

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Kristi Lea Harrington, Circuit Court Judge

Opinion No. 2011-UP-363 (S.C. Ct. App. filed 6/30/2011)

07-GS-10-13898, 13899

THE STATE,

RESPONDENT,

V.

LLOYD WRIGHT,

PETITIONER

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

RECEIVED

NOV 23 2011

S.C. Supreme Court

INDEX

INDEX.....	i
OPINION (NO. 2011-UP-363, FILED JUNE 30, 2011)	1
PETITION FOR REHEARING.....	7
ORDER DENYING PETITION FOR REHEARING	24

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Lloyd Wright,

Appellant.

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2011-UP-363
Submitted April 1, 2011 – Filed June 30, 2011

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Harold M. Coombs, Jr.,
all of Columbia; Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: While investigating a potential "open-air" illegal drug market, the Charleston Police Department, in conjunction with the Federal Bureau of Investigation (FBI), conducted an undercover operation in September of 2007. On September 17, Investigator Karen Springmeyer, operating undercover, drove to an area known as Athens Court. She noticed several "subjects," one of whom told her to pull down a side street. There, a man, allegedly Lloyd Wright, approached her vehicle, and she told him she wanted to buy some crack. The man reached in the car and handed her the drugs, and she paid him \$50.00 in "marked money" the FBI provided for the operation. Springmeyer then returned to her unit and delivered the crack to Investigator Seabrook, the case agent.

Three weeks later, Wright was arrested for the drug transaction. The marked money was never recovered. Wright was tried for distribution of cocaine base and distribution of cocaine base within a close proximity of a school, and he was convicted of both charges. The trial court sentenced him to life without the possibility of parole. This appeal followed.

STANDARD OF REVIEW

In criminal cases an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

LAW/ANALYSIS

Wright's alleges the trial court erred in failing to strike Hurteau's testimony because he lacked personal knowledge. We disagree. Wright specifically indicated to the trial court that the basis for his objection was Rule 612, SCRE, which provides the following:

If a witness uses a writing to refresh memory for the purpose of testifying, either—

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Here, the trial court permitted, and the State did not prevent, Springmeyer's and Seabrook's reports to be marked as exhibits and allowed Wright the opportunity to review the documents and cross-examine Hurteau on them. Accordingly, we see no grounds to allege error under Rule 612.¹

¹ Wright argues Hurteau's testimony should also have been stricken under Rule 602, SCRE. Notwithstanding that Wright specifically clarified to the trial court the basis for his objection was Rule 612, the trial court noted that Hurteau had personal knowledge by virtue of being at the scene during the controlled buy. We agree and note that any defect in his memory was for the jury to weigh.

Wright further argues the State violated Rule 5, SCRCrimP,² and Brady v. Maryland³ in failing to provide a copy of the "operational plan." We disagree.

Rule 5 provides in pertinent part:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects ... which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial[]

Rule 5(a)(1)(C), SCRCrimP.

Similarly, Brady holds that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. To establish such a due process violation, an accused must demonstrate "(1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." State v. Gibson, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (footnote omitted).

Here, the State argued it neither had knowledge of nor possession of such a plan. Likewise, the trial court found there had been no showing the operational plan was in the State's possession, the State had suppressed it, or the State failed to disclose it. The evidence supports these findings. Similarly, nothing in the record supports Wright's contention that the

² We note that although Wright did not make a precise objection based on Rule 5, at the outset of his motion before the trial court he did note that the operational plan "was not provided in discovery[] . . . [and that he] believe[d] it was discoverable."

³ 373 U.S. 83 (1963).

document, which Hurteau testified was for the purpose of protecting the public, the officers, and the suspects during the investigation, was material or exculpatory. Accordingly, the trial court did not err.

Wright lastly argues the drug evidence should have been suppressed because the State failed to properly establish the chain of custody. We disagree. "[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." State v. Sweet, 374 S.C. 1, 6, 647, S.E.2d 202, 205 (2007). The determination of whether the State has established the chain of custody as far as practicable depends on the unique facts of each case. State v. Hatcher, Op. No. 26950 (S.C. Sup. Ct. filed Mar. 21, 2011) (Shearouse Adv. Sh. No. 10 at 82-83). "Testimony from each custodian of fungible evidence . . . is not a prerequisite to establish a chain of custody sufficient for admissibility." Sweet, 374 S.C. at 7, 647 S.E.2d at 206 (citing State v. Taylor, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct. App. 2004)). "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of the custody due to an absent witness." Id. "[W]here all individuals in the chain are, in fact, identified and the manner of handling is reasonably demonstrated, it is not an abuse of discretion for the trial judge to admit the evidence in the absence of proof of tampering, bad faith or ill-motive." Hatcher, Op. No. 26950, at 81.

In this case, the essence of Wright's argument is (1) Seabrook failed to sign the evidence sheet and as a result Wright was unaware Seabrook was in the chain of custody until the time of trial and (2) Joe Lelema, the evidence technician who signed the evidence into the evidence room, did not testify.

In this case, although Seabrook forgot to sign the evidence sheet, he testified that he delivered the evidence in a sealed package to the Charleston Police Department's evidence lock box. Similarly, although Lelema did not testify, Hinton testified that Lelema received the evidence on September 20, 2007, based on his recognition of Lelema's initials on the property sheet and evidence tag. Then, Susan Moody testified she retrieved the evidence from the evidence room, signed it out, and transported it to the laboratory for analysis. Finally, laboratory manager Elizabeth Wiggins-Mitchell testified

she received the sealed evidence bags, tested the evidence, determined it was cocaine base, and replaced it into a new sealed container bearing her initials. Moreover, she identified this sealed container, which bore her initials, in court. Accordingly, we find the trial court did not abuse its discretion in admitting the evidence.

CONCLUSION

The ruling of the trial court is

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

LLOYD WRIGHT,

APPELLANT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

Opinion No. 2011-UP-363

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's convictions and sentences on June 30, 2011. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Wright argued three issues on appeal where he believed the trial court erred : (1) in denying appellant's motion to strike the testimony of Corporal Todd Hurteau when he relied on the reports and memory of two other police officers and had their reports with him when he testified on the witness stand to refresh his memory of the incident instead of testifying from his own knowledge: (2) in not requiring the state to obtain from the FBI a copy of the operational plan the police

developed with the FBI. The solicitor admitted she had not requested any discovery from the FBI and the police did not have a copy resulting in a Brady¹ violation and Rule 5, SCRCrimP, violation; (3) in admitting the cocaine base crack into evidence when the chain of custody was not complete.

The Court of Appeals affirmed the trial court on all three issues. The Court held on Issue One that the trial attorney's objection was based on rule 612, SCRE, which provided that the court could allow defense counsel to review the documents the witness relied on, and that the trial court did allow that in Wright's case; therefore there were no grounds to allege error under rule 612. on Issue Two, the Court held that he state did not have the operational plan nor knowledge of it ,and Wright produced no evidence that the plan was exculpatory. On Issue Three, the Court held that the state did properly establish the chain of custody for the drugs because one witness could testify that he recognized the receiver's initials on the chain.

On **ISSUE ONE**, Due to citizens' complaints, on September 19, 2007, the Charleston Police were conducting an investigation into street drug dealing and open-air drug markets in the area of Romney and Athens Court in Charleston at all hours of the day. This was a joint investigation with the FBI. R. 34, ll. 24 – 25; R. 35, ll. 1 – 5; R. 82, ll. 1 – 10. It was decided to use an undercover officer who would drive into the area and buy cocaine base or heroin. Investigator Karen Springmeyer was the undercover officer who went. R. 82, ll. 11 – 15.

Investigator Springmeyer testified that on this date, a meeting was held with members of the Charleston Police Department (CPD), several special agents with the FBI, and her to plan the operation for the safety of everyone involved. There would be surveillance units in surrounding areas for her safety. R. 82, ll. 16 – 25. The FBI provided the \$50 of marked money for her to use to buy the drugs. Since she would be driving a car, she set up an audio-video recorder inside the car,

¹ Brady v. Maryland, 373 U.S. 83 (1963).

and she wore an audio wire on her person which transmitted to the surveillance officers for them to hear all that was happening. R. 92, ll. 1 – 25.

The audio-video CD of the drug buy was published to the jury. R. 90, ll. 1 – 25; R. 91, ll. 1 – 6. Investigator Springmeyer then described the incident. She drove underneath the I-26 overpass that went downtown, and made a left turn down Athens Court from Romney Street. R. 91, ll. 1 – 25; R. 92, ll. 1 – 25. She saw several “subjects” on the street corner and slowed down. One of them told her to pull down the street so she went farther down Athens and pulled to the right side of the road. Then a man who was allegedly Lloyd Wright walked up, and she told him how much cocaine she wanted. The man put his hand inside the car and the cocaine base was inside his hand. She handed him the \$50. He then walked away and she left. She returned to the location and met with the unit. She gave the drugs to Investigator Seabrook who was the case agent. R. 93, ll. 1 – 25. She testified that Corporal Constanza was the superior officer who signed off on her report. R. 117, ll. 25; R. 118, ll. 1- 14.

Lloyd Wright was arrested three weeks later on October 9, 2007; the drug transaction occurred on September 19, 2007. The marked money was not recovered. R. 119, ll. 14 – 25.

Corporal Todd Hurteau testified that he had been in narcotics investigations for eleven years and was currently the supervisor of the unit which he had been for four and a half years. R. 33, ll. 1 – 25; R. 34, ll. 1 – 13. He was the supervisor of the operation where Lloyd Wright was allegedly involved. R. 34, ll. 14 – 25; R. 35, ll. 1 – 25; R. 36, ll. 1 – 16.

He said that the investigation was started by coming up with an operational plan where they put everything on paper to provide for the safety of the officers involved. R. 35, ll. 16 – 20. On cross examination, Corporal Hurteau admitted that he did not write any reports for this case. Defense counsel said he noticed that Corporal Hurteau was looking at notes during his testimony,

and asked what they were. Corporal Hurteau replied that he had a copy of the incident report that Officer Seabrook wrote and the incident report that Investigator Springmeyer wrote. He brought them to the witness stand with him. R. 40, ll. 1 – 16; R. 41, ll. 1 – 25.

When defense counsel said that Corporal Hurteau was not relying on his own memory when he testified but was relying on the memory of other people, Corporal Hurteau replied that he was there when the incident occurred and listened to the audio when the transaction occurred. R. 40, ll. 17 – 25.

Defense counsel then told the court he had a motion. The judge excused the jury. R. 41, ll. 22; R. 42, ll. 1 – 8. Counsel argued that testimony from a witness on the witness stand was to come from the person's personal observations and memories and knowledge and not from someone else's. Corporal Hurteau's memory was influenced by the reports of the two other officers so his testimony was not reliable because it was not based on his independent recollection. Counsel made a motion to strike Corporal Hurteau's testimony. R. 42, ll. 18 – 25; R. 43, ll. 1 – 22; R. 46, ll. 10 – 23.

The state responded that Corporal Hurteau testified that he remembered the transaction as he was supervising the other officers. R. 44, ll. 10 – 25; R. 45, ll. 1 – 12. The judge allowed defense counsel to question Corporal Hurteau in a proffer. Corporal Hurteau admitted that he had investigated thousands of drug buys, and he did not create a report in this drug buy. R. 34, ll. 1 – 6. R. 47, ll. 1 – 25; R. 48, ll. 1 – 25; R. 49, ll. 1 – 25; R. 50, ll. 1 – 4.

After the proffer, defense counsel renewed his motion to strike Corporal Hurteau's testimony. The judge asked counsel if his motion was to strike the officer's testimony under Rule 612. Counsel said yes. R. 50, ll. 5 – 10.

The judge denied counsel's motion to strike Corporal Hurteau's testimony. She ruled that he referred to the other reports as background and did not testify from them. The judge ruled that she would allow defense counsel to review the reports Corporal Hurteau used and that counsel could cross-examine Corporal Hurteau on the documents. The judge had the two documents marked as court exhibits. R. 50, ll. 21 – 25; R. 51, ll. 1 – 12.

When the jury returned, cross-examination of Corporal Hurteau continued. Corporal Hurteau admitted that he had done as many as fourteen drug buys in one day and over a hundred cases a year during the eight years he had been in narcotics. R. 55, ll. 1 – 25; R. 56, ll. 1 – 25. He said he remembered most of them. R. 57, ll. 1 – 25; R. 58, ll. 1 – 25; R. 59, ll. 1 – 25. He said that his job as a supervisor was to review the reports the other officers wrote. R. 58, ll. 1 – 25.

When he was asked to see the supervisor who signed off on the two reports he used during his testimony, he replied that he did not sign either of the two reports. Corporal Kenard signed Officer Seabrook's report and Corporal Constanza signed Investigator Springmeyer's report. R. 59, ll. 1 – 25; R. 60, ll. 1 – 25; R. 61, ll. 1 – 25; R. 62, ll. 1 – 25.

When asked if he were the arresting officer for Wright, there was no response from Corporal Hurteau. Counsel asked if it would help if he showed him a document to refresh his memory, and Corporal Hurteau said yes. When counsel showed him the booking report dated October 9, 2007, he admitted that his name was listed as the arresting officer. Corporal Hurteau admitted that he did not review the arrest warrants before coming to court. R. 63, ll. 1 – 25; R. 64, ll. 1 – 25.

Corporal Hurteau did not remember the time of day this incident occurred, and said he had to reference the incident report. R. 66, ll. 1 – 20.

Rule 601, SCRE, provides that every person is competent to be a witness except as otherwise provided by statute or these rules. Rule 602, SCRE, provides that:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 602, SCRE.

Rule 602, SCRE, prohibits a witness from testifying to matters unless evidence is introduced sufficient to demonstrate the witness has personal knowledge. State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009).

In State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006), the Supreme Court held that the investigator's testimony that defendant was supreme or officer within a criminal street gang was inadmissible hearsay, in trial for murder of rival gang member, insofar as his **testimony was not based on his personal knowledge**, but on information relayed to him by informant. [Emphasis added]. Likewise, here it was based on the fact that Corporal Hurteau did not testify from his own personal knowledge.

Corporal Hurteau said he was testifying from his own knowledge, yet he did not remember that he was the arresting officer. He did not remember the time, and admitted that he had to review the reports of the other officers. He also was not the supervisor who signed off on the two police reports he used during his testimony. He said he had done as many as fourteen drug buys in one day. This incident occurred almost two year before the trial when Corporal Hurteau testified.

The Court of Appeals misapprehended the issue because Corporal Hurteau did not remember the particulars of Wright's case as evidenced from the things he could not remember based on his testimony. Wright argued Rule 602, SCRE, because the witness violated a basic rule of evidence when he did not testify from his own knowledge.

In State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011), the Supreme Court reversed the case and held that the trial court committed prejudicial error when it admitted hearsay testimony from the alleged co-conspirator who relied on the police report during his testimony to recall the events of the evening of the incident and to put Byers at the incident.

The judge should have granted the motion to strike Corporal Hurteau's testimony. These deficits go far beyond the "weight" of the testimony.

On **ISSUE TWO**, Corporal Hurteau testified that the investigation started with an operational plan where the people involved put everything on paper to provide for the safety of the officers involved. R. 35, ll. 16 – 20. On cross-examination, Corporal Hurteau said that operational plans are typically put on paper but he did not have a copy of the operational plan for this transaction. When asked if the plan for this incident was put to paper, he responded: "I believe it was. I just don't have a copy." R. 39, ll. 1 – 25. Corporal Hurteau said that the plan would not be destroyed. R. 39, ll. 24 – 25; R. 40, ll. 1 – 4.

Defense counsel told the court he had a motion, and the judge held an in camera hearing. Counsel argued that Corporal Hurteau's testimony disclosed an operational plan which was not provided in discovery. Counsel argued that it was discoverable and he had a Brady motion regarding it. R. 41, ll. 22 – 25; R. 42, ll. 1 – 25; R. 44, ll. 1 – 9.

The assistant solicitor replied that she had turned over to defense all paperwork that she had. She argued that an operational plan developed by the police was an internal document that had confidential and sensitive information, and she had never received one. R. 44, ll. 9 – 21.

Defense counsel argued that based on the case of United State v. Giglio, 405 U.S. 150 (1972), the prosecutor had an affirmative duty to check to see if there were any other discoverable documents. Just because the solicitor had never received a copy did not mean it was not

discoverable. Counsel asked the court to require that the operational plan be presented to the judge for the judge, as a neutral party, to determine if it was discoverable. R. 45, ll. 1 – 25; R. 46, ll. 1 – 23.

The judge allowed counsel to proffer continued questioning of Corporal Hurteau. At the end of the proffer, defense counsel renewed his Brady motion. He argued that he did not know if the plan was exculpatory or not but the defense was entitled to it. R. 50, ll. 1 – 25. The judge ruled that Corporal Hurteau testified that the plan was typically written down but he could not locate a written plan. She ruled that there was no showing that the state had it or that the state had suppressed it. She denied counsel's motion to strike Corporal Hurteau's testimony related to the Brady issue. R. 51, ll. 13 – 23.

During the continued cross-examination of Corporal Hurteau, he testified that there was a possibility that the FBI had a copy of the operational plan since this was a joint investigation with them. He also testified that the investigation was for an "open-air market" where there were multiple people selling drugs. R. 55, ll. 1 – 25; R. 56, ll. 1 – 8.

At the close of cross-examination, counsel again renewed his motion for the excluded Brady material because he argued that Corporal Hurteau, on further examination, believed that the FBI had a copy of the operational plan. He argued that the state had an obligation to inquire from each of the police bodies involved for the existence of any evidence. He argued that this plan was probably exculpatory because it was not focused on Wright but on the open-air market where multiple drug buys were occurring. R. 68, ll. 16 – 25; R. 69, ll. 1 – 25; R. 70, ll. 1 – 25.

The judge asked the state if Special Agent Klimas (FBI agent) was going to testify. The assistant solicitor responded that she was not going to call him. She did not review his file as the FBI only provided the money for the drug buy. R. 71, ll. 1 – 25.; R. 72, ll. 1 – 25; Court Exhibit 1.

The judge ruled that there was no showing that there was a written plan, and that it was not shown that it had ever been in the possession of the state. She denied counsel's motion. R. 73, ll. 1 – 25.

Defense counsel then asked the court to strike all of Corporal Hurteau's testimony related to the operational plan, or in the alternative, to declare a mistrial if the plan was exculpatory. The judge denied this motion. R. 74, ll. 1 – 20.

When Investigator Springmeyer testified on cross-examination, she stated that she was present when the operational plan was presented. She said that operational plans in narcotics are in writing. R. 101, ll. 1 – 25; R. 102, ll. 1 – 15.

Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations, tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

In State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998), the Court of Appeals held that Brady disclosure rule extends to evidence that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police. The Court also ruled that under Brady disclosure rule, "favorable evidence" includes both exculpatory and impeachment evidence. Id. Under the Brady disclosure, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in the outcome. State v. Kennerly, *supra*.

An individual asserting a Brady violation must demonstrate that evidence: (1) is favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the state;

(4) and was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419 (1995); Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999). The South Carolina Supreme Court applied this standard in the case of Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006), where the Court ruled that if a Brady violation occurred, post-conviction relief should be granted.

The Brady disclosure rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process clause of the Fifth and Fourteenth Amendments. State v. Kennerly, *supra*.

The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching. Riddle v. Ozmint, *supra*. In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution's nondisclosure of tape recordings of statements made by key state's witness, which contradicted trial testimony, in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, *supra*, the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996)

The overriding theme of the Brady cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. Riddle v. Ozmint, *supra*, citing Kyles v. Whitley, *supra*.

In U.S. v. Giglio, *supra*, the United States Supreme Court reversed the conviction and ordered a new trial for the defendant because a violation of due process occurred when the prosecutor did not fulfill his duty to present all material evidence to the jury. That case involved an

alleged promise of leniency made by the government to its key witness in return for his testimony which was not disclosed to the jury.

Although defense counsel stated he did not know for sure that the operational plan was exculpatory, since he had not seen it and the judge did not require the solicitor to produce it, he believed there was a "reasonable probability" that the plan was exculpatory because the investigation was about multiple drug buys at the open-air market and was not focused on Wright. Wright was denied a fair trial because he did not have all of the evidence. The state had not sought any evidence from the FBI who were involved in the planning and provided the money. The FBI special agents also were present with the police surveillance unit during the incident. Court Exhibit 1. If the FBI provided money, there was a reasonable probability that they had a paper trail to include the written operational plan.

The judge should have required the state to check with the FBI for any other evidence. Lloyd Wright was facing life in prison and was entitled to all of the evidence.

The Court of Appeals misapprehended the issue because defense counsel could not present any evidence to show the operational plan was exculpatory without seeing the plan. Based on the law, the state was responsible to produce the document even if it was in the possession of the police.

On **ISSUE THREE**, Investigator Damien Seabrook of the Charleston Police, testified that he was the case agent in Wright's case. He received the drugs from Investigator Springmeyer and placed them in a plastic bag. R. 122, ll. 1 – 25; R. 123, ll. 1 – 25; R. 124, ll. 1 – 25. He filled out the evidence sheet, and secured the drugs inside the secure lockbox in the Charleston Police Department. R. 124, ll. 22 – 25; R. 125, ll. 1 – 8.

Investigator Seabrook testified that he filled out the evidence sheet but did not sign it which he said was just an oversight. He prepared several documents during that time and just overlooked signing this one. R. 123, ll. 15 – 25; R. 124, ll. 1 – 25; R. 125, ll. 1 – 19.

On cross-examination, Investigator Seabrook again admitted that he forgot to sign the Form 48 which described the drugs and how they were obtained. The suspect was listed as unknown. R. 126, ll. 1 – 25; R. 127, ll. 1 – 25. He also admitted that he filled out the property sheet or evidence sheet when he took the drugs to the evidence room, but defense counsel said he did not have that document in the discovery. Counsel said he did not know that Investigator Seabrook was involved in the custody of the drugs until the trial because he had not signed the form. R. 130, ll. 1 – 25; R. 131, ll. 1 – 25; R. 132, ll. 1 – 25; R. 133, ll. 1 – 25.

During testimony concerning the chain of custody, Brian Hinton of the Charleston Police, testified that he was an evidence technician and had been trained by his superior, Sargent LaLema. He said that when evidence was turned in, they collect it from a temporary holding facility, fill out submittal forms if the evidence needed to go somewhere for testing. If not, then he signed the chain of custody form, secured the drugs and put them on the shelf until they were needed. R. 139, ll. 1 – 25; R. 140, ll. 1 – 25.

When he was shown the evidence tag, he said that Sargent LaLema's initials were on it which indicated that LaLema was the person who received this evidence. He recognized his initials. Defense counsel objected. The judge held an in camera hearing. R. 141, ll. 1 – 25; R. 142, ll. 1 – 25.

Counsel argued that it was speculation for Officer Hinton to talk about another person dealing with the evidence. The judge sustained the objection. R. 143, ll. 1 – 25. The testimony continued, and Officer Hinton stated again that based on the evidence tag, Joe LaLema received the

evidence into the evidence room. Officer Hinton admitted that he did not touch these drugs and really had nothing to do with this case. R. 149, ll. 1 – 25; R. 150, ll. 1 – 25.

Elizabeth Wiggins testified that she was the laboratory manager for the Charleston Police Department. R. 158, ll. 17 – 25. She received the drugs in Wright's case; analyzed them to be cocaine base that weighed .31 grams. When the state asked to have the drugs moved into evidence, defense counsel objected based on the chain of custody. The judge held an in camera hearing. R. 163, ll. 1 – 25; R. 164, ll. 1 – 25.

Counsel argued that Rule 6, SCRCrimP, provided the rule for the chain of custody. He argued that Rule 6 provided that he could demand the appearance of each person in the chain, and he did request that in his Brady motion and Rule 5 motion dated January 15, 2009. Counsel argued that there were two problems with the chain. The first one was that Sargent LaLema did not testify that he received the evidence into the evidence room nor where he sent the drugs out. And Officer Hinton was not identified as the successor to LaLema whom the state said had retired. R. 165, ll. 1 – 25; R. 166, ll. 1 – 4; R. 197, ll. 1 – 25; R. 173, ll. 8 – 21; R. 175, ll. 4 – 16.

The second problem was that Investigator Seabrook testified that he filled out the property sheet which was not provided and he did not sign the chain of custody. Counsel said he did not know Investigator Seabrook was on the chain until he testified. Counsel argued that the chain was not complete so he objected to the drugs being admitted into evidence. R. 166, ll. 5 – 25; R. 167, ll. 1 – 25.

The state argued that the chain was complete and presented the chain. R. 168, ll. 1 – 25. Defense counsel continued to argue that he did not know Investigator Seabrook was in the chain and he did not know they were going to have a substitute for Officer LaLema who testified to what they usually did in the evidence room. R. 169, ll. 1 – 25; R. 170, ll. 1 – 25.; R. 171, ll. 1 – 25; R. 172, ll. 1

– 25; R. 173, ll. 1 – 25; R. 174, ll. 1 – 25; R. 175, ll. 1 – 25; R. 176, ll. 1 – 25; R. 177, ll. 1 – 25; R. 178, ll. 1 – 25; R. 179, ll. 1 – 25.

The judge ruled that the weakness in the chain went to credibility and not admissibility. She overruled his objection to the admission of the drugs. R. 181, ll. 7 – 25; R. 182, ll. 1 – 7. Counsel renewed all of his objections at the close of the state's case which the judge denied. R. 193, ll. 1 – 25; R. 194, ll. 1 – 25; R. 195, ll. 1 – 25; R. 196, ll. 1 – 25; R. 197, ll. 1 – 25; R. 198, ll. 1 – 25; R. 199, ll. 1 – 25; R. 200, ll. 1 – 25.

Decisions regarding the admissibility of evidence and whether to grant or deny a mistrial are within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007). An abuse of discretion occur when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

Rule 6 (b), SCRCrimP, provides:

For the purpose of establishing a chain of physical custody or control of evidence entered under Part A of this Rule, a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statement says the substance was delivered in substantially the same condition as when received.

The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a).

A party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Hatcher, 384 S.C. 372, 681 S.E.2d 925 (Ct. App. 2009); State v. Sweet, *supra*. Where an analyzed substance that has passed through

several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. State v. Sweet, *supra*, citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534 537 (1957).

While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as possible. State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004).

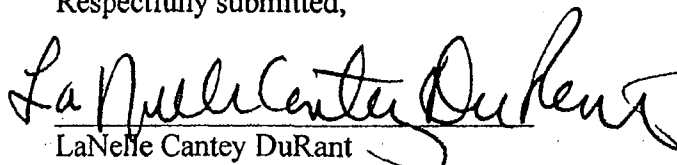
The chain of custody was not complete and the trial court did not follow the criminal rule of procedure. Defense counsel had requested the appearance of each person in the chain according to Rule 6, SCRCrimP. A significant part of the chain, Sargent LaLema, did not appear nor was a signed affidavit from him presented to the court.

During the jury deliberations, the jury requested to see and hear the audio-video CD of the transaction again, which the court allowed. R. 202, ll. 22 – 25; R. 203, ll. 1 – 25; R. 204, ll. 1 – 25; R. 205, ll. 1 – 25; R. 206, ll. 1 – 25; R. 207, ll. 1 – 4. The jury then requested to see the judge's charge on the chain of custody which was sent to the jury. R. 207, ll. 23 – 25; R. 208, ll. 1 – 8. The jury then asked to hear or see the testimony of investigator Seabrook which was played for them. R. 208, ll. 23 – 25; R. 209, ll. 1 – 25.

The Court of Appeals misapprehended the issue because sergeant LaLame was not present and did not produce an affidavit regarding the chain. It was prejudicial to Wright when he did not know all of the people in the chain since Seabrook did not sign the chain.

THEREFORE, we respectfully ask the Court of Appeals to reconsider its rulings.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 14th day of July, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LLOYD WRIGHT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 14th day of July, 2011.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 14th day
of July, 2011.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

The South Carolina Court of Appeals

The State,

Respondent,

v.

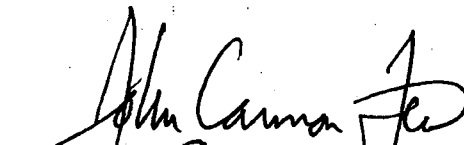
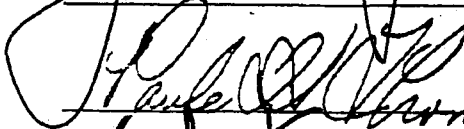
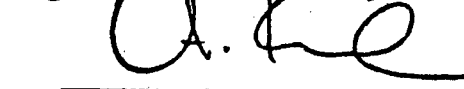
Lloyd Wright,

Appellant.

Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No.
2007-GS-10-13898
2007-GS-10-13899

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is therefore ordered that the Petition for Rehearing be denied.


_____. C.J.

_____. J.

_____. J.

Columbia, South Carolina

FILED

September 22, 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LLOYD WRIGHT,

APPELLANT

AMENDED
RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

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

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
PROCEEDINGS	6
MOTION TO ADOPT PRETRIAL RULLINGS- BY MR. SMILEY	7
MOTION TO SUPPRESS- BY MR. SMILEY.....	14
OPENING STATEMENT BY MS. LINDER.....	30
OPENING STATEMENT BY MR. SMILEY	31
TESTIMONY	
CORPORAL TODD HURTEAU	
Direct Examination by Ms. Linder.....	33
Cross-Examination by Mr. Smiley.....	39
Motion to Strike Testimony – By Mr. Smiley.....	42
<u>Brady</u> Motion – By Mr. Smiley.....	44
Proffer – By Mr. Smiley	47
Continued Cross-Examination by Mr. Smiley	54
Renewed Motion to Exclude <u>Brady</u> Material – By Mr. Smiley.....	68
TESTIMONY	
KAREN SPRINGMEYER	
Direct Examination by Ms. Linder.....	80
Cross-Examination by Mr. Smiley.....	99
Redirect Examination by Ms. Linder	118
DAMIEN L. SEABROOK	
Direct Examination by Mr. Byrd.....	122
Cross-Examination by Mr. Smiley.....	126
Redirect Examination by Mr. Byrd	135
Recross-Examination by Mr. Smiley	136
BRIAN HINTON	
Direct Examination by Mr. Byrd.....	139
Continued Direct Examination by Mr. Byrd.....	149
Cross-Examination by Mr. Smiley	150

ELIZABETH N. WIGGINS-MITCHELL

Direct Examination by Mr. Byrd.....	158
Continued Direct Examination by Mr. Byrd.....	183
Cross-Examination by Mr. Smiley.....	185
 MOTIONS – By Mr. Smiley.....	 193
 CHARGE OF COURT	 202
 COURT’S EXHIBIT #1.....	 210
 INDICTMENTS.....	 216
 CERTIFICATE OF COUNSEL	 220

STATE OF SOUTH CAROLINA
VS.
LLOYD WRIGHT,
DEFENDANT.

VOLUME 2 OF 3

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Stephanie Linder, Esquire
Bryan M. Byrd, Esquire
Assistant Solicitor
9th Circuit Solicitor's Office
101 Meeting Street, Suite 400
Charleston, South Carolina 29402

FOR THE DEFENDANT:

James W. Smiley, IV, Esquire
Laree Hensley, Esquire
Attorney at Law
3842-B Leeds Avenue
Charleston, South Carolina 29405

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	6
JUROR 106 EXCUSED BY THE COURT	7
MISTRIAL DECLARED BY THE COURT	19
JURY VOIR DIRE - JURY NUMBER TWO	25
STRIKING OF THE JURY	45
MOTION TO ADOPT PRETRIAL RULINGS - BY MR. SMILEY	57
MOTION TO SUPPRESS - BY MR. SMILEY	65
OPENING STATEMENT BY MS. LINDER	81
OPENING STATEMENT BY MR. SMILEY	82
 TODD HURTEAU	
Direct Examination by Ms. Linder	84
Cross-Examination by Mr. Smiley	90
Motion to Strike Testimony - By Mr. Smiley	93
<u>Brady</u> Motion - By Mr. Smiley	95
Proffer - By Mr. Smiley	98
Continued Cross-Examination by Mr. Smiley	105
Renewed Motion to Exclude <u>Brady</u> Material By Mr. Smiley	119
 KAREN SPRINGMEYER	
Direct Examination by Ms. Linder	131
Cross-Examination by Mr. Smiley	150
Redirect Examination by Ms. Linder	169

INDEX TO PROCEEDINGS, continued

	PAGE
DAMIAN L. SEABROOK	
Direct Examination by Mr. Byrd	173
Cross-Examination by Mr. Smiley	177
Redirect Examination by Mr. Byrd	186
Recross-Examination by Mr. Smiley	187
BRIAN HINTON	
Direct Examination by Mr. Byrd	190
Continued Direct Examination by Mr. Byrd	200
Cross-Examination by Mr. Smiley	201
SUSAN MOODY	
Direct Examination by Mr. Byrd	203
Cross-Examination by Mr. Smiley	205
ELIZABETH N. WIGGINS-MITCHELL	
Direct Examination by Mr. Byrd	209
Continued Direct Examination by Mr. Byrd	234
Cross-Examination by Mr. Smiley	236
MOTIONS - BY MR. SMILEY	244
CERTIFICATE OF COURT REPORTER	258

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

PROCEEDINGS

1
2 THE COURT: All right. Mr. Smiley, Ms. Linder,
3 we have two jurors that have issues. One of the jurors
4 has indicated she now lives in Berkeley County, so I
5 need to bring her out and inquire as to that. Another
6 juror's daughter was in a car accident this morning and
7 is at the hospital. So depending on the -- what the
8 Berkeley County -- perhaps now the Berkeley County
9 resident is going to tell us, we'll have some issues.
10 I do not have an update as to the medical condition of
11 the daughter of the juror, so as soon as we get that
12 information we will proceed accordingly.

13 MR. SMILEY: And, Your Honor, just to let you
14 know -- thinking a little bit down the road -- because
15 my client is looking at life, I'm not going to be able
16 to proceed with less than twelve. I know that -- just
17 to let you know.

18 THE COURT: I am not going to proceed with less
19 than twelve.

20 MR. SMILEY: I did not --

21 THE COURT: My thought was --

22 MR. SMILEY: Okay. Yes, ma'am.

23 THE COURT: My thought was if we could proceed
24 with the twelve --

25 MR. SMILEY: Yes, ma'am.

INDEX TO EXHIBITS

MARKED/ADMITTED

State's

State's Exhibit Number 1 [Map]	24 / 146
State's Exhibit Number 2 [Bag Containing Drugs]	24 / 235
State's Exhibit Number 3 [CD of Drug Buy]	24 / 142

Court's

Court's Exhibit Number 1 [Corporal Hurteau's Documents]	103 /
--	-------

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 to introduce by the defendant; is that correct?

