

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

V.

HILTON RHODEREQUES HAYES,

APPELLANT

APPELLATE CASE NO 2018-000264

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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SC Court of Appeals
RESPONDENT,

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
JURY VOIR DIRE	4
JURY SELECTION.....	10
OPENING REMARKS BY THE COURT	14
PRE-TRIAL MOTIONS.....	16
REMARKS BY THE COURT	30
OPENING STATEMENT BY MS. LIVELY	36
OPENING STATEMENT BY MS. KOUTSOGIANNIS	37
TESTIMONY	
AL CRAWFORD.....	40
BRAD BOWERS.....	57
TREY HUNTER.....	68
CHARLES VESS.....	80
ROGER CHUCK STARNES	97
LYNN BLACK.....	104
STATE RESTS	114
MOTION FOR A DIRECTED VERDICT.....	115
DEFENSE RESTS	121
CLOSING ARGUMENT BY MS. LIVELY.....	121
CLOSING ARGUMENT BY MS. KOUTSOGIANNIS	131
CHARGE ON THE LAW	140

VERDICT	149
POST-TRIAL MOTION FOR NEW TRIAL	150
RULING BY THE COURT.....	150
SENTENCING	156
INDICTMENT	158
SENTENCE SHEET.....	160
CERTIFICATE OF COUNSEL	161

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF CHESTER
4 2016-GS-12-00288
5

6 State of South Carolina

7 vs.

8 Hilton R. Hayes
9

10

11 Chester, South Carolina

12 February 13-14, 2018

13 Before the J. Mark Hayes,
14

15 APPEARANCES

16 For the State: Candace Lively

17 For the Defendant: Vicki Koutsogiannis, James Snell
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1	Voir Dire:	4
2	Pretrial Motions:	16
3	Opening Statements:	36
4	Al Crawford:	40
5	Brad Bowers:	57
6	Trey Hunter:	68
7	Charles Vess:	80
8	Roger Chuck Starnes:	97
9	Lynn Black:	104
10	Closing:	121
11	Jury Charge:	139
12	Jury Verdict:	149
13	Sentencing Hearing:	150
14	Certificate:	157

15

16

17

18

19

20

21

22

23

24

25

1 STATE'S EXHIBITS

2 1-6 Photos 93

3 7 Video Disc 53

4 8 Bag of Crack Cocaine 108

5

6

7

8

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VOIR DIRE

1 THE COURT: Ladies and gentlemen, we are now going to
2 begin the jury selection in the case of the State of South
3 Carolina versus Hilton R. Hayes. Ladies and gentlemen, there
4 are some questions that I need to ask you as part of this
5 process, but at this time the Clerk of Court needs to swear you
6 in as part of this process so I need for you to please stand
7 and raise your right hand.

8 (The jury panel was sworn.)

9 THE COURT: We now will begin the jury selection in the
10 case of the State versus Hilton R. Hayes. This is Mr. Hilton
11 Hayes seated down here with counsel, he is charged by way of
12 indictment of distribution of cocaine base, the indictment
13 alleges that it having occurred in Chester County on or about
14 July 5th of 2015. Mr. Hayes has pled not guilty to the
15 indictment. Ladies and gentlemen, I need for you to please
16 stand if you're related by blood or marriage to Mr. Hayes or if
17 you have a close, personal or social relationship with Mr.
18 Hayes, if you do please stand at this time. Ladies and
19 gentlemen, I'm now going to read a list of potential witnesses
20 who may be called as part of this case. Please listen -- we
21 have one standing? Your juror number?

22 THE JUROR: Thirty-six.

23 THE COURT: You are Ms. Coleman?

24 THE JUROR: Yes.

25 THE COURT: Ma'am, would the fact that you know Mr. Hayes,

VOIR DIRE

1 would that in way affect your ability to give the State and the
2 defense a fair and impartial trial in the event you are
3 selected as a member of the trial? That's a no? You have to
4 respond out loud, we're taking everything --

5 THE JUROR: No.

6 THE COURT: Thank you, ma'am, you may be seated.

7 MS. LIVELY: Your Honor, may we approach?

8 (A bench conference was held.)

9 THE COURT: Ladies and gentlemen, I'm now going to read a
10 list of potential witnesses who may be called as part of the
11 trial, please listen to these names because after I read all of
12 the names out I'm going to ask if you would please stand if
13 you're related by blood or marriage to any of these individuals
14 or if you have a close, personal or social relationship with
15 any of these individuals. I would also ask if any of these
16 individuals are present in the courtroom, I would ask that they
17 please stand when I call their names. We have Al Crawford with
18 the Chester County Sheriff's Department. Trey Hunter, Chester
19 County Sheriff's Department. Brad Bowers with the Chester
20 County Sheriff's Department. Roger Chuck Starnes with the
21 Chester County Sheriff's Department. Lynn black, SLED chemist.
22 And Charles Vess. Ladies and gentlemen of the jury, if you are
23 related by blood or marriage, know any of these individuals or
24 if you have a close, personal or social relationship with any
25 of these individuals I need for you to please stand at this

VOIR DIRE

1 time. Yes, ma'am, your juror number?

2 THE JUROR: 107.

3 THE COURT: Ms. Parker, the fact that you know one or more
4 of those individuals, would that in any way affect your ability
5 to give both the State and the defense a fair and impartial
6 trial in the event that you are selected as a member of this
7 jury?

8 THE JUROR: No, sir.

9 THE COURT: Thank you, ma'am. Ladies and gentlemen, I'm
10 now going to ask that the attorneys that will be participating
11 in the trial of the case to please stand and introduce
12 themselves to you.

13 MS. LIVELY: Thank you, Your Honor. Candace Lively,
14 Elliott Frazier.

15 MS. KOUTSOGIANNIS: My name is Vicki Koutsogiannis, I work
16 with James Snell who will be my cocounsel and he will be
17 attending shortly, and I represent the defendant, Hilton Hayes.

18 MR. SNELL: And I'm Jim Snell.

19 THE COURT: Ladies and gentlemen, if you're related by
20 blood or marriage to any of the attorneys in this case or if
21 you have a close, personal or social relationship with any of
22 the attorney in this case I need for you to please stand at
23 this time. Ladies and gentlemen, if you have ever been
24 prosecuted by the Sixth Judicial Circuit Solicitor's Office I
25 need for you to please stand at this time. Ladies and

VOIR DIRE

1 gentlemen, if you have ever been represented by any of the
2 lawyers representing the defense I need for you to please stand
3 at this time. Ladies and gentlemen, I need for you to please
4 stand at this time if you or a member of your family has ever
5 been employed by any type of law enforcement agency, please
6 stand at this time. Yes, ma'am, your juror number again?

7 THE JUROR: 107.

8 THE COURT: Ms. Parker, the fact that that has occurred,
9 would that in any way affect your ability to give both the
10 State and the defense a fair and impartial trial?

11 THE JUROR: No, sir.

12 THE COURT: Thank you. Yes, ma'am, your juror number?

13 THE JUROR: Juror number is 71.

14 THE COURT: You are Ms. Pennant?

15 THE JUROR: Yes. My --

16 THE COURT: Ma'am, the fact that that has occurred, would
17 that in any way affect your ability to give both the State and
18 the defense a fair and impartial trial?

19 THE JUROR: No, sir.

20 THE COURT: Thank you, ma'am, you may be seated. Yes,
21 ma'am, your juror number?

22 THE JUROR: I don't remember it.

23 THE COURT: What's your last name?

24 THE JUROR: Fisher.

25 THE COURT: You're number 53. Ma'am, the fact that that

VOIR DIRE

1 has occurred, would that in any way affect your ability to give
2 both the State and the defense a fair and impartial trial?

3 THE JUROR: No, sir.

4 THE COURT: Thank you, ma'am, you may be seated. Has any
5 member of the jury panel formed or expressed any opinion about
6 any issue or matter that is involved in this case? If so,
7 please stand at this time. Is any member of the jury panel
8 aware of any bias or prejudice towards either the State or the
9 defense in this case? If so, please stand at this time. Is
10 there any member of the jury panel that was a member of the
11 grand jury which issued the indictment in this case? If so,
12 please stand at this time. Is there any member of the jury
13 panel who is a member of or contributor to any group which has
14 as its primary concern the promotion of law enforcement or
15 victims rights? Now, these groups would include and certainly
16 not be limited to such groups as MADD, SADD, or Citizens
17 Against Violent Crimes, South Carolina Law Enforcement Officers
18 Association, Partners for a Drug Free America and the like. If
19 so, please stand at this time. Does any member of the jury
20 panel know of any reason whatsoever why he or she should not
21 serve as a juror in this case with particular emphasis being
22 placed on your ability to be fair and impartial to both the
23 State and the defense? If so, please stand at this time. Does
24 the State have any additional questions?

25 MS. LIVELY: None from the State, Your Honor.

VOIR DIRE

1 THE COURT: Defense have any additional questions?

2 MS. KOUTSOGIANNIS: No, Your Honor.

3 THE COURT: All right. Lawyers want to approach?

4 (A bench conference was held.)

5 THE COURT: Juror number 54, will you meet me up here in
6 front of the court reporter?

7 (Individual voir dire.)

8 THE COURT: Did I misunderstand, did you tell me before
9 that you knew the defendant?

10 THE JUROR: He lives beside my mother-in-law.

11 THE COURT: He does what?

12 THE JUROR: Lives beside my mother-in-law.

13 THE COURT: Would that in any way affect your ability to
14 give both the State the defense a fair --

15 THE JUROR: I wouldn't want to be a part of the jury.

16 THE COURT: Let me ask the question and then you answer.
17 Would that affect your ability to give both the State and the
18 defense a fair and impartial trial?

19 THE JUROR: Yes.

20 THE COURT: Okay. Thank you, ma'am. All right, we'll
21 remove 54. See the lawyers one more time.

22 (A bench conference was held.)

23 THE COURT: Five and five?

24 THE JUROR: Yes, sir.

25 THE COURT: Fifty-four will be removed.

VOIR DIRE

1 THE CLERK: Juror number 25, Larry B. Starnes. What say
2 the State?

3 MS. LIVELY: Present the juror.

4 THE CLERK: What says the defendant?

5 MS. KOUTSOGIANNIS: Please swear this juror.

6 THE CLERK: Number 39, Michaela B. Culp. What says the
7 State?

8 MS. LIVELY: Present the juror.

9 THE CLERK: What says the defendant?

10 MS. KOUTSOGIANNIS: Swear this juror.

11 THE CLERK: Juror number 72, Susan M. Hinson. What says
12 the State?

13 MS. LIVELY: Present the juror.

14 THE CLERK: What says the defendant?

15 MS. KOUTSOGIANNIS: Please excuse this juror.

16 THE CLERK: Juror number 18, Palm K. Blanchett. What says
17 the State?

18 MS. LIVELY: Present the juror.

19 THE CLERK: What says the defendant?

20 MS. KOUTSOGIANNIS: Please swear this juror.

21 THE CLERK: Juror number nine, Edward G. Bass. What says
22 the State?

23 MS. LIVELY: Present the juror.

24 THE CLERK: What says the defendant?

25 MS. KOUTSOGIANNIS: Please swear this juror.

VOIR DIRE

1 THE CLERK: Juror number 35, Monica F. Cloud. What says
2 the State?

3 MS. LIVELY: Excuse the juror from this case.

4 THE CLERK: Juror number 118, Justin S. Satterfield. What
5 says the State?

6 MS. LIVELY: Present the juror. (

7 THE CLERK: What says the defendant?

8 MS. KOUTSOGIANNIS: Please swear this juror.

9 THE CLERK: Juror number 107, Amy M. Parker. What says
10 the State?

11 MS. LIVELY: Present the juror.

12 THE CLERK: What says the defendant?

13 MS. KOUTSOGIANNIS: Please excuse this juror.

14 THE CLERK: Juror number 31, Francis B. Chisholm. What
15 says the State?

16 MS. LIVELY: Please excuse the juror from this case.

17 THE COURT: Juror number 60, Willie B. Gore. What says
18 the State?

19 MS. LIVELY: Present the juror.

20 THE CLERK: What says the defendant?

21 MS. KOUTSOGIANNIS: Please swear this juror.

22 THE CLERK: Juror number ten, Devaughn B. Beatty. What
23 says the State?

24 MS. LIVELY: Present the juror.

25 THE CLERK: What says the defendant?

VOIR DIRE

1 MS. KOUTSOGIANNIS: Please swear this juror.

2 THE CLERK: Juror number 21, Kimberly R. Branham. What
3 says the State?

4 MS. LIVELY: Present the juror.

5 THE CLERK: What says the defendant?

6 MS. KOUTSOGIANNIS: Please swear this juror.

7 THE CLERK: Juror number 148, Victoria C. Wright. What
8 says the State?

9 MS. LIVELY: Present the juror.

10 THE CLERK: What says the defendant?

11 MS. KOUTSOGIANNIS: Please swear the juror.

12 THE CLERK: Juror number 137, Barbara L. Truesdale. What
13 says the State?

14 MS. LIVELY: Present the juror.

15 THE CLERK: What says the defendant?

16 MS. KOUTSOGIANNIS: Please excuse the juror.

17 THE CLERK: Juror number 12, Shonteria S. Belk. What says
18 the State?

19 MS. LIVELY: Excuse the juror from this case.

20 THE CLERK: Juror number 99, Michael R. McCraven. What
21 says the State?

22 MS. LIVELY: Excuse the juror from this case.

23 THE CLERK: Juror number 71, Gloria C. Hinnant. What says
24 the State?

25 MS. LIVELY: Present the juror.

VOIR DIRE

1 THE CLERK: What says the defendant?

2 MS. KOUTSOGIANNIS: Please swear the juror.

3 THE CLERK: Juror number eight, Ethel Kilmer. What says
4 the State?

5 MS. LIVELY: Present the juror.

6 THE CLERK: What says the defendant?

7 MS. KOUTSOGIANNIS: Please swear the juror.

8 THE CLERK: Juror number 142, Mack A. Weathers. What says
9 the State?

10 MS. LIVELY: Present the juror.

11 THE CLERK: What says the defendant?

12 MS. KOUTSOGIANNIS: Please swear the juror.

13 THE CLERK: One alternate?

14 THE COURT: One alternate.

15 THE CLERK: Juror number 78, Jerome Johnson. What says
16 the State?

17 MS. LIVELY: Present the juror.

18 THE CLERK: What says the defendant?

19 MS. KOUTSOGIANNIS: Please swear the juror.

20 THE COURT: Anything concerning the manner and selection
21 of the jury from the State?

22 MS. LIVELY: Not from the State, Your Honor.

23 THE COURT: Any from the defense?

24 MS. KOUTSOGIANNIS: No, Your Honor.

25 (The remaining panel was excused.)

1 THE COURT: Ladies and gentlemen, congratulations as being
2 selected as our first jury for the week. I need to give you
3 some preliminary instructions. You have been selected to be
4 fact fingers in this case, that means that it is your
5 obligation to engage in appropriate deliberations in the case.
6 I need to let you know and I'm instructing you now that you
7 cannot have any discussions with anyone about anything
8 involving the case until the end of the case when you begin
9 your deliberations. Now, that includes if you're on a break
10 and you go home or you see a loved one, "Oh great, you got
11 selected to be on the jury, what kind of case is it?" Just
12 very politely tell them "The judge has instructed me that I
13 cannot talk to you or anyone else about anything involved in
14 the case until it's over. Now, that also includes among
15 yourselves. So if ever on a break or you go into the back into
16 your jury deliberation room and we're not finished with the
17 case, do not start discussing the case at all among yourselves
18 as well. The only time you will start with your deliberations
19 will be at the end of the trial after all of the evidence has
20 been presented to you and I've instructed you on the law
21 applicable to the case. I need to also instruct you that you
22 cannot do any type of independent research or investigation of
23 anything about the case. Now, you have heard -- I've done a
24 little introduction of the case to you, you've met the lawyers,
25 you've met the defendant. If you go on a break or you go home

1 at lunch time you say, "Well, gosh, I think I'm going to Google
2 this name or look up who this lawyer is or somebody that's in
3 the court process," you can't do that. You cannot do any type
4 of independent research or investigation into anything
5 involving this case, because the information that you'll use in
6 making the decision that you're going to make in this case will
7 be presented to you in this courtroom by the lawyers and you
8 will get the law as I instruct it to you at the end of this
9 case, so do not do any type of independent research or
10 investigation. That would include even if I have used a word
11 or if one of the lawyers used words that you think, "Gosh, I
12 don't quite understand what that word means, I'm going to pull
13 Websters Dictionary off the shelf," do not even do that because
14 you cannot do any type of independent research or investigation
15 into anything involving this case. Allow the lawyers the
16 opportunity to present to you the facts of the case, allow me
17 to present to you the law that I will struck you at the end of
18 this case. At this time we're going to take a short recess,
19 I'm going to let the bailiffs show you where the jury
20 deliberation room is, maybe you need to use the restroom, do
21 that but we'll get you back just shortly and we'll begin the
22 trial of this case. But at this time you may go with the
23 bailiff and he'll show you where the jury deliberations room
24 is.

25 (The jury left the courtroom.)

PRETRIAL MOTIONS

1 THE COURT: Anything before we bring the jury back in?

2 MS. LIVELY: Nothing from the State, Your Honor.

3 MS. KOUTSOGIANNIS: Yes, Your Honor, we have several
4 matters to cover. The first I would address Your Honor, and I
5 did raise this with you in chambers is we would request --
6 respectfully request a continuance of this trial and that is
7 based on my client's medical conditions. I do have some
8 medical records, I don't know if Your Honor would care to see
9 them or how helpful they would be, but he was injured in
10 October of 2017 in a car accident that was not his fault, he's
11 been treating with several different facilities. At this time
12 he has had injections, he has a bulging disc and all kinds of
13 back problems and he's currently treating and he's set to go in
14 a couple of weeks back to the doctor to determine what other
15 injections he'll get and what kind of surgery that he'll need
16 or how promptly they will need to do surgery. And that's
17 really the basis for our request, Your Honor, is that we feel
18 like this is untimely just because he's been treating and he
19 needs to continue to be treating and I'll let the Court ask any
20 follow-up questions you have regarding that.

21 MS. LIVELY: Well, Your Honor, we would oppose any type of
22 continuance. This case is already from 2015. I have actually
23 asked the defense counsel for any type of medical records
24 showing that he would be unable to appear for court, if that
25 was the case he's obviously here and he may be uncomfortable

PRETRIAL MOTIONS

1 but under the circumstances he's definitely able to proceed
2 with the trial. This case has been continued from another term
3 of court. As a matter of fact we were going to try it and the
4 State ended up giving them -- or telling the defense that they
5 would have another month in order for us to call this case, so
6 we would oppose any type of continuance at this point.

7 MS. KOUTSOGIANNIS: Your Honor, the only other thing I
8 would point out, I'm sure the Court would need to know this as
9 well, my client is -- per prescriptions he is taking pain
10 medication, I think it's Oxycodone. He's also under some other
11 antiinflammatory medications, so whatever Your Honor feels is
12 appropriate to inquire.

13 THE COURT: I'm not going to grant the request for a
14 continuance. Anything else?

15 MS. KOUTSOGIANNIS: Yes, Your Honor. Regarding the chain
16 of custody, we just discussed this via email and over the phone
17 with Ms. Lively, I have to object on the record before they
18 even introduce anything and that's just based -- I see on her
19 witness list, they have two parties, the SLED analyst and the
20 record custodian, Mr. Starnes, there's at least two others that
21 I know of that were evidence custodians, or parties in the
22 chain of custody that are not present today to testify. And
23 Your Honor, I read the case and the law and I understand that
24 you can make -- you should make the decision on your own as to
25 the integrity of the evidence and whether or not everybody is

PRETRIAL MOTIONS

1 required to be here today, that's always been my position and
2 I'm certainly objecting basically to the introduction of that
3 evidence and I would move to suppress any the evidence, they're
4 not all here to testify in court. Yes, and I apologize, Your
5 Honor, I also do have if you care to see it, we filed -- in our
6 initial discovery requests that we filed with the Court in our
7 letter of representation we note that we object to any analyst
8 report being introduced as well as per Rule Six of the Criminal
9 Rules of Procedure we demand in court the appearance of all
10 custodians and persons involved in the chain of custody. I do
11 have that if Your Honor cares for me to introduce that.

12 THE COURT: I would need to see it.

13 MS. KOUTSOGIANNIS: Thank you, Your Honor.

14 THE COURT: Yes, ma'am?

15 MS. LIVELY: Thank you, Your Honor. Your Honor, what the
16 defense has actually filed in regards to their rules, that's
17 pretty standard boiler plate at this point, and I understand
18 that they're going to put that in every single one of their
19 rules in order for us to provide a complete chain of custody.
20 If this were a situation where there was some type of
21 allegation of tampering, alternating or substitution of the
22 drugs possibly, I think that that would be possibly a reason
23 for this Court to consider having one of just the lab techs.
24 who actually just logs in the evidence and then takes it to the
25 actual chemist to be here to testify. However, that's not what

PRETRIAL MOTIONS

1 we have here. What we have is a very straight drug case where
2 we're going to have testimony from the people who are on the
3 witness list clearly who obtained the drugs that were
4 purchased, immediately put them into a sealed envelope which
5 was then taken to SLED. That information, Your Honor, by State
6 v. Hatcher which has upheld that procedure, as a matter of
7 fact State v. Hatcher was the supreme court case back in 2011
8 that overturned what the court of appeals had said was fatal to
9 the chain of custody. But here what Hatcher is saying is we
10 don't have those types of just really stringent rules in
11 regards to a chain of custody in a case where the Court is not
12 giving any type of reason to believe that tampering of the
13 evidence is a concern. It does not require every single
14 person, especially a lab tech. who is only checking things in
15 and checking things out to be present to testify to that. The
16 only person in this particular case that would be involved with
17 that would be Doris Yarborough, and she is the one who I did
18 subpoena out of an abundance of caution to be here today, she
19 confirmed in an email back to me that I forwarded to the
20 defense as well that that was her only duty in this particular
21 matter was to actually check it out after it had been submitted
22 by Chuck Starnes, which is our evidence technician at the
23 sheriff's office, and then the chemist was able to unseal the
24 package and do her chemical analysis. We do believe that the
25 State has met the requirements of State v. Hatcher in this

PRETRIAL MOTIONS

1 particular case and we would ask to be allowed to go forward
2 with those list of witnesses.

3 THE COURT: Any reply?

4 MS. KOUTSOGIANNIS: No response, Your Honor, other than
5 just to reiterate the concern I addressed previously. It's
6 been our position from the beginning and we believe our client
7 has the right to have all of those witnesses present to
8 confront them.

9 THE COURT: I will not grant the motion at this time. I
10 am familiar with the case law, you can make the appropriate
11 motion after the State's case in the event that you feel the
12 State has not met their burden and not in compliance with the
13 jurisprudence related to chain of custody witnesses. Anything
14 else?

15 MS. KOUTSOGIANNIS: Yes, Your Honor. Regarding -- I would
16 also make another motion for a continuance based on the
17 confidential informant. We just received his information
18 today, his NCIC and we were just able to -- before we came back
19 in here we were able to sort of just have a conversation with
20 him and just find out he was involved, Your Honor. And given
21 that it was right before trial we would ask for a continuance
22 even if it will be until tomorrow just to prepare for that to
23 be able to prepare the defense for the disclosure of the CI.

