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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

D. Craig Brown, Circuit Court Judge

ANDERS

ORIGINAL

No Respondent's Brief Filed

ANDERS RESPONSE BRIEF

DEC 03 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EDDIE F. ALEWINE,

APPELLANT

APPELLATE CASE NO. 2012-212343.

RECORD ON APPEAL

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

State of South Carolina,)
)
PLAINTIFF,)
)
-VS-)
)
Eddie Frank Alewine,)
)
DEFENDANT.)
_____)

TRANSCRIPT OF
HEARING
2012-GS-32-01191

BEFORE THE HONORABLE D. CRAIG BROWN, JUDGE

JUNE 18 AND 19, 2012

LEXINGTON, SOUTH CAROLINA

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For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 THE COURT: Good morning, ladies and
4 gentlemen. My name is Craig Brown. I am a Circuit
5 Court Judge from Florence, and I have been assigned
6 to Lexington County for a one-week term of General
7 Sessions, better known as Criminal Court. We have
8 two types of courts in this state, Common Pleas,
9 which is Civil Court, and General Sessions, which is
10 Criminal Court.

11 We have some matters that we need to
12 address the presence of the jury. So what I'm going
13 to do is I'm going to ask that the panel that's in
14 here right now step outside for a few minutes while
15 I handle some matters in the presence of the
16 lawyers.

17 And then I will get you back in here, and
18 we will move forward with selecting our first jury
19 for the first trial that's up this week. So at this
20 time, I'm going to ask that those who are on the
21 jury panel leave the courtroom. You can take about
22 a ten- or fifteen-minute break, and then I'll get
23 you right back in here. Thank you..

24 (The jury panel left the
25 courtroom.)

1 THE COURT: All right, it's my
2 understanding that the first case up for trial in
3 front of me this week is the State versus Eddie
4 Alewine.

5 MR. SCOTT: Alewine, Your Honor.

6 THE COURT: All right. It's my
7 understanding also there are some pre-trial matters
8 that we need to take up prior to selection of the
9 jury, is that correct, Mr. Scott, by Mr. Floyd?

10 MR. SCOTT: Yes, sir. It's my
11 understanding Mr. Floyd has a motion.

12 THE COURT: Mr. Floyd?

13 MR. FLOYD: Thank you, Your Honor. Your
14 Honor, there are two matters that we need to address
15 with Your Honor. First, it is my understanding --
16 and correct me if I'm wrong here -- that one of the
17 witnesses in the chain of custody of the drugs, Ms.
18 Candy Kyzer, will be unavailable for medical
19 reasons. If that is correct, then I have a motion
20 to make in connection with that.

21 MR. SCOTT: That is correct, Your Honor.
22 We do intend to call her. She will be out since she
23 has recently undergone a medical procedure that
24 would put her being unavailable I believe at least
25 till August. She is the intake person over at the

1 Sheriff's Department for drugs and other evidence
2 that are dropped into the evidence drop-off.

3 MR. FLOYD: Your Honor, it's our position
4 we have a right to cross-examine her as to her
5 handling of the drug evidence. There have been some
6 problems lately with some evidence being lost or
7 misplaced in the evidence room. And therefore she
8 would be a crucial witness for us to get into that
9 area of evidence.

10 THE COURT: Any evidence of lost or
11 misplaced evidence in this particular case, Mr.
12 Floyd?

13 MR. FLOYD: I don't know, Your Honor,
14 until we deal with it. I have not been told any.

15 THE COURT: Have you had an opportunity to
16 talk with her before today?

17 MR. FLOYD: I guess I could have gone to
18 see her.

19 THE COURT: So we don't know of any
20 potential problems?

21 MR. FLOYD: I don't know of any potential
22 problems with this particular case as to this
23 particular evidence.

24 THE COURT: All right, what says the
25 State?

1 MR. SCOTT: Your Honor, Rule 6 of the
2 South Carolina Rules of Criminal Procedure,
3 subsection (b), deals with a certified or sworn
4 statement. It says, "For the purpose of
5 establishing chain of physical custody or control of
6 evidence, noted under part (a) of the rule, a
7 certified or sworn statement signed by each
8 successive person having custody of the evidence
9 that he or she delivered to the person stated is
10 evidence that the person had custody and made
11 delivery as stated without the necessity of the
12 person who signed the statement being present in
13 court provided, one, the statement contains a
14 sufficient description of the substance or its
15 container to distinguish it; and, two, the statement
16 says the substance was delivered in substantially
17 the same condition as when it was received."

18 In our case, Your Honor, we have the
19 requisite Form B that complies with Rule 6. That is
20 a certificate of proof of chain of physical custody
21 or control. We have a form from when Eric Kirkland,
22 a law enforcement officer, dropped off the drug --
23 in this case, it's crack -- dropped it off to the
24 evidence locker on August 30, 2011.

25 We have the form where Candy Kyzer --

1 that's the missing link here, Your Honor --
2 transferred the crack from the evidence locker to
3 the evidence room on August 31st. On this form, .
4 Your Honor, Ms. Kyzer describes the evidence as BEST
5 Kit Number C015002.

6 She further notes that she made delivery
7 of the substance "in substantially the same
8 condition as when I received it." We finally have
9 the form where Candy Kyzer transfers the crack from
10 the evidence room to Emily Homer on September 6,
11 2011, for testing.

12 That's our chemist in this case, Your
13 Honor. Again, she lists the substance as BEST Kit
14 Number C015002 and states she made delivery of the
15 substance "in substantially the same condition as
16 when I received it."

17 Your Honor, the case law over the last
18 decade or so indicates the Court will admit fungible
19 evidence such as drugs if the State establishes
20 chain of custody as far as practicable. Your Honor,
21 State v. Carter, that is a 344-SC-419. That's a
22 2001 case.

23 In that case, Your Honor, two blood
24 samples and a saliva sample were drawn by a doctor
25 in Myrtle Beach. The doctor placed a security tape

1 over the box that held the samples and handed it to
2 an officer with the Myrtle Beach Police Department,
3 who in turn took it to the evidence custodian.

4 From there, it was taken to SLED for
5 testing. Inexplicably, according to the case, when
6 a SLED agent opened the box, it did not have the
7 saliva sample. The agent broke down the kit and
8 placed the blood samples in a heat-sealed pouch with
9 an ID bar code and placed it in a secure
10 refrigerator.

11 A SLED analyst then retrieved the heat-
12 sealed pouch and tested it. The defendant in this
13 case objected that the missing saliva sample
14 indicated a break in the chain of custody.

15 The Court of Appeals held that the issue
16 of the missing saliva sample went to the weight of
17 the evidence and not its admissibility, since the
18 State established a continuous chain of custody, as
19 we will be able to do here, Your Honor.

20 The Supreme Court in that case granted a
21 writ of cert to review the issue of whether or not
22 the State did prove a sufficient chain of custody of
23 the blood samples. Justice Moore, Your Honor,
24 issued the opinion in that case. Justices Toal,
25 Waller, Burnett, and Pleicones all concurred with

1 it.

2 In it, Moore cited State v. Williams.
3 That's a case that turns up a lot, and that's 301-
4 SC-369, a 1990 case. "For the proposition proof of
5 chain of custody does not negate all possibilities
6 of tampering so long as the chain of possession is
7 complete.

8 "In applying that rule, we have found
9 evidence inadmissible only where there is a missing
10 link in the chain of possession, because identity of
11 those who handled the blood or fungible evidence was
12 not established at least as far as practicable.

13 "On the other hand," Moore continues,
14 "where the identify of persons handling the specimen
15 is established, we have found evidence regarding its
16 care goes only to the weight of the specimen as
17 credible evidence. In other words, where there is a
18 weak link in the chain of custody as opposed to a
19 missing link, the question is only of credibility
20 and not admissibility."

21 Again, Your Honor, there's another one,
22 2004, State v. Taylor, 360-SC-18. That's an '04
23 case. The facts of that case are very similar to
24 ours. In that case, a quantity of crack was seized
25 by one trooper who placed it in a BEST bag and

1 sealed it.

2 He then took it to his superior officer,
3 who then took it to the evidence locker in Columbia.
4 From there, the evidence custodian would have taken
5 it and delivered it to SLED for analysis. When the
6 case was called for trial, the evidence custodian
7 was no longer available.

8 Another employee with the Highway Patrol
9 testified to protocol and procedure for handling
10 drugs. The drugs were admitted, and on appeal,
11 Taylor argued that the testimony of everyone who
12 handled the evidence, including that former
13 custodian, was necessary to establish the chain.

14 The Court of Appeals rejected this broad
15 notion that requires testimony of all people who
16 somehow handled a piece of fungible evidence.
17 Again, the Court distinguishes a line of cases where
18 the chain was at issue or the issue in the chain of
19 custody was the identity of people in the chain was
20 not established.

21 In cases such as State v. Cribb -- that's
22 310-SC-518 -- the State failed to trace the handling
23 of the evidence from the time it was gathered until
24 it was tested. As a result, the Court stated the
25 identity of the people who had control of the

1 evidence and what was done with it during their
2 possession was left to speculation.

3 That's not the case here, Your Honor.
4 It's been carefully documented from the time Mr.
5 Kirkland dropped it off to the time it was tested.
6 In contract, where there's evidence to establish
7 identity of those who have handled the evidence and ---
8 the manner in which it was handled, a weakness in
9 the chain merely raises the question of credibility,
10 again, not admissibility.

11 Finally, Your Honor, after going through
12 all that where the courts state that, you know,
13 identity is required, we have State v. Hatcher.
14 That's a case that came out last year, Your Honor.
15 That's 392-SC-86.

16 Again, it's a crack distribution case. In
17 this case, a CI was given money to purchase a
18 quantity of crack. The buyer gave the crack to an
19 deputy, who placed it in a sealed bag. He then
20 placed this bag in a BEST evidence bag.

21 Upon returning to his office, he drove the
22 sample himself to SLED. The chemist testified to
23 retrieving the evidence from the log-in department
24 at SLED and that it was still in the BEST bag. The
25 person responsible for receiving the evidence at

1 SLED was never identified.

2 So now we have an identity that the Court
3 is dealing with. Hatcher was found guilty at trial.
4 The Court of Appeals reversed his conviction, Your
5 Honor, missed on that missing link as to the
6 identity of the person who received the drugs at
7 SLED.

8 The Supreme Court granted the State's
9 petition for a writ of cert to review the case. In
10 this case, Your Honor, the Supreme Court noted that
11 courts have abandoned inflexible rules regarding the
12 chain of custody and the admissibility of evidence
13 in favor of a rule granting discretion to the trial
14 courts.

15 The Court noted that "Evidence is still
16 required as to how the item was obtained, how it was
17 handled, to ensure that it is in fact what it is
18 purported to be. However, we have consistently held
19 that the chain of custody need not be established
20 only as far as practicable, and we reiterate that
21 every person handling the evidence need not be
22 identified in all cases.

23 "The State need not establish the identity
24 of every person handling fungible items in all
25 circumstances. Rather, the standard is whether in

1 the discretion of a trial judge the State has
2 established the chain of custody as far as
3 practicable."

4 Your Honor, in this case we're able to
5 provide the continuous chain of custody. We're able
6 to identify every link in the chain. We're simply
7 missing the person who took the drugs out of the
8 drop box and walked them over to the chemist for
9 testing.

10 We will have somebody here to testify to
11 procedure and protocol the Sheriff's Department goes
12 through every time evidence is dropped off. Your
13 Honor, again, we will be able to establish chain of
14 custody as far as practicable in this case.

15 THE COURT: Mr. Floyd, anything in
16 response?

17 MR. FLOYD: Your Honor, the rule
18 specifically states that even though they can use
19 these certified statements, the defendant has the
20 right to demand the presence. And we made that
21 demand.

22 THE COURT: What about his argument with
23 regards to what the case law sets forth, that as
24 long as the trial judge is satisfied as to chain of
25 custody for all practical purposes of this trial or

1 for any trial, as long as they've established it
2 that they need not be here?

3 MR. FLOYD: Well, I understand this law
4 would give you discretion to rule. However, the
5 specifics of the statute will require their
6 presence. It's not long the person's gone forever.
7 She's just gone until August. Mr. Alewine is in
8 jail, so it's not like he's out on the street. So
9 there's no reason to go forward with the trial
10 without the witness being here.

11 THE COURT: Anything else, Mr. Floyd, or
12 anything else --

13 MR. FLOYD: Nothing further on the point,
14 Your Honor.

15 THE COURT: -- Mr. Scott on that issue?

16 MR. SCOTT: Your Honor, I think the case
17 law speaks for itself. And I would just argue we
18 developed and have using been these BEST bags for a
19 reason. Your Honor, I think the chain will be
20 established in this case.

21 THE COURT: What's your next motion, Mr.
22 Floyd?

23 MR. FLOYD: Thank you, Your Honor, if I
24 may approach.

25 THE COURT: Yes, sir.

1 MR. FLOYD: Your Honor, on Friday -- this
2 past Friday -- I was e-mailed that statement, which
3 is the first notice that we've ever been dealing
4 with this person being a potential witness for the
5 State. We would move for a continuance to allow us
6 to investigate this witness.

7 Of particular interest to us is in the
8 statement, the person giving the statement says that
9 he used to use a lot of crack, and then he went into
10 drug rehab. So in addition to the continuance,
11 we're going to move for an order from the Court
12 allowing us to get the evidence or the documents,
13 any documents in connection with his drug rehab to
14 explore whether or not anything came out in his drug
15 rehabilitation that could impact on his short-term
16 memory.

17 THE COURT: Mr. Scott, anything from the
18 State?

19 MR. McNAIR: Your Honor, Robbie McNair.
20 I'll address that. We discovered that individual
21 because he was the one who drove the defendant to do
22 the deal that we indicted this defendant on. We had
23 his license tag. It was in the report.

24 We didn't realize that law enforcement
25 didn't ever run that tag until Thursday, when we

1 were in the midst of trial. We told them to run
2 that tag immediately. They did. They spoke with
3 the individual on Friday.

4 They faxed us a statement. As soon as we
5 received it, we faxed it to Mr. Floyd. So we are
6 essentially in the same boat on that issue.
7 Nevertheless, that tag number was in the incident
8 report. Mr. Floyd could have followed up on that as
9 easy as we could have.

10 In addition, I don't think that statement
11 -- it's certain not exculpatory. And in fact, I
12 don't think it's subject to disclosure under Rule 5,
13 subsection (2), which states, "This rule does not
14 authorize the discovery or inspection of reports,
15 memoranda, or statements made by prosecution
16 witnesses or prospective prosecution witnesses"
17 essentially until after that witness testifies.

18 So I think we are well within the confines
19 of this rule. I don't see how at this point he can
20 get the gentleman's medical records. I think that
21 would be privileged information anyway. So I don't
22 think he's prejudiced by this witness statement.

23 THE COURT: Mr. Floyd, anything in reply?

24 MR. FLOYD: Your Honor, when they surprise
25 us with a witness statement like this on the eve of

1 trial, we certainly are entitled to have time to
2 explore. And we would ask the Court to issue an
3 order allowing us to get those records from rehab,
4 because they may well bear on the credibility of
5 this witness, who could be a crucial witness in this
6 matter.

7 MR. McNAIR: Your Honor --

8 THE COURT: Yes.

9 MR. McNAIR: -- I'm pretty certain this
10 witness will readily admit he had a crack problem,
11 and Mr. Floyd could impeach him on that all day
12 long.

13 THE COURT: All right, with regards to Mr.
14 Floyd's motion for a continuance due to Ms. Candy
15 Kyzer being unavailable, the Court is going to deny
16 defendant's motion with regards to that. Certainly,
17 the State has to connect the dots, so to speak, from
18 the officer that collected the drugs to the dropping
19 in the drop box and from Ms. Kyzer to the analyst.

20 I'm going to assume the analyst is going
21 to testify connecting those dots. I believe that it
22 does under the law go to the weight and not the
23 admissibility. Ms. Kyzer, from what was said here
24 today, would simply testify as to the taking of
25 those drugs from a lock box and then giving them to

1 the analyst, who I assume is going to testify in
2 this case.

3 Is that right, Mr. Scott?

4 MR. SCOTT: That's correct.

5 THE COURT: Obviously, if she doesn't
6 connect the dots -- if the analyst doesn't connect
7 the dots -- it may be a whole different ballgame.
8 Therefore, I will respectfully deny Mr. Floyd's
9 motion with regards to that.

10 Now, with respect to defendant's motion
11 for a continuance based upon this statement from Mr.
12 Brian Jeffrey Clark being provided to the defense on
13 Friday, I'm going to respectfully deny that motion,
14 as well.

15 Under the rules, in fact, such statements
16 don't have to be disclosed until after the witness
17 has testified. I believe that certainly this
18 statement would not be admissible exculpatory
19 information, or extrinsic information would not be
20 admissible, this statement would not be admissible.

21 It certainly has some information in here
22 that I believe it would be unduly prejudicial to
23 this defendant which references other deals. I'm
24 not exactly sure. Certainly, if the defendant
25 testified, it might be a different ballgame.

1 This statement would not be admissible by
2 itself, I don't believe. Certainly, this witness
3 would be subject to cross-examination on this
4 statement. If the defendant denies any of it, then
5 we're talking about a whole different ball of wax,
6 so to speak. He certainly would be entitled to
7 cross-examination of this witness. I'm going to
8 deny defendant's motion for a continuance on that.

9 Any other matters at this time from the
10 State -- Mr. Scott?

11 MR. SCOTT: I'm sorry, Your Honor, nothing
12 from the State.

13 THE COURT: Anything further from defense
14 counsel?

15 MR. FLOYD: Your Honor, I think you may
16 have already ruled on this point. We would formally
17 move a motion in limine to prevent this witness from
18 testifying as to any other incidents allegedly
19 occurring between him and the defendant, other than
20 the incident for which he's on trial.

21 THE COURT: Absolutely. And I don't know
22 what the State says on that, but I don't know that
23 it matters, all right. I am going to certainly
24 grant that motion, because any other alleged drug
25 deals that Mr. Alewine may have been involved in

1 would certainly be unduly prejudicial for this
2 defendant and would not be allowed by the State.

3 All right, anything else? Anything else,
4 Mr. Floyd?

5 MR. FLOYD: No, Your Honor.

6 THE COURT: All right, I'm going to stand
7 down for just a few minutes. If you'll let the jury
8 panel come back in here, and then we'll move forward
9 on selecting a jury. If you all have any requests
10 for voir dire, I need that right now. Make sure you
11 give me your witness lists, as well.

12 You can go ahead and let that panel back
13 in.

14 (Court in recess.)

15 THE COURT: Thank you. Be seated, please.

16 All right, Mr. Solicitor, call your first
17 case.

18 MR. SCOTT: Thank you, Your Honor. State
19 versus Eddie Frank Alewine, Indictment Number 2012-
20 GS-32-01191. It's an indictment for distribution of
21 crack cocaine. It was true billed by the Lexington
22 County Grand Jury May 7, 2012.

23 THE COURT: All right, ladies and
24 gentlemen, the first case called for trial this week
25 is the State of South Carolina versus Eddie Frank

1 Alewine. Mr. Alewine has been charged by Indictment,
2 2012-GS-32-1191, which alleges that Mr. Alewine on
3 or about August 30, 2011, knowingly and
4 intentionally distributed a quantity of cocaine
5 base, also known as crack cocaine, a controlled
6 substance under the provisions of Section 44-53-110
7 South Carolina Code of Laws, such distribution not
8 having been authorized by law, in violation of
9 Section 44-53-375(b) (3) of the South Carolina Code
10 of Laws.

11 Ladies and gentlemen, to this indictment
12 Mr. Alewine has pled not guilty. Therefore, the
13 State of South Carolina bears the burden of proving
14 his guilt beyond a reasonable doubt. The indictment
15 that I hold in my hand charging Mr. Alewine with
16 this offense is not evidence in this case.

17 It is not evidence in this case. It is
18 simply the method and manner in which a case is
19 brought into this Court. Before we move forward in
20 selecting a jury, there are several questions that I
21 have to ask you. So please listen very carefully to
22 these questions.

23 These questions are asked for the purpose
24 of determining your eligibility to serve on this
25 particular jury. The first question, ladies and

1 gentlemen, is anyone on the jury panel related by
2 blood or connected by marriage to Mr. Eddie Frank
3 Alewine? If so, please stand.

4 Has anyone on the jury panel ever had a
5 close personal or social relationship with Mr. Eddie
6 Frank Alewine? If so, please stand. Following,
7 ladies and gentlemen, is a list of potential
8 witnesses in this case. Please listen very
9 carefully to this list.

10 Eric Kirkland, Lexington County Sheriff's
11 Department; Terry Govan, Lexington County Sheriff's
12 Department; Paige Barnes, Lexington County Sheriff's
13 Department; Ken Correll, Lexington County Sheriff's
14 Department; Rick Hazewinkel of the Lexington County
15 Sheriff's Department; Candy Kyzer, Lexington County
16 Sheriff's Department; Beth Harmon, Lexington County
17 Sheriff's Department; Emily Homer, Lexington County
18 Sheriff's Department; Larry Scott; Brian Clark;
19 Benton Gunter.

20 Is any member of the jury panel related by
21 blood, connected by marriage, or have a close
22 personal or social relationship with any of the
23 potential witnesses in this case? If so, please
24 stand.

25 All right, at this time, Mr. Scott, if

1 you'd stand and introduce yourself, along with
2 anybody who may be assisting you in this case,
3 followed by you, Mr. Floyd.

4 MR. SCOTT: Good morning. My name is Dale
5 Scott. I'm an Assistant Solicitor in Lexington
6 County. I represent the State. With me is Robbie
7 McNair, who is also an Assistant Solicitor with
8 Lexington County.

9 THE COURT: Mr. Floyd.

10 MR. FLOYD: My name is Wayne Floyd, and I
11 practice law down on Highway One in West Columbia.
12 This is Mr. Alewine seated next to me.

13 THE COURT: All right, ladies and
14 gentlemen, is anybody on the jury panel related by
15 blood, connected by marriage, or have a close
16 personal, social, or business relationship with any
17 of the attorneys involved in this case? If so,
18 please stand.

19 All right, has any member of the jury
20 panel formed or expressed an opinion about any issue
21 or matter involved in this case? If so, please
22 stand. Is any member of the jury panel aware of any
23 bias or prejudice toward either the State or the
24 defendant in this case? If so, please stand.

25 Is there any member of the jury panel who

1 is a member of or contributor to any group which has
2 its primary concern the promotion of law enforcement
3 or victims' rights? These groups might include but
4 are not limited to MADD, SADD, or Citizens Against
5 Violence Crime. If so, please stand.

6 Does any member of the jury panel feel you
7 should not serve as a juror in this case with
8 particular emphasis being placed on your ability to
9 be fair and impartial to both the State and the
10 defendant? If so, please stand.

11 All right, does the State have any
12 additional voir dire?

13 MR. SCOTT: Nothing from the State, Your
14 Honor.

15 THE COURT: Does defense counsel have any
16 additional voir dire?

17 MR. FLOYD: No, Your Honor.

18 THE COURT: All right, Madam Clerk.

19 CLERK OF COURT: When I call your name, if
20 you'll come up and stand -- bring your belongings
21 and stand right here. Juror number 137, Patricia
22 Hert.

23 THE COURT: Five and five, Mr. Floyd.

24 MR. FLOYD: That's great.

25 THE COURT: Five and five.

1 CLERK OF COURT: What say you for the
2 State?

3 MR. SCOTT: Please present the juror.

4 CLERK OF COURT: What say you for the
5 defense?

6 MR. FLOYD: Present Ms. Hert.

7 CLERK OF COURT: If you'll have a seat in
8 the jury box, ma'am.

9 Juror number 230, Donna Turner.

10 What say you for the State?

11 MR. SCOTT: Please excuse the juror.

12 CLERK OF COURT: If you'll return to your
13 seat, ma'am.

14 Juror number 24, Carolyn Brewer.

15 What say you for the State?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: What say you for the
18 defense?

19 MR. FLOYD: Excuse Ms. Brewer, please.

20 CLERK OF COURT: If you'll return to your
21 seat, ma'am.

22 Juror number 209, Pamela Shumpert.

23 What say you for the State?

24 MR. SCOTT: Please present the juror.

25 CLERK OF COURT: What say you for the

1 defense?

2 MR. FLOYD: Present Ms. Shumpert, please.

3 CLERK OF COURT: Please have a seat in the
4 jury box.

5 Juror number 27, William Brittain.

6 What say you for the State?

7 MR. SCOTT: Please excuse the juror.

8 CLERK OF COURT: If you'll return to your
9 seat, sir.

10 Juror number 241, Gary Wilson.

11 What say you for the State?

12 MR. SCOTT: Please present the juror.

13 CLERK OF COURT: What say you for the
14 defense?

15 MR. FLOYD: Present Mr. Wilson.

16 CLERK OF COURT: If you'll have a seat in
17 the jury box, sir.

18 Juror number 25, Blake Bridwell.

19 What say you for the State?

20 MR. SCOTT: Please present the juror.

21 CLERK OF COURT: What say you for the
22 defense?

23 MR. FLOYD: Excuse Mr. Bridwell, please.

24 CLERK OF COURT: If you'll return to your
25 seat, sir.

1 Juror number 73, George Fagan.
2 What say you for the State?
3 MR. SCOTT: Please present the juror.
4 CLERK OF COURT: What say you for the
5 defense?
6 MR. FLOYD: Excuse Mr. Fagan, please.
7 CLERK OF COURT: If you'll return to your
8 seat, sir.
9 Juror number 89, Richards Green.
10 What say you for the State?
11 MR. SCOTT: Please present the juror.
12 CLERK OF COURT: What say you for the
13 defense?
14 MR. FLOYD: Present Mr. Green, please.
15 CLERK OF COURT: If you'll have a seat in
16 the jury box, sir.
17 Juror number 223, David Sykes.
18 What say you for the State?
19 MR. SCOTT: Please present the juror.
20 CLERK OF COURT: What say you for the
21 defense?
22 MR. FLOYD: Excuse Mr. Sykes, please.
23 CLERK OF COURT: If you'll return to your
24 seat, sir.
25 Juror number nine, Brian Barnes.

25 CLERK OF COURT: If you'll have a seat in

1 the jury box, ma'am.

2 Juror number 121, Demetrius Keenon.

3 What say you for the State?

4 MR. SCOTT: Please excuse the juror.

5 CLERK OF COURT: If you'll return to your

6 seat, sir.

7 Juror number 172, Cynthia Palmer.

8 What say you for the State?

9 MR. SCOTT: Please present the juror.

10 CLERK OF COURT: What say you for the

11 defense?

12 MR. FLOYD: Present Ms. Palmer.

13 CLERK OF COURT: If you'll have a seat in

14 the jury box, ma'am.

15 Juror number 118, Sunny Jinwala.

16 What say you for the State?

17 MR. SCOTT: Please present the juror.

18 CLERK OF COURT: What say you for the

19 defense?

20 MR. FLOYD: Present Mr. Jinwala.

21 CLERK OF COURT: If you'll have a seat in

22 the jury box, sir.

23 Juror number 47, Belinda Clark.

24 What say you for the State?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: What say you for the
2 defense?

3 MR. FLOYD: Present Ms. Clark, please.

4 CLERK OF COURT: If you'll have a seat in
5 the jury box, ma'am.

6 Juror number 90, Derrick Gunter.

7 What say you for the State?

8 MR. SCOTT: Please present the juror.

9 CLERK OF COURT: What say you for the
10 defense?

11 MR. FLOYD: Excuse Mr. Gunter, please.

12 CLERK OF COURT: If you'll return to your
13 seat, sir.

14 Juror number 40, Hope Canaday.

15 What say you for the State?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: What say you for the
18 defense?

19 MR. FLOYD: Present Ms. Canaday.

20 CLERK OF COURT: If you'll have a seat in
21 the jury box, ma'am.

22 Juror number 184, William Price.

23 What say you for the State?

24 MR. SCOTT: Please present the juror.

25 CLERK OF COURT: What say you for the

1 defense?

2 MR. FLOYD: Present Mr. Price.

3 CLERK OF COURT: If you'll have a seat in
4 the jury box, sir.

5 Juror number 153, Mindy McManus.

6 What say you for the State?

7 MR. SCOTT: Please present the juror.

8 CLERK OF COURT: What say you for the
9 defense?

10 MR. FLOYD: Present Ms. McManus.

11 CLERK OF COURT: If you'll have a seat in
12 the jury box, ma'am.

13 Alternates, Your Honor.

14 THE COURT: One alternate, one strike for
15 the State, two for the defense.

16 CLERK OF COURT: Juror number 211, Robert
17 Shumpert.

18 What say you for the State?

19 MR. SCOTT: Please present the juror.

20 CLERK OF COURT: What say you for the
21 defense?

22 MR. FLOYD: Excuse Mr. Shumpert, please.

23 CLERK OF COURT: If you'll return to your
24 seat, sir.

25 Juror number 45, Mary Chapin.

1 What say you for the State?

2 MR. SCOTT: Please present the juror.

3 CLERK OF COURT: What say you for the
4 defense?

5 MR. FLOYD: Excuse Ms. Chapin.

6 CLERK OF COURT: If you'll return to your
7 seat, ma'am.

8 Juror number 199, Barbara Rose.

9 What say you for the State?

10 MR. SCOTT: Please present the juror.

11 CLERK OF COURT: What say you for the
12 defense?

13 MR. FLOYD: Present Ms. Rose.

14 CLERK OF COURT: If you'll have a seat in
15 the jury box, ma'am.

16 THE COURT: Are there any matters of law
17 we need to take up by the State?

18 MR. SCOTT: Nothing from the State, Your
19 Honor.

20 THE COURT: From the defense?

21 MR. FLOYD: I do have one matter.

22 THE COURT: If you all will approach over
23 here for a sidebar.

24 All right, ladies and gentlemen, I'm going
25 to ask that you all step to the jury room for just a

1 minute while I take up a matter of law outside of
2 your presence. Do not discuss the case.

3 You don't know anything about it other
4 than what I've told you in the indictment. But do
5 not discuss the case until you're instructed to do
6 so. Please step to the jury room, and I'll get you
7 back in here in just a second.

8 (Petit jury out at 12:08 p.m.)

9 THE COURT: All right, those of you who
10 are seated in the audience that are on the jury
11 panel, I'm going to have to ask you to step out for
12 just a minute while we take up a matter outside your
13 presence. I'll get you back in here in just a
14 minute.