2 MS. LINDER: Correct. There are no statements
3 post Miranda.

4 THE COURT: So that motion we do not need to
5 address, Mr. Smiley?

6 MR. SMILEY: The only one that has a ruling that
7 would have an effect on this trial, Your Honor, is I
8 made a motion about prior bad acts, 403(b) and Lyle.
9 We had agreed -- or subject to ruling, we had agreed to
10 mute parts of the video. We had gotten to that. There
11 may be one right before -- when we come back from lunch
12 there might be one where you might need to listen and
13 maybe -- we're still trying to agree. I guess that's
14 what we're saying.

15 THE COURT: And just so the record is clear --

16 MR. SMILEY: Yes, ma'am.

17 THE COURT: -- in this trial I granted your
18 motion to exclude testimony of prior bad acts. My
19 understanding, as related by Ms. Linder, is there was
20 some indication that the tape that you plan to
21 introduce had conversations and statements regarding a
22 drug deal the day before. Is that correct, Ms. Linder?

23 MS. LINDER: Your Honor, the -- yes, more or
24 less. Yes. The undercover officer indicated the
25 defendant was in the same clothing during this as he

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 was the previous day. So that -- yes.

2 THE COURT: All right. And when we broke last
3 evening, Mr. Smiley and Ms. Linder, you were attempting
4 to agree upon where to mute the tape.

5 And I understand that now there may just be one
6 issue; is that correct, Mr. Smiley?

7 MR. SMILEY: Well, there are two prior -- their
8 two references to prior deals is not a problem. There
9 is one reference to a future deal, which is basically
10 the same thing, that we are trying to agree which part
11 is relevant, not relevant, or prejudicial, and if we
12 can't reach a resolution then I need you to intercede.
13 But I would guess we'll reach an agreement.

14 THE COURT: All right. Well, I am going to
15 bring in the jury. Do you have a preference of whether
16 or not I swear the jury before we break for lunch?

17 MR. SMILEY: I think we ought to go ahead and
18 swear them, Judge.

19 MS. LINDER: Leave it in the discretion of the
20 Court, Your Honor.

21 THE COURT: All right. I will swear the jury.

22 I will have them back in their jury rooms at
23 1:30. We will begin as promptly at that time. All
24 right? Please stand for the jury.

25 Please bring in the jury.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 [Whereupon, the jury enters the courtroom at
2 12:09 p.m.]

3 THE BAILIFF: Jurors are present, Your Honor.

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen of the jury, I am going to
6 give you your oath, and then we are going to recess for
7 lunch, so you will need to be back in your jury room at
8 1:30.

9 If you will please swear the jury.

10 THE CLERK OF COURT: Yes, Your Honor.

11 Please have the defendant stand.

12 [Whereupon, Mr. Wright complies]

13 THE CLERK OF COURT: Ladies and gentlemen of the
14 jury, if you will please stand and raise your right
15 hand. If you will please reply back to me, after I've
16 given you this oath, verbally.

17 [Whereupon, the jury is duly sworn by the clerk
18 of court as follows: do you swear or affirm that ye
19 shall well and truly try and a true deliverance made
20 between the State of South Carolina and the defendant
21 at the bar, whom you shall have in charge, and a true
22 verdict rendered according to the evidence and the law,
23 so help you God]

24 [Whereupon, jurors respond]

25 THE BAILIFF: Thank you. Be seated.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: Ladies and gentlemen, I will give
2 you further instructions on procedural matters. We
3 will break now for lunch. It is important that you do
4 not begin discussing this case amongst yourselves. Do
5 not begin your deliberations.

6 Do not do any independent research via
7 newspapers, television, internet, anything. All of the
8 evidence that you hear must come from this courtroom.

9 And, again, and I will instruct you on this
10 further. But if you see any of the parties during your
11 lunch hour and they do not acknowledge you, they are
12 not being rude. They are merely following the Court's
13 instructions that they may not discuss this case with
14 you. So they may give you a quick smile, and that will
15 be it, but do not think that they are being -- any
16 officers of the Court are being rude if they do not
17 speak with you.

18 Please be back in your jury room at 1:30.

19 Ms. Florence, you have been selected as the
20 foreperson of this case.

21 Mr. Schobein, you are the alternate. And I will
22 probably mispronounce your name one more time but I
23 will attempt, throughout the course of this trial, to
24 get it correctly.

25 Ms. Florence, you will be in that end seat when

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 you return, on the front row, and Mr. --

2 MR. SCHOBELIN: Schobel. .

3 THE COURT: -- Schobel, you will need to remain
4 in about that same seat. The rest of you may sit
5 wherever you choose.

6 You will notice that the persons in the audience
7 will be standing when you walk in. That is because you
8 are now the judges of the facts in this case. So
9 please come in, take your seat, and once all of you are
10 seated the audience will then be seated, as well.

11 Again, have a nice lunch. Please be back in
12 your jury room at 1:30. Thank you.

13 Please rise for the jury.

14 [Whereupon, the jury exits the courtroom at
15 12:12 p.m.]

16 THE COURT: Thank you. Be seated.

17 Do either of you have a preference on note-
18 taking?

19 MR. SMILEY: I have no preference.

20 MS. LINDER: I have no preference.

21 THE COURT: All right. And anything before we
22 break for lunch? From the State?

23 MS. LINDER: Nothing from the State, Your Honor.

24 MR. SMILEY: Nothing from the defense.

25 THE COURT: All right. Mr. Wright, we will

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 begin your trial promptly at 1:30. I hope you have a
2 wonderful lunch, as well. Thank you.

3 We are in recess until 1:30.

4 [Whereupon, a recess is taken from 12:13 p.m. to
5 1:29 p.m.]

6 THE COURT: Thank you. Be seated.

7 MS. LINDER: Your Honor, just to kind of
8 explain, we just watched the video in its entirety
9 over on my computer in my office, and it went with no
10 problems. And it just kept playing. And it goes for
11 about seven minutes with no problems and then the audio
12 you hear, the video is paused, but you can advance it
13 just past that. My investigator is getting our other
14 laptop to see if its this computer, since it worked
15 fine on the computer in my office.

16 But we may want to bring up our disagreement,
17 still, for one section of whether it should be muted or
18 not. And we can fast-forward to that section, so we
19 can at least address that, to keep the case moving
20 forward at this time if you would like.

21 THE COURT: Okay. Do you want to do that now,
22 Ms. Linder?

23 MS. LINDER: The State is ready to go forward
24 right now.

25 THE COURT: All right.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: As the motion heard yesterday and
2 Your Honor ruled upon it, the references where the
3 undercover police officer says he's in the same
4 clothing, he's in the same clothing as yesterday, your
5 ruling -- and we've gone back and we are going to be
6 muting all of that time so there's no reference to the
7 same clothing. I believe that's said two to three
8 times during it. It's been recorded. Mr. Smiley and
9 Mr. Byrd have gone over that. Those will all be muted.

10 The issue that we are not coming to an agreement
11 on is during the I would say fifteen to twenty-second
12 transaction itself, of the hand-to-hand, Mr. Wright
13 comes into the picture. Mr. Wright comes into the
14 picture and what happens is -- more or less the
15 conversation is, yo, why didn't you call me, why didn't
16 you call me. And she says, oh, I forgot, or whatever.
17 Why didn't you call me; you don't need to drive in
18 here. And then he says, you know, it looks suspicious
19 with the police. He's black, she's white. So on and
20 so forth. And then he says, call me next time, call me
21 next time. And she says, okay, okay, I'll try to get
22 money, and I'll call you.

23 MR. SMILEY: Your Honor, she talks about that
24 she's putting her money together to make another deal
25 on Friday. And that's clear on there. And where she

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 got the phone number was the deal the day before, so I
2 can't cross her about where she got the phone number
3 without opening the door to the prior bad act.

4 THE COURT: All right. Let me view the video.

5 MS. LINDER: And, Your Honor, I would like to be
6 heard briefly at the appropriate time.

7 [Whereupon, CD is played for the Court]

8 - - - - -

9 MOTION TO SUPPRESS

10 MR. SMILEY: That covers the part that's in
11 dispute. That covers the part that's in dispute, Your
12 Honor.

13 THE COURT: All right. Ms. Linder?

14 MS. LINDER: Your Honor, I would just say that
15 Mr. Wright -- allegedly, Mr. Wright is the person who
16 initiates the conversation, saying don't call me, don't
17 pull up in this area. I believe that goes to his
18 intention at this moment, at this incident that we're
19 here on trial for today, and then it shows kind of his
20 forward-looking, yes.

21 But we would argue, as Mr. Smiley brought up
22 with 404(b) and Lyle, nothing in Lyle talks about
23 subsequent or potential future bad acts. I would just
24 say that, especially in the beginning section, he's
25 talking about where she should and should not park for

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 this transaction, as he's walking up, because, why
2 didn't you call me, and you shouldn't be here, you need
3 to go to Katie Street or whatever street he said. And
4 that references, I argue, his frame of mind for this
5 transaction, which is why we are on trial today.

6 THE COURT: Mr. Smiley?

7 MR. SMILEY: The alleged phone number was taken
8 from the deal done with allegedly the same person the
9 day before. And that's when the police report says: I
10 obtained this phone number. And the 9/18 charge that
11 he was charged with, which he is charged with, the
12 distribution, he's not on trial for today. So there's
13 a reference to the prior bad act about the phone call.

14 Then there is talk about, I'm putting money
15 together for another act, that subsequently takes
16 place. It wasn't but -- it was for \$50, that he's
17 charged with in this case, too. So there's a
18 subsequent prior -- subsequent acts and prior bad acts
19 are covered the same under Lyle. I'm pulling up cases,
20 but I'm kind of familiar with these. I know that for a
21 fact. And they can only be used if the State intends
22 to show through a pattern -- first, they've got to show
23 clear and convincing; they've got to show a pattern,
24 motive, intent. They've got to meet one of those
25 exceptions. And then they've got to show by clear and

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 convincing evidence. And in this case he's charged
2 with those crimes separately, and he's not on trial for
3 those today. And so they've elected to go forward on
4 the 9/19, 2007 charge, and it refers to other arrests
5 or that become arrests, other acts, bad acts. They
6 can't be considered anything other.

7 I would ask Your Honor to suppress any reference
8 to future or prior bad acts or information that's
9 obtained -- I can't cross-examine him without opening
10 the door to the other act. I can't. I can't question
11 about, where did you obtain the phone number; oh, when
12 we bought from him the day before, or putting in that
13 reference, because that's not what's on trial here
14 today.

15 That's all I have. And I'll get you a case, if
16 you need one, about subsequent prior acts -- subsequent
17 acts. I'm looking them up as fast as I can, but I --

18 THE COURT: Ms. Linder?

19 MS. LINDER: Your Honor, I would just reiterate
20 that the conversation was initiated by Mr. Wright. And
21 especially on the beginning he kept saying for this
22 act, for this date on September 19th, 2007, he said,
23 you should have called me. He later talks about how,
24 you know, it'll flag attention by the police with them
25 being together, she should have called, she should have

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 gone to a different street. And I hold that that is
2 his mind set, his intention, for this statement and
3 that's why it is relevant and should be allowed in.

4 THE COURT: Mr. Smiley, what is your exact
5 objection? What is it -- what is the language that you
6 are objecting to?

7 MR. SMILEY: I object to this part that we've
8 looked at. We've already got the prior bad act stuff
9 we've agreed to. This part I object to a couple of
10 different -- he referenced about, why didn't you call
11 me, and her talking about the phone call, the calling
12 him. I can't cross-examine about that prior bad act.
13 I can't ask about, well, did you have his phone number;
14 oh, yes; where did you get it from; when we bought on
15 the day before. I can't ask any questions on that.
16 He's not on trial for the one from the day before. So
17 I'm blocked about the phone call --

18 Secondly, I think it's real clear when they
19 start talking about -- when she had said, I'm putting
20 money together to buy from you again, I'll try to get a
21 couple hundred together, certainly is talking about a
22 subsequent contemplated bad act.

23 I would make a motion to have both of those
24 suppressed.

25 THE COURT: Ms. Linder, is the testimony going

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 to be that the purchaser in the video received the
2 phone number pursuant to the transaction the day
3 before?

4 MS. LINDER: No, Your Honor. I've already
5 spoken with Investigator Springmeyer, who is the
6 undercover officer in this case, and she understands
7 your ruling yesterday and she is not -- she understands
8 that it will be muted, she cannot make reference to the
9 outfit, she cannot make reference, you know, unless
10 asked by defense. But I am not going to be asking her
11 about the phone number, about anything, and she knows
12 to stay away from the areas.

13 MR. SMILEY: But, yes, she obtained -- in her
14 report dated 9/18/2007, she reports that she obtained
15 the phone number. And so she did obtain -- she
16 allegedly obtained it from my client the day before.

17 THE COURT: Mr. Smiley, how did she obtain --
18 she only obtained the phone number because she had
19 purchased from him before --

20 MR. SMILEY: Right.

21 THE COURT: -- is that --

22 MR. SMILEY: -- a black male --

23 THE COURT: -- your contention?

24 MR. SMILEY: Yes. And I'm going to read this
25 record. The black, male man handed -- and I'm reading

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 from the report from this officer on 7/18/07:
2 [reading] the black male handed the reporting officer
3 the pieces, and reporting officer gave black male \$50.
4 Reporting officer asked the black male his name, and he
5 muttered something like L. And then reporting officer
6 asked for his phone number. The black male gave the
7 number of 568-0737. And reporting officer again asked
8 his name. This time he replied, my name is Swamp.

9 So that's information from the day before's
10 purchase.

11 THE COURT: Ms. Linder?

12 MS. LINDER: Your Honor, I would -- again, the
13 same argument as before. This officer is talking about
14 this incident this day. She is not talking about
15 previous encounters with the defendant about the name
16 or anything in those reports that Mr. Smiley says is
17 that's a separate number we are trying today.

18 THE COURT: Mr. Smiley, I am granting your
19 motion to suppress the reference to the gathering of
20 the money for the future purpose -- for future purpose.

21 I am denying your motion to suppress as to the
22 reference to, why didn't you call. I think it goes to
23 the -- one of the elements to distribution, and I am
24 going to allow it.

25 However, that being said, your officer needs to

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 be clear that there cannot be any reference to the
2 purchase on September 18th of 2007.

3 MS. LINDER: Your Honor, with that ruling, I
4 would ask for about five minutes to just reiterate that
5 to my officer to make sure everything is clear.

6 Also, we have our IT person here. She's going
7 to check out this laptop. And Mr. Byrd and Mr. Smiley
8 will probably want to get together for the same five
9 minutes. I'll be speaking with the investigator to
10 make sure that the correct -- per your ruling the
11 correct things are muted.

12 THE COURT: Thank you.

13 MS. LINDER: Thank you, Your Honor.

14 MR. SMILEY: And of course I guess I should say
15 note my objection, to the one part you're allowing, on
16 the record. Thank you.

17 THE COURT: Yes, sir.

18 MR. SMILEY: And then I will of course have to
19 repeat that when it comes up during testimony.

20 THE COURT: Yes, sir. Yes, sir, you will.

21 MR. SMILEY: All right. Thank you.

22 THE COURT: Thank you.

23 [Whereupon, a recess is held from 1:45 p.m. to
24 1:52 p.m.]

25 MS. LINDER: Your Honor, Ms. Buccas [phonetic]

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 is redoing the new computer. That should just take a
2 moment. I did have the opportunity, and I thank you
3 for that, to speak very clearly with my officer to not
4 address any of that whatsoever and to focus on the act
5 at hand, which is the hand-to-hand which is why we are
6 here today. So she has been very, very clearly
7 explained that and understands.

8 THE COURT: Thank you.

9 Anything further before we bring in the jury,
10 Mr. Smiley?

11 MR. SMILEY: No, Your Honor. I don't believe
12 so.

13 We've pre-marked some exhibits. I think there's
14 only two, but I haven't agreed to their admissibility
15 until a foundation is laid.

16 THE COURT: All right.

17 Is there anything that we can address, before I
18 bring in the jury, while we are switching computers?

19 MS. LINDER: It's booted up right now. She's
20 about to put it in. I would just ask that we make sure
21 that it does, in fact, play before we leave it back up
22 with the court reporter.

23 [Whereupon, Mr. Smiley and Ms. Linder confer]

24 THE COURT: I'm sorry?

25 MR. SMILEY: I asked her if she planned on using

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 the video in opening because if she did, we needed to
2 address an issue or two beforehand. But she doesn't,
3 so that --

4 [Off the record momentarily]

5 THE COURT: Ms. Linder, are we about --

6 MS. LINDER: She is here making sure that
7 there's nothing wrong with the disk itself. There
8 doesn't appear to be.

9 [Off the record momentarily]

10 THE COURT: All right. Ms. Linder, I'm going to
11 bring in the jury, give my opening, and your IT person
12 is welcome to remain at the table to continue working
13 on the computer.

14 MS. LINDER: Yes, ma'am.

15 THE COURT: Then you will do your opening,
16 Mr. Smiley will do his opening, and we'll make a
17 determination.

18 My recollection from yesterday is that the video
19 applies to witness number two; is that correct?

20 MS. LINDER: Yes, Your Honor.

21 THE COURT: All right. So that should give your
22 IT person sufficient time. And if we need to take a
23 break at that time, we will.

24 MS. LINDER: Thank you, Your Honor.

25 THE COURT: Anything before I bring in the jury?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: I just wanted to let you know that
2 the sound is not connected with the computer she's
3 working on, and the speaker itself has been turned off,
4 so a mishap should not happen.

5 THE COURT: Should not. They should not happen.
6 Mr. Smiley, anything before I bring in the jury?

7 MR. SMILEY: No, Your Honor.

8 THE COURT: All right. Please bring in the
9 jury.

10 [Off the record momentarily]

11 THE COURT: All right. Just let me know before
12 you bring them in.

13 Please be seated. We have a juror in the
14 restroom.

15 [Off the record momentarily]

16 THE COURT: All right. Please rise for the
17 jury.

18 And they have been given notebooks.

19 [Whereupon, the jury enters the courtroom at
20 2:00 p.m.]

21 THE BAILIFF: Jurors are present, Your Honor.

22 THE COURT: Thank you. Thank you. Please be
23 seated.

24 Madam Forelady, ladies and gentlemen of the
25 jury, what I now say is intended to serve as an

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 introduction to the trial of the case of the State vs.
2 Lloyd Wright. The remarks that I give to you are not a
3 charge on the law in this case. I will instruct you on
4 the law applicable to this case at the end of the trial
5 before you retire to consider your verdict. This is
6 merely an explanation of the procedure that we will
7 follow during this trial so that you may better
8 understand what is happening.

9 You have been given notebooks. You will be
10 allowed to take notes during this trial, and those
11 notebooks will go back with you during your
12 deliberation. But just as you may remember in school,
13 some of us are better note-takers than others. Those
14 notes are intended to help you, and you alone, while
15 you are listening to the trial. One juror's notes do
16 not take precedence over another juror's notes and so I
17 caution you, when you retire back into your jury room
18 to deliberate, that that needs to be the case.

19 Also, it is important that you pay attention to
20 what is going on during the trial, and sometimes when
21 you are taking notes you do not see the witnesses'
22 demeanor on the witness stand. So with all of those
23 admonitions to taking notes, again, you are permitted
24 to take notes during this trial.

25 As I stated during jury selection, Mr. Wright is

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 charged by an indictment filed in this court. He is
2 charged with distribution of cocaine base and
3 distribution of cocaine base within a proximity of a
4 school. I will explain to you the elements of each of
5 those charges later. The indictment is simply the
6 charge by which the case is brought into court, and is
7 not in any sense evidence of the allegations it
8 contains.

9 The defendant has pled not guilty to each
10 indictment. The State therefore has the burden of
11 proving each of the elements of each indictment beyond
12 a reasonable doubt. It will be your duty, ladies and
13 gentlemen, to decide whether the State has met that
14 burden.

15 Your purpose as jurors is to find and determine
16 the facts. You are the sole judge of the facts in this
17 case. If at any time I make any comment regarding the
18 facts, you must disregard it. You are to determine the
19 facts from the testimony you hear and other evidence
20 introduced in court. It is up to you to determine the
21 inferences which you feel may be properly drawn from
22 the evidence. It is especially important that you
23 perform your duty of determining the facts diligently
24 and conscientiously, because ordinarily there is no
25 way to correct an erroneous determination of the facts

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 by a jury.

2 On the other hand, and with equal emphasis, the
3 same law that makes you the judges of the facts makes
4 me the judge of the law. The law as given by this
5 Court is the only law that you may consider. You must
6 accept and follow it, even though you may not -- even
7 though you may disagree with it. I cannot tell you
8 what the facts are in this case, and you cannot
9 disagree with me about what the law is or what the law
10 should be. Your job is to take the law as I give it to
11 you, apply it to the facts as you find them from the
12 testimony of witnesses and any other evidence that is
13 introduced. After doing that, you will render your
14 verdict, a true and just verdict, under the solemn oath
15 that you took as jurors.

16 Until I advise you to begin your deliberations,
17 you must not discuss this case with anyone, including
18 your fellow jurors, friends, family members, and anyone
19 involved in this case. After this case is submitted to
20 you, you must discuss this case only in the jury room
21 only with your fellow jurors.

22 As I indicated to you before we broke for lunch,
23 the attorneys and the parties in this case have been
24 advised that they are not to talk to you at all. So if
25 you see anyone involved in this case, please remember

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 they are merely following the Court's warning and they
2 are not being rude.

3 During the trial do not read, listen to, watch
4 any news reports about this case. This includes
5 anything that may be in the newspapers, on the
6 internet, or the radio or the television. You must
7 not consider anything that you may have read or heard
8 about this case outside of this courtroom, whether
9 before or during the trial.

10 It is important that you keep an open mind and
11 not decide any issue in this case until all of the
12 evidence has been presented, the parties have made
13 their closing arguments, and I have instructed you on
14 the law in this case. It is your solemn responsibility
15 to determine the guilt or innocence of the defendant,
16 and your verdict must be based solely on the evidence
17 as it is presented to you in this trial, as well as on
18 the law as I instruct you during and at the close of
19 the trial.

20 In just a moment the solicitor will make what is
21 called an opening statement in which the solicitor will
22 explain to you the issues in the case, or at least what
23 the solicitor thinks the issues are. The attorney for
24 the defendant may also make a statement, although he is
25 not required to do so. What the attorneys tell you

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 during their opening statement is not evidence in this
2 case. It is only their contention as to what the
3 issues may be. The evidence in this case will be
4 presented to you by testimony of sworn witnesses from
5 the witness stand and by any exhibits that may be
6 introduced into evidence.

7 From time to time during the trial you may hear
8 one of the lawyers say something like, objection, or,
9 Your Honor, may we approach, I believe we have a
10 question of law, and I might find it necessary to
11 excuse you for just a brief moment so that I may
12 discuss a matter of law. The reason for this is not
13 that we are hiding anything from you but because you
14 are the judges of the facts in this case and sometimes
15 when making a decision on the law, I must discuss the
16 facts. It may be necessary for me to excuse you so
17 that I may comment on the facts and not influence you
18 in any way by my comments.

19 In determining what the true facts are in this
20 case, you must decide whether or not the testimony
21 of the witnesses is believable. It will be my
22 responsibility to rule as a matter of law as to
23 whether certain testimony is admissible or not, but
24 once the testimony is admitted, whether or not you
25 believe it is solely for you to determine.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 In deciding whether to believe a witness, you
2 have the right to consider the interest of a witness,
3 the bias of a witness, the prejudice of a witness, the
4 opportunity for the witness to have seen and heard the
5 things about which the witness testifies, as well as
6 the way the witness acts on the witness stand. You
7 have a right to consider anything that is in the record
8 that will help you evaluate the testimony of the
9 witnesses. That means it is your duty to pay close
10 attention to the witnesses, observe the witnesses, and
11 to pay close attention to the attorneys and to the
12 Court.

13 Please do not let your thoughts wander, but give
14 strict attention to the testimony in this case so at
15 the end of all the testimony, after the arguments of
16 counsel and the charge on the law by the Court, you
17 will be in a position to determine what the true facts
18 are and to apply the law to those facts and render a
19 true and just verdict.

20 It is your added duty, Madam Foreperson, to
21 preside in the jury room and to be the jury
22 spokesperson here in court. It will also be your
23 duty to write the verdict, but I'll give you
24 instructions on that later.

25 You will now hear the opening statement from the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 solicitor. Ms. Linder?

2 MS. LINDER: Thank you. May it please the
3 Court.

4 - - - - -

5 OPENING STATEMENT

6 MS. LINDER: Good afternoon, ladies and
7 gentlemen of the jury. We are here today for The State
8 versus Lloyd Wright. Mr. Wright has been charged with
9 distribution of cocaine base and distribution of
10 cocaine base within one-half mile proximity.

11 This case should be fairly short, simple, and
12 straightforward. Drugs are illegal. It is illegal to
13 possess drugs, it is illegal to distribute drugs, and
14 it is illegal to distribute drugs within a one-half
15 mile proximity of a school, park or playground.

16 Back on September 19th of 2007, the defendant I
17 will submit did just that. The city police department,
18 the Charleston Police Department, they utilized a
19 narcotics unit. They had an undercover police officer
20 go into the area, go into where Romney Street and
21 Athens Court is here in Charleston County. They went
22 in there where Romney and Athens Court are, and that is
23 where the defendant distributed crack cocaine, or
24 cocaine base, as it is called, to the undercover police
25 officer. All of that was done within one-half mile of

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 the New Israel School. And the New Israel School is
2 located at 88 Simmons Street. Like I said, this will
3 be simple, straightforward, and very short.

4 We are here today because Mr. Wright has been
5 charged. And we ask that you pay attention and listen,
6 for back in September 19th, 2007, in the area of Athens
7 Court and Romney Street here in Charleston County, he
8 distributed crack cocaine or cocaine base to an
9 undercover police officer, and all within one-half mile
10 proximity of the New Israel School. Thank you.

11 THE COURT: Mr. Smiley?

12 MR. SMILEY: Please the Court.

13 - - - - -

14 OPENING STATEMENT

15 MR. SMILEY: Ladies and gentlemen, as you've
16 heard, Lloyd Wright is accused of a crime, and he's
17 told you not guilty, he didn't do it, and so it's your
18 job to decide the facts in this case. But where we
19 start right now is you stand next to Lloyd that he
20 didn't do it. Not over here in the middle. Or, let's
21 see. He starts with the presumption of innocence, and
22 the jury stands over here that he didn't sell it, and
23 stands with him until and if the State can prove beyond
24 a reasonable doubt that he, in fact, sold the drugs.
25 If they can't prove that, he stays not guilty.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Now, things aren't always as they seem. And so
2 as the testimony is presented here today, look at it.
3 Look at what's actually being presented, and look at
4 what's not being presented; what's not being presented.
5 Are they giving you the information that's required to
6 make such an important decision on the facts to
7 determine a man's innocence or guilt? I'm going to
8 submit to you it does not rise to that level. There is
9 only one verdict in this case, and that's not guilty.
10 Thank you.

11 THE COURT: Ms. Linder, please call your first
12 witness.

13 MS. LINDER: The State calls Corporal Todd
14 Hurteau.

15 [Whereupon, Mr. Hurteau enters the courtroom]

16 [Whereupon, Mr. Hurteau is duly sworn by the
17 clerk of court as follows: do you swear or affirm that
18 your testimony will be the truth, the whole truth, and
19 nothing but the truth so help you God]

20 THE WITNESS: I do.

21 THE COURT: Be seated.

22 [Whereupon, Mr. Hurteau takes the witness stand]

23 THE CLERK OF COURT: If you'll please state your
24 full name and then spell your last name.

25 THE WITNESS: Todd Hurteau, H-U-R-T-E-A-U.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: Good afternoon, Corporal Hurteau.

2 - - -

3 TODD HURTEAU,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MS. LINDER:

8 Q. What is your occupation?

9 A. I am a police officer with the City of
10 Charleston Police Department.

11 Q. And what are your duties with CPD?

12 A. I've been working in the narcotics unit for
13 approximately eight years. We investigate drug
14 distribution, drug sales to include crack cocaine, heroin,
15 cocaine, marijuana, pharmaceutical pills, and ecstasy.

16 Q. And do you have any special training or skills?

17 A. Yes, I do. Prior to getting into law
18 enforcement I obtained a bachelor's degree in public
19 justice, with a minor in forensic science. I'm currently
20 attending the Citadel to obtain my master's degree in
21 education. I'm three classes shy of that.

22 I have eleven years in law enforcement
23 experience, eight of which I have done exclusively
24 narcotics investigations. While in the narcotics unit I
25 worked for four years as an investigator, then after four

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 years I was promoted to a supervisor of the unit where
2 I've been working for four and a half years now.

3 I've done joint investigators with the FBI, the
4 DEA, the ATF, State Law Enforcement Division, as well as
5 other local jurisdictions. And I've also done over 1,000
6 drug investigations in my career.

7 I've debriefed informants, I've interviewed
8 suspects and witnesses, I've written affidavits, I've
9 written reports, I've had the opportunity to testify as an
10 expert witness in both state and federal court, and I have
11 approximately 500 hours of formal training in interview
12 and interrogation, affidavit writing, and tactical
13 surveillance, and things of that nature.

14 Q. Did you have the occasion to be working back on
15 September 19th, 2007?

16 A. Yes, I did.

17 Q. And did you have the occasion to be brought into
18 this case, State vs. Lloyd Wright --

19 A. Yes, I did.

20 Q. -- on any way on that date?

21 A. Yes, I did.

22 Q. And how were you brought into this case? What
23 happened?

24 A. Well, prior to that date we had received several
25 complaints in reference to an open-air drug market, open-

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 air drug street-level sales over in that area. We did a
2 joint investigation with the FBI. Due to the amount of
3 citizen complaints that we were receiving, and complaints
4 from other officers that worked that area, we began to
5 conduct an investigation in that area.

6 Q. Okay. And then along with that how, then, did
7 it develop from there?

8 A. We started the investigation -- in this
9 particular case, you can either use a confidential
10 informant or an undercover officer. We elected to do --
11 utilize an undercover officer to make controlled drug
12 purchases. The FBI is the one that funded the money for
13 these controlled purchases in this area.

14 Q. And what is the procedure that you follow for
15 conducting the controlled purchase?

16 A. We start the investigation initially by coming
17 up with an operational plan. Essentially, that is we put
18 everything on paper in order to provide for the safety of
19 the officers that are involved, the citizens that are
20 involved, and also the suspects that are involved.

21 After we develop the operational plan, we send
22 the undercover officer into this particular location which
23 is on the corner of Athens Court and Romney Street where
24 our undercover officer that worked with the Charleston
25 Police Department did a hand-to-hand crack cocaine

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 purchase with the defendant.

2 Q. And is there any -- for procedure of these buys,
3 is there any recordings, is there -- how is it funded?
4 Can you tell us kind of how it all occurs?

5 A. Yeah. These buys are funded -- this particular
6 buy was funded by the FBI. Like I said, this was a joint
7 investigation with the Federal Bureau of Investigation.
8 They give the undercover officer the money. The
9 undercover officer goes to that particular area. There is
10 audio and video surveillance inside the vehicle. So this
11 particular transaction was captured on an audio-video
12 recording device.

13 Q. Are there other officers down there in that
14 area, or is it just that undercover officer?

15 A. There are multiple officers in the area. I
16 personally was the supervisor of the operation. We had
17 approximately six or seven other officers that are
18 assigned responsibilities. In the event that the drug buy
19 goes bad we can get in there, we can keep the citizens
20 safe, we can extract our undercover officer if necessary,
21 and we can detain any suspects if necessary. They are
22 also listening to the audio recording of the transaction.
23 I was listening to the audio recording of the transaction
24 on this date.

25 Q. And then you listen to it, you're set up, you go

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 through everything. In this case was the transaction, for
2 lack of a better term, successful?

3 A. Yes, this particular transaction was successful.
4 An undercover officer went into the area. She purchased
5 \$50 worth of cocaine. It was captured on the videotape.
6 The transaction took place through the driver's side
7 window of the undercover vehicle. She handed him the U.S.
8 currency that was given to her by the Federal Bureau of
9 Investigation. After the transaction was completed, she
10 drove out of the area at a pre-determined location.

11 There's two types of investigations that we can
12 do in order to curtail that problem. One of them is
13 called a buy-bust, and that's simply when our undercover
14 officer goes in and immediately after the transaction we
15 make the arrest. Or we can do what's called the buy-walk.
16 In that particular case, the undercover officer will go
17 into that location, they'll make the hand-to-hand
18 transaction with the defendant, they will leave the area.
19 And after the transaction is completed, we will secure
20 arrest warrants at a later time. And the reason that we
21 do that is we don't want to --

22 MR. SMILEY: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. SMILEY: Because I believe it's going to go
25 to the 404(b).

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: Counsel approach.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: Overruled.

5 MR. SMILEY: Thank you, Your Honor.

6 Q. [Ms. Linder] Corporal Hurteau, if you could
7 continue -- I know we're about done here -- just
8 specifically with this date back on September the 19th.

9 A. Like I was explaining earlier, it was a buy-walk
10 operation. And what our undercover officer does is they
11 go into the area and they make the controlled buy from the
12 defendant. After the transaction is completed, we don't
13 go right in right away to arrest the defendant.

14 Q. Not arresting someone immediately, is that --
15 does that have to do with the officer, or what does that
16 have to do with?

17 A. It's so we don't compromise the identity of our
18 undercover officer.

19 MS. LINDER: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Linder and Mr. Byrd confer]

22 MS. LINDER: I have no further questions.

23 Please answer any the defense may have.

24 THE COURT: Mr. Smiley.

25 - - -

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Corporal Hurteau, you said that these plans are put to paper?

A. They typically can be put on paper, and they're reviewed prior to the transaction.

Q. Was this plan put to paper for the September 19th of 2009?

A. I don't have a copy of the operation plan.

Q. That wasn't my question. Was it put to paper?

A. I believe it was. I just don't have a copy of the operational plan. But prior to any investigation that we do --

Q. It's policy --

A. -- we will --

Q. -- you write it up; right?

A. -- come up with a plan.

It's not policy to write it up. It is policy to go over the operational plan.

Q. Okay. But your answer in this case is you believe that there was an operational plan put to paper?

A. I believe that there was. I'm just not absolutely certain that we saw the copy of it.

Q. All right. Well, it wouldn't be destroyed, would it? If you created -- create a plan for a case, you

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 don't later destroy it, do you --

2 A. No, we --

3 Q. -- it's part of the file?

4 A. No, we wouldn't destroy it.

5 Q. Did you create any reports yourself for this
6 case?

7 A. I did not. I just approved the reports in this
8 case.

9 Q. Okay. I've noticed you've been looking at notes
10 during your testimony. Are those your notes you're
11 looking at, or just a blank piece of paper, or somebody
12 else's report?