24 MS. LIVELY: Well, Your Honor, I believe the case law is
25 very clear in regards to why we do not release information on a

PRETRIAL MOTIONS

1 CI until we know that the case is actually going forward for
2 trial for the protection of that CI. If they want to talk to
3 him some more they can. As soon as they came up to me and
4 asked me if he was here and I said yes, I offered for them to
5 go in there and talk to the CI, and he did sit in there and
6 talk to them briefly before we came out here. If they want an
7 opportunity to speak with him again I don't have any objection
8 to that, but I would object to us giving them a full day to do
9 so and continuing this case until tomorrow morning, I don't
10 think that's necessary.

11 MS. KOUTSOGIANNIS: No other response, Your Honor. Again,
12 just reiterate my request for a continuance.

13 THE COURT: All right. I'll not grant that request. If
14 during -- we're approaching the lunch hour anyway so if you
15 need to speak with him further you can do so during the lunch
16 break as well. Anything else?

17 MS. KOUTSOGIANNIS: Yes, Your Honor. I did mention this
18 to you in chambers but I do want to put it on the record, the
19 concern I addressed to you and Ms. Lively was my client --
20 during the time he'd been previously incarcerated just for a
21 probation violation he'd been requesting a transcript from a
22 hearing that should have been held February of 2016, so that
23 was certainly after there were warrants in this case but he was
24 incarcerated during that time. That particular probation
25 violation hearing had to do with them seeking to violate his

PRETRIAL MOTIONS

1 probation based on these new charges. My understanding is that
2 one of the officers involved here sort of has a connection with
3 a prior Officer Reynolds from that former probation violation
4 hearing and my client sincerely believes, Your Honor, that
5 would have been valuable impeachment evidence for him given the
6 law enforcement's involvement going back to the history with
7 them and then how this case came about. He requested a copy
8 from the time he was in jail and he had other people ask for it
9 and no one turned it over to him, and then I think when they
10 contacted them they told me that it had been over a year so
11 they just had no record of this tape from the probation
12 violation hearing, Your Honor. My client just wants that on
13 the record that he believes that's very important to his case.
14 And, of course, Your Honor, we would just -- and I have
15 informed Ms. Lively about this, all her response was was that
16 she doesn't have it, she doesn't think it's relevant. But, of
17 course, the reason I'm addressing it, Your Honor, with you is I
18 would make a motion to dismiss based on this not being produced
19 and us asking for it.

20 THE COURT: A motion to dismiss because the probation
21 department did not produce a transcript of a probation hearing?

22 MS. KOUTSOGIANNIS: Yes, Your Honor. And again, my client
23 had given -- I have a letter -- Your Honor, if I can introduce
24 this to you. Mr. Hayes wrote this I think from when he was
25 incarcerated, it is notarized, it just kind of addresses his

PRETRIAL MOTIONS

1 concern about everything. I would like to introduce this for
2 the Court to consider. And this is his reasoning for why he
3 wanted that transcript.

4 MS. LIVELY: Your Honor, my only objection -- this is
5 interesting to read, it has nothing to do with this case, but
6 my objection would be that it be considered for any reason to
7 either dismiss or to continue the case. I don't mind it being
8 marked as a Court's exhibit if Your Honor feels -- or it needs
9 to review it but it's talking about items that were in some
10 vehicle that was taken, corruption, I have no idea. I mean, it
11 has absolutely nothing to do with this particular case. It
12 even references the deputy solicitor that was here before me so
13 I have no idea what any of this is about, so I would just
14 object to its relevance.

15 THE COURT: You're askings for a dismissal of the charges
16 based upon the probation department not giving him the
17 information?

18 MS. KOUTSOGIANNIS: Yes, Your Honor. My client believes
19 it's relevant, certainly helpful to his case and we would ask
20 that the charges be dismissed outright because --

21 THE COURT: I would have to deny the motion for a
22 dismissal. It is -- I don't know what the State is going to
23 present as far as their case, but you have every right to
24 attack the credibility of what they present so.

25 MS. KOUTSOGIANNIS: And, Your Honor, one last matter. It

PRETRIAL MOTIONS

1 would be similarly a motion to either dismiss or postpone this
2 trial, that's just based on there's two controlled buys they
3 have -- my client was served simultaneously with both warrants
4 on both of those charges, he believes that it's prejudicial to
5 go forward on just one of the buys and then depending on the
6 aftermath of this then have this other charge pending, Your
7 Honor. We would just ask that the charges be combined to the
8 one trial to the two controlled buys.

9 MS. LIVELY: If they're willing to waive the presence of
10 the other CI I'll be glad to bring the second charge against
11 him today.

12 MS. KOUTSOGIANNIS: I'm not waiving the appearance of
13 any -- basically we're asking both cases, every witness,
14 everybody here to be ready for trial if we're going to go
15 forward today so that both cases be tried simultaneously and
16 every CI would need to be here to testify, I would not consent
17 to that.

18 THE COURT: All right. Then I could not -- the discretion
19 on calling cases rests with the solicitor's office, not with
20 the judiciary so the State apparently has a conflict with one
21 of the witnesses so I can't require the State to call a case if
22 they're not ready to go forward on it. Anything else?

23 MS. KOUTSOGIANNIS: That's all I have, Your Honor, at this
24 time.

25 MS. LIVELY: Your Honor, in regards to the CI, I did

PRETRIAL MOTIONS

1 provide the defense with a copy of his prior record, however
2 nothing carried over a year that he has got a conviction for
3 and everything is over ten years, but I did provide that to
4 them for them to look over.

5 MS. KOUTSOGIANNIS: I have reviewed the NCIC, Your Honor.

6 THE COURT: Do you agree with her reading of the NCIC,
7 that there's nothing that carries over a year?

8 MS. KOUTSOGIANNIS: I don't have the copy anymore.
9 There's two pending charges for domestic violence second,
10 assault and battery second.

11 MS. LIVELY: But it's not a conviction, it's not a
12 conviction, it was a pending charge. I think it was 2017,
13 recent, but it's pending.

14 THE COURT: Who is your first witness?

15 MS. LIVELY: It's going to be the CI, Charles Vess.

16 THE COURT: All right. Let's try to -- why don't we break
17 for lunch, send them to lunch and that will give the defense a
18 chance to talk to the CI before he testifies, why don't we
19 start back about 1:30?

20 MS. LIVELY: That's fine, Your Honor.

21 MS. KOUTSOGIANNIS: I'm fine with that, Your Honor, thank
22 you so much.

23 (Juror Hinnant returned to the courtroom.)

24 THE COURT: Ms. Hinnant, you're going to serve as the
25 forelady of this jury. I don't want to just unnecessarily hold

PRETRIAL MOTIONS

1 y'all in the back, we are actually working out here on this
2 case, but what I would like for you to do is to instruct the
3 jury -- remind them not to have any discussions about anything
4 about the case among themselves or with anyone else, remind
5 them do not do any type of independent research in the case,
6 but ask them if everybody would please be back in that jury
7 deliberation room by 1:30 and we will start the case. Can you
8 do that for me?

9 THE JUROR: Yeah, sure.

10 THE COURT: All right, we'll be at ease.

11 (A lunch recess was taken)

12 THE COURT: Anything else before we bring the jury in?

13 MS. LIVELY: Nothing else from the State, Your Honor.

14 MS. KOUTSOGIANNIS: Yes, Your Honor, there are some
15 matters I would like to address with you that came up during
16 the break. First thing, Your Honor, I would like to renew my
17 continuance motions based on -- I've had an opportunity to talk
18 to my client during this break and I have noticed -- as we said
19 earlier, he is on medication currently for his injuries and
20 he's on medication currently, he indicated to us that he's
21 feeling woozy. Just observing him I can -- his eyes look a
22 little droopy so we did during that time review prior plea
23 negotiations with him as well. So I would ask Your Honor if
24 you have any concern about that to please question him if you
25 feel whether he's competent or fully knows what is going on

PRETRIAL MOTIONS

1 right now and for that reason I would renew my motion for a
2 continuance.

3 THE COURT: All right.

4 MS. LIVELY: Well, Your Honor, the State still has its
5 position that we're ready to go forward and don't believe at
6 this point in time that there's a valid reason for a
7 continuance.

8 THE COURT: All right. Mr. Hayes, your lawyer indicates
9 that she might wish me to review with you the plea
10 negotiations, do you understand that?

11 THE DEFENDANT: I'm listening.

12 THE COURT: Pardon?

13 THE DEFENDANT: Say what?

14 THE COURT: Do you understand that your lawyer is asking
15 me to review the plea negotiations with you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. So your lawyer -- my understanding
18 is that the negotiations between the State and your counsel has
19 been that the State made an offer of allowing you to plead to
20 both of the charges with a recommendation of a cap of six
21 years, do you understand that, sir?

22 THE DEFENDANT: I understand that.

23 THE COURT: And you do not wish to accept that
24 recommendation from the State?

25 THE DEFENDANT: No, sir.

PRETRIAL MOTIONS

1 THE COURT: Okay. Do you have any -- feel the need to
2 want to ask any questions of your lawyer about anything that we
3 are doing so far?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right, I think we can proceed. All right,
6 thank you, sir. All right. What we'll do -- yes, ma'am?

7 MS. KOUTSOGIANNIS: Two other brief matters if we may
8 before the jury comes. I would make a motion in limine at this
9 time. My understanding is they're going to call the CI first
10 until -- I think the analyst is supposed to be last, the one
11 who actually tested the evidence so until that time if it comes
12 in to evidence that it is crack cocaine or cocaine base I would
13 ask the Court to prevent any testimony that it is crack or that
14 "I think it's crack." Of course, you know, if the CI says
15 whatever his buy was or why he went to this location and trying
16 to buy whatever that's fine, but I don't want anyone testifying
17 that it was this until we finally have that testimony and
18 evidence, the results and everything and the foundation was
19 laid for with that evidence actually was. And then I have --
20 Your Honor, the only other matter I have at this time would be
21 I would ask the Court just to sequester the witnesses during
22 testimony.

23 THE COURT: What about the first issue?

24 MS. LIVELY: About not calling it crack? I mean, that's
25 what he's charged with, so, of course, they can question that

PRETRIAL MOTIONS

1 and have the opportunity to also cross examine the analyst
2 regarding that. But, Your Honor, we need to be able to refer
3 to what illegal substance it is that we're here on trial about.
4 So, you know, they can make their arguments regarding that it's
5 not drugs but under the circumstances that's the reason why we
6 are here, it's already on the record so I don't see any
7 prejudice to the defendant at this time to refer to it as being
8 crack cocaine.

9 MS. KOUTSOGIANNIS: Your Honor, just my response to that
10 would be, of course, it's -- there's something else you could
11 call it, it could be a powdery substance, white substance
12 descriptive but it's not what it's purported to be until it is
13 tested and I don't think it should come into evidence until
14 then.

15 THE COURT: I will allow the State however they want to
16 present it to present it. If by chance the chemist or whatever
17 expert comes in later and says it's meth as opposed to crack
18 cocaine or flour or whatever they may say it would be subject
19 to a different ruling but we'll allow it, okay? Anything else?

20 MS. KOUTSOGIANNIS: No, Your Honor, other than
21 sequestering the witnesses.

22 THE COURT: Any objection to sequestering the witnesses?

23 MS. LIVELY: No, Your Honor. Actually I was going to call
24 the CI first but I am going to call my lead investigator who is
25 Al Crawford so that works out fine. He'll just go ahead and

PRETRIAL MOTIONS

1 stay in here and we can let the two other investigators step
2 out and they can actually go into the side room until it's time
3 for them to testify.

4 THE COURT: Okay.

5 MS. LIVELY: Is there an objection to my evidence
6 custodian being in here?

7 MS. KOUTSOGIANNIS: With respect to all of that, Your
8 Honor, I renew all of my objections to the chain of custody and
9 all my reasons pretrial.

10 THE COURT: She's asking can the chain --

11 MS. LIVELY: He's the evidence custodian, Chuck.

12 MS. KOUTSOGIANNIS: No objection, Your Honor.

13 MS. LIVELY: Okay. All right.

14 THE COURT: Let's bring the jury in.

15 (The jury returned to the courtroom.)

16 THE COURT: Ladies and gentlemen, we're now going to begin
17 the trial of the case of the State versus Hilton Hayes. I need
18 for to you please stand and raise your right hand and the clerk
19 needs to swear you in.

20 (The trial jury was sworn.)

21 THE COURT: Ladies and gentlemen, before we begin this
22 trial I want to tell you that this trial probably will be
23 different from what you expect. Many people do not have a
24 chance to attend an actual court session as you're doing now
25 and may think from watching television or movies or reading

1 books that trials are always full of high drama, intense action
2 and riveting circumstances, while all of these things may be
3 true at times this trial is not for entertainment, it is a
4 fundamental part of our democracy. A trial is often slow,
5 deliberate and repetitive, just the opposite of what you may
6 have seen in television or in movies or read about in books.
7 This courtroom is a place of honor dedicated to the protection
8 and preservation of citizen's rights through what many have
9 called the greatest justice system every created. The
10 attorneys appearing before you are advocates for the parties
11 that they are representing, but first and foremost they are
12 officers of the court sworn to uphold the integrity and
13 fairness of our judicial system and to help you in the search
14 for the truth. You should expect them to be professional,
15 competent and ethical in the representation of their client's
16 interests, but remember that you have taken an oath to try this
17 case and reach a fair and just verdict and you are also
18 expected to be professional, reasonable and ethical. Thank you
19 for accepting the important responsibility of jury service and
20 for your contribution today to our justice system. What I will
21 now say is intended to serve as an introduction to the trial of
22 this case, these remarks are not a charge on the law in the
23 case. I will instruct you on the law applicable to this case
24 at the end of the trial before you retire to consider your
25 verdict. This is merely and explanation of the procedures that

1 we will follow in this trial of this case so that you may
2 better understand what is happening. The defendant is charged
3 by way of indictment filed in this court with the crime of
4 distribution of cocaine base, the elements of which will be
5 explained to you later. The indictment is simply the charge by
6 which the case is brought into court and it is not in any sense
7 evidence of any of the allegations contained in it. The
8 defendant has pled not guilty to the indictment and the State
9 therefore has the burden of proving each of the elements of the
10 indictment beyond a reasonable doubt and it will be your duty,
11 ladies and gentlemen, to decide whether the State has met that
12 burden. Your purpose as jurors is to find and determine the
13 facts. You are the sole judge of the facts, if at anytime I
14 make any comment regarding the facts you must disregard my
15 comment. You are to determine the facts from the testimony you
16 hear and the other evidence that was introduced in this court.
17 It is up to you to determine the inferences which you may feel
18 properly to be drawn from the evidence. It is especially
19 important that you perform your duty of determining the facts
20 diligently and conscientiously, because ordinarily there is no
21 way to correct an erroneous determination of fact that is made
22 by a jury. On the other hand and with equal emphasis the same
23 law that makes you the judge of the facts makes me the judge of
24 the law. The law as given by the Court is the only law that
25 you may consider, you must accept and follow it even though you

1 may disagree with it. I cannot tell you what the facts are and
2 you cannot disagree with me about what the law is or what the
3 law should be. Your job is to take the law as I give it to you
4 and apply it to the facts as you find them from the testimony
5 of the witnesses and any other evidence that's introduced,
6 after doing that you will render your verdict, a true and just
7 verdict under the solum oath that you just took as jurors.
8 Now, until I advise you to begin your deliberations you must
9 not discuss the case with anyone including your fellow jurors,
10 friends, family members or anyone that is involved in the case,
11 this includes don't have any discussion about the case whether
12 it be face to face or by telephone, by text, by email or any
13 types of communication devices. As I've instructed you, do not
14 do any type of independent research or investigation, do not
15 use your computer, cellphone, Internet to do any type of
16 independent research into this case. Ladies and gentlemen,
17 during the trial I do not anticipate of there being any type of
18 media coverage but if there is do not read, listen to or watch
19 any type of news reports about the case, this includes anything
20 that might be in the newspaper, Internet, radio, television,
21 you ladies and gentlemen must not consider anything that you
22 might have heard or read about the case outside of the
23 courtroom whether before or during the trial. After the case
24 is submitted to you you must discuss it only in the jury room
25 with your fellow jurors. The attorneys and the parties in the

1 case have been advised they're not to talk to you at all, so if
2 ever you see anyone involved in this case and they do not even
3 say hello to you, they're not being unfriendly or rude, they
4 are simply following my instructions to them. It is important
5 that you keep an open mind and not decide any issue in the case
6 until after all of the evidence has been presented, the parties
7 have made their closing arguments and I have instructed you on
8 the law. It is your solum responsibility to determine the
9 guilt or the innocence of the defendant, and your verdict must
10 be based solely on the evidence that is presented to you during
11 this trial and on the law as I instruct it to you at the close
12 of this case. Now, in just a moment the solicitor will make
13 what's called an opening statement in which the solicitor will
14 explain to you the issues in the case, or at least what the
15 solicitor thinks the issues are in the case. The attorney for
16 the defendant may also make an opening statement, although
17 she's not required to do so. What the attorneys tell you
18 during their opening statement is not evidence in the case, it
19 is only their contention as to what the issues are. The
20 evidence in the case will be presented to you by testimony of
21 sworn witnesses from this witness stand and any exhibits that
22 may be introduced during the course of this trial. Now, from
23 time to time during the trial you may hear one of the lawyer
24 say something like, "Your Honor, I believe we have a question
25 of law or matter of law to discuss with you," or they may say,

1 "Your Honor, may we approach the bench?" Or sometimes I myself
2 may find it necessary to excuse you from the courtroom for a
3 short while so that the attorneys and I can discuss what is
4 called matters of law. The reason for this is because you are
5 the judges of the facts and sometimes when discussing matters
6 of law with the attorneys it is necessary for me to make
7 comments about the facts in connection on ruling on whether or
8 not a particular law applies or not. I'm not supposed to tell
9 you what I think about the facts so I will excuse you from the
10 courtroom while these discussions take place with the attorneys
11 so that you will not in any way be affected by comments I make
12 on the facts. In determining what the true facts are you must
13 decide whether or not the testimony of a witness is believable.
14 It will be my responsibility to rule as a matter of law whether
15 certain testimony is admissible at all or not, but once the
16 testimony is admitted whether or not you believe it is solely
17 up to you. In deciding whether to believe a witness you have
18 the right to consider the interest of any witness, the bias of
19 any witness, the prejudice of any witness, the opportunity for
20 the witness to have seen matters and things for which the
21 witnesses may testify and the way the witness acts on the
22 witness stand. You have a right to consider anything that is
23 in the record that will help you evaluate the testimony of the
24 witness, so that means that it is your duty to pay close
25 attention to the witnesses, to observe the witnesses, to listen

1 to the witnesses and pay close attention to the attorneys and
2 to the Court. Do not let your thoughts wonder but give strict
3 attention to the testimony so that the at the end of all the
4 testimony, after the arguments of counsel and the charge on the
5 law has been made by the Court you'll then be in a position to
6 determine what the true facts are, apply the law to those facts
7 and thus render a true and just verdict. It is your added
8 duty, Madam Foreperson, to preside over the jury room and to be
9 the jury spokesperson here in this courtroom, but it will also
10 be your duty to write the verdict, and I will give you further
11 instructions about that at the conclusion of this case. In
12 order to preserve everyone's rights I will give both of the
13 parties an opportunity to object to anything that I have just
14 stated. Any objection from the State?

15 MS. LIVELY: Not from the State, Your Honor.

16 THE COURT: Any from the defense?

17 MS. KOUTSOGIANNIS: No, Your Honor.

18 THE COURT: At this time we will proceed with the opening
19 statements.

20 MS. LIVELY: Thank you, Your Honor. May it please the
21 Court? Good afternoon, ladies and gentlemen, I'm Candace
22 Lively, I'm the deputy solicitor here in Chester County and
23 you're here sitting on a case that is actually going to be
24 pretty simple when it comes down to the facts. What you're
25 going to hear is that on July 5th of 2015, it's been almost

OPENING STATEMENTS

1 three years now, that this defendant, Hilton Hayes who is
2 seated over here, did distribute a substance, cocaine base,
3 which is also known as crack cocaine, to a confidential
4 informant. That confidential informant is going to be here to
5 testify today to tell you he's known Hilton Hayes for 20 years.
6 He's going to tell you that he called him personally and
7 actually set up this buy, went to a hotel room, made the
8 exchange, got the drugs, left and handed those drugs over to
9 narcotics agent Al Crawford. Now, that sounds all good and
10 fine, but guess what? It was all on audio and video, so you're
11 going to get to see that today, and when you see it just use
12 your common sense. The State, yes, we have a burden, it's a
13 high burden, beyond a reasonable doubt and I welcome that, I
14 welcome that because on that video you're going to see Hilton
15 Hayes, the defendant, exchanging drugs for money with a
16 confidential informant and then you're going to be able to see
17 that for yourself. So I'm going to keep it as simple as I can
18 for you today. We'll let you see the video, we'll have someone
19 come in and say that the drugs were tested, they tested
20 positive and that's it. It was a drug sale, the defendant did
21 it, you're going to see it for yourself, the drugs are what we
22 say they are, guilty. Thank you, ladies and gentlemen.

23 MS. KOUTSOGIANNIS: Members of the jury, thank you so much
24 for being here today. As you heard the Judge mention earlier,
25 you are here because you are a fundamental part of our

OPENING STATEMENTS

1 democracy, and what that means is you are here today to make
2 the sole decision as to the fate of Hilton Hayes, who is my
3 client who is seated over there. Now, you heard the prosecutor
4 tell you a little bit about this case. They have a video and
5 you'll watch it, and I encourage you to watch it and please pay
6 close attention, and when you do watch this video I want you to
7 not only consider what's on the video but what is missing.
8 There's a lot missing in this case. There's no money, there's
9 no drugs in the video, nothing. And as far as we know the
10 video doesn't show anything that happens before, it just starts
11 with this informant who just drives in his car and goes
12 somewhere and as far as we know he ends up somewhere, and then
13 he comes and he tells the officers, "This is what I" have.
14 Nothing else is on the video and you will see that for
15 yourselves. Now, the State has three parts -- there's three
16 parts to this whole thing; there's the confidential informant
17 who I will occasionally call the CI, he's an informant working
18 for the State. He is absolutely biased, he has everything to
19 gain from being here today, and in fact, you'll hear him say
20 that he worked out a deal with these police officers to be a
21 part of this scheme. And you'll also hear him testify that
22 just shortly before this July 5th, 2015 incident he got caught,
23 he himself got caught with something and he was scared, he
24 didn't know what to do so he decided "I'm going to find a way
25 out," and that's what he did. He is biased and he is

OPENING STATEMENTS

1 interested and he has everything to gain from testifying and
2 falsely testifying before you today. Aside from the CI there
3 is no other witness. Law enforcement did not go into any hotel
4 room, law enforcement has not seen anything other than this
5 video. The only witness, the one witness they have that this
6 whole case rests on is the CI. The next part of their case
7 will be the chain of custody, and what that means is once the
8 evidence is turned over to the police they have the duty to
9 make sure everything is documented as far as where it goes and
10 who is responsible for handling the evidence, and then they
11 take it to the lab for testing. Now, you'll see the witnesses
12 that the State is going to put up, they only have two, I
13 believe there were a total of five mentioned in the reports.
14 They can't produce all of their witnesses, they're not all here
15 to testify under oath before you today so we have a big problem
16 with the chain of custody as well. And lastly, and you'll get
17 to this part, is going to be the analyst who actually tests the
18 substance, and she's going to tell you based on her experience
19 and expertise and training what her results are. It doesn't
20 matter, that is the last piece of evidence and whatever it ends
21 up being does mean that that's what was in the whole room or
22 that that's what was transferred to the CI or that that's what
23 the police got, that's irrelevant as far as we're concerned.
24 There's two fatal flaws in this case, out of three parts two
25 fatal flaws, one with the informant and then again with the

OPENING STATEMENTS

1 chain of custody and they can't produce all of their witnesses.
2 Ladies and gentlemen, the State does absolutely have the burden
3 of proof here and as you heard the prosecutor say use your
4 common sense. Well, I ask you to please use your common sense
5 and understand that there's a lot of sloppy work here, there's
6 a lot that wasn't done and there's a lot missing from that
7 video and from documentation by the police officers involved.
8 So at the end of this you ask yourselves have they met their
9 burden, this high burden of proof we have in the criminal
10 justice system? They can't meet it, they just can't, so at the
11 conclusion of this case I will ask you to find my client not
12 guilty. Thank you.

