

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable Frank R. Addy, Circuit Court Judge

HARRY LAWRENCE ANTHONY,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO. 2016-001912

APPENDIX

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IN THE COURT OF GENERAL SESSIONS
YORK COUNTY, SOUTH CAROLINA

SOUTH CAROLINA

VERSUS

HARRY LAWRENCE ANTHONY, DEFENDANT

CASE NUMBER: 2007-GS-46-1072-1075; 2542-2543

HEARD ON THURSDAY, NOVEMBER 29, 2007.
BEFORE THE HONORABLE JOHN C. HAYES, III.

APPEARANCES:

MINDY LIPINSKI
YORK COUNTY SOLICITOR'S OFFICE
1675 YORK HIGHWAY
YORK, SC 29745
REPRESENTING THE STATE

MELVIN ROBERTS
POST OFFICE BOX 460
YORK, SC 29745
REPRESENTING MR. ANTHONY

REPORTED BY: JANET M. RICH
CIRCUIT COURT REPORTER
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ROCK HILL, SC 29732

E X H I B I T S

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2	D-1	LETTER	12
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1 (COURT IS IN SESSION AT 09:39 AM AND THE
2 DEFENDANT IS NOT PRESENT.)

3 THE COURT: THE FIRST ORDER IS ONE DEALING
4 WITH THE SCHMERBER MOTION BY THE STATE. MR. ROBERTS,
5 YOU REPRESENT THE DEFENDANT?

6 MR. ROBERTS: YES, SIR. AND I HAVE SOME
7 PRELIMINARY MOTIONS I'D LIKE TO GET OUT OF THE WAY
8 FIRST, IF WE MAY.

9 THE COURT: WELL, I WASN'T AWARE WE HAD
10 SOME PRELIMINARY MOTIONS BECAUSE NUMBER ONE WE'RE
11 TRYING TO WORK THIS IN ON THE TRIAL WE'VE GOT TO
12 CONCLUDE TODAY. I DIDN'T SCHEDULE IT, OF COURSE, BUT
13 I WAS UNDER THE IMPRESSION THAT IT WAS ONLY A
14 SCHMERBER MOTION. QUICKLY WHAT ELSE DO YOU HAVE
15 BECAUSE I MIGHT NEED TO DEFER THIS TO ANOTHER TIME.

16 MR. ROBERTS: I HAVE A MOTION FOR YOUR
17 HONOR TO RECUSE HIMSELF AND FOR A CONTINUANCE BECAUSE
18 WE DON'T HAVE THE RESULTS FROM THE ALLEGED DNA SAMPLE
19 OBTAINED FROM THE LAST PIPE AND FOR IT TO BE SET
20 BEFORE SOME OTHER CIRCUIT COURT JUDGE. YOU'VE
21 RECEIVED CORRESPONDENCE RELATIVE TO THIS MATTER. I'M
22 NOT ALLEGING ANY IMPROPRIETY OR ANY MISCONDUCT ON THE
23 PART OF YOUR HONOR.

24 THE COURT: OKAY.

25 MR. ROBERTS: BUT IT WAS JUST A MATTER OF

1 JUDGE SHOPPING WHICH I THINK IS WRONG.

2 THE COURT: I DON'T RECALL RECEIVING ANY
3 LETTERS, I MAY HAVE, BUT IF I DID, I DIDN'T DIGEST
4 THEM VERY WELL.

5 MR. ROBERTS: MAY I HAND YOU A COPY, YOUR
6 HONOR. IT'S GOT THE CORRESPONDENCE ATTACHED TO IT.

7 THE COURT: OKAY.

8 MR. ROBERTS: AND YOU WERE COPIED ON MOST
9 OF THOSE LETTERS I THINK.

10 THE COURT: IT'S DATED AUGUST 14 AND LET'S
11 SEE, I HONESTLY DO NOT REMEMBER.

12 MR. ROBERTS: AND AS LATE AS YESTERDAY I
13 SUGGESTED TO THE SOLICITOR PERSONALLY THAT HE
14 SCHEDULE THIS BEFORE OUR VISITING JUDGE BUT HE
15 INSISTED.

16 THE COURT: YOU'VE GOT A VISITING JUDGE
17 AND THAT MIGHT BE THE BEST WAY TO DO IT; BUT NUMBER
18 ONE, I DON'T SEE WHERE THIS LETTER FROM KEVIN
19 BRACKETT ADDRESSED TO YOU OF AUGUST 14 HAS ANY COPY
20 TO ME, AND THEN I SEE A LETTER FROM YOU AND YOU ARE
21 THE ONE WHO COPIED ME.

22 MR. ROBERTS: OKAY.

23 THE COURT: AND SO I THINK IT KIND OF LIES
24 HOLLOW IN ONE'S MOUTH TO COPY ME WITH SOMETHING AND
25 THEN SAY SINCE I COPIED YOU THE LETTER THAT EXCUSES

1 YOU, AND I'M NOT SAYING YOU MEANT TO AND I'M NOT
2 TALKING ABOUT JUDGE SHOPPING -- BUT, BOY, THAT WOULD
3 PRESENT AN IDEAL OPEN DOOR IN CASES IF ALL THE
4 DEFENSE LAWYER HAD TO DO IS WRITE THE JUDGE ABOUT A
5 CASE AND SAY, WELL, NOW YOU CAN'T HEAR IT AND I'M NOT
6 SAYING THAT'S WHAT YOU DID, BUT I DON'T SEE WHERE I
7 GOT A COPY OF MR. BRACKETT'S.

8 MR. ROBERTS: I DON'T THINK I HAD A RIGHT
9 TO SEND YOU MR. BRACKETT'S LETTER AND I THINK YOU
10 SHOULD HAVE REQUIRED HIM TO SEND YOU A COPY SINCE HE
11 KNEW ON HIS COPY THAT YOU RECEIVED A COPY OF MINE.

12 THE COURT: THAT'S NOT LITTLE A BACKWARDS?

13 MR. ROBERTS: I DON'T KNOW.

14 THE COURT: BUT I'M NOT GOING TO RECUSE
15 MYSELF. I DON'T REMEMBER ANYTHING ABOUT THIS CASE.
16 I DON'T RECALL RECEIVING ANY OF THESE LETTERS. QUITE
17 FRANKLY, WE GET LETTERS ALL THE TIME AND UNLESS THERE
18 IS SOMETHING THAT'S ACTIVE AND I GET THESE LETTERS
19 BACK AND FORTH BETWEEN COUNSEL SOMETIMES, WHAT I CALL
20 BACK AND FORTH LETTERS, YOU DID THIS, NO, I DIDN'T,
21 AND THOSE KIND OF THINGS, I'M NOT SAYING THAT'S WHAT
22 IN HERE, BUT THEY DON'T MEAN ANYTHING TO ME. ALL
23 RIGHT.

24 MR. ROBERTS: MAY I PUT, JUST FOR THE
25 RECORD, YOUR HONOR, I UNDERSTAND AND I'M NOT ARGUING

1 WITH THE COURT, BUT I THINK THE SUPREME COURT HAS
2 FROWNED ON JUDGE SHOPPING AND WHEN THEY INSIST THAT
3 YOU ARE THE ONLY JUDGE IN THE ENTIRE STATE OF SOUTH
4 CAROLINA THAT CAN HEAR THIS CASE, THAT'S JUDGE
5 SHOPPING, AND I JUST WANT THE RECORD TO REFLECT MY
6 POSITION.

7 THE COURT: OKAY.

8 MR. ROBERTS: NOW ALSO, YOUR HONOR, THE
9 BASIS OF THIS MOTION IS, AND THIS IS A MOTION FOR A
10 CONTINUANCE, THE BASIS OF THE MOTION IS THAT THEY
11 ALLEGEDLY, ACCORDING TO THE SOLICITOR'S MOTION,
12 OBTAINED A DNA PROFILE OF AN UNKNOWN MALE OFF OF A
13 GLASS CRACK POT, CRACK PIPE.

14 THE COURT: BY THE WAY -- IS THE DEFENDANT
15 HERE?

16 MR. ROBERTS: NO, SIR. HE WAIVES HIS
17 PRESENCE, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 MR. ROBERTS: AND THEY NEVER, ALTHOUGH I
20 SERVED MY DISCOVERY REQUEST, RULE FIVE AND BRADY,
21 BACK IN APRIL, I HAVE NOT RECEIVED ANY SUCH REPORT.
22 I THINK AT THE VERY LEAST THIS SHOULD BE CONTINUED
23 UNTIL WE RECEIVE THE DNA PROFILE THAT THEY ALLEGEDLY
24 RECOVERED FROM THE GLASS PIPE. IT WOULD, TO DO THAT
25 WOULD ELIMINATE SOME QUESTIONS ABOUT IT BECAUSE

1 ALTHOUGH THEY JUST AT THIS PRESENT TIME DON'T HAVE
2 HIS DNA PROFILE, IF THEY OBTAIN HIS PROFILE, DNA
3 PROFILE BEFORE, THEY REVEAL WHAT THEY RECOVERED WILL
4 RELIEVE SOME SUSPICION WHETHER OR NOT THEY
5 MANUFACTURED OR ISSUED A REPORT SHOWING A DNA PROFILE
6 OF HIS AS HAVING BEEN FOUND, SO I THINK AT THE VERY
7 LEAST WE SHOULD HAVE WHATEVER THEY FOUND BEFORE THEY
8 RECEIVE ANY DNA FROM HIM.

9 THE COURT: ALL RIGHT. I FOLLOW WHAT YOU
10 ARE SAYING. WHAT'S WRONG WITH THAT?

11 MRS. LIPINSKI: I CONTACTED CAPTAIN STEVE
12 LAMBERT, WHO IS OVER THE DNA SECTION OF THE SLED, HE
13 SAYS THAT THEY DO NOT DO PRELIMINARY REPORTS, THAT IT
14 VIOLATES THEIR LAB ACCREDITATION. I CAN PUT HIM ON
15 THE PHONE WITH LILLIAN GALLMAN WHO CAN TELL HIM SHE
16 HAS INDEED IDENTIFIED A MALE PROFILE, BUT THEY DO NOT
17 DO PRELIMINARY REPORTS. THAT IS THEIR STATUS TO ME.
18 THEY DO A CRACK PIPE AND IT WOULD SAY A MALE PROFILE
19 IDENTIFIED AND I TRIED TO GET THAT FROM THEM. I'VE
20 TALKED TO THE CAPTAIN OF SLED. I TRIED TO GET A
21 PRELIMINARY REPORT. THEY SAY THAT THAT IS NOT HOW
22 THEIR PROTOCOL ALLOWS THEM TO ISSUE REPORTS.

23 IN OTHER CASES THAT I'VE HAD WITH CSC
24 CASES, THEY WILL DO LIKE SEMEN IDENTIFIED OR THOSE
25 KIND OF THINGS. THEY DETERMINED THAT THAT IS A

1 PRELIMINARY REPORT. JUST SAYING DNA PROFILE
2 IDENTIFIED IS JUST NOT HOW THEY DO THAT. I TRIED TO
3 ALLEVIATE THAT BY PUTTING HIM ON THE PHONE WITH
4 LILLIAN GALLMAN, BUT THAT'S THE LIMITS THAT I HAVE.
5 I CAN ASSURE THE COURT THAT I'M NOT DOING ANYTHING.
6 I'VE TALKED TO MS. GALLMAN. SHE SAID THEY HAVE A
7 MALE PROFILE IDENTIFIED. I SAID, WELL, I WILL TRY
8 AND GIVE YOU A SUSPECT SAMPLE TO SEE IF YOU CAN DRAW
9 AN ANALYSIS TO THAT. THE INDICATION THAT THERE MIGHT
10 AT SOME POINT IN THE FUTURE BE SOME MANUFACTURING OF
11 EVIDENCE ON THE PART OF SLED IS WITHOUT MERIT. THAT
12 WOULD GO TO ITS WEIGHT, NOT TO ITS ADMISSIBILITY.
13 THE SCHMERBER MOTION IS DO WE HAVE PROBABLE CAUSE TO
14 SAY THAT WE NEED THE DEFENDANT'S DNA.

15 THE COURT: LET ME HEAR THAT THEN. WHAT
16 IS THE PROBABLE CAUSE AS TO THIS DEFENDANT?

17 MRS. LIPINSKI: THIS DEFENDANT IS CHARGED
18 WITH FOUR COUNTS OF DISTRIBUTION OF CRACK, ONE COUNT
19 OF EXPLOITATION OF A VULNERABLE ADULT, AND ONE COUNT
20 OF ABUSE OF A VULNERABLE ADULT.

21 THE MERITS OF THOSE CASES ARE
22 PRIMARILY THAT WHEN MARGARET MATTHEWS WENT MISSING
23 THEY WENT INTO, WHOSE THE VICTIM IN THE VULNERABLE
24 ADULT CASES, THAT THEY WENT LOOKING FOR PEOPLE THAT
25 SHE HAD BEEN WITH. THEY DETERMINED THAT THE

1 DEFENDANT HAROLD ANTHONY WAS SOMEBODY THAT SHE KNEW.
2 WHEN THEY TALKED TO THE FAMILY, THEY SAID SHE HUNG
3 AROUND HAROLD ANTHONY. CERTAIN FAMILY MEMBERS WOULD
4 HAVE SAID THEY DATED, SOME OF THEM JUST SAID THEY
5 WERE FRIENDS, BUT NONETHELESS THERE WAS A
6 RELATIONSHIP THERE. THEY TOOK STATEMENTS FROM TWO
7 WOMEN WHO SAID THAT THEY HAD BEEN IN THE PRESENCE OF
8 HARRY ANTHONY AND MARGARET MATTHEWS AND HER FAMILY
9 STATES THAT THE LAST TIME THEY SAW HER HARRY ANTHONY
10 PICKED HER UP.

11 AS A RESULT OF THAT, THEY GOT A SEARCH
12 WARRANT AND THEY GOT, THEY WENT INTO MR. HARRY
13 ANTHONY'S TWO RESIDENCES. AT THE ONE RESIDENCE THEY
14 FOUND A NUMBER OF VIDEO TAPES WHERE HE HAD VIDEO
15 TAPED HIMSELF HAVING SEX WITH MARGARET MATTHEWS WHO
16 IS THE VICTIM ON THE VULNERABLE ADULT CHARGES AND
17 ANOTHER WOMAN NAMED PATRICIA LITTLEJOHN, THOSE WERE
18 THE TWO WOMEN WE WERE ABLE TO IDENTIFY, WHICH PUT
19 HARRY ANTHONY IN CLOSE PROXIMITY TO MARGARET
20 MATTHEWS. AND IT'S NOT A MURDER CHARGE, WE'RE NOT
21 SAYING THAT HARRY ANTHONY DID THAT, BUT THOSE TAPES
22 SHOW THEM SMOKING CRACK. ON THIS ONE PARTICULAR
23 CRACK PIPE THAT WAS FOUND IN ITEMS IN HIS POSSESSION
24 IN HIS ROOM IN HIS HOUSE, THAT CRACK PIPE WAS SEIZED,
25 WE SWABBED IT FOR DNA, AND THEN WE SENT TO IT CYNTHIA

1 MITCHUM WHO HAS IDENTIFIED THAT THERE IS CRACK
2 RESIDUE PRESENT. WE BELIEVE THAT WE WOULD FIND
3 MARGARET MATTHEWS' DNA. THAT WAS THE PURPOSE FOR
4 SENDING IT TO SLED. THEY HAVE INDICATED MARGARET
5 MATTHEWS' DNA IS NOT ON THERE, BUT WE DO HAVE AN
6 UNKNOWN MALE PROFILE. THEY ARE ABLE TO EXCLUDE
7 MARGARET MATTHEWS. THE RESULT OF THAT, THE STATE
8 FEELS IT HAS PROBABLE CAUSE TO BELIEVE THAT IT MIGHT
9 ACTUALLY BE HARRY ANTHONY'S DNA PROFILE ON THAT CRACK
10 PIPE INSTEAD IN THAT HE IS IN THESE VIDEOS SMOKING
11 CRACK --

12 THE COURT: IS SHE GOING TOO FAST FOR YOU?

13 MRS. LIPINSKI: I'LL SLOW DOWN. SMOKING
14 CRACK FROM THAT CRACK PIPE. THAT IS A PROBABLE CAUSE
15 --TO BELIEVE HE MAY BE ONE OF THOSE SUSPECTS HERE.
16 MR. ROBERTS HAS BEEN GIVEN ALL OF THOSE VIDEOS. HE'S
17 HAD AN OPPORTUNITY TO SEE THAT. IF IT IS MR. ANTHONY
18 THAT WOULD OBVIOUSLY INCRIMINATE HIM AND FURTHER
19 CORROBORATE OUR CASE THAT HE IS DISTRIBUTING CRACK TO
20 PATRICIA LITTLEJOHN AND TO MARGARET MATTHEWS. IF
21 IT'S NOT HIS DNA, IT WOULD EXONERATE HIM AND
22 THEREFORE THE STATE FEELS HONOR BOUND TO EXPLORE THAT
23 OPTION. CERTAINLY WE WOULD NOT WANT TO SAY WE TRIED
24 TO PROSECUTE SOMEBODY FOR DISTRIBUTION OF CRACK WHEN
25 SOMEONE'S DNA WAS ON IT THAT WAS NOT HIM. FOR THAT

1 REASON, WE FEEL THAT PROBABLE CAUSE EXISTS. WE CAN
2 DO IT WITH ---

3 THE COURT: WHAT, ABSENT THIS SUSPECT THAT
4 HE MAY, THIS MAY SHOW, WHAT POINTS TO HIM AS THE
5 CULPRIT IN THESE CRIMES?

6 MRS. LIPINSKI: HE'S ON THE VIDEO SMOKING
7 CRACK WITH THE TWO VICTIMS, VERY OBVIOUS, WITH WHAT
8 APPEARS TO BE THIS PIPE AS CLOSE AS YOU CAN SEE.

9 THE COURT: WELL, TELL ME AGAIN WHAT THE
10 CHARGES ARE? ARE THE CHARGES THAT HE DID SOMETHING
11 ON A VIDEO?

12 MRS. LIPINSKI: HE'S CHARGED WITH
13 DISTRIBUTION OF CRACK FOUR COUNTS AND HE'S CHARGED
14 WITH EXPLOITATION OF A VULNERABLE ADULT MARGARET
15 MATTHEWS, WHO IS MENTALLY RETARDED, GIVING HER CRACK,
16 AND ASKING HER TO PERFORM SEX IN EXCHANGE FOR THAT
17 CRACK. HE IN ESSENCE TURNED HER INTO A CRACK SLAVE
18 AND THE ABUSE IS THE PHYSICAL INJURIES SHE WOULD HAVE
19 RECEIVED BOTH AS A RESULT OF THE SEX AND INGESTING
20 THE CRACK.

21 THE COURT: MR. ROBERTS, ANYTHING ELSE?
22 WHAT I'D LIKE TO --

23 MR. ROBERTS: YES, SIR. I HAVE A BRIEF
24 I'D LIKE TO GIVE AND I'D LIKE TO MAKE MY PRIOR
25 DOCUMENTS THAT I SUBMITTED TO THE COURT AN EXHIBIT

1 AND ALSO LIKE TO MAKE THIS MEMORANDUM AN EXHIBIT,
2 YOUR HONOR. MAY I HAVE THIS MARKED?

3 THE COURT: YOU MAY.

4 MR. ROBERTS: MAY I HAVE THAT MARKED?

5 THE COURT: YES.

6 (DEFENDANT'S EXHIBITS ONE AND TWO RECEIVED
7 INTO EVIDENCE.)

8 THE COURT: IN THE INTEREST OF JUDICIAL
9 ECONOMY I'M STILL HAVING TO RULE ON A MOTION FOR A
10 CONTINUANCE.

11 MR. ROBERTS: I UNDERSTAND, YOUR HONOR.

12 THE COURT: BUT I WANT TO HEAR WHAT
13 THEY'VE GOT TOO AND THEN I'LL TAKE BOTH UNDER
14 ADVISEMENT.

15 MR. ROBERTS: I'M NOT ARGUING WITH THE
16 COURT. I UNDERSTAND.

17 THE COURT: I UNDERSTAND. I JUST WANT TO
18 MAKE SURE THE RECORD REFLECTS WHAT I'M DOING.

19 MR. ROBERTS: YES, SIR.

20 THE COURT: BECAUSE WE'RE KIND OF NOT ON A
21 STRAIGHT LINE HERE, I'M KIND OF MIXING THINGS, BUT I
22 KNOW WHAT I'M DOING. I JUST WANT EVERYBODY ELSE TO
23 KNOW WHAT I'M DOING. ALL RIGHT, GO AHEAD.

24 MR. ROBERTS: MAY IT PLEASE THE COURT.
25 WE'VE GOT A CASE HERE, EVEN IF THE DNA MOTION, THE

1 MOTION OF THE PROSECUTION IS ACTUALLY FOR A SEARCH
2 WARRANT OF THE DEFENDANT'S BODY, BODY FLUIDS, THAT
3 WAS FIRST RECOGNIZED IN RE: SCHNEIDER. I DON'T THINK
4 YOU PRESIDED ON THAT?

5 THE COURT: NO, THAT WAS---I'M VERY
6 FAMILIAR WITH IT THOUGH.

7 MR. ROBERTS: THAT WAS 1999 I BELIEVE.

8 THE COURT: NO, I THINK IT WAS EARLIER
9 THAN THAT, BUT IT'S PROBABLY MORE LIKE I '89, BUT
10 ANYWAY I'M FAMILIAR WITH THE SCHNEIDER CASE.

11 MR. ROBERTS: AND THERE HAS BEEN SEVERAL
12 PRODIGIES SINCE THAT TIME. NOW WE START OFF AS TO
13 HOW THEY GOT THE PIPE. THEY DID NOT HAVE A VALID
14 SEARCH WARRANT TO OBTAIN THE PIPE TO BEGIN WITH.
15 THEY--

16 THE COURT: WELL, LET'S KIND OF SKIP OVER
17 THAT AND TELL ME BECAUSE.

18 MR. ROBERTS: WELL, THIS WOULD BE A RESULT
19 OF FRUIT OF THE POISONOUS TREE IS WHAT I'M TRYING TO
20 GET AT.

21 THE COURT: WHERE DID THEY GET THE PIPE
22 FROM?

23 MR. ROBERTS: SO I'LL SKIP THAT THEN BUT I
24 COVERED IT IN MY BRIEF.

25 THE COURT: OKAY. WHERE DID THEY GET THE

1 PIPE, FROM YOUR CLIENT'S PLACE?

2 MR. ROBERTS: NO, SIR.

3 THE COURT: OKAY. WHAT EXPECTATION OF
4 PRIVACY DID HE HAVE IN SOMEBODY ELSE'S HOUSE?

5 MR. ROBERTS: IT'S NOT, DON'T TURN ON
6 EXPECTATION OF PRIVACY. SEVERAL CASES THAT -- IN
7 FACT THEY EVEN SAY IN THEIR MOTION THAT HE USED IT
8 INTERMITTENTLY, HE WAS NOT EITHER THE OWNER OR A
9 TENANT; HIS COUSIN OWNED IT, VARIOUS PEOPLE USED IT
10 THE HOUSE, AND THEY, WHEN THEY OBTAINED THE SEARCH
11 WARRANT WAS SUPPOSED TO AID IN THE LOCATION OF THE
12 MISSING PERSON AND THEY SEIZED A LOT OF THINGS
13 INCLUDING THAT PIPE.

14 NOW THEY HAVE NOT PRODUCED ANY
15 EVIDENCE THAT HE EVER BROUGHT ANY COCAINE, HE EVER
16 DISTRIBUTED ANY COCAINE. THEY, I DON'T UNDERSTAND
17 HOW YOU CAN LOOK AT A VIDEO AND TELL WHAT A PERSON IS
18 SMOKING. YOU CAN TELL THAT THEY'VE GOT SOME KIND OF
19 PIPE OR WHATEVER AT THEIR MOUTH, BUT WHETHER THEY'RE
20 SMOKING OR WHAT THEY ARE SMOKING, YOU CAN'T TELL FROM
21 A VIDEO. WE DON'T KNOW HOW MANY PEOPLE USED THIS, WE
22 DON'T KNOW WHOSE DNA IT IS, BUT IN ANY EVENT I THINK
23 THAT THE THRESHOLD THING WOULD BE TO GIVE, YOU CAN
24 ORDER THE PROFILE BE PROVIDED AND IT BE CONTINUED
25 UNTIL IT IS PROVIDED, AND I THINK AT THE VERY LEAST

1 WE'D BE ENTITLED TO THAT, BUT IT'S OUR POSITION AND
2 I'LL BE GLAD TO ARGUE THE POINTS, THEY ARE ALL
3 INCLUDED IN THE BRIEF, THAT THE ORIGINAL SEARCH
4 WARRANT, WHEN THEY GOT THIS CRACK, THIS SO CALLED
5 CRACK GLASS PIPE, IS INVALID BECAUSE IT DOES NOT
6 COMPLY WITH THE SEARCH WARRANT STATUTE.

7 OUR SEARCH WARRANT STATUTE IS MORE
8 RESTRICTIVE THAN THE FOURTH AMENDMENT. THE FOURTH
9 AMENDMENT ADDS AFFIRMATION, OURS REQUIRES AN
10 AFFIDAVIT, AND OF COURSE PROBABLE CAUSE ENTAILS
11 ALLEGING THAT A CRIME HAD BEEN COMMITTED AND MOST
12 LIKELY COMMITTED BY THE SUSPECT THAT THEY ARE SEEKING
13 TO GO GET DNA OR SEEKING A SEARCH WARRANT FOR AND
14 NONE OF THAT IS CONTAINED IN EITHER THE SEARCH
15 WARRANT OF JANUARY 25, 2006, OR THIS IS NOT AN EVEN
16 AN AFFIDAVIT THAT'S PRESENTED TODAY AS A WAY OF A
17 MOTION, IT'S NOT AN AFFIDAVIT THAT WOULD COMPORT WITH
18 OUR SEARCH AND SEIZURE STATUTES, SO I THINK THEY ARE
19 WRONG ALL THE WAY DOWN THE LINE, BUT IF THEY WOULD
20 START OFF WITH AT THE VERY, VERY LEAST WE'RE ENTITLED
21 TO KNOW WHAT IT IS THEY FOUND.

22 IF NECESSARY WE CAN ALSO GET DNA
23 PROFILE OF, FOR COMPARISON BUT WE HAVE NOTHING TO
24 COMPARE WITH UNTIL WE GET WHAT THEY SAY THEY'VE GOT
25 AND THEY DON'T HAVE ANYTHING TO COMPARE WITH UNTIL

1 THEY GET WHAT WE, WHAT THEY WANT A SAMPLE FROM OUR
2 GUY.

3 NOW I'VE HAD DEALINGS WITH SLED IN THE
4 PAST, OH 15-20 YEARS AGO, INVOLVING A MURDER CASE. I
5 GOT AN ORDER FROM JUDGE VICTOR RAWLS TO REQUIRE SLED
6 TO OBTAIN DNA EVIDENCE FROM THE DEFENDANT WHO HAD
7 ALREADY BEEN CONVICTED, IT WAS ON PCR, TO COMPARE
8 WITH SAMPLES OBTAINED FROM HIS WIFE'S DEAD BODY,
9 JUDGE RAWLS ISSUED THE ORDER. THE REPORT FROM SLED
10 WAS IT WAS MORE THAN THREE YEARS OLD BY THAT TIME AND
11 THEY COULD NOT MAKE THE DETERMINATION, BUT YET JUST
12 PREVIOUS TO THAT I HAD READ WHERE THEY MADE A
13 DETERMINATION OF DNA PROFILE OF KING TUT WHO HAD BEEN
14 DEAD MORE THAN 3000 YEARS OLD, SO, YES, I DO HAVE
15 SOME QUESTION ABOUT SLED, AND I THINK AT THE VERY
16 LEAST THE DEFENDANT WOULD BE ENTITLED TO THAT DNA
17 PROFILE THAT THEY SAY THEY OBTAINED IN ADVANCE OF
18 THEM GETTING DNA PROFILE FROM MY CLIENT. BUT FOR ALL
19 THESE REASONS, NONE THE LEAST OF WHICH THE FIRST
20 SEARCH WARRANT IS INVALID AND THE SEARCH WARRANT THEY
21 ARE SEEKING TO HAVE NOW DOES NOT COMPORT TO THE
22 STATUTE AND IS INVALID. I'LL GO INTO ANY FURTHER
23 DETAILS IF THE COURT DESIRES, BUT I'VE GOT IT IN MY
24 BRIEF.

25 THE COURT: ALL RIGHT. I'LL TAKE A LOOK

1 AT THE BRIEF. MRS. LIPINSKI.

2 MRS. LIPINSKI: JUST BRIEFLY, YOUR HONOR.
3 THAT SEARCH WARRANT INDICATED THAT MS. MATTHEWS HAD
4 DIED AND THEY WERE LOOKING FOR WHO HAD BEEN WITH HER.
5 THEY HAD AFFIDAVITS FROM PEOPLE WHO SAID THAT THEY
6 HAD LAST SEEN THE TWO OF THESE TWO PEOPLE TOGETHER,
7 THAT GOT THEM INTO HIS RESIDENCE WHERE THEY FOUND
8 THOSE VIDEO TAPES. THOSE VIDEO TAPES THEN BECAME A
9 SEARCH WARRANT FOR TWO SEARCHES AT BOOKOUT ROAD WHERE
10 MR. MELVIN ROBERTS SAYS HE WASN'T LIVING THERE AND HE
11 DIDN'T HAVE AN EXPECTATION OF PRIVACY. THEY FOUND
12 CRACK PIPE THAT APPEARS TO BE THE CRACK PIPE USED ON
13 THOSE VIDEOS. THAT'S THE PROBABLE CAUSE TO RETURN
14 THAT DNA SAMPLE. IT WAS FOUND AMONG THINGS WHICH,
15 THE VIDEO SHOWED THEM HAVING SEX AT THIS BOOKOUT ROAD
16 LOCATION, THAT'S WHY THEY GO THERE TO SEARCH THAT
17 RESIDENCE. ONE SEARCH WAS DONE WITH THE CONSENT OF
18 THE ACTUAL HOMEOWNER WHO WAS PRESENT THERE. THIS
19 ISN'T WHERE IT'S THE FRUIT OF THE POISONOUS TREE.
20 IT'S A VERY SIMPLE CASE, PROBABLE CAUSE.

21 WANT TO TALK ABOUT DNA EVIDENCE THAT
22 EXISTED 20 YEARS OLD, SLED IS A DIFFERENT AGENCY THAN
23 IT WAS 20 YEARS AGO. FOR THAT REASON THE STATE FEELS
24 THERE IS SUFFICIENT PROBABLE CAUSE. THE EVIDENCE WAS
25 NOT IMPROPERLY OBTAINED. THERE HAS BEEN NO MOTION

1 FILED TO SUPPRESS THE EVIDENCE FOUND IN THESE SEARCH
2 WARRANTS. IT'S AN ATTEMPT TO DISTRACT YOU FROM THE
3 REAL ISSUE: IS THERE PROBABLE CAUSE TO BELIEVE THAT
4 HIS DNA MAY BE FOUND ON WHAT WE DEVELOPED FROM A DNA
5 SAMPLE. GIVEN THE FACT THAT THE VIDEOS EXIST WHICH
6 HE HAS SEEN THAT SHOW HIM SMOKING CRACK WITH THESE
7 WOMEN. HE SAYS YOU DON'T KNOW WHAT'S ON THAT VIDEO
8 BUT HE'S BEEN GIVEN STATEMENTS FROM PATRICIA
9 LITTLEJOHN WHO IS ONE OF THE WOMEN ON THE VIDEO
10 SAYING WE WERE SMOKING CRACK THAT DAY. WHEN WE DID
11 THAT WE SMOKED CRACK TOGETHER. THERE IS A STATEMENT
12 FROM ANOTHER WOMAN WHO SAYS THE EXACT SAME THING.
13 THERE IS SUFFICIENT PROBABLE CAUSE TO BELIEVE HIS DNA
14 MAYBE FOUND ON THAT CRACK PIPE THAT HE IS SEEN
15 SMOKING IN A VIDEO. WE WOULD BE ALLOWED TO OBTAIN
16 THAT SAMPLE.

17 YOU MUST DO A BALANCING TEST IN TERMS
18 OF THE INVASION OF HIS BODY VERSUS THAT PROBABLE
19 CAUSE. SLED NOW TAKES BUCCAL SWABS, WHICH IS AN ORAL
20 SWAB, A VERY MINIMAL INVASION, BALANCING THAT AGAINST
21 THE PROBABLE CAUSE OF THE STATE, WE SHOULD BE ABLE TO
22 OBTAIN HIS DNA SAMPLE. THE FACT THAT HE WANTS THAT
23 AHEAD OF TIME IS NOT PRUDENT AND SLED WILL NOT DO
24 THAT. I HAVE TRIED TO GET IT FOR HIM, I MADE THOSE
25 REASONABLE EFFORTS TO ACCOMMODATE THAT, HOWEVER ALL

1 HIS ARGUMENT IS REDUCED TO IS THEY MAY AT SOME POINT
2 IN THE FUTURE IMPROPERLY HANDLE EVIDENCE. THAT DOES
3 NOT GO TO WHETHER OR NOT WE HAVE PROBABLE CAUSE TO
4 OBTAIN THIS DNA SAMPLE WHICH WE DO. SCHMERBER ORDER
5 SHOULD BE GRANTED, IT'S A MINIMAL INVASION, AND THE
6 PROBABLE CAUSE IS OVERWHELMED.

7 MR. ROBERTS: MAY IT PLEASE THE COURT, I
8 HAVE A COPY OF THE ORIGINAL SEARCH WARRANT WHICH I'D
9 LIKE TO MAKE A PART OF THE RECORD ALSO, YOUR HONOR.

10 (DEFENSE EXHIBIT THREE IN EVIDENCE.)

11 MR. ROBERTS: IT DOES NOT ESTABLISH
12 PROBABLE CAUSE AS DEFINED BY OUR SUPREME COURT OR
13 APPELLATE COURTS. NEITHER DOES THIS SEARCH WARRANT
14 THEY HAVE NOW MENTION PATRICIA LITTLEJOHN. SHE HAS A
15 HISTORY AS A USER OF CRACK COCAINE. SHE'S BEEN IN
16 PRISON I UNDERSTAND IT AT LEAST ONE OR MORE TIMES.
17 SHE TOOK OUT AN ARREST WARRANT AGAINST MY CLIENT FOR
18 POINTING A PISTOL AT HER AND STATE HAS WITNESS A
19 PERSON WHO IS AT THAT TIME CONFINED IN THE
20 PENITENTIARY IN COLUMBIA AND THE CASE WAS DISMISSED,
21 SO SHE'S NOT A VERY CREDIBLE WITNESS.

22 THEY'VE SEARCHED HIS HOUSE WHERE HE
23 LIVES SEVERAL TIMES, THEY SEARCHED BOOKOUT ROAD
24 SEVERAL TIMES. THEY TOLD THE OWNER OF THE PROPERTY,
25 WHO IS IN CALIFORNIA AT THE TIME, THAT THERE WAS A

1 DEAD BODY IN THERE, THAT SHE HAD BEEN SHOT, AND THEY
2 WERE GOING TO BREAK INTO THE HOUSE WHICH THEY DID,
3 THEY BROKE INTO THE HOUSE TO GET, TO CONDUCT THE
4 SEARCH WARRANT. THERE WAS NO BODY AND THEY HAVE,
5 ALTHOUGH THEY SEARCHED NUMEROUS TIMES, SEIZED HIS
6 AUTOMOBILE, KEPT IT FOR OVER A YEAR, THEY'VE NEVER
7 FOUND ONE IOTA OF COCAINE EXCEPT THEY SAY THEY FOUND
8 SOME ON THIS PIPE. NOW THEY JUST DON'T HAVE PROBABLE
9 CAUSE IN THE ORIGINAL SEARCH WARRANT OR IN THE
10 INCIDENT SEARCH WARRANT NOR DOES THE INCIDENT SEARCH
11 WARRANT COMPORT WITH THE STATUTE PROVIDING FOR
12 SEARCHES AND SEIZURES AND WE SUBMIT THE MOTION SHOULD
13 BE DENIED, YOUR HONOR.

14 THE COURT: LET ME TAKE IT UNDER -- I'LL
15 TAKE FIRST THE CONTINUANCE AND DETERMINE WHETHER OR
16 NOT I NEED TO ADDRESS HAVING THE STATE PROVIDE THAT
17 WHATEVER SLED INFORMATION HAS BEFORE THE SCHMERBER
18 MOTION IS FINALLY HANDLED AND ALTERNATIVELY IF I
19 DECIDE THAT THAT IS NOT REQUIRED, I'LL RULE ON THE
20 SCHMERBER MOTION.

21 MRS. LIPINSKI: THANK YOU, YOUR HONOR.

22 MR. ROBERTS: THANK YOU.

23 (END OF PROCEEDINGS.)

24

25

1 I, JANET RICH, OFFICIAL COURT REPORTER FOR
2 THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA,
3 DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE,
4 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
6 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
7 THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
8 THE 29TH DAY OF NOVEMBER, 2007.

9 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11

12

13

Janet M. Rich
JANET M. RICH

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24

25

State of South Carolina) In the General Sessions
) Court of York
)
 County of York) Case No.: 2007-GS-466-01072
 thru 01075

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Harry Lawrence Anthony.,)
)
 Defendant.)
)
 _____)

January 9-11, 2012
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge and a jury.

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

Ms. Mindy H. Lipinski
 Assistant Solicitor
 Mr. Chris Epting
 Assistant Solicitor
 Sixteenth Judicial Circuit
 Moss Justice Center
 1675-1A York Hwy.
 York, South Carolina 29745-7422
 803-628-3020
 For the Plaintiff

Mr. B.J. Barrowclough
 Mr. Harry Dest
 Chief Public Defender
 Sixteenth Judicial Circuit
 Public Defender's Office
 1675-1A York Hwy.
 York South Carolina 29745-
 803-
 For the Defendant

ORIGINAL

Wanda Nelson
 Circuit Court Reporter
 Sixteenth Judicial Circuit

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4			62 (In Camera)
5		Mr. Barrowclough	59-61 (In Camera)
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7	Lieutenant Tim Hager	Ms. Lipinski	94-114
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13		Mr. Barrowclough	140-146
14	Commander Marvin Brown	Mr. Epting	148-162
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17	Closing	By Ms. Lipinski . .	174-194
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E-X-H-I-B-I-T-S

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CT.3	Jury Note.		234
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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

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1 (COURT IN SESSION ON MONDAY, JANUARY 9, 2012 AT 02:45
2 PM.)

3 THE COURT: You ready to get the jury up on the --

4 MS. LIPINSKI: Yes, Your Honor, I think we might need
5 to raise some voir dire motions beforehand.

6 THE COURT: All right.

7 MS. LIPINSKI: The State also -- Juror Number 153,
8 which was Kristine Speed, when she stood up downstairs in
9 jury collection, she indicated that the last time she did
10 work, she was a receptionist at the 16th Circuit
11 Solicitor's Office. I didn't recollect her in particular,
12 but I did speak with Deputy Betty Miller in our office, and
13 she reminded me that she was a receptionist that was
14 terminated by our office after some incidents that occurred
15 shortly after I started working here in the Solicitor's
16 Office. I think she would necessarily, because of the
17 nature of her termination, hold some undue hardship, and
18 the State feels that for that basis, Mrs. Speed should be
19 removed for cause.

20 THE COURT: Any objection?

21 MR. BARROWCLOUGH: No, Your Honor.

22 THE COURT: All right, she is removed for cause then.

23 MR. BARROWCLOUGH: Your Honor, may I approach?

24 THE COURT: Yes.

25 MS. LIPINSKI: B.J....

1 MR. BARROWCLOUGH: Your Honor, these are my voir dire
2 and my motions.

3 THE COURT: I've got voir dire. Any pretrial motions?
4 There's this personal statement. Do you have anything
5 else?

6 MS. LIPINSKI: There are, Your Honor, a number of
7 other pretrial motions. I think we've agreed on most of
8 them, but I think we could ---

9 THE COURT: Draw the panel and then take them up?

10 MS. LIPINSKI: --- just not swear them yet. And may
11 be even possible that depending on how -- it may be even
12 that we draw them, and let them go for the day so that we
13 can resolve pretrial and just start with opening tomorrow
14 given that it's now Three o'clock. I think my
15 instructions, just so the Court's aware, because I came to
16 you this morning in order to see how you would like to do.
17 We were down to, I believe, 65 or 67 members of the jury
18 panel, which the clerk informed me they could fit
19 comfortably in our courtroom. So they're just going to
20 bring them all up. Just hopefully, I think we can get this
21 passed, any jurors relieved we lose during voir dire
22 questioning. So I think that may be a little bit more
23 likely for the normal court. If he wants to go through
24 another method, that's fine, but I felt that they could all
25 fit up here. In lieu of questioning half of them again

1 later, that might be the better for it..

2 THE COURT: That's fine.

3 Anything else before we get them up?

4 MS. LIPINSKI: If you want, I looked at -- the Defense
5 and I have exchanged voir dire questions before. Obviously
6 they tend to focus on a large number of the same questions.
7 The defendant's question on Page[sic] 7, the end of it
8 which states that, well, "this is the case that require the
9 viewing of videotapes of a sexually explicit, graphically
10 and potentially offensive manner" which is very similar to
11 the State's question number 1. But it ends with, "Does any
12 member of the jury panel feel that their religious beliefs,
13 moral values, or common decency would prevent the defendant
14 -- giving the defendant a fair trial, including giving the
15 defendant the benefit of every reasonable doubt despite the
16 fact that the defendant is one of the actors in these
17 videos."

18 I think that encroaches on to commenting upon the
19 evidence and goes a little too far in terms of voir dire.

20 THE COURT: I'm going to use yours, but it is fair and
21 impartial, which is what I --

22 MR. BARROWCLOUGH: Judge, I just want to make sure
23 what my question was getting at. I know with her -- I
24 don't object to her, number one, but she goes to treating
25 the videos as evidence in the case, I believe. And I guess

1 one of her fears is that a potential juror would just
2 ignore the videos because they don't want to view the
3 videos. Mine is more getting at the fact that the sexually
4 explicit material might be offensive. A juror might hold
5 that against our client and not treat him fairly. It's a
6 somewhat different -

7 THE COURT: Yeah, I follow you.

8 How about if I add after her first sentence "This
9 defendant will be shown in some of these videos" and then
10 end up with asking the fair and impartial questions.

11 MR. BARROWCLOUGH: That's good.

12 MS. LIPINSKI: That's fine, Your Honor.

13 THE COURT: Anything else?

14 MS. LIPINSKI: Nothing from the State, Your Honor. I
15 think based on the first viewing, we're going to have to
16 clear the bulk of the courtroom. I have Investigator
17 Strait and Yeager here who are potential witnesses. I can
18 move them in front of the Bar. We do have a member of -- a
19 new lawyer getting a 403 and an in our intern with our
20 office which I can possibly seat up here, possibly -

21 THE COURT: I don't mind, if you're not going to --
22 probation, if she doesn't need to be here, I don't mind if
23 the attorney getting the 403 sits up here for the time
24 being and the intern.

25 MS. LIPINSKI: All right.

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1 Do you want to sit up here? Do you want to stay for jury
2 selection or not.

3 A. I'll stay.

4 MS. LIPINSKI: Well you can't sit back there. You
5 either have to move up here or leave.

6 (ATTORNEY GETTING 403'S AND INTERN MOVE TO PROBATION
7 OFFICER'S SEATS.)

8 THE COURT: We'll take a short break while we get the
9 jury in. Somebody let me know when the panel is up.

10 (COURT IN RECESS @ 02:55 PM.)

11 (COURT BACK IN SESSION @ 03:04 PM.)

12 (JURY POOL ENTERING COURTROOM.)

13 THE BAILIFF: All rise. Come to order.

14 THE COURT: Thank you. Take your seats.

15 (BENCH CONFERENCE @ 03:04 PM OFF THE RECORD.)

16 THE COURT: It will be a minute I'm told.

17 (PAUSE.)

18 THE COURT: I understand we still have one to come.

19 (REMAINING JURORS ENTER COURTROOM.)

20 THE COURT: All right, Solicitor, do you want to call
21 your case?

22 MS. LIPINSKI: May it please the Court, Your Honor. I
23 believe you have the indictments but the State's calling
24 the case of the *State of South Carolina versus Harry*
25 *Lawrence Anthony* indicted on 2007-GS-46-1072, 1073, 1074,

1 and 1075. All indictments for distribution of cocaine.
2 Crack cocaine, I'm sorry.

3 THE COURT: Members of the jury panel, this first case
4 involves four charges of distribution of cocaine base.
5 It's generally called crack cocaine. The defendant is Mr.
6 Harry Lawrence Anthony.

7 Mr. Anthony, would you stand and let the jury see who
8 you are.

9 (DEFENDANT HARRY ANTHONY STOOD.)

10 THE COURT: This is Mr. Harry Lawrence Anthony, and he
11 is represented by Mr. Barrowclough and by Mr. Dest.

12 (DEFENSE ATTORNEYS STOOD.)

13 THE COURT: You may be seated.

14 (DEFENDANT AND DEFENSE ATTORNEYS ARE SEATED.)

15 THE COURT: The State is represented by Mr. Epting and
16 Mrs. Lipinski.

17 (SOLICITOR LIPINSKI AND EPTING STOOD.)

18 THE COURT; You may be seated.

19 (SOLICITOR'S ARE SEATED.)

20 THE COURT: Thank you.

21 The charges are that in certain time periods, the
22 defendant Mr. Anthony was involved in distribution of crack
23 cocaine, cocaine base. It's alleged that this occurred
24 during a time period between December 2004 and December
25 2005, and that's the same date for all of them. Four

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1 offenses within that period of time, December 2004 and
2 2005. It's alleged these happened here in York County.

3 First, I ask, are any of you on the jury panel related
4 by blood or marriage to Mr. Harry Lawrence Anthony, or do
5 you know him in any way whatsoever; if so, please stand?

6 No one stands.

7 Yes, sir your name and number?

8 A. Juror 117, Michael Patton.

9 THE COURT: Patton?

10 MICHAEL PATTON: Yeah.

11 THE COURT: Do you know Mr. Anthony?

12 MICHAEL PATTON: I know him, yes.

13 THE COURT: Would that affect your ability to be fair
14 and impartial in his trial?

15 MICHAEL PATTON: No, sir.

16 THE COURT: All right, you can be seated. Thank you.

17 Are any of you members of the Grand Jury which passed
18 on these four indictments at an earlier time; if so, please
19 stand? No one stands.

20 Any of you know anything about this case? Have you
21 heard about it from any source whatsoever? Or have any of
22 you formed or expressed any opinion about any matter or
23 issue that would be involved in this case; if so, please
24 stand. No one stands.

25 Are any of you or members of your immediate family

1 involved in law enforcement or in the prosecution of
2 criminal cases at any level? That is, do you have anybody
3 in your family that has in the past or is now involved in
4 law enforcement, Sheriff's Office, police -

5 (JURORS STANDING.)

6 THE COURT: You can stand, go ahead and be standing.

7 Sheriff's Office, police, MP, or the prosecution of
8 criminal cases, anything like US Attorney, State's
9 Attorney, Solicitor, DA, anything like that?

10 All right, we'll start over here, and what I'm going
11 to do is ask each of you to give me your name and number
12 and why you are standing. That is, "Uncle Joe is a police
13 officer," something like that. And then I'll come back and
14 ask all of you a general question about fairness and
15 impartiality.

16 Yes, sir, your name and number?

17 A. Richard F. Garcia, Number 46. Former Sheriff's Deputy
18 and formerly assigned to the Sisk County Prosecutor's
19 Office, New Jersey Narcotics Task Force.

20 THE COURT: All right, remain standing.

21 Yes, ma'am.

22 A. Martha Warner, Number 170. My son has prosecuted
23 cases in US -

24 THE COURT: I know it's rude to point, but it helps me
25 at this distance.

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1 Yes, sir.

2 A. George Manghis, Number 88. I was a military police in
3 the army, and I was a police officer in New Hampshire. I'm
4 presently employed by the Department of Homeland Security.

5 THE COURT: Yes, ma'am.

6 A. Number 54, Lynette Gwaltney. My brother is NYPD
7 retired. He resides down here with me now. My daughter is
8 an attorney. She is no longer doing any criminal law. And
9 she was in Virginia, not here.

10 THE COURT: Okay, just remain standing.

11 Yes, ma'am?

12 A. Amy Boling, Number 15. My brother-in-law's employed
13 by the Sheriff's Department here in York County.

14 THE COURT: Your brother-in-law?

15 AMY BOLING: Yes, sir.

16 THE COURT: Yes, ma'am, your name and number?

17 A. Rachelle Herrmann, Number 62. And my brother is in
18 Decatur, Alabama, and as of October - up until October, was
19 a sergeant with the Decatur Police Department and head of
20 Drug Task Force.

21 THE COURT: All right, just remain standing.

22 Yes, ma'am. We have one other lady standing.

23 A. Juror Number 155, Leigh Ann Stephenson. My father

24 --

25 THE COURT: You're trailed off. Your name again?

1 A. Leigh Ann Stephenson. My father is retired from York
2 County.

3 THE COURT: All right.

4 The lady who's brother-in-law is with the Sheriff's
5 Office. This is a Sheriff's case.

6 I am going to excuse you from serving because this is
7 a Sheriff's Office case. You can be seated.

8 And Ms. Stephenson, I'm going to excuse you also
9 because -- you said your father?

10 LEIGH STEPHENSON: My father.

11 THE COURT: Your father's relationship to the York
12 County Sheriff's Office. Now -- you can be seated.

13 Now that leaves five of you standing. Because of your
14 relationship -- if your relationship with law enforcement
15 will prevent you from being fair and impartial in the trial
16 in this case, please raise your right hand?

17 All right, yes, sir, your name again?

18 GEORGE MANGHIS: George Manghis.

19 THE COURT: All right, Mr. Manghis, you can be
20 excused. Just have a seat.

21 The other four indicate they can be fair and
22 impartial. Thank you.

23 (JURORS SEATED.)

24 THE COURT: Are any of you members of or contributors
25 to organizations such as Students Against Drunk Drivers,

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1 Mothers Against Drunk Drivers, Citizens Against Violence,
2 Troopers' Association, Sheriffs' Association, Fraternal
3 Order of Police; if so, please stand. No one stands.

4 Now I'm going to ask you to listen carefully to this
5 next question. I'm going to ask you to listen carefully to
6 all of them particularly this question. According to the
7 information that I have, the State's evidence will contain
8 video and audio depictions of a sexually graphic and
9 potentially offensive nature to include, but not limited to
10 acts by adults, including masturbation with objects, oral
11 intercourse, vaginal intercourse, and anal intercourse.
12 The defendant will be shown in some of these videos. As
13 members of the jury will be required to watch these videos.

14 Do you have any moral -- Do any of you have any moral,
15 personal, or other objection to watching this material that
16 will prevent you from considering them as evidence or
17 prevent you from being fair and impartial; please stand.

18 (JURORS STOOD.)

19 THE COURT: All right. Yes, ma'am, your name and
20 number?

21 A. Sandra Alexander, Juror Number 2.

22 THE COURT: Do you feel like this -- you would be
23 unable to be fair and impartial based on these recitations?

24 SANDRA ALEXANDER: Yes, I don't want to see --

25 THE COURT: Okay, you don't have to comment. Just

1 have a seat.

2 Yes, ma'am?

3 A. Hattie Braxton, Juror Number 18. I would -- I don't -
4 --

5 THE COURT: You would not be able to be fair and
6 impartial?

7 HATTIE BRAXTON: No.

8 THE COURT: Okay, you can be seated too. We will take
9 your name out. Thank you.

10 The next question is somewhat delicate also -- and I'm
11 not going to ask you to go into any particulars. But are
12 any of you or a member of your immediate family been the
13 victim of what you would consider sexual or physical abuse?
14 If so, please stand.

15 (JURORS STOOD.)

16 THE COURT: All right, again, I'm not going to go into
17 great particulars, but I'll start with the lady closest to
18 the aisle.

19 Yes, ma'am, your name and number?

20 A. Christy Raines, 123.

21 THE COURT: All right. And then the next lady.

22 A. Cathleen Stowe, 158.

23 THE COURT: Now this lady.

24 A. Sue Sanders, 135.

25 THE COURT: All right. Would the fact that you're

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1 standing in response to this question, if that would being
2 part of your history, if that would prevent you from being
3 fair and impartial in this trial, please raise your right
4 hand?

5 (JURORS RAISED HANDS.)

6 THE COURT: All right, yes, ma'am, your name again?

7 CHRISTY RAINES: Christy Raines, 123.

8 THE COURT: You'll be excused. Don't leave, but you
9 can have a seat.

10 The other two indicate that they can be fair and
11 impartial.

12 Another somewhat delicate question but I'm not going
13 to ask you to go into any particulars, and listen to this
14 very carefully. Have any of you or a member of your family
15 had a drug addiction, drug or alcohol addiction, such that
16 it would prevent you from being fair and impartial. I'm
17 not asking you if somebody's had one. I'm asking you if
18 you've had something in your family involving addiction to
19 substances, legal or illegal, that would prevent you from
20 being fair and impartial in the trial of this case which
21 involves allegations of distribution of crack cocaine. If
22 so, please stand. No one stands. Thank you.

23 Are any of you or a member of your immediate family
24 been represented by our Solicitor's Officer, or our Public
25 Defender's Office, or either of the four attorneys seated

1 here today, which I've introduced to you earlier; if so,
2 please stand? No one stands.

3 Have any of you been or are you or a member of your
4 immediate family currently or previously a regular customer
5 of Ada's Beauty Salon on Congress Street in York; if so,
6 please stand? No one stands.

7 Have any of you ever been a witness for or involved
8 with in any way whatsoever -- I asked earlier if you had
9 been represented by the 16th Solicitor's Office and by Mr.
10 Dest or Mr. Barrowclough. Have you not been represented by
11 them, but worked with them in way whatsoever as a victim,
12 as a witness, or anything like that; if so, please stand?

13 (JUROR STOOD.)

14 THE COURT: All right, yes ma'am, your name and number
15 again?

16 KRISTINE SPEED: My name is Kristine Speed. I'm 153.

17 THE COURT: All right, and you formerly worked with
18 the Solicitor's Office, I remember you telling me.

19 KRISTINE SPEED: I formerly worked as a receptionist
20 at the Solicitor's Office.

21 THE COURT: Would that affect your ability to be fair
22 and impartial in this trial?

23 KRISTINE SPEED: No, sir, it would not.

24 THE COURT: Okay, thank you. You can be seated.

25 Now the following are possible witnesses in this case.

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1 It's a long list and I don't know that all will testify,
2 but I have to go over this list because even if they don't
3 testify, their names may be mentioned. So if any of you
4 know, friend or a close friend or go to church with, or
5 belong to a lodge with, or a circle with, or anything like
6 that, any of these individuals, please stand?

7 With the York County's Sheriff's Office: Lieutenant
8 Tim Hager, Detective Russ Yeager, Detective Eddie Strait,
9 Barbie Traylor, Gary Rollins, Pete Mitchum.

10 Then someone who was formerly, but not now with the
11 Sheriff's Office: Clara Painter, Mike Williams, Kevin
12 Tolson.

13 Now still with the Sheriff's Office: Cynthia Mitchum,
14 Crystal Kissell.

15 And then with the York Police Office: John Naylis,
16 Lieutenant Gary Messer.

17 And formerly with that department: Sarah Robbins.

18 Marvin Brown with the York County Drug Enforcement
19 Unit.

20 Lillian Gallman, Special Agent with the State Law
21 Enforcement Division.

22 And Patricia Littlejohn, not affiliated with law
23 enforcement.

24 Do any of you know any of those individuals or are
25 related to them; if so, please stand?

1 (JURORS STOOD.)

2 THE COURT: All right, we'll start like we've been
3 doing on this side. And just tell me your name, and
4 number, and who you know.

5 A. I know Mike Williams -- Juror Number 37, James Dubas.
6 I know Mike Williams through the fire service.

7 THE COURT: All right, just remain standing, if you
8 don't mind.

9 Yes, sir.

10 A. Mike Peavy, Number 118. I know John Naylis.

11 THE COURT: All right, remain standing.

12 Yes, ma'am.

13 A. Stella Allen, Juror Number 3. I know Russ Yeager from
14 school from forever ago.

15 THE COURT: Just remain standing.

16 Yes, sir.

17 A. Juror Number 8, Derek Aniba. I know Clara Painter.

18 THE COURT: All right. And, yes, ma'am.

19 A. Juror 174, Julia Williams. I know Tim Hager. I did
20 the baseball -

21 THE COURT: These are witnesses. They are not charged
22 with anything. The fact that they are going to be
23 witnesses in this case, would that affect your ability to
24 be fair and impartial; if so, please raise your right hand.

25 None do. All right, you may be seated. Thank you.

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1 Anything further from the State?

2 MS. LIPINSKI: Nothing further from the State.

3 THE COURT: Anything further from the Defense?

4 MR. BARROWCLOUGH: No, sir, Your Honor.

5 THE COURT: Members of the jury panel, the way we draw
6 juries in this court is as follows. If you hear your name
7 called, please come forward. Each side has the opportunity
8 to excuse up to five individuals. The Bailiff will stand
9 out near where that lectern is, and you will come up and
10 stand beside the Bailiff, turn around and face the table
11 where the solicitors are seated. One of them will say
12 either "Present the juror" or "Excuse the juror." If they
13 say, "Excuse the juror," return to your seat. If they say,
14 "Present the juror," turn and face the table where Mr.
15 Anthony and his attorneys are seated. One of his attorneys
16 will say either, "Excuse the juror," which again means you
17 may return to your seat or "Swear the juror." If you hear
18 the words, swear the juror, the Bailiff will tell you where
19 to have your seat in the jury box. Please bring with you
20 any personal belongings that you have so that you won't
21 have to go back and get them if you are seated.

22 Madame Clerk.

23 (STRIKING OF THE JURY AT 03:21 PM.)

24 MADAME CLERK: Juror Number 31, Melissa Corzine.

25 (WHITE FEMALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?

2 MS. LIPINSKI: Please present the juror.

3 MADAME CLERK: Defense?

4 MR. BARROWCLOUGH: Please swear the juror.

5 MADAME CLERK: You may have a seat in the jury box.

6 Number 22, Kimberly Carter.

7 (WHITE FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 MS. LIPINSKI: Please present the juror.

10 MADAME CLERK: Defense?

11 THE COURT: Just go ahead and sit down, we'll get
12 everybody straight later. It's a little confusing here,
13 but just have a seat. Thank you. Good job.

14 MR. BARROWCLOUGH: Please swear the juror.

15 MADAME CLERK: You may have a seat in the jury box.

16 Number 24, Heather Cicala.

17 (WHITE FEMALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 MS. LIPINSKI: Please present the juror.

20 MADAME CLERK: Defense?

21 MR. BARROWCLOUGH: Please excuse the juror.

22 MADAME CLERK: You are excused from this case.

23 Number 84, Andrew Long.

24 (WHITE MALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

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1 MS. LIPINSKI: Please present Mr. Long.

2 MADAME CLERK: Defense?

3 MR. BARROWCLOUGH: Please swear the juror.

4 MADAME CLERK: You may have a seat in the jury box.

5 Number 174, Julia Williams.

6 (WHITE FEMALE COMING FORWARD.)

7 MADAME CLERK: What say you for the State?

8 MS. LIPINSKI: Please present Ms. Williams.

9 MADAME CLERK: Defense?

10 MR. BARROWCLOUGH: Please excuse Ms. Williams.

11 MADAME CLERK: You are excused from this case.

12 Number 154, Mary Stefano.

13 (WHITE FEMALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 MS. LIPINSKI: Please present Ms. Stefano.

16 MADAME CLERK: Defense?

17 MR. BARROWCLOUGH: Please swear Ms. Stefano.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number 180, Harold Wright.

20 (WHITE MALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MS. LIPINSKI: Please present Mr. Wright.

23 MADAME CLERK: Defense?

24 MR. BARROWCLOUGH: Please swear Mr. Wright.

25 MADAME CLERK: You may have a seat in the jury box.

1 Number 40, Timothy Ellis.

2 (WHITE MALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 MS. LIPINSKI: Please present the juror.

5 MADAME CLERK: Defense?

6 MR. BARROWCLOUGH: Please swear Mr. Ellis.

7 MADAME CLERK: You may have a seat in the jury box.

8 Number 182, Camille Tyrpak.

9 (WHITE FEMALE COMING FORWARD.)

10 MADAME CLERK: What say you for the State?

11 MS. LIPINSKI: Please present Ms. Tyrpak.

12 MADAME CLERK: Defense?

13 MR. BARROWCLOUGH: Please excuse Ms. Tyrpak.

14 MADAME CLERK: You are excused from this case.

15 Number 27, Sharon Colvard.

16 (WHITE FEMALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 MS. LIPINSKI: Please present Ms. Colvard.

