

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Frank R. Addy, Circuit Court Judge

MICHAEL A. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000964

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS

State of South Carolina,)
v.) Case No. 16-GS-23-2216 *et. al.*
Michael A. Richardson,)
Defendant.)

TRANSCRIPT OF JURY TRIAL

The within jury trial in the above-captioned matter was held on January 18, 2017, before The Honorable Roger Henderson in Courtroom 4 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Walker Miller, Assistant Solicitor
13th CIRCUIT SOLICITOR'S OFFICE
...Appearing for State of South Carolina

Stuart Sarratt, Public Defender
...Appearing for Defendant

Deborah Garrison
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Case No. 16-GS-23-2216 et al
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Before The Honorable Roger Henderson

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(None Entered)		

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Jury Qualification & Selection

(DEFENDANT PRESENT)

(JURY PANEL IN @ 10:45 A.M.

THE COURT: Ladies and gentlemen of the jury panel, we are about to begin the trial of a case of the State of South Carolina versus Michael Richardson. And before we actually select the jury, I'm going to have to ask you a few questions. I'm going to ask that the clerk place you under oath before I ask those questions.

(WHEREUPON JURY PANEL SWORN)

THE COURT: Counsel, I'm going to ask that you please stand and identify yourself to the jury and any members of your staff that may be with you?

SOLICITOR MILLER: Yes, Your Honor. My name is Walker Miller. I'm an Assistant Solicitor in the Thirteenth Circuit Solicitor's Office. Seated next to me is Kathy Rein she is investigator in the same offices here.

MR. SARRATT: I am Stuart Sarratt. I'm a defense attorney here in Greenville and I represent Michael Richardson.

THE COURT: All right. If the

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1 Defendant, Michael A. Richardson would please
2 stand and face the jury panel.

3 DEFENDANT: (Complies).

4 THE COURT: All right that's fine.
5 You can be seated.

6 DEFENDANT: (Complies).

7 THE COURT: All right. If the
8 following individuals are present in the
9 courtroom, if you would, please stand?

10 These are for the potential witnesses in
11 this case:

12 Marcus Cannon. He's with the
13 Greenville County Sheriff's Office.

14 Quincy Whitner, with the Sheriff's
15 Office.

16 Christopher Pletcher, sheriff's
17 office.

18 Mason Hubber with the Greenville
19 County Sheriff's office.

20 Brad Grice with the Greenville
21 County Sheriff's office.

22 Kara Bennick, B-E-N-N-I-C-K,
23 Greenville County Property and Evidence.

24 Sean Collins, Greenville County
25 Crime Lab.

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1 Charles Moore with the Greenville
2 County Detention Center.

3 Alrad Cobbs.

4 THE COURT: Mr. Cobbs is here.
5 Let's bring him in so at least the jury can
6 see him. See if he has any -- see if they
7 can identify him.

8 (ALRAD COBBS ENTERS COURTROOM)

9 THE COURT: All right. This is
10 Mr. Alrad Cobbs.

11 (NO RESPONSE)

12 (ALRAD COBBS EXITS COURTROOM)

13 THE COURT: All right. Has any
14 member of the jury panel ever been related by
15 blood or marriage to Michael A. Richardson,
16 the defendant in this case?

17 (NO RESPONSE)

18 THE COURT: All right. No one
19 responded. Okay. Has anyone ever had a
20 close personal or social relationship with
21 Michael A. Richardson, the defendant in this
22 case?

23 (NO RESPONSE)

24 THE COURT: All Right. No one
25 responded.

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1 Now, you heard me call out the names
2 of the witnesses a few moments ago. Two of
3 the witnesses were present, Mr. Cobbs and Mr.
4 Moore. Has anyone ever been related by blood
5 or marriage to any of the witnesses whose
6 names I called out earlier? If so, please
7 stand?

8 (NO RESPONSE)

9 THE COURT: If not related by
10 blood or marriage, have any of you ever had
11 any type of close personal, business, or
12 social relationship with any of these people?
13 If so, please stand.

14 (NO RESPONSE)

15 THE COURT: All right. No one is
16 standing. All right. The attorneys in this
17 case have identified themselves. Has any
18 member of the jury panel ever been
19 represented by either Mr. Miller or Mr.
20 Sarratt or any law firms that they may have
21 been associated with in the past?

22 (NO RESPONSE)

23 THE COURT: Mr. Miller, I under-
24 stand you were with a firm before you went to
25 work with the Solicitors office?

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1 SOLICITOR MILLER: Yes, Your Honor.

2 THE COURT: Is that a firm here in
3 Greenville?

4 SOLICITOR MILLER: It was Gallivan,
5 White and Boyd.

6 THE COURT: Gallivan, White and
7 Boyd?

8 SOLICITOR MILLER: Yes, Your Honor.

9 THE COURT: Okay. Anybody ever
10 had any type of relationship, business,
11 social, personal with anybody in that law
12 firm? If so, please stand? Or ever been
13 represented by anybody in that law firm?

14 JUROR NUMBER 215: (Stands).

15 THE COURT: Yes, sir. Your name,
16 sir?

17 JUROR NUMBER 215: Claude Yarborough.

18 THE COURT: Okay. What was the
19 relationship you had with somebody in that
20 law firm?

21 JUROR NUMBER 215: I reviewed some
22 malpractice cases for the firm.

23 THE COURT: I'm sorry. I couldn't
24 hear you.

25 JUROR NUMBER 215: I reviewed some

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1 malpractice cases for that firm.

2 THE COURT: So you've done some
3 work for them?

4 JUROR NUMBER 215: Yes.

5 THE COURT: Okay. All right.
6 Please note that, Counsel. Thank you, sir.

7 Does the fact that you have done
8 that and that Mr. Miller had been employed by
9 that firm at one time, would that keep you
10 from being able to be fair and impartial to
11 both the plaintiff and defendant in this
12 case?

13 JUROR NUMBER 215: No, sir.

14 THE COURT: Okay. Thank you, sir.
15 All right. Is any member of the jury panel
16 formed or expressed an opinion about any
17 issue or matter involving this case? If so,
18 please stand.

19 (NO RESPONSE)

20 THE COURT: Has any member of the
21 jury panel or is any member of the jury panel
22 aware of any bias or prejudice toward either
23 the State or the Defendant in this case? If
24 so, please stand.

25 (NO RESPONSE)

1 THE COURT: No one's standing. Is
2 there any member of the jury panel that was a
3 member of the grand jury, which issued the
4 indictment in this case? If so, please
5 stand.

6 (NO RESPONSE)

7 THE COURT: No one's standing. Is
8 there any member of the jury panel who is a
9 member of or contributor to any group which
10 has its primary concern the promotion of law
11 enforcement or victims' rights? These groups
12 would include but not be limited to MADD,
13 SADD or CAVC, which is Citizens Against
14 Violent Crime. Anybody contributed to those
15 organizations or a member of any of those
16 organizations? If so, please stand?

17 JUROR NUMBER 194: (Stands).

18 THE COURT: Yes, ma'am. Your
19 name, please?

20 JUROR NUMBER 194: Jamie Taylor.

21 THE COURT: Taylor?

22 JUROR NUMBER 194: Yes.

23 THE COURT: Yes, ma'am. Ms.
24 Taylor, what organization are you a
25 contributor to or a member of?

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1 JUROR NUMBER 194: Years ago I had
2 contributed to Mothers Against Drunk Driving
3 as a guest speaker.

4 THE COURT: Okay. All right.
5 Would the fact that you've been involved with
6 some organization like that render you unable
7 to be fair and impartial to both the
8 plaintiff and the defendant in the trial of
9 this case?

10 JUROR NUMBER 194: No, sir.

11 THE COURT: Okay. Thank you,
12 ma'am.

13 Has any member of the jury panel
14 been approached by the Defendant or anybody
15 on behalf of the Defendant or anybody on
16 behalf of the State of South Carolina prior
17 to this trial being called? If so, please
18 stand.

19 (NO RESPONSE)

20 THE COURT: Okay. No one's
21 standing.

22 Does any member of the jury panel
23 know of any reason whatsoever why he or she
24 should not serve as a juror in this case with
25 particular emphasis being placed on your

1 ability to be fair and impartial to both the
2 State and the Defendant? If so, please
3 stand.

4 (NO RESPONSE)

5 THE COURT: No one's standing.
6 All right. Anything else from the State?

7 SOLICITOR MILLER: Nothing from the
8 State, Your Honor.

9 THE COURT: From the Defendant?

10 MR. SARRATT: Nothing, Your Honor.

11 THE COURT: All right. Ladies and
12 gentlemen, this is how we will proceed. When
13 your name is called, I'm going to ask that
14 you come forward and stand in front of this
15 podium and turn back toward the attorneys so
16 they can see you. Then they'll decide
17 whether to accept or strike you as a juror.

18 The strikes -- my understanding is
19 they are five and five; five for the State,
20 five for the Defendant.

21 Okay. Madam Clerk?

22 CLERK: Juror Number 106, Yintoneus
23 Jenkins.

24 (JUROR, BLACK MALE, BEFORE COUNSEL)

25 SOLICITOR MILLER: Please swear

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1 this juror.

2 CLERK: What says the Defense?

3 MR. SARRATT: Please seat this
4 juror.

5 CLERK: Please take a seat in the
6 jury box.

7 (JUROR NUMBER 106 SEATED)

8 CLERK: Juror number 206, James
9 Wall.

10 (JUROR, WHITE MALE, BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR MILLER: Please seat Mr.
13 Wall.

14 CLERK: What says the defendant?

15 JUROR NUMBER 206: (Starts to return
16 to seat).

17 THE COURT: No, no, wait a second.

18 JUROR NUMBER 206: I didn't hear
19 anything.

20 THE COURT: Okay. Stand right
21 there.

22 MR. SARRATT: Please seat the juror.

23 THE COURT: Now you can be seated.

24 CLERK: Please be seated in the
25 jury box.

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1 (JUROR NUMBER 206 SEATED)

2 CLERK: Juror number 215, Claude
3 Yarborough.

4 (JUROR, WHITE MALE, BEFORE COUNSEL)

5 CLERK: What says the State?

6 SOLICITOR MILLER: Please seat Mr.
7 Yarborough.

8 CLERK: What says the Defendant?

9 MR. SARRATT: Please seat the juror.

10 CLERK: Please have a seat in the
11 jury box.

12 (JUROR NUMBER 215 SEATED)

13 CLERK: Juror number 41, Shih Ping
14 Chung.

15 (JUROR, ASIAN MALE, BEFORE COUNSEL)

16 CLERK: What says the State?

17 SOLICITOR MILLER: Please seat Mr.
18 Chung.

19 CLERK: What says the Defendant?

20 MR. SARRATT: Please excuse the
21 juror.

22 CLERK: Please be seated back in
23 the panel. You've been excused from this
24 case.

25 (JUROR NUMBER 41 EXCUSED)

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1 CLERK: Juror number 171, Robert
2 Sadler.

3 (JUROR, WHITE MALE, BEFORE COUNSEL)

4 CLERK: What says the State?

5 SOLICITOR MILLER: Please seat Mr.
6 Sadler.

7 CLERK: What says the Defendant?

8 MR. SARRATT: Please seat the juror.

9 CLERK: Please be seated in the
10 jury box.

11 (JUROR NUMBER 171 SEATED)

12 CLERK: Juror number 128, Ryan
13 Lettig.

14 (JUROR, ORIENTAL MALE, BEFORE COUNSEL)

15 CLERK: What says the State?

16 SOLICITOR MILLER: Please excuse
17 Mr. Lettig.

18 CLERK: Please have a seat back in
19 the panel. You've not been selected for this
20 case.

21 (JUROR NUMBER 128 EXCUSED)

22 CLERK: Juror number 53, Donna
23 David.

24 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

25 SOLICITOR MILLER: Please seat Ms.

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1 David.

2 CLERK: What says the Defendant?

3 MR. SARRATT: Please swear the
4 juror.

5 CLERK: Please have a seat in the
6 jury box.

7 (JUROR NUMBER 53 SEATED)

8 CLERK: Juror Number 123, James
9 Lane.

10 (JUROR, WHITE MALE, BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR MILLER: Please seat Mr.
13 Lane.

14 CLERK: What says the Defendant?

15 MR. SARRATT: Please swear the
16 juror.

17 CLERK: Please have a seat in the
18 jury box.

19 (JUROR NUMBER 123 SEATED)

20 CLERK: Juror number 20, John

21 Besser.

22 (JUROR, WHITE MALE, BEFORE COUNSEL)

23 CLERK: What says the State?

24 SOLICITOR MILLER: Please seat Mr.

25 Besser.

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1 CLERK: What says the Defendant?

2 MR. SARRATT: Please swear the

3 juror.

4 CLERK: Please have a seat in the

5 jury box.

6 (JUROR NUMBER 20 SEATED)

7 CLERK: Juror Number 50, Kristen

8 Cuppia.

9 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

10 CLERK: What says the State?

11 SOLICITOR MILLER: Please seat Ms.

12 Cuppia.

13 CLERK: What says the Defendant?

14 MR. SARRATT: Please swear the

15 juror.

16 CLERK: Please have a seat in the

17 jury box.

18 (JUROR NUMBER 50 SEATED)

19 CLERK: Juror number 116, Leah

20 Klepacki.

21 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

22 CLERK: What says the State?

23 SOLICITOR MILLER: Please excuse

24 Ms. Klepacki.

25 CLERK: Please be seated. You've

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1 been excused from this case.

2 (JUROR NUMBER 116 EXCUSED)

3 CLERK: Juror Number 55, Billie
4 Davis.

5 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

6 CLERK: What says the State?

7 SOLICITOR MILLER: Please seat Ms.
8 Davis.

9 CLERK: What says the Defendant?

10 MR. SARRATT: Please excuse the
11 juror.

12 CLERK: Please be seated. You've
13 been excused from this case.

14 (JUROR NUMBER 55 EXCUSED)

15 CLERK: Juror Number 76, Shawn
16 Gasser.

17 (JUROR, WHITE MALE, BEFORE COUNSEL)

18 CLERK: What says the State?

19 SOLICITOR MILLER: Please seat Mr.
20 Gasser.

21 CLERK: What says the Defendant?

22 MR. SARRATT: Please swear the
23 juror.

24 CLERK: Please have a seat in the
25 jury box.

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(JUROR NUMBER 76 SEATED)

CLERK: Juror Number 69, Susan

Fore.

(JUROR, WHITE FEMALE, BEFORE COUNSEL)

CLERK: What says the State?

SOLICITOR MILLER: Please seat Ms.

Fore.

CLERK: What says the Defendant?

MR. SARRATT: Please excuse the
juror.CLERK: Please be seated. You've
been excused from this case.

(JUROR NUMBER 69 EXCUSED)

CLERK: Juror Number 124, Darleen
Leavitt.

(JUROR, WHITE FEMALE, BEFORE COUNSEL)

CLERK: What says the State?

SOLICITOR MILLER: Please seat Ms.
Leavitt.

CLERK: What says the Defendant?

MR. SARRATT: Please swear the
juror.CLERK: Please be seated in the
jury box.

(JUROR NUMBER 124 SEATED)

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1 CLERK: Juror Number 23, Julie

2 Bostick.

3 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

4 CLERK: What says the State?

5 SOLICITOR MILLER: Please seat Ms.

6 Bostick.

7 CLERK: What says the Defendant?

8 MR. SARRATT: Please swear the

9 juror.

10 CLERK: Please be seated in the

11 jury box.

12 (JUROR NUMBER 23 SEATED)

13 CLERK: Juror Number 8, Larry

14 Arflin.

15 (JUROR, WHITE MALE, BEFORE COUNSEL)

16 CLERK: What says the State?

17 SOLICITOR MILLER: Please seat Mr.

18 Arflin.

19 CLERK: What says the Defendant?

20 MR. SARRATT: Please swear the

21 juror.

22 CLERK: Please have a seat in the

23 jury box.

24 (JUROR NUMBER 8 SEATED)

25 THE COURT: All right. Counsel;

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1 let's select one alternate.

2 SOLICITOR MILLER: Yes, Your Honor.

3 THE COURT: One strike for the
4 State and two for the Defendant.

5 MR. SARRATT: Yes, Your Honor.

6 CLERK: Juror Number 151, Erik
7 Nelson.

8 (JUROR, WHITE MALE, BEFORE COUNSEL)

9 CLERK: What says the State?

10 SOLICITOR MILLER: Please excuse
11 Mr. Nelson.

12 CLERK: Please be seated. You've
13 been excused from this panel.

14 (JUROR NUMBER 151 EXCUSED)

15 CLERK: Juror Number 54, Thomas
16 David.

17 (JUROR, WHITE MALE, BEFORE COUNSEL)

18 CLERK: What says the State?

19 SOLICITOR MILLER: Please seat Mr.
20 David.

21 CLERK: What says the Defendant?

22 MR. SARRATT: Please swear the
23 juror.

24 CLERK: Please be seated in the
25 jury box.

1 (JUROR NUMBER 54 SEATED)

2 THE COURT: All right. Those of
3 you who have not been selected for service on
4 this jury, I'm going to ask that you return
5 back where you came from. Go back down-
6 stairs. I'm sure somebody will escort you to
7 show you where. Thank you.

8 (JURY PANEL EXCUSED)

9 THE COURT: All right. Mr. John
10 P. Besser.

11 JUROR NUMBER 20: Yes, sir?

12 THE COURT: Mr. Besser, I'm going
13 to appoint you as the Foreman of this jury.
14 So after you shift back around, when you come
15 back in, if you'll sit in the seat right over
16 here. The bailiff will show you where to
17 sit.

18 And if the alternate will just
19 remain in that seat always, we're fine.
20 Thank you.

21 All right. Madam Clerk, will you
22 swear this jury, please?

23 (WHEREUPON JURY SWORN)

24 THE COURT: All right. Ladies and
25 gentlemen, as I mentioned earlier, we are

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Welcome by The Honorable Roger Henderson

1 about to begin the trial of the case of the
2 State of South Carolina versus Michael
3 Richardson.

4 I don't know if any of you have ever
5 served on a jury. If you have, you under-
6 stand that it's not like a forty-five minute
7 TV block where you have a trial and it's over
8 in forty-five minutes. For those of you who
9 have never served, I advise you that's it's
10 not like that.

11 This is not any type of high drama
12 situation. It's a trial to find out the
13 guilt or innocence of the Defendant. It's
14 not for your entertainment. This is a part
15 of our fundamental democracy, the way our
16 democracy works. Now, it can be slow, it can
17 be deliberate.

18 I ask for your patience throughout
19 the course of the trial. There'll be times
20 when the attorneys want to discuss matters
21 with me and I may have to ask you to retire
22 to the jury room. And sometimes you feel
23 like, you know, you don't know what's going
24 on. But the important thing is that you pay
25 close attention to all the testimony and

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Welcome by The Honorable Roger Henderson

1 evidence that's introduced during the course
2 of this trial in determining what your
3 verdict will be.

4 This courtroom is a place of honor
5 and it's dedicated to the protection and
6 preservation of all citizens' rights. This
7 has been said to be the home of the greatest
8 justice system ever created. We have
9 criticisms of it. It's criticized often, but
10 if you look throughout history and look
11 around the world now, you won't find a better
12 system than our system of someone being in
13 judgment of their peers.

14 Now, the attorneys that are appear-
15 ing before you today, they are advocates of
16 the parties they represent, but first and
17 foremost, they are Officers of the Court and
18 they are sworn to uphold the integrity and
19 fairness of our judicial system. You should
20 expect them to be professional, competent and
21 ethical in the representation of their
22 client's interest.

23 Remember that you have taken an oath
24 to try this case and that you are to be as
25 diligent as the attorneys are and as ethical

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Welcome by The Honorable Roger Henderson

1 as they are throughout their deliberations.

2 I want to thank you for accepting
3 the important responsibility of jury service
4 and for your contribution to our judicial
5 system here today. It sometimes goes, a
6 thankless job, so to speak, but the Court,
7 myself in particular, do acknowledge the
8 importance of the jury system. And I do
9 appreciate it. And I don't just say that
10 just to be saying words. I'm sincere when I
11 say I appreciate your being willing to serve.
12 You'd be surprised at the folks who try to
13 dodge jury duty, to get out of it. So I do
14 appreciate your being here.

15 Now, in the next few seconds what
16 I will tell you is intended to serve as an
17 introduction to the trial of this case. What
18 I'm telling you is not a charge on the law at
19 this point in time. I'll instruct you on the
20 law that applies to this case at the end of
21 the trial before you retire to consider your
22 verdict. This is merely an explanation of
23 the procedure that we will follow in the
24 trial of this case so that you may have a
25 better understanding of what may be

1 happening.

2 Now, some judges allow notetaking,
3 some don't. I don't have a problem if you
4 want to take notes. If you have a piece of
5 paper and pencil and you want to take notes
6 throughout the course of the trial, I don't
7 have a problem with that. The only thing is
8 that I would warn you is that sometimes when
9 you're taking notes, you might miss
10 something. You might not pick up what some
11 witness is saying or just don't catch
12 everything. So that's the caution I give
13 you. I don't have a problem with it, but I
14 ask that you be careful about the way you
15 take your notes and that you do pay
16 particular close attention to the testimony.

17 The defendant in this case is
18 charged by two indictments. As has been
19 pointed out, he is charged with the crimes of
20 distribution of cocaine base, crack cocaine
21 and with conspiracy. The elements of these
22 crimes will be explained to you later on in
23 the trial. The indictments are simply the
24 charge by which the case is brought into
25 Court. And they are not in any sense

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1 evidence of any of the allegations it
2 contains.

3 The defendant has pled not guilty to
4 these indictments. The State, therefore, has
5 the burden of proving each of the elements of
6 the indictment beyond a reasonable doubt.

7 Now, it will be your duty, ladies
8 and gentlemen, to decide whether the State
9 has met that burden. Your purpose as jurors
10 is to find and determine the facts. You are
11 the sole judge of the facts.

12 If at any time I make any comment
13 regarding the facts, you must disregard it.
14 You are to determine the facts from the
15 testimony you hear from this witness stand
16 and any other evidence that may be introduced
17 during the course of the trial. It is up to
18 you to determine the inferences which you
19 feel may properly be drawn from the evidence.

20 It is especially important that you
21 perform your duty of determining the facts
22 diligently and conscientiously because
23 ordinarily there is no way to correct an
24 erroneous determination of the facts by a
25 jury.

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

15 Until I advise you to begin your
16 deliberations, you must not discuss this case
17 with anyone including your fellow jurors,
18 friends, family members, and anyone involved
19 in the case. This includes discussions face-
20 to-face and those by telephone, e-mail,
21 texts, blogs, or any other method of
22 communication.

23 You may not use a computer,
24 cellphone or other electronic device with
25 communication capabilities at any time while

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1 in the courtroom or during deliberations.
2 During your breaks for meals or overnight, if
3 necessary, you may use these devices;
4 however, you may not at any time use these
5 devices to get or send information about the
6 case. This includes information about a
7 party, a witness, an attorney, or a court
8 officer, news accounts about the case,
9 anything. You're not to do any research on
10 topics raised during the course of the trial
11 or anything that you think might be helpful
12 in deciding the case.

13 Now, I don't know that this would be
14 anything that would be published in the paper
15 or anything, but during the trial do not
16 read, listen to or watch any news reports
17 about this case. This includes anything that
18 may be in the newspapers or on the internet,
19 radio or television.

20 You must not consider anything you
21 have read or heard about the case outside the
22 courtroom, whether before or during the
23 trial. After the case is submitted to you,
24 you must discuss it only in the jury room
25 with your fellow jurors.

1 The attorneys and parties or
2 witnesses in this case have been advised that
3 they are not to talk to you at all. So if
4 you see anyone involved in the case and they
5 don't even say hello, it's not that they're
6 being unfriendly. They're following my
7 instructions. We don't want any appearance
8 of any type of impropriety. That's why we do
9 that. So they're not being, as I said,
10 unfriendly. They're just following my
11 instructions.

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

24 In just a moment, the Solicitor will
25 make what is called an opening statement in

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1 which he will explain to you the issues in
2 this case or at least what he thinks the
3 issues are in this case.

4 The attorney for the Defendant may
5 also make an opening statement, although he
6 is not required to do so.

7 What the attorneys tell you during
8 their opening statements is not evidence in
9 this case. It is only their contention as to
10 what the issues are. The evidence in this
11 case will be presented to you by the
12 testimony of sworn witnesses from this
13 witness stand and/or by exhibits that may be
14 introduced into evidence.

15 As I pointed out earlier, from time
16 to time during the trial you may hear one of
17 the lawyers say something like, 'Your Honor,
18 I believe we have a question of law or a
19 matter of law to discuss with you or Your
20 Honor, may we approach the bench?' Or
21 sometimes I might myself say it's
22 necessary to excuse you from the courtroom
23 for a while so I can discuss some issues with
24 the attorneys. The reason for this is
25 because you're the judges of the facts. And

1 sometimes when I'm discussing matters of law
2 with the attorneys, it just becomes necessary
3 that the facts may be talked about or
4 mentioned. And since you're the sole judges
5 of the facts, I don't want you to hear me
6 comment on anything about the facts because
7 you are the sole judges of the facts.

8 Now, in determining what the true
9 facts are in this case, you must decide
10 whether or not the testimony of the witnesses
11 is believable. It will be my responsibility
12 to rule as a matter of law as to whether
13 certain testimony is admissible or not. But
14 once the testimony is admitted, whether or
15 not you believe it is solely for you to
16 determine.

17 In deciding whether to believe a
18 witness, you have the right to consider the
19 interest of any witness, any bias of any
20 witness, any prejudice of any witness, the
21 opportunity for the witness to have seen the
22 matters and things about which the witness
23 may testify and the way the witness acts on
24 the witness stand. You have the right to
25 consider anything that is in the record that

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1 will help you evaluate the testimony of the
2 witnesses.

3 Therefore that means it is your duty
4 to pay close attention to these witnesses, to
5 observe the witnesses, to listen to the
6 witnesses and to pay close attention to the
7 attorneys and to the Court. Don't let your
8 thoughts wander, but give strict attention to
9 the testimony in this case so that at the end
10 of all the testimony, after the arguments of
11 counsel, and the charge on the law by me, you
12 will then be in a position to determine what
13 the true facts are and to apply the law to
14 those facts.

15 It is your added duty, Mr. Foreman,
16 to preside in the jury room and be the jury's
17 spokesperson here in the courtroom. It will
18 also be your duty to write the verdict, but I
19 will give you further instructions on that at
20 the conclusion of the case.

21 Now, in order to preserve everyone's
22 rights I will give the parties an opportunity
23 to object to anything I have said.

24 Any objection from the State?

25 SOLICITOR MILLER: None from the

1 State, Your Honor.

2 THE COURT: Any objections from
3 the Defendant?

4 MR. SARRATT: None, Your Honor.

5 THE COURT: Okay. All right. We
6 will now begin the trial of the case. Mr.
7 Miller.

8 SOLICITOR MILLER: Thank you, Your
9 Honor. May it please the Court?

10 OPENING STATEMENT

11 BY SOLICITOR MILLER:

12 Ladies and gentlemen of the jury, as
13 you heard earlier my name is Walker Miller, I
14 am an Assistant Solicitor representing the
15 State.

16 We're here today on a case against
17 Michael Richardson. The charges are
18 distribution of crack cocaine and conspiracy.
19 Now, it's my job to present the evidence to
20 you on each and every element of each of
21 those crimes beyond a reasonable doubt in
22 order for there to be a conviction.

23 His Honor will instruct you on what
24 beyond a reasonable doubt means and we'll
25 talk about that a little later in the closing

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Opening Statement by Solicitor Miller

1 arguments.

2 Basically "distribution" is what you
3 think it is. You sell the drugs and you
4 distribute them. Now, you don't have to be
5 the one that actually hands the drugs to the
6 person. You can be involved in theory. And
7 that's what this case is. That's why there's
8 a conspiracy charge. There is another
9 defendant in this case and he's here today.
10 You saw him walk out this morning. His name
11 is Alrad Cobbs. He has pled guilty to this
12 already and I'll ask him some questions when
13 he's on the stand about it, as to how it all
14 worked.

15 You'll also hear from the officers
16 in this case who are seated over here. They
17 were out earlier to make room for everybody
18 to sit down. And what they're going to do is
19 they're going to explain to you the process
20 of how they go about making some of these
21 buys. They won't give you too much detail
22 because they can't tell you everything that
23 they do, for security reasons. But they're
24 going to tell you about this case and what
25 happened in this case, how there were two

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1 people involved, the Defendant Michael
2 Richards and Alrad Cobbs.

3 Deputy Whitner's going to tell you
4 how he was undercover, how he approached
5 Alrad Cobbs, asked him to make a buy. Alrad
6 Cobbs then went over to Michael Richardson
7 after he spoke to him, told him he needed
8 some dope. He took the money from the
9 deputy, Alrad Cobbs did, gave that money to
10 Michael Richardson. Michael Richardson gave
11 the drugs to Alrad Cobbs, who then gave the
12 drugs back to the deputy.

13 Shortly after that, they have what's
14 called a take-down team who comes in and made
15 the arrest. They'll go into the detail with
16 you, but that's an overall idea of what
17 you're going to hear.

18 But there's also a little bit more.
19 We're going to present some evidence to you,
20 some jail calls. And we have Officer Charles
21 Moore, who I believe you saw stand up
22 earlier, from the detention center. He'll
23 explain to you the system of how the calls
24 are recorded and how they're stored. There
25 are going to be some parts that are going to

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Opening Statement by Solicitor Miller

1 be redacted as far as the Judge will rule on
2 as admissibility of evidence goes, but you
3 will hear the Defendant speak. I think it's
4 very important to listen to what he says
5 because these are his words.

6 We'll come back and we'll give you
7 closing arguments. That's where I'll tie and
8 wrap it all and sum in all up together for
9 you.

10 After that, you'll then get the get
11 the case after the charge on the law from His
12 Honor. And then when you go back you
13 deliberate and you ask questions and you go
14 through the facts. When you're going through
15 them a lot of times, a couple things are
16 needed to deliberate the facts and you will
17 have that information.

18 It's not as technical a lot of times
19 as people may think. You really need the
20 life experience and common sense and you
21 apply those to what's presented before you.
22 I'm going to ask you to make a determination
23 and I'm going to ask you to find the
24 Defendant guilty on both charges of
25 distribution of crack cocaine and conspiracy.