13 THE COURT: Is the State ready to call their first
14 witness?

15 MS. LIVELY: Yes, Your Honor. The State calls Al Crawford
16 to the stand.

17 The witness, AL CRAWFORD, was first duly sworn and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. LIVELY:

21 Q Officer Crawford, where are you currently employed?

22 A I'm a lieutenant with the Chester County Sheriff's Office.

23 Q And that's what I was about to ask you, what is your
24 rank now at the sheriff's office? Is it lieutenant?

25 A I'm a lieutenant.

AL CRAWFORD - DIRECT

1 Q And are you still working in the narcotics division at
2 the Chester Sheriff's Office.

3 A No, ma'am, I was promoted, I am a supervisor for patrol.

4 Q For patrol.

5 A Yes, ma'am.

6 Q How long have you been with the Chester County
7 Sheriff's Office?

8 A I've been there five years this time but I was there
9 previous.

10 Q The last five years before you became lieutenant, what
11 were your primary duties?

12 A Narcotics.

13 Q And in working in narcotics, do you have several
14 officers that assist you with any type of buys, search
15 warrant and things like that?

16 A Yes, ma'am.

17 Q And did you have any officers that assisted you back in
18 2015 with drug buys and with CI, confidential informants
19 being worked for the Chester County Sheriff's Office?

20 A Yes, ma'am.

21 Q And who would those officers be?

22 A Brad Bowers who was a lieutenant at the time, and Trey
23 Hunter who was a sergeant at the time.

24 Q Now, Lieutenant Crawford, would you please explain to
25 the jury what you do as a narcotics officer whenever you

AL CRAWFORD - DIRECT

1 encounter a CI or someone who may become a confidential
2 informant for the sheriff's office, how do you go about
3 doing that?

4 A Well, it's according to what their situation is.
5 Sometimes people come in and they volunteer to help, which is
6 rare, and then you have people who have committed crimes. When
7 we talk to the people who have committed crimes we tell them,
8 "If you want to try to help yourself," and when I mean help
9 yourself, what happens is once -- if they cooperate with us we
10 will go to the solicitor and say, "Hey, this person cooperated
11 with us," and leave it up to the solicitor and those higher up
12 to decide what they want to do with the charges for that person
13 who cooperated. So it behooves them to cooperate whenever they
14 get caught.

15 Q Okay. So someone who gets caught for -- give an
16 example to the jury. Are you talking about --

17 A Drug charges. Some people get simple stuff like driving
18 under suspension for people who have very sensitive jobs and
19 they don't want to lose their job they might want to cooperate
20 for any kind of crime.

21 Q Whenever this occurs, do you actually put in writing or
22 anything like that regarding that their charge is being
23 dismissed or disposed of?

24 A No, ma'am. One thing that we never do is we never make
25 any promises to anybody. What we tell them is -- what I tell

AL CRAWFORD - DIRECT

1 them is, "If you cooperate with us I would use that and go to
2 the solicitor's office and say this person has cooperated with
3 law enforcement which resulted in a conviction or an arrest of
4 a person that we were interested in busting," and leave it up
5 to the solicitor to make the decision using our recommendation
6 as weight.

7 Q Why would you work something out with someone that has
8 just a possession charge in a case such as the one that we
9 have here today?

10 A The objective is not to put people in prison for
11 possession of drugs. The job of narcotics is to get the person
12 that's selling the drugs, the person that's in the community
13 destroying the community by selling drugs would be our target,
14 and you're not going to get the pastor of a church or the nurse
15 from the hospital who has never been in any trouble to make any
16 buys, you have to get the people that the drug dealers deal
17 with.

18 Q So someone that the person would know.

19 A Yes, ma'am, someone that they know. They're not going to
20 deal with people they don't know.

21 Q And in the summer of 2015, were you and your narcotics
22 agents working any particular area where there was drug
23 activity?

24 A Yes, ma'am. We had been receiving information that there
25 were drug sales going on at the Super 8 Motel. Super 8 Motel

AL CRAWFORD - DIRECT

1 in Richburg is a place where construction workers tend to go
2 when they're in town to work and we had been getting
3 information and complaints that there were drug sales as well
4 as prostitution and other things going on at the Super 8 Motel.

5 Q Okay. Did you have a target or what you would refer to
6 as a target at that time?

7 A Not at that time.

8 Q All right. Now, how did you become involved with an
9 individual by the name of Charles Vess?

10 A While doing surveillance at that location we were watching
11 the back side of the hotel, which is what the information we
12 got that the person was selling drugs on the back side of the
13 hotel, so we parked the undercover vehicle in the parking lot.
14 Mr. Vess arrived, walked up the stairs to the second floor,
15 went in a room, stayed there for a very short period of time
16 and then left the area. With our experience and knowledge we
17 figured he was up there buying drugs.

18 Q So what did you do whenever you saw him leave in such a
19 quick fashion?

20 A We followed him down to the traffic light on Lancaster
21 Street, he made a left turn, he didn't use his turn signal, he
22 merged into the right down to get onto the on-ramp of I-77
23 southbound not using his turn signal again so we conducted a
24 traffic stop.

25 Q And when you conducted that traffic stop who all was

AL CRAWFORD - DIRECT

1 with you?

2 A Brad Bowers and Trey Hunter.

3 Q What happened during that traffic stop, Lieutenant?

4 A After making contact with Mr. Vess we basically told him,
5 "Hey, we know what you were up there doing, it helps you if you
6 just go ahead and be honest with us," and all that kind of
7 stuff, just the same things we tell everybody, give people a
8 chance to be honest with us, and he was. He told us that he
9 had just bought crack cocaine from the hotel.

10 Q And at that time did he tell you who he had purchased
11 it from?

12 A What we did was we moved off of the interstate and then we
13 started talking to him and that's when he identified who he
14 bought the crack cocaine from.

15 Q Was it at that time that you discussed him possibly
16 assisting you with being a confidential informant?

17 A Yes, ma'am. We did it pretty quickly because it's such a
18 high traffic area we didn't want anybody to see us talking to
19 him. So we discussed it with him and told him that if he was
20 going to work for us he needed to do something quick because
21 there's a lot of traffic and stuff out there and I was afraid
22 somebody would have seen us dealing with him.

23 Q Okay. At what point did the name Hilton Hayes come up
24 in these conversations?

25 A Well, when we were talking to him and we asked him who he

AL CRAWFORD - DIRECT

1 had bought the crack from that's who he named.

2 MS. KOUTSOGIANNIS: Objection.

3 THE COURT: I'll allow it.

4 Q Whenever he gave you the name of the defendant, what
5 kind of arrangement, if any, was set up in regards to him
6 working as an informant?

7 A We met with him in Chester I think it was the very next
8 day. He came in, he signed some confidential informant
9 paperwork, you know, the standard stuff, he was searched, then
10 we moved to a different area closer to Richburg. He was issued
11 confidential funds, which are recorded narcotics funds, he was
12 wired up with a video and audio device.

13 Q Let me stop you right there for a second, so he was
14 wired up. Before we get to that I want to make sure that we
15 don't leave anything out. Whenever you pulled him over and
16 he admitted to having bought drugs, was he ever arrested?

17 A No, ma'am, we didn't arrest him at the time.

18 Q So you never arrested him. Well, did you just let him
19 go at that point or what did you do?

20 A What we did was we told him, you know, to contact us if he
21 was going to work for us, and that if he didn't that we would
22 be getting warrants for his arrest for the possession of
23 cocaine. And he did, he contacted us.

24 Q So he knew from your own words what you're telling us,
25 that if he didn't cooperate then the charge that you stopped

AL CRAWFORD - DIRECT

1 him for, he was going to be arrested for it.

2 A Yes, ma'am. And it's a judgment call, there's some times
3 where we will go ahead and make that arrest. But like I said,
4 it was such a high traffic area, there's a lot of cars going by
5 and I did not want to lose that opportunity by talking to him
6 too much out there on the road, I just wanted to get him up
7 there out of there. Getting a warrant from him is easy, and
8 there's some CI's who say they'll do stuff and they don't so
9 you just get a warrant for them and lock him up.

10 Q And was he a local guy?

11 A Yes, ma'am, he is from Chester County.

12 Q So was there a concern that you had regarding his
13 flight?

14 A No, ma'am, not at all.

15 Q So then you stated that he did follow-up with you and
16 contact you about cooperating with the Chester Sheriff's
17 Office; is that right?

18 A Yes, ma'am.

19 Q Now, back to that. When someone agrees to do that, do
20 you actually have some type of document that they have to
21 fill out agreeing to work for you?

22 A Yes, ma'am, there are rules that they have to follow.
23 They can't break the law in the sheriff's office name, they
24 can't go out and make buys on their own. There are certain
25 rules that they have to follow and they have to initial and

AL CRAWFORD - DIRECT

1 then sign the confidential informant, and then there's some
2 information like names, date of births and that type of stuff
3 that we collect.

4 MS. KOUTSOGIANNIS: Objection, Your Honor, I apologize, I
5 was trying to catch up on that. We haven't received anything
6 that he's testifying to regarding -- no documentation from the
7 CI that was raised by the defense.

8 THE COURT: I am going to allow the question and you can
9 cross examine him.

10 Q The information that you received, Lieutenant Crawford,
11 regarding the CI, is that kept in your notes in your files
12 confidentially?

13 A The CI file is secure with limited access.

14 Q Why is that?

15 A We don't want people to walk by and find out who is
16 working for the police and who is not working.

17 Q Is it for safety reasons?

18 A Yes, ma'am. It's for the safety of a person who is
19 working for the sheriff's office.

20 Q Do you advise these CI's that there's a possibility
21 they will have to come to court eventually?

22 A Yes, ma'am. We always tell them that there is a very
23 small chance that they may have to come to court. We try to
24 make cases such as this one where you have good video so that
25 you don't have to bring them to court because it is dangerous

AL CRAWFORD - DIRECT

1 for them, but we always advise them there is a chance that you
2 may have to come to court.

3 Q Now, I'm going to take you back then to the day of July
4 5th, 2015. Would you please inform the jury exactly what
5 you and your narcotics team did on that day involving the
6 confidential informant and this defendant?

7 A Okay. So we met with the informant at the sheriff's
8 office in our office where he was briefed, he signed some
9 paperwork. His person is searched, we have Officer Bowers
10 search the CI, and then Officer Bowers goes outside and
11 searched the CI's vehicle, that's just to make sure he has no
12 other drugs or no other money on him, because it was so far
13 away from the sheriff's office to Richburg we did not want to
14 have all of that dead recording on there. So what we did was
15 we have the CI drive to Richburg and one of our detectives --
16 Agent Trey Hunter actually rode with the CI to make sure that
17 there were no stops, no drugs put back in the vehicle or
18 anything like that, that was just to make sure we kept the
19 integrity of the investigation going. We arrived at a location
20 that we always meet where the CI was brought out of the
21 vehicle, I talked to him about what we were going to do, gave
22 him instructions. You go to the location, make the buy, if he
23 wants to have small talk have a little small talk but get out
24 of there, that's a safety thing, we don't want anybody to get
25 hurt, so I talked to him about that. Agent Hunter gave him the

AL CRAWFORD - DIRECT

1 money that we used, the confidential money that we use and I
2 put the video equipment on him, turned it on, and then we sent
3 him to the hotel.

4 Q Just to be clear for the record, which hotel is this
5 again that you were sending him to on that day?

6 A It was the Super 8.

7 Q Now, was there any way for you to actually observe the
8 transaction as it took place or were you --

9 A We were in the area where we could see the CI pull up but
10 there's no way that we could see inside the hotel.

11 Q Did you see Mr. Vess, the CI, actually go into the
12 hotel room?

13 A I did not see him, I think one of the other officers that
14 was in the parking lot saw him actually go inside. But we
15 always stay close by, that way if -- because we can actually
16 hear it, now we can't see it but we can actually hear what's
17 going on and if there is an emergency we can go in and extract
18 the CI from the situation.

19 Q Since you were listening to it, did you hear him -- Mr.
20 Vess, the CI, interacting with anyone other than who we are
21 here for today, Mr. Hilton Hayes?

22 A No. Nobody else was in the room but Mr. Hayes.

23 Q Now, after -- about how long did this whole transaction
24 take place?

25 A It wasn't long, maybe ten minutes.

AL CRAWFORD - DIRECT

1 Q As soon as Mr. Vess -- well, was it obvious when Mr.
2 Vess left the hotel room that he actually was finished with
3 whatever took place in there?

4 A Yes, ma'am. They made the buy, they talked about a few
5 other things and then Mr. Vess left and met us back at the
6 location. Now, you have to understand, we follow the CI, we
7 follow the CI to the location to make sure that he doesn't go
8 any place else or do anything other than what we tell him to
9 do. Once he leaves that location we follow him back to the
10 location and that's what took place.

11 Q Where was that meeting location, Lieutenant?

12 A It was on General Drive in Richburg, it's a dead-end road.

13 Q And once you actually met up with Mr. Vess, what did he
14 provide to you at that time?

15 A Well, I turned the camera systems off, tried not to get
16 anything recorded that's unnecessary including the locations, I
17 don't really like to give up the locations, and then I
18 collected the crack cocaine, or the suspected crack cocaine.

19 Q And where was the crack cocaine or the substance that
20 you seized, where was it whenever it was given to you by Mr.
21 Vess?

22 A I think he handed it to me.

23 Q And whenever you received that item, what did you do
24 with it to protect it?

25 A I put it in a bag -- in a little envelope type thing and I

AL CRAWFORD - DIRECT

1 secure it until we get to the office where I can process it the
2 right way.

3 Q Are you the officer who actually processed it and
4 placed it into evidence?

5 A Yes, ma'am.

6 Q All right. And when that happens, do you actually have
7 to sign an evidence log and document that you were the one
8 who is submitting that?

9 A Yes, ma'am. I signed that and I signed the SLED Best Kit
10 which is the kit that we send down to SLED for analyzation, and
11 I signed all of that information and I also seal it.

12 Q And you seal it?

13 A Yes, ma'am.

14 Q And once you give that to evidence it goes into the
15 custody of your evidence custodian, Mr. Chuck Starnes,
16 correct?

17 A Yes, ma'am.

18 Q Do you have anything else to do with the substance
19 which is believed to be crack cocaine at that time? Do you
20 have any dealings with it to where you could tamper it,
21 alter it and go back into evidence and change it in any way?

22 A No, ma'am. Because once I seal it it has got a sticky
23 tamper proof seal on it, I have no access to it. Once I drop
24 it in that safe Mr. Starnes takes custody of it, I never see it
25 again until we're sitting right here.

AL CRAWFORD - DIRECT

1 Q Now, you said that you actually have the CI, which is
2 Mr. Charles Vess, hooked up so that everything that he did
3 would be audio and video recorded; is that correct?

4 A Yes, ma'am.

5 Q I'm going to show you what's been marked as State's
6 Exhibit Number 7. I'm going to ask you if you recognize
7 this audio/video disc provided to the solicitor's office?

8 A This is a copy of the video that we made of that buy.

9 Q Has that video been altered or tampered with in any way
10 since you provided it to our office?

11 A We don't have that kind of technology to tamper with any
12 video.

13 MS. LIVELY: Your Honor, at this time the State would move
14 State's Exhibit 7 into evidence.

15 MS. KOUTSOGIANNIS: No objection, Your Honor.

16 THE COURT: Without objection.

17 (The CD was received as State's 7.)

18 Q Now, Lieutenant Crawford, have you had the opportunity
19 to look at this video again?

20 A I've seen it several times over the past few years.

21 Q And in your experience in narcotics, did you have any
22 concern regarding the integrity of that transaction that
23 took place between Mr. Vess and the defendant, Hilton Hayes?

24 A No, ma'am, it was pretty straight forward. He went in, he
25 made the drug transaction, little conversation and he left. It

AL CRAWFORD - DIRECT

1 was very fast, it was very simple and very routine.

2 Q And was the buy money that was given to the
3 confidential informant actually left with the defendant?

4 A Yes, ma'am. When our CI came back out he comes back to
5 the location, I collect the evidence and at that time either
6 Lieutenant Bowers or Sergeant Hunter would have searched him to
7 make sure he had no other drugs or no other monies on him and
8 he didn't.

9 Q And he did not. Okay. Now, one of the things I want
10 to ask you about in regards to identification on the video,
11 there is a date at the bottom corner of the video that I had
12 a question about, what can you tell me about the date stamp
13 on that video?

14 A So our equipment is not -- is kind of old, so what happens
15 is when the battery goes dead it resets itself. There's a way
16 that you can go in and do a bunch of typing and reset the date
17 and time, but a lot of times we'll just grab the equipment off
18 of the shelf, somebody else may not have -- it's not like it's
19 got the video camera on there, and I'm not going to discuss
20 what it is, but it's just a little item. If you don't walk up
21 to the computer, plug it up, wait for it to load, look at the
22 date and time there's no guarantee that it's even going to fix
23 the date and time. The date and time has never really been an
24 issue with us because we've always been able to explain why the
25 date and time is not correct on it.

AL CRAWFORD - CROSS

1 Q You said that you've watched it several times. Is this
2 the video from the buy that occurred between the defendant
3 and Mr. Vess on July the 5th of 2005.

4 A Yes, ma'am. And the date and time I think it says it was
5 2010, I wasn't employed with the sheriff's office in 2010.

6 Q So that would have been physically impossible that it
7 would have happened in 2010.

8 A Yes, ma'am.

9 MS. LIVELY: Thank you, Lieutenant, answer any questions
10 that the defense may have for you.

11 CROSS EXAMINATION

12 BY MS. KOUTSOGIANNIS:

13 Q Yes, sir. My first question is how did you first get
14 assigned to this particular case?

15 A This particular case?

16 Q Yes, sir.

17 A I had gotten information that there was drug activity in
18 that particular area, drugs and prostitution activity in that
19 particular area. A phone call came to my desk, they called
20 into the sheriff's office, it doesn't really matter who they
21 send it back to, they'll just send it back there and it just
22 happened to be on my desk it came to my phone, I answered it
23 and added that to some other information that we had so that's
24 how I got involved in it.

25 Q Okay, thank you. And this was the first time you'd

AL CRAWFORD - CROSS

1 ever worked with this particular confidential informant,
2 correct?

3 A Yes, ma'am.

4 Q Was this the first time that informant had ever
5 cooperated or worked with your department or any other
6 department that you're aware of?

7 A As far as I know this is the only time.

8 Q Okay. Thank you. And you said that you followed their
9 car to the Super 8 Motel; is that right?

10 A Yes, ma'am, all of us did. We had three officers in three
11 different vehicles and all three of us followed -- it's not
12 like I'm right on his bumper but I'm able to see him. For
13 safety reasons you don't want to be right there on them because
14 the person that you're going after may recognize our vehicles,
15 even though they're unmarked narcotics vehicles people tend to
16 still know who they are.

17 Q And as you testified earlier you personally did not see
18 the CI enter into whichever hotel room it is.

19 A No, ma'am. My vehicle was a black pickup truck and that
20 car has been a narcotics vehicle since 2004, everybody in
21 Chester knows that that's a narcotics vehicle, it would have
22 been stupid for me to pull that thing right there where
23 somebody could see it because everything would have shut down.
24 So I was a little bit further back but I was close enough to
25 where if he called for an emergency I could have gotten there

AL CRAWFORD - CROSS

1 and helped get him out of there.

2 Q And just to be clear, your testimony earlier after you
3 said you caught this CI with whatever it is he had, you
4 didn't make any promise to him.

5 A I never make promises.

6 Q And then as you said you didn't even arrest him.

7 A No, ma'am, I did not.

8 Q No warrants were obtained for him.

9 A No, ma'am.

10 MS. KOUTSOGIANNIS: Okay. I have no further questions,
11 thank you.

12 THE COURT: Any redirect limited to what she went in to?

13 MS. LIVELY: No, Your Honor.

14 THE COURT: Thank you, sir, you may step down. Is the
15 State ready to call their next witness?

16 MS. LIVELY: Yes, Your Honor, the State calls Brad Bowers
17 to the stand.

18 The witness, BRAD BOWERS, was first duly sworn and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LIVELY:

22 Q Good afternoon, Mr. Bowers.

23 A Good afternoon.

24 Q Please tell the jury where you're currently employed.

25 A I'm employed with Richard Hough Construction out of

BRAD BOWERS - DIRECT

1 Richburg, South Carolina, I'm a project manager there.

2 Q And where were you employed back on July of 2015?

3 A Chester County Sheriff's Office.

4 Q How long did you work for the Chester County Sheriff's
5 Office?

6 A About four years.

7 Q And while you were there what were your primary duties?

8 A I was a lieutenant in the narcotics division for a little
9 over a year and a half. I spent some time at the DEA task
10 force out of Columbia, South Carolina, basically full-time DEA,
11 I did that for about eight months, and the rest of the time a
12 lieutenant in the narcotics division with the sheriff's office.

13 Q When did you actually leave the sheriff's office?

14 A December of 2016.

15 Q And since that time, do you continue to be called in on
16 cases such as this one?

17 A Yes, ma'am, I've been back several times.

18 Q All right. Now, it feels weird to call you Mr. Bowers,
19 I want to call you Officer Bowers, I'm sorry. Mr. Bowers,
20 are you familiar with this particular case that we've talked
21 about here today that occurred July the 5th of 2015?

22 A Yes, ma'am.

23 Q We've already heard from Lieutenant Crawford regarding
24 the narcotics team and what y'all did that day. Would you
25 please tell this jury, were you involved with the original

BRAD BOWERS - DIRECT

1 pull over and stop of the CI from this case, Mr. Charles
2 Vess?

