 Q. All right. Now you said you are from Mexico. What
16 city are you currently living in?

17 DEFENDANT: Conway, Myrtle Beach.

18 Q. Myrtle Beach. How long have you lived in Myrtle Beach?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. Since 2000.

22 Q. Do you have any family who lives here with you?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. Yes.

1 Q. Who lives here with you?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. My son and my girlfriend.

5 Q. Now, Adrian, let me ask you, a couple of years ago did
6 you get in trouble with the law?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. Yes.

10 Q. What were you charged with?

11 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
12 INTERPRETER STATES AS FOLLOWS:)

13 A. They charged me with twenty-eight grams of cocaine.

14 Q. Okay. What did you do, or agree to do in regards to
15 these charges?

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. Work with Randy Miller.

19 Q. Okay. And who is Randy Miller?

20 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
21 INTERPRETER STATES AS FOLLOWS:)

22 A. The officer, Randy Miller.

23 Q. So Randy Miller is an officer?

24 DEFENDANT: Yes. Se.

25 Q. Okay. And he is the officer seated at the prosecution

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1 table with me?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. Yes.

5 Q. Now Adrian, let me ask you, were you working as an
6 informant for Randy Miller back on August of 2011?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. Yes.

10 Q. Did you have the chance to come in contact with the
11 Defendant, Jawan White?

12 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
13 INTERPRETER STATES AS FOLLOWS:)

14 A. Yes.

15 Q. Was that on August 16th, 2011?

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. Yes.

19 Q. All right. Now, the first time you met with Jawan
20 White who told you to go talk to him?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. Randy Miller.

24 Q. All right. And where did you go to talk to him?

25 A. Myrtle Beach.

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1 COURT REPORTER: Excuse me. Would you answer, please,
2 the interpreter?

3 A. Myrtle Beach.

4 Q. Was anyone else with you?

5 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
6 INTERPRETER STATES AS FOLLOWS:)

7 A. Yes.

8 Q. Who was with you?

9 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
10 INTERPRETER STATES AS FOLLOWS:)

11 A. Another informant.

12 Q. Okay. Did it appear that that individual knew Jawan
13 White?

14 MR. HILLIARD: Objection to the form of the question.

15 COURT: What is your objection?

16 MR. HILLIARD: Did it appear that he knew Jawan White.

17 COURT: Yes. I would sustain that. Ask it another
18 way.

19 MR. HILLIARD: Thank you, Your Honor.

20 COURT: I don't know how anyone could appear to know
21 someone.

22 MR. SPRATLIN: Okay.

23 Q. Based on what you observed, was the informant, the
24 informant, familiar with Jawan White?

25 MR. HILLIARD: That's the same question, Judge.

1 MR. SPRATLIN: It's just based on what he observed,
2 Your Honor.

3 COURT: How can he observe whether somebody knew?

4 MR. SPRATLIN: Based on -- based on -- I'll rephrase,
5 Your Honor.

6 COURT: Okay.

7 Q. Based on what you saw and heard that day did it appear
8 that the informant was familiar with Jawan White?

9 MR. HILLIARD: That's -- that's the same objection,
10 Judge.

11 COURT: I think it just -- I'm not going to allow it.

12 MR. SPRATLIN: Yes, Your Honor.

13 MR. HILLIARD: Thank you, Your Honor.

14 Q. Now, prior to meeting with Jawan White at Broadway at
15 the Beach did you meet with anyone else?

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. Randy Miller.

19 Q. Now, to the best of your knowledge, were you given any
20 sort of recording equipment by Randy Miller?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. A watch.

24 Q. All right. Was there anything special about that
25 watch?

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1 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
2 INTERPRETER STATES AS FOLLOWS:)

3 A. It had a camera.

4 MR. SPRATLIN: Permission to approach to retrieve an
5 exhibit, Your Honor.

6 COURT: Certainly.

7 MR. SPRATLIN: Your Honor, permission to approach the
8 witness.

9 COURT: Yes.

10 Q. Mr. Chavez, please let the record reflect I'm showing
11 you what's been marked State's Exhibit Number 3 for
12 identification purposes.

13 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
14 INTERPRETER STATES AS FOLLOWS:)

15 A. Yes.

16 Q. Have you ever had a -- do you know what that is?

17 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
18 INTERPRETER STATES AS FOLLOWS:)

19 A. Part of the information, the recording.

20 Q. Is it a video?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. Yes.

24 Q. And what is it a video of?

25 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

1 INTERPRETER STATES AS FOLLOWS:)

2 A. It shows me and Jawan White.

3 Q. Is it the meeting from Broadway at the Beach?

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
5 INTERPRETER STATES AS FOLLOWS:)

6 A. Yes.

7 Q. Now have you had a chance to watch that video before
8 today?

9 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
10 INTERPRETER STATES AS FOLLOWS:)

11 A. Yes.

12 Q. Is it a fair and accurate reflection of the events that
13 occurred on that day?

14 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
15 INTERPRETER STATES AS FOLLOWS:)

16 A. Yes.

17 Q. To your knowledge have there been any additions or
18 deletions to that video?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. No.

22 MR. SPRATLIN: Your Honor, at this time I would tender
23 into evidence State's Exhibit Number 3.

24 COURT: Mr. Hilliard.

25 MR. HILLIARD: I don't object to it, Judge.

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1 COURT: All right. Without objection.

2 (DVD ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
3 3.)

4 MR. SPRATLIN: Your Honor, at this time I would also
5 ask to publish the exhibit to the jury.

6 COURT: You may.

7 MR. SPRATLIN: Permission to retrieve?

8 COURT: Yes.

9 MR. SPRATLIN: Your Honor, I would ask the Clerk's
10 assistance in bringing down the projector screen.

11 (AT THIS TIME STATE'S EXHIBIT NUMBER 3, DVD, WAS
12 PUBLISHED TO THE JURY IN OPEN COURT.)

13 COURT: Stop that. Take the jury out.

14 Just take the jury out a minute. Just have them out in
15 the hall, Mr. Ropp.

16 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
17 JURY.)

18 COURT: Mr. Spratlin, can you tell me what we are doing
19 watching that?

20 MR. SPRATLIN: Your Honor, we -- we were showing the
21 entire video.

22 COURT: No, you are not. I can tell you are not. That
23 is not relevant, and that is -- has no probative value
24 whatsoever.

25 MR. SPRATLIN: Yes sir.

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1 COURT: We are not going to sit here for hours watching
2 a tape, in Spanish, that no one in this court, other than the
3 interpreter and the witness, understands a thing about. We
4 are not doing that.

5 MR. SPRATLIN: I understand, Your Honor. I would just
6 like the jury to know that it's -- what I'm basically trying
7 to prevent is the jury thinking that the State is trying to
8 hide anything by showing ---

9 COURT: Well, you fast-forward it, because I can tell
10 you one thing, we are not going to sit here -- how long is
11 this tape?

12 MR. SPRATLIN: Your Honor, the actual relevant portion
13 is probably only going to be about twenty-five minutes, twenty
14 to twenty-five minutes.

15 COURT: We are not going to watch this, and have them
16 speculate as to what may or may not be said on this thing.

17 MR. SPRATLIN: Yes sir, Your Honor. I will prepare it
18 right for when ---

19 (MR. SPRATLIN FAST-FORWARDS THE DVD.)

20 MR. SPRATLIN: That is shortly before the Defendant
21 appears.

22 COURT: Is the Defendant speaking in English, or is it
23 going to be more of the same?

24 MR. SPRATLIN: No. The Defendant speaks in English.

25 COURT: All right.

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1 MR. SPRATLIN: And both individuals, informants, do
2 speak in English with the Defendant.

3 COURT: All right. Bring the jury back in.

4 MR. SPRATLIN: Yes sir.

5 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
6 JURY.)

7 COURT: Ladies and gentlemen, based on questions I
8 asked during voir dire I know that none of you speak Spanish,
9 and neither do I, and rather than sit here for an extended
10 period of time watching people drive through the County
11 speaking Spanish I have required the State to forward this
12 tape to some relevant part. Okay.

13 MR. SPRATLIN: Yes sir, Your Honor. Permission to
14 begin playing again?

15 COURT: Yes.

16 (STATE CONTINUES PUBLISHING STATE'S EXHIBIT NUMBER 3 IN
17 OPEN COURT.)

18 MR. SPRATLIN: Your Honor, permission to have the Clerk
19 of Court move the screen back up.

20 COURT: All right.

21 Q. Adrian, I know that video was hard to -- hard to
22 understand. We hear some things that -- what were y'all
23 discussing when you were talking with Jawan White at Broadway
24 at the Beach?

25 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

1 INTERPRETER STATES AS FOLLOWS:)

2 A. That he wanted to buy four ounces of heroin.

3 Q. How much was he going to pay for that?

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
5 INTERPRETER STATES AS FOLLOWS:)

6 A. Ten Thousand Dollars.

7 Q. Adrian, let me show you what's been marked, for
8 identification purposes, as State's Exhibit Number 8 at this
9 point. Do you recognize the person in that photograph?

10 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
11 INTERPRETER STATES AS FOLLOWS:)

12 A. Yes.

13 Q. Who is that person?

14 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
15 INTERPRETER STATES AS FOLLOWS:)

16 A. The guy that I gave the heroin to.

17 Q. And is that the same guy you met at Broadway at the
18 Beach that we just watched the video for?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. Yes.

22 Q. All right. Thank you.

23 COURT: Do you move that in?

24 MR. SPRATLIN: No, Your Honor. We are going to put it
25 in through a different witness.

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1 COURT: All right.

2 Q. Now, Adrian, you said that Jawan White wanted to
3 purchase four ounces of heroin from you.

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
5 INTERPRETER STATES AS FOLLOWS:)

6 A. Yes.

7 Q. When was this transaction suppose to take place?

8 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
9 INTERPRETER STATES AS FOLLOWS:)

10 A. When he was ready.

11 Q. How was he going to get in touch with you?

12 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
13 INTERPRETER STATES AS FOLLOWS:)

14 A. He was going to call me on my phone.

15 Q. And did you give him your phone number that day?

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. Yes.

19 Q. All right. Now, Adrian, on August 19th, 2011, three
20 days later, did you hear from Jawan White?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. Yes.

24 Q. How did he get in touch with you?

25 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

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1 INTERPRETER STATES AS FOLLOWS:)

2 A. He called me on my phone and told me he was ready.

3 Q. Is that the same phone number that you had given him
4 earlier at Broadway at the Beach?

5 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
6 INTERPRETER STATES AS FOLLOWS:)

7 A. Yes.

8 Q. What did you take him saying "I'm ready" to mean?
9 What did he mean by "I'm ready"?

10 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
11 INTERPRETER STATES AS FOLLOWS:)

12 A. That he had the money ready.

13 Q. All right. What did you do after being contacted by
14 Jawan White?

15 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
16 INTERPRETER STATES AS FOLLOWS:)

17 A. I called Randy Miller.

18 Q. And what did you agree to do then?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. To give him time to be ready.

22 Q. Okay. And where were you going to meet Jawan White?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. When?

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1 Q. Yes. When in relation to the phone call on August ---

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. The next day.

5 Q. Now the next day who did you meet first?

6 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
7 INTERPRETER STATES AS FOLLOWS:)

8 A. Randy Miller.

9 Q. Where did you meet Randy Miller at?

10 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
11 INTERPRETER STATES AS FOLLOWS:)

12 A. At the police station.

13 Q. Did anyone else go with you this time?

14 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
15 INTERPRETER STATES AS FOLLOWS:)

16 A. No.

17 Q. And where were you going to go meet Jawan White at?

18 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
19 INTERPRETER STATES AS FOLLOWS:)

20 A. At the mall, Coastal Grand Mall.

21 Q. Now, were you outfitted with a camera like last time?

22 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
23 INTERPRETER STATES AS FOLLOWS:)

24 A. Yes.

25 Q. All right. And what, if anything else, did Randy

1 Miller give you?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. The four ounces of heroin.

5 MR. SPRATLIN: Your Honor, permission to approach and
6 retrieve the exhibit.

7 COURT: Yes.

8 Q. Adrian, let me show you what's been marked State'
9 Exhibit Number 5 for identification purposes. Do you
10 recognize that item?

11 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
12 INTERPRETER STATES AS FOLLOWS:)

13 A. Yes.

14 Q. What is it?

15 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
16 INTERPRETER STATES AS FOLLOWS:)

17 A. The four ounces of heroin.

18 Q. Okay. And who gave you that four ounces of heroin?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. To me?

22 Q. Yes.

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. Randy Miller.

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1 Q. All right. And what did you do with it after Randy
2 Miller gave it to you?

3 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
4 INTERPRETER STATES AS FOLLOWS:)

5 A. I gave it to Jawan White.

6 Q. Okay. And where did you give it to Jawan White at?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. At the mall.

10 Q. Okay. Now, between the time that Randy Miller gave it
11 to you, and you gave it to Jawan White, did you have
12 possession of it the entire time?

13 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
14 INTERPRETER STATES AS FOLLOWS:)

15 A. Yes.

16 MR. SPRATLIN: Thank you. Permission to retrieve the
17 Exhibit?

18 COURT: Yes.

19 Q. Now, Adrian, let me show you what's been marked State's
20 Exhibit Number 4. Do you recognize this item?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. Yes.

24 Q. What is it?

25 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

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1 INTERPRETER STATES AS FOLLOWS:)

2 A. The other evidence of the transaction.

3 Q. Is it a video?

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
5 INTERPRETER STATES AS FOLLOWS:)

6 A. Yes.

7 Q. Is it -- what is it a video of?

8 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
9 INTERPRETER STATES AS FOLLOWS:)

10 A. It shows where I gave him the heroin and he gave me the
11 money.

12 Q. Okay. Have you had a chance to observe that video
13 before court?

14 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
15 INTERPRETER STATES AS FOLLOWS:)

16 A. Yes.

17 Q. To your knowledge is it a fair and accurate reflection
18 of the events of that day?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. Yes.

22 Q. To your knowledge, have there been any additions or
23 deletions to that video?

24 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
25 INTERPRETER STATES AS FOLLOWS:)

1 A. No.

2 MR. SPRATLIN: Your Honor, at this time I would tender
3 evidence State's Exhibit Number 4.

4 MR. HILLIARD: No objection.

5 COURT: Without objection.

6 (DVD ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
7 4.)

8 MR. SPRATLIN: The State would ask to play it for the
9 jury.

10 COURT: Okay. How long is this one?

11 MR. SPRATLIN: Your Honor, this one is much shorter,
12 and there will be a portion which, just like last time, I will
13 be able to fast-forward it.

14 COURT: Well, you fast-forward driving through the
15 Country speaking Spanish.

16 MR. SPRATLIN: Yes sir.

17 Your Honor, I would ask the Clerk of Court's assistance
18 again in bringing down the screen.

19 (AT THIS TIME STATE'S EXHIBIT NUMBER 4 WAS PUBLISHED IN
20 OPEN COURT.)

21 MR. SPRATLIN: Your Honor, I would ask the Clerk's
22 assistance in bringing up the screen.

23 COURT: All right. Bring it up.

24 Q. Now Adrian, let me ask you real quickly, what, if
25 anything during that video we just watched did you give Jawan

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MIRIAM BERROUET, INTERPRETER, SWORN

1 White?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. Can you repeat the question?

5 Q. What, if anything, did you give Jawan White in that
6 video we just watched?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. What I gave to him, the heroin.

10 Q. Okay. And what, if anything, did he give you?

11 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
12 INTERPRETER STATES AS FOLLOWS:)

13 A. Money.

14 Q. Did he say or do anything that led you to believe that
15 he -- well, let me back up a second. Did you tell the
16 Defendant at any point in time that what you were giving him
17 was not real heroin?

18 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
19 INTERPRETER STATES AS FOLLOWS:)

20 A. No.

21 Q. And how much money did he give you for this imitation
22 heroin?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. Ten Thousand Dollars.

1 MR. SPRATLIN: Thank you, Your Honor. That's all the
2 questions I have.

3 COURT: All right. Mr. Hilliard.

4 CROSS-EXAMINATION BY MR. HILLIARD:

5 Q. Mr. Chavez ---

6 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
7 INTERPRETER STATES AS FOLLOWS:)

8 A. Yes.

9 Q. ---When the Solicitor was asking you questions you
10 indicated that you had been in some trouble here in Horry
11 County; is that correct?

12 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
13 INTERPRETER STATES AS FOLLOWS:)

14 A. Yes.

15 Q. And in fact, you have been in trouble in Texas; is that
16 correct?

17 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
18 INTERPRETER STATES AS FOLLOWS:)

19 A. No.

20 Q. You didn't have eighteen months of probation in ---

21 DEFENDANT: No...

22 Q. ---Texas?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. No.

1 Q. You have a tatoo on your left forearm?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. I don't have tatoos.

5 Q. Where were you born?

6 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
7 INTERPRETER STATES AS FOLLOWS:)

8 A. Mexico.

9 MR. HILLIARD: It's not him.

10 MR. SPRATLIN: Your Honor, may we approach?

11 COURT: Yes.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 Q. How long have you been in the United States?

14 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
15 INTERPRETER STATES AS FOLLOWS:)

16 A. Since 2000.

17 Q. And are you a citizen of the United States?

18 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
19 INTERPRETER STATES AS FOLLOWS:)

20 A. No.

21 Q. When were you arrested for trafficking in cocaine?

22 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
23 INTERPRETER STATES AS FOLLOWS:)

24 A. Almost three years ago.

25 Q. So that would have been -- let me ask the question a

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1 different way. How long before this arrest that we are here
2 about today was it that you had been arrested for trafficking
3 in cocaine?