1 And I'll talk a little bit more in detail
2 about those elements later in the closing
3 argument.

4 But one last thing we have to
5 mention and that is that a conspiracy doesn't
6 have to be an expressed, but can be implied.
7 It doesn't have to be laid out. It's really
8 a mutual understanding to perform unlawfully.
9 It doesn't have to be exactly stated, just
10 everybody's okay with what they're doing and
11 they do it and it's an unlawful act. That's
12 what conspiracy is. It doesn't have to be
13 this detailed, laid-out plan.

14 With that, thank you for your
15 attention as we go through this case. We're
16 going to try to be efficient with your time.
17 I know that everybody that's here, you have
18 other places you need to be. But at the same
19 time we appreciate you being here because it
20 is an important thing. Thank you for your
21 time and attention.

22 THE COURT: Mr. Sarratt.

23 OPENING STATEMENT

24 BY MR. SARRATT:

25 Good morning. Once again, I'm

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Opening Statement by Mr. Sarratt for Defense

1 Stuart Sarratt. I represent Michael
2 Richardson. Michael Richardson sits at the
3 defense table an innocent man. He is an
4 innocent man because he, like all citizens of
5 this country, is presumed innocent until
6 proven guilty.

7 Now, you heard from the State
8 through the prosecutor, Solicitor Miller,
9 that they have the burden to prove Michael
10 Richardson guilty of each and every one of
11 the two offenses that he's charged with
12 beyond a reasonable doubt.

13 And, again, we'll talk more about
14 what beyond a reasonable doubt means at the
15 end of this trial.

16 But for now what you need to
17 understand is that in order for the State to
18 prove its case, it is going to have to call a
19 number of witnesses. Some of those witnesses
20 are going to be very crucial for the defense
21 as well as the State, that would want you to
22 pay particular attention to others because
23 they have a burden of proof they have to
24 establish foundation to ensure that drugs
25 are, in fact, drugs, that they haven't been

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Opening Statement by Mr. Sarratt for Defense

1 tampered. I'm not necessarily going to ask
2 too many questions on that because we're
3 actually in agreement as to several facts in
4 this case. We agree, one, there was a drug
5 transaction, it was with an undercover
6 officer. Michael Richardson was present. He
7 was there.

8 What I want you to focus on in this
9 case, it's really very simple. There are two
10 things I want you to keep in mind as you as
11 you hear the evidence, when you hear it from
12 the witnesses:

13 One, where is the agreement? There
14 must be an agreement between Michael
15 Richardson and Alrad Cobbs for there to be a
16 conspiracy. Now, it doesn't have to be
17 spoken. It doesn't have to be laid out in
18 detail, but there must be some understanding
19 of what they were going to do. Number one,
20 where is the agreement?

21 Number two, where are the drugs?
22 This is a conspiracy and distribution case.
23 They're alleging that Michael Richardson took
24 part in distributing drugs to Officer
25 Whitner. I want you to listen to the

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1 witnesses. And as they describe the
2 sequence of events, how the transaction takes
3 place, I want you, in your mind, to picture
4 it. Where were -- when does Mr. Richardson
5 ever possess the drugs?

6 I believe at the end of this trial,
7 after the presentation of all the evidence
8 you will find that there has been no
9 agreement, that Mr. Richardson did not
10 possess these drugs and you'll come back with
11 a verdict of Not Guilty. Thank you.

12 THE COURT: Mr. Miller, you may
13 call your first witness.

14 SOLICITOR MILLER: Your Honor, at
15 this time the State calls Deputy Quincy
16 Whitner.

17 (WITNESES TAKES STAND)

18 QUINCY WHITNER, having been duly sworn
19 to tell the truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR MILLER:

23 Q. Where are you employed, Mr. Whitner?

24 A. Greenville County Sheriff's Office.

25 Q. How long have you been employed

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1 there?

2 A. A little over six years, sir.

3 Q. What's your -- what are your job
4 responsibilities within the sheriff's office?

5 A. Right now, I'm assigned to the
6 special operations division, SWAT team.

7 Q. Were you always there?

8 A. No, previously I was in the
9 community services division under the direct
10 patrol unit.

11 Q. What were your job responsibilities
12 December 11th, 2015?

13 A. December 11th, 2015, I was assigned
14 to work in an undercover capacity, making
15 undercover drug buys throughout Greenville
16 County at various different locations.

17 Q. Will you please explain to the jury
18 how that works?

19 A. Pretty much how it works is we are
20 wearing our street clothes and we're in what
21 we refer to as a cold car. Just sit in the
22 car like anybody driving around and we have
23 that car outfitted with video or audio
24 monitoring devices.

25 I also have some radio communication

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Testimony of Quincey Whitner - Direct Examination

1 back to deputies who are, you know,
2 monitoring my -- deputies kind of following
3 me around. And I would pretty much go up to
4 known drug dealers and try to buy drugs, find
5 out where to get drugs.

6 Q. Were you working on December 11,
7 2015?

8 A. I was. I was working.

9 Q. Is this what y'all were doing on
10 that day?

11 A. That was the purposes -- that was
12 our objective that day was to make undercover
13 buys or attempt to make narcotics buys that
14 day.

15 Q. Do you remember which areas you were
16 in through that day?

17 A. That day, we started on the south
18 end of the county and later moved to the west
19 side of the county, around a known area, a
20 high drug traffic area known as Buncombe and
21 Shaw. That would be the general area, we
22 were pretty familiar with that area.

23 Q. What county is that in?

24 A. Greenville County, South Carolina.

25 Q. Is this the location where the

1 transaction we're about here today occurred?

2 A. Yes, it is.

3 Q. Buncombe and Shaw?

4 A. Yes.

5 Q. Would you explain to the jury around
6 what time this occurred?

7 A. This is about 8:30 p.m. that night,
8 around 8:00, 8:30 p.m.

9 Q. Are there any lights in that area?

10 A. There's a few street lights. Where
11 it actually occurred, there's actually a
12 store with several lights on the side, so
13 it's a pretty well-lit parking lot area.

14 Q. Okay. And can you explain to the
15 jury, I guess the process of how you started
16 the buy?

17 A. Absolutely, yeah. That day I was,
18 once again, in that same undercover vehicle,
19 working in an undercover capacity as I
20 explained before. I proceeded to that
21 parking lot where I saw them in the parking
22 lot. I believe it was the Super Safe Mart is
23 what's on the side of the business. I saw a
24 couple guys loitering about the parking lot,
25 in that area. Several people loitering

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1 around the area, that type of activity. And
2 one who I knew to be Alrad Cobbs from
3 previous encounters.

4 I pulled up to him in the cold car,
5 rolled my passenger window down. And I
6 motioned for him to come over there. I said
7 'hey, man I'm looking to get twenty hard.'
8 "Twenty hard" is street terminology for hard
9 cocaine, crack cocaine. It's cooked down
10 from cocaine and cooked into a freebase and
11 it's actually a little rock-like substance.
12 And I asked him for twenty hard, which is,
13 once again, street terminology for crack
14 cocaine.

15 He proceeded to come over to the
16 passenger side of the vehicle that I was in.
17 Looked inside. I handed him at that point
18 twenty dollars (\$20) in U.S. currency, which
19 was issued to me earlier that day to us for
20 the buy. We use sheriff's office money that
21 we keep track of when we do these operations.
22 I handed him the twenty dollars (\$20) U.S.
23 currency. He proceeded to turn to -- and
24 motioned for the Defendant to come over.
25 And, you know, he said 'hey, I need a rock.'

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1 A rock is also street terminology for a piece
2 of crack cocaine.

3 Q. Who yelled that?

4 A. Alrad Cobbs did.

5 Q. Who did he yell that to, the
6 Defendant?

7 A. He yelled that to the Defendant.

8 Q. Did you see the Defendant, the
9 person he yelled that to in the courtroom
10 today?

11 A. I do. He's sitting right over there
12 beside defense counsel.

13 Q. And can you describe any article of
14 clothing he's wearing?

15 A. It looks like he's wearing a green
16 shirt, a plaid shirt it looks like from here,
17 a light green plaid shirt.

18 SOLICITOR MILLER: Your Honor, for
19 the record, the witness has identified the
20 defendant in this case.

21 THE COURT: All right, sir.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR MILLER:

24 Q. So you heard Mr. Cobbs yell to Mr.
25 Richardson?

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1 A. Yes, sir. And Mr. Richardson and
2 Mr. Cobbs -- Mr. Richardson was more towards
3 the front of this store at the time, and Mr.
4 Cobbs and I were on the side of the store,
5 kind of a -- there's a big mural painted on
6 the side. It's like along the side of the
7 store. They walked in that area. I watched
8 them. They were about twenty feet away from
9 my car. I watched as Alrad Cobbs handed the
10 sheriff's office buy money to the Defendant.
11 They proceeded to do a hand-to-hand exchange,
12 over by this mural/wall. Mr. Cobbs then
13 walked back to my car, handed a piece of
14 white rock-like substance, which from prior
15 training and experience, I recognized as
16 crack cocaine at the time.

17 After this happened, I gave my take-
18 down signal and proceeded to drive away from
19 the location and advise the deputies. Then
20 once I got away, via the radio I had in the
21 cold car with me I gave the description of
22 both Mr. Cobbs and the Defendant.

23 Q. All right. Let's talk a little bit
24 more about, was there a clear line of sight
25 when you saw the hand-to-hand?

1 A. Absolutely. If this was my, the
2 cold car that I was in, they would be
3 standing at the corner of that table, that
4 distance or less.

5 Q. Was anyone else in the area?

6 A. No, it was just them in the parking
7 lot at the time.

8 Q. Did Mr. Cobbs stop to talk to
9 anybody else at this time?

10 A. No. He went from my car directly to
11 him. To the Defendant, excuse me.

12 Q. Could you see clearly?

13 A. Clear as a bell; clear as a ---

14 Q. Was it well lit?

15 A. ---, bell. I'm sorry?

16 Q. Was it well lit?

17 A. Well lit. Plenty of lights in the
18 parking lot. That's always pretty well lit
19 because they have a problem with other crimes
20 in there, and so they keep it pretty well
21 lit; basically, you could say.

22 Q. So after you receive, you have the
23 crack cocaine in your hand, were did you
24 place it?

25 A. Typically I don't get this stuff --

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1 because I am in a cold car, which I don't
2 have any gloves on, but these things are
3 dangerous chemical substances and I will put
4 it in the little center console in that car
5 to get it out of my hands so I don't have it
6 on my hands. I had to drop it right beside
7 me in the little cup holder until I passed it
8 off to another deputy. So it was right
9 beside me, six inches away from me inside of
10 a cup holder.

11 Q. Did you pass it off to another
12 deputy in this case?

13 A. Yes, I did.

14 Q. Who was that?

15 A. Deputy Hubber.

16 Q. Okay. After you said a takedown
17 signal occurred, what occurs after that?

18 A. After that, there's usually assigned
19 members of the unit that are on, what we
20 call, the takedown team. Four, five, six
21 deputies depending upon where we are, what
22 we're doing. After I give the signal and
23 description, the move into the area. They
24 usually stay somewhere close by, come right
25 in, and they'll apprehend the suspects in

1 question. And then take the -- right after
2 that, I'll do another drive-by and just say,
3 confirm that that was the people that we were
4 talking about. In this case, I did that as
5 well. Made a quick loop around the block and
6 advised the take-down team that they got both
7 suspects who were involved in the deal.

8 Q. Well, how much time went by between
9 when you gave the takedown signal to when the
10 suspects were in custody?

11 A. Usually, it's less than a minute.
12 Well, less than that actually because it's
13 pretty quick. I would say about thirty,
14 forty-five seconds because they're literally
15 parked, sometimes across the street or around
16 the corner, sometimes even watching us while
17 the deal is going down, as a security
18 measure.

19 Q. Was anybody else -- when you drove
20 back by, was anybody else in the area of
21 Buncombe and Shaw when you drove back by?

22 A. Just the takedown units that were
23 there and the two suspects that were in
24 handcuffs at the time of the takedown. I
25 properly identified them at that time.

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Testimony of Quincey Whitner - Direct Examination

1 Q. When you drove back by, did you have
2 a clear line of sight?

3 A. Yes. At the time I was coming down
4 Buncombe Road, which is an adjacent road. If
5 this is the store, the road I drove down
6 would be the road in front of it, and I could
7 look out of my right passenger window, which
8 was actually still down at the time. I could
9 see them standing in the parking lot where I
10 was previously parked, standing there clear
11 as day.

12 Q. When you say them, who is them?

13 A. Members of the takedown team with
14 Mr. Cobbs and the Defendant in handcuffs,
15 standing there.

16 Q. Were those the two people that were
17 involved in the buy?

18 A. Absolutely.

19 Q. A hundred percent?

20 A. Hundred percent.

21 Q. Once you do identification, what
22 else do you do after that?

23 A. Then I will complete the handoff of
24 the drugs. After I do an identification, I
25 just pulled right in and that's where I can

1 pass-off the piece of white rock-like
2 substance to the evidence officer.

3 Q. And you identified Alrad Cobbs and
4 this Defendant.

5 A. The Defendant sitting right over
6 there, (affirmative nod).

7 Q. Please answer any questions Mr.
8 Sarratt has.

9 A. Absolutely.

10 CROSS-EXAMINATION

11 BY MR. SARRATT:

12 Q. Deputy Whitner, how are you?

13 A. Good, sir. How about yourself?

14 Q. Doing well. All right. So you
15 testified earlier that when you approached in
16 the cold car you knew Alrad Cobbs?

17 A. Yes.

18 Q. You recognized him from previous
19 encounters?

20 A. Previous encounters, yes, sir.

21 Q. So when you encountered him, you
22 knew that he would be a good target to try to
23 make a controlled buy from; correct?

24 A. Well, not just him in particular,
25 just the area, the totality of the

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Testimony of Quincey Whitner - Cross Examination

1 circumstances of that area. It's a known
2 area for drug activities. He was somebody
3 who's known for drug activity. Honestly,
4 that corner, typically you can approach
5 anybody and usually get involved with drugs,
6 most kinds, even prostitution activity
7 because it's kind of a known area.

8 Q. And, indeed, you did say that this
9 was an operation that moved from the south
10 part of the county through several neighbor-
11 hoods and areas. And it was a successful
12 operation; was it not?

13 A. We made a solid case. I mean,
14 anytime you make a case I would say it's
15 successful.

16 Q. The charges that we're here for
17 today, that's not the only arrest you made
18 that day is it?

19 A. No, sir. It's not the only arrest
20 we made. We made several others that day as
21 well.

22 Q. Okay. So you're doing this -- I'll
23 call it a sting. Not that there's
24 necessarily there's anything nefarious about
25 that, but it's a sting operation; is that

1 fair to say?

2 A. It is a controlled buy.

3 Q. Well, and I didn't want any negative
4 connotation to that, but we'll just call it
5 the operation. So as part of this operation,
6 you were wearing surveillance equipment;
7 correct?

8 A. On my person, on my person I wasn't
9 wearing anything on my person, but it was
10 both in the car.

11 Q. I'm sorry. I didn't mean to say
12 where. You had surveillance equipment you
13 were utilizing in the vehicle?

14 A. Yes. And I also had a radio on my
15 person as well. I had contact.

16 Q. Now, it wasn't video surveillance as
17 part of this ---

18 A. No. It was just audio surveillance.

19 Q. Okay. Now, I understand that audio
20 was not available; is that your understand-
21 ing?

22 A. Yes. However, as the undercover, I
23 was the one that was operating and
24 controlling the audio. And it simply just a
25 transmitter. It was maintained by deputies

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Testimony of Quincey Whitner - Cross Examination

1 who were, what we called a wire car that
2 monitors the transmissions. Because it's
3 kind of hard for me to make sure I'm not
4 getting robbed or anything, so they monitor
5 the audio at all times.

6 Q. Okay. And again, I'm not alleging
7 any wrongdoing and maybe I was getting ahead
8 of myself. But let's just for now say there
9 was audio. You don't have it with you today
10 to testify?

11 A. No, I don't.

12 Q. Sure. I mean, that wasn't your
13 responsibility was it?

14 A. That wasn't my job at the time.

15 Q. Okay. So let's talk about --
16 basically, what we have is your memory of the
17 event, and that wasn't all that long ago.
18 Any notes that you may have. But I want to
19 try to get into as much detail as I can about
20 the sequence of events?

21 A. Okay.

22 Q. So initially you drive up and you
23 recognize Alrad Cobbs and you approach him
24 and ask for twenty hard; right?

25 A. That's correct.

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Testimony of Quincey Whitner - Cross Examination

1 Q. Okay. Now, as you said twenty hard
2 is slang for crack cocaine as opposed to
3 powder cocaine?

4 A. That's correct.

5 Q. And Mr. Cobbs understood that as far
6 as you could tell?

7 A. As far as I could tell.

8 Q. He didn't have any follow-up
9 questions about what that meant?

10 A. No, absolutely not.

11 Q. And, in fact, you said that he then
12 motioned for my client, Mr. Richardson, to
13 bring him a rock.

14 A. That's correct.

15 Q. And, again, that's slang as well for
16 crack cocaine?

17 A. That's correct.

18 Q. Now, at that point, you proceed to
19 hand the twenty dollars (\$20) in marked
20 currency to Mr. Cobbs; is that right?

21 A. That's correct.

22 Q. Okay. And he, Mr. Cobbs, took
23 possession of it. And then he met with
24 Michael Richardson?

25 A. That's correct.

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Testimony of Quincey Whitner - Cross Examination

1 Q. And that's what you say took place
2 twenty feet away?

3 A. Twenty-five or so.

4 Q. Okay. And you did, you saw the
5 twenty dollar bill change hands?

6 A. I saw the exchange, him hand
7 something back. It was a hand to hand -- it
8 was a pretty obvious hand to hand transaction
9 that happened.

10 Q. Now, I'm going to refer you -- do
11 you have a copy of your report with you
12 today?

13 A. I do.

14 Q. Okay. Do you see ---

15 MR. SARRATT: And may I approach?

16 THE COURT: That's fine. Thank
17 you.

CROSS-EXAMINATION CONTINUED

18 BY MR. SARRATT:

19 Q. --- near the bottom. I don't want
20 you to read it out loud, but starting here,
21 just read to yourself ---
22

23 SOLICITOR MILLER: I believe he's
24 trying to impeach by reading from the report
25 would not be proper. If he said something

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Testimony of Quincey Whitner - Cross Examination

1 inconsistent I believe he can ask him to read
2 and review and then comment but not read it
3 directly ---

4 MR. SARRATT: I'm sorry. I may not
5 have said it loud enough. I said to read it
6 to himself.

7 SOLICITOR MILLER: Just to
8 yourself.

9 THE COURT: Yeah. Yeah. Don't
10 read it out loud. Just read it to yourself,
11 refresh yourself, refresh your memory.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. SARRATT:

14 Q. Okay. Now, this report was written,
15 it appears January 6 of 2016?

16 A. That's correct.

17 Q. So shortly after the operation took
18 place. And, of course, at the time this is
19 fresh in your memory, having just taken
20 place?

21 A. Yes.

22 Q. You were thorough and complete in
23 writing your report?

24 A. Yes, sir.

25 Q. And you want to be accurate and

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Testimony of Quincey Whitner - Cross Examination

1 provide as much detail as you can because,
2 again, you know that eventually you're going
3 to have to come testify in these cases and
4 your memory may not be as good as it was
5 closer in time to when the event happened; is
6 that right?

7 A. Absolutely.

8 Q. So in your handwritten notes -- I'm
9 sorry, not handwritten note. In your report,
10 do you recall saying that Mr. Cobbs -- well,
11 I'm sorry. Do you recall writing the twenty
12 dollars (\$20) of currency was handed to Mr.
13 Richardson, that they made the exchange of
14 currency, what you described as the hand to
15 hand transaction?

16 A. Yes. I know I watched them make the
17 hand to hand transaction.

18 Q. All right. Now, do you recall in
19 January of 2016 writing in the report that
20 Mr. Cobbs then walked over to the adjacent
21 wall, after the hand to hand transaction took
22 place?

23 A. Yes, that's what's in my report.

24 Q. Okay. So after walking over to the
25 adjacent wall, you wrote that he then

1 returned to the vehicle with the crack
2 cocaine; is that correct?

3 A. That's correct.

4 Q. Okay. So the person to whom you
5 gave the money was Alrad Cobbs?

6 A. That's correct.

7 Q. And the person who subsequently
8 handed the twenty hard of crack cocaine was
9 Alrad Cobbs?

10 A. That's correct. After they had the
11 hand to hand transaction in the parking lot.

12 Q. Now, again, you describe the hand to
13 hand transaction and we've talked about it in
14 your report. You did say that you saw the
15 twenty dollars (\$20) in currency exchange
16 hands?

17 A. That is correct. It was -- for
18 clarification let me explain that when a drug
19 transaction occurs, and just from experience
20 in making purchases, it is very easy to
21 handoff money and narcotics at the same time.
22 Quite frequently, when these transactions go
23 down that way because the less time that
24 they're exposed to potential police
25 surveillance or the time that they have the

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Testimony of Quincey Whitner - Cross Examination

1 narcotics in their hand, it's often a very
2 quick transaction, almost like a handshake.
3 And oftentimes when I purchase narcotics, it
4 goes that quick and the money and the drugs
5 change hands.

6 Q. Sure. But again you specifically
7 testified that you did see the twenty dollar
8 (\$20) bill change hands?

9 A. Yes, sir. I watched them exchange
10 the money.

11 Q. And it appeared to you to be a hand
12 to hand transaction that involved drugs?

13 A. Yes, sir. It looked like a hand to
14 hand transaction.

15 Q. But you can't specifically say that
16 you did see a clear package or a white rock-
17 like substance change hands?

18 A. No. That would be pretty hard to
19 see a small tiny piece of white rock like
20 substance in his hand. But it was a hand to
21 hand transaction of the money and anything
22 else that could have potentially been in his
23 hand.

24 Q. But you saw the twenty dollars
25 (\$20)?

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Testimony of Marcus Cannon - Direct Examination

1 A. Absolutely. A twenty dollar (\$20)
2 bill is six inches, a little white rock-like
3 substance might be that big (indicating).

4 MR. SARRATT: Nothing further.

5 REDIRECT EXAMINATION

6 BY SOLICITOR MILLER:

7 Q. Did you receive the drugs before or
8 after Alrad Cobbs met with the Defendant?

9 A. After.

10 SOLICITOR MILLER: No further
11 questions.

12 THE COURT: Anything else, Mr.
13 Sarratt?

14 MR. SARRATT: No follow-up.

15 THE COURT: You can step down,
16 sir. Thank you.

17 (WITNESS STEPS DOWN)

18 SOLICITOR MILLER: Your Honor, at
19 this time we would call Sergeant Cannon from
20 the Greenville County Sheriff's Office.

21 THE COURT: All right, sir.

22 (WITNESS TAKES STAND)

23 MARCUS CANNON, having been duly sworn
24 to tell the truth, and nothing but the truth,
25 testified as follows:

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Testimony of Marcus Cannon - Direct Examination

DIRECT EXAMINATION

BY SOLICITOR MILLER:

Q. Where are you employed, Sergeant Cannon?

A. The Greenville County Sheriff's Office.

Q. How long you been at the sheriff's office?

A. Going on nineteen years.

Q. What job responsibilities have you had at the Greenville Sheriff's Office?

A. Currently I am assigned as sergeant to the vice and narcotics unit.

Q. What does the vice and narcotics unit do?

A. Our unit consists of about fifteen guys. We're solely in an undercover capacity. We drive cold cars; wear plain clothes, we don't put on uniforms. We just do various drug buys, investigations throughout Greenville County.

Q. Okay. Were y'all conducting investigations on December 11th, 2015?

A. Yeah. December 11th we had planned to do street-level narcotics buys, from

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Testimony of Marcus Cannon - Direct Examination

1 around the county of Greenville where we'd
2 got complaints, we know that drug
3 transactions take place. We call it street
4 buys because the undercover officer drives in
5 a cold car. He doesn't know where or who he
6 will make a buy from, it's not a pre-arranged
7 drug arrangement at the time. They just
8 drive around the areas and see somebody and
9 just start a conversation and try to buy
10 drugs.

11 Q. Were you working on that day,
12 December 11, 2015?

13 A. Yes, sir. I was.

14 Q. Okay. Were you a part of the
15 incident that we're here about today?

16 A. Yes.

17 Q. What was your role?

18 A. I was supervising the scene and also
19 monitoring the wire that was in the vehicle
20 of Deputy Whitner.

21 Q. Okay. We have heard a few questions
22 about the audio. Would you explain the audio
23 system for the jurors?

24 A. During that day, like I say, this
25 was towards the end of that day. We were

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Testimony of Marcus Cannon - Direct Examination

1 using a body wire or newer body wiring that
2 does the recording on the device itself, is
3 the newer one so you don't have to wear it
4 but it transmits from a receiver that is in a
5 vehicle. During the day the battery went
6 dead on this one right before this deal. And
7 we changed out to our older wire, that I
8 hadn't used in several years. It doesn't
9 record to the device. So when this buy went
10 down, I didn't hit the record button on the
11 receiver that I had in my car because I was
12 used to having the one that records on the
13 device that's in the vehicle, the wire. So,
14 therefore, the recording did not get
15 recorded. It was operator error on my part.

16 Q. In what area was this buy occurring?

17 A. At Buncombe Road and Shaw Street.

18 The address of the store is Shaw and Buncombe
19 Street in Greenville County.

20 Q. Okay. And who else was involved in
21 this -- at the sheriff's office, who else was
22 involved in this transaction?

23 A. Deputy Whitner was the only one in
24 the undercover capacity. We had other units
25 for safety around. We had a designated

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Testimony of Marcus Cannon - Direct Examination

1 takedown team that comes in. Once you do the
2 signal, they come in and arrest the people.
3 That's immediately after he makes the
4 transaction and pulls out of the parking lot.

5 And we also have just unmarked officers
6 that are just riding around the area, so if
7 an emergency happened, they could jump right
8 in.

9 Q. When the signal came from Deputy
10 Whitner to do the takedown, did you then
11 participate in that?

12 A. Yes. I was a little farther out. I
13 wasn't the first that responded on the scene.
14 The other units had taken Defendant Cobbs in
15 the parking lot, had him detained. When I
16 got there, we observed Defendant Richardson
17 inside the store.

18 Q. The defendant sitting here today?

19 A. Yes. In the green shirt.

20 Q. All right. Where did you observe
21 him?

22 A. He was at the cash register inside
23 the store.

24 Q. Did you see what he was doing at the
25 register?

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Testimony of Marcus Cannon - Direct Examination

1 A. He was exchanging a twenty dollar
2 bill for four fives with the clerk, in the
3 process of trying to change that twenty for
4 four fives.

5 Q. Whose twenty dollar bill was that?

6 A. It was a twenty dollar bill that I
7 provided Deputy Whitner for the use in the
8 buys. The buy money that we use at the
9 sheriff's office, we either make photocopies,
10 take pictures or write down the serial number
11 on every bill we use. In this case, it was
12 the same twenty dollar bill.

13 So it was just one bill. We confirmed
14 with the serial number of the twenty he had
15 exchanged for the four fives, from a
16 photocopy I had that confirmed that that was
17 our twenty dollar bill that Deputy Whitner
18 had used for the buy.

19 Q. Do you have that photocopy with you
20 here?

21 A. Yes, I do.

22 Q. Okay. Do you have it with you up
23 here?

24 A. Yes.

25 Q. Just take out ---

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Testimony of Marcus Cannon - Direct Examination

1 A. You want me to take all of it out?

2 Q. Yes, sir.

3 A. It's going to take a second.

4 COURT REPORTER: That's State's

5 Exhibit Number 1 for identification.

6 (SO MARKED AS STATE'S EXHIBIT 1)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR MILLER:

9 Q. All right. Sergeant Cannon, that
10 says that's Exhibit 1. Do you recognize
11 that?

12 A. Yes. That's the twenty dollar bill
13 the deputy would have had for this buy.

14 Q. When did you make that photocopy?

15 A. That morning on the 11th before I
16 left my office.

17 Q. Was this done in the regular course
18 of the business that y'all perform?

19 A. Yes. If it's a planned operation,
20 we usually make photocopies. If it's spur of
21 the moment, we usually write the serial
22 number down or make copy -- or take a picture
23 with our phone.

24 Q. Okay. So this was made right at the
25 time when the buy is going to occur?

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Testimony of Marcus Cannon - Direct Examination

1 A. Yeah. This was at the beginning of
2 that morning when I was planning the buy. I
3 knew I was using this money, so I made photo-
4 copies of it.

5 Q. And the serial number gets verified?

6 A. Yes.

7 SOLICITOR MILLER: Your Honor, at
8 this time I'd admit into evidence State's
9 Exhibit 1.

10 MR. SARRATT: Without objection.

11 THE COURT: All right. Received
12 into evidence without objection.

13 (SO ENTERED AS STATE'S EXHIBIT 1)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR MILLER:

16 Q. And why do you make a photocopy?

17 A. Because we are allotted so much
18 money to use as buy money throughout the
19 sheriff's office. In this case, it was just
20 a twenty dollar bill, but that's how in
21 investigations we can confirm that our money
22 is in any money we find upon the suspect or a
23 defendant, it's just a way that we can verify
24 that, yes, it is our money.

25 Q. Does the twenty dollar bill get used

1 in more than one buy?

2 A. Yes. We just put that back into our
3 drug evidence -- or money, because it's not
4 possible to put like this money into P&E for
5 evidence for our case. Because when you --
6 in this case it's a single twenty dollar
7 bill, but other cases would be when you're
8 talking thousands and thousands of dollars,
9 holding that money over for court, I mean,
10 you would -- the budget's just not capable
11 of having a hundred thousand dollars in the
12 Evidence, waiting to go to trial.

13 Q. Are these your notes on here?

14 A. Yes, notes. These notes were not
15 pertaining to this deal. It was just some-
16 thing I wrote on earlier in the day.

17 Q. But this twenty dollars was used in
18 the buy that we're here about today?

19 A. Yes. We used this twenty (\$20) for
20 most of the buys that day.

21 Q. Including this one?

22 A. Yes.

23 Q. And, I'm sorry -- what did you
24 observe Mr. Richardson doing in the store?

25 A. He was with the clerk at the store,

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Testimony of Marcus Cannon - Cross Examination

1 he was trying to change this twenty dollars
2 to get four fives.