15 (Jury out at 12:08 p.m.)

16 THE COURT: Yes, sir, Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor. At
18 this time, we would enter a Batson motion for
19 consideration. Juror number 121 is the only black
20 male potential juror who was called. He was struck
21 by the State. We would move that the selection
22 process be overturned and another jury panel
23 selected because of their violation of Batson.

24 THE COURT: Thank you, Mr. Floyd.

25 Mr. Scott?

1 MR. SCOTT: Your Honor, 121 was our fifth
2 strike. Our records show in 1988 he had a financial
3 transaction fraud conviction. Our notes are that he
4 received one year suspended with three years'
5 probation. That's what the notes say here.

6 It indicates that he does have a criminal
7 conviction. Fraud or this type of crime would be
8 one that we prefer our jurors not to have. Your
9 Honor, apparently, he has had run-ins with the law
10 before and was sentenced for it. That was our
11 reason for striking him.

12 THE COURT: Mr. Floyd, the State has given
13 a race-neutral, gender-neutral reason for the
14 strike. Anything further?

15 MR. FLOYD: I would ask if there were any
16 jurors they allowed on the jury that have previous
17 arrests.

18 THE COURT: Mr. Scott?

19 MR. SCOTT: Not while we still had
20 strikes, Your Honor. The first one was 137, did
21 not; 230, Your Honor, we struck. We had a question.
22 We weren't even sure if that was the correct rap
23 sheet, but it did list a number of convictions. So
24 we struck number 230, which was a white female.

25 24 had no record. 209 was the next one,

1 Your Honor; 209 had no record. 27 had no record,
2 which was the next one called; 241, Your Honor, was
3 the next one, had no record. 25 had no record, was
4 struck by Mr. Floyd.

5 73, Your Honor, had no record. I believe
6 73, a white male, was also struck by Mr. Floyd. 89,
7 Your Honor, was seated, had no record. 223 had no
8 record and I believe was struck by Mr. Floyd.
9 Number nine was a white male. We did strike, had an
10 '01 DWI but our records show was not guilty. But
11 just to err on the side of safety, we struck that
12 juror.

13 216, Your Honor, was a white male who was
14 struck, did have a prostitution conviction. 195 had
15 no record and was seated. 140 had no record, was a
16 black female. That brought us to 121. Your Honor,
17 that was the juror in question and, again, had an
18 '88 financial transaction card fraud conviction,
19 received one year suspended to three years'
20 probation.

21 Do you want me to go over the ones after
22 the strikes, Your Honor?

23 THE COURT: Yes, sir.

24 MR. SCOTT: Okay. 172 was the next one,
25 no record. 118 was called next; 118 had no record.

1 47 was called; 47 had no record. 90 was next; 90
2 had no record. 40 was called after that; 40 had no
3 record. 184 was next, with no record.

4 Finally, 153, no record. And as far as
5 the alternates, the State did not use any strikes.
6 211 was called first, with no record.

7 THE COURT: Well, 211 and 45 were both
8 struck by the defendant.

9 MR. SCOTT: That's correct, Your Honor.
10 Neither had a record.

11 THE COURT: What about 199, the alternate?

12 MR. SCOTT: 199 had no record listed, Your
13 Honor.

14 THE COURT: Anything further, Mr. Floyd?

15 MR. FLOYD: Nothing further, Your Honor.

16 THE COURT: All right, based upon what
17 I've heard here today, the State has certainly given
18 a race-neutral, gender-neutral reason for exercising
19 its fifth strike on juror number 121 and that there
20 were no same or similar jurors seated on this jury.
21 Therefore, the Court does not find a violation of
22 Batson. Therefore, defense counsel's motion is
23 denied.

24 Anything further on that, Mr. Floyd?

25 MR. FLOYD: Nothing further, Your Honor.

1 THE COURT: All right, this is what my
2 intentions are. I'm going to bring this panel back
3 in. I'm going to excuse them for the balance of
4 today and ask that they call back tonight after
5 6:00.

6 And then I'm going to bring this jury that
7 we've selected in this case. I'm going to excuse
8 them for lunch. It's about 12:17 right now.

9 I'm not going to start the trial of this
10 case, let you all do opening statements, and then
11 cut them loose for lunch. I'm going to cut them
12 loose right now and ask that they be back in the
13 jury room at 2:00, and we'll start the trial of this
14 case at that time.

15 Any objection by the State to that?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: By defense counsel?

18 MR. FLOYD: No, Your Honor.

19 THE COURT: All right, if you'll bring me
20 the panel back in here, please.

21 (Petit jury in at 12:19 p.m. and out at
22 12:21 p.m.)

23 THE COURT: All right, if you'll bring the
24 other panel back in here, please.

25 BAILIFF: Yes, sir, Your Honor.

1 (Jury in at 12:22 p.m.)

2 THE COURT: All right, ladies and
3 gentlemen, we appreciate your patience. What we're
4 going to do right now is I'm going to cut you all
5 loose for lunch, okay. I'm going to ask that you be
6 back in the jury room at 2:00, and we'll start the
7 trial of this case at that time.

8 During your lunch break, ladies and
9 gentlemen, and throughout the trial of this case
10 until you're instructed to do so, you are not to
11 discuss this case at all with anybody. That
12 includes fellow jurors, family, friends, or anyone.

13 If anybody attempts to talk with you about
14 this case, you let one of the Bailiffs know, and
15 they will let me know, and we will address it
16 accordingly. In addition, during any breaks and
17 during the course of this trial, you are not to do
18 any independent investigation on your own.

19 We're going to decide this case based
20 solely upon the testimony and the evidence that's
21 presented in this courtroom during the course of
22 this trial, and nowhere else, all right. Now, let
23 me go ahead and say this to you.

24 Ms. Rose, you're the only person right now
25 that's got an assigned seat, okay. That is your

1 seat right now. Everybody else, all other jurors,
2 can seat wherever you so desire when you all come in
3 and out of the courtroom.

4 At some point during the course of this
5 trial, I will appoint a foreperson, and that
6 foreperson will be seating in this very first seat
7 on the front row, okay. And I will do that either
8 after lunch or at some point during the course of
9 this trial.

10 Again, please be back in the jury at 2:00,
11 and we'll begin the trial of this case as promptly
12 as possible at that time.

13 Anything from the State before I excuse
14 the jury?

15 MR. SCOTT: Nothing, Your Honor.

16 THE COURT: From defense counsel?

17 MR. FLOYD: No, Your Honor.

18 THE COURT: All right, you all are free to
19 leave.

20 You'll escort them out?

21 BAILIFF: Yes, sir.

22 THE COURT: Thank you.

23 (Jury out at 12:24 to 2:00 p.m. for
24 lunch.)

25 THE COURT: Anything from the State before

1 we break for lunch?

2 MR. SCOTT: No, Your Honor.

3 THE COURT: Anything from defense counsel?

4 MR. FLOYD: No, Your Honor.

5 THE COURT: Is Mr. Alewine in custody?

6 MR. SCOTT: He is, Your Honor.

7 MR. FLOYD: Yes, he is.

8 THE COURT: I'd ask the lawyers to be back
9 here at a quarter till two in case of any matters
10 that we need to address prior to beginning the
11 trial. Everybody else 2:00, okay?

12 (Court in recess.)

13 THE COURT: Thank you. Be seated, please.

14 Anything from the State before we bring
15 the jury back in?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: Anything from defense counsel?

18 MR. FLOYD: No, Your Honor.

19 THE COURT: Any issues with sequestering
20 witnesses?

21 MR. SCOTT: Nothing from the State.

22 THE COURT: Mr. Floyd?

23 MR. FLOYD: No, Your Honor.

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

1 MR. SCOTT: Nothing from the State, Your
2 Honor.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: No, Your Honor.

5 THE COURT: All right, if you'll bring us
6 the jury, please.

7 BAILIFF: Yes, sir, Your Honor.

8 (Jury in at 2:07 p.m.)

9 THE COURT: Madam Clerk, if you will swear
10 the jury.

11 (The jury was sworn.)

12 CLERK OF COURT: All jurors are sworn,
13 Your Honor.

14 THE COURT: All right, ladies and
15 gentlemen, we're about to begin the trial of the
16 case of the State of South Carolina versus Eddie
17 Frank Alewine. Before we begin the trial of this
18 case, I want to tell you that this trial probably
19 will be different from what you might expect.

20 Many people do not have the chance to
21 attend actual court sessions as you're doing now and
22 may think from watching television or movies or
23 reading books that trials are always full of high
24 drama, intense action, and riveting circumstances.

25 While all of these things may be true at

45

1 times, this trial is not for entertainment. It is a
2 fundamental part of our democracy, a search for the
3 truth in an effort to make sure that justice is done
4 between the parties before this Court.

5 Searching for the truth and making sure
6 that justice is done is often slow, deliberate, and
7 repetitive, the opposite of what you may have seen
8 on television or in movies or read in books. This
9 courtroom is a place of honor dedicated to the
10 protection and preservation of citizens' rights
11 through what many have called the greatest justice
12 system ever created.

13 The attorneys appearing before you are
14 advocates for the parties that they represent. But
15 first and foremost, they are officers of the Court
16 sworn to uphold the integrity and fairness of our
17 judicial system and to help you in the search for
18 the truth.

19 You should expect them to be professional,
20 competent, and ethical in the representation of
21 their client's interests. Remember that you have
22 taken an oath to try this case and reach a fair and
23 just verdict.

24 And you, ladies and gentlemen, are also
25 expected to be professional, reasonable, and

1 ethical. Thank you for accepting this important
2 responsibility of jury service and for your
3 contribution to our judicial system.

4 What I will now say to you is intended to
5 serve as an introduction to the trial of this case.
6 These remarks are not a charge on the law in this
7 case. I will instruct you on the law applicable to
8 this case at the end of the trial, before you retire
9 to consider your verdict.

10 This is merely an explanation of the
11 procedure that we will follow in the trial of this
12 case so that you may better understand what may be
13 happening. The defendant, ladies and gentlemen, in
14 this case is charged by an indictment filed in this
15 Court with the crime of distribution of crack
16 cocaine, the elements of which will be explained to
17 you later.

18 The indictment, ladies and gentlemen, is
19 simply the charge by which this case is brought into
20 this Court, and it is not in any way -- in any way --
21 evidence of any of the allegations it contains.

22 The defendant has pled not guilty to this
23 indictment. Therefore, the State bears the burden
24 of proving each of the elements of the indictment to
25 you, the jury, beyond a reasonable doubt. And it

1 will be your duty, ladies and gentlemen, to decide
2 whether the State has met that burden.

3 Your purpose as jurors is to find and
4 determine the facts. You are the sole judge of the
5 facts. If at any time I make any comment regarding
6 the facts, you must disregard it. You are to
7 determine the facts from the testimony you hear and
8 the other evidence introduced in court.

9 It is up to you to determine the
10 inferences which you feel may properly be drawn from
11 the evidence. It is especially important that you
12 perform your duty of determining the facts
13 diligently and conscientiously, because ordinarily
14 there is no way to correct an erroneous
15 determination of the facts by a jury.

16 On the other hand and with equal emphasis,
17 the same law that makes you the judge of the facts
18 make me the judge of the law. The law as given by
19 the Court is the only law that you may consider.
20 You must accept and follow it, even though you may
21 disagree with it.

22 I cannot tell you what the facts are, and
23 you cannot disagree with me about what the law is or
24 should be. Your job is to take the law as I give it
25 to you and apply it to the facts as you find them

1 from the testimony of the witnesses and any other
2 evidence that is introduced.

3 After doing that, you will render your
4 verdict, a true and just verdict, under the solemn
5 oath that you just took as jurors. Until I advise
6 you to begin your deliberations, you must not
7 discuss this case with anyone, including your fellow
8 jurors, friends, family members, and anyone involved
9 in this case.

10 This includes discussions face-to-face and
11 those by telephone, e-mail, text, blogs, or any
12 other method of communication. You may not use a
13 computer or cell phone or other electronic device
14 with communication capabilities at any time while in
15 the courtroom or during deliberations.

16 During your breaks for meals or overnight,
17 if necessary you may use these devices. However,
18 you may not at any time use these devices to get or
19 send information about the case.

20 This includes information about a party, a
21 witness, an attorney, or a Court officer, news
22 accounts about the case, research on any topic
23 raised, any topics you may think would be helpful in
24 deciding the case, or any testimony presented by any
25 witness.

1 During the trial, I don't think you're
2 going to see or hear, but you are not to read,
3 listen to, or watch any news reports about this
4 case. This includes anything that may be in the
5 newspapers or on the Internet, radio, or television.

6 You must not consider anything you may
7 have read or heard about the case outside the
8 courtroom, whether before or during the trial.
9 After the case is submitted to you, you must discuss
10 it only in the jury room with your fellow jurors.

11 The attorneys and parties in this case
12 have been advised that they are not to talk to you
13 at all. So if you see anyone involved in this case
14 and they don't speak to you, they're not being
15 unfriendly. They're simply following the
16 instructions of this Court.

17 It is important that you keep an open mind
18 and not decide any issue in this case until all of
19 the evidence has been presented, the parties have
20 made their closing arguments, and I have instructed
21 you on the applicable law in this case.

22 It is your responsibility, your solemn
23 responsibility, to determine the guilt or innocence
24 of the defendant. And your verdict must be based
25 solely on the evidence as it is presented to you in

1 this trial and on the law as I instruct you during
2 and at the close of the trial.

3 Now, in just a moment, the Solicitor will
4 make what is called an opening statement in which
5 the Solicitor will explain to you the issues in this
6 case or at least what the Solicitor thinks the
7 issues are in this.

8 The attorney for the defendant may also
9 make an opening statement, although he is not
10 required to do so. What the attorneys tell you all,
11 ladies and gentlemen, during their opening
12 statements is not evidence in this case.

13 It is only their contention as to what the
14 issues are. The evidence in this case will be
15 presented to you by the testimony of sworn witnesses
16 from this witness stand and/or by exhibits that may
17 be introduced into evidence.

18 From time to time during the trial, you
19 may hear one of the lawyers say something like "Your
20 Honor, I believe we have a question of law or a
21 matter of law to take up," or "Your Honor, may we
22 approach the bench?" or sometimes I, myself, might
23 find it necessary to excuse you all from the
24 courtroom for a short while so that the attorneys
25 and I can discuss a matter of law.

1 The reason for this is because you are the
2 judge of the facts in this case. And sometimes when
3 I'm discussing matters of law with the attorneys, it
4 may be necessary for me to make some comment as to
5 the facts in connection with ruling whether or not a
6 particular law applies.

7 I am not supposed to tell you what I think
8 the facts are. So I will excuse you from the
9 courtroom while these discussions take place so that
10 in no way will you be influenced by anything that I
11 might say or do in connection with the facts.

12 In determining what the true facts are in
13 this case, you must decide whether or not the
14 testimony of the witnesses is believable. It will
15 be my responsibility to rule as a matter of law as
16 to whether certain testimony is admissible at all or
17 not.

18 But once the testimony is admitted,
19 whether or not you believe it is solely for you to
20 determine. In deciding whether to believe a
21 witness, you have the right to consider the interest
22 of any witness, the bias of any witness, the
23 prejudice of any witness, the opportunity for the
24 witness to have seen the matters and things about
25 which the witness may testify, and the way the

1 witness acts on the witness stand.

2 You have a right to consider anything that
3 is in the record that will help you evaluate the
4 testimony of the witnesses. That means that it is
5 your duty, ladies and gentlemen, to pay close
6 attention to these witnesses, to observe the
7 witnesses, to listen to the witnesses, and to pay
8 close attention to the attorneys and to the Court.

9 Please don't let your thoughts wander, but
10 give strict attention to the testimony in this case
11 so that at the end of all the testimony, after the
12 arguments of counsel and the charge of the law by
13 the Court, you will then be in a position to
14 determine what the true facts are, and to apply the
15 law to those facts, and thus render a true and just
16 verdict.

17 Now, I will appoint a foreperson later
18 during the course of this trial, as I said earlier.
19 And it will be the foreperson's responsibility to
20 preside in the jury room and be the jury's
21 spokesperson here in court.

22 It will also be the foreperson's
23 responsibility to write the verdict. I will give
24 the foreperson further instructions later during the
25 course of this trial and at the conclusion of this

1 case.

2 Now, in order to preserve everyone's
3 rights, I will give the parties an opportunity to
4 object to anything that I have said. Any exception
5 or objection to anything that I have said to the
6 jury by the State?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: By the defense counsel?

9 MR. FLOYD: No, Your Honor.

10 THE COURT: Ladies and gentlemen, we will
11 now begin the trial of this case. Mr. Scott, you
12 are recognized with opening statements.

13 MR. McNAIR: Thank you, Your Honor.

14 THE COURT: Excuse me, Mr. McNair.

15 MR. McNAIR: May it please the Court?

16 THE COURT: Yes, sir.

17 OPENING STATEMENT

18 BY THE STATE

19 MR. McNAIR: Mr. Floyd. Ladies and
20 gentlemen, on August 30th of last year, the
21 defendant, Eddie Alewine, distributed poison into
22 our community. He sold crack cocaine. However,
23 unbeknownst to him at the time, the individual that
24 he sold the crack to was a confidential informant
25 working for law enforcement.

Opening Statement by the State

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1 Now, I don't know if you've heard about
2 what a confidential informant is or not, also called
3 a CI for short. It is essentially a layperson or
4 somebody off the street who works for law
5 enforcement in order to make buys from drug dealers.

6 Now, I'll go ahead and tell you, ladies
7 and gentlemen, some of these CIs have charges
8 themselves, and they're trying to cooperate with law
9 enforcement in order to help themselves. Sometimes
10 they get paid a small amount of money for their
11 assistance to law enforcement.

12 In this case, I will readily admit to you
13 that the CI has a troubled past. His name is Larry
14 Wayne Scott. He's from Batesburg-Leesville, ran
15 away from home when he was 13. He has a history of
16 drug abuse. He has a criminal abuse.

17 He's actually currently incarcerated for
18 robbery. But, ladies and gentlemen, keep in mind,
19 you can't send an angel to do the devil's business,
20 okay? Law enforcement picks these guys for a
21 reason. And one of those reasons is because they
22 fit the part.

23 They can go up and ask a drug dealer for
24 crack or if he's selling crack without raising
25 suspicion. Now, I'm not saying any of us are angels

Opening Statement by the State

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1 or law enforcement. But if we went up to a drug
2 dealer or law enforcement went up to a drug dealer
3 in uniform, it's going to raise suspicions.

4 A drug dealer probably wouldn't deal with
5 them. So that's part of the reason why we use CIs
6 like that. And you're going to hear from Larry
7 Wayne Scott, ladies and gentlemen.

8 You're also going to hear from Officer
9 Kirkland sitting right here and other law
10 enforcement officers who were involved in this
11 investigation. You're going to hear how they
12 conduct controlled buys, how they monitor these, how
13 they use confidential informants.

14 In this case, they met with the CI, Larry
15 Wayne Scott, beforehand at the predetermined
16 location. Larry Wayne Scott in their presence calls
17 the defendant and asks for crack. They then set up
18 a place to meet, which is the IGA in Gilbert.

19 Law enforcement searches Larry Wayne Scott
20 to make sure he has no drugs or money on him prior
21 to doing the deal. They wire him up with audio.
22 Then they transport him to the IGA. They drop him
23 off. They pull off where they can maintain
24 surveillance on him at all times.

25 Larry Wayne waits there for a while.. The

Opening Statement by the State

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1 defendant pulls up in a red truck. He's in the
2 passenger seat. They do the deal. It happens in a
3 snap. He's off. Larry Wayne comes back, turns the
4 drugs over to law enforcement.

5 Law enforcement then sends those drugs off
6 for testing. And you'll hear from the chemist.
7 They came back positive as to crack cocaine. Ladies
8 and gentlemen, I will also admit to you that I
9 mentioned that Mr. Scott was wired.

10 We will play that for you. I'll go ahead
11 and tell you, you can't hear very much on it. It's
12 bad audio. You hear a few words exchanged, and it's
13 over. But you'll also hear from Officer Kirkland a
14 lot of these deals, they go down in a flash.
15 There's not much time.

16 In a perfect world, we'd love to have
17 better audio. We'd love to have video. But in the
18 real world, that's not always possible. As you
19 know, this is not CSI. But I submit to you, ladies
20 and gentlemen, we have something better than that.

21 We have two eyewitnesses. We have Larry
22 Wayne Scott himself who did the hand-to-hand
23 transaction with the defendant. And we have the
24 driver of that red truck that this defendant was
25 riding in. And you will hear from him, as well.

Opening Statement by the State

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1 Now, the Judge is going to instruct you in
2 detail on the law at the end of this trial. I want
3 to briefly cover a little bit of it right now. We
4 will prove to you three things. Again, he's charged
5 with distribution of crack cocaine.

6 We'll prove to you three things. One, the
7 substance involved was in fact crack cocaine. Two,
8 the defendant had possession of that crack cocaine,
9 all right. It was a hand-to-hand transaction. It
10 was in his hand. He had possession.

11 Third, that he distributed or sold that
12 crack cocaine in Lexington County. And, again, it
13 happened at the IGA in Gilbert. Now, the Judge will
14 also instruct you on reasonable doubt.

15 Of course, everybody knows in a criminal
16 trial that that's the burden of proof. And that's a
17 burden that we welcome, because, frankly, that's the
18 way it should be. Everybody in this country who's
19 ever been convicted has been convicted beyond a
20 reasonable doubt.

21 Just be mindful that it does not mean
22 beyond any doubt. It does not mean beyond a doubt
23 you can create or imagine. I submit to you that if
24 you are firmly convinced of this defendant's guilt
25 at the end of this trial, you do not have a

1 reasonable doubt.

2 You may have also heard a criminal trial
3 referred to as a defendant's day in court. And it
4 is. It's his day in court. I'm sure this day is
5 very important to him. But it's also the day in
6 court for the people of South Carolina and the
7 citizens of Lexington County.

8 I'm Robbie McNair. I'm representing the
9 people of this State, assisting Mr. Scott with this
10 case. And at the conclusion of this trial, we will
11 come back before you, and we're going to ask you to
12 return a verdict that speaks the truth and find this
13 defendant guilty as charged. Thank you.

14 THE COURT: Mr. Floyd?

15 OPENING STATEMENT

16 BY THE DEFENSE

17 MR. FLOYD: Thank you, Your Honor. Ladies
18 and gentlemen of the jury, this young man is Eddie
19 Alewine. He's the defendant in this case. He's a
20 man about whom you're going to make one of the most
21 important decisions you ever make about anybody,
22 because you're going to decide whether this man,
23 who's a total stranger to you right now, should be
24 branded a criminal for what the State alleges
25 happened on August 30, 2011.

Opening Statement by the Defense

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1 Now, if you've ever served on a criminal
2 jury before, you almost have to set aside human
3 nature, because some of you may have the thought in
4 your mind that because Eddie Alewine was arrested in
5 connection with this charge, carried to jail? --
6 in connection with this charge and is sitting now
7 before you to be judged in connection with this
8 trial.

9 So you may have a problem in your mind.
10 But if you've got that kind of thought in your mind,
11 you must erase it, because what the law says and
12 what you must follow is this.

13 Eddie Alewine is innocent. That's right.
14 And when you look at him, you must say in your mind
15 and in your heart "Eddie Alewine is innocent." And
16 he remains innocent unless the State proves his
17 guilt to each one of your satisfaction beyond a
18 reasonable doubt.

19 All we can ask is that you listen closely
20 in the courtroom to what each one of these witnesses
21 say. We ask that you judge these witnesses, and
22 you'll hear about some records that these witnesses
23 have. And you must make a decision whether based
24 upon what you hear.

25 Now, I want to thank you for your presence

Opening Statement by the Defense

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1 here. Law enforcement officers can arrest you.
2 They can carry you to jail, and they can charge you.
3 But the only way you can be convicted of a crime is
4 if 12 members of the community unanimously agree
5 that the evidence proves your guilt beyond a
6 reasonable doubt.

7 So we appreciate your presence here. This
8 is Mr. Alewine's day in court. You are what stands
9 between the charges of the State and the potential
10 punishment he will face. So you have a most
11 important role, and we appreciate your presence
12 here. I look forward to speaking with you again in
13 what we the closing argument of the case. Thank
14 you.

15 THE COURT: Call your first witness.

16 MR. SCOTT: Your Honor, the State calls
17 Eric Kirkland.

18 (The witness was sworn.)

19 CLERK OF COURT: If you'll have a seat
20 over here and state your name, please, for the
21 record.

22 MR. KIRKLAND: Detective Eric B. Kirkland.

23 ERIC B. KIRKLAND, having first been duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

Eric Kirkland - Direct

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1 BY MR. SCOTT:

2 Q Mr. Kirkland, where are you employed?

3 A Lexington County Sheriff's Department.

4 Q How long have you been with that
5 department?

6 A Since 2003.

7 Q And where were you before that?

8 A Orangeburg County Sheriff's Department.

9 Q How long were you there?

10 A From 1996 until 2003.

11 Q Any other law enforcement experience?

12 A Barnwell County Detention Center, two
13 years of corrections.

14 Q How many years of law enforcement
15 experience do you have in all?

16 A Seventeen.

17 Q What do you for Lexington County?

18 A I am a narcotics investigator with the
19 Sheriff's Department, and my primary responsibility
20 is narcotics, illegal narcotics.

21 Q Okay. You refer to that as the NET team,
22 is that right?

23 A Yes, sir, narcotics enforcement team.

24 Q What is that?

25 A It's the Lexington County Multiagency

Eric Kirkland - Direct

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1 Narcotics Enforcement Team.

2 Q Okay. So your main duty is in
3 investigating drug crimes?

4 A Yes, sir, that's correct.

5 Q What type of drug offenses do you
6 investigate?

7 A Crack cocaine, cocaine, meth, illegal
8 controlled substances Schedules I through IV.

9 Q So any illicit or illegal drug falls
10 under?

11 A Yes, sir.

12 Q That's one of your duties to investigate?

13 A That's correct.

14 Q What is a CI?

15 A A CI is a confidential informant. It's
16 someone that actually comes to us through
17 motivations or money or either they've actually
18 gotten into trouble. And if they fit the criteria,
19 they actually can qualify to get -- to actually work
20 with us and help us to better combat this thing we
21 call illegal narcotics.

22 Q How do they work with you?

23 A They actually, if they can -- they
24 actually are charged with actually going to
25 locations that we determine that we have established

Eric Kirkland - Direct

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1 to be drug activity locations that we can't get into
2 and primarily they can.

3 Q What's a controlled buy?

4 A A controlled buy is a probable cause buy
5 like what we refer to it as. That's when we
6 actually meet with a confidential informant. He is
7 searched before the controlled purchase to make sure
8 he doesn't have any money or narcotics on him prior
9 to going to.

10 He is actually then given documented funds
11 provided to by us. He actually is wired with
12 sophisticated equipment, audio/video, that enables
13 us to hopefully watch it as well as listen to it.

14 And then from there, the CI goes in, makes
15 the controlled purchase. From there, we meet back
16 with him as soon as it's over with. We retain those
17 illegal drugs that he purchased.

18 We search them again to make sure he
19 hadn't -- he or she -- hadn't went in and purchased
20 anything for themselves, any money or drugs. Then
21 we get the voluntary statement.

22 Those drugs are then immediately placed
23 into a BEST kit, later delivered to the Lexington
24 County Sheriff's Department. And that pretty much
25 concludes a controlled buy.

1 Q Had you used a CI before to conduct a
2 controlled buy?

3 A Yes, sir.

4 Q How many times?

5 A Hundreds, maybe.

6 Q Hundreds?

7 A Yes, sir.

8 Q And that kind of answers my question. But
9 is it common in your line of work to use a CI?

10 A Yes, sir.

11 Q Why not just use an undercover cop to go
12 in and do a buy with somebody who you think is
13 selling dope?

14 A It's very hard to use an undercover. You
15 almost have to use someone of a CI's caliber,
16 because you can't use a choirboy to actually buy
17 what kind of illegal narcotics they want.

18 Q You mentioned a search before you send the
19 CI over to make a buy. Why is that important?

20 A That's very important because we need to
21 make sure that they don't have any illegal drugs on
22 them going into. Also, the search covers weapons.
23 They can't have weapons either.

24 They can't have money, because if they go
25 in and they have money on them, then they might very

Eric Kirkland - Direct

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1 well make a purchase for themselves, and it could
2 contaminate and destroy our case.

3 Q So you provide the money for the CI to use
4 in a controlled buy?

5 A Yes, sir.

6 Q You document funds that you give them?

7 A By serial numbers on the report, yes, sir.

8 Q Okay. And you said you search them
9 afterwards. Why is that important?

10 A Because if they go in or if they actually
11 either pinch dope, because we actually give them
12 money to make to make a purchase, we need to make
13 sure that they hadn't pinched off whatever quantity
14 that we sent them in to buy. That, again, it
15 contaminates the case. So we have to make sure,
16 number one, they haven't got any drugs given to
17 them, or they haven't pinched any of what we
18 actually sent them in to control.

19 Q Because sometimes these CIs are addicted
20 to drugs themselves?

21 A That's correct, sir.

22 Q Do you find that's common?

23 A Yes, sir.

24 Q Did you use a CI on August 30, 2011?

25 A Yes, sir.

Eric Kirkland - Direct

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1 Q What were you looking to use that CI for?

2 A To make a controlled purchase of crack
3 cocaine.

4 Q Who was your target suspect?

5 A Mr. Eddie Alewine.

6 Q And who was the CI that you used?

7 A Larry Wayne Scott.

8 Q Had you used Mr. Scott to make purchases
9 from people before?

10 A Yes, sir.

11 Q Do you know how many times?

12 A Wayne had worked?

13 Q Okay.

14 A I mean, multiple.

15 Q Tell me how things got going August 30,
16 2011.

17 A I believe I received a phone call from him
18 that morning to make sure that he could actually
19 work that day. He had actually given that name to
20 me on the forefront. We set up a controlled
21 purchase. We met with him at a predetermined
22 location.

23 Q Where did you meet with him? Where did
24 you meet?

25 A We met with him down at the West Region,

Eric Kirkland - Direct

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1 down on Number One, which is Augusta Road.