3 A We discussed it while we were reviewing the case file. I
4 believe I was there for the initial contact with Mr. Vess, I
5 don't recall it as well as maybe some of the other cases or I
6 may not have been as heavily involved with this particular one.
7 2015 probably was about the time I was kind of back and forth
8 there towards the end when I was doing the DEA thing while I
9 was in Columbia, so I believe I was there for it but I don't
10 remember the initial contact as well as maybe some other cases.

11 Q Who would normally be in charge of talking to and
12 possibly getting a confidential informant to cooperate with
13 the sheriff's office on your team?

14 A Each individual narcotic investigator kind of handled
15 their own. We had our own cases that we were working, we had
16 our own CI's that we were working, you may have one or two
17 agents that are assigned to a CI or they kind of handle the
18 interactions with different CI's. But as far as if I made the
19 traffic stop or if I made the initial contact with the person
20 and that person was found to have drugs in their possession and
21 they were in turn made into a -- or they began to do work for
22 the sheriff's office under the premise of a confidential
23 informant I would be the one responsible for handling that CI
24 generally speaking.

25 Q And in hearing your explanation of that and that you

BRAD BOWERS - DIRECT

1 were not the lead guy on the stop of Mr. Vess, was it
2 Lieutenant Crawford then who handled this particular
3 informant?

4 A To my knowledge I believe it was, yes, ma'am.

5 Q It wasn't you, correct?

6 A It was not.

7 Q So now I'm going to take you to July 5th of 2015. Do
8 you recall you and Lieutenant Crawford and also Sergeant
9 Trey Hunter working together on a buy that y'all were going
10 to do with this informant?

11 A I do, yes, ma'am.

12 Q Please tell the jury exactly what your role was on that
13 day regarding the informant, Charles Vess.

14 A We have a pretty standard procedure that we follow in
15 dealing with confidential informants that are going in to make
16 a controlled narcotic purchase, it's done for several different
17 reasons, but the main thing is that so you don't omit anything
18 and that there's no questions at the end. If you stick by the
19 standard procedure and do the same protocol with every
20 informant then you know that you have pretty much covered your
21 bases as far as when it comes to court. So basically when the
22 confidential informant arrives we have a predetermined
23 location, sometimes it's the sheriff's office, sometime it's
24 other places, it just depends on convenience or ease of access
25 of getting to the confidential informant. We'll meet with

BRAD BOWERS - DIRECT

1 them, we'll discuss what is going to take place for that day
2 and then you start your standard protocol of searching the
3 confidential informant, making sure they don't have any illegal
4 substance or any contraband or anything on them prior to going
5 in to make a purchase. If they are driving a vehicle you'll
6 search their vehicle as well to make sure there's nothing
7 illegal inside the vehicle. They are usually provided with
8 documented funds from the narcotic expenditure account or the
9 narcotics fund to use to buy narcotics with or illegal
10 substances with and then you go forward from there, outfit them
11 with either a video or electronic listening equipment and then
12 you send them to the location to make that buy.

13 Q And so this procedure that you're talking about, what
14 did you do in regards to Mr. Vess?

15 A On this particular buy when Mr. Vess arrived I searched
16 him, I searched his person and made sure he had nothing on him
17 illegal, and then when I was done with him he remained in the
18 office with other agents and I went out to his vehicle and did
19 search his car.

20 Q Did you find any contraband, drugs or anything that
21 gave you any kind of concern at that time?

22 A No, ma'am.

23 Q So after all of this search was done of his person as
24 well as his vehicle, what was your role from that point
25 forward?

BRAD BOWERS - DIRECT

1 A Basically from that point you just become more of a
2 surveillance -- or my role that day was more of a surveillance
3 role. We went to a second meeting location due to the location
4 of where this controlled purchase was suppose to take place, it
5 wasn't in town so we had a little bit of a drive, so we went to
6 a second meeting location and kind of went over again -- you
7 kind of just debrief real quick with the confidential informant
8 and make sure they're clear the concise instructions on what
9 they are and are not to do, and then we'll usually go get set
10 up in our locations where we can observe what is going on from
11 a safe distance and without interfering or alerting anybody to
12 our presence. You want everything to go as it would as if we
13 were not in the area. So we just set up a surveillance
14 location or set up a surveillance role as far as the buy goes,
15 and then once the buy is complete just meet back at another
16 location.

17 Q Where were you when the buy took place?

18 A If I recall correctly I believe I was at -- I think it was
19 McDonald's parking lot across the street from the hotel in the
20 Richburg.

21 Q So right across -- is that a four lane highway?

22 A It is a four lane, yes, ma'am. At that time that was
23 prior to them doing all of the new construction they have done,
24 but back then it was just a standard four lane and had a little
25 turn lane to go into McDonald's.

BRAD BOWERS - DIRECT

1 Q Were you able to listen to the confidential informant
2 as he went into the hotel room and then back out?

3 A I don't recall having audio with me in the car where I
4 was, I don't recall.

5 Q Okay. So Lieutenant Crawford -- who was it that
6 actually had hooked him up with the audio/video?

7 A If I'm not mistaken I believe Crawford provided the
8 confidential informant with the audio/video equipment.

9 Q Now, how long did this whole process take once you're
10 in McDonald's and you were no longer with Mr. Vess?

11 A It's just a matter of minutes, it is I would say less than
12 five.

13 Q And after he came out of the hotel and got back into
14 his vehicle, where did he go?

15 A Mr. Vess?

16 Q Yes.

17 A Got back into the vehicle, he left the motel in Richburg
18 and went straight to the meeting location where we had told him
19 to go.

20 Q And how far away was the meeting location?

21 A A mile, if that's even a mile, three quarters of a mile.

22 Q When he is driving -- so he would be alone at that
23 point in time, right?

24 A From the secondary -- once we left to the sheriff's office
25 and went to the secondary meeting location he was never alone

BRAD BOWERS - DIRECT

1 until he left the secondary meeting location, went to make the
2 buy and back to the meeting location, that's the only point in
3 time he was alone.

4 Q And when that happens, is the audio and video on and
5 recording everything until he gets back to you?

6 A The entire time, yes, ma'am. We cut it on and we cut it
7 off.

8 Q Okay. Did you ever handle any alleged drugs or
9 substance believed to be drugs after Mr. Vess got back to
10 the meeting location?

11 A I don't recall -- for this buy I don't believe I did but I
12 don't recall for certain, I'm pretty sure I didn't.

13 Q Have you had the opportunity to review the video?

14 A Not recently. We watched the video once we got back to
15 the sheriff's office that night and were preparing the case
16 file and getting the warrants done, I do remember seeing it but
17 I don't remember in detail. I haven't seen it recently.

18 Q Did you have any concerns at that time regarding any
19 type of improper conduct by the CI or doing anything
20 improper that gave you concerns about the buy that took
21 place?

22 A No.

23 MS. LIVELY: Answer any questions that the defense may
24 have for you.

25 CROSS EXAMINATION

BRAD BOWERS - DIRECT

1 BY MS. KOUTSOGIANNIS:

2 Q All right, sir. You testified that you rode with the
3 CI to the second meeting location?

4 A I did not.

5 Q I apologize, you rode with was it Crawford?

6 A No, ma'am, I drove separate.

7 Q You drove on your own but you did go to the second
8 meeting location.

9 A I did. I met with Crawford and Agent Hunter and the CI
10 there.

11 Q Okay. And did your patrol car capture any of that
12 route on camera at all?

13 A I didn't have a camera in my car.

14 Q Okay. Now, you testified you were in the parking lot
15 at the McDonald's; is that correct?

16 A Yes.

17 Q Were you able from there to see anything that was going
18 on with the CI entering the hotel room or parking or
19 anything?

20 A I didn't have eyes on the CI. I could clearly see the
21 hotel and I knew about where in that area that the CI was going
22 to, basically I knew which room he was going to. But from my
23 vantage point basically I was there to ensure that everything
24 went smooth, he was able to get in and he was able to get out.
25 I did have radio contact with the other officers that did have

BRAD BOWERS - CROSS

1 eyes on him and they had direct contact as far as being able to
2 listen live to what was going on through the audio transmission
3 that the CI was wearing, and we generally just relay
4 information because we have a private channel on our radios so
5 we just generally relay information amongst ourselves.

6 Q Again, your communication with the officers, that's all
7 you knew about where the CI was, whether he'd arrived or
8 anything like that; is that correct?

9 A No. I watched him turn into the hotel and then once he
10 went down into the hotel to actually go to the room I could not
11 see him.

12 Q Got it, thank you. And you said that the CI drove from
13 this second meeting location on his own to the Super 8; is
14 that correct?

15 A Correct.

16 Q Approximately how much of a distance is there from that
17 second meeting location to the Super 8?

18 A Three quarters of a mile roughly. It's less than a mile,
19 it may be a little more than three quarters but it's less than
20 a mile.

21 Q And it was your testimony earlier that that driving
22 from the second meeting location to the Super 8 would have
23 been the only time that the CI was by himself; is that
24 correct?

25 A Correct, and then from the hotel back to the second

BRAD BOWERS - CROSS

1 meeting location.

2 Q No one else was with him at that time?

3 A No.

4 Q As you already stated, you didn't observe the CI enter
5 any specific room at the hotel; is that correct?

6 A I could not from where I was sitting, no, ma'am.

7 MS. KOUTSOGIANNIS: Thank you, no further questions.

8 THE COURT: Any redirect limited to what she went in to?

9 MS. LIVELY: Just one question.

10 REDIRECT EXAMINATION

11 BY MS. LIVELY:

12 Q Mr. Bowers, the vehicles that y'all use from the
13 Chester Sheriff's Office in order to do these type of
14 operations, are they like patrol cars or are they unmarked?

15 A No, ma'am. They were all unmarked vehicles, not your
16 standard police car, they didn't have any markings on them, no
17 lights or anything outside of the vehicle. All of our cars
18 were just standard vehicles with no external lights or vehicles
19 on them.

20 Q What about cameras?

21 A We don't have dash cams, we didn't have radar in our car,
22 that wasn't part of our job duty to stop cars from speeding.
23 That's not generally how we operate so we didn't have any
24 equipment in our vehicles.

25 MS. LIVELY: All right, thank you.

TREY HUNTER - DIRECT

1 THE COURT: Thank you, sir, you may step down. Is the
2 State ready to call their next witness?

3 MS. LIVELY: Yes, Your Honor, the State would call Trey
4 Hunter.

5 The witness, TREY HUNTER, was first duly sworn and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LIVELY:

9 Q Mr. Hunter, please tell the jury where you were working
10 back in 2015.

11 A With the Chester County Sheriff's Office assigned to the
12 narcotics division.

13 Q And how long had you worked at the Chester County
14 Sheriff's Office?

15 A I was assigned to the narcotics division from 2010 until
16 2017 when I had to medically retire, prior to that I was two
17 and a half years on the road side.

18 Q And whenever you medically retired in 2017, what was
19 your rank at that point in time?

20 A Sergeant.

21 Q You were a Sergeant.

22 A Yes, ma'am.

23 Q I'm going refer to you as Sergeant Hunter, okay?

24 A Okay.

25 Q So Sergeant Hunter, whenever you were working with the

TREY HUNTER - DIRECT

1 narcotics team while you were at the Chester County
2 Sheriff's Office, was it standard for you to use
3 confidential informants in setting up drug buys?

4 A Yes, ma'am, it was.

5 MS. KOUTSOGIANNIS: Your Honor, I have to object. It
6 appears that the witness has some kind of documentation with
7 him, I need to know what it is that he's relying on using.

8 A It is the incident report.

9 THE COURT: He hasn't used it yet.

10 MS. KOUTSOGIANNIS: Out of an abundance of caution I have
11 to object, I could see that he had something in front of him
12 and I didn't want him reading from it in testimony.

13 THE COURT: Okay. He hasn't done that yet so -- all
14 right, go ahead.

15 Q Now, Sergeant Hunter, I was asking you about the use of
16 confidential informants. Is that a standard practice in the
17 narcotics field of investigation?

18 A Yes, ma'am.

19 Q And whenever you actually have a confidential informant
20 work with you on drug cases, do you make any kind of
21 promises regarding what might happen with any pending
22 charges they have?

23 A Sometimes they are allowed to work a charge in any kind of
24 which way to help them help us.

25 Q Right. But at the time whenever you actually tell them

TREY HUNTER - DIRECT

1 that they can become -- they can work with you and cooperate
2 with the sheriff's office, are you able to promise him
3 anything in regards to their charges?

4 A No, ma'am.

5 Q All right. Who has control over that?

6 A I guess ultimately it is up to them as long as they're
7 cooperating and the prosecutors.

8 Q Okay. So whenever you have an informant such as Mr.
9 Charles Vess who is involved in the case from July of 2015,
10 who was the person that was kind of the handler of Mr. Vess?

11 A Agent Al Crawford.

12 Q Lieutenant Crawford. Lieutenant Crawford who was here
13 before you?

14 A Yes, ma'am.

15 Q So were you an assisting agent in that particular case?

16 A Yes, ma'am, I was.

17 Q Please tell the jury exactly what your role was in the
18 case that occurred on July the 5th or the buy that occurred
19 on July the 5th of 2015?

20 A When the informant, Mr. Vess, met us at the sheriff's
21 office my job at that point was to search the vehicle and make
22 sure everything was clear and make sure there were no narcotics
23 in the vehicle or any kind of weapons or anything that could be
24 used or anything. I know after the phone call was made I
25 actually got into the vehicle with Mr. Vess and we rode to a

TREY HUNTER - DIRECT

1 secondary meet location, I rode with him just to maintain the
2 security and the integrity of the investigation because we had
3 to travel such a distance to a secondary meet location, and at
4 the secondary meet location the other agents were doing their
5 duties and right prior to the actual investigation starting to
6 take place handed him the documented money.

7 Q And the documented money, how do you document that this
8 money is funds being used by the sheriff's office?

9 A We make copies of it and stick it in a file and maintain
10 it until it was needed.

11 Q And how much money was provided to this particular CI
12 that day, do you recall?

13 A I believe it was \$40 I believe.

14 Q Now, you said once the call was made that you
15 accompanied Mr. Vess in the vehicle to a secondary location,
16 what call was that that you're referring to?

17 A He had contacted Mr. Hilton Hayes to make sure that the
18 buy was still good to go, that he had the drugs in hand and
19 wanted to make sure that the trip was going to be worth it and
20 they had told him to come down here to the room, they gave him
21 a room number and Mr. Hilton was even recorded saying "Don't
22 say the room out loud." That's when we went to the secondary
23 location and he went on to the Super 8 from there.

24 Q So this is the -- that's what I was going to ask you,
25 the Super 8 Motel is the --

TREY HUNTER - DIRECT

1 A Is located in Richburg right next to the interstate.

2 Q All right. How far away was the secondary location
3 where you stopped and actually exited the vehicle from Mr.
4 Vess, the CI?

5 A Roughly one mile.

6 Q So once you actually removed --

7 MS. KOUTSOGIANNIS: Your Honor, I apologize, may I
8 approach one moment?

9 THE COURT: Lawyers approach?

10 (A bench conference was held.)

11 THE COURT: Ladies and gentlemen, there's a matter I need
12 to take up with the lawyers outside of your presence, I'll ask
13 if you would please not have any discussions among yourselves
14 or anything about the case, you may return back to your jury
15 deliberation room and we'll get you back here shortly.

16 (The jury left the courtroom.)

17 THE COURT: All right. Officer, we're going to step down,
18 we're in the process of you giving testimony so don't talk to
19 anybody about the substance of your testimony as well. We'll
20 come right back.

21 (A break was taken.)

22 THE COURT: Anything before we bring the jury back?

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

24 MS. KOUTSOGIANNIS: No, Your Honor.

25 THE COURT: Let's bring the jury back in.

TREY HUNTER - DIRECT

1 (The jury returned to the courtroom.)

2 THE COURT: Yes, ma'am.

3 MS. LIVELY: Thank you, Your Honor.

4 Q Now, Sergeant Hunter, I was talking to you about the
5 set up for the buy that took place on July 5th of 2015 that
6 you were involved in, okay? All right. So you mentioned
7 that the funds that were actually used was about \$40 that
8 was provided through the sheriff's office; is that right?

9 A Yes, ma'am.

10 Q That's documented money and that's pretty standard
11 procedure as well, correct?

12 A Yes, ma'am.

13 Q All right. The last thing that you were telling us
14 about was how you actually rode with Mr. Vess to a secondary
15 location before he was actually sent on his own; is that
16 right?

17 A Yes, ma'am.

18 Q Where did you go once you left -- or the CI left to go
19 to do the buy, where did you actually park?

20 A I believe I recall myself and Agent Bowers moved to a
21 location that was closer to Super 8 to where we had the
22 computer in our vehicle which would transmit the body wire
23 to -- just out to everyone who was there listening. So we had
24 to get in a position that's close, that's normally within one to
25 two tenths of a mile for best reception. I can't exactly

TREY HUNTER - DIRECT

1 recall, it may have been in the Zaxby's parking lot or possibly
2 the Hardee's -- I mean the Burger King parking lot which is
3 right in front of the Super 8.

4 Q Are there a bunch of fast food restaurants in that
5 area?

6 A Yes, ma'am.

7 Q Actually that particular area where the Super 8 is, is
8 that also where the overpass is from Number 9 going over 77?

9 A Yes, ma'am.

10 Q Is there a McDonald's around there?

11 A Yes, ma'am, there's a McDonald's right across the street.

12 Q Okay. So you would have been in one of those locations
13 then.

14 A Yes, ma'am. I can't recall which one, which particular
15 position.

16 Q The issue for you as the agent would be to be what did
17 you say, like .1 or .2 tenths of a mile?

18 A Yes, ma'am, that's ideal for best reception.

19 Q Could you actually hear yourself what was going on
20 between the CI and his interaction with the defendant?

21 A Yes, ma'am, it was in and out. It could be numerous
22 amount of things with interference from just the power lines or
23 anything like that, but it was in and out, yes, ma'am.

24 Q All right. Where was the actual camera placed, do you
25 recall?

TREY HUNTER - DIRECT

1 A If I recall correctly I believe it was a button camera
2 placed on the shirt, I believe. We have numerous things, some
3 of them I'm not going to disclose but I do believe on that day
4 he had it on a shirt.

5 Q Now, the button cam, where all could it be placed if
6 you're using a button cam?

7 A In any location, a T-shirt, regular button up coat, a
8 hoodie, a hat.

9 Q Now, whenever that video -- you said that the video was
10 on and it was transmitting whenever Mr. Vess, the CI,
11 actually went over to the hotel. About how long did that
12 take place from the time whenever he left you and went into
13 the hotel and came back, about how long did that take place,
14 do you recall?

15 A From the secondary location?

16 Q Yes.

17 A Roughly maybe six, seven, eight minutes, somewhere in
18 there, I can't remember an exact time. It's just it's so fast
19 paced.

20 Q So a short period of time.

21 A Yes, ma'am.

22 Q And whatever the video shows in regards to timeline
23 would be the accurate time, is that fair to say?

24 A Yes, ma'am.

25 Q As in the amount of time it took. Is that a yes?

TREY HUNTER - DIRECT

1 A Yes, ma'am.

2 Q Because it's being recorded -- by the time you say,
3 "Okay, bye, Mr. CI," that audio/video is on and it is
4 recording whatever happens at that point.

5 A Yes, ma'am. It's recording everything that he says, radio
6 on, everything, it's recording everything.

7 Q So if he says, "I've got a camera on me," then you're
8 going to hear that happen as well as that's being said in
9 front of the potential seller, correct?

10 A Correct.

11 Q Did you have any concerns during that whole transaction
12 that there was anything inappropriate or that there was
13 anything comprised in regards to the drug buy and the
14 transaction?

15 A No, ma'am.

16 Q Now, after the transaction took place, did you meet
17 back up with Mr. Vess, the confidential informant?

18 A Yes, ma'am. When Mr. Vess left I followed in my vehicle
19 and stayed behind him, so I stayed behind him. We keep a line
20 of sight on that vehicle, that way they can't pull off anywhere
21 and do anything, so I follow them back in the secondary
22 location and once we arrive there is when Major Crawford had
23 the drugs there.

24 Q Did you ever touch the substance that was believed to
25 be crack cocaine once --

TREY HUNTER - DIRECT

- 1 A No.
- 2 Q You did not. Who was it that actually handled the
- 3 drugs?
- 4 A Lieutenant Crawford.
- 5 Q Did you at any point in time find any other drugs or
- 6 paraphernalia in the car after the CI met you back again at
- 7 that secondary location?
- 8 A No, ma'am. The vehicle was searched thoroughly again
- 9 postop and it was -- the vehicle was cleared of any contraband.
- 10 Q So any contraband or substances alleged to be drugs
- 11 would have been turned over to Agent Crawford.
- 12 A Yes, ma'am.
- 13 Q Now, after your worked on this particular case that
- 14 day, did you have anything else to do with the informant,
- 15 Mr. Charles Vess, after that point?
- 16 A No, ma'am.
- 17 Q And you had nothing to do with the drugs being
- 18 introduced to the evidence custodian, correct?
- 19 A No, ma'am.
- 20 Q Now, who had the phone number for the defendant, was it
- 21 you or was it Mr. Vess?
- 22 A Vess.
- 23 Q It was Vess?
- 24 A Yes, ma'am.
- 25 Q So he contacted him.

TREY HUNTER - DIRECT

1 A Yes, ma'am.

2 MS. LIVELY: Thank you. Answer any questions that the
3 defense has for you.

4 CROSS EXAMINATION

5 BY MS. KOUTSOGIANNIS:

6 Q Sergeant, you testified that you rode with the
7 confidential informant to the second meeting location; is
8 that correct?

9 A Yes, ma'am, from the sheriff's department to the secondary
10 meet location.

11 Q If I'm correct I think everybody including yourself has
12 testified so far that the informant rode on his own from
13 that second location to the Super 8; is that correct?

14 A Yes, ma'am.

15 Q Okay. And from where you were parked somewhere close
16 to the McDonald's, were you able to see the informant's car
17 enter the parking lot of the Super 8? Were you able to
18 track him?

19 A Yes, ma'am, I was.

20 Q From your vantage point where you are, were you able to
21 see the informant enter a specific hotel room or any hotel
22 room from that matter?

23 A I observed Mr. Vess' vehicle traveling around to the
24 backside of the Super 8 Hotel which is the room that Mr. Hinton
25 was in. Like I said, a few minutes passed and when he came

TREY HUNTER - CROSS

1 back out I immediately observed him and followed right in
2 behind him.

3 Q Okay. And whose car was the informant driving? Was it
4 his own car?

5 A I believe it was his vehicle, yes, ma'am.

6 Q Just curious, did you check to see if he had a valid
7 driver's license before letting him go out there on his own?

8 A I did not.

9 Q And you said that -- were you the one who gave the
10 informant \$40?

11 A Yes, ma'am, I handed him the \$40 of documented funds. The
12 funds belonged to Lieutenant Crawford but I had made the copies
13 of the money and handed it to him.

14 Q And can you say with certainty that the CI didn't have
15 any additional money on his person?

16 A No, ma'am. The procedures are all monies down to a penny
17 are removed from any informant, all items other than the keys
18 to their vehicle, any knives or anything like that is
19 completely removed. If we find change or money in the vehicle
20 that's removed as well and documented.