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
5 INTERPRETER STATES AS FOLLOWS:)

6 A. From today to back then?

7 Q. No, from the date of the arrest of White?

8 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
9 INTERPRETER STATES AS FOLLOWS:)

10 A. I don't understand the question.

11 Q. Okay. When you were arrested for trafficking in
12 cocaine that was real cocaine; right?

13 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
14 INTERPRETER STATES AS FOLLOWS:)

15 A. Yes.

16 Q. So you are, in fact, a drug trafficker?

17 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
18 INTERPRETER STATES AS FOLLOWS:)

19 A. I was.

20 Q. And you are illegally in the United States?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. Yes.

24 Q. In return for your working with the government you got
25 to stay out of prison; is that correct?

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1 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
2 INTERPRETER STATES AS FOLLOWS:)

3 A. Yes.

4 Q. Do you know how long you would have gone to prison for
5 had you been convicted of trafficking in cocaine?

6 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
7 INTERPRETER STATES AS FOLLOWS:)

8 A. No.

9 Q. Nobody ever told you that?

10 DEFENDANT: No.

11 INTERPRETER: No.

12 Q. Do you know that it would have been a long time?

13 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
14 INTERPRETER STATES AS FOLLOWS:)

15 A. No.

16 Q. In return for your cooperating with the government they
17 let you stay in the United States?

18 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
19 INTERPRETER STATES AS FOLLOWS:)

20 A. Yes.

21 Q. All right. Now, during the time that you were a drug
22 trafficker here in Horry County you didn't know Mr. White?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. No.

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1 Q. And you had, in fact, never talked to him before
2 Broadway at the Beach; isn't that true?

3 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
4 INTERPRETER STATES AS FOLLOWS:)

5 A. No.

6 Q. That is true?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. That's true, yes.

10 Q. The person that was with you at Broadway at the Beach,
11 besides Mr. White, was also a Mexican drug trafficker; isn't
12 that true?

13 MR. SPRATLIN: Object, Your Honor. It calls for
14 speculation regarding ---

15 COURT: He may know.

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. No.

19 Q. He was not?

20 (DEFENDANT SPEAKS IN SPANISH.)

21 INTERPRETER: He was an informant.

22 Q. He was an informant?

23 DEFENDANT: Uh huh (indicating positive)

24 INTERPRETER: Yes.

25 Q. You and he spent a good deal of time talking with one

1 another; is that correct?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. From the station to Broadway.

5 Q. Right. The part that we skipped was you and him
6 talking?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. Yes.

10 Q. And he didn't tell you what caused him to be an
11 informant for the government?

12 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
13 INTERPRETER STATES AS FOLLOWS:)

14 A. He was working for the government.

15 Q. Right. You were working for the government because you
16 didn't want to go to prison?

17 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
18 INTERPRETER STATES AS FOLLOWS:)

19 A. That's right.

20 Q. He was working for the government; do you know why?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. No.

24 Q. He was not an employee of the government?

25 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

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1 INTERPRETER STATES AS FOLLOWS:)

2 A. What he told me was, he was working for the money.

3 Q. For the money?

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

5 INTERPRETER STATES AS FOLLOWS:)

6 A. That the government pays him.

7 Q. Ahhh. And at the point in time -- do you know his
8 name?

9 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

10 INTERPRETER STATES AS FOLLOWS:)

11 A. No.

12 Q. At the point in time that you met him he knew that it
13 was four ounces for Ten Thousand Dollars; isn't that true?

14 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

15 INTERPRETER STATES AS FOLLOWS:)

16 A. That's what he told me.

17 Q. Right. The guy who the government paid told you that
18 it was four ounces of heroin for Ten Thousand Dollars?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

20 INTERPRETER STATES AS FOLLOWS:)

21 A. That's what he told me.

22 Q. So it wasn't Mr. White that told you that?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

24 INTERPRETER STATES AS FOLLOWS:)

25 A. Who is White?

1 Q. Jawan White, the Defendant.

2 (DEFENDANT SPEAKS.)

3 INTERPRETER: He wanted only four ounces to begin.

4 Q. But it was the government-paid informant who told you
5 that?

6 (DEFENDANT SPEAKS.)

7 INTERPRETER: He gave the price because he didn't want
8 to give me the four ounces.

9 Q. He was -- the government informant, the paid government
10 informant was the one who had talked to Mr. White initially;
11 is that true?

12 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
13 INTERPRETER STATES AS FOLLOWS:)

14 A. Yes.

15 Q. And he only brought you in to do the deal?

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. Yes, basically.

19 Q. And before any of this was done he had already gone and
20 got his money and left town?

21 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
22 INTERPRETER STATES AS FOLLOWS:)

23 A. He is not from here. Somebody had to be there, so
24 that's why they put me there.

25 Q. And you don't know where he is now?

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1 was already over; isn't that true?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. Yes.

5 Q. And Mr. White had this, whatever this is?

6 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
7 INTERPRETER STATES AS FOLLOWS:)

8 A. Yes. He put it in his pants.

9 Q. And you had the money?

10 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
11 INTERPRETER STATES AS FOLLOWS:)

12 A. The money that he gave me, yes.

13 Q. And the money that you had you immediately gave to the
14 police; you signed it over so they could have it?

15 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
16 INTERPRETER STATES AS FOLLOWS:)

17 A. Yes, I signed.

18 Q. Mr. White had come to this transaction by himself; is
19 that right?

20 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
21 INTERPRETER STATES AS FOLLOWS:)

22 A. Yes.

23 Q. And he didn't examine this product at all?

24 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
25 INTERPRETER STATES AS FOLLOWS:)

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1 A. No. It was quick, the transaction.

2 Q. He didn't weigh it, or taste it, or check it in any
3 form or fashion?

4 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
5 INTERPRETER STATES AS FOLLOWS:)

6 A. No.

7 Q. Back in the days when you were involved in the drug
8 trafficking business did you check the drugs to make sure you
9 were getting real drugs before you gave the money?

10 DEFENDANT: No.

11 Q. You didn't?

12 DEFENDANT: No.

13 INTERPRETER: No.

14 Q. Did anybody ever sell you imitation drugs?

15 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
16 INTERPRETER STATES AS FOLLOWS:)

17 A. There was one time, and no more.

18 Q. One time in your whole life?

19 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
20 INTERPRETER STATES AS FOLLOWS:)

21 A. Yes.

22 Q. And that's the time you got caught?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. Yes.

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1 Q. And you recall a -- excuse me just a second.

2 At Broadway at the Beach when you guys were setting up
3 this transaction Mr. White didn't have enough money to buy
4 anything; isn't that true?

5 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
6 INTERPRETER STATES AS FOLLOWS:)

7 A. Not at that time.

8 Q. Right. And so you guys weren't going to do business
9 with him until he got four ounces worth of money up?

10 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
11 INTERPRETER STATES AS FOLLOWS:)

12 A. That's right, until he had enough money -- sufficient
13 money to buy four ounces.

14 Q. So how much heroin Mr. White was going to buy was
15 decided by you guys?

16 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
17 INTERPRETER STATES AS FOLLOWS:)

18 A. To begin.

19 Q. Pardon?

20 A. To begin, and later we were given the ---

21 Q. When you gave him the fake heroin he asked you if he
22 could cut it; isn't that true?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. Yes.

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1 Q. So he was asking you how to deal with the heroin?

2 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
3 INTERPRETER STATES AS FOLLOWS:)

4 A. It's something normal, because you have to make it
5 smaller.

6 Q. That's what you know about heroin trafficking?

7 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
8 INTERPRETER STATES AS FOLLOWS:)

9 A. This is what I've seen, what I've heard.

10 Q. Right. But Mr. White was asking you?

11 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
12 INTERPRETER STATES AS FOLLOWS:)

13 A. Yes.

14 Q. It's fair to say, in this transaction -- and if this is
15 wrong just tell me. It's fair to say that in this transaction
16 you were the person who knew more about drug-dealing than Mr.
17 White?

18 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
19 INTERPRETER STATES AS FOLLOWS:)

20 A. No.

21 Q. Because you participated in this transaction you are
22 not in trouble anymore; isn't that true?

23 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
24 INTERPRETER STATES AS FOLLOWS:)

25 A. Yes.

1 MR. HILLIARD: Thank you, sir.

2 MR. SPRATLIN: Real briefly, Your Honor.

3 REDIRECT-EXAMINATION BY MR. SPRATLIN:

4 Q. Mr. Hilliard asked you if you had ever known Jawan
5 White before.

6 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
7 INTERPRETER STATES AS FOLLOWS:)

8 A. Or not, no.

9 Q. Did you know all the drug traffickers in Horry County?

10 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
11 INTERPRETER STATES AS FOLLOWS:)

12 A. No.

13 Q. Now the guy that drove around with -- or went to
14 Broadway at the Beach with you originally ---

15 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
16 INTERPRETER STATES AS FOLLOWS:)

17 Q. ---Have you ever seen him again?

18 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,
19 INTERPRETER STATES AS FOLLOWS:)

20 A. No.

21 Q. When you spoke to Jawan White at Broadway at the Beach
22 how much heroin did he want to buy?

23 A. Four ounces.

24 Q. And how much did he want to pay?

25 (INTERPRETER SPEAKS TO DEFENDANT, DEFENDANT ANSWERS,

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1 INTERPRETER STATES AS FOLLOWS:)

2 A. Ten Thousand.

3 MR. SPRATLIN: Thank you, Adrian. That's all the
4 questions I have.

5 MR. HILLIARD: Nothing from the Defense.

6 COURT: You may step down.

7 MR. SPRATLIN: Your Honor, may this witness be excused?

8 MR. HILLIARD: No objection.

9 COURT: Without objection.

10 MR. SPRATLIN: May the interpreter also be excused?

11 COURT: Certainly.

12 MR. SPRATLIN: Come down.

13 MR. HILLIARD: Thank you, Ma'am.

14 MR. SPRATLIN: Your Honor, the State is prepared to
15 call a second witness, Mr. Randy -- Agent Randy Miller to the
16 stand.

17 COURT: Call him.

18 MR. SPRATLIN: We would call Agent Randy Miller to the
19 stand.

20 RANDY SCOTT MILLER, JR., being
21 first duly sworn, testifies as follows:

22 DIRECT-EXAMINATION BY MR. SPRATLIN:

23 Q. Good afternoon, Mr. Miller. Where are you currently
24 employed?

25 A. Myrtle Beach Police Department.

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1 Q. How long have you been working for the Myrtle Beach
2 Police Department?

3 A. A little more than eight and a half years.

4 Q. What's your current assignment over at the Police
5 Department?

6 A. Currently assigned to the Fifteenth Circuit Drug
7 Enforcement Unit.

8 Q. What is the Fifteenth Circuit Drug Enforcement Unit?

9 A. It's a -- covers Horry and Georgetown Counties,
10 different agencies throughout those counties provide officers.
11 It's basically a drug task force made up of different agencies
12 within Horry and Georgetown County.

13 Q. So it's the drug task force?

14 A. Yes sir.

15 Q. How much training and experience do you have in drugs,
16 policing drugs?

17 A. I started in Myrtle Beach Street Crimes, which is
18 Narcotics Vice Unit in 2008, and moved to the Drug Enforcement
19 Unit in 2010, so between four and five years total.

20 Q. So four and five years. And most of your law
21 enforcement career has been in narcotics?

22 A. Yes.

23 Q. Now narcotics, illicit drugs.

24 As a member of the Drug Enforcement Unit what sort of
25 operations do you run?

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1 A. There's different types of buy operations, a buy/walk
2 where we use an agent or an informant, purchase drugs from
3 somebody, a buy/bust where we would make the arrest on scene
4 rather than during a buy/walk where the arrest wouldn't be
5 made at that time, search warrants, surveillance operations,
6 investigating citizen complaints, and reversal operations.

7 Q. Reversal operations. What do you mean by that?

8 A. Reversal operation is where we gather information that
9 somebody is looking to buy narcotics, and again, either we
10 will act as an agent, or an agent will act as an undercover,
11 or we will have an informant act as an undercover as a drug
12 supplier in order to apprehend somebody looking to purchase
13 narcotics.

14 Q. Is this a kind of practice in narcotics policing?

15 A. Yes, it is.

16 Q. Is it done at the Federal level as well as the State?

17 A. Yes sir.

18 Q. Is there anything unethical about it, to your
19 knowledge?

20 A. No sir.

21 Q. You mentioned earlier informants -- I believe you said
22 informants, or some other term - what is an informant?

23 A. Confidential informant is -- there's two ways you can
24 be an informant. One is, you've been in trouble; you have
25 pending charges. More times than not -- not always, but it's

1 narcotics charges, and with agreement of working with the Drug
2 Enforcement Unit in return you will get help with those
3 charges - we don't decide what kind of help you get - or you
4 can be a paid informant where you have information on drug
5 dealers, or any information that can help us with making
6 arrests, and you can be paid for that also.

7 Q. Again, is this pretty standard in narcotics policing,
8 in your experience?

9 A. Yes sir.

10 Q. Now Adrian Chavez who testified earlier today, was he
11 an informant?

12 A. Yes sir.

13 Q. Whose informant was he?

14 A. He's my informant.

15 Q. All right. How did you first come into contact with
16 Adrian?

17 A. I arrested him for approximately twenty-eight grams of
18 cocaine.

19 Q. All right. And what did he do, or agree to do in
20 regards to working off his charges?

21 A. He agreed to provide me with information on basically
22 all the drug dealers that he knew, and I could -- he could
23 deal with, set up buys, and just work as an informant.

24 Q. Okay. Was Jawan White the only case he worked on?

25 A. No sir.

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1 Q. Now let me ask you, Agent Miller, at some point did
2 Jawan White become a target of an investigation?

3 A. Yes sir.

4 Q. How did he come into your attention?

5 A. I had received information ---

6 MR. HILLIARD: Objection as to the hearsay.

7 MR. SPRATLIN: Your Honor, if I may respond.

8 COURT: Yes sir.

9 MR. SPRATLIN: It's being offered, not for the truth of
10 the matter asserted, but to show the actions of the officer in
11 regards to information he received.

12 MR. HILLIARD: Certainly more prejudicial than
13 probative.

14 COURT: I believe so. I'm not going to allow it.

15 MR. HILLIARD: Thank you, Your Honor.

16 COURT: Just say you got information, and ---

17 Q. You got information regarding Jawan White?

18 A. That's correct.

19 Q. And at that point he became a target of an
20 investigation?

21 A. Yes sir.

22 Q. Okay. How did you go about this operation?

23 A. Well, on August 16th I met with Adrian, my informant.
24 We had set up a meeting with Jawan White, who had agreed to
25 meet at Broadway at the Beach to discuss a future heroin

1 transaction.

2 Q. Now Adrian wasn't the only informant there that day;
3 was he?

4 A. No.

5 Q. There was another informant working for a different
6 government agency?

7 A. Yes sir.

8 Q. Was that informant, in any way, working for the -- for
9 your agency?

10 A. No sir.

11 Q. As far as you know, was he working for any agency
12 within the boundaries of Horry County?

13 A. No sir.

14 Q. All right. And after that day, did you ever see that
15 informant again?

16 A. No.

17 Q. Have you ever seen him since?

18 A. No.

19 Q. Regarding that other informant and Adrian, what were
20 they suppose to do that day?

21 A. Just meet with Jawan White and discuss -- basically
22 Adrian, my informant, was going to be introduced as the heroin
23 supplier. He was to meet with Jawan at Broadway at the Beach,
24 basically to get familiar with each other, exchange numbers,
25 and talk about their future heroin transaction.

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1 Q. Okay. What, if anything, did you out -- what kind of
2 equipment did you give Adrian that day?

3 A. An audio-video recording device, which was inside a
4 man's watch.

5 Q. And was that the video we watched earlier from Broadway
6 at the Beach?

7 A. Yes.

8 Q. Now let me ask you about that video. You said on the
9 video, I believe you said, and also just testified, that this
10 first meeting occurred on August 16th; is that correct?

11 A. That's correct.

12 Q. That's 2011?

13 A. Yes.

14 Q. The date stamp on the video said the 17th. Is there
15 any explanation for that?

16 A. Typically we don't go in to change the date on the
17 video, that's why at the beginning I always state what my
18 purpose of the day was, and give the correct date and time at
19 the beginning and at the end of the video.

20 Q. Okay. Let me ask you, Agent Miller, after Adrian and
21 the other informant left to go to Broadway at the Beach what
22 did you do?

23 A. I followed in my vehicle.

24 Q. And what is the purpose of following them?

25 A. Just maintain surveillance, make sure they didn't make

1 any stops in between, and just for safety also, supervise on
2 it.

3 Q. And what did you observe as you were following them?

4 A. Followed them to the parking lot of Broadway at the
5 Beach, they exited the vehicle. We were at the Ripley's
6 Aquarium area at Broadway at the Beach. After about twenty
7 minutes I observed a black male, later determined to be Jawan
8 White, approach. They spoke for roughly twenty, twenty-five
9 minutes, both parted their ways, and got back in their
10 vehicles, and I continued to follow Adrian back to the Police
11 Department.

12 Q. Okay. Now, did you have a chance to watch that video
13 that we just saw in court of the meeting?

14 A. Yes.

15 Q. Were you able to identify the person that they were
16 talking to, both from your observations at the scene, as well
17 as the video?

18 A. Yes.

19 Q. Who was that person?

20 A. Jawan White.

21 Q. All right. Let me ask you, as a law enforcement
22 officer with several years experience in narcotics, what, if
23 any, phrases or words that were said during that video kind of
24 jumped out at you?

25 A. Just a lot of street terms, just, is it good ---

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1 Q. What does "good" mean on the street?

2 A. Is it good quality narcotics.

3 Q. Okay.

4 A. That phrase, powder, was used several times, powder
5 heroin.

6 Q. All right. Now, after that initial meeting at
7 Broadway at the Beach what was your understanding of the next
8 step in the operation against Jawan White?

9 A. My understanding was that Jawan White and the informant
10 had exchanged numbers, they had agreed on the four ounces of
11 heroin for Ten Thousand Dollars. Once Jawan was able to raise
12 the money, and have the Ten Thousand Dollars, he was going to
13 contact the informant, Adrian.

14 Q. All right. And now, when was the next time you heard
15 from Adrian regarding this case?

16 A. The next time I heard from him was on August 19th,
17 2011.

18 Q. And what was the purpose of that contact?

19 A. He called me, advised me that Jawan had made contact
20 with him and stated that his money was ready, and Adrian
21 advised him that he would get with him the following day.

22 Q. All right. What did you do in -- or did you prepare
23 anything, or make anything in preparation of a meeting with
24 Jawan White and Adrian?

25 A. Yes. Once Adrian contacted me on the 19th and

explained to me that Jawan had contacted him and told him that the money was ready, and that he was ready to do business, basically, at that time I contacted my supervisor and I put together a -- basically a reversal bust operation.

Q. And what all did that entail?

A. It's just a general layout of where the loca -- what the location is, what agents are going to be involved, what their assignment are, such as -- you know, certain agents are assigned just for making the arrest, some are surveillance, some are looking out for counter-surveillance, things of those nature.

Q. Why would you need so many agents on an operation like this?

A. Well, four ounces of heroin is a significant amount. There's always a possibility of the whole deal being a rip. somebody getting ripped off, just -- we are out in the public, there's the public walking around. You want as many agents as possible to have eyes create a perimeter to keep it contained to a certain area so nobody outside that is in danger basically.

Q. Okay. Now what sort of substance, if any, did you give Adrian to take to Jawan White?

A. Imitation heroin.

Q. All right. Let me show you what's been already marked State's Exhibit Number 5. Do you recognize that item?

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1 A. Yes.

2 Q. What is it?

3 A. It's imitation heroin.

4 Q. All right. Who made that?

5 A. I did.

6 Q. Is it something that you've had training and experience

7 in before?

8 A. Yes.

9 Q. All right. Let me ask you, in your training and

10 experience as a law enforcement officer have you had a chance

11 to come in contact with brown powder heroin?

12 A. Yes, many times.

13 Q. All right. How close is that substance to brown

14 powder heroin?

15 A. It's almost identical.

16 Q. Without tasting it or smelling it is there any way you

17 could tell the difference, in your opinion?

18 A. No.

19 Q. Now you said you made that.. Once you made it what did

20 you do with it?

21 A. I weighed it, and then I secured it in the -- our drug

22 safe.

23 Q. How many -- how much of the imitation heroin did you

24 make?

25 A. Four ounces, which an ounce is twenty-eight grams, made

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1 four individual, approximately twenty-eight gram bags, which
2 the combined was -- I'd have to look it up, but it was a
3 little over a hundred grams..

4 Q. Little over a hundred grams.

5 A. Hundred and twenty-three point forty-three grams is
6 what the weight was.

7 Q. All right. It was a hundred and twenty-three grams,
8 and trafficking is twenty-eight grams or more as far as the
9 statute we are dealing with today; right?

10 A. That's correct.

11 Q. All right. Now you said you wrapped it up in
12 individual bags, about an ounce apiece. Why did you do it
13 that way?

14 A. It's just -- this is typical packaging that I've dealt
15 with when it comes with narcotics. Most of the time when you
16 are dealing with ounces or more they are packaged
17 individually, probably because it's easier to weigh that way,
18 and then the heat-seal around it is typically the way I see
19 multiple bags of drugs housed.

20 Q. So the bag was heat-sealed?

21 A. Yes.

22 Q. All right. Let me ask you, in reverse buys is it
23 common to use an imitation controlled substance?

24 A. Yes.

25 Q. Why don't you use real heroin?

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1 A. Just don't want to be responsible for putting real
2 drugs onto the street. That's basically -- basically it.

3 Q. So then -- so there's nothing illegal about the
4 substance in front of you today though?

5 A. No.

6 Q. Now Agent Miller, after you prepared that imitation
7 heroin what did you -- who, if anyone, did you give it to?

8 A. Gave it to Adrian.

9 Q. All right. When did you give it to Adrian?

10 A. On August 20th.

11 Q. All right. And what was the purposes of you giving it
12 to Adrian?

13 A. For him to be able to conduct the four-ounce
14 transaction with Jawan White.

15 Q. Okay. Now, was that the second video that we watched?

16 A. Yes.

17 Q. All right. Now, when Adrian went to do the second
18 transac -- or the first transac -- the transaction, excuse me,
19 what did you do after he left the police -- well, first off
20 let me ask you; where did you and Adrian meet?

21 A. We met at the Myrtle Beach Police Department Training
22 Annex.

23 Q. Okay. And then at some point where was Adrian suppose
24 to go to meet Jawan White?

25 A. At the Coastal Grande Mall.

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1 Q. All right. What did you do after Adrian left the
2 Police Annex and went to the Coastal Grande Mall?

3 A. I followed in my vehicle. I was acting as a
4 surveillance agent.

5 Q. Okay. Now acting as a surveillance agent were you able
6 to observe the take-down that took place?

7 A. I was.

8 Q. Okay. Let me also back up before we get to the actual
9 take-down. You said you made four ounces of heroin, or of
10 imitation heron. In your training and experience as a law
11 enforcement officer are you abreast of the street value of
12 heroin?

13 A. Yes.

14 Q. What's the street value of four ounces of heroin?

15 A. Ten Thousand Dollars would be accurate.

16 Q. Roughly right what the Defendant agreed to pay?

17 A. Yes. Typically an ounce is Twenty-Eight Hundred to
18 Thirty-Five Hundred range. The more you get the better --
19 better deal you are going to get.

20 Q. All right. So how was Adrian, if at all, suppose to
21 alert you that the transaction was taking place?

22 A. The agreement was -- what I instructed Adrian to do was
23 to take the imitation heroin, in this bag, place it in the
24 trunk of his vehicle, to drive straight to the Coastal Grande
25 Mall, park his vehicle in the area of the Sears Auto Center.

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1 At that point, once he was parked and in position he could
2 then call Jawan White and tell him he was there, and he was
3 ready for -- to do the deal. At that point I had myself,
4 other agents in the area. I had a clear line of sight of
5 Adrian in the vehicle. I advised him when Jawan showed up to
6 try to -- try to let the deal go down inside of his vehicle.
7 Once Jawan presented the money Adrian was to get out of his
8 vehicle, go to the trunk to retrieve the imitation heroin, and
9 at that point, once I seen the trunk open I would know that
10 Adrian had seen -- seen the money, and the deal was a go.

11 Q. Okay. And at that point was the take-down suppose to
12 occur?

13 A. Yes. I -- at that point I gave the go signal to move
14 in and make an arrest.

15 Q. All right. And did it pretty much go down just as
16 planned?

17 A. It went down exactly as planned.

18 Q. All right. Let me ask you about that imitation
19 heroin. After the transaction did you eventually recover
20 that?

21 A. Yes.

22 Q. Who did you recover it from?

23 A. Jawan White.

24 Q. Where was it on Jawan White's person?

25 A. It was tucked in his wasteband.

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1 MR. SPRATLIN: Permission to approach and retrieve
2 exhibits, Your Honor.

3 COURT: Yes.

4 MR. HILLIARD: I don't have any objection to this,
5 Judge.

6 COURT: All right. Without objection.

7 MR. SPRATLIN: Your Honor, I'm tendering these in
8 evidence without objection, State's Exhibits Numbers 6, 7 and
9 8.

10 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBITS 6, 7
11 AND 8.)

12 Q. Agent Miller, let me just ask you, as far as State's
13 Exhibit Number 8, what is that a photograph of?

14 A. That's Jawan White, and the substance in his wasteband.

15 Q. All right. What is that substance?

16 A. It's packaged heroin, imitation heroin.

17 Q. Let me show you what's been marked State's Exhibit
18 Number 7. What is that a picture of?

19 A. That's a picture of his wasteband, with the imitation
20 heroin sticking out of it.

21 Q. Okay. Let me show you what's been marked State's
22 Exhibit Number 6 and entered into evidence. What is that a
23 photograph of?

24 A. That is the Ten Thousand Dollars I recovered from the
25 floorboard of Adrian's vehicle, the driver's side.

1 MR. SPRATLIN: Okay. Your Honor, permission to publish
2 to the jury.

3 COURT: Certainly.

4 I'll tell you what we are going to do. It's a quarter
5 of five. I'm going to take a quick break, whether the jury
6 needs it or not, the Court does, and we will continue with
7 this in just a moment, okay.

8 MR. SPRATLIN: Yes sir, Your Honor. Can the jury
9 continue looking at the exhibits?

10 COURT: Certainly.

11 Bobby, take the jury out as soon as they finish that.
12 Okay.

13 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
14 PRESENCE OF THE JURY.)

15 COURT: All right. We have everyone back in.

16 DIRECT BY SPRATLIN CONTINUED:

17 Q. Agent Miller, I think we left off you had just
18 described that you recovered that substance from the wasteband
19 of Jawan White, the substance in front of you. Let me ask you
20 a little bit more about that substance. Now you said you --
21 you prepared it and made it?

22 A. Yes.

23 Q. And was it in your custody and control up until you
24 gave it to Adrian?

25 A. That's correct.

1 Q. And then you recovered it from Jawan White?

2 A. Yes sir.

3 Q. It has been in your custody and control ever since?

4 A. Yes.

5 MR. SPRATLIN: Your Honor, at this time I would tender
6 into evidence State's Exhibit Number 5, the imitation heroin.

7 MR. HILLIARD: I have no objection the heroin. I
8 object to the bags where the fake heroin is.

9 (IMITATION HEROIN ADMITTED INTO EVIDENCE AS STATE'S
10 EXHIBIT NUMBER 5.)

11 MR. SPRATLIN: The State is stipulating that the
12 evidence bag the imitation heroin was packaged in is not going
13 to be sent back to the jury, rather, all that's going to be
14 sent back is the McDonald's bag, and the imitation heroin, as
15 packaged.

16 COURT: Okay.

17 Q. Now Agent Miller, let me ask you, you said that that
18 substance that you created was significantly, in fact, almost
19 identical to black -- or brown powder heroin -- excuse me.
20 What other kinds of heroin are there?

21 A. There's brown powder heroin, white powder heroin, and
22 black tar heroin. Those are the three main heroins that I
23 know of, types of heroin.

24 Q. And someone asking for powder heroin would know the
25 different kinds of heroin, or likely have an idea of the

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1 heroin?

2 A. Yes.

3 Q. All right. Agent Miller, we saw on that video a take-
4 down, and we saw that Adrian, your confidential informant, was
5 also involved in the take-down, and actually handcuffed and
6 placed in the back of the car. Why was that?

7 A. So that the Defendant, Jawan White, did not know that
8 Adrian was cooperating with me, or the Drug Enforcement Unit.
9 We wanted it to look like we were arresting Adrian, along with
10 the Defendant, Jawan White, so both of them were handcuffed,
11 and Adrian was removed from the area, basically acted like we
12 transported him off to jail.

13 Q. And that's basically to protect them?

14 A. Yes.

15 Q. All right. Let me ask you, Agent Miller, and
16 apologize for not asking this sooner, but let's go back to
17 before Adrian went out to Coastal Grande Mall. What, if
18 anything, did you do in regards to searching him?

19 A. I searched his person and his vehicle.

20 Q. What was the purpose of searching him and his vehicle?

21 A. Just to make sure there was no contraband or large sums
22 of money on his person, or inside the vehicle.

23 Q. Okay. The large sum of money that was recovered from
24 Adrian, is there anywhere else that could have come from other
25 than the Defendant, Jawan White?

1 A. Nowhere else.

2 Q. Now Agent Miller let me ask you, when you arrested
3 Jawan White what did you -- what charge did you arrest him on
4 again?

5 A. Trafficking heroin.

6 Q. All right. And what, if anything, did you do with him
7 in regards to his rights?

8 A. Immediately after, when I approached Jawan he was in
9 handcuffs. I advised him that he was under arrest for
10 trafficking heroin, and at that time I advised him of his
11 Miranda Rights.

12 Q. What, exactly, did you tell him? What are his Miranda
13 Rights?

14 A. That he was under arrest, he had the right to remain
15 silent, anything that he said could be used against him in a
16 court of law, he had a right to have an attorney present while
17 being questioned, if he answered -- decided to answer any
18 questions he had the right to stop at any time.

19 Q. Did the Defendant, Jawan White, agree to talk to you?

20 A. Yes, he did.

21 Q. All right. Now, at any point prior to him talking to
22 you while you were reading his rights or beforehand, did he
23 ever state that he wanted an attorney?

24 A. No.

25 Q. Did he ever state that he wished to remain silent?

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1 A. No.

2 Q. Did he, in any way, insinuate to you that he wished to
3 invoke any of his rights that you just read?

4 A. No. He stated that he understood his rights, and that
5 he was willing to talk to me.

6 Q. Now let me ask you, in exchange for a statement did
7 you, or anyone in your presence, promise him anything?

8 A. No.

9 Q. Did you, or anyone in your presence, threaten him in
10 any way?

11 A. No.

12 Q. Now, Agent Miller, you've been in law enforcement for
13 eight years?

14 A. Law enforcement, altogether, is a little over twelve
15 years. Some of that was in a -- in a jail, working as a
16 correctional officer, but about nine years of on the --
17 working as a police officer.

18 Q. In your time, just in law enforcement in general, have
19 you had a chance to come in contact with individuals who are
20 under the influence of either drugs or alcohol?

21 A. Yes, many times.

22 Q. All right. What sort of signs do you look for to
23 determine if someone was under the influence of drugs or
24 alcohol?

25 A. Blood-shot eyes, slurred speech, unsteady on their

1 feet, talking -- overly talkative, slow with their movements,
2 or overly fast moving and talking, maybe a little more body
3 language or something that would be common, those sort of
4 things.

5 Q. Did you notice anything about -- did you notice any of
6 those signs in regards to the Defendant?

7 A. No sir.

8 Q. Did he appear to you to be under the influence of
9 anything that day?

10 A. Nothing.

11 Q. All right. Based on your conversation with the
12 Defendant did he appear to understand the things you were
13 saying?

14 A. Yes, he did.

15 Q. Did he appear to understand the English language?

16 A. Yes.

17 Q. And at any time did he ask for clarification on either
18 his rights or anything else you said?

19 A. No.

20 Q. Did you have any reason at all to believe that the
21 Defendant was not making a informed, voluntary waiver of his
22 rights when he spoke with you?

23 A. No, I did not.

24 Q. Where did this interview with the Defendant take place?

25 A. At the location of the arrest, at the Coastal Grande

1 Mall, in the parking lot.

2 Q. Did it take place in a vehicle, or was it just out in
3 public?

4 A. Inside my vehicle.

5 Q. All right. And what did the Defendant tell you in
6 regards to the questions you asked?

7 A. Told me that he was there to purchase four ounces of
8 heroin, and that he paid Ten Thousand Dollars for it.

9 Q. Now Agent Miller let me ask you, in what county is
10 Broadway at the Beach in?

11 A. Horry County.

12 Q. And what county is Coastal Grande Mall in?

13 A. Horry County.

14 Q. So all the events you described here today, they
15 occurred in Horry County?

16 A. Yes sir.

17 Q. And they occurred on or about August 20th, 2011?

18 A. Yes sir.

19 Q. Again, the person that you arrested was the person in
20 the photographs, and identified himself as Jawan White?

21 A. Yes, Jawan White?

22 MR. SPRATLIN: Thank you, Your Honor. That's all the
23 questions I have at this time.

24 MR. HILLIARD: Thank you, Judge.

25 CROSS-EXAMINATION BY MR. HILLIARD:

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3 A. We recovered Ten Thousand Dollars.

5 A. I didn't get to keep it; it goes in the Drug
6 Enforcement seizure account.

10 A. That's correct. It went into the Drug Enforcement
11 Unit's seizure account.

14	A.	No.
----	----	-----

16 A. That's correct.

18 A. That's correct.

20 | A. Yes.

24	A.	Yes.
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1 he had been in the drug business?

2 A. That's correct. He could provide information on other
3 drug dealers.

4 Q. So he was providing information on drug traffickers;
5 right?

6 A. That's correct.

7 Q. And he was a drug trafficker?

8 A. He was charged with trafficking cocaine.

9 Q. Real cocaine?

10 A. That's correct.

11 Q. And he didn't know Jawan White?

12 A. Not prior to this operation, no.

13 Q. And the very first time that you knew anything about
14 this case it was a Ten Thousand Dollar four-ounce deal; isn't
15 that true?

16 A. The information that I had received was that there was
17 a subject, Jawan White, looking for -- to purchase a large
18 quantity of heroin. I was advised that -- it was explained --
19 I don't believe anybody knew what that large quantity was, but
20 it's my understanding that the third party that introduced
21 Adrian to the -- to Jawan White, has stated that he does not
22 deal less than four ounces of heroin. We had information that
23 a subject was looking for a large quantity of heroin, which
24 would have been Jawan White, and the informant was instructed
25 to just advise that he does not deal in less than four ounces

1 of heroin.

2 Q. So the informant was instructed to tell Jawan White
3 that the informant does not deal in less than four ounces of
4 heroin?

5 A. That's correct.

6 Q. So the informant was instructed specifically how much
7 heroin to sell to Jawan White?

8 A. No sir.

9 Q. The informant was instructed to make a determination
10 not to do a transaction for less than four ounces?

11 A. That's correct. He was advised that he on -- to say he
12 only dealt in four ounces or more. My understanding they did
13 not know how much, just looking for a large quantity of
14 heroin.

15 Q. All right, sir. And the Ten Thousand Dollars would
16 have been a pretty substantial bargain for this amount of
17 heroin; is that right?

18 A. To my knowledge, it's about -- would be about the
19 average -- average price.

20 Q. You said Twenty-Eight to Thirty-Five per ounce?

21 A. That's correct.

22 Q. Four ounces times Twenty-Eight would be more than Ten;
23 right?

24 A. That's correct. I also said, the more you get the
25 better deal you are going to get.

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1 Q. Right.

2 MR. HILLIARD: Excuse me just a second.

3 Q. The business about what does "good" mean in the drug
4 trade could be learned by watching TV; isn't that true?

5 A. I suppose so.

6 Q. And "good" sort of means good in any kind of a --
7 whether it's drugs or anything?

8 A. That's right.

9 Q. And the notion of powder being some kind of specific
10 thing to the drug trade, that could come off of TV as well?

11 A. In my experience, when somebody is going to discuss a
12 heroin transaction, and the phrase "powder" is brought up
13 several times, I would -- the best of my knowledge, I would
14 say they are speaking of powder heroin, and if they are
15 asking, is it "good", is it good quality narcotics, was my
16 understanding of the video.

17 Q. Have you ever heard anybody say they were selling bad
18 quality narcotics?

19 A. I've heard of it. People are -- do sell bad quality
20 narcotics, but people want the -- people looking to purchase
21 drugs want the good stuff. That's why they say, is it good.

22 Q. Certainly your narcotics are of the worse quality?

23 A. It's imitation heroin.

24 Q. Right. When you arrested Mr. White he didn't have any
25 drugs on his person?

1 A. He had the imitation heroin.

2 Q. The only drug -- the only narcotic-looking sorts of
3 things that he had were the things that you guys had given
4 him, sold him?

5 A. Yes, that's correct, the imitation heroin that I had
6 given Adrian, that he sold to Jawan White.

7 Q. Right. He didn't have any scales, he didn't have any
8 way to test it or anything like that?

9 A. No sir, not -- not with him.

10 Q. He didn't have any indicia of being a drug trafficker
11 other than -- I know he had the imitation controlled
12 substance, but other than that, he had none of the indicia of
13 a drug trafficker?

14 A. You are asking me ---

15 Q. Yes sir, that's a question. I'm sorry.

16 A. Can you say it again? I'm sorry.

17 Q. Well, I mean, there would be like scales, or some way
18 to test it, or three or four other -- or I shouldn't say other
19 -- three or four sort of folks trying to make sure he didn't
20 get killed or robbed, or something like that, I mean, he
21 didn't have any of that; it was just him and Ten Thousand
22 Dollars?

23 A. The only thing I recovered was the imitation heroin
24 from him. That's correct. No scales were recovered.

25 Q. Right. Okay. And he didn't have any backup, or any

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1 people with him?

2 A. Not that I saw.

3 Q. I mean, you were there looking for backup and ---

4 A. Yes. I did not -- nobody else was seen, other than
5 Jawan White, during the whole operation.

6 Q. Right. And it took him a significant amount of time to
7 raise the Ten Thousand Dollars; isn't that true?

8 A. They first met on August 16th, and the transaction
9 occurred on August 20th.

10 Q. And the person who actually -- the informant who
11 actually set up this deal, you only saw on that one occasion;
12 you never saw him before, and you never saw him since; isn't
13 that true?

14 A. That's correct.

15 Q. And you don't know what happened to him?

16 A. It's my understanding that he's in Mexico.

17 Q. All right, sir. The best you know, he's not available
18 for us today?

19 A. Yes sir.

20 MR. HILLIARD: That's all I have. Thank you, sir.

21 MR. SPRATLIN: Just real briefly, Your Honor.

22 REDIRECT-EXAMINATION BY MR. SPRATLIN:

23 Q. Agent Miller, again, why did you make four ounces of
24 imitation heroin?

25 A. That was the transaction that Jawan and the informant

1 had agreed upon.

2 Q. Now Mr. Hilliard asked you if -- Hilliard asked you
3 about whether or not Adrian had ever had any knowledge of
4 Jawan White beforehand. Is it common for every drug
5 trafficker to know every other drug trafficker in a county?

6 A. No.

7 Q. Especially when it's big as Horry County?

8 A. That's right.

9 Q. Is Jawan White even from Horry County?

10 A. I believe he's from Georgetown County.

11 Q. Now, let me ask you, Mr. Hilliard said -- excuse me --
12 John Hilliard. Mr. Hilliard said that it took a great deal of
13 time for him to come with the Ten Thousand Dollars to purchase
14 four ounces of heroin. You said that the initial meeting
15 happened on the 16th; correct?

16 A. That's correct.

17 Q. And then the transaction itself happened on the 20th?

18 A. Yes sir.

19 Q. So four days?

20 A. That's right.

21 Q. He actually called a day ahead of time and said that he
22 had the money?

23 A. He called on the 19th and stated that he had the money
24 and he was ready, and then Adrian, the informant, told him
25 that he would be ready to do business the next day, on the

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1 20th.

2 Q. So three days?

3 A. Three days.

4 Q. Three days, Ten Thousand Dollars. Mr. Hilliard was
5 also making a big deal about the fact that he wasn't testing
6 the imitation heroin, and the ---

7 MR. HILLIARD: Objection to the form of the question.

8 COURT: Rephrase your question.

9 Q. Mr. Hilliard brought up to fact that the -- that Jawan
10 White had not tested the heroin at the scene. Is it common
11 for people to test heroin in a crowded parking lot?

12 A. No sir.

13 Q. And was this parking lot, in fact, crowded?

14 A. It was. It was August, in Myrtle Beach. It was a
15 fairly business day. The parking lot was full. It's normal
16 that you would want the exchange part of the transaction to
17 occur as fast as possible.

18 Q. Based on everything you had to know about this case did
19 you think this was going to be a one-time transaction?

20 A. Yes.

21 MR. SPRATLIN: Thank you. No questions.

22 MR. HILLIARD: I don't have anything else, Judge.

23 COURT: All right, you may step down.

24 A. Thank you, Your Honor.

25 COURT: Witness?

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MR. SPRATLIN: Your Honor, the State would rest at this

COURT: All right.

Ladies and gentlemen of the jury, we are going to break for the evening. It's after five, and I'm going to keep you like I did yesterday, so Mr. Ropp, if you would, take them out to the jury room and make sure they are safe when they leave.

I would, again, ask you not to speak with anyone about this case, discuss it, don't go on the internet look for anything, or any other information, please, don't do any of that. Okay.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

COURT: All right. We are at ease until tomorrow morning at 9:30.

MR. HILLIARD: Motions in the morning, Judge?

COURT: Pardon?

MR. HILLIARD: "Motions in the morning?"

COURT: Yes.

MR. HILLIARD: Thank you.

(THE FOLLOWING TAKES PLACE ON THE NEXT DAY, JUNE 14,
2013, OUTSIDE THE PRESENCE OF THE JURY.)

COURT: All right. : Motions.

MR. HILLIARD: Thank you, Judge.

We would renew, and do renew our motion to dismiss the

1 case based on the fact that the necessary witness is
2 unavailable to us, that the person who set up the deal, and
3 has been testified by both the informant who was here and the
4 police officer, the person who set up the deal, and in fact,
5 who made the determination about how much heroin to sell, is
6 not here, was not part of the case, and we would submit to the
7 Court that that person was a necessary witness with fraught to
8 the case, and made the case for the government, and because
9 the witness is not here -- and our position is as to the
10 consequence of government action, we would ask that the case
11 be dismissed, and in support of that, Judge, I would like to
12 make a part of the Court's record the information that I have
13 from the Prosecutor -- provided about the absence of a
14 witness's name.

15 COURT: All right. Hasn't the witness's conversations
16 with your client been recorded, and weren't they provided to
17 you?

18 MR. HILLIARD: Well, again, we don't know that those
19 were all the conversations we have ---

20 COURT: There's no indication there were more; is
21 there? Do you have any evidence that there were more than
22 that? Your problem here is, your witness has exercised your --
23 I mean, your Defendant has exercised his right not to testify,
24 and of that is his right, and he's exercised his right not to
25 be present, or he waived his right to be present; let me put

1 it that way ---

2 MR. HILLIARD: Yes sir.

3 COURT: ---And there's nothing that this witness could
4 have provided that your client could not have provided, or
5 that these tapes might provide. It's just pure speculation
6 that there might be another tape, that there might be
7 something else that would be helpful to you.

8 I would respectfully deny your motion.

9 MR. HILLIARD: Thank you, Your Honor.

10 If we could just make this a Court's Exhibit of the ---

11 COURT: All right.

12 MR. HILLIARD: ---Discovery.

13 COURT: Dixie, if you would, mark this as Court's ---

14 (ACKNOWLEDGEMENT OF RECEIPT OF SUPPLEMENTAL DISCOVERY
15 DOCUMENTS MARKED COURT'S EXHIBIT NUMBER 2, NOT TO GO TO THE
16 JURY.)

17 MR. HILLIARD: If we can make a copy of it.

18 COURT: Okay. What else do we have?

19 MR. HILLIARD: We ask at this time, Your Honor, for a
20 directed verdict of not guilty based on the failure of the
21 State to carry all elements of trafficking in heroin, again,
22 based on the testimony which was given it is the government
23 who selected the amount of heroin to be sold. There was, in
24 fact, no heroin in this case, and we would respectfully
25 request the Court to dismiss the case on that basis.

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1 COURT: I am going to give you a charge on entrapment;
2 I've already told you that at the pretrial charge meeting;
3 however, I think the State has shown evidence of
4 predisposition on the part of your Defendant, under the
5 circumstances of this case, to trafficking in heroin, and I
6 would respectfully deny your motion.

7 MR. HILLIARD: Thank you, Your Honor.
8 Judge, the only other thing we would have is, I
9 understand, based on our charge conference, that the Court has
10 modified what is the ordinary trafficking charge. We would
11 respectfully request the Court to charge trafficking in the
12 Court's charge without the addition of the Solicitor's
13 requested language. We would submit to the Court that the
14 requested language from the Solicitor is, in fact, a comment
15 on the facts of this particular case by the Court.

16 COURT: All right. And I think it would be -- is -- a
17 comment on the law in this case. It merely says that -- or
18 emphasizes the fact that an attempt to purchase a substance
19 that is -- substances, counterfeit substance makes no
20 difference as to the offense, and I think that's a correct
21 statement of law. I would deny your motion.

22 MR. HILLIARD: Thank you, Your Honor. That's all we
23 have, Judge.

24 MR. SPRATLIN: Your Honor, I have a copy of that
25 State's Request to Charge if you want to make it a Court's

1 Exhibit, for purposes of the record.

2 COURT: Yes.

3 (STATE'S REQUEST TO CHARGE MARKED COURT'S EXHIBIT NUMBER
4 3, NOT TO GO TO THE JURY.)

5 MR. HILLIARD: One other thing that I forgot, Judge. I
6 notice that Mr. Spratlin has a sign this morning, and I don't
7 have any objection to him using his sign if I can use my sign.

8 COURT: Well, you can during your closing arguments.

9 MR. HILLIARD: Thank you, Judge.

10 COURT: We just don't need signs stood up all around
11 the courtroom.

12 MR. HILLIARD: Yes sir.

13 MR. SPRATLIN: Your Honor, the State only intends on
14 using it's sign as a statement on what the trafficking statute
15 says for the jury. We will only use it briefly in closing.

16 COURT: All right.

17 MR. HILLIARD: I'll argue last, Judge?

18 COURT: Yes.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 COURT: All right, ladies and gentlemen of the jury, as
22 I -- as you heard yesterday, the State has rested now, and the
23 Defense has rested.

24 Mr. Hilliard, is that correct?

25 MR. HILLIARD: Yes sir, we rest, Your Honor.

1 **COURT:** The Defense has also rested in this matter, and
2 you are about to hear closing arguments. As I indicated to
3 you earlier in this trial, closing arguments, like opening
4 remarks, are not evidence. You will consider only the
5 evidence you heard from the witness stand, but the attorneys
6 in this matter do have an opportunity to comment, not only on
7 the evidence and the facts in the case, and how they perceive
8 the facts, but also as to the law, but I remind you that you
9 are the sole and exclusive judges of the facts. You will
10 determine what the facts are, then I will determine what the
11 law is.

12 Mr. Spratlin.

13 **MR. SPRATLIN:** Thank you, Your Honor.

14 May it please the Court.

15 Ladies and gentlemen, willing, able and ready. The
16 evidence you've seen today, the evidence that's been presented
17 to you has shown you that the Defendant was willing to
18 purchase four ounces, or over a hundred grams of heroin, able
19 to purchase four ounces, over a hundred grams of heroin, and
20 ready to purchase over four -- over four ounce -- four ounces,
21 over one hundred grams of heroin.

22 Now, specifically, in a couple of minutes I'm going to
23 talk to about what the trafficking statute says specifically,
24 and what the facts in this case show you specifically. But
25 before I got into that I want to talk to you a little bit

7 Now, the Defendant comes into court presumed innocent.
8 What does that mean? Let me tell you what that means? You
9 picture a set of old timey scales, the kind where you put
10 something on this side, it tips over, put something on this
11 side, it balances out. When you come in the courtroom the
12 scales are tipped all the way to not guilty. The burden is on
13 the State to bring forth enough evidence to convince you,
14 beyond a reasonable doubt, that the Defendant is guilty. Now
15 we don't have to prove -- bring it all the way to the top; we
16 don't have to prove with absolute certainty that he's guilty,
17 rather, we have to present proof that convinces you, beyond a
18 reasonable doubt, he is guilty. That raises a question, what
19 is proof beyond a reasonable doubt. Well, the Judge is going
20 to tell you that in a couple of minutes. Proof beyond a
21 reasonable doubt is proof that leaves you firmly convinced of
22 the Defendant's guilt. Then I raise this question, what do
23 you have to be firmly convinced the Defendant did? I'm going
24 to, real briefly, show you the trafficking statute and read it
25 to you. I'm going to read the whole thing to you but a lot of

1 it does not apply, or is not necessary here today, but the
2 Judge is going to read the whole thing to you so I want you to
3 have a chance to hear it twice. "Any person who knowingly
4 sells, manufactures, cultivates, delivers, purchases, or
5 brings into this State, or who provides financial assistance,
6 or otherwise aids, abets, attempts or conspires to sell,
7 manufacture, cultivate, deliver, purchase, or bring into this
8 State, or who is knowingly in actual or constructive
9 possession, or who knowingly attempts to become in actual or
10 constructive possession of more than twenty-eight grams of
11 heroin is guilty of trafficking in heroin.

12 Specific to this case, ladies and gentlemen, the
13 Defendant knowingly attempted to purchase more than twenty-
14 eight grams of heroin. The words are very important there,
15 because doing any of these things, with more than twenty-eight
16 grams of heroin, makes you guilty of trafficking, intending to
17 purchase more than twenty-eight grams of heroin makes you
18 guilty of trafficking.

19 Ladies and gentlemen, when you look at the evidence here
20 objectively, I submit to you you can't find that he didn't
21 attempt to purchase more than four ounces, or more than
22 twenty-eight grams of heroin. The evidence presented to you
23 shows that the Defendant met two informants at Broadway at the
24 Beach, Myrtle Beach area, and made an agreement to purchase
25 four ounces of heroin for Ten Thousand Dollars. The evidence

1 shows you, three days later, not even quite three days, a
2 little under three days, he calls Adrian, the informant you
3 heard from today, and says I'm ready. Meet up the next
4 morning. The Defendant has Ten Thousand Dollars in cash, Ten
5 Thousand Dollars, cash, to buy four ounces of heroin. He
6 intended and attempted to purchase heroin. He did everything
7 in his power, everything he could do, to purchase more than
8 twenty-eight grams of heroin, and that, ladies and gentlemen,
9 is what makes him guilty of trafficking.

10 Now the Judge is going to tell you in a second the fact
11 that the only thing at the transaction site, the fact that the
12 only thing he got for his Ten Thousand Dollars is imitation
13 heroin is irrelevant, doesn't matter, doesn't change the fact
14 that he's guilty, doesn't change what he did, doesn't change
15 what he attempted to do. He attempted, and intended to try to
16 buy real heroin. He did everything he could. He did
17 everything possible, under his control, to try to buy real
18 heroin, paid Ten Thousand Dollars for it. The fact that the
19 only thing he got was imitation heroin is irrelevant. He's
20 guilty of trafficking nonetheless.

21 How do we know -- how do we know that he intended to buy
22 actual heroin? Well, he paid Ten Thousand Dollars for it, Ten
23 Thousand Dollars, cash. What did he do with it? Well, Mr.
24 Hilliard talked about how he didn't taste it, test it, or do
25 anything like that. He's in a crowded parking lot, ladies and

1 gentlemen, in a car, with windows. You don't taste heroin in
2 a car; you don't break it out on a digital scale, you don't
3 start weighing it out in the car, in a crowded parking lot,
4 with windows. Now, he shoved it down his pants. He shoved
5 real heroin down his pants. No one sees it. No one knows
6 what you have. Unfortunately for him the police came in and
7 found it on him. He thought this was real heroin.

8 Talk to you a little bit about some of the specifics of
9 the facts that you saw here today. You heard from Adrian, who
10 was the informant in this case, Adrian Chavez. You heard how
11 he has some prior history of drug trafficking. He was, in
12 fact, charged with trafficking in cocaine, and he cooperated
13 with law enforcement in the case against Jawan White, and also
14 some other cases you heard, to get those charges taken care
15 of. I don't want you to draw any inferences from the fact
16 that the police used a informant, who knew about trafficking,
17 in a trafficking case, because ladies and gentlemen, if you
18 are going to hunt a skunk you don't get a peacock. If you are
19 going to get a drug trafficker you don't get a guy off the
20 street who knows nothing about drugs, nothing about how drugs
21 are bought, how drugs are packaged, how drugs are sold. You
22 catch a skunk with another skunk. You catch a drug trafficker
23 or a drug dealer with another drug trafficker. That's why you
24 use Adrian. That's why they use them. That's why you wire
25 him up with audio and video, and that's why you follow him, to

1 make sure he's doing what he's suppose to do.

2 Now I talked about that video a little bit. That video
3 was not the best quality. I really do wish that these videos
4 were like you see on TV, crystal clear audio, crystal clear
5 pictures of faces, everything just perfect, wish we could
6 reshoot it four or five times, wish we could take it from
7 different angles to make sure we get everything right.

8 Unfortunately when you are recording stuff with a camera on a
9 watch, and a microphone on a watch you can't do everything.

10 Now, the purpose of showing that first video, the Broad
11 at the Beach video, wasn't to necessarily show you, or talk to
12 you, or have you follow every single thing that was going on
13 in that transaction. It's to show you, and confirm what
14 Adrian, in fact, told you, because there was enough on that
15 video to show you what they were talking about. The words
16 powder were heard clearly, powder, and that was heard from the
17 Defendant's mouth. Heard four mentioned several times. I
18 think you even heard Ten Thousand Dollars mentioned at one
19 point, or ten, or something like that. What's also important
20 in that video, ladies and gentlemen, is the body language, the
21 body language of the participants. Was the State brow-beating
22 the Defendant into committing this crime, or buying four
23 ounces of heroin, were the State agents beating him up,
24 telling him, you better do this, you better do that? No, he
25 was there glad-handing them, talking about how he was going to

1 do business, how business was going to be made, how he's an
2 entrepreneur. He was talking about making money off of
3 making a deal with them. He was a willing, able and ready
4 participant in any negotiation for the purchases of four
5 ounces of heroin.

6 Now, it's been alluded in this case that the Defendant
7 was ignorant of drugs. I believe it was said at one point
8 that Adrian knew more than the Defendant about drugs. Well,
9 what's the first thing the Defendant asked when he was handed
10 the imitation heroin over there? I can cut this, right?
11 Someone who doesn't know about drugs doesn't know what cutting
12 means; someone who doesn't know about the game doesn't know
13 how you cut, why you cut, what you would do. Cutting the
14 drugs, ladies and gentlemen, is the same thing as asking if
15 it's good. May seem harmless, may seem like you could pick it
16 up on TV, using the right contacts. We don't need nothing
17 like that. He knew about drugs. The evidence we have shown
18 you, he did. Then it showed you he tried to buy it, attempted
19 to buy four ounces for -- four times the trafficking weight,
20 at issue in this case, worth of heroin.

21 Ladies and gentlemen, you are going to hear in a minute,
22 as I talked about in my opening argument, the issue of
23 entrapment. The Defense is arguing that -- or I assume going
24 to argue that the Defendant was entrapped into committing this
25 crime. Entrapment is when the State, basically, make someone

JURY IN
STATE'S SUMMATION (SPRATLIN)

1 commit a crime. Now the Judge is going to read you off a long
2 charge about what entrapment is. I want you to pay special,
3 special attention to that. Above anything else you hear pay
4 very close attention to that, because I'm going to talk to you
5 about a couple more points that I want you to focus on when
6 you hear them. Specifically, that the Defendant would not
7 have committed the crime without the trickery, persuasion or
8 fraud of the officer of agent. Ladies and gentlemen, that man
9 was going to buy heroin. The police had information he was
10 looking to buy heroin. They simply provided a means and a way
11 for him to buy it, and stopped him from buying it. He was
12 going to find heroin. He tried to find heroin, and he was
13 going to get heroin. Now that doesn't mean that he was going
14 to go to Grand Strand Mall that day, buy four ounces of heroin
15 in the parking lot from someone else. Just the fact that
16 there was an agent there when he committed that particular
17 offense that doesn't make it entrapment, but if he would have
18 purchased heroin some other way, the fact that the State
19 simply said, hey, we'll sell you four ounces of heroin; let's
20 do a deal, and then he agrees, meets up, buys the heroin, what
21 he believes to be heroin, luckily it was only imitation
22 heroin, that doesn't mean the State made him do it; the State
23 didn't make him do it. He wanted to buy heroin. He would
24 have found somewhere else to buy it if he didn't -- if the
25 State hadn't intervened, and had him try to buy it from

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1 Adrian.

2 Now I mentioned earlier, predisposed to commit the
3 crime, because the Judge is going to talk to you about that.
4 Pre -- if an individual is predisposed to commit a crime the
5 defense of entrapment is completely irrelevant. Now I just
6 told you why it doesn't apply in the first place, but if he's
7 predisposed to commit the crime it's completely irrelevant;
8 you don't even have to consider. A defendant is predisposed
9 to commit the crime, and have the intent, purpose, readiness
10 or willingness to commit the crime without the inducement or
11 persuasion of the officer of agent. Specifically, the fact
12 that the officer or agent merely presented opportunities, or
13 facilities for the commission of the crime is not entrapment.
14 It's not entrapment that the State said, come meet me at Grand
15 Strand Mall; I'll sell you four ounces. Furthermore, you can
16 infer predisposition to commit the crime from several factors,
17 existing course or criminal conduct by the defendant, an
18 already formed plan by the defendant to commit the crime, and
19 lastly, a willingness to commit the crime charged as shown by
20 the defendant's ready response to the inducement. The State
21 didn't have to beat Jawan White into agreeing to buy four
22 ounces of heroin, the State didn't have to strongly convince
23 him; he was more than happy, he was ready, able and willing.
24 Broadway at the Beach, ladies and gentlemen, the only reason
25 he wasn't able to buy it then, he didn't have the money, they

1 didn't have the drugs either, he didn't have the money.
2 Whether you meet at somewhere public, in the middle of the
3 area, you agree to meet somewhere else, a little more
4 secluded, car in a parking lot, you meet in that parking lot.

5 The Defendant was ready, able and willing, and I've used
6 that a lot, because it's important for you to know that,
7 because I think that's what the evidence has shown you, and
8 one of the key factors of evidence I want you to look at to
9 show how willing, able and ready he was to purchase four
10 ounces of heroin is the time that it took him to come up with
11 the money, Ten Thousand Dollars, cash. He meets with Adrian
12 at Broadway at the Beach on August 16th. You saw on the
13 video, it's getting dark, it's late night, the 17th, 18th, the
14 19th he calls Adrian, the 19th he says he's ready. Adrian
15 says, all right, we'll meet the next day. Under three days to
16 come up with Ten Thousand Dollars, cash. You don't just have
17 Ten Thousand Dollars cash laying around, ladies and gentlemen,
18 to buy heroin with, unless you are planning on buying heroin.
19 The Defendant fully intended to buy heroin, and made a plan to
20 buy heroin. The State simply stopped him from doing it.
21 That's not entrapment, that's good police work, and for that
22 reason, for the fact that he attempted to purchase twenty-
23 eight grams of heroin, you need to find him guilty.

24 Thank you.

25 MR. HILLIARD: Thank you, Judge.

1 As you can see, I still don't have a client, and you are
2 still under an obligation to not think about that, and I know
3 that's impossible to do, so I brought this sign, because this
4 is really what it is that we are talking about, based on what
5 the Judge has told you, the presumption of innocence, and
6 Jawan White, he doesn't have to be here - he's not here - and
7 that does not enter into your deliberation. The question for
8 you to decide is whether the State has carried the burden of
9 proving, beyond a reasonable doubt, the facts necessary for
10 you to find him guilty, because he is presumed to be innocent.
11 The Judge is going to talk about that some more when the Judge
12 comes to the charge, but I want to give you the opportunity to
13 have that fully planted in your head, because it's important
14 in every case, it's important in every case, not just this
15 case, but every case that comes before a criminal jury.

16 And I have neglected to thank you. I know it's Friday
17 morning and you guys have been here all week, but we do thank
18 you for your service in this case. We appreciate the fact
19 that you are here with us on a Friday morning.

20 One of the things that you can consider when you are
21 making your decision, that you should consider when you are
22 making your decision, is what do you know, and what do you not
23 know. Again, it all ties into the presumption of innocence.
24 The burden of proof is on the State. They control the trial
25 of the criminal case. They control what it is that they put

1 before you, and they created this evidence. Now the
2 prosecutor has indicated to you that he wished the -- he
3 wished that it was a better video, but they didn't present a
4 better video. I would submit to you that you can't tell --
5 that was an extremely long conversation that took place, and
6 the witness that testified didn't say a whole lot about it,
7 but I would submit to you that you can't really tell what the
8 heck was getting said on that thing. You know the body
9 language, I don't know the -- you know, it goes up and down
10 and sideways and you get sort of dizzy looking at it. You
11 can't hear any of the things that were said. Maybe there's a
12 word you catch here, or a word you catch there, but the idea
13 that somehow that proves a predisposition to commit a crime,
14 could you really tell anything about that, other than the fact
15 that there was a meeting that took place? That's all that
16 showed you.

17 What about the witness that they had, the drug
18 trafficker of the twenty-eight grams of bone fide cocaine drug
19 trafficker that they had to testify? When you are judges
20 witnesses, and credibility of witnesses, and you are thinking
21 about those things a person that will not tell the truth about
22 one thing will also not tell the truth about a lot of things.
23 That's in your good common sense and your experience as human
24 beings. What did he tell you, the drug trafficker? The only
25 time that he was ever in the drug trafficking business he got

1 caught, but then what did the police officer tell you when he
2 got up there? He's made a lot of cases of people that he knew
3 that were in the drug business that he got to know from being
4 in the drug business. He was in the drug business.

5 What do you know about Jawan White? You don't know
6 whether he's in the drug business or not. You know, when you
7 talk about entrapment, and whether the Defendant, Jawan White,
8 is predisposed to commit the crime, what don't you have? You
9 don't have an existing course of criminal conduct by the
10 Defendant similar to the crime charged. You haven't hear a
11 word about that. An already formed plan by the defendant to
12 commit the crime. You haven't heard a word about that. A
13 willingness to commit the crime charged as shown by the
14 defendant's ready response to the inducement. And I guess we
15 will debate whether that's here or not, because what else
16 don't you have? What witness would you have liked to have
17 heard from that's not here? How about the guy who set up the
18 deal? What do we know about that? We know that this deal was
19 set up before the informant that testified came into this case
20 at all. He didn't know Jawan White, he didn't have anything
21 about Jawan White. This whole thing was put together by a
22 paid informant who never showed up in court. You don't know
23 what that paid informant said to Jawan White. You don't know
24 anything about that. That informant was in control of the
25 government. He was a paid person, best we know. He was in

1 control of the government. They brought the case, why didn't
2 they bring that guy? Why is he not here? Wouldn't you like
3 to know, from him, how this whole deal got set up? One thing
4 that you do know was, the paid informant selected the amount
5 of heroin that he was going to sell. We know for certain,
6 based on the testimony of the police officer, that it was the
7 government's informant that created this transaction, that
8 four ounces of heroin was a decision made by the government
9 paid informant on behalf of the government. We know that the
10 government weighed the heroin, not heroin. That's one thing
11 that I -- I guess I keep forgetting, there ain't no heroin in
12 this case, none, not a drop, nothing, nothing.

13 Trafficking. Jawan White has got to be -- if, in fact,
14 he is a drug trafficker, he has got to be the world's dumbest
15 drug trafficker. Now, he showed up with Ten Thousand Dollars.
16 There's no question about that, and there's a sad looking
17 picture of him laying on the ground, where they have pulled
18 the, whatever that stuff is, out of his pants there, and what
19 happens when he -- you know, there's no question but what, by
20 the time this thing is done, that he was -- that he was -- was
21 in the position of buying the imitation controlled substance.
22 When the policeman arrested him what did he do? He fully
23 cooperated. He said, yes, I was here, I brought this money, I
24 brought this imitation heroin, that he thought was heroin.
25 There's no question about that part of this. That's not

1 really the question of the fact. The question is why? You
2 don't know the answer to that. You don't know the answer to
3 that, because the person who put this whole thing together is
4 not here today, not here yesterday to testify, and you don't
5 know why. Again, it's their case, it's their responsibility.
6 They are the ones who brought us all here. They got the
7 indictment from the Grand Jury, put this whole thing together,
8 made this transaction. They did the video tape you can't
9 hear. They did all that, and now they want you to find Jawan
10 White guilty, beyond a reasonable doubt, of trafficking in
11 heroin.

12 Do you believe the informant when he says he didn't know
13 how much prison time he could get for trafficking in cocaine?
14 Do you believe that? Do you believe that was the only time
15 the informant ever had any drug activity, was the time that he
16 got caught? Do you believe that? He got away with it,
17 putting this thing together, and a bunch of other stuff that
18 he did, apparently. And the other fellow, the paid informant,
19 again, we don't know anything about him. We don't know --
20 when you say a willingness to commit the crime charged that's
21 shown by the ready response to the inducement, the inducement
22 is the -- the putting the thing out there. We know the
23 government put the thing out there. We know the government
24 picked the four ounces. We know those things happened, but
25 when did that inducement take place? You don't know that.

1 You don't know that. This thing didn't start at Broadway at
2 the Beach and then three days later happen. This thing
3 started when the informant that you didn't hear from contacted
4 Jawan White about the four ounces. He put that together.
5 That's clear. What else, we don't know.

6 The State is required to prove, beyond a reasonable
7 doubt, that the defendant was predisposed to commit the crime
8 without the inducement of the officer or the agent. They have
9 to prove, beyond a reasonable doubt, that Jawan White had a
10 predisposition to commit trafficking in heroin without the
11 inducement. You don't know anything about that. You know
12 they picked four ounces. You know that. You know Jawan White
13 didn't pick four ounces; they did.

14 When the Solicitor was talking to you about the case,
15 and I -- my recollection and his recollection were different
16 as to one particular part of this, but there's twelve of you,
17 there's one of me, there's one of him, and I'm not trying to
18 say, in any form or fashion, that he was misleading you, but
19 my recollection of what was said was -- about the heroin was,
20 can I cut it, not, I can cut this, right. But, you know, if
21 you want to listen to the tape, or see the tape again you are
22 entitled to look at that and try to figure out exactly what
23 that's about. You can have the opportunity to have that back
24 in the jury room with you, and -- or come out here and watch
25 it, if you want to, again, and see what's on -- what's in

1 there.

2 The Solicitor has indicated to you that Jawan White
3 wanted to buy heroin. You don't know that, because the
4 transaction was set up by somebody who is not here. Solicitor
5 indicates to you that he would have bought heroin from
6 somebody else. You don't know that. There's no evidence in
7 this case at all to that effect. You don't know that.
8 There's more in this case, ladies and gentlemen, that you
9 don't know than there is that you do know. There's a critical
10 piece of information in order for you to make a informed
11 decision that you just don't have, and in that the State has
12 failed to carry their burden. It's their responsibility to
13 prove it to you, and they didn't bring you what you needed.
14 That's not Jawan White's fault. You don't have what you need
15 in order to convict him of this crime, trafficking in heroin.

16 Thank you.

17 **COURT:** Ladies and gentlemen, let me remind you that
18 during this trial you and I have certain duties to perform.
19 As the Trial Judge it's my responsibility to preside over the
20 trial of the case, and I also have the duty to rule on the
21 admissibility of the evidence offered during the trial, and
22 you are to consider only the competent evidence before you.
23 If there was any testimony ordered stricken from the record in
24 this case during this trial you must disregard that testimony.
25 You are to consider only the testimony which has been

1 presented from this witness stand, any exhibits which have
2 been made a part of the record in this case, and any
3 stipulations of counsel.

4 I have the additional duty to charge you the law
5 applicable to this case. As the Presiding Judge I am the sole
6 judge of the law of this case, and it's your duty, as jurors,
7 to accept and apply the law as I now state it to you. If you
8 already have an idea as to what the law is, or what the law
9 ought to be, and it doesn't agree with what I now tell you the
10 law is, you must abandon this idea, because you are sworn to
11 accept the law and apply the law exactly as I state it to you.

12 In every case tried in this court before a jury the jury
13 becomes the sole and exclusive judge of the facts in the case.
14 A trial judge cannot intimate, state, comment on, or make any
15 statement to a jury, or a trial jury about the facts in a
16 case. Since you, the jury, are the sole judges of the facts
17 in the case you are not to infer from what I have said during
18 the progress of this trial in ruling on the admissibility of
19 evidence or otherwise, or anything that I say now, during the
20 course of this instruction to you, that I have any opinion
21 about the facts in the case. The law does not allow me to
22 have an opinion about the facts in the case. This is a matter
23 solely for you, the jury, to determine. As jurors it is your
24 duty to determine the effect, value, weight and truth of the
25 evidence presented during this trial.

1 Now the indictment in this matter charges the Defendant
2 with trafficking in heroin, twenty-eight grams or more. I
3 remind you that the fact that the Defendant was arrested,
4 charged and indicted in this case is not evidence, and cannot
5 be considered by you as evidence of guilt in the case, nor
6 does it create any presumption or inference of guilt. That
7 document, the indictment, is simply the formal, written
8 instrument which contains the charges made against the
9 Defendant. It is the formal document by which the case is
10 brought into the court.

11 Now, the Defendant has pled not guilty to the
12 indictment, and that plea puts the burden on the State to
13 prove the Defendant guilty. A person charged with committing
14 a crime -- a criminal offense in South Carolina is never
15 required to prove himself innocent. I charge you that is an
16 important rule of law that the defendant, in a criminal case,
17 no matter what the seriousness of the charge may be, will
18 always be presumed to be innocent of the crime for which the
19 indictment was issued unless guilt has been proved by evidence
20 satisfying you of that guilt beyond a reasonable doubt. This
21 presumption of innocence does not end when you begin your
22 deliberations. It accompanies the Defendant throughout the
23 trial until you reach a verdict of guilt based on evidence
24 satisfying you of that guilt beyond a reasonable doubt.
25 Presumption of innocence is like a robe of righteousness

1 placed about the shoulders of the Defendant, which remains
2 with the Defendant until it has been stripped from the
3 Defendant by evidence satisfying you of the Defendant's guilt
4 beyond a reasonable doubt. The presumption of innocence is
5 not mere legal theory. It is not just a legal phrase. It is
6 a substantial right to which every defendant is entitled
7 unless you, the jury, are satisfied from the evidence of the
8 Defendant's guilt, beyond a reasonable doubt.

9 The State has the burden of proving, as I said, the
10 Defendant's guilt beyond a reasonable doubt. Some of you may
11 have served as jurors in civil cases, where you were told that
12 it's only necessary to prove that a fact is more likely true
13 than not true. This is called sometimes the preponderance of
14 the evidence, or proof by a greater weight of the evidence.
15 In criminal cases the State's proof must be more powerful than
16 that. It must be beyond a reasonable doubt. Proof beyond a
17 reasonable doubt is proof that leaves you firmly convinced of
18 the Defendant's guilt. There are very few things in this
19 world that we know with absolute certainty, and in criminal
20 cases the law does not require proof that overcomes every
21 possible doubt. If, based on your consideration of the
22 evidence, you are firmly convinced that the Defendant is
23 guilty of the crime charged you must find the Defendant
24 guilty. If, on the other hand, you think there is a real
25 possibility that the Defendant is not guilty you must give the

1 Defendant the benefit of the doubt and find him not guilty.

2 What is a reasonable doubt in the law? A reasonable
3 doubt is the kind of doubt that would cause a reasonable
4 person to hesitate to act.

5 Now there are two types of evidence which are generally
6 presented during a trial, direct evidence and circumstantial
7 evidence. Direct evidence is the testimony of a person who
8 claims to have actual knowledge of a fact, such as an
9 eyewitness. This is evidence which immediately establishes
10 the main fact to be proved. Circumstantial evidence is proof
11 of a chain of facts and circumstances indicating the existence
12 of a fact. It is evidence which immediately establishes
13 collateral facts from which the main fact may be inferred.
14 Circumstantial evidence is based on inference, and not on
15 personal knowledge or observation. The law makes absolutely
16 no distinction between the weight or the value to be given
17 either direct or circumstantial evidence, nor is a greater
18 degree of certainty required of circumstantial evidence than
19 direct evidence. You should weigh all the evidence in the
20 case, and after weighing all the evidence if you are not
21 convinced of the guilt of the Defendant beyond a reasonable
22 doubt you must find the Defendant not guilty.

23 Necessarily, you must determine the credibility of
24 witnesses who have testified in the case. Credibility simply
25 means believability. It becomes your duty as jurors to

1 analyze, and to evaluate the evidence, and determine which
2 evidence convinces you of it's truth. In determining
3 believability of witnesses who have testified in the case you
4 may believe one witness over several witnesses, several
5 witnesses over one witness; you may believe part of a
6 witness's testimony and reject the remaining part -- remaining
7 testimony of that same witness; you may believe the testimony
8 of a witness in it's entirety, or reject the testimony of a
9 witness in it's entirety.

10 You may consider whether any witness has exhibited to
11 you any interest, bias, prejudice, or other motive in this
12 case. You may also consider the appearance and manner of the
13 witness while on the witness stand.

14 I instruct you and emphasize that the fact that the
15 Defendant did not testify is not a factor to be considered by
16 you in any way in your deliberation, and in your consideration
17 on the question of guilt or innocence of the Defendant. It
18 must not be considered by you in any manner whatsoever. A
19 defendant has the Constitutional Right to remain silent, and
20 the assertion of this right must not be considered by you in
21 your deliberations. I repeat, under your oath you are to draw
22 no conclusion whatsoever from the fact that the Defendant in
23 this case did not testify. The fact that the Defendant did
24 not testify should not even be discussed in the jury room.
25 The burden of proof, as I have stated to you, is on the State.

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

4 Now the Defendant is charged with trafficking in heroin.
5 The State must prove, beyond a reasonable doubt, that the
6 Defendant knowingly sold, manufactured, cultivated, delivered,
7 purchased, brought into this State, provided financial
8 assistance or otherwise aided, abetted, attempted or conspired
9 to sell, manufacture, cultivate, deliver, purchase, or bring
10 into this State, and was knowingly in actual or constructive
11 possession, knowingly attempted to become in actual or
12 constructive possession of heroin.

13 In order to find the Defendant guilty the State must
14 also prove, beyond a reasonable doubt, that the amount of the
15 heroin, or any mixture containing heroin, was twenty-eight
16 grams or more. Under trafficking in heroin, twenty-eight
17 grams or more, the presence of only imitation heroin at the
18 transaction is irrelevant if the State proves, beyond a
19 reasonable doubt, that the Defendant conspired or attempted to
20 purchase more than twenty-eight grams of real heroin.

21 The Defendant in this case has raised the defense of
22 entrapment. Entrapment is shown if one, the crime was
23 conceived and planned by an officer, or someone acting as an
24 agent of law enforcement, two, the officer or agent induced,
25 solicited, purposed, initiated, suggested or persuaded the

1 Defendant to commit the crime, and three, the Defendant would
2 not have committed the crime without the trickery, persuasion
3 or fraud of the officer or agent. The State is required to
4 prove, beyond a reasonable doubt, that the Defendant was
5 predisposed to commit the crime without the inducement of the
6 officer or agent.

7 Predisposed to commit the crime means that the Defendant
8 had the intent, purpose, readiness, or willingness to commit
9 the crime, without inducement or persuasion of the law officer
10 or agent. The fact that the officer or agent merely presented
11 opportunities or facilities for the commission of the crime is
12 not entrapment. If you find that the Defendant had any
13 predisposition, without any government inducement and
14 influence to commit the crime the defense of entrapment would
15 not apply. In deciding whether the Defendant had any
16 predisposition to commit the crime you may consider evidence
17 such as, number one, an existing course of criminal conduct by
18 the Defendant similar to the crime charged. Number two, an
19 already-formed plan by the Defendant to commit the crime, and
20 three, a willingness to commit the crime charged as shown by
21 the Defendant's ready-response to the inducement. If you find
22 that the Defendant was entrapped into committing the crime you
23 must find the Defendant not guilty.

24 Under the laws of this State a defendant may be tried
25 even if the defendant does not attend the trial, but the fact

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1 that the Defendant is not present may not be considered
2 against the Defendant in any manner whatsoever.

3 Now, there are two possible verdicts that you may find
4 in this case, guilty or not guilty. There's no significance
5 whatsoever in the order in which I state the possible
6 verdicts. It's simply that one must be stated first. Ladies
7 and gentlemen, your verdict must be a unanimous one. When the
8 jury -- Mr. Foreman -- foreperson, when the jury reaches a
9 verdict, or agrees on a verdict you will write the verdict on
10 the verdict form and sign your name as foreperson. And I have
11 prepared a verdict form for you where you can only circle the
12 verdict that you have reached, and again, there's no
13 significance whatsoever in the other in which they are listed.
14 Knock on the door at that time, and inform the bailiff that
15 you've reached a verdict. At that time we will receive you
16 back into the courtroom.

17 Now, I'm going to ask that you go into your jury room,
18 but don't begin your deliberations until I have sent word for
19 you to do so. Now, in that regard, if I need to bring you out
20 for further instruction I will do so. If I do not need to
21 bring you back out I will send in the exhibits that have been
22 introduced into this case. That will be your signal to begin
23 your deliberations. Do you understand?

24 Okay. Mr. Ropp, if you would, take them into their jury
25 room, and segregate Mr. Tanner.

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 COURT: Anything further from the State?

4 MR. SPRATLIN: No, Your Honor.

5 COURT: Anything further from the Defendant?

6 MR. HILLIARD: We just renew our objection to the
7 portion of the charge, exception to the charge, Judge, that
8 we've put on the record.

9 COURT: And thank you very much.

10 MR. HILLIARD: Thank you.

11 COURT: And as is my practice, I will be sending in to
12 the jury a copy of my charge for their use as Court's Exhibit
13 Number 4.

14 (WRITTEN COPY OF COURT'S CHARGE MARKED COURT'S EXHIBIT
15 NUMBER 4.)

16 COURT: All right. Anybody want to see the verdict
17 form? It simply says, as to the charge of trafficking in
18 heroin, twenty-eight grams or more, we, the jury, unanimously
19 find the Defendant, circle one, guilty or not guilty.
20 Foreperson.

21 MR. HILLIARD: You gave it to us at the ---

22 COURT: All right.

23 MR. SPRATLIN: No objection, Your Honor.

24 COURT: All right. Let's make sure we've got ---

25 MR. SPRATLIN: Your Honor, the only thing with the

1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 COURT: Madame Forelady, do you have a verdict?

4 FORELADY: We do.

5 COURT: Is it a unanimous verdict?

6 FORELADY: Yes, it is.

7 COURT: Madame Clerk, if you would, please, verdict for
8 me.

9 You may publish the verdict.

10 DEPUTY CLERK OF COURT: Indictment Number (2012-GS-26-
11 01319), State of South Carolina, County of Horry, versus Jawan
12 Ravel White, as to the charge of trafficking heroin, twenty-
13 eight grams or more, we, the jury, unanimously find the
14 Defendant guilty.

15 Dated June 14th, 2013. Signed by foreperson, Wanda
16 Collins.

17 Ladies and gentlemen of the jury, if this is your
18 verdict so signify by raising your right hand.

19 (AT THIS TIME EACH AND EVERY JUROR CONFIRMED THE VERDICT
20 AS PUBLISHED BY THE RAISING OF HIS OR HER RIGHT HAND.)

21 COURT: Any request for individual voir dire -- or
22 individual polling?

23 MR. HILLIARD: Yes sir, if you don't mind, Judge.

24 DEPUTY CLERK OF COURT: Okay. When I call your jury
25 number if you will please stand.

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1 66. Is this your verdict?

2 A. Yes.

3 DEPUTY CLERK OF COURT: Is this still your verdict?

4 A. Yes.

5 DEPUTY CLERK OF COURT: 306. Is this your verdict?

6 A. Yes.

7 DEPUTY CLERK OF COURT: Is this still your verdict?

8 A. Yes.

9 DEPUTY CLERK OF COURT: Thank you.

10 That's it.

11 COURT: All right.

12 MR. HILLIARD: Thank you, Your Honor.

13 COURT: Yes. Mr. Hilliard, anything further?

14 MR. HILLIARD: Not for the jury, Judge. I would like
15 to put on the record some motions and things.

16 COURT: I'm going to let you do it right now.

17 MR. HILLIARD: All right. That will be good.

18 One thing, Judge. We had requested in chambers a charge
19 on simple possession of ---

20 COURT: I don't know if it was a request or not.

21 MR. HILLIARD: My recollection was that we asked for it
22 and you denied the opportunity for us to have a lesser-
23 included offense, was my ---

24 COURT: Let me hear you on that, Mr. Spratlin.

25 MR. SPRATLIN: Your Honor, the State would say that

1 even if a request had been made for a lesser-included offense
2 that lesser-included offense was not appropriate in this case.
3 The evidence, as presented at trial, was that the Defendant
4 attempted to purchase four grams (SIC) of heroin. There has
5 been no indication that a lesser amount was attempted to be
6 purchased, other than four ounces of heroin, thus the only
7 jury verdict that would have been appropriate is the more than
8 twenty-eight grams trafficking offense as charged.

9 COURT: And I agree with the State in that regard, Mr.
10 Hilliard.

11 MR. HILLIARD: Yes sir. I understood, and that's what
12 you said in chambers, Judge.

13 COURT: All right.

14 MR. HILLIARD: So -- and I understood that. I just
15 didn't -- had to put it on the record.

16 The other thing, Judge, we would renew our motion for
17 dismissal based on the fact that the State did not provide a
18 witness who we have submitted is an essential witness to the
19 crime, and we would also ask at this time for Your Honor to
20 set aside the jury's verdict, and give us the opportunity for/
21 a new trial.

22 COURT: I believe that the verdict is well-
23 substantiated by the evidence in this matter, well-supported
24 by it, and I would respectfully deny your motion.

25 I would also deny your motion again for dismissal. The

1 COURT: I'm just going to let them go.

2 MR. HILLIARD: Yes sir.

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY.)

5 COURT: Do you have a sentencing sheet?

6 MR. SPRATLIN: I do, Your Honor. I have a sentencing
7 sheet prepared as well an order issuing bench warrant since
8 he's been convicted in his absence.

9 COURT: All right.

10 All right, let me hear from you, Mr. Hilliard.

11 MR. HILLIARD: Thank you, Judge.

12 As you can tell from the videos and what-not, he's a --
13 he's a younger fellow, Judge. He's not married.

14 Certainly the sentence range connected to this case is
15 serious and substantial. There's no information to the
16 effect, other than -- of course I'm not arguing with the jury
17 verdict at this point, but it is imitation controlled
18 substance. I don't believe that he has significant criminal
19 history, significant criminal history at least, so we would
20 ask you to sentence him at the lower range of the
21 possibilities connected with this.

22 COURT: All right. Let me hear from you, Mr.
23 Spratlin.

24 MR. SPRATLIN: Thank you, Your Honor. As you heard,
25 the Defendant was tried and convicted of trying to purchase

1 Defendant certainly had the opportunity to testify concerning
2 any -- if he chose to, any conversations he might have had
3 with any other informants, plus, the State has provided, for
4 your use, all the -- what it asserts to be all the
5 conversations that were recorded concerning this transaction.
6 Those were available for your use also, and I would
7 respectfully deny your motion.

8 MR. HILLIARD: Thank you, Your Honor.

9 COURT: Thank you.

10 Any reason that sentencing should not take place?

11 MR. HILLIARD: Nothing further, Your Honor.

12 COURT: All right. Ladies and gentlemen of the jury,
13 you asked during the trial of this case what the sentencing
14 range was, or what the sentence would be for trafficking
15 greater than twenty-eight grams in heroin. That is an
16 extremely serious offense, and one that the Legislature has
17 deemed to be one of the most serious offenses that you could
18 commit in this State. In that regard, the sentence range in
19 this matter is from twenty-five to forty years, with no
20 suspension of sentence, and no possibility of parole. In that
21 the Defendant did not appear it's only appropriate for me to
22 sentence him and seal that sentence, so you will not have the
23 opportunity to know what my sentence is, or perhaps you will
24 if we ever find the Defendant to serve him with his sentence,
25 and that's reported in some news or something of that nature,

1 but I can only tell you that it's twenty-five to forty years.

2 I want to thank you for your service this week. Some of
3 you have been on more than one jury. It was a pleasure to
4 have you in my courtroom. You've worked very hard. We've
5 tried three cases this week, and that's about as many as you
6 could possibly get tried in a single week. You -- I hope you
7 can appreciate what we do here today after having served on a
8 jury.

9 I told you when you began your service that you would
10 probably find this to be enlightening, if not rewarding, and I
11 hope that that has been true for you.

12 Again, thank you for your service. This is the most
13 important civic duty that you can perform, perhaps other than
14 service in the military during war time, but it is a valuable
15 service that you provide for this -- for this community, and
16 for the persons who are -- or the people who are charged with
17 criminal offense. They have the right to have their case
18 determined by a jury of their peers.

19 Thank you again for being here. I hope to see you in
20 the future.

21 You may leave.

22 MR. HILLIARD: Would you hear from me as to sentencing,
23 Judge?

24 COURT: Yes, I'm going to.

25 MR. HILLIARD: Okay. Thank you.

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1 four ounces of heroin. That is four times the twenty-eight
2 gram level for the twenty-five year offense to begin with,
3 Your Honor, so he was trying to purchase an extremely large
4 amount of drugs.

5 Additionally, he does have a prior conviction. I have a
6 certified copy of the convictions, if we could make it a court
7 record as well. Distribution of cocaine from back in 19 -- or
8 2009. He was sentenced and convicted. If I could approach.

9 COURT: Yes sir.

10 MR. SPRATLIN: It's a certified copy.

11 Your Honor, in addition to that he has another pending
12 distribution of heroin charge which will likely be nolle
13 prossed as a part of this -- as a result of this verdict.

14 COURT: Yes sir. Do you challenge the prior
15 conviction?

16 MR. HILLIARD: I don't, Judge.

17 COURT: All right. Anything further from the Defense?

18 MR. HILLIARD: No sir, Your Honor.

19 COURT: All right. Mr. Spratlin, I'm going to impose
20 sentence, and have this sentence sealed, and placed in the
21 custody of the Clerk of Court.

22 MR. SPRATLIN: Yes sir, Your Honor.

23 COURT REPORTER: Judge, do you want me to mark that
24 record as Court's 5 -- 6?

25 COURT: Yes.

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF HORRY) CASE NO: 2012-GS-26-01319

(SENTENCING)

B E F O R E: The Honorable Larry B. Hyman
July 18, 2014

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

JAWAN RAYEL WHITE,

Defendant.

 ORIGINAL

APPEARANCES:

Martin Spratlin, Esq.
For the State of South Carolina.

Bert von Herrmann, Esq.
Rose Mary Parham, Esq.
For the Defendant.

Court Reporter:
Natalie Dahl, RPR

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P-R-O-C-E-E-D-I-N-G-S

MR. SPRATLIN: State of South Carolina, County of Horry versus Jawan Rayel White, charged in indictment 2012-GS-26-01319. Trial was held in this case back June of 2013 before Your Honor. The defendant at that point in time was represented by Attorney John Hilliard. Pursuant to a trial in absentia, the defendant was convicted of trafficking in heroin. The Court issued a sealed sentence. The defendant was picked up on a bench warrant issued by this Court as well as some other charges in February of this year. He is before the Court for unsealing of the sentence. For the purposes of today's hearing, he's represented by two attorneys, Rosemary Parham and Mr. Bert Von Herrmann.

THE COURT: Mr. Von Herrmann, you and Ms. Parham are representing Mr. White?

MR. von HERRMANN: Correct.

THE COURT: And you are aware that Mr. White was tried on the 13th day of June 2013 before me on the offense of trafficking in heroin. He was tried 28 grams or more, tried in his in absentia with Mr. John Hilliard representing him. I have the sealed sentence. Any matters before we unseal the sentence?

MR. von HERRMANN: No, Your Honor.

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1 THE COURT: The defendant is committed to the
2 State Department of Corrections for a determinate term
3 of 25 years. Anything further, Mr. Von Herrmann?

4 MR. von HERRMANN: Yes, Your Honor. In this
5 particular case, Ms. Parham nor myself were not trial
6 counsel in the case. We have not had access or had
7 the opportunity to get access to the Solicitor's file.
8 There potentially could be some post-trial motions we
9 would want to make with regard to a new trial or
10 things of that nature. We would request that the
11 Court issue an order -- and we'll be happy to provide
12 one -- allowing us to order the transcript and all
13 pretrial motions be filed after we're able to review
14 that information.

15 THE COURT: That's granted. This is 25 minimum?

16 MR. SPRATLIN: Yes, sir, Your Honor, it carried
17 25 to 40.

18 THE COURT: So he was sentenced the minimum?

19 MR. von HERRMANN: Yes, sir.

20 THE COURT: Very well. Motion granted. Prepare
21 a short order in that regard reduced to writing and
22 I'll sign it. I will hear you on motions -- well, at
23 some agreed time.

24 MR. von HERRMANN: Thank you.

25 (Whereupon, the proceedings concluded.)

1
2 CERTIFICATE OF REPORTER
3

4 State of South Carolina)

5 County of Horry)
6

7 I, Natalie Dahl, Official Court Reporter for the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the matter of the captioned case,
12 relative to appeal, in the Court of General Sessions
13 for Horry County, South Carolina, on the 18th day of
14 July, 2014.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 March 28, 2017

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20 

21 Natalie Dahl, RPR

22 Court Reporter
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24
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1 STATE OF SOUTH CAROLINA), TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2012-GS-26-01319

3
4 (MOTION)

5 B E F O R E: The Honorable Larry B. Hyman
6 September 14, 2016

7
8 STATE OF SOUTH CAROLINA,
9 Plaintiff,
10 vs.

 ORIGINAL

11 JAWAN RAYEL WHITE,
12 Defendant.

13
14 APPEARANCES:

15 Gray Ervin, Esq.
16 For the State of South Carolina.

17
18 Thurmond Brooker, Esq.
19 For the Defendant.

20
21
22 Court Reporter:

23 Natalie Dahl, RPR
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P-R-O-C-E-E-D-I-N-G-S

MR. ERVIN: Jawan White, he was convicted in June of 2013 in absentia for trafficking heroin, received a 25-year sentence from Your Honor. These new counts, Thurmond Brooker has filed a motion for a new trial that Your Honor has before you now.

THE COURT: Yes, sir. All right, Mr. Brooker.

MR. BROOKER: Your Honor, as you can remember, I think this case -- and if you don't remember, I would be more than happy to give you background information. Obviously, it is contained within the motion that you are reading is that this was a situation back in 2011 in which the DEA -- federal DEA was pursuing a drug operation against Mr. White -- or drug investigation. They had a federal CI in which the federal CI was trying to set up a bond with Mr. White, Jawan White. I think -- my understanding is that the federal CI had discussed with Mr. White in Mr. White purchasing 4 ounces of heroin for \$10,000. Of course, my understanding is that that agreement had been set up for that particular period of time using a federal CI. At some point in time, the DEA reached the conclusion that it did not want to pursue this investigation or operation against Mr. White, and so what the DEA did was contacted the 15th Circuit Drug Enforcement Unit

1 and asked them whether or not they wanted to resume
2 the operation. They agreed. I think they may have
3 talked with Miller with DEU. They agreed they would
4 resume or take over the operation, and the federal
5 government or DEA would step out.

6 At that particular period of time, the DEU
7 produced a confidential informant, and of course it
8 was arranged between the DEA and the DEU that the
9 federal CI would introduce Mr. White to the state CI
10 as the supplier for the alleged 4 ounces of drugs that
11 they set up -- or heroin they set up for the drug
12 deal. So I think it was in April -- I think April --
13 around April 16th of 2011, the federal CI, the state
14 CI met with Agent Miller. Agent Miller wired the
15 state CI. The federal CI then drove the state CI to
16 Broadway at the Beach where the federal CI introduced
17 Mr. White to the state CI as the supplier of the
18 alleged 4 ounces of drugs for the drug sale.

19 At that particular period of time, after the
20 federal CI made the introduction between White and the
21 state CI, the federal government steps out. They
22 passed the ball off to the state, and it was now the
23 operation of the state. The state CI indicated to
24 Mr. White at that meeting that he still wanted to --
25 still wanted to go sell the 4 ounces of heroin. He

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1 had the 4 ounces of heroin, if he could buy it.
2 Mr. White told him he didn't have the money at the
3 time, and that as soon as he acquired the money, he
4 would call him. Three days later, he called him and
5 advised the state CI that he acquired the \$10,000 to
6 purchase the 4 ounces.

7 On the next day, which was the 20th, is that
8 the state CI, along with DEU, wired the state CI and
9 they arranged for the exchange to take place at the
10 Coastal Grand Mall. Of course on the 20th, the DEU
11 sets up positions around Coastal Grand, and then of
12 course is that they sent the state CI in to conduct
13 the buy. Of course once the buy was completed, the CI
14 signaled the DEU, and the DEU converged and arrested
15 Mr. White. Mr. White was charged with trafficking in
16 heroin, I think it was between 14 and 28 grams, or
17 greater than 28 grams.

18 Obviously, I think it was back in June of 2013
19 that this case finally came to trial. At that
20 particular period of time, when it did come to trial,
21 Mr. White was not present. He was actually absent for
22 the trial. The trial proceeded in absentia.

23 THE COURT: I think what happened is he came to
24 trial, he was granted a continuance, said he wanted to
25 hire a private lawyer, his case was continued, and he

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1 hired a lawyer and then just didn't show up for trial;
2 isn't that what happened?

3 MR. BROOKER: Yes, Your Honor.

4 THE COURT: Isn't that what happened?

5 MR. MARTIN: Martin Spratlin for the State. I'm
6 the original trial attorney on Mr. White's case.
7 Mr. White was originally represented by Attorney James
8 Galmore.

9 THE COURT: And then he got Mr. Hilliard?

10 MR. SPRATLIN: Yes. He was scheduled and noticed
11 for trial beginning of Monday on the court term. He
12 retained Mr. Hilliard, and I believe the case was
13 continued at that point in time.

14 THE COURT: I think I continued it.

15 MR. SPRATLIN: Yes, sir. And then it was
16 rescheduled. Mr. White did not appear the day it was
17 rescheduled, and he did not appear for the next term
18 for trial either.

19 THE COURT: All right. Go ahead, Mr. Brooker.

20 MR. BROOKER: Thank you, Your Honor. So when the
21 case was finally scheduled for trial in 2011, and
22 obviously Mr. White did not appear for trial and he
23 was tried in his absence, of course, as was stated,
24 Mr. Hilliard represented him at the trial.

25 THE COURT: Mr. Hilliard moved to be relieved,

1 and I denied his motion.

2 MR. BROOKER: That is correct.

3 THE COURT: I required him to stay and try the
4 case.

5 MR. BROOKER: That is correct, Your Honor. Of
6 course, one more factual issue, on the day of the drug
7 purchase, I think August 20, 2011, is that I think I
8 advised you that the drug transaction went through, it
9 was a reverse buy. The only unusual -- in connection
10 with this is that in addition to being a reverse buy,
11 is that Agent Miller for the DEU was not using -- did
12 not provide the CI with real heroin. He provided the
13 CI with imitation heroin. Of course, he was then
14 charged with --

15 THE COURT: Doesn't the trafficking statute say
16 you violate the statute by attempting to purchase?

17 MR. BROOKER: Absolutely. The statute says you
18 can violate the statute in two ways, is that by
19 actually conspiring or attempting to purchase heroin.
20 So, of course, that is one of the reasons I think why
21 Your Honor in this case proceeded on trial. One of
22 the issues we have -- you can notice in our brief, and
23 I think it is issued -- starts on Page 8 of the brief
24 where we argue that a new trial should be granted on
25 the grounds that the jury charge for trafficking in

1 heroin 20 grams or more was erroneous and had the
2 potential of confusing the jury based upon -- on the
3 underlying facts. The reason why, Your Honor -- I
4 think in this particular situation you are absolutely
5 right, you can be found guilty in a situation where
6 there is imitation drugs. You can be found guilty if
7 the jury finds that you either conspired to purchase
8 real drugs, even though it was imitation, or that he
9 attempted to purchase real drugs. Obviously is that
10 during the jury trial, when the jury instructions were
11 given to the jury, I think, if my understanding is
12 correct, is that they were given the definition for
13 the entire statute. I think Your Honor also mentioned
14 to the jury that even though this was a situation that
15 involves imitation drugs, that he still could be
16 convicted, because in an imitation drug case with
17 reverse buy, the statute allows for conviction based
18 on conspiracy and also contempt (sic).

19 THE COURT: Attempt.

20 MR. BROOKER: Yes, sir.

21 THE COURT: I thought you said "contempt," but
22 you mean "attempt."

23 MR. BROOKER: Yes, sir. The reason why we think
24 the jury charge was erroneous, Your Honor, is that
25 attempt should never have been charged to the jury

1 because attempt -- conspiracy was not available to the
2 jury. Obviously is that South Carolina -- and not
3 just South Carolina, but federal jurisprudence
4 basically says that conspiracy can't occur between a
5 governmental agent and a defendant. It says that if
6 it is a situation where you have a defendant that is
7 being set up by a governmental agent, and the
8 governmental agent includes a CI, because of course is
9 that you don't have two people involved in a
10 conspiracy because the governmental agent is really
11 not involving in conspiracy, he's actually weighing or
12 feigning interest in the conspiracy, and of course is
13 you only have one person, and as a result of that, you
14 don't have a conspiracy.

15 So when the jury was charged with, you know,
16 conspiracy and/or attempt, of course is basically what
17 we argue in the motion is it could create confusion on
18 the part of the jury. We know that there was probably
19 a 66 percent chance that probably the jury's decision
20 was based upon an erroneous charge, and the reason we
21 believe that is when the jury went back in the jury
22 room and deliberated this, the jury could have
23 possibly reached three possible conclusions. You
24 know, all 12 jurors could have said, well, we believe
25 that he's guilty based upon conspiracy and they could

1 have all found that he conspired to purchase drugs and
2 base his decision on that.

3 THE COURT: Don't we have a situation where trial
4 counsel agreed that any -- that the charge given was
5 appropriate?

6 MR. BROOKER: I don't know whether trial counsel
7 did, Your Honor. I don't know whether he objected to
8 it, I'm not sure.

9 THE COURT: Let me put it that way. He did not
10 object, and doesn't that become a PCR, basically?

11 MR. SPRATLIN: I do not recall any objection from
12 Mr. Hilliard, going off memory.

13 THE COURT: We know my policy, I do it in writing
14 in advance and provide it to both attorneys. We
15 adjust it based on any recommendations. I ask them in
16 court, and the charge is actually delivered as given
17 to the jury.

18 MR. SPRATLIN: Yes, sir.

19 THE COURT: Every trial. I mean, I know it was
20 this trial as well.

21 MR. SPRATLIN: Yes, sir.

22 MR. BROOKER: So, obviously, is that if the jury
23 -- if all 12 jurors say we were influenced by the
24 language of conspiracy language, then of course is
25 then you don't have a problem -- excuse me, you do

1 have a problem. Now, that is one scenario in which
2 that could have happened in the jury room. The second
3 scenario is that the jury -- all 12 jurors could have
4 said we're influenced by the attempt language, and we
5 all believe he was attempting to purchase drugs as
6 opposed to him engaging in a conspiracy, you know,
7 with the CI, who testified, I think, at trial. That,
8 you know, he entered into this agreement with
9 Mr. White for Mr. White to buy these drugs from. Of
10 course, if they said all 12 jurors were influenced by
11 attempt, then of course you don't have a problem.

12 Or the third scenario is you could have had a
13 situation where it could have been a mixed bag where
14 some of the jurors were influenced by the conspiracy
15 language, which would be the erroneous language, and
16 some were influenced by the attempt language, which
17 would only be the charge that should have been given
18 to the jury, but either way, if the jurors were
19 influenced by the conspiracy language -- all 12 jurors
20 were influenced by the conspiracy language, or if all
21 12 jurors were kind of a mixed bag where half was
22 influenced by conspiracy and half influenced by
23 contempt (sic), then you have a situation where you
24 have jury confusion, and of course the jury would have
25 made a determination based upon that erroneous call.

1 Of course then, the question becomes is that whether
2 or not the jury became confused. Of course there is
3 case law out there that basically says -- and I
4 understand that Your Honor probably mentioned that
5 trial counsel may not have objected to the charges,
6 but the reason we're filing a post-trial motion is
7 that in trial Your Honor's position as the 13th juror,
8 there is case law that basically says whenever there
9 is a situation in which the trial court reaches a
10 conclusion that the juror may have been confused by an
11 erroneous charge, then it is within the power, you
12 know, of Your Honor, of the Court, to grant a new
13 trial because justice would not have been served in
14 that situation.

15 And of course is there is also the issue that can
16 be argued that, you know, with a situation where one
17 of the charges were erroneous, and because this was
18 not a situation where it was done on an interrogatory
19 verdict form, then of course we don't know what
20 language influences them, and of course the next
21 question is whether or not we had an unanimous jury
22 based upon the actual legitimate facts and
23 instructions for conviction. That is the problem we
24 have.

25 So Your Honor has it within its power, and the

1 court has said under the 13th Jury Doctrine, if Your
2 Honor believes that because an erroneous charge that
3 the jury could have been confused in its deliberation,
4 then you have that power to grant a new trial.

5 Of course is that there is also case law that
6 suggests that the Court of Appeals has suggested that
7 if the trial Court realizes that it has made an error,
8 that it provides the trial Court with latitude to
9 correct that error, as opposed to, you know, not
10 correcting that error, and of course having the case
11 sent to Court of Appeals for the Court of Appeals to
12 attempt to correct it.

13 The second argument, Your Honor, that we made,
14 which is on Page 11, is based upon a violation of the
15 confrontation clause, and of course underneath the
16 Sixth Amendment. And, obviously, the Sixth Amendment
17 of course is that we cited State versus Davidson,
18 which I think did an absolute great job, you know, in
19 explaining the state of the law, you know, of the
20 confrontation clause under the Sixth Amendment after
21 the Crawford case. And of course is that basically
22 Justice Scalia says that the confrontation clause
23 requires, even though there are, you know, there are
24 state statutes that basically says on certain
25 circumstances, you know, there are exceptions to the

1 confrontation rules, and I think on the hearsay
2 exceptions. For instance -- but of course what Scalia
3 says is that the confrontation clause requires that
4 every defendant has a right to confront anyone who is
5 providing evidence against that particular witness or
6 against that particular defendant. Of course is that
7 the only exceptions to that is that in a situation
8 where the witness is not available, and there has been
9 prior opportunity for cross-examination. Absent that,
10 if it is testimonial evidence is that it is mandatory
11 that that witness be in court, be on the stand under
12 oath and the defendant through counsel has a right to
13 cross-examine. It doesn't apply if it is
14 non-testimonial.

15 THE COURT: I understand.

16 MR. BROOKER: But underneath Davidson, it clearly
17 states that any time when information is taken from a
18 witness during the course of a police investigation,
19 and that is exactly what we have going on in this
20 particular situation, that that is considered
21 testimonial, and because it is considered testimonial,
22 of course it is square within the wheelhouse of the
23 Sixth Amendment confrontation clause, and of course
24 any exception, even if it were an exception that might
25 be applicable, that exception would not exclude the

1 presence of a witness. In this particular situation,
2 Your Honor, in the brief, I think we cited at least
3 two instances in which the CI on -- the state's CI and
4 also more specifically the federal CI was allowed to
5 present evidence during the trial through the
6 testimony of the state CI about the arrangement that
7 had been made with Jawan White prior to the state CI
8 being involved for the purchase of 4 ounces of heroin
9 for \$10,000. A number of questions were asked about
10 his conversations that he had with the federal CI and
11 why the federal CI actually agreed to be a CI, and of
12 course the state CI said that he had a conversation
13 with the federal CI, and the federal CI said he agreed
14 to do this basically for the money, that he was a paid
15 confidential informant. Also is that Agent Miller
16 also discussed conversations that he had had I think
17 with the DEA agent or either the federal confidential
18 informant about the pre-arranged buy that was already
19 set up with White by the federal CI prior to the state
20 becoming involved, and of course is that -- like I
21 said, is that the because all of this conversation was
22 during the course of the ongoing investigation that
23 was taking place, most of it was recorded, and of
24 course is that there is no exception that we saw where
25 it would require under the Sixth Amendment

1 confrontation clause that that federal CI, that
2 witness, be in court to testify to the information
3 that Agent Miller and agent -- the state CI had
4 testified in his absence.

5 THE COURT: Let me ask you this, Mr. Brooker.
6 Let's think about what you are asking me to do. Here
7 we have a case, and I note that you take no exception
8 to the Court's finding that your client voluntarily
9 waived his right to be present at his trial, which I
10 believe he did. He was represented at that trial,
11 required counsel to represent him. He was represented
12 at that trial by counsel, of his choosing, obtained
13 counsel.

14 Now, the issues that you have raised are issues
15 involving failures on the part of his attorney to
16 object. The record will show that he was not only
17 advised as to what the charge would be in advance, he
18 was provided with a copy of that charge in advance,
19 and after the charge, gave no exception to the charge.
20 You also raised the issue of confrontation clause, an
21 issue that would challenge the trial counsel's failure
22 to object to the admissibility of certain evidence.
23 Now, you do this on a motion for a new trial. If I
24 were to grant relief, aren't we essentially saying
25 what you do is you go try your case with your first

1 lawyer, and all you have to do is find another lawyer
2 to come in and say that lawyer didn't do what he
3 should do, or he committed -- failed to object, failed
4 to represent my client properly, and so my client
5 should have a new trial; when, in essence, if this
6 matter were to go to the Court of Appeals, the Court
7 of Appeals, in my view, would look at a failure to
8 object to a charge, even if it was erroneous, and say,
9 well, you waived any objection, you failed to object,
10 you failed to object to the introduction of certain
11 evidence, you never brought it before the Court, and
12 the Court would say, would they not, they were not
13 preserved for appellate review, and then what we would
14 have is issues being raised on a PCR.

15 You're asking me to do a mini PCR on every case
16 that I try. Let's go back and look at the lawyer, and
17 if he did something wrong, let's give him a new trial.
18 That is not really how it works, is it, Mr. Brooker?