13 A. I've got a copy of the incident report that
14 Mr. Seabrook wrote, Officer Seabrook, and I've got a copy
15 of the incident report in front of me that Investigator
16 Springmeyer wrote.

17 Q. So when you were answering the questions you
18 weren't relying upon your memory, you're relying upon the
19 words written down of Officer Seabrook and Officer
20 Springmeyer?

21 A. That's not correct. During the transaction, I
22 have a live audio feed of exactly what's transpiring
23 during the transaction. She's wearing a wire so I can
24 hear, with a scanner, exactly how the transaction is
25 transpiring.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. Well, let me ask you this. Would it be fair
2 that within your testimony, that you've referred to those
3 reports?

4 A. I referred -- when I was doing my testimony, I
5 was referring to my background notes.

6 Q. Okay. So you're saying you haven't looked at
7 those reports? They haven't refreshed your memory or
8 anything like that?

9 A. Yes. Before I came to trial I prepared for
10 trial, and I did review the incident report and
11 supplemental reports.

12 Q. So you reviewed the knowledge of other people to
13 supplement your knowledge?

14 A. I've reviewed what they wrote down on paper, but
15 I also recall what happened based on my -- based on my own
16 knowledge and the audio feed from that day, the live
17 transaction.

18 Q. Okay. And you brought their reports to the
19 witness stand; correct?

20 A. I have a copy of Investigator Seabrook's report
21 and a copy of Investigator Springmeyer's report.

22 MR. SMILEY: I have a motion, Your Honor.

23 THE COURT: Please approach.

24 [Whereupon, an off-the-record bench conference
25 is held]

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: Ladies and gentlemen of the jury,
2 there is a matter of law that I must take up outside of
3 your presence.

4 Please do not begin your deliberations. Do not
5 discuss this case amongst yourselves.

6 Please rise for the jury.

7 [Whereupon, the jury exits the courtroom at
8 2:23 p.m.]

9 THE COURT: Thank you. Be seated.

10 Mr. Smiley, before we proceed with your motion,
11 do you want Corporal Hurteau in or out of the
12 courtroom?

13 MR. SMILEY: He's fine in the courtroom.

14 THE COURT: Corporal Hurteau, you are fine right
15 there. If you want to step down you may do so, as
16 well. Your choice.

17 - - - - -

18 MOTION TO STRIKE TESTIMONY

19 MR. SMILEY: If you could -- if I could, Your
20 Honor, it's a well established fact that any testimony
21 from the stand should come from the person's personal
22 observations and their own memories. Any time they
23 refresh their memory or prepare for testimony, it
24 should be through their own notes and their own reports
25 because what we want is their knowledge, not someone

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 else's.

2 In this case they're questioning -- he is the --
3 the officer clearly states that he was present. He
4 does have a recollection, and he does -- he's stated
5 under oath that in preparing for his testimony he
6 reviewed the reports of Officer Springmeyer and Officer
7 Seabrook. He also brought those reports with him to
8 the stand in case he needed to refresh his memory. He
9 doesn't have any notes from this report -- from this
10 incident, Your Honor.

11 And so he, in my belief, can't -- see how to
12 state this and try to be delicate, because it is a --
13 Officer's Hurteau's memory can only be influenced, it
14 could not -- by the reports of other officers. It
15 couldn't -- there's no way to say, my memory wasn't
16 impinged upon by others, when because he used their
17 reports to reflect upon him preparing for his
18 testimony; therefore, since it's not based on only his
19 recollection or his notes, but the notes of others, I
20 would move to strike his testimony as not being
21 reliable because of the fact that it's not based on his
22 independent recollection or notes that he has taken.

23
24
25

-- --

-- --

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

BRADY MOTION

MR. SMILEY: On an additional -- I've got that issue, but I have one more, Your Honor.

Additionally, his testimony is -- he says that they put an operational plan together beforehand that was not provided in discovery. I believe it's discoverable, and I have a Brady motion as to that.

THE COURT: All right. I'll be happy to hear from you on that one.

MS. LINDER: Thank you, Your Honor. May it please the Court.

First, as far as the operational plan, the State has turned over any and all paperwork that we have to the defense. It is -- you know, Corporal Hurteau can respond to this more. It's my understanding that typically operational plans, if they are reduced to writing, is an internal item of the police department with confidential information and sensitive information such as that is not typically -- I've never received one in a prior case. Everything I have has always been turned over.

As far as Corporal Hurteau refreshing his memory based on other reports: Corporal Hurteau testified that he himself remembers this transaction, remembers that day, remembers working that day. And as far as

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 him not personally have written a report of the
2 accounts of that day, there are many officers involved.
3 And as he testified, he was supervising them. He was
4 there present during it and he supervised. He was
5 there before, he was monitoring during, and he was
6 present after.

7 Each individual -- there were numerous people
8 involved. There happened to be two reports written.
9 Corporal Hurteau was supervising the entire sting;
10 therefore, I hold that that is his knowledge and
11 personal -- it's his recollection of that day, as he
12 previously testified that he was there that day.

13 MR. SMILEY: If I could respond?

14 THE COURT: Certainly, Mr. Smiley.

15 MR. SMILEY: First, as to the operational plan,
16 the United States vs. Gigglio puts the inferment of the
17 duty on the prosecution to check to see if there are,
18 in fact, any other discoverable documents. Just the
19 fact that they don't -- never been given doesn't mean
20 it's not a discoverable document.

21 I would ask that the plan be presented to Your
22 Honor -- any exculpatory information whatsoever has not
23 been reviewed by an attorney and therefore we can't
24 determine whether it is, in fact, discoverable.

25 So the excuse that "I've never gotten one" just

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 doesn't cut it. The prosecutor has an affirmative duty
2 to search for that. The fact that the police didn't
3 turn it over because some attorney connected with the
4 state in this -- in this matter I would ask that a
5 detached, neutral person, Your Honor, look at it and
6 see if there's anything discoverable. If, in fact, it
7 is, I believe that we were entitled to it.

8 THE COURT: Mr. Smiley, didn't Corporal Hurteau
9 testify that he does not --

10 MR. SMILEY: He doesn't know where it is. But
11 he can find it. They don't destroy them. I asked
12 that. And he believes that one was prepared in this
13 case. To that issue.

14 On the other issue, there's no way you can
15 say that a report created by someone else is his
16 recollection, number one. Number two, if his
17 recollection was so clear, he wouldn't have brought
18 both of the officers' reports with him to the stand.
19 And, therefore, I would want to say that the fact that
20 he has read through the recollections of other
21 officers, has used that to supplement his memory of the
22 events, and that's not his memory, that's someone
23 else's.

24 THE COURT: Mr. Smiley, do you need to inquire
25 of Corporal Hurteau, or do we rely -- would you wish

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 the Court to rely on the testimony already presented?

2 MR. SMILEY: I believe that I've already asked
3 the questions, but I'll ask him again if I need to.

4 - - - - -

5 PROFFER

6 BY MR. SMILEY:

7 Q. So, Corporal Hurteau, is there -- and I believe
8 I asked you this. But at the start -- during your direct
9 you said: at the start of every investigation coming up
10 with an operational plan, we put everything on paper to
11 provide for the safety of the undercover officer, the
12 citizens, and the suspect.

13 That's your testimony; correct?

14 A. Yes. We typically do that, yes.

15 Q. Okay. And then on cross I asked you if there
16 was an operational plan in this one, and you said yes.
17 And then I asked you if, in fact, operational plans
18 ever -- were destroyed and you said, of course not. And
19 so, in fact, there's an operational plan somewhere on this
20 case; correct?

21 A. Well, what I said was I'm not sure if I have a
22 copy of the operational plan on paper; that we do do an
23 operational plan. So it may be a verbal operational plan.
24 I don't have a copy of the operational plan in our case
25 file or in front of me right now or anything like that.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. So your testimony on direct that -- and so your
2 testimony on direct that the start of every investigation
3 by coming up with an operational plan putting everything
4 on paper is just not true?

5 A. We typically do. But I said I wasn't sure if we
6 have -- if we have an operational plan on paper for this
7 particular incident, but we do an operational briefing
8 prior to any operation --

9 Q. All right.

10 A. -- so everybody is given out their assignments
11 of what they're responsible for so we're not just going
12 out there on a free-for-all.

13 Q. Okay. And, now, on my other issue. On the
14 other issue I asked if you created any of your own
15 reports and you said, no; correct? You didn't --

16 A. Correct. I just -- I just overlooked the
17 reports of the --

18 Q. Okay. I'm going to get to it for you, I
19 promise.

20 A. -- of the officers.

21 Q. You didn't create any of your own reports;
22 correct?

23 A. No, I did not.

24 Q. And this happened September, 2007; correct?

25 A. That's correct.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. And by your own testimony, you've done thousands
2 of drug buys; correct?

3 A. That's correct.

4 Q. In preparing for this trial, you accessed the
5 report of Investigator Springmeyer and Investigator
6 Seabrook; correct?

7 A. That's correct.

8 Q. You reviewed those in preparing for your
9 testimony; correct?

10 A. Correct. As well as my own recollections
11 of the --

12 Q. I'm not doubting that. But you did read their
13 reports in preparation; correct?

14 A. Correct.

15 Q. And you brought those reports to the stand with
16 you; correct?

17 A. Correct. But I did not look -- I wasn't looking
18 at these reports while I was testifying. The only thing
19 that I referenced was my background -- was this sheet of
20 paper here.

21 Q. Right. That's sort of your curriculum vitae or
22 your resume of the things you've done?

23 A. Correct.

24 Q. All right. But it is your testimony that in
25 preparation for this case, to refresh your memory you

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 read -- you looked over the report of Investigator
2 Springmeyer and Investigator Seabrook; correct?

3 A. Correct; as I would with any -- with any report.
4 It's part of my job.

5 MR. SMILEY: That's all I have, Your Honor. And
6 I would still make my motion.

7 THE COURT: And your motion is to Rule 612 to
8 strike the testimony of this officer; is that correct,
9 Mr. Smiley?

10 MR. SMILEY: Yes, ma'am. Yes, ma'am.

11 And, also, I have a Brady motion and its prodigy
12 about the operational plan that was -- may or may not
13 have been put to paper but certainly wasn't summarized,
14 certainly wasn't provided to the State, and hasn't been
15 provided to myself and I don't know if it contains any
16 exculpatory information or not. But certainly we would
17 be entitled to it.

18 THE COURT: With respect to -- anything further,
19 Ms. Linder?

20 MS. LINDER: Nothing further, Your Honor.

21 THE COURT: As to the use of the reports by
22 Corporal Hurteau while he was testifying, based upon
23 the Court's observation and listing to the testimony,
24 Corporal Hurteau indicated that the reports that he
25 brought, he referred to them only to the -- as he

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 referred to it, his background, as Mr. Smiley referred
2 to them as his curriculum vitae. The officer testified
3 that he wasn't using them to testify from, that he did
4 use -- look at them prior to coming to court.

5 Mr. Smiley, I will allow you an opportunity to
6 review the documents that Corporal Hurteau has on the
7 stand with him. We can mark them as defense exhibits,
8 Court's exhibits. Let's mark them as Court's exhibits.
9 You may have an opportunity to inspect them, and I will
10 allow you to cross-examine Corporal Hurteau as to the
11 information contained therein.

12 MR. SMILEY: Yes, ma'am.

13 THE COURT: As to the operational plan, the
14 testimony given by Corporal Hurteau was that typically
15 it is written down. He did not have one written -- he
16 could not locate a written one in this case.

17 There has been no showing so far that it was in
18 the possession of the State; that the State suppressed
19 it, or that Corporal Hurteau or the prosecutor's office
20 has failed to disclose it to you.

21 Based upon the testimony given by Corporal
22 Hurteau, I am denying your motion to strike this
23 officer's testimony with respect to the Brady issue.

24 MR. SMILEY: Yes, ma'am. Just please note my
25 objection for the record.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: I will note your objection to both
2 issues, Mr. Smiley.

3 Corporal Hurteau, may I have --

4 Bailiff, if you will get those documents. And
5 how many pages are there?

6 There are six pages. I'm going to paperclip
7 them together. This will be Court's 1.

8 [Whereupon, Court's Exhibit Number 1, Corporal
9 Hurteau's documents, is marked by the court reporter]

10 THE COURT: And if you will allow -- give
11 Court's 1 to Mr. Smiley.

12 Mr. Smiley, we will take a ten-minute recess.
13 If you need any additional time, please let the Court
14 know.

15 MR. SMILEY: That will be plenty, I'm sure.

16 THE COURT: Corporal Hurteau, the rule of
17 sequestration has been invoked. What that means is you
18 may not discuss your testimony with either the State or
19 Mr. Smiley or with any of the witnesses that are
20 outside of the courtroom at this time. Do you
21 understand that rule, sir?

22 THE WITNESS: Yes, ma'am, I do.

23 THE COURT: You may step down. We're going to
24 take -- we're going to take our afternoon break to
25 allow Mr. Smiley to review the document that you had on

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 the stand, and we will resume in ten minutes.

2 Anything before we take our afternoon break,

3 Ms. Linder?

4 MS. LINDER: Nothing, Your Honor.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: No, ma'am.

7 THE COURT: And, again, if you need additional
8 time, please --

9 MR. SMILEY: Thank you very much.

10 THE COURT: -- let the Court know. Thank you.

11 [Whereupon, a recess is taken from 2:37 p.m. to
12 2:51 p.m.]

13 THE COURT: Thank you. Be seated.

14 Mr. Smiley, are you ready?

15 MR. SMILEY: I'm prepared, Your Honor.

16 THE COURT: Okay. Corporal Hurteau, please come
17 and have a seat back on the witness stand.

18 [Whereupon, the witness re-takes the witness
19 stand]

20 THE COURT: Please bring in the jury.

21 [Whereupon, the jury enters the courtroom at
22 2:53 p.m.]

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. Please be seated.

25 MR. SMILEY: Mr. Smiley, your witness.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

CONTINUED CROSS-EXAMINATION

BY MR. SMILEY:

Q. Okay. Corporal Hurteau, you were in charge of this buy; correct?

A. Yes. I was in charge of overseeing the operation, along with a couple of the FBI agents.

Q. Okay. While we're talking about the operation, this operation you said had an operational plan; correct?

A. We would go over our assignments. There would be an operational plan. Whether we had it in writing I'm not sure, but I know that people would be given out assignments prior to the operation so they would know what their responsibilities are during the operation.

Q. Now, you testified on direct that operational plans are put to paper, didn't you?

A. They usually are put to paper, yes.

Q. Okay. Well, your -- that wasn't my question. In your direct testimony, you testified operational plans were put to paper?

A. I believe I said that they are typically put to paper, but --

Q. Okay. And that's done for the safety of your undercover officer, that's done for the safety of the citizens, and possible suspects; correct?

A. That's correct.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. Since this is an operation that's targeting an
2 area -- correct?

3 A. Correct.

4 Q. And I think you described it as an open-air
5 market; correct?

6 A. That's correct..

7 Q. A place where there were multiple people selling
8 drugs; correct?

9 A. That's correct.

10 Q. To your knowledge -- wait before I get to that.
11 This operation was in connection with the
12 Federal Bureau of Investigation; correct? They were
13 involved?

14 A. That's correct. It was a joint investigation
15 with the Federal Bureau of Investigation.

16 Q. And of course the Federal Bureau of
17 Investigation, they like to put lots of things to paper,
18 too, don't they?

19 A. I believe that they do. I don't know what
20 they --

21 Q. You've dealt with them --

22 A. Right.

23 Q. -- several times.

24 And you've been in narcotics for over eight
25 years, haven't you?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. There could be a possibility that they would
2 have a copy of the operational plan.

3 Q. Okay. So if we ask the FBI, they may or may not
4 have one on this case?

5 A. That's correct.

6 MR. SMILEY: And I would like to make another
7 motion, but I can wait until the end of my testimony.

8 THE COURT: All right.

9 MR. SMILEY: But I need to note it at this time,
10 Your Honor, if that's all right.

11 Q. [Mr. Smiley] All right. Now, you make -- I
12 think your testimony was your -- you've made, over your
13 career, in excess of thousands of drug buys -- or, excuse
14 me -- arrests.

15 A. A thousand drug cases --

16 Q. Cases.

17 A. -- to include arrests, buys, search warrants.

18 Q. Okay. And that's over an eight-year period;
19 correct?

20 A. That's correct.

21 Q. Okay. That's in excess of over a hundred cases
22 a year?

23 A. That's correct. I've done as many as fourteen
24 buys in one day.

25 Q. Okay. That's a lot.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. That is a lot.

2 Q. All right. And during these last two years from
3 September the 19th, 2007, until May of this year, you made
4 a lot of -- a lot of drug cases; correct?

5 A. Yeah. We made many drug cases. That's what my
6 job is.

7 Q. Okay. And you have an independent recollection
8 of each one? of each of those thousand?

9 A. I remember most of them. Of course, I would
10 have to refresh my memory by looking at copies of incident
11 reports and whatnot.

12 Q. Okay. However, in refreshing your memory, you
13 don't have any notes on this case?

14 A. I didn't need to take notes on this case because
15 the notes were taken by the officers. By policy and
16 procedure with our department, the officers write the
17 incident reports --

18 MR. SMILEY: Your Honor --

19 A. -- and then I approve them.

20 MR. SMILEY: -- could I ask him to answer the
21 question that I'm asking? I asked him a very simple
22 question.

23 Q. [Mr. Smiley] Did you prepare any notes in this
24 case?

25 A. I did not personally prepare any notes.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. Okay. Did you refresh your memory by looking at
2 other persons reports?

3 A. I did look over the other persons reports the
4 date of the incident, and then prior to trial, as well as
5 reviewing the videotape.

6 Q. Okay. So in this case, to refresh your memory
7 you relied on the memory of others?

8 A. That's not correct.

9 Q. Yes, or no?

10 A. No.

11 Q. You have an independent recollection of this
12 event?

13 A. Yes, I do.

14 Q. So you reviewed the notes of others, though;
15 correct?

16 A. I reviewed the notes of other people with their
17 recollection of the case, as well as my own recollection.

18 Q. To make sure that it matched up?

19 A. No, not to make sure it matched up.

20 Q. If you had an independent recollection, there
21 would be no need to look at other people's notes; correct?

22 A. As a supervisor in the unit, I am required to
23 look at other people's notes, other people's incident
24 reports. That's my job as a supervisor.

25 Q. Have you reviewed their reports today?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. I reviewed them the day that the report was
2 taken, and I looked at their incident reports after the
3 buy.

4 Q. You didn't answer my question. Did you look at
5 them today before you --

6 A. Yes --

7 Q. -- came in here to --

8 A. -- I did.

9 Q. Okay. Because you looked at Deputy Seabrook's;
10 correct?

11 A. Right. Which is a -- just a very generic, maybe
12 a three-sentence, report.

13 Q. I'm just asking you did you look at Deputy --
14 excuse me -- Damian Seabrook's report.

15 A. Yes, I did.

16 Q. Okay. And who was the supervising sign-off
17 agent -- officer on that one?

18 A. That looks like it was Corporal Kenard
19 [phonetic] that signed this particular report, possibly,
20 but I'm not -- I'm not a hundred percent certain.

21 Q. Okay. So he was the officer that took -- well,
22 let me back up. When a report is prepared by an officer,
23 it's sent up to a supervisor for approval. Is that a fair
24 statement?

25 A. It is read over by a supervisor, of course.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. Okay. So a supervisor looks at the reports,
2 signs off on it; correct?

3 A. Correct.

4 Q. On this report that you reviewed, your signature
5 is not on it?

6 A. No, it is not.

7 Q. Okay. It's a different officer; right?

8 A. Correct.

9 Q. And you reviewed that report today; correct?

10 A. Correct.

11 Q. Okay. And then you reviewed a report today by
12 Detective Springmeyer; correct?

13 A. That's correct. I --

14 Q. And that report was approved by Corporal
15 Constanza; correct?

16 A. That's correct. His signature is not on there
17 but his name is printed --

18 Q. Right. That --

19 A. -- on there.

20 Q. -- would be the person that approved it;
21 correct?

22 A. Well, I can approve it, too. He just put his
23 signature on the report. Corporal --

24 Q. Did you -- did you approve this report?

25 A. I over -- I looked at that report --

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. Did you sign --

2 A. -- I didn't actually --

3 Q. Did you sign this report?

4 A. No, I did not. Corporal Constanza it looks like
5 signed it. He --

6 Q. Oh, so --

7 A. -- because his --

8 Q. -- there is --

9 A. -- name is on it.

10 Q. -- is there a report that's -- it says right
11 here, approving officer, Corporal Constanza. Is that not
12 true?

13 A. His name is typed on the approval of the report.
14 That's correct.

15 Q. And wouldn't that be the officer that approved
16 the report? Correct?

17 A. He can approve the report and I can also review
18 the report and approve it, as well, because we have
19 multiple supervisors in the unit.

20 Q. Okay. Well, let me ask you this question, since
21 we aren't getting anywhere. You've got these -- this is a
22 supplemental incident report made by Officer Springmeyer;
23 correct?

24 A. That's correct.

25 Q. And she does it on a form, preprinted out form,

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 approved by the City Police Department; correct?

2 A. Correct.

3 Q. All right. And on that form there's a place for
4 the reporting officer to put their name; correct?

5 A. That's correct.

6 Q. The date that she did the report; correct?

7 A. Correct.

8 Q. And then on the unit number that she had; right?

9 A. That's correct. The unit number.

10 Q. Then beside it is a spot printed out for the
11 approving officer. And their name goes there; correct?
12 Yes, or no?

13 A. One of the approving officers can sign it, but I
14 can look at the report prior to that officer approving it.
15 That's --

16 Q. That's not my question. Listen to my question.
17 On this form is there a place that says approving officer?

18 A. Yes.

19 Q. Is that blank provided for where the officer who
20 approved the report's name goes?

21 A. Yes.

22 Q. Okay. And a date that he would have approved
23 the report?

24 A. That's correct.

25 Q. Okay. And you -- they're reviewed by that

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 officer to make sure everything is correct; right?

2 A. Yes. He will review that, as well.

3 Q. To make sure there's not mistakes, that kind of
4 thing; to make sure all the information that's needed to
5 be in is put there. Correct?

6 A. That's correct.

7 Q. All right. And then it's dated by him; right?

8 A. Correct.

9 Q. Now, he wouldn't date that report until after
10 Officer Springmeyer did the report; correct?

11 A. That's correct.

12 Q. And you've reviewed these reports as early as
13 today; right?

14 A. That's correct.

15 Q. All right. What date did Corporal Constanza
16 approve this report?

17 A. It looks like it might be -- it says 9/18 of
18 '07.

19 Q. Okay. Thank you. On the 18th.

20 Now, in this case you were actually the
21 arresting officer for Lloyd Wright; correct?

22 A. [No response]

23 Q. Would it refresh your memory if I showed you
24 something with your signature on it?

25 A. Yes.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: Okay. Just one moment.

2 [Whereupon, Mr. Smiley reviews documents]

3 Q. [Mr. Smiley] I'm going to show you a booking
4 report dated October the 9th that says, arresting officer.
5 Is that your name?

6 A. Yes. That's correct.

7 Q. Okay. So you were the arresting officer on
8 October the 9th of Lloyd Brooks [sic]; correct?

9 A. Yes.

10 Q. All right. And that's your name. You did that;
11 right?

12 A. Right.

13 Q. You didn't review that before today, however?

14 A. No, I didn't.

15 Q. Okay. Now, another thing that you reviewed this
16 morning before you got here would have been the arrest
17 warrant that was issued in this case; right?

18 A. I didn't review the arrest warrants.

19 Q. Well, you had it with you; right?

20 A. I did have it with me, but I did not review it.

21 Q. Okay. And that was done by Officer Springmeyer;
22 correct?

23 A. I didn't review it. I'm going to have to
24 look --

25 Q. The affiant --

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. -- at that.

2 Q. -- in that case is Investigator Springmeyer;
3 correct?

4 A. That's correct. It would be Investigator
5 Springmeyer.

6 Q. All right. Now, you received a report in this
7 case from Elizabeth Wiggins-Mitchell, did you not?

8 A. I didn't personally receive this. This was
9 brought over to our office --

10 Q. It was --

11 A. -- it's --

12 Q. -- it was addressed to you, though?

13 A. It's addressed to me, but they are submitted to
14 our office. I didn't get a copy of this report.

15 Q. All right. And the last thing you had were some
16 notes that had your experience on it; right?

17 A. That's correct.

18 Q. And those -- that's your handwriting, stuff you
19 wrote down; correct?

20 A. Yes, that's correct.

21 Q. In preparation for the questions that Ms. Linder
22 would ask you; right?

23 A. That's correct.

24 Q. And, in fact, Ms. Linder told you, these are the
25 questions I'm going to ask you, go do your homework before

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 you get up there so you --

2 MS. LINDER: Your Honor --

3 Q. [Mr. Smiley] -- make sure you're prepared?

4 THE COURT: Mr. Smiley.

5 MS. LINDER: -- may be approach?

6 THE COURT: You may.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: You may proceed, Mr. Smiley.

10 Q. [Mr. Smiley] Corporal Hurteau, when this buy on
11 the 19th took place, what time was it?

12 A. 1440 hours. 2:40 in the afternoon.

13 Q. Okay. And that's from your memory?

14 A. Yes.

15 Q. So you remember the times and dates of the last
16 two-hundred-and-some-odd?

17 A. In this particular case I did not remember the
18 exact time. I had to reference the incident report --

19 Q. Okay. So you refreshed your memory off someone
20 else's report.

21 All right. When this took place, where were
22 you -- when this incident took place, where were you
23 located?

24 A. I was with Officer Springmeyer and Officer Grill
25 [phonetic], and I was located behind the library over on

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 King Street monitoring the wire.

2 Q. Okay. So you had no view of the incident?

3 A. I did not have a direct view of the incident. I
4 was listening through the audio transmission.

5 MR. SMILEY: Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Smiley and Ms. Hensley confer.

8 MR. SMILEY: Nothing further.

9 THE COURT: Ms. Linder?

10 MS. LINDER: Nothing further from me, Your
11 Honor.

12 THE COURT: May this witness step down and be
13 excused from the courthouse?

14 MS. LINDER: Yes, Your Honor. We ask that this
15 witness be excused.

16 THE COURT: Any objection --

17 MR. SMILEY: No objection.

18 THE COURT: -- Mr. Smiley?

19 MR. SMILEY: No. No objection. Just that I
20 have another motion.

21 THE COURT: Yes, sir.

22 MR. SMILEY: He might want to remain on the
23 premises until its finished.

24 THE COURT: Corporal Hurteau, you may step down.
25 And I ask that you remain in the courtroom for just a

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 few moments. Thank you.

2 I do remind you that the rule has been invoked.

3 Thank you.

4 THE WITNESS: Thank you.

5 [Whereupon, the witness exits the witness stand]

6 THE COURT: Ladies and gentlemen of the jury,
7 there is a matter of law that I must take up outside of
8 your presence. Please do not begin your deliberations.
9 Do not discuss this case amongst yourselves.

10 Please rise for the jury.

11 [Whereupon, the jury exits the courtroom at
12 3:12 p.m.]

13 THE COURT: Thank you. Be seated.

14 - - - - -

15 RENEWED MOTION TO EXCLUDE BRADY MATERIAL

16 MR. SMILEY: And I'm sorry I needed to do it
17 outside the presence. I wish we could have done it
18 otherwise, but the motion that I need to make is I need
19 to renew my motion for excluded Brady material.

20 On further examination Corporal Hurteau, he has
21 reason to believe -- he doesn't know for a fact --
22 reason to believe that the FBI may, in fact, have a
23 copy of this operational plan. If there is an
24 operational plan in existence, as he has testified is
25 germane to about every case and it's typically put to

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 paper and when a -- that the Federal Bureau of
2 Investigation was included in this case is -- under
3 United States vs. Gigglio and its prodigy, it is the
4 State has an obligation to go to each of their police
5 bodies and to inquire about the existence of any
6 evidence and then determine if it's exculpatory. That
7 has not been done in this case. The destruction -- if
8 there, in fact, was an operational plan, the
9 destruction of an operational plan certainly should
10 have been disclosed to the defense prior to trial.

11 So I renew -- now, I understand your ruling,
12 Your Honor, but I renew my motion again now that I've
13 got -- there is a piece of evidence that could be,
14 very probably would be, exculpatory in nature. But
15 this operational plan wasn't focused on Lloyd Wright.
16 This operational plan was focused, according to his
17 testimony, on an open-air drug market which multiple
18 buys were being made. And I think it's important that
19 I get any information that could be exculpatory to my
20 client's cause.

21 THE COURT: Ms. Linder?

22 MS. LINDER: Thank you, Your Honor.

23 When Mr. Smiley was asking Corporal Hurteau
24 questions on the stand, his position is that he was
25 asking questions about, you know, the FBI wants paper,

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 the FBI wants a paper trial, wouldn't you think the FBI
2 would have these written down, and Corporal Hurteau
3 repeated time and time again that typically things are
4 written down. Does that mean on paper? Does that mean
5 on a dry-erase board? Does that mean on a chalkboard?
6 Does that mean it's just verbal?

7 I wasn't there. I'm not aware that -- he
8 definitely said that if there were items, that they are
9 not typically destructed [phonetic]. But that, again,
10 kind of is pulling out and making it more and more
11 vague, along with that --

12 This case, and in every case, the State does ask
13 affirmatively to police and officers for every bit of
14 evidence; and that is, everything -- and we received
15 everything after that inquiry, and everything was
16 immediately turned over to Mr. Smiley and defense
17 counsel.

18 THE COURT: Anything further, Mr. Smiley?

19 MR. SMILEY: If there's not one and wasn't one
20 and I'm mistaken, Your Honor, I would certainly want
21 to do more inquiry to find out if there is one. I
22 guess I'll do a Freedom of Information Act request
23 on the FBI. I would ask the FBI was there any direct
24 request from the FBI for any information pertaining to
25 this case.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: Your Honor, we would absolutely
2 defer to the Court's ruling; however, at these -- in my
3 experience in looking at these, it appears as though
4 this was a City Police Department item with FBI
5 involvement.

6 [Whereupon, Ms. Linder and Mr. Byrd confer]

7 MS. LINDER: Your Honor, I would just reiterate
8 everything I said before: that we did make an
9 affirmative attempt to receive all items and give
10 all items to the defense, as was done quite a while
11 ago with everything.

12 MR. SMILEY: If -- then I --

13 THE COURT: Hold on one second.

14 Ms. Linder, is Special Agent Klimas [phonetic]
15 going to be testifying?

16 MS. LINDER: No. I'm not going to call him. I
17 do not intend to at this time.

18 THE COURT: And what was the nature of your
19 conversations with Special Agent Klimas [phonetic], and
20 did you review his file and the contents thereof?

21 MS. LINDER: I did not review a file of Special
22 Agent Klimas [phonetic]. Part and parcel of why I'm
23 not intending to call him is that his limited
24 interaction in this is fronting it, giving the money to
25 a police officer, and being one of the stationary

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 individuals.

2 All reports from any and every agency that I've
3 seen, that I have heard of, everything has been turned
4 over to the defense.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: If it's the State's position that
7 an affirmative request was made of the FBI for anything
8 to do with this case, and they say they don't have
9 anything when, in fact, they do, it would be an FBI
10 problem and we'll deal with it that way.

11 So, I mean, I'm not accusing Ms. Linder, of
12 course, of doing anything wrong except that I'm trying
13 to make sure all the discovery -- some discovery that I
14 just found out may or may not exist from the stand.

15 And you know, Judge, I wasn't there at this
16 operational meeting. It was through the testimony of
17 the officer that says, we do an operational plan and we
18 put it on paper. And then he says, we don't destroy
19 it. And I'm just trying to find it. And then he said
20 maybe he didn't have one in this case.

21 Then he tells me this is a joint task force with
22 the FBI, a joint operation. So I asked if they would
23 have it, and he says they would possibly. And I'm just
24 trying to make sure we get it, if it's there.

25 And then it has to be determined if it's

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 discoverable. It may not be, but an attempt has to be
2 made to ensure my guy -- my client's constitutional
3 rights to have a safe and -- excuse me -- a fair and
4 impartial trial.

5 THE COURT: Based upon the testimony presented
6 by officer -- or, excuse me -- Corporal Hurteau, there
7 has been no showing that the destruction -- that there
8 was a report written in written form. I believe that
9 his exact statement was, typically we reduce them to
10 writing, however, he cannot state with certainty that
11 it was done in this case; it was not part of the
12 material that he reviewed in preparing for his
13 testimony here today, nor part of the packet which has
14 now become Court's Exhibit Number 1.

15 Further, it has not been shown that the State,
16 by and through Ms. Linder, ever had possession of a
17 written plan, operational plan, nor has it been shown
18 that Ms. Linder has intentionally suppressed the
19 discovery of that operational plan.

20 And, further, Corporal Hurteau testified to what
21 the operational plan was, be it -- even though he did
22 state typically it is planned on paper.

23 Based upon all of those factors, I deny -- I'm
24 not sure, Mr. Smiley, even what you were asking the
25 Court to do at this point.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: Okay. Then I'll make it clear: to
2 strike any testimony that would have come as a result
3 of an operational plan; in other words, all of Corporal
4 Hurteau. If, in the alternative, there in fact was a
5 plan that's exculpatory, to declare a mistrial in this
6 case.

7 And so I understand you are denying my motion.
8 I just ask that you note it for the record.

9 THE COURT: I am denying your motion to strike
10 any reference to the operational plan by Corporal
11 Hurteau.

12 I am denying your request for a mistrial based
13 upon the failure to produce a written operational plan.

14 And I am denying any request by the defense to
15 request that the FBI produce the operational plan at
16 this time.

17 MR. SMILEY: Thank you, Your Honor.

18 THE COURT: Anything further, Mr. Smiley?

19 MR. SMILEY: No, ma'am.

20 THE COURT: Anything further from the State?

21 MS. LINDER: Your Honor, for scheduling
22 purposes, we may need to approach. My next witness is
23 the undercover officer. That's going to get into the
24 video. I have a feeling she'll be up there for
25 probably, between the two of us, a solid hour or so.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 And, also if Corporal Hurteau is any indication of just
2 how meticulous Mr. Smiley is going to be in doing his
3 representation, there is a chance it may go beyond an
4 hour.

5 So for scheduling matters we just wanted to
6 bring it to the Court's attention, if we needed to go
7 over that, along with finalizing with Mr. Smiley the
8 areas during the transaction to mute it based upon your
9 ruling.