2 Q Okay. And who was with you? Who met with
3 the CI?

4 A Agent Barnes, myself, Agent Govan, Agent
5 Hazewinkel, and Agent Ken Correll.

6 Q And what did you do at West Region with
7 the CI?

8 A We pretty much prepped him for the
9 controlled purchase. He was actually searched
10 there. He was actually, once the search came back
11 negative for money --

12 Q Who searched him?

13 A I searched him, yes, sir.

14 Q You said the search came back negative?
15 It was a negative search?

16 A Yes, sir, for money and/or narcotics.

17 Q What did do you next?

18 A We actually wired him with the
19 sophisticated equipment that we use for monitoring
20 purposes, for his safety, and so we can hear the
21 controlled purchase.

22 Q Why do you call it sophisticated?

23 A It's just a technical term for using.
24 We're not really sophisticated. We just like to
25 refer to it as that.

Eric Kirkland - Direct

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1 Q Those recordings don't always turn out, do
2 they?

3 A No, sir, they don't. No, sir.

4 Q Okay, so you search him, you wire him.
5 Then what happens?

6 A I actually gave him the documented funds
7 that we actually provide him with. Once that money
8 was given to him, a telephone call was made.

9 Q Who made that telephone call?

10 A Larry Wayne Scott did.

11 Q Who was he calling?

12 A Well, he was actually calling Mr. Eddie
13 Alewine.

14 MR. FLOYD: Your Honor, I'm going to
15 object unless he knows of his own knowledge.

16 THE COURT: Rephrase your question. State
17 your question again.

18 Q I asked who he was calling. Let me --

19 THE COURT: He can testify as to who he
20 was calling and if he knows what they said. The
21 objection is sustained.

22 Q Who was he calling?

23 A Eddie Alewine.

24 Q Okay. And on that occasion, August 30th,
25 what was that CI supposed to be buying?

Eric Kirkland - Direct

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1 A A hundred dollars' worth of crack.

2 Q What's a slam?

3 A A slab?

4 Q A slab?

5 A Yes, a slab.

6 Q What's a slab?

7 A Street terminology for a hundred dollars'
8 worth of crack cocaine.

9 Q Okay.

10 A Yes, sir.

11 Q And he was supposed to be buying a slab
12 that day?

13 A Yes, sir.

14 Q And where was the CI supposed to purchase
15 the crack?

16 A It was going to be in the Gilbert area.
17 That's one of the reasons that we called to
18 actually, number one, agree to the purchase; and,
19 number two, to set up a location.

20 Q Okay. Where did you go next?

21 A After we got him wired, the phone call was
22 made, and the agreement that was made as to
23 location, we actually went next to Piggly Wiggly
24 down in Gilbert. And we actually positioned
25 ourselves there, and he was actually delivered to a

Eric Kirkland - Direct

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1 location somewhere across the street.

2 Q You went to Piggly Wiggly?

3 A Yes, sir.

4 Q Did anybody go to the IGA?

5 A Yes, sir, it became -- no, I'm sorry. We
---6 went to IGA, not Piggly Wiggly. The IGA is where we
7 went.

8 Q And --

9 A It's not Piggly Wiggly.

10 Q -- who was with you when you went to the
11 IGA?

12 A Myself, Agent Ken Correll -- I'm sorry,
13 myself, Agent Hazewinkel, Agent Barnes, and Agent
14 Govan were in the vehicle with me.

15 Q Where was the CI?

16 A The CI was in an adjacent vehicle with
17 Agent Ken Correll, who dropped him off.

18 Q Where did you go once you got to the IGA?

19 A We positioned ourselves in a parking lot
20 so we could actually visually keep a view on the
21 confidential informant.

22 Q Where did Agent Correll take the CI?

23 A Dropped him off at a I think it's like a
24 little bar across the street there. He took him and
25 dropped him off there.

Eric Kirkland - Direct

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1 Q And from where you were, were you able to
2 observe the CI?

3 A Yes, sir. We had a catty-corner visual on
4 him the entire time, yes, sir.

5 Q I want to show you State's Exhibit Number
6 One. Do you recognize this?

7 A Yes, sir.

8 Q How are you able to do so?

9 A That's actually the IGA parking lot, if
10 I'm not mistaken, where positioned at.

11 Q Does this fairly and accurately represent
12 what you observed on August 30, 2011?

13 A Yes, sir.

14 Q Okay. I'm going to ask you to draw on
15 here approximately where you parked your automobile.

16 A We were actually somewhere in here, and I
17 believe we shot across.

18 Q Okay, let's see. Would you label that
19 "undercover police" or something like that? And
20 would you mark where the CI went? Okay. So once
21 you get there and you park, you stated the CI walks
22 across the street. What happened next?

23 A We were there for I guess maybe 20, 20 or
24 30 minutes. And it's primary if we're standing
25 there too long then we shoot him a phone call. So

Eric Kirkland - Direct

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1 another phone call either was made or was actually
2 received by the confidential informant. I can't
3 remember, but I don't know the contents were "Where
4 are you?" And he said the next thing --

5 MR. FLOYD: Your Honor, I'm going to
6 object unless he was there. I thought he said the
7 CI left his location.

8 MR. KIRKLAND: No, sir.

9 MR. FLOYD: I'm sorry. If you didn't say
10 it, I apologize.

11 MR. KIRKLAND: No, sir.

12 Q Okay. So who was he speaking with then?

13 A He was speaking to Eddie Alewine, yes,
14 sir.

15 Q Okay.

16 A That's who he stated.

17 Q After that phone call, where did the CI
18 go?

19 A A short while later, a red in color
20 vehicle pulls up, and I hear the CI. He was advised
21 to come to the side of the building, and he proceeds
22 to walk off to the adjacent side of the building.

23 Q Okay. Did you observe the red truck?

24 A Yes, sir.

25 Q Did you observe the occupants?

Eric Kirkland - Direct

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1 A No, sir.

2 Q And let me ask you this. That IGA and the
3 building across the street that the CI walked, is
4 that in Lexington County?

5 A Yes, it is.

6 Q And that's Augusta Road, is that right?

7 A Yes, sir.

8 Q Mark on here where the red truck was.
9 And would you just label that "red truck"? And
10 would you label the CI, where you marked him to be?

11 A Yes, sir. He was right about here.

12 Q And then with a dotted line, will you mark
13 his path that he took? Thank you.

14 MR. SCOTT: Your Honor, the State would
15 offer State's Exhibit One for admission into
16 evidence.

17 THE COURT: Any objection, Mr. Floyd?

18 MR. FLOYD: No objection.

19 THE COURT: Without objection, State's
20 Exhibit Number One admitted into evidence.

21 (State's Exhibit Number One, Chart, was
22 entered in evidence.)

23 MR. SCOTT: Thank you, Your Honor.
24 Permission to publish to the jury?

25 THE COURT: Yes, sir.

Eric Kirkland - Direct

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1 Q If I may, Mr. Kirkland, I'd ask you to
2 step down --

3 A Yes, sir.

4 Q -- just to illustrate. If you'd stand
5 right here beside the Court Reporter. Please
6 indicate in this picture, State's Exhibit One, where
7 the IGA is.

8 A The IGA is here.

9 Q Please mark or indicate on here where you
10 marked your vehicle to be.

11 A Right here.

12 Q And you've labeled it "police"?

13 A Yes, sir.

14 Q Please mark on here where the CI walked
15 to.

16 A The CI was positioned here, right there.

17 Q And please indicate where the red truck
18 parked.

19 A Parked on the side of that building, with
20 the tail-end of it down, just like that.

21 Q Okay. And this is all Lexington County?

22 A Yes, sir.

23 Q And you remained in this spot --

24 A Yes.

25 Q -- the entire time?

Eric Kirkland - Direct

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1 A Yes, sir.

2 Q Okay, thank you. You may take the witness
3 stand. You stated that the CI walked to the red
4 truck.

5 A Yes, sir.

6 Q You could see the red truck from where you
7 were positioned. However, you could not see the
8 occupants.

9 A That's correct.

10 Q How long was the CI at the red truck?

11 A It was less than a minute. It would have
12 been real quick, very quick.

13 Q What happened next?

14 A After the red truck left, the CI then came
15 back around. And what's traditional is we meet back
16 up with the CI, which he came back to us. We
17 retained the drugs that was just purchased. A
18 second search for drugs and money took place.

19 Q Who searched?

20 A Me -- wait a minute. Let me tell you
21 what's on there. Wait a minute. I don't want to
22 lie to you. Agent Correll -- Agent Correll searched
23 that one.

24 Q Okay. Is that what your notes indicate?

25 A Yes, sir, that's what my notes indicate

1 the second search took place.

2 Q And were you present?

3 A Yes, sir.

4 Q Okay. Did the CI give you anything?

5 A Yes, sir. I retrieved the quantity of
6 off-white, rock-like substance, yes, sir.

7 Q And he handed it to you?

8 A Yes, sir.

9 Q I want to show you State's Two. Do you
10 recognize that?

11 A Yes, sir.

12 Q How are you able to do so?

13 A It is the crack cocaine that was purchased
14 on that day, sir.

15 Q Okay. And what did you do after it was
16 handed to you?

17 A The substance was handed to me. It was
18 placed in this BEST kit.

19 Q What is a BEST kit?

20 A A BEST kit is actually this actual bag
21 here. It's an evidence bag that we actually placed
22 it in. And it's not to be tampered with. It's
23 actually to be placed in there and kept in constant
24 view until we can deliver it to the Sheriff's
25 Department, which it always is.

Eric Kirkland - Direct

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1 Q And who took it to the Sheriff's
2 Department?

3 A I did.

4 Q And what's the -- why do you take it to
5 the Sheriff's Department?

6 A Well, we actually place it in the evidence
7 locker. It's got to be tested, number one, to make
8 sure it is in fact an illegal substance; and, number
9 two, we need to make sure it keeps for placement in
10 storage.

11 Q And do you always use one of those BEST
12 kits?

13 A Yes, sir.

14 Q And you sealed it yourself?

15 A Yes, sir.

16 Q And you hand-delivered it?

17 A Yes, sir.

18 Q And where did you say you put it?

19 A You have to put it in the evidence locker
20 at the Lexington County Sheriff's Department.

21 Q Okay. What did -- the CI in this case,
22 what did he get out of this?

23 A He was actually paid.

24 Q How much did you pay him?

25 A Eighty dollars.

1 Q Okay.

2 A Yes, sir.

3 Q And that's typical?

4 A It depends, yes, sir.

5 Q But they're certainly not doing it for
6 free?

7 A No, sir.

8 Q Were you able to get a license tag number
9 from that red truck?

10 A Yes, sir.

11 Q And were you able to --

12 MR. FLOYD: Objection, Your Honor, unless
13 he's talking about something he did of his own
14 personal knowledge.

15 THE COURT: I'll allow it. Go ahead.
16 Objection overruled.

17 Q Did you follow up on that license tag
18 number?

19 A That license tag number was actually
20 called out over the wire. That's one of the things
21 that we teach the confidential informants to do once
22 the vehicle is leaving. So I can't remember in this
23 case if it was called out over the wire or if it was
24 obtained by the confidential informant. But I got
25 it from the informant.

Eric Kirkland - Direct

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1 Q Let me ask you this. Did you follow up on
2 that license tag?

3 A No, sir, not up until Friday.

4 Q Okay. Did you follow up on the license
5 tag?

6 A Yes, I did, yes.

7 Q Okay. And how so? How did you do it?

8 A I actually ran the tag and the tag
9 information, and it came back to a --

10 MR. FLOYD: Your Honor, objection. That
11 has to be hearsay.

12 THE COURT: Objection overruled.

13 Q Whose tag did that?

14 A Did it come back to? Brian Jeffrey Clark.

15 Q Okay.

16 A Yes, sir.

17 Q Without saying what he said, were you able
18 to speak with him?

19 A Yes, sir.

20 Q Okay, thank you. Please answer any
21 questions Mr. Floyd may have for you.

22 A Yes, sir.

23 THE COURT: Mr. Floyd, cross-examination.

24 MR. FLOYD: Thank you, Your Honor.

25 CROSS-EXAMINATION

Eric Kirkland - Cross

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1 BY MR. FLOYD:

2 Q Officer Kirkland --

3 A Yes, sir.

4 Q -- did you testify that this CI, Mr. Scott
5 was his name -- is that his name --

6 A Yes, sir.

7 Q -- told you he could get Eddie Alewine?
8 Is that how he --

9 A Yes, sir.

10 Q Now, you don't know, do you, whether or
11 not this Mr. Scott had any kind of personal
12 animosity toward Mr. Alewine over something, do you?

13 A No, sir, I don't.

14 Q So you don't know what his motivation was?

15 A No, I didn't know, sir.

16 Q You said that you searched him before he
17 went here, is that correct?

18 A That's correct, sir.

19 Q And did you do a full search on him?

20 A Yes, sir.

21 Q Including did you search in his underwear?

22 A No, sir -- no, sir.

23 Q This stuff that we're talking about that's
24 crack, it's just little tiny pieces of stuff, isn't
25 it?

Eric Kirkland - Cross

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1 A Yes, sir.

2 Q You could hide that pretty much anywhere,
3 couldn't you?

4 A Yes, sir.

5 Q Hide it in your shoes, in your socks, in
6 your underwear?

7 A Yes, sir.

8 Q In your pockets?

9 A Yes, sir.

10 Q Did you search any of those areas?

11 A I searched every -- I didn't go in his
12 underwear, no, sir.

13 Q Now, did you make a documentation of your
14 search?

15 A Yes, sir.

16 Q I'm going to show you and see if you can
17 identify it.

18 A Yes, sir. Yes, sir, this is it.

19 Q Who made the search of the man?

20 A It says here Agent Correll.

21 Q Agent Correll made the search. You didn't
22 make the search, did you?

23 A I actually did. It was a typographical
24 error. I actually did make the search, yes, sir.

25 Q Well, why does it say Agent Correll?

1 A Agent Correll made the second search,
2 after the buy.

3 Q He made the first search.

4 A The first search was a typographical
5 error, yes, sir. As I said, that search was
6 conducted by me.

7 Q The first search says search by Agent
8 Correll --

9 A Yes, sir.

10 Q -- isn't that right?

11 A Yes, sir. And my incident report states
12 by me. So it was a mistake.

13 Q It's a mistake?

14 A Yes, sir.

15 Q So y'all make mistakes on these things?

16 A Yes, we're human, sir.

17 Q Okay. Now, there was an audiotape of this
18 thing, was there not?

19 A Yes, sir.

20 Q Eddie Alewine's name never is said on that
21 audiotape, is it?

22 A No, sir.

23 Q The name Eddie is never said on that
24 audiotape, is it?

25 A I don't think so, no, sir.

Eric Kirkland - Cross

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1 Q Now, do you know the distance from where
2 you said you were parked over here where supposedly
3 this transaction occurred?

4 A In total distance, no, sir, but it's a
5 straight shot.

6 Q A hundred yards?

7 A We have binoculars in our trucks, and
8 there's also a digital camera that we use that
9 videos. We attempted video, but it didn't work. We
10 was off the visual on that side. The video was
11 inoperable. We used binoculars.

12 Q Where you've got the truck here --

13 A Uh-huh.

14 Q -- you've got it around the building over
15 here, right?

16 A When it stopped just short of the building
17 -- I'll use this as the term -- the front portion of
18 that truck -- the front portion of that truck went
19 on the side of that building. All we could see was
20 the tail-end of the red vehicle. That's why I
21 couldn't see who was in it.

22 Q So you never could see the occupants?

23 A Huh-uh, no, sir -- no, sir.

24 Q And am I correct on this, like what you've
25 got right here, is that where the CI was standing,

1 and then he goes over to the truck?

2 A Yes.

3 Q Is that what all that represents?

4 A Yes, sir, that's correct, yes, sir.

5 Q And he had been out of your presence --
6 well, he had been out of your vehicle for 20 or 30
7 minutes before that movement occurred?

8 A Uh-huh.

9 Q Okay. And you paid him \$80 for his
10 trouble?

11 A Yes, sir.

12 Q But you did not confront Mr. Alewine that
13 day, did you?

14 A No, sir.

15 Q And to your personal knowledge -- your
16 personal knowledge -- you don't know whether Eddie
17 Alewine was in that vehicle or not, do you?

18 A To my personal knowledge -- no, sir.

19 Q Thank you.

20 MR. FLOYD: I have no further questions,
21 Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q You stated you did not confront Mr.

Eric Kirkland - Redirect

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1 Alewine that day. Why didn't you confront him that
2 day?

3 A It is not normal for us to confront
4 suspects that we're investigating on the very same
5 day. Sometimes we do what's called a buy bust. But
6 on this particular day, this was an investigation.

7 So confronting him that day would have
8 been not part of what we do for purposes of not
9 endangering the life of the CI as well as our
10 investigation that may or may not be ongoing.

11 Q And CI safety is one of your concerns?

12 A That's our primary concern.

13 Q But he was arrested?

14 A Later on, yes, sir. He was arrested later
15 on, yes, sir.

16 Q And who was your target that day?

17 A Mr. Eddie Alewine.

18 Q Why didn't you take your police unit and
19 try to follow the red car?

20 A Well, we actually had the confidential
21 informant there. We had evidence. We had the
22 confidential informant. So, no, we couldn't. We
23 couldn't tail the red car.

24 Q Okay. Is that something you would
25 normally do?

1 A No, sir. It depends on the circumstances
2 or the type of controlled purchase they have. But
3 that particular day, no, sir.

4 Q Okay. Mr. Floyd was just showing you a
5 list, I think, of who -- I think the question was
6 who searched the CI beforehand.

7 A Uh-huh.

8 Q And you said it was a typo?

9 A It was, yes.

10 Q Who actually generated that report he was
11 showing you?

12 A I did.

13 Q That was your handwriting on that report?

14 A Yes -- yes, sir.

15 Q Do you have it with you?

16 A Yes, sir, it's right here. Actually, I
17 believe I don't, no, sir.

18 Q I'm going to show you --

19 A Yes, sir.

20 Q -- what Mr. Floyd showed you.

21 A Yes, sir -- uh-huh.

22 Q That's your handwriting?

23 A Yes, sir, it is.

24 Q And who did you say searched the CI
25 beforehand?

Eric Kirkland - Redirect

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1 A I have here Agent Correll.

2 Q Okay.

3 A Yes, sir.

4 Q But it's your testimony here today that
5 you did?

6 A I did.

7 Q When he was being searched, who all was
8 present?

9 A Agent Hazewinkel, Agent Govan, Agent
10 Barnes, and Agent Correll.

11 Q So he's not just searched by one person
12 alone. Whoever searches him has three other
13 officers watching the whole time, is that correct?

14 A Always, sir, yes, sir.

15 Q But it's your testimony you searched him
16 beforehand?

17 A Yes, sir.

18 Q Okay. Thank you, nothing further.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: One other question.

21 RE CROSS EXAMINATION

22 BY MR. FLOYD:

23 Q But there's no question that this form
24 that you filled out on August 30, 2011, says that
25 Agent Correll searched him, doesn't it?

1 A Yes, sir, it does.

2 Q And that was prepared by you?

3 A Yes, sir.

4 Q Thank you, no further questions.

5 THE COURT: All right, sir, you may step
6 down. Thank you.

7 MR. KIRKLAND: Thank you, sir.

8 MR. McNAIR: Your Honor, the State calls
9 Rick Hazewinkel.

10 (The witness was sworn.)

11 CLERK OF COURT: If you'll have a seat
12 over here. Spell your last name for the record,
13 please.

14 MR. HAZEWINDEL: Yes, ma'am. My last name
15 is Hazewinkel -- H-A-Z-E-W-I-N-K-E-L.

16 RICK HAZEWINDEL, having first been duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. McNAIR:

20 Q Officer Hazewinkel, good afternoon.

21 A Good afternoon, sir.

22 Q What law enforcement agency do you work
23 for?

24 A I work for the Town of Lexington Police
25 Department.

Rick Hazewinkle - Direct

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1 Q How long have you worked there?

2 A About ten years.

3 Q Do you have any previous law enforcement
4 experience?

5 A No, sir.

6 Q Are you within any particular section of
7 the police department?

8 A Right now, for the Town of Lexington I
9 work as a patrol supervisor.

10 Q Okay. Are you also on any special task
11 force?

12 A In the past, prior to assuming the job
13 that I have right as a sergeant on the road, I
14 worked for the Lexington County Multiagency
15 Narcotics Enforcement Team, which is a task force
16 for narcotics.

17 Q And generally what types of investigations
18 did you do with the NET team?

19 A It was anything from people growing
20 marijuana at their house to individuals riding down
21 the road that have methamphetamine labs actually in
22 their vehicles. So it could be a plethora of
23 narcotics violations.

24 Q Okay. And back in August of 2011, did you
25 have an opportunity to become involved with an

1 investigation on the defendant, Eddie Alewine?

2 A I did, yes, sir.

3 Q And specifically, were you involved in a
4 controlled buy on August 30, 2011?

5 A Yes, sir, I was.

6 Q Would you please tell the jury what your
7 role was in that investigation?

8 A Sure, yes, sir. Agent Kirkland was the
9 lead investigator at the time. And I rode around,
10 first of all, as a cover officer. We always want to
11 make sure we have more officers for any time we do
12 anything like that. And I was there for cover for
13 Agent Kirkland and also to help scribe, trying to
14 keep notes of when everything happened for the
15 controlled purchase.

16 Q Okay. In regards particularly to the CI,
17 Larry Wayne Scott, did you do anything as a part of
18 this controlled buy on him?

19 A I actually put a wire on the confidential
20 informant.

21 Q Okay. And how does this wire work?

22 A It's a small transmitter that I attached
23 to his person. And that way when he's a little bit
24 away from us, I can actually hear what's going on.
25 It's just like a way to keep track of him for,

Rick Hazewinkle - Direct

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1 mainly, the first thing, would be for his safety.

2 Q Correct. Where is that wire? How do you
3 disguise it?

4 A It was inside of a hat.

5 Q Okay. Now, do those wires always work as
6 you hope they would work?

7 A Not all the time. But what we typically
8 do is we test the wire and make sure it works, put
9 it on the confidential informant, and make sure we
10 have some type of audio communication coming from
11 him before he leaves from where we are.

12 Q After you wired him up, did you also
13 travel to the scene of the buy?

14 A I did, yes, sir.

15 Q Where were you?

16 A I was in the parking lot of the IGA. The
17 Independent Grocer is near the incident location.
18 It's across the street. And I was actually sitting
19 in the vehicle with Agent Kirkland.

20 Q Do you recall where you were in the
21 vehicle?

22 A I was in the back seat.

23 Q And can you tell the jury what you
24 observed?

25 A It happened really quick. The vehicle --

Rick Hazewinkle - Direct

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1 the red vehicle -- had pulled up, and I just
2 remember seeing a red vehicle pull up to the
3 incident location. It was like a red pickup truck.

4 Q Uh-huh.

5 A And that's about the only thing I could
6 see from where I was.

7 Q Okay. How long did this transaction last?

8 A It was a matter of seconds. It was really
9 quick.

10 Q So you saw the red truck pull up. Did you
11 see the CI approach the vehicle?

12 A I saw the CI had walked towards around the
13 corner of the building. But I could not see the CI
14 from where I was actually at the vehicle.

15 Q Okay. So you couldn't see the occupants
16 of the vehicle?

17 A No, sir, that is correct.

18 Q But you saw a red truck?

19 A Yes, sir.

20 Q Okay.

21 MR. McNAIR: I don't have any further
22 questions.

23 THE COURT: Mr. Floyd, cross-examination,
24 sir.

25 MR. FLOYD: Thank you, sir.

Rick Hazwinkle - Cross

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1 CROSS-EXAMINATION

2 BY MR. FLOYD:

3 Q Officer Hazewinkel --

4 A Yes, sir.

5 Q -- you did not see the occupants of the
6 truck, is that correct?

7 A That is correct, sir.

8 Q You could not see the CI once he walked
9 around the building, is that correct?

10 A That is correct.

11 Q You don't even know whether or not there
12 could have someone else over there on the other side
13 of the building, do you?

14 A Yes, sir, I could not see over there at
15 all.

16 Q Thank you, no further questions.

17 MR. McNAIR: Nothing further, Your Honor.

18 THE COURT: Sir, you may step down. Thank
19 you.

20 MR. HAZEWINDEL: Yes, sir.

21 MR. McNAIR: Your Honor, the State calls
22 Paige Barnes.

23 (The witness was sworn.)

24 CLERK OF COURT: If you'll have a seat
25 over here. State your name, please, for the record.

1 MS. BARNES: Paige Barnes.

2 PAIGE BARNES, having first been duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. McNAIR:

6 Q Officer Barnes, what law enforcement
7 agency do you work for?

8 A Lexington County Sheriff's Department.

9 Q How long have you been there?

10 A Eight and a half years.

11 Q Are you within any particular department
12 of the Sheriff's Department?

13 A The Lexington County Multiagency Narcotics
14 Enforcement Team.

15 Q Generally, what types of investigations do
16 y'all do?

17 A We do undercover investigations with
18 reference to illegal narcotics, the drug trade,
19 prostitution.

20 Q Okay. Were you involved back in August of
21 2011 in an investigation of the defendant, Eddie
22 Alewine?

23 A Yes, sir.

24 Q And were you part of a controlled buy on
25 August 30, 2011?

Paige Barnes - Direct

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1 A Yes, sir.

2 Q Please tell the jury what your role was in
3 that controlled buy.

4 A I was there as a cover team for the
5 confidential informant and also to observe any
6 activity that I could witness at that time.

7 Q Did you actually travel to the location at
8 the IGA where the deal was done?

9 A Yes, sir, I did.

10 Q Where were you stationed?

11 A I was in the black Ford pickup truck with
12 Agent Kirkland, Agent Govan, and Agent Hazewinkel.

13 Q Do you recall where you were in the
14 vehicle?

15 A I was behind the driver's seat.

16 Q Were you maintaining surveillance during
17 that time of the CI?

18 A Yes, sir.

19 Q How were you doing so?

20 A I was watching the CI across the street.
21 We were parked in the IGA parking lot, and I was
22 watching the CI across the street.

23 Q And what did you observe that day?

24 A The CI was standing in front of the white
25 building across the street from the IGA. He was on

1 the phone, and then a red pickup truck pulled in to
2 the side of the building. The CI walked over to the
3 red truck, and I heard on the wire that a drug
4 transaction had been made.

5 Q And after the transaction happened, what
6 happened next?

7 A The red truck pulled off, and another
8 agent came over and picked up the CI.

9 Q How long did the deal last?

10 A It was very, very quick.

11 Q I have no further questions. Please
12 answer any questions Mr. Floyd has.

13 THE COURT: Mr. Floyd, cross-examination.

14 MR. FLOYD: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. FLOYD:

17 Q Officer Barnes, you could not see, then,
18 the occupants of the red vehicle, could you?

19 A No, sir. They came from the Batesburg
20 area, and they just pulled in right beside the
21 building.

22 Q So you never saw Eddie Alewine that day?

23 A No, sir, I didn't see anyone in the truck.

24 Q The building that the CI was standing in
25 front of before he walked over to the truck, what is

Paige Barnes - Cross

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1 that building?

2 A I'm not exactly sure what the name of it
3 is. I know it's a white building.

4 Q Is it a business?

5 A I'm not exactly sure.

6 Q You didn't see people going in and out of
7 it?

8 A No, sir. There were no other vehicles
9 around it.

10 Q And you don't know what was on the other
11 side of the -- well, let me ask you this way. Do
12 you agree that that's the building the truck went
13 around?

14 A I believe so, yes, sir.

15 Q And so from your vantage point, you
16 couldn't see what was going on on the other side of
17 that building, could you?

18 A No, sir.

19 Q Thank you. I have no further questions.

20 REDIRECT EXAMINATION

21 BY MR. MCNAIR:

22 Q Real quick. Agent Barnes, in your
23 experience, how often do you actually see the deal
24 go down?

25 A Not very many times. We have to stay back

1 in order to protect the confidential informant.

2 Q Thank you.

3 THE COURT: Mr. Floyd, anything further?

4 MR. FLOYD: Nothing further, Your Honor.

5 THE COURT: Ma'am, you may step down.

6 Thank you.

7 MR. SCOTT: The State calls Terry Govan.

8 (The witness was sworn.)

9 CLERK OF COURT: You can have a seat over
10 here. State your name, and if you'll spell your
11 last, please, for the record.

12 MR. GOVAN: Investigator Terry Govan,
13 Lexington County Sheriff's Department.

14 TERRY GOVAN, having first been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Thank you. You may be seated, Mr. Govan.
19 How long have you been with the Sheriff's
20 Department?

21 A Ten and a half years.

22 Q Do you have any law enforcement experience
23 before that?

24 A Yes, sir.

25 Q Where were you?

Terry Govan - Direct

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1 A With the Orangeburg Sheriff's Department
2 for about three months, then the Department of
3 Juvenile Justice, Public Safety, for four and a half
4 years, and also as a correctional officer for two.

5 Q What are your primary duties with the
6 Sheriff's Department?

7 A At this time, it's narcotics.

8 Q Okay. Are you on the NET team, too?

9 A Yes, sir.

10 Q How many drug cases do you think you make
11 in a year?

12 A Haven't been there quite a year yet --
13 maybe five or six.

14 Q That you personally made?

15 A Yes, sir.

16 Q How long have you been with the NET team?

17 A About ten months.

18 Q Oh, I'm sorry. And in a given month, how
19 many drug cases are you involved in?

20 A Several.

21 Q Have you ever been involved with a
22 controlled buy?

23 A Yes, sir.

24 Q So you've been involved with cases
25 involving CIs?

Terry Govan - Direct

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1 A Yes, sir.

2 Q Did you have an opportunity to be involved
3 with a controlled buy on August 30, 2011?

4 A Yes, sir.

5 Q And where did that occur?

6 A It occurred in the Gilbert area, off of
7 Augusta Highway, with Mr. Alewine.

8 Q Did it occur in Lexington County?

9 A Yes, sir.

10 Q Tell me what your role was in that
11 controlled buy.

12 A My role is to make sure when we've got a
13 controlled buy with a CI that I cover for protection
14 of the CI himself and for the controlled purchase
15 and also to assist Agent Kirkland in a buy.

16 Q How do you assist?

17 A I do the paperwork sometimes. I keep
18 watch of transactions, what we can watch, by
19 possibly writing down tags of vehicles, anything
20 that we see.

21 Q Okay. So besides security, you're another
22 set of eyes for the transactions?

23 A Yes, sir.

24 Q And in your experience working with the
25 NET team, do you always get to personally observe

Terry Govan - Direct

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1 the hand-to-hand in a controlled buy? In other
2 words, do you get to observe a person who might be
3 dealing drugs hand over contraband to a CI?