19 MADAME CLERK: Defense?

20 MR. BARROWCLOUGH: Please swear Ms. Colvard.

21 MADAME CLERK: You may have a seat in the jury box.

22 Number 54, Lynette Gwaltney.

23 (BLACK FEMALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 MS. LIPINSKI: Please present the juror.

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1 MADAME CLERK: Defense?

2 MR. BARROWCLOUGH: Please swear Ms. Gwaltney.

3 MADAME CLERK: You may have a seat in the jury box.

4 Number 117, Michael Patton.

5 (BLACK MALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 MS. LIPINSKI: Please excuse the juror.

8 MADAME CLERK: You are excused.

9 Number 72, Jennifer Huddleston.

10 (WHITE FEMALE COMING FORWARD.)

11 MADAME CLERK: What say you the State?

12 MS. LIPINSKI: Please present Ms. Huddleston.

13 MADAME CLERK: Defense?

14 MR. BARROWCLOUGH: Please swear Ms. Huddleston.

15 MADAME CLERK: You may have a seat in the jury box.

16 Number 52, Debra Grimsby.

17 (WHITE FEMALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 MS. LIPINSKI: Please present Ms. Grimsby.

20 MADAME CLERK: Defense?

21 MR. DEST: Madame Clerk, can I have the juror number
22 again, please.

23 MADAME CLERK: Fifty-two.

24 MR. DEST: Thank you.

25 MR. BARROWCLOUGH: Please excuse Ms. Grimsby.

1 MADAME CLERK: You are excused from this case.
2 Number 141, Scott Sinclair.
3 (WHITE MALE COMING FORWARD.)
4 MADAME CLERK: What say you for the State?
5 MS. LIPINSKI: Please present Mr. Sinclair.
6 MADAME CLERK: Defense?
7 MR. BARROWCLOUGH: Please swear Mr. Sinclair.
8 MADAME CLERK: You may have a seat in the jury box.
9 Number 75, Benjamin Jagers.
10 (BLACK MALE COMING FORWARD.)
11 MADAME CLERK: What say you for the State?
12 MS. LIPINSKI: Please present Mr. Jagers.
13 MADAME CLERK: Defense?
14 MR. BARROWCLOUGH: Please swear Mr. Jagers.
15 MADAME CLERK: You may have a seat in the jury box.
16 Number 135, Sue Sanders.
17 (WHITE FEMALE COMING FORWARD.)
18 MADAME CLERK: What say you for the State?
19 MS. LIPINSKI: Please present Ms. Sanders.
20 MADAME CLERK: Defense?
21 MR. BARROWCLOUGH: Please excuse the juror.
22 MADAME CLERK: You are excused from this case.
23 Number 162, Lafe Thompson.
24 (WHITE MALE COMING FORWARD.)
25 MADAME CLERK: What say you for the State?

1 MS. LIPINSKI: Please excuse Mr. Thompson.

2 MADAME CLERK: You are excused from this case.

3 Number 62, Rachelle Herrmann.

4 (WHITE FEMALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 MS. LIPINSKI: Please present Ms. Herrmann.

7 MADAME CLERK: Defense?

8 MR. BARROWCLOUGH: Please swear Ms. Herrmann.

9 MADAME CLERK: You can have a seat in the jury box.

10 THE COURT: Draw two alternates, strikes will be one
11 and two on each.

12 MADAME CLERK: Number 118, Michael Peavy.

13 (WHITE MALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 MS. LIPINSKI: Please present Mr. Peavy.

16 MADAME CLERK: Defense?

17 MR. BARROWCLOUGH: Please swear Mr. Peavy.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number 164, Megan Utegg.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MS. LIPINSKI: Present the juror.

23 MADAME CLERK: Defense?

24 MR. BARROWCLOUGH: Please swear the juror.

25 MADAME CLERK: You may have a seat in the jury box.

1 THE COURT: Anything from the State involving the
2 striking of the panel?

3 MS. LIPINSKI: Nothing from the State, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. BARROWCLOUGH: No, sir, Your Honor.

6 THE COURT: All right. Call back?

7 MADAME CLERK: After 7:00.

8 THE COURT: Those of you who are not chosen, please
9 call back tonight after 7:00 and receive -- and follow
10 whatever instructions you receive: it may be to call back,
11 it may be to return at a certain time. It's very important
12 that you follow those instructions. If you're not here
13 when you're supposed to be -- I don't mean this as a
14 threat, but if you're not here, I'll have to ask the
15 Sheriff to find out why you are not here. And that's for
16 you is not a very pretty sight. But if you just follow the
17 instructions: call back when you're supposed to, or report
18 when you're supposed to we'll all get along fine. So if
19 you have a legitimate emergency, we understand that. We
20 can work with that. If you call and tell us you've become
21 ill or a family member is so ill you cannot come. If you
22 have any legitimate reason, call the Clerk, and let them
23 know and let them know why you're not here, and when we can
24 expect you. We can deal with what we know, of course, we
25 can't deal with what we don't know. I'm going to allow you

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1 to leave but do so quietly so we can start working with
2 this panel.

3 Thank you.

4 (REMAINING JURY PANEL EXCUSED AT 03:40 PM.)

5 THE COURT: Members of the jury panel, just keep your
6 seats. Tomorrow when you come back, we're not going to go
7 into the merits of the trial. I have -- We've got some
8 legal matters to take up outside of your presence. And I
9 have an obligation in a little while to do some other work
10 for a different part of the court. So we're not going to
11 actually start into the trial testimony today. And we're
12 not going to swear you in until in the morning, and that
13 will be 10:00 o'clock. I do have a few instructions to
14 give you before you leave for the night.

15 First, you are on this jury panel, so you are not to
16 discuss the case among yourselves or try to make up your
17 own mind until I instruct you to jointly deliberate and
18 return a unanimous verdict. Prior to that time, you are
19 not equipped with all of the tools you need to make a fair
20 and reasonable decision. Do not let anyone discuss the
21 case with you outside the courtroom. If anyone tries to
22 discuss this case with you, tell them you cannot as you are
23 serving as a juror. And report back to me if anyone tries
24 to discuss this case with you, hopefully giving me that
25 person's identity because I'd have to deal with them for

1 having tried to talk to a seated juror.

2 I do not know that there would be any new coverage of
3 this case, but if there is, do not let yourself be exposed
4 to it. Don't read anything, watch anything, or listen to
5 anything that could remotely deal with this trial. Your
6 verdict must be based solely on the law and the evidence
7 that is developed here in the trial.

8 Do not do any independent research. We have Cloud and
9 everything else now where you can find out just about
10 anything about anybody and about any subject but that will
11 not be proper. In fact it will be a violation of the oath
12 you are going to take in the morning. Do not do any
13 independent research, don't go online, or try to learn
14 anything about the charges, about the defendant, about the
15 attorney, about me, about court procedure, about evidence,
16 rules. Don't do any independent research through
17 electronic or any means whatsoever. That would be improper
18 and unfair to both the State and Mr. Anthony.

19 So I'm going to let you go in just a minute.

20 Ms. Gwaltney, I'm going to have you be the forelady.
21 When you come back, you will take this first seat on this
22 row. The Bailiff can tell you the two -- the seating is a
23 little mixed up, but that's okay. The back two seats will
24 be for the alternates, Mr. Peavy's in one already and Ms.
25 Utegg will take the other one. And the foreman, Ms.

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1 Gwaltney will take this seat where Ms. Utegg's is seated,
2 and then the rest of you, there's no assigned seating.
3 It's just wherever you come in, have a seat. The Bailiff
4 will show you where the jury room is, and that's where you
5 are to be at 10:00 in the morning. And the Bailiff will
6 tell you how to get in and out of the building while you
7 are serving as a juror.

8 Anything else from the State before I dismiss the jury
9 for the day?

10 MS. LIPINSKI: Nothing from the State, Your Honor.

11 MR. BARROWCLOUGH: Nothing from the Defense, Your
12 Honor.

13 THE COURT: All right, have a pleasant evening, and
14 we'll see you back at 10:00, and we'll try to start as
15 promptly at 10:00 as we can. Have a pleasant evening.

16 (JURY EXITS COURTROOM AT 03:42 PM.)

17 THE COURT: All right, what do we need to deal with
18 now?

19 MS. LIPINSKI: May it please the Court, Your Honor.

20 Mr. Barrowclough, and Mr. Dest, and I have been able
21 to work out some of the pretrial matters, but just for the
22 purposes when we go forward, I'd like to put some of them
23 on the record.

24 THE COURT: All right. Let's go -- Do you have any?

25 MS. LIPINSKI: I do. Do you want to start with them?

1 THE COURT: We can start with them.

2 Number one, is discovery.

3 MR. BARROWCLOUGH: Your Honor, I believe I provided
4 all discovery in this case. As the Court is aware, I was
5 appointed to take over this case after Melvin Roberts was
6 deceased. And Dan DAgostino brought me the entire case
7 file from Mr. Roberts office, which I did review. And in
8 the weeks leading up to this trial date, I did compare
9 notes a few times with Ms. Lipinski. There were one or two
10 documents that I did not have that she provided to me, but
11 at this time, I have no reason to believe that there is
12 anything that I don't have in this case.

13 THE COURT: Did the State comply with discovery rules?

14 MS. LIPINSKI: Yes, Your Honor. We did produce all of
15 it to Mr. Roberts and have assumed, in essence, that it was
16 transferred accordingly to Mr. Barrowclough. We have met a
17 couple of times. We just made sure that certainly the
18 evidence that's focused in on this case has been exchanged.

19 THE COURT: All right. Any impeachments?

20 MS. LIPINSKI: Yes, sir.

21 THE COURT: All right. What does the State contend it
22 can introduce as far as impeachable testimony?

23 MS. LIPINSKI: I believe the only impeachable offense
24 -- and just so the Court is aware, and I believe it's on
25 the indictment, but when he was originally charged and

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1 arrested, it was listed as a distribution of crack, third.
2 Upon pulling his convictions, one of his prior drug
3 offenses was a bond surrender. As a result of that, we
4 acknowledge that, that would not be an enhance able
5 offense. And therefore, we are going forward under the
6 assumption that this would be a -- and he would be
7 sentenced and convicted under a distribution of crack,
8 second.

9 I do have certified copies of the prior simple
10 possession of marijuana. And he does have a prior
11 conviction for distribution of crack cocaine, which
12 occurred -- he was indicted on -- in 1995, but he was
13 sentenced to three years probation. The State feels that
14 takes it to 1998, which is within 10 years of his
15 indictment of 2007. So not necessarily the trial, but it
16 would bring it in. So the State does feel we may intend to
17 impeach him with it if he does take the stand, however,
18 I've been advised at this time by Mr. Barrowclough that he
19 does not intend to testify.

20 THE COURT: Ten years from when he's charged or 10
21 years from when he's testifying because impeachment has to
22 do with his testimony.

23 MR. BARROWCLOUGH: Your Honor, my understanding would
24 be that it would be 10 years from when he's testifying.

25 THE COURT: Well that's always been my understanding.

1 I've never had it come up, quite frankly. So why don't we
2 see what we can find out here?

3 (PAUSE.)

4 THE COURT: It says evidence is not admissible if ten
5 years has elapsed. So we are going to go from the day of
6 the testimony, not the date of the -

7 MS. LIPINSKI: I understand, Your Honor.

8 THE COURT: All right. Next is the list of witnesses.
9 That's already been taken care of. Prior bad acts or Lyle
10 evidence.

11 MS. LIPINSKI: Yes, Your Honor, and we don't have any
12 in the true, traditional sense of the word. But obviously
13 in this particular case, it involves him trading sex for
14 crack. And the State has instructed our witnesses,
15 although the investigation revealed other women with whom
16 he had this arrangement, we have instructed members of law
17 enforcement, and Ms. Littlejohn, to focus solely on his
18 relationship with her. So to that extent, we kind of agree
19 that, that's kind of where the focus of this will be.
20 However the cross examination of Ms. Littlejohn may
21 necessarily involve other things. In -- During the course
22 of the investigation, these witnesses stated that the
23 defendant would -- was looking to find women who would
24 engage in homosexual sex or lesbian sex acts with him. We,
25 by agreement, are not going there, that he was looking to

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1 possibly find a woman who may have sex with animals for
2 him. We are not going there. Ms. Littlejohn did provide
3 law enforcement with a statement that stated that Mr.
4 Anthony did engage in the practice of branding his
5 prostitutes, that he would take a coat wire or some other
6 object and either put an "H" or an "A" on some part of
7 their body. And that Ms. Littlejohn at one time had such a
8 brand, although she states it's no longer visible. I do
9 not intend to illicit that testimony on direct. However
10 based on where they may go in cross examination, I have
11 advised Mr. Barrowclough that I do feel that it may become
12 probative to establish Ms. Littlejohn's credibility and her
13 role in these acts. So I did want to put the Court on
14 notice that, that was kind of, I believe, where we had
15 agreed to draw the line previously.

16 THE COURT: Any comments?

17 MR. BARROWCLOUGH: Well, Judge, I think that Ms.
18 Lipinski's covered prior topics that my motion was
19 addressing. And of course, it would be our position that
20 we would not want any of that information coming before the
21 jury. Mr. Dest and I certainly would do nothing
22 intentionally to illicit that and we have tried to
23 carefully craft our questions to not even unintentionally
24 illicit anything that would lead Ms. Littlejohn to testify
25 to any of that information.

1 Additionally, Your Honor, that -- one other thing,
2 which I guess goes more to law enforcement, but also with
3 Ms. Littlejohn is that as the Court is aware from pretrial
4 conference in chambers that the law enforcement came into
5 possession of the videotapes investigating a missing
6 person. And also whatever -- to whatever extent Mr.
7 Anthony's relationship with Ms. Matthews, any suspicions
8 they had about Mr. Anthony and Ms. Matthews, we're also
9 trying to make sure that, that doesn't come in either. We
10 are of course going to be careful not to open the door to
11 any of that, but we feel it will also reflect negatively
12 and improperly upon Mr. Anthony's character, we would also
13 ask that, that be kept out as well.

14 MS. LIPINSKI: If I can, just briefly, Your Honor. I
15 do understand that these tapes were discovered obviously as
16 the Court is aware during an ongoing investigation into the
17 disappearance and death of Ms. Matthews. I have instructed
18 law enforcement to avoid reference to Ms. Matthews if at
19 all possible, and that if they feel it is necessary to
20 reference her in order to truthfully and honestly answer
21 the question posed by them because we can't necessarily
22 anticipate every answer, that they should perhaps try and
23 draw the Court's attention and ask that the matter be taken
24 up outside of the presence of the jury so that we may
25 explore that on proffer nonetheless. I've also instructed

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1 Ms. Littlejohn of that. However I feel her ability to
2 necessarily comply with those instructions is not as
3 sophisticated as members of law enforcement, but I
4 certainly attempted. And she understands that this is not
5 a trial about Margaret Matthews, and this is a trial about
6 her and her only.

7 I will state that on one of the tapes, and I believe
8 that it's the first tape the State would show, Ms.
9 Littlejohn and Mr. Anthony discuss a Margaret. I believe
10 that to be Margaret Matthews. I don't intend to call any
11 question, point it out in any where, or suggest it any
12 where or those kind of things, but I do want to put on the
13 record that the State does intend to play that tape, and
14 that is part of the audio portion of it. We also feel that
15 the way that I kind of -- and we keep going on about this,
16 but I believe that the way to present this to the jury is
17 that York County Sheriff's Office and possibly York P.D.
18 were engaged in a joint investigation into an unrelated
19 matter. During the course of that investigation, Patricia
20 Littlejohn became a material and cooperating witness.
21 During -- in her statements, she revealed that on occasion,
22 she would receive crack cocaine from the defendant in
23 exchange for sexual acts and performances, and that she was
24 aware that many of them, although she did not know how
25 many, were videotaped. That is the result of her

1 statement. Investigators with York County Sheriff's Office
2 executed two search warrants, and went looking for those
3 tapes, and therein located them. I feel that's the best
4 way to try and sanitize the script that is necessary from
5 law enforcement in order to explain how these tapes came to
6 be in their possession, and the role of Ms. Littlejohn in
7 this investigation without necessarily broaching the
8 subject of the death and investigation of Margaret
9 Matthew's disappearance.

10 THE COURT: Well it may be a delicate dance as we go
11 through that, but I'm aware of what the issues are and keep
12 my ear tuned, and obviously you will.

13 MS. LIPINSKI: And I apologize. Mr. Barrowclough and
14 I spoke of this about lunch. But in, I believe it's the
15 second-to-the-last video, but one of the videos, and I'm
16 aware of which one, Mr. Anthony makes a statement about not
17 liking Caucasian women are not being aroused by Caucasian
18 women. I have not, since Mr. Barrowclough put me on notice
19 that he would like that played for the jury, had a chance
20 to go back and look at that because there is some
21 conversation that relates to it. But to the extent that I
22 don't feel that, that conversation is probative or
23 necessary in order to establish the guilt of the defendant,
24 I will attempt to at least mute that part of the playback.

25 MR. BARROWCLOUGH: That's great, Your Honor, yes.

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1 There is some commentary about white women and with really
2 nothing to do with the distribution of crack. So I would
3 just ask that, that part of the audio be muted. And just
4 for the record, we already discussed this for the record,
5 through discovery, we were provided with 33 30-minute
6 DVD's, which the Solicitor did edit down to, I believe, 7.
7 One is 30 minutes, the rest are approximately 15 or 16
8 minutes. So it's a greatly shortened presentation, which
9 in going back and forth, Ms. Lipinski and I, we did get
10 down to where we are now, which is pretty much almost at an
11 agreement other than these little minor points we're
12 bringing up.

13 MS. LIPINSKI: Your Honor, I just -- I wanted the
14 opportunity to look at that tape, but if I have any reason
15 I can't comply with Mr. Barrowclough's request to mute that
16 portion, I'll bring it to the Court's attention first thing
17 tomorrow.

18 MR. BARROWCLOUGH: Thank you.

19 THE COURT: Now, sequestration will be reciprocal.
20 Prior, any record of lay witnesses?

21 MS. LIPINSKI: Yes, Your Honor. I have presented the
22 defense with a copy of Ms. Littlejohn's record. I did that
23 today, and I even updated it to make sure that there
24 weren't any changes since she was identified as a witness.

25 THE COURT: Any statements from Mr. Anthony that the

1 State intends to introduce?

2 MS. LIPINSKI: Again, Your Honor, at this point, the
3 State does not intend to go into his statements on direct.
4 We feel that, if at all, it would be necessary based on the
5 cross examination of Ms. Littlejohn to illicit from law
6 enforcement certain concessions that he made, that he went
7 to Bookout Road to have sex with her. In the event that we
8 do need to do that, I think we can do the Denno prior to
9 lunch tomorrow as opposed to belaboring the issue now. Or
10 if Investigator Straight is here, if the Court would like
11 to indulge it at this time.

12 THE COURT: If you've got time, we can do it this
13 afternoon if you want to. It's not even 4:00 yet, I don't
14 believe. If we can do it this afternoon it would be fine.
15 Let's finish up these motions and then do that.

16 MS. LIPINSKI: Thank you, Your Honor.

17 THE COURT: The last one is the glass pipe. What's
18 the State's position on that?

19 MS. LIPINSKI: Obviously the State feels that the
20 glass pipe is probative and admissible. Some of the tapes
21 have date stamps; some of them do not. Of course the State
22 is not able to corroborate in any way the date stamps on
23 them. At least one goes into July of 2006. I believe Ms.
24 Littlejohn's testimony would be that she continued in these
25 acts with the defendant up until December of 2005. So

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1 while the defense indicates that it's quite extensive in
2 time, I don't believe it's quite as extensive as they
3 portray it to be.

4 The defendant lived at a residence here on Hunter
5 Street in the City of York. He lived there with his mother
6 and his mother's beauty supply or beauty salon was next
7 door. That was the voir dire question that the Court asked
8 earlier at the State's request. It was our understanding
9 that he would not like using this place for sex due to the
10 proximity to his mother, and as a result would go to his
11 cousin's residence at [REDACTED]. When law
12 enforcement went there and began to search, they located a
13 bedroom. In that bedroom, there are things about that
14 bedroom that are idiosyncratic that demonstrate that, that
15 is the bedroom where a large portion, if not all but one of
16 these tapes occur. You can see a part of the wall where
17 the outer coating of the drywall has been stripped off for
18 whatever reason. They pulled something off just to the
19 decay of the building. Nonetheless, that appears to be the
20 bedroom that he would use. And Ms. Littlejohn did indicate
21 that the cousin had one bedroom that was kind of his. He
22 had one bedroom that they would use when they would go
23 there. The crack pipe was found in that bedroom in the
24 floor. We did obtain that crack pipe. We did test it.
25 And Cynthia Mitchum did identify that there is crack

1 residue on that pipe. It was swabbed for DNA, and
2 insufficient DNA was obtained to make any comparison. So
3 the State did make every effort they could in order to tie
4 the pipe to both the defendant, Ms. Littlejohn, or the
5 other victim. However the State does feel that in the --
6 this is the room where this activity frequently took place,
7 that its discarded in such a nature as kind of the bottom
8 of a closet. But it doesn't appear that anyone else was
9 living or using the bedroom, and that, that is the practice
10 of the defendant to take his women there specifically Ms.
11 Littlejohn. And that's where most of these tapes occur,
12 that the pipe is probative. It's consistent with the pipes
13 that are seen in the videotapes. Now I will acknowledge
14 there's nothing so idiosyncratic that if purple with polka
15 dots that you can say definitively that pipe on the tapes
16 is the pipes they recover from the room. But it's
17 certainly consistent with it and the pipe in nature used by
18 both individuals in the videotapes. And so therefore the
19 State feels that it's relevant, is appropriate, and that
20 any argument raised by the defense goes to weight and not
21 as to admissibility.

22 MR. BARROWCLOUGH: Your Honor, may it please the
23 Court. I would point out that, and as I stated in my
24 motion, the residence from which the pipe was recovered was
25 not Mr. Anthony's residence. That my understanding is that

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1 this was sort of like what had been sort of a hunting shack
2 that was kind of used as a party spot by more than just Mr.
3 Anthony. When I say that 1 to 13 months, I'm just working
4 on the time frame alleged in the indictments. The
5 timestamp in the videos, she's right, the last one went in
6 July of '05. That would still be seven months. I mean
7 seven months after the time stamp on the indictment, that
8 the pipe was recovered at the end of January 2006. There's
9 no telling how long that pipe had been there, who put it
10 there. There's certainly no indication that, that area was
11 under the exclusive control of Mr. Anthony for those six or
12 seven months. There's no forensic evidence linking that
13 glass pipe to Mr. Anthony. And as the Solicitor had to
14 admit, there's nothing idiosyncratic about it. You can
15 look at it and tell. I mean so there's no direct or
16 inferential evidence that this crack pipe is linked to this
17 case. I mean it would be analogous, Your Honor, to a case
18 where somebody shoots somebody, and a gun is found in the
19 general location of the shooting six months later, but it
20 can't be matched forensically or ballistically, it
21 certainly wouldn't come in as evidence in a shooting case.
22 So just because this is something more not used like a
23 glass pipe than a gun, it's still does not increase its
24 relevance. It's still not a relevant piece of evidence in
25 the trial of Mr. Anthony. And I think it would be unfair

1 to him, the State to be able to allege this crack pipe is
2 the one or could potentially be the one in these videos
3 when we really don't have no idea.

4 THE COURT: I'm going to grant the State's - the
5 Defense's motion to preclude the introduction of the glass
6 pipe. I just feel like we don't reach the probative value
7 versus prejudicial value or prejudicial value versus
8 probative value. Without anything further to link it other
9 than its found in this room, I'm going to grant the Defense
10 motion to preclude the introduction of that pipe.

11 MR. BARROWCLOUGH: Thank you, Your Honor.

12 MS. LIPINSKI: And Your Honor, and I understand, and
13 I'm not trying to argue with the Court or belabor the
14 issue. However, Mr. Barrowclough's characterization that
15 this was a party shack or anything of that nature. Or --
16 and the State is ---

17 THE COURT: I'm not taking that into consideration.
18 My thinking is, this pipe was found in a room, in a
19 residence whether it belonged to this man, it's got no DNA.
20 When you go through December of 2005, it was not 13 months,
21 but at least 26 days beyond the period that he's charged
22 with, I'm sure the crack pipe, being found there in the
23 room, the videos that you think are portrayed -- portray
24 that room, I just don't think that's enough. So it's not
25 that it's a party house or -- I just don't think that,

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1 that's enough. I guess if there's some evidence that he
2 had -- you could produce evidence that he had a key, and
3 the room was locked, and he had the only key, I might look
4 at it different.

5 MS. LIPINSKI: And, Your Honor, we would just ask that
6 at least we would be able to renew our motion of
7 admissibility after the testimony of Ms. Littlejohn. The
8 issue that I was going to raise is that Ms. Littlejohn
9 would state that the only two people she knew who have the
10 key were his cousin and him, that he used that key to gain
11 entry into the house, not the bedroom, but at least into
12 the house, and that would establish a tie that this wasn't
13 something where random people came and went all the time.
14 But instead it was limited and it was under the dominion
15 and control of the defendant for an extended period of time
16 consistent of when these occurred. And that there were no
17 personal items that tied it to anybody else in terms of
18 this bedroom. And that instead the cousin's personal items
19 were in another bedroom where other items were found. So I
20 would just -- and I'm not trying to belabor the point, but
21 the State may renew our motion to consider admissibility
22 after Ms. Littlejohn has testified because we may be able
23 to establish that, at least somewhat more of a connection.

24 THE COURT: That door is always open if something
25 changes. Right now its glued and locked.

1 MR. BARROWCLOUGH: Thank you, Your Honor.

2 THE COURT: Anything else? You want to go into
3 Jackson versus Denno?

4 MS. LIPINSKI: Just briefly if, Your Honor, we can put
5 some of the stipulations that we've worked out -

6 THE COURT: Yes.

7 MS. LIPINSKI: --- nonetheless on the record.

8 THE COURT: That would be good.

9 MS. LIPINSKI: Obviously it involves four indictments
10 of distribution of crack cocaine. Mr. Anthony as numerous
11 other items including ones for exploitation of a vulnerable
12 adult. Abuse of a vulnerable adult, he has warrants for
13 criminal sexual conduct. The State just feels that while
14 the Defense and the State have agreed that these four
15 indictments will be tried together and will be presented
16 before the Court, his remaining indictments are not
17 triggered in terms of double jeopardy. The Defense has
18 stipulated to this bifurcation of charges and acknowledges
19 that the remaining incidents involving Ms. Matthews
20 nonetheless remain active and viable charges that the State
21 can pursue.

22 MR. BARROWCLOUGH: Of course, yes, Your Honor.

23 MS. LIPINSKI: There is -- and Mr. Barrowclough did
24 not mention this, but they also indicate a search warrant
25 at the defendant's residence, which is where the videotapes

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1 were seized from. We have obviously paired down the
2 videotapes to some extent and agree on what the videotapes
3 are, which ones will be used, and that type of thing. But
4 Mr. Barrowclough indicated that he's not challenging the
5 search warrant of his residence or anything in terms of
6 that, he may none the less challenge of relevance of the
7 evidence seized. But the other evidence that the State
8 would present in addition to the videotape from the
9 Congress Street, which was his primary residence, is two
10 camera bags that were seized -

11 THE COURT: Two what kind of bags?

12 MS. LIPINSKI: Camera bags. Like little bitty ole -

13 THE COURT: Camera bags?

14 MS. LIPINSKI: Camera bags. There's two video
15 recording cameras, one a JVC, and one another brand. In
16 one of those bags is a crack stem. It's not used. It's
17 just a clear stem that has a little flower in it that the
18 State would intend to introduce, believes it is relevant,
19 and would illicit the testimony of Marvin Brown who states
20 that, that is consistent with -- or generally used and
21 bought for the purposes of ingesting narcotics. So there's
22 no crack residue on that pipe. But the State would --
23 because these are items seized at his house, are consistent
24 with the acts in which he engaged, the State would intend
25 to introduce those items. And it's my understanding that

1 the Defense has no objection to the search of that house.

2 MR. BARROWCLOUGH: Your Honor, as far as search
3 warrants for the Congress Street house, I understand there
4 were three. We don't challenge those. And we don't
5 challenge the search, the searches that flow from those
6 warrants. We don't challenge camera bags. And as far as
7 that glass stem goes, it -- I would reserve the right to --
8 I want to hear what Marvin Brown has to say about it
9 really. I mean it's not necessarily tied to this case. I
10 think that it's hard to tell. It doesn't -- right now,
11 it's not a crack pipe. I mean it looks like something
12 glass with a rose in it. I'm not even familiar with what
13 it is. So I'm not really agreeing or disagreeing with it,
14 we'll just have to wait for right now.

15 THE COURT: That's another one we'll visit if we've
16 got to visit it.

17 MS. LIPINSKI: And I understand you may have relevancy
18 questions later, but I wanted to get out that we didn't
19 need any Fourth Amendment search motions ---

20 MR. BARROWCLOUGH: No, no. I agree with that.

21 MS. LIPINSKI: The defendant has been indicted since
22 2007. We've -- those indictments are in possession of the
23 defense. The State would just ask that any challenges to
24 the sufficiency, particularity, and notice or other issues
25 be raised prior to the swearing of the jury. I understand

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1 it covers an unusual span of time that's more consistent
2 with the case of sexual abuse, but the State just feels
3 that any issues or challenges to that need be made at this
4 time and not once the jury is sworn, consistent with the
5 Supreme Court's recent holding in *State v. Shepherd*.

6 MR. BARROWCLOUGH: Judge, pursuant -- I know that in
7 chambers last week I told you that I may raise that issue.
8 Having done the research much to my surprise although I
9 don't really think we have an issue of challenge here, so
10 we're not going to...

11 MS. LIPINSKI: And I'm truly not trying to belabor the
12 point, but I just want these issues resolved before we
13 proceed. Mr. Barrowclough and I had also pursued under the
14 -- in his words, under illicit possibility that the State
15 was able to get the crack pipe in. And perhaps upon
16 hearing the testimony of Ms. Littlejohn, we can ask the
17 Court to reconsider your ruling. And I'm not trying to
18 belabor. But in argument of assuming that we do, and the
19 planets align for the State tomorrow, Mr. Barrowclough and
20 I had agreed as to the chain of that crack pipe. It was
21 tested by SLED. SLED's results were that there were
22 insufficient human material garnered to create a DNA
23 profile. But we had agreed to stipulate as to the results
24 of that SLED DNA report and any chain issues getting it to
25 SLED. And also Lillian Gallman who was on the list is a

1 SLED analyst who generated the report. Ms. Gallman is
2 under subpoena in two other counties for trials this week
3 as the Court is commonly aware. In the event that we were
4 not able to get to Ms. Gallman in terms of scheduling, the
5 State was going to rely on Cynthia Kissell who's the local
6 DNA analyst who has been hired by York County to interpret
7 or testify as to those results. So I really don't want the
8 Court to think I'm taking any affront to your ruling, I'm
9 not. But in the event that we go there, I just wanted it
10 all put on the record as stipulations that we have agreed
11 to previously.

12 MR. BARROWCLOUGH: That's correct, Your Honor. As far
13 as the DNA results being negative for Mr. Anthony, we would
14 obviously stipulate to those being per agreement should you
15 change your mind on that.

16 MS. LIPINSKI: Would you like to make that pre --
17 certified copies of his previous convictions as Court's
18 exhibits just for the record?

19 THE COURT: That would be fine.

20 MS. LIPINSKI: The Court's indulgence.

21 (WHEREUPON: COURT'S EXHIBITS ONE AND TWO IDENTIFIED
22 AND MARKED, RECEIVED INTO EVIDENCE.)

23 MS. LIPINSKI: If we can go over the Jackson v. Denno
24 because I think that clears up everything.

25 THE COURT: Wanda, do you need a break?

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1 MADAME COURT REPORTER: Yes, sir, I do.

2 THE COURT: Well let's take a break.

3 MS. LIPINSKI: Thank you, Your Honor.

4 (COURT IN RECESS AT 04:10 PM.)

5 (COURT BACK IN SESSION AT 04:26 PM.)

6 THE COURT: Thank you, take your seats.

7 All right, you may proceed.

8 MS. LIPINSKI: And, Your Honor, just too, if Mr.

9 Barrowclough wishes anything different, certainly the State
10 would have no problem.

11 We intend on calling Eddie Strait who was present when
12 the Defendant gave his statement which at least talks in
13 some relevant nature about this investigation versus the
14 death and disappearance of Margaret Matthews, which we
15 would not intend to go into. Lieutenant Hager did have a
16 conversation separately with Mr. Anthony in which they
17 talked specifically a lot more about Margaret Matthews.
18 That conversation arises once they seize the tapes. They
19 do recover some commercial pornography, which does not
20 involve Mr. Anthony, Ms. Littlejohn, or anybody else. They
21 then return that to Mr. Anthony. So Mr. Hager may state
22 during his testimony that they seized these tapes, and that
23 some of them which were not criminal in nature will
24 returned to Mr. Anthony. But we don't intend to otherwise
25 go into the substance of that conversation or that

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

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1 statement, which was done on February 8th of 2006. If at
2 all, the State would go into the statement taken by Eddie
3 Strait when he had a conversation with him on February 2nd
4 of 2006 when they talked more specifically about Ms.
5 Littlejohn, the Bookout Road location, and things of that
6 nature.

7 THE COURT: All right.

8 MS. LIPINSKI: And we would call Investigator Strait
9 to the stand at this time.

10 THE COURT: Okay.

11 (WHEREUPON: EDDIE STRAIT, BEING
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION - IN CAMERA

14 DETECTIVE EDDIE STRAIT BY MS. LIPINSKI:

15 Q. Investigator Strait, with whom are you currently
16 employed?

17 A. York County Sheriff's Office.

18 Q. And obviously you've been appointed in that fashion
19 for some time now, and in what capacity?

20 A. I've been in the Sheriff's Office for 18 years, been
21 assigned to the Detective Division for the last 10 years.

22 Q. And did you have the occasion on February 2nd of 2006
23 to speak with Mr. Anthony?

24 A. Yes, I did.

25 Q. And do you recall, if at all, where that conversation

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

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1 took place?

2 A. In the Detention Center.

3 Q. Prior to you speaking -- So was he incarcerated at
4 that time at the Detention Center, or do you know how it
5 came to be that...

6 A. I think we had a warrant on him at that time, and he
7 was -- well he definitely was incarcerated at the Detention
8 Center. I'm not sure about the charge.

9 Q. In your report, and I believe you have a copy of that
10 in front of you, does it indicate IN reference to his
11 charge of pointing and presenting a firearm?

12 A. That's correct.

13 Q. And at that time, did you speak with Mr. Anthony? Did
14 you Mirandize him in any way? If you recall?

15 A. I don't recall.

16 Q. Was anyone else present during that conversation?

17 A. Lieutenant Hager.

18 Q. And you go to speak to him. Are you going to speak to
19 him about the pointing and the presenting charge, or do you
20 go to speak to him about other instances as well?

21 A. It's in reference to the charge of pointing the
22 firearm.

23 Q. And is it a voluntary encounter? When you went there,
24 did he appear willing to speak with you?

25 A. Yes, he did.

1 Q. And had either you or Investigator Hager had any
2 involvement with him previous to that?

3 A. Yes.

4 Q. Had you spoken to him about Margaret Matthews either
5 at the Detention Center or outside the Detention Center
6 prior to that day, if you recall?

7 A. I don't recall a specific day or time, but we had
8 talked to him during the investigation.

9 Q. And on February 6th -- and the State will not illicit
10 the conversation about the pointing and the presenting
11 charge, but we do offer it just in terms of the context of
12 the -- did you ask him about the residence at Bookout Road?

13 A. Yes, I did.

14 Q. And what did he state in relation to that?

15 A. I asked him who all he had taken to that residence.
16 That's where the allegations of the pointing and presenting
17 the firearm supposedly originated at. He stated he had
18 taken Patricia Littlejohn; Betty Hayes, who he knows as
19 "Toe Toe"; Barbara Nichols; and Margaret Matthews.

20 Q. And you asked him further questions about Margaret
21 Matthews?

22 A. That's correct.

23 Q. And what does he state in relation to Ms. Matthews?

24 A. He had picked her up before Christmas, took her to the
25 library in York to pick up some free toys. And he took her

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

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1 back to her daughter's residence, but no one was home at
2 the time, and he left her there. Said he did not take her
3 to Bookout on that day and has not seen her since.

4 Q. And just to clarify, when he was making those
5 comments, he's referring to Margaret Matthews and not
6 Patricia Littlejohn?

7 A. That is correct.

8 Q. So at that point, the conversation goes beyond your
9 conversation about a pointing and presenting that may have
10 allegedly occurred at Bookout Road involving Ms.

11 Littlejohn?

12 A. That's correct.

13 Q. Did you ask him about whether or not he had ever owned
14 a gun?

15 A. Yes, he said he had owned a .22-caliber revolver.

16 Q. Did he indicate anywhere that weapon was at this time?

17 A. He said he did not know where it was at the time. He
18 said it may have been at his mother's or his brother's on
19 Edgefield Road.

20 Q. Did you go any further into asking him about his
21 activities at Bookout Road?

22 A. Yes, I asked him why he took the girls to Bookout
23 Road, and he stated it was for sex. I asked him about
24 taking pictures or videos. He stated, "Yes, he did, but
25 that was not illegal." And the camcorder was at his

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

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1 mother's house in York.

2 Q. Did you -

3 A. We also asked --

4 Q. I'm sorry, go on.

5 A. We also asked him about branding the females that were
6 involved. He said that they had branded themselves.

7 Q. And did he indicate who of these women had branding on
8 them?

9 A. Matthews; Toe Toe, which is ---

10 Q. Betty Hayes?

11 A. Betty Hayes and Nichols had brands on them, Barbara
12 Nichols.

13 Q. So he didn't indicate at that time that Ms. Littlejohn
14 had a brand on?

15 A. No.

16 Q. Did you threaten him in any way?

17 A. No.

18 Q. In your experience in talking to him in this kind of
19 nature, would you have told him that he had certain rights,
20 that he didn't have to talk to you? That if he appeared
21 reluctant to talk to you, would you have pursued that
22 conversation?

23 A. No, I would not.

24 Q. Do you ever recall him asking for a lawyer or asking
25 to speak with a lawyer?

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

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1 A. No, ma'am.

2 Q. Had he done that, would you have afforded him that
3 opportunity to do that?

4 A. Yes, typically in conversation at that point.

5 Q. Did he ever indicate he didn't want to speak with you
6 or wanted to end the conversation with you?

7 A. No.

8 Q. Would you characterize the conversation as voluntary
9 or involuntary?

10 A. Voluntary.

11 Q. Do you remember his demeanor at all during the
12 conversation?

13 A. I can't say that in particular. I know I've had
14 several conversations with him, and he's always been calm
15 and polite when we spoke with him.

16 Q. He didn't appear nervous in any way that you recall?

17 A. No.

18 Q. Did he appear to be under the influence of anything
19 that you recall?

20 A. No.

21 Q. When you spoke with him, were you wearing a firearm at
22 your side as you typically do?

23 A. Actually in the Detention, I would have had an empty
24 holster with a badge.

25 Q. Did you ever threaten him with a weapon, threaten him

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

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1 physically in any way?

2 A. No.

3 Q. During the course of your investigation into the
4 disappearance of Margaret Matthews, how was Mr. Anthony?
5 Was he cooperative or uncooperative with you?

6 A. He was cooperative.

7 Q. Was that consistent with the conversation that
8 happened on February 2nd of 2006?

9 A. Yes.

10 MS. LIPINSKI: The Court's indulgence, one moment.

11 (PAUSE.)

12 MS. LIPINSKI: And, Your Honor, obviously this
13 conversation goes beyond that, but I wanted the Court to
14 consider the context of his comment so that you would
15 understand the nature of it. But specifically what the
16 State would seek to introduce from Mr. Harry Anthony, if we
17 go in that direction depending on the Defense, is that he
18 acknowledged that he would -- he did go to Bookout Road.
19 He went there to have sex, that he would videotape that
20 encounter, that he acknowledged a camcoder was at his
21 mother's house because the State did state that we would
22 intend to introduce those two camera bags that we brought
23 up before. And while we don't necessarily anticipate going
24 as to the branding of Ms. Littlejohn, it may at some point
25 become relevant to reestablish or go into her credibility

DETECTIVE EDDIE STRAIT: CROSS BY MR. BARROWCLOUGH - IN CAMERA -58-

1 as a witness.

2 THE COURT: Cross.

3 MR. BARROWCLOUGH: Thank you, Your Honor. May it
4 please the Court.

5 CROSS EXAMINATION

6 DETECTIVE EDDIE STRAIT BY MR. BARROWCLOUGH:

7 Q. So Detective Strait, this was on February 2nd of 2006.
8 Correct?

9 A. That's correct.

10 Q. And Mr. Anthony at this time was incarcerated.
11 Correct?

12 A. That's correct.

13 Q. And did he request to speak to you, or did you just go
14 and see him in the jail?

15 A. I don't recall to be honest with you.

16 Q. So you don't have any information to the effect that
17 he requested to speak to you?

18 A. No, I do not.

19 Q. And he was in jail on a pointing firearm charge?

20 A. Yes.

21 Q. And that's what you initially went to speak to him
22 about?

23 A. That's correct.

24 Q. And you don't have any information, or you don't
25 recall if you read him his rights. Correct?

DETECTIVE EDDIE STRAIT: CROSS BY MR. BARROWCLOUGH - IN CAMERA -59-

1 A. I do not.

2 Q. And there's no rights form indicating that you read
3 him his rights in discovery. Correct?

4 A. That's correct.

5 Q. And there's no signed form, either a rights form or
6 another type of forms that y'all use saying I give this
7 statement freely and voluntarily. Correct?

8 A. That's correct.

9 Q. There's no form signed by Mr. Anthony in conjunction
10 with this statement?

11 A. Not that I'm aware of.

12 Q. And the document that you're holding in your hand was
13 actually generated by you, not Mr. Anthony. Correct?

14 A. That's correct.

15 Q. And so there's no written statement by Mr. Anthony?

16 A. No.

17 Q. And your interview with Mr. Anthony was not
18 videotaped. Right?

19 A. Not videotaped?

20 Q. Not videotaped.

21 A. That's correct.

22 Q. And is not audio taped?

23 A. That's correct.

24 Q. Okay. And everything that you're testifying to with
25 regards to his appearance, his demeanor, that's all from

DETECTIVE EDDIE STRAIT: CROSS BY MR. BARROWCLOUGH - IN CAMERA

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1 your recollection. Right?

2 A. That's correct.

3 Q. None of that is encapsulated in this document?

4 A. No, no, it's not.

5 Q. Okay. And speaking of this document, you testified
6 that eventually you talked to Mr. Anthony about taking
7 girls to Bookout Road. Right?

8 A. That's correct.

9 Q. And that was for sex. Right?

10 A. Yes.

11 Q. And there was taking pictures or video. Right?

12 A. That's correct.

13 Q. And Mr. Anthony said, "Yes, and that was not illegal."

14 A. That's right.

15 Q. But in this, there's no mention of any drugs. Right?

16 A. That's correct.

17 Q. The sale of any drugs?

18 A. Correct.

19 Q. The use of any drugs?

20 A. Correct.

21 Q. The trading of any drugs for sex?

22 A. Correct.

23 Q. And let me ask you this question. Is that because you
24 didn't ask him, or is it because you did ask him, and he
25 denied it, and you didn't put it in the statement?

DETECTIVE EDDIE STRAIT: REDIRECT BY MS. LIPINKSI - IN CAMERA

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1 A. I believe because I didn't ask.

2 MR. BARROWCLOUGH: One second, Your Honor, please.

3 (PAUSE.)

4 MR. BARROWCLOUGH: That's all I have, Your Honor.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION - IN CAMERA

7 DETECTIVE EDDIE STRAIT BY MS. LIPINSKI:

8 Q. You stated that you had nonetheless though spoken to
9 him previously?

10 A. Yes.

11 Q. About the disappearance of Ms. Matthews?

12 A. Yes.

13 Q. Do you remember where those conversations took place?
14 If you had ever been out to his house or anything?

15 A. We had -- had been to the house, to his mom's house.

16 Q. And at that time, he was willing to speak with you?

17 A. Yes.

18 MS. LIPINSKI: That's all the State has at this
19 particular time, Your Honor.

20 MR. BARROWCLOUGH: Nothing further, Your Honor.

21 THE COURT: You can step down. Thank you.

22 (WITNESS LEAVING WITNESS STAND.)

23 MS. LIPINSKI: Your Honor, and the only other witness
24 the State may present in terms of this is Ms. Sarah
25 Robbins, who's also on the witness list, also spoke to him

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1 on the same day. I don't believe she took a written
2 statement from him, but she did *Mirandize* him on that
3 particular day. I tried to get to her before she left
4 today when you indicated you wanted to do that, but she's
5 only a part-time person and had already left for the day.
6 But the State could also offer the testimony of Ms. Robbins
7 who *Mirandized* him at some point on that same day according
8 to her report. We wouldn't introduce that statement, but
9 also just that he was aware of his *Miranda* rights on the
10 same day.

11 THE COURT: Is she going to testify before or after
12 Mr. -- Officer Strait?

13 MS. LIPINSKI: Honestly, I do not know the answer to
14 that question.

15 THE COURT: Well I guess we better wait until we hear
16 from her before I decide.

17 MR. BARROWCLOUGH: Yes, sir.

18 THE COURT: Anything else we can do today?

19 MS. LIPINSKI: I have nothing further.

20 MR. BARROWCLOUGH: Nothing further, Your Honor.

21 THE COURT: I'm going to -- based on the nature of
22 these charges, I'm going to require Mr. Anthony to remain
23 incarcerated during the trial.

24 MR. BARROWCLOUGH: Yes, sir, Your Honor.

25 THE COURT: We'll be at ease until 10:00 in the

1 morning. I think Solicitor, Mr. Epting, or one of you
2 check to see, I think somebody wanted to do something. Ms.
3 Joyner or somebody wanted to try to work in something early
4 in the morning. Just find out --

5 MR. EPTING: I will, Your Honor.

6 (COURT IN RECESS AT 5:00 PM.)

7 (COURT BACK IN SESSION ON TUESDAY, JANUARY 10, 2012 @
8 10:32 AM.)

9 (STATE'S EXHIBITS ONE THROUGH SIX PREMARKED FOR
10 IDENTIFICATION.)

11 THE COURT: Is the State ready?

12 MS. LIPINSKI: We are ready, Your Honor.

13 I will tell you that the State is withdrawing its
14 motion to admit today a statement that the Defendant made
15 to Eddie Strait when we did the Jackson v. Denno hearing.
16 I did speak with Ms. Sarah Robbins who you -- I do believe
17 in all candor to the Court, mirandized him earlier in the
18 day. She reviewed her reports last night and fortunately
19 it doesn't have a timestamp or it would give her that
20 definitive knowledge. She says that is the best of her
21 recollection, but I don't want to put her in a situation
22 that I don't feel is proper, ethical, and so the State for
23 that reason is going to withdraw the motion to submit that
24 statement. I did want to put that on the record, to
25 clarify that for the purposes of the Court this morning.

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1 I believe -- also I gave Mr. Barrowclough the pretrial
2 motions. Yesterday raised the issue of a comment on one of
3 the tapes where the defendant is making comments about his
4 attraction to Caucasian women, and I told the Court that I
5 would review the tape last night, determine whether or not
6 we needed that body or portion of the tape for any reason.
7 I have done that. There are six tapes -- six different
8 discs. On tape 5, there are two videos that appear to be
9 on the same day, the same location, they're wearing the
10 same clothes, that kind of thing. The tape in question is
11 on disc 5, the second video. What I approached Mr.
12 Barrowclough about earlier today is that I would just mute
13 that video because some of the videos do not have audio or
14 have unintelligible audio on them. And that I would just
15 mute it, and let the jury believe that there was not audio
16 to be heard on that portion of the tape as opposed to
17 trying to find that exact moment in time and just hitting
18 the mute button then. Mr. Barrowclough stated he didn't
19 have any objection to that.

20 We also had several pretrial discussions and also in
21 chambers with you regarding trying to move forward through
22 the sex portions of the tapes and highlighting the actual
23 crack portions of the tape. Some of the tapes we'll be
24 able to fast-forward, some they may still see a rapid
25 motion and in some they may actually skip certain segments

1 of the tape. But that is, I believe, the agreement that we
2 reached out to diminish prejudice to all parties involved.

3 The last tape, which is tape 6, but there are actually
4 seven videos, but disc 6, the last few minutes of the tape
5 are some unfavorable closeups for all parties involved.
6 The crack portion of the tape is not involved in that
7 segment. And what I have advised Mr. Epstein to do when
8 playing that tape, and I believe with no objection from the
9 Defense, is to just stop the tape after the second crack
10 pipe appears, and that's the end of it and not play that
11 remaining segment for the jury. So I just wanted to
12 memorialize that and make sure that, that was the
13 agreement.

14 Our first witness will be Lieutenant Hager, and it is
15 the State's intention to admit both the tapes, and the two
16 camera bags we discussed earlier, with Lieutenant Hager.
17 You did not rule about the rose-stemmed pipe found in one
18 of those camera bags. And I didn't -- I don't want to go
19 afoul of your ruling or do any --

20 THE COURT: I hadn't ruled on it because I never had
21 any definitive motion on it.

22 MS. LIPINSKI: And I just wanted to make sure that
23 there isn't before I go forward with those with Lieutenant
24 Hager.

25 THE COURT: Well you've lost me on that or where we

1 stand on a flowery pipe.

2 Any objection to it?

3 MR. BARROWCLOUGH: Not at this time, Your Honor. And
4 it --

5 THE COURT: Well don't say "Not at this time," unless
6 -- because we're getting ready to get into ---

7 MR. BARROWCLOUGH: No, there's not.

8 THE COURT: Okay.

9 MR. BARROWCLOUGH: And just for purposes of the
10 record, I've listened to all of the stipulations set forth
11 by Ms. Lipinski. They are exactly the same as we discussed
12 before the trial this morning, and we do agree.

13 MS. LIPINSKI: The only other thing that -- and I may
14 need a break between Lieutenant Hager and Ms. Littlejohn
15 due to the length of Lieutenant Hager's testimony -- that I
16 anticipate the viewing of the tapes and opening statement.
17 I did provide the Defense with a copy of Ms. Littlejohn's
18 rap sheet, and she is our only lay witness. I believe, for
19 impeachable purposes, she has a forgery in 2004, a petty
20 larceny in 2007, and a shoplifting in 2011. I don't know
21 if they have any, but I thought we might address that issue
22 in lieu of having to take a break ahead of time and resolve
23 it later.

24 MR. BARROWCLOUGH: Your Honor, I did receive that rap
25 sheet from the Solicitor. I agree with those. The rap

1 sheet also indicated arrests for receiving stolen goods and
2 obtaining goods by false pretenses in 2003. I did research
3 those, and those did result in convictions, consecutive
4 days, receiving stolen goods at 07/24/03, obtaining goods
5 by false pretense at 07/25/03. I think those will both be
6 impeachable. Also my understanding is, at this time, she
7 has a pending forgery charge being prosecuted by this
8 office, which I would intend to ask her about as it relates
9 to her cooperating with this same office in this case.

10 MS. LIPINSKI: She does have a pending forgery charge.
11 I have not had any conversations with Ms. Littlejohn about
12 intervening in that forgery charge, but I do recognize that
13 she does have it, and that may be subject to cross
14 examination with her. And I don't take exception -- I'm
15 sure it's probably just -- I didn't see convictions for
16 those '03 convictions, and I didn't pull them. But I don't
17 take exception with Mr. Barrowclough adding them.

18 THE COURT: All right.

19 Ready for the jury?

20 MS. LIPINSKI: I believe so.

21 MR. BARROWCLOUGH: Yes, sir, Your Honor.

22 THE COURT: Bring in the jury.

23 (JURY ENTERS COURTROOM AT 10:42 AM.)

24 THE COURT: Now that you're all comfortably seated,
25 I'm going to ask you to stand. The Clerk will administer

1 the oath.

2 MADAME CLERK: Will you raise your right hand, please?

3 (WHEREUPON: THE JURY IS DULY
4 SWORN AND ALL AFFIRMED.)

5 THE COURT: You can be seated.

6 First I apologize for running a little behind schedule
7 this morning. That happens sometimes.

8 We are now starting the trial. You are now sworn in.
9 And in just a moment, the attorneys have the right but no
10 obligation to come before you and make what we call opening
11 statements. They are blueprints or outlines of the trial.
12 The attorneys will be telling you what they anticipate will
13 be the testimony and what the issues are in this case. And
14 they will not be trying to convince you of what your
15 verdict should be. They will at a later time have the
16 opportunity to come before you and make what we call
17 closing statements or closing arguments at which time, they
18 will be trying to convince you of a certain verdict.

19 To the charges, Mr. Anthony has entered pleas of not
20 guilty. His pleas of not guilty place on the State the
21 burden of proof; that is, the burden of proving his guilt
22 beyond a reasonable doubt. Under our law, he is presumed
23 innocent of the charges against him, and he need not prove
24 his innocence. The State must prove his guilt beyond a
25 reasonable doubt before you can convict him.

1 I have three primary jobs. One is logistical: make
2 sure we take breaks, make sure that you can hear and see;
3 mechanical parts of the trial. I also rule on questions of
4 evidence. That is, if one party believes certain evidence
5 should be allowed into the record, and the other for
6 certain reasons that is based on the law, or rules of
7 evidence believes the evidence is inadmissible, I have to
8 rule on that. My third job is that I am the sole judge of
9 the law in this case. You must take, accept, and apply the
10 law as I charge it. This is true even if you think I
11 charge the law in error, or even if you think the law
12 should be different. Your oath requires you to take,
13 accept, and apply the law as I charge it. You are not to
14 infer from anything I say or do at anytime as being an
15 opinion of mine on the facts. I am not allowed as the
16 trial judge in this case to formulate or express to you any
17 opinion about the facts. That is solely your job. It's
18 solely up to you to examine the evidence and give to the
19 evidence the effect, the value, the weight, and the truth
20 you believe it should have. In doing this, you may believe
21 one witness as opposed to several, several witnesses as
22 opposed to one. You may believe all, part, or none of a
23 witness's testimony.

24 As judges of the facts, you must judge the
25 credibility; that is, the believability of the witnesses

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1 who testify. In assessing believability, use those things
2 I just mentioned, and use those things that you in your
3 day-to-day life find as being indicative of truthfulness.
4 And you can use certain evaluators: the witness's demeanor;
5 how do they act on the stand; are they hesitant or
6 straightforward? Look at consistencies and inconsistencies
7 in a witness's testimony. Consider any bias or prejudice a
8 witness may have; that is, whether a witness would wish to
9 help or hurt one side or the other. And you can consider
10 the opportunity that witness had to know those things to
11 which they testified. All of these things you consider to
12 determine the true facts, apply the law, and you will be in
13 a position to return a verdict that speaks the truth.

14 I will remind you, and I'm not going to keep repeating
15 myself, but don't discuss the case among yourselves, or let
16 yourself be exposed to anything about this case outside of
17 the courtroom. And do not try to make up your own mind
18 until we reach that point where I instruct you to jointly
19 deliberate and return a unanimous verdict.

20 You don't need to take notes. I would rather you not
21 take notes. I know somebody looks like they're ready to,
22 but we don't take notes in this type of setting. Just pay
23 close attention. If you can't see or you can't hear, let
24 me know. Cup your ear or give me a voice-raising gesture,
25 or a nudging gesture, and I'll try to make sure that you

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1 can see and hear those things that you need to see and
2 hear. We take breaks about every hour and a half. I find
3 that is a pretty good time for most of us. However if any
4 of you need a break at any time, just raise your right hand
5 and with no questions asked we'll take a break. You're not
6 going to be able to pay attention if you need a break. So
7 please let me know if you need one, and we'll take one.

8 And I extend that to counsel and Mr. Anthony.

9 Just please listen carefully.

10 Ms. Gwaltney, as the forelady, you'll be the liaison
11 between the jury and myself, preside over the jury's
12 deliberation and ultimately decide on behalf of the jury,
13 its unanimous verdict.

14 At this time now, I turn the case over to the
15 attorneys for their opening of their -- making of their
16 opening statements if they wish.

17 MS. LIPINSKI: Thank you, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, ma'am.

20 MS. LIPINSKI: Good morning.

21 As I previously introduced to you, my name is Mindy
22 Hervey Lipinski, and I am an Assistant Solicitor with the
23 16th Circuit Solicitor's Office. I work for Solicitor
24 Kevin Brackett. My father was a tool and dye man for about
25 30 years in the upstate, and when I graduated from law

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1 school I said, "I'm going to be a solicitor." And he said,
2 "Why are you going to be a door-to-door salesman?" And I
3 said, "No, I'm going to use my law degree. Don't worry.
4 You didn't waste all your effort." But in South Carolina,
5 solicitor is a term which you've probably deduced for now,
6 is a prosecutor, a state's attorney, the district attorney.
7 We have a number of different names, but in essence, we are
8 criminal lawyers. We work on half of the state of South
9 Carolina. We work with members of law enforcement, York
10 County Sheriff's Office, York Police Department in order to
11 prosecute individuals who are accused of committing crimes
12 here in York County. And that will be my role here today.

13 I want to thank you for your time and your attention.
14 I know that you obviously have much better places to be and
15 things to do, and that we are taking you away from your
16 role in your normal day-to-day life and asking you to
17 perform an otherwise extraordinary task. But most people
18 here, is when they hear about jury service, they think
19 they're going to have to go sit in some big room, wait
20 around for a while, do something I don't want to deal with,
21 and why do we have to do this, and those kind of things.
22 But what your role, and what you see here now is that we
23 couldn't do this without you.

24 People who are accused of committing crimes in York
25 County or anywhere in the United States are entitled to a

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1 jury trial. They are entitled to have members of their
2 peers, their community, determine whether they are guilty
3 or not guilty for the crimes that they stand accused. And
4 there is no other way to do this process without members of
5 the community coming and serving in this particular role.

6 So I want to thank you. I -- We, both the Defense,
7 the Court, appreciate the sacrifice, and what you are going
8 to do over the next couple of days here.

9 In some respects, this is a very simple case. Both
10 Mr. Dest and Mr. Barrowclough, and Mr. Epting, and I have
11 prosecuted much more complicated cases with significantly
12 more pieces of evidence, and some of the witnesses that
13 last a lot longer than we anticipate this trial to last.
14 Unfortunately, some of the more simple fact patterns are
15 the more difficult cases to resolve. Their simplicity in
16 and of themselves oftentimes gives us pause. In this case,
17 the facts are quite simple. The allegations are quite
18 simple. The indictments that the Court read to you
19 yesterday during questioning was that between December of
20 2004 and December of 2005, the Defendant Harry Anthony
21 distributed crack cocaine to Patricia Littlejohn, another
22 member of our community, a witness that you will hear from.
23 That he did this on four separate occasions, and that he
24 did it here in York County. That is what you will be asked
25 to resolve: Is he guilty of those four counts of

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1 distribution of crack cocaine?

2 Crack cocaine has three basic elements. One is that
3 the Defendant was in possession of crack cocaine, that he
4 distributed it to somebody else, that he shared it with
5 another, that he passed it to another, that he sold it to
6 another. And did that happen here in York County? So in
7 some respects, you might be wondering, "Well really, why
8 are we all here?" And I will acknowledge that having
9 prosecuted drug cases, having done this as long as I have,
10 that this is not your typical distribution of crack cocaine
11 case. In the best of circumstances, the ideal case, I as a
12 prosecutor dream for, I rarely ever get, is that people
13 like Lieutenant Hager, people like Detective Marvin Brown
14 that you'll hear from, take an undercover officer, they've
15 wired him with audio and videotape, they send him in to do
16 a transaction for crack, the money is labeled and marked,
17 the drugs are seized, and it all is tied up in a nice,
18 pretty bow for everybody to evaluate. This is not that
19 case. As you probably surmise from the questions that we
20 asked you yesterday, this is not that. Patricia Littlejohn
21 did not have money to purchase crack cocaine. And what is
22 very common, unfortunately, in our society as a whole is
23 that women who become addicted to crack cocaine and do not
24 have the money to pay for it, start trading other things;
25 in this case, sexual favors.

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1 In December of 2005, January of 2006, Ms. Littlejohn
2 became a cooperating material witness in a completely
3 unrelated matter. But during her discussions with law
4 enforcement, she was frank and honest with them, and told
5 them about her addiction to crack cocaine. And also told
6 them that she would go to Harry Anthony for it, and that
7 she would trade sexual favors for it. And when law
8 enforcement said, "Well how do we know this happened, and
9 how do we believe you?" And she said, "Well he would
10 videotape it. And I think he probably still has the
11 videotapes." And so based on that information, law
12 enforcement obtained the search warrant for Mr. Anthony's
13 home, they went to his house, and they found videos.

14 What we know from Ms. Littlejohn's testimony when they
15 talked to her is that these happened in the year preceding
16 time. There are some date stamps on some of these videos
17 that corroborate that it was going on in 2005. However
18 some of them, we don't know their accuracy. It's not a
19 security camera in a gas station or that kind of thing
20 where we know that they're very concerned about the date
21 that fluctuates every 90 days or that particular thing. So
22 that's why you have such a broad date range.