10 THE COURT: Ms. Linder, I thought we were all
11 clear on what needs to be muted, what did not need to
12 be muted. Do we need to go over this again?

13 MS. LINDER: Your Honor, I believe that we are
14 clear. Out of an abundance of caution, I was hoping to
15 go over it with Mr. Smiley so there's no risk of
16 hurried approach and a quick -- just out of an absolute
17 abundance of caution --

18 THE COURT: So what are you asking, Ms. Linder?
19 That you and Mr. Smiley go over the video one more
20 time?

21 MS. LINDER: Yes, Your Honor.

22 THE COURT: And how long is this video, Ms.
23 Linder?

24 MS. LINDER: The video, the -- the important
25 part is about twenty to thirty seconds, is what we're

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 going to be going over.

2 THE COURT: All right. Take your thirty
3 seconds.

4 [Whereupon, Ms. Linder, Mr. Byrd, and Mr. Smiley
5 confer]

6 MS. LINDER: Your Honor, as always, more
7 technical difficulty. This laptop is having the same
8 issue. My physical computer from my office is sitting
9 down the hallway.

10 MR. SMILEY: -- hook it up. If you've got to --

11 MS. LINDER: It is -- the issue is that either
12 we -- the picture pauses and if we skip it ahead six,
13 the audio continues. If we skip it ahead six seconds,
14 then it meets back up, for some reason, on laptops.
15 On other computers that it's been playing on, it's
16 no problem at all. So in order to play it in its
17 entirety --

18 THE COURT: So what are you requesting, Ms.
19 Linder?

20 MS. LINDER: I'm requesting for Ms. Buccas
21 [phonetic] to literally go in the hallway and get my
22 computer from my office and sit it right here --

23 MR. SMILEY: She needs ten minutes, Your Honor.

24 MS. LINDER: -- to have a resolution of the
25 video issues.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: And I would tend to agree because
2 they're going to have to have it right or else we've
3 got a mess. Just to make sure it works exactly right.

4 [Off the record momentarily]

5 THE COURT: All right. So if I give you ten
6 minutes, you'll be able to get the desktop hooked up,
7 the video running, and we can proceed accordingly?

8 MS. LINDER: Yes, Your Honor.

9 THE COURT: All right. You have ten minutes.
10 We'll be at ease for ten minutes.

11 [Whereupon, a recess is taken from 3:25 p.m. to
12 3:46 p.m.]

13 THE COURT: Be seated.

14 Are we prepared to bring in the jury, Ms.
15 Linder?

16 MS. LINDER: Yes, we are.

17 THE COURT: Mr. Smiley, anything before we bring
18 in the jury?

19 MR. SMILEY: No, ma'am.

20 THE COURT: And you have viewed the video and
21 we -- there are no objections?

22 MR. SMILEY: The test run had a couple of
23 problems. If the second test run is how it appears
24 before the jury, we're okay. If it's not, we've got a
25 problem. So it's going to be all up to Mr. Byrd. I

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 don't want to put any pressure on him, but --

2 THE COURT: All right. Mr. Byrd, there is --

3 MR. SMILEY: If you click at the wrong --

4 THE COURT: Mr. Byrd, you are aware of where we
5 need to stop?

6 MR. BYRD: Where we'll need to mute.

7 THE COURT: Mute, yes.

8 MR. BYRD: And where it stops, Your Honor.

9 THE COURT: Yes.

10 And with the exception of your objection to the
11 Court's ruling --

12 MR. SMILEY: Yes, ma'am.

13 THE COURT: -- there is no further objections to
14 this video; is that correct?

15 MR. SMILEY: Once they establish their
16 foundation --

17 THE COURT: Yes, sir. All right.

18 MS. LINDER: Your Honor, if I may just approach
19 to return this to the court reporter? the exhibit?

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Linder proffers CD to the court
22 reporter]

23 THE COURT: Anything before we bring in the
24 jury?

25 MS. LINDER: [No response]

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: [No response]

2 [Whereupon, Mr. Smiley and Ms. Linder confer].

3 THE COURT: All right. Anything before we bring
4 in the jury?

5 MS. LINDER: Nothing from the State, Your Honor.

6 MR. SMILEY: Good to go.

7 THE COURT: Please bring in the jury. Please
8 rise for the jury.

9 [Whereupon, the jury enters the courtroom at
10 3:49 p.m.]

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: Thank you. Please be seated.

13 Ms. Linder, call your next witness.

14 MS. LINDER: Thank you, Your Honor. The State
15 calls Investigator Karen Springmeyer.

16 [Whereupon, Investigator Springmeyer enters the
17 courtroom]

18 [Whereupon, Investigator Springmeyer is duly
19 sworn by the clerk of court as follows: do you swear
20 or affirm your testimony will be the truth, the whole
21 truth, and nothing but the truth so help you God]

22 THE WITNESS: I do.

23 THE CLERK OF COURT: Be seated.

24 [Whereupon, Investigator Springmeyer takes the
25 witness stand]

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE CLERK OF COURT: If you will state your full
2 name and spell your last name for the record.

3 THE WITNESS: Yes. Karen Springmeyer. It's
4 K-A-R-E-N S-P-R-I-N-G-M-E-Y-E-R.

5 THE COURT: Ms. Linder, your witness.

6 MS. LINDER: Thank you, Your Honor.

7 Good afternoon, Investigator Springmeyer.

8 - - - - -

9 KAREN SPRINGMEYER,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. LINDER:

14 Q. What is your occupation?

15 A. I'm a police officer.

16 Q. And who is your employer?

17 A. The City of Charleston Police Department.

18 Q. What are your duties with the City of Charleston
19 Police Department?

20 A. Currently I am an investigator in the special
21 investigations unit.

22 Q. And how long have you been employed by CPD?

23 A. I've been with the City Police Department for
24 approximately four and a half years, and I've been in the
25 narcotics -- or the special investigations unit, as a

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 narcotics investigator, for approximately three years.

2 Q. And will you please tell the jury about any
3 special training or skills you have with regards to law
4 enforcement.

5 A. Yes, ma'am. Through my three years in the
6 investigations unit, I've had approximately 300-plus hours
7 of undercover training. Included in that, I've been to a
8 DEA basic investigator school for narcotics; I've attended
9 an undercover techniques school at the South Carolina
10 Criminal Justice Academy; I've attended a narcotic
11 techniques and survival class taught by the International
12 Association of Undercover Officers; and I've also attended
13 a female undercover narcotics class, given by the same
14 association. In addition, I've attended an interview and
15 interrogation class and I've also completed approximately
16 75-plus undercover transactions for the Charleston Police
17 Department, for other local jurisdictions, as well as for
18 the FBI, the DEA, and the ATF.

19 Q. Investigator Springmeyer, did you have the
20 occasion to be working back on September 19th, 2007?

21 A. Yes, ma'am.

22 Q. Did you have the occasion to become involved in
23 the investigation of this case, The State vs. Lloyd
24 Wright?

25 A. Yes, ma'am.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. And how were you brought into this case? And if
2 you can please explain to the jury what happened.

3 A. Yes, ma'am. Our -- the CPD narcotics unit had
4 received complaints from citizens and also from patrol
5 officers in the area of Romney Street and Athens Court, in
6 reference to street drug dealing, on subjects hanging out
7 on street corners selling drugs pretty much at all
8 different times of the day. Our unit, as well as the FBI
9 field office located in Charleston, got together and
10 started a joint investigation on the area.

11 What we decided to use was an undercover officer
12 to drive into the areas and attempt to purchase cocaine
13 base or heroin and different types of narcotics.

14 Q. And who was that undercover officer?

15 A. I was the undercover officer.

16 So on this date, members of the CPD narcotics
17 unit, including myself and also several special agents
18 with the FBI, met at a meeting location where we conducted
19 a briefing. During a briefing, what will normally happen
20 is we all get together and go over what the operation is
21 going to consist of. Being I was an undercover officer, I
22 was going to be the undercover role. And we will have
23 surveillance units, which would be my fellow officers in
24 the surrounding areas, used for safety and also to listen
25 to what's going on during the operation.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 After the initial briefing, one of the special
2 agents with the FBI gave me \$50 of prerecorded currency
3 from their FBI fund, meaning that they recorded the serial
4 numbers of the currency that he gave me.

5 After that, for safety reasons and for evidence
6 purposes, we normally -- myself, I will always wear a wire
7 and also a video and audio recorder. I do that myself.
8 At this point I was going to be driving a car so I set up
9 an audio-video recorder inside of the vehicle, and I also
10 had an audio wire on my person which transmitted to
11 receivers that my other officers would have that were on
12 surveillance.

13 Q. You mentioned that this was recorded on audio-
14 video.

15 A. Yes, ma'am.

16 Q. Did you attach that device?

17 A. Yes. What it is is a digital recorder, and it
18 has a port for an audio feed and a video feed. I would
19 set it up myself. I turned on the audio and video, set it
20 up in a stationary location inside the vehicle, and it was
21 in my control at all times. I was the only one in the
22 vehicle during the buy.

23 Q. Were there any problems with that device's
24 operation the day in question back to September 19, 2007?

25 A. No, ma'am.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. And you started talking about this device that's
2 in the car that records. If you could talk a little bit
3 more about that: how and when it's put in, who puts it
4 in, how any items are retrieved if anything is recorded.

5 A. Yes, ma'am. Like I said, it's a small digital
6 device. It's probably about the size of a cell phone. We
7 keep that -- we have, obviously, various equipment that we
8 keep in our office which is a secure police facility away
9 from the headquarters downtown. In that facility we keep
10 all of our audio-video recording equipment.

11 When we are scheduled to do a transaction and
12 have a briefing and such, I, being an undercover officer
13 that's going to be using it, will take it out from our
14 facility, set it up in the vehicle, and set it up on
15 myself. And we'll do the transaction.

16 After that's completed, I'll go back to our
17 office and I'll take the equipment out of -- in this case
18 it was in the vehicle -- take it out of the vehicle and
19 off my person. What it has is one of the USB ports that
20 you hook up a printer, or that sort of thing, to your
21 computer. It hooks up the same way. So you just get a
22 USB cord and you hook up the device to the computer.

23 At that point there's a program that we have
24 installed in our computers in our office called U.S. Bird.
25 And what it does is it takes that digital evidence and it

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 transfers it to the computer so we can see it, because
2 inside of the box it's -- all it is is pretty much like a
3 storage. It collects it and stores it. To be able to see
4 it, you have to transfer it to a computer.

5 Q. And once it was transferred to the computer for
6 viewing, did you ever transfer it to anything else aside
7 from that computer?

8 A. Yes. What we'll do is we'll transfer it onto a
9 main hard drive where it stays on the computer hard drive.
10 From that we can make CDs, a disk, that you can watch in a
11 computer so that you can view it on not only the main
12 computer which it's stored on, but other computers.

13 And then the device itself can only store so
14 much. So after each transaction that we do, after it's
15 transferred onto the hard drive of the -- hard drive of
16 the computer, we have to erase the device itself because
17 it only has a storage time of somewhere around three hours
18 of actual memory, I guess you would call it.

19 MS. LINDER: Your Honor, may I approach?

20 THE COURT: You may.

21 Q. [Ms. Linder] Investigator Springmeyer, at this
22 time I show you what has been marked as State's Exhibit 3.
23 Do you recognize this?

24 A. Yes, ma'am.

25 Q. Have you reviewed this?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Yes, I have.

2 Q. Does that fairly and accurately represent the
3 what occurred that day?

4 A. Yes, it does.

5 MS. LINDER: Your Honor, beg the Court's
6 indulgence.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Linder and Mr. Byrd confer]

9 MS. LINDER: Your Honor, at this time I would
10 ask that the disk be published for the jury.

11 THE COURT: Any objection?

12 MR. SMILEY: Objection to the foundation. It's
13 not -- objection to the foundation.

14 THE COURT: Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Sustained, Mr. Smiley.

18 Q. [Ms. Linder] Investigator Springmeyer, just in
19 case I missed this before, or if I did hear incorrectly,
20 can you explain again about the recording of this U.S.
21 Bird, or -- I don't know what you were calling it. But if
22 you can explain that again to the jury.

23 A. Sure. Once we complete a transaction, we'll
24 take the actual device back to our office. Our office is
25 located away from the -- the central police department

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 headquarters in an undisclosed location at a secure
2 facility here. You take the device, you plug in a USB
3 cable from the device to the computer. It'll pop up as a
4 new device found.

5 And then if you open up the U.S. Bird program,
6 which comes along with the device -- it's a program that
7 comes with it. When you open it up, it'll say the device
8 is attached. And it said -- it'll ask if you want to
9 transfer. And it'll show you on the screen the size of
10 the video you want to transfer, how long it may be. It
11 may be seventeen minutes. Do you want to transfer. You
12 hit yes, and it transfers it from the device to the
13 computer hard drive.

14 You then have to -- like I say, it can only hold
15 so much. And the equipment is thousands of dollars for
16 one of these devices. So we have to erase the device that
17 we take out in the field, and we now have the information
18 on the hard drive of the computer which is located in our
19 secure office.

20 Q. And what happens with that information that's on
21 the hard drive in your computer in your secure office?
22 What happens? Is that ever transferred to another medium?

23 A. Yes. We can transfer it so that we can view it
24 outside of the office if necessary, such as in a trial.
25 So what we can do is take the -- you can take the video

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 that's on the U.S. Bird system and transfer it to I
2 believe it's a Windows media file, a wave file, and what
3 you can do is you can transfer that onto -- into one of
4 those type of files, which goes onto a disk. And then we
5 just burn the CD and you can view it on another computer.

6 Q. And that disk that I previously approached and
7 showed you as State's Exhibit I believe it's 3 --

8 A. Yes, ma'am.

9 Q. -- do you recognize that disk?

10 A. Yes, ma'am.

11 Q. And have you viewed -- have you reviewed that
12 disk?

13 A. Yes, I have.

14 Q. Does that disk fairly and accurately represent
15 what was transferred from the device to the Bird --

16 A. The hard drive.

17 Q. -- the hard drive --

18 A. Yeah. Uh-huh.

19 Q. -- is that a fair and accurate representation?

20 A. Yes.

21 MS. LINDER: Your Honor, at this time I would
22 ask that it be published to the jury.

23 MR. SMILEY: I still have the same objection,
24 Your Honor.

25 THE COURT: Counsel approach.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 [Whereupon, an off-the-record bench conference
2 is held]

3 THE COURT: Mr. Smiley, I am overruling your
4 objection.

5 Ms. Linder, you may publish State's Exhibit
6 Number 3 to the jury.

7 Mr. Smiley, I note your objection and will --

8 MR. SMILEY: Thank you.

9 THE COURT: -- allow you to fully articulate on
10 the record your reasons that we discussed at the
11 sidebar.

12 Ms. Linder?

13 MS. LINDER: Thank you, Your Honor. May I
14 approach the witness --

15 THE COURT: You may.

16 MS. LINDER: -- to retrieve the item?

17 [Whereupon, the witness proffers CD to Ms.
18 Linder]

19 MS. LINDER: At this time we'll be publishing
20 the video in its entirety.

21 THE COURT: One moment, Mr. Byrd. Counsel
22 approach.

23 [Whereupon, an off-the-record bench conference
24 is held]

25 MR. SMILEY: And I guess this would be an

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 appropriate time to note my objection to the one part
2 that you overruled.

3 THE COURT: All right.

4 MR. SMILEY: And just for the record.

5 THE COURT: State's Exhibit Number 3 will be
6 published to the jury with the limited exception of the
7 Court's ruling.

8 I note your objection for the record, Mr.
9 Smiley.

10 You may play.

11 [Whereupon, State's Exhibit Number 3, CD of drug
12 buy, is played for the jury]

13 Q. [Ms. Linder] Investigator Springmeyer, now
14 having published the video, is that a fair and accurate
15 representation of what happened that day?

16 A. Yes, ma'am.

17 Q. Have there been any alterations to -- aside from
18 the --

19 A. Transfer?

20 Q. -- sound, are there any alterations made to
21 this?

22 A. No, ma'am.

23 MS. LINDER: Your Honor, we're going to ask that
24 this be admitted into evidence.

25 THE COURT: Mr. Smiley?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: Again, to my same exceptions, for
2 the record.

3 THE COURT: State's Exhibit Number 3 into
4 evidence over your objection, Mr. Smiley.

5 [Whereupon, State's Exhibit Number 3, CD of drug
6 buy, is admitted into evidence by the Court]

7 Q. [Ms. Linder] Investigator Springmeyer, the jury
8 just watched this. Can you explain and kind of take
9 through -- take the jury through what happened?

10 A. Yes, ma'am. Just the video or --

11 Q. Yes, please.

12 A. Okay. This is when I first turned on the device
13 inside the car. The long period of time that I was just
14 sitting there is when the rest of my unit was setting up
15 surveillance outside of the area. So I'm waiting for them
16 to get set up. And I'm still waiting at the location, so
17 that was that log gap of time there when I'm just sitting.

18 Q. And is this device on your person, or on the
19 vehicle?

20 A. No, ma'am. This video-recording device is -- I
21 placed it in the vehicle like at the center console kind
22 of area next to my right leg. See, I can actually adjust
23 it if I need to -- when I put it there. So I adjusted it
24 there. And now this is where I wait for a little while
25 until everyone gets set up. I did receive a phone call

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 from one of the supervisors saying that they were ready to
2 go, and that's when I started driving towards the area.

3 Q. We're just going to skip ahead here. And if you
4 could tell us what's happening --

5 A. Uh-huh.

6 Q. -- around this time.

7 A. I had already left the location where we met,
8 and I was driving towards the Romney Street Athens Court
9 area. And you can tell I've been driving and getting off
10 cross streets because, like I said, I am wearing a wire
11 that the rest of my unit can hear. That way they know
12 exactly where I am at all times. That's at this point.

13 Q. And where did this incident occur?

14 A. This occurred on Athens Court, which is -- it's
15 a one-way horseshoe kind of street. You can make a left
16 off of Romney Street, and it's just a big horseshoe that
17 comes right out very close to the entrance.

18 Q. And is that in Charleston County?

19 A. Yes, ma'am.

20 Right here I was driving underneath the I-26
21 overpass that goes downtown. I'm on Romney Street right
22 now, and I'm making a left turn down Athens Court.

23 At this point, as I did mention, I saw several
24 subjects on the corner. I --

25 Q. Would you mind speaking more into the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 microphone? I apologize --

2 A. I'm sorry.

3 I saw several subjects on the corner, so I
4 slowed down the vehicle. One of them advised me to pull
5 down the street, and that's what I did. I pulled farther
6 down onto Athens Court and pulled over onto the right side
7 of the road and I waited.

8 At this point the defendant walked up. As I
9 said, I had received \$50 of currency from the FBI. And I
10 told the defendant how much cocaine base I wanted.

11 Q. And what is this?

12 A. That was the hand-to-hand transaction. The
13 defendant put his hand in the car; inside was the
14 cocaine base.

15 After I took that from him, I handed him the
16 currency. You can see it was folded up.

17 After I received it, the defendant walked away,
18 and I drove out of the horseshoe and I went back to the
19 meeting location where the rest of the unit met with me.

20 Q. And what happened with those drugs?

21 A. After I got back to the location and I turned
22 off the video, I met with the rest of the unit and I
23 turned over the cocaine base to the case agent, which was
24 Investigator Seabrook.

25 MS. LINDER: Your Honor, may I approach the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 court reporter with this at this time?

2 THE COURT: Yes, ma'am.

3 Q. [Ms. Linder] Investigator Springmeyer, I'm
4 showing you what's been marked as State's Exhibit 1 for
5 identification purposes.

6 A. Uh-huh.

7 Q. Do you recognize this exhibit?

8 MR. SMILEY: Your Honor, can we turn the video
9 off since we're doing something else? Just -- yeah,
10 that's --

11 THE COURT: Ms. Linder, are you done with the
12 video?

13 MS. LINDER: Yes, sir.

14 MR. SMILEY: You can turn --

15 THE COURT: Thank you.

16 MR. SMILEY: -- it back on. There's just two
17 things going at once. That's all.

18 THE COURT: Thank you, Mr. Smiley.

19 MR. SMILEY: All right. Thank you, Your Honor.

20 Q. [Ms. Linder] Do you recognize this exhibit?

21 A. Yes, ma'am.

22 Q. How are you able to do so?

23 A. It's a view of the city of Charleston downtown
24 area. I've obviously worked for the City Department for
25 four and a half years and when I was on patrol, this area

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 was part of my patrol area.

2 Q. And is this a fair and accurate representation?

3 A. Yes, ma'am.

4 Q. Have there been any deletions or alterations
5 made to this map?

6 A. No, ma'am.

7 MS. LINDER: Your Honor, at this time I would
8 like to offer into evidence State's Exhibit 1.

9 MR. SMILEY: I don't have any objection.

10 THE COURT: State's 1 into evidence without
11 objection.

12 [Whereupon, State's Exhibit Number 1, map, is
13 admitted into evidence by the Court]

14 MS. LINDER: At this time, may Investigator
15 Springmeyer step down to be able to better point out
16 items on the map to the jury?

17 THE COURT: Yes, ma'am.

18 MS. LINDER: You can step down.

19 [Whereupon, the witness complies]

20 THE COURT: Investigator Springmeyer, you are
21 very soft-spoken so you are now going to be away from a
22 microphone. Please speak loudly so that every member
23 of the jury can hear you.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: That will be your prop.

2 Q. [Ms. Linder] Will you please explain to the
3 jury what this exhibit depicts? State's Exhibit 1.

4 A. This is an area of downtown, an overheard view.
5 You see right in the corner, that's I-26 right over here.

6 Q. And can you -- can you see on this map where the
7 transaction occurred back on September 17th --

8 A. Yes, ma'am.

9 Q. -- excuse me -- September 19th, 2007?

10 A. Yes, ma'am. As I stated, and you heard on the
11 video, I said I was driving underneath the overpass which
12 was for I-26. I came down -- I came down Romney Street.
13 And this right here, this horseshoe, that is Athens Court.
14 I made a left onto Athens Court. I slowed down
15 approximately here. And when I pulled over and waited, I
16 was about right here where the map is labeled Athens
17 Court.

18 Q. And on this map do you see New Israel School
19 located at 88 Simmons Street?

20 A. Yes, ma'am.

21 Q. Would you please point it out to the jury?

22 A. That is this right here. And this is Simmons
23 Street running right here. And then in here is the
24 school.

25 Q. And do you know the approximate distance between

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 the incident location and the New Israel School?

2 A. Yes. It's approximately 400 yards from the
3 incident location to the school right here.

4 Q. And how are you aware of that distance or
5 approximate distance?

6 A. As I said, it's my jurisdiction. I was on
7 patrol there in that area for a year and a half, and I've
8 done many drives from this street to the area of the buy
9 on Athens Court, so I'm very familiar with the location
10 itself and how long and how far it takes to get from point
11 A to point B.

12 Q. And for those who cannot do conversions, is the
13 incident location less than one half of a mile away from
14 New Israel Simmons [sic]? I believe you said, in yards,
15 those numbers.

16 A. Yes. It is less than one half mile.

17 MS. LINDER: Thank you. Please be seated on the
18 stand.

19 [Whereupon, the witness complies]

20 Q. [Ms. Linder] Just to review, Investigator
21 Springmeyer, in what capacity were you working back on
22 September 19th, 2007?

23 A. I was in an undercover capacity for the
24 Charleston Police Department.

25 Q. And what was your -- what was the incident that

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 day? why we are here today?

2 A. It was a distribution of cocaine base from the
3 defendant to myself.

4 Q. And where was the location of that?

5 A. It occurred on Athens Court.

6 Q. And is that Charleston County?

7 A. Yes, ma'am.

8 Q. What exactly -- was something exchanged in the
9 transaction? If so, what?

10 A. Yes. The defendant handed me cocaine base, and
11 in exchange I gave him the \$50 of prerecorded currency
12 given to me by the special agent with the FBI.

13 Q. And what happened with the -- with the cocaine
14 base, previously mentioned, after the transaction? What
15 did you do with it?

16 A. I turned it over to the case agent, Investigator
17 Seabrook, who is also one of the investigators in our
18 narcotics unit.

19 Q. Do you see the individual that sold drugs to you
20 in the courtroom today?

21 A. Yes, ma'am.

22 Q. Can you please identify him.

23 A. Yes, ma'am. He's sitting at the defendant's
24 table with the blue shirt with the white stripes, and dark
25 pants.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: Your Honor, please let the record
2 reflect Investigator Springmeyer has entered the
3 courtroom identification of the defendant, Lloyd
4 Wright.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: There's only one defendant here, so
7 I would guess she was pointing to him. Yes, ma'am.

8 THE COURT: The record will reflect.

9 MS. LINDER: Thank you, Your Honor. Beg the
10 Court's indulgence.

11 THE COURT: Yes, ma'am.

12 [Whereupon, Ms. Linder and Mr. Byrd confer]

13 MS. LINDER: I have no further questions at this
14 time. If you would answer any questions the defense
15 may have.

16 THE COURT: Mr. Smiley.

17 CROSS-EXAMINATION

18 BY MR. SMILEY:

19 Q. All right. So it's your testimony that the
20 crack cocaine that you recovered was given to Damian
21 Seabrook; is that correct?

22 A. Yes, ma'am. Or yes, sir. I'm sorry.

23 Q. Okay. And then that at that point you -- it was
24 out of your custody and you were done with it until it
25 came back here in court today; correct?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Yes, sir.

2 Q. Okay. Are you familiar with a chain-of-evidence
3 card?

4 A. Yes, sir.

5 Q. Would you have been the one that filled this
6 chain-of-evidence card out?

7 A. No, sir.

8 Q. That was someone else?

9 A. Yes, sir.

10 Q. Let's talk about operational plans. This is a
11 joint operation with the FBI; correct?

12 A. Yes, sir.

13 Q. And how many people from the FBI were involved?

14 A. I believe there was two.

15 Q. Do you remember their names?

16 A. It was Special Agent Klimas [phonetic] and
17 Griffin.

18 Q. And then it was your special investigations
19 narcotics unit that was involved; correct?

20 A. Yes, sir.

21 Q. And that would have consisted of your -- I guess
22 your supervisor, Corporal Hurteau --

23 A. Yes, sir.

24 Q. -- Hurteau?

25 A. Yes, sir.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. Excuse me. I mispronounce his name all the
2 time.

3 Your immediate superior or case agent in this
4 case, Damian Seabrook?

5 A. Yes. He was present, as well.

6 Q. Corporal Constanza?

7 A. Yes, sir.

8 Q. Any other -- Investigator Grill?

9 A. Yes, sir.

10 Q. Yourself?

11 A. Uh-huh.

12 Q. Anybody else?

13 A. [No response]

14 Q. I think I got them all.

15 A. I would have to check the report to make sure,
16 but perhaps Investigator Gilmore, as well.

17 Q. Okay. But that's the group, and y'all met
18 together to create an operational plan; correct?

19 A. Yes, sir.

20 Q. And y'all do that in just about every case;
21 right?

22 A. We conduct -- I'm sorry. Can --

23 Q. An operational plan. Put down what you're going
24 to do.

25 A. Yes.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. And was that put down in writing?

2 A. I did not make the operational plan, so --

3 Q. That would have been --

4 A. -- I didn't put it down in writing.

5 Q. -- with Corporal Hurteau; right?

6 A. Well, normally it's a case agent. I was an
7 undercover officer, and normally the undercover officer
8 cannot run an operation.

9 Q. Absolutely.

10 But you would have been present when the
11 operational plan was presented; correct?

12 A. Yes.

13 Q. All right. It's your experience in narcotics
14 that these operational plans are in writing?

15 A. Yes.

16 Q. Now, you had prerecorded buy money in this case;
17 right?

18 A. Yes, sir.

19 Q. Now, when I ask you about prerecorded buy money,
20 that means the actual bills are photocopied or serial
21 numbers are recorded before they are given to you; right?

22 A. Well, in my experience when we use our own money
23 from the CPD narcotics fund, that is what we do. Now,
24 what the FBI does previously, I'm not sure if they
25 photocopy it, or if they write down serial numbers, or how

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 they record it.

2 Q. Okay. My point being --

3 A. Okay.

4 Q. -- is when you say prerecorded, that those bills
5 are identified --

6 A. Yeah.

7 Q. -- correct?

8 A. Yes.

9 Q. And the purpose of that is that once the money
10 and drugs are exchanged is you can try to recover the
11 bills; right?

12 A. If that's the type of operation we're doing,
13 yes.

14 Q. Right.

15 A. Uh-huh. Yes.

16 Q. But I mean, otherwise it's sort of senseless;
17 right? The point of prerecorded buy money is to be able
18 to track the money; right?

19 A. Yes.

20 Q. Okay. Now, in this case you were in a rental
21 car; is that right?

22 A. Yes, sir.

23 Q. And this -- I'm not real educated with IT, but
24 let me see if I can do a little better. The device, the
25 recording device, is placed in the car. It's basically

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 like a hard drive. It's putting information in; right?

2 A. Yes.

3 Q. Okay.

4 A. Okay.

5 Q. And it has a camera that goes into it, and your
6 audio goes into it; right?

7 A. Yes, sir.

8 Q. And you actually have another camera in the back
9 seat; right?

10 A. Yes, sir.

11 Q. And that's going into it, also?

12 A. As a separate --

13 Q. It has its own hard drive in the back --

14 A. Right. Yeah.

15 Q. -- okay?

16 A. There's only one video that can be plugged into
17 each --

18 Q. Okay. Okay.

19 A. -- each --

20 Q. So we've got video in the back seat, we've got
21 video in the front seat, and we've got some audio being
22 recorded on -- well, I've got a good example. When you
23 use your camera --

24 A. Uh-huh.

25 Q. -- you've got a memory card in it; right?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Yes.

2 Q. In a digital camera. And that memory card is
3 what you're -- in some form or fashion is what you're
4 recording to; right?

5 A. Yes.

6 Q. Okay. So you're gathering this information and
7 you then take it back to your secret headquarters, your
8 secure secret headquarters; right?

9 A. Yes, sir.

10 Q. Okay. And then you take that card or, in this
11 case, the device, and hook it up to the computer; right?

12 A. Yes, sir.

13 Q. And transfer it off of that device into the
14 computer?

15 A. Yes, sir.

16 Q. And then the original medium that was recorded
17 on, that being the card or --

18 A. Well --

19 Q. -- whatever it is --

20 A. Yeah. There's no card with --

21 Q. I understand. But --

22 A. -- this one.

23 Q. But for lack of a better word, the hard drive;
24 correct?

25 A. Right.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. It's erased; right?

2 A. Yes.

3 Q. So the original stuff is gone, has been
4 transferred into the computer?

5 A. It's been transferred to a way to see it,
6 because there's no way to view it..

7 Q. Right. I've got you. But you've moved it;
8 right?

9 A. Yes.

10 Q. Okay. And it's in this computer there at the
11 secret hideout. Now, that computer, is it tied into
12 modems or anything like that?

13 A. Do we have internet? Yes.

14 Q. To that computer. Yeah.

15 A. Yes.

16 Q. So it can be accessed; right?

17 A. Through internet, yes.

18 Q. Okay. Now, that data when it's on there, is it
19 in a -- this is my question, and I'm not very good at
20 asking it so we'll try it.

21 This computer that you've got this information
22 in, is it a standalone or is it part of a network?

23 A. I believe our -- the CPD computers are networks.
24 Like I said --

25 Q. Okay.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. -- I'm not a --

2 Q. So --

3 A. -- IT expert.

4 Q. Me either.

5 A. Okay.

6 Q. But we're trying to get to a point here.

7 So this information is on a computer that can be
8 accessed through a network; correct?

9 A. Yes.

10 Q. All right. And you view it through a program
11 called U.S. Bird; right?

12 A. Yes. That's the program that comes with the
13 device.

14 Q. Right. It's a package deal. It's what moves it
15 over for you; right?

16 A. Right. Correct.

17 Q. Is it also the device that allows you to
18 manipulate it to see it?

19 A. To play it? Yes, you can play it on it.

20 Q. All right. When that information is put on your
21 hard drive, okay, it's not in a read-only fashion because
22 you copy it somewhere else; right?

23 A. I'm not sure what read-only --

24 Q. Well, I probably should get a software expert,
25 but I'm going to get to it here.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 That information that's sitting on your hard
2 drive, all right, it's just data sitting there; right? We
3 agree?

4 A. Yes.

5 Q. You moved it over there.

6 A. Okay.

7 Q. It is capable of manipulation? It can be
8 changed; correct?

9 A. I don't know how to, no.

10 Q. Well, I didn't say you knew --

11 A. Oh. Okay.

12 Q. -- how to.

13 But it's not in a fashion that can't be changed?
14 Do you know?

15 A. That I don't know.

16 Q. Okay. That's fair enough.

17 Did you note the size of the file that went into
18 the computer?

19 A. It tells you automatically. Like I explained
20 before, it'll say do you want to transfer this, and it'll
21 show a minute and it --

22 Q. It doesn't --

23 A. I don't think it shows like a gigabyte or
24 that --

25 Q. It doesn't --

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. -- but it shows like a time --

2 Q. All right.

3 A. -- that you transfer over.

4 Q. How many people have access to that computer?

5 A. Well, the investigators in narcotics.

6 Q. Okay. To get from another part of the network,
7 do you have to have a password?

8 A. To get -- each person in the whole police
9 department has a password to get onto a computer, so --

10 Q. Okay. Can -- can all of the officers at CPD
11 access U.S. Bird?

12 A. Not that I'm aware of, no.

13 Q. Do you have to have a special password to get
14 into the information you're storing on a network computer?

15 A. I'm not sure I understand the question.

16 Q. Okay. And you may not be able to answer it, but
17 I'm going to ask, is you've got this information on a
18 computer and that computer is on a network; correct?

19 A. Yes.

20 Q. What's your -- let me just ask it this way. And
21 I don't ever ask "what" questions, but I'll try it.

22 What's your security on that computer?

23 A. That I do not know.

24 Q. You don't have a clue. You just --

25 A. No. I know we have our IT department that does

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 such things with the fire walls and --

2 Q. Okay. Well, let me --

3 A. -- computer security.

4 Q. -- ask this question.

5 Who is protecting that data when it's sitting on
6 your computer? Do you have any clue?

7 A. Who's protecting like our computer physically?

8 Q. That -- no.

9 A. Okay.

10 Q. That file when it's on your computer that's on a
11 network, who is protecting it so it's not changed,
12 manipulated?

13 A. I guess you could say the City of Charleston's
14 IT department. They're the ones that set up the security.

15 Q. Are you aware of any log of people that accessed
16 that information? the information that was collected in
17 this case?