4 A Sometimes.

5 Q All the time?

6 A The majority of the time.

7 Q You get to actually watch it?

8 A Yes, sir.

9 Q And sometimes do they go inside of houses
10 to do the deal?

11 A Yes, sir.

12 Q Or behind fences?

13 A Yes, sir.

14 Q On this occasion, August 30, 2011, what
15 did you observe from your vantage point at the IGA?

16 A We sat stationary in the parking lot of
17 the IGA. And I witnessed a burgundy small vehicle,
18 pickup truck, pull up near the old Murraytown
19 Phillips. The old building is no longer -- it's
20 there, but there's name on it. The CI walked around
21 the building and did a transaction with \$100 of
22 crack cocaine.

23 Q So was this one of those occasions where
24 you were not able to witness the hand-to-hand
25 transaction?

Terry Govan - Direct

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1 A Yes, sir.

2 Q Okay. Were you present when the CI came
3 back to your vehicle?

4 A Yes, sir.

5 Q And did you observe him to have anything?

6 A Yes, sir.

7 Q All right. What did he have?

8 A He had a quantity of all-white rock-like
9 substance, crack cocaine.

10 Q All right. And who did he turn that over
11 to?

12 A He turned that over to Agent Kirkland.

13 Q Thank you. Please answer any questions
14 Mr. Floyd would have for you.

15 THE COURT: Mr. Floyd, cross-examination.

16 MR. FLOYD: Thank you.

17 CROSS-EXAMINATION

18 BY MR. FLOYD:

19 Q Agent Govan, could you see the occupants
20 of the vehicle that drove up?

21 A I could not.

22 Q And when it drove up, the front end of it
23 was actually parked around the building, wasn't it?

24 A The vehicle did went around the building.

25 Q So the building blocked you off from

Terry Govan - Cross

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1 visualization of the front of the truck, is that
2 correct?

3 A Yes, sir.

4 Q And when the CI walked over to the truck,
5 he walked around the corner of the building also,
6 didn't he?

7 A Correct.

8 Q So you couldn't see what transpired around
9 the corner of the building, could you?

10 A No, sir.

11 Q And you don't know whether or not there
12 were more people standing around over there on the
13 other side of the building, do you?

14 A No, sir.

15 Q Thank you. No further questions.

16 MR. SCOTT: Nothing further from the
17 State.

18 THE COURT: Sir, you may step down.

19 MR. GOVAN: Yes, sir.

20 MR. SCOTT: Your Honor, may we approach
21 just briefly?

22 THE COURT: Yes.

23 All right, ladies and gentlemen of the
24 jury, I'm going to ask that you step to the jury
25 room for just a minute. We've been going about an

Terry Govan - Cross

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1 hour and ten minutes.

2 And I'm going to ahead and tell you, we
3 typically run about an hour and a half, two years
4 between breaks. I know we started right after
5 lunch. This will give you an opportunity to kind of
6 stand up and walk around for a few minutes.

7 If you'll step to the jury room, I'll get
8 you back in here in about ten or fifteen minutes.
9 Once again, do not discuss the case until you are
10 instructed to do so.

11 Everyone else remain seated while the jury
12 leaves the courtroom.

13 (Jury out at 3:16 p.m.)

14 THE COURT: Let me say this, and I'm going
15 to step down for just a second while you all do
16 that. When witnesses are on this witness stand
17 testifying, I know there's a lot at stake for both
18 parties, the State and the defense.

19 However, let me make a point to make this
20 statement. I don't want to see anybody out in the
21 audience making any head gestures as to agreement or
22 disagreement with what witnesses say.

23 The determination of the facts in this
24 case, as in any other case, is for the jury to make
25 a decision on and not to be influenced in any way by

Terry Govan - Cross

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1 what individuals out in the audience may or may not
2 be doing.

3 That's a warning to everybody in the
4 courtroom, the State's witnesses as well as defense,
5 people that are here on behalf of the defense, all
6 right.

7 Are there any matters that we need to take
8 up with regards to the State's next witness who I
9 was informed at sidebar was the CI. Is that
10 correct, Mr. Scott?

11 MR. SCOTT: That's correct, Your Honor.

12 THE COURT: Any matters that we need to
13 take up with regards to him from defense counsel?

14 MR. FLOYD: Your Honor, I've been provided
15 a copy of a record. I don't know if we have any
16 dispute over what I can ask him about it or whether
17 they plan on bringing it out.

18 THE COURT: All right. Why don't, while I
19 step down, you all talk about that? If there is,
20 when I come back, we'll address it at that time.
21 Also, are there any other exhibits? I typically
22 inform the lawyers prior to the start of the trial,
23 and there haven't been any issues as of yet.

24 If there are any potential exhibits, any
25 further exhibits, how about you all look at those,

Terry Govan - Cross

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1 as well. And if there's any disagreement on those,
2 let's go ahead and address those so we don't have to
3 run the jury out of here if and when it comes up
4 during the course of a witness' testimony, okay?

5 MR. SCOTT: Yes, sir.

6 THE COURT: I'm going to stand down a few
7 minutes.

8 (Court in recess.)

9 THE COURT: All right, the State informed
10 me at a sidebar before we took a break their next
11 witness is the confidential informant.

12 Is that right, Mr. Scott?

13 MR. SCOTT: That's correct, Your Honor.

14 THE COURT: And then after that, there are
15 two other witnesses?

16 MR. SCOTT: Three, Your Honor. We have
17 the fellow who was driving the car.

18 THE COURT: Okay.

19 MR. SCOTT: We have Beth Harmon, who's
20 going to testify to procedures as far as the chain
21 of the custody at the Sheriff's Department or intake
22 of evidence.

23 THE COURT: All right.

24 MR. SCOTT: And then we have the chemist,
25 Emily Homer.

Terry Govan - Cross

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1 THE COURT: All right. I'm just trying to
2 figure out how far we can get today. Let's just
3 kind of play it by ear and see. Anything before we
4 bring the jury out from the State?

5 MR. SCOTT: Nothing, no, Your Honor.

6 THE COURT: From the defense?

7 MR. FLOYD: Other than we discussed the
8 charges, the convictions he'd had. And I think
9 we've got an agreement on that.

10 THE COURT: Okay. All right, bring us the
11 jury, please.

12 BAILIFF: Yes, sir, Your Honor.

13 (Jury in at 3:36 p.m.)

14 THE COURT: Mr. Scott, call your next
15 witness, please.

16 MR. SCOTT: Thank you, Your Honor. The
17 State calls Larry Scott.

18 (The witness was sworn.)

19 CLERK OF COURT: If you'll have a seat
20 over there and state your name, please, for the
21 record.

22 MR. SCOTT: Larry Wayne Scott, Jr.

23 LARRY WAYNE SCOTT, JR., having first been
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

Larry Wayne Scott - Direct

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1 BY MR. SCOTT:

2 Q How old are you, Mr. Scott?

3 A Sir?

4 Q How old are you?

5 A Thirty-three.

6 Q And where are you from?

7 A Batesburg, South Carolina.

8 Q Where do you live now?

9 A Kirkland Correctional Institution.

10 Q And what are you serving time for?

11 A Attempted strong arm robbery.

12 Q What was your sentence?

13 A Five years.

14 Q When did it begin?

15 A June the 7th.

16 Q So you just entered in the last month?

17 A Yes, sir.

18 Q And you've got a five-year sentence?

19 A Yes, sir.

20 Q Is that the first time you've been in
21 trouble with the law?

22 A No, sir.

23 Q Is that the first time you've been in
24 prison?

25 A No, sir.

Larry Wayne Scott - Direct

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1 Q What else have you served time for?

2 A Complicity with death, escape, and CSC.

3 Q Okay. Besides that, you've had
4 shoplifting convictions?

5 A Yes, sir.

6 Q You've had CDV convictions?

7 A Yes, sir.

8 Q Public disorderly conduct?

9 A Yes, sir.

10 Q Malicious injury to personal property?

11 A Yes, sir.

12 Q Have you ever been addicted to drugs?

13 A Yes, sir.

14 Q What was your drug of choice?

15 A Crack cocaine.

16 Q When did you first start smoking crack
17 cocaine?

18 A Probably about 2009.

19 Q What good have you gotten out of crack?

20 A Nothing.

21 Q Tell me where you were living in August of
22 last year.

23 A 6369 Counts Sausage Road.

24 Q Where is that?

25 A Newberry --

Larry Wayne Scott - Direct

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- 1 Q I'm sorry.
- 2 A Newberry, South Carolina.
- 3 Q Okay. Were you working with law
- 4 enforcement at that time?
- 5 A Yes, sir.
- 6 Q What were you doing for law enforcement?
- 7 A Making controlled buys.
- 8 Q What was in it for you?
- 9 A Cash, more or less.
- 10 Q Did you get paid --
- 11 A Yes, sir.
- 12 Q -- every deal you did?
- 13 A Yes, sir.
- 14 Q Did you know a man named Eddie Alewine?
- 15 A Yes, sir.
- 16 Q When did you meet him?
- 17 A 2009.
- 18 Q How many times had you been around him
- 19 before August of last year?
- 20 A Numerous.
- 21 Q Describe him.
- 22 A Black male, heavyset, mid to late
- 23 twenties.
- 24 Q So he was somebody you were familiar with?
- 25 A Yes, sir.

Larry Wayne Scott - Direct

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1 Q Did you meet with law enforcement on
2 August 30, 2011?

3 A Yes, sir.

4 Q What was the purpose of meeting with them?

5 A To make a controlled buy for crack
6 cocaine.

7 Q From who?

8 A Eddie Alewine, Jr.

9 Q Where did you meet with law enforcement?

10 A At the -- in Lexington, on Highway One.

11 Q Do you know where you went?

12 A Yes, sir.

13 Q Where?

14 A There's a local field office.

15 Q A field office?

16 A Yes, sir.

17 Q So, what, like a police substation or
18 something?

19 A Yes, sir.

20 Q What did you do when you got there?

21 A Talked with law enforcement, discussed the
22 situation. I was searched. I called Eddie and
23 asked him if he would sell me some crack cocaine.
24 He agreed to sell me some crack cocaine. I was
25 wired for sound and went to the meeting spot, and I

Larry Wayne Scott - Direct

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1 bought the crack.

2 Q Let me back up to the West Region. Were
3 you searched?

4 A Yes, sir.

5 Q Who searched you?

6 A Eric Kirkland.

7 Q Did he find anything on you?

8 A No, sir.

9 Q Did he give you any money?

10 A Yes, sir.

11 Q Okay. How long did you smoke crack?

12 A A couple of years.

13 Q And what do you refer to \$100 worth of
14 crack to be?

15 A Slab, yard in street slang.

16 Q Okay. So a slab is \$100 worth of crack?

17 A Yes, sir, in street slang.

18 Q Okay. After you went to West Region, you
19 were given government funds, \$100 worth?

20 A Yes, sir.

21 Q You were wired?

22 A Yes, sir.

23 Q And you were searched?

24 A Yes, sir.

25 Q Where did you go next?

Larry Wayne Scott - Direct

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1 A To a determined -- the spot that me and
2 Eddie determined to make the transaction.

3 Q And where had y'all determined the
4 transaction to take place?

5 A Well, in the vicinity of the IGA parking
6 lot on U.S. One in Gilbert.

7 Q Okay. How did you get from the West
8 Region over there to that IGA?

9 A Law enforcement.

10 Q Do you remember which officer took you?

11 A It was -- I think it was -- I don't know.
12 I'm not sure. I can't remember the last name, yes,
13 sir.

14 Q Okay. Well, did you meet up with any
15 other officers once you to the IGA?

16 A Yes, sir.

17 Q Who did you meet up with?

18 A Kirkland, Govan. Mancuso was I think was
19 the one transported me. I was in the vehicle with
20 Govan -- Officer Govan -- and Mancuso. I think that
21 was who.

22 Q Okay.

23 A Deputy Ken.

24 Q Ken, okay. You knew his first name to be
25 Ken?

Larry Wayne Scott - Direct

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1 A Yes, sir.

2 Q Okay. So you rode with one officer over
3 there, and you said Govan, Kirkland. Who else met
4 you at the IGA?

5 A I think Officer Paige was there.

6 Q Paige Barnes?

7 A Yes, sir.

8 Q Okay. And what happened once y'all all
9 rendezvoused at the IGA parking lot?

10 A I got out of the vehicle, crossed the road
11 to the meeting spot. I spoke with Eddie on the
12 phone again. He pulled up.

13 I went to the window of the vehicle, made
14 the transaction, bought \$100 worth of crack cocaine.
15 He gave me the baggie with the rocks in it. I
16 walked back across the road to law enforcement,
17 handed the crack cocaine to them, and went back to
18 the spot we started from.

19 Q Okay. And you were searched again?

20 A Yes, sir.

21 Q I'm going to show you State's Exhibit
22 Number One. Do you recognize what this is?

23 A Yes, sir.

24 Q This is an aerial photo of the IGA on U.S.
25 Highway One in Gilbert. Point to the IGA, if you

Larry Wayne Scott - Direct

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1 don't mind.

2 A Right here.

3 Q Okay. And where were you dropped off?

4 A In this vicinity, right here.

5 Q And where did you next?

6 A Across the road to this area right here.

7 Q Okay. And what happened after you were
8 there?

9 A All right, I stood there for probably for
10 a few minutes waiting for Little Eddie to arrive
11 till he come. I spoke with him on the phone. He
12 pulled up, made the transaction right here. And I
13 walked back across the road, back to law
14 enforcement.

15 Q Okay. You said Little Eddie.

16 A Yes, sir.

17 Q Who is Little Eddie?

18 A That's Eddie Alewine, Jr.

19 Q That's what you called him?

20 A Yes, sir.

21 Q So what did he arrive in?

22 A An extended cab red Ford Ranger, a reddish
23 color Ford Ranger.

24 Q Okay. Was he driving?

25 A No, sir.

1 Q Who was driving?

2 A A white guy.

3 Q Did you know him?

4 A No, I didn't know him at the time. I
5 recognized him, but I didn't know him, no, sir.

6 Q You stated they parked the truck on the
7 side of that building on the corner?

8 A Yes, sir, right there on the corner.

9 Q Okay. I'm going to show you what's been
10 marked for ID purposes as State's Number Two. Do
11 you recognize that?

12 A Yes, sir.

13 Q What is that?

14 A Crack cocaine.

15 Q Is that the crack that you received on the
16 day of August 30, 2011?

17 A Yes, sir.

18 Q And you stated it was -- I'm trying to
19 remember. Did you state that -- when you went to
20 West Region, did you receive a recording device?

21 A Yes, sir.

22 Q And did you wear it?

23 A Yes, sir.

24 Q Let me show you State's Exhibit Number
25 Three. Do you recognize that?

Larry Wayne Scott - Direct

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1 A Yes, sir.

2 Q How are you able to do so?

3 A My initials.

4 Q Have you heard this?

5 A Yes, sir.

6 Q And what is it?

7 A A recording of the buy that I described,
8 yes, sir.

9 Q And was it a true and accurate reflection
10 of what you heard on August 30, 2011?

11 A Yes, sir, of the events.

12 Q I'm sorry?

13 A Yes, sir, of the events that took place on
14 that day, yes, sir.

15 Q Okay.

16 MR. SCOTT: Your Honor, the State would
17 offer State's Number Three for admission into
18 evidence.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: No objection, Your Honor.

21 THE COURT: Without objection, State's
22 Exhibit Number Three admitted into evidence.

23 (State's Exhibit Number Three, DVD/CD, was
24 entered in evidence.)

25 MR. SCOTT: And, further, Your Honor, we'd

Larry Wayne Scott - Direct

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1 ask for permission to publish this audio to the
2 jury.

3 THE COURT: So granted.

4 MR. SCOTT: Thank you, Your Honor.

5 (Whereupon, a portion of the audiotape was
6 played for the jury.)

7 Q And where was that recording made? Where
8 were you when this was made?

9 A At the field office.

10 Q Okay. And after that, you drove to the
11 IGA?

12 A Yes, sir.

13 (Whereupon, another portion of the
14 audiotape was played for the jury.)

15 Q Whose voice was that?

16 A Mine.

17 Q And what was that phone call about?

18 MR. FLOYD: Your Honor, I object. He can
19 record it. He can play it. But I don't think he
20 can stop and editorialize it. He's just playing it
21 --

22 THE COURT: I will allow him to ask him
23 questions about it. Go ahead.

24 Q What was that recording?

25 A Of the transaction.

Larry Wayne Scott - Direct

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1 Q What is a slab?

2 A A hundred dollars' worth of crack cocaine.

3 Q And what is a doub?

4 A Twenty dollars' worth of crack cocaine.

5 Q What arrangement did you make with him on
6 what you would buy?

7 A I told him I had \$100. He said he only
8 sells douts, which is \$20's of crack. And I said,
9 "Well, however many douts that would equal to \$100."

10 Q Okay. How long did you wait for him to
11 arrive?

12 A Probably three, four, or five minutes.

13 (Whereupon, another portion of the
14 audiotape was played for the jury.)

15 Q Okay. Whose voice was that we just heard?

16 A Mine.

17 Q And what were you doing there?

18 A Talking to Little Eddie.

19 Q About what?

20 A About the location right there where I was
21 standing in front of -- beside the bar in front of
22 IGA.

23 Q Okay.

24 (Whereupon, another portion of the
25 audiotape was played for the jury.)

Larry Wayne Scott - Direct

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1 Q Whose voice was that?

2 A Mine.

3 Q And what was that?

4 A The transaction.

5 Q How long did the transaction take?

6 A Twenty, third seconds at the most.

7 Q Okay. Who had that crack in their
8 possession?

9 A Eddie.

10 Q And who handed that crack to you?

11 A Eddie.

12 Q What did the driver do?

13 A He just sat there.

14 Q Where did Eddie have the crack? Where did
15 he pull it from?

16 A He had it in his hand when they pulled up.

17 Q Tell us one more time what you did with it
18 after you got it from him.

19 A He handed it to me -- I handed him the
20 money. He handed me the crack. I walked back
21 across the street, called out the license plates of
22 the vehicle as I was walking, walked back across the
23 street, and immediately handed it to law
24 enforcement.

25 Q Okay. Besides getting paid, have you

Larry Wayne Scott - Direct

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1 gotten any other special treatment for these buys?

2 A No, sir.

3 Q Have you been promised anything for your
4 testimony here today?

5 A No, sir.

6 Q Have any agreements been made with you
7 regarding your testimony?

8 A No, sir.

9 Q Do you see Eddie Frank Alewine here today?

10 A Yes, sir.

11 Q Would you point to him?

12 A He's sitting right there.

13 Q Thank you, nothing further. Please answer
14 any questions Mr. Floyd may have.

15 THE COURT: Mr. Floyd, cross-examination,
16 sir.

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q Mr. Scott --

21 A Yes, sir.

22 Q -- were you convicted of shoplifting in
23 September of 2011?

24 A Yes, sir.

25 Q Were you convicted of strong arm robbery

Larry Wayne Scott - Cross

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1 in June of 2012?

2 A Yes, sir.

3 Q Were you convicted of criminal sexual
4 conduct, first degree, May of '06?

5 A Yes, sir.

6 Q Were you convicted of escape, possession
7 of burglary tools in May of '06?

8 A Yes, sir.

9 Q Were you convicted of shoplifting in July
10 of '09?

11 A Yes, sir.

12 Q Petty larceny in December of '09?

13 A Yes, sir.

14 Q Fraudulent check in October of 2010?

15 A Yes, sir.

16 Q Now, you've been mad at Eddie Alewine for
17 a while, haven't you?

18 A No, sir.

19 Q Isn't it true that he had a relationship
20 with your woman when you were in jail?

21 A Not that I've ever heard of.

22 Q You've never heard of that?

23 A No, sir.

24 Q You didn't get mad at him about that?

25 A This is the first I've heard of it, sir.

Larry Wayne Scott - Cross

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1 Q How long did you have this crack in your
2 possession?

3 A A minute or so, a minute and a half.

4 Q So how do you know this is the same crack
5 you had? Did you testify it was?

6 A Yes, sir.

7 Q And how do you know that?

8 A Because it was in my possession, and I
9 recognize the package. It was one of the last buys
10 I've ever bought of crack cocaine.

11 Q What makes that crack different from any
12 other crack you've seen?

13 A All of it looks the same.

14 Q All of it looks the same, doesn't it? So
15 you just said --

16 A But that's the --

17 Q -- what you thought they wanted to hear,
18 didn't you?

19 A No, sir.

20 Q It looks the same as all crack, doesn't
21 it?

22 A Pretty much. Crack is white, off-white.

23 Q You couldn't tell anybody -- you couldn't
24 walk to us and say "This is the crack I had that
25 day" at all, could you?

Larry Wayne Scott - Cross

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1 A Yes, sir.

2 Q You could?

3 A Yes, sir.

4 Q How would you know that?

5 A Because I handed it over to law
6 enforcement.

7 Q And how do you know? Can you look at this
8 crack and tell me --

9 A Yes, sir.

10 Q -- that's the same crack?

11 A Yes, sir.

12 Q What makes it different than any other
13 crack you've ever seen?

14 A I mean, I don't understand what you mean.

15 Q Does it look any different than any other
16 crack that you've ever seen?

17 A Crack comes in different shades. But,
18 yes, white crack, several pieces of crack cocaine.
19 I handed it over to law enforcement.

20 Q That's what I'm getting at, Mr. Scott.
21 You just said yes, it was the same crack because you
22 know that's what they wanted you to say, isn't that
23 true?

24 A No, sir.

25 Q Do you recognize the crack?

Larry Wayne Scott - Cross

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1 A Yes, sir.

2 Q You had it in your hand for one minute,
3 and you recognize that's the same crack you had that
4 day?

5 A Yes, sir.

6 Q How many pieces is it?

7 A Roughly seven.

8 Q Okay. How big are they?

9 A Doubs, \$20 pieces of rock. If you put
10 them on a scale, they probably weigh about .2 or so,
11 something like that. It's probably about \$20 worth
12 of crack cocaine.

13 Q What makes this crack that you've got from
14 Eddie Alewine, you say on this day -- what makes it
15 distinguishable from any other crack you ever had?

16 A I mean, it's crack. I mean, it's drugs.
17 I mean it's simply drugs.

18 Q That's what I'm getting at, Mr. Scott.

19 A Okay.

20 Q You say it's the same crack because you
21 know that's what they wanted you to say, isn't that
22 true?

23 A No, sir.

24 Q Did you speak with the Solicitors before
25 today?

- 1 A Yes, sir.
- 2 Q When did you speak with them?
- 3 A When they served the subpoena on me.
- 4 Q And when was that?
- 5 A I think last week.
- 6 Q Did you go over your testimony with them?
- 7 A No, sir.
- 8 Q Oh, you didn't discuss what you were going
- 9 to say?
- 10 A No, sir.
- 11 Q Why did they serve you the subpoena, then?
- 12 A Let me know I was needed in court and sign
- 13 some papers.
- 14 Q Sign some papers?
- 15 A Yes, sir -- no, that was the subpoena.
- 16 Yes, sir, I didn't sign it. They just presented it
- 17 to me. I'm sorry.
- 18 Q And you're telling me that they never
- 19 discussed with you what you were going to say today?
- 20 A No, sir.
- 21 Q Where have you been this morning?
- 22 A South Carolina of Corrections, Kirkland.
- 23 Q How long have you been over here?
- 24 A About an hour or so.
- 25 Q And nobody has come and talked --

Larry Wayne Scott - Cross

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- 1 A Since about 2:00.
- 2 Q Nobody has come and talked to you?
- 3 A Yes, sir, the Solicitor come over there.
- 4 Q All right. He never discussed your
- 5 testimony with you?
- 6 A No, sir.
- 7 Q Never discussed it?
- 8 A No, sir.
- 9 Q How many times have you been a narc?
- 10 A What you mean?
- 11 Q How many times have you made CI buys for
- 12 these agents?
- 13 A I've made a couple of buys.
- 14 Q More than two?
- 15 A Probably so, yes, sir.
- 16 Q More than five?
- 17 A I would say.
- 18 Q More than ten?
- 19 A Somewhere around that number, yes, sir.
- 20 Q Somewhere around ten?
- 21 A Yes, sir.
- 22 Q Over what period of time did you make
- 23 these buys?
- 24 A Probably about seven months, six months or
- 25 so, a couple of months.

Larry Wayne Scott - Cross

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1 Q A couple of months?

2 A Yes, sir, somewhere around in there.

3 Q Ten buys? Was it always --

4 A Don't hold me to that, because I'm not
5 sure how many.

6 Q Was it always with the same agents?

7 A No, sir.

8 Q Different agents, different buys?

9 A Yes, sir.

10 Q And were you shown your statement?

11 A What you mean?

12 Q Did you write a statement --

13 A Yes, sir.

14 Q -- when this happened?

15 A Yes, sir.

16 Q Did they show you your statement before
17 you testified today?

18 A No, sir.

19 Q You just happen to remember the names of
20 the agents on this particular buy?

21 A Yes, sir.

22 Q Do you remember the agents from all your
23 ten buys?

24 A Yes, sir. I've worked with these agents
25 on, like I said, probably several buys with these

Larry Wayne Scott - Cross

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1 agents, yes, sir.

2 Q Are you telling this jury you made at
3 least ten different buys over a couple of months,
4 and you happen to remember the agents involved in
5 this particular buy --

6 A Yes, sir.

7 Q -- with nobody telling you anything about
8 it?

9 A No, sir.

10 Q You've got a good memory, huh?

11 A Yes, sir.

12 Q Okay. And all that crack you did didn't
13 affect your memory?

14 A No, sir. It's affected my life
15 drastically. You read off the charges.

16 Q Did you do this deal before or after you
17 were arrested for strong arm robbery?

18 A After.

19 Q And did you have some other charges
20 pending at the same time?

21 A Not that I -- no, sir, I don't believe so.

22 Q Did you have a burglary charge?

23 A Yes, sir -- yes, sir.

24 Q Was that pending at the same time?

25 A It's still pending, yes, sir.

1 Q You weren't promised any help with that?

2 A No, sir, another county.

3 Q We listened to this tape, and Eddie

4 Alewine's name is never on there, is it?

5 A No, sir.

6 Q And you were having these phone calls, but
7 nobody could hear what the other side was saying,
8 could they?

9 A Yes, sir, I was -- yes, sir.

10 Q You could hear it?

11 A Yes, sir. And I believe I might have had
12 it on speaker phone when I made the original buy --
13 I mean, the original call.

14 Q Eddie Alewine's name is not mentioned
15 there either, is it?

16 MR. FLOYD: No further questions, Your
17 Honor -- oh, just one.

18 Q They search you before you make these?

19 A Yes, sir.

20 Q Did anybody look in your underwear?

21 A They run around my waist and throughout my
22 legs and everything, yes, sir.

23 Q They do look in your underwear?

24 A I mean, they didn't strip search me. They
25 patted me down around my waist and up the inside of

Larry Wayne Scott - Cross

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1 my legs and outside of my legs -- I mean, just a
2 brief shakedown.

3 Q What if I told you they said they didn't
4 do that? Are you saying they did do that?

5 A Yes, sir.

6 Q So if they said they didn't do that, then
7 they were being not truthful?

8 A Yes, sir.

9 Q Okay.

10 MR. FLOYD: No further questions, Your
11 Honor.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q You said you started smoking crack in '09?

16 A Yes, sir.

17 Q Did you get any of these convictions while
18 you were smoking crack?

19 A Yes, sir, almost all of them, except for
20 the ones I was convicted in 2006, which was from
21 2000.

22 Q Well, did you tell Mr. Floyd you had a
23 2011 shoplifting?

24 A Yes, sir.

25 Q You were convicted this year of strong arm

1 robbery?

2 A Yes, sir.

3 Q You've got a 2006 CSC?

4 A Yes, sir.

5 Q 2010, a shoplifting?

6 A Yes, sir.

7 Q 2010, a fraudulent check?

8 A Yes, sir.

9 Q Now, you smoked crack?

10 A Yes, sir.

11 Q Did you take any crack with you into one
12 of these controlled buys?

13 A No, sir.

14 Q Did you have crack hidden in your
15 underwear when you went to do a controlled buy with

16 --

17 A No, sir.

18 Q -- Eddie Alewine?

19 A No, sir.

20 MR. SCOTT: Nothing further from the
21 State.

22 THE COURT: Mr. Floyd, anything further?

23 MR. FLOYD: Nothing further, Your Honor.

24 THE COURT: Sir, you may step down. Thank
25 you.

Larry Wayne Scott - Redirect

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1 MR. SCOTT: Thank you, Your Honor.

2 MR. McNAIR: The State calls Brian Clark.

3 (The witness was sworn.)

4 CLERK OF COURT: If you'll have a seat
5 over here and state your name, please, for the
6 record.

7 MR. CLARK: Brian Jeffrey Clark.

8 BRIAN JEFFREY CLARK, having first been
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. McNAIR:

12 Q Mr. Clark, how are you doing?

13 A All right.

14 Q Where do you live right now?

15 A I live with my parents.

16 Q Where is that?

17 A On Windmill Road in Leesville.

18 Q In Leesville. Do you have a job?

19 A Yes, sir.

20 Q What do you do?

21 A I work for a landscaping company that my
22 pastor of our church runs.

23 Q How long have you worked there?

24 A Probably about three months now.

25 Q Okay. Let's go back to August of 2011.

Brian Clark - Direct

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1 What were you doing back then?

2 A I was involved in drugs, helping people
3 move drugs to make money to get drugs.

4 Q How would you describe your life back
5 then?

6 A Not very good, hanging on the edge. None
7 of my family really spoke to me or anything. It was
8 just a disaster. It was a nightmare.

9 Q Were you addicted to drugs?

10 A At the time, yes, sir, I was.

11 Q What kind?

12 A Crack cocaine.

13 Q Okay. Have you since gotten help with
14 that addiction?

15 A I have. I went through rehab back in
16 December, and I went for three months and got out.

17 Q And what prompted you to go to rehab?

18 A Well, in November I went to jail.

19 Q What did you go to jail for?

20 A I went to jail for shoplifting -- that was
21 in November -- I guess to feed my drug habit. But
22 after I got out of that, I kind of had a life
23 awakening.

24 Q Okay.

25 A You know, it was past time to do something

Brian Clark - Direct

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1 about it.