23 There are no drugs. They are consumed on these tapes
24 in front of you. So there will be no chemist to say that
25 "We seized the crack cocaine, and we tested it, and beyond

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1 a reasonable doubt, that is it." The State still believes
2 that the tapes speak for themselves. That it is quite
3 clear what they are doing on these tapes is crack cocaine.
4 You will hear from Ms. Littlejohn who will state "That was
5 my drug of choice. That is what we did." You will hear
6 from officers who are familiar with narcotics
7 investigations that will talk to you about idiosyncratic
8 special way in which people smoke crack cocaine that let
9 them know that it's crack cocaine versus other drugs.

10 Unfortunately, there is not a way to take these tapes
11 and cut out and splice little segments of them where all
12 you have to see is them smoking crack cocaine. It is
13 necessary in order for you to evaluate the credibility of
14 Ms. Littlejohn, to evaluate the guilt of Mr. Anthony, that
15 you see some of these sex acts. They are not commercial
16 grade videos. They are not pretty. They are, quite
17 frankly, offensive, graphic, and unusual. And that is why
18 we ask you that question. We do not relish putting you in
19 this position, but having found this evidence of these
20 crimes, law enforcement charged Mr. Anthony, and we are
21 here for that.

22 We will try to do our best to minimize what you have
23 to see to focus in on the key pieces of evidence. But
24 inevitably, what you see will be sex acts including oral
25 intercourse, vaginal intercourse, anal intercourse. Ms.

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1 Littlejohn masturbating, masturbating with different
2 objects. And I tell you this because I want you to know
3 what's coming. I'm not trying to shock you. I don't want
4 you to convict Mr. Anthony based on your personal appeal or
5 revulsion to these videos. It's just fair warning of what
6 lies ahead. So you will see these videos. You will hear
7 the testimony of Ms. Littlejohn. You will hear the
8 testimony of the other officers involved in this
9 investigation. And at the end, the State will come back to
10 you, and ask you to convict the defendant of four counts of
11 distribution of crack cocaine between December of 2004 and
12 December of 2005.

13 Ms. Littlejohn is a member of our community. You will
14 hear her testimony. You will evaluate her credibility. By
15 her very nature, she has done a lot of things in this life
16 that she is not proud of, that she is ashamed of. However,
17 the State feels that when you evaluate the totality of the
18 evidence and the circumstances involved, you will find her
19 testimony nonetheless credible. So like I said, in some
20 respects, the factual allegations are quite simple: did he
21 distribute crack cocaine, did he trade it for sex, did he
22 give her crack to induce her to do more things, was it
23 crack cocaine, did it happen here in York County? Quite
24 simple allegations, but quite difficult facts to consider.
25 But as you now appreciate, dementaltively, this is the only

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1 way we can proceed, and that these things do go on in our
2 community, and that people must evaluate them to determine
3 whether a crime as been committed.

4 The State must prove these things to you beyond a
5 reasonable doubt. That's a term you will hear and read
6 about it in books and on TV. The Defense is going to talk
7 an awful lot about it. They're going to say I don't have
8 any crack cocaine to show you, and as a result of that
9 there's not enough evidence to convict Mr. Anthony. But as
10 you evaluate this evidence, realize that as compelling as
11 CSI is that makes you think we can get evidence from
12 everything, anytime, anywhere, and in an hour, what you'll
13 find out is, that's not always the case. Especially when
14 there are delayed reporting, things you'll see here where
15 it's not being monitored by law enforcement where you have
16 a witness who comes back and says to you, "This happened
17 some time over the past year." But that does not mean that
18 there isn't sufficient evidence for you to consider. And
19 when you evaluate this evidence, realize that you are going
20 to draw on your life experience. That, that's why we call
21 you here. We find people who have no friends to reward and
22 no means to punish. We aren't here because of prejudice
23 against anyone. But who can come in here and look at this
24 as objectively as possible and evaluate these witnesses and
25 this evidence the same way you make all your life

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1 decisions. The same way you evaluate what a car salesman
2 tells you about the latest Hyundai Electra, the same way
3 you evaluate when your kids come to you and they both say,
4 "He started it." The same way you evaluate any number of
5 things, we all engage in these type of credibility
6 decisions on a day-to-day basis in our work, at home, in
7 our lives. And it's those same skills that you will draw
8 on here today.

9 I appreciate that we're asking you to apply them to a
10 rather unique and foreign set of circumstances, but we do
11 that so that you don't have those prejudices or bias
12 against the witnesses involved, against Ms. Littlejohn for
13 what she has done, against Mr. Anthony for what is on those
14 tapes. But that you try to evaluate it and focus in on the
15 guilt of the defendant.

16 So I thank you for your time and attention. As I
17 stated, we will try and focus in on the evidence, focus in
18 on what you evaluate. We appreciate that this will a
19 difficult case as we go forward. But as I stated, as you
20 can now understand, dementaltively, this is the only way we
21 can move forward in criminal prosecutions is with the
22 service of jurors such as yourselves. So thank you.

23 THE COURT: Mr. Dest.

24 MR. DEST: May it please the Court.

25 THE COURT: Yes, sir.

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1 MR. DEST: On January 18th, 2007, my client Harry
2 Anthony was arrested for four counts of distribution of
3 crack cocaine, extending from incidents the State allege
4 occurred from December of 2004 to December 2005.

5 The State detectives in this case, Officer Strait,
6 Eddie Strait and Officer Russ Yeager arrested my client
7 Harry Anthony at his home on South Congress Street here in
8 York County on January 18th, 2007. When they arrested
9 Harry Anthony, they did not find any crack cocaine on him.
10 They did not find any crack cocaine in his residence. They
11 did not find any crack cocaine residue on any items in his
12 house. They did not find any plastic baggies that are
13 types of evidence that can be used by drug dealers. They
14 did not find any scales that are used in the drug trade.
15 They did not find any documents with a list of potential
16 customers that the State would claim are confidential
17 informants or people who have bought drugs.

18 But ladies and gentlemen, bear in mind that the State
19 has made these accusations for incidents from December '04
20 to December of '05. And the evidence in this case will
21 show that on three separate occasions, in the early part of
22 2006, law enforcement executed a search warrant and
23 conducted the search of Harry Anthony's house in February
24 of 2006. The first time they conducted this search in 2006
25 was on February 2nd, and on February 2nd, they did not find

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1 any crack cocaine in his home on South Congress Street.
2 They did not find any crack cocaine in his house or any
3 residue on any articles or pieces of evidence. They did
4 not find any baggies, or scales, or other things associated
5 with distribution in dealing crack cocaine. But yet the
6 evidence will show that they went to his house again in
7 February, February 21st. And they executed a search
8 warrant and conducted a search of his entire house again.
9 And on that day, they didn't find any crack cocaine on
10 Harry Anthony. They didn't find any crack cocaine in his
11 house. They didn't find any plastic baggies used to
12 package the cocaine. They didn't find any scales. They
13 didn't find any additional evidence of crack cocaine on the
14 21st of February. But then they searched again. On
15 February 27th, the evidence will show that they executed
16 and conducted another search warrant. They didn't find any
17 crack cocaine on Harry Anthony then. They didn't find any
18 scales, or baggies, or any evidence of drug dealing, of
19 drug distribution.

20 The State will present to you Patricia Littlejohn, she
21 is their star witness. She is the witness who is going to
22 come in here and tell you the State's version as laid out
23 by Ms. Lipinski. That's their witness. She will come
24 through those doors, she will put her hand on this Bible,
25 and then she will walk over to this witness stand, sit in

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1 this chair, and answer questions from Ms. Lipinski, Mr.
2 Barrowclough. And when she testifies, when she testified,
3 the sole witness in their case, the sole star witness in
4 their case about drug distribution, ask yourselves, do I
5 believe her? Do I believe her? Is she the type of person
6 that is trustworthy? Is she the type of person that I
7 would rely on? Is she the type of person that I would rely
8 on to make the most important decision about somebody
9 else's life. I submit to you, ladies and gentlemen of the
10 jury, she will not be trustworthy. She will not be
11 credible when you hear about her entire history. But you
12 will also make that determination not by her testimony
13 alone, by what you will see on the videos that the State
14 intends to introduce in this case.

15 Ms. Lipinski is right. These videos are difficult to
16 watch. These videos may offend. They may be morally
17 repugnant to you. And I acknowledge at the get-go, that
18 what you will see is my client Harry Anthony engaged in
19 some sex acts. But, ladies and gentlemen of the jury, I
20 ask you, I implore you, no matter how repulsed you may be
21 regarding the sex acts that you will view, I ask you to
22 hold firm to the oath that you just took a few moments ago
23 and to judge this case in a fair and objective manner on
24 the evidence, on the evidence.

25 When we talk about fair and objective evidence, you

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1 will hear in the course of this trial about what is called
2 "forensic evidence" or "scientific evidence," such as
3 fingerprints, palm prints, footwear impressions, DNA. It
4 is the type of evidence that is examined in a lab, that is
5 tested in a lab, and that can establish whether an
6 individual had contact with a particular item. The
7 evidence in this case will show that there is not one shred
8 of forensic evidence that links my client Harry Anthony
9 with any drugs, with any drug paraphernalia, with anything
10 regarding the distribution of crack cocaine that is
11 outlined in these four charges, not one, not a shred of
12 evidence.

13 This will be a difficult case. This case will test
14 the very principles that you have been sworn to uphold just
15 a few moments ago, to be fair and to be objective. But the
16 greatest thing about the criminal justice system is that
17 ultimately, ultimately in the final analysis, it takes the
18 power away from the State, and it gives it to you twelve
19 jurors to decide. Not them, not the judge, but you twelve
20 jurors. The power that you have is to reach a verdict in
21 this case. The term "verdict" comes from the Latin word
22 "verdicto" which means to speak the truth, to speak the
23 truth. It's been said that truth is justice and power
24 meeting at the same time. Whatever is powerful, must be
25 just and whatever is just, must be powerful. That power

1 now lies with you. And the truth is that Harry Anthony is
2 not guilty of the four counts of distribution of crack
3 cocaine.

4 Thank you.

5 THE COURT: Call your first witness.

6 MS. LIPINSKI: Your Honor, could I take up an issue
7 outside the presence of the jury?

8 THE COURT: All right. We'll take a short break. Go
9 to the jury room while I take up a matter outside of your
10 presence.

11 (JURY EXITS COURTROOM AT 11:12 AM.)

12 THE COURT: All right.

13 MS. LIPINSKI: May it please the Court, Your Honor.

14 We had extensive pretrial discussions about how we
15 were going to sidestep the big elephant in the room being
16 Margaret Matthews, her disappearance, and what law
17 enforcement was doing, and how they seized upon this
18 evidence. I crafted a carefully-worded summary about how
19 she became a material, cooperating witness in an unrelated
20 matter that had nothing to do with Harry Anthony, and that
21 during her discussion, she also confessed to these matters,
22 all to sidestep the Margaret Matthews issue, all so that
23 the jury wouldn't have that interjected into them. And I
24 appreciate the Defendant has allowed his defense and to
25 point out what law enforcement did and did not do, but I

1 said that, that door may be opened. And I think it was
2 opened in opening argument. They stated that he -- they
3 went to his house on three separate occasions. They
4 created the impression they were going there looking for
5 crack cocaine, not that they were going there looking for a
6 deceased, missing girl. That they were going back there
7 once she turned up floating in the lake to recover wire and
8 brick that they were going to send off to Quantico for
9 testing. That's the second reason they go back to his
10 house, not looking for crack cocaine. True, they didn't
11 find any. But he's created the impression that law
12 enforcement is on some type of crack witch hunt with the
13 defendant, and that they keep turning up nothing.
14 Moreover, they had spoken to him in December of '05 putting
15 him on notice that he was somebody they were looking at, so
16 he had every opportunity to get rid of any crack cocaine he
17 had at the house, knowing that he was possibly a suspect
18 now in Margaret Matthews' disappearance, which is the only
19 way the State can rebut the question of why they didn't
20 find any when they go there three times.

21 The Court kept out the crack pipe saying that I had no
22 way to tie it to Mr. Anthony, but Mr. Dest specifically
23 referenced the search on February 6th of '06 and called it
24 the defendant's residence and said that they didn't find
25 any scales, baggies, or anything associated with crack

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1 cocaine when he knows there's a crack pipe on the floor,
2 there's marijuana bowls in the other bedroom, there's a
3 picture of scales in the kitchen, there's two crack pipes
4 that we viewed out -- property and evidence in a burnt pile
5 outside the State didn't even get into because I didn't
6 think I had a chance of tying that to the defendant.

7 I carefully crafted this, and yet every door I tried
8 respectfully acknowledge was closed to the State, not go
9 through, he throws open in opening argument. There's no
10 way for the State now to respond, "Why did you go back
11 there a second time? Because you didn't find crack
12 cocaine?" Even the first time they go there, they're not
13 looking for crack cocaine. They're looking for videos to
14 find Margaret on the video to see if it will help them look
15 for her. That's not the focus of their investigation at
16 that particular time. The focus of their investigation is
17 find Margaret. And for them to create this assumption with
18 the jury that they keep -- that this is just a crack
19 investigation, that they keep -- they go to every location
20 they possibly can. I wasn't even going to mention the
21 third time they returned to Bookout Road. They searched
22 his car too. There's any number of things that happened.
23 They talked to him multiple times. But out of respect for
24 the fact that we were bifurcating these trials, and
25 Margaret Matthews was not going to be an issue, I closed

1 all those doors, and I respected them. But for them to be
2 allowed to back door everything in and undermine the
3 credibility of law enforcement, it is completely unfair.
4 It's let's tie every hand we possibly can, and possibly
5 both legs behind my back. But the defense has every fair
6 game they have? They can challenge that there was no crack
7 cocaine. I understand that's fair game. They can even
8 challenge when they seized the videotapes of the victim,
9 but to suggest that the Bookout Road had no crack location
10 when they know there's a crack pipe in it. His opening
11 says the search on February 21st. That's the search at
12 Bookout Road where they find the crack pipe, and the ones
13 in the burn pile the next day, and the scales in the
14 kitchen. So it's -- I find it completely unfair that I'm
15 not allowed to admit it because it's not relevant, and I
16 can't tie it to the defendant, but they can use that as an
17 argument to try to exonerate their client.

18 So the State feels that Margaret Matthews is now fair
19 game, in totality.

20 MR. BARROWCLOUGH: If I may, Your Honor.

21 With all due respect, the -- in reviewing the
22 discovery, the search warrant for Bookout Road was January
23 25th of 2006. Mr. Dest did not reference that, did not
24 reference Bookout Road, did not reference the date of
25 January 25th, 2006. Mr. Dest referenced February 2nd,

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1 2006, February 21st, 2006, and February 27th, 2006, all
2 three of which were the Congress Street residence, which
3 were the residence -- which was the residence of Mr.
4 Anthony, which the first search yielded those camera bags,
5 the glass stem with the rose in it, and stuff like that,
6 and that's it. Mr. Dest carefully stayed away from
7 everything that had to do with Bookout Road. He did not
8 reference that at all.

9 Now as far as -- so that's just factually the case.
10 We did try to do everything we could to try to stay away
11 from Bookout Road. Now as far as going three times to the
12 Congress Street residence, Mr. Dest stayed away from why
13 they went there. But certainly, Mr. Anthony's entitled to
14 have the jury know that his residence was looked three
15 times, and no drugs were found. No matter what reason they
16 went there for, if they found -- they saw crack, they would
17 have taken it into evidence. If they saw scales, they
18 would have taken it into evidence. It would be
19 preposterous to say that law enforcement would search Harry
20 Anthony's house, and not take those things into evidence.
21 And the fact that his house was looked at three times in a
22 month and none of those items were found, I think in
23 fairness to Mr. Anthony can be brought before the jury, and
24 we stayed away from talking about the context of what they
25 were looking for. We didn't say they went there looking

1 for drugs. We said they did go there, and they didn't find
2 any drugs.

3 But as far as the Bookout Road stuff, we didn't get
4 into that. The only search warrant that we have in
5 discovery for Bookout Road from which the item, the one
6 crack pipe was recovered, that was January 25th, 2006, and
7 we stayed away from that.

8 THE COURT: Briefly, Ms. Lipinski.

9 MS. LIPINSKI: But it also begs the question that Mr.
10 Dest emphasized on January 18th of 2007, he was finally
11 indicted for distribution of crack cocaine. But yet these
12 offenses occurred back in '05. Well the whole reason for
13 that delay is they're still trying to evaluate the focus of
14 their investigation, which is the death of Margaret
15 Matthews. And the reason that they didn't go ahead and
16 charge him with distribution of crack cocaine is because
17 obviously that they didn't want to reveal that evidence.
18 And once they got the evidence back from Quantico that they
19 weren't going to have sufficient evidence to focus in on
20 the death of Margaret Matthews. Then they looked at what
21 evidence of any other potential crimes they had and made
22 that decision. And I have -- and maybe it's gotten messed
23 up in my file, but I have that January 25th, they went to
24 Bookout Road, but also on February 21st, they went to
25 Bookout Road and recovered some plyers. They did go on

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1 February 2nd to Congress Street, but they also on February
2 21st, which is referenced in Mr. Dest's opening argument,
3 is one of the days they searched Bookout Road. To sit
4 there and say we didn't go there, they did. They have
5 created the impression that law enforcement went there,
6 that they kept looking for drugs, they couldn't find any,
7 they waited a year, and then they finally decided "Okay
8 we'll charge him with drugs even though we -- no matter how
9 many times we go back there, we can't catch him with any."
10 When the reality of the fact is, that's not the reason for
11 the delay, that's not the reason they keep returning to his
12 house, that's not the reason they go to Bookout Road, it's
13 not the reason they even search for the videos in the first
14 place. There's a way to attack that evidence without
15 having to reference all those things.

16 THE COURT: I don't think they've opened the door to
17 what the investigation was regarding. We've chatted about
18 this in chambers that I think we certainly can be presented
19 in a fashion that investigating an unrelated matter this
20 occurred. It is a delicate dance, we all know that. But I
21 don't think that we are not going to allow the State to go
22 into the Margaret Matthews matter.

23 And as far as fair comment on what -- fair comment is
24 not the right word. But as far as them -- the testimony
25 that in these searches, nothing was recovered. I certainly

1 think that's fair game. So we're going to stick to the
2 program as we outlined it before we started the trial.

3 MR. BARROWCLOUGH: Thank you, Your Honor.

4 MS. LIPINSKI: Is the State going to be allowed to ask
5 Investigator Hager, "Why did you return to this house
6 again? Were you even looking for narcotics at that time?"

7 THE COURT: I think you can ask those questions, yes.
8 Like I said, it's a very delicate dance. And you can --
9 you're a good attorney. And I can't tell you how to
10 fashion it, and I can't telegraph rulings. All I can do is
11 see what you ask, and if they object, I can rule on it. So
12 I can't micro-manage every question and every answer and
13 every nuance of the trial.

14 So we'll take a short, refresher break, and then we'll
15 come back and call the jury back in. We'll take about a 10
16 -- about a five minute break. Just long enough to use the
17 facilities.

18 (COURT IN RECESS AT 11:22 AM.)

19 (COURT BACK IN SESSION AT 11:30 AM.)

20 THE COURT: Take your seats. Is the State ready?

21 MS. LIPINSKI: The Court's indulgence. I anticipate
22 playing the videos for Mr. Hager. I just want to make sure
23 that -- I'll turn it off obviously. But I just wanted to
24 make sure that was all in working order. So ---

25 THE COURT: Okay.

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1 MS. LIPINSKI: We'll take a break and call audio-
2 visual down.

3 THE COURT: You'll let me know when you're ready?

4 MS. LIPINSKI: I just want to put one in and hit play.
5 If it works, then I'll turn it off, and we'll go back. I'm
6 sorry, Your Honor. It took a while to warm up.

7 (PAUSE.)

8 MS. LIPINSKI: Your Honor, normally, I would hand the
9 piece of evidence to Lieutenant Hager - these are the two
10 camera bags that he seized -- to avoid the Margaret
11 Matthews -- they wrote "Margaret Matthews" on the box.
12 She's on the inventory sheet. A way to sidestep that issue
13 is I was going to open this box, just hand him the two
14 camera bags, and ask him if those were the items that he
15 seized from Bookout Road on the day in question.

16 MR. BARROWCLOUGH: That's fine, Your Honor.

17 MS. LIPINSKI: And I just wanted to before -- Congress
18 Street.

19 THE COURT: Okay, Congress Street.

20 (PAUSE.)

21 (WHEREUPON: STATE'S EXHIBITS SEVEN AND EIGHT
22 PREMARKED FOR IDENTIFICATION.)

23 THE COURT: Ready for the jury?

24 MS. LIPINSKI: Yes, Your Honor.

25 THE COURT: All right. Bring in the jury.

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1 MADAME COURT REPORTER: You're up to Eight, Chris.

2 (JURY REENTERS COURTROOM AT 11:35 AM.)

3 THE COURT: All right. Call your first witness.

4 MS. LIPINSKI: May it please the Court. We call
5 Lieutenant Tim Hager.

6 (WHEREUPON: LIEUTENANT TIM
7 HAGER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
8 FOLLOWS:)

9 MR. HAGER: Good morning, Your Honor.

10 THE COURT: Good morning.

11 DIRECT EXAMINATION

12 LIEUTENANT TIM HAGER BY MS. LIPINSKI:

13 Q. Lieutenant Hager, with whom are you currently
14 employed?

15 A. I'm employed with the York County Sheriff's
16 Department.

17 Q. And in what capacity?

18 A. At this time, I am Lieutenant over Security for all
19 our courtroom facilities, which would be civil court,
20 criminal courts, and the family courts.

21 Q. How long have you been employed with the York County
22 Sheriff's Office?

23 A. Tomorrow will be 32 years.

24 Q. And have you always been employed in that capacity as
25 head of courtroom security?

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1 A. No, ma'am. I started out as a road deputy in 1980,
2 went to -- in '85 started the drug-dog program in
3 conjunction with the Rock Hill School districts. Four
4 years later, I went into Narcotics, worked there for six
5 years. And I went over to Investigations, and then was
6 promoted to lieutenant 14 years ago over Crimes Against
7 Persons Unit in our Criminal Investigation Division until I
8 took this job two years ago.

9 Q. Better hours?

10 A. Better hours, yes. Chased the pager for about 20
11 years, and this is a more set schedule, yes.

12 Q. What -- in what capacity were you employed in December
13 of 2005 through January of 2007?

14 A. I was lieutenant over Crimes Against Persons Division
15 of the investigative section, which basically boils down to
16 violent crimes and investigations.

17 Q. And in December of 2005 to January of 2006 or from
18 late 2005 into early 2006, did you ever have the occasion
19 to meet with or speak with a Patricia Littlejohn?

20 A. Yes, I did.

21 Q. And was she -- Did she become what you would consider
22 would a material or cooperating witness?

23 A. Yes.

24 Q. And if you could, without referring specifically to
25 Ms. Littlejohn, what exactly are these type of witnesses as

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1 it relates to your role in investigation. How do you use
2 them? What do you use them for?

3 A. Well it can -- It all goes back to when I was in
4 Narcotics, you -- you develop information, then you look
5 for individuals who can corroborate that information and
6 confirm what information that you found during the course
7 of your investigation. And that's what happened with Ms.
8 Littlejohn.

9 Q. And do these witnesses always stick on one track, or
10 in telling you about some crimes, do they also acknowledge
11 other incidences in which they may have knowledge or be
12 aware?

13 A. Yes. Not always up front to start with, but it's been
14 my experience once it gets down to the nuts and bolts of it
15 they will come clean with all the information.

16 Q. And did you have the occasion to speak with Ms.
17 Littlejohn?

18 A. Yes, as did one of my detectives.

19 Q. And during the course of that conversation, did she
20 reveal to you that she either then or in the past had, had
21 an addiction to crack cocaine?

22 A. Yes, extremely.

23 Q. And did she indicate who one of her sources had been?

24 A. She did.

25 Q. And who was that?

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1 A. That was defendant Harry Anthony.

2 Q. And did she relate to you anything unusual about their
3 crack transactions -- and let me -- before I go there, let
4 me go back. You prior to working in investigations, you
5 worked in narcotics?

6 A. Yes, for five years I worked as an investigator. And
7 the last six months, I was a supervisor of the unit.

8 Q. And in your work, even in Crimes Against Persons or
9 Crimes Against Property, do narcotics become a key or
10 substantial role in those crimes?

11 A. Yes.

12 Q. And as a result of that, do you have any special
13 training or education in narcotics, specifically in crack
14 cocaine?

15 A. Very little in crack cocaine because when I was a
16 supervisor and in that unit, crack had not become such a
17 big deal in York County per se. But at the end, yes, it
18 had gotten to the point where we were -- became pretty
19 familiar with it.

20 Q. And in non-narcotics investigations, either in terms
21 of other crimes, anything from an armed robbery to a
22 homicide, or God knows what, do you nonetheless still come
23 across things associated with the use of crack cocaine
24 either as a motive or just there?

25 A. At the time that I was investigator -- over the unit

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1 Crimes Against Persons, we were in the poker machine realm,
2 and our armed robberies were sky-high, and that usually was
3 the leading factor: chasing money for crack cocaine.

4 Q. So you are familiar with some of the items associated
5 with it?

6 A. Yes.

7 Q. And when Ms. Littlejohn told you about going to Mr.
8 Anthony as one of her potential sources, did she indicate
9 to you anything unusual based on your experience and
10 training about the nature of their transactions?

11 A. She was trading sexual favors for crack cocaine, and
12 also he was videotaping these encounters, and also he was
13 branding her with a ---

14 MR. BARROWCLOUGH: Your Honor, I object on a matter of
15 law.

16 THE COURT: Just --

17 MS. LIPINSKI: I'll move on, Your Honor.

18 THE COURT: Okay, just move on.

19 Q. And did she --

20 THE COURT: Disregard that last statement from the
21 witness, members of jury.

22 Q. She stated he was videotaping?

23 A. Yes.

24 Q. And did she give you any information where you felt
25 you might be able to obtain or locate any of these

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1 videotapes?

2 A. His primary residence, which was on South Congress
3 Street, and also a house on Bookout Road owned by one other
4 individual.

5 Q. And did you have the occasion to go to Congress
6 Street?

7 A. Yes, I did.

8 Q. And let me show you State's Exhibit Number Seven, ask
9 you -- I have previously shown these to the Defense.

10 They have no objection to these photographs, Your
11 Honor.

12 And ask you if you recognize what is depicted in these
13 photographs?

14 A. Yes, this is the defendant's primary residence.

15 Q. And do they accurately reflect the condition of his
16 property as you found it?

17 A. Yes, ma'am.

18 Q. Let me show you these documents and just ask you,
19 without going into their contents, if you're familiar with
20 them, and if they relate to the Congress Street location?

21 A. Yes, ma'am.

22 Q. And do they indicate on what date you served a search
23 warrant on the Congress Street location?

24 A. It does.

25 Q. It would have been February of 2006?

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1 A. February the 2nd, 2006.

2 Q. And turning your attention to the last page --

3 THE COURT: Let me back up. Did you offer the
4 photographs into evidence, or you --

5 MS. LIPINSKI: I'm sorry. I kind of got -- I'm
6 building up there, but I ---

7 THE COURT: Okay, all right. No, that's fine. I just
8 -- go ahead, go ahead.

9 Q. And so you executed a search warrant and the house
10 upon which you executed a search warrant is what is
11 depicted in State's Exhibit Number Seven?

12 A. Yes, [REDACTED] South Congress Street in York, South
13 Carolina, which is in York County.

14 MS. LIPINSKI: Your Honor, at this time, we would move
15 State's Exhibit Number Seven into evidence, the
16 photographs.

17 MR. BARROWCLOUGH: No objection.

18 THE COURT: In without objection.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN IDENTIFIED
20 AND MARKED, RECEIVED INTO EVIDENCE.)

21 Q. And in addition to those photographs being taken
22 either on that day or another day, did you also see some
23 evidence from the Congress Street location?

24 A. I did.

25 Q. And did you seize 38 BHSC tapes?

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1 A. I did.

2 Q. And did you take those tapes into evidence?

3 A. I did.

4 Q. In addition to the BHSC tapes, you also received 33
5 VHS tapes?

6 A. I did, yes.

7 Q. And is there anything about those two different types
8 of tapes, why you listened to them separately?

9 A. Because VHS tapes are the full-sized, the old VHS
10 players. VHSC is a compact. You have to have a converter
11 and/or the player to play those compact tapes.

12 Q. So the 33 VHS tapes are what every one of us we used
13 to have a VHS player, that's what we used to put in?

14 A. That's correct.

15 Q. And the VHSC tapes were something that was -- at that
16 time had been associated with a camcorder or a video
17 camera?

18 A. Yes.

19 Q. The 33 VHS tapes, did you keep those or did you return
20 them to anyone in particular. And did I give you that
21 piece of paper?

22 A. Yes. I don't think you did. Let me check.

23 MS. LIPINSKI: Hold on. Court's indulgence.

24 A. Yes, you did. I'm sorry.

25 Q. And the VHS tapes, the full-sized tapes, were they of

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1 a commercial nature?

2 A. Yes, it was commercial pornography.

3 Q. And what did you do with those tapes?

4 A. I signed those back over to the Defendant Mr. Anthony
5 on February the 8th, 2006.

6 Q. And the other items that you seized into evidence, you
7 took in the compact tapes? And then you also took in -- Do
8 you have the evidence inventory sheet? Did I give you
9 that?

10 A. Yes.

11 Q. Item Number 4, was what that?

12 A. Item Number 4 is two bags with VHSC cameras.

13 MS. LIPINSKI: And, Your Honor, at this time, we would
14 move those cameras into evidence, and I believe without
15 objection from the Defense.

16 MR. BARROWCLOUGH: That's correct. No objection, Your
17 Honor.

18 THE COURT: In without objection.

19 MADAME COURT REPORTER: Nine and Ten, Mindy.

20 MS. LIPINSKI: Do you want to mark them now?

21 MADAME COURT REPORTER: Yeah. Does it matter which?

22 MS. LIPINSKI: Uh-huh.

23 MADAME COURT REPORTER: Yes, ma'am. Thank you.

24 (WHEREUPON: STATE'S EXHIBIT NUMBERS NINE AND TEN
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

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1 Q. Let's actually start with State's Exhibit Number Ten
2 first, I believe. And within that bag, what do you -- What
3 is the primary object, the largest object in the bag?

4 A. Would be a VH - the Panasonic VHS compact camera.

5 Q. All right. And moving to the other camera bag, I
6 believe State's --

7 A. Nine.

8 Q. Nine. What is the content of that bag?

9 A. It's another VHS compact camera. It would be JVC.

10 Q. And is there anything else, other than that camera,
11 either in that big compartment or the front compartment?

12 A. There's men's scents, some lighters, and also what I
13 would commonly refer to as a crack pipe.

14 Q. And if you could, just -- Why do you refer to that as
15 a crack pipe? Is there any crack residue on that?

16 A. No crack residue, matter of fact, there's a miniature
17 rose in there. These are commonly purchased at any
18 convenience store you go to. They are usually at the
19 counter, and it's predominantly used to smoke crack cocaine
20 with.

21 Q. And is there also a black skull cap of some type, a
22 head wrap in that bag anywhere?

23 A. Yes, there's a black skull cap up under the camera.

24 Q. Thank you. And the VHSC tapes, did you ever have the
25 occasion to review them?

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1 A. Yes, I did.

2 Q. Did you review all of them?

3 A. Yes, ma'am, I did.

4 Q. And did any of them depict Patricia Littlejohn?

5 A. Yes, they did.

6 Q. And VHS tapes obviously have a technology that we
7 don't commonly rely upon anymore. Did you or someone with
8 Forensics ever transfer those over into a more common CD or
9 DVD form?

10 A. Yes, I think there were seven full tapes that were put
11 on CD's.

12 Q. And did you have the opportunity to review these to
13 make sure they were similar or accurate depictions of what
14 you viewed from the original compact tapes?

15 A. They were the same, yes.

16 Q. And let me just show you State's Exhibit One, Two,
17 Three, Four, Five, and Six, and ask you if those are the
18 discs you reviewed.

19 A. Yes, ma'am, they were.

20 Q. And if I could draw your attention back to either the
21 return or your evidence inventory sheet where you took the
22 items seized from the Congress Street location ---

23 A. Uh-huh.

24 Q. --- on February 2nd. Did you recover a wallet or
25 billfold of any item?

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1 A. Yes, we recovered a black billfold, had the
2 identification of Patricia Deanna Littlejohn.

3 Q. And did either you or a member of your investigation
4 unit ever sit down with Ms. Littlejohn and review the tapes
5 with her that depicted her?

6 A. I did not, no.

7 Q. Did anyone with your office?

8 A. Yes.

9 Q. And a result of that, did you learn that some of the
10 tapes depicted scenes that did not happen at the Congress
11 Street location?

12 A. That's correct.

13 Q. And do you know what location they possibly did occur
14 at?

15 A. It was on Bookout Road, which is in the McConnell area
16 of York County.

17 Q. Are both the Congress Street and the Bookout Road
18 location, are those both within York County?

19 A. Yes, they are.

20 Q. And what did you learn about the nature of the Bookout
21 Road location in terms of who possibly had a key or was a
22 homeowner of this structure?

23 A. From what we gathered through our investigation -

24 MR. BARROWCLOUGH: Your Honor, I'm going to object to
25 that. It calls for hearsay.

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1 THE COURT: I sustain the objection.

2 BY MS. LIPINSKI:

3 Q. Did you go to that location?

4 A. Yes, several times.

5 Q. And let me show you what's been previously marked as
6 State's Exhibit Number Eight, which I believe are
7 photographs the Defense has no objection to either and ask
8 you if recognize what is depicted in those photographs.

9 A. Yes, I do.

10 Q. And is that the Bookout Road location?

11 A. Yes, it is.

12 Q. And do they accurately depict the condition which you
13 found it when you went out there?

14 A. Correct. Yes, it did.

15 MS. LIPINSKI: Your Honor, at this time, we would
16 enter State's Number Eight into evidence.

17 MR. BARROWCLOUGH: No objection, Your Honor.

18 THE COURT: In without objection.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT IDENTIFIED
20 AND MARKED, RECEIVED INTO EVIDENCE.)

21 MS. LIPINSKI: Your Honor, I'm just going to stand
22 back here so I don't -- If I stand right there, I'm kind of
23 in the way of the jurors. I'm trying to avoid that.

24 Q. Let me show you what's been marked as State's Exhibit
25 Number Eight, the first one, which I believe is from

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1 outside.

2 A. Yes, that's the residence on Bookout Road.

3 Q. And again, you stated, this is more of the McConnell
4 area versus the Congress Street, which is --

5 A. Well if you go out McConnells Highway from Rock Hill,
6 turn left on Brattonsville, go down about a three-quarters
7 of a mile to a mile, Bookout's on the left. And this house
8 is approximately a quarter-of-a-mile down Bookout Road.

9 Q. Also State's Exhibit Number Eight, I'll call it B.

10 MADAME COURT REPORTER: Excuse me, Mindy, they're
11 numbered down in the corner.

12 MS. LIPINSKI: Oh, they are.

13 MADAME COURT REPORTER: Yes, ma'am, they are.

14 MS. LIPINSKI: Eight-2, thank you.

15 Q. I'm showing you Eight-2. I believe the first one
16 would have been an Eight-1. Is this the inside of that
17 structure?

18 A. That's the living room area of that same residence.
19 Or den, however you want to call it.

20 Q. I'm showing you Eight-3.

21 A. That's one of the bedrooms in the residence.

22 Q. And also Eight-4.

23 A. That's a table that was in the residence, and --

24 Q. Right. Can you see the bed that we saw in Eight-3?

25 A. Yes.

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1 Q. I probably need to bring them to you.

2 A. No, just -- same bedroom, just off to the right, if
3 you're looking at it from the foot of the bed.

4 Q. And I'm going to move this over. And I don't know if
5 you can see it from your angle if you need to step down,
6 but you stated there's a table here?

7 A. Yes.

8 Q. And that there's some damage to the -- is that what
9 I'm seeing here in the photographs here, and to the ---

10 A. Yes, where the -- Where it looks to be where the
11 wallpaper or the drywall had been taken down or corroded.

12 Q. Moving on to State's Exhibit Number Seven, which is
13 the Congress Street location. I'm showing you Seven-1. Is
14 that the outside of that structure?

15 A. Yes, ma'am, it is.

16 Q. And Seven-2, would that also -- would that be the
17 outside of the same structure, but the other end?

18 A. Outside if you're looking at it from the right side
19 shooting west from I think were we were -- or south.

20 Q. Seven-3.

21 A. That's down -- from the backside of the house shooting
22 down the side of the house, back toward Congress Street.

23 Q. And where did you -- the cameras that you talked about
24 -- State's Nine and Ten, where did you locate them in a
25 Congress Street location?

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1 A. They were in what we determined to be the defendant's
2 bedroom in the hallway. I mean, in the closet. I'm sorry.

3 Q. In a closet?

4 A. Yes.

5 Q. And sorry to dilate everyone's eyes. Let me show you
6 Seven-4. I don't know -- was that -- do you recognize what
7 room that was? Was that the suspect's bedroom?

8 A. That's in the defendant's bedroom, and that's the
9 closet that's referenced earlier.

10 Q. And finally Seven-5, is that part of that same
11 bedroom, or is that a different bedroom?

12 A. Same bedroom. That's his bed in the residence.

13 Q. And other than the Defendant Harry Anthony, who else
14 lived at that residence?

15 A. We determined his mother lived there with him.

16 Q. And so was it at least a two-bedroom structure?

17 A. Yes.

18 Q. And was there anything about the nature of the items
19 in Mr. Anthony's bedroom versus his mother's bedroom, that
20 would kind of lead you to determine whose was whose?

21 A. The rest of the household was very well kept. Mr.
22 Anthony's room was in disarray, items stacked upon items.
23 And there again as you can see in the closet, but on the
24 chester drawer and on tables all around.

25 Q. And what about -- was there a female's bedroom or what

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1 appeared to be a female's bedroom?

2 A. Yes, and there again, very well kept, an elderly
3 woman. I can't remember her name right off.

4 MS. LIPINSKI: The Court's indulgence a moment.

5 (PAUSE.)

6 MS. LIPINSKI: And, Your Honor, at this time, the
7 tapes that Mr. Hager referred to, which are State's One
8 through Six, the State would move those into evidence.

9 MR. BARROWCLOUGH: No objection.

10 THE COURT: In without objection.

11 MS. LIPINSKI: And we would also publish them to the
12 jury at this time.

13 THE COURT: All right.

14 MS. LIPINSKI: Showing State's One to the jury.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE THROUGH SIX
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PUBLISHED TO
18 THE JURY AT 12:00 PM.)

19 Q. Were you able to identify the gentleman in this tape?

20 A. Yes, that's the Defendant Harry Anthony.

21 Q. And the female in the tape, were you able to identify
22 her?

23 A. That's Patricia Littlejohn.

24 MS. LIPINSKI: And, Your Honor, at this time, I'm
25 going to fast-forward to certain portions of the tape based

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1 on our pretrial discussions.

2 THE COURT: All right.

3 MS. LIPINSKI: Moving onto State's Exhibit Number Two,
4 Your Honor.

5 Q. And just to indicate, there is a time stamp on this
6 one?

7 A. Yes.

8 Q. But it also says Merry Christmas?

9 A. On April 24th, '05 yes.

10 Q. Thank you.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO PUBLISHED TO
12 THE JURY AT 12:08 PM.)

13 BY MS. LIPINSKI:

14 Q. And again, are you able to recognize the woman in this
15 one?

16 A. Yes. Patricia Littlejohn.

17 Q. And there are some items on the bed in front of Ms.
18 Littlejohn?

19 A. Yes. Looks to be a lighter. May be a crack pipe.

20 MS. LIPINSKI: State's Number Three, Your Honor.

21 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE PUBLISHED TO
22 THE JURY AT 12:15 PM.)

23 BY MS. LIPINSKI:

24 Q. Are you able to identify this female?

25 A. Yes. Again that's Patricia Littlejohn.

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1 Q. Looking just behind Ms. Littlejohn, is there any
2 damage to the wall behind her?

3 A. Yes.

4 MS. LIPINSKI: The Court's indulgence. One moment,
5 Your Honor.

6 BY MS. LIPINSKI:

7 Q. Do you identify the gentleman in this video?

8 A. That's the defendant Harry Anthony.

9 MS. LIPINSKI: Moving on to State's Exhibit Number
10 Four.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER FOUR PUBLISHED TO
12 THE JURY AT 12:23 PM.)

13 BY MS. LIPINSKI:

14 Q. Do you recognize the female in this video?

15 A. Again that's Patricia Littlejohn.

16 MS. LIPINSKI: That was State's Exhibit Number Four.
17 This is State's Exhibit Number Five, I believe the one that
18 has the two video's on it.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER FIVE PUBLISHED TO
20 THE JURY AT 12:28 PM.)

21 BY MS. LIPINSKI:

22 Q. And again, is this Ms. Littlejohn?

23 A. Yes it is.

24 Q. And if you could, on the dresser, is there a mirror?

25 A. Yes.

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1 Q. Is there anyone visible in the mirror? I don't know
2 if you can identify them. May be I need to play the tape,
3 it may become more visible.

4 A. You can see someone but at this point in time I don't
5 identify who it is.

6 Q. Thank you. And here you see Ms. Littlejohn to your
7 front and you can see her back in the mirror?

8 A. Yes.

9 Q. And at that point is it more legible whether she's
10 approaching another individual in the video?

11 A. Yes. It looks to be the defendant Harry Anthony.

12 Q. This is the second video also on this DVD?

13 A. Yes. Different location.

14 MS. LIPINSKI: And, Your Honor, I fast forwarded to
15 part of that due to previous ruling, agreement between the
16 State and the Defense.

17 State's Exhibit Number Six, Your Honor.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER SIX PUBLISHED TO
19 THE JURY AT 12:39 PM.)

20 BY MS. LIPINSKI:

21 Q. Are you able to identify this female?

22 A. Again that's Patricia Littlejohn.

23 MS. LIPINSKI: Bring the lights up.

24 (VIDEO'S STOP AT 12:43 PM.)

25 BY MS. LIPINSKI:

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CROSS BY MR. BARROWCLOUGH

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1 Q. And again State's One through Six were part of those
2 videos you seized at the Congress Street location?

3 A. That was approximately seven out of the thirty video's
4 we seized yes.

5 MS. LIPINSKI: The Court's indulgence one moment, Your
6 Honor.

7 A. Or thirty-eight. Excuse me.

8 MS. LIPINSKI: That's all we have of Lieutenant Hager
9 at this time, Your Honor.

10 THE COURT: Cross.

11 MR. BARROWCLOUGH: May it please the Court.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 LIEUTENANT TIM HAGER BY MR. BARROWCLOUGH:

15 Q. The videos that we just viewed were recovered during a
16 search at [REDACTED] South Congress on February 2nd. Correct?

17 A. Yes, sir.

18 Q. And --

19 A. 2006.

20 Q. 2006. Correct.

21 And that search encompassed the residence. Correct?

22 A. The residence located at [REDACTED] South Congress Street,
23 which is in York County, yes.

24 Q. And I believe on that date, a vehicle was searched?

25 A. I'm not sure if we searched a vehicle that date or

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

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1 not. I'd have to go back in there. I don't have that
2 paperwork in front of me. I can't -- we searched it at
3 some time. I'm not exactly sure exactly when.

4 Q. Going back a minute. You took out warrants for this
5 case. Correct?

6 A. I did, yes.

7 Q. And you're the lead investigator in this case.
8 Correct?

9 A. I was the supervisor of the unit that was conducting
10 the investigation, yes.

11 (PAUSE.)

12 MR. BARROWCLOUGH: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes, sir.

15 Q. Lieutenant Hager, take a moment to review that.

16 A. Yeah.

17 Q. That document indicates that the vehicle was searched
18 on February 2nd?

19 A. Yes.

20 Q. The same day as the search warrant?

21 A. That's correct.

22 Q. Okay.

23 A. If I'm not mistaken, it was brought back to our
24 facility for searching.

25 Q. And pursuant to those searches, no crack cocaine was

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1 found?

2 A. No, sir.

3 Q. No crack residue was found?

4 A. None.

5 Q. No scales associated with drug dealing were located?

6 A. There were some scales that were found in -- not his
7 residence, no.

8 Q. Well, I'm talking about his residence.

9 A. You said search warrants. You didn't say specifically
10 his residence.

11 Q. Okay, I'm going to be clear with you. I'm not trying
12 to trick you. On February 2nd at [REDACTED] South Congress, his
13 residence?

14 A. No scales, no drugs, no residue were found of crack
15 cocaine, no.

16 Q. No baggies?

17 A. No baggies, no, sir.

18 Q. And no customer list?

19 A. None.

20 Q. No cell phone records that would be indicative of drug
21 dealing?

22 A. None.

23 Q. No computer records indicative of drug dealing?

24 A. None.

25 Q. And that residence was searched, [REDACTED] South Congress

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1 was searched also on February 21st and February 27th.

2 Correct?

3 A. I'd have to see the search warrants to make sure the
4 dates were -- yeah, there were other occasions that we were
5 there, yes.

6 (PAUSE.)

7 MR. BARROWCLOUGH: Your Honor, may I approach the
8 witness again?

9 THE COURT: Yes, sir.

10 Q. Mr. Hager, I'll hand you these two search warrants.

11 A. Okay.

12 Q. And just ascertain for yourself, those search warrants
13 are for [REDACTED] South Congress Street. Correct?

14 A. Yes, sir. This one is on the 21st, and again the
15 27th. Yes, sir.

16 Q. And, so I was correct when I said that [REDACTED] South
17 Congress Street residence was searched two other times in
18 February?

19 A. Correct.

20 Q. For a total of three times?

21 A. That's correct.

22 Q. And no drugs were ever recovered?

23 A. No.

24 Q. And no drug scales were ever recovered?

25 A. No, sir.

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- 1 Q. And no baggies?
- 2 A. No, sir.
- 3 Q. Okay. And no cell phones or computers?
- 4 A. That's correct.
- 5 Q. All right. And isn't it also true as the lead
- 6 investigator, no -- strike that, let me back up. You said
- 7 you worked in Narcotics at one point. Right?
- 8 A. For approximately six years, yes.
- 9 Q. Okay. And as someone who worked in Narcotics, you're
- 10 familiar with the concept then of a CI buy. Right?
- 11 A. Correct.
- 12 Q. And just so the jury understands, a CI buy is when you
- 13 work with somebody who goes and buys drugs from your target
- 14 person, while you're either wearing wire or perhaps on
- 15 video, and then they bring those drugs back to you.
- 16 Correct?
- 17 A. If you're running a drug investigation, yes.
- 18 Q. Right. And there was no CI buy ever made from Harry
- 19 Anthony in conjunction with these warrants. Correct?
- 20 A. Because I was not running the drug investigation.
- 21 Q. Well just answer my question, yes or no.
- 22 A. No.
- 23 Q. And, now you did as you testified to, recover and take
- 24 into evidence some items on February 2nd. Correct?
- 25 A. Correct.

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1 Q. Two black bags?

2 A. Yes.

3 Q. And those, I believe you testified, were camera bags?

4 A. Yes.

5 Q. And of course, the VHS tapes that you testified to.

6 A. Correct.

7 Q. And those black bags, they were never submitted for
8 trace analysis. Were they?

9 A. For cocaine?

10 Q. Yeah.

11 A. No.

12 Q. And in addition to what you've already testified to
13 that you found with those black bags, there was also a
14 denim skirt. Correct?

15 A. Correct.

16 Q. And the denim skirt that was found with those bags and
17 tapes, was that identified to be Ms. Littlejohn's skirt?

18 A. No, it was not sent to test.

19 Q. Okay. But you did find Ms. Littlejohn's ID, I believe
20 you testified?

21 A. I did, yes.

22 Q. And her billfold?

23 A. Correct.

24 Q. And those are indicated on the return of the search
25 warrant. Right?

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1 A. Yes.

2 Q. But those are not logged into evidence?

3 A. I think they were returned to her if I remember
4 correctly.

5 Q. Okay. And that was from February 2nd, that some of
6 her belongings were there in the bedroom. Correct?

7 A. Yes.

8 Q. Okay. So, and let me ask you this question. You did
9 not recover any crack from [REDACTED] South Congress Street. Did
10 you ever go and search Ms. Littlejohn's residence for
11 crack?

12 A. No.

13 Q. Now of course you know how to obtain a search warrant.
14 Correct?

15 A. Do I know how?

16 Q. Yes.

17 A. I've obtained hundreds of them, yes.

18 Q. So of course you could have pursued a search warrant
19 for Ms. Littlejohn's residence. Correct?

20 A. If that was the target of my investigation, yes.

21 Q. If that was the target of your investigation. And on
22 some paperwork, it's indicated that her address was
23 Centre Street, York. Does that sound right to you?

24 A. Yes, there's -- very transient. We'd find her one
25 place one day, and another place the next.

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1 Q. But you never obtained a search warrant fo Centre
2 Street, York?

3 A. No.

4 Q. So sitting here today, you couldn't tell this jury if
5 there would have been crack at that residence?

6 A. Don't know if there's crack there, I don't believe I'd
7 had probable cause to obtain a search warrant to that
8 residence.

9 Q. Well you recovered these videos on February 2nd.
10 Correct?

11 A. Correct.

12 Q. And as you have testified to for this jury and for the
13 Solicitor, that's Ms. Littlejohn in the videos. Correct?

14 A. That's correct.

15 Q. And you testified that you had interviewed Ms.
16 Littlejohn previous to watching those videos, and she said
17 that she used crack. Right?

18 A. Yes.

19 Q. And it's your hypothesis, although nothing was
20 recovered, that, that's crack on those videos. Right?

21 A. Yes, I'm fairly certain that's crack on those videos.

22 Q. And so, you don't think that would give you probable
23 cause to get a search warrant for her house to see if the
24 crack on the videos came from her house?

25 A. All of it was taking place at the defendant's house at

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1 another residence that he had a key to.

2 Q. Well let me ask you this. Back when you were in
3 Narcotics, did you ever know anybody who sold crack to move
4 it from their house to another location?

5 A. Yes, numerous times.

6 Q. And when you were in Narcotics, the people that would
7 move the crack to a different location to sell it, did they
8 ever keep some crack at their house?

9 A. Some did, some didn't.

10 Q. And let me ask you this question. Ms. Littlejohn was
11 not charged with distribution of crack. Was she?

12 A. No, she wasn't.

13 Q. She wasn't charged with possession of crack?

14 A. Was not.

15 Q. She wasn't charged with prostitution?

16 A. Was not.

17 Q. You didn't charge her with anything in conjunction
18 with this case?

19 A. No, I did not.

20 MR. BARROWCLOUGH: That's all the questions I have,
21 Your Honor.

22 THE COURT: Redirect.

23 MS. LIPINSKI: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 LIEUTENANT TIM HAGER BY MS. LIPINSKI:

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1 Q. You stated earlier stating that Ms. Littlejohn, the
2 way you came to know her was not part of a crack
3 investigation?

4 A. That's correct.

5 Q. And you stated that she became a material and
6 cooperating witness in another investigation?

7 A. Yes. She furnished information that we used for the
8 request and issuance of the first search warrant.

9 Q. So in addition to the information she gave you here,
10 she did provide you with other information about your other
11 ongoing, but unrelated investigation?

12 A. Yes, corroborated a good bit about what we were
13 looking into.

14 Q. And has it ever been your practice or your occasion
15 either in your work in narcotics or investigation to use
16 these CI's or use these corroborating witnesses not so much
17 to target them during investigation, but to use the
18 information they give you to focus in on other people who
19 may be more of a priority to you?

20 A. Yes.

21 Q. And as a result of that, do you ever make any type of,
22 for lack of a better term, executive decision on whether to
23 charge these cooperating witnesses or not charge them?

24 A. Yes, do it all the time.

25 Q. And if you could, just explain to the jury some of the

LIEUTENANT TIM HAGER: REDIRECT BY MS. LIPINSKI

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1 factors that go into that judgment paradigm on your part,
2 and why you are vested with that discretion.

3 A. Some of the factors -- the biggest factor to me is you
4 weigh what you're looking into versus what you've
5 uncovered, and whether or not that rises to the level that
6 we need to prosecute that or use that individual for
7 information to get the -- to meet our end goal to what
8 we're initially looking into.

9 Q. And is it ever your occasion, for lack of a better
10 term, to try and work up the food chain?

11 A. Yes, it happens all the time, especially in narcotics.

12 Q. So she was giving you corroborating or material
13 information in an unrelated investigation that was of high
14 value to you. Have you ever made the decision not to
15 charge lower or smaller crimes as a result of that?

16 A. Yes, a prime example would be a State Grand Jury case
17 I worked. We arrested an individual for a quarter-of-a-
18 pound -- a student for a quarter-of-a-pound of marijuana,
19 ended up in Atlanta, Georgia. We knocked off an
20 organization that was bringing in 35 kilos of cocaine into
21 the United States every week.

22 Q. And did you charge the student?

23 A. He ended up walking free.

24 Q. And Mr. Barrowclough indicated that you did go back on
25 a subsequent occasion to the Congress Street location?

LIEUTENANT TIM HAGER: REDIRECT BY MS. LIPINSKI

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1 A. Yes.

2 Q. At that time, were you looking for narcotics?

3 A. No. At no point were we looking for narcotics from
4 Harry Anthony's residence.

5 Q. And Mr. Barrowclough stated that in the course of your
6 investigations, you had people who were either trained in,
7 or who moved their drugs from location to location. Does
8 that knowledge that they tend to move them, does that give
9 you probable cause to get a search warrant for anywhere
10 that you can associate with that witness?

11 A. No, you have to establish probable cause that the
12 evidence or contraband that you're interested in or you're
13 searching for, there's a reasonable degree of certainty to
14 this at that location.

15 MS. LIPINSKI: Court's indulgence, one moment.

16 (PAUSE.)

17 Nothing further from Mr. Hager.

18 MR. BARROWCLOUGH: Nothing further, Your Honor.

19 THE COURT: You can step down.

20 THE WITNESS: Thank you, sir.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Members of the jury panel, we're going to
23 break for lunch, its about five to 1:00. We'll break to
24 2:15. Have a pleasant lunch, and we'll see you back at
25 2:15.

1 (JURY EXITS COURTROOM AT 12:59 PM.)

2 THE COURT: Anything from the State before we break
3 for lunch?

4 MS. LIPINSKI: Nothing further from the State.

5 THE COURT: Anything from the Defense?

6 MR. BARROWCLOUGH: Yes, Your Honor. Prior to taking a
7 break I objected at the time to the mention of branding,
8 and I did not feel based on the Court's response, that I
9 should continue to pursue it at that time. However at this
10 time, hopefully this motion will be contemporaneous from my
11 objection. I would be forced to ask for a mistrial based
12 on Detective Hager's bringing up and mentioning branding.
13 I am certain that we did nothing to open the door to that.
14 Additionally, yesterday in Court we agreed on the record
15 that, that would not be a part of the case unless we opened
16 the door to it. This was on direct examination. And I
17 think what makes it more egregious, Your Honor, is the fact
18 that when we were having this conversation and putting all
19 that on the record, Lieutenant Hager was in the room.
20 We've had conversations about how the State's witnesses,
21 particularly law enforcement, more sophisticated witnesses,
22 and nevertheless sort of unprompted by Ms. Lipinski,
23 Lieutenant Hager put the branding right out there, and put
24 our client's character into evidence in violation of our
25 agreement.

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1 And, Your Honor, again, I objected at the time
2 cognizant of the Rule of Criminal Procedure 18 (A) argued
3 after ruling that you told them to move along. But I would
4 say -- I would hope that this motion is timely and I do
5 move for a mistrial.

6 THE COURT: Let me hear from the State.

7 MS. LIPINSKI: Just briefly, Your Honor. We also
8 agreed that we would narrowly tailor the focus of our
9 questions. I don't believe it was any inadvertence or
10 misstep on the part of Mr. Hager. Why we agreed that we
11 would try to avoid that, I also stated that it would
12 nonetheless become -- may nonetheless become part of this.
13 Obviously the defendant's character is an issue by the very
14 admission of these tapes. So to suggest that we have put
15 his character at issue when it was otherwise not an issue,
16 I think is a misstep.

17 Moreover, he could have made a contemporaneous
18 objection. There could have been a curative instruction
19 made. I think the way that we handled it was a way to
20 cause the least attention to it, and for that reason, the
21 State feels -- but I don't feel it's fair to go through all
22 of cross with Lieutenant Hager or anything of that nature,
23 and then at the end, start making a motion for a mistrial.
24 I think he should have -- If he felt that it was of that
25 paramount necessity at the time, the motion should have

1 been made then. Or we could have found some way perhaps to
2 handle it with Mr. Hager in a way that either minimized
3 that prejudice or otherwise avoided it. But I don't
4 believe that it has so contaminated the trial that a
5 mistrial is of manifest necessity or a remedy. He asked
6 him generally about "What were you able" -- He asked him an
7 open-ended question and soliciting information. Now it
8 could have been that, but also could have focused in -- we
9 both in this entire trial have exercised the timed surgical
10 precision to narrowly tear that. And I don't think he just
11 randomly threw it in there to contaminate the trial. There
12 isn't any indication of that. I think Lieutenant Hager's
13 reputation as a whole speaks of that, wasn't necessarily
14 the case and for that reason, the State feels that his
15 motion for a mistrial is both late and at best a curative
16 instruction. But I think, quite frankly, the way it was
17 addressed in terms of just moving on and telling them
18 disregard, was the way to cause the least attention to it.

19 THE COURT: Anything further?

20 MR. BARROWCLOUGH: Well again, just so the record's
21 clear. First of all, it didn't come out when I was
22 questioning Lieutenant Hager, it came out while the
23 Solicitor was questioning Lieutenant Hager so we certainly
24 didn't open the door. But we hadn't even had a chance to
25 question the witness. Secondly, I did act for a matter of

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1 law and it was not granted to me at that time. So, Your
2 Honor, I'm not going to obviously engage in an argument
3 with the Court in front of the jury. I think that would be
4 improper, number one and unwise, number two. And I don't
5 -- Thirdly, I don't understand the Solicitor's point. On
6 one hand she's saying this was not inadvertent. But then
7 she's also saying that it was not intentional to make Mr.
8 Anthony look bad in front of the jury. So I -- I'm not
9 going to attempt to characterize what Lieutenant Hager did.
10 I'm just saying the facts speak for themselves. We had
11 this agreement. We won't get into it. We did nothing to
12 open the door to it, and he injected it in the trial.

13 THE COURT: I find there is no manifest necessity to
14 grant a mistrial. The objection was sustained, and the
15 jury was told "Disregard the testimony." So I deny the
16 motion for a mistrial.

17 MR. BARROWCLOUGH: Okay, Your Honor.

18 THE COURT: We'll see you back at 2:15.

19 MS. LIPINSKI: Thank you, Your Honor.

20 MR. BARROWCLOUGH: Thank you.

21 (COURT IN LUNCH RECESS AT 01:04 PM.)

22 (BACK ON THE RECORD AT 02:20 PM.)

23 THE COURT: Thank you, take your seats.

24 Is the State ready?

25 MS. LIPINSKI: Yes, Your Honor. If we could, just in

1 terms of scheduling, the Clerk has asked me this. When I
2 originally -- when we had our docket meeting this morning,
3 and we were scheduled to start at 10:00 a.m., I thought
4 that we could probably push through today, and maybe argue
5 and charge at the close of business today. We still have
6 the testimony of Ms. Littlejohn which I don't know that
7 she'll be lengthy, but I think she'll be a substantial
8 witness, and the testimony of Detective Marvin Brown as an
9 expert, just being candor with the Court. I think that,
10 that drives us well into 3:30 or 4:00 o'clock in all
11 candor. And so my question is, should we -- or is the
12 Court inclined to push through and argue and charge today
13 or in the morning?

14 THE COURT: No, I can stop you right there. No, you
15 argue and charge in the morning. I'm not going to - if it
16 were Thursday if we could get the jury out and not have to
17 come back on Friday, but I'm not going to keep the jury
18 here.

19 MS. LIPINSKI: So assuming we argue and charge in the
20 morning, I think they would be ready to start with the next
21 case at 11:00 tomorrow, or 2:00?

22 THE COURT: Let's say noon.

23 MS. LIPINSKI: Noon, okay.

24 THE COURT: That way we'll draw the jury, get them
25 drawn, break for lunch, and then --

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1 MS. LIPINSKI: Come back and start with whatever we
2 have.

3 THE COURT: That ought to work.

4 MS. LIPINSKI: I just wanted to -- everybody be on the
5 same page.

6 THE COURT: Well I --

7 MS. LIPINSKI: The Clerk needs to leave a message, and
8 they've inquired that with me, and I will pass on to the
9 Solicitor's Office as well.

10 THE COURT: I was getting ready to ask how we were
11 going as far as logistics, and you've answered that
12 question.

13 Anything from the Defendant?

14 MR. BARROWCLOUGH: No, sir, Your Honor.

15 THE COURT: Not the Defendant, the Defendant's
16 counsel.

17 Bring in the jury.

18 (JURY REENTERS COURTROOM AT 02:23 PM.)