3 Q. Is that the defendant seated here?

4 A. Yes, in the green shirt.

5 Q. Okay. What county did this occur
6 in?

7 A. Greenville County.

8 Q. Please answer any questions Mr.
9 Sarratt has.

CROSS EXAMINATION

10
11 BY MR. SARRATT:

12 Q. How are you?

13 A. Good.

14 Q. So just briefly, talking about this
15 operation, you explained that there was a
16 wire that was utilized that failed to record;
17 is that ---

18 A. Yes.

19 Q. Okay. Now, while the recording was
20 not produced, you were listening at the time;
21 is that correct?

22 A. Yes.

23 Q. And so you were able to hear what
24 took place or at least what was captured by
25 that audio?

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Testimony of Marcus Cannon - Cross Examination

1 A. Yeah. Sometimes when somebody's at
2 a distance, outside of a car, it's hard to
3 actually understand all of it, but I could
4 hear what was going on.

5 Q. Now, were you also maintaining
6 visual surveillance at the same time?

7 A. No, sir.

8 Q. Okay. So you were only able to hear
9 what was happening?

10 A. Yes.

11 Q. All right. Now, in listening to
12 that, you heard Officer Whitner approach
13 somebody who -- I guess you didn't know who
14 it was, but to request a "twenty hard"?

15 A. Yes.

16 Q. Okay. Now, at the point that Mr.
17 Cobbs walked away, as he described, it
18 doesn't pick up anything outside of the car.
19 And so you weren't able to hear any
20 conversation that may or may not have taken
21 place between Mr. Richardson and Mr. Cobbs;
22 is that right?

23 A. No. I wouldn't have been able to
24 hear that.

25 Q. Okay. And that likely would not

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Testimony of Marcus Cannon - Cross Examination

1 have been captured on audio anyway?

2 A. Correct.

3 Q. Your understanding is that when Mr.
4 Richardson was arrested, he was changing the
5 twenty dollars into four fives?

6 A. From my understanding, that's what
7 he was doing.

8 Q. Okay. And again it was four fives,
9 so he was just breaking the twenty dollars
10 down. He wasn't buying something with the
11 money. He made change?

12 A. Just breaking it down, (affirmative
13 nod).

14 Q. Just breaking the twenty into four
15 fives.

16 A. (Affirmative response).

17 Q. All right. No further questions.

18 THE COURT: Anything else, Mr.
19 Miller?

20 SOLICITOR MILLER: Nothing from the
21 State, Your Honor.

22 THE COURT: All right. You can
23 step down. Thank you.

24 WITNESS: Thank you.

25 (WITNESS STEPS DOWN)

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Testimony of Mason Hubber - Direct Examination

1 SOLICITOR MILLER: Your Honor, at
2 this time the State calls Deputy Mason
3 Hubber.

4 (WITNESS TAKES STAND)

5 MASON HUBBER, having been duly sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR MILLER:

10 Q. Where are you employed, Mr. Hubber?

11 A. Greenville County Sheriff's Office.

12 Q. How long you been at the sheriff's
13 office?

14 A. Seven and a half years.

15 Q. What roles have you had within the
16 sheriff's office?

17 A. I was with uniform patrol when I
18 first started out. And then I transferred to
19 the drug patrol unit, and now I'm currently
20 with the special operations division.

21 Q. In December of 2015, which unit were
22 you with?

23 A. Drug control unit.

24 Q. What job responsibilities did you
25 have within the drug patrol unit?

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Testimony of Mason Hubber - Direct Examination

1 A. We would just respond to certain
2 calls, did a lot of Crime Stoppers tips and
3 street or pretty small short time narcotics.

4 Q. Were you working drugs, were you
5 actually working on December 11, 2015?

6 A. Correct. I was.

7 Q. What were you doing on that day?

8 A. We were operating in a undercover
9 capacity buying narcotics from these certain
10 areas in the county that are well known for
11 their activities with narcotics and
12 prostitution.

13 Q. Do you remember which areas on
14 December 11, 2015 you were working in?

15 A. We started out on the south end of
16 Greenville, near I-85 in the hotels and moved
17 to the west side of Greenville from there,
18 Buncombe and Shaw Street. They're a high
19 volume areas for narcotics.

20 Q. When you say high volume area, what
21 do you mean?

22 A. There was a lot of complaints from
23 that area, a lot of crime, reports of
24 narcotics being sold or used and prostitution
25 in that specific area.

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Testimony of Mason Hubber - Direct Examination

1 Q. What was your role in the operation
2 going on that day?

3 A. On that day, I was part of the
4 takedown team, so I was in a patrol car, a
5 marked patrol car that day. I was standing
6 by to move in to arrest individuals once
7 Deputy Whitner made a buy.

8 Q. Okay. How would you be alerted
9 after a buy was made?

10 A. Through the radio. We have radios.
11 So once we were told by the guys in the
12 vehicle who listened to Deputy Whitner make
13 the purchase, once they got the takedown from
14 him, then it was told to us. Our guys could
15 come on, move on in. This would have been if
16 a purchase could be made.

17 Q. About how much time would you say
18 elapses between when the call comes in and
19 the takedown team is able to arrest the
20 suspects.

21 A. It's very short. We're not very far
22 away. I'd be less than a quarter mile. We
23 want to be close by in case somebody tries to
24 leave the area. You know, and a deputy will
25 be very close by, so we're talking fifteen,

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Testimony of Mason Hubber - Direct Examination

1 thirty seconds.

2 Q. Were you able to -- at the takedown,
3 what was your responsibility when you arrived
4 on scene?

5 A. I was later -- I was, I guess maybe
6 later than anybody else. And by the time I
7 got there they pretty much had both suspects
8 in custody by the time I got there.

9 Q. Did you have any interaction with
10 Deputy Whitner?

11 A. I did. I met with Deputy Whitner
12 after he showed back up to the scene. He had
13 left and came back. And he handed me the
14 crack/rock that he had purchased.

15 Q. What did you do with that drug?

16 A. From that, I put it into a plastic
17 baggie, the same bags that are used in
18 property and evidence. And I put it in
19 there. I put the case number, my initials,
20 MH for Mason Hubber and the date.

21 COURT REPORTER: State's Exhibit
22 Number 2 for identification.

23 (SO MARKED AS STATE'S EXHIBIT 2)

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR MILLER:

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Testimony of Mason Hubber - Direct Examination

1 Q. For identification, what's on here.

2 Do you recognize this?

3 A. I do.

4 Q. What is it?

5 A. It is the baggie that I took out and
6 placed the crack rock in once Deputy Whitner
7 gave it to me.

8 Q. Is that your handwriting?

9 A. It is.

10 Q. What kind of information do you
11 write down?

12 A. I write down the case number, the
13 Defendant's name, Michael Richardson, and I
14 have the time and the address of where this
15 occurred at.

16 Q. And when you say case number, are
17 you referring to just the overall day or how
18 is that broken out?

19 A. That's for each individual buy. So
20 for that specific buy we take it when they're
21 at that location with those two -- that's the
22 case number that was used, generated for us
23 through dispatch for that one particular
24 incident.

25 Q. So you're able to keep track of

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Testimony of Mason Hubber - Direct Examination

1 which drugs are from which buy?

2 A. Correct.

3 Q. How can you put it in a bag ---

4 A. It was then -- I took in my
5 possession, put it in a baggie and then I
6 gave it Deputy Pletcher to take it to
7 property and evidence.

8 Q. Did you perform any other roles that
9 day?

10 A. I transported both suspects to the
11 detention center and turned them over to
12 Sergeant Cannon as he was the case agent.

13 Q. All right. Answer any questions Mr.
14 Sarratt has.

CROSS EXAMINATION

15
16 BY MR. SARRATT:

17 Q. Deputy, you've been present through-
18 out the testimony today?

19 A. Yes, sir.

20 Q. Would you agree with the
21 characterization from other witnesses that
22 this is a fairly low-level operation?

23 A. I wouldn't say low-level, no, sir.
24 I mean, it can be -- we've had undercover
25 deputies who have been robbed doing this.

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Testimony of Mason Hubber - Direct Examination

1 So, I mean, this can be -- this is very
2 serious, if you've not been doing this.

3 Q. Certainly not insignificant or not
4 dangerous, but this is not a coordinated
5 search warrant ---

6 A. Right.

7 Q. --- you know, those guys, the big
8 dealer type operations?

9 A. There's no search warrant, but it is
10 definitely coordinated. I mean, everyone has
11 to be present, in a certain place. And I
12 mean, it has to be -- I mean, yes, it is very
13 coordinated. If not, you know, who knows
14 what could happen.

15 Q. Sure.

16 MR. SARRATT: No further questions.

17 THE COURT: Anything from the
18 State?

19 SOLICITOR MILLER: No.

20 THE COURT: You may step down,
21 sir.

22 (WITNESS STEPS DOWN)

23 SOLICITOR MILLER: Your Honor, at
24 this time the State calls Deputy Christopher
25 Pletcher.

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Testimony of Christopher Pletcher - Direct Examination

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1 THE COURT: All right.

2 (WITNESS TAKES STAND)

3 CHRISTOPHER PLETCHER, having been duly
4 sworn to tell the truth, and nothing but the
5 truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MILLER:

8 Q Where are you employed Deputy
9 Pletcher?

10 A. The Greenville County Sheriff's
11 Office.

12 Q. How long you been there?

13 A. Almost nine years.

14 Q. What have your roles been within the
15 sheriff's office?

16 A. I've worked with uniform patrol, the
17 drug control unit, and I'm currently working
18 for special operations.

19 Q. Which unit were you with December
20 2015?

21 A. The drug control unit.

22 Q. What operations do y'all perform,
23 what are your job responsibilities?

24 A. On this day we were doing street-
25 level narcotics purchases, utilizing Deputy

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Testimony of Christopher Pletcher - Direct Examination

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1 Whitner as undercover.

2 Q. When you say on this day, which day
3 are you referring to?

4 A. That was December the -- I'm sorry.
5 Let me check my notes real quick. I forgot
6 got the actual day. 11th.

7 Q. Of 2015?

8 A. Yes, sir.

9 Q. What areas were y'all operating in?

10 A. Initially we were on the south end,
11 we considered, I guess, around the I-85 area,
12 and then moved to the west side. And this
13 particular incident happened at Buncombe and
14 Shaw, in the area.

15 Q. And this incident, what incident are
16 you referring to?

17 A. When Deputy Whitner purchased
18 narcotics from the defendant.

19 Q. What was your role within this
20 operation?

21 A. I was part of the takedown team.

22 Q. All right. Once the suspects are
23 apprehended, do y'all stay around the area
24 for a while?

25 A. So we want to try to conduct as many

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Testimony of Christopher Pletcher - Direct Examination

1 investigations in one day as possible. So
2 typically when we make a buy or purchase,
3 we'll quickly get what we need, get the
4 defendant(s), get them in the car and get out
5 of there because we don't want to burn the
6 area. The longer we're in the particular
7 area, the more the people that do bad things
8 in that area are calling each other and
9 telling them, saying, 'hey, the police out.
10 The police are out.' So we typically, as
11 soon as we can get out of the area, we try to
12 get out.

13 Q. There's not an extensive search of
14 the area conducted?

15 A. No.

16 Q. You say you don't want to burn the
17 area. What do you mean?

18 A. The longer -- a lot of time in these
19 areas there's a lot of networking of the
20 people that are in the area that are known
21 for illegal activity. When they see the
22 police out there, they let each other know,
23 texting, phone calls and stuff like that. So
24 the longer we're in a particular area, the
25 higher likelihood that the criminals are

1 going to go somewhere else and set up.

2 Q. I'm showing you what's been marked
3 State's Exhibit 2 for identification
4 purposes. Do you recognize this?

5 A. Yes.

6 Q. Okay. How do you recognize it?

7 A. I recognize it -- this is the crack
8 cocaine that I placed in property and
9 evidence. It has my initial on it. It has
10 the case number and the date that I placed it
11 in property and evidence.

12 Q. Does that case number refer to this
13 buy?

14 A. Yes, sir, it does.

15 Q. Do you have other case numbers that
16 refer to this buy?

17 A. No. This buy is done under one case
18 number only.

19 Q. How did you then transport this --
20 you say you transported it to property and
21 evidence?

22 A. Yes, sir.

23 Q. How was it transported?

24 A. It was transported in this bag right
25 here. I put it in my center console. I then

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Testimony of Christopher Pletcher - Direct Examination

1 drove to property and evidence. Once I got
2 to property and evidence, which is in the law
3 enforcement center, we have a station down
4 there. And it has a scale so I weighed it,
5 weighed the substance on a scale, wrote on
6 this bag my initials, the case number and the
7 date. I fill out the property and evidence
8 sheet, which basically has the case number,
9 the date, where it was impounded, the
10 defendant's name, the description of the
11 substance, how much it weighs. I fill that
12 sheet out and then where I'm putting it. So
13 I seal this bag right here. After I put my
14 initials inside of it, I seal it.

15 And at that time -- it was about 9:00 at
16 night so the property and evidence people
17 weren't working so we have a drop box. That
18 drop box is kind of like a -- it's just a
19 door that's locked that we don't have access
20 to the inside. And it's a small lever that
21 goes up and you can drop your evidence down
22 in there, so that it's secure and nobody else
23 has access to it. So after I filled out the
24 property and evidence sheet, I did a lab
25 analysis form on it to have it analyzed to

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1 make sure that it is, indeed crack cocaine.
2 And I put all that stuff in an envelope
3 similar to this and I drop it in the drop
4 box. And that drop box cannot be accessed by
5 anybody except for the people in property and
6 evidence who have the key.

7 Q. Is that drop box sealed off? It's
8 not just, not just right next to the door or
9 anything? Just paint a picture for the jury,
10 if you would, of that area.

11 A. Right. It's -- basically, it's a
12 door similar to this door that has a little
13 lever you can pull up, almost like a mail,
14 you know, a mail slot. And you can't reach
15 or lean in there. It's not big enough. It's
16 really only large enough for envelopes about
17 this size, maybe a little bit larger. And
18 you just lift the lever up, drop it in there,
19 and it goes kind of down a little chute and
20 into a box so that nobody can reach through
21 or tamper with it or anything like that.

22 Q. And does that evidence there appear
23 to be tampered with in any way?

24 A. No.

25 Q. Answer any questions Mr. Sarratt may

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Testimony of Christopher Pletcher - Cross Examination

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1 have.

2 CROSS EXAMINATION

3 BY MR. SARRATT:

4 Q. All right. So Deputy Pletcher,
5 you're part of the takedown team; is that
6 correct?

7 A. Yes, sir.

8 Q. Okay. So you were present when both
9 Mr. Cobbs and Mr. Richardson were arrested?

10 A. When I pulled up, they were being
11 put in the back of Deputy Hubber's patrol
12 car.

13 Q. Okay. Then you then collected any
14 evidence pertaining to this investigation and
15 put it in property and evidence?

16 A. Yes, sir. I basically said, 'Hey,
17 since you're taking these guys to jail, let
18 me have the drugs. I'll take this and put it
19 in property and evidence for you.'

20 Q. Okay. Now, they were in handcuffs
21 whenever you went in to the patrol car?

22 A. Yes.

23 Q. Okay. And it wasn't your patrol
24 car. It was another one?

25 A. Correct.

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Testimony of Christopher Pletcher - Cross Examination

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1 Q. But those officers who were putting
2 them in the patrol car didn't hand you any
3 additional crack that they had recovered from
4 anyone else; is that correct?

5 A. No, sir. The only thing that I was
6 handed was when Deputy Hubber handed me this
7 bag.

8 Q. Sure. Just that one crack rock?

9 A. Yes, sir.

10 Q. Okay.

11 MR. SARRATT: No further questions.

12 SOLICITOR MILLER: Nothing further.

13 THE COURT: You can step down.

14 Thank you, sir.

15 WITNESS: Yes, sir.

16 (WITNESS STEPS DOWN)

17 SOLICITOR MILLER: Your Honor may
18 we approach?

19 THE COURT: Yes, sir.

20 (OFF RECORD BENCH CONFERENCE)

21 SOLICITOR MILLER: Your Honor, at
22 this time the State calls Officer Charles
23 Moore.

24 THE COURT: Okay.

25 (SO MARKED AS STATE'S EXHIBIT 3)

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Testimony of Charles Moore - Direct Examination

1 (SO MARKED AS STATE'S EXHIBIT 4)

2 (WITNESS TAKES STAND)

3 CHARLES MOORE, having been duly sworn to
4 tell the truth, and nothing but the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR MILLER:

8 Q. Where are you employed, Officer
9 Moore?

10 A. The Greenville County Detention
11 Center.

12 Q. What is your role at the Detention
13 Center?

14 A. The custodian of records of jail
15 calls of Secure Technologies.

16 Q. What's the name of the system?

17 A. Secure Technologies, secured call
18 platform.

19 Q. Okay. The secured call platform,
20 can you explain to the jury how that
21 operates?

22 A. All calls that come from the jail,
23 there's a record of them. And all calls
24 except for approved calls to a lawyer or
25 public defenders are recorded. Each call has

1 a statement before a single call is made
2 stating that their call is going to be
3 recorded. Also, we have a record of the past
4 calls, from 2014.

5 Q. How is the call stored?

6 A. They're stored through Secure
7 Technologies on their database that they have
8 set up.

9 Q. When they're on that database, can
10 they be edited at all or is it just recorded?

11 A. It's just recorded. There is no
12 editing that takes place, no tampering that
13 could go on.

14 Q. And as the custodian of them, what
15 are your job responsibilities?

16 A. I do repairs around the facility and
17 I also coordinate -- I'm the liaison between
18 Secure Technologies and the facility.

19 Q. You oversee that whole system?

20 A. Yes.

21 Q. Okay. Have you had an opportunity
22 to listen to any jail calls from this case?

23 A. I have -- I verified the validity of
24 the call. It was a target call. I listened
25 fully all the way through.

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Testimony of Charles Moore - Direct Examination

1 Q. But you verified that there were
2 calls.

3 A. Yes.

4 Q. Who were the calls from?

5 A. Michael Richardson.

6 Q. Okay. I'm handing you what's been
7 marked as State's Exhibit 3 and 4.

8 A. Yeah.

9 Q. What are they?

10 A. The calls that are made on the date
11 at 11:53, 12/12/2015.

12 Q. Have you been able to review them?

13 A. Yes. I reviewed part of the calls
14 to verify that they're the same calls that
15 are on the Secure call records.

16 Q. Are they the same calls?

17 A. Yes.

18 Q. Have you initialed them or anything?

19 A. I have initialed and I dated them
20 with my employee number.

21 Q. Okay. Have they been tampered with
22 in any way?

23 A. No.

24 SOLICITOR MILLER: Your Honor, at
25 this time, the State would move to admit into

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Testimony of Charles Moore - Direct Examination

1 evidence Exhibits 3 and 4.

2 MR. SARRATT: No objection.

3 THE COURT: All right. Without
4 objection, into evidence 3 and 4.

5 (SO ENTERED AS STATE'S EXHIBIT 3)

6 (SO ENTERED AS STATE'S EXHIBIT 4)

7 SOLICITOR MILLER: Thank you, Your
8 Honor.

9 And at this time if Mr. Moore could
10 step down and help me operate the system for
11 the jury.

12 THE COURT: Yes, sir. Certainly.

13 SOLICITOR MILLER: I'll monitor the
14 phone calls at that time.

15 THE COURT: You may step down.

16 (WITNESS STEPS DOWN)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR MILLER:

19 Q. And if you could, who has access to
20 this system?

21 A. The only people who have access to
22 the system are people who set up accounts,
23 the investigators.

24 Q. All right. If we could play -- this
25 is the account of the Defendant Michael

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Testimony of Charles Moore - Direct Examination

1 Richardson?

2 A. Yes.

3 Q. The date is 12/12 at 11:47.

4 (STATE'S EXHIBIT 3 & 4 PUBLISHED)

5 SOLICITOR MILLER: Your Honor, I just
6 want to be sure that all the jurors can hear?

7 THE COURT: Yeah. Can you hear,
8 jurors, everybody?

9 JURORS: (Affirmative nods).

10 THE COURT: Is there any way to
11 maybe scoot this closer to them?

12 WITNESS: It's connected to this
13 port down here.

14 THE COURT: Okay. All right. If
15 you have any trouble, please raise your hand.

16 (AUDIO PLAYING)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR MILLER:

19 Q. Okay, the 11:47 call. And this is
20 the same call?

21 A. Yes, sir.

22 (AUDIO PLAYING)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR MILLER:

25 Q. Which call is this?

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Testimony of Charles Moore - Direct Examination

1 A. The other call.

2 Q. Have you verified this?

3 A. Yes.

4 Q. Okay.

5 (AUDIO PLAYING)

6 (WITNESS TAKES STAND)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR MILLER:

9 Q. You listened to all the copies, but
10 were you able to verify that these were calls
11 from Secure's system?

12 A. Yes. Both calls, I listened to
13 portions of each call on the platform and I
14 have verified they're the same thing.

15 Q. On Michael Richardson's account?

16 A. Yes.

17 Q. And what were the dates of those
18 calls?

19 A. They were December 12th, 2015.

20 Q. Thank you. Answer any questions Mr.
21 Sarratt has.

22 MR. SARRATT: I don't have any
23 questions for this witness, Your Honor.

24 THE COURT: Okay. All right. You
25 can step down, sir.

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Testimony of Kara Bennick - Direct Examination

1 SOLICITOR MILLER: We have one more
2 witness, Your Honor, that we could call
3 before lunch, that will not be very long.

4 THE COURT: Okay.

5 SOLICITOR MILLER: Your Honor, we
6 can continue if the Court would like to.

7 THE COURT: Okay. Just Ms.
8 Bennick?

9 SOLICITOR MILLER: Yes, sir.

10 THE COURT: How long do you
11 anticipate her testimony taking?

12 SOLICITOR MILLER: Very quick, Your
13 Honor.

14 THE COURT: Okay. Why don't we go
15 ahead and take her testimony and then we'll
16 break for lunch at that point in time?

17 SOLICITOR MILLER: Thank you. Your
18 Honor, at this time the State calls Karen
19 Bennick.

20 (WITNESS TAKES STAND)

21 KAREN BENNICK, having been duly sworn to
22 tell the truth, and nothing but the truth,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR MILLER:

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Testimony of Kara Bennick - Direct Examination

1 Q. Where are you employed, Ms. Bennick?

2 A. Greenville County in the forensics
3 unit, property and evidence section.

4 Q. How long have you been employed with
5 that unit?

6 A. Thirteen years.

7 Q. Give the jury an idea of what goes
8 on, what the job responsibilities are like in
9 property and evidence?

10 A. We're the holding entity for all the
11 incoming evidence from investigations and
12 arrests.

13 Q. Okay. When you say the holding
14 entity, what do you mean?

15 A. Any evidence, any property that
16 comes in, anything that needs to be secured.

17 Q. How is evidence brought to the
18 property and evidence?

19 A. There's two different ways. It can
20 come in over the counter from the actual
21 individual, from the officers. Or it can
22 come through the afterhours drop box.

23 Q. Okay. Can you explain how the drop
24 box works?

25 A. The drop box is a secure location

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Testimony of Kara Bennick - Direct Examination

1 that the officers can place evidence into,
2 until we come in the following morning and
3 pick it up and log it all in.

4 Q. And generally speaking, how is
5 evidence such as narcotics stored in property
6 and evidence?

7 A. They're stored in a secured vault
8 area.

9 Q. Who has access?

10 A. Only the five evidence people.

11 Q. Can anybody outside law enforcement
12 get into the facility?

13 A. No.

14 Q. When someone brings evidence to
15 property and evidence, do they have any forms
16 or paperwork they have to fill out?

17 A. There is a property and evidence
18 report that accompanies everything that's
19 coming in.

20 Q. I hand you what's been marked as
21 State's Exhibit 2 as well as this document.
22 Do you recognize these documents?

23 A. I do.

24 Q. What are they?

25 A. It's a chain of custody and a

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Testimony of Kara Bennick - Direct Examination

1 receipt for custody.

2 Q. What does that show?

3 A. A chain of custody is the piece of
4 paper that travels with the evidence and
5 shows all its movements from the time it's
6 brought in until it leaves.

7 Q. So it tracks all the movement?

8 A. Yes, sir.

9 Q. Is that chain of custody for the
10 evidence before you?

11 A. Yes.

12 Q. How do you know?

13 A. I can tell from the identifying
14 factors on it. It's labeled with the item
15 number and case number.

16 Q. What are the item number and case
17 number?

18 A. The item number is -- it's a County
19 15206293, and the item number is CP1.

20 Q. When were these items logged into or
21 dropped off in the drop box in property and
22 evidence?

23 A. December 14th, 2015, they were
24 actually logged into the property and
25 evidence section.

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Testimony of Kara Bennick - Direct Examination

1 Q. Is that when they were dropped off
2 or just when they were logged in?

3 A. That's when they were logged into
4 our system.

5 Q. When does somebody have to fill out
6 the form showing that was dropped off?

7 A. Any time they are delivering
8 evidence, it must accompany the evidence on
9 delivery.

10 Q. Right after it happens?

11 A. Uh-huh, (affirmative nod).

12 THE COURT: Say yes or no, please?

13 WITNESS: Yes.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR MILLER:

16 Q. I show you another form. Do you
17 recognize this form?

18 A. I do.

19 Q. What is it?

20 A. That's the actual handwritten
21 property and evidence report that the officer
22 would complete.

23 Q. Does it show which date that the
24 evidence was dropped off?

25 A. It does.

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Testimony of Kara Bennick - Direct Examination

1 Q. What date does it show?

2 A. It was impounded on December 11th,
3 2015 at 21:05.

4 Q. Okay. Would that correlate when it
5 would be dropped in the drop box?

6 A. No, the drop box section is also
7 filled out. That's separate.

8 Q. Okay. What happens to an item
9 that's in the drop box?

10 A. It's just secured in the drop box
11 until an evidence person can pick it up.

12 Q. Okay. Does that always happen right
13 away?

14 A. No.

15 Q. Does anybody have any access to that
16 drop box?

17 A. No. It's in a secured area.

18 Q. So who would have access to come
19 pick it up?

20 A. Just the evidence people that come
21 in the following morning.

22 Q. And does that get logged?

23 A. Yes.

24 Q. Okay. That gets logged. Does that
25 apply to the evidence before you here today?

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Testimony of Kara Bennick - Direct Examination

1 A. It does.

2 Q. Okay. Was this evidence, looking at
3 the chain of custody, been tampered with in
4 any way? Does everything gets marked as it's
5 moved?

6 A. Yes. All movements appear to be on
7 here.

8 Q. Okay. What other movements then do
9 you see -- are on the chain of custody, how
10 else does the evidence move?

11 A. Well, first, it was catalogued in
12 off of the report. And then it went to
13 staging for the drug lab. There was a
14 request for drug lab on it. And then it was
15 signed out to the drug lab.

16 Q. When an item is staged, what does
17 that mean?

18 A. It goes to a secure holding area
19 pending lab exam.

20 Q. And who would have access to that
21 secured area?

22 A. Nobody.

23 Q. Just P&E?

24 A. Uh-huh, (affirmative nod).

25 Q. What about the lab person?

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Testimony of Kara Bennick - Direct Examination

1 A. No. They come to the counter and
2 check out.

3 Q. And they check it out?

4 A. Through us, (affirmative nod).

5 Q. And when they bring it back, is that
6 also documented?

7 A. Yes.

8 Q. Is that documented on there?

9 A. It is.

10 Q. So this item has been submitted to
11 custody and the P&E and then marked and
12 tracked, and it shows if they are checked out
13 for the lab?

14 A. Right.

15 Q. When did the item -- well, when was
16 it checked out to the lab?

17 A. On December 14th, 2015.

18 Q. When is it returned?

19 A. On December 15th, 2015.

20 Q. That's the item there before you?

21 A. It is.

22 SOLICITOR MILLER: Your Honor, at
23 this time we'd move to have State's Exhibit 2
24 into evidence.

25 MR. SARRATT: Without objection.

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Jury Trial of January 18, 2017

Testimony of Kara Bennick - Direct Examination

1 THE COURT: All right. Received
2 into evidence without objection, State's
3 Exhibit 2.

4 (SO ENTERED AS STATE'S EXHIBIT 2)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR MILLER:

7 Q. Please answer any questions Mr.
8 Sarratt may have

9 MR. SARRATT: I have no questions
10 for this witness.

11 THE COURT: Okay. You may step
12 down. Thank you, ma'am.

13 (WITNESS STEPS DOWN)

14 THE COURT: All right. Mr.
15 Miller, this appears to be a good time to
16 stop and break for lunch unless you want to
17 press forward. I don't know how the jury
18 feels, okay?

19 SOLICITOR MILLER: Yes, sir. We
20 have the -- Your Honor, we have our lab
21 witness, Sean Collins is here to testify. He
22 really shouldn't take too long. Then we'll
23 have one more witness after that.

24 THE COURT: Okay. That's fine.
25 If you're good to press on, press on then,

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Testimony of Sean Collins - Direct Examination

1 okay?

2 SOLICITOR MILLER: That's fine.

3 MR. SARRATT: I'm sorry. Can we
4 have just a brief recess for a bathroom
5 break?

6 THE COURT: Okay. All right.
7 Let's take a brief -- take about five minutes
8 or whenever the jury's ready to come back in,
9 then you may.

10 (JURY OUT @ 12:35 P.M.)

11 (BRIEF RECESS)

12 (DEFENDANT PRESENT)

13 (JURY IN @ 12:45 P.M.)

14 THE COURT: All right. Mr.
15 Miller, you may call your next witness.

16 SOLICITOR MILLER: Thank you, Your
17 Honor. At this time the State would call
18 Sean Collins.

19 (WITNESS TAKES STAND)

20 SEAN COLLINS, having been duly sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR MILLER:

25 Q. Mr. Collins, where are you employed?

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Testimony of Sean Collins - Direct Examination

1 A. I'm employed by the Greenville
2 County Forensics, Crime Lab Report.

3 Q. How long have you been employed
4 there?

5 A. Just about twenty-six and a half
6 years.

7 Q. What are your job responsibilities?

8 A. My title is principal criminalist
9 and I'm the lab report manager.

10 In addition to those duties, I'm actually
11 a drug analyst. And part of my job is to
12 analyze suspected controlled substances.