2 Q And when did you get out of rehab?

3 A February.

4 Q Do you know the defendant, Eddie Alewine?

5 A I do.

6 Q Back in August of 2011, were you hanging
7 around him a lot during that time?

8 A I was.

9 Q Did you ever have the opportunity to drive
10 him around?

11 A I did.

12 Q What type of vehicle do you have?

13 A I had a 2000 S-10 that was red, extended
14 cab.

15 Q Okay. Now, has the defendant ever ridden
16 in your truck?

17 A He has.

18 Q Specifically, let's talk about August 30,
19 2011. Do you remember that day?

20 A I do.

21 Q Who were you with?

22 A I was with Mr. Eddie Alewine.

23 Q Please tell the jury what happened.

24 A On that day, we got a call to go to
25 deliver some product.

1 Q By "product," what do you mean?

2 A Crack. We rode up to the IGA, across the
3 street from it.

4 Q Okay.

5 A And went over there.

6 Q I'm going to show you what's marked as
7 State's Exhibit One. Is this the IGA you drove up
8 to?

9 A Yes.

10 Q Will you just show the jury the route you
11 took?

12 A Coming from Batesburg, his apartment is
13 down a couple of miles on the left. We came down
14 this road here just coming from Batesburg.

15 Q Is that Highway One?

16 A Highway One.

17 Q Okay.

18 A The IGA is over here, and we swung in
19 right there.

20 Q Okay. And what is this right here?

21 A It's an abandoned gas station. I think an
22 old Exxon over there.

23 Q Okay. And did the individual walk up to
24 your truck?

25 A He did.

Brian Clark - Direct

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1 Q Did you know him?

2 A Not off the top of my head, no, I did not.

3 Q Was he a white guy or a black guy?

4 A A white guy.

5 Q Okay. What happened when he came up to
6 the truck?

7 A They spoke for a second or two and made an
8 exchange.

9 Q Okay. What was the exchange?

10 A Money for crack.

11 Q Who gave him the crack?

12 A Mr. Alewine.

13 Q Were those your drugs?

14 A No, sir.

15 Q Mr. Alewine's drugs. Do you see Mr.
16 Alewine in the courtroom today?

17 A He's right over there.

18 Q Would you please describe an article of
19 clothing he's wearing?

20 A A white with black stripes on the shirt
21 pockets.

22 Q Let the record reflect that he identified
23 the defendant. Now, what were you getting out of
24 this deal? Why did you drive Mr. Alewine?

25 A I was addicted to crack. So in exchange

Brian Clark - Direct

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1 for giving him a ride to do his business, he gave me
2 crack cocaine --

3 Q Okay.

4 A -- to pay me off.

5 Q I don't have any more questions at this
6 time. Please answer any questions that Mr. Floyd
7 has.

8 THE COURT: Cross-examination, Mr. Floyd.

9 MR. FLOYD: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FLOYD:

12 Q So, Mr. Clark, how often were you smoking
13 crack back then?

14 A On a daily basis.

15 Q Daily?

16 A Uh-huh.

17 Q So tell me how you remember the date
18 August 30th as opposed to August 28th, September
19 2nd?

20 A Well, I remember the location. I remember
21 because it was a bad spot. It's in the wide open,
22 so it's pretty evident it's not a safe place to do
23 something, especially when you're driving somebody.
24 You always keep that in the back of your head.

25 Q And you remember that date as opposed to

Brian Clark - Cross

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1 any other dates -- August 30th as opposed to any
2 other dates?

3 A There were a lot of dates, but I remember
4 the date in question.

5 MR. FLOYD: Your Honor, may we approach a
6 moment?

7 THE COURT: Yes.

8 You may continue, sir.

9 Q Now, Mr. Clark, you haven't even thought
10 about this situation until last Thursday or Friday,
11 have you?

12 A I try to put all of last year behind me.
13 It's a part of my life I don't really care to
14 remember. It's a living nightmare living that kind
15 of life. So I would think anybody would want to put
16 that behind them.

17 Q And so the only reason you have a date in
18 mind is because law enforcement agents came and told
19 you about a date?

20 A Well, they asked me about a specific date.

21 Q And that's not something you even thought
22 about for four or five months -- longer than that,
23 August of 2011 -- ten months?

24 A No, sir, I don't try to live my life
25 remembering things like that. When things are

Brian Clark - Cross

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1 brought to my attention, then my brain recollects
2 things.

3 Q And all the crack you did doesn't affect
4 your memory at all?

5 A No, sir.

6 Q Thank you, no further questions.

7 MR. McNAIR: One more question, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. McNAIR:

11 Q Have you ever driven anybody to that
12 particular spot to do a drug deal before?

13 A No, just Mr. Alewine.

14 Q Thank you.

15 THE COURT: Any recross? Anything else,
16 Mr. Floyd?

17 RECROSS EXAMINATION

18 BY MR. FLOYD:

19 Q Mr. Clark, there were times that other
20 people drove your vehicle, weren't there?

21 A Yes, but very slim -- very, very slim --
22 and it would have to be somebody just like a female
23 that needed to go to the grocery store or something
24 like that. But I never let a lot of people draw my
25 vehicle.

Brian Clark - Recross

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1 Q And when you were doing crack, you never
2 let anybody drive your vehicle?

3 A Just what I just told you just now.

4 Q There are other men that have driven that
5 vehicle, aren't there?

6 A I'm sorry?

7 Q There are other men that you allowed to
8 drive the vehicle, too, weren't there?

9 A Not that I can recollect.

10 Q But definitely you admit you let women
11 drive your vehicle?

12 A Maybe on a once or twice occasion to let
13 them go to the grocery store or something.

14 Q Thank you.

15 MR. FLOYD: No further questions, Your
16 Honor.

17 THE COURT: You may step down. Thank you.

18 MR. McNAIR: Your Honor, we'd ask that
19 this witness be excused, as well.

20 THE COURT: Any objection, Mr. Floyd?

21 MR. FLOYD: No objection, Your Honor.

22 THE COURT: Sir, you're excused with
23 regards to any further obligation under your
24 subpoena. You may leave.

25 MR. SCOTT: The State calls Beth Harmon,

Brian Clark - Recross

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1 Your Honor.

2 MR. FLOYD: Your Honor, may we approach?

3 (The witness was sworn.)

4 CLERK OF COURT: If you'll have a seat and
5 state your name, please.

6 MS. HARMON: Margaret Elizabeth Harmon --

7 H-A-R-M-O-N.

8 MARGARET ELIZABETH HARMON, having first
9 been duly sworn, testified as follows:

10 MR. SCOTT: Thank you.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Ms. Harmon, where are you employed?

14 A I'm employed with the Lexington County
15 Sheriff's Department.

16 Q What are your duties there?

17 A I'm currently assigned as an evidence
18 custodian.

19 Q What is an evidence custodian?

20 A Evidence custodians are responsible for
21 the care and custody of all of the property in the
22 evidence control room. We accept property from
23 officers or investigators, in this case narcotics
24 investigators.

25 Q Okay. And who is Candy Kyzer?

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1 A Candy Kyzer is one of our evidence
2 custodians.

3 Q Where is she today?

4 A She's currently out on sick leave.

5 Q Okay. What are her duties?

6 A She is also an evidence custodian.

7 Q Okay. What is the typical procedure when
8 an officer of the law drops off a piece of evidence
9 to be analyzed or stored?

10 A The evidence room is open Monday through
11 Friday from 8:00 to 5:00 with the exception of
12 holidays. During the open hours of 8:00 to 5:00,
13 the officers or investigators can directly bring the
14 evidence to us. After hours or if we're closed for
15 lunch or court, they can place the evidence into a
16 secure locker system.

17 Q And what happens from there?

18 A The officers are responsible for sealing
19 all of their packages. They're also responsible for
20 creating a voucher. The voucher is their paperwork
21 that identifies to us what the case number is as
22 well as how many items of evidence that they have.

23 Once they've sealed those items and placed
24 the paperwork in the locker system or they've handed
25 it to us, then we assign it a bar code label once we

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1 have verified that all of the property is in its bag
2 there.

3 Q And do you retain all that paperwork?

4 A We do.

5 Q And would you tell us what a Form C is?

6 A A Form C is an additional custody form on
7 joint cases. Specifically, Form C's are done on
8 marijuana cases as well as on BEST kits.

9 Q And what is a BEST kit?

10 A A BEST kit is a drug kit specifically
11 designed for drugs other than marijuana or marijuana
12 that the officer believes has been laced with
13 something else.

14 Q What is the purpose of a BEST kit? What
15 are some of the features of a BEST bag?

16 A BEST kits themselves are tamper-evident.
17 You'll notice on this one it's got a continual
18 circle design on the sides. If you were to try to
19 open this case, it would distort the images here.

20 The glue at the top is glued over an image
21 similar to that. And if you tried to tamper with
22 it, it would also distort that image. The only way
23 to get into that is to rip it with some sort of
24 force or cut it with scissors or a knife.

25 Q And let the record reflect you're

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1 referring to State's Number Two.

2 A That's correct.

3 Q And have you brought your paperwork for
4 the particular case we're here in court for today?

5 A Yes, I did.

6 Q And what does that paperwork track?

7 A It tracks several things. The first
8 paperwork is the voucher. It tells me who was
9 logged into the computer and the location that the
10 evidence was found and the case number on the actual
11 item of evidence.

12 I also brought the chain-of-custody
13 report, which shows me which person in the evidence
14 room might have signed out that evidence to the lab
15 or an investigator for review or whatever the case
16 may be.

17 Q And tell us according to your notes -- and
18 what does the BEST bag show? Does it have any
19 documentation on it that you rely on?

20 A The BEST kit has a control number at the
21 top. Each control number is unique to that BEST
22 kit. BEST kits are created by the chemist at the
23 Sheriff's Department. She packages the BEST kit bag
24 as well as all the documentation that the officer
25 needs into an envelope.

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1 The envelope then has a control number
2 printed on it, and those numbers match. When we
3 receive the items into evidence, we verify that the
4 control number on the outside of the BEST kit is the
5 control number for all of the paperwork contained
6 inside.

7 Q And who generates the bar code on the
8 outside of the envelope?

9 A The bar code on the outside of the
10 envelope that this is stored in is actually
11 generated by the evidence custodians.

12 Q Okay.

13 MR. FLOYD: Your Honor, we object. This
14 witness did not generate this document they're
15 trying to put in now.

16 THE COURT: Ladies and gentlemen, I'm
17 going to have to ask you to step to the jury room
18 for a minute while we take up a matter outside your
19 presence. Do not discuss the case. I'll get you
20 back out here as quickly as possible.

21 (Jury out at 4:30 p.m.)

22 THE COURT: What's your objection, Mr.
23 Floyd?

24 MR. FLOYD: Your Honor, it's my
25 understanding that this witness -- they're trying to

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1 get this document into evidence here --

2 THE COURT: Can I see it?

3 MR. FLOYD: -- for what purpose I'm not
4 sure. My objection is that document, from my
5 understanding, was not generated by this witness.
6 So I don't know how they can get it into evidence
7 through this witness.

8 THE COURT: Mr. Scott?

9 MR. SCOTT: Your Honor, yes, I probably
10 should have fleshed that out a little more. I think
11 what Ms. Harmon was going to testify to is Candy
12 Kyzer -- she said the evidence custodian generates
13 that bar code that's on that envelope, puts the BEST
14 bag in it.

15 And from there, they scan that bar code to
16 keep track of it. Of course, Candy Kyzer was the
17 intake person that day. Ms. Harmon was not.

18 So she's testifying -- she can testify to
19 the procedure and the protocol. That bag is linked
20 to that BEST kit with the numbers on there, the
21 description, and the bar code.

22 THE COURT: All right, I believe that it
23 goes to the weight and not the admissibility of it.
24 I think you can certainly cross-examine her on that.
25 I'll allow you to do that, Mr. Floyd. I will

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1 overrule the objection on that.

2 MR. FLOYD: Thank you, Judge.

3 THE COURT: Also with regards to it was
4 brought to the Court's attention prior to this
5 witness taking the stand -- I just want to make sure
6 it's noted for the record, Mr. Floyd, while the jury
7 is outside the presence.

8 Prior to the beginning of this trial,
9 witnesses were ordered to be sequestered. This
10 particular witness, Ms. Harmon, was brought to the
11 Court's attention by Mr. Floyd at sidebar that she
12 had been seated within the courtroom I guess pretty
13 much throughout the course of the trial. Is that
14 right, Mr. Floyd?

15 MR. FLOYD: At least for a couple of
16 witnesses. I didn't notice her initially, but after
17 a couple of witnesses I did.

18 THE COURT: All right. What says the
19 State?

20 MR. SCOTT: Your Honor, I didn't notice
21 either. I'm sure it wasn't until at least two. We
22 have, Your Honor, this week simultaneous drug trials
23 going on. Ms. Harmon and our chemist were upstairs.

24 I think she must have come down here after
25 she was not needed up there any longer. She is an

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1 evidence custodian, Your Honor. She has the drugs
2 that we had to ID through a number of witnesses.

3 She maintains custody and control of
4 those. Typically, the evidence custodian in cases
5 such as these are, despite sequestration of
6 witnesses, allowed to be in the trial to maintain
7 custody of these fungible items. And I think it's
8 their policy they don't release them until they are
9 entered into evidence.

10 MR. FLOYD: Judge, we've been looking at
11 that bag all trial, and she wasn't in here to start
12 with.

13 THE COURT: Well, I thought you said a
14 second ago you didn't notice because she wasn't in
15 here, if she wasn't in here earlier.

16 MR. FLOYD: I didn't see when we first
17 started. Like I said, I can only said she's been
18 here for the last two witnesses, because that's when
19 I noticed her.

20 THE COURT: For the record, I've seen here
21 in here, okay. I've seen her in here. I think
22 she's been in here from the start of the trial. I
23 didn't know that she was a witness in the trial
24 until they called her. She's been in here, and I
25 know she's been in here longer than the last two

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1 witnesses.

2 MR. FLOYD: I mean, that could be. That's
3 when I noticed her, Judge.

4 THE COURT: But anyway, she is an evidence
5 custodian. Regardless, I think sequestration is a
6 discretionary call by the Court. I'm going to allow
7 her to testify.

8 Her testimony is not of any substance to
9 what actually this defendant did on the day in
10 question, rather simply custodian of the evidence.
11 But your objection is so noted for the record.

12 MR. FLOYD: Thank you, Your Honor. Why
13 don't we get to the next thing, too, then? What
14 they're trying to do right now is get past the
15 problem they have that Candy Kyzer's not here to
16 testify, because Candy Kyzer is the appropriate
17 chain witness in this case, not Mr. Harmon.

18 THE COURT: Right.

19 MR. FLOYD: We asked for a continuance
20 saying they didn't have Candy Kyzer here. We wanted
21 Candy Kyzer here. And we asked for a continuance so
22 they could have her here. They chose to go forward
23 with the trial --

24 THE COURT: Right.

25 MR. FLOYD: -- to deprive us of the

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1 opportunity to cross-examine Ms. Kyzer. And it's
2 going to be unfair, Your Honor, to the Court to
3 allow them to try to get Ms. Kyzer's testimony in
4 through this witness, who has no first-hand
5 knowledge of --

6 THE COURT: I'm not going to allow her to
7 testify about anything that she doesn't have any
8 first-hand knowledge of.

9 MR. FLOYD: All right, thank you, Your
10 Honor.

11 THE COURT: Okay. She can certainly
12 testify to policy and procedure that they go through
13 as an evidence custodian. And on cross-examination,
14 you can certainly cross-examine her on the fact that
15 she didn't in this particular case deal with that.

16 MR. FLOYD: Thank you, Your Honor.

17 THE COURT: I think you can certainly do
18 that.

19 All right, anything further from the State
20 or the defense?

21 MR. SCOTT: Nothing from the State, Your
22 Honor.

23 THE COURT: Mr. Floyd, anything further?

24 MR. FLOYD: Nothing further, Your Honor.

25 THE COURT: Please bring us the jury back.

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1 (Jury in at 4:40 p.m.)

2 THE COURT: All right, it's been brought
3 to my attention that one of the jurors needs to make
4 a telephone call. I assume they're concerned that
5 we go beyond 5:00.

6 I'm going to allow him or her to make that
7 phone call in the presence of one of the Bailiffs.
8 They'll be escorted outside of the jury room by one
9 of the Bailiffs for her or him to make that phone
10 call.

11 We're going to start a new witness that
12 may go well beyond five, and we may stop earlier
13 than five. But ordinarily, we try to stop around
14 five, respecting the fact that you all have lives
15 outside this courtroom.

16 And it appears today that we may go a
17 little bit beyond 5:00, and hopefully that won't
18 happen after today. I just wanted to advise you of
19 that. Is everybody on the jury okay?

20 I was advised that somebody needed to make
21 a phone call. Is everybody else okay with going
22 beyond 5:00 today? If not, raise your right hand.
23 All right, thank you.

24 Mr. Solicitor, you may continue.

25 MR. SCOTT: Thank you, Your Honor.

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1 EXAMINATION CONTINUED

2 Q All right, you were talking about the BEST
3 bag, the procedure for when a piece of evidence is
4 dropped off at the intake locker at the Sheriff's
5 Office. You mentioned working hours and whenever
6 y'all are not in that it's typical for somebody to
7 just to drop it off in the evidence drop box. From
8 there, would you tell us what happens whenever y'all
9 do come back to work?

10 A The evidence lockers are secure lockers in
11 a secure facility. The lobby to the evidence room
12 is accessible for the officers with a proxy card
13 system. The officers are the only ones that can
14 access that area.

15 That would be where they would fill out
16 their voucher on the computer program, and they
17 would leave their property. They can leave their
18 property in a secure lockers which are with a
19 push-button system.

20 It's basically a locker that they open the
21 door, they put all of their property in, and they
22 push a button to lock it. That locker is then
23 locked from the outside and cannot be opened by
24 them.

25 It must be opened by an evidence custodian

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1 the following morning when we go into our office.
2 Our office is the back part of their lobby, and it's
3 accessible with a key and a proxy card. So the
4 lockers themselves are locked on the back.

5 Q From there -- now, you're an evidence
6 custodian. How many evidence custodians does the
7 Sheriff's Department have?

8 A We have two evidence custodians and a
9 supervisor.

10 Q Okay. Who is the other evidence
11 custodian?

12 A Our supervisor is Sgt. Bobby McMullen, and
13 the other evidence custodian is Candy Kyzer.

14 Q Okay. Now, when the evidence custodian
15 goes to the drop box and finds a piece of evidence,
16 what do they do next?

17 A We work one case at a time so we don't mix
18 two cases together. It helps with the integrity of
19 each case. Those items are checked on a voucher to
20 make sure that we do have all of the items that the
21 officer says that they dropped.

22 If it's a BEST kit, we check the seals to
23 make sure that the item is sealed. If the item is
24 not sealed, it is our policy that we do not accept
25 that voucher. We call the officer or investigator

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1 to come in.

2 Q Okay. And I think that's actually my next
3 question. But if it shows tampering, do you forward
4 it on to the chemist?

5 A No, we do not. We receive sealed
6 packages. If the officer doesn't seal any of their
7 evidence, whether it's a BEST kit or a fingerprint
8 card, we do not accept it. Their evidence must be
9 sealed for us to accept it. If it's not, we call
10 them to come in and correct their error. If it's a
11 BEST kit that hasn't been sealed, we don't send it
12 to the chemist.

13 Q Okay. And the bar code, what were you
14 saying about the bar code on the envelope?

15 A Bar codes are generated by the evidence
16 custodian through the software that we use on the
17 computer. Each bar code is unique to that item and
18 has a property room number that is unique to that
19 particular bag.

20 Q Okay. And this particular case that we're
21 here for today, were you involved with this case
22 August 30th?

23 A I was involved in part of this case, yes.

24 Q For August 30, 2011, I believe that's BEST
25 kit number -- you have the BEST kit right there.

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1 What is the number on that one?

2 A This is control number C015002.

3 Q Were you involved with that particular
4 BEST kit?

5 A This particular one, no, I was not.

6 Q Okay. Who was the evidence custodian when
7 that was dropped off?

8 A It was Candy Kyzer.

9 Q And who dropped it off?

10 A To my knowledge --

11 MR. FLOYD: Your Honor, I'm going to
12 object. She's obviously giving us hearsay now.

13 THE COURT: Rephrase your question.

14 Q I think we can move on, Your Honor. Let
15 me ask you State's Exhibit Number Four, do you
16 recognize that?

17 A Yes, I do.

18 Q Does it correspond to that BEST kit?

19 A It does.

20 Q Okay.

21 MR. SCOTT: Nothing further from this
22 witness.

23 THE COURT: Mr. Floyd, cross-examination.

24 MR. FLOYD: No questions of this witness
25 at this time.

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1 THE COURT: Ma'am, you may step down.

2 Thank you.

3 MR. SCOTT: The State calls Emily Homer:

4 (The witness was sworn.)

5 CLERK OF COURT: If you'll have a seat
6 over here. State your name, spelling your last,
7 please.

8 MR. FLOYD: Your Honor, may we approach?

9 THE COURT: Yes, sir.

10 Go ahead.

11 EMILY HOMER, having first been duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Please state your occupation, Ms. Homer.

16 A It's Emily Homer -- H-O-M-E-R -- and I'm
17 the chemist for Lexington County Sheriff's
18 Department.

19 Q How long have you worked at Lexington
20 County doing that?

21 A It will be seven years this November.

22 Q And what are your duties as a chemist for
23 Lexington County?

24 A I analyze drug cases, and I'm also a
25 certified law enforcement officer.

Emily Homer - Direct

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1 Q What kind of training must you have to
2 qualify for your position?

3 A I have a bachelor's in chemistry from the
4 University of South Carolina and a master's in
5 organic chemistry from the University of South
6 Carolina. I've had training in drug analysis
7 specifically with SLED and also with the DEA Special
8 Testing Laboratories in Virginia as it pertains to
9 just the drug analysis. And I'm also certified with
10 the state for Class I, also.

11 Q Have you had an occasion to chemically
12 analyze substances to determine whether or not they
13 are illegal narcotics?

14 A Have I ever analyzed cases?

15 Q Have you ever analyzed substances to
16 determine whether they were illegal narcotics?

17 A Yes.

18 Q How many times?

19 A About 500 cases a year -- 300 to 500 cases
20 a year for six and a half years.

21 Q So thousands?

22 A Thousands, uh-huh.

23 Q Have you had occasion to chemically
24 analyze a substance and determine whether or not it
25 contained crack cocaine?

Emily Homer - Direct

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1 A Yes.

2 Q Approximately how many times?

3 A I don?t keep track.

4 Q More than a hundred?

5 A Yes, definitely. I mean, over 50 percent
6 of my cases are cocaine or cocaine base. I test for
7 all controlled substances, controlled as far as
8 Schedule I through V.

9 Q Okay. How many chemical analyses do you
10 make in a given week?

11 A Well, depending on whether or not I'm in
12 court.

13 Q An off-court week, just on average. How
14 many do you think tests you run a week?

15 A It depends on what type of case it is. If
16 it's a meth lab, sometimes that will take a day or
17 two. And we run I guess about ten -- between ten
18 and fifteen cases.

19 Q Okay. So you make analyses a regular part
20 of your duties?

21 A Yes.

22 Q Have you had occasion to qualify as an
23 expert in this area in courts in Lexington County?

24 A Yes.

25 Q In General Sessions Court?

Emily Homer - Direct

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1 A Yes.

2 Q How many times?

3 A Today is my 17th.

4 Q And what were you qualified as an expert
5 in?

6 A Well, I mean 16 times actually in state
7 but once in federal.

8 Q And what have you been qualified as an
9 expert in?

10 A As a chemist, chemical analyst for drug
11 analysis.

12 Q Did you actually testify those 16 times?

13 A Uh-huh.

14 MR. SCOTT: Your Honor --

15 A -- 17 times.

16 Q Oh, 17, I'm sorry.

17 A One time in federal, 16 in state.

18 MR. SCOTT: Your Honor, the State would
19 offer Emily Homer as an expert in the field of
20 chemistry and analyses of narcotics.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: I have no questions on that
23 point, Your Honor.

24 THE COURT: Any objections?

25 MR. FLOYD: No objections.

Emily Homer - Direct

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1 THE COURT: All right, ladies and
2 gentlemen, before we go any further, let me just
3 advise you that normally a person cannot give
4 opinion testimony. Normally when a person
5 testifies, they must testify as to what they either
6 saw, heard, or sensed by smell or something of that
7 nature.

8 However, there is an exception when
9 someone is qualified because of education or
10 experience. They are permitted to give their
11 opinion in certain areas that the Court qualifies
12 them that way. This witness will be qualified in
13 the area of chemistry and analysis of narcotics to
14 give opinion testimony in that area.

15 That does not mean that you must accept
16 the opinion. But it is evidence for you to use in
17 any way that you see fit and give it the weight and
18 credibility you believe is appropriate.

19 Mr. Scott?

20 MR. SCOTT: Thank you, Your Honor.

21 Q Let me show you what's been marked State's
22 Exhibit Number Two. Please examine that. Based
23 upon your past experience and training, do you have
24 an opinion as to what that substance is?

25 MR. FLOYD: Your Honor, I'm going to

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1 object till we establish the chain of custody as
2 there being specific drugs in there imputed to Mr.
3 Alewine.

4 THE COURT: Hold on a minute. Can the
5 lawyers approach, please?

6 The objection is sustained.

7 Rephrase your question.

8 Q Do you recognize that exhibit?

9 A Yes, this is BEST kit C015002 that matches
10 from this case 28019.

11 Q Okay. And how did that exhibit come into
12 your possession?

13 A I received this BEST kit on September 6,
14 2011, from Candy Kyzer.

15 Q And where did you receive that exhibit?

16 A In person in the evidence room.

17 Q And did Candy Kyzer personally hand it to
18 you?

19 A Yes, uh-huh.

20 Q And do you have any -- have you marked
21 that exhibit in any way?

22 A Yes, this is -- you know, we call it --
23 this is a BEST kit. It stands for best evidence
24 sampling technique. The "C" number that I quoted is
25 the number that's printed on the top. And if the

Emily Homer - Direct

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1 seal is intact, I'll write on the actual BEST kit

2 "seal okay."

3 The seal is what shows us that -- it's not
4 tamper-proof, but it is tamper-evident that if
5 someone were to pull apart the seal, then it would
6 distort the writing. If that writing is distorted,
7 I would have written on here "seal not okay," along
8 with the date and my initial. The other number on
9 top of that is the lab number that I assign to every
10 particular grouping of evidence that I work. It's
11 specific for the lab.

12 Q Okay. And are your marks evident on that
13 exhibit?

14 A Yes, they are.

15 Q And you say chemically analyzing
16 substances is a regular part of your job. Well, is
17 it a regular part of your job to observe those BEST
18 kits for evidence of tampering?

19 A Yes, we do. And if they're not sealed, as
20 a rule I don't analyze them. And I turn them back
21 in to the evidence room. I also check through the
22 chain of custody to make sure it makes sense.

23 Q Did you check the chain of custody on this
24 one?

25 A Yes, uh-huh.

Emily Homer - Direct

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1 Q And what was the chain of custody?

2 A What are chain of custody, or what --

3 Q Well, yes, what is a chain of custody?

4 A Well, mainly all that I do is I look at
5 the Form B's and, you know, make sure that I don't
6 have the same officer listed as the person -- the
7 Form B is the person that takes initial custody.

8 Usually, it's the officer that takes it
9 off of the suspect. And then I check to make sure
10 that the Form C's correspond -- you know what, I'm
11 not checking -- the evidence room checks it on their
12 system.

13 But I mainly just look and make sure
14 nothing out of the ordinary is present with the
15 chain of custody. And as long as the seals are
16 intact and the chain of custody seems to make sense,
17 you don't have repeating names as a person that
18 handed it back and forth to themselves, you know,
19 then I'll go ahead and analyze it.

20 Q And did the chain of custody make sense in
21 this case?

22 A Yes, uh-huh.

23 Q And what was the chain of custody?

24 MR. FLOYD: Your Honor, I object. That's
25 going to be hearsay to her.

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1 THE COURT: I'll allow her to testify.

2 Objection overruled.

3 A As far as chain of custody and the
4 information that I have was that Eric Kirkland
5 seized them on August 30, 2011, from Eddie Alewine.
6 And he turned it in to the evidence room on August
7 30th. And then the 31st, the Candy Kyzer put it
8 into the evidence room. And then on September 6th,
9 she signed it out to me.

10 Q And when you got it, did you mark that the
11 seals are intact?

12 A Yes, I did -- well, I didn't mark it the
13 day that I received it. I marked it the day I
14 analyzed it. When I get the evidence from the
15 evidence room, sometimes I have other cases I'm
16 working in the lab or something else has come up, I
17 have to go to court or what not.

18 So the lab itself has security controls
19 that it's controlled by proxy card that only myself
20 and my boss are allowed to enter it. Then inside
21 the lab, I also have a safe that I use to directly
22 hold the evidence.

23 And only I have access to that safe, and
24 only I know the access code. So I directly picked
25 it up from Candy, and I put it into the safe. And

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1 then on September 8th, when I analyzed it, is when I
2 marked that the seal was okay.

3 Q Okay. And did you perform an analysis on
4 it?

5 A Yes.

6 Q What were you testing for?

7 MR. FLOYD: Your Honor, I object again to
8 the testimony of this substance, and the proper
9 foundation has not been laid for chain of custody.

10 THE COURT: So noted for the record.
11 Overruled.

12 Q For what purpose did that exhibit come to
13 you?

14 A For testing.

15 Q Testing of what?

16 A For a controlled substance.

17 Q And were you the tester?

18 A Yes, I was.

19 Q And when did you make that analysis,
20 again?

21 A I analyzed it on September 8th.

22 Q And what types of tests were made by you?

23 A I did a presumptive screening and then two
24 different confirmatory tests.

25 MR. FLOYD: Your Honor, may we approach?

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1 THE COURT: Yes.

2 (Sidebad by the Court and
3 counsel.)

4 Ladies and gentlemen, I'm going to have to
5 ask you to step out for just a minute while we
6 discuss a matter outside your presence. I
7 apologize. I'll get you back in here as quickly as
8 possible.