19 THE COURT: Call your next witness.

20 MS. LIPINSKI: May it please the Court. The State
21 calls Patricia Littlejohn to the stand.

22 MADAME CLERK: Please raise your right hand, place
23 your left hand on the Bible.

24 (WHEREUPON: PATRICIA LITTLEJOHN,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 MADAME CLERK: Thank you. Have a seat in the stand.

2 DIRECT EXAMINATION

3 PATRICIA LITTLEJOHN BY MS. LIPINSKI:

4 Q. If you could, Ms. Littlejohn, state your name, and
5 spell your last name for the record.

6 A. Patricia Deanna Littlejohn, L-I-t-t-l-e-j-o-h-n.

7 Q. And if you could, as you just did, speak in the
8 direction of that microphone. You're a little soft-spoken.
9 I'm going to stand back here. That way if I can hear you,
10 I know these last jurors can hear you. Do you need a cup
11 of water or anything before we begin?

12 A. No, ma'am.

13 Q. You stated your name is Patricia Littlejohn. Do you go
14 by Pat?

15 A. Yes.

16 Q. And did you grow up here in York County or in this
17 general area?

18 A. Yes.

19 Q. And have you more or less lived here all of your life?

20 A. Yes.

21 Q. Does your family live here?

22 A. Yes.

23 Q. Your sister?

24 A. Yeah.

25 Q. I believe your mom lives what -- in Gastonia or

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 Gaffney?

2 A. Gastonia.

3 Q. Gastonia?

4 A. Yes.

5 Q. Do you work or go to school right now?

6 A. I go to school.

7 Q. And what type of school do you attend, Ms. Littlejohn?

8 A. I'm in adult education for my GED.

9 Q. And are you getting ready to take a test?

10 A. Yes.

11 Q. And when's the next test that you're going to take?

12 A. February the 9th.

13 Q. And do you go -- you said you go to school, kind of
14 Adult Ed classes to prepare you for the GED test?

15 A. Yes, yes.

16 Q. And where do you attend those classes at?

17 A. On Pinckney Street in York, South Carolina.

18 Q. And how long have you been enrolled in those classes?

19 A. Over six months now.

20 Q. And you do that hoping to enable you to get a better
21 job in the end?

22 A. Yes.

23 Q. So how often do you go to class?

24 A. Four days a week.

25 Q. And do you go in the morning, the afternoon, or all

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 day?

2 A. I go from 8:00 to 12:00.

3 Q. And you stated that you've grown up here or lived
4 here. Have you worked before?

5 A. Yes, I used to work at Whitesides Cleaners.

6 Q. And what are some of the other jobs you've ever had?

7 A. I did fast foods, hotels...

8 Q. Just here and there, odds and ends jobs?

9 A. Yes.

10 Q. And have you ever gone through periods where you
11 weren't working?

12 A. I haven't worked in about two years, over two years.

13 Q. And you don't have to list your specific address, but
14 do you now live here and city of York?

15 A. Yes.

16 Q. And of the entire York County, is that kind of the
17 part of York that you more or less have lived in most of
18 your life in comparison to Fort Mill or that type thing?

19 A. Mostly York.

20 Q. Mostly York?

21 A. Yes.

22 Q. Do you know the defendant Mr. Harry Anthony?

23 A. Yes.

24 Q. And have you known him more or less all your life?

25 A. Basically yes.

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1 Q. Did he go to school with your sister or know her in
2 school?

3 A. He know my sisters, yes.

4 Q. And did you know him back in December -- back in the
5 year 2005?

6 A. Yes.

7 Q. Have you ever had a problem with crack cocaine?

8 A. Yes.

9 Q. And when I say "a problem," would you characterize it
10 as an addiction?

11 A. Yes.

12 Q. And did you have that addiction in 2005?

13 A. Yes.

14 Q. Did it start in 2005 or did it start before that?

15 A. Before 2005.

16 Q. And in 2005, did you ever come to obtain crack cocaine
17 from Mr. Harry Anthony?

18 A. Yes.

19 Q. And where did you know him to live at that time?

20 A. On Congress Street.

21 Q. And did you ever obtain crack cocaine from him at any
22 other location?

23 A. No.

24 Q. Did you ever go with him to any place out on Bookout
25 Road?

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 A. Yes.

2 Q. And where did he live? On Congress Street or at
3 Bookout Road?

4 A. Congress.

5 Q. And what was at Bookout Road?

6 A. Another house down in the country.

7 Q. And did it belong to Mr. Anthony or someone else?

8 A. Someone else.

9 Q. Did Mr. Anthony have a key or would this other person
10 allow you to come in?

11 A. He had a key.

12 Q. And for what purpose did you all go to Bookout Road?

13 A. To get high and, you know, do things, sexual things,
14 whatever.

15 Q. And you have met with law enforcement?

16 A. Yes.

17 Q. And in the December of 2005 going into the early part
18 of 2006, did you begin -- and without going into what, but
19 did you begin speaking with law enforcement about an
20 ongoing investigation?

21 A. Yes.

22 Q. And during that time, did you tell them about your
23 relationship with Harry Anthony?

24 A. Yes.

25 Q. And did you relate to them that he was one of your

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 sources for crack cocaine?

2 A. Yes.

3 Q. And would you pay Mr. Anthony for the crack cocaine
4 with money, or with sex, or with something else?

5 A. Sometimes.

6 Q. All three?

7 A. Sometimes money, sometimes not.

8 Q. Okay. Would you ever trade sex for crack cocaine with
9 Mr. Anthony?

10 A. Yes.

11 Q. And these sex acts, when you spoke with law
12 enforcement, did you ever relate to them that there was any
13 evidence of that going on? Specifically, were there any
14 videotapes of that?

15 A. Yes.

16 Q. And did you tell them where they might find those
17 videotapes?

18 A. I didn't. They --

19 Q. Did you tell -- did you have them?

20 A. No.

21 Q. So when you spoke of them, in whose possession would
22 they have been?

23 A. Mr. Anthony's.

24 Q. And did you ever have the occasion to meet with Eddie
25 Strait or other members of law enforcement and review those

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 tapes with them?

2 A. Yes.

3 Q. And did you also come to my office and review some of
4 those tapes with me?

5 A. Yes.

6 Q. Who is the female depicted on those videotapes that
7 you reviewed with me?

8 A. It's me.

9 Q. Who is the gentlemen on those videotapes that you
10 reviewed with me?

11 A. Mr. Anthony.

12 Q. And if you could, just to clarify for the record, do
13 you see Mr. Anthony here in the courtroom here today?

14 A. Yes.

15 Q. And is he seated at the Defense table?

16 A. Yes.

17 Q. And if you could, just describe his shirt.

18 A. He has a brown dress shirt on, button-up.

19 Q. Kind of a striped shirt?

20 A. Yes.

21 MS. LIPINSKI: Let the record reflect that she's
22 identified Mr. Anthony.

23 (WHEREUPON: THE WITNESS IDENTIFIES THE DEFENDANT.)

24 Q. On those tapes, in addition to the sex acts, you all
25 appear to be doing some illegal substance?

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1 A. Yes.

2 Q. What is that?

3 A. Cocaine, crack.

4 Q. Crack cocaine or regular cocaine?

5 A. Crack cocaine.

6 Q. And how do you know it's crack cocaine?

7 A. I was smoking it.

8 Q. I guess that was the answer I deserved.

9 Is that the drug you're always doing on those
10 videotapes with Mr. Anthony?

11 A. Yes.

12 Q. Is there any question in your mind that it was crack
13 cocaine at the time?

14 A. No.

15 Q. And the videotapes that you reviewed in my office, do
16 they predominantly take place at Bookout Road or at some
17 other location?

18 A. It's at Bookout.

19 Q. Is it possible that some of them occur at Congress
20 Street?

21 A. It's possible.

22 Q. And is it possible that they occur at another
23 location?

24 A. No.

25 Q. Did you and Mr. Anthony ever leave York County and

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

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1 make any of these videotapes?

2 A. No.

3 Q. In these videotapes, do you ever bring the drugs to
4 the encounter? Are you ever the supplier of the drugs?

5 A. No.

6 Q. Would you ever bring your own paraphernalia, your own
7 pipe, or your own lighter, possibly?

8 A. No.

9 Q. From whom did you obtain that?

10 A. From Mr. Anthony.

11 Q. Did he ever provide you with copies of these
12 videotapes?

13 A. No.

14 Q. Did you ever request that?

15 A. No.

16 Q. But you were aware of their existence?

17 A. I did. I found out, yes.

18 Q. And, Ms. Littlejohn, in addition to crack cocaine, you
19 do have a criminal record?

20 A. Yes.

21 Q. And in 2003 were you convicted of obtaining goods by
22 false pretenses or receiving stolen goods?

23 A. Yes.

24 Q. In 2004, were you convicted of forgery?

25 A. No.

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CROSS BY MR. BARROWCLOUGH

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1 Q. Have you ever been convicted of petty larceny, say
2 around 2007?

3 A. Umm...

4 Q. If you recall.

5 A. I don't think -- I don't recall.

6 Q. Were you convicted most recently in 2011 of
7 shoplifting?

8 A. Yes, I was.

9 Q. And do you currently have a charge for forgery in our
10 office?

11 A. That's because I'm a witness in another case, yes.

12 Q. Did I ever have any discussion with you or offer any
13 hope of reward about the outcome of that forgery charge in
14 exchange for your testimony here today?

15 A. No.

16 MS. LIPINSKI: That's all we have for Ms. Littlejohn.

17 MR. BARROWCLOUGH: May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 PATRICIA LITTLEJOHN BY MR. BARROWCLOUGH:

21 Q. Ms. Littlejohn, you said that you had a drug problem.
22 Correct?

23 A. Yes.

24 Q. And that was mainly a crack problem?

25 A. Yes.

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

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- 1 Q. But you used other drugs?
- 2 A. No.
- 3 Q. You never smoked marijuana?
- 4 A. I have in the past, yes.
- 5 Q. In 2005?
- 6 A. No.
- 7 Q. And did you ever smoke marijuana with Mr. Anthony?
- 8 A. No.
- 9 Q. Never ever?
- 10 A. No.
- 11 Q. And you drink?
- 12 A. Yes, I drink.
- 13 Q. You smoke cigarettes?
- 14 A. Yes.
- 15 Q. And in reviewing those videos, you smoke cigarettes in
- 16 those videos. Correct?
- 17 A. I smoke cigarettes, yes.
- 18 Q. But you're saying no marijuana?
- 19 A. No.
- 20 Q. And it was your testimony that you would get crack
- 21 from Mr. Anthony?
- 22 A. Yes.
- 23 Q. Sometimes for money, sometimes not?
- 24 A. Yes.
- 25 Q. And then when the Solicitor suggested it, you also

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

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1 said sometimes for sex. Right?

2 A. Yes.

3 Q. And would it be true that you at some point in 2005
4 were working as a prostitute?

5 A. No.

6 Q. Never?

7 A. No.

8 Q. And so trading then sex for crack would not be being a
9 prostitute.

10 A. No, I wouldn't consider that as a prostitute because
11 I'm not a prostitute.

12 Q. And so -- I'm going to take your word for that.

13 MS. LIPINSKI: Your Honor, I'm going to object.

14 THE COURT: Yeah, that -- we don't need a comment on
15 the testimony. Ask her a question.

16 BY MR. BARROWCLOUGH:

17 Q. Your testimony was that -- again, I'm questioning from
18 the Solicitor, was that it was Harry Anthony who brought
19 the crack to you.

20 A. That's right.

21 Q. Not you?

22 A. That's correct.

23 Q. And that he never gave you money for crack or sex?

24 A. No.

25 Q. And on the videos, you possess crack. Right?

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

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1 A. I'm smoking crack. I'm not possessing it.

2 Q. At some point in time on the videos, you have it in
3 your possession. True?

4 A. Yes. When he give it to me, I guess so.

5 Q. And it's also true that on the videos, you give it to
6 him. Right?

7 A. No, he gives it to me.

8 Q. You never pass it to him?

9 A. No.

10 Q. And you were never charged with any type of crack
11 charge in relation to what's on those videos?

12 A. No.

13 Q. And you were never charged with any type of
14 prostitution charge with what's on those videos?

15 A. No.

16 Q. But you're here to say today that Mr. Anthony had
17 crack?

18 A. That's correct.

19 Q. And you said that you were convicted of receiving
20 stolen goods ---

21 A. Yes.

22 Q. --- in 2003.

23 A. Yes.

24 Q. Okay. You were convicted of obtaining goods by false
25 pretenses in 2003?

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

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1 A. "False pretenses"? What do you mean?

2 Q. The charge of obtaining goods by false pretenses.

3 A. I was -- yes, I was charged for that, yes, receiving
4 stolen goods.

5 Q. And convicted of that?

6 A. Receiving stolen goods, yes.

7 Q. And obtaining goods by false pretenses?

8 A. Whatever.

9 Q. And in -- on March 18th of 2004, you were convicted of
10 forgery?

11 A. No, that's not correct.

12 Q. So you dispute that the clerk's records indicated that
13 you were convicted?

14 A. No, I have not been convicted of no forgery. That's
15 not true.

16 Q. And July 19th of 2007, you were convicted of petty
17 larceny?

18 A. I don't recall that, no.

19 Q. You don't recall, or are you saying you did not?

20 A. No, I don't recall that.

21 Q. And September of 2011, you were convicted of
22 shoplifting?

23 A. That's correct.

24 Q. And currently you have a forgery charge pending?

25 A. Pending, as a witness.

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

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1 Q. Pending, as a defendant?

2 A. No.

3 Q. Right now you have a charge of forgery against you.

4 A. I know.

5 Q. Being prosecuted ---

6 A. But that ain't got ---

7 Q. --- by this prosecutor's office?

8 A. --- nothing to do with this case.

9 Q. Excuse me?

10 A. It ain't got nothing to do with this case.

11 Q. Well I'm asking you, do you have a charge of forgery
12 pending against you?

13 A. I have a charge pending, yes.

14 Q. In which you're the defendant?

15 A. Excuse me?

16 Q. I said, in which you are the defendant.

17 A. I assume, yes.

18 Q. Being prosecuted by this Solicitor's Office.

19 A. I don't know who's prosecuting me. All's I know is I
20 got to be here.

21 Q. And it's also true, is it not, Ms. Littlejohn, that in
22 May of 2006, you were fired from McDonalds for stealing?

23 A. No.

24 Q. Food.

25 A. Excuse me?

PATRICIA LITTLEJOHN: REDIRECT BY MS. LIPINSKI

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1 Q. Stealing food.

2 A. No.

3 MR. BARROWCLOUGH: One moment, Your Honor.

4 (PAUSE.)

5 MR. BARROWCLOUGH: Thank you, Ms. Littlejohn.

6 THE COURT: Redirect?

7 MS. LIPINSKI: The Court's indulgence, one moment.

8 (PAUSE.)

9 REDIRECT EXAMINATION

10 PATRICIA LITTLEJOHN BY MS. LIPINSKI:

11 Q. Ms. Littlejohn, Mr. Barrowclough asked you if you were
12 a prostitute, and you said that you were not.

13 A. That's correct.

14 Q. What is your definition of a prostitute?

15 A. I think a prostitute is somebody who is out there on
16 the streets selling their body, which I don't do, and I
17 never will.

18 Q. And so your definition, just so we're clear, the
19 reason you don't consider yourself a prostitute is because
20 you didn't engage in that conduct? The sex that you traded
21 for crack, you think is a different definition?

22 A. I wouldn't call it whatever you want to call it. But
23 no, I'm not a prostitute, no matter what he say.

24 Q. And Mr. Barrowclough asked you about the forgery
25 charge that's pending. You understand you were arrested

PATRICIA LITTLEJOHN: REDIRECT BY MS. LIPINSKI

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1 for that?

2 A. Yeah, they just took me uptown and booked me because
3 I'm a witness to that case. It's -- I'm not going to get
4 into all of that.

5 Q. And I don't want you to get into all of that.

6 A. Yeah.

7 Q. But did you give a statement in that case as well?

8 A. Yes, I did.

9 MS. LIPINSKI: That's all we have, Your Honor.

10 THE COURT: All right.

11 Recross?

12 MR. BARROWCLOUGH: Nothing, Your Honor.

13 THE COURT: You can step down and be excused. We
14 appreciate your time.

15 THE WITNESS: Thank you.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 MS. LIPINSKI: Your Honor, I apologize, I drank too
19 much at lunch, but can we have a short recess before we
20 call our next witness? I do apologize.

21 THE COURT: That's fine. We'll take a short break.

22 (JURY EXITS COURTROOM AT 02:43 PM.)

23 THE COURT: We'll take about a ten minute break.

24 (COURT IN RECESS AT 02:43 PM.)

25 (COURT BACK IN SESSION AT 03:00 PM.)

MARVIN BROWN: DIRECT BY MR. EPTING

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1 THE COURT: Thank you, take your seats.

2 Is the State ready?

3 MS. LIPINSKI: Yes, Your Honor.

4 THE COURT: Is the Defense ready?

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

6 THE COURT: Bring in the jury.

7 (JURY REENTERS COURTROOM AT 03:01 PM.)

8 THE COURT: All right. You may proceed.

9 MR. EPTING: Thank you, Your Honor. May it please the
10 Court.

11 The State calls Marvin Brown to the stand.

12 MADAME CLERK: Raise your right hand, place your left
13 hand on the Bible.

14 (WHEREUPON: MARVIN BROWN, BEING
15 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 DIRECT EXAMINATION

17 MARVIN BROWN BY MR. EPTING:

18 Q. To begin with, could you please state your name for
19 the record.

20 A. My name is Marvin Brown.

21 Q. Commander Brown, how are you employed?

22 A. I am employed by the Solicitor's Office, paid by York
23 County. But I am assigned to and supervisor of the York
24 County Multi-jurisdictional Drug Enforcement Unit. That's
25 the county-wide drug task force.

MARVIN BROWN: DIRECT BY MR. EPTING

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1 Q. Could you explain briefly to the jury what the Multi-
2 jurisdictional Drug Enforcement Unit does?

3 A. Yes, I can. Thirteen years ago, we came together, and
4 every drug unit in this county, which is 13 -- I'm sorry,
5 it's eight police agencies. The officers from these eight
6 police agencies came together, and we all work under one
7 unit. I'm the supervisor of Fort Mill, Rock Hill, York.
8 We all work together. And there was a time when the -- the
9 different drug units were separate, but now we're all
10 together and have been together for 13 years. So we work
11 the whole county together. And actually I work for the
12 Solicitor's Office, but I'm a county employee. I'm a
13 county police officer.

14 Q. How long total have you been in law enforcement?

15 A. I started law enforcement -- in two weeks will be 35
16 years. I started in mid-70's.

17 Q. How many of those 35 years were dedicated to narcotics
18 investigation?

19 A. Pretty much all of it. When I was hired, I pretty
20 much started working drugs and guns from the very
21 beginning, but my first search warrant was like in '77,
22 1977.

23 Q. Outside of the on the job everyday training that you
24 get just by being a police officer, have you had any formal
25 training in the field of narcotics?

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1 A. We -- yes, I have. I've been to Narcotics Level I
2 through the State training, Narcotics Level II. I've been
3 to the Federal Training Commander School. And actually
4 sometimes I go down and help teach at the Commander
5 School's annual training that they do. And sometimes I
6 teach 3-hour blocks: one Search and Seizure, one Asset
7 Forfeiture, and one Basic Narcotics. Just like 1-hour
8 blocks for rookies and young officers, that type thing.

9 Q. And during the -- and the material, that training, do
10 you -- does that training include training concerning
11 identification of narcotics? .

12 A. It does.

13 Q. Identification of drug paraphernalia?

14 A. Yes.

15 Q. Identifying how various drugs are packaged?

16 A. Yes.

17 Q. Identifying the street value of various drugs?

18 A. Yes, it's basic narcotics. It's all about street
19 drugs and sold, packaged, what it looks like, what it does
20 to you, the effects it has on the body.

21 Q. What about transaction training?

22 A. Yes, that's part of it. Asset forfeiture, search and
23 seizure.

24 Q. And you briefly mentioned your teaching experience.
25 Could you expound on that for the jury?

MARVIN BROWN: DIRECT BY MR. EPTING

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1 A. I don't do -- I do some instruction, not a whole lot.
2 I do 3-hour blocks for the rookies and young police
3 officers. Sometimes I go down to the Commander school if
4 they want me to as the narcotics supervisor from around the
5 state. We go down to Columbia, and I do a block about drug
6 enforcement and different -- how to put a drug unit
7 together, things like that. I did do a little minor
8 publication before it went to book. It's something I did.
9 It was nationwide about drug units and drugs in general.

10 Q. Now I know 30 years is a long time, you probably made
11 a lot of arrests. Approximately how many drug arrests, if
12 you had to estimate, have you made in the course of your
13 career?

14 A. I'm not sure. Our unit makes about 100 to 150 arrests
15 a month. So, I mean, at least thousands a year. So it's a
16 lot of drug cases.

17 Q. And could you tell the jury what experience you have
18 investigating? Rather than investigating drugs in general,
19 investigating crack cocaine in particular.

20 A. Crack came to York County in summer of 1990. Actually
21 I made the first crack cases, three guys out of New York.
22 And we've been working crack since. But -- and crack's
23 been one the drugs we work most. Crack, cocaine, and
24 marijuana is the three that's just always been around.
25 Heroin comes and goes, LSD, that type thing. But crack

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1 came here in 1990, and we've been working it ever since.

2 Q. And in the course of your investigations, have you
3 come across the materials you use to use crack cocaine,
4 smoke it or however it's used?

5 A. Pretty much every day, yeah. Pretty much every day.

6 Q. And in doing your narcotics investigations, have you
7 had interviews with drug dealers as well as drug users?

8 A. We try to interview everyone we arrest, believe it or
9 not.

10 Q. If you can, could you put a rough number on that for
11 the jury?

12 A. The interviews? Oh man, hundreds, thousands, I guess,
13 hundreds. We write them up its hundreds of interviews.

14 Q. And during the course of those interviews, do you
15 learn about recreational drug use and street-level drug
16 buying?

17 A. Yes.

18 MR. EPTING: Your Honor, at this time I'd offer Mr.
19 Brown as an expert at street-level drug-dealing, narcotics
20 transactions and the identification of illegal drugs.

21 THE COURT: Any voir dire?

22 MR. DEST: No, Your Honor.

23 THE COURT: I find he is qualified.

24 MR. EPTING: Thank you.

25 Q. Commander Brown would you -- for those members of the

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1 jury that have -- that know nothing about crack cocaine,
2 could you give them a brief overview of the basics: how
3 it's used, how it's packaged, how it's sold?

4 A. Crack cocaine is a rock form of powder cocaine. Just
5 like you have powder meth amphetamine, you have powder ice,
6 which is a hard form. You have powder cocaine. You have
7 crack. What it is, you have cocaine, you cook the
8 impurities out. And somebody come up with this back in the
9 '80s, and you come up with this little rock. It look like
10 peanut brittle. It can be that color. Sometimes a little
11 bit, a little bit a shade more towards white. But there's
12 a little -- it actually can be large rocks, but they chop
13 -- usually chop it down to little rocks because you smoke
14 it, \$20 dollar rocks at a time, or a tenth of a gram, or .2
15 tenths of a gram. And crack is nothing more than a
16 smokeable form of cocaine. Cocaine is normally injected or
17 snorted; crack is -- crack is smoked. It's -- just flat
18 out -- the only thing you do with crack is smoke it.

19 Q. I know I think in terms, beer is something that most
20 of us know as a 6-pack. That's what I consider an
21 intoxicating dose.

22 A. Uh-huh.

23 Q. How much is an intoxicating dose of crack cocaine?

24 A. A tenth of a gram is an intoxicating dose. It's a
25 little small rock. For a gram -- a gram of crack cocaine

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1 is about a hundred dollars street value. And you can cut
2 10 rocks out of it, which is a tenth of a gram would be an
3 intoxicating dose. It would be the one that you put in the
4 crack pipe and smoke, and it last a high in total, lasts
5 about 10 or 15 minutes. And then you're looking, you know,
6 you're looking for the next high. And crack can be
7 packaged; it depends on the weight of the crack. The \$20
8 dollar rock is actually hard enough where you don't have to
9 even put it in plastic. A lot of times they just -- they
10 just sell it straight out, out of the hand or off the
11 counter. Or they can put several in the bag and just pick
12 them out. When they first started, they put them in vials.
13 And it was like you put \$20 dollar rocks in little vials.
14 The bigger crack goes in plastic bags. It's just like
15 cocaine or methamphetamine. But the crack is actually hard
16 enough to the point where you can walk around with a piece
17 of it in your mouth, and it won't dissolve. And you can
18 take it out of your mouth and sell it to people, believe it
19 or not. So if the police come up, you can swallow it. But
20 so it's packaged many different ways. You weigh it up to
21 sell it. If you like large amounts, they have scales with
22 it. If it's smaller amounts, such as the \$20 dollar rocks,
23 you can actually eyeball it. If you buy two or three
24 hundred dollars worth of crack cocaine, you can take a
25 razor blade, and you can cut off the little small pieces

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1 that you put in the pipe to smoke it. And that's -- and
2 those pieces -- you only have to weigh those because you
3 can eyeball them. And the crack pipes themselves, it's
4 just a little round glass tube you get at convenient stores
5 believe it or not, most of them have a rose inside, and
6 everybody knows that's the only thing it's used for. You
7 buy the crack pipe, and right beside the crack pipe is some
8 steel wool. They're side-by-side in the convenience
9 stores. It's like -- and they buy both. It's about \$1.50
10 for the crack pipe and \$1.50 for the steel wool. Put a
11 little bit of steel wool into the crack pipe. Put that \$20
12 dollar rock in there or that tenth of a gram, kind of hold
13 it up, and you put fire, a lighter, straight to that rock,
14 and suck the smoke back down in that pipe. And even on
15 undercover deals when we send people in to buy crack, we've
16 seen -- we've actually seen people smoking crack on video.
17 Q. Now you mentioned a \$20 dollar rock. Obviously people
18 are paying cash for crack sometimes.

19 A. Yeah, and I keep calling it -- it's a tenth of a gram.
20 I call it a \$20 dollar rock because crack starts at about
21 \$20 dollars, a \$20 dollar rock, a tenth of a gram. And
22 they pay -- people pay cash for them.

23 Q. In your experience as a police officer in your
24 numerous investigations, have you come across situations
25 where people used other means of exchange than cash?

MARVIN BROWN: DIRECT BY MR. EPTING

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1 A. Oh yeah, it's common for people to leave a car with
2 somebody for the night. So give me five rocks, and you can
3 have my car for five hours. Or lawnmowers, and -- or it's
4 very common for motel rooms and some housing rooms too
5 exchange sex for crack.

6 Q. Now in your experience investigating drug dealers and
7 interviewing them, have you come across drug dealers who
8 smoke crack?

9 A. Most crack dealers smoke crack, believe it or -- most
10 crack dealers do smoke crack, especially small-level.
11 Small-level crack dealers smoke crack, yes.

12 Q. Now have you had an opportunity -

13 Your Honor, may I approach the witness?

14 I'm going to hand you what's been marked State's
15 Exhibit's One through Six, and I'll let you look at them
16 real quick. Take this clip off of it.

17 A. Six CD's?

18 Q. I'm sorry?

19 A. Six CD's?

20 Q. That is correct. That's State's Exhibits One through
21 Six. Have you had an opportunity to review those?

22 A. I have.

23 Q. Do you have an opinion about those -

24 THE COURT: Well are they CD's or DVD's?

25 MR. EPTING: They're CD's, Your Honor.

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1 THE WITNESS: I looked at them. Their actually CD's,
2 Your Honor.

3 THE COURT: Thank you.

4 BY MR. EPTING:

5 Q. Do you have an opinion what, if any, drugs were used
6 on those CD's?

7 A. Yeah, all six of these are -- the persons in these
8 videos are smoking crack cocaine.

9 Q. Before we go any further, I'd like to show you one
10 other thing.

11 MR. EPTING: I beg the Court's indulgence.

12 (PAUSE.)

13 Q. Now I am handing you an item that is taken out of
14 State's Exhibit Nine. If you would, look over that.

15 MR. DEST: Counsel, may I see that please?

16 MR. EPTING: Certainly.

17 (DEFENSE COUNSEL REVIEWING EXHIBIT.)

18 Q. If you would, please take a look at that?

19 (WITNESS REVIEWING EXHIBIT.)

20 A. Okay.

21 Q. Now earlier you testified that people would buy glass
22 tubes with flowers in them in convenient stores for \$1.99.
23 In your expert opinion, is that the type of thing that they
24 would buy and convert into a crack pipe?

25 A. Yes, I mean, they used to be 99 cents, then they went

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1 to about \$1.50. But yes, this is what it is. It's -- It's
2 a -- It's a piece of glass with a hole in each end. And
3 the only use I've ever seen it for years is smoking crack
4 cocaine. I mean, that's what it's made for.

5 Q. Thank you.

6 I think we've established that you have reviewed
7 State's Exhibit's One through Five, and you've given your
8 opinion about what drug was used.

9 Do you think it would be beneficial to the jury to
10 play one of those tapes, and to explain to them step-by-
11 step how a crack pipe fits this?

12 A. Well it would be easier. I mean, my opinion -- that's
13 the only thing you would do -- the only type of drug you
14 smoke like that is crack cocaine, not even meth. Ice, you
15 don't smoke it like that.

16 MR. EPTING: May I approach?

17 THE COURT: Yes, sir.

18 MR. EPTING: Your Honor, permission to publish State's
19 Exhibits One.

20 THE COURT: You'll have to step down or sit where you
21 are.

22 MR. EPTING: If he can see from there -- once we play
23 it if he has difficulty seeing, Your Honor, that I would
24 ask that he be allowed to step down.

25 If you could get the lights, please, Madame Clerk?

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1 (COURT ROOM LIGHTS DIMMED.)

2 MR. EPTING: We'll fast-forward as much as possible.

3 THE COURT: Tell us which one that is.

4 MR. EPTING: Your Honor, that -- on the screen right
5 now is State's Exhibit One.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PUBLISHED TO
7 THE JURY AT 03:15 PM.)

8 Q. Do you see -- Commander Brown, do you see the
9 condition that the glass pipe is --

10 A. I can. I saw him flip it. It's a little bit hard to
11 see for people who have maybe never seen it, but I've seen
12 it hundreds of times. So he flipped it over. It's the
13 same style tube, glass tube that -- years ago, they used
14 Coke cans and stuff, but when somebody started producing --
15 mass producing these glass tubes for the last five years or
16 so, they've been using these glass tubes. But that's the
17 same thing. You flip it over. You put some steel wool in
18 the end, just a little ways. You put the crack rock in
19 there on the end, just like he did. And you leave a little
20 bit of crack rock protruding, and you put a hot flame
21 straight to the rock because you're burning that rock up.
22 And you suck the smoke or the fumes back into -- and you
23 have to hold it up when you first start burning it because
24 it will fall out. But once it starts burning, you can come
25 down a little bit. You'll see that, that's how they move

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1 it. But -- but it gets very hot. So they can't do but so
2 much of it, and then they have to set it down, or hold it
3 to one side and let it cool down. And eventually that end
4 will break off, and you'll end up having to buy another
5 glass pipe or crack -- we call them "crack pipes." That's
6 what they are.

7 He's putting the lighter, the flame to the end of the
8 pipe, which is actually where the crack rock is at, a
9 little bit steel wool right up behind it, and she's smoking
10 -- you can see the smoke coming out of her mouth that she
11 pulled back through the glass pipe.

12 What I failed to mention earlier is when you buy the
13 crack pipe and the steel wool, there's rows and rows of
14 lighters with it too so they buy the lighters right there
15 too. So you come in and you get all three at the same
16 time.

17 The only drug that I know of smoked like this or used
18 like this is crack cocaine. Meth has ice, but it's in a
19 round bulb because it turns liquid when you heat it. So
20 you have to have like a bowl to catch it. You can't smoke
21 meth like this.

22 Q. Commander, I would draw your attention to the State's
23 Exhibit One playing. Let us know if anything significant
24 is occurring.

25 A. He's got the tube in his hand. He's put the flame

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1 straight to the crack rock. I mean, he's smoking crack is
2 what he's doing at those point. At some point, it's going
3 to be -- it's going to get too hot for him to deal with it,
4 but right now he's smoking crack cocaine.

5 And crack cocaine smoke too is a little bit whiter.
6 You can't hardly tell in this. It's normally whiter than
7 cigarette smoke for some reason. It's -- it's a different
8 smell too. But...

9 It looks like he's got the paper towel on the stem.
10 It's probably due to the fact it's real hot. And he's
11 letting it cool down or hold it to the side. They smoke a
12 rock or two, and they have to let it cool down before they
13 can smoke some more using a different crack stem. They --
14 And it's a crack pipe, crack stem. That's what most people
15 call it. But that's why he's got that tissue wrapped
16 around it because it's too hot just to hold it.

17 Q. And I would draw your attention to how he's holding it
18 right now. Is there anything peculiar about that? And you
19 can come off the stand if you need to see that.

20 A. I mean, he's holding it straight up. So the crack --
21 any crack that might be in here won't fall out.

22 Oh, he's got a metal rod up through the crack pipe. I
23 see it now. And that's also because it's hot.

24 Q. Okay.

25 A. And he's just letting it cool down because he's gonna

MARVIN BROWN: DIRECT BY MR. EPTING
CROSS BY MR. DEST

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1 smoke crack. Sometimes when the Brillo pad or the steel
2 wool goes down a little bit too far, they can take those
3 rods and push it back up in there. And it needs those rods
4 because as you smoke a rock or two, you have to push it out
5 and put new Brillo pads there because the ashes clogs it
6 up. The Brillo pad -- I call it a Brillo pad, it's steel
7 wool. It's nothing more than a strainer. And the steel
8 wool is not a Brillo pad. It's a stainer. So it clogs up,
9 so they have to clean it out and start over again.

10 (WITNESS RETURNED TO WITNESS STAND.)

11 MR. EPTING: I have no further questions for this
12 witness, Your Honor.

13 I'll turn it over to the Defense.

14 CROSS EXAMINATION

15 MARVIN BROWN BY MR. DEST:

16 Q. Officer Brown, where is that stem pipe?

17 A. I think they put it back in that case, Mr. Dest. I'm
18 not sure. Right in that yellow bag, I believe.

19 MS. LIPINSKI: I believe it might be in that yellow
20 bag, Mr. Dest. It may have fallen out when he put it back
21 in there.

22 MR. DEST: If you can help me find it, Commander.

23 THE WITNESS: I don't see it.

24 MR. DEST: I don't see it either.

25 THE COURT: Mr. Epting, you think you can find it?

MARVIN BROWN: CROSS BY MR. DEST

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1 MR. EPTING: I'll give it a crack.

2 THE WITNESS: No, it's not in the bag.

3 MADAME COURT REPORTER: Don't look at me.

4 Look in your coat pocket.

5 THE WITNESS: I thought I handed it back to him.

6 MADAME COURT REPORTER: You may have. I did not see
7 you do anything with it. I don't have it.

8 THE WITNESS: I don't think so. I put it right in
9 that bag.

10 MR. EPTING: There it is.

11 MR. DEST: Where is it? Thank you.

12 Q. Detective Brown, this pipe, this stem, if you could
13 look at it. It is not burned, is it, sir?

14 A. No, I would say this one's never been used.

15 Q. And it's pretty much in pristine condition?

16 A. Yes.

17 Q. And if you were -- or somebody is a crack addict, it's
18 your testimony they would use something like this as a
19 crack pipe?

20 A. Yes.

21 Q. And if --

22 A. They could. But yes.

23 Q. And certainly an addict, a drug addict who is addicted
24 to crack cocaine, could have this type of pipe on them?

25 A. Yes.

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1 Q. They could have it in their pocket. Correct?

2 A. Uh-huh.

3 THE COURT: You've got to give us a "Yes or No"

4 A. Yes, sir.

5 Sorry, judge.

6 Q. And if you are a crack addict, certainly there are
7 times in the thousands of arrests that you made, where
8 someone has a crack problem, they may have a crack pipe on
9 them. Correct?

10 A. That's correct.

11 Q. And this particular crack pipe was found with some
12 personal items belonging to Patricia Littlejohn.

13 MS. LIPINSKI: Your Honor, I object.

14 Q. Is that correct?

15 MR. EPTING: Your Honor, I object. That's not the
16 testimony we've heard so far.

17 THE COURT: Well anyway, you need to rephrase your
18 question.

19 MR. DEST: Yes, sir.

20 Q. Are you aware that, that pipe was found with other
21 personal items of Patricia Littlejohn?

22 A. No, sir, Mr. Dest. I don't have a clue about any of
23 this. I wasn't involved in that case. I don't know
24 anybody.

25 Q. I understand.

MARVIN BROWN: CROSS BY MR. DEST

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1 A. So...

2 Q. You've been the head of the Multi-jurisdictional Drug
3 Unit for quite some time, sir?

4 A. Yes, I was lieutenant over the drug unit at the Rock
5 Hill Police Department, and we formed the drug unit 13
6 years ago. So I've been over -- supervisor of the drug
7 unit -- the current drug unit for 13 years.

8 Q. And you testified that you work in conjunction with
9 other units or other law enforcement agencies in the
10 county. Correct?

11 A. Yeah, state and federal.

12 Q. And you did not generate a investigative report on the
13 four charges against Harry Anthony. Did you?

14 A. I did not.

15 Q. And no one in your Multi-jurisdictional unit generated
16 an investigative report on the four charges against Mr.
17 Anthony?

18 A. I don't know that. I have four supervisors. I'm the
19 head supervisor. There's three under me. It could have
20 come through. I can't see all the reports.

21 Q. But you're not aware of that.

22 A. I'm not aware of any.

23 Q. And you did not seize any crack cocaine from my client
24 Harry Anthony. Did you?

25 A. I did not.

MARVIN BROWN: CROSS BY MR. DEST
REDIRECT BY MR. EPTING

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1 Q. And to your knowledge, no one from the Multi-
2 jurisdictional Task Force Drug Unit seized any drugs from
3 my client Harry Anthony. Correct?

4 A. Not to -- not to my knowledge.

5 Q. And to your knowledge, no one from your Multi-
6 jurisdictional Task Force Drug Unit seized any drugs or
7 drug baggies or scales from the residence of my client
8 Harry Anthony. Correct?

9 A. Not that I know of. I believe that to be correct.

10 Q. Thank you, Officer Brown.

11 MS. LIPINSKI: The Court's indulgence one moment.

12 REDIRECT EXAMINATION

13 MARVIN BROWN BY MR. EPTING:

14 Q. Now you mentioned that you were Commander, and you
15 were over the Drug Enforcement Unit.

16 A. Yes, sir.

17 Q. But isn't it fair to say that other drug arrests are
18 made in York County without your direct involvement?

19 A. Yes, Rock Hill City and York County make a tremendous
20 amount of arrests, the patrol guys. And we assist them
21 sometimes, and sometimes we don't. But we account for a
22 large amount of the drug arrests, but over 24 hours a day,
23 the deputies and the Rock Hill City Police make a lot of
24 drug cases.

25 MS. LIPINSKI: No further questions.

1 MR. DEST: No further questions, Your Honor.

2 THE COURT: You can step down and be excused.

3 THE WITNESS: Thank you, thank you.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: Call your next witness.

6 MS. LIPINSKI: The Court's indulgence.

7 The State rests.

8 (STATE RESTS AT 03:28 PM.)

9 THE COURT: Members of the jury panel, the State is
10 resting. That means they presented -- the State has
11 presented its evidence. At this point, we have to take up
12 some legal matters outside of your presence. So I'm going
13 to let you go to the jury room and we'll send for you as
14 promptly as we can.

15 (JURY EXITS COURTROOM AT 03:29 PM.)

16 THE COURT: Anything from the State?

17 MS. LIPINSKI: Nothing from the State at this time.

18 THE COURT: Mr. Barrowclough?

19 MR. BARROWCLOUGH: Thank you, Your Honor. May it
20 please the Court.

21 Your Honor, at this time on behalf of Mr. Anthony, I
22 would move for directed verdict on the basis that the
23 evidence seen in the light most favorable to the State is
24 not sufficient in this case to go to the jury. And I would
25 incorporate my prior motion which I think is my number one

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1 motion, which was for the mistrial on the commentary about
2 the branding.

3 THE COURT: Let me hear from the State.

4 MS. LIPINSKI: May it please the Court, Your Honor.

5 The State feels that there is sufficient
6 circumstantial evidence. You have the testimony of two law
7 enforcement officers that the transactions depicted on the
8 videotapes involve crack cocaine. That coupled with the
9 testimony of Ms. Littlejohn that what they are smoking on
10 there is crack cocaine. Further I believe that the videos
11 state for themselves -- speak for themselves that Ms.
12 Littlejohn was trading sexual performances, sexual acts,
13 and other means in order to obtain crack cocaine from Mr.
14 Anthony.

15 Her testimony that it occurred in 2005 coupled with
16 the date stamps on the tapes and when these items were
17 seized establish -- Mr. Hager - or Lieutenant Hager
18 established that these crimes occurred in York County. Ms.
19 Littlejohn stated that's where they would go for these
20 videos to be made, that they never left York County. And
21 for that, the State feels the light taken in -- the
22 evidence taken in the light most favorable to the State is
23 sufficient to present the issue to the jury that he
24 distributed it, that he transferred ownership of the crack
25 cocaine from him to Ms. Littlejohn as depicted on the

1 videos.

2 THE COURT: I deny the motion for a directed verdict.
3 I find that there is direct evidence and substantial
4 circumstantial evidence from which a jury could find the
5 State's allegations are in fact proven by that evidence.
6 So I in looking at the evidence in the light most favorable
7 to the non-moving party, of course that's the State, I deny
8 the motion for a directed verdict.

9 MR. BARROWCLOUGH: Yes, sir.

10 THE COURT: Mr. Anthony, can you hear me? Can you
11 hear me? Can you hear me?

12 MR. ANTHONY: No, I can't hear you.

13 THE COURT: You can't hear me now?

14 MR. ANTHONY: I can hear you now.

15 THE COURT: All right. We've reached a point in the
16 trial where you have a right to present a defense if you
17 wish, but you don't have to. You are presumed innocent of
18 this charge or these court charges, and the State has to
19 prove your guilt beyond a reasonable doubt before you could
20 be convicted. So you can present evidence if you wish, but
21 you don't have to.

22 You also -- just a minute, after I finish. You also
23 have a right to testify, and you also have a right to
24 remain silent. If you testify, the State can ask you about

25 --

1 What was the offenses again? Any impeachable
2 offenses?

3 MS. LIPINSKI: I believe that you ruled the
4 distribution of crack cocaine was beyond the 10-year
5 period.

6 THE COURT: If you testify, you'll be placed under
7 oath, and you'll have to answer questions posed to you by,
8 of course, your attorney and by the State. You can call
9 witnesses if you wish. You also have a right to remain
10 silent. That is, you do not have to testify, and you do
11 not have to make any statement. You don't have to present
12 a defense. You are presumed innocent of the charge against
13 you. I will tell the jury that again if you exercise your
14 right to remain silent. And I will tell them they cannot
15 use it against you in any fashion whatsoever your exercise
16 of your Constitutional right to remain silent. I will tell
17 them they cannot discuss it, nor can they factor that into
18 their own deliberations and their own mind.

19 Now this right to testify or not is yours; it's not
20 your attorney's. And of course, you can get advice from
21 them. And it's not your friends or family, but you can get
22 advice from them too.

23 Do you have any questions about any of that?

24 MR. ANTHONY: No, sir.

25 THE COURT: Have you decided or will you testify?

1 MR. ANTHONY: I'd like to confer --

2 THE COURT: Okay, we'll take a break, and let you
3 confer with your attorneys.

4 MR. BARROWCLOUGH: Thank you, Your Honor.

5 THE COURT: All right. If somebody will just send
6 word, and we'll be ready to have him back in.

7 MR. DEST: Yes, sir.

8 (COURT IN RECESS AT 03:33 PM.)

9 (COURT BACK IN SESSION AT 03:41 PM.)

10 THE COURT: Thank you, take your seats.

11 Mr. Barrowclough?

12 MR. BARROWCLOUGH: Yes, Your Honor, we've conferred
13 with Mr. Anthony, and he does not wish to testify.

14 THE COURT: Is that correct, Mr. Anthony?

15 MR. ANTHONY: Yes.

16 THE COURT: All right. Well, we'll bring in the jury
17 and dismiss them for the day and then do arguments and
18 charge starting at Ten in the morning.

19 MS. LIPINSKI: Do you have any evidence or anything?

20 MR. BARROWCLOUGH: What?

21 MS. LIPINSKI: Are you putting up any evidence or any
22 or...

23 MR. BARROWCLOUGH: No, no, no evidence.

24 MS. LIPINSKI: I just wanted to make sure.

25 THE COURT: Okay. All right, let's bring in the jury.

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1 MS. LIPINSKI: I'm sorry, I saw some documents I
2 thought you may be introducing.

3 (JURY REENTERS COURTROOM AT 03:43 PM.)

4 THE COURT: Mr. Barrowclough.

5 MR. BARROWCLOUGH: Your Honor, the Defense would rest.

6 THE COURT: All right.

7 Members of the jury panel, the State, as I told you
8 before you went out has rested. And the Defense is resting
9 also, which means the -- all of the evidence, exhibits, and
10 testimony have been presented.

11 The next part of this case would be the arguments of
12 the attorneys and my charge on the law which you are to
13 apply to the facts. That will take us well into the
14 evening so we're not going to do that this evening.
15 We'll start and do that at 10:00 in the morning. So I'm
16 going to let you go in just a moment and have you come back
17 at 10:00 in the morning.

18 But keep in mind all of those admonitions about not
19 discussing the case because you still haven't heard the
20 arguments, nor my charge. You're still not in the position
21 to make up your mind because you don't know what law to
22 apply, and you haven't heard the arguments of the
23 attorneys. And I'll remind you not to do any research
24 through any electronic or other means and not to let
25 yourself be exposed to any news coverage. We pretty

1 standardly have been instructed by the Chief Justice not to
2 send juries out after 4:00 because it usually extends up
3 until the evening. So that's why we're going to stop even
4 though it's a little before 4:00.

5 We'll start back at 10:00 in the morning. Have a
6 pleasant evening, and we'll see you at 10:00 in the
7 morning.

8 (JURY EXITS COURTROOM AT 03:44 PM.)

9 THE COURT: Anything from the State before we stop?

10 MS. LIPINSKI: Nothing from the State.

11 THE COURT: Defense?

12 MR. BARROWCLOUGH: Your Honor, just for purposes of
13 the record, I'll renew my motion and renew my --
14 incorporate my previous --

15 THE COURT: Motions are denied as earlier denied. Why
16 don't we -- we just took a break. So why don't we in just
17 a couple of minutes come on back, and we'll talk about the
18 charges as far as -- I don't see any lessor included but
19 I'll certainly be willing to listen to whatever anybody has
20 to say, but come on back in just a minute. We'll have our
21 charge conference, and at the same time, the Solicitor's
22 Office will be drumming up some business for the rest of
23 the afternoon. I see -- They're trying to sink down where
24 I won't see them now, but I do see at least -- I see a
25 couple of solicitors who may give us some help.

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1 MR. BARROWCLOUGH: Yes, sir.

2 MS. LIPINSKI: Yes, sir, Your Honor.

3 (COURT IN RECESS AT 03:45 PM.)

4 (COURT BACK IN SESSION WEDNESDAY, JANUARY 11, 2012 AT
5 10:13 AM.)

6 (JURY ENTERS COURTROOM AT 10:14 AM.)

7 THE COURT: Good morning.

8 THE JURY: Good morning.

9 THE COURT: Now we'll hear the closing arguments. The
10 State will go first, then the Defense will make their
11 arguments. And then we'll probably take a short break
12 before I get into my charge. The charge is not that long.
13 I don't know how long the attorneys will take, but we
14 usually find that, that's a good time to take a break.
15 I'll turn it over to the attorneys at this time.

16 MS. LIPINSKI: May it please the Court, Your Honor.

17 THE COURT: Yes.

18 MS. LIPINSKI: Good morning, ladies and gentlemen of
19 the jury. I want to start off by thanking you. I told you
20 at the beginning that we appreciated your service here this
21 week, that we knew we were asking you to perform some
22 extraordinary task to view some difficult materials. And
23 for that reason I want to thank you because we do pay
24 attention, and you all have been a very thoughtful and
25 attentive jury when looking at that material. And I wanted

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1 to express our appreciation on behalf of the State, on
2 behalf of the Defense because as I told you earlier, this
3 is really a -- and what you probably now realize more than
4 you ever could have imagined before, this is the only way
5 the system works.

6 I told you that this would be a difficult case. And
7 it's a difficult case because crimes conceived of in hell
8 don't have angels as witnesses. And there is no doubt that
9 these crimes were conceived up in hell. The videos are
10 offensive, graphic, difficult to watch. They are difficult
11 even for people like Patricia Littlejohn to watch. So I am
12 sure having never been exposed to this before, they were
13 difficult for you to watch. But as you can now see, there
14 really wasn't a way to splice out the crack part of the
15 tapes from the sex part of the tapes, and that you needed
16 to consider the context in which the activity took place.
17 It wasn't even low-grade pornography or an amateur home
18 video. If anything, these videos are a documentary on how
19 low crack cocaine can drag members of the community.
20 Because I would imagine prior to this trial, prior to
21 watching these videos, most of you had no idea the power of
22 crack cocaine, and what it can do to members of our
23 community as a whole.

24 I also told you that the State is not asking you to
25 convict the defendant based on some emotional and gut

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1 reaction to these videos. We didn't show them to you
2 because of their shock value. We didn't show them to you
3 hoping that your prejudice would somehow over weigh your
4 sense of logic and common reasoning, and that based on
5 that, and that alone, you would convict the defendant. We
6 showed them to you because they are raw, compelling, and
7 overwhelming evidence, and the only evidence that the
8 defendant is guilty of the four crimes of which he is
9 charged, the four indictments you will be asked to render a
10 verdict on. Because that is a question that you will be
11 asked, when I get done, Mr. Barrowclough gets done with his
12 closing argument, and the judge charges you on the law, the
13 question posed to you will be simple: On at least four
14 separate occasions in 2005, did Harry Anthony distribute,
15 share, give to Patricia Littlejohn crack cocaine? That's
16 it. Those are the four questions that you will be asked to
17 answer.

18 Now Mr. Dest in his opening argument came to you and
19 posited many questions to you about why it took so long for
20 him to charge him. Or, why do we have these dates? Why do
21 we have these big time frames? But realize we've had the
22 entire trial before you, and you've seen the evidence put
23 before you. You've seen the challenge by not only Mr.
24 Barrowclough, but Mr. Dest. And they have uncovered no
25 impropriety. They have revealed nothing untoward to you.

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1 And so you should not speculate as to questions you won't
2 be asked to answer because that's not your role here today.
3 Your role here today is very simple: Did Harry Anthony
4 distribute crack cocaine to Patricia Littlejohn on four
5 separate occasions?

6 They suggest to you that law enforcement, having
7 uncovered these videos in an unrelated investigation and
8 not charging Patricia Littlejohn should have just moved on,
9 packed it away, no harm, no foul. And I ask you, having
10 seen these videos, having watched them, is that what you
11 would have asked law enforcement to do: to turn a blind
12 eye to this, to condone this activity in our community, to
13 simply move on to the focus of the investigation. Because
14 realize, law enforcement goes out there in any number of
15 investigations and sometimes they stumble upon other
16 crimes. But we don't sit there and say, "Well, that's not
17 what you went looking for. So you know what, just
18 disregard that." You have taken an oath that you will
19 consider this evidence, that you will evaluate it. And
20 that based on the evidence taken as a whole, that you will
21 render a verdict, a unanimous verdict of either guilty or
22 not guilty of four counts of distribution of crack cocaine.
23 A jury sometimes say "Well, we don't have unanimous verdict
24 as to guilt, but we must have a unanimous verdict as to not
25 guilty." But it's a unanimous verdict either way.

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1 And so I'm going to ask you, as difficult as it was to
2 watch the videos yesterday to consider them again when you
3 go back in your deliberation room. Because they are the
4 State's evidence, in addition to the testimony of Patricia
5 Littlejohn, and Lieutenant Hager, and Commander Marvin
6 Brown.

7 I must prove the defendant's guilt beyond a reasonable
8 doubt and I embrace that burden. But now you realize the
9 impact and the severity of the charges involved. I am
10 asking you to convict him of four separate counts in
11 distribution of crack cocaine beyond a reasonable doubt.
12 We hear that term on TV, but that doesn't mean we all kind
13 of have the same opinion as to what it might mean. And
14 some of us may not even know.

15 The judge is going to charge you that a reasonable
16 doubt is a doubt to which you can give reason. A doubt
17 that leaves you -- beyond a doubt that leaves you firmly
18 convinced of the defendant's guilt. A doubt that after
19 consideration, after deliberation with your jurors, leaves
20 you hesitating to convict the defendant of these four
21 counts of distribution. It does not mean a reluctance to
22 watch these videos. It does not mean a reservation to sit
23 in judgment of others or questions about the criminal
24 justice system because that is not your role. Your role is
25 quite simple: Did Harry Anthony give Patricia Littlejohn

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1 crack cocaine four times in 2005?

2 I want to talk to you a minute about distribution
3 because you heard some talk from Commander Brown and even
4 Lieutenant Hager who spent a little bit of time in
5 Narcotics Investigation, that most of us kind of have a
6 common concept that distribution means a true crack dealer,
7 somebody who's selling it out of his car for money, or
8 moving large quantities, or this, that, and the other. But
9 in reality here in South Carolina, distribution has a much
10 simpler meaning, and again the judge is going to charge you
11 that all is required for distribution is sharing, a
12 transfer of ownership, a giving of one thing the crack
13 cocaine to another. It does not have to be an exchange for
14 money. It does not have to be an exchange for sex. There
15 is no quid pro quo. It can be a gift. So you do not have
16 to find that the sex had to happen before the crack was
17 exchanged. Now that was some type of quid pro quo. You do
18 not have to find that Harry Anthony had computer excel
19 files of buyers and things like that, that Mr. Barrowclough
20 asked Commander Brown about. None of that is required to
21 convict the defendant of distribution in York County, South
22 Carolina. It is a much, much simpler definition. Did he
23 give it to her? That's all.

24 I come to you and provide my opening first. Mr.
25 Barrowclough gets the second closing argument. Obviously

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1 one of us has to go first. You wouldn't want to listen to
2 both of us at the same time. But I'm going to attempt to,
3 in some ways, predict or guess what things he may posit to
4 you. He may have even better arguments I haven't even
5 thought of. But in order to try and proceed where he's
6 going, that's part of my role here in closing argument.
7 The Defense may suggest to you that Harry Anthony and
8 Patricia Littlejohn are on the same level, that one
9 shouldn't be held more accountable than the other, that one
10 should be more blameworthy than the other. And because
11 Patricia Littlejohn wasn't charged, then you shouldn't
12 convict the Defendant. That is not your role. The judge
13 is not going to ask you at the end of this trial: who you
14 consider more blameworthy, who you find to be the lowest
15 human denominator, who you think went the farthest in these
16 videos, who would you rather have over for dinner? That is
17 not your role. Your role is, did Harry Anthony distribute,
18 give crack cocaine to Patricia Littlejohn? It is not a
19 question. You are not to go in the mind set of Lieutenant
20 Hager who has spent almost 35 years in law enforcement, and
21 led the crimes against persons, and question his decision
22 that based on the information Patricia Littlejohn was
23 giving them in an unrelated investigation, that he made
24 that executive decision not to charge her. You're not here
25 to question that because you don't know what information

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1 factored in, in that decision. You are here to answer the
2 question of did Harry Anthony distribute crack cocaine?

3 So ask yourself, as difficult as it may be, to think
4 back to those videos. What did you see? Did you ever see
5 Harry Anthony put crack cocaine in a pipe, and light it,
6 and tilt Patricia's head up so she could smoke it? Did you
7 ever see Harry Anthony cutting up crack rock on the dresser
8 and deciding which rock he got and which rock was
9 Patricia's? Did you ever see Harry Anthony, while he was
10 anally penetrating Patricia, take a crack rock and put it
11 on the couch in front of her, so the look of pain on her
12 face, so she'd let him keep going? Who directs these
13 videos? Who takes Patricia Littlejohn and turns her up
14 against the wall? Who tells her to keep going, we have
15 four more minutes of tape? Who tells her to take off her
16 clothes? Who, when she tries to pull the blankets over
17 her, pulls the blankets off of her, so he can continue to
18 film her even while she smokes crack cocaine? Who -- Do
19 you ever see Patricia go to her purse and go, "Oh Harry,
20 look at what I brought. Let me smoke -- and let me give it
21 to you. Let me share it with you." No.

22 To whose benefit are these sexual videos? Hers?
23 Because I've watched them, and I can't say that I ever see
24 a moment of pleasure on her face other than when she's
25 hitting the crack pipe. But all of the sex acts, even the

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1 masturbation, she is apathetic, stoic, numb, and under the
2 influence of crack cocaine. She is doing whatever she has
3 to get to that point. But it is not for her benefit. She
4 is not the director of the documentary. And I am not, by
5 any stretch of the imagination asking you to find that
6 Patricia Littlejohn is some helpless victim in all of this.
7 You are not here in a sexual exploitation case or anything
8 of that nature. Does Patricia Littlejohn have to own that
9 she did this? Yes. No doubt about it. But the law says
10 that when you take your crack cocaine, and you share it
11 with others, and you exploit their addiction so that they
12 do that on your video, on your camera, that's different.

13 Harry Anthony is charged with four counts of
14 distribution of crack cocaine. So when Mr. Barrowclough
15 and Mr. Dest gets up here and asks you to speculate about
16 any number of things, ask yourself, "Does that cause me to
17 doubt his guilt as to that, as to, did he share the crack
18 cocaine with Patricia Littlejohn?"

19 Distribution has three basic elements that happen here
20 in York County. How do you know that? Lieutenant Hager
21 with the York County Sheriff's Office said that the two
22 places that he identified in the videos, clearly in York
23 County: Bookout Road location, Congress Street location.
24 The State admitted photographs of both of those. And as
25 much as I doubt you really want to go back to the videos,

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1 if you look at the photographs of the houses, you can see
2 things in the videos: a green lamp at the Congress Street
3 location that's the same in State's Three and Four, a
4 headboard that you can see in One and Five. When she's
5 dancing up against the wall, we pointed out the damage to
6 the dry wall. It's -- they've ripped it off so the tears
7 are very idiosyncratic. This happened in York County. Did
8 he give it to her? Did he share it with her? No doubt
9 about it. On all of those tapes, you see that over, and
10 over, and over again.

11 I would suggest to you that if Patricia Littlejohn
12 went to Lieutenant Hager and said, "I traded sex for crack
13 with Harry Anthony, and he's got videos of the sex in
14 house, in his closet, in his camera bag. And if you go
15 there, you're going to find those videos." And we looked
16 at the videos, and the videos have the sex on there without
17 the crack, without the crack pipe, without the steel wool,
18 without the steel rod cramming the Brillo Pad up into
19 there, without any of that. But she just wanted you to
20 take it on faith that she wouldn't have done that unless
21 she got crack at the end, then perhaps you would have a
22 reason to doubt the Defendant's guilt because then you
23 really are going solely on the testimony of Patricia
24 Littlejohn. But it's all on the videos. It's all there.
25 That is what he is giving to her.

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1 And I asked -- sometimes we lawyers, we think we come
2 up with brilliant questions and sometimes we don't, and I
3 asked her, I said, "Patricia, how did you know it was
4 crack?" And she gave me the answer I deserved. She said,
5 "I smoked it. It's crack." And in some respects, that's
6 the simplest answer. And if maybe because like the one
7 video were you see Patricia very clearly, but you only see
8 Harry Anthony in the reflection of a mirror, and it's not
9 as clear what is going on; maybe if they were all like that
10 where you couldn't really tell, maybe then you would have a
11 reason to doubt the Defendant's guilt. But he stars in his
12 own documentary just as much as she does. He gives you a
13 tutorial on how to load a crack pipe; how to put steel wool
14 in it; how to hold the pipe up 'so until you get the crack
15 going, and then you can put the pipe down. It's all there.
16 Proof beyond a reasonable doubt.

17 And how do you know it's crack in addition to what
18 Patricia Littlejohn tells you? You have Lieutenant Hager,
19 worked in Narcotics; worked thousands of crimes not
20 narcotic-based, but nonetheless where crack was involved.
21 You had the expert testimony of Commander Marvin Brown who
22 made the first crack case ever in York County who says to
23 you, "That's the only thing it could be. That's the only
24 drug that's smoked that way."

25 And you heard a lot about the little -- and I'm not

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1 going to dig for it because the last time I went there, it
2 took 25 minutes -- but you have the little rose pipe in
3 Harry Anthony's camera bag. And was there crack on it?
4 No, it hasn't been used yet. But he's carrying around the
5 paraphernalia associated with the crack. No crime against
6 thieves; they're just little rose flowers. I've got to ask
7 you, if your spouse bought you that rose at the end of the
8 day, would you be impressed with it? No. It's only
9 marketable value because it is sold next to Brillo pads and
10 lighters is to supply the drug paraphernalia to crack
11 addicts and crack dealers. The State has proven beyond a
12 reasonable doubt that the drug being ingested on State's
13 One through Six is crack cocaine.