13 Q. How does that -- how do you do that?

14 A. When anything's suspected, we will
15 bring it to the test area, measure the
16 volume/weight if that's appropriate and then
17 I run chemical testing with instrumental
18 analysis for confirmation.

19 Q. Can you tell us about a chemical
20 test and instrumental testing?

21 A. A chemical test is a chemical color
22 test. It's a quick indication. It doesn't
23 say specifically anything one way or the
24 other, just an indication of what something
25 might be or might not.

1 The instrumental analysis we would do
2 would be either the infrared mass
3 spectrometer or the gas chromatograph.

4 Q. And are these instruments able to
5 identify controlled substances and tell you
6 which one they are?

7 A. Yes, sir.

8 Q. Okay. What kind of education and
9 training do you have to be able to perform
10 these duties?

11 A. I have a Bachelor of Science degree
12 in Chemistry from Clemson University.

13 I've attend the Drug Enforcement
14 Administration's forensic chemist seminar(s)
15 and completed several instrumental schools
16 for the equipment we have in the laboratory.
17 I've received over seven hundred hours of
18 specialized training in drug identification.

19 Q. What goes into that training, as
20 best you can remember during those seven
21 hundred hours?

22 A. New information about drugs that are
23 coming out, updates in the equipment, new
24 operating systems. They're computer based so
25 there's always something changing with

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Testimony of Sean Collins - Direct Examination

1 computers, the theory and technology behind
2 the instrumentations.

3 Q. Okay. As all part of this -- how
4 many drug analyses have you performed in your
5 career?

6 A. Many thousands.

7 Q. Have you ever testified in court
8 before?

9 A. Yes, sir. I've testified one
10 hundred and sixty-four times as an expert
11 witness.

12 Q. In what field?

13 A. Drug identification.

14 Q. And analyses?

15 A. Yes, sir.

16 SOLICITOR MILLER: Your Honor, at
17 this time, the State would move to have Mr.
18 Collins as an expert witness in drug
19 identification and analysis?

20 MR. SARRATT: No objection.

21 THE COURT: All right. I find him
22 so qualified.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR MILLER:

25 Q. All right. So I kind of want to get

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Testimony of Sean Collins - Direct Examination

1 into a little bit more of what happens when
2 you get a controlled substance. How does a
3 controlled substance first come into your
4 possession that needs to be tested?

5 A. We will go to the property and
6 evidence room where all the drugs are stored
7 and ask for a selection of cases to be given
8 to us, depending on -- sometimes we ask for a
9 specific type or a certain case if something
10 is being special requested. Typically, it's
11 just give me ten cases and I'll get the next
12 ten and go.

13 Q. So they provide the substance to
14 you?

15 A. Yes. They bring it up from the
16 vault secured area and sign it out to us at
17 the counter.

18 Q. How are you able to keep track of
19 which substance go with which case?

20 A. Each case has its unique case number
21 and each item within the case has an item
22 identifying number as well.

23 Q. Does a report get generated later
24 that shows all of that?

25 A. Yes, sir.

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Testimony of Sean Collins - Direct Examination

1 Q. All right. I hand to you what's
2 been marked as State's Exhibit Number 2 and
3 see if you're able to identify if you
4 performed any testing on this substance?

5 A. Yes, sir, I did examine this item.

6 Q. Okay. How was that item examined?

7 A. I did a chemical instrumental
8 analysis and took a weight value.

9 Q. Okay. Did a report get generated on
10 this item?

11 A. Yes, sir.

12 Q. Do you have that report?

13 A. I have a copy of it.

14 Q. Okay. Would you please pull that
15 out?

16 A. Yes, sir.

17 Q. This is the report for State's
18 Exhibit 2?

19 A. Yes, sir. It is.

20 COURT REPORTER: State's Exhibit 5
21 for identification.

22 (SO MARKED AS STATE'S EXHIBIT 5)

23 THE COURT: Thank you.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. MILLER:

1 Q. It's been marked as State's Exhibit
2 5 for identification. When are these reports
3 generated?

4 A. Once the analysis is complete.

5 Q. Is that pretty immediate?

6 A. Typically it can be. Occasionally,
7 if we get a large batch of cases, it might
8 take a week or two to get through all of
9 them.

10 Q. And how are you able to identify
11 that this report is for that substance?

12 A. It's got the same case number as the
13 item and the same item number.

14 Q. Do you produce -- or are these
15 reports produced in the course of business
16 when they're produced?

17 A. Yes, sir.

18 Q. And did you produce this report?

19 A. Yes, sir. I did.

20 Q. How do you know?

21 A. The program types it on the report.

22 Q. Do you sign it?

23 A. Yes, sir.

24 Q. Okay.

25 SOLICITOR MILLER: Your Honor, at

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Testimony of Sean Collins - Direct Examination

1 this time the State would move Exhibit 5 into
2 evidence.

3 MR. SARRATT: Without objection.

4 THE COURT: All right. Received
5 into evidence without objection, State's 5.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR MILLER:

8 Q. Did you get any results?

9 A. Yes, sir, I did.

10 Q. What are those?

11 A. I found the item CP1 to be cocaine
12 base with a weight of 0.12 grams.

13 Q. Cocaine base?

14 A. Yes, sir.

15 Q. Why would it say cocaine base and
16 not just cocaine?

17 A. The laws specifies which from
18 cocaine is in must identified, whether it be
19 cocaine base or cocaine. It has to be
20 identified.

21 Q. Is cocaine base a controlled
22 substance?

23 A. Yes, sir, it is.

24 Q. Please answer any questions Mr.
25 Sarratt has.

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Testimony of Sean Collins - Direct Examination

1 THE COURT: Mr. Sarratt.

2 MR. SARRATT: I have no questions
3 for this witness.

4 THE COURT: Okay. Mr. Collins,
5 you may step down. Thank you, sir.

6 WITNESS: Thank you.

7 (WITNESS STEPS DOWN)

8 THE COURT: All right. It's
9 almost 1:00. We should break for lunch at
10 this point in time. How long does it usually
11 take here since I'm not usually in this
12 circuit. Getting in and out, can the jurors
13 get something in an hour and a half?

14 SOLICITOR MILLER: An hour and a
15 half would be fine, Your Honor.

16 THE COURT: 2:30, 2:15.

17 MR. SARRATT: Sure.

18 THE COURT: You think everybody
19 can be back by 2:15? All right. Why don't
20 we break now for lunch until 2:15.

21 Ladies and gentlemen, I caution you
22 as I did earlier. Please don't discuss the
23 case. You've only heard a portion of the
24 testimony at this point in time and I
25 instruct you not to deliberate until all the

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Testimony of Alrad Cobbs - Direct Examination

1 evidence is in and the arguments have
2 been. So you can talk about the weather,
3 sports, whatever you want to, but not about
4 the case. All right. Have a good lunch.

5 Everybody remain seated until the
6 jury gets out.

7 (JURY OUT @ 1:00 P.M.)

8 THE COURT: Okay. Down until
9 2:15.

10 (LUNCH RECESS)

11 (DEFENDANT PRESENT)

12 (JURY IN @ 2:20 P.M.)

13 THE COURT: All right. Mr.
14 Miller, you may proceed.

15 SOLICITOR MILLER: Thank you, Your
16 Honor.

17 THE COURT: At this time, the
18 State calls Alrad Cobbs.

19 (WITNESS TAKES STAND)

20 ALRAD COBBS, having been duly sworn
21 to tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR MILLER:

25 Q. Mr. Cobbs, you're currently in the

1 South Carolina Department of Corrections?

2 A. Yes, sir.

3 Q. Okay. You're in the department of
4 corrections because you pled guilty; correct?

5 A. Yes, sir.

6 Q. You pled guilty to your charge of
7 distribution from the December 11th, 2015?

8 A. Yes, sir.

9 Q. Okay. And that was when you and
10 Michael Richardson sold drugs to an under-
11 cover officer?

12 A. Yes, sir.

13 Q. Okay. You pled guilty because you
14 were guilty?

15 A. Yes, sir.

16 Q. Nothing was promised to you, was it?

17 A. No, sir.

18 Q. I want to talk a little bit about
19 that buy. Do you remember the person coming
20 up to you that day?

21 A. Yes, sir.

22 Q. Do you remember what they asked for?

23 A. Yes, sir.

24 Q. What did they ask for?

25 A. A dub.

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Testimony of Alrad Cobbs - Direct Examination

1 Q. They asked for a dub, is that a
2 twenty hard?

3 A. Yeah.

4 Q. Did you take the money from him?

5 A. Yes, sir.

6 Q. You then took the money to Michael
7 Richardson?

8 A. Yes, sir.

9 Q. Okay. You go the drugs from Michael
10 Richardson?

11 A. Yes, sir.

12 MR. SARRATT: Objection, Your Honor.
13 Leading.

14 THE COURT: All right. Don't lead
15 the witness.

16 DIRECT EXAMINATION CONTINUED
17 BY SOLICITOR MILLER:

18 Q. Who did you get the drugs from?

19 A. Michael Richardson.

20 Q. Who did you take the drugs to?

21 A. The officer.

22 Q. Okay.

23 THE COURT: Speak up a little bit,
24 please, sir.

25 WITNESS: The officer.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR MILLER:

Q. And for the jury, speaking up again,
who did you take the money to?

A. Michael Richardson.

Q. Who did you get the drugs from?

A. Michael Richardson.

Q. What happened after you gave the
drugs back to the officer?

A. The takedown team came and got us.

Q. Were you arrested?

A. Yeah.

Q. Okay. This is from December 11,
2015?

A. Yes, sir.

Q. Near Buncombe and Shaw?

A. Yes, sir.

Q. Again, was there anything promised
to you when you pled?

A. No, sir.

Q. Okay. Have you already been
sentenced?

A. Yes, sir.

Q. Please answer any questions Mr.
Sarratt has.

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Testimony of Alrad Cobbs - Cross Examination

CROSS-EXAMINATION

1
2 BY MR. SARRATT:

3 Q. All right. Mr. Cobbs now you
4 testified earlier you pled guilty to
5 distribution?

6 A. And conspiracy.

7 Q. And conspiracy. And you're telling
8 the Court and the jury as you told the judge
9 that day when you pled guilty that you pled
10 guilty because you were guilty?

11 A. Yes, sir.

12 Q. Now, you also testified that Michael
13 Richardson is the person who provided you
14 with the drugs?

15 A. Yes, sir.

16 Q. The officer handed you the twenty
17 dollar bill; is that correct?

18 A. Yes, sir.

19 Q. And you then took that twenty dollar
20 bill and handed it to Michael Richardson;
21 correct?

22 A. Yes, sir.

23 Q. All right. Now, is it your
24 testimony that at that point Michael
25 Richardson handed you a bag of crack cocaine?

1 A. A rock.

2 Q. Now, was that a hand to hand
3 transaction when you passed him the twenty
4 dollar bill?

5 A. Who, the officer?

6 Q. No, Mr. Richardson?

7 A. Yeah.

8 Q. And isn't it true that after you
9 handed Mr. Richardson the twenty dollar bill,
10 that you then went around, back to the side
11 wall before going to the officer's car?

12 A. Say that again?

13 Q. After you gave Michael Richardson
14 the twenty dollar bill, you didn't walk
15 straight to the officer's car; did you?

16 A. No, he came and I went back and gave
17 him the money.

18 Q. You didn't go around to the side
19 wall adjacent to the building and do
20 something over there?

21 A. No. He was in the store. He's in
22 the store, I'm on the side of the building.
23 Then that's when they came and got him out
24 the store.

25 Q. Now, isn't it true that when you

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1 handed Mr. Richardson the twenty dollar bill
2 you asked him to go make change for him?

3 A. No, I ain't asked him nothing.

4 Q. You didn't ask him to go inside and
5 break it, break the twenty?

6 A. No. He done that on his own, man.
7 No, he did that on his own.

8 Q. Now, is it your testimony ---

9 A. Hold on. Excuse me.

10 THE COURT: You can't ask him a
11 question. You just have to answer his
12 questions.

13 WITNESS: Well, he just came out
14 and say something, then he just put that in
15 there.

CROSS-EXAMINATION CONTINUED

16
17 BY MR. SARRATT:

18 Q. Is it your testimony that you were
19 out there dealing drugs with Michael
20 Richardson?

21 A. Nope.

22 Q. You're not a drug dealer?

23 A. Nope. I'm a user.

24 Q. All right. Now, you said that
25 nothing was promised to you in exchange for

1 your guilty plea; is that right?

2 A. I ain't got nothing but a guilty
3 plea.

4 Q. On the distribution and the
5 conspiracy charge that you pled guilty to?

6 A. Oh, okay. Yeah. I though you said
7 about having a guilty plea or something.

8 Q. All right. Now, there was no
9 promise, but there was a recommendation made
10 in your case; is that not right?

11 A. Yeah.

12 Q. And they recommended the minimum?

13 SOLICITOR MILLER: Your Honor, may
14 we approach?

15 THE COURT: Yes, sir.

16 (OFF RECORD BENCH CONFERENCE)

17 THE COURT: All right. Mr.

18 Foreman, ladies and gentlemen, I need to ask
19 you to retire to the jury room just for a few
20 moments. One of those legal issues has come
21 up that I've got to address. You won't be
22 back there long and I apologize, but it's
23 necessary. Again, don't discuss the case
24 while you're back there.

25 (JURY OUT @ 2:28 P.M.)

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Testimony of Alrad Cobbs - Cross Examination

1 THE COURT: All right. Mr.
2 Sarratt, your line of questioning is to what
3 extent at this point?

4 MR. SARRATT: My next question --
5 well, I believe the question that I did ask
6 was, was there a recommendation of the
7 minimum. I understand since there's no
8 reduction in charge here that I'm not get
9 into sentencing ranges to show that he's
10 probably facing a lighter sentence than he
11 had been. So I understand I'm not going to
12 be able to get into any kind of number as to
13 what the range is. I was merely going to ask
14 that there was a recommendation as to the
15 minimum and he received the minimum.

16 SOLICITOR MILLER: Again, as long
17 as we don't get into numbers. At the same
18 time, I think he was -- they're aware that
19 he's in the department of corrections. Of
20 course, but I think as long as we avoid
21 numbers and ranges. But my concern is that,
22 you know, we're not going down that road.

23 THE COURT: Mr. Cobbs?

24 WITNESS: Yes, sir.

25 THE COURT: I want you to

1 understand and I'm cautioning you and
2 instructing you now, as you respond to these
3 questions that Mr. Sarratt's get ready to
4 answer [sic] you, I don't want you to use any
5 number or any figure about the time that
6 you're serving. Do you understand?

7 WITNESS: (Affirmative nod).

8 THE COURT: I don't know what your
9 sentence was, don't care what your sentence
10 was, you understand? But I don't want the
11 jury to have any number blurted out like ten
12 years, fifteen years or anything like that.

13 You talk about the minimum. It
14 stays at that. But if you received the
15 minimum, you say that. The jury doesn't have
16 to know -- I don't want them to know what the
17 minimum is. I don't want them to know
18 anything about number of years. Is that
19 clear?

20 WITNESS: Yes, sir.

21 THE COURT: You know, you're not
22 going to mention any numbers. You understand
23 that?

24 WITNESS: Yes, sir.

25 THE COURT: Okay. All right.

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Testimony of Alrad Cobbs - Cross Examination

1 Bring them back in.

2 WITNESS: I just keep it at the
3 minimum number?

4 THE COURT: Sir?

5 WITNESS: Just keep it at the
6 minimum?

7 THE COURT: That's the only term I
8 want you to use if that's the appropriate
9 answer, you understand? But no numbers.

10 WITNESS: Yes, sir.

11 (JURY IN @ 2:30 P.M.)

12 THE COURT: That was even quicker
13 than I thought.

14 All right. Mr. Sarratt, you may
15 continue.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. SARRATT:

18 Q. All right. Just to get back on
19 track. We were discussing the fact that
20 there was a recommendation, while not a
21 promise, there was a recommendation made when
22 you pled guilty, as to your sentence;
23 correct?

24 A. (Affirmative response).

25 THE COURT: Yes or no, please?

1 WITNESS: Yes, sir.

2 CROSS-EXAMINATION CONTINUED

3 BY MR. SARRATT:

4 Q. And that, without saying any
5 numbers, that recommendation was for the
6 minimum sentence allowed?

7 A. Yes, sir.

8 Q. And you did, in fact, receive the
9 minimum sentence allowed?

10 A. Yes, sir.

11 Q. All right. And you understood when
12 you pled guilty that you could be called to
13 testify in this case?

14 A. (Negative response).

15 Q. Well, you're here; aren't you?

16 A. (Affirmative nod).

17 THE COURT: Sir, you can't shake
18 your -- you've got to answer yes or no, a
19 verbal response.

20 WWITNESS: Can I say something
21 real quick? I didn't know what was going on.
22 I didn't know I was coming to court or
23 nothing. This was just popped up on me. I
24 didn't know nothing about no coming to
25 testify. I didn't know. This something new.

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Testimony of Alrad Cobbs - Cross Examination

CROSS-EXAMINATION CONTINUED

BY MR. SARRATT:

Q. Well, at the time that you pled you were aware that you had a codefendant?

A. Yeah. But I thought he left. I thought I was the only one gotta do time and he left. I was still in the county. So this, all this right here -- all this right here is something new to me. They came up and said -- come in the yard and said I had to come down to court for this. So I come down here and all this right here now comes up in my face.

I -- to testify against him. This all, this all this right here something new to me. This is all new to me, so I'm lost.

Q. But at the time you pled guilty you understood that the codefendant's case was pending?

A. No, to tell you the truth.

MR. SARRATT: I beg the Court's indulgence.

THE COURT: Yes, sir.

CROSS-EXAMINATION CONTINUED

BY MR. SARRATT:

1 Q. Now, do you recall pleading guilty
2 on December 1st, 2016, last month?

3 A. Yes, sir.

4 Q. And that was in front of Judge Perry
5 Gravely?

6 A. Yes, sir.

7 Q. All right. And that was a guilty
8 plea that was handled by this Solicitor,
9 Solicitor Miller?

10 A. Yes, sir.

11 Q. Remember, he was the one that read
12 the presentation of facts that you agreed to?

13 A. Yes, sir.

14 Q. All right. Now, do you recall when
15 he was explaining the circumstances of this
16 case, that he told on the record in your
17 presence, that the codefendant's case was
18 still pending?

19 A. I ain't hear that.

20 Q. You don't recall hearing that?

21 A. No.

22 Q. But you do recall him making a
23 recommendation for the minimum sentence?

24 A. Yes, sir.

25 Q. And you're here testifying today?

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Testimony of Alrad Cobbs - Cross Examination

1 A. Yes, sir. New to me.

2 MR. SARRATT: No further questions.

3 THE COURT: Mr. Miller?

4 SOLICITOR MILLER: No questions.

5 THE COURT: Okay. You can step
6 down, sir. Thank you.

7 (WITNESS STEPS DOWN)

8 SOLICITOR MILLER: The State rests,
9 Your Honor.

10 THE COURT: Okay. All right.
11 Ladies and gentlemen, I hate to do this to
12 you again, but I'm going to ask you to return
13 to your jury room for just a few moments.
14 I've got another matter I need to take up
15 with the lawyers. It's the nature of the
16 beast. I'm sorry.

17 (JURY OUT @ 2:37 P.M)

18 THE COURT: Mr. Sarratt, do you
19 intend to put forth any defense?

20 MR. SARRATT: I don't believe so.
21 We discussed that before Mr. Cobbs testified.
22 At that time, my client decided he did not
23 wish to testify. I told him we could revisit
24 that after Mr. Cobb's testimony. If he
25 decided to -- if he changed his mind. I

1 haven't had a chance to ask him.

2 THE COURT: Sure. That's fine.

3 And I'll certainly give you time to do that.

4 And if you need some privacy, you can go back
5 to the back and then I'll him as well.

6 MR. SARRATT: Okay.

7 THE COURT: Yeah. Take time to
8 talk with him.

9 MR. SARRATT: Thank you.

10 THE COURT: We'll stand at-ease
11 for a few moments.

12 (COURT AT EASE)

13 THE COURT: All right. Mr.
14 Sarratt, what's your client's decision
15 concerning testifying?

16 MR. SARRATT: After further
17 consultation, my client is going to exercise
18 his right to remain silent. He does not wish
19 to testify.

20 THE COURT: Okay. That's fine.

21 MR. SARRATT: In addition, I have
22 no witnesses that I intend to call so if Your
23 Honor would for me to be heard on a directed
24 verdict motion.

25 THE COURT: All right. Well,

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1 just a minute a though.

2 MR. SARRATT: Sure.

3 THE COURT: Mr. Richardson?

4 DEFENDANT: Yes, sir?

5 THE COURT: Your attorney has
6 advised me that you have decided you do not
7 want to testify in your own defense; is that
8 correct?

9 DEFENDANT: That's correct. Yes,
10 sir.

11 THE COURT: Okay. I want you to
12 make certain you understand. I want the
13 record reflect that you do understand you
14 have the right to put forth a defense?

15 DEFENDANT: Yes, sir. I under-
16 stand.

17 THE COURT: You can call witnesses
18 on your behalf and you can testify yourself.
19 But, as has been pointed out by your
20 attorney, you have the right to remain
21 silent. And if you exercise that right,
22 which it appears you are doing at this time
23 that cannot be held against you in any
24 whatsoever. And I will instruct the jury to
25 that effect during my charge on the law. You

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1 understand that?

2 DEFENDANT: Yes, sir. And thank
3 you.

4 THE COURT: But you clearly
5 understand you have the right to testify if
6 you want to?

7 DEFENDANT: Yes, sir. I do.

8 THE COURT: Okay. All right.
9 Anything you want to ask him Mr. Sarratt?

10 MR. SARRATT: No, Your Honor.

11 THE COURT: Thank you, sir. You
12 may be seated.

13 Yes, sir, any Motions I'll be glad
14 to ---

15 MR. SARRATT: Thank you, Your
16 Honor. At this time I make a motion for
17 directed verdict. Taking the evidence in the
18 light most favorable to the State, I feel
19 they've failed to meet their burden as to the
20 evidence of conspiracy.

21 There's no direct testimony that
22 there was any verbal agreement to (a), to
23 distribute drugs. Certainly, there has been
24 some circumstantial evidence to show drugs
25 were exchanged and a subsequent transaction

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1 of a twenty dollar bill being passed to
2 my client. But, again, I think even with
3 that circumstantial evidence, it doesn't rise
4 to the level that would be sufficient for the
5 State to withstand a directed motion as to a
6 conspiracy charge.

7 On to the distribution charge, for
8 the record, I'll make a motion for a directed
9 verdict. I believe there was testimony from
10 Mr. Cobbs that my client did possess the
11 drugs and distributed them to Mr. Cobbs. So
12 I think that makes my argument.

13 Still for the record, I would argue
14 that the State has failed to meet its burden
15 as to the distribution charge as well.

16 THE COURT: Okay. All right, sir.
17 Mr. Miller?

18 SOLICITOR MILLER: Your Honor, for
19 a response, I guess I'll start with the
20 distribution. I believe we have heard, not
21 only through Mr. Cobbs, but through the
22 testimony of the other witnesses, including
23 Deputy Whitner, we're saying just the hand to
24 hand, as well Mr. Cobb identified Mr.
25 Richardson as well.

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1 In regards to conspiracy, if I was
2 listening correctly, Mr. Sarratt argued that
3 upon a direct statement to a verbal
4 agreement. Again, a conspiracy does not have
5 contain an absolute verbal agreement to be a
6 mutual understanding towards the unlawful
7 act. I believe the handing of the money and
8 exchanging of the drugs showed them to having
9 a mutual understanding and calling out for a
10 dub and then Mr. Richardson providing the
11 crack cocaine. And as well as under the law,
12 as Your Honor well knows circumstantial and
13 direct evidence are given the same weight.
14 So I believe under *State v. Weaver* where it
15 is just only if evidence does exist, then it
16 would be proper to go to the jury. So I
17 believe under the case law and the evidence
18 presented that the State has met the burden
19 on conspiracy as well as distribution.

20 THE COURT: Thank you, Mr. Miller.
21 All right. Mr. Sarratt, I am going to
22 respectfully deny your Motion for directed
23 verdict with regard to both the distribution
24 charge and the conspiracy charge. I agree
25 with the solicitor that there is sufficient

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1 evidence from which a jury could certainly
2 draw an inference that there was a conspiracy
3 in this particular case. So, again, I
4 respectfully deny your Motions.

5 MR. SARRATT: Okay. All right.

6 THE COURT: Tell me, do either one
7 of you have any requests for charge?

8 Let me get mine printed. I'll show
9 you what I've got, and then if you have some-
10 thing. But if you have something you know
11 you want, go ahead and let me know.

12 SOLICITOR MILLER: I was just
13 considering how, you know, show the hand of
14 one the hand of all is necessary along with
15 the conspiracy.

16 The other issue, I did want to
17 address the Court as to the format of the
18 closing arguments under the Beatty opinion.
19 I agree and it wasn't ever listed as
20 State/Defense, but the parties. I believe I
21 remember calling it correctly if the Defense
22 does not put up any evidence, which it's not
23 in this case, that the State would then open
24 on the law and the facts and then the Defense
25 would go and the State would have a chance to

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1 rebut just on what was presented in the
2 State's argument. So, you know, the Beatty
3 opinion also I believe has stated that the
4 grounds for a possible mistrial just on that
5 alone. So I just wanted to be -- first I
6 want to be clear of what format we would be
7 operating under. I know it's kind of in
8 a -- this period in we're in right now, but
9 it's ---

10 THE COURT: I've got the case
11 right here, the Beatty case. And I'm looking
12 at the footnotes on page sixteen. It says
13 "today we preserve the common law rule that
14 the Defendant has the right to open and close
15 if he presents no evidence." So Mr. Sarratt,
16 do you desire to open and close? And it's
17 basic. Well, you tell me. I think you have
18 to make the request.

19 MR. SARRATT: Right. My under-
20 standing of the case is that they talked
21 about -- but I believe this is basically the
22 rule, we're just doing an end run around the
23 rule. And there was some discussion about
24 what the rule stated that it would apply to
25 every case. And so that the State would be

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1 required to open on the law and then close in
2 full. So I'm not sure if it's -- I have to
3 request that the State does that or if the
4 State itself can request to be allowed to --
5 (pause).

6 SOLICITOR MILLER: I don't have it
7 right in front of me. I do recall, in fact,
8 that it wasn't specifically State and
9 Defense, but party one or party two,
10 something of that nature.

11 THE COURT: They have a conclusion
12 paragraph states that "further we would hold
13 that in criminal cases tried after this
14 opinion becomes final, if requested by the
15 party of the right to make an argument."

16 Okay. The party with the right to
17 open and close, will be required to open in
18 full on the law and the facts and be limited
19 to the reply, to any reply the defense and
20 the other parties arguing to raise new
21 matters. So, I mean, you have the right to
22 open and to close. So you would be the party
23 with the second argument.

24 I might be remembering this
25 incorrectly. I thought it was designed in a

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1 way of encouraging for it to be put up to
2 that.

3 THE COURT: Say that again?

4 SOLICITOR MILLER: I thought it was
5 designed in a way that would encourage the
6 Defense to put evidence in so if it did enter
7 evidence that they would open and then have
8 rebuttal. But if not -- and the other party
9 in this case being the State would open and
10 then rebut.

11 MR. SARRATT: And I'll say this.
12 If I'm the party with the right to close
13 since I didn't put up evidence to close last.
14 I did not request that he open on the law and
15 then ---

16 THE COURT: I mean, I'm reading
17 straight from the case. Today we preserve
18 the common law rule that the defendant has
19 the right to open and close if he presents no
20 evidence. I mean, it says what it says.

21 SOLICITOR MILLER: Thank you.

22 THE COURT: The bottom line is,
23 you may request to open. He gives the middle
24 argument and you close.

25 MR. SARRATT: To open on the law?

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1 SOLICITOR MILLER: And the facts.

2 THE COURT: You have the right to
3 open. And we have in the past. All you had
4 to do was do a closing argument.

5 MR. SARRATT: Right. But what I'd
6 prefer he close, I close and that be enough.

7 THE COURT: It says you have the
8 right though, if you present no evidence.

9 SOLICITOR MILLER: I don't want to
10 betray my ignorance, but it's confusing.

11 THE COURT: You go first. I mean,
12 then he's got to go as the middle guy. And
13 then that gives you a chance to come back. I
14 mean, it's -- you know, the Court didn't help
15 us a whole lot. I don't mind putting that on
16 the record.

17 SOLICITOR MILLER: We're all going
18 back and forth right now.

19 THE COURT: Yeah. Exactly.

20 MR. SARRATT: This is my first
21 trial since that Opinion was issued.

22 THE COURT: Mine too. Mine too.
23 But I mean, if you open, you've got to open
24 in full.

25 MR. SARRATT: Right.

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1 THE COURT: And then the way I
2 read it, then he puts up his argument and you
3 can rebut what he talks about on is middle
4 argument.

5 MR. SARRATT: If I choose to.

6 THE COURT: Yeah. You don't have
7 to. You don't have to argue at all.

8 MR. SARRATT: So is it your
9 position that ---

10 THE COURT: I think it's my
11 position that if you want to have the final
12 say, the last say-so, you've got to open.
13 That's my position. I may be wrong. We'll
14 find out, I guess, though.

15 MR. SARRATT: Okay.

16 SOLICITOR MILLER: And that would
17 be an open in full.

18 THE COURT: Yeah. He's got to
19 open in full and then you respond and then he
20 can rebut just, you know, what you bring out
21 in your argument.

22 MR. SARRATT: Okay.

23 THE COURT: Unless he defers to
24 you, which I guess you could always do. If
25 he wants to defer, that you open.

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1 SOLICITOR MILLER: My concern was
2 the part of, you know, there was some
3 language in there about the mistrial part or
4 anything like. There's something in our
5 office that got sent around or something
6 about that. And so there's been a lot of
7 concern in our office about how the structure
8 of the closing formats are done. And the
9 consensus was they wanted for us to go with
10 what was in Beatty. And, again, I mean,
11 there is still a lot of back-and-forth on all
12 of it.

13 MR. SARRATT: Well, if the Court's
14 position is that I just open in full, then he
15 gets a right to do his middle argument, and
16 then I reply. I don't foresee -- I mean,
17 you've heard the facts of this case. I don't
18 know exactly what I would have in reply in
19 rebuttal.