21 MS. KOUTSOGIANNIS: Thank you, no further questions.

22 THE COURT: Any redirect limited to what she went in to?

23 MS. LIVELY: Not of this witness, Your Honor.

24 THE COURT: Thank you, sir, you may step down. State
25 ready to call their next witness?

CHARLES VESS - DIRECT

1 MS. LIVELY: Yes, Your Honor, the State would call Charles
2 Vess to the stand.

3 The witness, CHARLES VESS, was first duly sworn and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. LIVELY:

7 Q Mr. Vess, if you don't mind, pull that microphone to
8 you, we want to make sure we're hearing everything you're
9 saying. You are Charles Vess. Mr. Vess, when were you
10 born?

11 A June 29, 1978.

12 Q So that makes you --

13 A Thirty-nine.

14 Q Thirty-nine years old. And are you a resident of
15 Chester?

16 A Yes, ma'am.

17 Q How long have you lived in Chester?

18 A All of my life.

19 Q Do you know the defendant, Hilton Hayes?

20 A Yes, ma'am.

21 Q And how long have you known the defendant, Hilton
22 Hayes?

23 A Twenty or 25 years.

24 Q And how do you know him?

25 A Went to school together.

CHARLES VESS - DIRECT

- 1 Q What school?
- 2 A Lewisville High School.
- 3 Q And after you graduated from high school did y'all
- 4 remain in contact with one another?
- 5 A Yes, ma'am.
- 6 Q Now Mr. Vess, was there a time in 2015 whenever
- 7 yourself actually got into some trouble with the Chester
- 8 County Sheriff's Office?
- 9 A Repeat that.
- 10 Q Back in the summer of 2015 before the issue that we're
- 11 here for today, did you have an opportunity to where you
- 12 actually got in a little bit of trouble and were pulled over
- 13 by the Chester County Sheriff's Office?
- 14 A Yes.
- 15 Q Tell the jury why you were pulled over and what
- 16 happened.
- 17 A I was pulled over and they found possession of crack
- 18 cocaine on me, so --
- 19 Q They found crack cocaine.
- 20 A Yes.
- 21 Q And make sure you speak up because this gentleman has
- 22 to take down everything you're saying, okay? Now, Mr. Vess,
- 23 are you nervous about being here today?
- 24 A Yes, ma'am.
- 25 Q I understand. Now, on that day whenever you were

CHARLES VESS - DIRECT

1 pulled over by the Chester County Sheriff's Office, where
2 had you been?

3 A At the movies in Rock Hill.

4 Q At the movies in Rock Hill. Okay. Now, whenever they
5 pulled you over where were you at that point in time?

6 A Just getting on the interstate coming from the motel room.

7 Q Coming from the motel room. What motel is that?

8 A Motel 8, Super 8.

9 Q The Super 8?

10 A Yes.

11 Q And what little town is that referred to?

12 A Richburg.

13 Q Were you by yourself?

14 A No.

15 Q Who was with you?

16 A My son.

17 Q You had your son with you. What were you leaving the
18 hotel room for, what had you just done?

19 A I had bought and purchased crack.

20 Q And you had your son with you.

21 A Yes.

22 Q Is that hard to talk about now?

23 A Uh-huh.

24 Q Is that a yes? I'm sorry, he has to pick that up,
25 okay?

CHARLES VESS - DIRECT

1 A Yes.

2 Q I understand. Now, Mr. Vess, had you had some issues
3 with drugs in the past?

4 A Yeah.

5 Q Since you assisted the Chester County Sheriff's Office
6 on July 5th of 2015, have you used crack cocaine?

7 A No.

8 Q Now, I'm going to step back for just a minute and talk
9 about -- you said that you were pulled over by the Chester
10 County Sheriff's Office and you had crack on you. And
11 that's a yes?

12 A Yes.

13 Q I'm sorry, I'm just making sure that it's clear for the
14 record. When that happened, Mr. Vess, what were your
15 thoughts at that point in time? What were you worried
16 about?

17 A My son.

18 Q Okay. Did you have a conversation with Al Crawford,
19 who is the agent who was a part of that pulling you over
20 that day, did you have a conversation with him?

21 A Yes.

22 Q And in that conversation was there an offer made to you
23 regarding possibly working with -- as a confidential
24 informant?

25 A Yes.

CHARLES VESS - DIRECT

1 Q What did you think about that?

2 A I hesitated, but it was a yes.

3 Q Now, who was the one that actually brought up who you
4 were going to purchase from?

5 A I brought that up.

6 Q You brought that up?

7 A Yeah.

8 Q Tell the jury how you brought that up.

9 A Well, he's the only person I knew and I bought from so
10 that was --

11 Q And that who is the defendant, Hilton Hayes?

12 A Yes, ma'am.

13 Q And will you please identify who Hilton Hayes is to
14 these jurors here in the courtroom?

15 A That's him right there.

16 Q In the blue shirt?

17 A Yes, ma'am.

18 MS. LIVELY: Your Honor, let the record reflect that the
19 informant, Mr. Vess, has identified the defendant, Hilton
20 Hayes.

21 THE COURT: All right.

22 MS. LIVELY: Thank you.

23 Q Now, Mr. Vess, tell us on July the 5th, 2015, did you
24 actually fill out any paperwork to agree to work with the
25 Chester County Sheriff's Office and be an informant?

CHARLES VESS - DIRECT

1 A Yes, ma'am.

2 Q Were you made any kind of promises that your charges
3 would definitely go away if you did this?

4 A No, ma'am.

5 Q So once again, why did you decide to actually work with
6 them and try to work on your charges? What was your
7 inspiration?

8 A I just didn't want the charge, I didn't want to be
9 publicly humiliated, there was a lot of reasons.

10 Q Were you scared?

11 A Yeah. A little, yeah.

12 Q So on July the 5th, 2015, where did you meet up with
13 the narcotics agents?

14 A In Richburg on the back road on a dead-end road.

15 Q Before you got there did you have to go undergo any
16 kind of searches?

17 A Yeah.

18 Q Tell the jury what was searched.

19 A Myself and my vehicle.

20 Q Did you have any other drugs or contraband on you or in
21 your vehicle on that day?

22 A No, ma'am.

23 Q Were you warned that if you had anything in your
24 vehicle that that would be the end of everything?

25 A Yes.

CHARLES VESS - DIRECT

1 Q So your vehicle was searched, correct? And your
2 person, your clothing was searched; is that right?

3 A Yes, ma'am.

4 Q So did one of the agents actually ride with you to the
5 secondary location before you were to make the buy?

6 A Yes, ma'am.

7 Q Do you remember which one of them it was?

8 A Yes.

9 Q Was he here today?

10 A Yes.

11 Q Okay. So one of those agents rode with you. And did
12 y'all stop anywhere before you got to the secondary location
13 where you were going to drop him off and then make the buy?

14 A No.

15 Q Were you aware of any other agents following you or
16 tailing you to that secondary location?

17 A No.

18 Q Do you know where Agent Crawford was then at that point
19 in time?

20 A He was in front of us, we was following him.

21 Q I'm sorry, okay. But he was there.

22 A Yes.

23 Q Now, who was it that actually put the audio/video wire
24 on you?

25 A Crawford and the white guy, I don't know his name.

CHARLES VESS - DIRECT

1 Q But Crawford was kind of in charge of that. Where did
2 the camera actually go, do you remember?

3 A On my key chain.

4 Q On your key chain. So was it like a little button size
5 camera?

6 A Yeah.

7 Q Now, whenever you got the camera, were you advised that
8 anything you say and everything you were doing was being
9 recorded?

10 A Yes.

11 Q Now, whenever you got to that secondary location, were
12 you alone at that point whenever you went to park your
13 vehicle at the Super 8?

14 A Yes.

15 Q What kind of vehicle were you driving, Mr. Vess?

16 A A 2010 Jeep Wrangler.

17 Q 2010 Jeep Wrangler. Was that your vehicle?

18 A Yes.

19 Q So you agreed to use your own vehicle for this
20 transaction.

21 A Yes.

22 Q Who actually contacted the defendant, Mr. Hayes, to set
23 all of this up?

24 A I did.

25 Q So you had his number.

CHARLES VESS - DIRECT

- 1 A Uh-huh.
- 2 Q That's a yes?
- 3 A Yes.
- 4 Q So did you know where to go at that point?
- 5 A Yes.
- 6 Q And where was that?
- 7 A The Super 8 Motel.
- 8 Q And were you familiar with which room to go to?
- 9 A Yes, ma'am.
- 10 Q Was it on the first floor or the second floor?
- 11 A Second floor.
- 12 Q And was anyone with you at anytime from the time
- 13 whenever you dropped off the agent and then you went to that
- 14 hotel room and spoke with the defendant?
- 15 A No.
- 16 Q After you left the defendant's room and went back to
- 17 your vehicle, did you meet with anyone, talk to anyone or do
- 18 anything with the items that he gave to you until you met up
- 19 with the agents again?
- 20 A No.
- 21 Q Now, were you given a certain amount of money by the
- 22 sheriff's office in order to transact this drug buy?
- 23 A Yes.
- 24 Q Do you remember about how much it was?
- 25 A \$40.

CHARLES VESS - DIRECT

- 1 Q And so what were you expecting to get for \$40?
- 2 A \$40 worth of crack.
- 3 Q \$40 worth of crack.
- 4 A Yeah.
- 5 Q So that would be one rock, two rocks, about how much?
- 6 A Normally two.
- 7 Q Do you remember how much you actually got?
- 8 A Two.
- 9 Q Was that actually provided to the actual officers
- 10 whenever you went back to the secondary location?
- 11 A Yes.
- 12 Q How far away was the secondary location?
- 13 A Less than a mile.
- 14 Q So pretty close.
- 15 A Yeah.
- 16 Q Now, Mr. Vess, whenever you actually got back to that
- 17 location, did you turn over what was believed to be crack
- 18 cocaine at that time?
- 19 A Yes.
- 20 Q And do you remember who you actually gave it to you?
- 21 A I left it on the dash and I got out of the truck and they
- 22 got in to get it out.
- 23 Q So you put it on the dash and then you stepped away; is
- 24 that right?
- 25 A Yes. Well, when I come out of the motel room I put it on

CHARLES VESS - DIRECT

1 the dash, drove back to the site, got out and let them get it.

2 Q And so did you touch it or tamper with it or alter it
3 in any kind of way?

4 A No.

5 Q So what you purchased from Hilton Hayes is what was
6 given to the agents when you got to that secondary location.

7 A Yes.

8 Q Now, did you have anything else that you got from Mr.
9 Hayes whenever you left there that day?

10 A No, ma'am.

11 Q Did you have a conversation with Mr. Hayes while you
12 were in there?

13 A Yes.

14 Q Was it a pretty casual conversation?

15 A Yes.

16 Q Have you had the opportunity to actually watch the
17 video of whenever you went into the hotel room and spoke
18 with Mr. Hayes?

19 A A little.

20 Q Does it look like that scene that you're watching, has
21 it been altered in any way?

22 A No.

23 Q What I'm going to --

24 MS. LIVELY: And Your Honor, at this time the State is
25 going to publish the video while this witness is on the stand

CHARLES VESS - DIRECT

1 and I'm going to key that up. And Your Honor, what the State
2 would like to do -- and I'll bring this up for the defense in
3 case the defense has any kind of objection, there is a
4 timeframe for about five minutes where it's just dead time
5 where the informant is actually walking -- he's in the vehicle
6 walking from his vehicle and going up to the hotel room, I was
7 just going to play just from the time whenever he gets to the
8 hotel room unless the defense has any kind of objection just so
9 the jury doesn't have to hear and see the walking.

10 MS. KOUTSOGIANNIS: There's no objection as to how she
11 chooses to present the case, it is going to be made available
12 for the jury to play on their own.

13 THE COURT: All right.

14 MS. LIVELY: Yes, sir, Your Honor.

15 Q Mr. Vess, I may get you to explain some things as we go
16 through this, okay?

17 (The video was played.)

18 Q What we just watched, was that you on that video?

19 A Yes.

20 Q And who was the individual that you bought drugs from
21 that day?

22 A Hilton Hayes.

23 Q Now, the video itself, you said that the button cam was
24 on your key chain; is that right?

25 A Yes.

CHARLES VESS - DIRECT

1 Q So it's kind of shaky and all of that stuff. At the
2 end the last part that I showed, you weren't talking or
3 saying anything, was anyone with you at the last, that
4 little short period of time after you bought the drugs going
5 through the parking lot and then into your vehicle?

6 A No.

7 Q Did you meet up with or talk to anyone or have an
8 opportunity to buy anymore drugs or anything before you met
9 the officers at that secondary location?

10 A No.

11 Q So the drugs that you provided to them, were those the
12 drugs that you received from the defendant, Hilton Hayes?

13 A Yes.

14 Q Now, I'm going to show you one part of the video, and
15 I'll ask you if you would please tell me at what point in
16 time the drugs actually were exchanged.

17 A Right there.

18 Q Right there? So right around 7:40 into -- so about
19 seven minutes and 40 seconds into this recording is whenever
20 there was an exchange; is that right?

21 A Yes.

22 Q I'm going to show you what's been marked as State's
23 Exhibits 1 through 6 and just ask you if this is a breakdown
24 of the still shots from that transaction, okay? If you'll
25 just tell me if this looks like what we just saw in the

CHARLES VESS - DIRECT

1 video, just flip through each one of those photos.

2 A (Witness complies.)

3 Q So is that transaction where you were provided with
4 what you were believing to be drugs, crack cocaine, from the
5 defendant, Hilton Hayes?

6 A Yes.

7 Q All right.

8 MS. LIVELY: Your Honor, the State would move to enter
9 State's Exhibits 1 through 6 into evidence.

10 MS. KOUTSOGIANNIS: No objection.

11 THE COURT: Without objection it's State's 1 through 6.

12 (The photos were received as State's 1-6.)

13 Q Now Mr. Vess, since the -- after all of this happened
14 on July the 5th of 2015, what happened with your charges
15 that you had for the -- when you were pulled over for
16 possession of crack cocaine?

17 A What you mean what happened?

18 Q Were you ever even arrested for those charges?

19 A No.

20 Q And why is that?

21 A Because I made a deal.

22 Q Okay. You made a deal to assist with the Chester
23 County Sheriff's Office; is that right?

24 A Yes.

25 Q If you didn't help them what did they tell you they

CHARLES VESS - DIRECT

1 would do?

2 A I would get charged.

3 Q You would get charged?

4 A Yeah.

5 Q So you have a really, really good reason to be here
6 testifying today, is that a fair statement?

7 A Yes.

8 Q Are you making any of this up in order to get back at
9 Mr. Hayes or get him in trouble for some reason?

10 A No.

11 Q Do you have any ill will against Mr. Hayes?

12 A No.

13 Q Do you want to be here?

14 A No.

15 Q And did you have a crack cocaine problem or at least a
16 habit to an extent back in 2015?

17 A Yes.

18 Q And have you kicked that habit?

19 A Yes.

20 Q Has this helped you kick that habit?

21 A Yes.

22 MS. LIVELY: Answer any questions that the defense may
23 have.

24 CROSS EXAMINATION

25

CHARLES VESS - DIRECT

1 BY MS. KOUTSOGIANNIS:

2 Q Mr. Vess, so a few weeks before July 5th of 2015, which
3 is allegedly the date of this video you were caught with
4 possession of what you believed was crack cocaine; is that
5 right?

6 A Yes.

7 Q And at that time you were caught you were scared,
8 right?

9 A Yes.

10 Q And you did not want to go to prison; is that right?

11 A Right.

12 Q You didn't want to get separated from your son or have
13 any other issues with DSS or anything, right?

14 A Right.

15 Q Now, because you were scared and because you didn't
16 want to go to prison and because you didn't want to lose
17 your son you decided that you would cooperate with the
18 police and give up with a name; is that right?

19 A Yes.

20 Q And, in fact, it was you that testified that you
21 suggested a name to the police; is that right?

22 A Yes.

23 Q And so after today you're done, right?

24 A Yes.

25 Q You get off.

CHARLES VESS - CROSS

1 A Yes.

2 Q You were never arrested.

3 A No.

4 Q You weren't taken to jail for what happened before this
5 incident, right?

6 A No.

7 Q And you used crack in the past is what you're saying?

8 A Yes.

9 Q But you're telling everybody today that you haven't
10 used since that first day you were arrested -- or excuse me,
11 you were picked up by the police.

12 A Yes.

13 Q And did you -- you watched the officers put the camera
14 on your key chain, is that right, is that what you've
15 testified to?

16 A Yes.

17 Q That's where the camera was.

18 A Yes.

19 Q All right. And were you there when they searched your
20 car and everything and they searched you?

21 A Yes.

22 MS. KOUTSOGIANNIS: No further questions, thank you.

23 THE COURT: Any redirect limited to what she went into?

24 MS. LIVELY: No, Your Honor.

25 THE COURT: Thank you, sir, you may step down.

CHARLES VESS - CROSS

1 MS. LIVELY: May this witness be excused, Your Honor?

2 THE COURT: Any objection to the witness being excused?

3 MS. KOUTSOGIANNIS: I don't need him at this time, no.

4 THE COURT: Thank you, sir, you may be excused as well.

5 State ready to call its next witness?

6 MS. LIVELY: Chuck Starnes.

7 The witness, ROGER CHUCK STARNES was first duly sworn
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LIVELY:

11 Q Mr. Starnes, please tell the jury what your duties are
12 at the Chester County Sheriff's Office.

13 A I'm the Chester County Sheriff's Department evidence
14 technician.

15 Q And how long have you been in that position?

16 A I started 1 May of 2015.

17 Q And what were your duties as the evidence custodian?

18 A When a police officer, deputy, whatever you want to call
19 them, collects evidence and turns it in to be brought in for
20 safe guarding by the evidence technician, I'm the individual
21 that removes it from the whatever evidence locker they may have
22 put that evidence into, or if they brought it straight to me I
23 will take it from them, I will enter it into our system where I
24 will then protect it until it's needed in court or until it can
25 be destroyed.

ROGER CHUCK STARNES - DIRECT

1 Q As a matter of fact you have a package with you here
2 today; is that right?

3 A That's correct.

4 Q And is that package from the case file involving --
5 it's a SLED lab number L1509024.

6 A That's correct.

7 Q Whenever especially a narcotics agent brings in
8 something like drugs to you to be for safe keeping, what
9 type of an actual kit is used in order to protect those
10 items?

11 A It's called a Best Kit. And it's comprised of a manila
12 envelope initially that inside contains a plastic -- I guess
13 you could call it a secure plastic folder in which the drugs
14 are placed. Along with those drugs they will also place in
15 what's known as a Best Kit analysis -- drug analysis request
16 form, and also in that kit is a chain of custody form for the
17 SLED Best Kit itself. We have at the Chester County Sheriff's
18 Department our own Chester County Sheriff's Department chain of
19 custody form, but there's also one that's used in the Best Kit
20 which is separate from ours and we keep those two together for
21 our safety, or I should say for safety of the drugs into
22 account for where they've been and all of that.

23 Q And that's what I was about to ask you, so you have a
24 form that's actually used with the Chester County Sheriff's
25 Office when this evidence is submitted to you; is that

ROGER CHUCK STARNES - DIRECT

1 right?

2 A Correct.

3 Q And then SLED has their own forms and documentation of
4 anyone who touches or has anything to do with the drugs once
5 you dropped them off; is that fair?

6 A That's correct.

7 Q And did you actually have an opportunity to deliver the
8 SLED Best Kit from this particular case to SLED in July of
9 2015?

10 A I did.

11 Q And as a matter of fact when you submit something like
12 that to SLED, do they document who you are, where you're
13 from and what the case number is?

14 A That's correct.

15 Q I'm going to ask if you would please let me see the
16 item that you brought with you here today. It is State's
17 Exhibit Number 8. And I'm going to ask you this tag up at
18 the top, L1509024, is that the SLED lab number?

19 A That's correct. They put that on there themselves once
20 it's delivered to SLED, they'll assign it that number at that
21 point in time.

22 Q And then the number that's below that which says
23 evidence Best Kit, what is that white sticky tab right
24 there, what's that --

25 A Chester County Sheriff's Department has a system called

ROGER CHUCK STARNES - DIRECT

1 Lawtrac. Every time I bring a piece of evidence in I enter it
2 into that system, it assigns it a one-up number that belongs to
3 the Chester County Sheriff's Department.

4 Q So that way once it's identified you actually log it in
5 and that's how you can track it; is that fair?

6 A That's correct.

7 Q Now, once the items are actually -- the SLED has done
8 their analysis, whether it's a chemical analysis or if it is
9 DNA or whatever the case may be, once that's done, do they
10 notify you that the actual items have been tested?

11 A They will send a report to the officer themselves. I
12 generally don't receive that as the evidence technician, but
13 when I go to SLED, which is usually once a week and I take
14 evidence down I indicate that I'm ready to bring any evidence
15 back that they may have that's already been tested or whatever
16 the case may be. And when I start my trip out of SLED I will
17 sit down with one of their evidence technicians who will go and
18 collect our evidence to be brought, will print up a form and
19 will have me sign for it and that's how I know that it's ready
20 to come back is they present it to me at that point in time.

21 Q And then once it comes back, you have your sticky on
22 here that tells you what evidence it is and what case it
23 belongs to, correct?

24 A Right. When I take it down, as soon as I get back from
25 SLED I'll have a report that tells me what time I dropped it

ROGER CHUCK STARNES - DIRECT

1 off at SLED, I put it into my system that as of that time that
2 no longer belongs to me, it belongs to SLED, and then when I
3 bring it back from SLED I use the time that I sign for it down
4 in SLED to put it back in my system to indicate that I now have
5 control of it once again.

6 Q Now, the bag that is inside of this sealed outside --

7 A Which is that plastic container -- inside there, that blue
8 container is what that officer put it in and sealed it and you
9 see that they've written that the seal was intact when they
10 received it. That piece of plastic on the outside is the SLED
11 heat sealed bag they put it in once they tested it, so it's
12 constantly under somebody's control with a signature or what
13 have you.

14 Q Now, Mr. Starnes, if the officer provided you evidence
15 in that inner bag and it was not sealed and signed or
16 initialed by that officer, would you accept it?

17 A No, I would not.

18 Q Why is that?

19 A Because we have to keep integrity of all the drugs or any
20 type of evidence that we have. And he would have put that in
21 to one of our Chester County Sheriff's Department evidence
22 lockers, which if I can explain that right quick so they've got
23 something that they can get an idea of what we're talking
24 about. Think of in your house you have a metal container
25 that's about 15-foot long and about 17-foot high, and inside

ROGER CHUCK STARNES - DIRECT

1 that metal container are individual containers themselves that
2 have four steel walls, a front door that is steel and a back
3 that's steel, and there is a key that goes in that particular
4 inserts door. I have 34 of those inserts for which there's one
5 key that hangs in that door, when the officer brings the stuff
6 in he will open that locker up, put whatever is that he has in
7 there, locks the key inside and closes the door. At that point
8 in time that locker is still there but nobody can access what's
9 in it but me, because I have around my neck here are a bunch of
10 keys that are master keys to get into all those lockers. When
11 I go to bring one of these in the first thing I do is look to
12 see are there any keys missing, if they are I go to that
13 locker, I open it up, if the key is present that indicates to
14 me that the officer is ready for me to bring it in. If the key
15 is not there that indicates that the officer is still working
16 on that case and it's not for me to bring in yet. If the key
17 is there in this particular case and had I pulled it out, had
18 there been anything wrong with it at all I would have refused
19 to take it, I would have sent an email to the officer and said,
20 "Prior to me bringing this into evidence you must come back,
21 see me so I can open the locker to give you the key so you once
22 again can take possession of this stuff and do whatever needs
23 to be done to it." I'm not going to let them bring something
24 in that's not right.