18 A. Let me make sure -- if you could -- make sure I
19 understand you correctly. You're asking if I know who
20 signed on to CPD computers or --

21 Q. No. I asked it more specifically. The data
22 file that you collected in this case --

23 A. Yes, sir.

24 Q. -- do you have any clue who accessed that file
25 other than yourself?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. No, sir.

2 Q. Okay. But it's possible someone else could have
3 looked at that file? You don't know?

4 A. I do not --

5 MS. LINDER: Your Honor, objection.
6 Speculation.

7 THE COURT: Overruled.

8 Q. [Mr. Smiley] All right. So you're truly not
9 the custodian of that information on the computer? You
10 just put it in and then you printed it out; right?

11 A. [No response]

12 Q. You aren't protecting it; correct?

13 A. I myself am not, no.

14 Q. Okay.

15 A. Huh-uh.

16 Q. Okay. Very good.

17 Did you note the length of the program, the data
18 file that was put in?

19 A. Did I note it like in a note somewhere else?

20 Q. Anywhere. Did you -- or remember it?

21 A. No. I didn't -- I didn't write it down, the
22 exact time.

23 Q. When you made your copies, did you note the
24 length of the file then?

25 A. After it transferred onto the file we just

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 viewed today?

2 Q. Yeah.

3 A. I didn't make any kind of physical note, no, but
4 I --

5 Q. Do you know if it's the same size or not?

6 A. Yes. I remember that is when I turned it on and
7 turned it off.

8 Q. Okay. But as far as how many gigabytes,
9 kilobytes, whatever the word is --

10 A. No.

11 Q. -- you don't know if they're the same or not?

12 A. I don't know anything about gigabytes because,
13 as I said --

14 Q. All right. Got you.

15 All right. Now, you were driving in your car --
16 or your rental car, excuse me, and you were going to make
17 a purchase; correct? That's the whole reason you're doing
18 it; right?

19 A. Yes.

20 Q. Okay. And you approach the corner of Romney and
21 Athens Court, and there's nobody on the corner there;
22 right?

23 A. Correct.

24 Q. And I think it's been described as the reason
25 y'all were doing that joint operation is it's sort of an

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 open-air market there? Lots of people selling?

2 A. Yes, sir.

3 Q. Okay. And this was about 2:30 in the afternoon,
4 somewhere around there?

5 A. Approximately, yes.

6 Q. Okay. So you turned onto Athens Court and saw a
7 group of individuals down the road?

8 A. Yes, sir.

9 Q. And I believe you said it was six to eight, you
10 can't be more specific than that.

11 A. I believe I said five to six.

12 Q. Five to six.

13 A. Yes, sir.

14 Q. All right. Five or six people. All black
15 males?

16 A. That, I do not remember.

17 Q. All right. As you pulled up, they told you to
18 pull forward; correct?

19 A. Yes, sir.

20 Q. All right. And when you pulled forward, a black
21 male approached you; right?

22 A. Yes, sir.

23 Q. And you did a hand-to-hand contact transaction
24 with that black male; right?

25 A. Yes, sir.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. And then you left the area; correct?

2 A. Correct.

3 Q. Nobody was arrested as a result of your
4 operation that day?

5 A. Not that day, no, sir.

6 Q. All right. In fact, Mr. Wright wasn't arrested
7 until October the 9th. Does that sound about right to
8 you?

9 A. It does, yes, sir.

10 Q. So no prerecorded buy money is recovered?

11 A. No, not at -- not during his arrest.

12 Q. Well, you don't have the prerecorded buy money,
13 so it wasn't recovered; right?

14 A. Correct.

15 Q. Okay. When you were attempting to identify that
16 individual that made the purchase for you, were you ever
17 shown a photo lineup?

18 A. No, sir.

19 Q. Was the drugs that you were handed contained in
20 anything?

21 A. As -- or meaning?

22 Q. Plastic bags --

23 A. Oh.

24 Q. -- tinfoil, anything like that?

25 A. No.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. No?

2 Did the individual that came to your car, did he
3 touch the car?

4 A. That, I don't recall.

5 Q. Well, you certainly didn't dust for any
6 fingerprints.

7 A. On the vehicle, no.

8 Q. No.

9 Did you dust anything for fingerprints? Did you
10 dust the cocaine?

11 A. No.

12 Q. Now, you were -- the only officer that had a
13 view of the black male that conducted the transaction was
14 you; correct?

15 A. Realtime, yes.

16 Q. Well, the other ones had it on the video; right?

17 A. Yes.

18 Q. There was nobody else watching it, correct, from
19 their own --

20 A. Not that I know --

21 Q. -- point of view?

22 A. -- know of. Like I said, my officers were
23 surrounding the area. I don't know if any of them -- I
24 don't think they all had a live view.

25 Q. All right. Now, you've been on narcotics for

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 three years; is that right?

2 A. Yes, approximately.

3 Q. So you started in May of 2007, right, give or
4 take?

5 A. No. I started June of 2006.

6 Q. June of 2006?

7 A. Yes. So it'll be three years in June.

8 Q. I got you.

9 All right. And you told us about at the time of
10 this incident how many undercover buys had you been
11 involved in? Because you said about seventy-five over the
12 three years, but you had been on for about nine months.
13 And so less than twenty-five?

14 A. I would say between twenty-five and forty,
15 estimated.

16 Q. And those courses that you told us that you had
17 taken --

18 A. Yes, sir.

19 Q. -- were all those prior to this, or some of them
20 were since --

21 A. No. Two --

22 Q. -- the buy?

23 A. Two of the courses were after the --

24 Q. Okay.

25 A. The undercover association, those two courses

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 were after. The others were before.

2 Q. That recording from the back seat didn't really
3 show anything, though, did it?

4 A. That, I don't recall. I would have to review
5 the video again.

6 Q. Right. But you copied it off? You transferred
7 it on your computer and copied it off --

8 A. The same way.

9 Q. -- the same way? All right.

10 A. Yes.

11 Q. And you said New Israel School was 400 yards
12 away?

13 A. Approximately. I believe there's a legend on
14 the map, as well, to where the --

15 Q. Yeah. Yeah.

16 That's 140 feet, so about 400 yards, 1200 feet,
17 right, give or take? Close by?

18 A. Yes.

19 Q. Close by. All right.

20 MR. SMILEY: All right. Beg the Court's
21 indulgence.

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Smiley and Ms. Hensley confer]

24 MR. SMILEY: Just a couple more.

25 Q. [Mr. Smiley] You did a report as a result of

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 your buy; correct?

2 A. Yes, sir.

3 Q. When you do a report, what you're trying to do
4 is to put down your recollection while it's still fresh in
5 your memory and put as much information as possible in it?

6 A. Yes, sir.

7 Q. Okay. And is it standard procedure in your part
8 of the -- once you produce a report, that a superior
9 officer will look at that report and sign off on it?

10 A. Yes, sir.

11 Q. And in this case Corporal Constanza is the
12 officer that signed off on your report?

13 A. Yes, sir.

14 MR. SMILEY: Nothing further.

15 THE COURT: Ms. Linder.

16 MS. LINDER: Briefly, Your Honor. May it please
17 the Court.

18 REDIRECT EXAMINATION

19 BY MS. LINDER:

20 Q. Investigator Springmeyer, does the video we saw
21 fairly and accurately represent -- or an account of what
22 occurred back on September 19th, 2007?

23 A. Yes, ma'am, it does.

24 Q. And we've heard about different types of
25 operations. Was this a buy-bust operation or a buy-walk

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 operation?

2 A. This was what we call a buy-walk operation.

3 Q. And can you please explain to the jury kind of
4 the pros and cons and explain why one was utilized instead
5 of another in this case.

6 A. Yes, ma'am. A buy-bust is --

7 MR. SMILEY: Your Honor, I'm going to object.
8 Beyond the scope.

9 MS. LINDER: Your Honor, if we may approach?

10 THE COURT: You may.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 THE COURT: Sustained.

14 Q. [Ms. Linder] Why was the prerecorded money
15 not -- why was it not recovered?

16 A. Because we arrested the individual approximately
17 three weeks later. I believe we did the buy on September
18 19, 2007, and I believe the affidavit for the arrest
19 warrant was issued on October 9th. So the chances of him
20 having the money we gave him on September 19th on his
21 person during the time of arrest more than three weeks
22 later is probably very slim.

23 Q. And did a transaction occur on September 19th,
24 2007, when you were in an undercover capacity?

25 A. Yes.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. What was exchanged in this transaction?

2 A. The \$50 of U.S. currency provided to me by the
3 FBI in exchange for I believe the lab report said .31
4 grams of cocaine base.

5 Q. And what's the name of the person that sold you
6 the drugs?

7 A. Lloyd Wright.

8 Q. Where is this -- where did this occur?

9 A. On Athens Court.

10 Q. And is that within half a mile proximity of the
11 New Israel School?

12 A. Yes, ma'am, it is.

13 MS. LINDER: I've nothing further, Your Honor.

14 THE COURT: Mr. Smiley?

15 MR. SMILEY: Nothing further.

16 THE COURT: May this witness step down and be
17 excused? Any objection, Ms. Linder?

18 MS. LINDER: No, Your Honor.

19 THE COURT: Any objection, Mr. Smiley?

20 MR. SMILEY: I don't have any reason to keep her
21 here.

22 THE COURT: Investigator Springmeyer, you may
23 step down. You may remain in the courtroom if you
24 wish, but you also may be excused.

25 THE WITNESS: Thank you.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: Thank you.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Call your next witness.

5 MR. BYRD: Your Honor, the State calls Damian
6 Seabrook.

7 [Whereupon, Mr. Seabrook enters the courtroom]

8 [Whereupon, Mr. Seabrook is duly sworn by the
9 clerk of court as follows: do you swear or affirm that
10 your testimony will be the truth, the whole truth, and
11 nothing but the truth so help you God]

12 THE WITNESS: Yes, sir.

13 THE CLERK OF COURT: Thank you. Be seated.

14 [Whereupon, Mr. Seabrook takes the witness
15 stand]

16 THE CLERK OF COURT: If you will state your full
17 name and then spell your last name for the record.

18 THE WITNESS: Damien L. Seabrook, Damien Latrell
19 Seabrook, and that's S-E-A-B-R-O-O-K.

20 THE COURT: Mr. Byrd.

21 MR. BYRD: Thank you, Your Honor.

22

23

24

25

- - -

- - -

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 DAMIEN L. SEABROOK,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BYRD:

6 Q. Mr. Seabrook, what is your profession?

7 A. I'm a City of Charleston police officer.

8 Q. All right. And what are your duties with the
9 City of Charleston Police Department?

10 A. I am now currently the housing -- one of the
11 housing liaison officers.

12 Q. How long have you been employed there?

13 A. Eight and a half years.

14 Q. Any special training or skills?

15 A. Yes. I went to the DEA narcotics school; I went
16 to the surveillance operation school; a certified hostage
17 negotiator; certified bicycle, to ride the bicycle, excuse
18 me; joint operations with the FBI, DEA, ATF; did numerous
19 search warrants; did numerous narcotics investigations.

20 Q. Let me ask you: in your capacity as an officer
21 with the City of Charleston Police Department, did you
22 have an occasion to become involved with the investigation
23 of this case on September 19th, 2007?

24 A. Yes, sir.

25 Q. Would you tell us: how were you brought into

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 that case then? What was your involvement?

2 A. I was in narcotics back in September 19th, 2007,
3 and we were initiating an undercover operation and I was
4 one of the case agents for that operation, which we were
5 utilizing an undercover officer to make narcotics
6 purchases in the downtown Charleston area.

7 Q. All right. And that particular -- and in that
8 capacity making those purchases, did it relate to the
9 investigation of this particular case and what was your
10 specific involvement with that?

11 A. Yes. My specific involvement is I prepared some
12 of the paperwork since being that I was the case agent,
13 and also receiving the properly of evidence from
14 Investigator Springmeyer who was the undercover officer..

15 MR. BYRD: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 Q. [Mr. Byrd] Investigator Seabrook, I placed in
19 front of you what's been marked as State's Exhibit 2
20 for identification purposes.

21 A. Yes, sir.

22 Q. Do you recognize that?

23 A. Yes, sir.

24 Q. Could you tell us what that is, please.

25 A. That is crack cocaine, cocaine which is cocaine

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 base.

2 Q. Let me ask you: the evidence tag --

3 A. Uh-huh.

4 Q. -- that you see on that, are you familiar with
5 that?

6 A. Yes.

7 Q. Okay. And what makes you familiar with that?

8 A. Because it's my handwriting.

9 Q. Your handwriting?

10 A. Yes, sir.

11 Q. All right. And when you look at it, I notice
12 that -- did you fill the entire thing out describing the
13 evidence?

14 A. Yes, except for the signature. Yes.

15 Q. Except for the signature?

16 A. Yes. Uh-huh.

17 Q. All right. And why didn't you sign it?

18 A. It was merely an oversight.

19 Q. But the evidence yourself you received from
20 Investigator Springmeyer?

21 A. Yes, sir. Uh-huh.

22 Q. Let me ask you this. When you received it from
23 Investigator Springmeyer, what did you do with it?

24 A. I then properly placed it in the plastic bag,
25 filled out the evidence sheet, and secured it inside our

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 facility inside the City of Charleston Police Department,
2 which is a secure facility in a secured room.

3 Q. All right. You mentioned a secure lockbox. Was
4 there any way to get back into that once it's been dropped
5 off there?

6 A. No, sir.

7 Q. Not at all?

8 A. No, sir.

9 Q. All right. And you mentioned the not having
10 your signature on it. What was the reason for that again?

11 A. Say that again, sir.

12 Q. The signature not being on it. You filled out
13 the entire tag --

14 A. Yes, sir.

15 Q. -- you mentioned, but your signature wasn't on
16 it. What was the reason for that again?

17 A. Just merely an oversight. I prepared several
18 documents during that time. Just it was merely an
19 oversight.

20 MR. BYRD: Okay. No further questions, Your
21 Honor.

22 If you would please answer any questions of the
23 defense counsel.

24 THE COURT: Mr. Smiley.

25 - - -

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

CROSS-EXAMINATION

BY MR. SMILEY:

Q. You've been an officer for eight and a half years; right?

A. Yes, sir.

Q. And you were a case agent in this case; right?

A. Yes, sir.

Q. All right. And you understand what a chain of custody is; right?

A. Yes, sir.

Q. And how important a chain of custody is --

A. Yes, sir.

Q. -- to ensure that the evidence from the time it's collected until the time it hits the court is in the same condition and it hasn't been manipulated in any form or fashion; correct?

A. Yes, sir.

Q. That we have rules of criminal procedure regarding that. Rule 5 it says that we need to record who's had -- who had the evidence. And that's why we sign a chain of custody; correct?

A. Yes, sir.

Q. Now, in this case it's your testimony that Investigator Springmeyer turned over the crack cocaine to you; correct?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Yes, sir.

2 Q. All right. And that you, in fact, filed out
3 this Form 48; correct?

4 A. Yes, sir.

5 Q. And that's your writing on the front there?

6 A. Yes, sir.

7 Q. And on it it tells us, evidence, description,
8 three pieces of off-white-in-color rocklike substance;
9 right? Actually, I'll let you look at it. That would be
10 easier.

11 [Whereupon, Mr. Smiley proffers exhibit to the
12 witness]

13 Q. [Mr. Smiley] And then it talks about where it's
14 recovered, Athens Court; right?

15 A. Yes, sir.

16 Q. And the date it's recovered, the time; right?

17 A. Yes, sir.

18 Q. It talks about the suspect; right?

19 A. Yes, sir.

20 Q. And where it says suspect, what does it say?

21 A. Unknown.

22 Q. Unknown.

23 All right. And then on the back of the tag is
24 where each person that has handled the evidence signs it;
25 correct?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Uh-huh. Yes, sir.

2 Q. And the first person says -- that's on there,
3 and it says obtained by, is Investigator Springmeyer;
4 right?

5 A. Yes, sir.

6 Q. Then the next person on there is who it went to,
7 has the initials of J.L., or Jose LaLema, I believe it is,
8 the evidence tech or collection custodian? Does it say
9 J.L. next?

10 A. Yes.

11 Q. All right. So you're just telling this jury
12 that with your experience and knowing how important it is
13 in the collection of evidence, that you just forgot to
14 sign it; right?

15 A. No, I didn't say I forgot to sign it, just was
16 an oversight.

17 Q. Well, you didn't sign it.

18 A. Yes.

19 Q. And you have the evidence --

20 A. Yes.

21 Q. -- right?

22 A. Uh-huh.

23 Q. So do you know if anybody else forgot to sign it
24 or who else might have had it?

25 A. No. Only it was turned over -- once I obtained

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 it from Investigator Springmeyer, secured it in a locked
2 facility.

3 Q. Right. But we don't know if anybody else forgot
4 to sign it like you did, do we?

5 A. No.

6 Q. And that's why we have rules about who has
7 evidence, and they sign the back. But you didn't sign it?

8 A. [Indicates affirmatively]

9 Q. Now, what time did you get the evidence from
10 Investigator Springmeyer?

11 A. What time?

12 Q. Yeah.

13 A. Approximately on the evidence tag should be
14 about 1510, which is 3:10, if I'm not mistaken.

15 Q. Okay. And then where did you put this evidence
16 at that point in time?

17 A. When I obtained it?

18 Q. Yeah.

19 A. In a plastic bag.

20 Q. All right. Is this the plastic bag you put it
21 in?

22 A. This is one like this, yes.

23 Q. You don't know if it's the one, though?

24 A. No.

25 Q. You don't?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. I put it in a plastic bag but --

2 Q. You put it in a plastic bag --

3 A. Yes.

4 Q. -- did you identify that plastic bag with your
5 initials or your signature of any sort?

6 A. No, sir.

7 Q. All right.

8 A. Uh-huh.

9 Q. So it was a bag like that? That's --

10 A. Uh-huh.

11 Q. -- what you put it in?

12 A. Yes, sir.

13 Q. All right.

14 A. Uh-huh.

15 Q. And then that was about three o'clock in the
16 afternoon. Then what did you do with the evidence?

17 A. I have to take it to City of Charleston Police
18 Department, 180 Lockwood.

19 Q. All right. And once you took it there, what did
20 you do with it?

21 A. Once I took it there I took and filled out the
22 property sheet, then that set of paperworks, and then took
23 it to the evidence locker.

24 Q. What property sheet would that be?

25 A. That would be a property sheet that we fill out.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Smiley reviews documents]

4 MR. SMILEY: Beg the Court's indulgence. Just
5 looking to try to find the property sheet in my
6 discovery.

7 THE COURT: Yes, sir.

8 [Whereupon, Mr. Smiley reviews documents]

9 MR. SMILEY: May we approach?

10 THE COURT: You may.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 Q. [Mr. Smiley] All right. Tell me about this
14 evidence sheet. Excuse me. Excuse me. It's a property
15 sheet. What does it look like?

16 A. It's the form that we fill out --

17 Q. When you take the evidence to turn it in --

18 A. Yes.

19 Q. -- right?

20 A. And you --

21 Q. You fill out a form --

22 A. You fill out a form --

23 Q. -- because you turn it into evidence; right?

24 A. Yes, sir.

25 Q. And on that you describe the evidence, I would

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 assume?

2 A. Yes.

3 Q. Okay. And who you are dropping it off?

4 A. Yes, sir.

5 Q. And what time it was dropped off?

6 A. Yes, sir.

7 Q. Okay. And then you take that evidence sheet and
8 do what with it?

9 A. You place it in -- there's this bin you place it
10 in, and then that's collected by the evidence officers.

11 Q. So it accompanies the property you're turning
12 in?

13 A. Yes. Uh-huh.

14 Q. All right. And you're sure you filled one out
15 in --

16 A. Yes.

17 Q. -- this case?

18 A. Uh-huh.

19 Q. Okay. Because you're not on this chain of
20 custody; right? You're not on that?

21 A. Right.

22 Q. Okay. So the only way we would know besides
23 your testimony would be to have that evidence sheet which
24 would show that you were in the chain, because it would
25 show you turned it in; right?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Right.

2 Q. Okay. All right. So you filled out an evidence
3 sheet and turned it in at what time?

4 A. Probably the approximate --

5 Q. Not probably.

6 A. -- time --

7 Q. Not probably. What time did --

8 A. I don't know what time.

9 Q. -- you turn it in?

10 You don't know, because you don't have the
11 evidence sheet?

12 A. Right.

13 Q. We know that an officer evidence technician,
14 whatever his title is, J.L. initials, picked it up the
15 next day at 4:15, 0451 -- 15?

16 A. Uh-huh. Yes, sir.

17 Q. All right. But until you testified here today,
18 we had no clue that you were on that custody thing,
19 because you didn't sign it, and the only way we would know
20 that is with the evidence sheet; right?

21 A. Yes, sir.

22 Q. All right. Now, let me ask you some other
23 questions. We'll move on from that.

24 Where are you located during this event at
25 Athens Court and Romney?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Inside --

2 Q. Physically located.

3 A. Inside a vehicle behind the old library.

4 Q. Okay. So you couldn't see what was going on
5 there?

6 A. No, sir.

7 Q. Okay. And in this case you filled out a report;
8 correct?

9 A. Yes, sir.

10 Q. All right. And I'm going to show you a report.
11 Is that the report you did?

12 A. Yes, sir.

13 Q. Okay. On that report that you did it has
14 different blocks to fill out, like the case number and the
15 time and the what-have-you. Is there a space for the
16 subject or the suspect?

17 A. Yes, sir.

18 Q. Okay. Who's the suspect or subject that you
19 filled out?

20 A. Unknown.

21 Q. Okay. And this was filled out the day of the
22 transaction; right?

23 A. Yes, sir.

24 Q. Okay. And that's the only report you -- other
25 than the property sheet we don't have, it's the only

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 report that you filled out; right?

2 A. Yes, sir.

3 Q. Okay. And that was approved by another officer;
4 right?

5 A. Another supervisor. Right.

6 Q. Okay. Now --

7 MR. SMILEY: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 [Whereupon, Mr. Smiley and Ms. Hensley confer]

10 MR. SMILEY: Nothing further, Your Honor.

11 THE COURT: Ms. Linder? I'm sorry. Mr. Byrd?

12 MR. BYRD: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. BYRD:

15 Q. Investigator Seabrook --

16 A. Yes, sir.

17 Q. -- let's get down to the fact of the matter for
18 a second. Did you receive the evidence from Investigator
19 Springmeyer?

20 A. Yes, sir.

21 Q. Did you fill out that evidence tag?

22 A. Yes, sir.

23 Q. Was the evidence in your sole possession and
24 custody --

25 A. Yes.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. -- the entire time?

2 A. Yes, sir.

3 Q. And what did you do with it after that?

4 A. I secured it inside a lockbox.

5 MR. BYRD: Thank you. Nothing further, Your
6 Honor.

7 RECROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q. You just misspoke. So you didn't -- did not --
10 fill out the evidence tag? You didn't --

11 A. I filled --

12 Q. -- sign it.

13 A. I filled out --

14 Q. This side?

15 A. -- all of this side and then --

16 Q. Yeah, but you --

17 A. -- part of the back. Yes.

18 Q. -- didn't sign that you had custody --

19 A. I didn't sign the --

20 Q. -- of the product?

21 A. -- but the label.

22 Q. Okay. The only thing that would notice us that
23 you had custody --

24 MR. BYRD: Your Honor, may I approach?

25 THE COURT: Counsel approach.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 [Whereupon, an off-the-record bench conference
2 is held]

3 THE COURT: Overruled, Mr. Byrd.

4 Q. [Mr. Smiley] So you didn't sign it like you
5 were supposed to; right?

6 A. That's right.

7 Q. And the only thing that would give us notice,
8 give this jury notice, that you handled the evidence in
9 this case would be the property sheet you filled out;
10 correct?

11 A. And that sheet right there.

12 Q. But you're not on here anywhere; right?

13 A. Except for my handwriting.

14 Q. So as -- this jury should just say, okay, that's
15 your handwriting, is that we should know that? There's
16 no -- you didn't sign it anywhere, did you?

17 A. No, I didn't.

18 Q. Okay. The only thing that would have your name
19 attached to it would be the property sheet?

20 A. Yes, sir.

21 MR. SMILEY: Okay. Thank you.

22 THE COURT: Anything further, Mr. Smiley?

23 MR. SMILEY: No, Your Honor.

24 THE COURT: You may step down. Any objection
25 to this officer being excused from the courthouse,

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Mr. Byrd?

2 MR. BYRD: None, Your Honor.

3 THE COURT: Mr. Smiley?

4 MR. SMILEY: No, Your Honor.

5 THE COURT: Officer, you may remain in the
6 courtroom if you wish, but you are free to leave.
7 Thank you.

8 THE WITNESS: Thank you.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: Call your next witness.

12 MR. BYRD: Your Honor, the State calls Brian
13 Hinton.

14 [Whereupon, Mr. Hinton enters the courtroom]

15 [Whereupon, Mr. Hinton is duly sworn by the
16 clerk of court as follows: do you swear or affirm that
17 your testimony will be the truth, the whole truth, and
18 nothing but the truth so help you God]

19 THE WITNESS: I do.

20 THE CLERK OF COURT: Thank you. Be seated.

21 [Whereupon, Mr. Hinton takes the witness stand]

22 THE CLERK OF COURT: If you'll state your full
23 name and then spell your last name for the record.

24 THE WITNESS: Brian Hinton, H-I-N-T-O-N.

25 THE COURT: Mr. Byrd.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. BYRD: Thank you, Your Honor.

2 - - - - -

3 BRIAN HINTON,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MR. BYRD:

8 Q. Could you tell us where you're presently
9 employed.

10 A. Charleston Police Department.

11 Q. And how long have you been with CPD?

12 A. Nine years.

13 Q. What's your position there?

14 A. Evidence technician.

15 Q. And what kind of training and education do you
16 have to help you with that position?

17 A. I'm sorry?

18 Q. What kind of training and education do you have?

19 A. Just through the department.

20 Q. Give us an example, if you would, please.

21 A. All the training I've had was -- is what I was
22 taught by my superiors, Sargent LaLema.

23 Q. Sargent LaLema you say?

24 A. Yes, sir.

25 Q. Now, would you go through and tell us sort of an

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 overview of what your duties are.

2 A. Once evidence is turned in, we collect it from a
3 temporary holding facility which is downstairs, lockers,
4 or if the officers bring it to us, and then I fill out
5 some submittal forms if it has to go somewhere for
6 testing. If not, we sign the chain of custody, secure it,
7 and place it on a shelf until further time it's needed for
8 court.

9 Q. All right. And do you generally assign the
10 evidence a case number or some sort of identifying mark?

11 A. We actually put bar codes on it for tracking.
12 The case number comes when the officers turn it in that
13 date. Put the case number there with their evidence on
14 there.

15 Q. Okay. And is that all part of how you log it
16 in?

17 A. Yes, sir.

18 Q. And where do you log it in?

19 A. We have a system, an evidence-tracker system,
20 where we put the -- basically a case number, defendant's
21 name, officer's name, a description of the evidence, and a
22 location where it's placed, and it's all kept at our
23 police headquarters in a room either on a shelf or in a
24 box until court.

25 Q. All right. Let me ask you this. When you

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 receive evidence from CPD officers --

2 A. Yes, sir.

3 Q. -- what forms do you fill out?

4 A. A property sheet and an evidence tag.

5 Q. Now, specifically on September 20th, 2007, was
6 evidence related to this case received by your department?

7 A. Yes, sir.

8 MR. BYRD: Okay. May I approach, Your Honor?

9 THE COURT: You may.

10 Q. [Mr. Byrd] I've just given you what's been
11 marked as State's Exhibit 2 for identification
12 purposes. Could you tell us what that is, please.

13 A. According to the evidence tag, three pieces of
14 off-white rocklike substance.

15 Q. All right. And can you tell by looking at that
16 evidence tag who received that in your office?

17 A. Sargent LaLema.

18 Q. How can you tell?

19 A. From his initials.

20 Q. Do you recognize his initials?

21 A. I do.

22 Q. How do you recognize them?

23 A. Dealing with other evidence he's handled the six
24 years I've been in the evidence room.

25 Q. And once you received that evidence -- or,

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 excuse me -- once Officer LaLema received that evidence,
2 where was it put?

3 MR. SMILEY: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. SMILEY: It's going to require speculation.
6 He didn't receive the evidence.

7 THE COURT: Counsel approach.

8 [Whereupon, an off-the-record bench conference
9 is held]

10 THE COURT: One moment, Mr. Byrd.

11 Ladies and gentlemen of the jury, there is a
12 matter of law that I must take up outside of your
13 presence. Please do not begin your deliberations.
14 Please do not discuss this case amongst yourselves.

15 We are going to go until approximately 6:30, so
16 this would be an appropriate time for us to take our
17 late-afternoon break.

18 Please rise for the jury.

19 [Whereupon, the jury exits the courtroom at
20 5:23 p.m.]

21 THE COURT: Please be seated.

22 Mr. Smiley, would you like to articulate your
23 argument on the record as the basis of my previous
24 ruling?

25 MR. SMILEY: In regards to which ruling? This

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 one?

2 THE COURT: If you would like to articulate --

3 MR. SMILEY: I'll start here.

4 THE COURT: All right.

5 MR. SMILEY: Your Honor, I object on the basis
6 that it requires speculation on behalf of this witness
7 to talk about another person dealing with the evidence.
8 To say it's general routine or practice that he would
9 take it from here to there is irrelevant, because we
10 need to know what happened with this evidence.

11 If I should back up to the previous witness, I
12 have to -- if you want me to.

13 THE COURT: I want this witness only, Mr.
14 Smiley.

15 MR. SMILEY: Okay.

16 THE COURT: And I sustained your objection.
17 Officer Hinton --

18 THE WITNESS: Yes, ma'am?

19 THE COURT: -- I'm going to allow you to step
20 off this witness stand --

21 THE WITNESS: Okay.

22 THE COURT: -- tuck in your shirt, and get rid
23 of the gum.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you. You may do that now.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 [Whereupon, the witness exits the witness stand]

2 THE COURT: We're in recess for ten minutes.

3 Thank you.

4 [Whereupon, a recess is taken from 5:24 p.m. to
5 5:33 p.m.]

6 THE COURT: Be seated.

7 Ms. Linder, after Mr. Hinton you have two more
8 witnesses; is that correct?

9 MS. LINDER: Yes, Your Honor.

10 THE COURT: Do you anticipate we'll be able to
11 finish by 6:30?

12 MS. LINDER: Yes, Your Honor.

13 THE COURT: Where is Mr. Smiley?

14 [Off the record momentarily]

15 THE COURT: Anything before we bring in the
16 jury, Ms. Linder?

17 MR. SMILEY: Yes, Your Honor.

18 THE COURT: Ms. Linder?

19 MS. LINDER: Nothing from the State, Your Honor.

20 THE COURT: Mr. Smiley?

21 MR. SMILEY: Your Honor, I hate to be a
22 fussbudget, a whiner, whatever but, unfortunately,
23 during the break the sequestration rule was violated.

24 THE COURT: All right. Mr. Smiley, why don't
25 you put that on the record.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MR. SMILEY: It was during -- and I didn't view
2 it, so I'm going to let Ms. Hensley describe what she
3 saw, and then we'll go from there.

4 If you would tell the Court what you saw.

5 MS. HENSLEY: Your Honor, may it please the
6 Court.

7 Just the witness that's on the stand was having
8 discussion with the State's case investigator during
9 the break.

10 MR. SMILEY: Don't know the substance, but they
11 were having a discussion during the break.

12 THE COURT: Mr. Smiley, do you wish for me to
13 inquire of this witness what they were talking about,
14 or were you merely bringing this to the Court's
15 attention?

16 MR. SMILEY: I think we have to inquire if he
17 was being instructed how to testify. And if he wasn't,
18 I was just bringing it to your attention. There's a
19 reason we ask for sequestration.

20 THE COURT: Officer Hinton --

21 THE WITNESS: Yes, ma'am.

22 THE COURT: -- it has been brought to the
23 Court's attention, and you were present during the
24 instruction.

25 And I have forgotten your name, and I apologize.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Ms. Linder --

2 MS. LINDER: Investigator Kelly.

3 THE COURT: Investigator Kelly, could you just
4 step right outside those double doors while I inquire.

5 There has been -- the defense has instructed the
6 Court that there was a conversation between you and
7 this witness during the break and so I just want to
8 inquire so that -- I may need to inquire of you, as
9 well.

10 INVESTIGATOR KELLY: Yes, ma'am.

11 THE COURT: Thank you.

12 [Whereupon, Investigator Kelly exits the
13 courtroom]

14 THE COURT: Officer Hinton --

15 THE WITNESS: Yes, ma'am.

16 THE COURT: -- there has been indicated to the
17 Court that you and the investigator from the
18 solicitor's office were having discussions during the
19 break. And were you advised that the rule of
20 sequestration was invoked?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: And do you understand what that
23 means?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Would you explain to the Court what

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 your understanding of the rule of sequestration is.

2 THE WITNESS: Not to discuss anything related to
3 the -- related to this case.

4 THE COURT: All right. And did you and the
5 investigator from the solicitor's office have
6 discussions regarding your testimony?

7 THE WITNESS: No, ma'am. It was regarding my
8 gum.

9 THE COURT: Regarding your gum?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Mr. Smiley, did you need any further
12 inquiry of this witness, or of the investigator from
13 the solicitor's office, regarding the rule of
14 sequestration and the conversation you brought to the
15 Court's attention?

16 MR. SMILEY: Your Honor, I believe we have to.
17 In caution, I would ask -- would inquire of the Court
18 to ask the investigator if there was anything else in
19 the conversation. At that point, I'll drop it. I'm
20 just -- from my perspective, Your Honor. I would ask
21 you to do that.

22 THE COURT: Mr. Smiley, I have inquired of this
23 witness. He is still under oath.

24 MR. SMILEY: Yes, ma'am.

25 THE COURT: He indicated to the Court that he

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 understood the rule of sequestration; that the
2 conversation was -- with the investigator's office was
3 regarding the gum. I am assuming that this is the
4 first time that this officer has been in front of me,
5 while I do know that the investigator from the
6 solicitor's office does know my accordance for the use
7 of chewing gum, especially when you're on the witness
8 stand. I am assuming that that was the nature of the
9 conversation --

10 MR. SMILEY: Yes, ma'am.

11 THE COURT: -- as verified by this witness. So
12 I deny your request --

13 MR. SMILEY: Thank you.

14 THE COURT: -- to inquire of the investigator.

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: Let me make this clear, because
17 there were some other people. There is to be no gum-
18 chewing in the courtroom. It is disrespectful to the
19 Court and to the honor and integrity of this courtroom
20 to be chewing gum in this courtroom.