20 SOLICITOR MILLER: I just don't
21 know if it's the option or if that's what it
22 is now the ---

23 MR. SARRATT: Just to make sure
24 real quick. I can request that he open in
25 full, then I would argue and then he could

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1 rebut. I have that ability?

2 THE COURT: Yeah. I mean, you can
3 waive your right to argue. The way I read
4 this case, you have the right to open and
5 close if you present no evidence, which you
6 have done?

7 MR. SARRATT: Right.

8 THE COURT: I'm reading straight
9 from the case footnotes.

10 MR. SARRATT: Sure.

11 THE COURT: But, you obviously can
12 defer and there's no reason you couldn't
13 defer. I can't see any basis for a mistrial
14 or anything, reversal based on that. Who
15 knows though? But you can certainly defer to
16 him, you know. You can waive your right to
17 open and close.

18 SOLICITOR MILLER: My question
19 would then be if he defers then he would be
20 only limited to what I say and not bring up
21 any new issues.

22 MR. SARRATT: I think that's
23 correct.

24 THE COURT: I mean, he can respond
25 to your opening. And then when you reply in

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1 your final argument, he can use as his middle
2 argument, as they call it, then you're
3 limited to whatever he talks about. You
4 can't bring up any new matter either.

5 SOLICITOR MILLER: Correct. Or no,
6 so if I'm first and he's middle, I mean, he
7 can do a full, bring up new. But I'm limited
8 to ---

9 THE COURT: You're limited to what
10 he brings up. Yeah.

11 SOLICITOR MILLER: Okay.

12 MR. SARRATT: I'm think I'm going to
13 elect to do that. I think I'd like to do
14 that. So have the State open in full and
15 then I will give my full closing and if he
16 chooses to reply, he can.

17 THE COURT: He can, yeah. That
18 way you don't get the last say-so that you
19 would have otherwise, so I just to make sure
20 we're clear on the record now.

21 MR. SARRATT: Yeah. Sure.

22 THE COURT: But I think the case
23 allows you to have the last argument, the
24 first and last. There's nothing in here that
25 says you can't defer to him the way I read

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1 it.

2 MR. SARRATT: Okay.

3 SOLICITOR MILLER: And so I'm
4 giving a full closing.

5 THE COURT: You're closing in
6 full, yes, sir.

7 SOLICITOR MILLER: Yes, sir.

8 THE COURT: And then he'll respond
9 and you can rebut or reply to his argument,
10 limited to what he talks about.

11 SOLICITOR MILLER: Yes, sir.

12 THE COURT: Okay. We clear?

13 SOLICITOR MILLER: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. SARRATT: Yes, Your Honor.

16 (OFF RECORD DISCUSSION)

17 THE COURT: All right. I'm
18 waiting on one part of the charge. If you
19 gentlemen would go ahead and look at this to
20 begin with.

21 SOLICITOR MILLER: (Upon review),
22 I have no objection with those. Hopefully, I
23 got them back in the right order.

24 THE COURT: Approach the bench,
25 please?

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1 MR. SARRATT: Sure.

2 (OFF-RECORD BENCH CONFERENCE)

3 THE COURT: Anybody need a break
4 before we ---

5 MR. SARRATT: Maybe just ten
6 minutes. And if I may add before we break,
7 I believe in the hand-of-one-hand-of-all
8 charge, you had language in there about mere
9 presence. I'd request an additional
10 standalone charge on mere presence.

11 THE COURT: I'm sorry?

12 MR. SARRATT: I'd request a mere
13 presence charge. There is some language in
14 the hand of one hand is the hand of all that
15 says that mere presence is not enough to show
16 in the joining and helping with the act. I
17 believe there is also a standalone charge for
18 mere presence. And I would request that as
19 well.

20 I believe we are on solid ground if
21 my client testified and contradicted the
22 testimony of Mr. Cobbs, but I think there's
23 enough in the case that I think the charge is
24 appropriate.

25 THE COURT: Any objection to that?

1 SOLICITOR MILLER: I just don't
2 feel that there's anything direct to reflect
3 on mere presence when there's nothing to
4 support that it was just mere presence. What
5 was presented was that he was an active
6 participant. He was not just present.
7 That's what everybody testified to and that's
8 been established.

9 THE COURT: Hang on just a minute.
10 Of course, the hand-of-one charge does
11 comment. It says "however, mere presence at
12 the scene of a crime is not sufficient to
13 convict one as a principal in the theory of
14 aiding and abetting."

15 Intent is also a necessary element.
16 Now, there was -- I mean, the testimony, all
17 of the State's testimony was that, I mean,
18 there was interaction between your client and
19 the other client. And it wasn't just a mere
20 presence situation. I think the hand of one
21 language covered it sufficiently without
22 having to actually charge a mere presence.

23 MR. SARRATT: Thank you, Your Honor.

24 THE COURT: Say you want about ten
25 minutes?

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1 MR. SARRATT: Sure.

2 THE COURT: Yeah. Take your time.
3 Get your thoughts organized.

4 (BRIEF RECESS)

5 (DEFENDANT PRESENT)

6 THE COURT: All right. Bring the
7 jury in.

8 (JURY IN @ 3:30 P.M.)

9 THE COURT: All right. Mr.
10 Sarratt, I understand that the Defense rests?

11 MR. SARRATT: That's correct, Your
12 Honor. The Defense rests.

13 THE COURT: Thank you, sir.

14 All right. Ladies and gentlemen of
15 the jury, we have reached the point in the
16 trial where the attorneys will make their
17 closing arguments to you. Again, I caution
18 you what the lawyers say is not evidence.
19 They're just giving you a summation as to
20 what their position is with regard to the
21 evidence and testimony that was introduced in
22 the course of the trial. I ask that you pay
23 close attention to the attorneys as they make
24 their closing arguments.

25 Mr. Miller, you may proceed.

1 SOLICITOR MILLER: Thank you, Your
2 Honor, may it please the Court.

3 CLOSING STATEMENT

4 BY SOLICITOR MILLER:

5 I want to start off with what,
6 again, I have to prove and the standard I
7 have to prove it. You remember, again, we're
8 here on distribution and conspiracy. I have
9 to prove each element of those beyond a
10 reasonable doubt.

11 So, again, distribution that's
12 again, distributing or giving the controlled
13 substance away in exchange for money. It's a
14 drug deal. That's a distribution. You sell
15 drugs, you get money. It's a drug deal.

16 Conspiracy, again, does not have to
17 be expressed in terms written, expressly said
18 otherwise, but a mutual understanding of an
19 unlawful act that both are trying to
20 accomplish.

21 So now to prove that beyond a
22 reasonable doubt. Beyond a reasonable doubt
23 does not mean one hundred percent. It is
24 highest standard in all the justice systems
25 and for good reason, but it's not a hundred

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1 percent. Because there are few things in the
2 world that are a hundred percent. And if you
3 really think about it, it's very true.

4 There's very few things that you can actually
5 say one hundred percent this is what it is.

6 So the law does not require that I have to
7 prove this one hundred percent.

8 But what it means is, are you firmly
9 convinced? Are you firmly convinced with the
10 evidence presented to you that the defendant
11 isn't guilty. And so that's the standard
12 that I have.

13 In this case, what evidence do you
14 have before you? What is it? Well, I'm
15 going to run through it.

16 First I'll address the elephant in
17 the room, we had the testimony about the
18 audio. You heard Sergeant Cannon talk about
19 the recording equipment, they hadn't used it
20 in a few years, he said operator error, you
21 know. You heard him up there on the stand.
22 He told you what happened.

23 But that's not all the evidence that
24 you do have. That's not everything there is
25 to show you what happened that day December

1 11th, 2015.

2 Deputy Whitner took the stand. He
3 went up with a twenty dollar bill and wanted
4 a twenty hard.

5 Mr. Cobbs came over. Again, it was
6 only Mr. Cobbs and Mr. Richardson in the
7 parking lot. 'Comes over, takes the money
8 says give me a dub.' I put him on the stand.
9 He said that is what he said.

10 He goes over to Michael Richardson.
11 He gets the crack from him and takes the
12 crack back to the officer. Now, that's only
13 going to be accomplished if there is a mutual
14 understanding between those two people. I
15 don't know how that could be accomplished if
16 they didn't both understand what was going on
17 and what they were doing. So I would say you
18 have this evidence.

19 We didn't have someone say, 'yeah,
20 we talked twenty minute before about what
21 exactly we were going to do', but by their
22 actions it shows you they knew what was going
23 on and they knew what they were doing.

24 Again, the distribution. You don't
25 just have to listen to what Deputy Whitner

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Closing Argument by Solicitor Miller

1 has to say. You can listen to what Alrad
2 Cobbs had to say, and also what Michael
3 Richardson has to say.

4 But what shows you that that did
5 occur, that twenty dollar bill that Michael
6 Richardson was found with in the store trying
7 to break that matched the serial numbers that
8 were used from the sheriff's office funds in
9 order for operations like this. This is what
10 they use that money for. So there's only
11 really one way you can come into possession
12 if you're not part of that operation, is that
13 you then sold drugs and that was the money
14 used to pay for it. You have it.

15 How else you going to have possession
16 of that, especially after the hand-to-hand is
17 observed, and that Alrad Cobbs told you
18 about. So you have all of that.

19 Now, let's talk a little bit about
20 the jail calls. I'm reading what Mr.
21 Richardson stated. He said, "I didn't serve
22 the man. He served him."

23 But then they're down there about
24 five minutes. He says, 'well, he didn't set
25 me up because', he says, 'I got a man that

1 wants some dope.' So Alrad Cobbs has to tell
2 him he has a man that wants some dope. If
3 Alrad Cobbs had the dope, he wouldn't need to
4 go to Michael Richardson to get it. Michael
5 Richardson wouldn't even say Alrad Cobbs
6 needed to come get dope from him, which is
7 what he's saying in this call.

8 The other call. A "guy got some
9 crack from me last night was undercover
10 police." Those were his words. He was
11 telling you that he sold crack to an
12 undercover police officer.

13 And he's also telling you in the
14 other call that he did it with another guy.
15 And you saw the other guy on the stand, Alrad
16 Cobbs. So, again, you have that mutual
17 understanding and you have that distribution
18 as to what was going on.

19 Now, Mr. Cobbs I took some notes
20 during his testimony. You heard him say he
21 was not promised anything. And, in fact, you
22 heard him say he didn't even know he was
23 coming up here to testify. He was surprised
24 to come up here and testify. He said, 'I was
25 just laying in bed and they pulled me out to

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1 come up here.' So he wasn't promised
2 anything to come testify. And he pled
3 guilty. And he, as you could tell, he's now
4 serving his time for what he did.

5 He told you what happened. He said
6 it was him and Michael Richardson, sitting
7 right there, sold the dope to undercover
8 police.

9 And, again, I told you earlier that
10 it only takes your common sense to know what
11 happened.

12 Yes, it was not video recorded. I
13 can't show you a video of what happened
14 there. But you have all this other evidence
15 pointing that Michael Richardson and Alrad
16 Cobbs sold crack cocaine to the undercover
17 officer. I think if you look at it, and you
18 go through everything, you will then be
19 firmly convinced beyond a reasonable doubt
20 that Michael Richardson is guilty of a
21 conspiracy through his mutual agreement and
22 understanding with Alrad Cobbs, which is
23 shown to you through the jail calls, as well
24 as the distribution. And that's why we're
25 asking for a verdict of guilty.

1 THE COURT: Yes, sir.

2 CLOSING STATEMENT

3 BY MR. SARRATT:

4 Ladies and gentlemen of the jury, at
5 the start of this trial I told you that this
6 trial was going to be about two things, there
7 were two issues that I want you to focus on.
8 One, is where is the agreement; two, where
9 are the drugs?

10 So let's break that down and start
11 first with the agreement that would go to the
12 conspiracy charge. You heard from several
13 witnesses at this trial and I think two are
14 the most important persons and those are
15 Officer Whitner and Alrad Cobbs.

16 When Officer Whitner came to
17 testify, and you heard him say that he
18 approached Alrad Cobbs. That Alrad Cobbs
19 come and that Officer Whitner told him he
20 needed a twenty hard. At that point, Alrad
21 Cobbs is said to have said 'bringing it up'
22 and then walked away. He walked away outside
23 of earshot of Officer Whitner.

24 And so whatever conversation took
25 place between Mr. Richardson and Mr. Cobbs,

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Closing Argument by Mr. Sarratt for Defense

1 Officer Whitner was not a party to that
2 conversation and he didn't hear it. The
3 recording wouldn't have, if he had one,
4 captured it even if we had available today.
5 So we don't have any evidence from the
6 officer as to what agreement may or may not
7 have been made. We do have the statement,
8 "bringing it up."

9 Now, you heard Alrad Cobbs on the
10 stand testifying. He didn't know Mr.
11 Richardson. They were not drug dealers
12 together. This is not an operation that they
13 were doing. And then he calls out for him to
14 bring a dub. According to Mr. Cobbs' version
15 of events, he was essentially just a -- not
16 an innocent bystander but just a generous
17 guy. His only role is that he held up to
18 this officer. The officer knows who he is.
19 But the officer requests some drugs. He
20 takes the twenty dollars, gives it to Michael
21 Richardson, Michael Richardson gives him
22 drugs and he gives it to the officer -- and
23 that's the extent of his involvement. He
24 gains nothing. He doesn't get any money out
25 of it. He doesn't get any drugs out of it.

1 What kind of a drug conspiracy is
2 that? I mean, what kind of a risk is that to
3 take, for absolutely no benefit whatsoever,
4 for someone who he claims to not even know.

5 That is just not a credible story.
6 It's not an accurate version of events
7 because that's not what happened. Alrad
8 Cobbs would like to downgrade his role and
9 say that Mr. Richardson is the one who guilty
10 and Mr. Richardson is the one who had the
11 drugs. All Mr. Cobbs did was facilitate the
12 transaction and acted as a middle man with no
13 benefit whatsoever to him. That's not a
14 credible version of events and it's not one
15 that you should believe.

16 Now, the other issue I wanted you to
17 focus on throughout this trial is where are
18 the drugs? And the most credible witness
19 that you heard from today is Officer Whitner.
20 And Officer Whitner told you that when he
21 observed Alrad Cobbs walk away and approach
22 Michael Richardson, that he saw the twenty
23 dollar bill, clear as a bell, I believe. He
24 saw that twenty dollar bill change hands from
25 Mr. Cobbs to Mr. Richardson. And then he

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1 starts to hedge his language a little bit, if
2 you remember. He said it appeared as though
3 it were a hand-to-hand transaction, from his
4 training and experience that he's familiar
5 with. "It appeared to be." Now, I nailed
6 him down on that and I said, it appeared to
7 be but you did not see a package of drugs.
8 And he said, 'well, it would have been too
9 small, I couldn't have seen it.' Now, never
10 mind he said the distance was from the
11 witness stand to about the corner of that
12 room. And that he said he could see the
13 twenty dollar bill clear as a day. So I
14 don't think there's any reason why he would
15 not have been able to see a pack of drugs if
16 that is, in fact, what was taking place with
17 the transaction there. But he wants you to
18 just assume that drugs changed hands.

19 And that's the problems with the
20 State's case. That they cannot meet their
21 burden of proof to prove to each and every
22 one of you beyond a reasonable doubt that Mr.
23 Richardson did provide the drugs. They want
24 you to assume that the drugs, the twenty
25 dollar bill changed hands, there must have

1 been an accompanying hand to hand transaction
2 of drugs. But no officer testified to seeing
3 that. There's no video. The audio would not
4 have captured it. And I'm not blaming them
5 for not having the audio. The audio, I don't
6 think would have made that much of a
7 difference in this case.

8 But they're asking you to take a
9 leap of faith to assume facts that are not
10 true, facts that are not in evidence.

11 Now, I say that, there was testimony
12 from Alrad Cobbs. Alrad Cobbs does say
13 Michael Richardson had the drugs. 'He gave
14 them to me. I gave them to the officer.'

15 But can you trust Alrad Cobbs?
16 Alrad Cobbs came from the department of
17 corrections in his jumpsuit to tell you the
18 story that he told when he pled guilty and
19 received the minimum sentence, that he came
20 in here and he expects you to believe. He
21 expects you to believe that Michael
22 Richardson gave those drugs to him. There's
23 no reason for you to believe Mr. Cobbs,
24 because Mr. Cobbs is just trying to honor his
25 part of the deal that he made in order to

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1 receive the minimum sentence.

2 When Officer Whitner was testifying,
3 you remember I asked him specifically about
4 something he wrote in his report. And I said
5 it's important to get the sequence of events
6 right. Officer Whitner said that he wrote in
7 his report that he witnessed Cobbs hand the
8 twenty dollar bill to Richardson. So that's
9 the money changing hands. Then Cobbs went
10 over to the adjacent wall or to the wall
11 adjacent to the building and did something.
12 I don't think he was able to testify as to
13 what that was. Then came back to the car
14 with the drugs.

15 Now, when I asked Alrad Cobbs about
16 that, he's not got any knowledge of that at
17 all. He said, 'No, I handed him the twenty
18 dollar bill. He handed me the drugs and I
19 went straight back to the police car and gave
20 the drugs to him.'

21 So why don't those two versions of
22 events line up? Because one is not true.

23 Now, what motivation would Officer
24 Whitner have to come in here and lie to you
25 about what happened? Nothing. It's up to

1 you to assess the credibility of each and
2 every witness. But Officer Whitner has no
3 motivation to come in here and tell you
4 something that's not true. He wrote it in
5 his report and, as he said, he was very
6 careful to document the exact sequence of
7 what took place.

8 So why would Alrad Cobbs come in
9 here and tell you something other than
10 Officer Whitner's version of events. It
11 conflicts with what Officer Whitner said
12 because it's not true. It is a lie.

13 Of course, to reconcile two
14 competing stories, it's up to you to make a
15 determination about who you believe, but I
16 believe that Officer Whitner is a credible
17 witness who testified truthfully. I believe
18 Alrad Cobbs is a liar who is trying to honor
19 the deal to save his own skin.

20 Now, just finally, I want to touch
21 on the jail calls. The State would have you
22 believe that this is essentially an
23 audiotaped confession. And really you need
24 to look no further than to Defendant's own
25 words that you heard as to what he did. But

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1 we don't really get the context of this phone
2 call. This isn't an interrogation. This
3 isn't a signed statement that he has given.
4 He's just calling people from the jail that
5 he knows and they're asking him, you know
6 basically, 'What are you in for?' And he
7 says, 'I messed up and sold to an
8 undercover.'

9 Now, again, the State would have you
10 believe that's the case, open and shut. But
11 taken from his perspective, he knows that
12 he's been charged. He knows that Alrad Cobbs
13 was charged. At this point he's found out
14 that the person that they sold to is a police
15 officer. And in his mind it's not looking
16 good. And so he doesn't give the whole
17 story. He knows this is a recorded phone
18 call. He's not going to break down in detail
19 everything about this case and his defense
20 for everybody to hear. He just summarily
21 states, 'I've been charged. I messed up,
22 selling to an undercover.'

23 And I would submit that is not proof
24 that the State would have you believe and
25 it's just sort of idle talk communicating to

1 the people that he knows on the outside.
2 He's not going into detail. He's just
3 summarizing the reason he's in jail, the
4 allegations.

5 And, also, in the first call he
6 says, 'I didn't serve the man. The other guy
7 did.'

8 So, again, Alrad Cobbs is the drug
9 dealer. Alrad Cobbs is the one that received
10 the twenty dollars from Officer Whitner.
11 Alrad Cobbs is the one who then produces the
12 dub, the twenty hard of crack cocaine. Alrad
13 Cobbs is the one that pled guilty and
14 admitted that he is the one who did the
15 transaction. The State has their man. They
16 want more.

17 This was -- well, not a sting. It's
18 an operation designed to make as many cases
19 as they can. And it was successful. This is
20 not the only case they made that day. I
21 don't know how many there were, but there
22 were several other ones. The State has an
23 interest in pursuing those and getting
24 convictions. So what they're asking you to
25 do today is to hand over a conviction without

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1 backing it up with evidence. They want you
2 to hand over a conviction based solely on the
3 word of a jailhouse snitch, a codefendant who
4 has a motive. The State would disagree
5 that's gotten him the deal that he received.
6 There's no video. There's no audio. There's
7 no proof and without any proof they have no
8 case and you must find Mr. Richardson not
9 guilty because Mr. Richardson is not guilty.

10 THE COURT: Mr. Miller?

11 SOLICITOR MILLER: Thank you, Your
12 Honor.

REPLY CLOSING STATEMENT

13
14 BY SOLICITOR MILLER:

15 Just quickly to address a couple of
16 things Mr. Sarratt said. I think the main
17 part is to address he said, 'Well, how can
18 you believe Alrad Cobbs?'

19 Alrad Cobbs' case is done. It's
20 over. Clearly, he was promised nothing even
21 though coming up here today. As much as Mr.
22 Sarratt tried to press him on the stand to
23 that, Mr. Cobbs was saying, 'I didn't know I
24 was coming today. No, I didn't know about
25 that. No.' His case is done. Nothing is

1 going to change.

2 Also, recall the testimony about the
3 hand to hand. The officer described that to
4 you. So oftentimes that -- there's the
5 exchange. 'Here's your crack rock.' It's
6 not big, only one or two grams. The twenty
7 dollar bill is bigger than the small rock of
8 crack. The hand to hand, that is how it's
9 done.

10 What Mr. Sarratt wants you to
11 believe is that Alrad Cobbs took the twenty
12 dollar bill from Officer Whitner to Michael
13 Richardson and that the drugs came from
14 Michael Richardson. If Alrad Cobbs was the
15 sole dealer in all of this, why wouldn't he
16 just do the hand-to-hand right there at the
17 car? Why wouldn't he just do it right there?
18 Why walk farther away, expose yourself more,
19 then walk farther back and expose yourself
20 more. Why not just do it right there?
21 Remember, Deputy Whitner said that was the
22 only place he went. No other people were
23 around, okay?

24 And these calls, the jail calls,
25 Mr. Sarratt, he's right. They're not an

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1 interrogation. But it's not idle talk. He
2 didn't say, "I messed up." He used a
3 different word. "I sold to an undercover."
4 He's not talking about defenses or anything
5 like that. He is telling his friends what he
6 did. They asked him, 'why are you in jail?'
7 "Man, I messed up. I sold to an undercover."

8 So it's not just Deputy Whitner and
9 Alrad Cobbs saying it happened, Michael
10 Richardson told you what happened.

11 The design of this operation was not
12 to make as many cases as possible. The
13 design of this was to find illegal activity
14 and they were geared toward drug deals. If
15 the drug deal's not there, they can't make
16 the case. They have to have their probable
17 cause before they give orders to arrest.

18 So going back through what Mr.
19 Sarratt talked about and just briefly
20 touching on it again, just to summarize it,
21 think about how far away Deputy Whitner said
22 he was. He had a clear view, well lit. So
23 he could see the people. And think about the
24 relative size of that twenty dollar bill in
25 relation to the size of that crack rock in a

1 hand-to-hand like this. How they showed you
2 on the stand, how it's done all the time,
3 their training and experience.

4 And again it is important, the jail
5 calls are important and what Alrad Cobbs had
6 to tell you today, they're all important.
7 And, yes, it would be great if I had the
8 audio here to show. Mr. Sarratt's right that
9 it wouldn't have that conversation that
10 Michael Richardson and Alrad Cobbs had. But
11 they're telling part of it, Alrad Cobbs told
12 Michael Richardson, "I need a dub." And then
13 he gets it, which shows you a mutual under-
14 standing of what was going on. Yeah, it
15 wouldn't capture what they were saying. They
16 would have been too far away.

17 Everything there is pointing to you
18 that Michael Richardson is an active
19 participant, and even I would say more so
20 than Alrad Cobbs, in that that's who the
21 money went to. That's where the money was
22 found. And that's who provided the crack.
23 That's why we're asking you to return a
24 verdict of guilty on distribution and
25 conspiracy. Thank you.

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1 THE COURT: All right. Ladies and
2 gentlemen, we're now to the point of the
3 trial where I discuss with you and charge you
4 the law that applies to this case.

5 I remind you that during this trial
6 you and I have both had certain duties
7 perform.

8 As the trial judge, it is my
9 responsibility to trial over the trial of
10 this case. I also have the duty to rule on
11 the admissibility of the evidence, which has
12 been offered during this trial.

13 You're to consider only the
14 competent evidence before you. If there was
15 any testimony ordered stricken from the
16 record in this case, you must disregard it.
17 I don't recall that happening during the
18 course of this trial.

19 You're to consider only the
20 testimony which has been presented from this
21 witness stand, any exhibits which have been
22 made a part of the record in this case, and
23 any stipulations of counsel.

24 I have the additional duty to charge
25 you the law applicable to this case. As

1 presiding judge, I am the sole judge of the
2 law of this case. And it is your duty as
3 jurors to accept and apply the law as I now
4 state it to you. If you already have any
5 idea as to what the law is or what the law
6 ought to be and it does not agree with what I
7 now tell you the law is, you must abandon
8 this idea because you are sworn to accept the
9 law and apply the law exactly as I state it
10 to you.

11 In every case tried in this court
12 before a jury, the jury becomes the sole and
13 exclusive judge of the facts in the case.

14 A trial judge cannot intimate,
15 state, comment on or make any statement to a
16 trial jury about the facts in the case.
17 Since you, the jury, are the sole judge of
18 the facts in this case, you are not to infer
19 from what I have said during the progress of
20 this trial in ruling upon the admissibility
21 of evidence or otherwise, or anything that I
22 say now during the course of this instruction
23 to you, that I have any opinion about the
24 facts in this case. The law does not allow
25 me to have an opinion about the facts in this

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1 case.

2 This is a matter solely for you, the
3 jury to determine. As jurors, it is your
4 duty to determine the effect, value, weight
5 and truth of the evidence presented during
6 this trial.

7 Now, the indictment charges the
8 defendant with distribution of cocaine base,
9 crack cocaine and conspiracy. I remind you
10 that the fact the defendant was arrested,
11 charged and indicted in this case is not
12 evidence in this case and cannot be
13 considered by you as evidence of guilty in
14 this case, nor does it create any presumption
15 or inference of guilt. This document is
16 simply the formal written instrument, which
17 contains the charges made against the
18 Defendant. It is the formal document or the
19 formal documents by which this case is
20 brought into this Court.

21 Now, each indictment charges a
22 separate and distinct offense. You must
23 decide each indictment separately on the
24 evidence and the law applicable to it,
25 uninfluenced by your decision as to any other

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1 indictment. The defendant may be convicted
2 or acquitted on any or all of the offenses
3 charged. You'll be asked to write a separate
4 verdict of guilty or not guilty for each
5 indictment.

6 The defendant has pled not guilty to
7 these indictments. And that plea puts the
8 burden on the State of South Carolina to
9 prove the defendant guilty.

10 A person charged with committing a
11 criminal offense in South Carolina is never
12 required to prove himself innocent. I charge
13 you that it is an important rule of the law
14 that a defendant in a criminal trial, no
15 matter what the seriousness of the charge may
16 be, will always be presumed to be innocent of
17 the crime, for which the indictment was
18 issued unless guilt has proven by evidence
19 satisfying you of that guilt beyond a
20 reasonable doubt.

21 This presumption of innocence does
22 not end when you begin your deliberations,
23 but it accompanies the defendant throughout
24 the trial until you reach a verdict of guilt
25 based on the evidence satisfying you of that

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1 guilt beyond a reasonable doubt.

2 The presumption of innocence is like
3 a robe of righteousness placed about the
4 shoulders of the defendant, which remains
5 with the defendant until it has been stripped
6 from the defendant by evidence satisfying you
7 of the defendant's guilt beyond a reasonable
8 doubt. The presumption of innocence is not
9 mere legal theory. It is not just a legal
10 phrase. It is a substantial right to which
11 every defendant is entitled unless you, the
12 jury, are satisfied from the evidence of the
13 Defendant's guilt beyond a reasonable doubt.

14 Now, the State has the burden of
15 proving the defendant guilty beyond a reason-
16 able doubt. Some of you may have served as
17 jurors in civil cases where you were told
18 that it is only necessary to prove that a
19 fact is more likely true than not true, such
20 as by the greater weight or the preponderance
21 of the evidence. In criminal cases, the
22 State's proof must be more powerful than
23 that. It must be beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the

1 defendant's guilt. There are very few things
2 in this world that we know with absolute
3 certainty. And in criminal cases, the law
4 does not require proof that overcomes every
5 possible doubt.

6 If based on your consideration of
7 the evidence you are firmly convinced that
8 the defendant is guilty of the crime charged,
9 you must find the defendant guilty.

10 If, on the other hand, you think
11 there is a real possibility that the
12 defendant is not guilty, you must give the
13 defendant the benefit of the doubt and find
14 him not guilty.

15 Now, there are two kinds of
16 evidence, which are generally presented
17 during a trial, direct evidence and
18 circumstantial evidence.

19 Direct evidence is the testimony of
20 a person who claims to have actual knowledge
21 of a fact, such as an eyewitness. It is
22 evidence which immediately establishes the
23 main fact to be proved.

24 Circumstantial evidence is proof of
25 a chain of facts and circumstances indicating

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1 the existence of a fact. It is evidence,
2 which immediately establishes collateral
3 facts, from which the main fact may be
4 inferred. Circumstantial evidence is based
5 on inference and not on personal knowledge or
6 observation.

7 The law makes absolutely no
8 distinction between the weight given to
9 either direct or circumstantial evidence, nor
10 is a greater degree of certainty required of
11 circumstantial evidence than of direct
12 evidence. You should weigh all of the
13 evidence in the case.

14 After weighing all of the evidence,
15 if you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must
17 find the defendant not guilty.

18 And that's sort of a mouthful with
19 regard to circumstantial evidence and direct
20 evidence. I like to give a simple example,
21 what I consider direct and circumstantial
22 evidence. And it's very simple. If you go
23 outside and you look up in the sky and you
24 see a jet plane crossing -- and you're
25 looking at the jet plane, that's direct

1 evidence. You're seeing it. You know what
2 it is.

3 Let's say you go outside a few
4 minutes later, you look up in the sky. You
5 don't see that jet plane, but you see that
6 vapor trail that follows that jet plane.
7 That's what I consider circumstantial
8 evidence. It's not direct because you didn't
9 see the plane, but you know -- you can infer
10 from the fact that you saw that vapor trail,
11 that there has been a plane, a jet plane
12 flying in that sky. That is my simple
13 explanation with regards to that.