9 (The jury left the
10 courtroom at 5:03 p.m. after which the following
11 proceedings were had:)

12 THE COURT: Okay, go ahead, Mr. Floyd,
13 and put any objection you want to put on the record,
14 sir.

15 MR. FLOYD: Thank you. Your Honor, at
16 this time we would move to not allow -- we would
17 move to -- we would object to any testimony from
18 this witness as to the analysis of this alleged drug
19 on the grounds that the State has failed to
20 establish the chain of custody or laid a proper
21 foundation to introduce the results of the tests.
22 There are actually two problems with their chain.

23 THE COURT: Okay.

24 MR. FLOYD: The first problem is their
25 chain starts with Eric Kirkland saying he got the

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1 drugs from Eddie Alewine.

2 THE COURT: Right.

3 MR. FLOYD: We know that's not accurate.

4 He never saw Eddie Alewine. He got the drugs from
5 Mr. Scott. Mr. Scott got them, according to their
6 testimony, from Mr. Alewine. So that's the first
7 defect in their chain.

8 The next defect is that they're missing
9 Candy Kyzer. Candy Kyzer took the drugs, according
10 to their records she took the drugs out of the drop
11 box --

12 THE COURT: Right.

13 MR. FLOYD: -- on the 30th. On the sixth,
14 I think it was, turned them over to Emily. They've
15 got a big gap there, Judge, of six days. There's no
16 testimony whatsoever as to what Candy Kyzer did or
17 did not do with those drugs, whether or not those
18 drugs were still in the same shape and condition as
19 they were when she received them.

20 So they've got a six-day window that is
21 open they haven't closed. And until they can do
22 that, Your Honor, it's our position they cannot
23 introduce the results of the examination of the
24 evidence.

25 THE COURT: Mr. Scott or Mr. McNair? This

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1 is your witness, Mr. Scott.

2 MR. SCOTT: Your Honor, I guess -- you
3 know, we tracked ad nauseam the path of these drugs
4 through the Form B, Form C, and the procedural
5 policy employed every time by the Sheriff's
6 Department.

7 It was testified it was followed in this
8 case. We tracked the identity of each and every
9 chain witness. Ms. Homer has gone over the BEST kit
10 and said that she checks to see if the chain of
11 custody makes sense before she tests it, checks the
12 bag to see if there's any tampering with the bag.

13 And if, and only if, she finds that there
14 is no tampering, and if she finds that the chain
15 does add up, will she test the drugs. Your Honor,
16 she has testified to all that.

17 Again, Your Honor, we've offered all the
18 corresponding numbers, all the marks provided by the
19 chemist and the procedural forms that go along with
20 fungible evidence entered into evidence at the
21 Sheriff's Department.

22 THE COURT: All right. Is there anything
23 else, Mr. Floyd?

24 MR. FLOYD: Well, the problem is there has
25 not been any testimony that the drugs were in

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1 substantially the same condition from when received
2 by Candy Kyzer till delivered to Emily Homer.

3 And without that link in the chain of
4 custody, it's broken. And therefore they should not
5 be allowed to introduce the chemical results of the
6 tests. It's not our fault they don't have them,
7 Judge. We asked for a continuance.

8 THE COURT: All right, the testimony from
9 the outset or which has been established over the
10 course of this trial is that the drugs were taken.
11 Granted, Mr. Kirkland testified first. Mr. Scott
12 testified he obtained the drugs from Mr. Alewine.

13 Those drugs were subsequently given to Mr.
14 Kirkland -- Officer Kirkland -- by Mr. Scott.
15 Kirkland testified that he placed the bag of drugs
16 in the kit and dropped it in the evidence locker.
17 At least that's what my recollection of the
18 testimony was.

19 Ms. Harmon, I believe it was, testified as
20 to policy and procedure. And she did testify that
21 she did not or was not involved in this particular
22 case but certainly testified as to the policy and
23 procedure, handling of drugs, etc.

24 While there has been no specific testimony
25 from Ms. Homer that it was in the same or a similar

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1 condition from the time it was taken or when she got
2 it, there was certainly testimony by Ms. Homer that
3 the drug kit appeared not to have been tampered
4 with. And that's the testimony that's in the
5 record.

6 Mr. Floyd, you aptly brought to the
7 Court's attention at sidebar over here that it's
8 certainly weak, and your words were "weak" -- weak
9 link. And I think that case law addresses a weak
10 link.

11 I think it goes to the weight in this case
12 and not the admissibility. And I'm going to
13 overrule your objection on that, but your objection
14 is so noted for the record, okay.

15 All right, anything else -- from the
16 State?

17 MR. SCOTT: Nothing from the State, Your
18 Honor.

19 THE COURT: From defense counsel?

20 MR. FLOYD: Nothing further, Your Honor.

21 THE COURT: All right, bring us the jury,
22 please.

23 BAILIFF: Yes, sir.

24 (The jury returned to the
25 courtroom at 5:10 p.m.)

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1 THE COURT: Mr. Floyd, would you and Mr.
2 Scott approach the sidebar for just a second?

3 (Sidebar with Court and
4 counsel.)

5 Mr. Scott, you may continue.

6 MR. SCOTT: Thank you, Your Honor.

7 EXAMINATION CONTINUED

8 BY MR. SCOTT:

9 Q Okay. Earlier you mentioned a Form B and
10 a Form C. What are those?

11 A Chain-of-custody forms. Form B is the
12 person that takes initial custody. Form C is
13 subsequent chain of custody.

14 Q And what information are the parties
15 required to put on Form B?

16 A The name of the officer, where he works,
17 the date that he seized it, who he seized it from,
18 pursuant to what type of charge, and location, and
19 then the date where he dropped off the evidence.

20 Q Okay. Are they asked to describe the
21 substance?

22 A I don't require -- you know, in the middle
23 they can put a physical description of it, narcotic,
24 powder substance. Or if they can't describe it --
25 say, there's lots of items from, say, a meth lab --

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1 they'll put simply the BEST kit number.

2 Q Okay. Are they required to vouch that
3 it's in the same condition as when they received it?

4 A No.

5 Q I want to show you Form B. And before the
6 signature, there is a blank or a line. What does
7 that entry require --

8 MR. FLOYD: Your Honor, I object. He's
9 impeaching his own witness. He's already asked her
10 this question.

11 THE COURT: Your objection is so noted for
12 the record. I'm going to allow it.

13 Go ahead.

14 Q The last entry on that Form B, what does
15 it require the applicant to I guess vouch for?

16 A The notary?

17 Q Before the signature of the party.

18 A Where they work.

19 Q Okay. And what is that line for? What is
20 the purpose of that particular line? What are they
21 vouching for?

22 A Well, you're right. It's in substantially
23 the same condition as when I received it.

24 Q Okay. Form C, what is a Form C?

25 A It's just a subsequent change of custody.

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1 Q Are those same two things required, a
2 description and a voucher that it's in substantially
3 the same condition as when they received it?

4 A Yes, and that's what they're signing for.

5 Q Okay. And you stated you reviewed the
6 chain before you tested?

7 A I don't actually interview every single
8 person on the chain. I just check to make sure that
9 the signatures are there, names are there, the dates
10 seem to make sense -- you know, that it wasn't
11 seized after the subsequent chain of custody -- you
12 know, clerical mistakes.

13 Q But you did all of those reviews before
14 you tested this substance?

15 A Yes.

16 Q Okay. Tell me what tests were made by
17 you.

18 A I did a presumptive screening test and
19 two --

20 MR. FLOYD: Your Honor, I renew my
21 objection.

22 THE COURT: So noted.

23 Go ahead, ma'am.

24 A A presumptive screen and two confirmatory
25 tests.

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1 Q From these tests, were you able to form an
2 expert opinion as to what State's Number Two is?

3 A This one says four.

4 Q All right, what you hold in your hand is
5 State's Exhibit Two'

6 A Yes. It's a Zip-loc containing a plastic
7 bag with a rock substance. It's 1.48 grams of
8 cocaine-base crack.

9 Q And what is the basis of your opinion?

10 A It's cocaine-base crack, 1.48 grams of
11 cocaine-base crack.

12 Q And you came to that conclusion after
13 performing your tests?

14 A Yes.

15 Q Thank you.

16 MR. SCOTT: The State would offer State's
17 Exhibit Number Two for admission into evidence.

18 MR. FLOYD: I'm asking what that exhibit
19 consists of. Just this --

20 A No, there was two different. But this is
21 just the envelope, I guess.

22 MR. FLOYD: Your Honor, I'd, of course,
23 object for the same basis which we're already
24 argued.

25 THE COURT: So noted. Over defense

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1 counsel's objection, admitted into evidence.

2 MR. SCOTT: Thank you.

3 (State's Exhibit Number Two, BEST evidence
4 kit, was entered in evidence.)

5 MR. SCOTT: Nothing further, Your Honor.

6 Q Please answer any questions Mr. Floyd may
7 have.

8 A Okay.

9 THE COURT: Mr. Floyd, can you all
10 approach for a second? I'm sorry.

11 All right, ladies and gentlemen, it's now
12 a little after 5:15. Rather than go ahead and start
13 cross-examination at this time, I'm going to allow
14 you to go home for the balance of the evening. I'm
15 going to ask that you be back at 9:30 a.m. in the
16 morning, and we'll resume trial of this case at that
17 time.

18 My instructions remain the same
19 throughout. Do not discuss the case with anyone
20 until you are instructed to do so. You all are free
21 to go. Please be back at 9:30 in the morning.
22 Thank you.

23 Ma'am, you stay seated right there.

24 (The jury left the
25 courtroom for the day at 5:17 p.m.)

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1 THE COURT: All right, we're going to
2 stand down for the balance of the evening.

3 Ms. Homer, you are not to discuss your
4 testimony at all overnight. Do not discuss your
5 testimony with anybody overnight. You understand?

6 MS. HOMER: Yes, sir.

7 THE COURT: All right. You may step down.
8 Anything from the State at this time?

9 MR. SCOTT: Nothing from the State. Just
10 to clarify, Ms. Homer will be called --

11 THE COURT: You'll be the first witness
12 back on this stand in the morning at 9:30.

13 MS. HOMER: Nine-thirty, okay.

14 THE COURT: You're still under subpoena.
15 Is there anything further, Mr. Floyd, at
16 this time?

17 MR. FLOYD: Nothing further at this time,
18 Your Honor.

19 THE COURT: And let me say this. I so
20 note your objection for the record on what you're
21 objecting to here, Mr. Floyd. I certainly believe
22 that my ruling is correct.

23 However, I'm going to look at it some more
24 overnight. And if there's any cases that you want
25 me to look at that will support your position,

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1 please get those here. I'll be here by 9:00 in the
2 morning, and I'll be happy to look at them.

3 MR. FLOYD: All right, sir.

4 THE COURT: Anything further? I want to
5 see Mr. Scott, Mr. Floyd. Is there a bailiff
6 outside the back door?

7 BAILIFF: No, just the deputies.

8 THE COURT: And I want to see the deputy
9 at the back door before you all leave.

10 Lawyers back here at 9:00. And I would
11 ask, Ms. Thomas, that you be back at 9:00, as well;
12 others, 9:30.

13 Tuesday, June 19, 2012

14 (The defendant, along with
15 counsel, was personally present in the courtroom.)

16 THE COURT: Back on the record with
17 regards to this chain-of-custody issue we dealt with
18 yesterday. I looked at this overnight and this
19 morning, and Mr. Floyd at my request handed me a
20 couple of cases this morning, one being State v.
21 Taylor, 360-SC-18, and one being State v. Chisholm.
22 State v. Chisholm is a 2003 case. It doesn't have a
23 cite on it, but the opinion number is
24 36-49-355-SC-175.

25 The Court also looked at State v.

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1 Ballentine, 386-SC-499. The issue in the State v.
2 Ballentine case was whether the trial judge erred in
3 admitting the cocaine because the State failed to
4 prove a sufficient chain of custody.

5 In the State v. Ballentine case, the Court
6 went on to say, "Where other evidence establishes
7 the identity of those who have handled the evidence
8 and reasonably demonstrates the manner of handling
9 the evidence, our courts have been willing to fill
10 the gaps in the chain of custody due to an absent
11 witness.

12 "Here the State established the CI's
13 identity and reasonably demonstrated the manner in
14 which the cocaine was handled." That's why I
15 believe has happened here in this particular case.

16 The State has certainly established the
17 CI, his identity, his handling the drugs, turning
18 those drugs over to Office Kirkland, who placed them
19 in the drop box; the identity of I believe it was
20 Candy Kyzer who delivered those drugs.

21 Is that correct, Mr. Scott? --

22 MR. SCOTT: It is, Your Honor.

23 THE COURT: -- to the analyst who
24 performed the tests on the drugs. She has testified
25 here as to the findings pursuant to her testing of

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1 those drugs. In the State v. Taylor case which was
2 looked at this morning, 598-SE2D-735, it stated,
3 "Where there is evidence to establish the identity
4 of those who have handled the evidence and the
5 manner in which it is handled, the weakness in the
6 chain merely raises a question of credibility, not
7 admissibility."

8 And I think that's what we have here. I
9 think it certainly raises the question of
10 credibility but not admissibility. And therefore
11 that's my ruling on that matter.

12 Mr. Floyd, I appreciate you giving those
13 to me this morning.

14 Anything else from the State at this time?

15 MR. SCOTT: Nothing from the State, Your
16 Honor.

17 THE COURT: Is there anything from defense
18 counsel?

19 MR. FLOYD: No, Your Honor.

20 THE COURT: Let me just say this. This
21 State v. Chisholm case that I read this morning,
22 that case has been overruled. The case was
23 overruled for the very proposition that not every
24 person must testify who handled the evidence to
25 establish chain of custody.

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1 MR. FLOYD: Well, I agree with that
2 statement.

3 THE COURT: I'm sorry?

4 MR. FLOYD: I agree with Your Honor that
5 it had been modified by Taylor. I think the concept
6 of a break in the chain can lead to inadmissibility.

7 THE COURT: Absolutely.

8 MR. FLOYD: It's still good law.

9 THE COURT: Absolutely, no question about
10 that. And I think that what differentiates it is
11 when they're unable -- unable -- to establish chain
12 of custody, when there is a break in that link and
13 they can't explain that or have anybody coming in to
14 testify as to what the chain was and who reasonably
15 handled the evidence. That is certainly where you
16 have a problem, and that's not the case that we have
17 here, okay?

18 Bring us the jury, please, sir.

19 BAILIFF: Yes, sir, Your Honor.

20 THE COURT: All right, anything before we
21 bring the jury from the State?

22 MR. SCOTT: No, Your Honor.

23 THE COURT: Would there be anything from
24 defense counsel?

25 MR. FLOYD: No, Your Honor.

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1 THE COURT: Where is my chemist? Is she
2 here?

3 Ma'am, if you'd come on around here and
4 take the stand. Ma'am, I'll remind you you're still
5 under oath, okay?

6 MS. HOMER: Yes, sir.

7 (The jury returned to the
8 courtroom at 9:37 a.m. after which the following
9 proceedings were had:)

10 THE COURT: Ms. Pamela Shumpert, that's
11 your seat. You've been appointed the forelady of
12 this jury, okay? That will be your assigned seat
13 throughout the remainder of this trial.

14 MS. SHUMPERT: Thank you.

15 THE COURT: You sat there yesterday. You
16 must have known it was coming.

17 All right, at this time, ladies and
18 gentlemen -- and I hope you all had a good evening
19 last night -- we are prepared to go forward and
20 continue the trial of this case. We're going to
21 continue with testimony of Ms. Homer, I believe.

22 Is that correct?

23 MS. HOMER: Yes, sir.

24 THE COURT: All right. And we stopped
25 yesterday after the State had finished direct

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1 examination of Ms. Homer. It now will be turned
2 over to defense counsel at this time for cross-
3 examination.

4 Mr. Floyd, you're recognized, sir.

5 MR. FLOYD: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. FLOYD:

8 Q Ms. Homer, you did not receive this item
9 for analysis until September 6, 2011, is that
10 correct?

11 A Yes, sir.

12 Q And you received it from whom?

13 A Candy Kyzer.

14 Q Candy Kyzer. And isn't it true that
15 they've had some problems recently with losing
16 evidence in the evidence room?

17 A Not that I know of.

18 Q Not that you know of?

19 A No, sir.

20 Q You haven't heard that?

21 A No, sir.

22 Q You don't personally work in the evidence
23 room, do you?

24 A No, I work in the forensic drug lab.

25 Q Thank you, Ms. Homer. I have no further

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1 questions.

2 THE COURT: Any redirect?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: All right, ma'am, you may step
5 down. Thank you.

6 MR. SCOTT: The State rests, Your Honor.

7 THE COURT: All right.

8 All right, ladies and gentlemen, the State
9 has rested its case. And what I'm going to have to
10 do at this time is I'm going to have to ask you to
11 step back to the jury room while we take up a matter
12 outside your presence.

13 There is a matter of law that we have to
14 take up. Do not discuss the case until you're
15 instructed to do so, okay? I'll get you back out
16 here as quickly as possible.

17 (The jury left the courtroom at
18 9:40 a.m.)

19 THE COURT: Mr. Floyd, do you have
20 anything?

21 MR. FLOYD: Yes, Your Honor. At this
22 time, the defense would move for a directed verdict
23 of acquittal. In making this motion, we, of course,
24 renew the motions that we made concerning
25 evidentiary matters throughout the State's case.

1 It's our position that, first of all, that
2 the Court erred when it allowed Ms. Homer, the
3 chemist, and Ms. Harmon, the evidence technician, to
4 testify, as they had been in the courtroom listening
5 to other testimony, in violation of the Court's
6 sequestration order.

7 We renew our motion to suppress the
8 introduction of the drugs in this case because of
9 what we consider a fatal break in the chain of
10 custody of the drugs, that being the failure of the
11 State to produce the testimony of Candy Kyzer, who
12 was in control of the drugs from August 31st -- from
13 August 30th -- until June 6th when it was turned
14 over to the chemist, Ms. Homer.

15 THE COURT: You said June 6th? You mean
16 September 6th?

17 MR. FLOYD: I mean September 6th. You're
18 right, Your Honor -- through Ms. Homer. There was
19 no competent testimony presented as to what happened
20 to those drugs while they were in the control and
21 possession of Ms. Kyzer.

22 There was incompetence evidence in the
23 record to show that they were delivered to Ms. Homer
24 in substantially the same condition as received by
25 Ms. Kyzer. Therefore, we consider that a fatal

1 break in the chain of custody and that therefore
2 these drugs should not be admitted.

3 Furthermore, we'd argue that there is not
4 sufficient evidence to establish the guilt of Mr.
5 Alewine beyond a reasonable doubt in that the only
6 evidence that they have as to Mr. Alewine's
7 participation in any illegal activity came from the
8 mouth of an individual who has eight or nine
9 convictions. Therefore, his credibility would be
10 totally without merit.

11 And the other individual who gave some
12 evidence that may tend to point toward Mr. Alewine
13 is an admitted crackhead who had no way to remember
14 this from six months earlier when he was finally
15 confronted it -- eight months later when he was
16 finally confronted with it by the State.

17 The weakness of their testimony is such
18 that it cannot establish guilt beyond a reasonable
19 doubt. Accordingly, we move for a directed verdict
20 of acquittal.

21 THE COURT: Thank you, Mr. Floyd.

22 All right, Mr. Scott or Mr. McNair.

23 MR. SCOTT: Your Honor, regarding the
24 sequestration motion, Beth Harmon, she is the
25 evidence custodian. Again, she was in here. She

1 had possession, care, and custody of the crack
2 cocaine which the State did rely on, had to identify
3 through multiple witnesses throughout the trial
4 obviously in establishing the chain.

5 And on the path to introducing it into
6 evidence, Your Honor, on sequestration is right. It
7 is in the Judge's discretion. Your Honor did grant
8 sequestration at the beginning of the trial.

9 However, the defense would not be able to
10 show any prejudice from the evidence custodian
11 sitting in the courtroom. She is simply an evidence
12 custodian, not a substantive fact witness who would
13 have benefited from hearing other witnesses testify.

14 Your Honor, next I think his motion was
15 Emily Homer's testimony. Your Honor, we've gone
16 over a few times this issue of the chain and Candy
17 Kyzer, her absence today.

18 We had Ms. Harmon testify to the protocol
19 and procedure that's followed at the Sheriff's
20 Office at the evidence room and all of the
21 safeguards that are in effect. We have identified
22 Ms. Candy Kyzer as being the person who took the
23 crack cocaine from the evidence locker and placed it
24 to the evidence room.

25 Some seven days later, a week later, she

1 hand-delivered the crack cocaine to the chemist, Ms.
2 Emily Homer. Ms. Emily Homer did testify to as a
3 matter of practice she always reviews the Form B's
4 and Form C's.

5 It does have a section where they asked to
6 describe with sufficient particularity the substance
7 they're submitting. Furthermore, they are required
8 to vouch for the fact that it is in substantially
9 the same condition as when they received it.

10 All these are pursuant to Rule 6, the
11 affidavit. Your Honor, that was testified to by Ms.
12 Homer. She further mentioned that she does not test
13 any drugs unless the seals are intact and she can
14 account for each and every person who had it before
15 her.

16 Your Honor, we have definitely shown a
17 chain of custody as far as practicable. As far as
18 the CI's testimony and the driver's testimony,
19 unfortunately, Your Honor, we don't really always
20 get to pick our witnesses.

21 I submit to you they were credible
22 witnesses, Your Honor. That is the issue for a jury
23 to decide, Your Honor. Of course, the trial judge
24 will consider only the existence or non-existence of
25 evidence and not the weight of it.

1 Mr. Floyd will be able to argue that they
2 weren't credible witnesses. But there has been some
3 evidence that Mr. Alewine did distribute crack
4 cocaine on August 30th of last year.

5 THE COURT: All right, based on what I've
6 heard here today, I'm going to respectfully deny
7 defendant's motion for a directed verdict at this
8 time. The defendant is certainly entitled to a
9 directed verdict when the State fails to produce
10 evidence of the offense charged.

11 If there is any direct or circumstantial
12 evidence reasonably tending to prove the guilt of
13 the accused, the case should go to the jury. And I
14 certainly understand defense counsel's issue
15 regarding the State's witnesses, the credibility of
16 the State's witnesses.

17 I do believe that that is a jury. It's a
18 jury issue as to their credibility, and the Court
19 will charge the jury as I instructed them at the
20 outset, that it is their job to determine the
21 credibility of these witnesses and whether or not
22 they believe them or not. Therefore, I'm going to
23 respectfully deny defendant's motion for a directed
24 verdict.

25 And I previously ruled upon this chain-of-

1 evidence issue, and I previously ruled on the issue
2 of sequestration of the witnesses. And I just want
3 to say those witnesses were not in here, I don't
4 believe, the entire time.

5 I will say I think -- and I said this
6 yesterday -- Ms. Kyzer was in here for the bulk of
7 the time. Ms. Harmon, I'm not exactly sure when she
8 came in here. Excuse me, Ms. Homer and Ms. Harmon
9 have been in here. And I said this yesterday.

10 Sequestration, court-ordered
11 sequestration, is not a right. It's clear in the
12 case law that sequestration is not a right of a
13 defendant. I do not believe that based upon
14 testimony that I've heard during the course of this
15 trial that there's been any prejudice to the
16 defendant in allowing these two individuals to
17 testify.

18 All right, anything else from the State at
19 this time?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: Anything further from defense
22 counsel?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: All right, at this time I'm
25 going to advise the defendant of his right to

1 testify.

2 Sir, if you would stand and raise your
3 right hand and be sworn.

4 Madam Clerk, would you swear the
5 defendant, please?

6 (Whereupon, the witness was
7 sworn.)

8 THE COURT: All right, sir, you are Eddie
9 Frank Alewine?

10 MR. ALEWINE: Yes, sir.

11 THE COURT: At this time, I am going to
12 explain to you certain of your rights. If you do
13 not understand anything that I say, please let me
14 know. If you want me to explain anything in more
15 detail, please let me know. Do you understand that?

16 MR. ALEWINE: Yes, sir.

17 THE COURT: All right, we have now reached
18 the stage of the trial where you may present your
19 defense. You have the right to claim the
20 protections given to you by the Fifth Amendment to
21 the United States Constitution.

22 This amendment states in part that no
23 person shall be compelled of any criminal case to be
24 a witness against himself. This means that you
25 cannot be required to testify in this case.

1 You have the right to testify on your own
2 behalf. However, no one can make you testify. This
3 is a personal right, and no one can waive this right
4 except you.

5 If you decide to testify, you will be
6 subject to the same rules that govern other
7 witnesses, and you may be examined and cross-
8 examined on any relevant issues in this case.

9 In addition, if you have any convictions
10 involving dishonesty or false statements or for
11 crimes punishable by imprisonment for more than one
12 year and the Court determines that the probative
13 value of admitting this evidence outweighs its
14 prejudicial effect to you, the Solicitor,
15 prosecutor, will be able to introduce your record to
16 attack your credibility.

17 If you decide to testify, this decision on
18 your part must be freely, voluntarily, and
19 intelligently made with a knowledge of the
20 protections given to you by the Fifth Amendment to
21 the Constitution and the consequences of your
22 decision to testify.

23 If you decide not to testify, I will
24 instruct the jurors that they cannot give the fact
25 that you did not testify any consideration

1 whatsoever and that there is to be absolutely no
2 prejudice to you because you did not testify.

3 It is left entirely up to you whether or
4 not you testify. You may talk with your attorney,
5 your family, your friends, or anyone else, but the
6 final decision will be left entirely up to you. Do
7 you understand, sir, what I have explained to you?

8 MR. ALEWINE: Yes, sir.

9 THE COURT: Do you have any questions
10 about what I have explained to you?

11 MR. ALEWINE: No, sir.

12 THE COURT: Have you discussed with your
13 lawyer whether or not you should testify?

14 MR. ALEWINE: Yes, sir.

15 THE COURT: Do you wish to talk to your
16 lawyer any more?

17 MR. ALEWINE: No, sir.

18 THE COURT: Do you wish to testify in the
19 trial of this case?

20 MR. ALEWINE: No, sir.

21 THE COURT: And this decision is yours,
22 being made freely and voluntarily?

23 MR. ALEWINE: Yes, sir.

24 THE COURT: Without any threat or coercion
25 or force by anybody?

1 MR. ALEWINE: Yes, sir.

2 THE COURT: All right, thank you, sir.

3 You may be seated.

4 Mr. Floyd, does the State intend to put a
5 case?

6 MR. FLOYD: The defense does not, Your
7 Honor.

8 THE COURT: I'm sorry. All right, this is
9 what we'll do. I'll bring the jury back in, and you
10 can rest. At the time of you resting, you can note
11 your prior objections and motions, and it's so noted
12 for the record, and my ruling will not change. Then
13 we'll go right into closing arguments.

14 We'll go straight into closing arguments.
15 The State will go first, the defendant will close,
16 and then we'll give the jury charge while we've got
17 the jury out right now so we don't have to send them
18 back out.

19 My law clerk is getting every charge on
20 this matter. She is going to print it for me. I'll
21 meet with the lawyers back in chambers before we go
22 into closing arguments. Then we'll go through the
23 charge to make sure there's not anything more, okay?
24 So we'll stand down for a few minutes until that
25 charge is brought down.

1 (Court in recess.)

2 THE COURT: I apologize for taking as long
3 as it took. There were some changes that needed to
4 be made to the jury charge after I looked at it
5 again. We made some changes to the section on
6 distribution.

7 We had a charging conference back in
8 chambers, went through the charge with Mr. Floyd
9 present, Mr. McNair, and Mr. Scott. During that
10 charging conference, I realized there were some
11 changes that needed to be made.

12 I'm going to read this to the lawyers on
13 the record. This is on distribution of cocaine,
14 cocaine-base crack cocaine.

15 (Whereupon, the charge was read into the
16 record.)

17 THE COURT: Anything from the State on
18 that?

19 MR. SCOTT: No, Your Honor.

20 THE COURT: Defense counsel?

21 MR. FLOYD: No, Your Honor.

22 THE COURT: All right, it's my
23 understanding there were no -- and we'll certainly
24 give the State and the defendant an opportunity at
25 the conclusion of my charge to put on the record any

1 objections or exceptions to the charge after the
2 charge is given and outside the presence of the
3 jury.

4 But we have gone through the charge, and
5 right now there is no objection to the charge. The
6 lawyers also had an opportunity to review the
7 verdict form, as well. And it's my understanding
8 there is no objection to the verdict form from the
9 State. Is that correct?

10 MR. SCOTT: That's correct, Your Honor.

11 THE COURT: Nor from defense counsel, is
12 that correct?

13 MR. FLOYD: Correct, Your Honor.

14 THE COURT: All right. Is there anything
15 else at this time before we bring the jury back in,
16 Mr. Scott?

17 MR. SCOTT: Nothing from the State, Your
18 Honor.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: All right, the plan is Mr.
22 Floyd is going to rest and then certainly can renew
23 his motions or make a note for the record of those
24 motions as previously made by Mr. Floyd.

25 We will at that time move into closing

1 arguments, the State first, followed by defense
2 counsel. Since the defense did not put up any
3 evidence or testimony, the defense gets to argue
4 last.

5 During the closing arguments and charge,
6 there is to be no one entering or exiting the
7 courtroom. The back door needs to be locked. I
8 don't want anybody entering or exiting the courtroom
9 during closing arguments and the charge on the law.

10 Anything further before I bring the jury
11 back from the State?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: Anything further from defense
14 counsel?

15 MR. FLOYD: No, Your Honor.

16 THE COURT: All right, bring us the jury,
17 please, sir.

18 BAILIFF: Yes, sir.

19 (The jury returned to the
20 courtroom at 11:00 a.m. after which the following
21 proceedings were had:)

22 THE COURT: Madam Forelady and ladies and
23 gentlemen of the jury, I appreciate your patience.
24 We apologize for having you sit back there as long
25 as you were. There were some matters I needed to

1 deal with before I could bring you back out. Before
2 I sent you out, the State rested its case.

3 At this time, defense counsel is
4 recognized, Mr. Floyd, in the case.

5 MR. FLOYD: Your Honor, the defense rests.

6 THE COURT: All right.

7 MR. FLOYD: And we renew all motions.

8 THE COURT: And I'm going to give you that
9 opportunity, Mr. Floyd.

10 The defense has rested. You have heard
11 all of the evidence. You've heard all the testimony
12 and all the evidence that's going to be presented in
13 this case. We are now going to move into closing
14 arguments.

15 The State will go first, followed by
16 defense counsel, Mr. Floyd. I will remind you that
17 closing arguments are not evidence in this case. It
18 is not evidence in this case.