21 THE WITNESS: I apologize.

22 THE COURT: Thank you.

23 Anything before we bring in the jury?

24 MR. SMILEY: No, ma'am.

25 THE COURT: Thank you.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Please bring in the jury. Please rise for the
2 jury.

3 MS. LINDER: Your Honor, may Investigator Kelly
4 be allowed back in?

5 THE COURT: Yes, ma'am. Thank you.

6 [Whereupon, Investigator Kelly re-enters the
7 courtroom]

8 [Whereupon, the jury enters the courtroom at
9 5:41 p.m.]

10 THE BAILIFF: Jurors are present, Your Honor.

11 THE COURT: Thank you. Thank you. Please be
12 seated.

13 Mr. Smiley, your witness --

14 MR. SMILEY: Actually --

15 THE COURT: Or, I'm sorry. Mr. Byrd, your
16 witness.

17 MR. BYRD: Thank you, Your Honor. I only have
18 one final question.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. BYRD:

21 Q. Mr. Hinton --

22 A. Yes, sir.

23 Q. -- based on that evidence tag that we discussed
24 a minute ago --

25 A. Yes, sir.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Q. -- who in your department received the evidence?

2 A. Joe LaLema. Sargent LaLema.

3 MR. BYRD: Thank you very much.

4 THE COURT: Mr. Smiley?

5 CROSS-EXAMINATION

6 BY MR. SMILEY:

7 Q. What did -- did you touch this evidence in this
8 case?

9 A. No, sir.

10 Q. So you really don't have anything to do with
11 this case?

12 A. No, sir.

13 MR. SMILEY: Okay. Nothing further.

14 THE COURT: Mr. Byrd?

15 MR. BYRD: Nothing further from the State, Your
16 Honor.

17 THE COURT: May this witness step down and be
18 excused?

19 MR. BYRD: Yes, Your Honor.

20 THE COURT: Any objection, Mr. Smiley?

21 MR. SMILEY: No objection.

22 THE COURT: Officer Hinton, you may step down
23 and you may be excused. You are welcome to remain in
24 the courtroom. Thank you.

25 THE WITNESS: Thank you.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Call your next witness.

4 MR. BYRD: Your Honor, the State calls Susan
5 Moody.

6 [Whereupon, Ms. Moody enters the courtroom]

7 [Whereupon, Ms. Moody is duly sworn by the clerk
8 of court as follows: do you swear or affirm that your
9 testimony will be the truth, the whole truth, and
10 nothing but the truth so help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: Have a seat.

13 [Whereupon, Ms. Moody takes the witness stand]

14 THE CLERK OF COURT: If you'll state your full
15 name and then spell your last name for the record.

16 THE WITNESS: My name is Susan Marie Moody,
17 M-O-O-D-Y.

18 THE COURT: Mr. Byrd.

19 MR. BYRD: Thank you, Your Honor. May it please
20 the Court.

21

22

23

24

25

- - -

- - -

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE WITNESS: I do.

2 THE CLERK OF COURT: Thank you. Be seated.

3 [Whereupon, Ms. Wiggins-Mitchell takes the
4 witness stand]

5 THE CLERK OF COURT: State your full name and
6 spell your last name.

7 THE WITNESS: Elizabeth Wiggins-Mitchell,
8 W-I-G-G-E-N-S M-I-T-C-H-E-L-L.

9 THE COURT: Mr. Byrd.

10 MR. BYRD: Thank you, Your Honor.

11 Before we proceed, just out of curiosity, do you
12 prefer to be called Ms. Wiggins-Mitchell or just Ms.
13 Mitchell?

14 THE WITNESS: Mitchell is fine.

15 MR. BYRD: All right. Thank you.

16 - - - - -

17 ELIZABETH N. WIGGINS-MITCHELL,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. BYRD:

22 Q. Ms. Mitchell, what is your profession?

23 A. I'm a laboratory manager for the Charleston
24 Police Department.

25 Q. Okay. How long have you been employed by the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Charleston Police Department?

2 A. Since 2002, so seven years.

3 Q. Okay. And specifically what position do you
4 hold there?

5 A. I'm sorry. I couldn't hear you.

6 Q. It was lab technician you said was your --

7 A. I can't hear you.

8 Q. Your specific position? I'm sorry.

9 A. I'm the laboratory manager.

10 Q. Thank you.

11 And what are your duties as a laboratory
12 manager?

13 A. I oversee the daily operations and the personnel
14 within the laboratory, and I also perform analyses on
15 physical evidence submitted to the laboratory.

16 Q. What kind of training and education do you have?

17 A. I have a bachelor's degree in biochemistry and
18 chemistry from the College of Charleston. From there I
19 worked a couple of years in a research laboratory.

20 And then when I started with the Charleston
21 Police Department we have an internal training program
22 that includes reading, shadowing somebody who's already
23 qualified to do analyses, the DNA forensic chemist
24 seminar; competency tests where we actually get tested
25 practically on how to analyze evidence; and also an oral

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 expert in the area of chemical analysis, specifically
2 in the analysis of narcotics?

3 MR. BYRD: Well, specifically chemistry and the
4 analysis of narcotics, Your Honor.

5 MR. SMILEY: That's fine, Your Honor.

6 MR. BYRD: Sorry --

7 THE COURT: Mr. Smiley, you have no objection?

8 MR. SMILEY: No objection.

9 THE COURT: Ladies and gentlemen of the jury,
10 normally a person cannot give opinion testimony.
11 Normally when a person testifies they must testify as
12 to what they either saw, heard or sensed by smell, or
13 something of that nature. However, there is an
14 exception when someone is qualified because of their
15 education or their experience. They are permitted to
16 give their opinion in certain areas if the Court
17 qualifies them that way.

18 This witness will be qualified in the area of
19 chemistry and the analysis of narcotics, to give
20 opinion testimony in that area. That does not mean
21 that you must accept the opinion. It is evidence for
22 you to use in any way that you see fit.

23 Mr. Byrd.

24 MR. BYRD: Thank you, Your Honor. May I
25 approach the witness?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: You may.

2 Q. [Mr. Byrd] I've just sort of pushed in your
3 direction what's been marked as State's Exhibit 2 for
4 identification purposes. Based on your experience and
5 training, do you have an opinion as to what it is?

6 A. Yes. This is evidence that I analyzed for the
7 particular case at hand. Do you want me to identify what
8 I found it contains?

9 Q. Please.

10 A. Okay. I found the substance to weigh .31 grams
11 and contain cocaine base.

12 Q. Curiosity: how can you identify it as cocaine
13 base?

14 A. How do I identify it as that evidence --

15 Q. Right.

16 A. -- or -- all right.

17 After I analyze every case, I mark the container
18 that it was in and reseal it and put a sticker on the
19 outside of the packaging. Then I have the case number, a
20 number that our laboratory associates with that case, as
21 well as my initials and a date that I sealed it. And I
22 recognize all of that.

23 Q. Okay. And when did you mark it?

24 A. On the 20th of September, 2007.

25 Q. Okay. And is that the same day it was

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 submitted?

2 A. It sure is.

3 Q. Okay. And where did you receive it?

4 A. I received it from the evidence safe within the
5 laboratory.

6 Q. Okay. And -- all right.

7 MR. BYRD: Your Honor, at this point I would
8 like to offer State's Exhibit 2 into evidence.

9 MR. SMILEY: I object.

10 THE COURT: Mr. Smiley?

11 MR. SMILEY: I object, Your Honor.

12 THE COURT: Basis?

13 MR. SMILEY: Chain; foundation --

14 THE COURT: All right. Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Ladies and gentlemen of the jury,
18 there is a matter of law that I must take up outside of
19 your presence.

20 Please do not begin your deliberations. Do not
21 discuss this case amongst yourselves. We will receive
22 you back in the courtroom just as soon as possible.

23 Please rise for the jury.

24 Ms. Wiggins-Mitchell, you may be seated.

25 THE WITNESS: Thank you.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 [Whereupon, the jury exits the courtroom at
2 5:58 p.m.]

3 THE COURT: Thank you. Be seated.

4 Mr. Smiley, I'm going to allow you to begin your
5 argument anew.

6 MR. SMILEY: Yes, ma'am. And I apologize for my
7 speaking too loud. It's late in the day and I'm
8 getting a little --

9 Rule 6 of the South Carolina Rules of Criminal
10 Procedure established a rule for criminal analysis and
11 chain of custody. In it, it says that I can
12 specifically demand an appearance of each person in the
13 chain. And I did that, Your Honor, in my Brady motion,
14 Rule 5 motion, dated January 15th of 2009, and then --
15 on page -- I didn't number the pages. But under
16 specific requests -- under specific request number 11,
17 I made a demand: it's hereby made of the personal
18 testimony of all personnel with any chain of custody as
19 to the item of evidence.

20 So I adhered to the rule. They have two
21 problems, Your Honor. The first problem that -- the
22 most obvious problem is one of the persons in the chain
23 has not testified, and that would be Sargent LaLema.
24 He hasn't testified to taking the evidence, he hasn't
25 testified to keeping the evidence, and he hasn't

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 testified to sending out the evidence. Which is
2 complicated even more in this case because the chain --
3 it's important for the preservation of the evidence,
4 hasn't been followed, as Officer Seabrook has testified
5 that he received the evidence from Investigator
6 Springmeyer and took it to the evidence lab to turn it
7 in.

8 They filled out a property sheet that hasn't
9 been provided to show that and put in that Sargent
10 LaLema took. He did not sign the chain of custody.
11 And I did not find this out, which I think is pretty
12 important, until he testified. If they were aware of
13 their chain, probably they sure -- certainly could have
14 made me aware of it beforehand besides, well, you
15 should know my writing.

16 They've got to give it to me eleven days before
17 the trial of the case. And I don't have that paper, I
18 don't have -- they haven't established the chain in
19 this case. My client is on trial for his life, and so
20 to say it's just, well, we just overlooked, I don't
21 think is acceptable.

22 There's a rule specifically for it. I've made
23 the proper demand. And I don't believe that this
24 evidence should be submitted and allowed into evidence
25 without the chain being accomplished; and, therefore, I

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 make an objection to the admission of the drug at this
2 point in time.

3 THE COURT: Mr. Byrd, Ms. Linder?

4 MR. BYRD: Your Honor, the chain was actually,
5 it was my understanding, sent to Mr. Smiley earlier on
6 in discovery. So this notion of --

7 MR. SMILEY: It wasn't --

8 MS. LINDER: Your Honor --

9 THE COURT: Hold on one second, Mr. Smiley.

10 MS. LINDER: Your Honor, while tag-teaming, so
11 to speak, is not looked favorably upon, I was hoping
12 that I could address the chain issues since I was the
13 person handling the case from that aspect, or I can
14 whisper to Mr. Byrd and he can --

15 THE COURT: Ms. Linder, what I would like to
16 hear from you is I would like for you to articulate
17 for the record, in response to what Mr. Smiley had
18 said, the chain --

19 MS. LINDER: As regards --

20 THE COURT: -- as testified to here today.

21 MS. LINDER: Your Honor, would you like to keep
22 that with Mr. Byrd, since he questioned those
23 witnesses?

24 THE COURT: No, ma'am. I want to hear it from
25 you.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: Okay. With regards to those
2 witnesses, the copy of the tag was in the discovery
3 that was sent to Mr. Smiley. Before that, the case was
4 Ms. Gay's case.

5 THE COURT: Okay. No, no, no. Maybe I wasn't
6 clear.

7 I want to start from the drugs in the hands of
8 the defendant to -- and I want to know where the drugs
9 have been, what they have been testified to here today.

10 MS. LINDER: Testified here today, the drugs
11 were in the hands of the defendant, went to
12 Investigator Springmeyer, which turned them over -- who
13 turned them over to Damian Seabrook, Officer Seabrook,
14 who turned them into the secured lockbox at evidence.
15 Those were logged in, based on the tag by LaLema. Mr.
16 Hinton works with Mr. LaLema or before Mr. LaLema
17 retired. From there, Susan Moody, per their own
18 procedure, checked out the drugs from evidence, took
19 them to the lab, placed them in the lab safe. And then
20 at that point Ms. Mitchell takes them out of the lab
21 safe and analyzes them.

22 THE COURT: All right, Ms. Linder. And then you
23 were indicating to the Court the information given to
24 Mr. Smiley?

25 MS. LINDER: Yes, Your Honor. The chain, the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 actual chain of custody -- this is not the first time
2 this has been on the docket. This was on the docket
3 well before this. The chain was -- a copy was made of
4 the physical tag that was on that, and that was sent to
5 defense counsel, being Lisa Gay at that time. She is
6 to hand over her entire file. And also at that time my
7 secretary resubmits everything she has ever sent, to
8 new counsel which was Mr. Smiley.

9 MR. SMILEY: And I'm not complaining about not
10 getting the tag, Your Honor. What I'm complaining
11 about is until Officer Seabrook testified today, I've
12 had no way to know he was -- allegedly in the chain,
13 because he didn't sign the chain. They didn't put me
14 on notice that, hey, we've got somebody else in the
15 chain.

16 MS. LINDER: It was in the report, Your Honor --

17 MR. SMILEY: What report?

18 THE COURT: Hold on one second.

19 MS. LINDER: I apologize. I'll let Mr. Smiley
20 finish, Your Honor.

21 MR. SMILEY: I don't know what report I'm
22 supposed to look at, Your Honor. I looked at the
23 chain.

24 Also, I wasn't put on notice that they were
25 going to have a substitute for Sargent LaLema to say

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 that's what he usually does. They didn't have him
2 testify I saw him take the drugs out of the lockbox; I
3 saw it put into custody. They're trying to get around
4 that. They've got a chain problem, Your Honor.

5 THE COURT: Ms. Linder, you may finish your
6 argument.

7 MS. LINDER: Your Honor, as far as notice of
8 Mr. Seabrook being part of the chain, in the report,
9 specifically -- you know, fortunately, unfortunately,
10 there are two pieces of paper, as far as reports
11 from the police. There is a one-sentence -- one long,
12 round sentence, or two sentences, short one by
13 Seabrook and another one by Springmeyer. In the --
14 it says: [reading] the cocaine base was turned over to
15 Investigator Seabrook and then Seabrook says the
16 narcotics tag is secured into CPD evidence.

17 Along with that, the State has furnished the
18 witness list. On that witness list it even says -- on
19 the witness list that I submitted to the Court and
20 defense counsel, it says who the people are. I mean,
21 it says where they work. It says I believe it's the
22 CPD evidence on that.

23 [Whereupon, Ms. Linder reviews documents]

24 MS. LINDER: Your Honor, as far as any issues or
25 non issues about who has or has not testified about who

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 has or has not signed the tag, we would argue that all
2 of that goes toward a weakness in the chain, not to the
3 admissibility of the chain, and that weight should be
4 allowed by the judges of fact, the jury, to decide on
5 how much weight they're going to give to the
6 credibility and -- to that, as opposed to the
7 admissibility.

8 THE COURT: Mr. Smiley?

9 MR. SMILEY: I'm looking at Detective Seabrook's
10 report. He doesn't say in his report that he took
11 possession of the cocaine. He says: [reading] the
12 narcotics will be tagged and secured in CPD evidence.

13 That doesn't say, I took the cocaine.

14 Now, in Detective Springmeyer's supplemental, it
15 does say in the last sentence: [reading] the cocaine
16 base was turned over to Investigator Seabrook.

17 And I guess I missed that. But I had no reason
18 to be looking for a problem in the chain.

19 But under Rule 6, Your Honor, is: [reading] the
20 defendant or his attorney may demand appearance in
21 court of the persons within the chain of custody in the
22 same manner as prescribed in Section A.

23 And I certainly, in my specific discovery
24 request, demanded the appearance of the persons in the
25 chain. We've had one testify who is not in the chain

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 who -- but actually was in the chain, and then we've
2 had one not testify who was in the chain. And we're --
3 I guess the other officer tried to say this was normal,
4 but he didn't have any personal knowledge of this case.

5 So, I mean, the chain -- her argument as to
6 weight: you've got to make the chain first. If you
7 can't make the chain, then it doesn't get submitted to
8 the jury for them to weigh it. I mean, it's not --
9 it's a chain. It's got to be linked. If it's not
10 linked and it doesn't make the chain, then they haven't
11 linked it.

12 THE COURT: Anything further, Ms. Linder?

13 MS. LINDER: Your Honor, I am currently
14 refreshing my recollection of a case here. If I
15 may beg the Court's indulgence for one moment.

16 THE COURT: Yes, ma'am.

17 [Whereupon, Ms. Linder reviews documents]

18 THE COURT: Ms. Linder?

19 MS. LINDER: Your Honor, I believe State vs.
20 Taylor addresses this issue. If I may approach, I can
21 give you copies.

22 THE COURT: Yes, ma'am. And make sure -- I
23 don't know if Ms. Hensley is connected in.

24 MS. HENSLEY: I'm connected, Your Honor.

25 THE COURT: Do you have a copy?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 MS. LINDER: May I approach?

2 THE COURT: You may.

3 [Whereupon, Ms. Linder proffers documents to the
4 Court]

5 [Whereupon, the Court reviews documents]

6 THE COURT: Ms. Linder, do you have any further
7 arguments?

8 MS. LINDER: Your Honor, I would just look to
9 this case, The State vs. Taylor, for further argument
10 and discussion in the matter. In this case some basic
11 facts are similar. Traffic stop; officer receives
12 drugs from person who was charged; that officer makes
13 note of it, hands it over to superior officer -- in
14 this case we would say the case agent organizing it,
15 which was Seabrook was the officer -- that officer did
16 not sign tag. That was then turned over to their
17 evidence, so to speak, because evidence custodian no
18 longer worked at the facility.

19 Which is what we have. Sargent LaLema no longer
20 works for the Charleston Police Department. He is
21 retired. He has moved hours away.

22 And further, in here it says: [reading] where
23 the identify of persons handling the evidence is
24 unknown, it needs to be admissible.

25 And we agree with that, obviously. But then it

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 says in here that --

2 [Whereupon, Ms. Linder reviews documents]

3 MS. LINDER: In here it says that, in contrast
4 from that previous situation: [reading] when there is
5 evidence to establish the identity of those who have
6 handled the evidence in the manner in which it was
7 handled.

8 Which we would argue identity is through
9 testimony. For Seabrook it was not he -- he filled out
10 the tag. He testified that he handled it, and he
11 testified that it was in his custody. He testified
12 that he turned it into a secure lockbox. Also, with
13 Mr. Hinton: when he testified, Mr. Hinton identified
14 Sargent LaLema's initials on the tag. And Susan Moody,
15 who is the next person on -- the bookend, so to speak,
16 of that in taking it from the evidence to the lab, she
17 also identified it being from Sargent LaLema. The
18 identity is not in question.

19 So, again, with that, Your Honor, I would say
20 that this is a weakness in the chain which then goes to
21 a question of credibility, not admissibility.

22 THE COURT: Mr. Smiley, briefly, any response?

23 MR. SMILEY: Can I finish reading the case --

24 THE COURT: I'm sorry?

25 MR. SMILEY: Can I finish reading the case just

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 for a second?

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Smiley reviews documents]

4 MR. SMILEY: A couple of things, Your Honor,
5 that distinguishes this case from the case before
6 the --

7 First of all, I didn't hear -- and maybe I'm
8 wrong, because I wasn't listening for it, is -- at
9 least I hope I'm wrong, is that Officer Hinton hasn't
10 testified, first of all, that he is the successor to
11 Sargent LaLema. And in this case I think it's very
12 important to establish -- Sargent LaLema was the head
13 of their evidence. He's the one that did that job. I
14 don't believe it was established that Hinton took over
15 the same role and was in charge of those procedures. I
16 think that's important.

17 But here, I think, the more important point: in
18 the case State v. Taylor, and something that the
19 Supreme Court hinged their ruling upon, is that
20 evidence was placed in a Best evidence kit and sealed
21 at the scene by the second trooper, Trooper Long. It
22 was handed by Trooper Webber to Trooper Long, who put
23 it in a Best evidence kit, sealed it. And it says by
24 the Supreme Court: [reading] the evidence shows that
25 the arresting officer placed the crack cocaine in a

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 special bag providing to preserve the integrity of the
2 evidence against tampering. It contained a glue-like
3 seal that once applied was stronger than the bag;
4 hence, the bag could not have been opened without
5 tearing.

6 We've got no testimony here. As a matter of
7 fact, Your Honor -- and I don't know if you've been
8 able to look at the bag -- the original bag that I've
9 tried my best to question, to discover, that was turned
10 in is nothing more than a simple Ziploc bag.

11 Now, it also in that case, the State Law
12 Enforcement Division or public safety, they follow
13 protocol by the forms that are printed out that were
14 approved by the Court, the Rule 6(a)(b)(c)(d), where
15 you fill it out and you have it notarized and sworn
16 that you have custody and you turn it in to the next
17 person. That wasn't used here.

18 So we have two problems going on here. Problem
19 number one is we've got an officer who didn't follow
20 any of the procedure, who I was not -- until he
21 testified that he was in the chain and took custody of
22 the evidence, he didn't place it in any bag that
23 couldn't be tampered with. He dropped it off, as we
24 have heard, that it must have been LaLema that took the
25 evidence.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 We haven't had any testimony of the condition of
2 the evidence, what he found it in. There's no marks by
3 Detective Seabrook on that evidence to show it's, in
4 fact, the same evidence that he took into his custody.
5 He even testified to that, that he doesn't know, he
6 just put it in a bag. It wasn't sealed, it wasn't
7 marked that, I took this evidence.

8 And so the proper -- they want to argue it's
9 a weakness in the chain, Your Honor. It's not a
10 weakness. They don't have a complete chain here.
11 They don't have going from Springmeyer to analysis and
12 back.

13 I think it's very important in State v. Taylor
14 that once that evidence was put in the -- they aren't
15 relying upon what the officer said. What they are
16 relying upon is that the evidence at that time was
17 placed in a tamper-proof bag. It's like glued shut.
18 If you tear on it, stretch it, it destroys the bag.
19 You can see if someone tries to get into it. We don't
20 have that here.

21 I don't even -- I haven't been able to establish
22 that because I haven't asked the questions of this
23 witness that that outside bag wasn't added until after
24 the analysis. Because that's simply -- I don't even --
25 that's what I haven't asked, was it -- did it come in

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 that bag? Where did that bag come from? Is that a
2 standard bag you use? I mean, Best kit bags are
3 standardized bags that you put the evidence in, you
4 pull the strip off, and they're sealed. We do not have
5 that in this case, Your Honor.

6 Therefore, I would distinguish that in State v.
7 Taylor, is I also demanded the appearances of the
8 witnesses. We do not have the appearances of the
9 witnesses. We don't even have Sargent LaLema's
10 successor, is we have an officer that comes in and
11 says, yeah, I work in there; yeah, that's what I did.
12 But we don't know if there was -- if they still would
13 accept it and that's how it was found. Was that how it
14 was marked in? He says he bar code -- that they get
15 bar coded, but we don't have anything to show up with a
16 bar code.

17 And lastly, Your Honor, is the person that
18 injected themselves into the chain today says, I filled
19 this out, this card out, but I didn't sign it; however,
20 I filled out a property sheet when I took it to put it
21 into evidence. They don't have that, either.

22 So we don't know what happened to that evidence
23 from the time that it was taken until the time that
24 actually Ms. Moody got -- there's no evidence, no
25 testimony, about what happened with that evidence. We

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 don't know if it's been tampered with in any shape or
2 form, because it's not in a tamper-resistant bag. Is
3 we don't have LaLema, and we have the injection of an
4 officer who didn't sign. And the one thing he did do
5 is not here.

6 Therefore, I don't think they have established a
7 chain, much less -- well, they haven't established a
8 chain; therefore, I mean, it's not about a weak chain.
9 There is no chain.

10 THE COURT: The testimony before the Court was
11 that Investigator Springmeyer came into contact with a
12 hand-to-hand transfer, hand-to-hand buy, from the
13 person she identified to be the defendant.
14 Investigator Springmeyer then returned to the office
15 where she turned over the drugs to Officer Seabrook,
16 who she indicated was the case agent. Officer Seabrook
17 testified here today under oath that he then turned the
18 drugs over to -- placed the evidence in a plastic bag,
19 the sheet accompanies the property, it was in his
20 handwriting, and that he placed them in the secured
21 box. Officer Hinton testified that he was the evidence
22 technician. Then Susan Moody testified that she
23 removed the -- checked the property from the evidence
24 room. And Officer Mitchell -- excuse me -- Wiggins-
25 Mitchell, Ms. Wiggins-Mitchell, indicated that she then

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 tested the drugs.

2 Mr. Smiley, it appears that your main argument
3 is the fact that Officer Seabrook testified -- or was
4 unable to testify as to his role in this chain, that he
5 had not testified that he succeeded Officer LaLema, who
6 I'm assuming on this property tag, chain of possession
7 of evidence, is the J.L. Is that correct, Ms. Linder?

8 MS. LINDER: Yes, Your Honor. Sargent Jeff
9 LaLema.

10 THE COURT: And is that the crux of your
11 argument, Mr. Smiley?

12 MR. SMILEY: One part is he's not the successor.
13 But also I asked him if he had anything to do with this
14 case, and he said no. So he's not in the chain. So
15 there's nothing from the time --

16 THE COURT: So that I'm clear, Mr. Smiley. I
17 just want to make sure.

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: It appears that your argument would
20 be what happened after it was placed by Officer
21 Seabrook into the lockbox.

22 MR. SMILEY: I've got --

23 THE COURT: Is that your argument?

24 MR. SMILEY: That's part of it. I've got a
25 problem, also, with where -- how the evidence was

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 handled, since there was no documentation of it from
2 the time that he took it and the condition it was in
3 and how it was found. He said he put it in a lockbox
4 with a property sheet that no longer exists. How do I
5 know this is the same evidence? There were no marks on
6 it.

7 THE COURT: All right. Mr. Smiley, the purpose
8 of the chain of custody is to determine whether or not
9 there -- or it is not to negate the possibility of all
10 tampering. There has been absolutely no testimony or
11 no indication offered by either the State or the
12 defendant that the drugs, State's Exhibit Number 2,
13 have been tampered with.

14 Based upon the testimony as presented, the
15 handling of the evidence has reasonably been
16 demonstrated from that into the hands of Investigator
17 Springmeyer to Ms. Wiggins-Mitchell. I am admitting
18 the State's Exhibit Number 2 into evidence. The
19 weakness in the chain implicates credibility; it does
20 not render the evidence inadmissible.

21 Each person indicated to whom they gave the
22 evidence, from Springmeyer to Seabrook to the lockbox.
23 Hinton indicated that it was taken from -- checked
24 from -- actually, Moody indicated that she checked
25 it from evidence, and Mitchell then checked it from Ms.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Moody.

2 I overrule your objection. State's Exhibit
3 Number 2 will be admitted into evidence. I will note
4 your objection for the record.

5 MR. SMILEY: Please, Your Honor.

6 THE COURT: Thank you.

7 Please come get State's Exhibit Number 2.

8 [Whereupon, Mr. Byrd complies]

9 THE COURT: And this is your last witness, Mr.
10 Byrd?

11 MR. BYRD: That's correct, Your Honor.

12 THE COURT: All right.

13 MR. BYRD: Thank you, Your Honor. May I give it
14 back to the --

15 THE COURT: You may place it -- please bring in
16 the jury.

17 Ms. Linder, Mr. Smiley, I indicated to you that
18 we would stop at 6:30. We will finish with this
19 witness, and then we will adjourn for the evening.
20 Okay?

21 MS. LINDER: We would prefer to rest --

22 THE COURT: But please take your time. Both of
23 you. Mr. Smiley, take your time with this witness.

24 [Whereupon, the jury enters the courtroom at
25 6:28 p.m.]

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE BAILIFF: All present, Your Honor.

2 THE COURT: Thank you. Please be seated.

3 Ladies and gentlemen of the jury, just for
4 scheduling purposes: this is our last witness for the
5 evening, so do not think that I'm going to keep you
6 until the wee hours of the morning. This will be our
7 last witness for the evening.

8 Mr. Byrd.

9 MR. BYRD: Thank you, Your Honor.

10

- - - - -

11

CONTINUED DIRECT EXAMINATION

12

BY MR. BYRD:

13

Q. All right. Ms. Mitchell, did you have occasion

14

to perform a chemical analysis on this evidence?

15

A. I'm sorry. What was the last part of that?

16

Q. A chemical analysis. Did you do a chemical

17

analysis?

18

A. I did.

19

Q. Okay. And when did you make that analysis?

20

A. I did it on September 20th of 2007.

21

Q. What kind of test did you perform?

22

A. I performed a color test, initially, and then I

23

did two instrumental confirmations of that color test.

24

Q. Okay. And from those tests were you able to

25

form an expert opinion as to what the substance is or what

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 it contained?

2 A. I was.

3 Q. And what were your results?

4 A. The substance contains cocaine base.

5 Q. Okay. Now, what was the weight of that?

6 A. The weight of it was .31 grams.

7 [Whereupon, Mr. Byrd and Ms. Linder confer]

8 MR. BYRD: And, Your Honor, just for purposes of
9 clarifying the record, I would like to confirm that
10 this has been admitted as State's Exhibit 2.

11 THE COURT: State's Exhibit Number 2 admitted
12 into evidence.

13 Note your objection, Mr. Smiley.

14 [Whereupon, State's Exhibit Number 2, bag
15 containing drugs, is admitted into evidence by the
16 Court]

17 MR. BYRD: Thank you, Your Honor. No further
18 questions.

19 THE COURT: Mr. Smiley.

20 MR. SMILEY: Ms. Mitchell, I've got a bunch of
21 different questions.

22

23

24

25

- - -

- - -

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Are you familiar with a Best kit that's used by State law enforcement?

A. I've never worked with it. I've heard of it, I've seen it, but I can't really say I know how to use it.

Q. When you receive evidence --

A. Uh-huh.

Q. -- you want to make sure it's substantially in the same condition as when it was collected; correct?

A. Yes.

Q. Because if it's put in a tamper-resistant bag, then you can tell whether somebody manipulated it or changed it because the bag would be tampered with; correct?

A. Yes.

Q. So if this evidence was put in a bag that was sealed before you got it, you would be able to see if that was in the same condition as when it was collected?

A. Yes.

Q. Did you receive this evidence in any kind of tamper-resistant bag?

A. I received it -- you can kind of see through here -- in the Ziploc type bag that it's in. It was sealed across with a heat seat, initialed -- the seal is

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 initialed across with J.L. That's Sargent LaLema's
2 initials.

3 Q. Okay. So before it got to J.L. --

4 A. Uh-huh.

5 Q. -- you don't know what it was in?

6 A. That's correct. I don't.

7 Q. All right. Now, when you get evidence in your
8 lab, your job is to take what you're given, test it, come
9 to a conclusion, and then make a report to that?

10 A. Yes.

11 Q. All right. And when you do your report, you're
12 given certain information like allegedly where the
13 substance was located?

14 A. Sometimes. Not all the time.

15 Q. Well, I'm going to show you your report and
16 we'll just get right to the specifics. On your report
17 dated September 20th, 2007, it says that the substance
18 that you analyzed was allegedly located at Athens Court
19 and Romney?

20 A. Yes.

21 Q. Okay. Also, sometimes you receive who the
22 suspect or subject that the evidence was collected from;
23 correct?

24 A. We get a name --

25 Q. Right.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. -- sometimes.

2 Q. In this case who was -- now, this was September
3 the 20th; right?

4 A. Yes.

5 Q. Okay. On September the 20th when you conducted
6 that report, you were supplied with whom as the subject or
7 suspect?

8 A. I was not -- I was not given a name.

9 Q. Unknown. Okay.

10 Now, let me ask you some questions about chain
11 of custody. You're familiar with the chain of custody --

12 A. Yes, I am.

13 Q. -- and its importance?

14 All right. A chain of custody, is it fair to
15 say, is used to establish who would have handled an item
16 from the time it's collected until the time it gets to
17 court, actually; right?

18 A. Yes.

19 Q. And that each person that handled that item is
20 included in the chain?

21 A. That is the policy in the laboratory.

22 Q. All right. If somebody -- well, you're the
23 manager of your lab --

24 A. Uh-huh.

25 Q. -- right?

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 A. Uh-huh.

2 Q. If somebody in your lab took a piece of evidence
3 and handled it, they would mark that they were in the
4 chain; correct?

5 A. Yes. In the laboratory.

6 Q. And that's so that we know who handled it, to
7 remove the risk of tampering so we know which evidence is
8 which; correct?

9 A. Yes.

10 Q. And, in fact, in this it shows that Ms. Moody
11 brought it to you?

12 A. Yes.

13 Q. That you tested it? Well, it doesn't show that.
14 Then it shows that you took custody of it?

15 A. I took custody.

16 Q. And then you returned the custody to Ms. Moody?

17 A. Uh-huh. Yes, sir.

18 Q. All right. And then there are some other
19 initials that -- on there. But as far as your lab goes,
20 Moody to you, back to Ms. Moody; correct?

21 A. Yes.

22 Q. All right. Now, this big bag on the outside --

23 A. Uh-huh.

24 Q. -- did you put it in --

25 A. I added that. I added --

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

- 1 Q. You added that?
- 2 A. Uh-huh.
- 3 Q. And those are your initials?
- 4 A. It is.
- 5 Q. And you had actually initialed the bag that the
6 drugs came in?
- 7 A. I initialed the bag the drugs came in. The
8 little bag in here that's got the blue tint, I added that
9 bag --
- 10 Q. Okay. So you added that, also? And you put a
11 number on it and your initials; correct?
- 12 A. Yes.
- 13 Q. And that's so you can identify that evidence;
14 right?
- 15 A. Correct.
- 16 Q. So any bags that were given to you -- none of
17 those were thrown away, were they?
- 18 A. No.
- 19 Q. And so if somebody else like the officer that
20 collected it, if he had put his initials on something, it
21 would show up, correct --
- 22 A. Yes.
- 23 Q. -- because he wouldn't throw it away?
- 24 A. No.
- 25 Q. All right. Now, when -- from the time the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 evidence is collected until the time it gets to you, you
2 don't have a clue besides what you're told; correct?

3 A. Yes.

4 Q. And then you analyze whatever you're given;
5 right?

6 A. Yes.

7 Q. Do you know what a property sheet is?

8 A. I do.

9 Q. And does it come with the evidence?

10 A. We get a copy of it with the evidence which we
11 then return back to the evidence room.

12 Q. All right. But you don't -- you didn't -- you
13 don't have a property sheet --

14 A. I don't retain -- I don't retain a copy of it.

15 Q. Okay.

16 MR. SMILEY: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 [Whereupon, Mr. Smiley and Ms. Hensley confer]

19 MR. SMILEY: Could I get that copy back from
20 you?

21 THE WITNESS: Uh-huh.

22 [Whereupon, the witness proffers documents to
23 Mr. Smiley]

24 MR. SMILEY: Thank you. That's all I've got.
25 Thank you, ma'am.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 THE COURT: Mr. Byrd?