25 Q Was this one packaged correctly?

ROGER CHUCK STARNES - DIRECT

1 A Yes, it was.

2 Q And you were the one that took it to SLED and then
3 retrieved it from SLED after testing, correct?

4 A I'm the one that got it from the locker, took it to SLED
5 and retrieved it after it had been tested, nobody else touched
6 it.

7 Q Did you alter it, tamper it or substitute the items in
8 the bags at any time?

9 A No, ma'am.

10 MS. LIVELY: Thank you, answer any questions that the
11 defense may have for you.

12 CROSS EXAMINATION

13 BY MS. KOUTSOGIANNIS:

14 Q Mr. Starnes, other than you serving as the records
15 custodian in this case, do you have any personal knowledge
16 of any transaction, buy, anything we're here about today?

17 A Absolutely none.

18 Q And do you have any other personal knowledge concerning
19 the chain of custody within SLED's lab once it got to SLED
20 for testing?

21 A No, ma'am, I do not.

22 MS. KOUTSOGIANNIS: Thank you, no further questions.

23 THE COURT: Any redirect limited to what she went into?

24 MS. LIVELY: No, Your Honor.

25 THE COURT: Thank you, sir, you may step down. Does the

ROGER CHUCK STARNES - CROSS

1 witness need to be excused?

2 MS. LIVELY: He can be excused if he needs to be.

3 THE COURT: Any objection to the witness being excused?

4 MS. KOUTSOGIANNIS: No, Your Honor.

5 THE COURT: Thank you, you may be excused. State ready to
6 call their next witness?

7 MS. LIVELY: Yes, Your Honor, Lynn Black.

8 The witness, LYNN BLACK, was first duly sworn and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FRAZIER:

12 Q Hello, Ms. Black, how are you doing today?

13 A Good, thank you.

14 Q Could you just please state your name for the record?

15 A It's Lynn Black.

16 Q And Ms. Black, where do you work?

17 A I work at the forensic services laboratory at the South
18 Carolina Law Enforcement Division commonly known as SLED.

19 Q And what is your title or position at SLED?

20 A I'm a drug chemist.

21 Q And how long have you been in that position?

22 A I've been at SLED for about nine and a half years.

23 Q And have you ever worked anywhere else as a chemist?

24 A Yes, I have. I worked about eight years at the Georgia
25 Bureau of Investigation in Atlanta, Georgia.

LYNN BLACK - DIRECT

1 Q So about how long have you been doing drug analysis
2 professionally?

3 A Almost 18 years.

4 Q And could you describe your educational background for
5 us?

6 A Yes. I have a Bachelor of Science Degree in Chemistry
7 from Kentucky Wesleyan College, a certificate of medical
8 technology from the University of Louisville, and a Master of
9 Science Degree of Forensic Science from Marshall University.

10 Q And have you -- in addition to that academic, have you
11 had any specialized training in the field of drug analysis?

12 A Yes. At both GBI and at SLED I went through about a
13 year's training in each one on drug analysis.

14 Q And have you ever testified as an expert before in a
15 South Carolina court?

16 A Yes, I have.

17 Q Do you know about how many times?

18 A In South Carolina about 34 times.

19 MR. FRAZIER: Your Honor, at this time I would like to
20 present Ms. Black as an expert in the field of drug analysis.

21 MS. KOUTSOGIANNIS: No objection, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, normally a
23 person cannot give opinion testimony. Normally when a person
24 testifies they must do so as to either what they saw, heard or
25 sensed by smell or something of that nature. However, there is

LYNN BLACK - DIRECT

1 an exception when someone is qualified because of education or
2 experience they are permitted to give their opinion in certain
3 areas if the Court qualifies them that way. This witness will
4 be qualified in the area of drug analysis to give opinion
5 testimony in that area. Now, that does not mean you must
6 accept the opinion, but it is evidence for you to use in any
7 way that you see fit and to give the weight and credibility you
8 believe is appropriate.

9 Q Ms. Black, did you have the opportunity to receive any
10 evidence pertaining to this case with Mr. Hayes?

11 A Yes, I did.

12 Q And when you receive this evidence, was it --

13 MS. KOUTSOGIANNIS: Your Honor, I object, lack of
14 foundation. There's been no testimony as to who she received
15 it from regarding the chain of custody from the SLED lab.

16 THE COURT: I believe the question is appropriate, go
17 ahead.

18 MR. FRAZIER: Thank you.

19 Q And when you received this evidence was it sealed?

20 A Yes, it was.

21 Q Was there anyone else working with you that day?

22 A No, there was not.

23 Q And you say the evidence was sealed, would you have
24 been able to tell if the evidence had been tampered with?

25 A Yes, sir. As a normal practice I always look at the

LYNN BLACK - DIRECT

1 evidence, the tamper evident bag before you open it to make
2 sure that the seal is still intact and there's no holes or any
3 place that looks like it has been tampered with.

4 Q You said tamper evident. What would happen if -- how
5 does it show it has been tampered with?

6 A Well, it depends on which bag, we've gone through several
7 versions of the tamper evident bag. But generally there's some
8 sort of seal that's either colored or something that might be
9 red, it could just be clear, but you can tell if somebody tried
10 to put something in there that's been stretched out or
11 something or that could be as obvious as a cut or somebody
12 poked a hole through it.

13 Q I'm going to show you what has been marked as State's
14 Exhibit 8. How would you be able to tell with this bag?

15 A That bag is the one in this case. And as I said, I
16 usually check it before I open it, I also write on it. It's
17 the bag inside this outer bag is the one we're talking about,
18 it says seal intact, has the date and my initials. So that,
19 and also on my work sheet, I have a place where I circled
20 whether or not it's been -- yes or no, whether it has been
21 tampered with, or the seal is intact.

22 Q Thank you. And that evidence you said is -- the
23 evidence that's here today is the evidence that you tested?

24 A That's correct.

25 Q And how can you identify that it is that same evidence?

LYNN BLACK - DIRECT

1 A Again by the -- if you want me to show -- I can recognize
2 it by the fact that -- like I said, the bag inside here has got
3 as I said the seal intact and the initials and the day. But
4 also I hand wrote the case number which is the unique case
5 number that it was given when it was brought into SLED, and
6 that number is also on this bar code, that is the way we use to
7 track the evidence at SLED. Also my initials are in the bag
8 that has the actual substance that's inside here with the case
9 number and my initials are on that bag as well and my initials
10 and date are on the seal of the outer bag.

11 Q And you pointed to the sample that's in the bag. You
12 had the opportunity to analyze that sample; is that correct?

13 A Yes.

14 Q And what were your findings?

15 A I found it to be cocaine base was found in the sample
16 tested, and it had a net weight of 0.25 grams.

17 MR. FRAZIER: Your Honor, at this time I would like to
18 move into evidence what's been marked as State's Exhibit 8.

19 MS. KOUTSOGIANNIS: Your Honor, I have to renew my
20 objection, lack of foundation. All of the witnesses are not
21 here to testify as to the proper chain of custody prior to Ms.
22 Black testing this.

23 THE COURT: All right. I'll allow it into evidence.

24 MR. FRAZIER: Thank you, Your Honor.

25 (The bag of drugs was received as State's 8.)

LYNN BLACK - DIRECT

1 Q Now, Ms. Black, are you able to find out anyone else
2 who -- who did you get the evidence from at SLED?

3 A If I may refer to some notes that I brought. According to
4 them I received this from Doris Yarborough who is a forensic
5 technician in our evidence control section.

6 Q And you received that from her just minutes before you
7 started working on it; is that correct?

8 A Actually that's not correct. I received that on eight --
9 excuse me, I'll tell you the month -- August 25th of 2015 and I
10 actually opened the evidence to test it on October the 2nd of
11 2015.

12 Q Okay. So you received it but then didn't start working
13 on it until a little while later?

14 A Correct.

15 Q But when you received it there was no way for Ms.
16 Yarborough to have tampered with it, correct?

17 A Not that I could tell. Like I said, when I look at the
18 evidence, when I open it up I make sure it's still sealed and
19 all of the seals look right and no holes or anything. As I
20 said, I marked the actual evidence that it was sealed and also
21 my worksheet.

22 Q And then when you're done testing the samples, what do
23 you do with it then?

24 A Then I place it in another bag, that's what the outer bag
25 is in that evidence, it's called Apack, I think that's just the

LYNN BLACK - CROSS

1 name the manufacturer gives it. But it's just another plastic
2 bag, and we just fold the tamper evident bag that the evidence
3 had come in, we fold that, place the sample where it's already
4 in a plastic bag or Ziploc bag also inside there and then we
5 heat seal that. As I say, I placed the crime lab sticker as
6 the unique crime lab case number outside so that it can still
7 be tracked within SLED.

8 Q And who do you give it to when you're finished?

9 A When I'm finished I may or may not take it back down to
10 evidence control right then, I think in this case I didn't take
11 it back down until November the 12th of 2015.

12 MR. FRAZIER: Thank you, answer any questions that the
13 defense may have.

14 CROSS EXAMINATION

15 BY MS. KOUTSOGIANNIS:

16 Q Ms. Black, other than your role as a forensic analyst
17 testing substances, do you have any personal knowledge that
18 you can contribute to this case about any transactions or
19 anything?

20 A No. I have no personal knowledge other than what I
21 tested.

22 Q Okay. And you mentioned Doris Yarborough, she's the
23 first one who gave it to you; is that right?

24 A That is correct.

25 Q You testified that you didn't believe -- you couldn't

LYNN BLACK - CROSS

1 tell there was evidence of tampering based on just looking
2 at it but you don't know for certain what she did or didn't
3 do with it; is that right?

4 A All I know is what's general practice when the evidence
5 comes in, and she is the one who actually logged it in as well.
6 When the law enforcement personnel from Chester County Sheriff
7 brought it in, she's the one who actually moved the information
8 into the computer system and then put it in their vault, and
9 then when I came down she gave it to me.

10 Q She's not here today; is that right?

11 A That's correct.

12 Q What about Lynn Black, how did she get involved in
13 this?

14 A That would be me.

15 Q Excuse me, I apologize, I meant Jennifer Aycock was the
16 next name on my list.

17 A She's the one that I gave the evidence to after I had
18 tested it. I took it back down to evidence control and she's
19 the one who received it from me and then she placed it into the
20 return area of the vault until the law enforcement personnel
21 from the Chester County Sheriff came to pick it up.

22 Q Okay. Jackie Davis also apparently handled the
23 evidence, did you witness any of that? Do you have any
24 knowledge of that?

25 A All I can say is from my chain of custody she took it out

LYNN BLACK - CROSS

1 of the return shelf and then gave it back to whoever came to
2 pick it up from Chester County Sheriff.

3 Q So Aycock picked it from you?

4 A Correct.

5 Q And then you don't know exactly what Davis did with it,
6 you didn't observe anything.

7 A I did not see anything, no.

8 MS. KOUTSOGIANNIS: Thank you so much. No further
9 questions, Your Honor.

10 THE COURT: Any redirect limited to what she went in to?

11 MR. FRAZIER: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. FRAZIER:

14 Q Ms. Black, when you had received the evidence from Ms.
15 Yarborough you would have been able to tell if she had
16 opened it; is that correct?

17 A Yes, it would have been obvious. And as I said I did not
18 note that it had been tampered with or was open in any way.

19 Q Had it been tampered with would you have even tested
20 it?

21 A That's kind of a difficult question. At that time in 2015
22 I'm not sure if we would have tested it, we would have sent it
23 back. Today we test it and we just note -- we take pictures of
24 it and we just make a note and we say on the report that it was
25 not sealed. But in 2015 I think we were still in transition, I

LYNN BLACK - REDIRECT

1 think at that time we were sending it back, I believe.

2 Q So you would have just sent it right back to Chester
3 County?

4 A Correct.

5 Q You said earlier that this evidence right here looks
6 exactly the same as when you gave it to Jennifer Aycock?

7 A Yes, it does.

8 Q It doesn't look any different?

9 A No. It still has the seals that I put on there and it
10 still has the initials on everywhere that I generally place my
11 initials.

12 MR. FRAZIER: Thank you, Ms. Black, I don't have anymore
13 questions.

14 MS. KOUTSOGIANNIS: Brief recross, Your Honor?

15 THE COURT: Limited to what he went in to.

16 MS. KOUTSOGIANNIS: I'm sorry.

17 THE COURT: Limited to anything she went in to.

18 MS. KOUTSOGIANNIS: Yes, of course.

19 RECROSS EXAMINATION

20 BY MS. KOUTSOGIANNIS:

21 Q Ms. Black, you testified that back in 2015 you had
22 different policies and procedures than you do now, different
23 safe guards if you will?

24 A Yes. Well, just in the respect that we previously would
25 not test the evidence if we could see that there was a hole in

LYNN BLACK - RECROSS

1 the bag or it had been tampered with, we would send it back to
2 the agency and let them reconcile or whatever. But now we
3 accept it and we test it but just take pictures of it and we
4 also -- on the report it would say that it was not sealed in
5 some way, we have different ways to say it depending on what we
6 find, so that's today.

7 Q Right. So your office has incorporated new practices
8 and procedures from back in 2015 as you just testified to.

9 A Correct.

10 MS. KOUTSOGIANNIS: Thank you. No further questions, Your
11 Honor.

12 THE COURT: Thank you, ma'am, you may step down. Any
13 reason why the witness cannot be excused?

14 MR. FRAZIER: No Your Honor.

15 THE COURT: Any objection to the witness being excused?

16 MS. KOUTSOGIANNIS: No, Your Honor.

17 THE COURT: Thank you, ma'am, you may be excused as well.

18 MS. LIVELY: Your Honor, at this time the State rests its
19 case.

20 THE COURT: Ladies and gentlemen, this is one of those
21 times where I have to have some discussion with the attorneys
22 outside of your presence. I need to remind you that can't have
23 any discussions among yourselves or with anyone else involving
24 the case, as well as do not attempt to do any type of research
25 or investigation. If you would I ask that you retire back to

LYNN BLACK - RECROSS

1 your jury deliberation room and we'll get you back shortly.

2 (The jury left the courtroom.)

3 THE COURT: Yes, ma'am?

4 MS. KOUTSOGIANNIS: May it please the Court, Your Honor?

5 At this time I would make a motion for a directed verdict.

6 With all of the light most favorable to the State I don't think
7 they could prove all of the elements of a controlled buy under
8 these circumstances. Your Honor, I would also reiterate all of
9 my prior motions made pretrial as well as right before the jury
10 came in regarding the chain of custody witnesses and
11 everything, I don't believe there's been a foundation
12 established for that so I renew all of my prior motions.

13 MS. LIVELY: Your Honor, the State would just disagree on
14 the fact that they believe there's at least substantial
15 circumstantial evidence as well as direct evidence as to the
16 defendant's guilt which would definitely in the light most
17 favorable to the State be more than enough to send this case to
18 a jury at this time.

19 THE COURT: All right. I would -- based on the standard
20 that this Court has to apply in ruling on a directed verdict
21 motion, the State (sic) would not grant the present motion, as
22 well as the Court needs to make a specific rulings to all of
23 the other rulings that the Court would be reaffirmed to those
24 as it relates to all of the other motions made by the defense.
25 All right. Will the lawyers approach?

1 (A bench conference was held.)

2 THE COURT: Has counsel been able to speak with the
3 defendant as to whether or not he intends to testify or not at
4 the trial?

5 MS. KOUTSOGIANNIS: Yes, Your Honor, we have spoken with
6 him, he does not wish to testify.

7 THE COURT: Okay. Well Mr. Hayes, if you would please
8 raise your right hand, I need to swear you in, I've got some
9 questions I need to ask you.

10 (The defendant was sworn.)

11 THE COURT: Mr. Hayes, at this time I'm going to explain
12 to you certain of your rights and if you do not understand
13 anything that I say please let me know, if you want me to
14 explain anything in more detail please let me know that as
15 well, is that okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Thank you, sir. We've now reached the stage
18 of the trial where you may present your defense, and you have
19 the right to claim the protections given to you by the Fifth
20 Amendment to the Constitution of the United States. This
21 amendment states in part no person shall be compelled in any
22 criminal case to be a witness against himself, this means that
23 you cannot be required to testify in this case. You have the
24 right to testify on your own behalf, however no one can make
25 you testify. This is a personal right and no one can waive

1 this right except you. If you decide to testify you will be
2 subject to the same rules that govern other witnesses, and you
3 may be examined or cross examined on any relevant issue in the
4 case. In addition if you have any convictions involving
5 dishonesty or false statements or for crimes punishable by
6 imprisonment for more than one year and this Court determines
7 that the probative value of admitting this evidence outweighs
8 the prejudicial effect to you, the solicitor will be able to
9 introduce your prior record to attack your credibility. If you
10 decide to testify this decision on your part must be freely,
11 voluntarily and intellectually made with the knowledge of the
12 protections given to you by the Fifth Amendment and the
13 consequences of the decision to testify. If you decide not to
14 testify I will instruct the jurors that they cannot give that
15 fact that you did not testify any consideration whatsoever and
16 that there is to be absolutely no prejudice to you because you
17 did not testify. It is left entirely up to you whether or not
18 you testify. You may talk with your attorney, with your
19 family, with your friends or anyone else but the final decision
20 will be left entirely up to you. Now, do you understand what I
21 have just explained to you?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And do you have any questions about what I
24 have just explained to you?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And have you been able to discuss with your
2 lawyers whether you should or should not testify?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And do you wish to talk with your lawyers
5 anymore about the issue of whether you should testify or not?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: And Mr. Hayes, have you made the decision to
8 testify or not to testify?

9 THE DEFENDANT: Your Honor, I made the decision not to
10 testify.

11 THE COURT: All right, thank you, sir. Has anybody
12 threatened you or promised you anything in order to get you to
13 make the decision to not testify?

14 THE DEFENDANT: No, sir, Your Honor.

15 THE COURT: Am I correct to conclude that your decision is
16 a free and voluntary decision on your part?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right, thank you, sir. All right. I have
19 received jury charges from the defense, does the State have
20 any?

21 MS. LIVELY: Your Honor, if you'll allow me I'm going to
22 actually email them to your law clerk. They're going to be
23 standard, they're from the Ralph King Anderson jury book but I
24 just don't have them in front of me right now, is that okay?
25 I'll send them to you like before I leave here today.

1 THE COURT: You may bring the forelady in?

2 MS. KOUTSOGIANNIS: Your Honor, briefly, I apologize, sir.
3 The charges that I submitted to you, and we can address this
4 tomorrow, but I just wanted to strike the last one, number nine
5 because it didn't come up so it will be confusing and I don't
6 think the prosecutors will have an issue with that. Thank you.

7 (The forelady returned to the courtroom.)

8 THE COURT: Madam Forelady, we're continuing to have to do
9 some work out here outside the presence of the jury, given the
10 hour that it is I am going to ask that, if you would, to please
11 instruct the jury that they can leave the courthouse and go
12 home for the night. Remind them that they cannot have any
13 discussion with anyone about anything involving the case. Also
14 remind them not to do any type of independent research or
15 investigation into the case and ask them if they would to be
16 back in the jury deliberation room by 10:00 in the morning and
17 we will resume the trial.

18 THE JUROR: Okay, I will.

19 (Court recessed for the evening and resumed at 9:45
20 A.m. on Wednesday, February 14, 2018.)

21 THE COURT: I have reviewed proposed charges submitted by
22 the defense and also the State, the only addition that we did
23 is the State had requested an identification charge and so I
24 did include the State's identification charge. The other --
25 let's go first to the defendant's request to charge the -- I'm

1 not inclined to give detailed instructions as to what would be
2 bias or what would be particular characteristics of a witnesses
3 testifying in favor of one side or against the other, I don't
4 believe in -- it would be appropriate for me to give statements
5 of bias or prejudice but I'm not including them. I am not
6 saying you cannot argue them because I think you can. So I
7 will make the State's -- I will give my copy of the defendant's
8 requested charge to the court reporter and make it part of the
9 record of the case. The other charge that was requested by the
10 State I think is incorporated into my general charges.

11 MS. LIVELY: Yes, sir. I'm reading through them now and
12 it does appear to address all of that, the direct and
13 circumstantial evidence, yes, sir.

14 THE COURT: The only other part of the charge that I give
15 that y'all do not have is when I'm explaining the verdict form
16 I do explain to the jury that -- the forelady that has to be
17 unanimous, that it cannot be based upon passion, prejudice,
18 capriciousness or any other factor not supported by the
19 evidence in the case, I do instruct them on that. And then I
20 do ask them to knock on the door and let us know once they
21 reach a decision.

22 MR. SNELL: Your Honor, if I may, was there a separate
23 charge for identification of witnesses?

24 THE COURT: Yes. We did not have access to a printer so
25 it is the State's -- I've just taken the State identification

1 charge and will charge that one.

2 MS. LIVELY: And I pulled that one right out of the Ralph
3 King Anderson book, Your Honor.

4 (Break in proceedings.)

5 THE COURT: Let's bring the jury in.

6 (The jury returned to the courtroom.)

7 THE COURT: Is the defense ready to proceed?

8 MS. KOUTSOGIANNIS: Yes, Your Honor, the defense rests.

9 THE COURT: Okay. Thank you, ma'am. Ladies and
10 gentlemen, the parties have now rested their evidence in this
11 case and it is now time for the attorneys to make what is
12 called their closing arguments to you. The arguments of the
13 attorneys are not evidence in this case, their statements and
14 arguments are meant to help you understand the evidence and
15 apply the law to the evidence. You should disregard any
16 remark, statement or argument which is not supported by the
17 evidence presented during the trial or the law that I will
18 explain to you after the argument, but at this time we will
19 receive the closing arguments from counsel.

20 MS. LIVELY: Thank you, Your Honor. May it please the
21 Court? Good morning everyone. Whenever I first talked to you,
22 gosh, was it just yesterday? These days kind of run together
23 sometimes, but whenever I talked to you at first I told you
24 this was going to be a very straight forward case. If there
25 was going to be complicated issues then I would definitely let

CLOSING ARGUMENTS

1 you know, "Be prepared, this is something that that will
2 really -- there will be times when you might get tripped up on
3 some of the facts and or some of the evidence," but sometimes
4 we have really complicated matters that we have to bring to a
5 jury, sometimes medical experts and things like that. I'm glad
6 you didn't have to sit through something like that this week.
7 This week we have a very straight forward drug case, a drug
8 case where there was an undercover buy, which all of you saw
9 for yourself firsthand, it's in evidence, and that undercover
10 buy was done with a confidential informant who got on the
11 stand. The reason why we call them confidential is because we
12 want to protect people who actually are willing to come forward
13 and put themselves in harms way in such a situation to actually
14 respond to a community concern about someone who is selling
15 drugs. I mean, if there was a way that if we could maybe set
16 up someone who was a preacher or a teacher who could actually
17 go up to someone like the defendant or someone who is selling
18 drugs and convince that person to sell to someone like that I
19 would love to put someone like that on the stand. That's not
20 going to happen. We're going to have a use someone who knows
21 the drug dealer in order for us to actually make the buy. And
22 Lieutenant Crawford told you, they didn't know who it was that
23 they were going to end up running in to in regards to this
24 community complaint about drugs being sold at the Super 8 Motel
25 in Richburg. So what do they do? What law enforcement is

CLOSING ARGUMENTS

1 supposed to do, they responded to a community complaint that
2 there were drugs being sold in this area. I mean, that is what
3 communities are supposed to do is look out for each other, call
4 law enforcement, have them do what they can do. So they send
5 their narcotics people over there, and maybe it was the worst
6 day of Mr. Vess' life or it may have been the best day of his
7 life, because when he got pulled over that day in the summer of
8 2015 with his son in the car he was busted in the worst way.
9 He had crack cocaine on him, he knew he was going to jail and
10 possibly prison. He had an you ah ha moment, an eye opening
11 moment, "Is this the life I am going to lead or not?" And
12 thank goodness not every one has to come to that type of a
13 realization in their lifetime where they've got to make a
14 decision to deal with someone who our state laws deems a
15 criminal in order to save their own selves, but he did.
16 Whether you like the kind of person he is, whether you like
17 what he was doing, that's not what your job as jurors is to
18 decide, this is not a popularity contest, this is about the
19 facts, what happened. So Charles Vess tells you he had his son
20 in the car. That is about the most vile thing that you can do
21 is have a child be exposed to a drug transaction. So yeah,
22 that should make all of us very mad, but he made a decision
23 that day and Lieutenant Crawford, along with the narcotic
24 agents who have testified, told you we basically gave him the
25 keys to the jailhouse. He had a decision at that point in

CLOSING ARGUMENTS

1 time. He knew that his choices were we can arrest you for what
2 you've done or you can work with us, and why is that? Because
3 in order to stop the users you have to catch the sellers. If
4 the users don't have someone to go and buy it from then they're
5 not going to have someone -- they're not going to have the
6 drugs to use. Now, they might find another seller, but you
7 know what? Yeah. Sometimes it takes a long time to chip away
8 at these people out there selling drugs for money, it's not an
9 easy thing. Why? Because you have to come and do that whole
10 process and then possibly walk into a courtroom as a
11 confidential informant and expose the under belly of the worst
12 of your -- worst of your life, "I bought drugs while my son was
13 in the car." And I'll tell you it's surprised me when I saw
14 him crying on that stand. You can't orchestrate what a witness
15 is going to say or do because they are just sworn to tell the
16 truth and to do whatever it is or talk about what it is that
17 they know personally, and to see him get on that stand and tell
18 you he didn't want to be here, he was embarrassed, he said he
19 did not want people to know he was using drugs, and he had to
20 get up in front of all of you who were total strangers to him
21 and basically tell you the worst time of his life, okay? All
22 right. So let's think about what we saw. What do I have to
23 prove? I represent the State of South Carolina and this
24 community, what do I have to prove in order to prove that he,
25 the defendant, sold drugs on July the 5th, 2015? I have to

CLOSING ARGUMENTS

1 show that there was actually an exchange, some type of delivery
2 or exchange of an illegal substance, all right? I have to then
3 prove that that illegal substance actually tested positive or
4 was tested for the drug that I'm claiming he sold which is
5 crack cocaine, and in the indictment it says cocaine base which
6 is crack cocaine. So we have, number one, a video that shows
7 the defendant in a hotel room at the Super 8 meeting with a
8 confidential informant, Mr. Vess, who told you he had bought
9 from Mr. Hayes before. And as a matter of fact when he got
10 pulled over that day whenever he had his ah ha moment he is the
11 one that offered up the defendant, not Lieutenant Crawford. He
12 says, "How can you help us to help yourself?" He says, "I've
13 got somebody that I buy from." He had his telephone number,
14 he, Mr. Vess, instigated that call on July 5th, 2015. He
15 started the whole process that led to the defendant, not
16 Lieutenant Crawford. This was not some type of a set up,
17 that's not what they do, what they do is they follow the leads
18 given to them, and Mr. Vess said, "This is the guy I've known
19 for 20 years," very clear on identification. So under those
20 circumstances on July 5th he goes, Mr. Vess -- totally searched
21 his whole person, searched his vehicle, then whenever Officer
22 Hunter gets in the car he says, "I'm looking around again
23 making sure that I'm not seeing anything, make sure everything
24 is clean, everybody is following procedure," this is standard
25 procedure. There are reasons why they don't drive in the

CLOSING ARGUMENTS

1 parking lot with them, it's a safety issue. It's not a secure
2 place, it's a hotel, people are coming and going all the time
3 so you've got to be careful, they do not want one of their CI's
4 getting shot and killed, because guess what? Are you ever
5 going to get a CI to help you again? Absolutely not. So they
6 do everything in their precaution that he was searched, he was
7 wired, he went into that hotel room, and why did the defendant,
8 Hilton Hayes, just open the door and let him in? Because he
9 knew him. He felt no anxiety in selling him more drugs because
10 he's done it before and Mr. Vess told you that. So the
11 identification of the defendant is not an issue and the defense
12 is not going to argue that to you. They haven't brought that
13 up during this whole case because that is not something they
14 can argue. Mr. Vess has known him for 20 years so what can the
15 defense argue? We have a video of the defendant selling the
16 drug. We have the informant who comes out of that hotel room,
17 immediately goes in that -- that's why I played the last bit of
18 the video for you, I know it will make you dizzy and sick if
19 you had to watch the whole thing, but at the end I wanted you
20 to be able to see, he doesn't talk to anybody, he doesn't stop
21 anywhere, he doesn't do anything but go straight to that
22 secondary location where the drugs are then retrieved. That's
23 why I wanted you to hear that, because if he had stopped or
24 talked to somebody, or if he had have been fishing around in
25 there and -- which the car had been searched so he wouldn't

CLOSING ARGUMENTS

1 have anything else in there, but if he had stopped he knew we
2 may have a concern but that didn't happen, that's why they had
3 the recording on the whole time. Drugs were given to
4 Lieutenant Crawford who put them in a sealed bag, then he turns
5 it over to Chuck Starnes who then -- that's all Chuck does.
6 You know, Chuck, you see him here in Chester County walking
7 around, that's all he does, it's an easy job but it's an
8 important job. Because what he does he says, "If this stuff
9 isn't in the locker -- see how he's talking about the keys? I
10 didn't ask him about the keys but he likes to talk about the
11 keys, okay? So I'm sorry about that, I digress about the keys.
12 But he likes to talk about it because it's important to him and
13 it's important to us, because what he puts in there if it
14 doesn't look right, what did he say? "I'm not taking it to
15 SLED because that's on me." So they put it in this bag
16 underneath here and it says SLED drug analysis security
17 envelope, then they sign it on the seal so it cannot be -- or
18 if it is torn open or it comes open then somebody at SLED is
19 going to know it, or Chuck is going to know it, all right? So
20 that didn't happen. So it goes to SLED, they put it in a
21 locker, and then the next thing that happens is the SLED
22 analyst who you saw, Ms. Black testify, she actually calls one
23 of the technicians, okay? They're in there -- can you imagine
24 for the entire State of South Carolina they're in there testing
25 drugs. There are some places like Richland County that has

CLOSING ARGUMENTS

1 their own drug lab, but for the most part everything is going
2 to them, they have to deal with every little drug test in every
3 single drug case, okay? So it's a lot of stuff they're
4 testing. So they can't be running downstairs and checking
5 things out of the locker, they have people whose only job is is
6 to go down there, pick up the evidence and bring it to them for
7 it to be tested. Now, what does she tell you? "Whenever I
8 test it before I open it I make sure that that SLED Best
9 Evidence bag, which is inside this one it's in now, has not
10 been opened or tampered with." She testified under oath it had
11 not been opened or tampered with, okay? She tests it, and then
12 once it's tested it's put in this final bag, which has the
13 little red sticker on it, and it is all sealed back up. By
14 that time it doesn't really matter, because what happens -- I
15 mean it does -- it's nice to get this bag so I can show y'all
16 the drugs and y'all can look at it back in the jury room, but
17 by that time it's been tested and we have a report saying it's
18 drugs, okay? So the defense brought up whether or not these
19 people that were on that list in SLED, the fact that we did not
20 call them as witnesses as being a potential issue as to the
21 integrity of these drugs. When you cannot argue identification
22 of the defendant, whenever you cannot show that the police had
23 done anything extremely out there and there's a possibility
24 they didn't search, they didn't do what they were supposed to
25 do, then the only thing that you can try and say at this point

CLOSING ARGUMENTS

1 to a jury is, "Well then, someone must have tampered with the
2 drugs." There is no evidence whatsoever that anything happened
3 with these drugs except for them testing positive for crack
4 cocaine. They were in a sealed bag, there's no conspiracy at
5 SLED by some technician to switch something out to get Mr.
6 Hayes, that's -- it's just not reasonable. And that's the
7 reason why I tell you, these procedure are put in place for a
8 reason and they were all followed in this case. I called every
9 necessary and material witness necessary for this case. You
10 know, yeah sure, I could call every single one of the techs
11 that did that and you would hear them say, "Yes. I unlocked
12 the locker, handed it over and left, I put it back in the
13 locker with the keys," we'd have another three people up here
14 talking about keys to a locker. I bring you the necessary
15 material witnesses to prove a case beyond a reasonable doubt,
16 that's what I did, and each person that had a material part in
17 this case you heard from. You can weigh the evidence, you can
18 weigh their credibility because that's why you were chosen to
19 be on this jury. You use your common sense that you bring in
20 from your everyday lives to see what is really going on here.
21 He sold drugs and he got caught, that's it, and the State has
22 proven that beyond a reasonable. Now, what I did was -- and if
23 you don't mind turning on the TV I'm just going to show you
24 just a small piece because I want to show you the exchange.
25 And I know y'all have seen this but I want to show you the

CLOSING ARGUMENTS

1 exchange again and explain to you what I did. These are not
2 great because I'm not computer savvy, but what I did -- these
3 are the snapshots by second of the transaction that took place
4 between the defendant and Mr. Vess. The reason why I did that
5 is because when you go back in the jury room there's going to
6 be no way for to you play the video, okay? So what I did was I
7 broke it down -- and it's not always clear just like this, if
8 it's playing it's clearer, but I broke it down, the transaction
9 and the exchange of whenever the drugs were actually handled by
10 the defendant, which is State's Exhibit 5, to Mr. Vess.

11 (The video was played.)

12 MS. LIVELY: That's it, that's it. And that's what these
13 pictures are for so you can know, I actually pulled those off.
14 So ladies and gentlemen, here is what I want to ask you as a
15 jury, I want you to understand that these cases, even when you
16 have a simple case that is very clear cut regarding what
17 happened they're important, they're important to the State,
18 they're important to the community and I just want you to use
19 that common sense and understand you are reasonable people.
20 That's what reasonable doubt is, is a reasonable person going
21 to hesitate and say, "You know, I'm just not 100 percent sure
22 that that's him on the video." Well, you don't have to be 100
23 percent, okay? That's why -- because if we can say 100 percent
24 that will be easy, you can't explain reasonable doubt that way,
25 but the way the Judge is going to tell is if you seated right

CLOSING ARGUMENTS

1 there, right now are firmly convinced that it was that
2 defendant who sold drugs that tested positive for crack cocaine
3 here in the County of Chester on July 5th, 2015 then he is
4 guilty of distributing crack cocaine period. If you are firmly
5 convinced of that then you have to find him guilty. Thank you
6 so much for listening, and thank you for your time.

7 MS. KOUTSOGIANNIS: Members of the jury, thank you for all
8 of your patience in this case, for listening intently and for
9 being here to serve as members of the jury under our justice
10 system. As I mentioned to you in the beginning, you are a
11 crucial part of our democracy, and why is that? That is
12 because you've seen there's a judge here, there's a prosecutor,
13 there's me, there's my client, there's all kinds of actors,
14 there's the witnesses, the police officers, but only you and
15 you alone decide the facts in accordance with the law here, and
16 it is critical that you understand how important your role is
17 today. Now, the prosecutor mentioned to you that this case is
18 an easy one, use your common sense, it's straight forward,
19 you're not going to see everything. And again as I told you in
20 the beginning please use your common sense. When you break it
21 down, you really dissect everything that was presented to you,
22 everything every witness has testified to, it falls apart. All
23 they have is this one witness, this confidential informant.
24 The police officers all told you none of them saw him go in the
25 hotel room, none of them have any direct personal knowledge of

CLOSING ARGUMENTS

1 this alleged transaction. This informant drove on his own to
2 the hotel, and in fact when you watch the video that is when it
3 cuts on. It doesn't cut on when they're searching him, it
4 doesn't cut on when they're searching his car, it starts when
5 he's driving to the motel, and then when he gets in his car,
6 when he's done it immediately cuts off. There's no drugs in
7 the video, there's no money in the video, you don't see
8 anything. Why couldn't he have just shown you the alleged
9 crack when he gets back in his car, or when he parks his car
10 when he's going to meet the police? It just cuts off
11 immediately. Also keep in mind that the main investigator on
12 this case who allegedly received the crack directly from the
13 informant, Crawford, he says he got it from his person, but the
14 informant himself testified it was on the dash board, and
15 that's in one of their reports. They don't remember where it
16 came from, they don't know exactly when they got it at what
17 time. Ladies and gentlemen, I want you to start with this, how
18 did this all come up? When did this even begin? It started
19 with a pretextual stop that we talked about. They stopped the
20 informant for some traffic violation they claim when they saw
21 him pulling out of the hotel, and they knew they were looking
22 for somebody who buys crack, they knew what they wanted to find
23 so they stopped him for that reason. And sure enough, he's not
24 written up for the ticket or anything, they don't even verify
25 he was driving under suspension or had a valid driver's

CLOSING ARGUMENTS

1 license, all they cared about was finding somebody with crack
2 and they found it and he admitted to that, and he also admitted
3 to you that he had serious drug problems because he had his kid
4 with him to go buy crack that day. This is just a couple of
5 weeks before July 5th of 2015 which is what we're here for
6 today. So they knew what they were looking for when they
7 stopped him. He knew he was going to cooperate, he was
8 terrified, he told you he did not want to go to prison, he did
9 not want to lose his son. He had all kinds of reasons to
10 cooperate with this scheme to give up a name and that's all the
11 police needed was a name and that's what he did, and just keep
12 in mind, you know, when they stopped this guy and they find
13 crack in his car they don't even call DSS? Were they concerned
14 about the kid in the car? What happened with that? But the
15 biggest question I have, ladies and gentlemen, is where is that
16 crack? What happened to it? There was no testimony as to
17 whether they inventoried it, tested it, anything. What
18 happened to the crack that they seized from the informant a
19 couple of week before the reason we're here for today? No
20 testimony whatsoever. All we know is that they set up a camera
21 and they were also confused about where the camera was, one of
22 the police officers thought it was on his shirt, the informant
23 said it was on his keys, they don't know. Almost three years
24 ago, they haven't documented anything, they have no real
25 memory. He goes to conduct this alleged transaction but at no

CLOSING ARGUMENTS

1 time in the video do you see any crack, any money, anything.
2 And, in fact, what you do hear when you watch the video is you
3 hear some conversation about weed, smoking weed. Well, I'm
4 pretty sure all of you know that weed cannot be mistaken for
5 crack, that's unquestionable, that's all we have in that video.
6 So even if you find that Hilton Hayes was in that hotel room,
7 even if that is your finding there is no proof whatsoever that
8 whatever happened was a transaction; no money, no drugs, and
9 certainly not any crack. It would have been very simple once
10 the CI got in his car and parked his car at the safe location
11 where the police are going to meet him to show you with the key
12 fob here is the crack, very simple, didn't happen. What else
13 is missing? What other problems are there with this case?
14 Because I promise you there are many. So after this alleged
15 transaction when the CI goes back and they get the crack the
16 police could have just searched hotel records to see who is in
17 that room, just what name, they could have later sought a
18 search warrant for those records, none of that was done. Why?
19 Why was that not done? It's within their authority and power
20 to do so, didn't even bother. They claim that they searched
21 the CI prior to him driving to the hotel and that they searched
22 his car. A couple of officers testified to this, all I heard
23 was, "We searched him," they might have said something like,
24 "thoroughly." Okay. They say they have this protocol in
25 place, all kinds of paperwork and everything that they do

CLOSING ARGUMENTS

1 whenever they get these confidential informants to work on
2 these cases. I didn't see any paperwork, any checklist, in
3 fact they didn't testify exact protocol and how they were sure
4 there was nothing in his vehicle, nothing on his person. You
5 saw the evidence they have, you see how small that is. Did
6 they tell you they looked on the floor? No. Did they tell you
7 they looked everywhere? They tell you they brought drug dogs?
8 All they said was they searched. They haven't provided any
9 proof or that protocol and that is sincerely flawed. And keep
10 in mind, this was almost three years ago and they claim that
11 they remember every step of the way, every part of the protocol
12 that they followed, they claimed that the integrity of the
13 search was done just fine when they haven't produced any notes
14 or anything to you what was done and exactly how they knew that
15 this guy didn't have anything on him or any opportunity to have
16 anything else on him before they had him go into that hotel
17 room. Another thing the video does not show is the room number
18 and it certainly doesn't show any drugs, any cash. Keep in
19 mind, this also came up during the trial, the officers told you
20 that they provided the informant with what they call recorded
21 funds, huge, in fact, that's a big part of these CI cases is
22 documenting this money. They told us they gave \$40, one of the
23 officers even said they took pictures of the money. I didn't
24 see it. I don't have any documentation as to this money, what
25 happened to it, nothing. They just told you they recorded it

CLOSING ARGUMENTS

1 in accordance to their procedures but they didn't even bother
2 to show you any documentation or anything. Ladies and
3 gentlemen, let's talk about this informant. So what we do know
4 is just a few weeks before this video he was caught with crack
5 in the car with his son, he was caught in the car with crack
6 with his son. He was terrified of going to prison, he did not
7 want to lose his son, he didn't know what else to do so he
8 decided to cooperate and engage in the scheme. We know this is
9 the first time he's ever testified in court so he's not
10 reliable, he's never done this before. More importantly we
11 know, and this came up, he didn't expect that he would have to
12 come to court. In fact, the police told him, "You won't have
13 to come to court, just cooperate with us, get us what we need
14 and we'll get you out." He got the sweetest deal that an
15 informant could get. They didn't even bother bringing charges,
16 taking him to jail, bonding him out, having that on him then
17 cooperating, they just didn't prosecute him all together. He
18 just did this one controlled buy, gets this video for them and
19 then he's done and all he had to do was come to court yesterday
20 and he's done with it. He got the sweetest deal you can get,
21 he basically won the criminal justice lottery quite frankly.
22 He's not a reliable witness. A couple of weeks before this he
23 bought crack and he expects you to believe that he was all
24 better, all straight just a couple of weeks later when he does
25 this alleged controlled buy? Unbelievable. Ladies and

CLOSING ARGUMENTS

1 gentlemen of the jury, when you really get down to it when you
2 break the case down they want you to believe it's so easy,
3 there's common sense here, there's no way you can find him --
4 they want you to believe that there's no way that crack wasn't
5 involved. All we know is that the SLED analyst who testified
6 yesterday, Ms. Black, she tested a substance and to her
7 expertise it's determined to be crack. Like I told you in the
8 beginning I'm not challenging that it is crack, I'm not
9 challenging her expertise, it doesn't matter, they can't prove
10 where that came from. The reason for that also is because her
11 testimony was as to the net weight of that crack was .25 grams,
12 and the police officers testified yesterday and the informant
13 that he went to buy approximately .4 grams of crack from he
14 claims my client, there's a huge discrepancy there in the
15 weight, huge discrepancy. Reasonable doubt. When you really
16 break it down, this all started from a pretextual where
17 everybody admits this informant was caught with crack,
18 everybody. But there is no explanation as to what they do with
19 it afterwards, none. And then we have a video, we have no
20 documentation as to the search, no checklist, no verification
21 of their protocol they all talk about, all we have is their
22 word from two and a half years ago. And I'm not saying the
23 police made that up, but does everyone have that great of a
24 memory? They have one witness here, one witness who knows what
25 happened in that motel room and that witness is the CI and they

CLOSING ARGUMENTS

1 expect you to believe him and he expects you to believe him
2 even after knowing everything we know about him. He's
3 unreliable, and he's unreliable because if he would have wanted
4 to, if he wanted to prove this case to you you could have just
5 framed in the video in the car, he could have just popped that
6 crack. I understand it might have been hard to do that in the
7 hotel room but there's none of that whatsoever. And there's
8 inconsistent testimony as to where the crack was received
9 afterwards. Was it from his person or was it from the dash?
10 Officer says one thing, informant says another. Reasonable
11 doubt. Ladies and gentlemen, I've been talking about
12 reasonable doubt and what is it. You're going to hear the
13 Judge instruct you about it, it's going to be a lot of words
14 and a lot of confusing jury charges that will explain to you
15 the law and how you must find the facts in accordance with the
16 law. Essentially, though, reasonable doubt -- we are in a
17 criminal trial, so the burden of proof is all of the way up
18 here. I don't know if you've been to any other trials before,
19 if you've ever seen any, but if you're in a car accident and
20 you have a civil case and you're injured and you want to sue
21 the guy who hit you for money, right, it's his fault, the
22 burden of proof is preponderance of the evidence, it's just 51
23 to 49, just a little bit, that's all you've got to prove,
24 fault. If DSS is trying to terminate your parental rights and
25 take your children away from you it's a little more serious,

CLOSING ARGUMENTS

1 right, so we don't just have that burden, we have what is
2 called clear and convincing, and I'm not going to bore you with
3 it, but it's kind of a little higher because it's more serious.
4 Here today we're all the way up here. There is no other type
5 of case or type of legal case that you could have that has
6 beyond a reasonable doubt, it's the criminal justice system,
7 and the reason is because we all acknowledge and understand we
8 don't want to take that risk of innocent people being convicted
9 and going to prison especially when there's been sloppy work
10 all along and the State has not proved their case to you beyond
11 a reasonable doubt. From the very beginning they couldn't
12 explain what they did with that crack that the informant had,
13 it just went missing, we don't know and we don't see any
14 evidence of any transaction, any money, any drugs, not even
15 after he says he got it and he was by himself. Reasonable
16 doubt, ladies and gentlemen. Ladies and gentlemen, we also
17 didn't hear anything about how they arrested the defendant, did
18 they even Mirandize him, none of that came up. We don't know
19 how that came about. All we have is this one video and this
20 one witness who tells you that he wants you to believe him,
21 that's all we have. Ladies and gentlemen, I trust that you
22 will make the right decision in this case, and that after you
23 weigh all the evidence, go over everything you saw and didn't
24 see, didn't hear in the video you will find my client not
25 guilty. Thank you so much.