14 The Defense, no doubt, is going to get up here and
15 say, "But you got no crack. No crack. They ain't got no
16 crack." First, there is no law in the state of South
17 Carolina that says, "If I don't have crack, I can't
18 prosecute." There is no law in the state of South Carolina
19 that says, "If I don't have crack, you can't find any --."
20 Is it worthy of your consideration? Sure. But is it the
21 end of your deliberation? No. Because we have cases where
22 when they're busting in to do the search warrant, people
23 are flushing it down the toilet. We have cases where the
24 crack addicts consume all of the crack before law
25 enforcement can get involved. We have cases where they

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1 simply go back, and they find none of it. Those cases
2 exist. And you as jurors must consider that evidence. Is
3 it worthy? Yes. Is it the end of your deliberation? No.
4 All of it, all the evidence -- and rarely do we have them
5 on videotape smoking it. They're smoking crack cocaine.
6 The Defense will suggest, "Well, you went to that house
7 three times, and they didn't find any crack. And if they
8 didn't find any crack three times, I've got to say, I don't
9 think he was the one with the crack." Well first of all,
10 this is all just smoke and mirrors so you forget the six
11 videos you watched where he's got the crack in his hand the
12 entire time. And second of all, I'm glad that he has at
13 least one standard that he doesn't keep his crack at his
14 momma's house. Because that's what Lieutenant Hager told
15 you. All that Harry Anthony's room is a very well kept,
16 nicely -- you can see the yard, house on Congress Street.
17 Maybe he just doesn't keep his crack at his momma's house.
18 Maybe whenever he got crack, he went and got Patricia and
19 he smoked it. I don't know. Nor do you. And you also
20 know, that wasn't what they were looking for in the first
21 place. Is it possible they missed it? Sure. Is it
22 possible there was none there? Sure. Is it possible after
23 the first time that they searched his house, he said, "You
24 know what? Even if I had any crack still on me, I better
25 get rid of it. They might come back for it again." Of

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1 course they didn't find it the second and third time. He'd
2 make dumbest crook news if they'd found it two and three
3 times. And if they search your house once, they come back
4 two weeks later, and you've still got it there, or you went
5 and got it and brought it when they didn't find it in the
6 first place? Really? That's not a reason to doubt the
7 Defendant's guilt. Patricia told you that for the most
8 part, they got it at his mama's house, and they went to
9 Bookout Road, and that's where most of that happened. And
10 you see them consume the crack in the videos. Just because
11 they didn't find it a couple of months later doesn't mean
12 what is depicted several different times on that video
13 wasn't crack cocaine. It wasn't cigarettes. It wasn't
14 marijuana. And according to Commander Marvin Brown who
15 teaches other commanders of drug enforcement, it couldn't
16 have been any other drug.

17 Let me posit this question to you, and let me turn the
18 tables on the Defense a little because they wanted to
19 emphasize "Oh Patricia never got charged. You can't
20 convict the Defendant." Say Lieutenant Hager did come to
21 you and say "I made these charges against Patricia
22 Littlejohn during her cooperation with us in another
23 investigation. She unknowingly revealed the existence of
24 these videos. And, you know, she admitted to us it was
25 crack cocaine." And I ask you to convict Patricia

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1 Littlejohn of possession of crack cocaine, would you have
2 any doubt? If she's got crack, he's got crack. This is a
3 distribution of crack cocaine case.

4 I submit that probably a lot of what the Defense is
5 going to do, and what they're going to try to do throughout
6 this entire trial, is cause you to call into question the
7 credibility and the believability of Patricia Littlejohn.
8 And I started out my closing argument by saying, "Crimes
9 conceived of in hell, don't have angels as witnesses." I
10 am not a prosecution lawyer. Harry Anthony did not go pick
11 up a Catholic nun who had never told a lie in her life or
12 never committed a sin and turned her into a sex for crack
13 addict prostitute. So, of course she's a crack addict. No
14 doubt. We would probably, although she disagrees, call her
15 a crack prostitute. No doubt about it. The Defense will
16 suggest to you that you can't believe her because she won't
17 even acknowledge that she's a prostitute.

18 If I gave the definition of crack prostitute, would
19 Patricia Littlejohn be that? Sure. If we took 9 out of 10
20 members of the community, would Patricia Littlejohn meet
21 that definition? No doubt about it. But before you
22 question her credibility, before you judge her testimony, I
23 want you to take a step back and appreciate the role in
24 which Patricia Littlejohn found herself in this
25 investigation. They have identified her as a witness in an

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1 unrelated investigation. They asked her for providing them
2 with information, and she did. They asked her if they
3 could corroborate anything she was saying. And she led
4 them to the videos at Harry Anthony's house. This wasn't
5 being bought and sold on the Internet. Lieutenant Hager
6 didn't go into some Mom and Pop video store in a back room
7 and find where Harry Anthony had taken his video collection
8 and put it up for sale. She led them. She didn't have to.
9 She didn't have any pending charges in '05 and '06. They
10 never caught her with possession of crack cocaine. She's
11 not working off any charges. She revealed what is
12 undoubtedly, undoubtedly the most shameful, humiliating,
13 embarrassing secret of her entire life. Video evidence of
14 how far she has sunk to feed her crack addiction. That's
15 what she did.

16 . Imagine I came to you, and I said, "We're
17 investigating a crime that happened at your neighbor's
18 house." And if only we could look -- have gone back in
19 time and looked through your window, I believe that we
20 could catch the burglars breaking into your house. And
21 were you there? "Yes, I was there. I might have seen it"
22 -- or whatever. "Is there anything else that I could use
23 to corroborate your testimony?" "Well, you know, my
24 husband and I made a video that night and I'm going to show
25 it." Would you have shown it to them? And what did she

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1 get for this? What did she have to gain? What was her
2 motive in doing this? Did Lieutenant Hager say, "Thanks,
3 here's your free trip to Disney world." She got a ticket
4 to court, a subpoena. So that on top of having to share
5 those videos with members of law enforcement, she got to
6 know that they were played in an open courtroom where any
7 number of strangers watched. And that wasn't enough. She
8 had to come in and admit to you, that was her. That's her
9 doing all that. I'm in some ways glad she said she wasn't
10 a prostitute because what that tells me is, despite all of
11 that, she has this much shred of human dignity left that
12 she can still function. Because if those videos existed of
13 me, and I knew they were discovered, I -- you wouldn't find
14 me to serve a subpoena. I'd be living in an igloo in
15 Alaska by myself for the rest of my lifelong life.

16 So while you and I may at first blush say, "She should
17 have just owned that." She has already owned more than
18 most of us can even possibly imagine. And that does not
19 cause you to question her credibility. All it is, is
20 evidence that she's trying to hold on to some last shred of
21 dignity.

22 What else do they have? They have some magistrate
23 charges for receiving possession of stolen goods, and
24 forgeries, and things like that. Shocking. A crack addict
25 has stolen to support her habit. She doesn't have any

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1 convictions for crack. And she doesn't have any
2 convictions for prostitution. Does that mean she is the
3 best witness we can find? No. But as I told you, Harry
4 Anthony didn't select a nun as a partner. He picked up a
5 crack addict. He picked up someone with a past. And he
6 had to because, I've got to say, even with a crack
7 addiction, I'm not sure most women go there. It doesn't
8 question her credibility; it is consistent, congruent, and
9 comprehensive in terms of telling her story. It's not an
10 aberration; it's a reinforcement. What else do they have?
11 Some suggested she might have stolen food from McDonalds.
12 That's the best you have? And look at it, '05 and '06.
13 She didn't have any motive to lie at that point. Oh well
14 she's got charges in the Solicitor's Office now, but she
15 wasn't promised anything to come in here. Quite frankly, I
16 might have taken the forgery charge before I walked in
17 there and admitted that was me bent over on those videos.
18 Because if that's the deal, I'd rather have behind door
19 number A. But the statements were given back in '05 and '06
20 when none of that was true. She has no motive to lie. She
21 has nothing to gain, and in fact, she has everything to
22 lose because now that's out there. Before this trial, this
23 was a dirty little secret between her and Harry Anthony.
24 But you don't have to rely solely on the testimony of
25 Patricia Littlejohn. You have the testimony of Lieutenant

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1 Hager. You have the testimony of Commander Brown. You
2 have the documentary. All that leave you firmly convinced
3 that at least on four separate occasions in 2005 that the
4 Defendant shared, gave, or transferred ownership of crack
5 cocaine to Patricia Littlejohn. And you're not relying on
6 her testimony so much as you're relying on the videos.

7 The defenses raised are very good at trying to pick
8 apart little pieces of evidence. And while I tried to
9 anticipate where Mr. Barrowclough will go, he's a very
10 talented advocate. We have tried a number of cases
11 together. We work together everyday. And no doubt about
12 it, he'll probably pull out a few things I didn't
13 anticipate. But as you listen to his closing argument, and
14 as you go back into your jury deliberation room, and you
15 look at all the evidence, focus on that simple question
16 that the judge is going to pose to you: Is the Defendant
17 guilty of four counts of distribution of crack cocaine to
18 Patricia Littlejohn here in York County in 2005? Or are
19 you firmly convinced that, that is the only thing, the only
20 thing that they are smoking on those videos; the only thing
21 that she is willing to trade herself for on those videos;
22 that, that is indeed Harry Anthony on those videos; that
23 they are his videos; that they are found in his closet;
24 that they are with his camera bag?

25 Mr. Barrowclough may point out, "Oh well when they

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1 found the camera bags, they found her billfold." But if
2 you go through the camera bag, there aren't a lot of
3 feminine articles in there. In fact, the one thing in
4 there in addition to what is basically a lot of trash in
5 your seats, is a black head rag. And again, I won't ask
6 you if you want to see those videos again. But in one of
7 those videos, he has a very similar head rag on. Don't get
8 distracted by questions you aren't here to answer. Focus
9 on the evidence that is before you, and realize that
10 questions and dispersions and speculations do not amount to
11 reasonable doubt.

12 The documentary is compelling. Patricia Littlejohn
13 despite her flaws is a credible witness. Lieutenant Hager
14 is a credible witness. Commander Marvin Brown is a
15 credible witness. And all of them agree that is what is
16 going on in those videos because Patricia Littlejohn didn't
17 work some JEDI mind tricks on Lieutenant Hager and convince
18 him to walk in here and put his 30-year-reputation on the
19 line and tell you that in his opinion, that's them smoking
20 crack. She didn't hoodoo Commander Brown to come in here
21 and corroborate what she says, that the only thing on there
22 is them smoking crack. Don't get distracted by questions
23 of blameworthiness; and who's the victim; and this, that,
24 and the other.

25 The judge is going to tell you that you will have the

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1 option of convicting the Defendant of a lessor-included
2 offense of possession of crack cocaine. That in addition
3 to distribution, juries are allowed to consider the lessor-
4 included offense of possession of crack cocaine. And Mr.
5 Barrowclough will tell you that if there is any doubt, you
6 have to give the benefit of the doubt to the defendant and
7 convict him of this lessor-included offense. But for you
8 to do that, first of all, you have to answer all of my
9 questions correctly: that it happened in York County, that
10 it happened in 2005, and that it was crack cocaine. And
11 you have to believe the fiction, the fiction that he never
12 gives anything to her on those videos. You have to
13 unanimously find in some fiction that you never see him
14 light up a crack pipe and hand it to her; that you never
15 see him cut up crack and decide, "That's my rock not
16 yours"; that you never see him smoke crack cocaine and
17 never give Patricia Littlejohn any; that you never see him
18 hold her head up so she can do it; that you never see him
19 direct this documentary and control what is going on in
20 these videos, and that they just happen to be two people in
21 the same room who aren't in any way engaged with one
22 another. You have to find unanimously in that fiction to
23 find him guilty of possession. Or you can choose to
24 believe the documentary and find him guilty of the crime
25 for which he did distribution of cocaine.

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1 Thank you, ladies and gentlemen of the jury.

2 THE COURT: Mr. Barrowclough.

3 MR. BARROWCLOUGH: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, sir.

6 MR. BARROWCLOUGH: Good morning. Ladies and gentlemen
7 of the jury, this without a doubt is going to be a
8 difficult case for you all to decide. I acknowledge that
9 there is a degree of emotionality to this case that in
10 order for you to do your jobs properly, you will have to
11 set aside that you will have to and have taken an oath to
12 decide this case on the evidence, what's in evidence as
13 well as what's missing from the evidence.

14 Ms. Lipinski did say numerous times that she doesn't
15 want you to convict Mr. Anthony based on any sort of an
16 emotional reaction to the videos. I don't either. But at
17 the same time, I noted how many times in arguing to you for
18 Mr. Anthony's guilt, she did use emotionally jarring
19 characterizations to deal with these videos: crimes
20 conceived in hell, and he's exploiting her, and all this
21 stuff, trying to appeal to your emotion because she's a
22 good lawyer too. But those emotional appeals, ladies and
23 gentlemen, are not evidence. And I'm going to ask you to
24 focus on the facts, okay, in making your decision. Again,
25 because that's what you've taken an oath to do.

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1 Now, let's start with what we know from what's been
2 testified to in this case. What we know is that based on
3 the facts in this case, Harry Anthony is not a drug dealer.
4 We know because the evidence was testified to that there
5 were three searches done in February of 2006: February 2nd
6 of 2006, law enforcement searched his home and his vehicle;
7 February 21st of 2006, law enforcement searched his home;
8 February 27th of 2006 law enforcement searched his home.
9 And in all of those searches, no crack was ever found. No
10 crack residue was ever found. Residue would be what would
11 be left behind in an area where you stored crack. No
12 scales were ever found. Scales which drug dealers use to
13 weigh their crack that they're going to sell or trade. No
14 baggies were ever found where drug dealers use to store
15 their crack for sale or trade. No large sums of cash were
16 found. No customer lists were found, no cell phone records
17 were found, or computer records were found. Nothing was
18 found in any of these searches, which would be consistent
19 with Mr. Anthony being a drug dealer. Now I know the State
20 wants to distance itself from that. They want to lower the
21 bar for themselves and say, "We don't have to prove any of
22 this stuff. We don't have to have any of this evidence."
23 And you know what? That's true. They don't have to have
24 it. But on the other hand, the fact that this was done and
25 none of this was found means something. That is a fact

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1 that is true. That's not a fact that we've got to rely on
2 anybody's credibility or anything. That's a fact that's
3 true, that's for your consideration. The absence of those
4 things would tend to indicate that Mr. Anthony is not
5 involved in the crack trade.

6 And what else do we know along those same lines? No
7 confidential informant buy was ever made or even attempted
8 from Mr. Anthony. And you heard me question Lieutenant
9 Hager who used to be in Narcotics. The typical way that
10 you would try -- that they would try to investigate and
11 prosecute a person they suspected of being a drug dealer
12 would be to get an informant, be it an undercover officer
13 or be it a citizen, and have that person be wired up, go to
14 the suspected dealer, engage in the transaction, and then
15 bring back a substance, whatever was purchased, and that
16 substance would be tested.

17 Now he's charged -- Mr. Anthony's charged with four
18 counts of distribution of crack. The State is alleging
19 he's a drug dealer. And yet, no buy was ever made. And
20 okay, Ms. Lipinski tries to explain that by the
21 circumstances which this case came about. But no buy was
22 ever attempted to be made. Ms. Lipinski poses the
23 question: They find these tapes, what would you have them
24 do, ignore the tapes? In good faith, I can't answer that
25 question, yeah, ignore the tapes. No, I wouldn't say that

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1 at all. But how about this? We don't know what those
2 tapes depict. All we know about what those tapes depict is
3 the word of Ms. Littlejohn, which is obviously no good. So
4 why don't we use those tapes as a jumping-off point, and do
5 a real investigation. If you really think based on what
6 you see in those tapes, that Mr. Anthony is a drug dealer,
7 crack dealer, why not do a legitimate investigation? Why
8 not get an informant to go to Congress Street or go to
9 Bookout Road, and see whether or not Mr. Anthony has any
10 crack for sale or would sell any crack. That's the proper
11 way of doing things. That's the way to make a real case.
12 Don't just slander somebody based on some sex tapes that
13 you found in an unrelated investigation, and charge them
14 with these so serious offenses. That's not right. That's
15 not how we do things in America. The fact that they failed
16 to do that is significant. And again, the State tries to
17 distance itself from that, lower the bar for themselves,
18 but that's not right.

19 And how about this? They get Marvin Brown to testify.
20 Marvin Brown, head of the Drug Unit, established the Drug
21 Unit, teaches at drug schools. Why did they get him to
22 testify? Because they suspected that Ms. Littlejohn's
23 word, that what you see in the videos is crack, wouldn't be
24 good enough. They know she has all kinds of credibility
25 issues. Well then why wouldn't that win the case? So they

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1 call Marvin Brown and render his "expert" opinion that it's
2 crack. And don't forget what his testimony was. Marvin
3 Brown actually works for the Solicitor's Office. He is
4 actually Ms. Lipinski's co-worker. Believe you me, I could
5 call four, five, six attorneys in my office, my co-workers
6 who have evaluated plenty of police investigations, to sit
7 in this chair and render an opinion that the police
8 investigation in this case stinks. But I mean, that's not
9 right. That's not good evidence. But that's what they did
10 with Marvin Brown. That's why they called him. But you
11 know what, I'm glad they called him. You know why?
12 Because what did -- when Mr. Dest cross examined him, what
13 did he testify to? He testified, "He didn't know anything
14 about this case. He didn't know anything about Mr.
15 Anthony." Now bear in mind, they're alleging that this
16 occurred over the span of a year in 2005. A year. A year
17 during which time Marvin Brown is commander of the Drug
18 Enforcement Unit. A year that was six years ago. It
19 encompasses a wide period of time. And the head of the
20 Drug Unit never heard of him, never heard of this? Is that
21 not circumstantial evidence that Mr. Anthony is not a drug
22 dealer. If he was, wouldn't Marvin Brown at least heard of
23 him, at least heard of this situation? I'm not saying he
24 would have personally investigated it. He said that he has
25 different supervisors. But wouldn't of he at least heard

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1 of it? But he didn't. He didn't because Mr. Anthony is
2 not involved in the crack trade.

3 And, ladies and gentlemen, the judge will tell you
4 that the definition of "reasonable doubt" is the type of
5 doubt that would cause a reasonable person, and all of you
6 are deemed to be reasonable people, the type of doubt that
7 would cause a reasonable person to hesitate to act. Does
8 it have some hesitation with regards to the charges in this
9 matter. And the judge will tell you that, that hesitation
10 can come from the evidence in the case, but the judge will
11 tell you that, that can also come from the absence of
12 evidence in the case, the absence of all of this type of
13 evidence from which the State keeps trying to distance
14 itself. But the short of it is, there's absolutely no
15 evidence in this case consistent with Mr. Anthony being a
16 crack dealer, consistent with Mr. Anthony being someone who
17 supplies crack cocaine.

18 Now against all of this evidence, what do we have?
19 Well we have the word of Ms. Littlejohn. Okay. The word
20 of Ms. Littlejohn. The word of Ms. Littlejohn that what
21 you see in the videos is in fact crack cocaine. And also
22 the word of Ms. Littlejohn that the crack cocaine that's in
23 the videos came from him and not from her. Now
24 interestingly, interestingly they searched his place three
25 times and never found anything. And yet, they never

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1 searched her place. What do you think they would have
2 found if they searched her place? Maybe they would have
3 found crack cocaine or crack residue. Maybe they would
4 have found scales or baggies. We don't know because they
5 didn't do it.

6 Now, ladies and gentlemen, that's not asking you to
7 just engage in speculation to try to distract you. That
8 goes to the main issue in the case. If in fact that's
9 crack cocaine, where did it come from? There is
10 circumstantial evidence it didn't come from Mr. Anthony.
11 What about Ms. Littlejohn? Now of course, Ms. Lipinski
12 says numerous times, well Ms. Littlejohn was a cooperating
13 witness in an unrelated case, and she brought out testimony
14 from Lieutenant Hager that it was a bigger case, a more
15 important case. The implication that, that's why she got
16 cut a break and didn't get charged with this. But in
17 trying to cut her a break, perhaps they misread the
18 situation. "Mr. Anthony's the guy. He must be the guy
19 supplying crack." Go get a female. They didn't search her
20 house, not one time. Is that fair? Is that right? Is
21 that how we make cases? Is that how we prosecute cases?
22 That's not right at all. That's not doing a full and fair
23 investigation. Like I said a minute ago, I'm not asking
24 them to ignore these videos. Okay. These videos are
25 evidence of something, something that bears investigating.

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1 But there is no investigating done. It is for Mr. Anthony.
2 They didn't try and build a good case against Mr. Anthony,
3 nor did they investigate Ms. Littlejohn at all. And yet
4 they come to you six years later and ask you just to
5 convict him. That's not right. That's not right. But all
6 you have -- and this is what it really boils down to -- all
7 you have to base your verdict on is her word, her word.
8 And Ms. Lipinski wants to minimize or pooh pooh the fact
9 that she's got a criminal record, that she's a thief, that
10 she's a crack addict, that she's a prostitute. She wants
11 to ignore the fact that Ms. Littlejohn sat in this chair
12 and lied. Do you think that it's a coincidence that Ms.
13 Lipinski and I were both asking her was she convicted of
14 forgery on the same day in York County according to the
15 York County Clerk of the Court records and she said no?
16 Do you think both of us are mistaken? Or is she lying?
17 She was lying. She was lying. Their whole case stands or
18 falls on her credibility and she lied to you under oath,
19 and she has a criminal record.

20 Now one thing that Ms. Lipinski said in her opening
21 that I agree with is this: She said bring your life
22 experience into the jury room. The same skills that you
23 would use to evaluate whether or not you buy a Hyundai
24 Elantra, bring that to this case. And I would say that's
25 true. Ask yourself -- I don't know how much a Hyundai

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1 Elantra costs, say \$15,000 dollars -- would you trust Ms.
2 Littlejohn in evaluating whether or not you'd spend \$15,000
3 dollars of your money? Would you trust her for \$15,000
4 grand? Because, ladies and gentlemen, I submit to each and
5 every one of you, the State is asking you to trust her with
6 a lot more than \$15,000 dollars. They're asking you to
7 trust Ms. Littlejohn with the freedom of another citizen
8 from our community. And grant it, you might not like his
9 morality, but he's another citizen of our community. And
10 truly if the answer is you wouldn't trust her for \$15,000,
11 how can you base a verdict by putting your trust in her
12 with regards to the defendant?

13 So that being said, we have the videos. We have the
14 videos. Now I agree the videos are offensive. And believe
15 me, I don't like looking at them either. Okay? But you
16 boil it down. Ms. Lipinski, in talking about the videos,
17 she had her own characterization as to what you see on the
18 videos. Okay. Basically, I think, factually what you see
19 on the videos, we boil it down to two adults, two
20 consenting adults who do appear comfortable with each
21 other, who engage in various, and insert your adjective,
22 offensive, disgusting, repulsive sex acts, who also engage
23 in conversation, and who are sharing smoking something.
24 That's really what the videos come down to. These videos,
25 these facts are insufficient to convict Mr. Anthony. Fair

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1 is fair.

2 Note what is not on the videos. What do the videos
3 not show? And again, these are my characterizations of the
4 videos. She has her characterizations of the videos. But
5 really it's up to you. You saw them. There's no mention
6 in any of the videos of any type of an exchange of sex for
7 crack. Now again, Ms. Lipinski in her closing argument was
8 lowering the bar saying, "Well sharing is distribution."
9 That's not what she said in Opening. In her Opening she
10 said, "This was a sex for crack type situation." Well for
11 some reason she's changed her allegation. But there's no
12 mention of sex for crack in the videos. There's no
13 negotiating a bargain on any of the videos. There's no
14 withholding of the pipe until any type of particular act is
15 performed or occurs. There's no force, intimidation, or
16 violence on the videos. From what I saw on the videos --
17 again, take it as you saw it -- to me the videos don't show
18 either party exercising more control over either the pipe
19 or the substance than the other. And again, the videos
20 don't show who brought the alleged crack to the encounter.
21 We've just got to rely on Ms. Littlejohn's word for that.

22 And again, the video clips played in court totaled
23 about 40 minutes. But you have to think that as far as the
24 allegations in this case, those 40 minutes are probably the
25 best they've got. They don't have some other tape -- It

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1 wouldn't make sense they would have some other tape that
2 does show an exchange, but they held that one back. There
3 were 38 tapes. Detective Hager testified there were 38
4 tapes. And this is the best --

5 MS. LIPINSKI: Your Honor, I'm going to object ---

6 THE COURT: I sustain.

7 MS. LIPINSKI: --- at this point.

8 THE COURT: I sustain --

9 MS. LIPINSKI: The other tapes ruled by the Court is
10 not relevant to this.

11 THE COURT: I sustain the objection.

12 MR. BARROWCLOUGH: All right. I'll move on.

13 So what does it mean? What does it mean? What do
14 those tapes mean? Well two people are together. Two
15 people engage in sex acts together. Two people share a
16 smoke together. That's really all we know. That's really
17 all we know. Could it be that these are people who like to
18 get together, and have sex, and use drugs? Could be.
19 Could it be that this is some horrendous, amateur homemade
20 porn, and that, that's not real drugs, that it's some other
21 smokeable substance? Could be. Could it be that Ms.
22 Littlejohn, who is the cooperating witness in this bigger,
23 more important unrelated case knows that she made these
24 tapes with Mr. Anthony and directs the police in the
25 direction of these tapes with Mr. Anthony? Could be. It

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1 could be a lot of things.

2 And again, anything that you, or I, or Ms. Lipinski
3 tries to interpret out of these tapes is speculation. She
4 said, "Why don't I ask you to speculate?" I'm not asking
5 you to speculate. I'm pointing out the fact that all we're
6 left to do in this case is speculate because of the poor
7 problem of the evidence in the State's case. You can't
8 base a verdict on speculation. Be it her scenario or any
9 one of the three scenarios I have said, whatever it is, it
10 is speculation, and the Constitution of the United States
11 of America demands more than that.

12 And the last point I want to make is this. There's an
13 expression that an old friend of mine uses that says,
14 "Sauce for the goose is sauce for the gander," sometimes
15 said, "What's good for the goose is good for the gander."
16 Whatever the truth is about what those tapes depict, or
17 about how those tapes came into existence, it goes without
18 saying that the moral and legal culpability between Ms.
19 Littlejohn and Mr. Anthony is the same. And Ms. Littlejohn
20 was not charged for any of this.

21 And again, Ms. Lipinski said that I will make this
22 point. But she said that I would make it trying to get you
23 to speculate to what's in Hager's brain, which I'm not
24 doing. Well my point is this, as the state of South
25 Carolina prosecuted criminal cases, you can't have it both

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1 ways. You can't say that the truth is, is that with
2 regards to Harry Anthony, it's crack on the video. But the
3 truth is, with regards to Ms. Littlejohn, not crack, then
4 let it go. The truth is, with regard to Harry Anthony,
5 it's a distribution. But the truth is with regard to Ms.
6 Littlejohn, there's no exchange, no prostitution. They
7 can't have it both ways. It's not right. "Sauce for the
8 goose, sauce for the gander." What's fair for one is fair
9 for both. And what Mr. Dest said at the beginning in his
10 opening statement is true.

11 The best thing about the jury system is that it takes
12 the power away from the State. It takes it away from the
13 judge. It invests it in twelve citizens from our
14 community. The Prosecution does want to have it both ways.
15 The Prosecution wants the sauce for the gander, but wants
16 to let the goose go free. It's not right, ladies and
17 gentlemen. The State does not have any evidence. The
18 State has not proven their case. The State has not met its
19 burden. And on top of that, on top of that, it's extremely
20 unfair. I would ask you, ladies and gentlemen, to find Mr.
21 Anthony not guilty. Treat him the same as Ms. Littlejohn.
22 Find him not guilty, and close the book on this whole
23 thing.

24 Thank you very much.

25 THE COURT: Members of the jury panel, we'll going to

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1 take a short break before I charge you the law. But you
2 can't discuss the case yet because you haven't heard my
3 charge on the law. So just -- we'll have a little
4 refresher break about between five and ten minutes.

5 Follow the Bailiff.

6 (JURY EXITS COURTROOM AT 11:18 AM.)

7 THE COURT: Anything before we break?

8 MS. LIPINSKI: Your Honor, the State feels obligated
9 to ask for curative instruction about the 38 tapes that Mr.
10 Barrowclough went into. As the State -- I know you
11 sustained the objection, and I don't want to cause any more
12 attention to it, but the reason the other tapes don't come
13 in is because they involve Margaret Matthews. And the
14 State agreed not to go there, but yet he asked the jury to
15 speculate as to what's over there in closing argument as to
16 grasp of the Defendant's guilt. He has all those 38 tapes.
17 He knows what's in there. And to ask them to speculate on
18 that is in direct violation of the Court's previous ruling
19 about what's fair game in this trial.

20 THE COURT: Mr. Barrowclough.

21 MR. BARROWCLOUGH: Judge, first of all, I do apologize
22 for doing that. I wasn't thinking of it from that
23 perspective. My point was -- and I don't think I really
24 asked them to speculate what was on the other tape. My
25 point was, with regards to the transaction alleged in this

1 case, that was a logical assumption that these tapes, what
2 was showed to the jury was most probative of the
3 transaction. That, not that anything having to do with
4 Margaret Matthews, but that the other tape wouldn't show
5 necessarily the transaction which I think that, that's
6 true. But I wasn't -- I don't know -- I wasn't coming at
7 it from the point of view she's talking about. Your Honor,
8 I did move on. For purposes the record, I did move on
9 quickly. I did -- I don't know...

10 MR. LIPINSKI: And, Your Honor, you can say that, but
11 38 tapes was written on the bottom of that dry-erase board
12 and shown to the jury for over 10 minutes. Well he talked
13 about that point. It may have only come out of his mouth
14 once, but it's sitting there with a big question mark at
15 the end of it for a good, long while. And the only way the
16 State could respond to that is to say, "You know what, the
17 evidence that it's not two people sharing crack cocaine is
18 that there's other woman that he did this with, or that he
19 branded them, or all the things the Court ruled was
20 inadmissible. I mean to sit there and say that he's
21 allowed the benefit from that in closing argument when the
22 State's not allowed there going through their direct case
23 in chief, well let's talk about what's fair for the goose
24 and the gander.

25 THE COURT: Wait, wait just a minute here. Yeah, that

1 was from a wise old man wasn't it?

2 MR. BARROWCLOUGH: That was an old friend. I like to
3 take --

4 THE COURT: A wise old friend.

5 What do you want me to do? Do you want to --
6 obviously you're not going to -- I can't tell you what
7 you're gonna do, but I can't instruct the jury disregard --
8 I've already sustained the objection.

9 MS. LIPINSKI: I think you can instruct them to
10 disregard that, I mean the same way that -- I think, at
11 least emphasize that if I sustain the objection, that means
12 that, that's not proper evidence for you to consider
13 whether it happened in closing argument -- to not draw
14 attention to it -- whether it happened in closing argument
15 or opening argument, you focus them on the evidence. I
16 think just --

17 THE COURT: Well why don't we just say this: To any
18 objections I -- because we had two that I can recall, that
19 one and one earlier about the branding -- that only
20 consider -- you may not consider any evidence where there
21 was an objection and I sustained it.

22 MS. LIPINSKI: Well and I think it -- and I'm thinking
23 loud more than taking exception is, but I think it goes
24 further to sit there and say, you -- if I sustained it then
25 you're also not to speculate as to that evidence that I've

1 ruled inadmissible.

2 THE COURT: Well I start -- I'm not going to -- I'm
3 going to stick to what I said. This is one of those
4 slippery slopes. If you start going down it, then you find
5 yourself sometimes going in a circle saying more than you
6 wish or making it confusing. But I'll be glad to say that
7 do not consider any evidence where there was an objection,
8 and I sustained it.

9 MR. EPTING: Thank you, Your Honor.

10 MS. LIPINSKI: And I'm not taking part and partial
11 again. I don't want to engage the wrath. But could it be
12 any evidence or --

13 THE COURT: You're not going to engage my wrath.
14 Don't worry about that. You used the word yesterday that
15 you didn't want to affront me. I won't be affronted.

16 MS. LIPINSKI: But could -- Could the instruction be,
17 any argument or evidence where I sustained the objection?

18 THE COURT: Right, okay.

19 MS. LIPINSKI: Thank you, Your Honor.

20 THE COURT: All right. We'll take a short break then.

21 (COURT IN RECESS AT 11:23 AM.)

22 (COURT BACK IN SESSION AT 11:35 AM.)

23 THE COURT: Thank you. Take your seats.

24 (DEFENDANT REENTERS COURTROOM.)

25 THE COURT: Bring in the jury.

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1 Let the record reflect that the Counsel and the
2 Defendant are present.

3 (JURY REENTERS COURTROOM AT 11:36 AM.)

4 THE COURT: Members of the jury panel, I appreciate
5 the attention you've given me, the attorneys, and the
6 witnesses who have testified. It is now -- we've reached
7 the point where I will charge you the law as it applies in
8 this case and you are to apply the law as I charge it, to
9 the facts in this case.

10 The indictments against Mr. Anthony, and there are
11 four of them, all charge him with the same thing, and you
12 will have those in the jury room with you. You will not
13 consider them as evidence. They are not evidence. They
14 are simply the paperwork by way of which the case is
15 processed through our court system, and it is the place
16 where the verdict of your unanimous verdict will ultimately
17 be enrolled by your forelady. The fact that Mr. Anthony
18 was charged, the fact that he is on trial, the fact that
19 this case has gone forward is not evidence of anything.
20 That's just the way our system works. When the individual
21 is arrested or thought to have been charged with an
22 offense, they are arrested, their case is processed, they
23 come to a trial, and if it comes to trial that is not to be
24 held against him in any way whatsoever. That's just the
25 way our system works. Someone is arrested, charged, and

1 tried.

2 He is -- and I will talk to you more in a moment --
3 presumed innocent of the charges against him. Again the
4 indictment is simply the paperwork by way of which this
5 case is processed through our court system.

6 The fact that there are four charges is not of any
7 merit, that is, that does not mean that he is more guilty
8 than he would have been had it only have been one charge.
9 Each charge is to be examined individually. You can find
10 him guilty on one and not guilty on the others or visa
11 versa.

12 It is up to you to determine whether as to any
13 indictment and each indictment the State has proven
14 satisfactory to you beyond a reasonable doubt that Mr.
15 Anthony is, in fact, guilty of the offense charged in the
16 indictment.

17 Mr. Anthony, as I told you earlier, is presumed
18 innocent of each of these charges. His presumption of
19 innocence is a substantial right in our legal system. It
20 is not a mere legal theory or a mere legal phrase. It is a
21 substantial right. It inures to the benefit of someone at
22 the time they are arrested. It remains with them as their
23 case is processed through our court system. The
24 presumption of innocence in Mr. Anthony's favor remains
25 with him at this moment. It even remains with him as you

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1 deliberate. The presumption of innocence in his favor is
2 removed if and when, and only if and when you as the trial
3 jury in this case determine that the State has carried its
4 burden of proof and proven his guilt beyond a reasonable
5 doubt. The State is not required to prove his guilt beyond
6 all or beyond every doubt, but beyond a reasonable doubt.

7 Now in considering this case, you are not to consider
8 any evidence or arguments presented either through
9 witnesses or counsel where there was an objection to that
10 evidence or argument, and I sustained the objection. That
11 testimony or argument is not for your consideration. As I
12 said, the State must prove, before you convict Mr. Anthony
13 that any or all of these indictments is guilty beyond a
14 reasonable doubt.

15 Our courts have described a reasonable -- or defined a
16 reasonable doubt as a kind of doubt that would cause a
17 reasonable person to hesitate to act. Proof beyond a
18 reasonable doubt is proof that leaves you firmly convinced
19 of someone's guilt. There are, of course, very few things
20 in our world that we can know with absolute certainty, and
21 our law does not require that. If based on your
22 consideration of the evidence, you are firmly convinced
23 that Mr. Anthony is guilty of one or more of the offenses
24 which he is charged, you will find him guilty. If on the
25 other hand, you think there is a real possibility that he

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1 is not guilty, you must give him the benefit of that doubt,
2 and find him not guilty. Mr. Anthony is entitled to the
3 benefit of any reasonable doubt you have as to any issue
4 and element in this case.

5 I remind you that I am the sole judge of the law in
6 this case, and that you must take, accept, and apply the
7 law as I charge it. This is true as I have already told
8 you, whether you agree with me as to the law. That is,
9 whether you think I charged the law in error, and you must
10 accept the law as I charge it, even if you think the law
11 should be different. Your oath requires you to take,
12 accept, and apply the law as I charge it. You're not to
13 infer from anything that I say or do or have said or done
14 during this trial as indicating an opinion of mine on the
15 facts. Our law does not allow a trial judge to formulate
16 or express to a jury any opinion on the facts. It is
17 solely your job to examine the evidence and to give to the
18 evidence the effect, the value, the weight, and the truth
19 you believe the evidence should have.

20 In doing this, you may believe one witness as opposed
21 to several, several witnesses as opposed to one. You may
22 believe all, part, or none of the witnesses' testimony.
23 Use your common sense, your sense of logic, your sense of
24 reason. Use your experiences in life as you analyze the
25 evidence. As judges of the facts, you would necessity must

CHARGE TO THE JURY

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1 judge the credibility, that is the believability of the
2 witnesses who have testified. In assessing believability,
3 use those things I've just talked about. Use the things
4 that you find in your day-to-day life as indicating to you
5 truthfulness in an individual. And you can use certain
6 evaluators: a witness's demeanor, how they act on the
7 stand. Are they hesitant or straightforward? You can look
8 at consistencies and inconsistencies in a witness's
9 testimony. You can consider any criminal record a witness
10 may have. You may consider the opportunity a witness had
11 to know those things to which they testified. And you can
12 consider any bias or prejudice. That is, whether a witness
13 would wish to help or hurt one side or the other.
14 Determine the true facts, apply the law, and you will be in
15 a position to return a verdict that speaks the truth.

16 In this case we had testimony of someone who was
17 qualified as an expert, Officer Brown. Generally an
18 individual can only testify as to something they've
19 observed with one of their five senses. It's usually
20 something they've seen or heard, but it could be taste,
21 touch, or smell. However where an individual has certain
22 education, training, and experience in a certain area, that
23 person can take facts, and from those facts render an
24 opinion. The opinions of experts are allowed into evidence
25 to assist you. They are not binding on you. You look at

1 the expert's testimony just as you look at the testimony of
2 any other witness with all those considerations I've
3 already talked about. In addition as to an expert, you can
4 consider whether you believe they have the expertise to
5 render the opinion they reach, and whether you find that
6 the reason that they give the opinions they reached are
7 satisfactory to you. You are not bound by an expert
8 witness's testimony. Give it such weight, if any, as you
9 believe it should have.

10 Now in cases such as this, there are generally two
11 types of evidence presented: direct evidence and
12 circumstantial evidence. Direct evidence is the testimony
13 of someone who has actually seen or claims to have seen
14 something or to have actual knowledge of a fact, such as an
15 eyewitness. Direct evidence is evidence which immediately
16 establishes the main facts sought to be proven.
17 Circumstantial evidence is proof of a chain of facts and
18 circumstances which indicate the existence of a fact.
19 Circumstantial evidence is evidence which immediately
20 establishes collateral facts from which the main fact may
21 be inferred. Circumstantial is based on inference and not
22 on personal knowledge or observation. Our law makes
23 absolutely no distinction between the weight or value to be
24 given as to direct or circumstantial evidence. Our law
25 does not require a greater degree of certainty for

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1 circumstantial evidence as opposed to direct evidence.
2 What you should do in this case is weigh all of the
3 evidence. After weighing the evidence, if you are not
4 convinced of the guilt of Mr. Anthony as to one or more of
5 the charges, you would give -- or beyond a reasonable doubt
6 -- you would give him the benefit of that and find him not
7 guilty.

8 Mr. Anthony is charged in these four indictments. And
9 again, the fact that there are four is of no importance
10 other than that you have to address each one separately.
11 He is charged with distribution of a controlled substance
12 that is cocaine base, commonly called crack cocaine. He is
13 charged with distributing crack cocaine in each of these
14 indictments. As to these charges, the State must prove
15 beyond a reasonable doubt that Mr. Anthony distributed
16 crack cocaine. The State must prove that the substance
17 alleged to have been distributed was crack cocaine. They
18 must also prove that it was distributed by Mr. Anthony. To
19 distribute means to deliver or to actually, constructively,
20 or attempt to transfer a drug other than by administering
21 or dispensing. Delivery means to actually, constructively,
22 or attempt to transfer a drug. A transfer can involve an
23 exchange for money, a barter, or a gift. There does not
24 have to be anything given in exchange for the drugs for
25 there to be a transfer which constitutes distribution. Now

1 that's what he's charged with and the State must prove
2 those elements, that is was crack cocaine, and that it was
3 distributed as I've defined those for you beyond a
4 reasonable doubt.

5 Under our law, there are sometimes -- and in this case
6 there is -- what is called a lessor-included offense. If
7 you look at it as a set of steps, there's the offense with
8 which he's charged with, and then there's a step down, a
9 lessor-included offense. That step down in this case, the
10 lessor-included offense is the offense of simple possession
11 of crack cocaine. If you find the State has failed to
12 prove beyond a reasonable doubt that Mr. Anthony possessed
13 crack cocaine with intent to distribute it, you may
14 consider whether or not Mr. Anthony was in simple
15 possession of crack cocaine. Simple possession does not
16 require any distribution. To prove possession, the State
17 must prove beyond a reasonable doubt Mr. Anthony knowingly
18 or intentionally possessed crack cocaine. Knowingly means
19 that it is done with knowledge, consciously, that it is not
20 done accidentally. Intentionally means that it was done.
21 That is, any possession was willful, that the results were
22 intended, that it was not accidental or voluntarily
23 possessed. Intent may be shown by acts of a defendant and
24 from other circumstances from which you may naturally and
25 reasonably infer intent.

CHARGE TO THE JURY

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1 To prove possession, the State must prove beyond a
2 reasonable doubt that Mr. Anthony had both the power and
3 intent to control the use of crack cocaine. Possession may
4 be either actual or constructive.

5 Actual possession means that the crack cocaine was in
6 the actual, physical possession of an individual.
7 Constructive possession means that an individual had
8 dominion and control or the right to exercise dominion and
9 control over either the crack cocaine itself or the
10 property on which the crack cocaine was located. Mere
11 presence at the scene where a drug is found is not enough
12 to prove possession. Actual knowledge of the presence of a
13 drug, crack cocaine here, is strong evidence of a
14 defendant's intent to control its disposition and use. A
15 defendant's knowledge and possession may be inferred when a
16 substance is found on property under their control.
17 However this inference is simply an evidentiary fact to be
18 taken into consideration by you along with the other
19 evidence in the case and to be given the weight you decide
20 it should have. Two or more individuals may have joint
21 possession of a drug.

22 Now your verdict in this case must be unanimous. Of
23 course as I said, the State must prove before you could
24 find Mr. Anthony guilty of those four charges, any or all
25 of them or before you could find him guilty of any lesser-

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1 included offense of simple possession of crack cocaine, the
2 State must have convinced you of that. That is, Mr.
3 Anthony's guilt of that offense beyond a reasonable doubt.

4 Your verdict must be unanimous. All twelve jurors
5 must agree. Once all twelve jurors have agreed on a
6 verdict, your forelady will write it on your behalf.

7 And I'll go over the verdict forms with you, Ms.
8 Gwaltney, in just a moment. Your verdicts cannot be based
9 on sympathy, passion, prejudice, public opinion, or malice
10 outside the record. In South Carolina, we do not sign a
11 written charge in with the jury, but if you want me to go
12 over any part or all of my charge on the law, let me know,
13 and I will bring you back out and here in open court
14 recharge you.

15 We can have testimony replayed if you wish. And if
16 you wish to review any of the CD's, any of the videos, we
17 can bring you back out here in the courtroom, and without
18 any testimony or anybody making any comments, we can re-
19 show them if you wish.

20 If you have any questions, please write them down, and
21 knock on the door and give them to the Bailiff. The
22 Bailiff will bring them to me. After consulting with
23 counsel, I will determine how to answer the note. It may
24 be that I can write an answer on the note itself. And if I
25 do return a note to you, keep it, and hand it back at the

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1 end of the trial because it has to be part of the record.
2 It may be that I'll have to bring you back here in open
3 court and answer whatever your question may be. When
4 you've reached a verdict, knock on the door, tell the
5 Bailiff, and the Bailiff will come and get us. I'm
6 supposed to start another trial, but I will send for you as
7 promptly as I can.

8 We have lunch ordered to be here at 12:30, give or
9 take, 12:30'ish. Of course I can't guarantee it will be
10 right at 12:30. You can -- While you're eating, you can
11 take a break, or you can work while you're eating. If you
12 can take a break, all twelve of you should take a break.
13 That is, your verdict must be unanimous if all twelve of
14 you are working or all twelve of you are on break.

15 Mr. Peavy and Ms. Utegg, you all will remain in here
16 when the jury goes out. In just a moment, I -- you're
17 services will not be needed further since the jury is all
18 in tact.

19 Now there are four different verdict forms -- or there
20 are four indictments. Verdict forms on each are the same.
21 On each I have three options. The order they're in is of
22 no importance. I have to put them in some order, and this
23 is the order I always use. The first says, "We find the
24 Defendant guilty of distribution of cocaine base," that is
25 crack cocaine. That is what he is charged with. If you

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1 find the State has proven his guilt as to one or more of
2 those charges, you would in front of that line, put an "X"
3 or a check indicating that is the jury's unanimous verdict.
4 If the State has failed to prove Mr. Anthony guilty of
5 distribution of crack cocaine on one or more of these
6 indictments, you may consider whether or not he was in
7 simple possession of crack cocaine. If you find that,
8 beyond a reasonable doubt, you would use the second line
9 that says that: "We find the Defendant guilty of the
10 lesser-included offense of simple possession of cocaine
11 base," that is crack cocaine. If you find that the State
12 has failed to prove Mr. Anthony guilty as to one or more or
13 all of these indictments, fail to prove it beyond a
14 reasonable doubt, you would use the third line that simply
15 says, "We find the Defendant not guilty."

16 There's a place for you to sign Madame Forelady, and
17 to date, today is the 11th.

18 So everybody but Mr. Peavy and Ms. Utegg will go to
19 jury room. Do not start deliberating yet. I have to go
20 over my charge with the attorneys. If I have made an error
21 or neglected to tell you something that I should have, I
22 will bring you back in and correct myself. If I have not
23 made an error, we will send in the exhibits and the verdict
24 forms, and the Bailiff will tell you to start deliberating.
25 But don't start deliberating at this time. Now you may go

CHARGE TO THE JURY

1 to the jury room.

2 (JURY EXITS COURTROOM AT 11:53 AM.)

3 THE COURT: You all just have your seat. I'll be with
4 you in just a minute.

5 MS. LIPINSKI: Your Honor, we do have an issue we need
6 to bring to your attention.

7 THE COURT: Well do you want the alternates to step
8 out?

9 MS. LIPINSKI: I just don't know if you charged them.
10 They need to be recharged. No, they can step out. Sorry.

11 THE COURT: All right. Why don't you just step
12 outside the door? Don't go to the jury room.

13 (ALTERNATE JURORS LEAVE COURTROOM.)

14 MS. LIPINSKI: I didn't hear it, and I was kind of
15 taking notes, but Mr. Epting didn't check it off either.
16 I'm not sure you charged the Defendant's right to remain
17 silent --

18 THE COURT: You're right. I did not.

19 MR. BARROWCLOUGH: I was --

20 MS. LIPINSKI: And I just --

21 THE COURT: I did not, that was a slip up. You're
22 right. Anything else?

23 MS. LIPINSKI: No, that was it. I just --

24 MR. BARROWCLOUGH: That's it, Your Honor.

25 THE COURT: All right.

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1 Bring the jury back in. I apologize. That's..

2 MS. LIPINSKI: No.

3 (JURY REENTERS COURTROOM AT 11:55 AM.)

4 THE COURT: Madame Forelady, and ladies and gentlemen
5 of the jury, I did neglect to tell you about a very
6 important right that Mr. Anthony has, and I neglected to
7 tell you that.

8 Mr. Anthony chose to exercise his Constitutional right
9 to remain silent in this case. That is, he chose not to
10 testify. The fact that he did that is not a factor that
11 can be considered by you in any way whatsoever. It must
12 not be discussed by you. It may not be factored into your
13 deliberation. I cannot be factored into your own
14 consideration of the issues before you. Mr. Anthony, like
15 anyone charged with any offense in our legal system, is
16 presumed innocent. I told you that on several occasions.
17 He does not have to prove his innocence. The State, as
18 I've also told you on several occasions, must prove his
19 guilt beyond a reasonable doubt. Under you oath, you will
20 not consider in any way whatsoever against Mr. Anthony the
21 fact that he exercised his Constitutional right to remain
22 silent. You are to draw no inference from it, you are not
23 to discuss it, and you are to keep in mind that the burden
24 remains on the State to prove Mr. Anthony's guilt beyond a
25 reasonable doubt, and that he is presumed innocent.

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1 So I apologize for not going over that. It is a very
2 important right of Mr. Anthony, and now I've charged you.

3 As to that, if you'll go back to the jury room, but
4 don't start deliberating until you're told to by the
5 Bailiff. And the two alternates can stay in here this
6 time.

7 (JURY EXITS COURTROOM AT 11:57 PM.)

8 THE COURT: Anything further from the State?

9 MS. LIPINSKI: Nothing. Thank you, Your Honor.

10 THE COURT: The Defense?

11 MR. BARROWCLOUGH: No, sir, Your Honor.

12 THE COURT: We'll check the exhibits and verdict
13 forms, and make sure everything's in order.

14 And the two alternates, we've got pizza ordered. If
15 you'd like to stay and have pizza, you can.

16 You can leave. Call back tonight after 7:00, and
17 you'll receive whatever instructions there are about
18 further reporting or being through for the week.

19 Thank you so much for your help.

20 Check everything and we'll send it back and check with
21 the Solicitor about the next trial.

22 (COURT IN RECESS AT 12:00 PM.)

23 (COURT BACK IN SESSION AT 12:27 PM.)

24 THE COURT: We received a note from the jury. They
25 asked for the definition of "distribution." So I'll bring

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1 them in and charge them with what I charged them earlier.

2 Anything before I bring them in?

3 MS. LIPINSKI: Nothing from the State.

4 MR. BARROWCLOUGH: No, sir, Your Honor.

5 THE COURT: All right.

6 Bring in the jury.

7 (JURY REENTERS COURTROOM AT 12:28 PM.)

8 THE COURT: Madame Forelady, ---

9 MADAME FORELADY: Yes, sir.

10 THE COURT: --- your note ask that I redefine because
11 I've already defined it once distribution as it pertains to
12 this case. Is that correct?

13 MADAME FORELADY: Yes, sir.

14 THE COURT: All right well, you can go ahead and have
15 a seat.

16 Mr. Anthony is charged in those four separate
17 indictments with distribution of crack cocaine. The State
18 in order for him to be found guilty must prove beyond a
19 reasonable doubt to your satisfaction that he distributed
20 crack cocaine. They must prove that the substance alleged
21 to be crack cocaine was crack cocaine. The term
22 "distribute" means to deliver, or to actually, or
23 constructively, or attempt to transfer a drug other than by
24 administering it or dispensing it. Deliver means to
25 actually constructive, or attempt to transfer a drug. A

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1 transfer can involve an exchange for money; a barter, that
2 is a trade; or a gift. There does not have to be anything
3 given in exchange for the drugs for a transfer to
4 constitute distribution. So in essence, that's what I
5 charged you earlier as to distribution.

6 So I'm going to let you go back and continue to
7 deliberate.

8 (JURY EXITS COURTROOM AT 12:30 PM.)

9 THE COURT: Any exceptions?

10 MS. LIPINSKI: None from the State.

11 MR. BARROWCLOUGH: No, sir, Your Honor.

12 THE COURT: All right. We'll remain at ease.

13 (COURT IN RECESS AT 12:30 PM.)

14 (VERDICT AT 01:47 PM.)

15 (COURT BACK IN SESSION AT 01:52 PM.)

16 THE COURT: Thank you. Take your seats.

17 I understand the jury has reached a verdict.

18 Is the State ready?

19 MS. LIPINSKI: Yes, Your Honor.

20 THE COURT: Defense?

21 MR. BARROWCLOUGH: Yes, sir, Your Honor.

22 THE COURT: All right. Bring in the jury.

23 MADAME COURT REPORTER: Judge, there's nobody to tell.

24 MS. LIPINSKI: I've missed, and I'm waiting on Mr.

25 Epting, I'm sorry.

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1 THE COURT: Just tell them to hold up just a minute,
2 if you don't mind.

3 (PAUSE.)

4 THE COURT: Is the State ready now?

5 MS. LIPINSKI: Yes, Your Honor.

6 MR. EPTING: I apologize, Your Honor.

7 THE COURT: Defense?

8 MR. BARROWCLOUGH: Yes, sir, Your Honor.

9 THE COURT: We're ready.

10 (JURY REENTERS COURTROOM AT 01:55 PM.)

11 THE COURT: Madame Forelady, I understand the jury has
12 reached verdicts?

13 MADAME FORELADY: Yes, sir.

14 THE COURT: If you'll hand them to the Bailiff, he'll
15 hand them up to me.

16 (VERDICTS RECEIVED UP BY THE COURT.)

17 THE COURT: Madame Clerk.

18 MADAME CLERK: Indictment 2007-GS-46-1072, the *State*
19 *versus Harry Lawrence Anthony*, indictment for distribution
20 of cocaine base, we find the Defendant guilty of
21 distribution of cocaine base, signed by the foreperson,
22 dated today's date.

23 Indictment 2007-GS-46-1073, the *State versus Harry*
24 *Lawrence Anthony*, indictment for distribution of cocaine
25 base, we find the Defendant guilty of distribution of

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1 cocaine base, signed by the foreperson, dated today's date.

2 Indictment 2007-GS-46-1074, the *State versus Harry*
3 *Lawrence Anthony*, indictment for distribution of cocaine
4 base, we find the Defendant guilty of distribution of
5 cocaine base, signed by the foreperson, dated today's date.

6 Indictment 2007-GS-46-1075, the *State versus Harry*
7 *Lawrence Anthony*, indictment for distribution of cocaine
8 base, we find the Defendant guilty of distribution of
9 cocaine base, signed by the foreperson, dated today's date.

10 Ladies and gentlemen of the jury, if that be your
11 verdict, so say you by raising your right hand.

12 Let the verdict show, all jurors affirmed this
13 verdict.

14 THE COURT: Anything from the State before the jurors
15 are dismissed?

16 MS. LIPINSKI: Nothing from the State.

17 THE COURT: Anything from the Defense?

18 MR. BARROWCLOUGH: No, sir, Your Honor.

19 THE COURT: Members of the jury panel, thank you for
20 your help. We are going to draw another jury, but I'm not
21 going to put you in a position to be in that jury because
22 we didn't know if you all would still be out, and they're
23 supposed to be here at Two o'clock. So this finishes your
24 work for the week. You don't have to call back, and you'll
25 be mailed a check, and we appreciate your help.

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1 Thank you so much.

2 (JURY DISMISSED AT 01:58 PM.)

3 (MADAME FORELADY SIGNED INDICTMENT/VERDICT FORMS.)

4 THE COURT: The jury is dismissed. Anything from the
5 State?

6 MS. LIPINSKI: Nothing from the State, Your Honor.

7 THE COURT: Mr. Barrowclough?

8 MR. BARROWCLOUGH: Yes, Your Honor, for purposes of
9 the record, on behalf of Mr. Anthony, I would move for a
10 new trial based on the fact that the evidence was not
11 sufficient for these verdicts. And I would also
12 incorporate the previous objections and exceptions.

13 THE COURT: I deny the motion. As I said in the
14 directed verdict stage, there was ample direct evidence and
15 ample, substantial circumstantial evidence from which a
16 jury could reach the verdicts they reached. I therefore
17 deny your motions -- any and all motions from the Defense
18 regarding a new trial and revisiting any issues addressed
19 during the trial.

20 All right, do you want to bring Mr. Anthony around for
21 sentencing?

22 Do you have sentencing sheets?

23 MS. LIPINSKI: Yes, Your Honor.

24 THE COURT: Why don't you just go ahead while she's
25 doing that. Remind me of the record, what the offenses

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1 would be.

2 MS. LIPINSKI: The second offense. He did have -- he
3 has two prior drug offenses, but one was a simple
4 possession of marijuana where he forfeited the bond so we
5 conceded in pretrial motion that, that would not be
6 enhanceable. But he also had a distribution of crack
7 cocaine in '98 that was not within the 10 years. I believe
8 his supervision went into, it was in '93, and I think
9 supervision went up to '98.

10 THE COURT: I'll be glad to hear anything from the
11 State involving sentencing.

12 MS. LIPINSKI: Your Honor, I just -- may it please the
13 Court. Obviously the Court's fully aware of the factual
14 ramifications of this case, in some respects that we just
15 ask the Court to take notice that this wasn't a simple
16 crack deal out of a window or something like this. This
17 was someone who was going further and exploiting other
18 addicts' addiction beyond just to obtain money in which he
19 received something of far more value, but far more
20 detriment to society, and we would ask the sentence reflect
21 that.

22 THE COURT: Mr. Barrowclough?

23 MR. BARROWCLOUGH: Thank you, Your Honor. May it
24 please the Court.

25 Your Honor, Mr. Anthony is 59 years old. He'll be 60

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1 years old in 11 days. He is a native of York. I think
2 that, that crack charge the Solicitor referenced from 1993
3 was his only prior General Sessions level offense. Your
4 Honor, Mr. Anthony as you know from yesterday's occurrences
5 at pretrial, he does have significant heart problems and
6 blood pressure problems, and he is under the care of
7 Carolina Cardiology who we contacted for his care while
8 he's been in the Detention Center these past two nights.
9 Your Honor, he -- he has been actually on house arrests as
10 part of his bond on these charges since, I believe, January
11 of 2007, so about five years. And he, to my knowledge, of
12 course I haven't heard him say that whole time, but Mr.
13 Roberts did, but to my knowledge, he hadn't had any bond --
14 any violations of that bond. He has obviously not been
15 fowl of the law or done anything else wrong during that
16 time period.

17 But over these past five years, at this time, I don't
18 believe he has any problem because of his heart conditions
19 and disability. But he does not have much of a prior
20 record, and it was a long time ago. He has tried to walk
21 the straight and narrow path these past five years. And he
22 is in poor health. And I would ask the Court to consider
23 all those mitigating factors in fashioning the sentence.

24 THE COURT: Mr. Dest, anything you want to say?

25 MR. DEST: No, Your Honor.

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1 THE COURT: Mr. Anthony, anything you want to say?

2 THE WITNESS: No.

3 THE COURT: The sentence on all of these are to run
4 concurrent. They are all for 15 years.

5 Thank you.

6 MS. LIPINSKI: Thank you.

7 MR. BARROWCLOUGH: Thank you, Your Honor.

8 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE IDENTIFIED
9 AND MARKED, RECEIVED INTO THE RECORD.)

10 (COURT ADJOURNED IN THE MATTER OF THE STATE OF SOUTH
11 CAROLINA VERSUS HARRY LAWRENCE ANTHONY AT 02:05 PM.)

12 -- END OF TRANSCRIPT OF RECORD--

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CERTIFICATE OF REPORTER

State of South Carolina)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 9th, 10th and 11th days of January 1012.

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

Wanda Nelson

Wanda Nelson, CVR - Master
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 2-23 / 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HARRY ANTHONY,

APPELLANT

APPELLATE CASE NO. 2012-206627

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial judge should have granted a motion for a mistrial after the State elicited an inadmissible prior bad act from its first witness?

2.

Whether the trial judge should have granted a motion for recusal as a sanction in response to judge shopping by the State?

3.

Whether appellant is entitled to a judicial determination on whether he should receive credit for time served while on house arrest?

STATEMENT OF THE CASE

On April 12, 2007, a York County grand jury indicted Harry Anthony for four counts of distribution of cocaine base (crack). R. 297. These indictments alleged conduct that was over two years old. R. 297-304. In November 2007, Anthony filed a motion requesting that the Honorable John C. Hayes, III recuse himself from the case. R. 257. On November 29, 2007, Judge Hayes held a hearing on this issue. R. 215. Anthony was represented by Melvin Roberts and Mindy Hervey Lipinski represented the State. R. 215. Judge Hayes denied the motion from the bench and on December 4, 2007, issued a written order. R. 288. R. p 215, ll. 14 – 23; R.288.

Anthony immediately appealed Judge Hayes' order and it was dismissed as interlocutory. R. 255. On March 25, 2008, Anthony's petition for rehearing was denied. R. 238. Anthony's petition for writ of certiorari was denied by the South Carolina Supreme Court on October 8, 2008. R. 294. The Court of Appeals issued the remittitur on October 13, 2008. R. 296.