14 Now, necessarily you must determine
15 the credibility of witnesses who have
16 testified in this case. Credibility simply
17 means believability. It becomes your duty as
18 jurors to analyze and to evaluate the
19 evidence and determine which evidence
20 convinces you of its truth.

21 In determining the believability of
22 witnesses who have testified in this case,
23 you may believe one witness over several
24 witnesses or several witnesses over one
25 witness. You may believe a part of the

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1 testimony of a witness and reject the
2 remaining part of the testimony of that same
3 witness. You may believe the testimony of a
4 witness in its entirety or reject the
5 testimony of a witness in its entirety. You
6 may consider whether any witness has
7 exhibited to you any interest, bias,
8 prejudice or other motive in this case. You
9 may also consider the appearance and manner
10 of a witness while on the witness stand.

11 Constructive presence: A person may
12 be constructively present at the commission
13 of a crime, even though the person is some
14 distance away from the actual scene, if it is
15 shown beyond a reasonable doubt that the
16 person played a role in the commission of the
17 crime as a result of some prior arrangement.

18 Now, we had one expert witness that
19 testified, one individual who was qualified;
20 the lab technician. The rules of evidence
21 ordinarily do not permit witnesses to testify
22 to opinions or conclusions. An exception to
23 this rule exists for witnesses we call expert
24 witnesses. A witness, who by education and
25 experience has become an expert in some art,

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1 science, profession, or calling may state an
2 opinion as to relevant and material matter in
3 which the witness claims to be an expert and
4 may also state the reasons for his opinion.

5 You should consider any expert
6 opinion received into evidence in this case,
7 and like any other evidence, give it the
8 weight you think it deserves. If you decide
9 that the opinion of an expert witness is not
10 based on sufficient education and experience
11 or if you conclude that the reasons given in
12 support of the opinion are not sound or that
13 the opinion is outweighed by other evidence,
14 you may disregard the opinion entirely.

15 An expert witness's testimony is to
16 be given no greater weight than that of other
17 witnesses simply because the witness is an
18 expert. Further, you are not required to
19 accept an expert's opinion, even though it is
20 not contradicted.

21 Now, in this case the Defendant, Mr.
22 Richardson, did not testify. I instruct you
23 and emphasize that the fact the Defendant did
24 not testify is not a factor to be considered
25 by you in any to your deliberation and in

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1 your consideration on the question of the
2 guilt or the innocence of the Defendant. It
3 must not be considered by you in any manner
4 whatsoever.

5 A defendant has a constitutional
6 right to remain silent. And the assertion of
7 this right must not be considered by you in
8 your deliberations. I repeat, under your
9 oath you are to draw no conclusion whatsoever
10 from the fact that the defendant in this case
11 did not testify. The fact that this
12 defendant did not testify should not even be
13 discussed in the jury room.

14 The burden of proof as I have stated
15 to you is on the State. The defendant is not
16 required to prove his innocence. The burden
17 of proof remains on the State to prove guilt
18 beyond a reasonable doubt.

19 An issue in this case is the
20 identification of the Defendant as the person
21 who committed the crime charged. The State
22 has the burden of proving identity beyond a
23 reasonable doubt. You must be satisfied
24 beyond a reasonable doubt that the accuracy
25 of the identification of the Defendant before

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1 you may convict the Defendant.

2 Identification testimony is an
3 expression of belief or impression by a
4 witness. You must determine the accuracy of
5 the identification of the Defendant. You
6 must consider the believability of each
7 identification witness in the same way as any
8 other witness. You may consider whether the
9 witness had an adequate opportunity to
10 observe the offender at the time of the
11 offense. This will be affected by things
12 like how long or short a time was available,
13 how far or close the witness was, the
14 lighting conditions and whether the witness
15 had the chance to see or know the person in
16 the past.

17 Once again, I instruct you, the
18 burden of proof on the State extends to every
19 element of the crime charged. And this
20 specifically includes the burden of proving
21 beyond a reasonable doubt the identity of the
22 Defendant as a person who committed the
23 crime.

24 If, after examining the testimony
25 you have a reasonable doubt as to the

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1 accuracy of the identification, you must find
2 the Defendant not guilty.

3 In order to establish criminal
4 liability, criminal intent is required. For
5 example, the mental state required to be
6 proven by the State for a particular crime
7 might be purpose, intent, knowledge,
8 recklessness or criminal negligence. The
9 criminal intent must be proven by the State
10 beyond a reasonable doubt.

11 Criminal intent is always a matter
12 that must be determined by the jury from the
13 circumstances surrounding the situation.
14 There is no way to prove intent to a
15 mathematical certainty. There is no way
16 medical science can dissect a person's brain
17 and determine what the person had in mind.
18 So the law says that criminal intent may be
19 inferred from the circumstances shown to have
20 existed. This is how you make a determina-
21 tion of whether or not the element requiring
22 intent was present.

23 It's not necessary to establish
24 intent by direct and positive evidence. But
25 intent may be established by inference in the

1 same way as any other fact by taking into
2 consideration the acts of the parties and all
3 the facts and circumstances of the case.

4 Criminal intent is a mental state, a
5 conscious wrongdoing. It is up to you to
6 determine what the Defendant intended to do
7 based on the circumstances shown to have
8 existed. Criminal intent can arise from
9 action or a failure to act. It may arise
10 from negligence, recklessness or an
11 indifference to duty or the consequences that
12 is considered by the law to be the equivalent
13 of criminal intent.

14 Probable cause is a good-faith
15 belief that a person has committed a crime
16 and that belief rests on grounds that would
17 make an ordinarily prudent and cautious
18 person from the circumstances to have the
19 same belief.

20 Probable cause for arrest in
21 misdemeanor cases without a warrant is
22 something more than a mere suspicion that the
23 person committed a crime. An arrest made on
24 a hunch, a mere belief or a guess unsupported
25 by facts, circumstances for credible

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1 information showing that the person has
2 committed a crime is not made on probable
3 cause. Probable cause is somewhere between
4 suspicion and sufficient evidence to convict.
5 In deciding whether there was probable cause
6 to arrest, probability cannot be based on
7 speculation, but must be based on factual and
8 practical considerations of everyday life on
9 which reasonable and prudent and cautious
10 people act.

11 Now, we've had the tape and a
12 statement alleged to have been made by the
13 Defendant admitted into evidence in this
14 case. While the Court has determined that
15 the statement is admissible, I instruct you
16 that you make the ultimate decision of
17 whether or not the Defendant made the
18 statement.

19 If the Defendant did make the
20 statement, you must determine whether the
21 statement was made by the defendant
22 voluntarily and of his own free will. This
23 means that the statement was not caused by
24 pressure, force, fear, threats, coercion or
25 intimidation or by hope or a promise of

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1 leniency or a reward of any kind. In
2 determining whether the statement was
3 voluntary, you should consider both the
4 characteristics of the defendant and the
5 details of the questioning. There was no
6 questioning actually in this case. It was
7 just a phone call.

8 Some of the factors that you must
9 consider are the age of the defendant, the
10 defendant's education or lack of education.
11 The defendant's mental ability or capacity,
12 the defendant's IQ or intelligence, the
13 defendant's background and environment, the
14 place and length of detention, the nature of
15 the questions and the advice or lack thereof
16 to the defendant of his constitutional
17 rights, including but not limited to: a
18 right to remain silent, that any statement
19 may be used against him in a court of law,
20 the right to have a lawyer present, and if he
21 could not afford a lawyer, a lawyer would be
22 appointed to represent him without cost, and
23 that he could stop making a statement at any
24 time.

25 You must carefully consider all of

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The Court's Charge on the Law

1 the surrounding circumstances before you give
2 any weight to an alleged statement. The
3 State has the burden of proving beyond a
4 reasonable doubt that the alleged statement
5 was voluntary.

6 If you determine it was voluntary,
7 you may give the statement any further
8 consideration that you deem proper. You must
9 decide what weight, if any, should be given
10 to the alleged statement.

11 And if you determine the alleged
12 statement was not the free and voluntary
13 statement of the defendant, you should not
14 consider the statement at all.

15 If a crime is committed by two or
16 more people who are acting together in
17 committing a crime, the act of one is the act
18 of all. A person who joins with another to
19 commit an unlawful act is criminally
20 responsible for everything done by the other
21 person, which happens as a probable or
22 natural consequence of the acts done in
23 carrying out the common plan and purpose.

24 For example, two people can be
25 guilty of killing another person when only

1 one of the two had a gun. There was only one
2 bullet and only one of the two fired the shot
3 that caused the death.

4 If two or more people are acting
5 together -- are together, acting together,
6 assisting each other in committing the
7 offense, the act of one is the act of all or
8 as it's sometimes is said, the hand of one is
9 the hand of all.

10 Prior knowledge that a crime is
11 going to be committed without more is not
12 sufficient to make a person guilty of that
13 crime. Mere knowledge that another person is
14 going to commit a crime, even if a defendant
15 is present when the crime is committed, is
16 not sufficient to convict the defendant as a
17 principal. Guilt, as a principal, is shown
18 by action or constructive presence at the
19 scene as a result of prior arrangement.
20 Therefore, a finding of a prior arranged plan
21 or common scheme is necessary for a finding
22 of guilt as a principal.

23 The State must prove beyond a
24 reasonable doubt by competent evidence the
25 theory of the hand of one is the hand of all.

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1 A "principal" in a crime is one who
2 either actually commits the crime or who is
3 present, aiding, abetting or assisting in
4 committing the crime. When a person does an
5 act in the presence of and with the
6 assistance of another the act is done by
7 both. If there are two or more acting with a
8 common plan or intent or present at the
9 commission of a crime, it does not matter who
10 actually commits the crime, all are guilty.
11 The hand of one is the hand of all.

12 Present at the commission of a crime
13 means to be sufficiently near to aid and abet
14 and assist in the commission of a crime.
15 However, mere presence at the scene of a
16 crime is not sufficient to convict one as a
17 principal on the theory of aiding and
18 abetting. Intent is also a necessary element
19 for there must have been a common design or
20 intent to commit the crime and the crime must
21 have been committed pursuant thereto with the
22 person aiding and abetting by some overt act.

23 "Intent" means to continue the
24 result, which actually occurs, not
25 accidentally or involuntarily. Intent may be

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1 shown by acts and conduct of the Defendant
2 and other circumstances from which you may
3 naturally and reasonably infer intent.

4 The State must prove these elements,
5 again, beyond a reasonable doubt.

6 The Defendant is charged with
7 distribution of cocaine base, crack cocaine.
8 The State must prove beyond a reasonable
9 doubt that the Defendant distributed cocaine
10 base, crack cocaine.

11 "Distribute" means to deliver or to
12 actually, constructively or attempt to
13 transfer a drug, other than by administering
14 or dispensing. "Deliver" means to actually
15 constructively or attempt to transfer a drug.
16 The transfer can involve an exchange for
17 money, a barter or a gift. There does not
18 have to be anything given in exchange for the
19 drugs for a transfer to constitute
20 distribution.

21 Conspiracy: The Defendant is
22 charged with conspiracy. The State must
23 prove beyond a reasonable that the defendant
24 combined with one or more persons for the
25 purpose of committing an unlawful act or

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1 committing a lawful act by unlawful means.

2 It must be a mutual understanding, agreement
3 or common intention and plan.

4 Mere passing knowledge of or consent
5 to the criminal conduct of another is not
6 enough to make a person a conspirator. There
7 must be guilty knowledge and participation.

8 Similarly, the mere fact that the
9 defendant may have associated with another
10 person or met with another person and
11 discussed the common aims and interests, does
12 not necessary establish proof of the
13 existence of a conspiracy or that the
14 defendant was involved in a conspiracy.

15 On the other hand, it is not
16 necessary that the agreement be a formal one,
17 that it be in writing, that the persons hold
18 a meeting and express state the terms of the
19 common plan, or that the agreement be stated
20 in words between. The agreement of a
21 criminal conspiracy may come into being
22 through an implied, mutual understanding.
23 The willful, intentional and knowing adoption
24 by two or more persons of a common plan is
25 sufficient.

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1 No overt acts need to be shown to
2 establish a conspiracy. A conspiracy may be
3 shown by circumstantial evidence and the
4 conduct of the parties. In order to convict
5 a defendant of conspiracy, the State must
6 prove beyond a reasonable doubt not only that
7 the defendant knew of the unlawful conduct,
8 but that the defendant agreed to combine with
9 the other person for the purpose of
10 accomplishing the unlawful act.

11 Now, ladies and gentlemen, there are
12 four possible verdicts which you may find in
13 this case:

14 Guilty of distribution of cocaine
15 base, crack cocaine;

16 Not Guilty of distribution of
17 cocaine, crack cocaine;

18 Guilty of conspiracy;

19 Not Guilty of conspiracy.

20 There's no significance whatsoever in the
21 order in which I just stated these possible
22 verdicts. It's simply that one must be
23 stated before the other.

24 Now, ladies and gentlemen, your
25 verdict must be a unanimous one. Mr.

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The Court's Charge on the Law

1 Foreman, when the jury agrees on the verdict,
2 you will write the verdict on the verdict
3 form, which I have prepared for you. And you
4 will sign your name as the foreperson. You
5 then knock on the jury door and inform the
6 bailiff that you have reached a verdict. At
7 that time, we will receive you back into the
8 courtroom.

9 I ask that you now retire to your
10 jury room but do not begin your deliberations
11 yet. You're not to begin until the clerk and
12 the bailiff have told you to begin that.
13 We'll have to get the exhibits and make sure
14 they're all in order and we'll send that in
15 to you. And there may be some matters of law
16 I need to discuss with the attorneys before
17 we start the deliberations.

18 So, if you would, if you will now
19 retire to your jury room. Do not begin the
20 deliberations until we tell you to. Thank
21 you.

22 (JURY OUT @ 4:15 P.M.)

23 THE COURT: Okay. Any exceptions
24 to the charge by the State?

25 SOLICITOR MILLER: None from the

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1 State, Your Honor.

2 THE COURT: From the Defendant?

3 MR. SARRATT: None from Defense.

4 THE COURT: Okay. All right.

5 Counsel, let's make sure we've got the
6 exhibits, if you'll make sure before we send
7 those in.

8 (COUNSEL APPROVAL OF EXHIBITS)

9 (JURY IN DELIBERATION @ 4:20 P.M.)

10 (COURT IN RECESS)

11 (JURY NOTIFICATION @ 4:30 P.M.)

12 (DEFENDANT PRESENT)

13 (JURY IN)

14 THE COURT: All right. Before I
15 ask about the verdict, Mr. Thomas David
16 (Alternate). All right. You are -- I should
17 actually have excluded you from the jury pool
18 when you went back in. But did you
19 participate in the deliberation of the
20 verdict?

21 JUROR NUMBER 54: No.

22 THE COURT: Okay. So you did not?

23 JUROR NUMBER 54: No, sir.

24 THE COURT: Okay. All right, sir.

25 Okay. All right, sir.

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VERDICT

1 Now, with regards to the verdict. Mr.
2 Foreman, did the jury reach a verdict?

3 FOREMAN: Yes, Your Honor.

4 THE COURT: Okay. Would you hand
5 that up, please?

6 FOREMAN: (Tenders)

7 BAILIFF: (Tenders verdict for
8 to the judge)

9 THE COURT: (Upon review), all
10 right. Madam Clerk, will you publish the
11 verdict? Mr. Richardson, please stand.

12 DEFENDANT: (Complies).

13 CLERK: In the case of 2016-GS-23-
14 02217, the State of South Carolina versus
15 Michael Richardson, we, the jury, find the
16 Defendant, Michael Richardson guilty of
17 conspiracy.

18 And in the case of 2016-GS-23-02216,
19 we, the jury, find the Defendant, Michael
20 Richardson guilty of distribution of cocaine
21 base, crack cocaine.

22 If this is your verdict, please
23 raise your right hand?

24 (UNANIMOUS AFFIRMATIVE RESPONSE)

25 CLERK: Thank you.

1 THE COURT: Okay. Anything from
2 the Defendant concerning the jury? Poll the
3 jury or anything?

4 MR. SARRATT: No, not to poll the
5 jury.

6 THE COURT: Okay. Anything from
7 the State?

8 SOLICITOR MILLER: Nothing from the
9 State, Your Honor.

10 THE COURT: All right. Ladies and
11 gentlemen, this now concludes your service as
12 jurors. It's my understanding that this
13 concludes your service for the week, so you
14 will be excused after today for the remainder
15 of the week.

16 I want to advise you that if someone
17 approaches you and wants to talk to you about
18 your verdict, your decision, it's your right
19 to either talk to them about it or not talk
20 to them about it. If you decide that you
21 want to talk them about it and halfway during
22 the conversation decide you don't want to
23 talk about it anymore, you can tell them
24 you're not going to talk about it anymore.
25 If someone were to harass you or try to

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VERDICT

1 attempt to talk to you and you don't want to
2 talk to them, if you would just inform the
3 clerk of court, then we'll take care of that
4 business if that does occur. I don't think
5 anything like that will happen. But the
6 decision to talk to somebody if you so desire
7 or not so.

8 Again, I want to thank you, as you
9 were thanked earlier in the week for jury
10 service. I appreciate what you've done. You
11 have provided a valuable service to the State
12 of South Carolina. You're keeping our
13 judicial system working, by being willing to
14 serve as jurors. It's not a pleasant task.
15 It's never a pleasant task to sit in judgment
16 of one of your fellow citizens, but as I said
17 earlier, it's the best system I've seen
18 devised in the world so far. So, again,
19 thank you very much.

20 If you wish to leave, you may leave.
21 If you want to stay around for the sentencing
22 of the Defendant, I have no problems with you
23 doing that. But you're excused from the jury
24 box at this point in time. Be sure and
25 collect all your personal items before you

1 leave.

2 (JURY DISMISSED)

3 THE COURT: All right. MR.
4 Sarratt.

5 MR. SARRATT: And, Your Honor,
6 outside the presence of the jury I just make
7 my post-trial motions and renew all previous
8 objections and renew my Motion for directed
9 verdict and move the Court for a new trial.
10 I understand we didn't poll the jury and the
11 alternate indicated he did not participate in
12 deliberations. I feel that I have an
13 obligation to my client to make a motion for
14 a new trial based on that. And, again, just
15 to renew my directed verdict.

16 THE COURT: Okay. All right. I
17 am going to deny your motions, including your
18 motion for a new trial with regard to the
19 alternate being in the jury room. The
20 alternate has clearly on the record indicated
21 he did not participate in deliberations.
22 There's an older case where the alternate was
23 allowed to go in the jury -- and actually
24 participate in the deliberations for a while
25 because of a curative instruction to the

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Defense Motion for New Trial

1 jury, the Supreme Court found that was not
2 any type of reversible error. So, in this
3 case, we've got clearly an alternate who said
4 he did not participate in the deliberations.
5 So I don't see any problem with that case. I
6 respectfully deny your motion.

7 SOLICITOR MILLER: And just for the
8 record, the alternate also did not raise his
9 hand as a part of the verdict and all the
10 actual jury members raised their hands.

11 THE COURT: Thank you for that,
12 noting that for the record, Mr. Miller.

13 Okay. All right.

14 All right. Mr. Sarratt, be glad to
15 hear from your first.

16 MR. SARRATT: Thank you, Your Honor.
17 Just by way of brief explanation as to how we
18 are on the trial docket and why we weren't
19 able to resolve this by way of a plea,
20 initially the offer from the State was to
21 reduce this to a second offense and recommend
22 the minimum five years. My client
23 entertained that offer, but took the position
24 and I believe him that he was a drug user,
25 you know. And he maintains he's not a drug

1 dealer. He does have a history of this kind
2 of thing, but that he's not out there making
3 a ton of money. And he's a public defender
4 client. He couldn't afford his bond to get
5 out, that he just wanted some kind of drug
6 treatment, inpatient rehab, that kind of
7 thing. Of course, with the minimum five
8 years that was not really going to be
9 possible unless there was a suspended
10 sentence, which the State was not willing to
11 recommend. And so we weren't able to reach
12 an agreement on that. And so this case was
13 placed on the docket for trial today.

14 Now, again, today -- and we talked
15 about this briefly off the record, so I'll
16 say it for the record, we sort of went round
17 and round as to whether to plead just
18 straight up to the third offense, understand-
19 ing there was no possibility to getting back
20 to the reduction.

21 And, you know, in talking about that
22 my client expressed some concern that he
23 believes that his criminal history has been
24 misstated, that he only has one prior offense
25 within ten years that would make this a

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1 second offense. Now, I have gone and done my
2 due diligence and looked on the public index
3 out of Spartanburg and I did find three
4 convictions from 2007, that I think would
5 qualify this to be a third offense. In
6 addition, the Solicitor's provided me with
7 certified copies of those convictions.
8 Certainly, I don't see any error with those.
9 It does appear that it is correct and it
10 should be a third offense. However, my
11 client maintains that he was incarcerated
12 during the period of time in which these
13 allegations -- the allegations are from
14 conduct that takes place between September
15 and November 2006. He says he was locked up
16 in Laurens at the time. I can't find
17 documentation on the public index or anything
18 that would show that that's the case. And I
19 can't really do the math based on his
20 criminal history to show for sure that he
21 would have been incarcerated during that
22 time. So all that is to say, you know, we
23 were just hung up on -- he didn't want to
24 plead to the third offense when in his head,
25 it really only should have been second.

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1 I'm not going to ask Your Honor to
2 sentence him as a second because, again, I
3 think the documentation is there to show that
4 this is a third offense. If, after the fact
5 we can come up with something from SCDC
6 showing that he was, in fact, incarcerated, I
7 suppose we could do a motion to reconsider,
8 that kind of thing. But I did want to put
9 that on the record just to make his concerns
10 clear.

11 Now, in terms of the sentence, I
12 would ask you to sentence him to the minimum
13 ten years, then five years on the conspiracy
14 concurrent. He is fifty-five years old. You
15 know, with the ten years, he's going to be
16 sixty-five -- or sixty-four, I guess. He's
17 done a year -- at the earliest when he gets
18 out. Anything higher than that approaches a
19 life sentence for this client.

20 And while the jury has spoken and he
21 is found guilty, you know, it's .12 or .18
22 grams of cocaine. It wasn't a large amount.
23 It's, you know, a -- it was a street-level
24 operation of low-level dealers. It seems
25 that he was just a guy who either had it or

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1 knew where to get it and got caught up in a
2 sting. He knows he shouldn't have done it.
3 Knows he shouldn't have been there, knows he
4 made a mistake.

5 But, again, I think anything fifteen
6 or above is a life sentence for him. And I
7 at least hope that he could have some
8 opportunity to get back out and continue on
9 with some point in his life. So, you know,
10 I'd ask you to sentence him to the minimum of
11 ten and then a five concurrent on the
12 conspiracy.

13 THE COURT: Thank you, Mr.
14 Sarratt. Mr. Richardson?

15 DEFENDANT: Yes, sir.

16 THE COURT: You agree with what
17 your lawyer said?

18 DEFENDANT: Yes, sir. I do.

19 THE COURT: What do you want to
20 say?

21 DEFENDANT: I hope you do give me
22 the minimum on it because, you know, anything
23 else -- I'm fifty-five years old. Anything
24 else, like he said, would be like a life
25 sentence. You know what I'm saying? I know

1 -- I'm admitting to my wrong and I apologize.
2 But, I mean, I just -- I was under the
3 influence.

4 When I got arrested my warrant said
5 it was a second offense, you know, when I got
6 arrested. So, that's what I was based on
7 going. You know, I wasn't trying to
8 manipulate the system or nothing. That was
9 just what I was going on, that's what my
10 warrant said, second offense.

11 THE COURT: Anything else?

12 DEFENDANT: No, sir.

13 THE COURT: Mr. Miller.

14 SOLICITOR MILLER: Your Honor,
15 first of all I'll hand up certified
16 convictions showing this would be a third or
17 subsequent offense.

18 In regards to the warrant, the
19 charging document as far as going back
20 through history we can determine the offenses
21 earlier.

22 The first offer on this case was a
23 second offense, with the recommendation of a
24 minimum of five years. There was another
25 recommendation on this case after that.

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1 First offer was extended a few months. And
2 then I extended it for another month. It
3 expired.

4 I spoke to Mr. Sarratt about perhaps
5 putting this case on the trial docket, but
6 meanwhile the plea to the second offense five
7 year had expired.

8 I offered a plea to the third
9 offense recommendation with a minimum of ten
10 years.

11 For the Court's knowledge he also
12 does have a lengthy criminal record dating
13 back to 1980.

14 THE COURT: In addition to these?

15 SOLICITOR MILLER: Those are
16 included in the list but there are more in
17 addition to this.

18 THE COURT: If you'd read those
19 others to me, I'd appreciate it.

20 SOLICITOR MILLER: Yes, Your Honor.

21 1980, housebreaking, grand larceny;

22 1981, grand larceny;

23 1987, forgery, a non-support;

24 1989, forgery;

25 1992, petit larceny, burglary third,

1 forgery times six;

2 1993, failure to appear, receiving
3 stolen goods;

4 1999, fraud check;

5 2000, fraud check;

6 2002, shoplifting, petit larceny;

7 2003, trespassing;

8 2004, possession of crack cocaine,
9 shoplifting. We had another property
10 offense;

11 2005, two shopliftings;

12 2006, shoplifting;

13 2007, shoplifting, possession of a
14 stolen vehicle.

15 And in 2007, I've handed you up the
16 other three drug charges from 2007;

17 2009, shoplifting;

18 2011, public misconduct;

19 2012, another property offense; and,

20 2013 shoplifting.

21 MR. SARRATT: That's certainly a
22 lengthy record. It started out bad, not that
23 it got necessarily better. But I will say in
24 the past decade it sounds like a whole lot of
25 shoplifting, which to me is indicative of

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1 somebody with a drug problem.

2 THE COURT: How much time have you
3 served in prison, Mr. Richardson?

4 DEFENDANT: Probably about thirty
5 years, sir.

6 THE COURT: Sir?

7 DEFENDANT: Probably about thirty
8 years.

9 MR. SARRATT: He means altogether,
10 for everything.

11 DEFENDANT: Right.

12 THE COURT: How much time have you
13 actually spent in prison?

14 DEFENDANT: About thirty years.

15 THE COURT: Thirty years?

16 DEFENDANT: Yes, sir. I mean, I'm
17 just being honest with you, you know. In and
18 out, back and forth.

19 THE COURT: And what's the longest
20 stretch of time you've done?

21 DEFENDANT: I think eight years, I
22 think. I think. I'm not sure.

23 MR. SARRATT: I think there were a
24 couple of five-year stints.

25 DEFENDANT: Yeah, I caught a five-

1 year sentence. But all my shoplifting, all
2 my shoplifting, all my crimes had to do with
3 drugs.

4 THE COURT: They're still crimes.

5 DEFENDANT: Yes, sir, they are.

6 THE COURT: Still.

7 DEFENDANT: Yeah, they still.

8 Yeah, you right.

9 THE COURT: I don't care what it
10 was for.

11 DEFENDANT: You're right. You're
12 right. I agree with that.

13 THE COURT: It's against the law.

14 DEFENDANT: Yes, sir.

15 THE COURT: And this is your third
16 time around. I'm convinced that this is a
17 third offense, despite what you say.

18 DEFENDANT: Yes, sir. I under-
19 stand.

20 THE COURT: If you want to hire
21 somebody to help you figure out that it's not
22 a third, that's up to you. But for
23 sentencing purposes, I consider this a third
24 offense.

25 DEFENDANT: Yes, sir.

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Defense Motion for New Trial

1 THE COURT: You're a menace to
2 society.

3 DEFENDANT: No, sir.

4 THE COURT: You may say you're out
5 there using ---

6 DEFENDANT: Yes, sir.

7 THE COURT: --- but you were
8 selling to people in order to use for
9 yourself. You got caught this time. How
10 many other sales did you make that night
11 before they pulled off this operation?

12 DEFENDANT: I didn't.

13 THE COURT: Well, you say that, of
14 course.

15 DEFENDANT: Yes, sir.

16 THE COURT: But I don't know that.

17 DEFENDANT: You're right.

18 THE COURT: This wasn't your first
19 time you were out there. I guarantee you
20 that either. It wasn't the first time you
21 ever sold to support your habit; was it?

22 DEFENDANT: No, sir, it wasn't.

23 THE COURT: Okay. And not only
24 are keeping yourself under the demon of
25 drugs, you're helping other people do the

1 same thing. You are fifty-five years old --
2 you're in your fifties doing this stuff?

3 DEFENDANT: Yes, sir, I am.

4 THE COURT: If you want me to take
5 your age into consideration, you should have
6 quit when you were younger.

7 DEFENDANT: You're right.

8 THE COURT: As Mr. Sarratt said,
9 the jury has spoken in this case. They found
10 you guilty of both of these offenses. And
11 you put the State of South Carolina to the
12 trouble of trying this case.

13 DEFENDANT: Yes, sir.

14 THE COURT: I don't know if you
15 wanted to make that part of the record, if
16 you do?

17 SOLICITOR MILLER: If I could make
18 this part of the record, as a Court's
19 Exhibit.

20 COURT REPORTER: Thank you.
21 Court's Exhibit Number 1.

22 (SO ENTERED AS COURT'S EXHIBIT 1)

23 SOLICITOR MILLER: Or State's.

24 THE COURT: You can make it a
25 Court's Exhibit if you want to.

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Sentence

1 SOLICITOR MILLER: Didn't want to
2 speak for the Court on that.

3 THE COURT: All right. Anything
4 else from anyone?

5 SOLICITOR MILLER: Nothing from the
6 State, Your Honor.

7 MR. SARRATT: Nothing from
8 Defense.

9 THE COURT: All right. Mr.
10 Richardson, with regards to the conspiracy
11 charge ---

12 DEFENDANT: Yes, sir.

13 THE COURT: --- the sentence of
14 the Court is you be committed to the State
15 Department of Corrections for a term of five
16 (5) years.

17 With regards to the distribution of
18 crack cocaine charge, the sentence of the
19 Court is you be committed to the State
20 Department of Corrections for a term of
21 twenty (20) years.

22 Your five-year sentence will run
23 concurrent with the twenty-year sentence.
24 You can make a choice whether you have to
25 make a life sentence out of this or not. You

1 made the choice to sell drugs even at a later
2 age in your life. It's not my problem. Good
3 luck to you.

4 SOLICITOR MILLER: Thank you, Your
5 Honor.

6 (COURT IN RECESS)

7 (TRANSCRIPT CONCLUDED)
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Certificate of Court Reporter

STATE OF SOUTH CAROLINA

)

)

CERTIFICATE

COUNTY OF GREENVILLE

)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on January 18,
2017, before The Honorable Roger Henderson;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.

Alexander Garrison

Deborah Garrison

Greenville, South Carolina

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville, 268870)Michael A. Richardson)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2017-CP-23- 03732)FILED-CLERK OF COURT
PAUL WICKENS
GREENVILLE CO. SC

2017 JUN -8 PM 3:25

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
Columbia, South Carolina
2. Name and location of Court which imposed sentence Greenville County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015A2330210811, 2015A2330210809, Ind. 2016-GS-23-2216
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 11, 2017
- (b) 20 years 85%
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- ~~(b)~~ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Counsel Failed To appeal, after I Told To appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was Told by Counsel That he will appeal but did not.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) The Court was without Jurisdiction to impose Sentence
- (c) Denied a Fair and impartial Jury - Jury misconduct.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failing To File a Notice of appeal
- (b) The applicant never had a Third offense For (L.S.D. Shed. 11-Cocaine) 1st.
- (c) The Court allowed The alternate Juror into The Jury Room during Deliberation
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A.
- ii. _____
- iii. _____
- iv. _____

With Leave To Amend.

(c) the disposition thereof:

- i. N/A.
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A.
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A.
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A.
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A.
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) The Grounds set forth in item 10 has not been previously
 (b) presented because Trial Counsel Failed To File a Direct
 (c) appeal.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Stuart Sarrett, E.S.q.
Greenville, S.C.

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Belated "white appeal", Reversal for New Trial.

Applicant is entitled to a new Trial on The Grounds That

his warrant shows only a second offense, making the state enhancement

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Michael A. Richardson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 24
day of May, 2017.



Notary Public (L.S.)

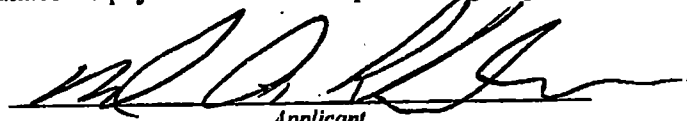
My Commission Expires: 8/14/2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael A. Richardson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

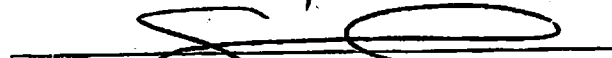
(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

24 day of May, 2017.


Notary Public

My Commission Expires: 9/16/2020

1, STATE of South Carolina, 269870 Michael A. Richardson, Applicant, VS. The State, <u>Respondent.</u>	County of Greenville Court of Common Pleas Case No. Motion To Amend Post- Conviction Application
--	---

The above Applicant moves To amend his application For Post-Conviction Relief To include The Following Grounds Of ineffective assistance of Counsel:

- 1, Trial Counsel was ineffective For Filing a notice of appeal When asked to do so, and applicant did not waive his Right to appeal,
- 2, Trial Counsel was ineffective For Failing To conduct an adequate and factual pretrial investigating, and Failing To prepare prior to Trial,
- 3, Trial Counsel was ineffective For Failing To object to Juror misconduct,
- 4, Trial Counsel was ineffective For Failing To move To suppress evidence seized without a proper Chain of Custody,
- 5, Trial Counsel was ineffective For Failing to move For a Direct Verdict on The unCredible evidence of The witness

2,

For The State, and The Use of The Tainted evidence,

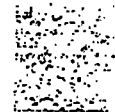
6. Trial Counsel was ineffective for failing to object to evidence without a sufficient chain of custody,

7. Trial Counsel was ineffective for failing to move for a Franks v. Delaware hearing prior to trial.

5/24/17

Michael D. Richardson

4460 Broad River Road
Columbia, S.C. 29210



\$ 001.40

Greenville County Clerk of Court
305 East North Street
Greenville, S.C. 29601

2017-CP-23-03732



LEGAL MAIL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Michael A. Richardson, #268870,	)	Case No.: 2017-CP-23-3732
	)	
Applicant,	)	
	)	RETURN AND PARTIAL
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on June 8, 2017, would respectfully show this Court:

I. Procedural Posture

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In August 2016, the Greenville County Grand Jury indicted Applicant for distribution of cocaine-base (crack cocaine) (2016-GS-23-2216) and conspiracy (2016-GS-23-2217). The charges resulted from a December 2015 incident in which Applicant, along with a codefendant, conspired and sold crack cocaine to an undercover police officer. (Tr. p. 37-38). Stuart Sarratt, Esquire represented Applicant. Assistant Solicitor Walker Miller, Esquire prosecuted the case. On January 18, 2017, Applicant proceeded to trial before the Honorable Roger Henderson. The jury found Applicant guilty as indicted of both charges. Judge Henderson sentenced Applicant to imprisonment for twenty years for distribution of crack cocaine — 3rd offense and five years for conspiracy, to be served concurrently. Applicant did not appeal his conviction or sentence.

Attached to this Return are the records of the Greenville County Clerk of Court regarding the

subject convictions, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Allegations Presented

In his application for post-conviction relief and the attached amendment to his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel was ineffective for [not] filing a notice of appeal when asked to do so, and Applicant did not waive his right to appeal."
 - b. "Failing to conduct an adequate and factual pretrial investigation and failing to prepare for trial."
 - c. "Failing to object to juror misconduct."
 - d. "Failing to move to suppress evidence seized without a proper chain of custody."
 - e. "Failing to move for a directed verdict on the uncredible evidence of the witness for the state and the use of tainted evidence."
 - f. "Failing to object to evidence without a sufficient chain of custody."
 - g. "Failing to move for Franks v. Delaware hearing prior to trial."
2. "The court was without jurisdiction to impose sentence."
 - a. "The applicant never had a third offense."
3. "Denied a fair and impartial jury – jury misconduct."
 - a. "The court allowed the alternate juror into the jury room during deliberation."

III. "Ineffective Assistance of Counsel" Allegation

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant alleges that his trial counsel failed to file an appeal despite being asked to do so. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass

upon all issues properly raised and argued as if the direct appeal has been perfected. As to Applicant's allegation that his trial counsel was ineffective for failing to file an appeal, Respondent submits that this allegation is frivolous and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held.

Applicant also alleges that trial counsel failed to adequately prepare for trial. To establish that counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Respondent submits that this allegation, like the rest of Applicant's allegations of ineffective assistance of counsel is without merit.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. "The court was without jurisdiction..." Allegation

Applicant was sentenced to twenty years for distribution of crack cocaine – 3rd offense, but he alleges that this was not actually his third offense so the court lacked jurisdiction to impose the sentence. This allegation is refuted by the record and was addressed by the trial judge, solicitor, and trial counsel. (Tr. p. 202). Applicant was given the opportunity to plead guilty to a distribution of crack cocaine – 2nd offense charge but willfully proceeded to trial instead. (Tr. p. 200). Moreover,

the trial court clearly had subject-matter jurisdiction in this case. Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Id. at 101. Applicant has not provided any sufficient reason why the trial court lacked jurisdiction to sentence him in this case, and there is no genuine issue of material fact regarding Applicant’s allegation that this was not his third offense. Therefore, Respondent submits that this allegation should be dismissed.

V. “Jury Misconduct” Allegation

Applicant finally alleges that he was deprived of a fair and impartial jury when an alternate juror was allowed to enter the jury room during deliberations. In U.S. v. Olano, 507 U.S. 725 (1993), the Supreme Court found that while the presence of an alternate juror during jury deliberations is a deviation from FRCP Rule 24(c) but held that the alternate juror’s presence independent of prejudice did not affect a substantial right of the defendant. In South Carolina, it is incumbent on the applicant to prove that he was denied a fair trial due to alternate person’s presence in the jury room. See State v. Bonneau, 276 S.C. 122, 276 S.E.2d 300 (1981). In State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999), the South Carolina Supreme Court affirmed the rule that the party alleging such juror misconduct has the burden of proving it. In this case, Applicant has set forth no evidence, nor has he raised any allegation, to evidence that he was prejudiced by the alternate juror’s presence in the jury room. Moreover, in Grovenstein, the court found that dialogue in which the judge questioned the alternate jurors about their involvement in the jury room cured any error. Id. Likewise, in this case, Judge Henderson acknowledged the fact that an alternate juror had been allowed into the jury room. Judge Henderson then questioned the alternate

juror to make sure the alternate juror did not participate in the deliberations. (Tr. p. 190). Respondent submits that Applicant has failed to make a *prima facie* case for juror misconduct and therefore requests that this allegation be dismissed.

VI. State's Assertion and Reservation of Rights

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII. Request for Evidentiary Hearing

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

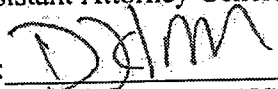
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

October 20, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MICHAEL A. RICHARDSON, 268870

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2017-CP-23-3732

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney W. Richey, Esquire
 Post Office Box 10916
 Greenville SC 29603

DATED this 20th day of October, 2017.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2017-CP-23-03732

MICHAEL ALLEN RICHARDSON,
APPLICANT,)

vs.)

STATE OF SOUTH CAROLINA,
RESPONDENT.)

TRANSCRIPT OF RECORD

ORIGINAL

February 23, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., JUDGE.

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

RODNEY W. RICHEY, ESQ.
Attorney for the Applicant

DESHAWN H. MITCHELL, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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INDEX (CONTINUED)EXHIBITS

(There were no exhibits introduced.)

P R O C E E D I N G S

1 THE COURT: The next case up, I believe, is
2 Mr. Richardson, who is, I believe, convicted of conspiracy
3 and distribution of crack cocaine. And I think he received
4 a 20-year sentence.
5

6 Solicitor, you want to call the case?

7 MR. MITCHELL: Yes, Your Honor.

8 May it please the Court --

9 THE COURT: Or Attorney General. Sorry.

10 MR. MITCHELL: That's quite okay.

11 This is 2017-CP-23-3732, Michael Richardson v. the
12 State of South Carolina. The Applicant is presently
13 confined in the South Carolina Department of Corrections
14 pursuant to orders of commitment of the Greenville County
15 Clerk of Court.

16 In August of 2016, the Greenville County Grand Jury
17 indicted Applicant for distribution of cocaine base and
18 conspiracy. Mr. Stuart Sarratt represented the Applicant.

19 On June 18th, 2017, the Applicant proceeded to trial
20 before the Honorable Roger Henderson. The jury found
21 Applicant guilty as indicted on both charges. Judge
22 Henderson sentenced the Applicant to imprisonment for
23 20 years for distribution of crack cocaine third offense,
24 and five years for conspiracy to be served concurrently.

25 The Applicant did not appeal his application -- his

1 conviction or sentence. He filed a post-conviction relief
2 application on June 8th, 2017, alleging ineffective
3 assistance of counsel.

4 He's present in the courtroom today and represented
5 by Mr. Richey.

6 THE COURT: All right. Mr. Richey, are y'all ready
7 to proceed?

8 MR. RICHEY: We're ready to proceed.

9 THE COURT: All right. Go ahead and call your first
10 witness, if you will, please.

11 MR. RICHEY: I would call Stuart Sarratt.

12 THE CLERK: Mr. Sarratt, please place your left hand
13 on the Bible and raise your right hand.

14 WHEREUPON,

15 STUART BRADLEY SARRATT,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 You may be seated.

19 And please state your full name for the record.

20 THE WITNESS: Sure. Stewart Bradley Sarratt,

21 S-A-R-R-A-T-T.

22 DIRECT EXAMINATION

23 BY MR. RICHEY:

24 Q Mr. Sarratt, where are you currently employed?

25 A At the Public Defender's Office.

1 Q And -- and were you -- do you recall representing
2 Michael Richardson?

3 A I do.

4 Q And did you represent him at -- through your
5 employment at the Public Defender's Office?

6 A I did.

7 Q And is -- the charges that were read out by the
8 Attorney General, are those the cases you represented him
9 on?

10 A That's correct.

11 Q And this was a drug case; correct?

12 A Correct.

13 Q Can you tell me just a simple version of the facts so
14 the Court can understand what we're dealing with here?

15 A Sure. This situation is where Mr. Richardson was at
16 a gas station and an undercover police officer -- I
17 believe Officer Whitner -- came and proposed a drug deal.
18 There was a hand-to-hand transaction between
19 Mr. Richardson and a co-defendant. Nothing was on video.
20 But Officer Whitner witnessed everything and came and
21 testified.

22 Our defense was that we were merely a bystander. And
23 that this was not -- you know, the -- the co-defendant was
24 the one that was selling drugs. Mr. Richardson didn't
25 have anything to do with it.

1 Q So the -- the co-defendant, this Cobbs gentleman, he,
2 actually, was the one that, actually, gave the drugs to
3 the officer?

4 A Yes.

5 Q And the State's theory was -- is that Mr. Richardson
6 gave the drugs to Cobbs, who then gave them to --

7 A Correct.

8 Q Okay. Did -- did Mr. Richardson express to you that
9 he was not guilty of these charges?

10 A He did.

11 Q And -- and prior to you all going to trial, were
12 there any plea negotiations in the case?

13 A There were.

14 Q Well, let me go back. What -- what offense was this?
15 Was it first? Second? Third? Do you recall?

16 A Third.

17 Q And did you review his prior criminal history with
18 him to -- to maybe show him that that was a legitimate
19 charge?

20 A Yes. And there was a point of contention at first.

21 Q So -- so did you discuss with him, hey, this is a
22 third offense prior to trial?

23 A Yes. He felt it should have been a second, if I
24 remember correctly.

25 Q Okay. And -- okay. So let's get back to -- to plea

1 negotiations. Prior to the trial, did the State make a
2 plea offer to you?

3 A They did.

4 Q And what was that -- was there multiple ones, or just
5 one?

6 A Just one. And it was to reduce to a second offense.
7 And five years was the recommendation.

8 Q Okay. It was reduced from third to second, and five
9 years?

10 A Yes.

11 Q And -- and under that plea agreement, had -- he had
12 served substantial time in the county?

13 A He had.

14 Q He did?

15 A Yes.

16 Q And -- and --

17 A Not quite a year, but...

18 Q Okay. And -- and did you discuss with him the
19 benefits of that offer of five years versus going to
20 trial?

21 A I did.

22 Q And -- and can -- did he refuse that offer?

23 A He did.

24 Q Okay. And so when he -- tell me how he refused it.

25 A Well, I believe, in his words, he said that, you

1 know, while he maintained his innocence, he did admit to
2 having a drug problem. He felt that he should not be
3 treated as a drug dealer, but he should be treated as a
4 drug user. And that probation and drug rehab would be an
5 appropriate sentence. I tried to get that, but was
6 unsuccessful with the Solicitor.

7 Q Did you discuss with him about his criminal history
8 affecting that type an offer?

9 A I did.

10 Q And did you file a notice of appeal in this case?

11 A No, I did not.

12 Q Did he ask you to?

13 A He did.

14 Q Okay. And so -- okay. And tell me about your
15 investigation into the case.

16 A So there was no video, or anything. So it was,
17 essentially, the officer's testimony against his. We had,
18 you know, the benefit of there not being a video, you
19 know.

20 He maintained that he was given money, but that he
21 was just breaking the money for Alrad Cobbs. I can't
22 remember his first name, but Cobbs. And that that was his
23 only involvement. There wasn't much else we could do, at
24 that point, without having it on video.

25 But I did look into his prior criminal history. That

1 was a point of contention, actually, all the way up to
2 trial. He maintained that he just didn't have these prior
3 convictions on his record.

4 I got -- Walker Miller was the Solicitor on the case.
5 He provided me with sentencing sheets from -- I believe it
6 was Spartanburg where he had signed a couple of pleas. If
7 I remember correctly, it was three that he had given me,
8 three sentencing sheets for three -- three prior guilty
9 pleas.

10 I showed those to Mr. Richardson. And he maintained
11 that that was not him. He had no recollection of ever
12 being sentenced in Spartanburg, never been to Spartanburg.
13 And I didn't investigate that any further, honestly.
14 Because I looked at, you know, the social security. It
15 matched up to make sure that it was the same person. But
16 aside from, you know, going and pulling the transcript or
17 anything from Spartanburg, I didn't -- I didn't quite go
18 that far.

19 Q Okay. And in terms of a -- was there a chain of
20 custody issue in this case? Do you recall?

21 A Not that I recall. Not that I objected to, at least.

22 Q Okay. And -- and that was just an oversight not
23 filing the --

24 A Yes, 100 percent. I intended to. And that's -- my
25 policy would be not to wait a day, just to do it

1 immediately.

2 Q So that's -- that's something that somebody else in
3 your office is supposed to handle; is that correct?

4 A No. I was supposed to have done that. That was a
5 100 percent oversight on my part. And I apologize to
6 Mr. Richardson.

7 MR. RICHEY: Thank you.

8 One moment.

9 (Pause.)

10 BY MR. RICHEY:

11 Q Mr. Sarratt, in -- in reviewing his prior criminal
12 history, those three cases over in Spartanburg -- those
13 cases over in Spartanburg, would it make any difference to
14 you in terms of computing his prior record if he'd got a
15 concurrent sentence on all those charges?

16 A Say it again.

17 Q If -- would it -- would it -- would it affect your
18 analysis to determine whether he had a third offense if
19 the charges that he had in Spartanburg were all pled on
20 the same day and ran concurrent? Would that effect --

21 A Well, if I recall correctly, it wasn't just those
22 three. On his NCIC, he had other convictions that would
23 have qualified this as a third as well, if I'm not
24 mistaken.

25 MR. RICHEY: Okay. Thank you.

1 Answer any questions the Attorney General has.

2 THE WITNESS: Sure.

3 THE COURT: Attorney General.

4 MR. MITCHELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q Good morning, Mr. Sarratt.

8 How are you?

9 A Good.

10 How are you?

11 Q Good.

12 Let me ask you a few brief introductory questions.

13 How long have you practiced criminal law in South
14 Carolina?

15 A Six years.

16 Q Six years. Okay. And you were retained -- or
17 appointed to this case; correct?

18 A Correct.

19 Q Okay. And I heard you testify a little bit about
20 the -- the facts of the actual case. So there was a
21 co-defendant in this case; correct?

22 A Yes.

23 Q Okay. Did that co-defendant testify at trial?

24 A He did.

25 Q Okay. Could you give me a brief summation of his

1 testimony?

2 A His testimony was that they -- it was a joint effort.
3 And they entered into the agreement that they were going
4 to split the money. It was -- I believe it was \$20. And
5 they were going to split it 10 and 10.

6 Q Okay. And let me ask you this. Is it your standard
7 practice to meet with your -- your client -- or I guess I
8 should back up. How many times did you meet with
9 Mr. Richardson prior to the trial? Do you recall?

10 A So I was trying to add up. It was either six or
11 seven. One of those was a preliminary hearing. We
12 routinely have people cover those. And so I can't say if
13 I was there for the preliminary hearing or not. But, at
14 least, six.

15 Q Okay. And during those meetings, did you guys go
16 over the discovery in the case?

17 A Yes.

18 Q Okay. Did -- was there ever any -- pardon me. Was
19 there ever any indication that Mr. Richardson did not
20 understand anything that you were discussing with him at
21 all?

22 A Aside from the issue of -- as I had said, whether it
23 was a second or third offense, that continued to be an
24 issue. But I maintained that -- his NCIC. And then once
25 I received all the -- the certified records of conviction

1 that it was a true third offense. But aside from that,
2 no, I believe he understood everything. And we were on
3 the same page in terms of our trial strategy, and all
4 that.

5 Q Okay. Did you do any type of investigation into the
6 case at all?

7 A I did -- well, you know, it -- it was an undercover
8 buy with a police officer. I -- I didn't see any
9 question on that. But aside from that, I did go over
10 everything.

11 I -- you know, in terms of the -- the prior
12 convictions, I did go on to the Spartanburg, you know,
13 open records public index and pull some additional
14 sentencing sheets to show him in addition to what the
15 Solicitor provided me. So I did make some effort to -- to
16 try to show him that it was, in fact, a third offense.
17 And that he was getting a benefit from the reduction to a
18 second and the five-year offer.

19 Q And -- and I want to touch on that next. So there
20 was a plea offer reducing the third to a second?

21 A Yes.

22 Q For five years?

23 A Right.

24 Q And Mr. -- Mr. Richardson's contention -- or I guess
25 his decision was that he did not want to take that?

1 A Correct.

2 Q Because he was not guilty, or...

3 A Well, both that he was not guilty, but he was -- he
4 was holding out for probation. If he could get a
5 probationary offer, we, perhaps, would have entertained an
6 Alford plea, something along those lines. But he just was
7 holding out for a probation offer that never came.

8 Q Did you ever get the indication from the Solicitor
9 that that was something that was plausible?

10 A I tried multiple times to get him to come down off
11 the five years. But he -- he said that was the best he
12 was going to do. And he never did come down off of that.

13 Q Okay. Let me ask you -- and I know you testified
14 previously. Mr. Richardson wanted you to appeal his
15 conviction; correct?

16 A Yes.

17 Q Okay. And you just didn't -- you failed to do it;
18 correct?

19 A I just failed to do it.

20 Q Okay. Fair enough.

21 A Uh -- yeah.

22 Q And I think Mr. Richey asked you, were there any
23 issues with the chain of custody in this case, drugs at
24 all that you saw?

25 A No, not that I recall.

1 Q Okay. And --

2 A It was sent off to the lab for analysis, and
3 everything. And it -- everything checked out.

4 Q All of the various persons testified at trial about
5 how the drug was transported from each person to each
6 party?

7 A Yes.

8 Q Okay. Let me ask you. I think you said that there
9 was no video, but there was audio of the transaction; is
10 that correct?

11 A Yes.

12 MR. MITCHELL: Okay. A moment of the Court's
13 indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 THE WITNESS: There was, also, an audio jail call
16 once he was in custody that he seemed to reference they
17 got me selling, or something. We went over that as well.

18 BY MR. MITCHELL:

19 Q Okay. Did the State intend to use that at all during
20 the trial, or did they indicate to you that they would use
21 it?

22 A And they did, yes.

23 MR. MITCHELL: Judge, that's all the questions I have
24 for this witness.

25 THE COURT: All right. Redirect?

1 MR. RICHEY: Just one question.

2 REDIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Did -- did you ever tell Mr. Richardson you thought
5 you could win at trial, not to accept the offer?

6 A I told him we always had a shot, I mean, with it just
7 being the fact that it was a co-defendant, and that there
8 was some confusion as to where the drugs were. And I
9 think they were behind a wall at some point.

10 So the officer couldn't say that he physically saw a
11 package of drugs change hands. He just saw a hand-to-hand
12 transaction, and put the two together. I said that was --
13 that was an issue that we could go to trial on.

14 I did advise him to take the five-year offer, though.
15 That would be in his best interest.

16 Q You advised him to take it?

17 A Yes.

18 MR. RICHEY: Okay. Thank you.

19 No other questions.

20 THE COURT: All right. One -- one quick matter.

21 I'm -- I'm assuming that y'all are abandoning the ground
22 concerning the alternate juror that stayed in the jury
23 room during deliberations, based upon the transcript, or
24 were y'all looking to pursue that?

25 MR. RICHEY: And I was going to pursue it through

1 him.

2 THE COURT: Oh, okay. All right. Very good.

3 Well, since -- let's save some trouble.

4 EXAMINATION

5 BY THE COURT:

6 Q Did you see any issue with that when that arose at
7 the conclusion of the trial?

8 A It was very unusual.

9 Q It was unusual. I read through the transcript. And
10 I don't know that I've ever heard of that happening
11 before.

12 A I know. I probably should have made more of an issue
13 of it. But the Judge did bring the juror out and said,
14 Did you take part in the deliberations?

15 And he said, No.

16 And I felt that what else could I do at that point.

17 THE COURT: Any follow-up, based on my questions to
18 Mr. Sarratt?

19 FURTHER EXAMINATION

20 BY MR. RICHEY:

21 Q Did you think it was proper to move for a mistrial at
22 that point?

23 A I -- I mean, I probably should have. But given that
24 the -- the witness [sic] testified that it didn't
25 impact -- you know, he didn't take part in deliberations,

1 I -- I didn't based on that.

2 MR. RICHEY: Okay.

3 THE COURT: All right, sir. Thank you.

4 You can step down.

5 THE WITNESS: Sure.

6 THE COURT: Thanks for coming.

7 All right. Call your next witness, please.

8 (WHEREUPON, there was no verbal response.)

9 THE CLERK: Mr. Richardson, please place your left
10 hand on the Bible and raise your right hand.

11 WHEREUPON,

12 MICHAEL ALLEN RICHARDSON,
13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 You may be seated.

16 THE COURTROOM DEPUTY: Watch your step, sir.

17 THE CLERK: Please state your full name for the
18 record.

19 THE WITNESS: Michael Allen Richardson.

20 THE COURT: And I neglected to introduce myself to
21 you earlier. Okay. My name's Frank Addy. All right.

22 THE WITNESS: My name's Michael.

23 How you doing?

24 THE COURT: Good to meet you, sir.

25 MR. RICHEY: Can I approach the witness, Your Honor?

1 THE COURT: Please.

2 DIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q You're going to have to speak up a little bit.

5 A Okay.

6 Q Sir, are -- are you currently in the Department of
7 Corrections?

8 A Yes, sir, I am.

9 Q And is it for the charges that's been outlined here
10 today, been talked about, the charges?

11 A (There was no response.)

12 Q What -- what charge are you in the Department of
13 Corrections for?

14 A I'm in for my -- criminal conspiracy, my third
15 offense drug charge.

16 Q Who -- did Mr. Sarratt represent you on those cases?

17 A Yes, sir, he did.

18 Q And you were in the courtroom when -- when he gave
19 his testimony; is that correct?

20 A Yes, sir, I was.

21 Q And -- and let me go through these issues kind of
22 bullet point. You -- you did ask him to file the appeal?

23 A Yes, sir, I did.

24 Q And in terms of his investigation, do you believe he
25 did an adequate investigation?

1 A No, sir, he didn't.

2 Q Well, what could've -- could he have done?

3 A If he would've -- if he would have investigated, he
4 would -- he would have known that my record -- I had a --
5 if he had investigated, he would have -- he would have
6 found out that my prior -- that my prior drug conviction
7 was the result of a plea. It -- it was my one and only
8 prior drug charge. And I would have been -- I would have
9 been able to challenge the -- my -- my third offense.

10 Q Okay. Is there any factual investigation that you
11 think he should have done in terms of the actual facts of
12 the case?

13 A I think that he should've -- he should've went to
14 Spartanburg County. He should've -- he should've
15 challenged -- he should've challenged -- he should've
16 challenged my third offense. Because I had it on record
17 that it was only my second.

18 I had three drug offenses in 2007. They ran them all
19 concurrent. And I feel like that was -- and -- and it got
20 on my sentencing sheet my first. If I would have known
21 that it was my third -- because my warrants say second.
22 If I would have known that it would have been my -- my
23 third offense, I would have pleaded to the five years.

24 Q Well, let me --

25 A He --

1 Q I'm going to ask you this question first, and we'll
2 get back to that.

3 A Okay.

4 Q In terms of the investigation of what, actually,
5 happened at the store --

6 A Oh, okay.

7 Q -- do you believe that his investigation was proper
8 as to the facts and what happened at the store with Cobbs,
9 and all that?

10 A Yes, I do. I do. Because just like I told him that
11 I was -- I was just mainly getting change. I was -- I was
12 an innocent bystander. He asked me to get change. That's
13 what I did. And when they -- when they got me, they got
14 me in the store getting change.

15 Q So your failure to investigate claim has to do with
16 your prior criminal history?

17 A Exactly.

18 Q And so it's your position that you have three prior
19 convictions in Spartanburg?

20 A Right.

21 Q But you believe because they were designated as a
22 first offense --

23 A Right.

24 Q -- it's not a third?

25 A Yes, sir, I do.

1 Q All right. In terms of the -- well, let me get to
2 the plea offer. The plea offer -- you were offered five
3 years; correct?

4 A Right.

5 Q How long did you stay in the county?

6 A I stayed in the county 15 months.

7 Q Okay. Did y'all discuss what that offer would mean
8 in terms of your actual service time, and all that stuff?

9 A When -- when he come and told me, he said that they
10 offered five years. I asked him -- I said, what do you
11 think?

12 He said, Mr. Richardson, you haven't done anything.
13 You haven't got caught with no drugs, or anything.

14 That was his -- that was his -- that was his actual
15 words like that.

16 So he said -- he said, I know we can do better.

17 So I said, Okay, fine.

18 So he left. So he left. And then we got -- again --
19 we talked again. And it was the same thing. I never knew
20 that I was -- that I was being held on a third offense,
21 never. I never was told that I was being held on a third
22 offense. I never got no warrant, or nothing. All my
23 warrants say second.

24 Q Okay. And so -- and with all due respect, you
25 understand what a good plea offer is; right?

1 A Yes, sir, I do. Of course, I do.

2 Q Do you -- do you understand enough about -- and I use
3 the word the "system" --

4 A Right.

5 Q -- to know that five years is a good offer --

6 A It was an excellent offer, if it would have been my
7 third, right.

8 Q Okay. And so -- so in knowing that, is it your
9 position that Mr. Sarratt overcame your own knowledge
10 about the system and the five years?

11 A Right. I do.

12 Q So -- and your position is he told you he could win
13 the case.

14 A He told me -- he said, Mr. Richardson, I can win --
15 he said, I believe I can win the case. So he kept on
16 saying it, kept on saying it.

17 So I said, Okay.

18 I never -- in the whole time, it never was nothing
19 said about no third offense, never, until I was found
20 guilty and the Judge said something. The Judge said,
21 You've been found guilty of your third offense.

22 Q Okay.

23 A And I told the Judge -- my exact words, I told him --
24 I said I was under -- I was under the -- the assumption
25 that I was being tried on my second. And Mr. Sarratt

1 didn't say nothing. And didn't nobody else say nothing.

2 And that was it. You know what I'm saying?

3 So I'm -- I mean, I'm surprised. You know what I'm
4 saying? I never -- and I never got no paper or nothing
5 stating that I was being tried on my third offense. And
6 my warrant right today in 2015 [sic] still says the same
7 thing. When I came in, it says, Second offense.