19 Now, Mr. Floyd, I will give you an
20 opportunity, sir.

21 MR. FLOYD: Thank you. Your Honor, we
22 renew all motions made during the State's case and
23 at the conclusion of the State's case.

24 THE COURT: Prior motions are so noted for
25 the record. The rulings remain the same on those

1 motions.

2 All right, at this time, Mr. Scott, you're
3 recognized for closing argument.

4 CLOSING ARGUMENT

5 BY THE STATE

6 MR. SCOTT: Thank you, Your Honor, may it
7 please the Court, ladies and gentlemen of the jury.

8 This case is about poison. It's about a
9 man named Eddie Alewine who distributes poison into
10 Lexington County. Now, make no mistake about it,
11 crack cocaine is poison. It's evil. It tears
12 people apart, highly addictive. It's evil.

13 And on August 30th of last year, Mr.
14 Alewine made a decision. He made a decision to get
15 in a pickup truck, drive to a meeting place in
16 Gilbert, and distribute that poison in this
17 community.

18 Now, we all have choices to make, and that
19 was his choice that day. That was how he was going
20 to make some money. Now, ladies and gentlemen, this
21 is a pretty straightforward case. I think you would
22 agree with me.

23 That's why I'm so sure a minute and a half
24 will just about wrap it up. There's not a whole lot
25 of moving parts here. It's the kind of case that

Closing Argument by the State

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1 you use your common sense to come to a conclusion.

2 Eric Kirkland, who was the lead
3 investigator on this case, he talked about
4 developing a CI named Larry Scott. And we heard
5 what CIs were. We learned what controlled buys
6 were.

7 And Larry Scott was a CI Mr. Kirkland had
8 developed and used to buy and make drug deals with
9 before. Larry Scott came to him and said, "I can
10 make a buy from Eddie Alewine." That's why they set
11 up this meeting on August 30th of last year.

12 Now, CIs and controlled buys, we heard
13 about the rap sheet on our CI in this case, Larry
14 Scott. And it would be great in these controlled
15 buys if we could use undercover cops or we could use
16 preachers or little old ladies.

17 But the fact of the matter is that's not
18 the kind of person that Mr. Alewine would sell to.
19 He sells to people like Larry Scott. And that's why
20 on August 30th Eric Kirkland and other members of
21 the narcotics team met with Larry Scott.

22 That's why they watched him make a phone
23 call to Eddie Alewine. That's why they searched him
24 to ensure he had nothing on him, no contraband.
25 That's why they miked him. That's why they drove to

Closing Argument by the State

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1 the IGA. And that's why they sat in that parking
2 lot and watched.

3 And what happened? A red pickup drove up,
4 pulled to the side of the vacant gas station. Larry
5 Scott walked over to the truck, and he came back
6 with this poison right here. Where did he get it
7 from?

8 He said he got it from Eddie Alewine. He
9 said he got it from the person he had called on the
10 phone right before they went to that location. He
11 said he got it from the man he initially went to law
12 enforcement with and said he could buy from.

13 He came back with something else besides
14 that poison right there. He came with a license
15 tag. So law enforcement ran that tag number, and
16 what did they get? They get the DMV record of Brian
17 Clark.

18 They go talk to Mr. Clark. What does he
19 say? "I was the driver of that truck that day.
20 You've got me. Eddie Alewine was the passenger. I
21 watched as a white male walked up to the truck.
22 Eddie Alewine gave him crack for some money," a
23 hundred dollars in government funds, to be exact.

24 Now, ladies and gentlemen, one of the
25 things you're going to do when you judge this case

1 is you're going to get to determine credibility of
2 witnesses or lies of witnesses. And I put up two
3 guys who have a past of smoking crack.

4 Again, those are the kind of people that
5 Eddie Alewine would be able to deal to. We don't
6 get to pick our witnesses in every case. But I
7 submit to you those people were credible.

8 Ask yourselves, "What are we to believe?
9 Are we to believe what they're telling us, or are we
10 to believe some alternate theory?" Maybe it's that
11 there was some conspiracy that they set up. It was
12 to set up Mr. Alewine up, and they pulled it all off
13 right under law enforcement's nose.

14 There is a theory with a pretty cool name.
15 It's called Occam's razor. And in that principle,
16 when one is given competing theories, it urges that
17 person to select the theory that requires the least
18 amount of assumption and therefore the simplest
19 explanation.

20 And the simplest explanation in this case
21 is that Eddie Alewine was the one who sold the crack
22 to Larry Scott. Now, you're going to hear all about
23 reasonable doubt. Mr. Floyd is going to tell you
24 what reasonable doubt is. I'm going to tell you a
25 little bit about it right now, very briefly.

Closing Argument by the State

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1 But ultimately the Judge is going to be
2 the final authority on what reasonable doubt is.
3 The State has the burden of proof in this, and we
4 have to prove this case beyond a reasonable doubt.
5 And what Mr. Alewine is charged with is distribution
6 of crack cocaine.

7 So there's three things we really have to
8 prove, and we have to prove each one of them beyond
9 a reasonable doubt. We have to prove that that's
10 crack cocaine. We have to prove that Mr. Alewine
11 possessed it. Then we have to prove that he
12 distributed it.

13 You heard the chemist yesterday. That is
14 crack cocaine beyond a reasonable doubt. She did
15 all the tests. It came back as crack cocaine. You
16 heard Clark -- Brian Clark -- the driver of the
17 pickup, you heard Larry Scott, the CI, testify that
18 he had that crack in his possession.

19 You heard both of them say he exchanged it
20 for \$100. You have all the evidence you need to
21 find him guilty beyond a reasonable doubt. What is
22 reasonable doubt? It doesn't mean beyond all doubt.
23 It doesn't mean beyond a shadow of a doubt.

24 It means beyond a reasonable doubt. As
25 long as you, ladies and gentlemen, are firmly

1 convinced that Mr. Alewine did distribute that
2 crack, you've found him guilty beyond a reasonable
3 doubt. Remember that term, "firmly convinced."

4 I submit to you you've been given all the
5 evidence you need to be firmly convinced that this
6 occurred that day. So if we've proven the facts
7 beyond a reasonable doubt, what else doubt is there
8 left?

9 Do you doubt that that's crack cocaine?
10 There was a lot brought up about this chain of
11 custody. We went over that a lot. We're all now
12 very familiar with that term, chain of custody.

13 And that's the State's responsibility when
14 there's a piece of evidence such as drugs or blood,
15 body fluids, that can be altered or tampered with.
16 They must account for each person who has been in
17 contact with that up until it's tested.

18 We've established that, ladies and
19 gentlemen. We've established that it went from the
20 CI, Larry Scott, to Eric Kirkland. Eric Kirkland
21 took it to the Sheriff's Department, put it in a
22 secured lock box.

23 You heard all the precautions taken in the
24 evidence room. Candy Kyzer was our missing evidence
25 custodian, and she's on medical leave. We heard

Closing Argument by the State

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1 that. Her role was to take the drugs out of the
2 lock box and transfer them to the chemist.

3 The chemist testified what a BEST kit is
4 and how it's tamper-evident. One of the first
5 things she does it has to look at all of the forms
6 to make sure she can determine who had contact with
7 these drugs and then to determine that they had not
8 been tampered with -- in other words, that bag has
9 not been opened.

10 Therefore, they are given to her in the
11 same condition as when they were retrieved. She
12 performed her tests, and it was crack cocaine.

13 Ladies and gentlemen, I'm about to end. I
14 don't have a whole lot to say to y'all. John Adams
15 once said that facts are stubborn things. And Mr.
16 Alewine would love to manipulate those facts, to
17 alter them in some way.

18 But they're very stubborn things, and they
19 are what they are. The fact remains on August 30,
20 2011, he distributed that poison in Lexington
21 County. And I submit to you you've been given all
22 the evidence you need to determine him guilty beyond
23 a reasonable doubt.

24 Now, Mr. Floyd is going to get up here in
25 a second. He's going to give you the defense's

Closing Argument by the State

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1 closing argument. And I really wish that I had the
2 opportunity to be after him so I could address every
3 little issue he puts in front of you. But I can't.

4 The rules say that he closes last. And
5 he's going to say, "We have the last word. We're
6 going to get the last word." But, ladies and
7 gentlemen, I submit to you you all are going to have
8 the last word.

9 Go back to that jury room after this is
10 over, review all this evidence, deliberate, use your
11 common sense, and find Mr. Alewine guilty of
12 distribution of crack cocaine. Thank you.

13 THE COURT: Mr. Floyd?

14 MR. FLOYD: Thank you, Your Honor.

15 CLOSING ARGUMENT

16 BY THE DEFENSE

17 Madam Forelady and ladies and gentlemen of
18 the jury, before I make my closing argument to you,
19 I would like to, of course, thank you for your
20 presence here. You know, we discussed this in our
21 opening argument.

22 Law enforcement can charge a person with a
23 crime, take them to jail, require them to be tried
24 in front of a jury because of that charge. The only
25 way a person can be convicted in our society and in

Closing Argument by the Defense

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1 our community is if that evidence proves the guilt
2 of that defendant beyond a reasonable doubt.

3 You, the jury, are the final protection of
4 any defendant before that defendant is declared a
5 criminal and punished. So we thank you for your
6 service. Now I'm going to mention something to you
7 I said at the opening. I don't think you forgot it.
8 It's just that it's so important.

9 And that's the rights that Eddie Alewine
10 has. And one of those most important rights is what
11 we call the presumption of innocence -- the
12 presumption of innocence. We all have it.

13 And what that means is when any defendant
14 is charged with a crime and they come before a jury
15 to be judged, they come with a presumption of
16 innocence. And they remain innocent unless and
17 until the State proves the guilt of that defendant
18 beyond a reasonable doubt.

19 Now, what do we mean by that? A lot of
20 people define reasonable doubt as that doubt that
21 would cause a reasonable person to hesitate to act -
22 - that doubt which would cause a reasonable person
23 to hesitate to act.

24 So if you could somehow take the evidence
25 you've heard in this case because of one piece of

1 that evidence or the lack of one piece of that
2 evidence, you would hesitate because you would vote
3 that Eddie Alewine should be branded a criminal for
4 this charge.

5 Your obligation as a juror is to determine
6 whether or not he's guilty even if there's other
7 evidence that makes you suspicious of his guilt,
8 because when you vote guilty or not guilty, you're
9 not voting on whether or not you think he did it.

10 What you're voting on is whether or not
11 the State has proven his guilt beyond a reasonable
12 doubt. Now, why should you have doubt in this case?
13 Let's discuss the evidence a few moments.

14 First, one thing is uncontroverted. There
15 is no law enforcement officer involved in this case,
16 testified in this case, who can tell you of his
17 personal knowledge or her personal knowledge that
18 Eddie Alewine committed this crime. Think about
19 that -- no one.

20 No law enforcement officer saw Eddie
21 Alewine at that abandoned gas station on August 30,
22 2011. Not a single one of them did. Now, the case
23 that the State promised to prove here today rests
24 mainly on the testimony of a guy named Larry Wayne
25 Scott, a "confidential informant."

Closing Argument by the Defense

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1 Now, let me discuss that for just a
2 moment. You've got his testimony, and you'll get
3 something else, too, audiotapes. There's audiotape
4 of some phone conversation, at least on Mr. Scott's
5 side. There was audiotape of an encounter at a
6 vehicle, according to Mr. Scott.

7 You know what's important about that
8 audiotape and maybe one of the main reasons you
9 should hesitate? Nowhere at no time on any of that
10 tape did you hear the name Eddie Alewine or his
11 nickname, Little Eddie. Did you hear that?

12 And I want you to think about that. This
13 is a confidential informant. In fact, what's an
14 interesting thought about all this, it was the
15 confidential informant's idea to give them Eddie
16 Alewine.

17 Now, what his motivation was, what he held
18 against Eddie Alewine, we don't know, because he
19 wouldn't admit anything. I want you to think about
20 that. If that was Eddie Alewine on the other end of
21 that telephone conversation, if that really was
22 Eddie Alewine seated in that red truck, don't you
23 think he would have said his name?

24 Think about that. It would have been so
25 easy if it was true, wouldn't it? "Hey, Little

Closing Argument by the Defense

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1 Eddie," that's all he's got to say. And then we
2 know, yes, it must be Eddie. And the reason he
3 didn't say it is because that wasn't Eddie.
4 Otherwise, why wouldn't he have said it? I just
5 want to make that clear.

6 Now, we heard some testimony from a guy
7 named Brian Clark. This is a man -- I think, by the
8 way, he admitted that -- who's a crackhead. He had
9 a red truck. He admitted he let other people use
10 it. He gets confronted last week by law
11 enforcement, asking him about something that
12 supposedly happened August 30, 2011, eight months
13 ago, almost nine -- no, actually, it was ten, ten
14 months ago.

15 Now, what kind of memory do you think a
16 crack addict would have of an incident that occurred
17 ten months earlier that he hadn't thought of since
18 then? What I do know is this. He couldn't give any
19 description of Larry Wayne Scott except he was a
20 white guy.

21 Was he tall? Was he short? Was he fat?
22 Was he skinny? What did he have on? What did Eddie
23 Alewine have on that day? We didn't hear any of
24 that from either Brian Clark or Larry Scott, did we?
25 You know, an interesting thing about Mr. Scott's

Closing Argument by the Defense

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1 testimony, there's another issue here.

2 Did those drugs even come from that red
3 vehicle? Since Mr. Clark gets up here -- Brian
4 Clark -- you remember me asking Agent Kirkland.
5 Because you see this small stuff here? "Did you
6 check his underwear?" "No, I didn't." I don't
7 think anybody said they checked his socks either.

8 But when I asked Mr. Scott about this
9 search, he got all defensive. "Oh, yes, they looked
10 around his underwear, looked inside." Did he maybe
11 think we knew something, because we know from Agent
12 Kirkland he never did that? What was he feeling
13 guilty about?

14 Now, the Judge is going to charge you on
15 the law. I ask you to listen, and I know you will.
16 One of the main decisions that you have to make when
17 you hear testimony is what we call credibility or
18 believability. When somebody gives you some
19 testimony from that stand, you don't have to accept
20 it as the gospel.

21 In fact, you are required to examine it,
22 evaluate it, and make some kind of decision about
23 whether or not you find it believable or not. One
24 of the things that you can use in making your
25 determination as to whether or not this evidence I

Closing Argument by the Defense

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1 am hearing is believable or not, is credible or not,
2 is the record, the criminal record, of the person
3 giving you the testimony.

4 Listen to the Judge on that. Now, the
5 main accuser of Eddie Alewine, the man who gave them
6 Eddie Alewine's name, the man who came in here and
7 pointed his finger at Eddie Alewine, Larry Wayne
8 Scott, what kind of record does he have?

9 Ladies and gentlemen, two counts of
10 shoplifting, one count of petty larceny, one count
11 of criminal domestic violence, one count of escape,
12 one count of possession of burglary tools, and we
13 haven't even gotten to the big ones yet -- criminal
14 sexual conduct in the first degree, rape; strong arm
15 robbery.

16 Now, ladies and gentlemen, do we take the
17 word of a man who is a rapist, a thief several times
18 over? Do we accept the word of that man and convict
19 a citizen of what that man says?

20 You know, crack cocaine is not on trial.
21 There's no way I'm going to stand up here and tell
22 you to find crack cocaine innocent, as the Solicitor
23 would like to tell you that's what this is all
24 about. It's not about crack cocaine.

25 It's about whether or not the State has

Closing Argument by the Defense

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1 proven that Eddie Alewine distributed crack cocaine
2 on August 30, 2011. The only way to find him guilty
3 is if you accept the word of a shoplifter times two,
4 petty larceny, criminal domestic violence,
5 fraudulent check, strong arm robbery, rapist.

6 And on the other hand, I cannot -- or
7 hesitate before you would convict someone based upon
8 the testimony of someone else with that kind of
9 record. I'm going to shut up and sit down now.

10 You see, the way the system works, I'm not
11 allowed to ask you questions, and you're not allowed
12 to ask me questions.

13 I can't say, "Is there some part of this
14 case that you've got a question about that I can
15 talk about?" And y'all can't say to me, "Talk about
16 this particular point." So as a defense lawyer, I
17 have to kind of stand up here and try to cover every
18 question you might have.

19 All we can ask is when you go back in the
20 jury room, if there's some point on this case that I
21 neglected to talk to you about, please talk among
22 yourselves and try to figure out how we would have
23 responded to that question. Once more, I thank you
24 for your presence. And I feel confident you will do
25 the right thing. Thank you very much.

Charge of the Court

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1 CHARGE OF THE COURT

2 THE COURT: All right, ladies and
3 gentlemen, it is now my duty as the trial judge
4 under the Constitution of this state to charge and
5 instruct you on the law applicable to this case.

6 It is your duty as jurors to accept and
7 apply the law as I will now state it to you.
8 Furthermore, it is your exclusive duty to decide all
9 the issues of fact in this case and to determine the
10 effect and the value, weight, and truth of the
11 evidence.

12 Both the State and the defendant have a
13 right to expect that you will carefully consider and
14 evaluate the evidence and apply the law of this case
15 to it so that in the end, both the State of South
16 Carolina and the defendant will receive a fair and
17 impartial trial.

18 I want you to understand that when I use
19 the word "defendant," I refer to Mr. Eddie Alewine.
20 Furthermore, it is important to understand that the
21 State of South Carolina charges the defendant with
22 the offense known as distribution of cocaine base or
23 what is commonly referred to as crack cocaine.

24 To this charge, the defendant has entered
25 a plea of not guilty. This plea of not guilty

Charge of the Court

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1 places the burden of proof on the State to prove the
2 guilt of the defendant to you, the jury, beyond a
3 reasonable doubt.

4 I remind you the fact that the defendant
5 was arrested, charged, and indicted in this case is
6 not evidence in this case and cannot be considered
7 by you as evidence of guilt in this case, nor does
8 it create any presumption or inference of guilt.

9 The indictment is simply the formal
10 written instrument which contains the charge made
11 against the defendant. It is the formal document by
12 which this case is brought into this Court.

13 It is vital to understand that the
14 defendant is presumed under the law to be innocent
15 of this charge. The defendant has no obligation to
16 prove his innocence.

17 It is a fundamental rule of our law that a
18 defendant, irrespective of the seriousness of the
19 charge against him, is always presumed innocent of
20 the crime for which he is charged unless and until
21 his guilt has been proven by evidence that satisfies
22 you, the jury, beyond a reasonable doubt.

23 The presumption of innocence is not a mere
24 legal theory or a legal phrase. The presumption of
25 innocence is very important, and you need to

1 understand that this presumption accompanies the
2 defendant from the time of his arrest and appearance
3 in this Court and continues with the defendant even
4 after you retire to the jury room to deliberate.

5 In other words, the defendant receives the
6 benefit of the presumption of innocence until the
7 very end of this trial when you, the jury, will
8 deliberate upon the evidence and decide whether the
9 State has proven his guilt beyond a reasonable
10 doubt.

11 Ladies and gentlemen, what is a reasonable
12 doubt? A reasonable doubt is the kind of doubt that
13 would cause a reasonable person to hesitate to act.
14 Proof beyond a reasonable doubt is proof that leaves
15 you firmly convinced of the defendant's guilt.

16 There are very few things in this world
17 that we know with absolute certainty. So even in
18 criminal cases, the law does not require proof that
19 overcomes every possible doubt.

20 However, if based on your consideration of
21 the evidence you are firmly convinced that the
22 defendant is guilty of the crime charged, you must
23 find him guilty. If, on the other hand, you think
24 there is a real possibility that he is not guilty,
25 you must give him the benefit of the doubt and find

Charge of the Court

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1 him not guilty.

2 Jurors, please understand that reasonable
3 doubt may arise from evidence which has been
4 presented in the case or from the lack of evidence
5 in the case. It is your responsibility to determine
6 whether or not reasonable doubt exists as to the
7 guilt of this defendant.

8 I charge you that the defendant is
9 entitled to every reasonable doubt arising in the
10 whole case. If upon any issues of fact essential to
11 conviction and a verdict, you have a reasonable
12 doubt as to how that issue should be resolved, it
13 would be your duty to resolve that reasonable doubt
14 in favor of the defendant.

15 Thus in summary, it is important to
16 understand that a defendant is not required to prove
17 his innocence. Instead, the State is required by
18 law to prove every essential element of the offense
19 charged against the defendant by evidence which
20 satisfies you, the jury, of his guilt beyond a
21 reasonable doubt. Only then can you convict the
22 defendant and find him guilty.

23 There are two types of evidence which are
24 generally presented during a trial, direct evidence
25 and circumstantial evidence. Direct evidence is the

Charge of the Court

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1 testimony of a person who claims to have actual
2 knowledge of a fact, such as an eyewitness.

3 It is evidence which immediately
4 establishes the main fact to be proved.
5 Circumstantial evidence is proof of a chain of facts
6 and circumstances indicating the existence of a
7 fact.

8 It is evidence which immediately
9 establishes collateral facts from which the main
10 fact may be inferred. Circumstantial evidence is
11 based on inference and not on personal knowledge or
12 observation.

13 The law makes absolutely no distinction
14 between the weight or value to be given to either
15 direct or circumstantial evidence, nor is a greater
16 degree of certainty required of circumstantial
17 evidence than of direct evidence.

18 You should weigh all of the evidence in
19 this case. If after weighing all the evidence, you
20 are not convinced of the guilt of the defendant
21 beyond a reasonable doubt, you must find the
22 defendant not guilty.

23 Now, during this trial, you and I have had
24 separate duties to perform. As the trial judge, it
25 is my responsibility to preside over this trial.

Charge of the Court

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1 And I also have the duty to rule upon the
2 admissibility of the evidence offered during the
3 process of this trial.

4 In that regard, you are to consider only
5 the competent evidence before you, and you are to
6 disregard from your mind any testimony ordered
7 stricken from the record of this case during the
8 progress of the trial, if there was any.

9 And you are to consider only the testimony
10 which has been presented from this witness stand,
11 together with any exhibits admitted into the record
12 of this case, and any stipulations of counsel made
13 into the record, if there were any.

14 Furthermore, I have the additional duty to
15 charge you on the applicable law of this case. And
16 in that regard, I am the sole judge of the law of
17 this case. It is your duty to accept and apply the
18 law as I state it to you.

19 If you have any preconceived ideas as to
20 what the law is or what the law ought to be and it
21 does not agree with what I tell you the law is, you
22 are obligated under your oath to abandon these
23 preconceptions, because you are sworn to accept the
24 law precisely as I state it to you.

25 In this trial, you are the sole and

Charge of the Court

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1 exclusive judge of the facts, and I am the judge of
2 the law. Do not infer that I have any opinion about
3 the facts in this case from anything I have said
4 during the course of this trial in ruling upon the
5 admissibility of evidence or otherwise or from
6 anything that I say during the course of this charge
7 to you.

8 In this regard, the law simply does not
9 permit me to have an opinion about the facts. As
10 jurors, it is your duty alone to determine the
11 effect, value, weight, and truth of the evidence
12 presented during the course of this trial.

13 In determining what the facts are in this
14 case, you must judge the credibility, which simply
15 means the believability, of the witnesses and the
16 value or weight to be given to their testimony. You
17 alone must decide the force, effect, and truth of
18 the testimony.

19 In making this decision, there are many
20 things you may and should take into consideration,
21 such as the appearance and manner of the witness on
22 the stand, a characteristic often referred to as the
23 demeanor of the witness.

24 Was the witness forthright or hesitant?
25 Was the witness' testimony consistent, or did it

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1 contain discrepancies? What was the ability of the
2 witness to know the facts about which he or she
3 testified?

4 Did the witness have a cause or reason to
5 be biased and prejudiced in favor of the testimony
6 he or she gave? Was the testimony of the witnesses
7 corroborated or made stronger by other testimony and
8 evidence, or was it made weaker or impeached by such
9 other testimony and evidence?

10 As jurors, please understand you have the
11 right to believe a small portion of a witness'
12 testimony and discard the larger portion, or vice
13 versa. You may believe all of a witness' testimony
14 or none. You may believe the testimony of a single
15 witness against that of many witnesses, or the other
16 way around.

17 In exercising your mental processes and
18 attempting to decide the truth, the law simply
19 requires that you exercise your good judgment, your
20 common sense, your sense of logic and reason, and
21 your experiences in life.

22 You then apply these attributes to the
23 evidence, and apply the law as I state it to you,
24 and thus arrive at a verdict. Now, ladies and
25 gentlemen, during the course of this trial, you

1 heard the testimony of police officers.

2 Please understand that the testimony of a
3 police officer is not entitled to more weight than
4 that of any other witness. You are the sole judges
5 of the credibility of a witness, and you are not to
6 give more weight to a police officer's testimony
7 solely because he or she is a police officer.

8 Rather, you should judge an officer's
9 testimony by the same standard that you apply to all
10 other witnesses. Now, you also heard testimony from
11 an individual that was qualified as an expert
12 witness.

13 The rules of evidence ordinarily do not
14 permit witnesses to testify to opinions or
15 conclusions. An exception to this rule exists for
16 witnesses we call expert witnesses.

17 A witness who by education and experience
18 has become an expert in some art, science,
19 profession, or calling may state an opinion as to a
20 relevant and material matter in which the witness
21 claims to be an expert and may also state the
22 reasons for the opinion.

23 You should consider any expert opinion
24 received in evidence in this case and, like any
25 other evidence, give it the weight you think it

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1 deserves. If you decide that the opinion of an
2 expert witness is not based on sufficient education
3 and experience, or if you conclude that the reasons
4 given in support of the opinion are not sound, or
5 that the opinion is outweighed by other evidence,
6 you may disregard the opinion entirely.

7 Furthermore, an expert witness' testimony
8 is to be given no greater weight than that of other
9 witnesses simply because the witness is an expert.
10 Further, you are not required to accept an expert's
11 opinion, even though it is not contradicted.

12 Now, you heard testimony from an
13 individual or individuals that had a past criminal
14 record. A person who has a past criminal record is
15 competent to testify during a trial. A past record
16 does not affect the ability of that witness to
17 testify.

18 The past record may only be considered by
19 you, if at all, in determining the witness'
20 believability. Remember, you are the sole judge of
21 the facts in this case and of the believability of
22 any and all of the witnesses.

23 Now, I instruct you, ladies and gentlemen,
24 and emphasize that the fact that the defendant did
25 not testify is not a factor to be considered by you

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1 in any way in your deliberations and in your
2 consideration on the question of the guilt or the
3 innocence of the defendant.

4 It must not be considered by you in any
5 manner whatsoever. A defendant has the
6 constitutional right to remain silent, and the
7 assertion of this right must not be considered by
8 you in your deliberations.

9 I repeat, under your oath you are to draw
10 no conclusion whatsoever from the fact that the
11 defendant in this case did not testify. The fact
12 that this defendant did not testify should not even
13 be discussed in the jury room.

14 The burden of proof, as I have stated to
15 you, is on the State. The defendant is not required
16 to prove his innocence. The burden of proof remains
17 on the State to prove guilt beyond a reasonable
18 doubt.

19 Now, in order to establish criminal
20 liability, criminal intent is required. For
21 example, the mental state required to be proven by
22 the State for a particular crime might be purpose,
23 intent, knowledge, recklessness, or criminal
24 negligence.

25 Criminal intent must be proven by the

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1 State beyond a reasonable doubt. Criminal intent is
2 always a matter that must be determined by the jury
3 from the circumstances surrounding the situation.

4 There is no way to prove intent to a
5 mathematical certainty. There is no way that
6 medical science can dissect a person's brain and
7 determine what the person had in mind.

8 So the law says that criminal intent may
9 be inferred from the circumstances shown to have
10 existed. This is how you make a determination of
11 whether or not the element inquiring intent was
12 present.

13 It is not necessary to establish intent by
14 direct and positive evidence, but intent may be
15 established by inference in the same way as any
16 other fact, by taking into consideration the acts of
17 the parties and all the facts and circumstances of
18 the case.

19 Criminal intent is a mental state, a
20 conscious wrongdoing. It is up to you to determine
21 what the defendant intended to do based on the
22 circumstances shown to have existed. Criminal
23 intent can arise from action or a failure to act.
24 It may arise from negligence, recklessness, or an
25 indifference to duty or consequences that is

1 considered by the law to be the equivalent of
2 criminal intent.

3 The defendant, ladies and gentlemen, is
4 charged with distribution of cocaine base or crack
5 cocaine. The State must prove beyond a reasonable
6 doubt that the defendant distributed cocaine base.

7 There are three elements to the offense of
8 distribution of crack cocaine that the State must
9 prove beyond a reasonable doubt: one, that the
10 substance involved was in fact crack cocaine; two,
11 that the defendant had possession of the crack
12 cocaine, either actual possession or constructive
13 possession; and, three, that the defendant
14 distributed or sold at the time and place and in the
15 manner alleged the controlled substance, in this
16 case, crack cocaine.

17 Section 44-53-210(b) (4) of the South
18 Carolina Code of Laws provides that cocaine in any
19 form is a controlled substance under the law of this
20 state. Section 44-53-110 states that cocaine base
21 means an alkaloid cocaine or free-based form of
22 cocaine, which is the end product of a chemical
23 alteration whereby the cocaine in salt form is
24 converted to a form suitable for smoking.

25 Cocaine base is commonly referred to as

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1 rock or crack cocaine. The substance must be crack
2 cocaine. The defendant must have had actual or
3 construction possession of the crack cocaine, and
4 the defendant must have distributed or sold the
5 crack cocaine at the time and place and in the
6 manner alleged.

7 To prove possession, the State must prove
8 beyond a reasonable doubt that the defendant had
9 both the power and the intent to control the
10 disposition or use of the crack cocaine. Possession
11 may be either actual or constructive.

12 Actual possession means that the crack
13 cocaine was in the actual physical custody of the
14 defendant. Constructive possession means that the
15 defendant had dominion and control or the right to
16 exercise dominion or control over either the crack
17 cocaine itself or the property on which the crack
18 cocaine was found.

19 Mere presence at the scene where the drugs
20 were found is not enough to prove possession.
21 Actual knowledge of the presence of the crack
22 cocaine is strong evidence of the defendant's intent
23 to control its disposition or use.

24 The defendant's knowledge and possession
25 may be inferred when a substance is found on the

1 property under the defendant's control. However,
2 this inference is simply an evidentiary fact to be
3 taken into consideration by you along with the other
4 evidence in the case and to be given the weight you
5 decide it should have.