On January 9, 2012, Anthony was tried before Judge Hayes and a jury. R. 1. Anthony's former counsel, Melvin Roberts, was tragically murdered and B.J. Barrowclough and Harry Dest represented Anthony at trial. R. 1. Mindy Hervey Lipinski and Chris Epting represented the State. R. 1. The jury convicted Anthony on all four counts. R. 208, l. 18 – 209, l. 9. Judge Hayes sentenced Anthony to concurrent terms of fifteen years' imprisonment. R. 213, ll. 3 – 4. On January 13, 2012, Anthony filed and served a notice of appeal. This appeal follows.

STATEMENT OF FACTS

Harry Anthony ("Anthony") was tried in 2012 for conduct the State alleged occurred in 2005. R. 68, ll. 9 – 12. The State wanted to charge Anthony in their investigation of the death of a woman named Margaret Matthews ("Matthews"). R. 68, ll. 9 – 15. The State sent evidence related to that investigation to Quantico, Virginia and once the analysis of this evidence was made, the State concluded they did not have sufficient evidence to charge Anthony with any crime related to Matthews' death. R. 68, ll. 9 – 20.

Unsatisfied with this result, the State then decided to try Anthony for possession with intent to distribute crack cocaine. R. 68, ll. 20 – 22. They charged Anthony with being a crack dealer despite the fact that during several searches, police never found any drugs, drug residue, baggies, customer lists, cell phone records indicative of drug dealing, computer records indicative of drug dealing, scales, and never made an attempt to buy drugs with a confidential informant. R. 93, l. 22 – 96, l. 22. The searches were executed in 2006. R. 92, ll. 15 – 19. Anthony was not indicted until April 12, 2007. R. 297-304. Anthony spent the next five years on house arrest awaiting trial. R. 212, ll. 9 – 11.

The evidence used against Anthony on the crack charges came from Patricia Littlejohn ("Littlejohn"). R. 73, ll. 17 – 23. The police admitted that Littlejohn had an extreme addiction to crack cocaine. R. 74, ll. 19 – 22. Littlejohn had prior convictions for obtaining goods by false pretenses and shoplifting. R. 118, l. 18 – 119, l. 11. When asked by the solicitor whether she had a pending charge for forgery, Littlejohn replied, "That's because I'm a witness in another case, yes." R. 119, ll. 9 – 11. Littlejohn denied the solicitor had promised her anything regarding the outcome of the forgery charge in exchange for her testimony against Anthony. R. 119, ll. 12 – 15. However, on cross-

examination when the defense attorney asked her about the pending forgery charge, Littlejohn replied, "Pending, as a witness." R. 123, ll. 24 – 25. The defense lawyer asked:

Q. Pending, as a defendant?

A. No.

Q. Right now you have a charge of forgery against you.

A. I know.

Q. Being prosecuted –

A. But that ain't got –

Q. – by this prosecutor's office?

A. – nothing to do with this case.

Q. Excuse me?

A. It ain't got nothing to do with this case.

Q. Well I'm asking you, do you have a charge of forgery pending against you?

A. I have a charge pending, yes.

Q. In which you're the defendant?

A. Excuse me?

Q. I said, in which you are the defendant.

A. I assume, yes.

Q. Being prosecuted by this Solicitor's Office.

A. I don't know who's prosecuting me. All's I know is I got to be here.

R. 124, ll. 1 – 20. When asked again about her pending forgery charge on redirect, Littlejohn stated, "Yeah, they just took me uptown and booked me because I'm a witness to that case." R. 125, l. 25 – 126, l. 4.

Even though Littlejohn admitted smoking crack and trading sex and money for crack, she was never charged with distribution of crack, possession of crack, prostitution, or anything else in conjunction with this case. R. 100, ll. 10 – 19. The police never attempted to search Littlejohn's residence for crack. R. 98, ll. 8 – 12. When asked if they could have pursued a search warrant for Littlejohn's residence, the police witness responded, "If that was the target of my investigation, yes." R. 98, ll. 18 – 20.

Littlejohn allegedly told the police that she would trade Anthony sexual favors for crack cocaine. R. 76, ll. 7 – 13. She also told the police that Anthony videotaped their sexual encounters. R. 76, ll. 7 – 13. The police searched Anthony's house in seized numerous videotapes. R. 78, l. 21 – 79, l. 3. The State moved six DVDs into evidence that they culled from the videotapes seized from Anthony's house. R. 88, ll. 6 – 12; (State's Exhibits 1 – 6.).

The DVDs shown at trial depict Littlejohn and Anthony engaged in a wide variety of sexual activities. (State's Exhibits 1 – 6.)¹ At no point in the videos do the encounters appear to be anything but consensual. (State's Exhibits 1 – 6.); R. 183, ll. 10 – 21. There is no mention in any of the videos of an exchange of sex for crack. (State's Exhibits 1 – 6); R. 183 ll. 5 – 7. The videos do show Anthony and Littlejohn smoking something which Littlejohn claimed in her testimony was crack solely provided by Anthony, but the videos do not show who brought the substance to the encounter. (State's Exhibits 1 – 6.); R. 183, ll. 16 – 21. R.116, ll. 6 – 118, l. 10. Acknowledging this reality, the solicitor told the jury in her closing "all [that] is required for distribution is sharing, a transfer of ownership, a giving of one thing the crack cocaine to another. It does not have to be an exchange for money. It

¹ State's Exhibits 1-6 have been transported to the Court.

does not have to be an exchange for sex. There is no quid pro quo. It can be a gift." R.158, ll. 11 – 15. Obviously concerned about this issue, during deliberations the jury asked again to be charged on the definition of "distribution." R. 226, l. 24 – 228, l. 7. After the trial judge's re-charge, the jury returned a little over an hour later with verdicts of guilty. R.207, ll. 13 – 14.

ARGUMENT

1.

The trial judge should have granted a motion for a mistrial after the State elicited an inadmissible prior bad act from its first witness.

Prior to trial, the court discussed the defense's motions with the parties. R. 12, ll. 8 – 10. The trial judge asked the State about “prior bad acts or Lyle evidence.” R. 12, ll. 8 – 10. The State agreed that it would not elicit testimony from its witnesses regarding an alleged prior bad act by Anthony. R. 13, ll. 2 – 15. Littlejohn allegedly told the police that Anthony like to brand his prostitutes with a wire and “put an ‘H’ or an ‘A’ on some part of their body.” R. 13, ll. 2 – 15. The solicitor told the court, “I do not intend to [elicit] that testimony on direct.” R. 13, ll. 8 – 9. Defense counsel told the court that the solicitor's representation “covered prior topics that my motion was addressing.” R. 13, l. 17 – 19. After a Jackson v. Denno, 378 U.S. 368 (1964), hearing, the State again told the court that it did not “anticipate going as to the branding of Miss Littlejohn.” R. 36, ll. 23 – 24. On both of these occasions, the solicitor told the court that this agreement was dependent on whether the defense opened the door to this testimony on cross-examination. R. 13, ll. 8 – 10. R. 36, l. 24 – 37, l. 1.

The State's first witness was Lieutenant Tim Hager. R. 72, ll. 3 – 12. Lieutenant Hager had been employed by the York County Sheriff's Office for thirty-two years. R. 72, ll. 21 – 23. Lieutenant Hager was in the courtroom during the court's discussion of the branding issue. R. 104, ll. 16 – 19. On direct examination, the following occurred:

Q. And when Ms. Littlejohn told you about going to Mr. Anthony as one of her potential sources, did she indicate to you anything unusual based on your experience and training about the nature of their transactions?

A. She was trading sexual favors for crack cocaine, and also he was videotaping these encounters, and also he was branding her with a –

MR. BARROWCLOUGH: Your Honor, I object on a matter of law.

THE COURT: Just –

MS. LIPINSKI: I'll move on, Your Honor.

THE COURT: Okay, just move on.

Q. And did she –

THE COURT: Disregard that last statement from the witness, members of the jury.

R. 76, ll. 7 – 21. At the next break when Lieutenant Hager left the stand, Anthony moved for a mistrial. R. 104, l. 5 – 105, l. 5. Anthony argued that Lieutenant Hager, since he was in the courtroom during the discussions on branding, intentionally injected the issue into the trial. R. 104, ll. 6 – 105, l. 5. Trial counsel noted the officer's experience and that he was a sophisticated witness. R. 104, ll. 16 – 21. Trial counsel argued that a mistrial was required because the State intentionally placed the defendant's character in evidence.

Amazingly, the State agreed that Hager intentionally testified about the branding. The solicitor stated, "I don't believe it was any inadvertence or misstep on the part of Mr. Hager." R. 105, ll. 9 – 10. The solicitor said, "Why we agreed that we would try to avoid that, I also stated that it would nonetheless become – may nonetheless become part of this. **Obviously the defendant's character is an issue by the very admission of these tapes.** So to suggest that we have put his character at issue when it was otherwise not an issue, I

think is a misstep.”² R. 105, ll. 10 – 16 (emphasis added). The trial judge denied the motion for a mistrial. R. 107, ll. 13 – 16.

The trial court erred in not granting a mistrial because the State admittedly elicited inadmissible character evidence from its first witness, a thirty-two year police veteran. Character evidence is not admissible. SCRE 404(a). The branding would not be admissible under any of the exceptions of Rule 404(b). SCRE 404(b). The trial judge ordered it stricken from the record; therefore, the only question before the Court was whether the State’s conduct and the prejudicial impact of hearing that Anthony branded Littlejohn was sufficiently severe to warrant a mistrial.

In State v. Parker, 391 S.C. 606, 609, 707 S.E.2d 799, 800 (2011), the trial court granted a mistrial in part based on the solicitor’s playing of an unredacted videotape containing graphic evidence. Id. The parties previously agreed to redact the videotape, but claiming “inadvertence,” the solicitor played the unredacted version for the jury.³ Id. Whether the prosecution intentionally elicits inadmissible evidence is a factor the Court considers in determining whether to grant a mistrial. State v. Ferguson, 376 S.C. 615, 619, 658 S.E.2d 101, 103 (2008). Here, the solicitor admitted that Lieutenant Hager intentionally mentioned branding.

² This claim was somewhat disingenuous when, minutes earlier, the Solicitor told the jury in her opening, “I don’t want you to convict Mr. Anthony based on your personal appeal or revulsion to these videos.” R. 56, ll. 3 – 5. In her closing, the Solicitor again told the jury, “I also told you that the State is not asking you to convict the defendant based on some emotional and gut reaction to these videos. We didn’t show them to you because of their shock value.” R. 154, l. 24 – 155, l. 2.

³ The solicitor who caused the mistrial in Parker is the same solicitor who elicited the testimony about branding from Lieutenant Hager in this case.

In State v. Ross, 272 S.C. 249 S.E.2d 159 (1978), the defendant asked for a mistrial after the prosecutor elicited character evidence. The Court reversed and granted the defendant a new trial, stating that "the testimony elicited had the effect of placing the bad character of the defendant in issue when she herself had not placed her good character in issue." Id. at 60, 249 S.E.2d at 161. Similarly, despite its earlier promise not to do so, the State intentionally placed Anthony's character at issue. The allegation about branding made Littlejohn a more sympathetic witness. The State argued that the distribution of crack in this case was worse than a typical transaction because of "how low crack cocaine can drag members of the community." R. 154, ll. 18 – 19. The branding allegation also made Anthony seem like a sadist. It lessened the chance that the jury would believe this was a consensual encounter and that Littlejohn supplied her own crack. For these reasons, Anthony's conviction should be reversed.

2.

The trial judge should have granted a motion for recusal as a sanction in response to judge shopping by the State.

Relevant Facts

On August 8, 2007, Assistant Solicitor Ryan Holloway wrote Anthony's lawyer, Melvin Roberts ("Roberts") notifying him that Anthony's trial would be held either the week of October 1, October 15, October 29, or November 26. R. 264. The next day, August 9, 2007, Roberts replied. R. 262-263. Roberts reiterated a prior conversation during which he told the solicitor that he was protected because of another trial for October 1-12, 2007. Roberts also wrote:

The other day, you called and we discussed another possible trial date but you kept skipping over anytime that Judge John C. Hayes, III was not here

because you insisted that you wanted this case tried before Judge John C. Hayes, III and no other judge. When I asked you why your answer was "because." When I further persisted and asked you because of what, you[r] answer was that I was berating you. I still would like to know why you insist that this case can only be tried before Judge John C. Hayes, III of all the other circuit court judges that we have in the State of South Carolina, all of whom are competent judges as far as I am concerned. So is Judge Hayes. I have tried many cases before him and I find him to be a very fair and reasonable judge. I have no problem with Judge Hayes, however when you say that you will only try this case before Judge Hayes, it makes me wonder what do you know that I don't know that would make Judge Hayes more favorable to the State, than any other judge in the State of South Carolina.

R. 262-263. Roberts copied Judge Hayes and the Circuit Solicitor on this letter. R. 263.

Instead of a response from Assistant Solicitor Holloway, the Circuit Solicitor for York County, Kevin S. Brackett ("Brackett") wrote Roberts. R.260-261. Brackett did not refute Roberts' version of the conversation with the assistant solicitor. R.260-261. Brackett told Roberts that he had a "busy schedule" and cited the "complexities of planning and managing a criminal docket." R. 260. Brackett took over the case. He closed his letter saying, "In light of the frustration you expressed over your communications with Mr. Holloway I have instructed him to refer any future questions or problems he may have to me." R. 260-261.

The case was not tried in October or November. On November 21, 2007, the State filed a motion seeking a DNA sample from Anthony. R. 291. The State asked for a hearing on November 29, 2007. R. 291. In response, Roberts filed a motion asking for Judge Hayes to recuse himself and also addressing the DNA issue. R. 257. Referencing his conversations and correspondence with the State in August, Roberts argued that the State was "judge shopping." R. 257. Roberts did not allege any impropriety on the part of Judge

Hayes, but argued that recusal was the appropriate sanction for the State's judge shopping. R. 257-258.

On November 29, 2007, Judge Hayes held a hearing on the recusal and DNA issues. R. 215. At the hearing, Roberts told Judge Hayes he was not alleging improprieties or misconduct on the trial judge's part, but explained that his motion for recusal was based on the State's judge shopping. R. 217, l. 16 – 218, l. 1. Judge Hayes stated he did not recall receiving any of the August correspondence between Roberts and the Solicitor's office, but Roberts handed Brackett's August 14 letter and his own letter up to the court. R. 218, ll. 2 – 21. Judge Hayes then refused to talk about judge shopping and remarked that defense lawyers should not be able to excuse a judge simply by copying the court on a letter. R. 218, l. 23 – 219, l. 13. Without further argument, Judge Hayes said, "But I'm not going to recuse myself. I don't remember anything about this case." R. 219, ll. 14 – 15. Roberts then again proffered his argument that the State had insisted that Judge Hayes was the only judge in the State of South Carolina that could hear this case and that judge shopping warranted recusal. R. 219, ll. 24 – 220, l. 6. At no point in the hearing did the State attempt to refute the allegation of judge shopping.

On December 4, 2007, Judge Hayes entered a written order regarding the DNA issue which also stated, "The Court has, on the record, denied defendant's motion to recuse himself." R. 288. Anthony filed a notice of appeal and on December 27, 2007, the Court of Appeals received his "Memorandum as to Appealability of Intermediate Order in a Criminal Case." R. 278. The Attorney General responded on behalf of the State and asserted that the appeal should be dismissed as interlocutory and not immediately appealable. R. 283. On January 10, 2008, the Court of Appeals dismissed the appeal. R. 255. Subsequent petitions

for rehearing and the petition for certiorari to the Supreme Court were denied, with the Supreme Court's order denying certiorari dated October 8, 2008. R. 294. Almost three and one-half years later, Anthony was tried and convicted before Judge Hayes.

Discussion

Melvin Roberts anticipated by five years the Supreme Court's landmark decision stripping solicitors of their complete control over the docket. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). In Roberts' argument to the Court of Appeals on appealability, he wrote:

[T]his appeal should be allowed to go forward so that our Appellate Courts can set perimeters on "judge shopping." It may be that the time is right to have a court coordinator (independent of both prosecution and defense) to set cases to be heard before any judge holding court in the circuit and not before a particular judge as requested by either of the parties.

R. 297. While the exact method of calling cases in General Sessions court remains to be determined, the Supreme Court made it clear in Langford that the solicitors' complete control over the docket was at an end. Langford at 436, 735 S.E.2d at 479.

One of the evils of the solicitors' control of the docket discussed in Langford was the exact issue raised by Anthony: judge shopping. Id. at 436-440, 735 S.E.2d at 479-481. It does not appear from the opinion that the Court was faced with the blatant judge shopping that occurred in this case. Id. The Court only states that Langford argued that the solicitors' control over the docket permitted them to select the judge. The Court treats this argument theoretically. Id. Nothing in the Langford case is as egregious as the assistant solicitor's comments to Roberts that no other judge but Judge Hayes would try Anthony. Therefore, the Langford Court required some "actual partiality and prejudice on the part of the judge." Id. at 438, 735 S.E.2d at 480. The Court noted that the "only" support for an allegation of

bias in Langford was that the judge ruled against the defendant on several issues and found this allegation "untenable." Id. at 438-39, 735 S.E.2d at 480.

Anthony asserts that the Court's requirement of prejudice in Langford should not apply in this case because of the blatant judge shopping by the State. "Without a doubt, permitting solicitors—who represent a party in the case—to select the judge raises the specter of partiality and calls the validity of the entire system into question." Id. at 437, 735 S.E.2d at 480. In Langford, the Court faced a theoretical assertion of judge shopping. In this case, the Court is presented with a concrete example of judge shopping. In Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984), the defendants' attorney sought to have his clients sentenced before Judge Timmerman instead of Judge Moss, who counsel referred to as the "hanging judge." Id. at 132, 318 S.E.2d at 360. When Judge Timmerman unexpectedly sentenced the defendants to prison terms, they sought (and were granted) post-conviction relief from their pleas. Id. The Supreme Court reversed the grant of PCR and chastised the defense attorneys for "judge shopping." Id. at 133, 318 S.E.2d at 360-61.

In State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002), this Court dealt with a solicitor's refusal to call a case for trial before Judge Dennis because of off-the-record remarks Judge Dennis had made regarding admissibility of evidence. Id. at 110-12, 561 S.E.2d at 623-24. However, the State called the case before the next available judge. Id. The Court framed the question as concerning the impartiality of the trial judge who ultimately heard the case. Id. In this respect, Cheatham is distinguishable from this case because while the State successfully avoided a judge in Cheatham, in this case the State deliberately sought and obtained Judge Hayes for the trial of this case. Because of the

unique circumstances of this case, the Court should dispense with any prejudice inquiry and reverse as a sanction for the judge shopping that occurred.

In the event that the Court imposes a prejudice inquiry, Anthony can show two instances of prejudice. Again, as argued by Roberts in his appeal, this prejudice argument is not meant as a personal attack on the impartiality of Judge Hayes. Appellate counsel does not allege any secret or malevolent bias on the part of Judge Hayes. In fact, as the record will show, Judge Hayes ruled in Anthony's favor on some objections. However, Anthony's situation is unique in two respects. First, even after the Supreme Court decided the interlocutory appeal in 2008, it was still another three years before his case was tried. The solicitor admitted this was not due to any lack of evidence regarding the instant case. It is apparent that the State had all of the evidence it presented in this case—the tapes and Littlejohn's testimony—in 2006. The sole reason for the delay was the State's unsuccessful attempt to link Anthony to its unrelated investigation of Matthews' death. Had control of the docket been stripped from the solicitors as it was in Langford, Anthony's case would not have languished for years. As will be seen in Argument 3, Anthony was on house arrest during that period and may not receive credit for that time against his sentence. Since Langford became law before Anthony's appeal was decided, he is entitled to the policy considerations inherent in that decision and this should serve as a basis for prejudice.

Second, Anthony received a severe sentence for this crime. Judge Hayes sentenced him to fifteen years' imprisonment. The sentencing range for Anthony's alleged crime at the time of the offense was zero to twenty-five years. 1993 South Carolina Laws Act 184 (H.B. 3151). The State presented no evidence that Anthony was a drug dealer in any conventional sense of the term. No evidence—including the tapes and Littlejohn's

testimony—showed that Anthony gave, sold or shared drugs with anyone other than his sex partner, Littlejohn. A reasonable interpretation of the tapes is that they depict two consenting adults sharing a substance during a sexual encounter. While the State attempted to portray Anthony as a depraved man who preyed on Littlejohn, her long criminal history undercuts this depiction. Indeed, Littlejohn herself denied that she was a prostitute, which lends credence to the idea that these encounters were more consensual instead of a sex-for-drugs exchange. R. 121, ll. 8 – 11.

There was no evidence that Anthony sold drugs to anyone else, sold drugs to children, employed other subordinate dealers, or anything else indicating he was a danger to the community, yet the sentence he received was harsh. Counsel acknowledges the State will argue that Judge Hayes' sentence was within the statutory range and not the maximum, but perhaps the likelihood of this stiff sentence from Judge Hayes and knowledge of his sentencing tendencies constituted the impetus behind the State's desire that no other judge would try this case. Anthony submits that if the Court requires a showing of prejudice, these two circumstances should satisfy that burden, especially when considered alongside the State's blatant judge shopping.

3.

Appellant is entitled to a judicial determination on whether he should receive credit for time served while on house arrest.

At sentencing, defense counsel noted for the court that Anthony had been on house arrest for five years prior to trial. R. 212, ll. 9 – 16. Anthony turned sixty years old shortly after the trial. R. 211, l. 25 – 212, l. 1. Judge Hayes sentenced Anthony to concurrent terms of fifteen years' imprisonment. R. 213, ll. 3 – 4. On the sentencing sheet, Judge Hayes

checked the box ordering that, "The Defendant is to be given credit for time served pursuant to S.C. Code Ann. § 24-13-40 to be calculated and applied by the State Department of Corrections." R. 305-308.

At the time of Anthony's sentencing, section 24-13-40 did not allow a prisoner to receive credit against his sentence for time spent on house arrest.⁴ State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004). On June 7, 2013, an amended section 24-13-40 went into effect. 2013 South Carolina Laws Act 34 (H.B. 3193). This act was titled:

AN ACT TO AMEND SECTION 24-13-40 . . . **RELATING TO THE COMPUTATION OF TIME SERVED BY A PRISONER, SO AS TO PROVIDE THAT ANY TIME SERVED UNDER HOUSE ARREST BY A PRISONER MAY BE USED IN COMPUTING TIME SERVED BY A PRISONER.**

Id. (emphasis added). The amended statute states that a prisoner "must" be given "full credit" for time served prior to trial and "may be given" credit for "any time spent under monitored house arrest." Id.

Anthony should be allowed to receive a judicial determination as to whether he is entitled to credit for time spent on house arrest pursuant to the amended section 24-13-40. Appellate counsel contacted the Department of Corrections and was informed that its position is that it will not recompute prisoners' time who were sentenced before the revised section 24-13-40 went into effect. The reasoning given to appellate counsel by the Department is that the discretionary language of section 24-13-40 can only mean that a judge—not the Department—has the discretion to decide the credit for house arrest.

⁴ To the extent that the State will make an argument that this issue is not preserved for appeal, Anthony replies that trial counsel could not have asked for credit for the time spent on house arrest because of the Higgins decision. Anthony is raising this issue at his first available opportunity.

Anthony does not disagree with the Department's reasoning. It is clear that the discretion contemplated by the amended 24-13-40 is vested within the judiciary, not the Department. However, Anthony does disagree with the Department's decision not to apply the statute to him for several reasons. First, prisoners are entitled to the benefit of new law created after their conviction and sentencing but before their appeal becomes final. See Davis v. United States, 131 S.Ct. 2419, (2011) (stating that newly announced rules of constitutional criminal procedure apply to all cases not yet final on direct review). While certainly the amendment of section 24-13-40 is not a new rule of constitutional criminal procedure as discussed in Davis, the principle that a defendant should get the benefit of favorable law passed before his direct review becomes final should inform the Court's decision in this case.

In State v. Spencer, 177 S.C. 346, 181 S.E. 217 (1935), the Court dealt with the issue of the retrial of a defendant after the repeal of prohibition. Spencer was tried without his attorney and the Court set aside his conviction on that ground. Id., 181 S.E. at 219. However, in the interim, prohibition's repeal went into effect in South Carolina with the passage of a new temperance law. Id. at 220-22. The Court ruled that Spencer could not be retried because his case was pending on direct review and not yet final. Id.

In a recent case, the Supreme Court dealt with the issue of whether a defendant was entitled to be sentenced under a statute amended after her crime but before her sentencing. State v. Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013). In Dawson, the crime occurred in 2009. Id. at 162, 740 S.E.2d at 501. At the time of the crime, the maximum sentence was five years' imprisonment. Id. In 2010, the legislature amended the statute and reduced the

maximum sentence to thirty days' imprisonment. Id. The trial court sentenced the defendant under the statute in effect at the time of the crime. Id.

The Supreme Court affirmed the sentence. Id. The basis for the affirmance in Dawson, however, shows that Anthony should receive the benefit of the amended section 24-13-40. The act in Dawson had a savings clause that said it did not affect pending actions. Id. at 164-65, 740 S.E.2d at 503. The amendment to section 24-13-40 has no such savings clause. Without such a savings clause, Anthony is entitled to the general rule that "a convicted criminal receive[s] the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed." Id. at 164, 740 S.E.2d at 503. But see State v. Varner, 310 S.C. 264, 423 S.E.2d 133 (1992)(stating that defendant was not entitled to resentencing when new law was passed while case was pending on direct appeal because no language in the act required retroactive application). Since Anthony's conviction is still on direct review, he should receive the benefit of this change.

Furthermore, the amended version should not only apply to prisoners whose appeals are not yet final on direct review, but should apply to all prisoners because it concerns the calculation of their sentence. The Department of Corrections routinely recalculates prisoners' sentences according to their behavior and earned credits. The express language of the act states that it relates to the "computation of time served." 2013 South Carolina Laws Act 34 (H.B. 3193). Since this involves the computation of time, there is no compelling reason why it should not apply to all prisoners, not just Anthony.

Public policy would also support giving Anthony credit for time served while on house arrest. South Carolina's prisons are overcrowded and allowing the recalculation of

sentences to include credit for time served while on house arrest would do much to alleviate this problem. Violent offenders do not receive house arrest. The earlier release of non-violent offenders comports with the Legislature's intentions in passing this amendment.

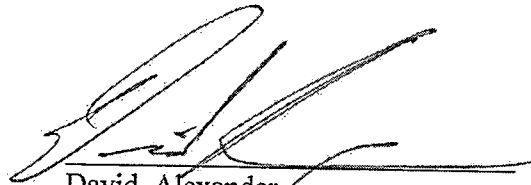
Allowing all prisoners to benefit from this amendment would not necessarily create a strain on judicial resources. For current cases, the standard sentencing sheet should be changed to reflect the new law and allow trial judges to exercise their discretion in a clear manner for the benefit of defendants and the Department. For prisoners who have already been sentenced who served time on house arrest, a form consent order could be created that a prisoner could forward to the solicitor. If the solicitor did not oppose credit for house arrest, such a consent order could be forwarded to the trial judge for consideration. In these cases, no hearing need be held. In cases where a solicitor opposed a prisoner's request, both parties could submit written requests to the trial judge. As the Court would be extending a defendant's right arguably past the minimum requirements of due process, hearings would not be mandated. Alternatively, this Court could determine that the judicial discretion that must be exercised for past prisoners could be exercised by an administrative law judge pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999),

Finally, to the extent the State argues this issue must be subjected to the Al-Shabazz procedure, Anthony's case is ripe for decision now and should be decided in the interest of judicial economy. The Court will be in no better position to decide this issue after it winds its way through the prison grievance system and through the administrative law courts. Furthermore, because of the length Anthony spent on house arrest, credit for this time could substantially affect his release date. Given Anthony's age, a decision now may mean the difference between Anthony dying in prison or one day being free.

CONCLUSION

For the foregoing reasons, Anthony's convictions should be reversed and the case remanded for a new trial. In the alternative, the Court should allow Anthony to have a judicial determination of whether he is entitled to credit for time served while on house arrest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

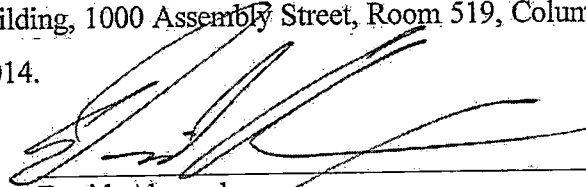
HARRY ANTHONY,

APPELLANT

APPELLATE CASE NO. 2012-20662

CERTIFICATE OF SERVICE

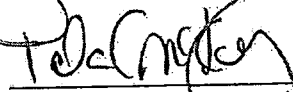
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of January, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2014.



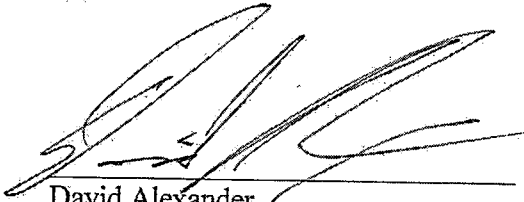
(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability 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."

January 13th, 2014



David Alexander
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ORIGINAL**STATE OF SOUTH CAROLINA****IN THE COURT OF APPEALS**

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-206627

THE STATE,

Respondent,

v.

HARRY ANTHONY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court correctly denied Appellant's motion for mistrial because the State did not elicit inadmissible prior bad act evidence from its first witness.

II.

The trial court properly denied Appellant's motion for recusal because Appellant did not show any evidence of judicial bias or prejudice that stemmed from an extra-judicial source and resulted in a decision based on information other than what the judge learned from his participation in the case as a judge.

III.

Appellant's argument that he is entitled to a judicial determination on whether he should receive credit for time served while on house arrest is not preserved for appellate review.

STATEMENT OF THE CASE

On April 12, 2007, a York County Grand Jury indicted Appellant for four counts of distributing crack cocaine. (R.pp. 297-304) On November 28, 2007, Appellant filed a motion for Judge John C. Hayes, III, to recuse himself. (R.pp. 257-59.) Judge Hayes held a hearing on November 29, 2007, and denied the motion to recuse himself. (R.p. 219.) On January 9-11, 2012, Appellant proceeded to trial before a jury. B.J. Barrowclough, Esquire, and Harry Dest, Esquire, represented Appellant and Assistant Solicitors Mindy H. Lipinski and Chris Epting represented the State. The jury found Appellant guilty of all four counts. (R.p.208.) The Honorable John C. Hayes, III, sentenced him to fifteen years' imprisonment on each charge, to be served concurrently. (R.p.213.)

On January 13, 2012, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

In the course of a narcotics investigation, Lieutenant Tim Hager of the York County Sheriff's Department interviewed Patricia Littlejohn, who revealed she was addicted to crack cocaine and Appellant was one of her sources. (R.p.73, line 14-R. p.75, line 1.) Littlejohn told Hager she traded sexual favors for crack and that Appellant videotaped the sexual encounters. (R. p.76, lines 11-12; R. p.115, lines 8-15.) On February 2, 2006, Hager obtained a search warrant and seized videotapes from Appellant's residence. (R. p.78, line 1-R. p.79, line 6.) Appellant was indicted for four counts of distributing crack cocaine. (R.pp. 297-304)

On November 28, 2007, Appellant filed a written motion to recuse Judge John C. Hayes, III. Judge Hayes held a hearing on November 29, 2007. Appellant argued the judge should recuse himself based on the State's "judge shopping." Appellant noted at the hearing, "I'm not alleging any impropriety or any misconduct on the part of your honor." (R. p.217, lines 21-23.) Appellant presented a letter to Judge Hayes at the hearing that was written by Solicitor Kevin Brackett. Initially, Appellant presented to the court that he thought he had copied Solicitor Brackett's letter to the judge. Judge Hayes did not remember the letter but stated, "And so I think it kind of lies hollow in one's mouth to copy me with something and then say since I copied you the letter that excuses you, and I'm not saying you meant to and I'm not talking about judge shopping—but, boy, that would present an ideal open door in cases if all the defense lawyer had to do is write the judge about a case and say, well, now you can't hear it and I'm not saying that's what you did, but I don't see where I got a copy of Mr. Brackett's." (R. p.218, line 23-R. p.219, line 7.) At that point, defense counsel stated, "I don't think I had a right to send you Mr. Brackett's letter and I think you should have required him to send you a copy

since he knew on his copy that you received a copy of mine.” (R. p.5, lines 8-11.) Judge Hayes denied the motion to recuse himself stating, “I don’t remember anything about this case. I don’t recall receiving any of these letters.” (R. p.5, lines 15-16.)

Appellant then attempted to appeal Judge Hayes’s order to this Court, but this Court dismissed the appeal as interlocutory. (R. p.255.) Appellant subsequently filed a Petition for Rehearing and Request for Rehearing En Banc, which this Court denied. (R. p.238-248.)

The case was called for trial on January 9, 2012. Pretrial, Appellant expressed concern with the possibility the State might seek to introduce evidence of prior bad acts. The State informed the trial court it did not intend to elicit any testimony on direct regarding information from Littlejohn that Appellant engaged in branding his prostitutes with an “H” or an “A.” (R. p.12, line 9-R. p.13, line 9.) However, the State noted that depending on defense counsel’s cross-examination, it may become probative to establish Littlejohn’s credibility and her role in those acts. (R. p.13, line 10-15.) Defense counsel stated they would not intentionally elicit any of that information. (R. p.13, lines 17-25.)

The State began its case by calling Lt. Hager. (R. p.72, lines 4-5.) When asked on direct what Littlejohn told him regarding transactions with Appellant as a drug source, Lt. Hager stated, “She was trading sexual favors, for crack cocaine, and also he was videotaping these encounters, and also he was branding her with a ---.” (R. p.76, lines 7-13.) At that point Appellant objected, and the State agreed to move on. (R. p.76, lines 14-17.) The trial court allowed the State to proceed and instructed the jury, “Disregard that last statement from the witness, members of jury.” (R. p.76, lines 18-21.)

At the conclusion of Lt. Hager’s testimony, after the jury had been excused, Appellant moved for a mistrial based on Hager’s comment regarding branding. (R.

p.104, lines 6-12.) He specifically argued Hager put Appellant's character into evidence in violation of the pretrial agreement reached by the parties. (R. p.104, lines 14-25.) The State argued that Appellant could have made a contemporaneous objection and asked for a curative instruction. (R. p.105, lines 17-19.) The trial court denied the mistrial motion, finding there was no manifest necessity to grant a mistrial, and noted the objection was sustained and the jury was told to disregard the testimony. (R. p.107, lines 13-16.)

Ultimately, the jury found Appellant guilty and Judge Hayes sentenced him to 'fifteen years' imprisonment on each charge, to be served concurrently. (R. pp.208, 213.)

ARGUMENTS

I.

The trial court correctly denied Appellant's motion for mistrial because the State did not elicit inadmissible prior bad act evidence from its first witness.

Appellant contends the trial court abused its discretion in failing to grant a mistrial after the State improperly placed Appellant's character at issue by eliciting inadmissible character evidence from its first witness in violation of Rule 404, SCRE. However, the granting of a mistrial requires manifest necessity and is an extreme measure that ought to be granted with the greatest caution. Here, Appellant failed to show manifest necessity and the trial court acted within its discretion in denying the motion for mistrial. Thus, its decision should be affirmed.

The “[g]ranting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error.” State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

“The decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court’s decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law.” State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (citation and internal quotation marks omitted). “A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial.” Id. at 585-86, 698 S.E.2d at 865. “Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence.” Id. at 586, 698 S.E.2d at 865 (citation and internal quotation marks omitted). “The determination of prejudice must be

based on the entire record and the result will generally turn on the facts of each case.” Id. at 586, 698 S.E.2d at 865-66 (citation and internal quotation marks omitted). The trial court is in the best position to ascertain the potential prejudicial effect of any offending testimony and the Supreme Court favors the exercise of wide discretion of the circuit court in ruling on a motion for mistrial in each individual case. State v. Jones, 325 S.C. 310, 324, 479 S.E.2d 517, 524 (Ct. App. 1996).

In Edwards, the appellant argued the trial court erred in denying his motion for a mistrial because the jury improperly heard evidence he hit his wife. Edwards, 373 S.C. at 236, 644 S.E.2d at 69. This Court affirmed the trial court, finding (1) the prosecution did not intentionally elicit the statement; (2) the statement was not offered for its truth; and (3) any prejudice to Edwards was cured by the court’s curative instruction asking the jury to disregard the last statement given by the witness. Id. at 236-37, 644 S.E.2d at 69; see also State v. Patterson, 337 S.C. 215, 227-28, 522 S.E.2d 845, 851 (Ct. App. 1999) (holding the trial court did not err in denying Patterson’s motion for mistrial because a curative instruction “cured any possible error and eliminated any conceivable prejudice”).

Appellant initially objected when Lt. Hager mentioned branding. The trial court sustained Appellant’s objection and instructed the jury to disregard the witness’s statement. After Hager finished testifying and the jury was excused, Appellant moved for a mistrial and the trial court denied the motion. The State submits that as in Edwards, the trial court’s ruling was proper because the curative instruction “cured any possible error and eliminated any conceivable prejudice.” This is particularly true because the reference to Appellant’s prior bad conduct was so vague.

In State v. Council, 335 S.C. 1, 11, 515 S.E.2d 508, 513 (1999), the defendant argued he was entitled to a mistrial based on the introduction of testimony concerning a

prior fingerprint card. An officer testified he took prints from the defendant after his arrest and compared those to prints in the SLED records. Id. at 11-12, 515 S.E.2d at 513. The defendant moved for a mistrial, contending the testimony implied he had a prior record by indicating he had been previously fingerprinted. Id. at 12, 515 S.E.2d at 513. The trial judge refused to grant a mistrial and declined to issue a curative instruction in order to avoid drawing the jury's attention to the issue. Id. The South Carolina Supreme Court affirmed the denial of the motion for mistrial, finding the reference was too vague to be prejudicial and it was questionable whether the jury understood the implications of the testimony. Id. at 13, 515 S.E.2d at 514.

In State v. Thompson, 352 S.C. 552, 560, 575 S.E.2d 77, 82 (Ct. App. 2003), the defendant moved for a mistrial after an officer testified that he knew the defendant had warrants at the time officers approached his home. The defendant asserted that this testimony was improper evidence of prior bad acts, but the trial judge denied the motion for a mistrial. Id. This Court affirmed, finding the reference to prior criminal acts was too vague and not sufficiently prejudicial to justify a mistrial. Id. at 561, 575 S.E.2d at 82. In affirming the trial court's decision to deny the motion for a mistrial, this Court determined that, based on testimony the jury had already heard, "it would be reasonable to assume the jury inferred that the warrants related to the charged offense." Id. This Court held: "[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes." Id.

In both Council and Thompson, our appellate courts have affirmed the denial of mistrials based on the vagueness of references to a defendant's prior bad conduct or criminal record. Other cases also support these holdings. See State v. George, 323 S.C.

496, 510-11, 476 S.E.2d 903, 912 (1996) (testimony that “merely suggested” a possible prior bad act was not prejudicial); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), (“extremely vague” references possibly suggesting another crime were harmless); State v. Robinson, 238 S.C. 140, 150-51, 119 S.E.2d 671, 676 (1961), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (finding testimony by a witness that the defendant told him he was on the way to the probation office did not create an inference that the defendant had been convicted of another crime); State v. Creech, 314 S.C. 76, 82, 441 S.E.2d 635, 638 (Ct. App. 1994) (inadvertent reference to calling the defendant’s probation officer did not warrant a mistrial).

In the case sub judice, Appellant’s objection was based on Lt. Hager’s single reference to branding. Lt. Hager stated, “She was trading sexual favors, for crack cocaine, and also he was videotaping these encounters, and also he was branding her with a ---.” The first two pieces of information—that she was trading sex for crack and that Appellant was videotaping the sexual encounters—came out on multiple occasions and were not objected to. The only portion of Hager’s statement that was challenged was the reference to “branding.” However, no further details of the branding were presented to the jury and no crime was mentioned. Such a vague reference, with nothing more, does not even rise to the level of the objectionable testimony in Council and Thompson, which were both found by our appellate courts to be too vague to require a mistrial. Here, no reference was made to anything regarding a criminal record or past arrest. Therefore, it was more innocuous.

Furthermore, the testimony at issue here does not qualify as character evidence under Rule 404, SCRE. In State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003), the Supreme Court addressed the admissibility of character evidence.

Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged. Rule 404(a), SCRE, states the general rule that '[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.' Evidence Haselden had a tendency to golf, fish, or go to his mother's house is simply not evidence which would tend to prove he had a tendency toward abusing and murdering his two-year old son.

Haselden, 353 S.C. at 196, 577 S.E.2d at 448 (citing State v. Brown, 344 S.C. 70, 543 S.E.2d 552 (2001) (whatever negative connotation appellant's gambling may have had, it did not imply any propensity on his part to commit the violent crime with which he was charged, such that any error in its admission was harmless beyond a reasonable doubt)). See Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); State v. Lyle, 125 S.C. 406, 415-16, 118 S.E. 803, 807 (1923) (South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan, or (5) the identity of the perpetrator).

Here, the State's questioning did not elicit "prior bad act" evidence. The State merely asked Lt. Hager what Littlejohn told him regarding transactions with Appellant as a drug source. The resulting testimony regarding branding cannot be construed as

substantive evidence constituting a "bad act" under Lyle. Nor did it tend to establish that Anthony had a propensity to distribute crack cocaine. Furthermore, the judge effectively excluded any potential "bad act" evidence when he sustained Appellant's objection and told the jury to disregard Lt. Hager's last statement.

Appellant cited several cases in his brief in an attempt to support his position. However, each of these cases can be distinguished from the case at hand. In State v. Parker, 391 S.C. 606, 707 S.E.2d 799 (2011), an entire unredacted videotape was played for the jury and defense counsel moved for a mistrial on the basis of prosecutorial misconduct. In his decision to declare a mistrial based on prosecutorial misconduct, the trial judge stated that "the defendant was almost goaded into the position of asking for a mistrial." Id. at 614, 707 S.E.2d at 802. At Parker's second trial, the second judge made an erroneous legal finding that jury deadlock caused the mistrial. Id. at 615, 707 S.E.2d at 803. The Supreme Court upheld the first trial judge's finding that the solicitor intended to goad the defendant into moving for a mistrial and reversed the Court of Appeals. Id. Here, there was no allegation of prosecutorial misconduct. The motion for mistrial was based on the State's eliciting improper character evidence in violation of Rule 404, SCRE. Thus, Parker is not applicable to this case.

In State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978), the Supreme Court reversed the trial court's denial of Ross's motion for mistrial based on the introduction of improper character evidence. Ross interrupted a witness's testimony several times to argue it was improper, yet the trial court allowed the State to continue until the damning evidence that Ross had threatened to shoot the witness was elicited. Id. at 58-59, 249 S.E.2d at 160-61. The case sub judice can be easily distinguished because the trial court immediately

sustained Appellant's objection to Lt. Hager's reference to "branding" and told the jury to disregard the testimony. Thus, unlike Ross, the testimony was not prejudicial.

In summary, the curative instruction eliminated any conceivable prejudice. Additionally, such a vague reference to branding by Lt. Hager was not sufficient to justify a mistrial because it did not constitute an attempt by the State to introduce evidence of other bad acts or crimes. See Thompson, 352 S.C. at 561, 575 S.E.2d at 82. Indeed, the testimony at issue here does not even qualify as character evidence under Rule 404, SCRE. Although Appellant argues the implication of branding could make Anthony seem like a sadist, the State fails to see how this trait would make it less likely Littlejohn supplied her own crack, which was Appellant's theory of the case. Accordingly, the trial court did not abuse its discretion in denying Appellant's motion for a mistrial.

II.

The trial court properly denied Appellant's motion for recusal because Appellant did not show any evidence of judicial bias or prejudice that stemmed from an extra-judicial source and resulted in a decision based on information other than what the judge learned from his participation in the case as a judge.

Appellant argues the trial court should have granted a motion for recusal as a sanction in response to “judge shopping” by the State. However, because Appellant did not allege any bias or prejudice on the part of the trial judge, nor show any evidence of such, he did not meet the long established requirements set forth for judicial recusal. Thus, the trial judge correctly denied Appellant's motion and his ruling should be affirmed.

In State v. Jackson, 353 S.C. 625, 578 S.E.2d 744 (Ct. App. 2003), this Court addressed the standard of review in appeals from the denial of a motion to recuse.

Pursuant to Canon 3(E)(1)(a) of Rule 501, SCACR, a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. It is not enough for a party seeking disqualification to simply allege bias or prejudice. The party must show some evidence of that bias or prejudice. The alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge. If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal.

Id. at 627, 578 S.E.2d at 745 (emphasis added) (citations omitted). This Court considered the fact that the trial judge was not familiar with the case and had not discussed it, as well as the fact Jackson offered no proof to the contrary. Id. at 627-28, 578 S.E.2d at 745. This Court also noted Jackson's conviction was supported by the record through strong

evidence and, thus, “there is no reason to question the trial judge’s impartiality.” Id. at 628-29, 578 S.E.2d at 745-46.

Appellant argues the Court’s requirement of prejudice in State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012), should not apply in this case. He asserts that while Langford’s allegation of “judge shopping” was theoretical, here it is concrete. Appellant cites the Langford Court’s statement: “Without a doubt, permitting solicitors—who represent a party in the case—to select the judge raises the specter of partiality and calls the validity of the entire system into question.” Id. at 437, 735 S.E.2d at 480. However, he ignores the following language in the opinion:

However, as Judge Posner wrote, [t]he presumption that judges are unbiased is more than a pious hope. Furthermore, [t]he right to a judge who is free from the mere *appearance* of partiality is not part of due process at all. Hence, we will not presume the judge is partial simply because he was selected by the prosecutor, for adopting such a rule would conflate[] the appearance of partiality with actual partiality.

Id. at 438, 735 S.E.2d at 480 (citations and internal quotation marks omitted). The Court made clear there is no presumption of partiality simply because a solicitor is accused of “judge shopping.” Thus, Appellant’s reliance on Langford to support his assertion that no showing of prejudice is required in this case is misplaced, and the argument is without merit.

Here, Judge Hayes considered Appellant’s motion for recusal at a hearing held prior to trial. Appellant argued Judge Hayes should recuse himself based on the State’s alleged “judge shopping.” Appellant acknowledged at the hearing, “I’m not alleging any impropriety or any misconduct on the part of your honor.” (R. p.217, lines 21-23.) Appellant presented a letter to Judge Hayes at the hearing that was written by Solicitor

Kevin Brackett. Initially, Appellant presented to the court that he thought he had copied Solicitor Brackett's letter to the judge. Judge Hayes did not remember the letter but stated, "And so I think it kind of lies hollow in one's mouth to copy me with something and then say since I copied you the letter that excuses you, and I'm not saying you meant to and I'm not talking about judge shopping—but, boy, that would present an ideal open door in cases if all the defense lawyer had to do is write the judge about a case and say, well, now you can't hear it and I'm not saying that's what you did, but I don't see where I got a copy of Mr. Brackett's." (R. p.218, line 23-R. p.219, line 7.) At that point, defense counsel stated, "I don't think I had a right to send you Mr. Brackett's letter and I think you should have required him to send you a copy since he knew on his copy that you received a copy of mine." (R. p.219, lines 8-11.) Judge Hayes denied the motion to recuse himself stating, "I don't remember anything about this case. I don't recall receiving any of these letters." (R. p.219, lines 15-16.)

First, Appellant has not alleged on appeal or at trial any judicial bias or prejudice on the part of Judge Hayes, which Rule 501, SCACR, indicates is required to seek disqualification. The only reason he gives for asking for the recusal is that the solicitor is "judge shopping." "Judge shopping" on behalf of the State does not demonstrate bias or prejudice on the part of a judge. See State v. Cheatham, 349 S.C. 101, 112, 561 S.E.2d 618, 624 (Ct. App. 2002) (finding no error in the failure of a judge to recuse himself when the only person accused of impropriety was the solicitor).

Second, even if Appellant's allegation of "judge shopping" can be seen to constitute an allegation of bias on the part of Judge Hayes, Appellant shows no actual evidence of any bias or prejudice, which is required by Rule 501. The letters were presented to Judge Hayes at the hearing and are included in an Appendix filed by

Appellant. (R. pp.260-264.) In defense counsel Melvin Roberts' letter to Assistant Solicitor Ryan Holloway dated August 9, 2007, Roberts referred to a telephone conversation with Holloway and wrote:

The other day, you called and we discussed another possible trial date but you kept skipping over anytime that Judge John C. Hayes, III[,] was not here because you insisted that you wanted this case tried before Judge John C. Hayes, III[,] and no other judge. When I asked you why[,] your answer was "because[.]"

This is the only "evidence" of any "judge shopping" and comes directly from Appellant's counsel. In both Holloway's original letter to Roberts regarding available trial dates and Solicitor Brackett's response to Roberts' letter, neither solicitor even mentions having Judge Hayes as the trial judge. (R. pp.260-264.) The only reference to Judge Hayes is in Holloway's letter when he notifies Roberts any continuance requests must be submitted to Judge Hayes *as the Chief Administrative Judge*. Nothing in either solicitor's letter provides any evidence of "judge shopping" by the State. Pursuant to Rule 501, SCACR, Appellant was required to show some evidence of bias or prejudice that stemmed from an extra-judicial source and resulted "in a decision based on information other than what the judge learned from his or her participation in the case as a judge." Judge Hayes stated at the hearing that he did not recall the letters. However, even if he had recalled their content, the letters would qualify as information the judge learned from his participation in the case as a judge rather than "information other than what the judge learned" in this manner. Thus, even if the letters could be construed to show evidence of bias, it would still fail to demonstrate the type of bias required to meet the requirements for recusal under Rule 501. Appellant showed no evidence of judicial bias or prejudice and, thus,

the judge's refusal to disqualify himself should not be reversed on appeal. Jackson at 627, 578 S.E.2d at 745.

This Court addressed a defendant's motion for recusal based on "judge shopping" in State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002). Cheatham's case was scheduled before the Honorable Markley Dennis but was not called for trial. Id. at 110, 561 S.E.2d at 623. Judge Dennis had previously agreed to suppress any reference to Cheatham's prior convictions at an informal conference held prior to the date the trial was originally scheduled. Id. The trial was then called before Judge Luke Brown. Prior to trial, Cheatham moved to have Judge Brown recused and replaced with Judge Dennis, arguing the State informed Judge Dennis it would not call the case before him because of the judge's intention to exclude Cheatham's prior convictions. Id. Cheatham presented an affidavit of one of his attorneys recounting the State's discussion with Judge Dennis. Id. at 111, 561 S.E.2d at 623. The State did not deny Judge Dennis's intentions influenced its decision not to call the case before him, but the State did refute Cheatham's contention that it was "judge shopping," noting the case was placed on the next docket. Id. This Court noted, "Cheatham does not assert Judge Brown was partial, biased, or acted improperly in presiding over his trial." Id. at 112, 561 S.E.2d at 624. Further, this Court found:

Cheatham has not provided any evidence that would support his allegation that Judge Brown should have recused himself. The only person Cheatham accuses of impropriety is the solicitor for refusing to call the case before Judge Dennis. Whether the solicitor acted improperly in choosing not to call the case before Judge Dennis did not affect Judge Brown's ability to preside over Cheatham's case. Accordingly, we find no error in the failure of Judge Brown to recuse himself.

Id. (emphasis added.)

Here, Appellant also only accuses the solicitor of impropriety, for allegedly refusing to call the case before any judge other than Judge Hayes. Indeed, he acknowledged at the hearing, "I'm not alleging any impropriety or any misconduct on the part of your honor." (R. p.217, lines 21-23.) Following this Court's logic in Cheatham, whether the solicitor acted improperly has no bearing on a judge's ability to preside over a case. Comparing the facts in this case with those of Cheatham, Cheatham had an almost identical argument about "judge shopping." However, Cheatham actually provided evidence in the form of an affidavit of one of his attorneys recounting the State's discussion with Judge Dennis, and the State did not deny Judge Dennis's intentions influenced its decision not to call the case before him. Here, no evidence exists other than defense counsel's version of a telephone call and a letter that mentions Judge Hayes as the Chief Administrative Judge. The facts here do not begin to rise to the level of evidence Cheatham provided, yet this Court easily found no error in Cheatham. Accordingly, this Court should find no error here. Whether the solicitor was "judge shopping" in this case or not, this Court should affirm Judge Hayes's denial of the motion to recuse himself because Appellant has provided no evidence of any judicial bias, prejudice, or impropriety.

Furthermore, as in Jackson, Appellant's conviction is supported by strong evidence. Littlejohn's testimony provided direct evidence of Appellant's distribution of crack cocaine in exchange for sexual favors. Additionally, videotapes of those sexual encounters provided direct evidence of these "drugs for sex" exchanges. Because of this evidence, "there is no reason to question the trial judge's impartiality." Jackson at 628-29, 578 S.E.2d at 745-46.

III.

Appellant's argument that he is entitled to a judicial determination on whether he should receive credit for time served while on house arrest is not preserved for appellate review.

Appellant argues he is entitled to a judicial determination on whether he should retroactively receive credit for time served while on house arrest. Specifically, he contends that because § 24-13-40 was amended on June 7, 2013, while this direct appeal was pending, to provide that time under house arrest may be used in computing time served, he is entitled to this credit.¹ However, Appellant did not raise this issue at sentencing, and, thus, it is not preserved for appellate review.

"Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review." In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009). If an error is not presented to and ruled upon by the trial court, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). The appellate court will not consider any issues that were not presented to or passed upon by the trial court. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000).

Because Appellant did not request credit for his time on house arrest at the time he was sentenced, Appellant argues the amendment to § 24-13-40 is retroactive and that he is raising the issue at his first available opportunity. He admits the amendment is not a

¹ Appellant was convicted and sentenced on January 11, 2012, approximately one year and five months before the statute was amended.

new rule of constitutional criminal procedure that would apply to all cases not yet final on direct review under Davis v. United States, 131 S. Ct. 2419 (2011). However, he contends Davis should inform this Court so that he may benefit from a favorable law. Appellant's reliance on Davis as guidance in this situation is misplaced. Davis dealt with a newly announced rule of substantive Fourth Amendment law and specifically looked at whether a remedy was available. Here, there is no constitutional remedy, such as suppression of evidence, that can be sought based on the amendment to the statute. Thus, Davis is inapplicable.

South Carolina case law makes it clear that amendments to statutes are not retroactive unless the Legislature says they are. "Generally, 'statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary.'" Wiesart v. Stewart, 379 S.C. 300, 303, 665 S.E.2d 187, 188 (Ct. App. 2008). "Statutes that are remedial or procedural in nature, however, operate retroactively. A statute is remedial and applies retroactively when it creates new remedies for existing rights or enlarges rights of persons under disability." Id. In Wiesart, this Court found the 1996 amendment to § 23-3-430 was procedural in nature because it created a requirement that the trial court make a specific finding on the record regarding whether a person convicted of indecent exposure should register as a sex offender, rather than creating a new right. Id.

In Edwards v. State Law Enforcement Div., 395 S.C. 571, 720 S.E.2d 462 (2011), the Supreme Court examined how to determine whether a statutory amendment is to be applied retroactively. "It is a well-settled rule of statutory construction that absent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in

nature.” Id. at 579, 720 S.E.2d at 466. After finding no explicit provision by the General Assembly that the amendment in question was to apply retroactively, the Court turned its focus to whether it was remedial or procedural. In exploring authority on the definition of remedial, the Court cited 82 C.J.S. Statutes § 585 (2009) for the proposition “that where a statute takes away or impairs vested rights acquired under existing laws, creates new obligations, imposes a new duty, or attaches a new disability, it will be construed as prospective only.” Id. at 580, 720 S.E.2d at 466. The Court then noted “a ‘procedural’ law sets out a mode of procedure for a court to follow, or ‘prescribes a method of enforcing rights.’” Id. (quoting Black’s Law Dictionary 1083 (1979)). The Court ultimately determined “[t]he amendments to section 23-3-430 do not provide a procedure for a court to follow, or prescribe a method for enforcing rights. Thus, the amendments are not procedural and cannot be applied retroactively to Respondent’s case.”

In this case at the time of trial, § 24-13-40 provided:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

The June 7, 2013 amendment to § 24-13-40 provides: "Any time served under house arrest by a prisoner may be used in computing time served by a prisoner." Following the Court's logic in Edwards, finding no explicit provision that the amendment is to apply retroactively, this Court must determine whether it is remedial or procedural. A statute is remedial when it creates new remedies for existing rights or enlarges rights of persons under disability, and is procedural if it sets out a mode of procedure for a court to follow, or 'prescribes a method of enforcing rights.' Wiesart, 379 S.C. at 303, 665 S.E.2d at 188; Edwards, 395 S.C. at 580, 720 S.E.2d at 466. Here, the amendment does not create a new remedy for an existing right, nor does it set out a mode of procedure for courts to follow. Rather, by providing that house arrest time may be used to calculate time served, the amendment creates a new obligation or imposes a new duty. Id. In Edwards, the Court found the amendments to the sex offender registry statute to provide that if a sex offender received a pardon for which he was required to register, he must reregister and may not be removed from the registry except in certain enumerated circumstances did "not create a new right, but instead impose[d] an obligation which did not exist prior to the amendments." Edwards, 395 S.C. at 579, 720 S.E.2d at 466. Similarly, the amendment in this case imposed an obligation by making house arrest part of time-served calculation. Therefore, it should be construed prospectively, not retroactively. Accordingly, the amendment does not apply to Appellant.

Appellant cites State v. Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013), to support his assertion that he is entitled to the benefit of the amendment because it has no savings clause. However, Dawson deals with a defendant who was sentenced under one statute, which was in effect at the time she committed the crime, but argued on appeal that she

should have been sentenced under an act that went into effect prior to her sentencing. The Supreme Court determined Dawson was not entitled to the benefit of the act because it contained a savings clause that specified it did not affect pending actions. *Id.* at 165, 740 S.E.2d at 503. Appellant argues that because the amendment here does not contain a savings clause, he should benefit from the general rule that “a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed.” Appellant appears to equate not receiving credit for time served under house arrest to a greater punishment. However, statutory amendments that lower penalties for certain crimes are distinguishable from this amendment, which simply provides that house arrest may be used to calculate time served. The amendment in question has no bearing on the actual penalty for the crime Appellant committed. Therefore, Dawson does not apply. Dawson can also be distinguished because the act went into effect after the commission of the crime but before the appellant was sentenced, whereas here Appellant was sentenced on January 11, 2012, and the statute was later amended on June 7, 2013.

Even if the Court accepts Appellant’s contention that credits are to be treated the same as penalties, one need only look at the Supreme Court’s decision in State v. Varner, 310 S.C. 264, 423 S.E.2d 133 (1992), to dispense with this argument. There, the Court determined “a criminal defendant receives the benefit of punishment mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced.” *Id.* at 265, 423 S.E.2d 134 (emphasis added). The Court did not agree that Varner was “entitled to resentencing because the legislature reduced the punishment applicable to his crime before his appeal was adjudicated.” *Id.* at 265, 423 S.E.2d 133. The Supreme Court compared Varner’s case to State v. Williams, 31 S.C.L. (2 Rich.) 418

(1846), to emphasize the importance of looking at the time of sentencing to determine whether an amendment would affect the penalty for a crime. Id. at 265-66, 423 S.E.2d 134. Williams took place during a time when convictions were appealed prior to sentencing. Id. at 266, 423 S.E.2d 134. The Varner court based its decision on "the common law rule that courts must impose the penalty in effect at the time of sentencing." Id.

Appellant argues that all prisoners should be entitled to benefit from this amendment and states, "The Department of Corrections routinely recalculates prisoners' sentences according to their behavior and earned credits." (App. Br. 21.) However, Appellant also noted in his brief that the Department of Corrections would not recompute prisoners' time and would leave that discretion to judges. Requiring every prisoner to appear before a court for a judicial determination of any recalculation of his time would be a strain on the judicial system and would certainly not serve the interests of efficiency and judicial economy. Furthermore, not just any court would be qualified to render a new sentence, particularly because the statutory amendment is written such that a judge may use time under house arrest in computing time served. By making the decision discretionary, it stands to reason the Legislature certainly intended the trial judge to consider all aspects of the case in making his decision. Thus, the only judge who would be able to consider everything would be the original sentencing judge. Although Appellant claims there would not be a strain on judicial resources, his idea is to use form consent orders with no need for a hearing. However, this proposal does not take into consideration the rights of victims. The South Carolina Victims' Bill of Rights, section 24(A)(5), provides: "To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right

to: (5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing.” S.C. Const. art. I, § 24. See also S.C. Code Ann. § 16-3-1550(D) (2003), which provides:

The circuit or family court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant. A circuit or family court judge, before proceeding with a trial, plea, sentencing, or other dispositive hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice.

Therefore, any form consent order without a hearing would violate those rights.

Appellant also advocates a public policy argument that recalculation of sentences to include time spent under house arrest would serve to address prison overcrowding. Appellant contends that “violent offenders do not receive house arrest” and, thus, the Legislature must have intended to allow for earlier release of non-violent offenders when passing this amendment. Initially, Appellant offers no support for this argument. Also, it is worth noting that people are released on bond for all types of crimes, both violent and non-violent, and most are allowed back into society without being restricted to house arrest while they await trial. Indeed, it would seem more likely that a person accused of a violent crime, rather than a non-violent crime, would receive a restrictive bond that included house arrest.