JURY CHARGE

1 THE COURT: Ladies and gentlemen, the indictment charges
2 the defendant with distribution of cocaine base. I remind you
3 the fact that the defendant was arrested, charged and indicted
4 in this case is not evidence in this case and cannot be
5 considered by you as evidence of guilt in this case, nor does
6 it create any presumption or inference of guilt. This document
7 is simply the formal written instrument which contains the
8 charge made against the defendant, it is the formal document by
9 which the case is brought to court. The defendant has pled not
10 guilty to this indictment and that plea puts the burden on the
11 State to prove the defendant guilty. A person charged with
12 committing a criminal offense in South Carolina is never
13 required to prove himself innocent. I charge you that it is an
14 important rule of law that the defendant in a criminal trial,
15 no matter what the seriousness of the charge may be, will
16 always be presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proven by evidence
18 satisfying you of that guilt beyond a reasonable doubt. This
19 presumption of innocence does not end when you begin your
20 deliberations, but it accompanies the defendant throughout the
21 trial until you reach a verdict of guilt based on evidence
22 satisfying you of that guilt beyond a reasonable doubt. The
23 presumption of innocence is like a robe of righteousness placed
24 about the shoulders of the defendant which remains with the
25 defendant until it has been stripped from the defendant by

JURY CHARGE

1 evidence satisfying you of the defendant's guilt beyond a
2 reasonable doubt. The presumption of innocence is not a mere
3 legal theory, it is not just a legal phrase, it is a
4 substantial right to which every defendant is entitled unless
5 you, the jury, are satisfied from the evidence of the
6 defendant's guilt beyond a reasonable doubt. What is
7 reasonable doubt in the law? A reasonable doubt is the kind of
8 doubt that would cause a reasonable person to hesitate to act.
9 The State has the burden of proving the defendant guilty beyond
10 a reasonable doubt. And some of you who have served as jurors
11 may have served in civil cases where you were told that it is
12 only necessary to prove that a fact is more likely true than
13 not true such as by the greater weight or preponderance of the
14 evidence. In criminal cases the State's proof must be more
15 powerful than that, it must be beyond a reasonable doubt.
16 Proof beyond a reasonable doubt is proof that leaves you firmly
17 convinced of the defendant's guilt. There are very few things
18 in this world that we know with absolute certainty, and in
19 criminal cases the law does not require proof that overcomes
20 every possible doubt. If based on your consideration of the
21 evidence you are firmly convinced that the defendant is guilty
22 of the crime charged you must find the defendant guilty. If on
23 the other hand you think there is a real possibility that the
24 defendant is not guilty, you must give the defendant the
25 benefit of the doubt and find him not guilty. I remind you

JURY CHARGE

1 during this trial you and I have had certain duties to perform,
2 and as the trial judge it is my responsibility to preside over
3 the trial of this case, and I also have the duty to rule on the
4 admissibility of evidence offered during the trial. You are to
5 consider only the competent evidence that is before you. If
6 there was any testimony ordered stricken from the record in the
7 case during this trial you must disregard that testimony. You
8 are to consider only the testimony which has been presented
9 from the witness stand and any exhibits which have been made
10 part of the record in this case. I have the additional duty to
11 charge you the law applicable to this case. As the presiding
12 judge I am the sole judge of the law and it is your duty as
13 jurors to accept and apply the law as I now state it to you.
14 If you already have any idea as to what the law is or what the
15 law ought to be and it does not agree with what I now tell you
16 the law is, you must abandon this idea because you were sworn
17 to accept the law and apply the law exactly as I state it to
18 you. In every case that's tried before a jury the jury becomes
19 the sole and exclusive judge of the facts of the case. A trial
20 judge cannot intimate, state, comment on or make any statement
21 to a trial jury about the facts in the case. Since you, the
22 jury, are the sole judge of the facts in this case you are not
23 to infer from what I've said during the progress of this trial
24 in ruling upon the admissibility of evidence or otherwise, or
25 anything that I now -- that I say now during the course of this

JURY CHARGE

1 instruction to you that I have an opinion about the facts of
2 this case, the law does not allow me to have an opinion about
3 the facts in this case. This is a matter solely for you, the
4 jury, to determine. As jurors it is your duty to determine the
5 effect, the value, the weight and the truth of the evidence
6 presented during this trial. There are two types of evidence
7 which are generally presented during a trial, that is direct
8 evidence and circumstantial evidence. Direct evidence is the
9 testimony of a person who claims to have actual knowledge of
10 the facts such as an eye witness. Circumstantial evidence is
11 proof of a chain of facts and circumstances indicating the
12 existence of a fact. The law makes absolutely no distinction
13 between the weight or value to be given either direct or
14 circumstantial evidence, nor is a greater degree of certainty
15 required in circumstantial evidence than direct evidence. You
16 should weigh all of the evidence in the case, and after
17 weighing all of the evidence if you are not convinced of the
18 defendant's guilt beyond a reasonable doubt you must find the
19 defendant not guilty. Necessarily, ladies and gentlemen, you
20 must determine the credibility of witnesses who have testified
21 in this case. Credibility simply means believability. It
22 becomes your duty as jurors to analyze and to evaluate the
23 evidence and determine which evidence convinces you of its
24 truth. In determining the believability of witnesses who have
25 testified in this case you may believe one witness over several

JURY CHARGE

1 witnesses or several witnesses over one witness. You may
2 believe a part of the testimony of a witness and reject the
3 remaining part of the testimony of that same witness. You may
4 believe the testimony of a witness in its entirety or reject
5 the testimony of a witness in its entirety. You may consider
6 whether any witness has exhibited to you any interest, bias,
7 prejudice or other motive in this case. You may also consider
8 the appearance and the manner of a witness while on the witness
9 stand. The rule of evidence -- the rules of evidence
10 ordinarily do not permit witnesses to testify to opinions or
11 conclusions. Exceptions to this rule exists for witnesses we
12 call expert witnesses. A witness who by education or
13 experience has become an expert in some art, science,
14 profession or calling may state an opinion as to relevant and
15 material matters in which the witness claims to be an expert
16 and they also state the reason for that opinion. You should
17 consider any expert opinion received in evidence in this case
18 and like any other evidence give it the weight that you think
19 it deserves. If you decide that the opinion of the expert is
20 not based upon sufficient education and experience, or if you
21 conclude that the reason given in support of the opinion are
22 not sound and that the opinion is outweighed by other evidence
23 you may disregard the opinion in its entirety. An expert
24 witness' testimony is to be given no greater weight than that
25 of other witnesses simply because the witness is an expert.

JURY CHARGE

1 Further you are not required to accept an expert's opinion even
2 though it is not contradicted. I instruct you and emphasize
3 that the fact that the defendant did not testify is not a
4 factor to be considered by you in any way in your deliberations
5 and in your consideration on the question of the guilt or the
6 innocence of the defendant, it must not be considered by you in
7 any manner whatsoever. A defendant has a constitutional right
8 to remain silent and the assertion of this right must not be
9 considered by you in your deliberations. I repeat, under your
10 oath you are to draw no conclusion whatsoever from the fact
11 that the defendant in this case did not testify. The fact that
12 this defendant did not testify should not even be discussed in
13 the jury room. The burden of proof, as I have stated to you,
14 is on the State, the defendant is not required to prove his
15 innocence. The burden of proof remains with the State to prove
16 guilt beyond a reasonable doubt. The defendant is charged with
17 distribution of cocaine base. The State must prove beyond a
18 reasonable doubt that the defendant distributed cocaine base.
19 Distribute means to deliver or to actually constructively or
20 attempt to transfer a drug other than by the administration or
21 dispensing. Delivery means to actually constructively or
22 attempt to transfer a drug. A transfer can involve an exchange
23 for money, a barter or a gift. There does not have to be
24 anything given in exchange for the drug or a transfer to
25 constitute distribution. An issue in this case is the

JURY CHARGE

1 identification of the defendant as the person who committed the
2 crime charged. The State has the burden of proving identity
3 beyond a reasonable doubt. You must be satisfied beyond a
4 reasonable doubt of the accuracy of the identification of the
5 defendant before you may convict the defendant. Identification
6 testimony is an expression of belief or impression by a
7 witness. You must determine the accuracy of the identification
8 of the defendant. You must consider the believability of each
9 identification witness in the same way as any other witness.
10 You may consider whether the witness had an adequate
11 opportunity to observe the offender at the time of the offense,
12 this will be affected by things like how long or short a period
13 of time was actually available or close -- I'm sorry, at the
14 time available, how far or close the witness was, the lighting
15 conditions and whether the witness had the chance to see or
16 know the person in the past. Once again, I instruct you the
17 burden of proof -- the burden of proof on the State extends to
18 every element of the crime charged, and this specifically
19 includes the burden of proving beyond a reasonable doubt the
20 identity of the defendant as the person who committed the
21 crime. If after examining the testimony you have a reasonable
22 doubt as to the accuracy of the identification you must find
23 the defendant not guilty. Madam Forelady, ladies and
24 gentlemen, we have prepared a verdict form for your use in the
25 jury room, there are two possible outcomes in the case, one is

JURY CHARGE

1 not guilty, one is guilty. The fact that I've listed one
2 before the other simply means that I had to list one before,
3 you are to infer nothing from the way that I have constructed
4 the form itself. Madam Forelady, the jury's decision has to be
5 unanimous, all 12 members of the jury must agree. Your verdict
6 cannot be based on passion, capriciousness or any other factor
7 that is not supported by the evidence that has been presented
8 to you. Madam Forelady, once the jury has reached their
9 conclusion you will complete the verdict form and then you will
10 sign the verdict form. You must do one other thing, you must
11 knock on the door, let the bailiff know that the jury has
12 concluded. I actually charged the jury one time and forgot to
13 tell the foreperson to knock on the door and we were here for
14 hours waiting, and finally I had to send the bailiff back to
15 the jury room to see what they were doing and the forelady
16 said, "You didn't tell me what to do after we came to the
17 decision." So be sure you knock on the door and let the
18 bailiff know that you have concluded. Madam Forelady, the
19 discussions or deliberations are to occur only when all 12
20 members are present. In the event that one of the jurors has
21 to make a phone call, go to the restroom or somehow leave the
22 room, stop the deliberations and do not start them back again
23 until all 12 members are present. Madam Forelady, ladies and
24 gentlemen, I'm going to allow you the opportunity to retire
25 back to the jury deliberation room but do not begin your

JURY CHARGE

1 deliberations until the bailiff comes and tells you to begin,
2 but at this time all of you may retire back to the jury
3 deliberations room.

4 (The jury left the courtroom.)

5 THE COURT: Any exceptions to the charges from the State?

6 MS. LIVELY: Not from the State, Your Honor.

7 THE COURT: Any from the defense?

8 MS. KOUTSOGIANNIS: Your Honor, if I may? Yes. I
9 appreciate you reviewing the jury charges that I proposed, I
10 would just want to put it on the record that going back through
11 them the ones that I feel should have been instructed are my
12 requests number one, testimony of a police officer --

13 THE COURT: All right. I have included your jury charges
14 as part of the record in this case so the record, I think, is
15 complete and that you object to the charges to the extent that
16 you presented other charges. Anything else that you need to
17 make part of this?

18 MS. KOUTSOGIANNIS: Nothing, Your Honor, I appreciate you
19 making it a part of the record.

20 THE COURT: All right. We can have the alternate held
21 somewhere else or y'all can agree if something happens with one
22 of the jurors that y'all will go with less than 12, then we can
23 dismiss the alternate.

24 MS. LIVELY: I'm fine with dismissing the alternate,
25 especially the early hour of the day, I think that we hopefully

JURY CHARGE

1 will be okay.

2 MS. KOUTSOGIANNIS: Your Honor, I would just ask that we
3 hold on to them in case we need them.

4 THE COURT: All right.

5 (The jury began deliberations.)

6 THE COURT: I am told that the jury has reached a verdict.

7 (The jury returned to the courtroom.)

8 THE COURT: Madam Forelady, I am told that the jury has
9 reached a verdict; is that correct?

10 THE JUROR: Yes, sir.

11 THE COURT: Ma'am, if you would please give the verdict to
12 the bailiff and he'll give it to the clerk. Madam Clerk,
13 please publish the verdict.

14 THE CLERK: Your Honor, this is case number
15 2016-GS-12-288, the State versus Hilton R. Hayes, "We, the jury
16 unanimously find Hilton R. Hayes guilty of distribution of
17 crack cocaine. Signed, Gloria C. Hinnant as foreperson on 2/14
18 of 2018." If this is your verdict please signify by the
19 raising of your right hands. Thank you.

20 THE COURT: Thank you very much. Anything before I
21 dismiss the jury?

22 MS. KOUTSOGIANNIS: Nothing from the defense.

23 MS. LIVELY: Not from the State, Your Honor.

24 (The jury was dismissed.)

25 THE COURT: Is the State and the defense ready to proceed

JURY VERDICT

1 with sentencing?

2 MS. LIVELY: Yes, Your Honor, the State is ready to
3 proceed.

4 MS. KOUTSOGIANNIS: Your Honor, if I may make some
5 post-trial motions, Your Honor. I would move for a new trial
6 at this time. Of course, I renew all my pretrials motions that
7 I made at the advance of trial as well as all of the objections
8 that were made on the record, and including my directed verdict
9 motions, Your Honor, I would include that as well.

10 THE COURT: Yes, ma'am?

11 MS. LIVELY: Yeah, Your Honor. We totally stand beside
12 what the jury's verdict is. We think that they made the right
13 decision in this case and there was ample evidence for the
14 verdict to stand.

15 THE COURT: And I would agree with the State so I would
16 deny the motion, but thank you very much. Otherwise we're
17 ready for sentencing. Mr. Hayes, I just need to remind you
18 that you remain under oath, do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'll get some background information from you.
21 First, how old are you, Mr. Hayes?

22 THE DEFENDANT: I'm 41, sir.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: 12th grade.

25 THE COURT: Did you get a diploma?

SENTENCING HEARING

1 THE DEFENDANT: No, I got a certificate.

2 THE COURT: Are you married, single, divorced, widowed?

3 THE DEFENDANT: Single.

4 THE COURT: Do you have children?

5 THE DEFENDANT: I have got to take a DNA test for two, a
6 boy and a girl.

7 THE COURT: Well, do you have a job outside of the home,
8 or prior to your injury did you have a job outside of the home?

9 THE DEFENDANT: I'm self-employed, I own a used car
10 business.

11 THE COURT: Ever served in the military?

12 THE DEFENDANT: No, sir.

13 THE COURT: And on this particular charge when you got
14 arrested, how long a period of time, if any, did you spend in
15 jail before you made bond?

16 THE DEFENDANT: I think right at ten months, sir.

17 THE COURT: About 300 days?

18 MS. LIVELY: I wasn't aware that he'd spent that amount of
19 time, Your Honor.

20 THE DEFENDANT: I got locked up in February some time and
21 I got out it was like September.

22 THE COURT: Prior record?

23 MS. LIVELY: Yes, sir, Your Honor. He has a 1998 criminal
24 domestic violence. 2004, possession of drug paraphernalia.
25 2008, assault and battery of a high and aggravated nature where

SENTENCING HEARING

1 he had a probation violation. 2014, threatening the life of a
2 person or family of an official where he got five years
3 suspended upon time served and probation for two years, and he
4 was violated on that as well in April of 2016. That is the
5 extent of his criminal report. He does still have a pending
6 distribution charge, Your Honor, I know that it's not for -- in
7 regards to his record something that you consider, but in
8 regards to when we came to court and what the State was
9 offering I was going to run both of those concurrent with a cap
10 of six years before the trial but that's still an outstanding
11 charge that the State could still proceed on if we saw fit.

12 THE COURT: Anything else from the State?

13 MS. LIVELY: Nothing from the State, Your Honor.

14 THE COURT: Yes, ma'am, and sir?

15 MS. KOUTSOGIANNIS: Your Honor, I would want to point out,
16 I would need to look at his record but the domestic violence
17 from '98, I'm not sure if it appears as a conviction or
18 anything, he's saying it was dropped or dismissed, at any rate
19 it's an older charge. I would just point out Mr. Hayes since
20 this all started he got out and has been out on bond, he's done
21 this start-up used car sales business, that's been his main
22 focus, he's been doing that. Of course, he was injured in
23 October so he's been out of work and everything and trying to
24 recover from this. But before his injury he was very involved
25 in his business, you know, doing everything to work to fend for

SENTENCING HEARING

1 himself and he really liked what he did. He's an animal lover,
2 he's a family man. His family is here with him today, his
3 aunt, his mother and long time friend, Shannon, is also here
4 and I would defer to them if any of them wish to share anything
5 with you about Mr. Hayes. Your Honor, given that this is a
6 first offense, I don't think he has a substantial criminal
7 history, certainly not involving distribution of drugs or
8 anything like that, I would ask Your Honor to be light on the
9 sentencing. And at this time I would just see if anybody
10 wishes to say anything to Your Honor or hear from them.

11 THE COURT: If any of the family or friends wishes to
12 address the Court I just need you to come up to the bench or
13 come up to the bar. I just need to let you know we are making
14 a recording of everything that happens here so speak up loud so
15 that both the court reporter and I can hear you. Just start by
16 giving us your full name.

17 SPEAKER: My name is Shannon Renee Kesley.

18 THE COURT: Yes, ma'am, I will be more than happy to hear
19 from you.

20 SPEAKER: I've been his girlfriend for four years. This
21 is a real shock to me and everything. I could tell you on my
22 behalf from nothing, him just as a man in general, he's a man
23 who rides down the road, pulls over when he sees you walking,
24 he's a man who sees someone broke down and he will go and stop
25 and help you. He has never been a bad person in any way. He

SENTENCING HEARING

1 has got so much potential and he's starting a new business. He
2 is really good to society. This is a situation where just I
3 don't understand it myself honestly. I'm sorry, Your Honor.
4 That's all I have to say for right now. He's so humble. He's
5 able to handle anything, he's so strong. Just have mercy, Your
6 Honor. He is not really the bad person it's made out to be, I
7 promise that.

8 THE COURT: If you would just start by giving us your full
9 name.

10 THE DEFENDANT: My name is Pauline B. Hayes, Hilton is my
11 nephew and I have known him all of his life. He's a good kid,
12 he'll help you, he'll give you the shirt off his back. He's
13 just an all around good person so when you're sentencing him
14 please consider all of this. Please, Your Honor.

15 THE COURT: Mr. Hayes, is there anything else that you
16 would like to say or want me to know or consider? I'm sorry,
17 wait one minute, we've got one more person.

18 MS. KOUTSOGIANNIS: It's his mother, I think she also
19 wishes to --

20 THE COURT: Ma'am, if you would just start by giving us
21 your full name.

22 SPEAKER: My name is Margaret C. Hayes, I'm Hilton Hayes'
23 mom. He's the only son I have. Okay. When I need to go to
24 the doctor he take me. They put me on some medication and
25 stuff I cannot drive. He's a loving, kind person. He have

SENTENCING HEARING

1 three nephews they all call him Uncle Pete. He will say,
2 "What's up, Nephew?" They'll say, "You, we love you." He
3 plays ball with them, take them out fishing, play games, go out
4 to eat and so this is the only uncle they have so they're crazy
5 to death about him and he love them. And he's going to take
6 care of them animals and he's going to make sure I'm taken care
7 of.

8 THE COURT: Mr. Hayes, is there anything else that you
9 would like to say or want me to know?

10 THE DEFENDANT: Yes, sir. I would like to thank you for
11 taking the time out for everybody to come here and listen to
12 everything, and also the jury. I would just like to thank
13 everybody for being here and I'm ready to be sentenced so I can
14 go ahead, do what I have to do and come back on PTR (sic) sir.
15 I would like to thank everybody for coming and taking the time
16 out.

17 THE COURT: Thank you, sir.

18 MR. SNELL: Your Honor, if I may very briefly, just
19 before. I -- just -- one thing is the client that we've had I
20 think is the client that the family spoke about, but they've
21 advised -- and specifically he was, we understand, in the jail
22 from February 2nd through October 19th, it took him that long
23 to raise the money to get a bond. I don't believe there has
24 been any allegation of trouble during that period. He's
25 conducted himself appropriately, certainly came to court on

SENTENCING HEARING

1 time and did everything like he was supposed to. One of the
2 things he talked to me about before was he grew up on a farm
3 and so this love of animals -- he grew up milking cows and
4 milking goats and taking care of animals and just that sort
5 of -- that's his personality. It seems like he's in a stable
6 living situation, stable family structure, everything and I
7 just don't -- it's an awful serious thing to get mixed up in
8 but I'm hopeful it's just an isolated incident and this isn't
9 indicative of his overall character. I think he's a better
10 person than this. Nothing further.

11 THE COURT: I find that there's -- well, I already have
12 accepted the verdict from the jury on this case, this will be a
13 sentence at the State of Department Corrections for a period of
14 seven years. I have indicated by my calculations it's 291 days
15 worth of credit. Good luck to you, sir.

16 (End of trial proceedings.)

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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 General
8 Sessions for Chester County, South Carolina, on the
9 13th-14th days of February, 2018.

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

12
13 April 30, 2018

14
15 
16 Michael C. Watkins

17 Court Reporter
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19
20
21
22
23
24
25

WITNESSES

Al Crawford (CSD)

✓ G Walls

ARREST WARRANT NUMBER/DOA

2015A1210100122 (DOA-2-4-16)

ACTION OF GRAND JURY**TRUEBILL**Sanna R. Wilson
Foreperson of Grand Jury

Date: 6-21-16

VERDICT

Guilty

Gloria C. Hinnant
Foreperson of Petit Jury

Date: 2-14-2018

DOCKET NO. 2016-GS-12-288**The State of South Carolina**
County of Chester**COURT OF GENERAL SESSIONS****JUNE TERM 2016****THE STATE**
vs.**Hilton Rhoderqus Hayes****Indictment for****Distribution of Cocaine Base**

SC Code: § 44-53-375(B)

CDR Code: 3014

Class: Felony, D

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

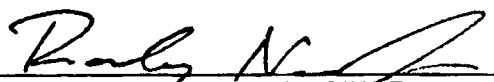
INDICTMENT

At a Court of General Sessions, convened on June 21, 2016, the Grand Jurors of Chester County present upon their oath:

DISTRIBUTION OF COCAINE BASE

That Hilton Rhoderqus Hayes did in Chester County on or about July 5, 2015, distribute, dispense, deliver, or purchase cocaine base, in violation of § 44-53-375(B), of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Randy E. Newman, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Chester

VS.

Hilton Rhoderequs Hayes

AKA:

Race: UNKNOWN/O Sex: M

Age: 41

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manufacture, distribution, etc. of cocaine base, 1st

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS12288

A/W#: 2015A1210100122

Date of Offense: 7/5/2015

S.C. Code § : 44-53-0375(B)(1)

CDR Code #: 3014

SENTENCE SHEET

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, Candice

SC Bar# 12123

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 291 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of November, 2018.

RECEIVED
NOV 05 2018
SC Court of Appeals