6 Distribution means to deliver or to
7 actually, constructively, or attempt to transfer a
8 drug other than by administering or dispensing.
9 Deliver means to actually, constructively, or
10 attempt to transfer a drug.

11 A transfer can involve an exchange for
12 money, a barter, or a gift. There does not have to
13 be anything given in exchange for the drugs for a
14 transfer to constitute distribution. The State must
15 prove that the substance involved is in fact crack
16 cocaine.

17 Ladies and gentlemen, I am now drawing
18 near the end of my charge. And I want you to
19 clearly understand that you are not partisans or
20 advocates for the State of South Carolina or this
21 defendant. You do not serve as jurors to reward
22 your friends or punish your enemies.

23 In this regard, you have been selected by
24 both the State and this defendant to be fair and
25 impartial jurors. It is your duty by your joint

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1 deliberations to determine the truth in this case,
2 giving to this defendant the benefit of every
3 reasonable doubt on each and every issue.

4 Then to the facts which you determine to
5 be true, you should take and apply the law which has
6 been given to you by this Court and thus arrive at a
7 verdict which speaks the truth in this case.

8 In fact, the word "verdict," which has a
9 Latin derivative, means a true saying. Thus, when
10 you have accomplished these responsibilities, you
11 will have satisfied your oath as jurors, and you
12 will have discharged your duty to this Court.

13 Madam Forelady, once you retire to the
14 jury room, the Bailiff will give you the verdict
15 form. When you, the jury, arrive at a verdict as to
16 the offense charged in this case, you, Madam
17 Forelady, will write your verdict on the form.

18 If the State has failed to prove the guilt
19 of this defendant beyond a reasonable doubt, your
20 verdict will be two words, "not guilty." Likewise,
21 if the State has proved the guilt of this defendant
22 beyond a reasonable doubt, your verdict will be one
23 word, "guilty."

24 Madam Forelady, once a decision has been
25 made, check whichever choice is the verdict of the

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1 jury. The verdict that you render in this case,
2 ladies and gentlemen, must be the verdict of each
3 and every juror. It must be your unanimous verdict.
4 All 12 jurors must agree on the verdict that you
5 authorize the forelady to write for the jury.

6 Madam Forelady and members of the jury, I
7 want you to further understand that the order in
8 which the choices of verdict appear on the verdict
9 form are not suggestive of any verdict on the part
10 of this Court. The verdict in this case is to be
11 determined by you, the jury, not the Court.

12 Furthermore, ladies and gentlemen, please
13 understand that even though I will give the verdict
14 form to the forelady, it is not her verdict alone.
15 It is the verdict of all 12 of you. And I emphasize
16 again, it must be unanimous.

17 Ladies and gentlemen, I am also going to
18 give you a copy of these instructions in written
19 form. During your deliberations, you may refer to
20 the instructions to guide your decision making. You
21 must consider the instructions as a whole and not
22 follow some and ignore others.

23 Please return the instructions to the
24 Court at the time your verdict is rendered. I know
25 ask, ladies and gentlemen, that you retire to the

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1 jury room but do not begin your deliberations until
2 you are told to do so.

3 The law requires that I now consult with
4 the attorneys to make sure that I have not left
5 anything out of these instructions. After I have
6 spoken to the attorneys, the Bailiff will bring in a
7 copy of these instructions, the verdict form, and
8 the items of evidence.

9 And at that time, you will be instructed
10 to begin your deliberations. Also, should you have
11 any questions during your deliberations, you must
12 put them in writing and send them to me by the
13 Bailiff.

14 A court Bailiff will be placed outside the
15 jury room door for that purpose. Once you've
16 reached a verdict, please knock on the jury room
17 door and ask the Bailiff to advise the Court that
18 you have reached a verdict, and we will return you
19 to the courtroom as promptly as possible.

20 Before I let you all retire to the jury
21 room, does everybody on the jury feel okay? I'm
22 going to ask that you step to the jury room, but,
23 again, do not begin your deliberations until you are
24 instructed to do so.

25 (The jury left the

1 courtroom at 11:54 a.m. to deliberate their
2 verdict.)

3 THE COURT: Anything from the State with
4 regards to the charge?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: Anything from defense counsel?

7 MR. FLOYD: No, Your Honor.

8 THE COURT: All right, can you all come
9 forward and look at the evidence to ensure that what
10 is in evidence is properly going back, that there's
11 nothing that's not in evidence going back.

12 COURT REPORTER: Your Honor, that would be
13 State's One, Two, and Three.

14 THE COURT: Okay.

15 THE COURT: Let me ask this question. I
16 know the drugs are admitted into evidence. Some
17 judges do it one way; others do it differently. Is
18 there any objection by the State or defense to the
19 drugs going back there?

20 MR. SCOTT: No, Your Honor. We would
21 request it.

22 THE COURT: All right. It's sealed up
23 tight, isn't?

24 BAILIFF: I'll make sure they go.

25 THE COURT: All right, you all have got

1 everything? You all have been through everything,
2 Mr. Scott?

3 MR. SCOTT: Yes, Your Honor, I think we're
4 in agreement.

5 THE COURT: Mr. Floyd?

6 MR. FLOYD: Yes, sir.

7 THE COURT: All right, I'm going to send
8 the evidence back, along with the verdict form and
9 the jury instructions, and ask that -- what's the
10 alternate's name? -- Ms. Barbara Rose, who is the
11 alternate, that she'd be pulled out before items of
12 evidence are given to the jury.

13 Once she is pulled out, you can give the
14 items of evidence to the jury and instruct them to
15 begin their deliberations.

16 What instructions do I need to give Ms.
17 Rose as far as tomorrow?

18 CLERK OF COURT: They're all released.
19 The alternates are released for the remainder of the
20 week.

21 THE COURT: All right, if you'll pull her
22 out, give them the items of evidence, along with the
23 verdict form and instructions.

24 BAILIFF: I'll go get her and come back
25 for the evidence.

1 THE COURT: Okay.

2 BAILIFF: Judge, I have the alternate. Do
3 you want to talk to her?

4 THE COURT: I need to speak to her, and
5 then I'm going to let her go.

6 (Court in recess.)

7 THE COURT: All right, just for the
8 record, Mr. Floyd is back in the courtroom, Mr.
9 Scott and Mr. McNair are here, along with the
10 defendant. The alternate has been pulled out. The
11 evidence, along with the verdict form and the
12 instructions, have been sent back with the
13 instruction for the jury to begin their
14 deliberations. All right, we'll stand at ease right
15 now.

16 (Court in recess.)

17 THE COURT: All right, we're back on the
18 record, the State versus Eddie Alewine. I've been
19 advised that the jury has reached a verdict in this
20 case. Before I bring the jury back in, let me
21 remind everybody in this courtroom that regardless
22 of what the verdict is, you are to keep your
23 emotions in check.

24 You're to keep your emotions in check. I
25 understand it's a very emotional time for both the

1 State and certainly for the defendant. But your
2 failure to keep your emotions in check, regardless
3 of what the verdict is, could result in you being
4 held in contempt of court and sentenced to a term of
5 incarceration and/or a fine. Is anything not clear
6 on that that's in this courtroom?

7 All right, bring us the jury, please.

8 BAILIFF: Yes, sir, Your Honor.

9 (The jury returned to the
10 courtroom at 1:12 p.m. with their verdict.)

11 THE COURT: Madam Clerk?

12 CLERK OF COURT: Madam Forelady, were you
13 able to reach a unanimous verdict?

14 MS. SHUMPERT: Yes.

15 CLERK OF COURT: If you would pass it to
16 the Bailiff.

17 THE COURT: Please publish the verdict.

18 CLERK OF COURT: On Indictment 2012-GS-32-
19 1191, the State versus Eddie Alewine, as to the
20 charge of distribution of cocaine-base crack
21 cocaine, we, the jury, unanimously find the
22 defendant, Eddie Alewine, guilty. It is so signed
23 and dated.

24 Ladies and gentlemen of the jury, was this
25 your verdict?

1 THE JURY: Yes.

2 CLERK OF COURT: Is it still your verdict?

3 THE JURY: Yes.

4 CLERK OF COURT: Thank you.

5 THE COURT: All right, anything from
6 defense counsel at this time before I release the
7 jury?

8 MR. FLOYD: Judge, we would request to
9 have the jury polled.

10 THE COURT: Madam Clerk, poll the jurors,
11 please.

12 CLERK OF COURT: When I call your name,
13 I'm going to ask you if this was your verdict and is
14 this still your verdict, and you just indicate by
15 yes, raising your hand.

16 Juror number 137, Patricia Hert, was this
17 your verdict, and is this still your verdict?

18 MS. HERT: Yes.

19 CLERK OF COURT: Pamela Shumpert, was this
20 your verdict, and is this still your verdict?

21 MS. SHUMPERT: Yes.

22 CLERK OF COURT: Gary Wilson, was this
23 your verdict, and is this still your verdict?

24 MR. WILSON: Yes, ma'am.

25 CLERK OF COURT: Richards Green, was this

1 your verdict, and is this still your verdict?

2 MR. GREEN: Yes.

3 CLERK OF COURT: Kay Richardson, was this
4 your verdict, and is this still your verdict?

5 MS. RICHARDSON: Yes.

6 CLERK OF COURT: Sonya Lybrand, was this
7 your verdict, and is this still your verdict?

8 MS. LYBRAND: Yes.

9 CLERK OF COURT: Cynthia Palmer, was this
10 your verdict, and is this still your verdict?

11 MS. PALMER: Yes.

12 CLERK OF COURT: Sunny Jinwala, was this
13 your verdict, and is this still your verdict?

14 MR. JINWALA: Yes.

15 CLERK OF COURT: Belinda Clark, was this
16 your verdict, and is this still your verdict?

17 MS. CLARK: Yes.

18 CLERK OF COURT: Hope Canaday, was this
19 your verdict, and is this still your verdict?

20 MS. CANADAY: Yes.

21 CLERK OF COURT: William Price, was this
22 your verdict, and is this still your verdict?

23 MR. PRICE: Yes.

24 CLERK OF COURT: Mindy McManus, was this
25 your verdict, and is this still your verdict?

1 MS. McMANUS: Yes.

2 CLERK OF COURT: All jurors are polled,
3 Your Honor.

4 THE COURT: All right, Madam Forelady and
5 ladies and gentlemen of the jury, you all have
6 performed your responsibilities and obligations of
7 jury service to the County of Lexington and the
8 State of South Carolina.

9 I want to personally thank you for your
10 service this week, for being attentive throughout
11 this trial. It's my understanding that a check will
12 be mailed to them for their service.

13 Is that how you all do it here?

14 CLERK OF COURT: Usually within a week.

15 THE COURT: A check along with a work
16 excuse. If you need a work excuse, it will be
17 mailed to you, okay? Don't plan on going out and
18 buying anything big, and I say that to say this.

19 Your service to this county, to this
20 state, to this country is invaluable. I guess the
21 financial situation of this country and this state
22 finds itself in certainly couldn't pay you for what
23 your service means.

24 And I hope you all learned something this
25 week. You learned that this isn't TV. You all are

1 free to go right now. You all are done for the
2 week, okay? You cannot be called up here for jury
3 service at least for the next three years.

4 Now, if you get called up here and you
5 wish to serve, you can serve, and I would encourage
6 you to serve. It is an important responsibility
7 that we have as citizens of this country.

8 But if you are called and so desire not to
9 serve and you bring it to the Court's attention that
10 you have served within the last three years, you can
11 be excused if you so desire.

12 Now, if you get called to City Court,
13 Magistrate's Court, or Federal Court, there's not a
14 thing anybody can do to help you over there. If
15 you're called up here to Common Pleas or General
16 Sessions and you wish to be excused, you may be
17 excused.

18 Now, after you all have fulfilled your
19 responsibilities in determining the facts in this
20 case, it's now the Court's responsibility to
21 determine the sentence. You all are free to stay
22 for sentencing if you so desire. However, if you
23 wish, you are free to leave, as well. I will give
24 you an opportunity at this time to leave.

25 Madam Forelady, I need you to step around

1 or at least if you want to go in the back. I need
2 you to sign the indictment indicating the verdict on
3 that indictment, okay? If you wish to leave, you
4 may leave at this time.

5 (Whereupon, the jury panel
6 was excused from service.)

7 THE COURT: Yes, sir?

8 MR. SCOTT: May I approach, Judge?

9 THE COURT: Yes, sir.

10 It's been brought to the Court's attention
11 by the Solicitor's Office that Mr. Alewine is on
12 probation.

13 MR. SCOTT: That's my understanding, Your
14 Honor.

15 THE COURT: All right. And I have asked
16 that the Solicitor's Office contact the Probation
17 Office to come over and let's deal with all of that
18 at one time as opposed to him being sentenced at
19 this time and then having to be brought back at a
20 later time to deal with the probationary matter.

21 MR. SCOTT: Your Honor, I'm not sure if
22 Rusty's here right now. He might be in the
23 building.

24 THE COURT: Okay. I'm going to give him a
25 couple of minutes --

1 MR. SCOTT: Okay.

2 THE COURT: -- go check on that, and I'm
3 going to sit tight right here for a few minutes.

4 MR. SCOTT: Okay.

5 THE COURT: If it can't be done, it can't
6 be done. He'll just have to go back. What we can
7 do while we're waiting on him, if you want to come
8 around and tell me whatever the State wishes to tell
9 me with regards to sentencing and give Mr. Floyd an
10 opportunity as well to tell me anything he wishes to
11 say right now with regards to mitigation.

12 MR. SCOTT: Okay. Your Honor, obviously,
13 I guess we're doing sentencing now, so it would be
14 the appropriate time to --

15 THE COURT: Mr. Floyd, if you'd come
16 around with your client at least for right now.

17 MR. FLOYD: Yes, Your Honor.

18 THE COURT: Go ahead, Mr. Scott.

19 MR. SCOTT: This is his third conviction,
20 drug-related conviction, so it is an enhanced
21 sentence, Your Honor. I do have with me the
22 certified copies of his prior convictions. I do
23 have his rap sheet as well, Your Honor.

24 I have his pending charges, ones that I
25 have not tried today, that we have, and I have Eric

1 Kirkland of the NET team who would probably like to
2 address the Court as far as sentences for Mr.
3 Alewine.

4 THE COURT: All right, if you would at
5 this time give me his prior criminal record.

6 MR. SCOTT: He had an attempted robbery in
7 2005, which he was convicted of. Your Honor, he had
8 a resisting arrest in 2005. He had a possession of
9 a Schedule I or II controlled substance in 2005,
10 Your Honor. It looks like two counts of that in
11 2005.

12 In 2010, he was convicted of possession
13 with intent to distribute cocaine near a school.
14 And those are his convictions, Your Honor. I have
15 the certified copies of his drug offenses with me.

16 THE COURT: All right, what else, Mr.
17 Scott?

18 MR. SCOTT: Your Honor, on top of that, I
19 have a stack of pending files, charges that we have
20 against Mr. Alewine with this office. He has
21 another distribution of crack cocaine, possession
22 with intent to distribute crack cocaine, conspiracy
23 to distribute narcotics, a distribution of Schedule
24 III controlled substance, and a distribution of
25 cocaine.

1 THE COURT: All right, what are the
2 State's intentions with regards to those pending
3 charges?

9 Again, Your Honor, I do have Mr. Kirkland.
10 I believe he'd like to address the Court. As I
11 mentioned earlier, this was a case that the NET team
12 felt very strongly about.

19 THE COURT: All right, Officer Kirkland,
20 please state your full name for the record. I'll be
21 happy to hear from you, sir.

24 THE COURT: Yes, sir.

1 like I stated, in 2004. As early as 2006 or maybe
2 better, I had heard the name, had learned of the
3 name of Mr. Eddie Alewine. He has been linked to
4 numerous other drug dealers.

5 That name came from several other
6 confidential informants that we've interviewed,
7 persons that we've arrested, persons that stated
8 that he was actually connected to. We were never
9 able to deal with him. He has actually been a
10 problem for one of the agencies, Batesburg-Leesville
11 PD. We learned of him through the chief.

12 And he became the target of many
13 investigations. That's why we felt so strongly
14 about his name coming up in all of the drug areas,
15 and all of the CIs, and all of the arrested persons
16 as a potential problem and a main distributor of
17 crack cocaine and cocaine.

18 We just arrested not long ago Antonio
19 Dupree Williams that was actually -- his name
20 actually came up in that investigation, as well.
21 That investigation went federal, so he has actually
22 been a problem for the NET, for the community, for
23 the Batesburg-Leesville Police Department. That is
24 why we felt so strongly about this case now.

25 THE COURT: Okay. Anything else, Mr.

1 Kirkland?

2 MR. KIRKLAND: No, sir. Thank you, Your
3 Honor.

4 THE COURT: All right, thank you, sir.
5 Anything else from the State at this time?

6 MR. SCOTT: Only that Rusty Rentz is on
7 his way here. He is our probation officer, Your
8 Honor.

9 THE COURT: He is on the way to this
10 courtroom now?

11 MR. SCOTT: Yes, Your Honor. The
12 defendant is on probation, and they'd like to handle
13 that violation today at the appropriate time.

14 THE COURT: Where is their office? I'm
15 not from Lexington.

16 MR. SCOTT: Your Honor, it's on Main
17 Street. It's probably I guess 10 minutes away, with
18 traffic.

19 THE COURT: All right, we'll continue to
20 wait on him. But in the meantime, Mr. Floyd, I'll
21 be happy to hear from you, sir, with regards to any
22 mitigation.

23 MR. FLOYD: Thank you, Your Honor. Eddie
24 is 26 years of age. He has two children, ages four
25 and two, and he's close to them and helps support

1 them.

2 He has good family support. This is his
3 mother back here, and she's always been there for
4 him. Judge, I think you'll find that most of
5 Eddie's dealings and what they say they've charged
6 him with and so forth are small quantities.

7 Even today, the one we're on trial for was
8 \$100 worth of crack. The other one that I know
9 about was pending was also a quantity of about that
10 same amount, very small.

11 The earlier drug convictions, it's my
12 understanding from speaking with him, the possession
13 charges back in 2005 or whatever year it was, that
14 was marijuana, small amounts of marijuana.

15 Arguably, the proximity charge may not
16 technically be a drug charge. I was reading the
17 proximity statute last night, looking at it, and it
18 starts out by saying this is a crime separate from a
19 drug offense.

20 So we would argue that it may not go to be
21 counted toward a third. I'm aware of the statute
22 itself and what it says. I studied that a little
23 bit, too. And I'm not convinced that it
24 automatically requires at least 10 years because of
25 the wording of the statute, because it says must be

1 imprisoned for not less than 10 nor more than 30 or
2 a fine of \$50,000.

3 So I think that's an alternate. He has
4 been in jail since January I think the 23rd,
5 something in that range. So about five months he's
6 been in jail since this happened. Your Honor, we're
7 asking for whatever mercy you can give him that
8 hopefully he can get out at some reasonable time and
9 resume his relationship with his children. And I
10 don't believe there's anything else to say about it.

11 THE COURT: Let me say this before he says
12 anything.

13 Mr. Alewine, you're certainly entitled to
14 say something if you wish to say something.
15 However, you're not required to say anything, and I
16 don't want you to say anything that could be used
17 against you or affect any appeal that you may have,
18 okay? But I will certainly hear from you if you
19 wish to say anything.

20 MR. ALEWINE: I do want to apologize to my
21 family and to the Court.

22 THE COURT: Mr. Floyd, does anybody from
23 his family wish to say anything? If so, I'll be
24 happy to hear from them.

25 MR. FLOYD: Let me just ask him, Your

1 Honor.

2 THE COURT: Okay.

3 MR. FLOYD: Your Honor, this is his
4 mother, Brittany Norris.

5 THE COURT: Ma'am, I'll be happy to hear
6 from you. If you would, please state your full name
7 for the record.

8 MS. NORRIS: Brittany Norris.

9 THE COURT: Yes, ma'am, Ms. Norris.

10 MS. NORRIS: This -- you know, I just --
11 you know, I just feel like a drug dealer would have
12 more. I'm not saying my son wasn't, because I don't
13 know. But he has nothing. And, I mean, I know he
14 was a user at one time. I do know that.

15 But as far as selling drugs, I mean, he
16 has nothing. I mean nothing -- cars, jewelry,
17 nothing. I just don't want them to label him as
18 that, you know, as being a big-time drug dealer.
19 You know, I know he might got -- I don't know if he
20 got caught because -- well, like I say, it's all new
21 to me.

22 THE COURT: Yes, ma'am.

23 MS. NORRIS: And he has nothing. And I
24 don't want him to be put away for a long time and,
25 you know, taken from me and his children.

1 THE COURT: Thank you, Ms. Norris.

2 I've noticed that probation has entered
3 the back door as Ms. Norris was speaking.

4 Sir, if you'd come forward please, Mr.
5 Rentz?

6 MR. RENTZ: Yes, sir.

7 THE COURT: If you'd come around. it's my
8 understanding that Mr. Alewine is on probation?

9 MR. RENTZ: Yes, sir.

10 THE COURT: I'd like to know what he's on
11 probation for and if he had any prior violations.
12 Mr. Floyd, do you represent him on that?

13 I don't know if he was retained to
14 represent you on that.

15 MR. FLOYD: I will stand with him, Your
16 Honor.

17 THE COURT: Okay.

18 MR. FLOYD: I will stand with him.

19 THE COURT: His violation of this offense,
20 that in and of itself is a violation of his
21 probation.

22 MR. FLOYD: I understand, and I'll stand
23 with him.

24 THE COURT: And I need to know from
25 probation is, one, what he's on probation for -- and

1 I think I know, but I want you to state on the
2 record what he's on probation for --

3 MR. RENTZ: Yes, sir.

4 THE COURT: -- the sentence that was
5 handed down.

6 MR. RENTZ: Yes, sir.

7 THE COURT: If he's had any other
8 violations, I'd like to know that.

9 MR. RENTZ: Okay. Your Honor, he was
10 sentenced on May 13, 2010. He pled to possession
11 with intent to distribute marijuana within
12 proximity. He received a sentence of three years,
13 upon the service of two days' time served, with two
14 years' probation.

15 He did have a probation violation on
16 January 13, 2011. It appears to be financial. And
17 at that time, his probation was extended three
18 years; and we restructured his money.

19 THE COURT: And that was on the prior
20 violation?

21 MR. RENTZ: Yes, sir.

22 THE COURT: Through the court like he was
23 supposed to?

24 MR. RENTZ: I don't have that information
25 in front of me, Your Honor.

1 THE COURT: Okay. So he essentially got
2 three years minus the two days --

3 MR. RENTZ: Yes, sir.

4 THE COURT: -- hanging over his head?

5 MR. RENTZ: That's correct.

6 THE COURT: All right, regardless of
7 whether a defendant would admit a willful violation,
8 again, I want to make it abundantly clear for the
9 record that by him being found guilty of this
10 offense, that in and of itself is a violation of
11 probation. Therefore, the Court does find a willful
12 violation of the terms and conditions of probation.

13 Is there anything that you wish to say
14 with regards to that, Mr. Floyd, that you haven't
15 already said?

16 MR. FLOYD: Nothing than I haven't already
17 said, Your Honor.

18 THE COURT: What says the State, if
19 anything, with regards to Mr. Floyd's argument about
20 the proximity issue of possibly not being a second?

21 MR. SCOTT: Your Honor, it's I guess sort
22 of a novel idea. I haven't heard it before. The
23 very definition of the charge, though, is possession
24 of a controlled substance. The only difference is
25 it involves being within proximity of I guess a

1 school, church, or park.

2 I believe it is a drug offense that you do
3 enhance off of it. I might have to research that a
4 little bit, though, Your Honor.

5 MR. FLOYD: It's 44 on page 3445, and it
6 begins "It is a separate criminal offense for a
7 person to distribute" and so forth within a half-
8 mile.

9 THE COURT: Well, let me ask this. The
10 penalty on a second offense is five to 30, mandatory
11 minimum of five, maximum 30. The penalty on a third
12 offense is 10 to 30, minimum of ten, maximum of 30,
13 correct?

14 MR. FLOYD: That's correct.

15 MR. SCOTT: That's correct, Your Honor.

16 THE COURT: What is the indictment number
17 on the probation matter or the warrant number? Give
18 me the indictment number.

19 MR. RENTZ: It would 10-GS-32-1604.

20 THE COURT: Let me ask this question.
21 This offense that he was convicted on today took
22 place in August 2011. These subsequent charges that
23 you have there, when did those charges take place?
24 MR. SCOTT: Some predate the conviction
25 today. This one does. This is a distribution of

1 crack cocaine for June 7, 2010.

2 THE COURT: So that was after he was put
3 on probation. He was put on probation in May 2010?

4 MR. FLOYD: That is correct.

5 THE COURT: He got this charge in June
6 2010.

7 MR. SCOTT: June 7, 2010, he has a
8 distribution of Schedule III controlled substance,
9 that being a Lortab or Lortabs.

10 THE COURT: That was again in June 2010?

11 MR. SCOTT: That's correct, Your Honor. I
12 have a conspiracy to distribute. That is again June
13 7, 2010.

14 THE COURT: Okay.

15 MR. SCOTT: I have a possession with
16 intent to distribute crack from January 23, 2012.

17 THE COURT: All right.

18 MR. SCOTT: And I had a distribution of
19 crack from August 24, 2011. That was another CI
20 case that occurred six days before the one we tried
21 today.

22 THE COURT: Okay. Mr. Floyd, on this
23 attempted armed robbery -- or the State may know --
24 he got back in 2005, what was the sentence on that?

25 MR. FLOYD: He said he didn't catch any

1 time on that, Judge.

2 MR. SCOTT: He got a six-month time
3 served. It was a charge of armed robbery with a
4 deadly weapon. He pled to attempted armed robbery
5 and got a six-month time-served sentence. That
6 court date was December 29th of '05.

7 THE COURT: And was that at the same time
8 he pled to resisting arrest?

9 MR. SCOTT: Your Honor, he pled to
10 resisting arrest --

11 THE COURT: You said he had a resisting
12 arrest from 2005.

13 MR. SCOTT: Yes, September 9, 2005, was
14 the resisting arrest.

15 THE COURT: September?

16 MR. SCOTT: Ninth.

17 THE COURT: All right. What kind of
18 sentence was handed down on that?

19 MR. FLOYD: He said it's the same, Your
20 Honor, time served.

21 MR. SCOTT: That's okay.

22 THE COURT: Now, what about these
23 possession of Schedule I or II controlled substances
24 back in 2005? He had two of those.

25 MR. SCOTT: Okay. December 29, 2005,

1 court charge number two, he was convicted, 90 days
2 time served. Court charge number three, convicted,
3 90 days time served.

4 THE COURT: And in 2010 -- probation.

5 Mr. Floyd, what's the most amount of time
6 your client has been in jail?

7 MR. FLOYD: At this time, Your Honor, he's
8 done five months. The other charges, for example,
9 they met the threshold, but they were very small
10 quantities of marijuana on the proximity and the
11 possessions.

12 He says about four ounces. So that's why
13 he caught, you know, time served. I guess he sat in
14 jail until he got in front of a judge.

15 THE COURT: This is a no-parole offense on
16 this?

17 MR. FLOYD: I think it is, Your Honor.

18 MR. SCOTT: I think so, too, Your Honor.

19 THE COURT: Which means he'll do 85
20 percent of it before he's even eligible for parole?

21 MR. SCOTT: That's my understanding.

22 THE COURT: All right, anything else from
23 the State?

24 MR. SCOTT: Nothing from the State, Your
25 Honor.

1 SENTENCE OF THE COURT

2 THE COURT: All right, with regards to the
3 probation matter, I'm going to revoke the balance of
4 that and terminate that case.

5 On Indictment 2012-GS-32-1191, the
6 defendant is committed to the State Department of
7 Corrections for a period of 18 years, give him
8 credit for 149 days.

9 Anything else from the State?

10 MR. SCOTT: Nothing from the State, Your
11 Honor.

12 THE COURT: From defense counsel?

13 MR. FLOYD: Nothing further, Your Honor.

14 THE COURT: Good luck to you, Mr. Alewine.

15

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON JUNE 18 AND 19, 2012, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE FIFTEENTH DAY OF SEPTEMBER, 2012.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

WITNESSES

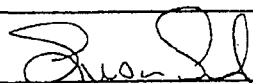
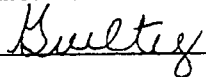
Lexington County Sheriffs Department

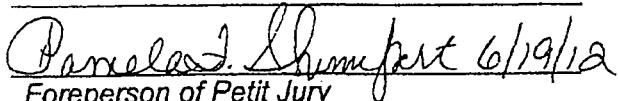
Eric V. Kirkland

Law Enforcement Case #: 11028019

DSARREST WARRANT NUMBER

J817190

ACTION OF GRAND JURY**TRUE BILL**

 Foreperson of Grand Jury
 Date: 5-7-2012
VERDICT -

 Guilty


 Foreperson of Petit Jury
 Date:
DOCKET NO. 2012GS3201191**The State of South Carolina****County of Lexington**COURT OF GENERAL SESSIONSMAY TERM 2012**THE STATE****vs.****Eddie Frank Alewine**CDR #: 3039Indictment for

Distribution of Crack

§ 44-53-0375(B)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

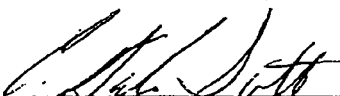
INDICTMENT FOR
Distribution of Crack

§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on May 2012, the Grand Jurors of Lexington County present upon their oath:

That Eddie Frank Alewine did in Lexington County, South Carolina on or about August 30, 2011, knowingly and intentionally distribute a quantity of Cocaine Base, also known as Crack Cocaine, a controlled substance under the provisions of Section 44-53-110, *et. seq.*, of the SC Code of Laws (1976), as amended, such distribution not having been authorized by law, in violation of Section 44-53-375(B)(3) of the SC 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.



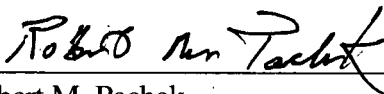
ASSISTANT SOLICITOR

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 3, 2012

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

D. Craig Brown, Circuit Court Judge

RECEIVED

DEC 03 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

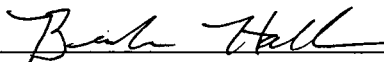
EDDIE F. ALEWINE,

APPELLANT

APPELLATE CASE NO. 2012-212343.

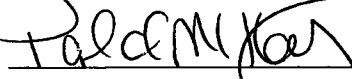
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 3rd day of December, 2012.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of December, 2012.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.