Despite the existence of an established procedure for addressing credit based issues, Appellant argues the Court should decide this issue now instead of following the procedure set forth in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Al-Shabazz makes clear that sentence credits-related issues should be addressed through the

prison grievance system and appealed to the Administrative Law Court. There is no way to predict what the Administrative Law Court will do, and there is no reason to circumvent that procedure by addressing this issue as a direct appeal. Going the route of the Administrative Law Court is just one of several ways this issue could be resolved preferable to pursuing a direct appeal as Appellant has. He also could have proceeded with a declaratory judgment. See S.C. Code Ann. § 15-53-30 (2005) (a party whose rights, status, and other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder). Likewise, he could have filed a writ of habeas corpus if he believes he is entitled to immediate release. Any of these avenues would better address this issue, particularly because it is not appropriate for direct appeal because it was not raised to and ruled upon by the trial judge.

In sum, Appellant's argument that he is entitled to a judicial determination regarding whether his sentence should be recalculated to include time under house arrest is not preserved. Additionally, for the foregoing reasons, the argument is without merit.

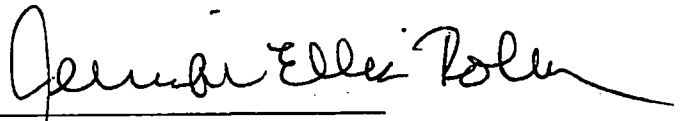
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
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ATTORNEYS FOR RESPONDENT

January 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-206627

THE STATE,

Respondent,

v.

HARRY ANTHONY,

Appellant.

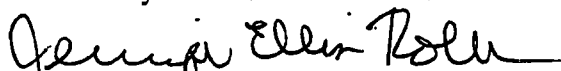
CERTIFICATE OF CONSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY:



Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 8, 2014

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SC COURT OF APPEALS

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-206627

THE STATE,

Respondent,

v.

HARRY ANTHONY,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, 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:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 8th day of January, 2014.


ANGELA BENNETT
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**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.

Harry Anthony, Appellant.

Appellate Case No. 2012-206627

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2014-UP-388
Submitted September 1, 2014 – Filed November 5, 2014

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities:

1. As to whether the trial judge erred in denying Anthony's motion for a mistrial: *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996) ("If the trial judge sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured."); *State v. Patterson*, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999) ("Because a trial [judge's] curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient *or* move for a mistrial to preserve an issue for review."); *State v. Heller*, 399 S.C. 157, 174, 731 S.E.2d 312, 321 (Ct. App. 2012), *cert granted on other grounds*, S.C. Sup. Ct. Order dated May 23, 2014 ("No issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not *contemporaneously* make an additional objection to the sufficiency of the curative charge or move for a mistrial.").

2. As to whether the trial judge erred in failing to recuse himself: *State v. Jackson*, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003) ("If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal."); *State v. Langford*, 400 S.C. 421, 438, 735 S.E.2d 471, 480 (2012) ("[W]e will not presume the judge is partial simply because he was selected by the prosecutor, for adopting such a rule would conflate[] the appearance of partiality with actual partiality. In order to be entitled to relief, a defendant therefore must establish actual partiality and prejudice on the part of the judge." (second alteration in original) (citations and internal quotation marks omitted)); *State v. Cheatham*, 349 S.C. 101, 112, 561 S.E.2d 618, 624 (Ct. App. 2002) (determining the trial judge did not need to recuse himself based on Cheatham's accusation that "the solicitor acted improperly in choosing not to call the case before [a different judge]" because the solicitor's actions "did not affect [the trial judge's] ability to preside over Cheatham's case").

3. As to whether the trial judge erred in failing to give Anthony credit for time-served while he was on house arrest: *State v. Varner*, 310 S.C. 264, 265, 423 S.E.2d 133, 133-34 (1992) ("In the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed. The correct penalty is the one in effect at the time of sentencing, even if the penalty is repealed while appeal is pending. Thus, a criminal defendant receives the benefit of punishment mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced." (internal citations omitted)); *id.* at 266, 423 S.E.2d at 134

("[P]rospective application is presumed absent a specific provision or clear legislative intent to the contrary." (citation omitted)); S.C. Code Ann. § 24-13-40 (Supp. 2013) (containing no language about retroactive application).

AFFIRMED.¹

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

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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November 21, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Harry Anthony
Lower Court Case No. 2007GS4601072, 2007GS4601073,
2011GS4601074, 2007GS4601075
Appellate Case No. 2012-206627

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: David Alexander, Esquire
Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
The Honorable John C. Hayes, III

FORM 5

2015CP46-790

STATE OF SOUTH CAROLINA)

County of)

York County)

HARRY L. Anthony # 349291)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SCDAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2015 MAR 13 AM 11:49

FILED - RECEIVED 2015 MAR 16 AM 10:10

CERTIFIED TRUE COPY

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County C.I. S.C.
2. Name and location of Court which imposed sentence Sixteenth Judicial Circuit, York, S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007GS4601072 Dist. of Crack 2nd off

- (b) 200 765 460 1073 Dist. of Crack 2nd Off.
 (c) 200 765 460 1074 Dist. of Crack 2nd Off.
 (d) 200 765 460 1075 Dist. of Crack 2nd Off.

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 1/11/13 15 yrs
 (b) 1/11/13 15 yrs
 (c) 1/11/13 15 yrs (d) 1/11/13 15 yrs

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
 (b) ☒ after a plea of not guilty
 (c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence? (yes)

From the judgment of conviction

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. Court of Appeals State of S.C.
 ii.
 iii.

(b) the result in each such Court to which you appealed:

- i. Affirmed
 ii.
 iii.

(c) the date of each such result:

- i. Filed Nov. 5, 2014
 ii.
 iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i.
 ii.
 iii.

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) N/A

- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

1=#1 on
additional
pages

- (a) "the trial judge erred in denying Anthony's motion for a mistrial"
- (b) (see additional attached pages 1-19)
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

1=#1 on
additional
pages

- (a) S.C. Appeal Court ruled that the trial lawyer failed to make (over)
- (b) (see additional attached pages 1-19)
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application: N/A

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed: N/A
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof: *N/A*

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: *N/A*

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: *N/A*

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? *NO,*

15. If you answered "yes" to (14) identify: *N/A*

(a) which grounds have been presented: *N/A*

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised: *N/A*

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (see #16 on additional pages)
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Mr. B. J. Barrowclough, Public Defender's Office, 1675-1A York Hwy., York, S.C. 29745
 ii. Mr. Harry Dost, Public Defender's Office, 1675-1A York Hwy., York, S.C. 29745
 iii. Mr. David Alexander, Division of Appellate Defense, 1330 Lady St. Suite 401, Columbia, S.C. 29201-3332
 (b) the proceedings at which each such attorney represented you:
 i. trial and sentencing
 ii. trial and sentencing
 iii. Appellate Defense

19. State clearly the relief you seek in filing this application:

A Mistrial. The solicitor who cause the mistrial in State vs Parker, 341 S.C. 606, 707 S.E.2d 999, 900 (2011) is the same that elicited inadmissible character evidence in my case. Immediate release.

20. Are you now under sentence from any other court that you have not challenged?

N/D

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, HARRY ANTHONY, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Harry Anthony

SWORN to and subscribed before me this 10 day of March, 2015.

Delia Suris (L.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Harry Anthony, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

Harry Anthony
Harry Anthony
Applicant

SWORN or affirmed to and subscribed before me this
9 day of March, 2015.

Debra Jones
Notary Public

My Commission Expires: 11-4-2015

Issue #1

Applicant's trial counsel was ineffective for failing to make a contemporaneous motion for a mistrial or object to the curative instruction to preserve our first issue for appeal.

Relevant Facts

The trial judge should have granted a motion for a mistrial after the State elicited an inadmissible prior bad act from its first witness.

Prior to trial, the court discussed the defense's motion with the parties. Tr. 33, ll. 8-10. The State agreed that it would not elicit testimony from its witnesses regarding an alleged prior bad act by the applicant. Tr. 34, ll. 8-9. The solicitor told the court, "I do not intend to elicit that testimony on direct." The State's first witness, Lt. Hager, was in the courtroom during the court's discussion of the alleged bad act. Tr. 97, ll. 7-15. The applicant argued that Lt. Hager, since he was in the courtroom during the discussion on branding, intentionally injected the issue into the trial. Tr. 125, ll. 6-25 and Tr. 126 ll. 1-5. Trial counsel noted the officer's experience and that he was a sophisticated witness. Tr. 125, ll. 16-21. Trial counsel argued that a mistrial was required because the State intentionally placed the defendant's character in evidence.

Amazingly, the State agreed that Hager intentionally testified about the branding. The solicitor stated, "I don't believe it was an

Argument

The solicitor who caused the mistrial in Parker is the same solicitor who elicited the testimony about branding from Lt. Hager in this case.

In State v. Parker, 707 S.E. 2d 799, 800 (2011), the trial court granted a mistrial in part based on the solicitor's playing of an unredacted videotape containing graphic evidence.

Whether the prosecution intentionally elicits inadmissible evidence is a factor the court considers in determining whether to grant a mistrial. State v. Ferguson, 658 S.E. 2d 141, 103 (2008). Here, in this trial, the solicitor admitted that Lt. Hager intentionally mentioned the alleged prior bad act.

Issue #2

The applicant's trial counsel was ineffective for failure to:

1. investigate my defence
2. object to evidence obtained in violation of IV Amendment Right
3. move to suppress evidence obtained in violation of IV Amendment Right: of illegal search and seizures.

Relevant Fact:

The applicant's trial counsel did not consult with the applicant nor keep him informed

Argument

The videotapes gained by the illegal search and seizures were the one and only thing on which the State's case rested. The prosecutor had already admitted that his search warrants executed by police were indeed illegal in a letter he had written to applicant's then attorney, Melvin Roberts. Applicant also challenges the ability of the trial attorney to give up this or any of applicant's constitutional rights.

Issue³

Applicant's trial counsel was ineffective for failing to properly preserve the issue of applicant's appeal, which was ripe for a ruling, by the South Carolina Appellate Court.

Relevant Fact

The South Carolina Appellate Court had already decided that they would rule on applicant's appeal when and if the applicant was ever convicted.

Argument

This appeal made on the applicant's behalf by attorney, Melvin Roberts, is what the public defender (trial counsel) did not challenge in applicant's trial, unbeknownst and without applicant's consent. The fact that applicant generated this motion and actively pursued it for five years shows the intent and desire of applicant to see the appeal to an end and to not give up his constitutional rights. To do

Issue #4

Applicant's trial counsel was ineffective for failing to properly preserve the issue and move into evidence that the prosecutor withheld favorable evidence from the defense, which amounted to unethical behavior of the prosecutor.

Relevant Fact

The prosecutor stated to the jury: "Pat was Frank and honest with them (law enforcement) Tr. 75 11.4 and "She didn't have any motive to lie at that point '05 and '06. Tr. 191 11.12-13

Argument

This prosecutor, Mandy H. Lipinski, was the same who dropped "pointing and presenting firearms at a person" case # 1150299 2/07/2006 because the accuser Pat Littlejohn, the state's witness, lied. Thus the prosecutor displayed a reckless and willful disregard for the truth and a violation of code of conduct and ethics. This also a case where the prosecutor withheld favorable evidence to the defense.

Issue #5

Applicant's trial counsel was ineffective for failing to properly preserve the issue of perjury by the state's witness.

Relevant Fact

(5)

Argument

To be convicted by the lies of the state's witnesses. Is this justice? Is an argument really necessary? I hope to God not.

Issue #6

The applicant's trial counsel was ineffective for failing to:

1. properly preserve the issue of
 2. move into evidence
 3. object to
- the unethical behavior of the prosecutor.

Relevant Fact

After dropping gun charges, case # 1150299, 2/07/2006 because the accused, the state's witness in applicant's trial, lied. Instead of prosecuting the accuser for the crime, the prosecutor went right back to the same witness a few months later to enlist the witness to lie again in the prosecutor's own crime. Tr. 262 11.17-18.

Argument

The State's whole case was based on lies, by the prosecutor, Mr Littlejohn, Lt. Hager, and the witness who was not even involved in the case, although the prosecutor lied and said that he (Marvin Brown) was involved. Tr. 77 11.7-9

Issue #7

Relevant Fact

The selector (Ms Lipinski) states: Tr. 77 11. 7-9
 "You will hear the testimony of the other officers involved in this investigation."

Argument

Commander Marvin Brown stated: Tr. 164 11. 22-23

A. "I don't have a clue about any of this. I wasn't involved in that case."

Again the prosecutor tried to make Commander Brown's testimony seem credible and knowledgeable about this case to the jury, when in reality he knew nothing about it.

Issue^{#8}

Applicant's trial counsel was ineffective for failing to object to evidence given by the state's witness.

Relevant Fact

Of Ms Lipinski questioning of Lt Hager: Tr. 77 11. 24-25 + Tr. 98 11. 1-4

Q. "And did she (Ms Littlejohn) give you any information where you felt you might be able to obtain or locate any of these videotapes?"

A. "His primary residence, ... also Bookout Rd."

Argument

But Ms Littlejohn testified Tr. 136 11. 16-19

Q. "And did you tell them (law enforcement) where they might find these videotapes?"

(11)

Issue^{#9}

The Applicant's trial counsel was ineffective for failing to object to evidence provided by the collector as to where to find videotapes.

Relevant Fact

The prosecutor stated; Tr. 36 ll. 25 + Tr. 37 ll. 1-3.

"That is the result of her (Ms Littlejohn) statement.

Investigators with York Co. Sheriff's Office executed two search warrants, and went looking for these tapes, and there in located them."

Again to the jury she stated: Tr. 189 ll. 3-4.

"And she (Ms Littlejohn) led them (law enforcement) to the videos at Harry Brubaker's house."

Argument

But Ms. Littlejohn testified: Tr. 136 ll. 16-18.

Q. "And did you tell them (law enforcement) where they might find these videotapes?"

A. "I didn't."

Again the prosecutor lies. Again a display of recklessness and willful disregard for the truth. Again a violation of code of conduct and ethics. Again this is nothing short of criminal.

Issue^{#10}

The applicant's trial counsel was ineffective for failing to object to the collector's vouching for the state's witnesses' credibility.

The solicitor states: Tr. 193 II. 13-14

"Lt. Hager is a credible witness.

The solicitor states: Tr. 193 II. 14-15

"Commander Marvin Brown is a credible witness."

Argument

How is Mrs. Littlejohn credible after she perjured herself so many times on the stand? How is Lt. Hager credible after his perjury on the witness stand and as a sophisticated witness the mention of alleged prior bad acts that he had agreed not to mention? Commander Marvin Brown by his own testimony. Tr. 164, II. 22-23.

A. "I don't have a clue about any of this.

I wasn't involved in that case."

Issue #11

The applicant's trial counsel was ineffective for failing to preserve the issue of a direct verdict and a mistrial.

Relevant Facts

Mrs. Barron clough's motion: Tr. 167, II. 21-25 & Tr. 168, II. 1-2

"Your Honor, at this time on behalf of Mrs. Barron, I would move for directed verdict on the basis that the evidence seen in the light most favorable to the State is not sufficient in this case to go to the jury. And I would incorporate my prior motion which I think is my number one motion, which was for

"There are no drugs. So there will be no chemist to say that 'we seized the crack cocaine, and we tested it, and beyond a reasonable doubt, that is it."

The trial judge stated to the jury: Tr. 68, 11.24-25

"The state must prove its (applicant's) guilt beyond a reasonable doubt..."

If beyond a reasonable doubt can not be proved and without the lies of the star witness (Ms Littlejohn), of Lt. Hager and the prosecutor the outcome of the trial would have been completely different.

Since this trial was based on supposition and there were no drugs or drug paraphernalia the motion made by Mr. Barrowclough of a direct verdict with the incorporation of his prior motion for mistrial on the commentary about the branding was proper.

Issue #32

The applicant's trial counsel was ineffective for failing to object to evidence obtained from the testimony of state's witness, Ms. Littlejohn, and thus failing to move this testimony into evidence.

Relevant Facts

Upon questioning, Ms. Littlejohn stated: Tr. 134, 11.16-23

Q. And in 2005, did you ever come to obtain crack cocaine from Mr. Anthony?

A. Yes.

Q. And where did you know him to live at that time?

Mrs. Lipinski stated: Tr 40, 11.10-16

"... and as a result would go to his cousin's residence at 4209-N Rockport Road. When law enforcement went there and began to search, they located a bedroom. In that bedroom, there are things about that bedroom that are idiosyncratic that demonstrate that, that is the bedroom where a large portion, if not all, of some of these tapes occur.

Argument

If drugs are not given by the applicant at the Rockport Road residence as the witness testified, then why are the videos at that location shown? They have no relevancy other than to prejudice and highly inflame the jury.

If videos are shown to depict that crime and at that location the witness testified that no crime occurred there. How then is the applicant guilty of something the witness plainly testified to, that he did not do?

Issue #13

The applicant's trial counsel was ineffective for failing to properly preserve the issue of the violation of applicant's constitutional rights.

Relevant Facts

In violation of Federal laws applicant's VI amendment rights, VII amendment rights, and his XIV amendment rights were violated and denied.

speedy trial. Throughout applicant's trial he was denied any of the applicant's witnesses in his favor. During the cruel and unusual punishment of his extended house arrest, the confiscation of his car for a year for no other reason other than punishment, the pressuring of applicant to plead and the threatening of his family. He was denied within this jurisdiction the equal protection of the law during four attempts on applicant's life by law enforcement and the execution of false and unwarranted arrests and jailing. These allegations can be substantiated by hospital, jail, court and police report records.

Issue #14

The applicant's trial counsel was ineffective for failing to object to the prosecutor's unethical behavior and suppression of evidence.

Relevant Fact

The solicitor tells the jury: To 181, 11.18.21

"Who -- Do you ever see Patricia go to her purse and go, 'Oh Harry look at what I brought. Let me smoke -- and let me give it to you. Let me share it with you. No.'"

Argument

The jury never see it because the solicitor never showed it. The solicitor had knowledge of the video.

Issue #25

The applicant's trial counsel was ineffective for failing to preserve for appellate review the issue of time served under house arrest.

Relevant Fact

Applicant's entitlement to receive more than five years credit for time served on house arrest was not preserved for appellate review.

Argument

The things that applicant's trial counsel failed to do for the applicant's benefit seems more and more a concerted effort of the trial counsel to wrong the applicant than to help. One error, OK. Two errors, maybe, but error after error after error is no coincidence, it shows intent.

Issue #16

The applicant's trial counsel was ineffective for failing to investigate applicant's accusations and witnesses.

Relevant Fact

The solicitor stated to the jury: Tr. 176, 11.23-25

"You've seen the challenge by not only Mr. Barrowclough, but Mr. Dest. And they have uncovered no impropriety. They have revealed nothing untoward to you."

had even signed a statement of being told of this along with a list and addresses of witnesses who would verify these allegations. The defense counsel did not interview those witnesses or inform the applicant that those facts could be used as a defense.

Issue #17

The applicant's trial counsel was ineffective for failing to move into evidence and investigate applicant's medical records and history of disabilities, of being a vulnerable adult.

Relevant Facts

In my trial counsel's rush to make his determination that the applicant was in "alright" medical health, he failed to get an expert opinion or evaluation on any medical facts at all of the applicant's condition or diminished capacity.

Argument

Since being in the state's custody, applicant have spent almost all of his time in palliative care. The state's own doctors concur with applicant's assessment of his health conditions. Applicant will have had major surgery by the time this application is received just to try to keep him alive. If the trial counsel can look at applicant and make a determination that he was alright, then his diagnosis

Issue #18

The applicant's trial counsel was ineffective for failing to investigate and challenge the evidence of no crack cocaine and the seizure of videos, info. provided by the solicitor.

Relevant Facts

The solicitor stated: Tr. 87, 11.6-8

"They can challenge that there was no crack cocaine. I understand that's fair game. They can even challenge when they seized the videotapes of the victim."

Argument

Even with the solicitor supplying possible defenses the trial counsel failed to investigate and challenge this given information for the applicant's favor and benefit.

Issue #19

The applicant's trial counsel was ineffective for failing to prepare for trial and object to argument made by the solicitor of "no motive for Mr. Littlejohn to lie."

Relevant Fact

The solicitor made the argument that: Tr. 196, 11.12-13

"And look at it, '05 and '06. She (Ms. Littlejohn) didn't have any motive to lie at that point."

Argument

was untrue, the trial counsel would have been prepared to object, knowing the partial reasoning behind all of Mr. Littlejohn's lies and actions.

Issue #20

The applicant's trial counsel was ineffective for failing to object to selector's selective and retaliatory prosecution.

Relevant Facts

After not being able to bring murder charges against applicant, the selector held him under house arrest for five years as punishment; this action was both malicious and vindictive.

Argument

The state's star witness (Mr. Littlejohn) had made false statements to police about a lady on Booker Road, that applicant had committed murder, had made a false accusation that applicant had assaulted her with a gun, had also filed false charges against the applicant, even when as far as to implicate herself in a crime and include the applicant, to give the selector grounds to selectively and retaliatorily charge only the applicant. Thus showing a malicious use of the selector's position.

Issue #21

The applicant's trial counsel was ineffective for

Relevant Facts

The applicant was not allowed to shower, change clothing, made to sleep in then wear the same clothing, not allowed to comb his hair nor brush his teeth, or allowed any kind of hygienic care for the duration of his three day trial.

Argument

These prejudicial and abusive actions make the defendant (applicant) appear to be a drug addict. Like the state was trying to make him appear to be a criminal at the jury. Thus placing him in a bad light before the jury.

Issue #2

The applicant's trial counsel was ineffective for failing to object to evidence of the dates of the video tapes.

Relevant Fact

The solicitor stated: Tr. 39, ll. 21-25

"Of course the state is not able to corroborate in any way the date stamps on them (video tapes). I believe Mrs Littlejohn's testimony..."

Argument

If the date can not be corroborated, then how were the dates arrived at? Only by Mrs Littlejohn's testimony? Already her testimony under the most lenient scrutiny is suspect.

Relevant Fact

The solicitor ask Ms Littlejohn: Tr 133, ll. 13-14

Q. "And you don't have to list your specific address, but do you now live here and city is York?"

A. "Yes."

Argument

Rule 5 of the S.C. Rule of Criminal Procedures say.

"Name and present address of witness given at the trial." The witness name is not the one given, it is not Patricia D. Littlejohn but Patricia D. Little and no address was ever given because she was homeless and working as a prostitute.

The solicitor seems to have an aversion to following the rules.

Issue #24

The applicants trial counsel was ineffective for failing to object to witness (Ms. Littlejohn) perjuring herself on the witness stand when asked if she worked as a prostitute.

Relevant Fact

Ms Littlejohn was asked by Mr Barrowclough: Tr 142, ll. 3-5

Q. "And would it be true that you at some point in 2005 were working as a prostitute."

A. "No."

Argument

At the time of questioning Mr Barrowclough had

Issue #25

The applicant's trial counsel was ineffective for failing to object to the trial judge wrongfully charging applicant at his trial.

Relevant Fact

The judge charged: Tr. 227, 11.21-24 & Tr. 218, 11.20-21.

"The term 'distribute' mean to deliver, or to actually or constructively, or attempt to transfer a drug other than by administering it or dispensing it."

Argument

The prosecutor states: Tr. 181, 11.6.

"... and tilt Patricia's head up so she could smoke it?"

and Tr. 194, 11.17-18.

"... see him hold her head up so she can do it;"

Webster's Dictionary says: administering = to mete out: Dispense.

Is this not what is taking place as described by the prosecutor's own words? Although the applicant still denies that it is the substance which the prosecutor assumes, the action described is none the less an act of administering just as the judge charged.

There is nothing mentioned by the judge of sharing as charged by the prosecutor. Tr. 179, 11.10-11.

"... and again the judge is going to charge you that all is required for distribution is sharing," the solicitor tells the jury.

Again the solicitor tells the jury: Tr. 74, 11.3-5.

(19)

Issue #26

The applicant's trial counsel was ineffective for failure to object to the solicitor's closing remarks that were interlarded with examples of speculations.

Relevant Facts

The solicitor stated: Tr. 186, 11.17-19

"Maybe he (applicant) just doesn't keep his crack at his momma's house. Maybe whenever he got crack, he went and got it from a and he smoked it. I don't know."

Again the solicitor stated: Tr. 186, 11.22-25

"Is it possible after the first time that they searched his (applicant's) house, he said, 'You know what? Even if I had any crack still on me, I better get rid of it.'"

Argument

The solicitor's whole case was based on supposition and speculation. In the absence of evidence, she painted "what if", "suppose it happened this way", and "maybe it was" scenarios for the jury to imagine, fortified with her and her witnesses' lies. In the absence of proof there was no other way to secure a verdict in her favor. A verdict achieved unethically, in violation of a code of conduct and one that was achieved criminally.

(2)

3. object to
the unethical behavior of the prosecutor.

Issue #7

Applicant's trial counsel was ineffective for failing to object to evidence elicited by the solicitor.

Issue #8

Applicant's trial counsel was ineffective for failing to object to evidence given by the state's witness.

Issue #9

The applicant's trial counsel was ineffective for failing to object to evidence provided by the witness as to where to find videotapes.

Issue #10

The applicant's trial counsel was ineffective for failing to object to the solicitor's vouching for the state's witnesses's credibility.

Issue #11

The applicant's trial counsel was ineffective for failing to preserve the issue of a direct verdict and a mistrial.

Issue #12

The applicant's trial counsel was ineffective for

(31)

Issue #13

The applicant's trial counsel was ineffective for failing to properly preserve the issue of the violation of applicant's constitutional rights.

Issue #14

The applicant's trial counsel was ineffective for failing to object to the prosecutor's unethical behavior and suppression of evidence.

Issue #15

The applicant's trial counsel was ineffective for failing to investigate applicant's accusations and witnesses.

Issue #16

The applicant's trial counsel was ineffective for failing to move into evidence and investigate applicant's medical records and history of disabilities, and his being a vulnerable adult.

Issue #17

The applicant's trial counsel was ineffective for failing to investigate and challenge the evidence of no crack cocaine and the seizure of videos, information provided by the solicitor.

Issue #18

The applicant's trial counsel was ineffective for failing to prepare for trial and object to argument made by the solicitor of "no motive for Mr. Little to kill

(4)

Issue #20

The applicant's trial counsel was ineffective for failing to object to solicitor's selective and retaliatory prosecution.

Issue #21

The applicant's trial counsel was ineffective for failing to object to the mistreatment of applicant while being held during trial.

Issue #22

The applicant's trial counsel was ineffective for failing to object to evidence of the dating of the videotape.

Issue #23

The applicant's trial counsel was ineffective for failing to object to the solicitor not following S.C. Rules of Criminal Procedure.

Issue #24

The applicant's trial counsel was ineffective for failing to object to witness (Ms. Littlejohn) perjurying herself on the witness stand when asked if she worked as a prostitute.

Issue #25

The applicant's trial counsel was ineffective for failing to object to the trial judge wrongfully charging applicant at the trial.

(5)

All of previous issues were not preserved
during the trial for appellate review.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-790
Harry L. Anthony,	)	
S.C.D.C. No. 349291,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 13, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the April 2007 term of the York County Grand Jury for four counts of distribution of cocaine base (20070-GS-46-1072, -1073, -1074, and -1075). Applicant was represented by B.J. Barrowclough, Esquire, and Harry Dest, Esquire. On January 9-11, Applicant proceeded to a jury trial before the Honorable John C. Hayes, III. Applicant was found guilty on all four counts. Judge Hayes sentenced Applicant to imprisonment for fifteen years on each charge, to run concurrently.

Applicant timely filed a notice of appeal and an appeal was perfected by Appellate Defender David Alexander, who filed briefs on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's convictions by an Unpublished Opinion filed November 5, 2014. State v. Anthony, Op. No. 2014-UP-388 (Ct. App. filed November 5, 2014). The Remittitur was issued November 21, 2014.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the

attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's trial counsel was ineffective.

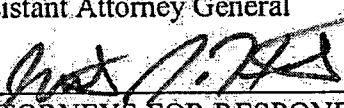
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

 , 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2015-CP-46-0790

HARRY ANTHONY, #349291

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

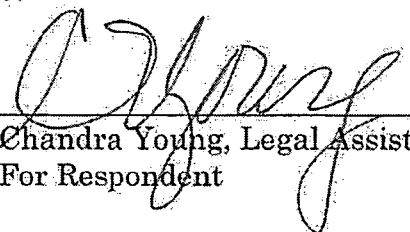
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
235 East Main Street, Suite 115
Rock Hill, SC 29731

DATED this 30th day of December, 2015.


Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Harry Anthony, # 349291)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-46-790

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

LEAH B. MOODY, Bar No. 12141

Address:

Law Office of Leah B. Moody, LLC
235 E. MAIN STREET, SUITE 115
Phone: 803-327-4192 Fax 803-329-1344
E-mail: LBMATTY@comporium.net Other: _____

Defendant's Attorney:

Justin Hunter, Bar No. _____

Address:

SC Attorney General's Office
POB 11549
Columbia, SC 29211
Phone: 803-737-970- Fax _____
E-mail: _____ Other: _____DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2016 APR 12 PM 2:39

FILED-RECEIVED

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend PCR

Estimated Time Needed: 10 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☒ Defendant

04/08/2016

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Harry Anthony, #349291,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Motion to Amend Post Conviction Relief
C.A. No.: 2015-CP-46-790

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

APR 12 PM 2:30

FILED-RECEIVED

To: Justin Hunter, South Carolina Attorney General, and York County Clerk of Court for entry of record:

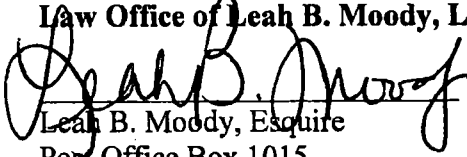
The Applicant, by and through the undersigned counsel, hereby moves the Court for an order permitting him to amend the application for post-conviction relief to include the following additional grounds for relief:

Applicant's Trial Counsel was ineffective assistance of counsel for the following:

1. Failed to file a timely motion to suppress illegally obtained evidence by a defective search warrant, denying Applicant constitutional right.
2. Failed to impeach state's key witness which was a denial of effective assistance of counsel and a violation of Applicant constitutional right.
3. Failing to litigate Applicant right to privacy.
4. Failing to object to addict's testimony without the required cautionary instructions, a violation of applicant's constitutional rights according to the 4th amendment.
5. Failing to object to the state failing to deny applicants constitutional right to a speedy trial's
6. Failing to object to the distribution of cocaine based(crack) indictments being constitutionally overbroad and vague, a violation of Applicant's constitutional rights

7. Failing to object to solicitor's improper vouching, because witness's credibility was clearly questionable thus denying Applicant's constitutional right.
8. Failing to disclose material fact to defendant, and to introduce available evidence to the jury, thus violating Applicant's constitutional right.
9. Failing to object to the indictment. The crime for which he was accused did not meet the elements of the indictment and he denied 6th amendment right.
10. Failing to object to the prosecutor to the prosecutor arguing inadmissible evidence to the jury, thus violating my constitutional right according to the 6th amendment.
11. Failing to competently litigate my illegal search and seizure claim thus violating my constitutional right according to the 6th amendment.
12. Failing to object to the court's erroneous jury instructions which was a denial of effective assistance of counsel, a violation of Applicant's constitutional right.
13. Failing to advise defendant of improbability of acquittal and benefit of plea bargain when defendant faced potential sentence twice as long as that offered under plea agreement, thus violating Applicant's right.
14. Trial court erred in denying Applicant's motion for a directed verdict as to the drug charges.
15. The prosecutor failed to disclose material evidence affecting the credibility of the state's witness.

Respectfully submitted,
Law Office of Leah B. Moody, LLC



Leah B. Moody, Esquire
Post Office Box 1015
Rock Hill, SC 29731
Telephone: (803)327-4192
Facsimile: (803) 329-1344
lbmatty@comporium.net

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF YORK

4 2015-CP-46-0790

5 Harry Anthony

6 vs.

7 State of South Carolina

8

9 York, South Carolina

10 April 18, 2016

11 Before the Honorable Frank Addy

12

13 APPEARANCES

14 For the State: Justin Hunter

15 For the Applicant: Leah Moody

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

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HARRY ANTHONY - DIRECT

1	Harry Anthony:	4
2	B. J. Barrowclough:	39
3	Certificate:	67
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HARRY ANTHONY - DIRECT

1 MR. HUNTER: Is this Harry Anthony versus State of
2 South Carolina, 2015-CP-46-790. Your Honor, he was
3 indicted at the May 2014 term of the York County grand jury
4 for four counts of distribution of cocaine base, those were
5 in -- I apologize if I said 2014 -- once second, Your
6 Honor. This was the 2007 term of the York County grand
7 jury, four counts of distribution of cocaine base, those
8 were 2007-GS-46-1072, 1074, 1075, 1073. Your Honor, he was
9 represented by Mr. B. J. Barrowclough and Mr. Harry Dest.
10 On January 9th through 11th of 2012 he proceeded to a jury
11 trial before Judge Hayes. Subsequently he was found guilty
12 on all four counts and was sentenced to imprisonment for 15
13 years on each charge to run concurrently. He did file a
14 direct appeal and his convictions were affirmed by
15 unpublished opinion filed November 5th, 2014. Your Honor,
16 he filed this current action on March 13th, 2015. He is
17 represented by Ms. Leah Moody and is present in the
18 courtroom today.

19 THE COURT: Ms. Moody, are you ready to proceed?

20 MS. MOODY: Yes, sir, Your Honor. I would just like
21 to put on the record that I filed an amended -- a motion to
22 amend the post conviction relief, and that was filed and
23 clocked with the clerk of court -- it was filed on April
24 8th, 2016, and the clocked copies I received back from the
25 clerk showing it was received by the Court on April 12th of

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1 2016.

2 THE COURT: All right, very good. Do you care to call
3 your first witness?

4 MS. MOODY: Yes, sir, Your Honor. I would call Harry
5 Anthony.

6 THE COURT: Sir, if you would come forward and have a
7 seat right over here, please.

8 The witness, HARRY ANTHONY, was first duly sworn and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MOODY:

12 Q Mr. Anthony, could you please state your full name for
13 the record?

14 A Harry Lawrence Anthony.

15 Q You need to talk into that microphone so he can record
16 everything you're saying.

17 A Harry Lawrence Anthony.

18 Q And you're currently incarcerated at what correctional
19 facility?

20 A Perry Correctional Institution.

21 Q It is where?

22 A In Pelzer, South Carolina.

23 Q And you are there based off of the charges that you
24 had a trial, correct?

25 A That's correct.

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- 1 Q Can you say to the Court the charges?
- 2 A Possession with intent to distribute crack cocaine.
- 3 Q Any other charges -- how many charges are you --
- 4 A Four.
- 5 Q Four counts of distribution.
- 6 A That's right.
- 7 Q Okay. And you were represented in your trial by B. J.
- 8 Barrowclough?
- 9 A That's right.
- 10 Q And was he your only attorney?
- 11 A No, Harry Dest.
- 12 Q And the two of them in your trial they represented
- 13 you, but did you have another attorney?
- 14 A Not representing me at a trial, no.
- 15 Q From the point that you were arrested did you have
- 16 another attorney?
- 17 A Yes.
- 18 Q Who was that attorney?
- 19 A Melvin Roberts.
- 20 Q And how far did Mr. Roberts represent you?
- 21 A He represented me for five years.
- 22 Q And then around the end of five years you went to
- 23 trial on this case?
- 24 A Right after he was killed, yes, I was rushed to
- 25 trial.

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1 Q You were what?

2 A Rushed to trial right after his death.

3 Q Okay. And at that time you had Harry Dest and B. J.
4 Barrowclough?

5 A That's right.

6 Q And we're here today on the post conviction relief
7 action against B. J. Barrowclough.

8 A Right.

9 Q And in your post conviction relief you allege that
10 your counsel was ineffective assistance, correct?

11 A That's right.

12 Q And you have a number of issues that you indicate that
13 go to the ineffective assistance of counseling?

14 A Yes, ma'am.

15 Q Can you begin with the first issue that you have as it
16 relates to Mr. Barrowclough?

17 A Yes. He failed to subject the prosecution to an
18 adversarial testing, that's my first issue.

19 Q I'm sorry, you'll have to speak up, it's very hard to
20 hear.

21 (a new roof on the was being put on the Moss Justice
22 Center, they were working right over the courtroom
23 During this hearing and a lot of knocking and banging
24 Was happening.)

25 THE COURT: I'm sorry about the knocking, sir, just

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1 speak as loudly as you can, sir.

2 A He failed to subpoena the prosecution's case to
3 adversarial testing.

4 Q And can you explain to the Court what that means?

5 A That means that he didn't object to -- make timely
6 objections. He didn't object to inadmissible evidence
7 that the prosecution made. He didn't make timely motions
8 to suppress evidence from the search.

9 Q So let's stop right there. He didn't -- he failed to
10 timely file a motion to suppress and illegally obtain
11 evidence by the defective search warrant?

12 A Yes, ma'am.

13 Q And it denied you of your constitutional right?

14 A That's right.

15 Q And what specifically about the search warrant did you
16 want the Court to hear?

17 A There was no probable cause for the search warrants.

18 Q Was this search warrant of your house?

19 A Yes, ma'am, of my house and of the seizure of tapes
20 that were used in my trial.

21 Q So you wanted him to suppress the tapes?

22 A Yes, ma'am. Because there was no probable cause for
23 the seizure of those tapes.

24 Q And can you give us a little more information about
25 what you mean by that?

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1 A The search warrant for my residence was to aide in a
2 missing person investigation, the tapes had nothing to do
3 with the missing person.

4 Q But you were not ultimately tried about the missing
5 person's --

6 A No. I had nothing to do with the missing person.

7 Q And so at the trial for the distribution of crack
8 cocaine the four counts, you feel that that came in to
9 play?

10 A Yes, because the tapes were illegally seized. They
11 had nothing to do with the search warrant that was issued
12 at my house, they had nothing to do with why the search
13 warrant was issued at. My house -- the search warrant was
14 issued to aide an investigation of a missing person, but
15 they secured those tapes by searching for evidence of
16 another crime. And the statute, it requires that you
17 search for evidence of a crime, but the search warrant
18 that they issued at my house wasn't the search for a
19 crime, it was to search for a missing person.

20 Q Did you discuss this with Mr. Barrowclough?

21 A No. He didn't discuss anything about my trial,
22 that's what was --

23 Q So you mean to tell me that when you went to trial you
24 didn't know anything that was going to be used against you
25 in the trial?

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1 A No, ma'am. When I went to trial he called me into
2 his office about a few days before trial, he asked he --
3 he told me, he said, "Mr. Anthony, your trial is Monday."
4 I said, "Okay, good. I have been under house arrest for
5 five years, I want to have my day in court, I want to
6 testify." He said, "Mr. Anthony, I have your case already
7 won." I said, "Yes, but I want to tell my side of the
8 story." He said, "You want to win your case, don't you?"
9 And I said, "Yes, of course I want to win my case." And
10 he said, "I know more than you, I'm a lawyer." And I
11 said, "Well, that's true. I've had heart trouble, I'm
12 disabled as of 2004, I had brain damage, and there's no
13 way that I know more than you." He said, "All right then,
14 I've got your case won. Come to court Monday, sit there,
15 don't say anything and I have your case won."

16 Q So you didn't ask him how he was going to win your
17 case?

18 A Well, like I said, I got brain damage, I know very
19 little about the law.

20 Q And I understand that. But I'm asking you, did you
21 ask him how he planned to proceed in your trial?

22 A No, ma'am. All I knew -- I went under the assumption
23 that he knew what he was talking about. He was
24 representing me, he was supposed to be my advocate. He
25 tells me, "I've got your case won," I believe him.

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1 Q So one of the issues that you allege that your
2 attorney failed to do was he failed to litigate your right
3 to privacy.

4 A Yes.

5 Q Can you tell the Court what you mean by that?

6 A Those tapes were mine, they were mine. They were
7 taken of me and a young lady that I had been in a
8 relationship with for 18 years.

9 Q And what's that young lady's name?

10 A Patricia Littlejohn. For 18 years. And there was no
11 reason for those tapes to be seized and put on display,
12 they had nothing to do with the search warrant which was
13 to aide in an investigation of a missing person.

14 Q Okay. Well, let's focus back in on the trial. How
15 were those tapes used and how did it violate your privacy?

16 A The tapes were used to prosecute me of a crime that
17 wasn't embodied in the search warrant.

18 Q Okay. You wanted your attorney to --

19 A Suppress those.

20 Q But one of your issues is he failed to litigate your
21 right to privacy.

22 A That's right, because --

23 Q So that goes with your motion to suppress.

24 A Yes, ma'am, because that's privacy. Those tapes are
25 private affairs in the privacy of my home and of my

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1 bedroom. The State had no reason to come into my house
2 and seize private matters that was between me and another
3 young lady who had consented to engage in that.

4 Q Engage in what?

5 A In the matters that -- personal matters, sexual
6 matters.

7 Q Okay. Well, you need to tell the Court because the
8 Court needs to understand what you're talking about.

9 A Sexual matters that was personal and private and it
10 shouldn't have been displayed for everyone to see. That's
11 private, that's private.

12 Q Okay. Well now, was it displayed for everyone to see?
13 When you say everyone, you mean the jury?

14 A Yes. The jury, the police, prosecution, anybody who
15 they wanted to see, everybody saw it, you know.

16 Q In the trial.

17 A Yes, ma'am.

18 Q And so they saw the full tapes?

19 A No, they did not, they saw redacted. They saw just
20 the things that the prosecution wanted them to see. If
21 they would have shown the entire tapes then they would
22 have seen that what they were prosecuting me for was not
23 legitimate, because I did not possess drugs. Hey, they
24 cut that out.

25 Q Okay. Another one of your allegations against your

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1 lawyer is he failed to object to the addicts, and the
2 addict being Ms. Littlejohn?

3 A Yes, ma'am.

4 Q Ms. Littlejohn's without the required cautionary
5 instructions, and that was a violation of your
6 constitutional rights according to the Fourth Amendment?

7 A Yes, ma'am, exactly.

8 Q How is that a violation of your Fourth Amendment
9 rights?

10 A Ms. Littlejohn I found out later was an addict, okay?
11 She wanted me to finance her addiction.

12 Q This is the same lady that you had an 18 year
13 relationship with.

14 A Yes, ma'am.

15 Q Okay.

16 A I couldn't do that and I wasn't going to do that.

17 Q You weren't going to do what?

18 A Finance her addiction.

19 Q And so you wanted your lawyer to object to her
20 testimony?

21 A I think that -- well, an addict's testimony isn't --
22 she's going to say whatever helps her, I'm saying that to
23 say this, that she wasn't prosecuted.

24 Q She was a witness in your trial.

25 A Yeah, she was a witness against me.

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1 Q Okay. And you didn't want the State to call her as a
2 witness.

3 A No, because she was lying.

4 Q Well, wait a minute, let me be clear, you didn't want
5 her to come to the witness stand at all, or you wanted him
6 to object to her statement -- maybe one or two statements
7 that she made from the stand? Which one is it?

8 A As a hostile witness I think maybe all of her
9 testimony.

10 Q Well, she wasn't testifying for you. I'm asking you
11 if you wanted Mr. Barrowclough to object to her even
12 testifying at all?

13 A I wanted --

14 Q I'm asking you.

15 A I wanted him to have the Judge give the jury
16 cautionary instructions as to an addict's testimony,
17 that's --

18 Q Did you tell Mr. Barrowclough this?

19 A I didn't get to tell Mr. Barrowclough anything.

20 Q Why not?

21 A Because he didn't discuss my case with me at all. He
22 just told me, "Come to court, don't say anything, I've got
23 your case won." We never discussed the strategy, we never
24 discussed any information about my case. Even when I gave
25 him witnesses -- a list of witnesses he said, "I don't

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1 need that. I've got your case won. I don't even need
2 that."

3 Q So are you saying that when you were in the courtroom
4 that you didn't talk to your lawyer.

5 A I did once, and we went outside -- the Judge let us
6 conference, I said, "I want to testify," and he said, "No.
7 I've got your case already won, so no."

8 Q So this is the second time he tells you that.

9 A Yes. It's when I made -- the Judge asked me -- when
10 I asked the Judge if I could confer with Mr. Barrowclough
11 and he let me, we went outside the door and talked. I
12 said, "I want to testify, I want to tell my side of the
13 story." He said, "No. I've got your case already won,"
14 he said, "Don't, no, no."

15 Q And so you decided not to.

16 A Well, he was my attorney.

17 Q I'm just asking. This Judge was not there at your
18 trial so you need to be clear. Did you not testify?

19 A No, I didn't testify.

20 Q Okay. So you also indicated that your lawyer failed
21 to object to the State failing to deny your constitutional
22 rights to a speedy trial. Now, just a few minutes ago you
23 said that you were rushed to trial. At what point are you
24 saying that you requested a trial and they denied your
25 right to a speedy trial?

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1 A In 2008 Mr. Melvin Roberts, he filed a motion to
2 dismiss because of the State not prosecuting. He also had
3 numerous communications with the solicitor where he tried
4 to arrange dates for my trial.

5 Q So as to -- so that was something that Mr. Roberts was
6 working on was a speedy trial. But then when you got to
7 Mr. Barrowclough, are you saying that they were supposed to
8 continue but -- you're contradicting yourself as to your
9 speedy trial. If they rushed you to a trial that means
10 they were trying to get you a trial.

11 A All right. The indictments were from 2004, my trial
12 wasn't until 2012. From 2004 to 2012 we tried -- Mr.
13 Roberts tried to get me a trial date.

14 Q But Mr. Barrowclough was not your attorney, so how is
15 it him that -- it's Mr. Barrowclough that failed to give
16 you a speedy trial?

17 A No, Mr. Barrowclough didn't. After Melvin Roberts
18 was killed I was rushed to trial then.

19 Q So --

20 A I'm talking about the speedy trial while Melvin
21 Roberts was my attorney.

22 Q But Melvin Roberts is not who you PCR'd.

23 A All right, I understand that.

24 Q So would you like to withdraw that?

25 A Yes, I would.

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1 Q You also indicate that your attorney failed to object
2 to the distribution of cocaine base crack indictments being
3 constitutionally overbroad and vague and a violation of
4 your constitutional rights.

5 A Yes. According to the Melendez Diaz objection, only
6 an analyst's testimony can substantiate the fact that the
7 substance was cocaine, and there was no analyst's
8 testimony to verify that fact.

9 Q So as to the indictment you wanted him to move to
10 quash the indictment?

11 A Yes, ma'am, exactly.

12 Q And did you discuss that with him?

13 A As I said before, I didn't get to discuss anything
14 with Mr. Barrowclough, he just said, "Hey, I've got your
15 case won." We didn't discuss no strategy or nothing about
16 my case.

17 Q And if you would have discussed with Mr. Barrowclough
18 your strategy on your case, what would your defense have
19 been for your case?

20 A My defense would have been to quash the indictment
21 because they were overbroad and vague, they were
22 unspecific as to when the allegations occurred. There was
23 no way I could defend myself against those charges because
24 they didn't specify when it was, I could have had an alibi
25 for those cases. As you see against the gun charges that

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1 Ms. Littlejohn brought against me, it had a date and then
2 all we had to do was look on the date and we found out
3 that her witness was in jail, so hey, I could put up a
4 defense if I had known the times and dates of these
5 allegations. But they were so overbroad that how could
6 I -- I could have said, "Hey, I've got a defense for
7 October 22nd." They said, "It's not October 22nd." I
8 said, "Well, I've got one for November," and they said,
9 "It wasn't November." They don't specify when the alleged
10 crimes took place, how can I defend against something when
11 I don't know when it was supposed to take place?

12 Q Did you have opportunity to see the indictments prior
13 to trial?

14 A No.

15 Q At trial did you get to see them?

16 A No, I didn't see anything.

17 Q Another allegation that you have is that your attorney
18 failed to object to the solicitor's improper vouching
19 because the witness' credibility was clearly questionable,
20 basically thus denying your constitutional rights.

21 A Yes, I objected to her bolstering. Because all
22 during the trial she was mentioning to the jury that the
23 police was coming to my house to search this time and that
24 time for reasons that they did not say, you know. They
25 were leading the jury to believe that I was a criminal

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1 that they were investigating for crimes that they had
2 information about that they wouldn't let a jury know, and
3 that was false, you know. That was something that he
4 should have objected to, I feel.

5 Q Okay. Anything else on that issue?

6 A I would like to state for the record that I didn't
7 never have a chance to get all of my discovery so I could
8 properly prepare for this hearing. I needed to have my
9 information, my discovery so I could properly prepare and
10 that was denied me. How could I put up a defense, you
11 know, when my hands are tied?

12 Q Do you have your transcript?

13 A Yes, I have my transcript.

14 Q So the transcript shows what happened in trial, right?

15 A Yes. But now --

16 Q Hold on. My question is, you indicated that your
17 lawyer failed to object to the solicitor's improper
18 vouching because the witness' credibility was clearly
19 questionable thus denying you your constitutional right.

20 A Yes, ma'am.

21 Q Is there anything else you would like to add on that
22 issue? If the answer is no, that's fine, but is there
23 anything else to add on that issue?

24 A No. I'm just trying to get my thoughts together.

25 Like I said, I'm disabled and I have brain damage and it

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1 takes awhile sometimes to get things from here to here,
2 that's what I'm saying. I'm sorry for my disability but I
3 am disabled.

4 Q Okay. Well, let's move on to the next issue, and if
5 you think of anything else we'll come back to that issue,
6 okay?

7 A Thank you.

8 Q You allege that your attorney failed to disclose
9 material facts to the defendant and to introduce available
10 evidence to the jury which violates your constitutional
11 rights.

12 A Yes, ma'am.

13 Q What do you mean by that?

14 A I mean that there was evidence to clearly show that I
15 was innocent of these charges. He never introduced it to
16 the -- for the jury's consideration.

17 Q So what was that evidence?

18 A It was evidence of -- I was charged with possession
19 with distribution. On the tapes it clearly shows that I
20 did not possess the substance in question.

21 Q So you're saying that your attorney did not present
22 those videos?

23 A He did not present that part of the video, he allowed
24 that part to be cut out and he didn't object to that. I
25 think that all of the evidence that was relevant to that

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1 to show my innocence should have been shown for the jury's
2 consideration, because if they would have seen the truth,
3 no, I would have never been convicted.

4 Q So you wanted him to move to suppress the search
5 warrant or the evidence obtained through the search warrant
6 that was used for another investigation, but is it those
7 same videos you wanted the Court to allow the jury -- or
8 your attorney to have the jury review?

9 A If he would have suppressed the tapes the jury -- the
10 prosecution would not have had a case to begin with
11 because that -- those tapes were vital to their case.

12 Q But you're saying if they came in.

13 A If they would have came in, then yes, they should --
14 all the tapes should have been showed so that the truth
15 would have come out. Because you can redact and show and
16 cut tapes to show anything you want them to mean, to
17 display, but if you show them entirely the whole truth
18 will come out in there.

19 Q Okay. So now as to this, did you know about the
20 tapes?

21 A Yes, I took the tapes.

22 Q But you're alleging that your attorney failed to
23 disclose a material fact to you, the defendant. So did you
24 know about the tapes?

25 A Yes, I knew about the tapes.

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1 Q So when you say he failed to disclose it to you, what
2 do you mean he failed to disclose to you? The fact that
3 the State was going to use it?

4 A No. He failed to disclose to the State -- to the
5 jury what was in the tape, that's what I'm alleging, that
6 he didn't show them entirely.

7 Q So you need to amend that one, because on your
8 document you have that he failed to disclose a material
9 fact to you.

10 A Like I said, I'm disabled, I'm sorry, ma'am. I have
11 a disability.

12 Q The next issue that you have is your attorney failed
13 to object to the indictment. The crime for which you were
14 accused did not meet the elements of the indictment and you
15 were denied your Sixth Amendment rights.

16 A Yes, ma'am. The evidence they propose didn't -- I'm
17 sorry, could you ask that question again, please?

18 Q Your attorney failed to object to the indictment. The
19 crime for which you were accused did not meet the elements
20 of the indictment and you were denied your Sixth Amendment
21 right. What do you mean by that?

22 A I mean there wasn't a circumstantial or direct
23 evidence to support their claim.

24 Q Next you allege that your attorney failed to object to
25 the prosecutor arguing inadmissible evidence to the jury

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1 and it violated your constitutional right according to the
2 Sixth Amendment.

3 A Yes, ma'am. The prosecution was saying that the
4 witness had never been charged with distribution or
5 possession of cocaine. She made it seem as though I was
6 the one, when the reality, Ms. Littlejohn has a record and
7 those statements where she said she had never been
8 prosecuted, that was false, that was false here. Right
9 here is the evidence. She was convicted for distribution
10 of crack cocaine, she was convicted for possession of
11 crack cocaine.

12 Q When was she convicted?

13 A It says here in 1994, five years she served. But
14 then she told the jury that she had never been convicted
15 and that was a lie, that was misconduct, that was
16 misrepresentation. Just as the films were where she
17 redacted that Ms. Littlejohn possessed the drugs. The
18 film clearly shows that she does, and my lawyer should
19 have objected to that, he shouldn't have allowed that. He
20 should have said, "Well, if you're going to show the films
21 just show them in entirety, let's not just show part of
22 them." Actually they should not have been shown because
23 the sex part didn't have anything to do with the charge of
24 distribution of crack cocaine. The sex part was to have
25 the jury -- to inflame the jury, to prejudice them against

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1 me. It was irrelevant, inappropriate and prejudicial.

2 Q So your attorney did not object to -- the next issue
3 you have is your attorney failed to competently litigate
4 your illegal search and seizure claim violating your Sixth
5 Amendment right.

6 A To improperly litigate, or failed to litigate search
7 and seizure claim competently is ineffectiveness -- is
8 allegations for ineffectiveness in itself.

9 Q So what should he have argued as to the search and
10 seizure?

11 A He should have filed a motion to have them dismissed.

12 Q Have what dismissed?

13 A The evidence obtained through the illegal search and
14 seizure.

15 Q And this is your house, the video.

16 A Yes, ma'am. Because like -- as I said before, the
17 search was not substantiated -- hold on. There was no
18 probable cause. There was no information given to the
19 magistrate for him to make a determination as to -- make a
20 determination if there was probable cause for the search.

21 Q Okay.

22 A The search, as I said before, was for a missing
23 person, not for a crime. South Carolina Code Section
24 17-13-104 says that a search warrant should be issued to
25 find evidence of a crime. The search warrants never state

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1 or alleged a crime, they just said, "We're coming to look
2 for a missing person." Well, what's the crime? There was
3 no corroboration of what led the officers to believe that
4 a crime exists, there were just mere conclusatory (sic)
5 statements and that's not suspicion. And so because the
6 search warrants were and the affidavits were defective,
7 yes, he should have made a motion that that evidence
8 should have been suppressed. That was a failure on his
9 part.

10 Q Okay. Your next allegation is that your attorney
11 failed to object to the Court's erroneous jury instructions
12 which denied you effective assistance of counsel and
13 violated your constitutional rights.

14 A Yes.

15 Q What do you mean by that?

16 A I mean that I was charged with distribution.
17 Distribution is to distribute among many. It was just two
18 people in the privacy of a bedroom, there was no
19 distribution. You know, even the prosecution in their
20 case said, "It would look like they're sharing." And how
21 do two people supposedly sharing in the privacy of their
22 bedroom get to be distribution?

23 Q So you had an issue with that jury charge.

24 A Yes, clearly.

25 Q Okay. The next issue you allege against your counsel

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1 is that he failed to advise you of the improbability of
2 acquittal and benefit of a plea bargain where you faced a
3 potential sentence twice as long as that offered under a
4 plea agreement.

5 A Never discussed a plea agreement.

6 Q What do you mean then the benefit of a plea bargain
7 when you faced a potential sentence twice as long as that
8 offered under a plea agreement?

9 A I don't know. In my readings I've come across that
10 in a plea bargain, you know, the lawyer should discuss it.
11 So maybe there wasn't a plea bargain, I really don't know
12 that.

13 Q There wasn't or there was?

14 A I don't know. Like I said, he never discussed that
15 with me. He never discussed anything about my case.

16 Q So you never knew how many years you were facing as
17 far as the charges if you were found guilty.

18 A No, ma'am. He told me it was won so I wasn't facing
19 anything to my understanding.

20 Q So how long did you meet with him when he told you
21 that? Did you meet with him five minutes?

22 A About 15 minutes.

23 Q And then this is prior to you going to trial, you only
24 met with him 15 minutes to discuss your case.

25 A That's right.

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1 Q So you don't know whether or not there was a plea
2 offer.

3 A No, I really don't to tell the truth.

4 Q And the next issue is you indicated that the trial
5 court erred in denying your motion for a directed verdict
6 as to the drug charges.

7 A Yes. Because there was, like I said, no substantial
8 circumstantial or direct evidence that I possessed drugs,
9 you know.

10 Q So you made the motion for a directed verdict, your
11 attorney, correct?

12 A Yes, ma'am, he did.

13 Q Okay. And the trial Court denied his motion and you
14 all proceeded on with the trial.

15 A That's exactly right.

16 Q Okay. You also allege that your attorney was
17 ineffective assistance for allowing the prosecutor to not
18 disclose material evidence effecting the credibility of the
19 State's witness?

20 A Yes, ma'am. Like I said, she said that she never was
21 prosecuted for --

22 Q When you say she, who is she?

23 A Ms. Littlejohn -- never prosecuted for drugs, and
24 clearly she was. She never entered -- my attorney never
25 did introduce evidence as to a motion, he never introduced

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1 statements from Mr. Emmanuel Brown which state that Ms.
2 Littlejohn had threatened him and me, and was out to get
3 me. The false gun charges that she alleged and brought
4 against me, false police reports that she filed against
5 me, that wasn't true, all of those things were prejudicial
6 against me, and had they brought that to the light of the
7 jury I think that would have made a difference as to the
8 outcome of the trial.

9 Q Well, wait you minute. You're saying all of those
10 things were prejudicial against you, they were or they were
11 not presented?

12 A They were not presented.

13 Q So how was it prejudicial against you then if they
14 were never presented?

15 A Because my attorney should have brought it to the
16 light of the jury for their consideration to see that this
17 witness had done numerous things against me. She had
18 charged me with threatening to kill her, pulling a gun on
19 her, filing a false police report against me, those things
20 were prejudicial.

21 Q So you wanted your attorney to impeach her --

22 A Yes.

23 Q -- based on her behavior towards you?

24 A Exactly.

25 Q You feel that prejudiced you or violated your --

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1 A Exactly, it did.

2 Q Now, how exactly -- what's the result of your
3 attorney's failure to do all of these things? How are you
4 prejudiced?

5 A Because of his performance, his reputation, it fell
6 below a reasonable standard. If not for his errors there
7 was a reasonable probability that I wouldn't have been
8 convicted at all, that the outcome of the trial would have
9 been different.

10 Q And so you're saying you wouldn't have been convicted.
11 And what relief are you seeking from this Court?

12 A A fair trial where all of the evidence is submitted
13 to the -- for the jury's consideration, where not
14 redacting tapes that show part of the issue but all of the
15 issue. If that would have would be presented for a jury's
16 consideration there's no way I would be convicted, because
17 I was not guilty of the crimes charged to me. I did not
18 possess cocaine, I did not smoke cocaine. The -- SLED's
19 report clearly states that on the pipe that had residue,
20 that my DNA wasn't on there, and of the other three pipes
21 that they presented to SLED for their evaluation is no
22 statement at all. Those were the ones that were used on
23 the tape and those didn't have any residue. So I didn't
24 smoke cocaine, you know, and the evidence clearly shows
25 that. If my lawyer had have brought that to light I think

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1 it would have made a difference.

2 Q But you were on the video with the crack pipes, it
3 just didn't have your DNA on it?

4 A No. There was three crack pipes, all right, only one
5 had residue, crack residue.

6 Q I understand that. But there were three crack pipes
7 that would have been seen on the video.

8 A Yes, and those didn't have crack residue. So what
9 they saw on the film wasn't us smoking crack, it wasn't me
10 smoking crack.

11 Q But whose --

12 A DNA was on the one that had the residue?

13 Q No. Whose crack pipes -- so you're saying that if
14 they saw those videos showing the crack pipes and you and
15 the individual, Ms. Littlejohn, on the video you would be
16 found not guilty?

17 A Because the crack pipes that they saw didn't have
18 crack on it. Only one had crack residue on it and my DNA
19 wasn't on that one, so no, I wasn't smoking.

20 Q So you're saying you weren't smoking --

21 A No, I wasn't.

22 Q But you realize that you were charged with
23 distribution of crack cocaine, it doesn't require you to
24 have smoked the crack cocaine.

25 A And if the videos would have been shown in their

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1. entirety they would have shown that Ms. Littlejohn is the
2. one that had that, not me.