2 MR. BYRD: Nothing further from the State, Your
3 Honor.

4 THE COURT: Mr. Smiley, any objection to this
5 witness being excused?

6 MR. SMILEY: Certainly not.

7 THE COURT: Ms. Wiggins-Mitchell, you may step
8 down. You are free to remain in the courtroom if you
9 wish, but you may be excused. Thank you.

10 THE WITNESS: Thank you, Your Honor.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Call your next witness.

14 MS. LINDER: Your Honor, at this time the State
15 rests.

16 THE COURT: Ladies and gentlemen of the jury,
17 this indicates to the Court that not only is there a
18 matter of law that I must take up outside of your
19 presence, it's also a perfect time for our evening
20 recess.

21 Counsel, please approach.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: Ladies and gentlemen of the jury,
25 again, we are going to recess for the evening. You

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 need to be back in your jury room at 9:30.

2 Please do not discuss this case amongst
3 yourselves or -- you are going to get home and your
4 family members are going to want to know what you did
5 today. You can tell them that the judge ordered you
6 not to discuss this case. Once you have reached a
7 verdict at the close of this case, you may then discuss
8 this case freely. And I will give you further
9 instructions regarding that, as well.

10 Again, the testimony -- your verdict must be
11 based upon the facts as presented by the Court -- in
12 the court, not on any independent research. So please
13 do not do any independent research this evening.
14 Please do not begin your deliberations. Please do not
15 discuss this case amongst yourselves until you are
16 given -- you have not received the instructions on the
17 law, so please remember my admonishments doing that.

18 I will see you back -- please have a restful
19 evening. See you back in your jury room at 9:30.

20 Please rise for the jury.

21 [Whereupon, the jury exits the courtroom at
22 6:39 p.m.]

23 THE COURT: Please be seated.

24 - - -

25 - - -

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

MOTIONS

THE COURT: Mr. Smiley, any motions?

MR. SMILEY: You want to do the motions? All right.

Your Honor, I would make a motion first for directed verdict because the issue in this case, the main issue -- several -- but the main issue in this case is identification, is whether the individual who sold narcotics on September 19th of 2007 is, in fact, Lloyd Wright. There's been no identification other than Officer Springmeyer pointing and saying, that's the guy I sold to, in court and no identification outside or any methods used to identify Mr. Wright as the seller of the drugs.

And so first I would make a motion that they haven't established a crucial element of distribution that, in fact, it was Mr. Wright who distributed the drugs.

I would renew my motion as to the Brady violation for the failure of the State to find or determine that there, in fact, was a written operational plan created by the City of Charleston narcotics unit, possessed by them or possessed by the Federal Bureau of Investigation in this case, is both Corporal Hurteau and Investigator Springmeyer spoke

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 about the existence of such a plan. They don't know
2 if, in fact, there is -- or what happened to that.

3 I think it's clearly a Rule 5 Brady, violates
4 the United States Constitution and the constitution of
5 South Carolina, and would make a motion for a mistrial
6 on that bases or at least to strike the testimony of
7 Officer Hurteau.

8 My second motion would be a motion -- I guess it
9 would be for a mistrial at this point, for the
10 admission of the evidence when a chain has not been
11 established. The officer -- and I'm going to reiterate
12 it all, if you don't mind, is Sargent LaLema, who at
13 the time was the evidence tech for the City of
14 Charleston, did not testify. His successor, to the
15 best of my knowledge, did not testify, either, is that
16 the evidence was taken and how it was handled and what
17 condition it was taken from the lockbox.

18 I would also move for a mistrial for the lack of
19 chain on the fact that through testimony today it was
20 determined that Officer Damian Seabrook injected
21 himself into the chain. He took the evidence, did not
22 put it in a tamper-resistant bag of any sort, and
23 allegedly put it in the lockbox at the City, and that
24 he filled out a property sheet that hasn't been given
25 to myself or shown to the Court it exists; that he, in

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 fact, did that.

2 So I believe the chain fails on -- not just
3 weak, but fails on both of those bases; therefore the
4 violation of Rule 6, the United States Constitution
5 and the Constitution of South Carolina requires that
6 the evidence not be submitted into evidence; and,
7 therefore, without any evidence I believe --

8 It's not a mistrial. It would be a directed
9 verdict on behalf of my client. So I think a directed
10 verdict in that light.

11 And I believe even taking the evidence in the
12 light most favorable to the State, they still have a
13 hole in the chain. The chain is not complete.

14 And I understand Your Honor's reasoning, but we
15 can agree to disagree about whether the chain has been
16 established or not. And I would therefore respectfully
17 request directed verdicts.

18 Let me make sure I've covered all my points. If
19 you'll give me just a second.

20 THE COURT: Take all the time you need, Mr.
21 Smiley.

22 [Whereupon, Mr. Smiley reviews documents]

23 MR. SMILEY: The only other motion that I guess
24 I need to renew, Your Honor, was my motion to have the
25 phone -- the reference to the call made that was in the

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 video also redacted. And you allowed that part, of
2 course, in. I asked that my objection be noted, and I
3 just renew that again, Your Honor, again violating my
4 client's sixth amendment right to a fair and impartial
5 trial.

6 Thank you. That's all I have, Your Honor. I
7 think I've covered everything.

8 THE COURT: Are you sure, Mr. Smiley? Do you
9 want to take a moment?

10 [Whereupon, Mr. Smiley and Ms. Hensley confer]

11 MR. SMILEY: That will be all, Your Honor.

12 THE COURT: Ms. Linder.

13 MS. LINDER: Thank you, Your Honor. I'll make
14 this very brief.

15 Kind of in reverse order of Mr. Smiley: as far
16 as the reference to any calls in the video that was
17 played, Your Honor, I would just state that Your Honor
18 has heard extensively about this and heard that part of
19 the tape -- of the video, rather, already, and you have
20 previously ruled.

21 As far as Mr. Smiley asking for a mistrial due
22 to the chain: we would say that, in fact, Sargent
23 LaLema did testify with Mr. Hinton, and that, again,
24 that goes to -- any weakness goes to the credibility,
25 not the admissibility. Again, Your Honor, you have

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 already ruled.

2 Brady violation: we believe that it's supported
3 by testimony that both officers -- or Investigator
4 Springmeyer and Corporal Hurteau did not know if it was
5 reduced to paper. And Your Honor did rule on that.

6 As far as a directed verdict: as Your Honor is
7 well aware, that's merely the existence or nonexistence
8 of evidence. And in a light most favorable to the
9 State, I would submit that we have both circumstantial
10 and direct evidence in this case and the directed
11 verdict, along with the others, should be denied.
12 Thank you.

13 THE COURT: Mr. Smiley?

14 MR. SMILEY: I don't believe I need to respond,
15 except I didn't hear that Officer Hinton was the new
16 successor to Sargent LaLema. And I could be wrong. I
17 apologize if I am. If he's in charge of our evidence,
18 then I'll --

19 THE COURT: With reference to in you renewing
20 your motion to have the reference to the phone call
21 stricken from the video, I articulated the reasons why
22 and --

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: -- I overrule your motion; note it
25 for the record.

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 With the renewal of the Brady violation motion
2 regarding the written operational plan, the request for
3 either a mistrial or to have Corporal Hurteau's
4 testimony stricken, I again deny that motion. There
5 was testimony that Corporal Hurteau typically does
6 reduce it to writing; however, he could not recall
7 whether or not that was done in this case. He
8 testified to the operational plan here today in court
9 and indicated in response to questioning that he did
10 not know where the written operational plan was.

11 I deny your request for a mistrial, to strike
12 Officer -- excuse me -- Corporal Hurteau's testimony,
13 or any other sanction with regards to that written
14 operational plan. I do not feel that it rises to the
15 level of a Brady violation.

16 With respect to the motion for the directed
17 verdict, under Rule 19 the Court is, again, concerned
18 with the existence or non existence of the evidence
19 in the light most favorable to the nonmoving party,
20 which would be the State. Officer -- excuse me --
21 Investigator Springmeyer indicated that on -- in her
22 testimony that this happened in Charleston County; that
23 the person that she identified to be the defendant was
24 the person from whom she purchased the drugs. I will
25 address the issue of the admissibility of the drugs

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 with respect to the chain in a moment -- testified that
2 New Israel School is within 400 yards, which according
3 to calculations is well within the half-mile school --
4 half mile of the location where the cocaine was
5 distributed, thus within the half-mile proximity
6 required by the charge. Based upon all of those, I
7 deny your motion for a directed verdict.

8 With respect, again, to your request for a
9 mistrial as to the admission of the drugs or the
10 failure of the State to produce sufficient evidence as
11 to the chain of custody: there was sufficient evidence
12 and testimony presented as to the chain which was,
13 again, from the defendant, to Springmeyer, to Seabrook,
14 to the lockbox, to Moody, to Mitchell, back to Moody,
15 and back to evidence.

16 The Court's interpretation of State v. Taylor,
17 as well as the cases following, the chain does not have
18 to be complete. What we are -- must not leave to
19 conjecture who was in possession of the drugs. What we
20 must be concerned with was what was done with the
21 evidence and between the taking and the analysis. The
22 testimony was complete, and based upon the Court's
23 review of the evidence and the testimony with respect
24 to the chain, went from the defendant, to Springmeyer,
25 to Seabrook, who was the case agent, to the lockbox, to

State v. Lloyd Wright
Jury Trial - Volume 2 of 3
May 19, 2009

1 Moody, who then gave it to Mitchell to be tested.

2 All of the individuals are known. There is no
3 missing evidence custodian. I note your objection for
4 the record, Mr. Smiley, that Officer LaLema was not
5 here to testify. But there is no -- in the Court's
6 opinion, there is no missing link that would render the
7 evidence inadmissible. Based upon that, again, the
8 State's Exhibit Number 2, which is the .31 grams of
9 cocaine base, is admissible.

10 Note your objection to all of my rulings, again,
11 for the record, Mr. Smiley.

12 Anything further?

13 MR. SMILEY: No, Your Honor.

14 THE COURT: All right. Mr. Wright, I am going
15 to advise you of your rights at this time so that you
16 can have the evening hour to discuss these rights with
17 your attorney. Please rise.

18 [Whereupon, Mr. Wright complies]

19 THE COURT: Please swear the defendant.

20 THE CLERK OF COURT: Mr. Wright, please raise
21 your right hand.

22 [Whereupon, Mr. Wright is duly sworn by the
23 clerk of court as follows: do you swear or affirm to
24 tell the truth, the whole truth, and nothing but the
25 truth so help you God]

STATE OF SOUTH CAROLINA
VS.
LLOYD WRIGHT,
DEFENDANT.

VOLUME 3 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Wednesday, May 20, 2009, Commencing at 9:33 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 THE COURT: I do not.

2 MR. SMILEY: Okay. I just was asking because if
3 you did, I wanted the defendant's request taken off --

4 THE COURT: If they should ask for a written
5 copy, Mr. Smiley, I will just print that off and put it
6 in a separate page for you.

7 MR. SMILEY: Thank you.

8 THE COURT: That's one of the reasons why I'm
9 not sending --

10 MR. SMILEY: Yes, ma'am.

11 THE COURT: -- this particular charge back at
12 this time.

13 Here's the verdict form and the indictment.

14 And we will be at ease until we get a verdict.
15 Thank you.

16 [Whereupon, evidence is sent to the jury at
17 10:42 a.m.]

18 [Whereupon, a recess is taken from 10:42 a.m. to
19 1:05 p.m.]

20 [Whereupon, Court's Exhibit Number 3, note from
21 the jury, is marked by the court reporter]

22 THE COURT: We have a note, marked Court's
23 Exhibit 3. The jury would like to view the audio-video
24 CD, State's Exhibit Number 3; signed, Hope Florence.

25 Anything before we bring in the jury?

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 MS. LINDER: Your Honor, we were -- unless they
2 make a specific request, we were hoping to -- we have
3 it set up and cued up. We were hoping to just play it
4 in mute --

5 MR. SMILEY: Unless they ask for it.

6 MS. LINDER: -- unless they ask us, just to have
7 less potential for error.

8 THE COURT: Okay.

9 MR. SMILEY: And that would be by my agreement,
10 too, because one slip and stuff comes out that
11 shouldn't come out.

12 THE COURT: All right. I will advise the jury
13 that due to technical difficulties we have the video
14 set up, and not the audio, and if they need the audio
15 then it will take additional time.

16 MS. LINDER: Thank you, Your Honor.

17 THE COURT: Please bring in the jury. And you
18 have State's 3 now?

19 MS. LINDER: Yes, Your Honor.

20 THE COURT: Thank you.

21 [Whereupon, the jury enters the courtroom at
22 11:07 a.m.]

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. Thank you. Please be
25 seated.

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 Madam Foreperson, we have received a note that
2 you wish to view State's Number 3. Again, we are
3 having some technical difficulties. It will only be
4 the video, not the audio.

5 [Whereupon, State's Exhibit Number 3, CD, is
6 played for the jury from 11:09 a.m. to 11:20 a.m.]

7 THE COURT: Ladies and gentlemen of the jury,
8 that concludes the video, State's Exhibit Number 3.

9 Ms. Florence, is there anything additional that
10 the jury is requesting before you go back to continue
11 your deliberations?

12 THE FOREPERSON: No, ma'am. But it's still not
13 possible to hear the audio portion?

14 THE COURT: Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Ladies and gentlemen of the jury, we
18 are attempting to remedy the technical problem, so if
19 you will give -- counsel has indicated it will be about
20 five more minutes so I'm going to allow you to retire
21 to your jury room, to give the time to correct the
22 problem, and we will receive you back in at that time.

23 Is there anything additional, Ms. Florence,
24 before I release you?

25 THE FOREPERSON: I don't think so.

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 THE COURT: All right. Please rise for the
2 jury.

3 [Whereupon, the jury exits the courtroom at
4 11:22 a.m.]

5 THE COURT: Thank you. Be seated.

6 MR. SMILEY: Your Honor, there's one other way
7 to listen to the audio without the threat, is the court
8 reporter has it recorded from when it was testified. I
9 was just thinking of a better alternative that didn't
10 put at risk the different evidence --

11 THE COURT: Let me check with my court reporter
12 to verify.

13 [Whereupon, the Court and the court reporter
14 confer]

15 [Off the record momentarily]

16 THE COURT: Counsel, my court reporter is
17 attempting to go through the testimony to --

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: Thank you.

20 MR. SMILEY: Yes, ma'am. I'm sorry.

21 [Off the record momentarily]

22 THE COURT: All right. We are going to listen
23 to -- the court reporter has found the audio of the
24 audio, and we're going to attempt to see if it's picked
25 it up.

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 [Off the record momentarily]

2 THE COURT: Any objection to us just playing
3 that? From the State?

4 MS. LINDER: There is no objection from the
5 State. Obviously, if the jury says again it is not --
6 they can't understand it as much, then I guess we can
7 revisit it. But the State has no objection to that.

8 THE COURT: Mr. Smiley?

9 MR. SMILEY: Certainly not.

10 THE COURT: I think that this is what was
11 played. Well, I know this is what was played. I
12 think that this is the best solution to this immediate
13 problem. If it is inaudible or the jury requests
14 something else, we will address that at that time, but
15 this is what was played for the jury yesterday. I
16 believe this is what we should play today.

17 MR. SMILEY: The last words that they say on the
18 audio I think we agreed -- it wasn't played through to
19 where she says the deal is done --

20 THE COURT: Please bring in the jury. Please
21 rise for the jury.

22 [Whereupon, the jury enters the courtroom at
23 11:38 a.m.]

24 THE BAILIFF: All present, Your Honor.

25 THE COURT: Thank you. Thank you. Be seated.

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 2009

1 Ladies and gentlemen of the jury, you are now
2 going to hear the audio of State's Exhibit Number 3.

3 [Whereupon, State's Exhibit Number 3, audio
4 portion of CD, is played for the jury]

5 THE COURT: Ladies and gentlemen of the jury,
6 that concludes the audio portion of State's Exhibit
7 Number 3. I am going to send you back to your jury
8 room to continue your deliberations.

9 Please rise for the jury.

10 [Whereupon, the jury exits the courtroom at
11 11:49 a.m.]

12 THE COURT: Thank you. Be seated.

13 Anything further before we recess awaiting
14 either another note or a verdict?

15 MS. LINDER: Nothing further from the State,
16 Your Honor.

17 MR. SMILEY: Nothing from the defense.

18 THE COURT: I have made arrangements, since it
19 is now approximately noon, to order lunch for the jury.
20 All right. We'll be in recess.

21 [Whereupon, a recess is taken from 11:49 a.m to
22 12:39 a.m.]

23 THE COURT: Counsel, and it will be Court's
24 Exhibit Number 3, I believe. The jury would like to
25 see the judge's written instructions of her charge,

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 specifically concerning the role of the chain of
2 custody.

3 I have retyped your charge, taken off the
4 defendant's request to charge. I am going to give the
5 jury the entire charge, and that will be marked Court's
6 Exhibit Number 4.

7 [Whereupon, Court's Exhibit Number 4, Court's
8 charge on the law, is marked by the court reporter]

9 THE COURT: Anything further from the State?

10 MS. LINDER: Nothing from the State.

11 THE COURT: Anything further from the defense?

12 MR. SMILEY: No, Your Honor.

13 THE COURT: We'll be at ease in that particular
14 case. The pizza has arrived, and so the jury is
15 eating.

16 Mr. Smiley, we have your cell number. Ms.
17 Linder, and we have a way to contact you?

18 MS. LINDER: Yes, Your Honor.

19 THE COURT: Thank you.

20 [Whereupon, a recess is taken from 12:40 p.m. to
21 1:50 p.m.]

22 THE COURT: Be seated.

23 [Whereupon, Court's Exhibit Number 5, note from
24 the jury, is marked by the court reporter]

25 THE COURT: Court's Exhibit Number 5, the jury

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 would like to hear or see the written transcript of
2 Officer Seabrook's testimony.

3 Anything before we bring in the jury?

4 MS. LINDER: Nothing, Your Honor, from the
5 State.

6 MR. SMILEY: And only that direct and cross be
7 played, unless instructed from the jury otherwise,
8 would be my request. They hear the whole thing.

9 THE COURT: We are playing the --

10 MR. SMILEY: Entire testimony.

11 THE COURT: -- entire testimony, Mr. Smiley.
12 Thank you.

13 MR. SMILEY: Thank you.

14 THE COURT: Please bring in the jury.

15 [Whereupon, the jury enters the courtroom at
16 1:48 p.m.]

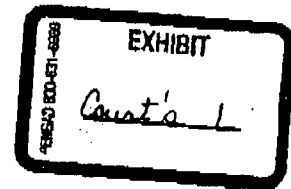
17 THE BAILIFF: All present, Your Honor.

18 THE COURT: Thank you. Please be seated.

19 Ladies and gentlemen of the jury, you will now
20 hear the testimony of Officer Seabrook.

21 [Whereupon, the testimony of Damian Seabrook is
22 played back to the jury]

23 THE COURT: Ladies and gentlemen, that concludes
24 the testimony of Officer Seabrook. Please return to
25 your jury room and continue your deliberations.



TODD HURTEAU

What is your occupation/profession? *Police officer*

Who is your employer? *CPD*

What are your duties with CPD? *Drug Investigations*

How long have you been employed by CPD? Special Training or skills?

Approx- 10 years 1 1/2 Spartanburg

Did you have the occasion to be working on September 19, 2007?

Did you have the occasion to become involved in the investigation of this case in any way on that date?

How were you brought into this case and what happened?
(Background - joint operatn, target loc & drug, UC buys)

What was the procedure that you followed for conducting these controlled purchases?

(In-depth - wire, \$\$\$, debrief, surveillance, monitor wire, etc)

Specifically, with the matter we are facing today, please tell us your involvement.

(ops plan, debrief/staging, in vehicle at set loc, monitor, post-brief)

- BA Public Justice, minor - Forensic Science MA - Education
- over 11 years law enforcement
- 8 years Narcotics, 4 years - Investigator, 4 years - supervisor
- Drug Enforcement Administration TFD
- Joint Investigations DEA, FBI, ATF, other local jurisdictions
- Over 1000 Drug Investigations
- Debriefed Informants, Interviewed suspects/witnesses, Executed search warrants, written reports / Arrest Affidavits testified in state and Federal court - expert witness
- Approx. 500 hours formal training in Undercover Drug operations Interview/Interrogations, report writing Affidavit writing, and leadership training, Meth Labs and Technical surveillance

AGENCY NO.
100100

INCIDENT REPORT
CHARLESTON POLICE DEPARTMENT 35A

OCA 21718161131
APR

NOV

INCIDENT TYPE		COMPLETE	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Narcotics Investigation		☒ YES ☐ NO	☐ YES ☒ NO	Street		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Public Corp. ☐ Other ☐ Unknown ☐ Police Off.
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (BLOCK, AVENUE, APARTMENT AND ALIAS, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE
Athens Court and Remedy St				29403		
INCIDENT DATE	DATE OF OFFENSE	TIME OF OFFENSE	REPORTING OFFICER	REPORTING AGENCY	REPORTING PHONE	REPORTING ADDRESS
9-19-07	9-19-07	1440	09-19-07	441	1441	11
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
Seabrook, Damien		None	☒ YES ☐ NO			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
170 Lockwood Blvd					123	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
City of Charleston		None	☒ YES ☐ NO			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
170 Lockwood Blvd		Charleston	SC	29403		

VICTIM NO. 1		VICTIM NO. 2		VICTIM NO. 3	
NAME (LAST, FIRST, MIDDLE)		NAME (LAST, FIRST, MIDDLE)		NAME (LAST, FIRST, MIDDLE)	
UNK					
RELATIONSHIP TO SUBJECT		RELATIONSHIP TO SUBJECT		RELATIONSHIP TO SUBJECT	
None					
ADDRESS		ADDRESS		ADDRESS	
CITY		CITY		CITY	
STATE		STATE		STATE	
SC					
ZIP CODE		ZIP CODE		ZIP CODE	
29403					
LOCATION NO.		LOCATION NO.		LOCATION NO.	

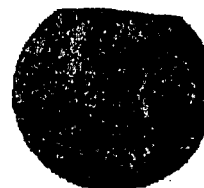
SUBJECT NO. 1		SUBJECT NO. 2		SUBJECT NO. 3	
NAME (LAST, FIRST, MIDDLE)		NAME (LAST, FIRST, MIDDLE)		NAME (LAST, FIRST, MIDDLE)	
UNK					
RELATIONSHIP TO SUBJECT		RELATIONSHIP TO SUBJECT		RELATIONSHIP TO SUBJECT	
None					
ADDRESS		ADDRESS		ADDRESS	
CITY		CITY		CITY	
STATE		STATE		STATE	
ZIP CODE		ZIP CODE		ZIP CODE	
LOCATION NO.		LOCATION NO.		LOCATION NO.	

NARRATIVE		PROPERTY EST.		SUBSTRUCTIVE	
On 9-19-07, at 1440hrs. The Charleston Narcotics Unit conducted an narcotics investigation in the area of Athens Court and Remedy St. A quantity of cocaine base was purchased from the area during a Central narcotics buy. The narcotics will be tagged and secured into CPD evidence. See Supplemental Report.		TYPE (GROUP)		TOTAL VALUE	
		Cocaine Base			
		STOLEN			
		DAMAGED			
		BLAMED			
		RECOVERED			
		SEIZED			
		SEARCHED			
		INDEXED			
		SERIALIZED			
		FILED			
		APPROVED			
		RECEIVED			
		DATE			
		TIME			
		OFFICER			
		FOLLOWUP			
		ALLOCATION			



FORENSIC SERVICES DIVISION

180 Lockwood Boulevard
Charleston, SC 29403
(843) 792-4588



CASE NUMBER: 0718810	LAB NUMBER: 263072076	DATE: 20 September 2007	Page: 1 of 1
TO: Officer Damien Seabrook Narcotics	LOCATION: Athens Court & Romney Street	SUBJECT(S): Unknown	
		VICTIM(S): N/A	

CONFIDENTIAL This is an official report of the Charleston Police Forensic Laboratory and is to be used in conjunction with an official criminal investigation. The items and the results of laboratory examinations are reported below:

ITEM(S) SUBMITTED	RESULTS OF EXAMINATION(S)	METHODS
Rock-like substance	Cocaine base 0.31 grams	3, 4, 5

On 20 September, 2007, Sergeant Joseph LaLima submitted the above item(s) to the laboratory for examination(s). This (these) item(s) was (were) tested using accepted reliable forensic procedures and the above results reflect conclusions based on the examination(s).

Methods:

- | | | |
|------------------------|--------------------------|-----------------------|
| 1 - Visual Examination | 2 - Published Literature | 3 - Color Test |
| 4 - FT-IR | 5 - GC/MS | 6 - TLC |
| 7 - Microscopy | 8 - EMIT | 9 - LabCorp |
| 10 - Catalytic Test | 11 - Crystal Test | 12 - ABACard HomeTrac |
| 13 - AP Spot Test | 14 - ABACard PSA Test | |

Elizabeth D. Higgins-Mitchell
Chemical Analyst

20 September 2007

Date

An ASCLD/LAB accredited laboratory since 1998

RULE 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one K. SPRINGMEYER

who first being duly sworn deposed and says that Lloyd Wright

Did with in this county and state on the 19 Sept 2007 violate the criminal laws of the State of South

Carolina in the following particular:

DESCRIPTION OF OFFENSE

DISTRIBUTION OF COCAINE BASE CLOSE PROX TO SCHOOL
44-53-445

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 9-19-07 at approximately 1440 hrs at Athens Court and Romey St. which is located in the City and County of Charleston, S.C. 29403 the above named defendant LLoyd Wright 3-21-79, did knowingly, wilfully, and unlawfully violate S.C. code 44-53-445 Distribution of Cocaine Base Close Prox To School .

That on the above mentioned date and time at the above mentioned location the defendant, Lloyd Wright, did distribute Three small off white rock like substance to a undercover police officer totally 0.31 grams. The defendant distributed the substance in exchange for (50) dollars in U.S. currency taken from the official FBI account funds. The substance tested positive for Cocaine Base (Crack) grams by the Charleston Police Department Forensic Laboratory. The above incident took place within 1/2 mile of W.D. SEARL School at 86 S. 1st St. Charleston, S.C. 29403

The above is true and believable based upon the investigation and observations of Inv. Seabrook, Springmeyer, Gilmore, Grill, Cpl Costanzo, Cpl. Hutreau, FBI Agents(Klimas, Griffin), of the Charleston Police Department, and the FBI

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9 DAY OF October, 2007

SIGNATURE OF JUDGE

(L.S.)

COMPLAINT #: 0718610
WARRANT

CPD Form OT3

AFFIANT

Charleston Police Department
180 Lockwood Blvd
Charleston, SC 29403
(843) 577-7434

RULE 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one K. SPRINGMEYER,who first being duly sworn deposed and says that Lloyd Wright

Did with in this county and state on the 19 Sept 2007 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

DISTRIBUTION OF COCAINE BASE

44-53-375

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 9-19-07 at approximately 1440 hrs at Athens Court and Romey St. which is located in the City and County of Charleston, S.C. 29403 the above named defendant LLOYD Wright 3-21-79, did knowingly, wilfully, and unlawfully violate S.C. code 44-53-375 Distribution of Cocaine Base .

That on the above mentioned date and time at the above mentioned location the defendant, Lloyd Wright, did distribute Three small off white rock like substance to a undercover police officer totally 0.31 grams. The defendant distributed the substance in exchange for (50) dollars in U.S. currency taken from the official FBI account funds. The substance tested positive for Cocaine Base (Crack) grams by the Charleston Police Department Forensic Laboratory. The above incident took place within 1/2 mile of New (SEAL SCHOOL) at 885 Morris St Charleston, S.C. 29403

The above is true and believable based upon the investigation and observations of Inv. Seabrook, Springmeyer, Gilmore, Grill, Cpl Costanzo, Cpl. Hutreau, FBI Agents(Klimas, Griffin), of the Charleston Police Department, and the FBI

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9 DAY OF October, 2007

SIGNATURE OF JUDGE

(L.S.)

COMPLAINT #: 0718610
WARRANT

CPD Form OT3

AFFIANT

Charleston Police Department
180 Lockwood Blvd
Charleston, SC 29403
(843) 577-7434

RULE 5

Agency I.D. Supplemental Incident Report
 SCO:100100 Charleston Police Department

OCA 0718610

ARR

NCIC
 INQ. ENTD.

215

- ☐ Original Report ☒ Supplemental Report ☐ Additional Victims ☐ Additional Stolen Property
☐ Modifies Original ☐ Case Status Change ☐ Additional Offenders ☐ Additional Stolen Property

Page 1 of 1 Pages

Incident: Undercover Buy/Walk
 Location: Athens Ct., Charleston, SC 29403
 Date/Time: 09/19/07 1440 hrs
 Subject: Lloyd Wright

On September 19, 2007, at approximately 1440 hrs, the CPD Narcotics Unit (Cpl. Costanzo, Cpl. Hurteau, R/O Inv. Springmeyer, Walker, Grill, Gilmore, & Seabrook) along with the FBI (SA Klimas & SA Griffin) initiated a narcotics investigation in the area of Athens Ct. and Romney St.

R/O Springmeyer, operating in an undercover capacity, was equipped with an audio/video-monitoring device and given \$50 in US Currency by FBI S/A Klimas at a predetermined location. Cpl. Costanzo, SA Klimas, and SA Griffin got into an FBI unmarked vehicle, Cpl. Hurteau, Grill, and Seabrook got into a CPD unmarked vehicle, and Walker & Gilmore also got into a CPD unmarked vehicle. The three vehicles then drove to predetermined locations to initiate surveillance and monitor the transaction over the wire using scanners.

R/O then got into a Blue Ford Escort Wagon, which had been rented by R/O (using money from the CPD Narcotics Fund) from "Rent-a-Wreck" of North Charleston, and drove to the area of Athens Ct. R/O made left turn onto Athens Ct. from Romney St. and immediately saw Lloyd Wright (wearing the same clothes as the day prior - tan shirt, tan pants) standing with approx. 5-6 other B/M on the left side of Athens Ct. R/O pulled up to Wright, and he motioned for R/O to pull further down the street. R/O pulled the vehicle approx. 40 ft. further down Athens Ct. and pulled over on the right side of the road. Wright approached the vehicle and said "Hey girl, why didn't you call? You gotta call me so I can meet you out there (pointing to Romney St.)" R/O responded "Sorry man! Hey man I'll call you Friday. I'm getting some money together. I need maybe 2 (meaning \$200 worth)". Wright stated "Yeah, I can get you anything. What you want now?" R/O then asked for "50 again", and Wright handed R/O 3 pieces of cocaine base. R/O then gave Wright \$50. Wright then said "Yeah girl, you see, the police are bad over here. They see a white girl and a black guy and they gonna fuck with us, you know?" R/O then said "Yeah, I gotcha man. I'll call you Friday", and then left the area. The cocaine base was turned over to Inv. Seabrook.

Narrative

Subject Identified ☒ Yes ☐ No		Subject Located ☒ Yes ☐ No		☐ Active ☐ Adm. Closed ☐ Unfounded		☐ Arrested Under 18 ☐ Arrested 18 and Over		☐ Ex-Clear Under 18 ☐ Ex-Clear 18 and Over	
Reason For Exceptional Clearance: 1. ☐ Offender Death 2. ☐ No Prosecution 3. ☐ Extradition Denied 4. ☐ Victim Declines Cooperation 5. ☐ Juvenile-No Custody									
Reporting Officer(s)		Date	Unit Number	Approving Officer		Date	Unit Number		
K. Springmeyer		09/19/07	1368	Cpl. Costanzo		09/18/07			
				Follow-up Investigation ☐ Yes ☐ No		Officer			

☐ ORIGINAL ☐ DETECTIVES ☐ SLED ☐ MISC.

RULE 5

SLB R5:00004

216

SIDB20071010972

WITNESSES

KAREN SPRINGMEYER
Charleston City Police Department

AGENCY CASE NUMBER

0718610

ARREST WARRANT NUMBER

F969614

DATE OF ARREST

2007-10-09

ACTION OF GRAND JURY

TRUE BILL
Filed 10-20-07

Foreperson of Grand Jury
Date: *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2007GS1013898

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2007

THE STATE

vs.

LLOYD WRIGHT

DOB: 1979-03-21

B/M

07-6454(OS)

Indictment for

Distribution of Cocaine Base

FILED
2007 DEC 12 PM 3:44
JULIE A. HARTS (RONG)
CLERK OF COURT
BY *[Signature]*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

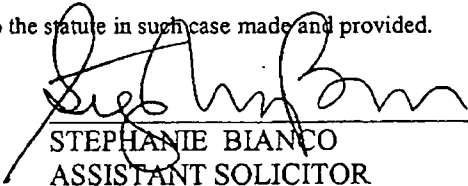
INDICTMENT

At a Court of General Sessions, convened on December 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine Base

That in Charleston County, South Carolina, on or about September 19, 2007, the Defendant, LLOYD WRIGHT, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


STEPHANIE BLANCO
ASSISTANT SOLICITOR

218 20071010972

WITNESSES

KAREN SPRINGMEYER
Charleston City Police Department

AGENCY CASE NUMBER

0718610

ARREST WARRANT NUMBER

F969615

DATE OF ARREST

2007-10-09

ACTION OF GRAND JURY

TRUE BILL
JUL 12 2007

Foreperson of Grand Jury
Date: *Karen Springmeyer*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2007GS1013899

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2007

THE STATE

vs.

LLOYD WRIGHT

DOB: 1979-03-21

B/M

07-6454106

Indictment for

Distribution of Cocaine Base within
Proximity of a School

2007 DEC 12 PM 3:44
JULIE A. AMSTRONG
CLERK OF COURT
BY *[Signature]*

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

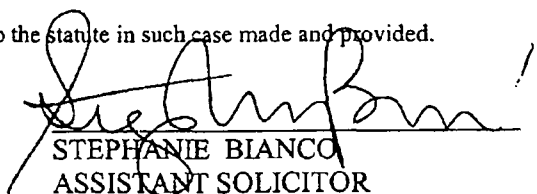
INDICTMENT

At a Court of General Sessions, convened on December 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine Base within Proximity of a School

That in Charleston County, South Carolina, on or about September 19, 2007, the Defendant, LLOYD WRIGHT, unlawfully did possess with intent to distribute, distribute, dispense, sell, purchase, or manufacture, a quantity of cocaine base within a one-half mile radius of the grounds of New Israel School, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended

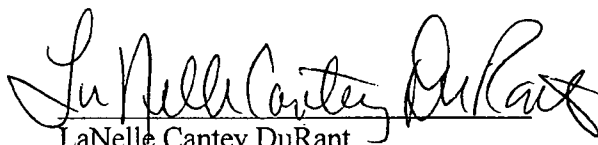
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE BIANCO
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

August 12, 2010.