19 MR. BROOKER: The reason why we -- obviously is
20 the reason why we're doing it this way is because
21 there is a process that will put in place that would
22 allow the trial Court that errors have been made, if
23 the trial Court believes it is within the interest of
24 justice and justice has not been served, there was a
25 mischaracter of justice, the trial counsel (sic)

1 within his power as the 13th juror has the authority
2 to be able to correct that error, you know, within --
3 I guess normally within the first 10 days or first 30
4 days after the conviction. And the reason why we
5 think that Your Honor has that authority is that --
6 and of course is I think there is cases out there
7 where the South Carolina Supreme Court says we don't
8 want to inhibit trial courts' ability, because I think
9 there are cases out there where the 13th Juror
10 Doctrine has been under attack, and I think on at
11 least a couple of occasions where the courts
12 considered the usefulness of the doctrine and whether
13 or not it should be done away with, and every time
14 it's been attacked is that the South Carolina Supreme
15 Court has preserved it, and they preserved it is
16 that -- there is case law there where the Court
17 reserved it is because the Court is suggesting to
18 trial courts is if there is a situation where you
19 identify an error that has taken place and that a
20 mischaracter of justice has occurred, then of course
21 we are giving you the power to be able to deal with
22 that mischaracter of justice without having to push it
23 to the appellant courts and then to the supreme court,
24 and then PCR, which could take years and years and
25 years.

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1 So it is given to the trial court, and I think at
2 least that in one case I read the language that says
3 is that we want to preserve the right of a trial
4 court, that if the trial court recognizes that an
5 error has occurred, that the trial court be able to
6 correct that error as opposed to remove that authority
7 away from them.

8 So you are absolutely right, he would have these
9 procedures, these other remedies, available to him,
10 but this is the first remedy that at least the process
11 has afforded him, and that is the filing of a
12 post-trial motion to petition the trial court to
13 recognize that these errors took place. There is case
14 law that says if they are erroneous instructions, the
15 Court sees something or believes it creates a
16 mischaracter of justice, the Court has the power to
17 correct it.

18 THE COURT: Wasn't there overwhelming evidence of
19 his guilt in this matter? I mean, this was not a
20 close case. I mean, he brings \$10,000 to the table to
21 buy 4 ounces of what is supposed to be cocaine. I
22 mean the evidence would certainly support a jury's
23 conclusion that he was attempting to purchase the
24 cocaine, and I have a question as to whether or not
25 the imitation substance really makes a difference as

1 to whether it was conspiracy or not. I don't know.

2 Let me hear from you, Mr. Ervin.

3 MR. ERVIN: Thank you, Your Honor. I do agree
4 that this is probably an argument for a PCR court and
5 not this, but we are before you. I'll address the
6 jury charge. As Your Honor said, you charged straight
7 from the statute, and then State v. McCluney, 606 S.E.
8 2nd, 485, a 2005 supreme court of South Carolina case.
9 They do say that the overt attempt -- and they list
10 other actions -- but the attempt to purchase either
11 fake or real drugs falls under the purview of the
12 trafficking statute. It also has language -- and I'll
13 quote -- Any person who knowingly attempts or
14 conspires -- not and, but or. So I think as far as
15 jury confusion, they had an either/or to choose.

16 I understand there was a video played in that
17 trial that had the defendant talking to someone about
18 getting money for this transaction, so I would argue
19 that would show a conspiracy on his part, an overt
20 act, to clear up any jury confusion whether it was a
21 conspiracy or not. Obviously we have an attempt, so I
22 don't believe there was any confusion on that. Again,
23 this case is clear that fake drugs or real drugs, it
24 doesn't matter as far as the trafficking statute is
25 concerned.

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1 As far as mischaracter of justice, he was
2 represented by counsel in his own absence. He failed
3 to appear by his own volition. And, you know, again,
4 PCR issues aside, he was represented by counsel and
5 had the protection of that, so I don't believe there
6 was any mischaracter of justice.

7 As far as the CI is concerned, the federal CI was
8 worked up by the feds and then handed over to the Drug
9 Enforcement Unit. They had their own CI that
10 participated in the transaction at issue. I believe
11 that the federal CI's testimony was non-testimonial
12 and does not fall under the purview of Mr. Brooker's
13 argument that it violated Crawford.

14 THE COURT: All right. Gentlemen, I want
15 proposed orders by Friday the 30th.

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1 State of South Carolina) Court of General Sessions
2 County of Horry) 2012-GS-26-01319

3
4 State of South Carolina)
5 vs.) Transcript of Record
6 Jawan Rayel White)
7

8 ORIGINAL

January 18th, 2017
Conway, South Carolina

10
11 BEFORE:
12 Honorable Larry B. Hyman, Judge.

13 APPEARANCES:
14 W. Gray Ervin, Esq.
15 Attorney for the State
16
17 Thurmond Brooker, Esq.
18 Attorney for the Defendant
19
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21
22 Teresa J. F. Bautz, RPR
23 Official Court Reporter
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E X H I B I T S

NO.	DESCRIPTION	ID	EV
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3	No exhibits submitted.		
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19	Exhibits retained by Clerk of Court.		
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1 (The hearing commenced at approximately 1:47 p.m.)

2 JAWAN RAYEL WHITE, after being duly sworn,

3 testified as follows:

4 MR. ERVIN: Your Honor, this is State of South
5 Carolina versus Jawan White. This is indictment No.
6 2012-GS-26-01319. As Your Honor is aware, Mr. Brooker,
7 the Defendant's attorney, has filed a motion to
8 reconsider Your Honor's denial of the Defendant's
9 original motion for a new trial.

10 THE COURT: Yes, I know.

11 MR. ERVIN: Which was denied, I have it clocked
12 December 9, 2016. Mr. Brooker has filed that motion to
13 reconsider, and we are here before you on that.

14 THE COURT: All right, Mr. Brooker.

15 MR. BROOKER: Thank you, Your Honor. Your Honor,
16 of course it is, and I apologize for having to bring
17 the motion to reconsider. What normally is, is that
18 in, I guess, the best world is that all the arguments
19 and all of the evidence and case law that we have would
20 have been put before you in the first motion.

21 But of course there is, and after, I think, the
22 denial and of course reading the order denying it, and
23 of course we've done some additional research and, I
24 think, discovered some case law that we thought was
25 very pertinent and needed to bring to the Court's

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1 attention. And, of course, and I don't know whether or
2 not Your Honor would remember the facts of this case,
3 or you would like me to go over them.

4 THE COURT: I remember them.

5 MR. BROOKER: Okay. Well, basically it is that
6 the case that we think is extremely important for
7 the motion -- in this motion to reconsider is the
8 Stromberg --

9 THE COURT: You argued Stromberg.

10 MR. BROOKER: Yes. Yes, sir -- versus the People
11 of the State of California. Because Jawan's case is
12 extremely similar to the circumstances in that
13 particular case. Of course, in that particular case is
14 that it was -- this is 1931, obviously this is a
15 California statute that basically says that it would be
16 unlawful to fly a red flag for three purposes. And the
17 three purposes were, was to display it as a sign or
18 symbol of opposition to organized government; or two,
19 as an invitation to an anarchistic action; or three, to
20 display it in aid to propaganda of seditious character.
21 In that particular case the Defendant was tried,
22 and, of course, he was found guilty based upon a
23 general verdict. It is that all three of those
24 particular theories were presented to the jury. The
25 jury rendered a general verdict of guilt.

1 At the trial the counsel for the Defendant, I
2 think, challenged the constitutionality of the statute,
3 appealed to the California Court of Appeals. The Court
4 of Appeals reached a conclusion that the first theory
5 might be unconstitutionally overbroad and, as a result,
6 may have been improperly charged to the jury.

7 But, of course, it is that the California Supreme
8 Court reasoned that the verdict would be upheld because
9 the jury could have found guilt based upon any of the
10 two remaining theories that were presented to the jury.
11 And, of course, the California Supreme Court denied to
12 hear the case. It was eventually appealed to the
13 United States Supreme Court.

14 And, of course, the United States Supreme Court
15 overturned the conviction. And it, of course, is that
16 the United States Supreme Court reasoned that because
17 this was a general verdict and, of course, at least one
18 of the theories that were argued that the juries could
19 consider was determined to be, or at least there was an
20 issue with respect to whether or not it was
21 unconstitutional, and because it was a general verdict,
22 then there was absolutely no way of making a
23 determination with respect to whether or not the jury
24 had reached its verdict based upon the improperly
25 charged language, or either whether or not it had

1 reached its decision based upon the other properly
2 charged language.

3 And specifically, the Stromberg Court stated that
4 the first clause of the statute being invalid upon its
5 face, the conviction of the appellant which, so far as
6 the record discloses, may have rested entirely upon the
7 -- I guess, the impermissible clause.

8 THE COURT: In Stromberg, didn't the trial
9 attorney challenge the charge?

10 MR. BROOKER: Yeah, the trial attorney challenged
11 the constitutionality of the statute.

12 THE COURT: Didn't have to but he did it?

13 MR. BROOKER: No, it didn't happen in this
14 particular case. But I don't think it has to, at
15 least. I don't think it has to in order for the judge
16 in his discretion to find that basically the charge was
17 improper and as a result that the trial violated due
18 process and, of course, exercised its authority
19 underneath the 13th juror doctrine.

20 And so we know here, at least in his particular
21 case, he was charged with two theories. And that was
22 the contempt theory and then also the conspiracy and
23 attempt theory. And, of course, it is and, I think,
24 it's undisputed that later it was identified that the
25 jury should not have been charged with conspiracy

1 because conspiracy was not available. Because you were
2 simply dealing with a Defendant along with a State CI,
3 and you could never have a conspiracy between, you
4 know, a Defendant and State agent.

5 And then, of course, it is that like in Stromberg,
6 the jury would charge with both of these theories. And
7 of course, like in Stromberg, the jury rendered a
8 general verdict of guilt. And, of course, now we're
9 left with the exact same situation that occurred in
10 Stromberg, and that is that we know that one of the
11 theories, one of the theories that was presented to the
12 jury, you know, was not a valid theory.

13 The question now becomes is that, can we
14 definitively state like in Stromberg whether or not the
15 jury bases its conclusions or its decisions to convict
16 based upon the attempt charge or either the
17 improperly -- improper conspiracy charge. And like the
18 Court said in Stromberg is unless you can make a
19 definitive conclusion that the verdict was not based
20 upon the improper language, then, of course, the
21 verdict has to be set aside.

22 And we cannot make that determination here. There
23 was absolutely no way in the world for it to be
24 determined whether or not the jury's verdict was based
25 upon the improper language in the contempt charge or

1 whether or not it was based -- excuse me, improper
2 language in the conspiracy charge, or whether or not it
3 was based solely on the conspiracy.

4 And, of course, there is and I've read in other
5 case law, it says that when that sort of error occurs
6 in which a jury is charged with two theories, and one
7 of them was improper, that that sort of verdict would
8 be saved if it's a special verdict. Because then a
9 delineation can be made with respect to whether or not
10 the verdict was based upon the improper charge or based
11 upon the non-improper charge.

12 But like in Stromberg, is that because it was a
13 general verdict, it is that it is the argument can very
14 well be made that he may be sitting in jail based upon
15 a conclusion -- based upon the conclusion from the jury
16 that he conspired to purchase drugs, which obviously is
17 that he could have never conspired with the Defendant.

18 So he could be sitting in jail based upon an
19 invalid conclusion of the law, and there is absolutely
20 no way to rule that out. And that's why I think the
21 Stromberg Court says unless you can rule that out, the
22 verdict has to be set aside.

23 THE COURT: All right.

24 MR. ERVIN: Your Honor, number one, as Your Honor
25 pointed out just now and in your order on page six,

1 this was not properly put before you, it was not
2 objected to at the trial. Quoting State v. Holmes, it
3 is not preserved. So that would be my primary
4 argument.

5 Number two, the language of the statute in
6 44-53-370 was used, and that was used from State v.
7 McCluny, as the jury charge. And that charge is
8 disjunctive, it has "or" in it, so the jury could find
9 attempt or conspiracy to find Mr. White guilty. And we
10 would reiterate those grounds as we did on the previous
11 motion.

12 THE COURT: All right. I would deny the motion
13 for reconsideration, and I will have an order
14 forthcoming. Thank you.

15 MR. BROOKER: Thank you, Your Honor.

16 MR. ERVIN: Thank you, Your Honor.

17 (The hearing concluded at approximately 1:56 p.m.)

18 (End of Transcript of Record.)
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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE OF SOUTH CAROLINA

PLAINTIFF.

VS.

JAWAN RAYEL WHITE

DEFENDANT.

) IN THE COURT OF GENERAL SESSIONS

) Warrant: M349874

) Indictment: 2012GS2601319

) Case: 11H03530

)

)

) STATE'S REQUEST TO CHARGE #1

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Under trafficking in heroin, 28 grams or more, the presence of only imitation heroin at a transaction is irrelevant if the State proves beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight (28) grams of real heroine.

--State v. McCluney, 361 S.C. 607 (2004)

EXHIBIT

Court
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DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE

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LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENT CHARGES THE DEFENDANT WITH TRAFFICKING HEROIN (28 GRAMS OR MORE). I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGES MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF

RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF

THE DOUBT AND FIND HIM NOT GUILTY.

WHAT IS A REASONABLE DOUBT IN THE LAW? A
REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE

EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE,
IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT
BEYOND A REASONABLE DOUBT, YOU MUST FIND THE
DEFENDANT NOT GUILTY.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

FAILURE OF DEFENDANT TO TESTIFY

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS [HER] INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

TRAFFICKING

THE DEFENDANT IS CHARGED WITH TRAFFICKING IN HEROIN. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KNOWINGLY SOLD, MANUFACTURED, CULTIVATED, DELIVERED, PURCHASED, BROUGHT INTO THIS STATE, PROVIDED FINANCIAL ASSISTANCE OR OTHERWISE AIDED, ABETTED, ATTEMPTED, OR CONSPIRED TO SELL, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE, OR BRING INTO THIS STATE, WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE POSSESSION, KNOWINGLY ATTEMPTED TO BECOME IN ACTUAL OR CONSTRUCTIVE POSSESSION OF HEROIN.

IN ORDER TO FIND THE DEFENDANT GUILTY THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE AMOUNT OF THE HEROIN, OR ANY MIXTURE CONTAINING HEROIN, WAS 28 GRAMS OR MORE.

UNDER TRAFFICKING IN HEROIN, 28 GRAMS OR MORE, THE PRESENCE OF ONLY IMITATION HEROIC AT A TRANSACTION IS IRRELEVANT IF THE STATE PROVES BEYOND A REASONABLE

DOUBT THAT THE DEFENDANT CONSPIRED OR ATTEMPTED TO
PURCHASE MORE THAN TWENTY-EIGHT (28) GRAMS OF REAL
HEROIN.

ENTRAPMENT

THE DEFENDANT IN THIS CASE HAS RAISED THE DEFENSE OF ENTRAPMENT. ENTRAPMENT IS SHOWN IF:

(1) THE CRIME WAS CONCEIVED AND PLANNED BY AN OFFICER, OR SOMEONE ACTING AS AN AGENT OF LAW ENFORCEMENT;

(2) THE OFFICER OR AGENT INDUCED, SOLICITED, PROPOSED, INITIATED, SUGGESTED, OR PERSUADED THE DEFENDANT TO COMMIT THE CRIME; AND

(3) THE DEFENDANT WOULD NOT HAVE COMMITTED THE CRIME WITHOUT THE TRICKERY, PERSUASION, OR FRAUD OF THE OFFICER OR AGENT.

THE STATE IS REQUIRED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS PREDISPOSED TO COMMIT THE CRIME WITHOUT THE INDUCEMENT OF THE OFFICER OR AGENT.

PREDISPOSED TO COMMIT THE CRIME MEANS THAT THE DEFENDANT HAD THE INTENT, PURPOSE, READINESS, OR WILLINGNESS TO COMMIT THE CRIME WITHOUT THE

INDUCEMENT OR PERSUASION OF THE OFFICER OR AGENT. THE FACT THAT THE OFFICER OR AGENT MERELY PRESENTED OPPORTUNITIES OR FACILITIES FOR THE COMMISSION OF THE CRIME IS NOT ENTRAPMENT.

IF YOU FIND THAT THE DEFENDANT HAD ANY PREDISPOSITION, WITHOUT ANY GOVERNMENT INDUCEMENT AND INFLUENCE, TO COMMIT THE CRIME THE DEFENSE OF ENTRAPMENT WOULD NOT APPLY.

IN DECIDING WHETHER THE DEFENDANT HAD ANY PREDISPOSITION TO COMMIT THE CRIME YOU MAY CONSIDER EVIDENCE SUCH AS: (1) AN EXISTING COURSE OF CRIMINAL CONDUCT BY THE DEFENDANT SIMILAR TO THE CRIME CHARGED; (2) AN ALREADY FORMED PLAN BY THE DEFENDANT TO COMMIT THE CRIME; AND (3) A WILLINGNESS TO COMMIT THE CRIME CHARGED AS SHOWN BY THE DEFENDANT'S READY RESPONSE TO THE INDUCEMENT.

IF YOU FIND THAT THE DEFENDANT WAS ENTRAPPED INTO COMMITTING THE CRIME, YOU MUST FIND THE DEFENDANT NOT GUILTY.

ABSENT DEFENDANT

UNDER THE LAWS OF THIS STATE, A DEFENDANT MAY BE
TRIED EVEN IF THE DEFENDANT DOES NOT ATTEND THE TRIAL,
BUT THE FACT THAT THE DEFENDANT IS NOT PRESENT MAY
NOT BE CONSIDERED AGAINST THE DEFENDANT IN ANY
MANNER WHATSOEVER.

JURY VERDICT

THERE ARE TWO POSSIBLE VERDICTS WHICH YOU MAY FIND IN THIS CASE: GUILTY OR NOT GUILTY. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE THESE POSSIBLE VERDICTS; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE. MADAM FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL WRITE THE VERDICT ON VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

Appellate No.: 2017-000281

The State of South Carolina

Respondent

Vs.

Jawan Rayel White

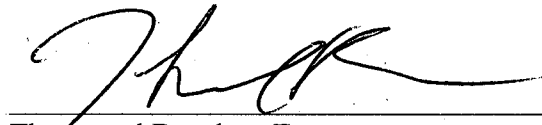
Appellant,

CERTIFICATE OF COUNSEL

Counsel for Appellant hereby certifies that the Record on Appeal contains all material designated for inclusion by all parties to the above-captioned action and contains no material not so designated.

March 2, 2018

Florence, SC



Thurmond Brooker, Esq.
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P. O. Box 1450
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Attorney for Appellant

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