3. Q And whose house was it?

4. A Whose house was it?

5. Q Yes?

6. A It was my cousin's house, we were visiting.

7. Q You and Ms. Littlejohn were at your cousin's house.

8. A That's right.

9. Q And the crack pipes were on the video, but you didn't
10. smoke any of the crack.

11. A No, I didn't.

12. Q And your DNA was not on the crack.

13. A No, it wasn't. And the SLED reports clearly states
14. that, that information --

15. Q I'm just asking to be clear on what the video is.

16. A Yes. That should have been brought to the -- for the
17. jury's consideration.

18. Q Okay. And so the relief you're seeking is a new
19. trial?

20. A A new trial with all of the evidence submitted.

21. Q Well, you understand that a new trial would be -- they
22. would present evidence and the Judge presiding over the
23. trial would determine what evidence comes in.

24. A All right, yes, ma'am.

25. Q And so that's what you're asking the Court to do?

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1 A Yes, ma'am, exactly.

2 Q Anything else you want to tell the Court?

3 A Nothing new, I don't think. Because like I said, my
4 lawyer didn't suppress the evidence that he should have.

5 I don't feel he properly represented me. He didn't

6 subject the prosecution's case --

7 Q I'm asking you do you have anything in addition to
8 what you've already told the Court, do you have anything
9 new to add to your previous testimony here today?

10 A Yes. And I don't know if I said this before, and if
11 I have you can let me know, the tapes that was shown that
12 show the sex part, that didn't have anything to do with my
13 charge, that should have been objected to and --

14 Q You've already discussed that.

15 A All right.

16 MS. MOODY: No further questions for this witness,
17 Your Honor.

18 THE COURT: Cross?

19 MR. HUNTER: Briefly, Your Honor.

20 CROSS EXAMINATION

21 BY MR. HUNTER:

22 Q Mr. Anthony, how many times before trial did you say
23 you met with Mr. Barrowclough?

24 A Twice I think it was. We met on a Monday, he told me
25 to come back that Friday. I come back that Friday, we

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1 talked for about 15 minutes, he told me he had my case
2 won, he wouldn't need any of my witnesses that I
3 submitted, he said he wouldn't need any of that. He said,
4 "Just come to trial, don't say anything, I got your case
5 won, that's what you wanted." I said, "Yes, sir."

6 Q So in these discussions, did you give him your version
7 of the facts and what you say happened?

8 A He didn't even want to hear that.

9 Q Well, did you tell him?

10 A I tried to, he just said, "That's not necessary."

11 Q So you didn't tell him.

12 A I tried to.

13 Q Okay.

14 A In fact, he signed a statement -- I don't know if my
15 lawyer has that statement.

16 THE DEFENDANT: Do you have that statement, Ms. Moody,
17 that he signed?

18 THE COURT: We'll address that in a second, okay?
19 Just answer his questions if you would, please.

20 Q And was -- I believe you've already talked about this,
21 was Mr. Barrowclough involved in any plea negotiations with
22 you and the State?

23 A No.

24 Q Okay. Now, as far as the investigation went, were you
25 aware that there was also a crack investigation in addition

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1 to the missing persons investigation.

2 A Mr. Hager stated in the --

3 Q We don't need to get into what he said, I'm just
4 asking you a question.

5 A He said never was he investigating crack of me, so
6 no, there was no crack investigation. That was in the
7 transcript, he stated that, so never was there a crack
8 investigation.

9 Q Okay. Now, did you tell any of this to your attorney?
10 Did you tell him anything about this having nothing to do
11 with crack?

12 A I tried to but he didn't want to hear that. He said,
13 "I already got your case won, Mr. Anthony."

14 Q Okay. Now, when you say you tried to, is that a yes,
15 you did tell him?

16 A I tried to.

17 Q As far as Ms. Littlejohn's testimony being an addict,
18 do you remember Mr. Barrowclough bringing that out to the
19 jury?

20 A That she was an addict?

21 Q Yeah.

22 A Yeah, I think that was brought out somewhat.

23 Q And do you remember him essentially asking, or telling
24 her that she was a prostitute? Do you remember him asking
25 her that?

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1 A Yes, I remember that.

2 Q Okay. And do you remember him asking Ms. Littlejohn
3 what she was doing in the videos and she says, "I'm smoking
4 crack?"

5 A Yes.

6 Q Okay.

7 A But that was a lie, just like it was a lie she told
8 when Mr. Barrowclough said, "Hey, she's lying. She's
9 lying on the stand, she's taken an oath and she's lying to
10 you." So that wasn't the only lie that she told.

11 Q Are you saying Mr. Barrowclough informed the Court
12 that she was lying?

13 A Yes. But he didn't inform the Court of all of her
14 lies. He didn't inform the Court of her false gun
15 charges, he didn't inform her -- the Court of her
16 prosecution for drugs, he didn't inform her -- the Court
17 of her false police reports, none of that was brought to
18 light.

19 Q But he did discuss her conviction for receiving stolen
20 goods --

21 A Yes, that was brought to light.

22 Q Okay. Obtaining goods by false pretenses. He went
23 over her prior convictions, correct?

24 A With Mr. Barrowclough?

25 Q Yeah.

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1 A No.

2 Q Now, you said you wanted to testify; is that correct?

3 A Yes, sure I wanted to testify. I had been under
4 house arrest for more than five years, I wanted my day in
5 court.

6 Q And when the Judge asked you if you wanted to you
7 didn't tell him?

8 A Yes. I told him I wanted to confer with Mr.

9 Barrowclough and we went outside, and I told Mr.

10 Barrowclough, "I want to testify, I want to tell my side
11 of the story. Mr. Anthony, no, I've got your case won.

12 I'm your lawyer, I know more than you, I've been in this
13 business a long time." What else was I supposed to do?

14 If I could have handled my case myself I would have seen
15 that the errors he put, but I'm trusting that man is going
16 to be fair with me.

17 Q So you never brought any of this to the Judge's
18 attention, you never told the Judge, "I really want to
19 testify to give my side of the story."

20 A No. Mr. Barrowclough said, "No, don't do that, I've
21 got your case won."

22 Q Okay. And despite all of that and despite these
23 errors you just never to wanted to bring that to the
24 Judge's attention?

25 A No. Because I wanted my case won, like I do today.

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1 Q And even after you were sentenced when the Judge asked
2 you if you had to say anything, you didn't say anything
3 then?

4 A There was nothing to say, I was convicted then.

5 Q But all of these issues you're bringing now that
6 apparently happened during the trial, you didn't think to
7 speak up then?

8 A I was told not to say anything, sir.

9 Q Okay.

10 A And I'm believing this man is going to help me, is it
11 not what his job was, to help me?

12 Q Okay.

13 A Sir?

14 Q I'll ask the questions.

15 A All right, I'm sorry.

16 Q Now, as far as these search warrants go you said you
17 never went over those pretrial?

18 A No, we never discussed anything.

19 Q Okay.

20 MR. HUNTER: Beg the Court's indulgence one second,
21 Your Honor.

22 THE COURT: Yes, sir.

23 (Break in proceedings.)

24 Q I just want to touch briefly on your complaints about
25 the pipes. Do you remember Mr. Barrowclough getting those

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1 suppressed before trial so that the crack pipes weren't
2 actually part of State's evidence?

3 A Say that again, please, sir.

4 Q Do you remember your attorney getting the crack pipes
5 suppressed prior to trial?

6 A No. He might have but I don't know if he did or not,
7 you know. I was hoping that by bringing those into
8 evidence that he could place before the jury that I wasn't
9 smoking. My DNA wasn't on the crack pipes. What the film
10 was showing wasn't a true indication of what really
11 happened.

12 Q And again, you weren't charged with smoking crack,
13 correct?

14 A I was charged with distribution. The films clearly
15 show that I didn't possess that, that Ms. Littlejohn
16 brought the substance alleged to the encounter, and that
17 evidence should have been shown to the jury for their
18 consideration.

19 MR. HUNTER: I have nothing else.

20 THE COURT: Anything on redirect?

21 MS. MOODY: No, sir, Your Honor.

22 THE COURT: Sir, thank you, you can step down.

23 THE DEFENDANT: Could I say one more thing if I can?

24 THE COURT: Sure, go right ahead.

25 THE DEFENDANT: What was on the film was not crack

HARRY ANTHONY - REDIRECT

1 cocaine. I don't understand how I was convicted without
2 proof positive that the substance alleged was crack
3 cocaine.

4 THE COURT: I understand your position, I really do.

5 THE DEFENDANT: All right. I would like to make this
6 statement, too. I've informed my attorney to file a 59E --

7 MS. MOODY: Objection, Your Honor. We're not even --
8 I don't even know if I should say objection, we're not even
9 at that point. Your Honor, if I could ask him another
10 question and go back on the record?

11 THE COURT: Sure, ask him another question.

12 REDIRECT EXAMINATION

13 BY MS. MOODY:

14 Q Is there anything else you want to tell the Court that
15 has not been stated here today as to your issues?

16 A Yeah. I would like to state this, that I would like
17 for you to file a 59E within ten days of the Judge's
18 ruling in case he doesn't rule in my favor.

19 Q Mr. Anthony, are you aware that a 59E is for
20 additional evidence?

21 A I was under the impression it was to preserve these
22 issues for --

23 Q Well, do you realize that you are testifying today and
24 it's on the record and that's how it's being preserved?

25 A Well, it doesn't hurt, does it?

HARRY ANTHONY - REDIRECT

1 Q No. I'm asking you, are you aware that Rule 59E is if
2 you leave something out and you're on the stand now, is
3 there anything else you wish to tell the Court so that he
4 can hear it now? Because after this, after I'm asking you
5 the question and you said there's nothing else there's no
6 purpose in filing your Rule 59E, do you understand that?

7 THE DEFENDANT: Could I take a minute, because --

8 THE COURT: Sure. Can we handle it this way? I
9 assume we have some additional witnesses and I'm trying to
10 get at least one of them out by 1:00, if he comes up or
11 thinks of anything else can we simply recall him at a later
12 point in time, will that be okay? Go ahead and step down,
13 sir. Any additional witnesses from the applicant?

14 MR. HUNTER: Yes, sir, Your Honor, B. J. Barrowclough.

15 THE COURT: Come on up, please.

16 The witness, B. J. BARROWCLOUGH, was first duly sworn
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. MOODY:

20 Q Mr. Barrowclough, could you please state your full
21 name for the record?

22 A Bryson John Barrowclough.

23 Q And Mr. Barrowclough, do you recall representing Mr.
24 Harry Anthony?

25 A Yes, I do.

B. J. BARROWCLOUGH - DIRECT

1 Q How did you come in contact first? How did you come
2 into contact with him?

3 A Well, as he testified, he had Melvin Roberts
4 representing him for a number of years and Melvin Roberts
5 was murdered, and our office was court appointed to take
6 over that case on May 17th of 2010, and the case was
7 assigned to me, and so at some point subsequent to that I
8 met with him. I think that Deputy Solicitor Willie
9 Thompson had the case at first for the solicitor's office,
10 I met with him, and then the case was subsequently
11 assigned to Mindy Lipinski, and so then I met with her.

12 Q And the first date that you met with Mr. Anthony, do
13 you recall that date?

14 A I don't recall the exact date, no.

15 Q Do you recall how many times you met with him?

16 A I met with him multiple occasions.

17 Q Was it more than five times?

18 A Yes.

19 Q And in those meetings when you met with him, what did
20 you all discuss?

21 A Well, we discussed obviously the facts of the case
22 and the evidence and the allegations. We did discuss the
23 possibility of trying to enter some type of a plea
24 arrangement. As I recall there was no firm plea offer in
25 the case, which I'll explain in a minute.

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1 Q There wasn't one?

2 A There was not one. But we did discuss the
3 possibility of me trying to obtain one, or put him in a
4 more favorable position for one. Mr. Anthony was not
5 interested in that. Mr. Anthony would consistently assert
6 his innocence. In talking with the prosecution, this case
7 happened in a larger context of a woman named Ms. Matthews
8 going missing and subsequently turning up dead in Lake
9 Wiley, and the prosecutors and law enforcement were of the
10 belief that Mr. Anthony was responsible for that in some
11 form or fashion, either that potentially he did kill her,
12 or that perhaps in doing drugs with her she had overdosed
13 and he had disposed of the body. And so they were taking
14 an extremely harsh view of Mr. Anthony in his case greater
15 than the charges for distribution of crack, which is why
16 they were not inclined to, you know, make a plea offer,
17 which I would consider to be a standard plea offer in a
18 distribution of crack type situation. So they were not
19 interested in negotiating with me, Mr. Anthony was not
20 really interested in me negotiating on his behalf, so
21 mostly there was nothing -- there were not a lot of
22 conversations about plea offer or plea negotiations.
23 There were some. We did go over his case with him and
24 there were a lot of -- there were negative points that
25 made us afraid that he would lose, particularly what was

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1 contained on his videotapes. Harry Dest, the chief public
2 defender, was also on the case with me. And when he
3 testified that I told him that we just had his case won
4 and things of that nature, that is an outright lie. I've
5 never said that to any client in my whole career. I never
6 feel that way in a jury trial because you never know what
7 a jury is going to do. But in the interest of perhaps
8 getting him to agree to allow us to pursue a plea there
9 was a meeting with Harry Dest and myself where he brought
10 a friend with him as sort of a -- I don't want to say a
11 juror, but sort of an impartial observer. And we went
12 over the facts and Mr. Dest and I both advised him that he
13 should allow us to at least try to obtain some type of a
14 plea offer, and it was my recollection that even his
15 friend with him thought that that would probably would be
16 a good idea. And Mr. Dest is here today if you need to
17 call him as a witness even though he's not under subpoena.

18 Q And so when particularly the larger context of the
19 case, Ms. Littlejohn, she comes in and she's testifying on
20 behalf of the State, what, if anything, did you know about
21 her prior record?

22 A Well, I know that she did have multiple convictions
23 for crimes of dishonesty, which I did cross examine her
24 on. There was the allegation with the gun situation with
25 Mr. Anthony that he testified to. Again, there were a lot

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1 of things that had occurred in the context of Mr. Anthony,
2 and Ms. Littlejohn and Ms. Matthews and at other times a
3 Ms. Hayes that it was -- trying the case was a very
4 delicate dance. We felt like it was in Mr. Anthony's best
5 interest to try to keep most of the information involving
6 particularly Ms. Matthews and Ms. Hayes and Ms. Littlejohn
7 outside, or away from the presence of the jury. As you
8 can see in the transcript there was also talks of Mr.
9 Anthony branding those woman, of course, Ms. Matthews
10 turning up dead. There were things that we wanted to keep
11 away. And we, out of an abundance of caution trying not
12 to open the door to a lot of information that we thought
13 would be extremely harmful to Mr. Anthony, we did decide
14 to stay away from some things that, he's right, would have
15 had some value, like that false allegation involving the
16 gun. I think their answer to that would have been she did
17 that because she was mad because he killed her friend. So
18 it was a dangerous type situation, trying to decide what
19 to get in to and what to stay away from. Certainly all of
20 her convictions that had nothing to do with this chain of
21 events, we got into all of those.

22 Q Now, you refer to branding. Can you clear up for the
23 Court what you mean by branding?

24 A Well, there was an allegation that in the larger
25 context Mr. Anthony would supply drugs to these women

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1 prostitutes for sex, and that the ones that he was with
2 regularly that he did brand them with some kind of
3 heated-up hanger or something.

4 Q On each instance or was it --

5 A No, no. Like one time to indicate that that was
6 something -- that they were for him or something.

7 Q And so he was -- now, he was engaged with these
8 prostitutes and they exchanged sex for drugs.

9 A Yes.

10 Q And so you've heard the testimony about the crack pipe
11 not having DNA. Was the State alleging that he was smoking
12 the crack along with the prostitutes on the video, or were
13 they just alleging that he gave them --

14 A Well, it's not so much what they were alleging. What
15 the videos depicted was that it was, as he said, some
16 sexual activity, some smoking, sharing of things and stuff
17 like that. Not -- as you can see in the transcript, not
18 as I argued like a straight exchange, here is this, you do
19 this, a quid pro quo type situation. It did look like two
20 consenting adults who were very familiar with each other
21 would engage in some sexual activity for awhile, smoke for
22 awhile, some cigarettes, smoke other things on the video,
23 sometimes pick up a magazine and read it, it was --

24 Q Continuous taping.

25 A Yes. And there, I believe, were 33 videos if I'm

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1 correct. And in preparation for the case I did have to
2 view all of them, and I can tell you that, you know, what
3 he says -- there was nothing that I in my professional
4 judgment would call exculpatory on them or anything like
5 that. There was a lot more of the same of what was shown
6 in court. There was some things that would have been just
7 like irrelevant, perhaps sex without smoking, things like
8 that, but things that a jury wouldn't want to see nor
9 would a Judge allow me to show. But there was nothing
10 that would have done anything to either exonerate Mr.
11 Anthony or allow this situation to be viewed in a
12 different light than from what was depicted.

13 Q So as I hear you testify here today, there's nothing
14 exculpatory on the videos.

15 A No.

16 Q And --

17 A And the other thing is, too, the videos weren't just
18 Ms. Littlejohn. Ms. Matthews, the woman who did wind up
19 dead, was involved in some of the videos as well.

20 Q Okay. And so the videos -- you heard Mr. Anthony
21 testify that the solicitor redacted videos. And was that
22 on order of the Court?

23 A No. That was in part for brevity's sake, and in part
24 because, like I said, there were things in the videos that
25 I didn't want to come in either, like the presence of Ms.

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1 Matthews. So it was redacted but it was also during the
2 redaction process it was shown to me to make sure that the
3 more prejudicial things I wanted out were also redacted
4 out.

5 Q So it wasn't just the solicitor saying this is what
6 I'm going to show the jury, it was also in conjunction with
7 you having viewed the tapes?

8 A Right. There were certain things that I objected
9 to -- not in court objected to, but told her, and she in
10 making her redactions took those into account. She did it
11 herself, I didn't participate in the redaction, but then
12 when it was done she did show it to me. And then I said
13 okay, that's has taken into account what I wanted kept
14 out, and then it was shown to the Court.

15 Q And on these videos, again, in terms of when I say
16 exculpatory, there's nothing that would -- or you feel that
17 would have the jury find him not guilty of distribution?

18 A Right. For example, in our conversations, one thing
19 that Mr. Anthony would float out there as an idea is this
20 is more like amateur film making, this is like not real.
21 So in viewing all of the videos looking for something that
22 would show something would be like cut and like talking
23 about it, like "Next scene we're going to do this," or
24 something that would show that it was actually
25 movie-making as opposed to just crack sex tapes involving

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1 crack and sex. There was no like break in the action or
2 anything that would indicate these were actually like
3 movies being made as opposed to just --

4 Q But you could see him on the video.

5 A Yes.

6 Q Along with the Littlejohn?

7 A Ms. Littlejohn, yes.

8 Q Now, in the trial you mentioned a lack of some of the
9 videos. Specifically on page 204 you mentioned -- you
10 discussed the videotapes and you talked about they withheld
11 any videotapes. I guess you were talking about in the
12 context of the videos that were redacted and were shown, it
13 doesn't show him giving Ms. Littlejohn any crack cocaine.

14 A Not in the way that it would be like a quid pro
15 exchange, like sex acts and then drugs, and then sex acts
16 like that. Like I said, it was two people --

17 Q Smoking?

18 A -- relaxing, consensual, naked, drug use and sex type
19 situation.

20 Q And so --

21 A But now what you referred to in my closing argument,
22 that was part of my argument was that in the law, the way
23 the distribution law is written so broadly that it would
24 include a situation of sharing and that's what the
25 solicitor relied upon in her closing. But my argument was

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1 that looking at what was in the videos it was not what you
2 would traditionally think of as a distribution or a sale,
3 or a quid pro quo exchange, in that -- and this is as I'm
4 sure you saw in the transcript I objected to and sustained
5 when I argued that what was in those videos that were, in
6 fact, shown to the jury, it had to be assumed that that
7 was the best they had, that there wasn't any other part of
8 any other video that would show a more clear quid pro quo
9 exchange or else they would have made it part of this
10 montage. But then because there was other parts of the
11 videos I also argued be kept out with Ms. Margaret
12 Matthews and all of that, that's why the solicitor
13 objected and it was sustained.

14 Q So in your argument to the jury, were you, in essence,
15 leaving it up to the jury to make a decision as to what the
16 exchange -- well, not the exchange, that it was a
17 distribution, they both were there together smoking crack.

18 A Right. Now, given the totality of the circumstances
19 with the fact that -- with the way the State argued, it's
20 a lower bar for a distribution of sharing, that Ms.
21 Littlejohn could have equally been charged and was not.
22 She could have been charged with possession and was not,
23 she could have been charged with prostitution, was not in
24 that. So sort of a fairness argument combined with this
25 doesn't match your traditional distribution arguments, not

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1 what you would expect for a crack distribution trial, that
2 for all of those reasons he should be acquitted.

3 Q And did you discuss this theory with Mr. Anthony?

4 A Yes, multiple times in my office.

5 Q And as it relates to any motions that would have been
6 filed on behalf of Mr. Anthony, did you have a basis for
7 not moving to suppress the search warrant of evidence,
8 which would have been ultimately the videos, did you have a
9 basis for not --

10 A In my judgment there was probable cause, there was
11 specific facts from witnesses, identifiable witnesses. I
12 mean, the actual search warrant that led to the recovery
13 of the videos was based on Lieutenant Hager telling the
14 magistrate they had talked to Mr. Anthony himself and he
15 said that there were these videos that included Margaret
16 Matthews on them, which was in the context of they thought
17 that she was at least kidnapped or perhaps murdered and a
18 search warrant issued. And I thought that in my judgment
19 according to Illinois versus Gates and all the progeny, I
20 thought that that was probable cause and so I thought it
21 would be a frivolous motion.

22 Q Did you explain this to Mr. Anthony?

23 A Yeah, many times. And he never agreed with that,
24 which is fine, but I'm just saying I did explain it to him
25 and he never got it if you will.

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1 Q Okay. So in your whole discussion of the case with
2 Mr. Anthony, as far as like the jury instructions, the
3 search and seizure, the motions, did you discuss those
4 things with Mr. Anthony, or during the trial did you not
5 discuss anything with him?

6 A No, I discussed everything with him. You know, some
7 of the things, like moving to suppress the crack pipe, I
8 told him about that and that was fine, and then we did
9 that and it was suppressed. You know, the search
10 warrants, he was, as he was here today, he was very
11 adamant about wanting that suppressed, but I didn't see in
12 my professional judgment that it was suppressible so I
13 didn't file a frivolous motion, in my opinion.

14 Q As to the directed verdict, the evidence that was
15 presented you felt that you needed to move for a directed
16 verdict.

17 A Right.

18 Q Did you feel like it was going to get -- you would get
19 a directed verdict?

20 A No. I'm under oath, no, I didn't. I mean, I -- you
21 know.

22 Q Tell me why.

23 A Because I felt like the Judge would think there was
24 substantial circumstantial evidence to let it go to the
25 jury.

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1 Q And this is as to the distribution of crack.

2 A Yes.

3 Q Did you have an investigation -- did you have an
4 investigator involved in this case when you came on to the
5 case?

6 A No.

7 Q How did you come up with your theory as to the
8 investigation that came up with Mr. Roberts? Was that
9 already there?

10 A Yes. There was there were reports of Andrew
11 Struffolino, an investigator that Mr. Roberts had utilized
12 on the case. Of course, I went to the sheriff's office
13 and viewed all of the evidence for the trial that was
14 used -- going to be used in the trial for myself. Like I
15 already testified to, I did view all of those videos
16 myself along with -- well, actually not that I was
17 investigating, but just to make sure I didn't miss
18 anything, Joe Medlin, who was an investigator in our
19 office at that time, he did view those videotapes.

20 Q So you had an investigator's report already in place,
21 you reviewed the videos, you reviewed the evidence, you had
22 another -- you had another investigator review the evidence
23 with you.

24 A Right.

25 Q And you had Harry Dest. Did he review any of the

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1 evidence?

2 A Yes, he did. Although as I recall when I went to
3 view the physical evidence at the sheriff's department, I
4 don't think Harry Dest went with me then. But he did view
5 the discovery and the videotaped evidence.

6 MS. MOODY: No further questions for this witness.

7 THE COURT: Cross?

8 MR. HUNTER: Please the Court?

9 CROSS EXAMINATION

10 BY MR. HUNTER:

11 Q Just to give a little bit of a timeframe, how long
12 were you representing him when you first met during trial?

13 A Well, our office was appointed May 17th, so trial was
14 January of 2012, so about 18 months.

15 Q And would you say you met with him more than five
16 times?

17 A Yes.

18 Q Other than him disagreeing with you, did you ever
19 think that he didn't understand the evidence, didn't
20 understand what was going on?

21 A No.

22 Q Do you think he understood the fact that these search
23 warrants, I guess in your opinion, were illegally obtained?

24 A I think he understood that that was my position, I
25 don't think he ever agreed with that position.

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1 Q And just to clear up, I guess, what he was saying
2 earlier, did you make it known to him that this crack
3 investigation was separate?

4 A It wasn't really a crack investigation.

5 Q Okay.

6 A It was always an investigation into first the
7 disappearance, then later the death of Margaret Matthews.
8 I mean, you know, in fairness to Mr. Anthony I think what
9 happened was the State could not tie him to that death
10 closely enough to prosecute him for any kind of homicide
11 charge, so to prosecute him for something they had these
12 videos, they went and found Ms. Littlejohn and they put
13 together a distribution of crack case from what they had.

14 Q Okay. And as far as the evidence they had, how would
15 you characterize it? Strong? Weak?

16 A This was such an odd case. You know, on the one hand
17 you can say from a defense side case how strong can it be
18 when they're prosecuting him for distribution of crack and
19 they don't have any crack to show the jury, like actual
20 crack that was tested. On the other hand, they put
21 together this circumstantial evidence that the Judge
22 allowed Marvin Brown to testify as an expert that it was
23 crack, it looked like crack, they were acting like they
24 were on crack, smoked crack, Ms. Littlejohn testified, so
25 from that point of view they had a case. But then on the

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1 other hand what the videos depicted was so horrific in a
2 way that I knew and I told him that it's going to turn any
3 jury against you, you know, overcoming that prejudice from
4 the jury would be extremely difficult. So it's a hard
5 case to say strong or weak, but I did tell Mr. Anthony I
6 thought we had an uphill battle at a trial.

7 Q Okay. So do you think he essentially understood kind
8 of his probability of being found guilty?

9 A Again, I don't think he agreed with it. He did not
10 present then as he presents now, and he definitely was
11 intelligent and could understand my communication and Mr.
12 Dest's communications with him, that we felt like it would
13 be an extremely hard case to win, to get a not guilty.

14 Q And can you just briefly explain your main strategy
15 during this case?

16 A Well, as I said, given the fact that was just these
17 videos and it was not any kind of crack distribution in a
18 traditional sense, and the fact that everything that Mr.
19 Anthony did on the video Ms. Littlejohn also did and she
20 was not charged with anything, and the fact that Ms.
21 Littlejohn had numerous credibility issues of her own, it
22 was our strategy to argue that this was not distribution
23 of crack, it was not distribution of crack the way any
24 normal person would understand it. Not to mention the
25 fact that you can't rely on a narrative of what the video

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1 actually shows based only on the word of Ms. Littlejohn
2 who was impeached for her record, was a prostitute, you
3 know, lied under oath about whether or not she had a
4 forgery conviction on her record. In a sanitized sense
5 the case -- the evidence against Mr. Anthony was pretty
6 weak, that was our strategy, and, of course, to keep all
7 of the other stuff involving Margaret Matthews from coming
8 in front of jury at all.

9 Q And do you think he was made aware prior to trial and
10 during trial about what your strategy would be?

11 A Yes.

12 Q Now, regarding his desire to testify, could you
13 explain your discussion with him about that?

14 A Yes. He did want to testify I know before trial and
15 we had advised him against that, mainly because in talking
16 with him every time we would talk with him about the
17 situation and what testifying would entail, it was obvious
18 that he would not be able to contain himself and not bring
19 in the Margaret Matthews stuff, which we felt would hurt
20 the case more than help the case, anything he could say.
21 But my recollection was that during trial, like that break
22 in the trail when we actually talked to him when we said
23 we still advise you not to testify, at that point in time
24 I don't recall him saying he wanted to testify, I might be
25 wrong about that but I don't recall that. I know prior to

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1 the trial when we were meeting in my office he said he
2 wanted to testify and we said we didn't think that would
3 be a good idea, but I don't recall it happening during the
4 trial.

5 Q And I know you discussed it a few minutes ago, but did
6 you give him any sort of guarantees?

7 A No. I've never done that, I would never do that.

8 Q And just to kind of go through these allegations a
9 little bit. Did you see any issue about his right to
10 privacy as far as those videos, how they were obtained
11 aside from the search warrant, from a privacy standpoint
12 did you see any issues?

13 A No.

14 Q And as far as impeaching Ms. Littlejohn, do you feel
15 like you did a sufficient job with impeaching her on her
16 prior conduct and just her acts on the videos?

17 A I thought that I did, yes.

18 Q Okay. And just to be clear -- well, nevermind, that
19 was withdrawn. Did you see any issues with the
20 indictments?

21 A No. I mean, I understand his point about the
22 allegations of timing so broad, but I also know from case
23 law the State is allowed to do that. And given the fact
24 that -- like he's saying, alibi, but alibi wasn't really
25 an issue because it clearly is him on the videos. So

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1 there was no defense we were losing by the way the
2 indictments were drawn up.

3 Q And as far as alibis are concerned, when you met with
4 him did he give you any favorable facts, versions, alibis,
5 witnesses, anything of that nature?

6 A No. Not with regards to these charges we went to
7 trial on, what's on the videos now. There was a lot of
8 extraneous things to defend himself with regards to what
9 happened to Margaret Matthews and things of that nature.
10 But, you know, like I said, as far as what was on the
11 videos, you know, there was not a concise defense for him.
12 But like I said, he did periodically float out the idea
13 that this was just amateur movie-making as opposed to
14 really sex and crack.

15 Q Okay. And given the fact that he proposed that idea
16 you felt like that wouldn't be a successful defense?

17 A No. Because there was no evidence to back that up,
18 to back up that assertion.

19 Q Now, as far as the State's evidence goes, is there
20 anything that you felt like was missing or any problems
21 receiving evidence from the State in this case?

22 A You mean discovery wise?

23 Q Discovery wise.

24 A No.

25 Q And you had enough time to view the videos. And I

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1 believe -- could you explain again whether you saw the
2 entire videos or just the portions?

3 A No. There was -- I think somewhere in this room,
4 there were a bunch of discs, I want to say there were 33
5 of them. So because I knew the case was going to trial
6 and I had to do it I watched all of them, not straight
7 through, I watched maybe one or two, take notes, then
8 another day I might watch one or two. But I made sure I
9 watched all of them to make sure that there wasn't some
10 silver bullet that would have really helped our case on
11 one of them.

12 Q Were you aware of anything, I guess, that wasn't shown
13 to the jury that would have told the whole story as he put
14 it?

15 A No. There wasn't anything like that.

16 MR. HUNTER: Beg the Court's indulgence one second,
17 Your Honor.

18 THE COURT: Yes, sir.

19 (Break in proceedings.)

20 Q Could you briefly go over again -- I guess you said
21 there was not technically a plea offer in this case, but
22 your attempt to obtain one?

23 A When I first got the case and I went to see Willie
24 Thompson, the deputy solicitor, it was his case at that
25 time and, you know, he began to sort of bring me up to

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1 speed. Because Melvin Roberts had died and there was --
2 the case even by that point was already old, and it was
3 somewhat confusing why the case was so old and all of
4 that. There had been I want to say a Schmerber Motion,
5 that Melvin Roberts had taken that all the way almost to
6 the United States Supreme Court and that had caused a
7 great delay in the case and other things, so Willie
8 Thompson was explaining all of that to me. And he
9 explained to me that the law enforcement -- himself and
10 law enforcement were of the opinion that Mr. Anthony was
11 responsible for the death of Ms. Matthews, and that
12 anything dealing with these drug charges was going to be
13 dealt with from that context, and that there's really no
14 plea offer. And then the case went to Ms. Lipinski, she
15 sort of, you know, followed that same line of thinking,
16 those were like her marching orders, so there was no plea
17 offer per se. Now, even in the context of no plea offer
18 per se I thought that if we could get in front of a Judge
19 who might not be so colored by all of that, who could just
20 focus on the charges being what they were as well as maybe
21 scheduling at a time when it might be a more favorable
22 Judge we could do something like that to try to get Mr.
23 Anthony less time. And that was something that Mr. Dest
24 and I thought might be a better strategy than going to
25 trial, and we did both advise Mr. Anthony of that. But

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1 Mr. Anthony, as he said in court today, is maintaining his
2 innocence and he didn't want to go that route, and like I
3 said, the solicitor's office was not really extending any
4 olive branches to try to get us to plead either, so that
5 really didn't go anywhere.

6 Q So at the end of the day do you think there's anything
7 else you could have done that you didn't do to help him?

8 A I really don't.

9 MR. HUNTER: I have nothing else, Your Honor.

10 THE COURT: Redirect?

11 MS. MOODY: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. MOODY:

14 Q As it relates to Ms. Matthews and having the case won,
15 was there ever any mention of a police coverup by Mr.
16 Anthony?

17 A Yes, there was as a matter of fact. He said that he
18 knew about the fact that York Police -- different members
19 of the York Police Department were having sex with these
20 same women and that perhaps, you know, they had caused her
21 death and were trying to frame him for it. But there was
22 no evidence. In fact, I said, "Hey, give me some evidence
23 of this." But there was never anything provided to me by
24 him that would support that, and obviously that would be
25 pretty big allegations to make with nothing to back it up.

B. J. BARROWCLOUGH - REDIRECT

1 Q So at any point in time did you tell him to keep his
2 mouth shut about that?

3 A I don't remember if I told him to keep his mouth
4 shut. I told him we couldn't really pursue that in court
5 without evidence to back it up.

6 Q And so did you -- were you of the opinion that if you
7 had that evidence then his case would have been won or the
8 charges would have gone away or anything like that?

9 A I mean, if there was some kind of legitimate
10 evidence, you know, that would support that allegation --
11 again, I don't know if the charges would have been won,
12 maybe they would have been, we would have been in a better
13 position than what we were in.

14 Q So at any point did he -- what was his response in
15 terms of there being evidence that could corroborate his
16 statement?

17 A Well, he would say things like, "Well, you know, I
18 know somebody who will tell you that." But like he could
19 never give me any contact information for somebody like
20 that, you know, things like that, or word on the street,
21 or everybody knows, or things like that.

22 Q But no witness that could testify to it.

23 A No.

24 MS. MOODY: No further questions at this time.

25 MR. HUNTER: Nothing else from the State.

B. J. BARROWCLOUGH - REDIRECT

1 THE COURT: Quick question. You said there were 33
2 tapes or 33 videos, about how long did it take -- in hours
3 about how long would you say it took you to view those
4 total footage?

5 THE WITNESS: I would say -- I think on average they
6 were 30 or 35 minutes each, so maybe 16 or 17 hours.

7 THE COURT: Okay. And at trial it looked like -- am I
8 correct, I thought I saw somewhere in the transcript where
9 approximately ten minutes of the relevant tapes was played,
10 or was it more than that at trial, or do you recall?

11 THE WITNESS: I want to say it was more than ten. If
12 I had to guess I would guess it was closer to 25 maybe.

13 THE COURT: 25 minutes? All right. Thank you, sir,
14 you can step down. I imagine we have additional witnesses,
15 my blood sugar is dropping so we need to take a break for
16 lunch. We'll be down until about 2:30 then. Or do y'all
17 have any other witnesses?

18 MS. MOODY: I don't have any other witness.

19 THE COURT: Were you calling anybody?

20 MR. HUNTER: Not on this case.

21 MS. MOODY: I called his witness.

22 THE COURT: Are we done with witnesses at this point?

23 MS. MOODY: Yes, sir, unless he has another statement
24 to add.

25 THE COURT: Anything else that you wanted to say, sir?

1 I feel like I've got pretty good feel for the situation.

2 MS. MOODY: It's your opportunity, can you tell me if
3 you want to say something else?

4 THE PETITIONER: Can I go to the bathroom?

5 THE COURT: Can you tell me briefly what it is that
6 you need to relate to me?

7 THE PETITIONER: I need to go to the bathroom.

8 THE COURT: Let him go to the bathroom, we'll be back
9 on the record in about five minutes or so, okay?

10 (A break was taken.)

11 THE COURT: We're going back on the record in Mr.
12 Anthony's case. Mr. Anthony, you've had a bathroom break,
13 is there anything else you would like to relate to me?

14 THE PETITIONER: Yes, sir. The person who redacted
15 those tapes --

16 (At this point the roof construction started once
17 Again.)

18 THE COURT: The person who redacted those tapes --
19 you're going to need to speak real loud because the
20 gentleman has to write down everything, okay?

21 THE PETITIONER: The person who redacted those tapes,
22 the tapes that were used as evidence against me, there was
23 never a chance for me during the trial to confront that
24 person who redacted those tapes to question them, or for
25 him to question them. I think that because those tapes

1 were used as a witness for information on them as to how he
2 put them together, my right -- Fourth Amendment right to
3 confront the witnesses, I was denied that. I would like to
4 put that on the record also.

5 THE COURT: All right, fair enough. I appreciate your
6 position on that. Anything further, Ms. Moody?

7 MS. MOODY: Your Honor, I would also just like to
8 have -- the individual here in the courtroom is Mr. James
9 Anthony who was present on behalf of Mr. Anthony, he is
10 here and he indicated that he received his clothing from B.
11 J. Barrowclough. Also that I have opened the box that I
12 received from the department of corrections on April 12th,
13 I certified mailed that these are the tapes, that I have
14 the tapes here and I will turn them over to the Court that
15 are sent to the warden at Perry Correctional Institute by
16 B. J. Barrowclough, and he did inform the warden there that
17 it was sexually graphic material on the videotapes, and in
18 response to that Steven Lunceford from the department of
19 corrections contacted me and indicated that it was a
20 security risk and that it would create a security risk, and
21 so I accepted possession for the Court today. If the Court
22 chooses to view these tapes I have all of the redacted
23 tapes.

24 THE COURT: All right. If we could, I know that we
25 have some hearings set for tomorrow, let me reflect on

1 what's been presented here today and I'll make a
2 determination on whether the Court needs to review those
3 other tapes, and at the very least perhaps the Court might
4 need to review the tape that was played at trial, that I
5 have a full picture of that tape. But Attorney General,
6 can you just burn me a copy of whatever was used at trial,
7 and I may or may not review it to tell you the truth, I
8 think the testimony is pretty clear, but if you could have
9 that available for me perhaps tomorrow if you have that in
10 your possession, and I'll let you know then whether or not
11 I intend to review that.

12 THE PETITIONER: The redacted tapes doesn't show, the
13 whole tape shows, that's what I'm contesting, because they
14 cut out the part that shows who possessed the alleged
15 drugs.

16 THE COURT: Okay. I understand that.

17 MS. MOODY: Well, I don't mean to say they redacted,
18 these are all the tapes from his file from B. J.
19 Barrowclough.

20 THE COURT: Right. Just let me reflect on that. I
21 understand your position. And for the purposes
22 of appellate authority at the very least let me let you
23 introduce those -- I hate to saddle the clerk of court with
24 those, but let's go ahead and ask those be marked and
25 introduced as Defendant's 1, they'll be collective 33

1 tapes, sorry, madam clerk.

2 (The discs were marked as Defense 1.)

3 THE COURT: And because of the nature of the tapes I
4 will order those sealed so they're not available for public
5 inspection. I am ordering those tapes sealed, Defendant's
6 1, they will be a sealed record and available only for
7 inspection by the Court if I determine it's appropriate,
8 and the appellate authority. So those are in the record at
9 this point.

10 (Break in proceedings.)

11 THE COURT: I'm assuming that the tape that was played
12 for the jury is somewhere in evidence, that they cut and
13 pasted it and put it all together and they're not shuffling
14 out from 33 or 38 different CD's, if you can get that
15 that's great. But again, I'll let you know tomorrow
16 whether I feel it's appropriate.

17 MS. MOODY: It is 38, they're individually numbered.

18 THE COURT: The matter is under advisement and we are
19 done.

20 (End of the hearing)

21

22

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for York County, South Carolina, on the 18th day of
9 April, 2016.

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

12

13

November 23, 2016

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Harry Anthony,
S.C.D.C. No. 349291,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-790

ORDER OF DISMISSAL

FILED-RECEIVED
2016 AUG 19 PM 1:53
DAVID HARRISON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 13, 2015. Respondent made its Return on or about December 30, 2015. An evidentiary hearing into the matter was convened on April 18, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, B.J. Barrowclough, Esquire, also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the April 2007 term of the York County Grand Jury for four counts of distribution of cocaine base (2007-GS-46-1072, -1073, -1074, and -1075). Applicant was represented by B.J. Barrowclough, Esquire, and Harry Dest, Esquire. On January 9-11, 2012, Applicant proceeded to a jury trial

before the Honorable John C. Hayes, III. Applicant was found guilty on all four counts. Judge Hayes sentenced Applicant to imprisonment for fifteen years on each charge, to run concurrently.

Applicant timely filed a notice of appeal and an appeal was perfected by Appellate Defender David Alexander, who filed briefs on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's convictions by an Unpublished Opinion filed November 5, 2014. State v. Anthony, Op. No. 2014-UP-388 (Ct. App. filed November 5, 2014). The Remittitur was issued November 21, 2014.

PCR Application

On March 13, 2015, Applicant filed an application for post-conviction relief alleging ineffective assistance of counsel. On April 8, 2016, Applicant filed a Motion to Amend, alleging the following grounds:

1. Failed to file a timely motion to suppress illegally obtained evidence by a defective search warrant, denying Applicant's constitutional right.
2. Failed to impeach State's key witness which was a denial of effective assistance of counsel and a violation of Applicant constitutional right.
3. Failing to litigate Applicant right to privacy.
4. Failing to object to addict's testimony without the required cautionary instructions, a violation of applicant's constitutional rights according to the 4th amendment.
5. Failing to object to the State failing to deny applicants constitutional right to a speedy trial.
6. Failing to object to the distribution of cocaine based (crack) indictments being constitutionally overbroad and vague, a violation of Applicant's constitutional rights.
7. Failing to object to solicitor's improper vouching, because witness's credibility was clearly questionable thus denying Applicant's constitutional right.
8. Failing to disclose material fact to Applicant, and to introduce available evidence to the jury, thus violating Applicant's constitutional right.
9. Failing to object to the indictment. The crime for which he was accused did not meet the elements of the indictment and he denied 6th amendment right.

10. Failing to object to the prosecutor arguing inadmissible evidence to the jury, thus violating my constitutional right according to the 6th amendment.
11. Failing to competently litigate my illegal search and seizure claim thus violating my constitutional right according to the 6th amendment.
12. Failing to object to the court's erroneous jury instructions which was a denial of effective assistance of counsel, a violation of Applicant's constitutional right.
13. Failing to advise defendant of improbability of acquittal and benefit of plea bargain when defendant faced potential sentence twice as long as that offered under plea agreement, thus violating Applicant's right.
14. Trial court erred in denying Applicant's motion for a directed verdict as to the drug charges.
15. The prosecutor failed to disclose material evidence affecting the credibility of the State's witness.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any

deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Counsel failed to file a timely motion to suppress illegally obtained evidence by a defective search warrant, denying Applicant's constitutional right.

Applicant testified that Counsel was ineffective for failing to timely object to inadmissible evidence or to move to suppress the evidence from the search. He testified that there was no probable cause for the search warrant on his house and believed the videotape evidence should be suppressed. He testified that the videotapes recovered had nothing to do with the missing persons case that the police were investigating.

Counsel testified that the police did have probable cause to search his house and recover the videotapes. He testified that the State had supporting facts and witnesses for the search

warrant. Counsel testified that making a motion to suppress this evidence would have been frivolous. He testified that he relayed this opinion to Applicant but Applicant disagreed with him.

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. This Court finds Counsel's testimony to be credible that the search warrant was not defective and a motion to suppress would have been frivolous. Additionally, Applicant has failed to show that the outcome of his trial would have been different had Counsel made a motion to suppress the evidence, as he has failed to show that this motion would have been meritorious. Accordingly, this allegation must be dismissed.

Counsel failed to impeach state's key witness which was a denial
of effective assistance of counsel and a violation of Applicant
constitutional right.

Applicant argued that Counsel should have impeached Ms. Littlejohn more effectively. Counsel testified, and the record reflects, that his entire cross examination of Ms. Littlejohn consisted of impeaching her with her drug use, her trading sex for crack on video, and her criminal history involving crimes of dishonesty. See Trial Transcript p. 141-145.

This Court finds that Applicant has failed to meet his burden of proving that Counsel's actions were deficient. This Court finds that Counsel spent his entire cross examination of Ms. Littlejohn impeaching her for her prior bad acts and crimes of dishonesty. This Court finds that Counsel's impeachment was reasonable and effective in highlighting issues with Ms. Littlejohn's credibility to the jury that would benefit Applicant's case. Cross-examination must be objectively reasonable, but not flawless. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000). An attorney's

decision about the extent of cross-examination and whether to refrain from certain lines of inquiry is entitled to great deference. Id.; see also Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (the manner and extent of cross-examination should not be second-guessed). Furthermore, Applicant has failed to show that he was prejudiced by Counsel's action as he has not shown that further cross-examination would have changed the result of his trial. Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) ("[O]ne can only speculate whether a 'better' cross examination would have helped Skeen."). Accordingly, this allegation must be dismissed.

Counsel failed to litigate Applicant's right to privacy.

Applicant testified that the videos recovered at his house were his own videos made with Ms. Littlejohn and had nothing to do with the State's warrant for a missing person. He testified that the tapes were his own property, showed consensual sex, and did not show crack.

As stated above, Counsel testified that the police did have probable cause to search Applicant's house and recover the videotapes. He testified that the State had supporting facts and witnesses for the search warrant. The record reflects that Counsel agreed during pretrial motions that there were no issues with the search of the house. See Trial Transcript p. 47.

This Court finds that Applicant has failed to meet his burden of showing that Counsel's actions were deficient for failing to litigate Applicant's right to privacy. This Court agrees with the State, Counsel, and the trial court that the search warrant was valid and the videotapes were recovered lawfully pursuant to the search warrant and Applicant has failed to prove otherwise. This Court further finds that Applicant has failed to show that his privacy rights were violated or that this was a meritorious argument for Counsel to argue. Furthermore, this Court finds that

Applicant has failed to show that the outcome of his trial likely would have been different had Counsel argued for Applicant's right to privacy. Accordingly, this allegation must be dismissed.

Counsel failed to object to addict's testimony without the required cautionary instructions, a violation of applicant's constitutional rights according to the 4th amendment.

Applicant testified that he later found out that Ms. Littlejohn was an addict. He testified that she should have been prosecuted and that Counsel should have objected to all of her testimony as not credible. He further testified that he did not bring any of this to Counsel's attention.

Counsel testified, and the record reflects, that he was able to impeach Ms. Littlejohn with her drug usage, her trading sex for crack on video, and her criminal history involving crimes of dishonesty. See Trial Transcript p. 141-145. Counsel also argued about Ms. Littlejohn's lack of credibility to the jury during closing. See Trial Transcript p. 198, ll. 2-3 ("All we know about what those tapes depict is the word of Ms. Littlejohn, which is obviously no good.") See also Trial Transcript p. 200, ll. 18-23.

This Court finds that Applicant has failed to show that Counsel was deficient in failing to object to Ms. Littlejohn's testimony. This Court finds that Applicant has failed to show specific testimony from Ms. Littlejohn that was objectionable, aside from his belief that her entire testimony should be objectionable because she was an addict. This Court finds that Counsel was effective in impeaching Ms. Littlejohn on her prior bad acts, drug usage, and prior crimes of dishonesty and in arguing her lack of credibility in closing argument. This Court finds that Ms. Littlejohn's drug addiction was made clear to the jury. Applicant has failed to show that an objection to her testimony was warranted or would have been successful and likewise has failed to show that a curative instruction was necessary or appropriate. Similarly, Applicant has failed

to show that the outcome of his trial would likely have been different had Counsel objected to Ms. Littlejohn's testimony. Accordingly, this allegation must be dismissed.

Counsel failed to object to the State's failure to honor Applicant's constitutional right to a speedy trial.

Applicant testified that he was withdrawing this allegation and this Court finds it must be dismissed.

Counsel failed to object to the distribution of cocaine based (crack) indictments being constitutionally overbroad and vague, a violation of Applicant's constitutional rights.

Applicant testified that Counsel should have objected to the indictments because there was no testimony provided by chemical analysts as to the substance of the crack. He testified that he did not discuss with this Counsel and never saw the indictments. He further testified that the indictments were overbroad because there was no timestamp on the videos.

The indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). An indictment is generally sufficient if (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) it apprises the defendant of the elements of the offense that is intended to be charged. Id. at 102-03, 610 S.E.2d at 500. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Id. Further, whether the indictment could be more definite or certain is irrelevant. Id.

This Court first finds Applicant has failed to meet his burden to show Counsel was ineffective for failing object to the sufficiency of the indictment. Applicant has failed to show any actual deficiency or otherwise meritorious reason for objecting to the indictment. Applicant's

indictments for distribution of cocaine base state the offense with certainty and apprise Applicant of the elements of distribution of cocaine base. Applicant's disagreement concerning with the evidence supporting his charges has no bearing on the sufficiency of the indictment. This Court finds that Counsel was not ineffective in this regard and that an objection to the indictment would not have been meritorious. Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Counsel failed to object to solicitor's improper vouching, because witness's credibility was clearly questionable thus denying Applicant's constitutional right.

Applicant testified that Counsel should have objected to vouching by the State because Ms. Littlejohn's testimony was not credible.

As stated above regarding Ms. Littlejohn's credibility, Counsel testified and the record reflects that he was able to impeach Ms. Littlejohn with her drug usage, her trading sex for crack on video, and her criminal history involving crimes of dishonesty.

It is well established that a solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences, but may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. Matthews v. State, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). This Court finds that Applicant has not shown any specific instances where the solicitor improperly vouched for Ms. Littlejohn's credibility and thus has failed to point out any instances where Counsel's objection would be necessary or appropriate. This Court finds that any issue with Ms. Littlejohn's credibility has been addressed above. Applicant has failed to show that Counsel was deficient in regard to the State's alleged vouching. Additionally, this Court finds that Applicant has failed to show that the outcome of his trial would likely have been different had Counsel made these objections. Accordingly, this allegation must be dismissed.

Counsel failed to disclose material fact to defendant, and to introduce available evidence to the jury, thus violating Applicant's constitutional right.

Applicant testified that Counsel failed to disclose evidence available that showed that Applicant was innocent. He testified that parts of the videos not shown to the jury would show his innocence. He testified that the full tapes should have been shown to the jury.

Counsel testified that out of all videos seized, there was nothing exculpatory on the videos or anything extra that would shed a different light on Applicant. He testified that the videos were redacted for brevity and to keep out prejudicial aspects such as the presence of other women including the subject of a missing persons investigation.

At the hearing, Applicant requested that the Court review approximately sixteen hours of videos. Based upon representation of Counsel, these videos depict Applicant and another individual engaged in sexual relations. Applicant failed to articulate a sufficient relevant reason for this Court to view all these videos and the Court ordered these videos marked as Applicant's #1 for purposes of the record. This Court did find that Applicant's PCR contained sufficient grounds to require the Court to view the video excerpts which were presented at trial. These tapes were received by the Court and the Court has had an opportunity to view these prior to this ruling. This Court agrees with Counsel that nothing in the videos provided anything exculpatory that would benefit Applicant. This Court finds that Applicant has failed to show that any material facts were not disclosed or that Counsel was ineffective for failing to introduce this at trial. This Court finds that Applicant has failed to show that Counsel was deficient and has failed to show that the result of his trial would likely have been different had Counsel shown more of the videos at trial. Accordingly, this allegation must be dismissed.

Counsel failed to object to the indictment. The crime for which he was accused did not meet the elements of the indictment and he was denied 6th amendment right.

Applicant testified that Counsel should have objected to the indictment because there was no evidence in the indictment to support the crime charged.

As stated above, the indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). An indictment is generally sufficient if (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) it apprises the defendant of the elements of the offense that is intended to be charged. Id. at 102-03, 610 S.E.2d at 500. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Id. Further, whether the indictment could be more definite or certain is irrelevant. Id.

This Court first finds Applicant has failed to meet his burden to show Counsel was ineffective for failing object to the sufficiency of the indictment. Applicant has failed to show any actual deficiency or otherwise meritorious reason for objecting to the indictment. Applicant's indictments for distribution of cocaine base state the offense with certainty and apprise Applicant of the elements of distribution of cocaine base. Applicant's disagreement concerning the evidence supporting his charges has no bearing on the sufficiency of the indictment. This Court finds that Counsel was not ineffective in this regard and that an objection to the indictment would not have been meritorious. Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Counsel failed to object to the prosecutor arguing inadmissible evidence to the jury, thus violating my constitutional right according to the 6th amendment.

Applicant testified that Counsel was ineffective for failing to object to the State arguing inadmissible evidence to the jury. Applicant testified that Littlejohn admitted during her testimony to smoking crack in the video played to the jury, but she testified at trial that she was not charged with a crack-related crime.

This Court finds that Applicant has failed to meet his burden of showing that Counsel was deficient for failing to object in this regard. Applicant has failed to show with specificity that there was inadmissible evidence presented to the jury without objection by Counsel. As Applicant has not made such a showing, he cannot show that Counsel was deficient nor can he show that any prejudice resulted from Counsel's actions. As Applicant has failed to meet his burden, this allegation must be dismissed.

Counsel failed to competently litigate my illegal search and seizure claim thus violating my constitutional right according to the 6th amendment.

Applicant testified that Counsel was ineffective for failing to argue the illegality of the search of his house and seizure of his videotapes. He testified that there was no probable cause for the search and Counsel should have moved to suppress the resulting fruits of the search.

As stated above, Counsel testified that he believed the police did have probable cause to search Applicant's house and recover the videotapes. He testified that the State had supporting facts and witnesses for the search warrant. Counsel testified that making a motion to suppress this evidence would have been frivolous. He testified that he relayed this opinion to Applicant but Applicant disagreed with him.

This Court finds Counsel's testimony to be credible that the search warrant was not defective and a motion to suppress would have been frivolous. Additionally, Applicant has failed

to show that the outcome of his trial would have been different had Counsel made a motion to suppress the evidence, as he has failed to show that this motion would have been meritorious. Accordingly, this allegation must be dismissed.

Counsel failed to object to the court's erroneous jury instructions which was a denial of effective assistance of counsel, a violation of Applicant's constitutional right.

Applicant testified that Counsel should have objected to the jury instruction for distribution of crack. He testified that he believed distribution to mean to distribute among many people but this case only involved two people. Counsel testified that although this case was not what one would call traditional distribution, distribution of crack would still involve the sharing of crack.

First, the instructions given to the jury were proper and not objectionable. When read as a whole, the jury instructions adequately covered the law and the burden of proof required to find Applicant guilty. The trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct.App. 1996). This Court finds that Applicant has failed to show that Counsel was deficient because he has failed to show that the trial court's instruction on distribution of crack inadequately covered the law or shifted the burden of proof. Applicant has also failed to show that the outcome of his trial likely would have been different had Counsel objected to the trial court's jury instruction. As such he has failed to prove both prongs of Strickland and this allegation must be dismissed.

Counsel failed to advise defendant of improbability of acquittal and benefit of plea bargain when defendant faced potential sentence twice as long as that offered under plea agreement, thus violating Applicant's right.

Applicant testified that Counsel never discussed any plea agreement with him and he never saw a plea agreement. Applicant testified that he only met with Counsel twice for about fifteen minutes.

Counsel testified that he viewed all evidence from the State, including reports from Applicant's prior attorney. Counsel testified that he met with Applicant more than five times and discussed the facts, evidence, and allegations against Applicant. Counsel testified that a plea offer was not presented because of the larger missing persons issue, but he still tried to negotiate a plea with the State. Counsel testified that he thought Applicant should plead guilty and that he even brought in one of Applicant's friends to meet with them who agreed that Applicant should plead guilty in this case. He further testified that Applicant was not interested in pleading guilty because he maintained his innocence. Counsel testified that he went over Applicant's case with him and told him that he would probably lose because of the videotape evidence showing him sharing crack. Counsel also testified that he never told Applicant that he "had his case won."

This Court finds Counsel's testimony to be more credible than Applicant's testimony regarding their pre-trial meetings and Counsel's advice. This Court finds Counsel's testimony to be credible that he tried to negotiate a plea even though the State would not offer one and that he told Applicant that he would probably lose at trial because of the strength of the State's evidence. This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that Counsel's actions were reasonable

and that Applicant has failed to show that Counsel gave deficient or erroneous advice regarding Applicant's probability of success at trial or the benefit of a plea bargain. Additionally, this Court finds that Applicant has failed to show that the outcome of his trial likely would have been different had Counsel given different advice. Accordingly, this allegation must be dismissed.

Trial Court erred in denying Applicant's motion for a directed verdict as to the drug charges.

Applicant testified that the Court erred in denying Counsel's motion for a directed verdict because there was no evidence to support the case. Counsel testified that he did not think a directed verdict would work given the substantial circumstantial evidence against Applicant. Counsel testified, and the record reflects, that he moved for a directed verdict at the close of the State's case. See Trial Transcript p. 167.

This Court finds that the trial court's failure to grant a directed verdict is a direct appeal issue. PCR is not a substitute for an appeal and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error, therefore, is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Accordingly, this allegation must be dismissed.

The prosecutor failed to disclose material evidence affecting the credibility of the State's witness.

Applicant testified that the State failed to present evidence that he could have used to impeach Ms. Littlejohn. He also testified that there were statements that the State failed to present that showed he was threatened.

This Court finds Applicant's allegation that the Solicitor failed to turn over material evidence is without merit. An individual asserting a Brady violation must demonstrate that

evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory 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." Id., 434 S.E.2d at 268.

This Court finds that Applicant has not met his burden as he has failed to show the existence of actual favorable evidence that the State failed to disclose. This Court finds Applicant's assertions to not be credible and finds that any impeachment evidence and evidence showing he was threatened are not material and would not change the result of Applicant's trial. As Applicant has failed to show that he was prejudiced by such action, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

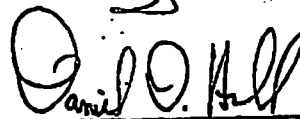
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11th day of August, 2016.



DANIEL D. HALL
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

WITNESSES

YCSO/Hager

adm

ARREST WARRANT NUMBER

Direct Indictment:
J-151102

ACTION OF GRAND JURY

TRUE BILL

Oliver Hernandez
Foreperson of Grand Jury

4-12-07

VERDICT

Guilty

Lyette C. J. Smith
Foreperson of Petit Jury
Date: 1/11/12

DOCKET NO. 2007-GS-46-01072

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

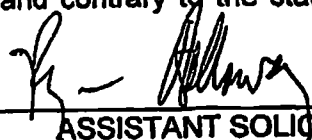
INDICTMENT

At a Court of General Sessions, convened on April 12, 2007, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about or between December 2004 through December 2005, in York County, South Carolina, the Defendant, Harry Lawrence Anthony, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, 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.



ASSISTANT SOLICITOR

WITNESSES

/Hager

adm

ARREST WARRANT NUMBER

Direct Indictment:
J-151103

ACTION OF GRAND JURY

TRUE BILL

Oliver Hampton
Foreperson of Grand Jury
4/12-07

VERDICT

Guilty

Lynne He C. J. Walsh 11/11/12
Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-46-01073

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

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SC Code: § 44-53-375
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Yocum, Roger

adm

ARREST WARRANT NUMBER

Direct Indictment:
J-151104

ACTION OF GRAND JURY

TRUE BILL

Oliver Hemphill
Foreperson of Grand Jury
4/12-07

VERDICT

Guilty

Lynette C. J. [Signature]
Foreperson of Petit Jury
Date: 4/11/12

DOCKET NO. 2007-GS-46-01074

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

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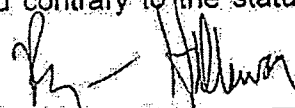
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Y.C. Hager

adm

ARREST WARRANT NUMBER

Direct Indictment
J-151105

ACTION OF GRAND JURY

TRUE BILL

Oliver Thompson
Foreperson of Grand Jury
4-12-07

VERDICT

Guilty

Lynette C. Gualtney 1/11/12
Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-46-01075

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

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Witness:

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

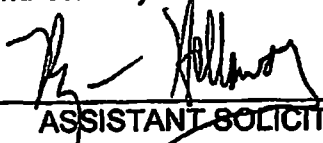
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 24, 2017

Ms. Connie Dumas, #346178
Leath Correctional Institution
2809 Airport Road
Greenwood, SC 29649

Dear Ms. Dumas:

Enclosed is a copy of the South Carolina Supreme Court's Order granting the motion filed by Tommy A. Thomas to be substituted as counsel and for an extension of time to file the petition for writ of certiorari and appendix for your appeal. Our office will be closing your case upon receipt of this Order.

Please contact me if you have any questions or concerns.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/cnp

cc: Tommy A. Thomas, Esquire