8 Now, Mr. Sarratt says that it was my third, that they
9 dropped it to my second, but they never did. Because I've
10 got a warrant that says it's my second from day one when I
11 came in. And that was all -- and that's -- that's the
12 whole thing. Nobody never discussed a third with me.

13 Q Well, I'm going to ask this. Did Mr. Sarratt discuss
14 with you that it's not what's on your warrant, it's the
15 actual number of convictions? Did he ever discuss that --

16 A No, sir, he did not. No.

17 Q He never told you, hey, this might say first offense,
18 you got to plead to first offense twice. But in terms of
19 this case, those two are going to work against you?

20 A No, sir.

21 Q So he never said that?

22 A No. It never was a discussion about a third offense.
23 That's what I'm saying. Never.

24 Q And really that's your main contention here; right?

25 A Right.

1 Q Because -- because you felt like if you were told
2 that, you would have took the five years --

3 A I would have.

4 Q -- and you would have been okay with that?

5 A Yeah. Why would I -- why would I chance a -- from 10
6 to 30 to take a trial when I'm offered five? That's
7 ridiculous.

8 Q Okay. So you're asking the Court to vacate and give
9 you a new trial; correct?

10 A Yes, sir, please.

11 Q And you're, also, asking that -- that you be granted
12 a direct appeal?

13 A Yes, sir.

14 Q Okay. And you're still pursuing the jury issue about
15 the juror misconduct?

16 A Yes, sir, I am.

17 Q And you -- do you believe that your attorney should
18 have requested a mistrial?

19 A I do. I do.

20 MR. RICHEY: Thank you.

21 Answer any questions the Attorney General has.

22 THE COURT: Attorney General.

23 MR. MITCHELL: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MITCHELL:

1 Q Good morning, Mr. Richardson.

2 How are you?

3 A Fine, sir.

4 How you doing?

5 Q Good.

6 So let me ask you this question. You said that this
7 was only your second conviction. So you pled guilty in
8 Spartanburg; correct?

9 A Yes, sir, I did.

10 Q Okay. How many charges -- drug charges did you plead
11 guilty to?

12 A Three, sir.

13 Q Three. Okay. So is it your contention that they
14 qualify as just one count?

15 A Yes, sir. I'm looking at my -- my sentencing sheet
16 and that's what it says, First, on all of them.

17 Q Okay. Let me ask you this. How many times did you
18 meet with your attorney prior to going to trial?

19 A Probably three times.

20 Q Three times.

21 A But I met with him, like, twice right -- I met with
22 him one time before we went to trial. Actually, it
23 [inaudible] going to be a trial. You understand what I'm
24 saying?

25 Q So is it your testimony -- or your contention that

1 during this whole time Mr. Sarratt represented you, you
2 guys never discussed that this was going to be a third
3 offense?

4 A Never, never.

5 Q Okay. So did he go over the discovery with you in
6 the case at all, the evidence?

7 A No, he didn't.

8 Q No?

9 A No, he didn't.

10 Q Okay. Did you know your co-defendant was going to
11 testify against you at trial?

12 A He told me -- he told me the day -- he told me the
13 day that my co-defendant got back -- and understand me,
14 I'm still thinking I'm going to court on my second
15 offense. He telling me -- he say -- he say, If your
16 co-defendant come -- come and testify -- those were his
17 exact words -- I'll tear him to threads. He said, Because
18 he's lying.

19 Q Okay. So during the course of your conversations
20 with your attorney, what was the defense that you guys
21 were going to go on, or what was -- that you were going to
22 present?

23 A That I never had no drugs, that I never -- I mean,
24 just like that. That I never had no drugs. And -- and he
25 was going to -- and I thought he was going to talk about

1 it was my second offense. You know what I'm saying? It's
2 my second offense. They -- they -- and that was all. You
3 know what I'm saying?

4 Q So you were at the trial that day. Do you not recall
5 Mr. Sarratt arguing the issue about whether this was truly
6 a third offense or not?

7 A No.

8 Q So you don't recall that at all?

9 A No, I know.

10 Q Okay. Let me ask you this. So when the -- when
11 your -- your co-defendant testified that you handed him
12 the drugs, he was lying?

13 A Yes, sir, he was.

14 Q Okay. Did you give your attorney any type of
15 witnesses to call, or anybody who could testify to --

16 A No. It wasn't really --

17 Q It was just you and him?

18 A It was just me, him, and the police out there. But,
19 I mean, it was some more people out there. But I didn't
20 really, you know...

21 Q What were you doing out there that night?

22 A I was getting high.

23 Q I'm sorry?

24 A I was getting high.

25 Q So you had drugs on you?

1 A No, I did not. The police searched me. I had a
2 thorough search. No, I did not have no drugs on me.

3 Q So you were getting high. So you had drugs prior to
4 and you used them, you didn't have any more?

5 A I didn't -- no. Listen, I did not have no drugs on
6 me when the buy went down.

7 Q The question I asked you was, you said you were
8 getting high; correct?

9 A Right. I did not have no drugs on me.

10 Q At some point, did you have drugs on you?

11 A Yeah, I did earlier.

12 Q All right. Let me ask you. Did you tell Mr. Sarratt
13 that you wanted him to -- to ask for a mistrial, or
14 anything like that in terms of the -- the juror, the
15 alternate juror being in the jury room at all?

16 A No, sir, I didn't.

17 Q You guys didn't discuss that at all?

18 A No.

19 Q Okay.

20 A He -- he asked for a mistrial. Mr. Sarratt asked for
21 a mistrial.

22 Q Okay.

23 A And the -- and the Judge denied it.

24 Q Okay.

25 A He did that.

1 Q Okay. Did you guys discuss whether there was any
2 issues with the chain of custody with the drugs at all?

3 A No, we didn't. No, I don't think so.

4 MR. MITCHELL: Thank you, Judge.

5 That's all the questions I have for this witness at
6 this time.

7 THE COURT: Anything on redirect?

8 REDIRECT EXAMINATION

9 BY MR. RICHEY:

10 Q Did you tell Mr. Sarratt you wanted probation?

11 A Yes, sir, I did.

12 Q Okay. And that was -- was that the basis for you
13 turning down the five years?

14 A He said he could get me probation. That was his
15 exact words when I asked him. He said he would look into
16 it. And he came back. And he -- and I signed the paper
17 for criminal conspiracy for five years. And he went and
18 took it to the Solicitor. I don't know what happened
19 after that.

20 MR. RICHEY: Thank you, sir.

21 THE COURT: Thank you, sir.

22 You can step down.

23 THE WITNESS: All right.

24 MR. RICHEY: Those are all our witnesses, Your Honor.

25 THE COURT: All right. Anything from the State?

1 MR. MITCHELL: Your Honor, the State would call --
2 recall Mr. Sarratt to the stand.

3 THE COURT: Come on up.
4 You're still under oath.

5 DIRECT EXAMINATION

6 BY MR. MITCHELL:

7 Q So -- Mr. Sarratt, so I wanted to ask you about
8 the -- whether this was a third offense or not. During
9 the course of your representation with Mr. Richardson, did
10 you guys discuss or have conversations about what
11 offense -- what number of offense this was?

12 A Yes. That -- that was an issue throughout the whole
13 representation. And that was really his main hang up was
14 that this was never a third offense. And I kept bringing
15 him sentencing sheets, and his NCIC, and telling him, yes,
16 it is. And we just couldn't see eye to eye on that.

17 Q Okay. So you informed him that it was a third
18 offense, but whether he wanted to believe you or not
19 was -- was a concern or issue?

20 A Yes.

21 Q Okay. Is it an accurate statement to say that you
22 presented this information or argument to the Court during
23 the actual trial?

24 A Yes. Before the case was called -- I don't remember
25 if it was on the -- I know -- I mean, part of it was off

1 the record, but I think I put it on the record that this
2 really shouldn't be a trial. That the only issue mainly
3 was that -- well, not that it shouldn't be a trial. But
4 one of the major issues that we were at trial is because
5 we just kept going round and round and round as to whether
6 this was truly a third offense or not. I told him that
7 was really more of a PCR issue. And if we were to plead,
8 he could still have that PCR. And we decided, let's just
9 proceed to trial and sort it out in the end.

10 Q Let me ask you this question, if -- if you're able to
11 answer or not. What's your -- I guess your knowledge or
12 understanding of a guilty plea -- one guilty plea, but
13 you're pleading to multiple drug -- drug convictions at
14 the same time?

15 A Well, if it had been three separate incidents that
16 took place at three different times, that'd be one thing.
17 Or if it was sort of three counts all in the same event,
18 that'd be one. But if I remember this correctly, it was
19 three separate incidents. He just happened to plead to
20 all three at the same plea package.

21 If I could add. I, also, remember the Solicitor
22 saying, you know, it wasn't just those three in
23 Spartanburg. He felt that it was really more like a
24 fourth or even a fifth offense. And that just went right
25 back to the whole just going round and round and round as

1 to what offense it was, second, third, fourth, fifth.

2 Q Okay.

3 A But it was, at least, a third.

4 Q And no question in your mind you explored this with
5 the Defendant and the Solicitor?

6 A Yes.

7 Q Okay. Let me ask you, I guess, again about this
8 juror misconduct issue. I think it was your testimony
9 that the Judge brought the -- the alternate out and
10 questioned that person as to whether they participated in
11 the deliberations?

12 A Right.

13 Q Okay. At that point, were you -- were you satisfied
14 with your answers -- or the answers from the alternate?

15 A Yes. And I -- I thought I didn't ask for a mistrial.
16 But it sounds like I did.

17 THE COURT: I think you did.

18 THE WITNESS: Okay.

19 THE COURT: I mean, he moved for -- I don't -- y'all
20 know more about appellate law than, perhaps, I do. But at
21 the conclusion of the trial on Page 194 -- and I'm quoting
22 the Court, "Okay. All right. I'm going to deny your
23 motions, including your motion for a new trial with regard
24 to the alternate being in the jury room. The alternate
25 has clearly on the record indicated," et cetera, et

1 cetera.

2 And just before that, Mr. Sarratt appears to move for
3 a new trial. So I would take that as a motion for a
4 mistrial. I would think that issue would be protected. I
5 believe it would be.

6 But go ahead. I'm sorry to interrupt.

7 MR. MITCHELL: It's quite okay, Judge.

8 BY MR. MITCHELL:

9 Q And I just want to touch back on -- one more time
10 concerning the -- the five-year plea offer. And so you
11 said that the Applicant rejected the plea offer in part --
12 or I guess in large part because he didn't believe that
13 this was his third offense; is that correct? What's your
14 understanding?

15 A That's part of it. And I think the main -- the other
16 component to it was he felt that he should be treated as a
17 drug user. Because that's -- he was just using that day,
18 and that he should get rehab. And I did tell him -- I was
19 like, I can try to get probation and rehab. I followed up
20 with the Solicitor. He never did make that concession.

21 I believe what Mr. Richardson was testifying to
22 earlier, after the plea offer had expired and everything
23 when it was on the trial docket, we said that we would
24 take five. And the Solicitor said, No, that deal's off.
25 It was too late at that point.

1 Q Okay. And whose decision was it to go forward to
2 trial?

3 A Mr. Richardson's.

4 Q Did you pressure him into making it?

5 A No. I mean, I -- if -- I used to try to really twist
6 people's arm and say, you need to take this plea. I've
7 since sort of said, if you want a trial, we can have a
8 trial, certainly, advise them that it was a trial of the
9 case.

10 I don't recall saying that we would win the trial.
11 I'm not that confident in my ability, to be quite honest,
12 especially with an undercover officer testifying.

13 MR. MITCHELL: Thank you so much, Mr. Sarratt.

14 Please answer any additional questions Mr. Richey may
15 have.

16 CROSS-EXAMINATION

17 BY MR. RICHEY:

18 Q Mr. Sarratt, in your criminal practice, would you
19 agree there's a problem with clients believing that it's a
20 first offense because of, actually, what the warrant says?

21 A Yes.

22 Q And -- and that's a -- that's a big problem you have
23 in drug cases with clients; correct?

24 A It is.

25 Q That the clients believe that it's a first offense

1 merely by what the --

2 A Yes.

3 Q And -- and would you agree that that is a -- that's a
4 tough thing to discuss with your clients at times?

5 A It is.

6 MR. RICHEY: Thank you.

7 That's it.

8 Thank you.

9 No other questions.

10 MR. MITCHELL: Just one additional question, Judge.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. MITCHELL:

14 Q Notwithstanding those questions, did you explain to
15 Mr. Richardson that this was his third offense he'd been
16 charged with?

17 A Yes.

18 MR. MITCHELL: Thank you.

19 EXAMINATION

20 BY THE COURT:

21 Q All right. The -- I can't seem to locate in the
22 transcript where there was a discussion with the Court
23 about this being a first or a third offense. And maybe I
24 missed it earlier. But is it possible that maybe that
25 issue was -- you said possibly it was discussed in

1 chambers with the Judge --

2 A Yes. That may not have been on the record.

3 Q Okay.

4 A But I think before the case was called, I sort of put
5 that out there that this is really why we're here is that
6 there's just been a hang up as to what level offense this
7 is. I thought that was on the record, but maybe it
8 wasn't.

9 THE COURT: Okay. I may be mistaken. Perhaps, it's
10 in here and I just missed it. But I've done some --

11 MR. MITCHELL: Your Honor, if -- if I could.

12 THE COURT: Yes, sir.

13 MR. MITCHELL: Page 196 of the transcript.

14 THE COURT: 196.

15 MR. MITCHELL: Yes, sir.

16 Line 14, Mr. Sarratt is talking. He says, Now,
17 again, today, we talked about this briefly off the record,
18 so I'll say it for the record. We sort of went around and
19 around as to whether to plead just straight up to a third
20 offense, understanding there was no possibility of getting
21 back to a reduction.

22 THE COURT: Okay. That references -- that does
23 reference the off-the-record conversation. All right.
24 Very good.

25 Thanks.

1 THE WITNESS: Sure.

2 THE COURT: Any additional witnesses?

3 MR. MITCHELL: None, Your Honor.

4 THE COURT: As far as the appellate issue goes, I
5 think that it's pretty clear that he's entitled to an
6 appeal.

7 MR. MITCHELL: Absolutely, Judge. And the State
8 would concede to that point.

9 THE COURT: Anything else concerning the underlying
10 merits of the trial that you wish to argue, Mr. Richey?

11 MR. RICHEY: Your Honor, I would just -- just
12 briefly -- I think -- I think Mr. Richardson testified to
13 his issue with the -- the third offense, and all that. I
14 think he testified as to the chain of custody, and all
15 that. And -- and his testimony would be [inaudible] is
16 our argument.

17 THE COURT: Can anyone point me to any law that
18 supports the proposition that if you plead to a whole
19 bunch of firsts at the first -- at one time that that
20 constitutes a first for all the firsts?

21 My understanding of the law is that, perhaps, that's
22 not the law, that, perhaps, the law is that even if it's
23 treated as a first offense for purposes of enhancement;
24 assuming the incident dates were separate, that would
25 enhance, if I'm not mistaken.

1 Is that not the law?

2 MR. MITCHELL: That's my understanding, Judge.

3 THE COURT: Okay. My clerk is double-checking that.
4 But she, initially, agrees with that assessment of the
5 law. But I want to take a little bit harder look at it
6 and make sure that we're absolutely correct on that point.

7 But at the very least, at an absolute minimum,
8 Mr. Richardson is entitled to a belated appeal. Because
9 he requested it of his counsel. And it's just one of
10 those things that through no fault of Mr. Sarratt's, it
11 just slipped his mind to file the notice of intent to
12 appeal. So that should have been done, and for whatever
13 reason it wasn't.

14 But the matter will be under advisement. I'll issue
15 a Form 4 over the weekend or sometime early next week
16 after I've had a chance to look at this a little harder.

17 Thank you all.

18 *****END OF TRANSCRIPT OF RECORD*****
19
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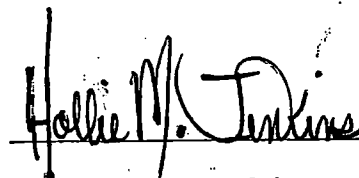
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 23rd day of February, 2018.

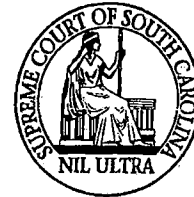
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 6, 2018

A handwritten signature in black ink, appearing to read "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20



Frank R. Addy, Jr.
CIRCUIT COURT JUDGE

Check 4 G:

Please also copy this
from 4 to the
Office of Appellate Defense.

TZ
Hed

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-23-3732

MICHALE A. RICHARDSON

STATE OF SOUTH CAROLINA

APPLICANT

DEFENDANT.

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ~~☒ Statement of Judgment~~ by the Court:

This matter came before the Court on February 23, 2018 for a trial on Applicant's petition for Post-Conviction Relief. Mr. Richardson was present and represented by Rodney W. Richey, Esq. The State was represented by Assistant Attorney General DeShawn H. Mitchell. The Court finds as follows:

Applicant seeks a belated appeal, and the State conceded that Mr. Richardson had requested that trial counsel file the notice of intent to appeal post-trial. Trial counsel also testified that he recalls Applicant making this request, yet trial counsel did not file the notice. Accordingly, the Court finds that Applicant is entitled to file a belated appeal of his conviction.

Applicant also contends that the offense for which he was convicted is not a third (3rd) offense distribution. Based upon the record and evidence presented at the PCR hearing, the Court denies relief. Although Applicant pled guilty to several narcotics charges, and although they were all treated as first (1st) offense charges at the time of the plea, the separate convictions do enhance rendering Applicant's present offense a third (3rd) narcotics offense. State v. Boyd, 288 SC 206 (1996); Section 17-25-50. Accordingly, relief is denied on this ground.

As to the contention that trial counsel erred by not moving for a mistrial when the trial judge mistakenly left the alternate juror in the jury room for deliberations, the Court finds that trial counsel's request for a new trial due to this irregularity sufficiently preserved the issue for appellate review. (Note: Should this judge be mistaken in that the Court of Appeals finds that trial counsel did not sufficiently preserve this issue and thereby refuse to consider this issue on appeal, this issue may be raised again on a successive PCR.) Additionally, at this point,

Applicant has not shown he was prejudiced by the alternate's presence. Upon questioning by the trial judge, the alternate stated that he did not participate in the jury's deliberations despite his presence.

Therefore, Mr. Richardson's application for PCR is granted insofar as he is entitled to a belated appeal. In all other respects, his application for Post-Conviction Relief is denied. Mr. Mitchell shall prepare a more formal order within thirty (30) days reflecting this Court's ruling.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2159

Judge Code

Feb. 23, 2018

Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Mar, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Mar, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Rodney W. Richey, Esq.

The Hon. DeShawn H. Mitchell

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

CLERK OF COURT

Court Reporter: Hollie M. Jenkins

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Michael A. Richardson, #268870,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-23-3732

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

ENTERED COMPUTER

18 MAY 17 PM 3:08
Paul Wolkensamer CJC 61L SC

This matter comes before the Court by way of an application for post-conviction relief filed on June 8, 2017 by Michael A. Richardson (Applicant). Respondent made its Return on or about October 20, 2017. An evidentiary hearing into the matter was convened on February 23, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Stuart B. Sarratt, Esq. also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL AND FACTUAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

[Handwritten signature]

to orders of commitment of the Greenville County Clerk of Court. In August 2016, the Greenville County Grand Jury indicted Applicant for distribution of cocaine-base (crack cocaine) (2016-GS-23-2216) and conspiracy (2016-GS-23-2217). The charges resulted from a December 2015 incident in which Applicant, along with a codefendant, conspired and sold crack cocaine to an undercover police officer. (Tran. p. 37-38). Stuart Sarratt, Esquire represented Applicant. Assistant Solicitor Walker Miller, Esquire prosecuted the case. On January 18, 2017, Applicant proceeded to trial before the Honorable Roger Henderson. The jury found Applicant guilty as indicted of both charges. Judge Henderson sentenced Applicant to imprisonment for twenty years for distribution of crack cocaine, third offense and five years for conspiracy, to be served concurrently. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel was ineffective for [not] filing a notice of appeal when asked to do so, and Applicant did not waive his right to appeal."
 - b. "Failing to conduct an adequate and factual pretrial investigation and failing to prepare for trial."
 - c. "Failing to object to juror misconduct."
 - d. "Failing to move to suppress evidence seized without a proper chain of custody."
 - e. "Failing to move for a directed verdict on the uncredible evidence of the witness for the state and the use of tainted evidence."
 - f. "Failing to object to evidence without a sufficient chain of custody."
 - g. "Failing to move for Franks v. Delaware hearing prior to trial."
2. "The court was without jurisdiction to impose sentence."
 - a. "The applicant never had a third offense."
3. "Denied a fair and impartial jury – jury misconduct."
 - a. "The court allowed the alternate juror into the jury room during deliberation."



SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Trial Counsel's Testimony

Trial Counsel testified he was currently employed by the public defender's office. He testified about the facts surrounding Applicant's case and how Applicant was ultimately arrested because of an undercover drug transaction by the police. Trial Counsel testified Applicant had other drug convictions on his record and this charge was a third offense. He testified he discussed with Applicant his past drug convictions and how they would impact his current charges. Trial Counsel testified the State had extended a plea offer to drop Applicant's charge to a second instead of a third offense for five years imprisonment. He testified Applicant refused to accept the plea offer. Trial Counsel testified he failed to file a notice of appeal in Applicant's case even though Applicant had asked him to. He also testified he did not see any issues with the chain of custody in this case.

On cross-examination, Trial Counsel testified at the time he represented Applicant he had been retained to do so. He testified he had practiced law for six years. Trial Counsel testified he met with Applicant some six or seven times prior to going to trial. He testified he discussed with Applicant the elements of the crimes for which he was charged, the possible punishments for them, his constitutional rights, and the State's burden of proof. Trial Counsel testified there was never any indication that Applicant did not understand the things they discussed. Trial Counsel testified there was also phone calls from the detention center Applicant made in which he discussed being caught. He testified he made a motion for new trial after learning the alternate jury went back to the jury room during deliberations.

Applicant's Testimony

Applicant testified Trial Counsel represented him on the charges he was facing. He

testified he believed Trial Counsel did not do any investigation into his case with regards to the store where the drug transaction took place. Applicant testified there was a five year plea offer extended to him that he did not take. He testified his main issue with the case was that he was being charged with a third offense but this was only his second offense. Applicant testified he had previously been convicted of drug charges but this was only his second offense. Applicant also testified that an alternate jury was allowed into the jury room during deliberations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive

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relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Belated Review of Appellate Issues

Applicant alleges Trial Counsel failed to file a notice of appeal on his behalf. This Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal. Counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White

v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.").

In the present case, the State consented to a belated review of Applicant's trial pursuant to White. Id. Trial counsel also testified that he recalls Applicant making this request, yet trial counsel did not file the notice. As such, this Court finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his conviction. Applicant's lack of an appeal shall be remedied pursuant to White v. State. Id.

Ineffective Assistance of Counsel

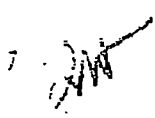
Applicant alleges that the offense for which he was convicted of was not a third offense distribution charge. Based upon a review of the record and evidence presented at the PCR hearing, this Court denies relief. Although Applicant pled guilty to several narcotics charges prior to this charge, and although the prior charges were all treated as first offense charges at the time of the plea, this Court finds the separate convictions do enhance rendering Applicant's present offense to a third narcotics offense. State v. Boyd, 288 SC 206 (1996); Section 17-25-50. (For these reasons we hold that where a defendant has been convicted on two or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the convictions will be considered as only one for the purpose of sentencing under a subsequent conviction for a violation of the Controlled Substance Act. We hasten to add that where multiple convictions are obtained for violations of the Controlled Substance Act where the violations are unrelated to one another and do not arise out of a single incident that there be no prohibition of counting for sentencing purposes each conviction separately.) Accordingly, this allegation is denied and dismissed.

Applicant also alleges that Trial Counsel erred by not moving for a mistrial when the trial judge mistakenly left the alternate juror in the jury room for deliberations. This Court finds that Trial Counsel made a request for a new trial due to this irregularity. (Tr.p.194). Additionally, this Court finds Trial Counsel sufficiently preserved this issue for appellate review. This Court would note that should the Court of Appeals find that Trial Counsel did not sufficiently preserve this issue for appellate review and thereby refuse to consider this issue on appeal, this issue may be raised again on a successive PCR by Applicant. Furthermore, this Courts finds Applicant has not shown he was prejudiced by the alternate's presence. This Court further finds that, upon questioning by the trial judge, the alternate stated that he did not participate in the jury's deliberations despite his presence. Accordingly, the trial judge handled this irregularity appropriately and was satisfied with the alternate's statements. Accordingly, this allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court grants Applicant a belated review of his conviction pursuant to White v. State. With regard to all other claims, this Court finds Applicant has not established any violations that would require this Court to grant further relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

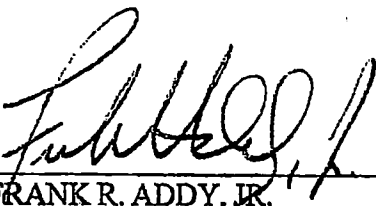


behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations.
2. Within **thirty (30) days** of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's conviction. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), SCACR, for the appropriate procedure for securing appellate review; and
3. Applicant must be remanded to the custody of South Carolina Department of Corrections.

IT IS SO ORDERED this 7th day of May, 2018.


FRANK R. ADDY, JR.
Presiding Judge
Thirteenth Judicial Circuit

Laurens, South Carolina

WITNESSES

Mason Hubber

Greenville County Sheriffs Office

12/11/2015

ARREST WARRANT NUMBER
2015A2330210811

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Padgett
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-23-
KB

002216

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2016

THE STATE

vs.

MICHAEL RICHARDSON

Indictment for

3015

**DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE)**

VIOLATION § 44-53-0375

**ENTERED
ACCT.**

FILED

MAR 11 2016

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

AUG 23 2016

That MICHAEL RICHARDSON did in Greenville County, on or about the 11th day of December, 2015, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such distribution not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Just Howard
SOLICITOR BAR # 73639

282

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Michael Richardson

AKA:

Race: BLACK Sex: M Age: 55DOB: -1961 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greenville, SC 29607DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution of Crack Cocaine

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2302216A/W#: 2015A2330210811Date of Offense: 12/11/2015S.C. Code §: 44-53-0375(b)(2)CDR Code #: 3015

SENTENCE SHEET

10-30 yrs☐ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375(b)(2) of the S.C. Code of Laws, bearing CDR Code # 3039☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The 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: [Signature]

101312

Miller, Walker

SC Bar#

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 20 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.☐ 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 ☐ OrderedTotal: \$ 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§ 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§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150§ 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: [Signature]

SCCA/217 (07/2016)

Presiding Judge [Signature]Judge Code: 2754Sentence Date: 1/18/17

ARREST WARRANT

2015A2330210811

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

15-206293

against

Michael Richardson

Address:

GREENVILLE, SC 29607-

Phone: SSN: Sex: M Race: B Height: 5 10 Weight: 220

DL State: DL #: DOB: 1961 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: M W Hubber - 1236

Offense: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

Offense Code: 3015

Code/Ordinance Sec: 44-53-0375(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516Personally appeared before me the affiant M W Hubber who being duly sworn deposes and says that defendant Michael Richardson did within this county and state on or about 12/11/2015 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, MICHAEL RICHARDSON, DID SELL A WHITE ROCK LIKE SUBSTANCE WHICH FIELD TESTED POSITIVE FOR A COCAINE BASE NARCOTIC TO AN UNDERCOVER DEPUTY. THE DEFENDANT DOES HAVE ONE PRIOR CONVICTION FOR COCAINE OFFENSE IN THE PAST 10 YEARS MAKING THIS HIS SECOND OFFENSE. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/11/2015 defendant Michael Richardson

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 12/11/2015

Signature of Issuing Judge
Horace Butler Jr.
Judge Code: 5020

Judge's Address Law Enforcement Center

Greenville, SC 29601-2256

Judge's Telephone (864)467-2402

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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002217

DOCKET NO. 2016-GS-23-
KB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2016

THE STATE

vs.

MICHAEL RICHARDSON

WITNESSES

Mason Hubber

Greenville County Sheriffs Office

12/11/2015

ARREST WARRANT NUMBER

2015A2330210809

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Padgett

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

Foreperson of Petit Jury

Date:

ENTERED
ACCT.

JCP

FILED

MAR 11 2016

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on

AUG 23 2016

the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL RICHARDSON did in Greenville County, on or about the 11th day of December 2015, willfully and unlawfully combined with ALRAD COBBS for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Distribution of Cocaine Base. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

148 Howard
SOLICITOR

BAR # 73639

286

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Michael Richardson

AKA:

Race: BLACK Sex: M Age: 55

DOB: 12-19-1961

SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Greenville, SC 29607

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Conspiracy, (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2302217

A/W#: 2015A2330210809

Date of Offense: 12/11/2015

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

0570

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ 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: [Signature] 101312

100228

Miller, Walker

SC Bar#

Defendant

SARRATT, STUART

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 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: 2016-65-23-2216☐ 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.☐ 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

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
§ 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
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.90

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2754

Sentence Date: 1/18/17

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ 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.

ARREST WARRANT

2015A2330210809

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

15-206293

against

Michael Richardson

Address:

GREENVILLE, SC 29607-

Phone: SSN:
 Sex: M Race: B Height: 5 10 Weight: 220

DL State: DL #:

DOB: 1/1961 Agency ORI #: SC0230000Prosecuting Agency: Greenville County Sheriffs OfficeProsecuting Officer: M W Hubber - 1236Offense: Conspiracy / Criminal Conspiracy, Common Law
conspiracy definedOffense Code: 0049Code/Ordinance Sec: 16-17-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

M. CHAEL RICHARDSON
12/11/15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
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violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy definedI further state that there is probable cause to believe that the defendant named above did commit
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POSITIVE FOR A COCAINE BASE NARCOTIC TO AN UNDERCOVER DEPUTY. THE DEFENDANT DID CONSPIRE TO
SELL SAID SUBSTANCE WITH CO-DEFENDANT ALRAD COBBS BY PROVIDING THE SUBSTANCE TO COBBS AFTER
RECEIVING THE MONEY. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee StreetGreenville, SC 29601-Affiant's Telephone (864)271-5210

ARREST WARRANT

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her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 12/11/2015Judge's Address Law Enforcement CenterGreenville, SC 29601-2256Judge's Telephone (864)467-2402Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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