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LLOYD WRIGHT,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	4
STATEMENT OF THE CASE	5
ARGUMENT I	6
ARGUMENT II	12
ARUMENT III.....	18
CONCLUSION.....	23
CERTIFICATE OF COUNSEL	24

TABLE OF AUTHORITIES

Cases

<u>Benton v. Pellum</u> , 232 S.C. 26, 100 S.E.2d 534 (1957).....	20
<u>Brady v. Maryland</u> , 373 U.S. 83 (1963)	passim
<u>Gibson v. State</u> , 334 S.C. 515, 514 S.E.2d 320 (1999).....	14
<u>Kyles v. Whitley</u> , 514 U.S. 419 (1995).....	14, 15
<u>Riddle v. Ozmint</u> , 369 S.C. 39, 631 S.E.2d 70 (2006).....	14, 15
<u>State v Harvey Jones and Melissa Jones</u> , 325 S.C. 310, 479 S.E.2d 517 (Ct. App.)	15
<u>State v. Douglas</u> , 380 S.C. 499, 671 S.E.2d 606 (2009)	9
<u>State v. Hatcher</u> , 384 S.C. 372, 681 S.E.2d 925 (Ct. App. 2009).....	20
<u>State v. Kennerly</u> , 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).....	13, 14
<u>State v. Landon</u> , 370 S.C. 103, 634 S.E.2d 660 (2006)	13
<u>State v. Osborne</u> , 291 S.C. 265, 353 S.E.2d 276 (1987)	14
<u>State v. Pagan</u> , 369 S.C. 201, 631 S.E.2d 262 (2006).....	14
<u>State v. Price</u> , 368 S.C. 494, 629 S.E.2d 363 (2006)	9
<u>State v. Sweet</u> , 374 S.C. 1, 647 S.E.2d 202 (2007).....	20
<u>State v. Taylor</u> , 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004).....	21
<u>United State v. Giglio</u> , 405 U.S. 150 (1972)	12, 15

Rules

Rule 5, SCRCrimP	3, 11, 13, 19
Rule 6, SCRCrimP	18, 20, 21
Rule 601, SCRE	9
Rule 602, SCRE	9

Rule 703, SCRE	9
----------------------	---

Constitutional Provisions

U. S. Const. Amend. V	14
-----------------------------	----

U.S. Const. Amend. XIV	14
------------------------------	----

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying appellant's motion to strike the testimony of Corporal Todd Hurteau when he relied on the reports and memory of two other police officers and had their reports with him when he testified on the witness stand to refresh his memory of the incident instead of testifying from his own knowledge?
2. Did the trial court err in not requiring the state to obtain from the FBI a copy of the operational plan the police developed with the FBI? The solicitor admitted she had not requested any discovery from the FBI and the police did not have a copy resulting in a Brady¹ violation and Rule 5, SCRCrimP, violation?
3. Did the trial court err in admitting the cocaine base crack into evidence when the chain of custody was not complete?

¹ Brady v. Maryland, 373 U.S. 83 (1963).

STATEMENT OF THE CASE

On December 10, 2007, the Charleston County Grand Jury indicted Lloyd Wright on the charges of distribution of cocaine base and distribution of cocaine base within the proximity of a school. On May 19 – 20, 2009, Wright proceeded to trial before the Honorable Kristi L. Harrington and a jury. The jury returned a verdict of guilty on both charges as indicted. Judge Harrington sentenced Wright to life without parole (LWOP) based on prior drug offenses. Wright's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

I

The trial court erred in denying appellant's motion to strike the testimony of Corporal Todd Hurteau when he relied on the reports and memory of two other police officers and had their reports with him when he testified on the witness stand to refresh his memory of the incident instead of testifying from his own knowledge.

Due to citizens' complaints, on September 19, 2007, the Charleston Police were conducting an investigation into street drug dealing and open-air drug markets in the area of Romney and Athens Court in Charleston at all hours of the day. This was a joint investigation with the FBI. R. 34, ll. 24 – 25; R. 35, ll. 1 – 5; R. 82, ll. 1 – 10. It was decided to use an undercover officer who would drive into the area and buy cocaine base or heroin. Investigator Karen Springmeyer was the undercover officer who went. R. 82, ll. 11 – 15.

Investigator Springmeyer testified that on this date, a meeting was held with members of the Charleston Police Department (CPD), several special agents with the FBI, and her to plan the operation for the safety of everyone involved. There would be surveillance units in surrounding areas for her safety. R. 82, ll. 16 – 25. The FBI provided the \$50 of marked money for her to use to buy the drugs. Since she would be driving a car, she set up an audio-video recorder inside the car, and she wore an audio wire on her person which transmitted to the surveillance officers for them to hear all that was happening. R. 92, ll. 1 – 25.

The audio-video CD of the drug buy was published to the jury. R. 90, ll. 1 – 25; R. 91, ll. 1 – 6. Investigator Springmeyer then described the incident. She drove underneath the I-26 overpass that went downtown, and made a left turn down Athens Court from Romney

Street. R. 91, ll. 1 – 25; R. 92, ll. 1 – 25. She saw several “subjects” on the street corner and slowed down. One of them told her to pull down the street so she went farther down Athens and pulled to the right side of the road. Then a man who was allegedly Lloyd Wright walked up, and she told him how much cocaine she wanted. The man put his hand inside the car and the cocaine base was inside his hand. She handed him the \$50. He then walked away and she left. She returned to the location and met with the unit. She gave the drugs to Investigator Seabrook who was the case agent. R. 93, ll. 1 – 25. She testified that Corporal Constanza was the superior officer who signed off on her report. R. 117, ll. 25; R. 118, ll. 1-14.

Lloyd Wright was arrested three weeks later on October 9, 2007; the drug transaction occurred on September 19, 2007. The marked money was not recovered. R. 119, ll. 14 – 25.

Corporal Todd Hurteau testified that he had been in narcotics investigations for eleven years and was currently the supervisor of the unit which he had been for four and a half years. R. 33, ll. 1 – 25; R. 34, ll. 1 – 13. He was the supervisor of the operation where Lloyd Wright was allegedly involved. R. 34, ll. 14 – 25; R. 35, ll. 1 – 25; R. 36, ll. 1 – 16.

He said that the investigation was started by coming up with an operational plan where they put everything on paper to provide for the safety of the officers involved. R. 35, ll. 16 – 20. On cross examination, Corporal Hurteau admitted that he did not write any reports for this case. Defense counsel said he noticed that Corporal Hurteau was looking at notes during his testimony, and asked what they were. Corporal Hurteau replied that he had a copy of the incident report that Officer Seabrook wrote and the incident report that

Investigator Springmeyer wrote. He brought them to the witness stand with him. R. 40, ll. 1 – 16; R. 41, ll. 1 – 25.

When defense counsel said that Corporal Hurteau was not relying on his own memory when he testified but was relying on the memory of other people, Corporal Hurteau replied that he was there when the incident occurred and listened to the audio when the transaction occurred. R. 40, ll. 17 – 25.

Defense counsel then told the court he had a motion. The judge excused the jury. R. 41, ll. 22; R. 42, ll. 1 – 8. Counsel argued that testimony from a witness on the witness stand was to come from the person's personal observations and memories and knowledge and not from someone else's. Corporal Hurteau's memory was influenced by the reports of the two other officers so his testimony was not reliable because it was not based on his independent recollection. Counsel made a motion to strike Corporal Hurteau's testimony. R. 42, ll. 18 – 25; R. 43, ll. 1 – 22; R. 46, ll. 10 – 23.

The state responded that Corporal Hurteau testified that he remembered the transaction as he was supervising the other officers. R. 44, ll. 10 – 25; R. 45, ll. 1 – 12. The judge allowed defense counsel to question Corporal Hurteau in a proffer. Corporal Hurteau admitted that he had investigated thousands of drug buys, and he did not create a report in this drug buy. R. 34, ll. 1 – 6. R. 47, ll. 1 – 25; R. 48, ll. 1 – 25; R. 49, ll. 1 – 25; R. 50, ll. 1 – 4.

After the proffer, defense counsel renewed his motion to strike Corporal Hurteau's testimony. The judge asked counsel if his motion was to strike the officer's testimony under Rule 612. Counsel said yes. R. 50, ll. 5 – 10.

The judge denied counsel's motion to strike Corporal Hurteau's testimony. She ruled that he referred to the other reports as background and did not testify from them. The judge ruled that she would allow defense counsel to review the reports Corporal Hurteau used and that counsel could cross-examine Corporal Hurteau on the documents. The judge had the two documents marked as court exhibits. R. 50, ll. 21 – 25; R. 51, ll. 1 – 12.

When the jury returned, cross-examination of Corporal Hurteau continued. Corporal Hurteau admitted that he had done as many as fourteen drug buys in one day and over a hundred cases a year during the eight years he had been in narcotics. R. 55, ll. 1 – 25; R. 56, ll. 1 – 25. He said he remembered most of them. R. 57, ll. 1 – 25; R. 58, ll. 1 – 25; R. 59, ll. 1 – 25. He said that his job as a supervisor was to review the reports the other officers wrote. R. 58, ll. 1 – 25.

When he was asked to see the supervisor who signed off on the two reports he used during his testimony, he replied that he did not sign either of the two reports. Corporal Kenard signed Officer Seabrook's report and Corporal Constanza signed Investigator Springmeyer's report. R. 59, ll. 1 – 25; R. 60, ll. 1 – 25; R. 61, ll. 1 – 25; R. 62, ll. 1 – 25.

When asked if he were the arresting officer for Wright, there was no response from Corporal Hurteau. Counsel asked if it would help if he showed him a document to refresh his memory, and Corporal Hurteau said yes. When counsel showed him the booking report dated October 9, 2007, he admitted that his name was listed as the arresting officer. Corporal Hurteau admitted that he did not review the arrest warrants before coming to court. R. 63, ll. 1 – 25; R. 64, ll. 1 – 25.

Corporal Hurteau did not remember the time of day this incident occurred, and said he had to reference the incident report. R. 66, ll. 1 – 20.

Rule 601, SCRE, provides that every person is competent to be a witness except as otherwise provided by statute or these rules. Rule 602, SCRE, provides that:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 602, SCRE.

Rule 602, SCRE, prohibits a witness from testifying to matters unless evidence is introduced sufficient to demonstrate the witness has personal knowledge. State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009).

In State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006), the Supreme Court held that the investigator's testimony that defendant was supreme or officer within a criminal street gang was inadmissible hearsay, in trial for murder of rival gang member, insofar as his **testimony was not based on his personal knowledge**, but on information relayed to him by informant. [Emphasis added]. Likewise, here it was based on the fact that Corporal Hurteau did not testify from his own personal knowledge.

Corporal Hurteau said he was testifying from his own knowledge, yet he did not remember that he was the arresting officer. He did not remember the time, and admitted that he had to review the reports of the other officers. He also was not the supervisor who signed off on the two police reports he used during his testimony. He said he had done as many as fourteen drug buys in one day. This incident occurred almost two year before the trial when Corporal Hurteau testified.

The judge should have granted the motion to strike Corporal Hurteau's testimony.
These deficits go far beyond the "weight" of the testimony.

ARGUMENT

II.

The trial court erred in not requiring the state to obtain from the FBI a copy of the operational plan the police developed with the FBI? The solicitor admitted she had not requested any discovery from the FBI and the police did not have a copy resulting in a Brady² violation and Rule 5, SCRCrimP, violation.

During his direct testimony, Corporal Hurteau testified that the investigation started with an operational plan where the people involved put everything on paper to provide for the safety of the officers involved. R. 35, ll. 16 – 20.

On cross-examination, Corporal Hurteau said that operational plans are typically put on paper but he did not have a copy of the operational plan for this transaction. When asked if the plan for this incident was put to paper, he responded: “I believe it was. I just don’t have a copy.” R. 39, ll. 1 – 25. Corporal Hurteau said that the plan would not be destroyed. R. 39, ll. 24 – 25; R. 40, ll. 1 – 4.

Defense counsel told the court he had a motion, and the judge held an in camera hearing. Counsel argued that Corporal Hurteau’s testimony disclosed an operational plan which was not provided in discovery. Counsel argued that it was discoverable and he had a Brady motion regarding it. R. 41, ll. 22 – 25; R. 42, ll. 1 – 25; R. 44, ll. 1 – 9.

The state replied that she had turned over to defense all paperwork that she had. She argued that an operational plan developed by the police was an internal document that had confidential and sensitive information, and she had never received one. R. 44, ll. 9 – 21.

² Brady v. Maryland, 373 U.S. 83 (1963).

Defense counsel argued that based on the case of United State v. Giglio, 405 U.S. 150 (1972), the prosecutor had an affirmative duty to check to see if there were any other discoverable documents. Just because the solicitor had never received a copy did not mean it was not discoverable. Counsel asked to court to require that the operational plan be presented to the judge for the judge, as a neutral party, to determine if it was discoverable. R. 45, ll. 1 – 25; R. 46, ll. 1 – 23.

The judge allowed counsel to proffer continued questioning of Corporal Hurteau. At the end of the proffer, defense counsel renewed his Brady motion. He argued that he did not know if the plan was exculpatory or not but the defense was entitled to it. R. 50, ll. 1 – 25. The judge ruled that Corporal Hurteau testified that the plan was typically written down but he could not locate a written plan. She ruled that there was no showing that the state had it or that the state had suppressed it. She denied counsel's motion to strike Corporal Hurteau's testimony related to the Brady issue. R. 51, ll. 13 – 23.

During the continued cross-examination of Corporal Hurteau, he testified that there was a possibility that the FBI had a copy of the operational plan since this was a joint investigation with them. He also testified that the investigation was for an "open-air market" where there were multiple people selling drugs. R. 55, ll. 1 – 25; R. 56, ll. 1 – 8.

At the close of cross-examination, counsel again renewed his motion for the excluded Brady material because he argued that Corporal Hurteau , on further examination, believed that the FBI had a copy of the operational plan. He argued that the state had an obligation to inquire from each of the police bodies involved for the existence of any evidence. He argued that this plan was probably exculpatory because it was not focused on

Wright but on the open-air market where multiple drug buys were occurring. R. 68, ll. 16 – 25; R. 69, ll. 1 – 25; R. 70, ll. 1 – 25.

The judge asked the state if Special Agent Klimas (FBI agent) was going to testify. The assistant solicitor responded that she was not going to call him. She did not review his file as the FBI only provided the money for the drug buy. R. 71, ll. 1 – 25.; R. 72, ll. 1 – 25; Court Exhibit 1.

The judge ruled that there was no showing that there was a written plan, and that it was not shown that it had ever been in the possession of the state. She denied counsel's motion. R. 73, ll. 1 – 25.

Defense counsel then asked the court to strike all of Corporal Hurteau's testimony related to the operational plan, or in the alternative, to declare a mistrial if the plan was exculpatory. The judge denied this motion. R. 74, ll. 1 – 20.

When Investigator Springmeyer testified on cross-examination, she stated that she was present when the operational plan was presented. She said that operational plans in narcotics are in writing. R. 101, ll. 1 – 25; R. 102, ll. 1 – 15.

Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations, tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

In State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998), the Court of Appeals held that Brady disclosure rule extends to evidence that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police. The Court also ruled that under Brady disclosure rule,

“favorable evidence” includes both exculpatory and impeachment evidence. Id. Under the Brady disclosure, evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a “reasonable probability” is a probability sufficient to undermine confidence in the outcome. State v. Kennerly, *supra*.

An individual asserting a Brady violation must demonstrate that evidence: (1) is favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the state; (4) and was material to the accused’s guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419 (1995); Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999). The South Carolina Supreme Court applied this standard in the case of Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006), where the Court ruled that if a Brady violation occurred, post-conviction relief should be granted.

An error is harmless beyond a reasonable doubt when it did not contribute to the verdict obtained. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006).

The Brady disclosure rule is grounded in the defendant’s fundamental right to a fair trial mandated by the Due Process clause of the Fifth and Fourteenth Amendments. State v. Kennerly, *supra*.

The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching. Riddle v. Ozmint, *supra*. In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution’s nondisclosure of tape recordings of statements made by key state’s witness, which contradicted trial testimony, in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, *supra*, the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App.)

The overriding theme of the Brady cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. Riddle v. Ozmint, *supra*, citing Kyles v. Whitley, *supra*.

In U.S. v. Giglio, *supra*, the United States Supreme Court reversed the conviction and ordered a new trial for the defendant because a violation of due process occurred when the prosecutor did not fulfill his duty to present all material evidence to the jury. That case involved an alleged promise of leniency made by the government to its key witness in return for his testimony which was not disclosed to the jury.

Although defense counsel stated he did not know for sure that the operational plan was exculpatory, since he had not seen it and the judge did not require the solicitor to produce it, he believed there was a "reasonable probability" that the plan was exculpatory because the investigation was bout multiple drug buys at the open-air market and was not focused on Wright. Wright was denied a fair trial because he did not have all of the evidence. The state had not sought any evidence from the FBI who were involved in the planning and provided the money. The FBI special agents also were present with the police surveillance unit during the incident. Court Exhibit 1. If the FBI provided money, there was a reasonable probability that they had a paper trail to include the written operational plan.

The judge should have required the state to check with the FBI for any other evidence. Lloyd Wright was facing life in prison and was entitled to all of the evidence.

ARGUMENT

III.

The trial court erred in admitting the cocaine base crack into evidence when the chain of custody was not complete.

During his testimony, Investigator Damien Seabrook of the Charleston Police, testified that he was the case agent in Wright's case. He received the drugs from Investigator Springmeyer and placed them in a plastic bag. R. 122, ll. 1 – 25; R. 123, ll. 1 – 25; R. 124, ll. 1 – 25. He filled out the evidence sheet, and secured the drugs inside the secure lockbox in the Charleston Police Department. R. 124, ll. 22 – 25; R. 125, ll. 1 – 8.

Investigator Seabrook testified that he filled out the evidence sheet but did not sign it which he said was just an oversight. He prepared several documents during that time and just overlooked signing this one. R. 123, ll. 15 – 25; R. 124, ll. 1 – 25; R. 125, ll. 1 – 19.

On cross-examination, Investigator Seabrook again admitted that he forgot to sign the Form 48 which described the drugs and how they were obtained. The suspect was listed as unknown. R. 126, ll. 1 – 25; R. 127, ll. 1 – 25. He also admitted that he filled out the property sheet or evidence sheet when he took the drugs to the evidence room, but defense counsel said he did not have that document in the discovery. Counsel said he did not know that Investigator Seabrook was involved in the custody of the drugs until the trial because he had not signed the form. R. 130, ll. 1 – 25; R. 131, ll. 1 – 25; R. 132, ll. 1 – 25; R. 133, ll. 1 – 25.

During testimony concerning the chain of custody, Brian Hinton of the Charleston Police, testified that he was an evidence technician and had been trained by his superior, Sargent LaLema. He said that when evidence was turned in, they collect it from a temporary

holding facility, fill out submittal forms if the evidence needed to go somewhere for testing. If not, then he signed the chain of custody form, secured the drugs and put them on the shelf until they were needed. R. 139, ll. 1 – 25; R. 140, ll. 1 – 25.

When he was shown the evidence tag, he said that Sargent LaLema's initials were on it which indicated that LaLema was the person who received this evidence. He recognized his initials. Defense counsel objected. The judge held an in camera hearing. R. 141, ll. 1 – 25; R. 142, ll. 1 – 25.

Counsel argued that it was speculation for Officer Hinton to talk about another person dealing with the evidence. The judge sustained the objection. R. 143, ll. 1 – 25. The testimony continued, and Officer Hinton stated again that based on the evidence tag, Joe LaLema received the evidence into the evidence room. Officer Hinton admitted that he did not touch these drugs and really had nothing to do with this case. R. 149, ll. 1 – 25; R. 150, ll. 1 – 25.

Elizabeth Wiggins testified that she was the laboratory manager for the Charleston Police Department. R. 158, ll. 17 – 25. She received the drugs in Wright's case, analyzed them to be cocaine base that weighed .31 grams. When the state asked to have the drugs moved into evidence, defense counsel objected based on the chain of custody. The judge held an in camera hearing. R. 163, ll. 1 – 25; R. 164, ll. 1 – 25.

Counsel argued that Rule 6, SCRCrimP, provided the rule for the chain of custody. He argued that Rule 6 provided that he could demand the appearance of each person in the chain, and he did request that in his Brady motion and Rule 5 motion dated January 15, 2009. Counsel argued that there were two problems with the chain. The first one was that Sargent LaLema did not testify that he received the evidence into the evidence room nor

where he sent the drugs out. And Officer Hinton was not identified as the successor to LaLema whom the state said had retired. R. 165, ll. 1 – 25; R. 166, ll. 1 – 4; R. 197, ll. 1 – 25; R. 173, ll. 8 – 21; R. 175, ll. 4 – 16.

The second problem was that Investigator Seabrook testified that he filled out the property sheet which was not provided and he did not sign the chain of custody. Counsel said he did not know Investigator Seabrook was on the chain until he testified. Counsel argued that the chain was not complete so he objected to the drugs being admitted into evidence. R. 166, ll. 5 – 25; R. 167, ll. 1 – 25.

The state argued that the chain was complete and presented the chain. R. 168, ll. 1 – 25. Defense counsel continued to argue that he did not know Investigator Seabrook was in the chain and he did not know they were going to have a substitute for Officer LaLema who testified to what they usually did in the evidence room. R. 169, ll. 1 – 25; R. 170, ll. 1 – 25.; R. 171, ll. 1 – 25; R. 172, ll. 1 – 25; R. 173, ll. 1 – 25; R. 174, ll. 1 – 25; R. 175, ll. 1 – 25; R. 176, ll. 1 – 25; R. 177, ll. 1 – 25; R. 178, ll. 1 – 25; R. 179, ll. 1 – 25.

The judge ruled that the weakness in the chain went to credibility and not admissibility. She overruled his objection to the admission of the drugs. R. 181, ll. 7 – 25; R. 182, ll. 1 – 7. Counsel renewed all of his objections at the close of the state's case which the judge denied. R. 193, ll. 1 – 25; R. 194, ll. 1 – 25; R. 195, ll. 1 – 25; R. 196, ll. 1 – 25; R. 197, ll. 1 – 25; R. 198, ll. 1 – 25; R. 199, ll. 1 – 25; R. 200, ll. 1 – 25.

Decisions regarding the admissibility of evidence and whether to grant or deny a mistrial are within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007). An abuse of

discretion occur when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

Rule 6 (b), SCRCrimP, provides:

For the purpose of establishing a chain of physical custody or control of evidence entered under Part A of this Rule, a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statement says the substance was delivered in substantially the same condition as when received.

The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a).

A party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Hatcher, 384 S.C. 372, 681 S.E.2d 925 (Ct. App. 2009); State v. Sweet, *supra*. Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. State v. Sweet, *supra*, citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534 537 (1957).

While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as possible. State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004).

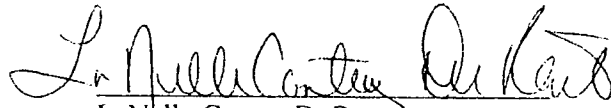
The chain of custody was not complete and the trial court did not follow the criminal rule of procedure. Defense counsel had requested the appearance of each person in the chain according to Rule 6, SCRCrimP. A significant part of the chain, Sargent LaLema, did not appear nor was a signed affidavit from him presented to the court.

During the jury deliberations, the jury requested to see and hear the audio-video CD of the transaction again which was done. R. 202, ll. 22 – 25; R. 203, ll. 1 – 25; R. 204, ll. 1 – 25; R. 205, ll. 1 – 25; R. 206, ll. 1 – 25; R. 207, ll. 1 – 4. The jury then requested to see the judge's charge on the chain of custody which was sent to the jury. R. 207, ll. 23 – 25; R. 208, ll. 1 – 8. The jury then asked to hear or see the testimony of investigator Seabrook which was played for them. R. 208, ll. 23 – 25; R. 209, ll. 1 – 25.

CONCLUSION

Based on the above, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

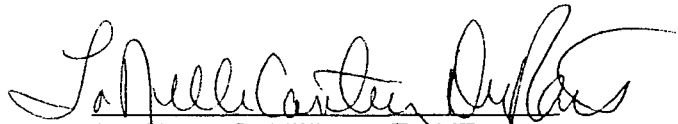

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of September, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



LANELLE CANTEY DURANT
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

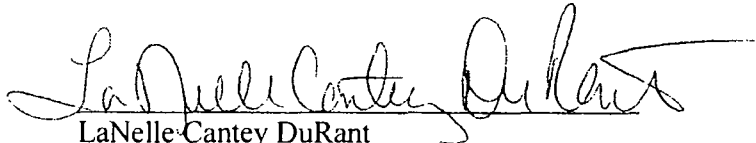
V.

LLOYD WRIGHT,

APPELLANT

CERTIFICATE OF SERVICE

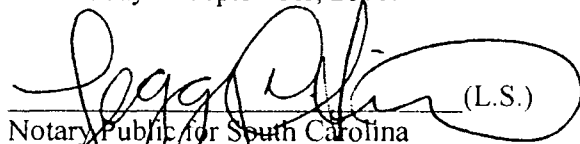
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 1st day of September, 2010.


LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of September, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE

vs.

Respondent

LLOYD WRIGHT

Appellant

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
ARGUMENT	
I. <u>The officer remembered his part in the investigation, and that testimony was admissible.</u>	3
II. <u>The court exercised sound discretion in the admission of testimony..</u>	5
III. <u>The court exercised sound discretion in finding the chain of custody was established.</u>	8
CONCLUSION	11

TABLE OF AUTHORITIES

Cases:

State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007) 9

Other Authorities:

Rule 602, SCRE 4

STATEMENT OF ISSUES ON APPEAL

I.

The defendant says Officer Hurteau relied on the reports and the memory of two other officers and had their reports on the witness stand to refresh his memory instead of testifying from his own knowledge. The defendant asks whether the court erred by not striking Hurteau's testimony.

II.

The defendant says the court erred by not requiring the state to get a copy from the FBI of the plan that the police and FBI developed. This was allegedly a violation of both Brady and Rule 5, SCRCrimP since the solicitor had not requested a copy from the FBI, and the police did not have a copy.

III.

The defendant says the chain of custody was not complete, and the court erred admitting the crack cocaine.

STATEMENT OF THE CASE

Indictments charged the defendant with distribution of cocaine base (2007-GS-10-13898) and distribution of cocaine base within proximity of a school (2007-GS-10-13899). The defendant and his counsel came before the Honorable Kristi L. Harrington, Judge, and a jury on May 18-20, 2009. The jury found the defendant guilty, and the court sentenced him to concurrent terms of life imprisonment without parole. The defendant timely served opposing counsel a notice of appeal.

ARGUMENT

I.

The officer remembered his part in the investigation, and that testimony was admissible.

Officer Hurteau (Hurteau) participated in an investigation involving an undercover officer who made contact with the drug seller. Hurteau supervised about six other officers and listened to the live audio of the undercover officer's purchase. One officer (Seabrook) wrote an incident report and another officer (Springmeyer) wrote a supplemental incident report, and Hurteau approved the reports. (ROA. pp. 35-36; 40; Court's Exhibit 1). Before trial, Hurteau reviewed those reports and brought them to the witness stand. He did not look at those reports on the stand. On the stand he referred to his own notes. While he had reviewed the reports, he remembered the operation and listening to the live drug transaction. (ROA. p. 41; p. 49, lines 8-18). The defendant moved to strike Hurteau's testimony on the ground that it was not reliable since it was not based upon either his independent recollection or his own notes. (ROA. pp. 42-43; p. 46, lines 14-23). Before the jury Hurteau affirmed that he had an independent recollection of the event. (ROA. p. 58). The state said that Hurteau was present, and he remembered the transaction and supervised other officers. (ROA. p. 44, line 22 - p. 45, line 12).

Based upon the court's observation and the testimony, the court found: The officer brought reports to the stand that he had looked at before coming to court. On the stand, the officer only referred to information about his own background [experience and education]. (ROA. p. 50, line 21 - p. 52; Court's Exhibit 1). The officer had personal knowledge of his role in the investigation, and the court soundly admitted the officer's testimony about that

role. Rule 602, SCRE (witness must have personal knowledge of the matter to which he testifies).

II.

The court exercised sound discretion in the admission of testimony.

Initially Officer Hurteau thought the investigation involving the Charleston Police Department and the FBI began with an “operational plan.” “Essentially, that is we put everything on paper in order to provide for the safety of the officers that are involved, the citizens that are involved, and also the suspects that are involved.” (ROA. pp. 33-35). On cross examination he said the policy was “to go over” the operational plan, but it was “not policy to write it up.” He believed an operational plan was on paper, he was “just not absolutely certain that we saw the copy of it.” While he thought an operational plan was on paper he did not remember that “we” saw it. (ROA. p. 39). In camera defense counsel asked the officer to affirm that “to provide for the safety of the undercover officer, the citizens, and the suspect[,]” there was an operational plan on paper. The officer affirmed and said that while it was typical, he was not sure if there was one in the present case. There was an operational briefing. (ROA. p. 47, line 7 - p. 48, line 12). Before the jury on cross examination, Hurteau affirmed that safety was the purpose of an operational plan. He was not sure that there was one on paper, but before the operation responsibilities “would be given.” He did not know whether the FBI had a copy of the plan. (ROA. pp. 54-56).

Officer Karen Springmeyer testified. Springmeyer and her unit in the Charleston Police Department, participated with the FBI field office investigating complaints from both the police and citizens about street drug dealing in the area of Romney Street and Athens Court. On the day of the operation, September 19, 2007, the Charleston Police Department narcotics unit and two FBI special agents met for a briefing and established [1] Springmeyer’s role as the operation’s undercover officer trying to purchase street drugs and

[2] the other officers' roles in surrounding surveillance units for safety and audio monitoring. (ROA. pp. 80-82; 100). After the briefing, she got \$50 of currency with recorded serial numbers from the FBI and set up audio and video equipment in her rented vehicle. (ROA. p. 83; 103). She drove to the area and, with apparent ease, used the FBI's \$50 in recorded currency to buy .31 grams of cocaine base from the defendant, drove away, and gave the cocaine base to the case agent. (ROA. pp. 92-93; 98-99; 119, line 23 - 171).

The defendant thought that the supposed operational plan was discoverable, but it had not been turned over to the defense. Counsel did not know that it was exculpatory but made a Brady motion. Further, defense counsel thought it "could be, very probably would be, exculpatory in nature." The state said that it had requested every bit of evidence and turned over everything to the defense. (ROA. p. 44, lines 4-21; p. 45, line 15 - p. 46, line 13; p. 50, lines 11-17; pp. 68-72). The court found that while the officer's testimony was that an operational plan was typically in writing, he did not have one. There was no showing of a failure to disclose it, and there was no showing of a written operational plan. The court declined to strike any reference to the operational plan, denied a motion for mistrial, and denied any request for the FBI to produce - at that time - the operational plan. (ROA. p. 51, lines 13-25; pp. 73-74).

In offering that he did not know that the unseen, supposed, written operational plan was exculpatory and that the same plan was very probably exculpatory, defense counsel presented the court a moving target. The trial testimony is only reasonably understood to state that the operational plan was a safety plan for citizens, suspects, and officers. It is difficult to understand how that plan would be exculpatory or impeaching. Moreover, Springmeyer's testimony demonstrates that while the surveillance and her purchase of

contraband from the defendant were straightforward, the operation required an organizational briefing, and she presented that to the jury. The record fully supports the court's ruling, and there was no abuse of discretion.

III.

The court exercised sound discretion in finding the chain of custody was established.

Officer Karen Springmeyer bought .31 grams of cocaine base from the defendant and gave the cocaine base to case agent Officer Seabrook. (ROA. pp. 92-93; 98-99; 119, line 23 - 171).

Officer Seabrook took the cocaine base (crack cocaine), packaged it, completed an evidence tag (Form 48), and secured the evidence in a lockbox within a secured room at the Charleston Police Department - where the next day an evidence technician - initials J.L. - picked up the evidence. Seabrook completed the evidence tag but neglected to sign it. He also filled out a property sheet at the City of Charleston Police Department. (ROA. pp. 123-125; 130-137).

Evidence technician Hinton said that on the basis of his six years experience in the evidence room, he knew from the initials that Sgt. Joe LaLema received the three pieces of off-white rocklike substance. (ROA. pp. 140-141; 149-150).

Lab technician Susan Moody received the evidence from Sgt. LaLema in the evidence room on September 20, 2007. She took it to the lab and put it in their drug safe. (ROA. pp. 152-154)

Chemist Wiggins-Mitchell got the evidence from the safe on even date and found that it was .31 grams containing cocaine base. (ROA. pp. 158-164).

After hearing the defendant's extended concerns, the court found that the chain of custody was established, and the evidence was admissible. (ROA. pp. 165-182). The defendant's concerns included Sgt. LaLema not testifying, not getting a property sheet,

Seabrook's not signing the chain of custody, and having no way of knowing that Seabrook was in the chain of custody.

There was no conceivable error in the court's admitting evidence of the crack cocaine in light of the chain of custody.

[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.

Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.

State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007)(internal citation omitted). While Sgt. LaLema did not testify, the evidence (his initials on the evidence tag and testimony from three witnesses - Seabrook, Hinton, and Moody) demonstrates that he handled the evidence and his manner of handling the evidence. The defendant's concern about the evidence (property) sheet was that it alone showed that Seabrook was in the chain of custody - since Seabrook did not sign the evidence tag. (ROA. pp. 131-133). However, defense counsel allowed that Springmeyer's supplemental report said that the cocaine was turned over to Seabrook. (ROA. p. 171, lines 14-16). And Seabrook testified at trial. Parenthetically, testimony about Springmeyer's purchasing the .31 grams of cocaine base from the defendant

was introduced at trial long before the defendant canvassed his concerns about the chain of custody leading to the chemical analysis.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

SCARLETT WILSON
Solicitor, Ninth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 16, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

Respondent,

vs.

LLOYD WRIGHT

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b, SCACR.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

SCARLETT WILSON
Solicitor, Ninth Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 16, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

Respondent,

vs.

LLOYD WRIGHT,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, LaNelle C. DuRant, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 16th day of August, 2010.

Harold M. Coombs Jr.
HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT