

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

ORIGINAL
RECEIVED

DEC 23 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HARRY ANTHONY,

APPELLANT

APPELLATE CASE NO. 2012-206627

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 9, 10, 11, 2012	1
OBJECTIONS TO VOIR DIRE	4
MOTIONS REGARDING ADMISSIBILITY OF PRIOR RECORD, PRIOR BAD ACTS AND PHYSICAL EVIDENCE	10
TESTIMONY (IN CAMERA)	
DETECTIVE EDDIE STRAIT	
Direct Examination by Ms. LIPINSKI	30
Cross Examination by Mr. BARROWCLOUGH	37
OPENING STATEMENTS	
BY Ms. LIPINSKI	50
BY Mr. DEST	59
STATE'S MOTION REGARDING EVIDENCE OF MARGARET MATTHEWS	63
TESTIMONY	
LIEUTENANT TIM HAGER	
Direct Examination by Ms. LIPINSKI	72
Cross Examination by Mr. BARROWCLOUGH	92
Redirect Examination by Ms. LIPINSKI	101
MOTION FOR MISTRIAL BY THE DEFENSE	104
TESTIMONY	
PATRICIA LITTLEJOHN	
Direct Examination by Ms. LIPINSKI	110
Cross Examination by Mr. BARROWCLOUGH	119
Redirect Examination by Ms. LIPINSKI	125
COMMANDER MARVIN BROWN	
Direct Examination by Mr. EPTING	127

Cross Examination by Mr. DEST	141
Redirect Examination by Mr. EPTING.....	145
 MOTION FOR DIRECTED VERDICT.....	 146
COLLOQUY ON THE DEFENDANT'S RIGHT TO TESTIFY	148
CLOSING ARGUMENT	
BY Ms. LIPINSKI.....	153
By Mr. BARROWCLOUGH.....	174
CHARGE ON THE LAW.....	191
VERDICT.....	208
MOTION FOR NEW TRIAL.....	210
SENTENCING.....	210
TRANSCRIPT OF <u>SCHMERBER</u> HEARING AND CONTINUANCE REQUEST (November 29, 2007).....	215
APPENDIX FROM INTERLOCUTORY APPEAL	236
SOUTH CAROLINA SUPREME COURT ORDER (OCTOBER 8, 2008)	294
REMITTITUR (OCTOBER 13, 2008).....	296
INDICTMENTS.....	297
SENTENCE SHEETS.....	305
CERTIFICATE OF COUNSEL.....	309

****STATE'S EXHIBITS # 1-6 (CD'S) ARE BEING TRANSPORTED
TO THE COURT OF APPEALS. ****

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

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

January 9-11, 2012
York, South Carolina

B E F O R E:

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

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

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

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

ORIGINAL

Wanda Nelson
Circuit Court Reporter
Sixteenth Judicial Circuit

I-N-D-E-XWITNESSBY:PAGE NO.

Detective Eddie Strait	Ms. Lipinski	52-58 (In Camera.)
		62 (In Camera)
	Mr. Barrowclough	59-61 (In Camera)
Lieutenant Tim Hager	Ms. Lipinski	94-114
		122-124
	Mr. Barrowclough	114-121
Patricia Littlejohn	Ms. Lipinski	131-140
		147-148
	Mr. Barrowclough	140-146
Commander Marvin Brown	Mr. Epting	148-162
		166
	Mr. Dest	162-166
Closing	By Ms. Lipinski . . .	174-194
	By Mr. Barrowclough	195-207
Charge on the law		212-228
Verdicts		229-231
Sentencing.		231-234
Court Reporter's Certificate.		235
Jury Voir Dire.		236

-3-

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
CT.1	Uniform Traffic Ticket		49
CT.2	Indictment from 3/6/1995		49
CT.3	Jury Note.		234
ST.1	CD		109
ST.2	CD		109
ST.3	CD		109
ST.4	CD		109
ST.5	CD		109
ST.6	CD		109
ST.7	Photo.	92.	99.
ST.8	Photo.	92.	105
ST.9	Camera Bag		101
ST.10	Camera Bag		101

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

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

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

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

6 THE COURT: All right.

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

20 THE COURT: Any objection?

21 MR. BARROWCLOUGH: No, Your Honor.

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

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

24 THE COURT: Yes.

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

-5-

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

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

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

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

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

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

2 THE COURT: That's fine.

3 Anything else before we get them up?

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

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

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

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

-7-

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

7 THE COURT: Yeah, I follow you.

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

11 MR. BARROWCLOUGH: That's good.

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

13 THE COURT: Anything else?

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

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

25 MS. LIPINSKI: All right.

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

3 A. I'll stay.

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

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

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

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

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

12 (JURY POOL ENTERING COURTROOM.)

13 THE BAILIFF: All rise. Come to order.

14 THE COURT: Thank you. Take your seats.

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

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

17 (PAUSE.)

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

19 (REMAINING JURORS ENTER COURTROOM.)

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

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

-30-

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

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

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

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

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

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

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

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

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

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

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

1 THE COURT: We can start with them.

2 Number one, is discovery.

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

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

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

19 THE COURT: All right. Any impeachments?

20 MS. LIPINSKI: Yes, sir.

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

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

-32-

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

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

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

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

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

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

3 (PAUSE.)

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

7 MS. LIPINSKI: I understand, Your Honor.

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

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

-34-

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

16 THE COURT: Any comments?

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

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

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

-36-

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

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

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

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

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

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

-38-

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

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

18 MR. BARROWCLOUGH: Thank you.

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

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

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

1 State intends to introduce?

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

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

16 MS. LIPINSKI: Thank you, Your Honor.

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

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

-40-

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

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

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

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

-42-

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

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

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

11 MR. BARROWCLOUGH: Thank you, Your Honor.

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

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

-44-

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

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

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

1 MR. BARROWCLOUGH: Thank you, Your Honor.

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

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

6 THE COURT: Yes.

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

8 THE COURT: That would be good.

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

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

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

-46-

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

11 THE COURT: Two what kind of bags?

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

13 THE COURT: Camera bags?

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

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

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

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

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

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

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

-48-

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

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

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

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

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

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

19 THE COURT: That would be fine.

20 MS. LIPINSKI: The Court's indulgence.

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

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

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

-50-

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

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

3 MS. LIPINSKI: Thank you, Your Honor.

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

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

6 THE COURT: Thank you, take your seats.

7 All right, you may proceed.

8 MS. LIPINSKI: And, Your Honor, just too, if Mr.
9 Barrowclough wishes anything different, certainly the State
10 would have no problem.

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

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

-51-

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

7 THE COURT: All right.

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

10 THE COURT: Okay.

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

13 DIRECT EXAMINATION - IN CAMERA

14 DETECTIVE EDDIE STRAIT BY MS. LIPINSKI:

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

17 A. York County Sheriff's Office.

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

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

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

24 A. Yes, I did.

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

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

-52-

1 took place?

2 A. In the Detention Center.

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

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

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

12 A. That's correct.

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

15 A. I don't recall.

16 Q. Was anyone else present during that conversation?

17 A. Lieutenant Hager.

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

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

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

25 A. Yes, he did.

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

3 A. Yes.

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

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

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

13 A. Yes, I did.

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

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

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

22 A. That's correct.

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

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

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

-54-

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

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

7 A. That is correct.

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

12 A. That's correct.

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

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

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

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

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

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

1 mother's house in York.

2 Q. Did you -

3 A. We also asked --

4 Q. I'm sorry, go on.

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

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

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

10 Q. Betty Hayes?

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

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

15 A. No.

16 Q. Did you threaten him in any way?

17 A. No.

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

23 A. No, I would not.

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

EDDIE STRAIT: DIRECT BY MS. LIPINSKI - IN CAMERA

-56-

1 A. No, ma'am.

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

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

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

7 A. No.

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

10 A. Voluntary.

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

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

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

17 A. No.

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

20 A. No.

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

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

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

1 physically in any way?

2 A. No.

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

6 A. He was cooperative.

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

9 A. Yes.

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

11 (PAUSE.)

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

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

1 as a witness.

2 THE COURT: Cross.

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

5 CROSS EXAMINATION

6 DETECTIVE EDDIE STRAIT BY MR. BARROWCLOUGH:

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

9 A. That's correct.

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

12 A. That's correct.

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

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

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

18 A. No, I do not.

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

20 A. Yes.

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

23 A. That's correct.

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

1 A. I do not.

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

4 A. That's correct.

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

8 A. That's correct.

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

11 A. Not that I'm aware of.

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

14 A. That's correct.

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

16 A. No.

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

19 A. Not videotaped?

20 Q. Not videotaped.

21 A. That's correct.

22 Q. And is not audio taped?

23 A. That's correct.

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

DETECTIVE EDDIE STRAIT: CROSS BY MR. BARROWCLOUGH - IN CAMERA -60-

1 your recollection. Right?

2 A. That's correct.

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

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

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

8 A. That's correct.

9 Q. And that was for sex. Right?

10 A. Yes.

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

12 A. That's correct.

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

14 A. That's right.

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

16 A. That's correct.

17 Q. The sale of any drugs?

18 A. Correct.

19 Q. The use of any drugs?

20 A. Correct.

21 Q. The trading of any drugs for sex?

22 A. Correct.

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

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

-61-

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

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

3 (PAUSE.)

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

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION - IN CAMERA

7 DETECTIVE EDDIE STRAIT BY MS. LIPINSKI:

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

10 A. Yes.

11 Q. About the disappearance of Ms. Matthews?

12 A. Yes.

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

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

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

17 A. Yes.

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

20 MR. BARROWCLOUGH: Nothing further, Your Honor.

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

22 (WITNESS LEAVING WITNESS STAND.)

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

-62-

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

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

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

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

17 MR. BARROWCLOUGH: Yes, sir.

18 THE COURT: Anything else we can do today?

19 MS. LIPINSKI: I have nothing further.

20 MR. BARROWCLOUGH: Nothing further, Your Honor.

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

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

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

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

5 MR. EPTING: I will, Your Honor.

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

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

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

11 THE COURT: Is the State ready?

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

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

-64-

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

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

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

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

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

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

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

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

-66-

1 stand on a flowery pipe.

2 Any objection to it?

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

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

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

8 THE COURT: Okay.

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

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

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

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

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

18 THE COURT: All right.

19 Ready for the jury?

20 MS. LIPINSKI: I believe so.

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

22 THE COURT: Bring in the jury.

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

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

-68-

1 the oath.

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

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

5 THE COURT: You can be seated.

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

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

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

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-70-

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

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-71-

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

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

9 Just please listen carefully.

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

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

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

19 THE COURT: Yes, ma'am.

20 MS. LIPINSKI: Good morning.

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

OPENING STATEMENT: BY MS. LIPINSKI

-72-

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

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-73-

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

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-74-

1 distribution of crack cocaine?

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

OPENING STATEMENT: BY MS. LIPINSKI

-75-

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

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-76-

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

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-77-

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-78-

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

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

OPENING STATEMENT: BY MS. LIPINSKI

-79-

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

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

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

23 THE COURT: Mr. Dest.

24 MR. DEST: May it please the Court.

25 THE COURT: Yes, sir.

OPENING STATEMENT: BY MR. DEST

-80-

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

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

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

OPENING STATEMENT: BY MR. DEST

-81-

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

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

OPENING STATEMENT: BY MR. DEST

-82-

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

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

25 When we talk about fair and objective evidence, you

OPENING STATEMENT: BY MR. DEST

-83-

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

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

-84-

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

4 Thank you.

5 THE COURT: Call your first witness.

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

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

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

12 THE COURT: All right.

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

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

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

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

-86-

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

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

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

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

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

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

-88-

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

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

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

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

8 THE COURT: Briefly, Ms. Lipinski.

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

-90-

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

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

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

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

3 MR. BARROWCLOUGH: Thank you, Your Honor.

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

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

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

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

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

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

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

25 THE COURT: Okay.

-92-

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

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

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

7 (PAUSE.)

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

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

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

19 THE COURT: Okay, Congress Street.

20 (PAUSE.)

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

23 THE COURT: Ready for the jury?

24 MS. LIPINSKI: Yes, Your Honor.

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-93-

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

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

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

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

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

9 MR. HAGER: Good morning, Your Honor.

10 THE COURT: Good morning.

11 DIRECT EXAMINATION

12 LIEUTENANT TIM HAGER BY MS. LIPINSKI:

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

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

17 Q. And in what capacity?

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

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

23 A. Tomorrow will be 32 years.

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-94-

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

9 Q. Better hours?

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

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

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

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

20 A. Yes, I did.

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

23 A. Yes.

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

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

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

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

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

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

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

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

22 A. Yes, extremely.

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

24 A. She did.

25 Q. And who was that?

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-96-

1 A. That was defendant Harry Anthony.

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

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

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

11 A. Yes.

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

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

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

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-97-

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

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

6 A. Yes.

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

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

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

16 THE COURT: Just --

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

18 THE COURT: Okay, just move on.

19 Q. And did she --

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

22 Q. She stated he was videotaping?

23 A. Yes.

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-98-

1 videotapes?

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

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

7 A. Yes, I did.

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

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

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

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

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

17 A. Yes, ma'am.

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

21 A. Yes, ma'am.

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

24 A. It does.

25 Q. It would have been February of 2006?

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-99-

1 A. February the 2nd, 2006.

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

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

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

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

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

12 A. Yes, in York, South
13 Carolina, which is in York County.

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

17 MR. BARROWCLOUGH: No objection.

18 THE COURT: In without objection.

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

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

24 A. I did.

25 Q. And did you seize 38 BHSC tapes?

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-100-

1 A. I did.

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

3 A. I did.

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

6 A. I did, yes.

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

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

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

14 A. That's correct.

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

18 A. Yes.

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

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

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

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

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-101-

1 a commercial nature?

2 A. Yes, it was commercial pornography.

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

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

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

10 A. Yes.

11 Q. Item Number 4, was what that?

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

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

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

18 THE COURT: In without objection.

19 MADAME COURT REPORTER: Nine and Ten, Mindy.

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

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

22 MS. LIPINSKI: Uh-huh.

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

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-102-

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

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

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

7 A. Nine.

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

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

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

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

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

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

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

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

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

1 A. Yes, I did.

2 Q. Did you review all of them?

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

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

5 A. Yes, they did.

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

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

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

15 A. They were the same, yes.

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

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

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

23 A. Uh-huh.

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-104-

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

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

6 A. I did not, no.

7 Q. Did anyone with your office?

8 A. Yes.

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

12 A. That's correct.

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

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

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

19 A. Yes, they are.

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

23 A. From what we gathered through our investigation -

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-105-

1 THE COURT: I sustain the objection.

2 BY MS. LIPINSKI:

3 Q. Did you go to that location?

4 A. Yes, several times.

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

9 A. Yes, I do.

10 Q. And is that the Bookout Road location?

11 A. Yes, it is.

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

14 A. Correct. Yes, it did.

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

17 MR. BARROWCLOUGH: No objection, Your Honor.

18 THE COURT: In without objection.

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

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

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-106-

1 outside.

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

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

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

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

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

12 MS. LIPINSKI: Oh, they are.

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

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

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

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

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

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

22 Q. And also Eight-4.

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

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

25 A. Yes.

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

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

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

7 A. Yes.

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

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

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

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

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

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

20 Q. Seven-3.

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

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-108-

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

3 Q. In a closet?

4 A. Yes.

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

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

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

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

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

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

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

17 A. Yes.

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

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

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-109-

1 appeared to be a female's bedroom?

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

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

5 (PAUSE.)

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

9 MR. BARROWCLOUGH: No objection.

10 THE COURT: In without objection.

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

13 THE COURT: All right.

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

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

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

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

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

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

23 A. That's Patricia Littlejohn.

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-110-

1 on our pretrial discussions.

2 THE COURT: All right.

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

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

7 A. Yes.

8 Q. But it also says Merry Christmas?

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

10 Q. Thank you.

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

13 BY MS. LIPINSKI:

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

16 A. Yes. Patricia Littlejohn.

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

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

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

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

23 BY MS. LIPINSKI:

24 Q. Are you able to identify this female?

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

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-111-

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

3 A. Yes.

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

6 BY MS. LIPINSKI:

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

8 A. That's the defendant Harry Anthony.

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

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

13 BY MS. LIPINSKI:

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

15 A. Again that's Patricia Littlejohn.

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

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

21 BY MS. LIPINSKI:

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

23 A. Yes it is.

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

25 A. Yes.

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI

-112-

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

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

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

8 A. Yes.

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

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

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

13 A. Yes. Different location.

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

17 State's Exhibit Number Six, Your Honor.

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

20 BY MS. LIPINSKI:

21 Q. Are you able to identify this female?

22 A. Again that's Patricia Littlejohn.

23 MS. LIPINSKI: Bring the lights up.

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

25 BY MS. LIPINSKI:

LIEUTENANT TIM HAGER: DIRECT BY MS. LIPINSKI
CROSS BY MR. BARROWCLOUGH

-113-

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

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

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

7 A. Or thirty-eight. Excuse me.

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

10 THE COURT: Cross.

11 MR. BARROWCLOUGH: May it please the Court.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 LIEUTENANT TIM HAGER BY MR. BARROWCLOUGH:

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

17 A. Yes, sir.

18 Q. And --

19 A. 2006.

20 Q. 2006. Correct.

21 And that search encompassed the residence. Correct?

22 A. The residence located at 426 South Congress Street,
23 which is in York County, yes.

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

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

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-114-

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

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

6 A. I did, yes.

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

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

11 (PAUSE.)

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

14 THE COURT: Yes, sir.

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

16 A. Yeah.

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

19 A. Yes.

20 Q. The same day as the search warrant?

21 A. That's correct.

22 Q. Okay.

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

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

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-115-

1 found?

2 A. No, sir.

3 Q. No crack residue was found?

4 A. None.

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

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

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

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

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

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

16 Q. No baggies?

17 A. No baggies, no, sir.

18 Q. And no customer list?

19 A. None.

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

22 A. None.

23 Q. No computer records indicative of drug dealing?

24 A. None.

25 Q. And that residence was searched, 426 South Congress

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-116-

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

2 Correct?

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

6 (PAUSE.)

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

9 THE COURT: Yes, sir.

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

11 A. Okay.

12 Q. And just ascertain for yourself, those search warrants
13 are for . . . Correct?

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

16 Q. And, so I was correct when I said that
17 residence was searched two other times in
18 February?

19 A. Correct.

20 Q. For a total of three times?

21 A. That's correct.

22 Q. And no drugs were ever recovered?

23 A. No.

24 Q. And no drug scales were ever recovered?

25 A. No, sir.

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-117-

1 Q. And no baggies?

2 A. No, sir.

3 Q. Okay. And no cell phones or computers?

4 A. That's correct.

5 Q. All right. And isn't it also true as the lead
6 investigator, no -- strike that, let me back up. You said
7 you worked in Narcotics at one point. Right?

8 A. For approximately six years, yes.

9 Q. Okay. And as someone who worked in Narcotics, you're
10 familiar with the concept then of a CI buy. Right?

11 A. Correct.

12 Q. And just so the jury understands, a CI buy is when you
13 work with somebody who goes and buys drugs from your target
14 person, while you're either wearing wire or perhaps on
15 video, and then they bring those drugs back to you.

16 Correct?

17 A. If you're running a drug investigation, yes.

18 Q. Right. And there was no CI buy ever made from Harry
19 Anthony in conjunction with these warrants. Correct?

20 A. Because I was not running the drug investigation.

21 Q. Well just answer my question, yes or no.

22 A. No.

23 Q. And, now you did as you testified to, recover and take
24 into evidence some items on February 2nd. Correct?

25 A. Correct.

1 A. Yes.

2 Q. But those are not logged into evidence?

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

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

7 A. Yes.

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

12 A. No.

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

15 A. Do I know how?

16 Q. Yes.

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

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

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

21 Q. If that was the target of your investigation. And on
22 some paperwork, it's indicated that her address was 1
23 Centre Street, York. Does that sound right to you?

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

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-118-

1 Q. Two black bags?

2 A. Yes.

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

4 A. Yes.

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

6 A. Correct.

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

9 A. For cocaine?

10 Q. Yeah.

11 A. No.

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

15 A. Correct.

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

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

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

21 A. I did, yes.

22 Q. And her billfold?

23 A. Correct.

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

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-120-

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

3 A. No.

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

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

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

11 A. Correct.

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

14 A. That's correct.

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

18 A. Yes.

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

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

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

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

LIEUTENANT TIM HAGER: CROSS BY MR. BARROWCLOUGH

-121-

1 another residence that he had a key to.

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

5 A. Yes, numerous times.

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

9 A. Some did, some didn't.

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

12 A. No, she wasn't.

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

14 A. Was not.

15 Q. She wasn't charged with prostitution?

16 A. Was not.

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

19 A. No, I did not.

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

22 THE COURT: Redirect.

23 MS. LIPINSKI: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 LIEUTENANT TIM HAGER BY MS. LIPINSKI:

LIEUTENANT TIM HAGER: REDIRECT BY MS. LIPINSKI

-122-

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

4 A. That's correct.

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

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

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

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

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

20 A. Yes.

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

24 A. Yes, do it all the time.

25 Q. And if you could, just explain to the jury some of the

1 factors that go into that judgment paradigm on your part,
2 and why you are vested with that discretion.

3 A. Some of the factors -- the biggest factor to me is you
4 weigh what you're looking into versus what you've
5 uncovered, and whether or not that rises to the level that
6 we need to prosecute that or use that individual for
7 information to get the -- to meet our end goal to what
8 we're initially looking into.

9 Q. And is it ever your occasion, for lack of a better
10 term, to try and work up the food chain?

11 A. Yes, it happens all the time, especially in narcotics.

12 Q. So she was giving you corroborating or material
13 information in an unrelated investigation that was of high
14 value to you. Have you ever made the decision not to
15 charge lower or smaller crimes as a result of that?

16 A. Yes, a prime example would be a State Grand Jury case
17 I worked. We arrested an individual for a quarter-of-a-
18 pound -- a student for a quarter-of-a-pound of marijuana,
19 ended up in Atlanta, Georgia. We knocked off an
20 organization that was bringing in 35 kilos of cocaine into
21 the United States every week.

22 Q. And did you charge the student?

23 A. He ended up walking free.

24 Q. And Mr. Barrowclough indicated that you did go back on
25 a subsequent occasion to the Congress Street location?

LIEUTENANT TIM HAGER: REDIRECT BY MS. LIPINSKI

-124-

1 A. Yes.

2 Q. At that time, were you looking for narcotics?

3 A. No. At no point were we looking for narcotics from
4 Harry Anthony's residence.

5 Q. And Mr. Barrowclough stated that in the course of your
6 investigations, you had people who were either trained in,
7 or who moved their drugs from location to location. Does
8 that knowledge that they tend to move them, does that give
9 you probable cause to get a search warrant for anywhere
10 that you can associate with that witness?

11 A. No, you have to establish probable cause that the
12 evidence or contraband that you're interested in or you're
13 searching for, there's a reasonable degree of certainty to
14 this at that location.

15 MS. LIPINSKI: Court's indulgence, one moment.

16 (PAUSE.)

17 Nothing further from Mr. Hager.

18 MR. BARROWCLOUGH: Nothing further, Your Honor.

19 THE COURT: You can step down.

20 THE WITNESS: Thank you, sir.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Members of the jury panel, we're going to
23 break for lunch, its about five to 1:00. We'll break to
24 2:15. Have a pleasant lunch, and we'll see you back at
25 2:15.

1 (JURY EXITS COURTROOM AT 12:59 PM.)

2 THE COURT: Anything from the State before we break
3 for lunch?

4 MS. LIPINSKI: Nothing further from the State.

5 THE COURT: Anything from the Defense?

6 MR. BARROWCLOUGH: Yes, Your Honor. Prior to taking a
7 break I objected at the time to the mention of branding,
8 and I did not feel based on the Court's response, that I
9 should continue to pursue it at that time. However at this
10 time, hopefully this motion will be contemporaneous from my
11 objection. I would be forced to ask for a mistrial based
12 on Detective Hager's bringing up and mentioning branding.
13 I am certain that we did nothing to open the door to that.
14 Additionally, yesterday in Court we agreed on the record
15 that, that would not be a part of the case unless we opened
16 the door to it. This was on direct examination. And I
17 think what makes it more egregious, Your Honor, is the fact
18 that when we were having this conversation and putting all
19 that on the record, Lieutenant Hager was in the room.
20 We've had conversations about how the State's witnesses,
21 particularly law enforcement, more sophisticated witnesses,
22 and nevertheless sort of unprompted by Ms. Lipinski,
23 Lieutenant Hager put the branding right out there, and put
24 our client's character into evidence in violation of our
25 agreement.

-126-

1 And, Your Honor, again, I objected at the time
2 cognizant of the Rule of Criminal Procedure 18 (A) argued
3 after ruling that you told them to move along. But I would
4 say -- I would hope that this motion is timely and I do
5 move for a mistrial.

6 THE COURT: Let me hear from the State.

7 MS. LIPINSKI: Just briefly, Your Honor. We also
8 agreed that we would narrowly tailor the focus of our
9 questions. I don't believe it was any inadvertence or
10 misstep on the part of Mr. Hager. Why we agreed that we
11 would try to avoid that, I also stated that it would
12 nonetheless become -- may nonetheless become part of this.
13 Obviously the defendant's character is an issue by the very
14 admission of these tapes. So to suggest that we have put
15 his character at issue when it was otherwise not an issue,
16 I think is a misstep.

17 Moreover, he could have made a contemporaneous
18 objection. There could have been a curative instruction
19 made. I think the way that we handled it was a way to
20 cause the least attention to it, and for that reason, the
21 State feels -- but I don't feel it's fair to go through all
22 of cross with Lieutenant Hager or anything of that nature,
23 and then at the end, start making a motion for a mistrial.
24 I think he should have -- If he felt that it was of that
25 paramount necessity at the time, the motion should have

1 been made then. Or we could have found some way perhaps to
2 handle it with Mr. Hager in a way that either minimized
3 that prejudice or otherwise avoided it. But I don't
4 believe that it has so contaminated the trial that a
5 mistrial is of manifest necessity or a remedy. He asked
6 him generally about "What were you able" -- He asked him an
7 open-ended question and soliciting information. Now it
8 could have been that, but also could have focused in -- we
9 both in this entire trial have exercised the timed surgical
10 precision to narrowly tear that. And I don't think he just
11 randomly threw it in there to contaminate the trial. There
12 isn't any indication of that. I think Lieutenant Hager's
13 reputation as a whole speaks of that, wasn't necessarily
14 the case and for that reason, the State feels that his
15 motion for a mistrial is both late and at best a curative
16 instruction. But I think, quite frankly, the way it was
17 addressed in terms of just moving on and telling them
18 disregard, was the way to cause the least attention to it.

19 THE COURT: Anything further?

20 MR. BARROWCLOUGH: Well again, just so the record's
21 clear. First of all, it didn't come out when I was
22 questioning Lieutenant Hager, it came out while the
23 Solicitor was questioning Lieutenant Hager so we certainly
24 didn't open the door. But we hadn't even had a chance to
25 question the witness. Secondly, I did act for a matter of

-128-

1 law and it was not granted to me at that time. So, Your
2 Honor, I'm not going to obviously engage in an argument
3 with the Court in front of the jury. I think that would be
4 improper, number one and unwise, number two. And I don't
5 -- Thirdly, I don't understand the Solicitor's point. On
6 one hand she's saying this was not inadvertent. But then
7 she's also saying that it was not intentional to make Mr.
8 Anthony look bad in front of the jury. So I -- I'm not
9 going to attempt to characterize what Lieutenant Hager did.
10 I'm just saying the facts speak for themselves. We had
11 this agreement. We won't get into it. We did nothing to
12 open the door to it, and he injected it in the trial.

13 THE COURT: I find there is no manifest necessity to
14 grant a mistrial. The objection was sustained, and the
15 jury was told "Disregard the testimony." So I deny the
16 motion for a mistrial.

17 MR. BARROWCLOUGH: Okay, Your Honor.

18 THE COURT: We'll see you back at 2:15.

19 MS. LIPINSKI: Thank you, Your Honor.

20 MR. BARROWCLOUGH: Thank you.

21 (COURT IN LUNCH RECESS AT 01:04 PM.)

22 (BACK ON THE RECORD AT 02:20 PM.)

23 THE COURT: Thank you, take your seats.

24 Is the State ready?

25 MS. LIPINSKI: Yes, Your Honor. If we could, just in

1 terms of scheduling, the Clerk has asked me this. When I
2 originally -- when we had our docket meeting this morning,
3 and we were scheduled to start at 10:00 a.m., I thought
4 that we could probably push through today, and maybe argue
5 and charge at the close of business today. We still have
6 the testimony of Ms. Littlejohn which I don't know that
7 she'll be lengthy, but I think she'll be a substantial
8 witness; and the testimony of Detective Marvin Brown as an
9 expert, just being candor with the Court. I think that,
10 that drives us well into 3:30 or 4:00 o'clock in all
11 candor. And so my question is, should we -- or is the
12 Court inclined to push through and argue and charge today
13 or in the morning?

14 THE COURT: No, I can stop you right there. No, you
15 argue and charge in the morning. I'm not going to -- if it
16 were Thursday if we could get the jury out and not have to
17 come back on Friday, but I'm not going to keep the jury
18 here.

19 MS. LIPINSKI: So assuming we argue and charge in the
20 morning, I think they would be ready to start with the next
21 case at 11:00 tomorrow, or 2:00?

22 THE COURT: Let's say noon.

23 MS. LIPINSKI: Noon, okay.

24 THE COURT: That way we'll draw the jury, get them
25 drawn, break for lunch, and then --

-130-

1 MS. LIPINSKI: Come back and start with whatever we
2 have.

3 THE COURT: That ought to work.

4 MS. LIPINSKI: I just wanted to -- everybody be on the
5 same page.

6 THE COURT: Well I --

7 MS. LIPINSKI: The Clerk needs to leave a message, and
8 they've inquired that with me, and I will pass on to the
9 Solicitor's Office as well.

10 THE COURT: I was getting ready to ask how we were
11 going as far as logistics, and you've answered that
12 question.

13 Anything from the Defendant?

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

15 THE COURT: Not the Defendant, the Defendant's
16 counsel.

17 Bring in the jury.

18 (JURY REENTERS COURTROOM AT 02:23 PM.)

19 THE COURT: Call your next witness.

20 MS. LIPINSKI: May it please the Court. The State
21 calls Patricia Littlejohn to the stand.

22 MADAME CLERK: Please raise your right hand, place
23 your left hand on the Bible.

24 (WHEREUPON: PATRICIA LITTLEJOHN,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

-131-

1 MADAME CLERK: Thank you. Have a seat in the stand.

2 DIRECT EXAMINATION

3 PATRICIA LITTLEJOHN BY MS. LIPINSKI:

4 Q. If you could, Ms. Littlejohn, state your name, and
5 spell your last name for the record.

6 A. Patricia Deanna Littlejohn, L-I-t-t-l-e-j-o-h-n.

7 Q. And if you could, as you just did, speak in the
8 direction of that microphone. You're a little soft-spoken.
9 I'm going to stand back here. That way if I can hear you,
10 I know these last jurors can hear you. Do you need a cup
11 of water or anything before we begin?

12 A. No, ma'am.

13 Q. You stated your name is Patricia Littlejohn. Do you go
14 by Pat?

15 A. Yes.

16 Q. And did you grow up here in York County or in this
17 general area?

18 A. Yes.

19 Q. And have you more or less lived here all of your life?

20 A. Yes.

21 Q. Does your family live here?

22 A. Yes.

23 Q. Your sister?

24 A. Yeah.

25 Q. I believe your mom lives what -- in Gastonia or

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

-132-

1 Gaffney?

2 A. Gastonia.

3 Q. Gastonia?

4 A. Yes.

5 Q. Do you work or go to school right now?

6 A. I go to school.

7 Q. And what type of school do you attend, Ms. Littlejohn?

8 A. I'm in adult education for my GED.

9 Q. And are you getting ready to take a test?

10 A. Yes.

11 Q. And when's the next test that you're going to take?

12 A. February the 9th.

13 Q. And do you go -- you said you go to school, kind of
14 Adult Ed classes to prepare you for the GED test?

15 A. Yes, yes.

16 Q. And where do you attend those classes at?

17 A. On Pinckney Street in York, South Carolina.

18 Q. And how long have you been enrolled in those classes?

19 A. Over six months now.

20 Q. And you do that hoping to enable you to get a better
21 job in the end?

22 A. Yes.

23 Q. So how often do you go to class?

24 A. Four days a week.

25 Q. And do you go in the morning, the afternoon, or all

1 day?

2 A. I go from 8:00 to 12:00.

3 Q. And you stated that you've grown up here or lived
4 here. Have you worked before?

5 A. Yes, I used to work at Whitesides Cleaners.

6 Q. And what are some of the other jobs you've ever had?

7 A. I did fast foods, hotels...

8 Q. Just here and there, odds and ends jobs?

9 A. Yes.

10 Q. And have you ever gone through periods where you
11 weren't working?

12 A. I haven't worked in about two years, over two years.

13 Q. And you don't have to list your specific address, but
14 do you now live here and city of York?

15 A. Yes.

16 Q. And of the entire York County, is that kind of the
17 part of York that you more or less have lived in most of
18 your life in comparison to Fort Mill or that type thing?

19 A. Mostly York.

20 Q. Mostly York?

21 A. Yes.

22 Q. Do you know the defendant Mr. Harry Anthony?

23 A. Yes.

24 Q. And have you known him more or less all your life?

25 A. Basically yes.

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

-134-

1 Q. Did he go to school with your sister or know her in
2 school?

3 A. He know my sisters, yes.

4 Q. And did you know him back in December -- back in the
5 year 2005?

6 A. Yes.

7 Q. Have you ever had a problem with crack cocaine?

8 A. Yes.

9 Q. And when I say "a problem," would you characterize it
10 as an addiction?

11 A. Yes.

12 Q. And did you have that addiction in 2005?

13 A. Yes.

14 Q. Did it start in 2005 or did it start before that?

15 A. Before 2005.

16 Q. And in 2005, did you ever come to obtain crack cocaine
17 from Mr. Harry Anthony?

18 A. Yes.

19 Q. And where did you know him to live at that time?

20 A. On Congress Street.

21 Q. And did you ever obtain crack cocaine from him at any
22 other location?

23 A. No.

24 Q. Did you ever go with him to any place out on Bookout
25 Road?

1 A. Yes.

2 Q. And where did he live? On Congress Street or at
3 Bookout Road?

4 A. Congress.

5 Q. And what was at Bookout Road?

6 A. Another house down in the country.

7 Q. And did it belong to Mr. Anthony or someone else?

8 A. Someone else.

9 Q. Did Mr. Anthony have a key or would this other person
10 allow you to come in?

11 A. He had a key.

12 Q. And for what purpose did you all go to Bookout Road?

13 A. To get high and, you know, do things, sexual things,
14 whatever.

15 Q. And you have met with law enforcement?

16 A. Yes.

17 Q. And in the December of 2005 going into the early part
18 of 2006, did you begin -- and without going into what, but
19 did you begin speaking with law enforcement about an
20 ongoing investigation?

21 A. Yes.

22 Q. And during that time, did you tell them about your
23 relationship with Harry Anthony?

24 A. Yes.

25 Q. And did you relate to them that he was one of your

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

-136-

1 sources for crack cocaine?

2 A. Yes.

3 Q. And would you pay Mr. Anthony for the crack cocaine
4 with money, or with sex, or with something else?

5 A. Sometimes.

6 Q. All three?

7 A. Sometimes money, sometimes not.

8 Q. Okay. Would you ever trade sex for crack cocaine with
9 Mr. Anthony?

10 A. Yes.

11 Q. And these sex acts, when you spoke with law
12 enforcement, did you ever relate to them that there was any
13 evidence of that going on? Specifically, were there any
14 videotapes of that?

15 A. Yes.

16 Q. And did you tell them where they might find those
17 videotapes?

18 A. I didn't. They --

19 Q. Did you tell -- did you have them?

20 A. No.

21 Q. So when you spoke of them, in whose possession would
22 they have been?

23 A. Mr. Anthony's.

24 Q. And did you ever have the occasion to meet with Eddie
25 Strait or other members of law enforcement and review those

1 tapes with them?

2 A. Yes.

3 Q. And did you also come to my office and review some of
4 those tapes with me?

5 A. Yes.

6 Q. Who is the female depicted on those videotapes that
7 you reviewed with me?

8 A. It's me.

9 Q. Who is the gentlemen on those videotapes that you
10 reviewed with me?

11 A. Mr. Anthony.

12 Q. And if you could, just to clarify for the record, do
13 you see Mr. Anthony here in the courtroom here today?

14 A. Yes.

15 Q. And is he seated at the Defense table?

16 A. Yes.

17 Q. And if you could, just describe his shirt.

18 A. He has a brown dress shirt on, button-up.

19 Q. Kind of a striped shirt?

20 A. Yes.

21 MS. LIPINSKI: Let the record reflect that she's
22 identified Mr. Anthony.

23 (WHEREUPON: THE WITNESS IDENTIFIES THE DEFENDANT.)

24 Q. On those tapes, in addition to the sex acts, you all
25 appear to be doing some illegal substance?

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI

-138-

1 A. Yes.

2 Q. What is that?

3 A. Cocaine, crack.

4 Q. Crack cocaine or regular cocaine?

5 A. Crack cocaine.

6 Q. And how do you know it's crack cocaine?

7 A. I was smoking it.

8 Q. I guess that was the answer I deserved.

9 Is that the drug you're always doing on those
10 videotapes with Mr. Anthony?

11 A. Yes.

12 Q. Is there any question in your mind that it was crack
13 cocaine at the time?

14 A. No.

15 Q. And the videotapes that you reviewed in my office, do
16 they predominantly take place at Bookout Road or at some
17 other location?

18 A. It's at Bookout.

19 Q. Is it possible that some of them occur at Congress
20 Street?

21 A. It's possible.

22 Q. And is it possible that they occur at another
23 location?

24 A. No.

25 Q. Did you and Mr. Anthony ever leave York County and

1 make any of these videotapes?

2 A. No.

3 Q. In these videotapes, do you ever bring the drugs to
4 the encounter? Are you ever the supplier of the drugs?

5 A. No.

6 Q. Would you ever bring your own paraphernalia, your own
7 pipe, or your own lighter, possibly?

8 A. No.

9 Q. From whom did you obtain that?

10 A. From Mr. Anthony.

11 Q. Did he ever provide you with copies of these
12 videotapes?

13 A. No.

14 Q. Did you ever request that?

15 A. No.

16 Q. But you were aware of their existence?

17 A. I did. I found out, yes.

18 Q. And, Ms. Littlejohn, in addition to crack cocaine, you
19 do have a criminal record?

20 A. Yes.

21 Q. And in 2003 were you convicted of obtaining goods by
22 false pretenses or receiving stolen goods?

23 A. Yes.

24 Q. In 2004, were you convicted of forgery?

25 A. No.

PATRICIA LITTLEJOHN: DIRECT BY MS. LIPINSKI
CROSS BY MR. BARROWCLOUGH

-140-

1 Q. Have you ever been convicted of petty larceny, say
2 around 2007?

3 A. Umm...

4 Q. If you recall.

5 A. I don't think -- I don't recall.

6 Q. Were you convicted most recently in 2011 of
7 shoplifting?

8 A. Yes, I was.

9 Q. And do you currently have a charge for forgery in our
10 office?

11 A. That's because I'm a witness in another case, yes.

12 Q. Did I ever have any discussion with you or offer any
13 hope of reward about the outcome of that forgery charge in
14 exchange for your testimony here today?

15 A. No.

16 MS. LIPINSKI: That's all we have for Ms. Littlejohn.

17 MR. BARROWCLOUGH: May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 PATRICIA LITTLEJOHN BY MR. BARROWCLOUGH:

21 Q. Ms. Littlejohn, you said that you had a drug problem.
22 Correct?

23 A. Yes.

24 Q. And that was mainly a crack problem?

25 A. Yes.

1 Q. But you used other drugs?

2 A. No.

3 Q. You never smoked marijuana?

4 A. I have in the past, yes.

5 Q. In 2005?

6 A. No.

7 Q. And did you ever smoke marijuana with Mr. Anthony?

8 A. No.

9 Q. Never ever?

10 A. No.

11 Q. And you drink?

12 A. Yes, I drink.

13 Q. You smoke cigarettes?

14 A. Yes.

15 Q. And in reviewing those videos, you smoke cigarettes in
16 those videos. Correct?

17 A. I smoke cigarettes, yes.

18 Q. But you're saying no marijuana?

19 A. No.

20 Q. And it was your testimony that you would get crack
21 from Mr. Anthony?

22 A. Yes.

23 Q. Sometimes for money, sometimes not?

24 A. Yes.

25 Q. And then when the Solicitor suggested it, you also

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

-142-

1 said sometimes for sex. Right?

2 A. Yes.

3 Q. And would it be true that you at some point in 2005
4 were working as a prostitute?

5 A. No.

6 Q. Never?

7 A. No.

8 Q. And so trading then sex for crack would not be being a
9 prostitute.

10 A. No, I wouldn't consider that as a prostitute because
11 I'm not a prostitute.

12 Q. And so -- I'm going to take your word for that.

13 MS. LIPINSKI: Your Honor, I'm going to object.

14 THE COURT: Yeah, that -- we don't need a comment on
15 the testimony. Ask her a question.

16 BY MR. BARROWCLOUGH:

17 Q. Your testimony was that -- again, I'm questioning from
18 the Solicitor, was that it was Harry Anthony who brought
19 the crack to you.

20 A. That's right.

21 Q. Not you?

22 A. That's correct.

23 Q. And that he never gave you money for crack or sex?

24 A. No.

25 Q. And on the videos, you possess crack. Right?

1 A. I'm smoking crack. I'm not possessing it.

2 Q. At some point in time on the videos, you have it in
3 your possession. True?

4 A. Yes. When he give it to me, I guess so.

5 Q. And it's also true that on the videos, you give it to
6 him. Right?

7 A. No, he gives it to me.

8 Q. You never pass it to him?

9 A. No.

10 Q. And you were never charged with any type of crack
11 charge in relation to what's on those videos?

12 A. No.

13 Q. And you were never charged with any type of
14 prostitution charge with what's on those videos?

15 A. No.

16 Q. But you're here to say today that Mr. Anthony had
17 crack?

18 A. That's correct.

19 Q. And you said that you were convicted of receiving
20 stolen goods ---

21 A. Yes.

22 Q. --- in 2003.

23 A. Yes.

24 Q. Okay. You were convicted of obtaining goods by false
25 pretenses in 2003?

PATRICIA LITTLEJOHN: CROSS BY MR. BARROWCLOUGH

-144-

1 A. "False pretenses"? What do you mean?

2 Q. The charge of obtaining goods by false pretenses.

3 A. I was -- yes, I was charged for that, yes, receiving
4 stolen goods.

5 Q. And convicted of that?

6 A. Receiving stolen goods, yes.

7 Q. And obtaining goods by false pretenses?

8 A. Whatever.

9 Q. And in -- on March 18th of 2004, you were convicted of
10 forgery?

11 A. No, that's not correct.

12 Q. So you dispute that the clerk's records indicated that
13 you were convicted?

14 A. No, I have not been convicted of no forgery. That's
15 not true.

16 Q. And July 19th of 2007, you were convicted of petty
17 larceny?

18 A. I don't recall that, no.

19 Q. You don't recall, or are you saying you did not?

20 A. No, I don't recall that.

21 Q. And September of 2011, you were convicted of
22 shoplifting?

23 A. That's correct.

24 Q. And currently you have a forgery charge pending?

25 A. Pending, as a witness.

1 Q. Pending, as a defendant?

2 A. No.

3 Q. Right now you have a charge of forgery against you.

4 A. I know.

5 Q. Being prosecuted ---

6 A. But that ain't got ---

7 Q. --- by this prosecutor's office?

8 A. --- nothing to do with this case.

9 Q. Excuse me?

10 A. It ain't got nothing to do with this case.

11 Q. Well I'm asking you, do you have a charge of forgery
12 pending against you?

13 A. I have a charge pending, yes.

14 Q. In which you're the defendant?

15 A. Excuse me?

16 Q. I said, in which you are the defendant.

17 A. I assume, yes.

18 Q. Being prosecuted by this Solicitor's Office.

19 A. I don't know who's prosecuting me. All's I know is I
20 got to be here.

21 Q. And it's also true, is it not, Ms. Littlejohn, that in
22 May of 2006, you were fired from McDonalds for stealing?

23 A. No.

24 Q. Food.

25 A. Excuse me?

PATRICIA LITTLEJOHN: REDIRECT BY MS. LIPINSKI

-146-

1 Q. Stealing food.

2 A. No.

3 MR. BARROWCLOUGH: One moment, Your Honor.

4 (PAUSE.)

5 MR. BARROWCLOUGH: Thank you, Ms. Littlejohn.

6 THE COURT: Redirect?

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

8 (PAUSE.)

9 REDIRECT EXAMINATION

10 PATRICIA LITTLEJOHN BY MS. LIPINSKI:

11 Q. Ms. Littlejohn, Mr. Barrowclough asked you if you were
12 a prostitute, and you said that you were not.

13 A. That's correct.

14 Q. What is your definition of a prostitute?

15 A. I think a prostitute is somebody who is out there on
16 the streets selling their body, which I don't do, and I
17 never will.

18 Q. And so your definition, just so we're clear, the
19 reason you don't consider yourself a prostitute is because
20 you didn't engage in that conduct? The sex that you traded
21 for crack, you think is a different definition?

22 A. I wouldn't call it whatever you want to call it. But
23 no, I'm not a prostitute, no matter what he say.

24 Q. And Mr. Barrowclough asked you about the forgery
25 charge that's pending. You understand you were arrested

1 for that?

2 A. Yeah, they just took me uptown and booked me because
3 I'm a witness to that case. It's -- I'm not going to get
4 into all of that.

5 Q. And I don't want you to get into all of that.

6 A. Yeah.

7 Q. But did you give a statement in that case as well?

8 A. Yes, I did.

9 MS. LIPINSKI: That's all we have, Your Honor.

10 THE COURT: All right.

11 Recross?

12 MR. BARROWCLOUGH: Nothing, Your Honor.

13 THE COURT: You can step down and be excused. We
14 appreciate your time.

15 THE WITNESS: Thank you.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 MS. LIPINSKI: Your Honor, I apologize, I drank too
19 much at lunch, but can we have a short recess before we
20 call our next witness? I do apologize.

21 THE COURT: That's fine. We'll take a short break.

22 (JURY EXITS COURTROOM AT 02:43 PM.)

23 THE COURT: We'll take about a ten minute break.

24 (COURT IN RECESS AT 02:43 PM.)

25 (COURT BACK IN SESSION AT 03:00 PM.)

MARVIN BROWN: DIRECT BY MR. EPTING

-148-

1 THE COURT: Thank you, take your seats.

2 Is the State ready?

3 MS. LIPINSKI: Yes, Your Honor.

4 THE COURT: Is the Defense ready?

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

6 THE COURT: Bring in the jury.

7 (JURY REENTERS COURTROOM AT 03:01 PM.)

8 THE COURT: All right. You may proceed.

9 MR. EPTING: Thank you, Your Honor. May it please the
10 Court.

11 The State calls Marvin Brown to the stand.

12 MADAME CLERK: Raise your right hand, place your left
13 hand on the Bible.

14 (WHEREUPON: MARVIN BROWN, BEING
15 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 DIRECT EXAMINATION

17 MARVIN BROWN BY MR. EPTING:

18 Q. To begin with, could you please state your name for
19 the record.

20 A. My name is Marvin Brown.

21 Q. Commander Brown, how are you employed?

22 A. I am employed by the Solicitor's Office, paid by York
23 County. But I am assigned to and supervisor of the York
24 County Multi-jurisdictional Drug Enforcement Unit. That's
25 the county-wide drug task force.

MARVIN BROWN: DIRECT BY MR. EPTING

-149-

1 Q. Could you explain briefly to the jury what the Multi-
2 jurisdictional Drug Enforcement Unit does?

3 A. Yes, I can. Thirteen years ago, we came together, and
4 every drug unit in this county, which is 13 -- I'm sorry,
5 it's eight police agencies. The officers from these eight
6 police agencies came together, and we all work under one
7 unit. I'm the supervisor of Fort Mill, Rock Hill, York.
8 We all work together. And there was a time when the -- the
9 different drug units were separate, but now we're all
10 together and have been together for 13 years. So we work
11 the whole county together. And actually I work for the
12 Solicitor's Office, but I'm a county employee. I'm a
13 county police officer.

14 Q. How long total have you been in law enforcement?

15 A. I started law enforcement -- in two weeks will be 35
16 years. I started in mid-70's.

17 Q. How many of those 35 years were dedicated to narcotics
18 investigation?

19 A. Pretty much all of it. When I was hired, I pretty
20 much started working drugs and guns from the very
21 beginning, but my first search warrant was like in '77,
22 1977.

23 Q. Outside of the on the job everyday training that you
24 get just by being a police officer, have you had any formal
25 training in the field of narcotics?

MARVIN BROWN: DIRECT BY MR. EPTING

-150-

1 A. We -- yes, I have. I've been to Narcotics Level I
2 through the State training, Narcotics Level II. I've been
3 to the Federal Training Commander School. And actually
4 sometimes I go down and help teach at the Commander
5 School's annual training that they do. And sometimes I
6 teach 3-hour blocks: one Search and Seizure, one Asset
7 Forfeiture, and one Basic Narcotics. Just like 1-hour
8 blocks for rookies and young officers, that type thing.

9 Q. And during the -- and the material, that training, do
10 you -- does that training include training concerning
11 identification of narcotics?

12 A. It does.

13 Q. Identification of drug paraphernalia?

14 A. Yes.

15 Q. Identifying how various drugs are packaged?

16 A. Yes.

17 Q. Identifying the street value of various drugs?

18 A. Yes, it's basic narcotics. It's all about street
19 drugs and sold, packaged, what it looks like, what it does
20 to you, the effects it has on the body.

21 Q. What about transaction training?

22 A. Yes, that's part of it. Asset forfeiture, search and
23 seizure.

24 Q. And you briefly mentioned your teaching experience.
25 Could you expound on that for the jury?

MARVIN BROWN: DIRECT BY MR. EPTING

-151-

1 A. I don't do -- I do some instruction, not a whole lot.
2 I do 3-hour blocks for the rookies and young police
3 officers. Sometimes I go down to the Commander school if
4 they want me to as the narcotics supervisor from around the
5 state. We go down to Columbia, and I do a block about drug
6 enforcement and different -- how to put a drug unit
7 together, things like that. I did do a little minor
8 publication before it went to book. It's something I did.
9 It was nationwide about drug units and drugs in general.

10 Q. Now I know 30 years is a long time, you probably made
11 a lot of arrests. Approximately how many drug arrests, if
12 you had to estimate, have you made in the course of your
13 career?

14 A. I'm not sure. Our unit makes about 100 to 150 arrests
15 a month. So, I mean, at least thousands a year. So it's a
16 lot of drug cases.

17 Q. And could you tell the jury what experience you have
18 investigating? Rather than investigating drugs in general,
19 investigating crack cocaine in particular.

20 A. Crack came to York County in summer of 1990. Actually
21 I made the first crack cases, three guys out of New York.
22 And we've been working crack since. But -- and crack's
23 been one the drugs we work most. Crack, cocaine, and
24 marijuana is the three that's just always been around.
25 Heroin comes and goes, LSD, that type thing. But crack

MARVIN BROWN: DIRECT BY MR. EPTING

-152-

1 came here in 1990, and we've been working it ever since.

2 Q. And in the course of your investigations, have you
3 come across the materials you use to use crack cocaine,
4 smoke it or however it's used?

5 A. Pretty much every day, yeah. Pretty much every day.

6 Q. And in doing your narcotics investigations, have you
7 had interviews with drug dealers as well as drug users?

8 A. We try to interview everyone we arrest, believe it or
9 not.

10 Q. If you can, could you put a rough number on that for
11 the jury?

12 A. The interviews? Oh man, hundreds, thousands, I guess,
13 hundreds. We write them up its hundreds of interviews.

14 Q. And during the course of those interviews, do you
15 learn about recreational drug use and street-level drug
16 buying?

17 A. Yes.

18 MR. EPTING: Your Honor, at this time I'd offer Mr.
19 Brown as an expert at street-level drug-dealing, narcotics
20 transactions and the identification of illegal drugs.

21 THE COURT: Any voir dire?

22 MR. DEST: No, Your Honor.

23 THE COURT: I find he is qualified.

24 MR. EPTING: Thank you.

25 Q. Commander Brown would you -- for those members of the

1 jury that have -- that know nothing about crack cocaine,
2 could you give them a brief overview of the basics: how
3 it's used, how it's packaged, how it's sold?

4 A. Crack cocaine is a rock form of powder cocaine. Just
5 like you have powder meth amphetamine, you have powder ice,
6 which is a hard form. You have powder cocaine. You have
7 crack. What it is, you have cocaine, you cook the
8 impurities out. And somebody come up with this back in the
9 '80s, and you come up with this little rock. It look like
10 peanut brittle. It can be that color. Sometimes a little
11 bit, a little bit a shade more towards white. But there's
12 a little -- it actually can be large rocks, but they chop
13 -- usually chop it down to little rocks because you smoke
14 it, \$20 dollar rocks at a time, or a tenth of a gram, or .2
15 tenths of a gram. And crack is nothing more than a
16 smokeable form of cocaine. Cocaine is normally injected or
17 snorted; crack is -- crack is smoked. It's -- just flat
18 out -- the only thing you do with crack is smoke it.

19 Q. I know I think in terms, beer is something that most
20 of us know as a 6-pack. That's what I consider an
21 intoxicating dose.

22 A. Uh-huh.

23 Q. How much is an intoxicating dose of crack cocaine?

24 A. A tenth of a gram is an intoxicating dose. It's a
25 little small rock. For a gram -- a gram of crack cocaine

MARVIN BROWN: DIRECT BY MR. EPTING

-154-

1 is about a hundred dollars street value. And you can cut
2 10 rocks out of it, which is a tenth of a gram would be an
3 intoxicating dose. It would be the one that you put in the
4 crack pipe and smoke, and it last a high in total, lasts
5 about 10 or 15 minutes. And then you're looking, you know,
6 you're looking for the next high. And crack can be
7 packaged; it depends on the weight of the crack. The \$20
8 dollar rock is actually hard enough where you don't have to
9 even put it in plastic. A lot of times they just -- they
10 just sell it straight out, out of the hand or off the
11 counter. Or they can put several in the bag and just pick
12 them out. When they first started, they put them in vials.
13 And it was like you put \$20 dollar rocks in little vials.
14 The bigger crack goes in plastic bags. It's just like
15 cocaine or methamphetamine. But the crack is actually hard
16 enough to the point where you can walk around with a piece
17 of it in your mouth, and it won't dissolve. And you can
18 take it out of your mouth and sell it to people, believe it
19 or not. So if the police come up, you can swallow it. But
20 so it's packaged many different ways. You weigh it up to
21 sell it. If you like large amounts, they have scales with
22 it. If it's smaller amounts, such as the \$20 dollar rocks,
23 you can actually eyeball it. If you buy two or three
24 hundred dollars worth of crack cocaine, you can take a
25 razor blade, and you can cut off the little small pieces

1 that you put in the pipe to smoke it. And that's -- and
2 those pieces -- you only have to weigh those because you
3 can eyeball them. And the crack pipes themselves, it's
4 just a little round glass tube you get at convenient stores
5 believe it or not, most of them have a rose inside, and
6 everybody knows that's the only thing it's used for. You
7 buy the crack pipe, and right beside the crack pipe is some
8 steel wool. They're side-by-side in the convenience
9 stores. It's like -- and they buy both. It's about \$1.50
10 for the crack pipe and \$1.50 for the steel wool. Put a
11 little bit of steel wool into the crack pipe. Put that \$20
12 dollar rock in there or that tenth of a gram, kind of hold
13 it up, and you put fire, a lighter, straight to that rock,
14 and suck the smoke back down in that pipe. And even on
15 undercover deals when we send people in to buy crack, we've
16 seen -- we've actually seen people smoking crack on video.
17 Q. Now you mentioned a \$20 dollar rock. Obviously people
18 are paying cash for crack sometimes.

19 A. Yeah, and I keep calling it -- it's a tenth of a gram.
20 I call it a \$20 dollar rock because crack starts at about
21 \$20 dollars, a \$20 dollar rock, a tenth of a gram. And
22 they pay -- people pay cash for them.

23 Q. In your experience as a police officer in your
24 numerous investigations, have you come across situations
25 where people used other means of exchange than cash?

MARVIN BROWN: DIRECT BY MR. EPTING

-156-

1 A. Oh yeah, it's common for people to leave a car with
2 somebody for the night. So give me five rocks, and you can
3 have my car for five hours. Or lawnmowers, and -- or it's
4 very common for motel rooms and some housing rooms too
5 exchange sex for crack.

6 Q. Now in your experience investigating drug dealers and
7 interviewing them, have you come across drug dealers who
8 smoke crack?

9 A. Most crack dealers smoke crack, believe it or -- most
10 crack dealers do smoke crack, especially small-level.
11 Small-level crack dealers smoke crack, yes.

12 Q. Now have you had an opportunity -

13 Your Honor, may I approach the witness?

14 I'm going to hand you what's been marked State's
15 Exhibit's One through Six, and I'll let you look at them
16 real quick. Take this clip off of it.

17 A. Six CD's?

18 Q. I'm sorry?

19 A. Six CD's?

20 Q. That is correct. That's State's Exhibits One through
21 Six. Have you had an opportunity to review those?

22 A. I have.

23 Q. Do you have an opinion about those -

24 THE COURT: Well are they CD's or DVD's?

25 MR. EPTING: They're CD's, Your Honor.

MARVIN BROWN: DIRECT BY MR. EPTING

-157-

1 THE WITNESS: I looked at them. Their actually CD's,
2 Your Honor.

3 THE COURT: Thank you.

4 BY MR. EPTING:

5 Q. Do you have an opinion what, if any, drugs were used
6 on those CD's?

7 A. Yeah, all six of these are -- the persons in these
8 videos are smoking crack cocaine.

9 Q. Before we go any further, I'd like to show you one
10 other thing.

11 MR. EPTING: I beg the Court's indulgence.

12 (PAUSE.)

13 Q. Now I am handing you an item that is taken out of
14 State's Exhibit Nine. If you would, look over that.

15 MR. DEST: Counsel, may I see that please?

16 MR. EPTING: Certainly.

17 (DEFENSE COUNSEL REVIEWING EXHIBIT.)

18 Q. If you would, please take a look at that?

19 (WITNESS REVIEWING EXHIBIT.)

20 A. Okay.

21 Q. Now earlier you testified that people would buy glass
22 tubes with flowers in them in convenient stores for \$1.99.
23 In your expert opinion, is that the type of thing that they
24 would buy and convert into a crack pipe?

25 A. Yes, I mean, they used to be 99 cents, then they went

MARVIN BROWN: DIRECT BY MR. EPTING

-158-

1 to about \$1.50. But yes, this is what it is. It's -- It's
2 a -- It's a piece of glass with a hole in each end. And
3 the only use I've ever seen it for years is smoking crack
4 cocaine. I mean, that's what it's made for.

5 Q. Thank you.

6 I think we've established that you have reviewed
7 State's Exhibit's One through Five, and you've given your
8 opinion about what drug was used.

9 Do you think it would be beneficial to the jury to
10 play one of those tapes, and to explain to them step-by-
11 step how a crack pipe fits this?

12 A. Well it would be easier. I mean, my opinion -- that's
13 the only thing you would do -- the only type of drug you
14 smoke like that is crack cocaine, not even meth. Ice, you
15 don't smoke it like that.

16 MR. EPTING: May I approach?

17 THE COURT: Yes, sir.

18 MR. EPTING: Your Honor, permission to publish State's
19 Exhibits One.

20 THE COURT: You'll have to step down or sit where you
21 are.

22 MR. EPTING: If he can see from there -- once we play
23 it if he has difficulty seeing, Your Honor, that I would
24 ask that he be allowed to step down.

25 If you could get the lights, please, Madame Clerk?

MARVIN BROWN: DIRECT BY MR. EPTING

-159-

1 (COURT ROOM LIGHTS DIMMED.)

2 MR. EPTING: We'll fast-forward as much as possible.

3 THE COURT: Tell us which one that is.

4 MR. EPTING: Your Honor, that -- on the screen right
5 now is State's Exhibit One.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PUBLISHED TO
7 THE JURY AT 03:15 PM.)

8 Q. Do you see -- Commander Brown, do you see the
9 condition that the glass pipe is --

10 A. I can. I saw him flip it. It's a little bit hard to
11 see for people who have maybe never seen it, but I've seen
12 it hundreds of times. So he flipped it over. It's the
13 same style tube, glass tube that -- years ago, they used
14 Coke cans and stuff, but when somebody started producing --
15 mass producing these glass tubes for the last five years or
16 so, they've been using these glass tubes. But that's the
17 same thing. You flip it over. You put some steel wool in
18 the end, just a little ways. You put the crack rock in
19 there on the end, just like he did. And you leave a little
20 bit of crack rock protruding, and you put a hot flame
21 straight to the rock because you're burning that rock up.
22 And you suck the smoke or the fumes back into -- and you
23 have to hold it up when you first start burning it because
24 it will fall out. But once it starts burning, you can come
25 down a little bit. You'll see that, that's how they move

MARVIN BROWN: DIRECT BY MR. EPTING

-160-

1 it. But -- but it gets very hot. So they can't do but so
2 much of it, and then they have to set it down, or hold it
3 to one side and let it cool down. And eventually that end
4 will break off, and you'll end up having to buy another
5 glass pipe or crack -- we call them "crack pipes." That's
6 what they are.

7 He's putting the lighter, the flame to the end of the
8 pipe, which is actually where the crack rock is at, a
9 little bit steel wool right up behind it, and she's smoking
10 -- you can see the smoke coming out of her mouth that she
11 pulled back through the glass pipe.

12 What I failed to mention earlier is when you buy the
13 crack pipe and the steel wool, there's rows and rows of
14 lighters with it too so they buy the lighters right there
15 too. So you come in and you get all three at the same
16 time.

17 The only drug that I know of smoked like this or used
18 like this is crack cocaine. Meth has ice, but it's in a
19 round bulb because it turns liquid when you heat it. So
20 you have to have like a bowl to catch it. You can't smoke
21 meth like this.

22 Q. Commander, I would draw your attention to the State's
23 Exhibit One playing. Let us know if anything significant
24 is occurring.

25 A. He's got the tube in his hand. He's put the flame

MARVIN BROWN: DIRECT BY MR. EPTING

-161-

1 straight to the crack rock. I mean, he's smoking crack is
2 what he's doing at those point. At some point, it's going
3 to be -- it's going to get too hot for him to deal with it,
4 but right now he's smoking crack cocaine.

5 And crack cocaine smoke too is a little bit whiter.
6 You can't hardly tell in this. It's normally whiter than
7 cigarette smoke for some reason. It's -- it's a different
8 smell too. But...

9 It looks like he's got the paper towel on the stem.
10 It's probably due to the fact it's real hot. And he's
11 letting it cool down or hold it to the side. They smoke a
12 rock or two, and they have to let it cool down before they
13 can smoke some more using a different crack stem. They --
14 And it's a crack pipe, crack stem. That's what most people
15 call it. But that's why he's got that tissue wrapped
16 around it because it's too hot just to hold it.

17 Q. And I would draw your attention to how he's holding it
18 right now. Is there anything peculiar about that? And you
19 can come off the stand if you need to see that.

20 A. I mean, he's holding it straight up. So the crack --
21 any crack that might be in here won't fall out.

22 Oh, he's got a metal rod up through the crack pipe. I
23 see it now. And that's also because it's hot.

24 Q. Okay.

25 A. And he's just letting it cool down because he's gonna

MARVIN BROWN: DIRECT BY MR. EPTING
CROSS BY MR. DEST

-162-

1 smoke crack. Sometimes when the Brillo pad or the steel
2 wool goes down a little bit too far, they can take those
3 rods and push it back up in there. And it needs those rods
4 because as you smoke a rock or two, you have to push it out
5 and put new Brillo pads there because the ashes clogs it
6 up. The Brillo pad -- I call it a Brillo pad, it's steel
7 wool. It's nothing more than a strainer. And the steel
8 wool is not a Brillo pad. It's a stainer. So it clogs up,
9 so they have to clean it out and start over again.

10 (WITNESS RETURNED TO WITNESS STAND.)

11 MR. EPTING: I have no further questions for this
12 witness, Your Honor.

13 I'll turn it over to the Defense.

14 CROSS EXAMINATION

15 MARVIN BROWN BY MR. DEST:

16 Q. Officer Brown, where is that stem pipe?

17 A. I think they put it back in that case, Mr. Dest. I'm
18 not sure. Right in that yellow bag, I believe.

19 MS. LIPINSKI: I believe it might be in that yellow
20 bag, Mr. Dest. It may have fallen out when he put it back
21 in there.

22 MR. DEST: If you can help me find it, Commander.

23 THE WITNESS: I don't see it.

24 MR. DEST: I don't see it either.

25 THE COURT: Mr. Epting, you think you can find it?

MARVIN BROWN: CROSS BY MR. DEST

-163-

1 MR. EPTING: I'll give it a crack.

2 THE WITNESS: No, it's not in the bag.

3 MADAME COURT REPORTER: Don't look at me.

4 Look in your coat pocket.

5 THE WITNESS: I thought I handed it back to him.

6 MADAME COURT REPORTER: You may have. I did not see
7 you do anything with it. I don't have it.

8 THE WITNESS: I don't think so. I put it right in
9 that bag.

10 MR. EPTING: There it is.

11 MR. DEST: Where is it? Thank you.

12 Q. Detective Brown, this pipe, this stem, if you could
13 look at it. It is not burned, is it, sir?

14 A. No, I would say this one's never been used.

15 Q. And it's pretty much in pristine condition?

16 A. Yes.

17 Q. And if you were -- or somebody is a crack addict, it's
18 your testimony they would use something like this as a
19 crack pipe?

20 A. Yes.

21 Q. And if --

22 A. They could. But yes.

23 Q. And certainly an addict, a drug addict who is addicted
24 to crack cocaine, could have this type of pipe on them?

25 A. Yes.

MARVIN BROWN: CROSS BY MR. DEST

-164-

1 Q. They could have it in their pocket. Correct?

2 A. Uh-huh.

3 THE COURT: You've got to give us a "Yes or No"

4 A. Yes, sir.

5 Sorry, judge.

6 Q. And if you are a crack addict, certainly there are
7 times in the thousands of arrests that you made, where
8 someone has a crack problem, they may have a crack pipe on
9 them. Correct?

10 A. That's correct.

11 Q. And this particular crack pipe was found with some
12 personal items belonging to Patricia Littlejohn.

13 MS. LIPINSKI: Your Honor, I object.

14 Q. Is that correct?

15 MR. EPTING: Your Honor, I object. That's not the
16 testimony we've heard so far.

17 THE COURT: Well anyway, you need to rephrase your
18 question.

19 MR. DEST: Yes, sir.

20 Q. Are you aware that, that pipe was found with other
21 personal items of Patricia Littlejohn?

22 A. No, sir, Mr. Dest. I don't have a clue about any of
23 this. I wasn't involved in that case. I don't know
24 anybody.

25 Q. I understand.

MARVIN BROWN: CROSS BY MR. DEST

-165-

1 A. So...

2 Q. You've been the head of the Multi-jurisdictional Drug
3 Unit for quite some time, sir?

4 A. Yes, I was lieutenant over the drug unit at the Rock
5 Hill Police Department, and we formed the drug unit 13
6 years ago. So I've been over -- supervisor of the drug
7 unit -- the current drug unit for 13 years.

8 Q. And you testified that you work in conjunction with
9 other units or other law enforcement agencies in the
10 county. Correct?

11 A. Yeah, state and federal.

12 Q. And you did not generate a investigative report on the
13 four charges against Harry Anthony. Did you?

14 A. I did not.

15 Q. And no one in your Multi-jurisdictional unit generated
16 an investigative report on the four charges against Mr.
17 Anthony?

18 A. I don't know that. I have four supervisors. I'm the
19 head supervisor. There's three under me. It could have
20 came through. I can't see all the reports.

21 Q. But you're not aware of that.

22 A. I'm not aware of any.

23 Q. And you did not seize any crack cocaine from my client
24 Harry Anthony. Did you?

25 A. I did not.

MARVIN BROWN: CROSS BY MR. DEST
REDIRECT BY MR. EPTING

-166-

1 Q. And to your knowledge, no one from the Multi-
2 jurisdictional Task Force Drug Unit seized any drugs from
3 my client Harry Anthony. Correct?

4 A. Not to -- not to my knowledge.

5 Q. And to your knowledge, no one from your Multi-
6 jurisdictional Task Force Drug Unit seized any drugs or
7 drug baggies or scales from the residence of my client
8 Harry Anthony. Correct?

9 A. Not that I know of. I believe that to be correct.

10 Q. Thank you, Officer Brown.

11 MS. LIPINSKI: The Court's indulgence one moment.

12 REDIRECT EXAMINATION

13 MARVIN BROWN BY MR. EPTING:

14 Q. Now you mentioned that you were Commander, and you
15 were over the Drug Enforcement Unit.

16 A. Yes, sir.

17 Q. But isn't it fair to say that other drug arrests are
18 made in York County without your direct involvement?

19 A. Yes, Rock Hill City and York County make a tremendous
20 amount of arrests, the patrol guys. And we assist them
21 sometimes, and sometimes we don't. But we account for a
22 large amount of the drug arrests, but over 24 hours a day,
23 the deputies and the Rock Hill City Police make a lot of
24 drug cases.

25 MS. LIPINSKI: No further questions.

1 MR. DEST: No further questions, Your Honor.

2 THE COURT: You can step down and be excused.

3 THE WITNESS: Thank you, thank you.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: Call your next witness.

6 MS. LIPINSKI: The Court's indulgence.

7 The State rests.

8 (STATE RESTS AT 03:28 PM.)

9 THE COURT: Members of the jury panel, the State is
10 resting. That means they presented -- the State has
11 presented its evidence. At this point, we have to take up
12 some legal matters outside of your presence. So I'm going
13 to let you go to the jury room and we'll send for you as
14 promptly as we can.

15 (JURY EXITS COURTROOM AT 03:29 PM.)

16 THE COURT: Anything from the State?

17 MS. LIPINSKI: Nothing from the State at this time.

18 THE COURT: Mr. Barrowclough?

19 MR. BARROWCLOUGH: Thank you, Your Honor. May it
20 please the Court.

21 Your Honor, at this time on behalf of Mr. Anthony, I
22 would move for directed verdict on the basis that the
23 evidence seen in the light most favorable to the State is
24 not sufficient in this case to go to the jury. And I would
25 incorporate my prior motion which I think is my number one

-168-

1 motion, which was for the mistrial on the commentary about
2 the branding.

3 THE COURT: Let me hear from the State.

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

5 The State feels that there is sufficient
6 circumstantial evidence. You have the testimony of two law
7 enforcement officers that the transactions depicted on the
8 videotapes involve crack cocaine. That coupled with the
9 testimony of Ms. Littlejohn that what they are smoking on
10 there is crack cocaine. Further I believe that the videos
11 state for themselves -- speak for themselves that Ms.
12 Littlejohn was trading sexual performances, sexual acts,
13 and other means in order to obtain crack cocaine from Mr.
14 Anthony.

15 Her testimony that it occurred in 2005 coupled with
16 the date stamps on the tapes and when these items were
17 seized establish -- Mr. Hager - or Lieutenant Hager
18 established that these crimes occurred in York County. Ms.
19 Littlejohn stated that's where they would go for these
20 videos to be made, that they never left York County. And
21 for that, the State feels the light taken in -- the
22 evidence taken in the light most favorable to the State is
23 sufficient to present the issue to the jury that he
24 distributed it, that he transferred ownership of the crack
25 cocaine from him to Ms. Littlejohn as depicted on the

1 videos.

2 THE COURT: I deny the motion for a directed verdict.
3 I find that there is direct evidence and substantial
4 circumstantial evidence from which a jury could find the
5 State's allegations are in fact proven by that evidence.
6 So I in looking at the evidence in the light most favorable
7 to the non-moving party, of course that's the State, I deny
8 the motion for a directed verdict.

9 MR. BARROWCLOUGH: Yes, sir.

10 THE COURT: Mr. Anthony, can you hear me? Can you
11 hear me? Can you hear me?

12 MR. ANTHONY: No, I can't hear you.

13 THE COURT: You can't hear me now?

14 MR. ANTHONY: I can hear you now.

15 THE COURT: All right. We've reached a point in the
16 trial where you have a right to present a defense if you
17 wish, but you don't have to. You are presumed innocent of
18 this charge or these court charges, and the State has to
19 prove your guilt beyond a reasonable doubt before you could
20 be convicted. So you can present evidence if you wish, but
21 you don't have to.

22 You also -- just a minute, after I finish. You also
23 have a right to testify, and you also have a right to
24 remain silent. If you testify, the State can ask you about

25 --

-170-

1 What was the offenses again? Any impeachable
2 offenses?

3 MS. LIPINSKI: I believe that you ruled the
4 distribution of crack cocaine was beyond the 10-year
5 period.

6 THE COURT: If you testify, you'll be placed under
7 oath, and you'll have to answer questions posed to you by,
8 of course, your attorney and by the State. You can call
9 witnesses if you wish. You also have a right to remain
10 silent. That is, you do not have to testify, and you do
11 not have to make any statement. You don't have to present
12 a defense. You are presumed innocent of the charge against
13 you. I will tell the jury that again if you exercise your
14 right to remain silent. And I will tell them they cannot
15 use it against you in any fashion whatsoever your exercise
16 of your Constitutional right to remain silent. I will tell
17 them they cannot discuss it, nor can they factor that into
18 their own deliberations and their own mind.

19 Now this right to testify or not is yours; it's not
20 your attorney's. And of course, you can get advice from
21 them. And it's not your friends or family, but you can get
22 advice from them too.

23 Do you have any questions about any of that?

24 MR. ANTHONY: No, sir.

25 THE COURT: Have you decided or will you testify?

1 MR. ANTHONY: I'd like to confer --

2 THE COURT: Okay, we'll take a break, and let you
3 confer with your attorneys.

4 MR. BARROWCLOUGH: Thank you, Your Honor.

5 THE COURT: All right. If somebody will just send
6 word, and we'll be ready to have him back in.

7 MR. DEST: Yes, sir.

8 (COURT IN RECESS AT 03:33 PM.)

9 (COURT BACK IN SESSION AT 03:41 PM.)

10 THE COURT: Thank you, take your seats.

11 Mr. Barrowclough?

12 MR. BARROWCLOUGH: Yes, Your Honor, we've conferred
13 with Mr. Anthony, and he does not wish to testify.

14 THE COURT: Is that correct, Mr. Anthony?

15 MR. ANTHONY: Yes.

16 THE COURT: All right. Well, we'll bring in the jury
17 and dismiss them for the day and then do arguments and
18 charge starting at Ten in the morning.

19 MS. LIPINSKI: Do you have any evidence or anything?

20 MR. BARROWCLOUGH: What?

21 MS. LIPINSKI: Are you putting up any evidence or any
22 or...

23 MR. BARROWCLOUGH: No, no, no evidence.

24 MS. LIPINSKI: I just wanted to make sure.

25 THE COURT: Okay. All right, let's bring in the jury.

-172-

1 MS. LIPINSKI: I'm sorry, I saw some documents I
2 thought you may be introducing.

3 (JURY REENTERS COURTROOM AT 03:43 PM.)

4 THE COURT: Mr. Barrowclough.

5 MR. BARROWCLOUGH: Your Honor, the Defense would rest.

6 THE COURT: All right.

7 Members of the jury panel, the State, as I told you
8 before you went out has rested. And the Defense is resting
9 also, which means the -- all of the evidence, exhibits, and
10 testimony have been presented.

11 The next part of this case would be the arguments of
12 the attorneys and my charge on the law which you are to
13 apply to the facts. That will take us well into the
14 evening so we're not going to do that this evening.
15 We'll start and do that at 10:00 in the morning. So I'm
16 going to let you go in just a moment and have you come back
17 at 10:00 in the morning.

18 But keep in mind all of those admonitions about not
19 discussing the case because you still haven't heard the
20 arguments, nor my charge. You're still not in the position
21 to make up your mind because you don't know what law to
22 apply, and you haven't heard the arguments of the
23 attorneys. And I'll remind you not to do any research
24 through any electronic or other means and not to let
25 yourself be exposed to any news coverage. We pretty

1 standardly have been instructed by the Chief Justice not to
2 send juries out after 4:00 because it usually extends up
3 until the evening. So that's why we're going to stop even
4 though it's a little before 4:00.

5 We'll start back at 10:00 in the morning. Have a
6 pleasant evening, and we'll see you at 10:00 in the
7 morning.

8 (JURY EXITS COURTROOM AT 03:44 PM.)

9 THE COURT: Anything from the State before we stop?

10 MS. LIPINSKI: Nothing from the State.

11 THE COURT: Defense?

12 MR. BARROWCLOUGH: Your Honor, just for purposes of
13 the record, I'll renew my motion and renew my --
14 incorporate my previous --

15 THE COURT: Motions are denied as earlier denied. Why
16 don't we -- we just took a break. So why don't we in just
17 a couple of minutes come on back, and we'll talk about the
18 charges as far as -- I don't see any lessor included but
19 I'll certainly be willing to listen to whatever anybody has
20 to say, but come on back in just a minute. We'll have our
21 charge conference, and at the same time, the Solicitor's
22 Office will be drumming up some business for the rest of
23 the afternoon. I see -- They're trying to sink down where
24 I won't see them now, but I do see at least -- I see a
25 couple of solicitors who may give us some help.

CLOSING: BY MS. LIPINSKI

-174-

1 MR. BARROWCLOUGH: Yes, sir.

2 MS. LIPINSKI: Yes, sir, Your Honor.

3 (COURT IN RECESS AT 03:45 PM.)

4 (COURT BACK IN SESSION WEDNESDAY, JANUARY 11, 2012 AT
5 10:13 AM.)

6 (JURY ENTERS COURTROOM AT 10:14 AM.)

7 THE COURT: Good morning.

8 THE JURY: Good morning.

9 THE COURT: Now we'll hear the closing arguments. The
10 State will go first, then the Defense will make their
11 arguments. And then we'll probably take a short break
12 before I get into my charge. The charge is not that long.
13 I don't know how long the attorneys will take, but we
14 usually find that, that's a good time to take a break.
15 I'll turn it over to the attorneys at this time.

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

17 THE COURT: Yes.

18 MS. LIPINSKI: Good morning, ladies and gentlemen of
19 the jury. I want to start off by thanking you. I told you
20 at the beginning that we appreciated your service here this
21 week, that we knew we were asking you to perform some
22 extraordinary task to view some difficult materials. And
23 for that reason I want to thank you because we do pay
24 attention, and you all have been a very thoughtful and
25 attentive jury when looking at that material. And I wanted

CLOSING: BY MS. LIPINSKI

-175-

1 to express our appreciation on behalf of the State, on
2 behalf of the Defense because as I told you earlier, this
3 is really a -- and what you probably now realize more than
4 you ever could have imagined before, this is the only way
5 the system works.

6 I told you that this would be a difficult case. And
7 it's a difficult case because crimes conceived of in hell
8 don't have angels as witnesses. And there is no doubt that
9 these crimes were conceived up in hell. The videos are
10 offensive, graphic, difficult to watch. They are difficult
11 even for people like Patricia Littlejohn to watch. So I am
12 sure having never been exposed to this before, they were
13 difficult for you to watch. But as you can now see, there
14 really wasn't a way to splice out the crack part of the
15 tapes from the sex part of the tapes, and that you needed
16 to consider the context in which the activity took place.
17 It wasn't even low-grade pornography or an amateur home
18 video. If anything, these videos are a documentary on how
19 low crack cocaine can drag members of the community.
20 Because I would imagine prior to this trial, prior to
21 watching these videos, most of you had no idea the power of
22 crack cocaine, and what it can do to members of our
23 community as a whole.

24 I also told you that the State is not asking you to
25 convict the defendant based on some emotional and gut

CLOSING: BY MS. LIPINSKI

-176-

1 reaction to these videos. We didn't show them to you
2 because of their shock value. We didn't show them to you
3 hoping that your prejudice would somehow over weigh your
4 sense of logic and common reasoning, and that based on
5 that, and that alone, you would convict the defendant. We
6 showed them to you because they are raw, compelling, and
7 overwhelming evidence, and the only evidence that the
8 defendant is guilty of the four crimes of which he is
9 charged, the four indictments you will be asked to render a
10 verdict on. Because that is a question that you will be
11 asked, when I get done, Mr. Barrowclough gets done with his
12 closing argument, and the judge charges you on the law, the
13 question posed to you will be simple: On at least four
14 separate occasions in 2005, did Harry Anthony distribute,
15 share, give to Patricia Littlejohn crack cocaine? That's
16 it. Those are the four questions that you will be asked to
17 answer.

18 Now Mr. Dest in his opening argument came to you and
19 posited many questions to you about why it took so long for
20 him to charge him. Or, why do we have these dates? Why do
21 we have these big time frames? But realize we've had the
22 entire trial before you, and you've seen the evidence put
23 before you. You've seen the challenge by not only Mr.
24 Barrowclough, but Mr. Dest. And they have uncovered no
25 impropriety. They have revealed nothing untoward to you.

CLOSING: BY MS. LIPINSKI

-177-

1 And so you should not speculate as to questions you won't
2 be asked to answer because that's not your role here today.
3 Your role here today is very simple: Did Harry Anthony
4 distribute crack cocaine to Patricia Littlejohn on four
5 separate occasions?

6 They suggest to you that law enforcement, having
7 uncovered these videos in an unrelated investigation and
8 not charging Patricia Littlejohn should have just moved on,
9 packed it away, no harm, no foul. And I ask you, having
10 seen these videos, having watched them, is that what you
11 would have asked law enforcement to do: to turn a blind
12 eye to this, to condone this activity in our community, to
13 simply move on to the focus of the investigation. Because
14 realize, law enforcement goes out there in any number of
15 investigations and sometimes they stumble upon other
16 crimes. But we don't sit there and say, "Well, that's not
17 what you went looking for. So you know what, just
18 disregard that." You have taken an oath that you will
19 consider this evidence, that you will evaluate it. And
20 that based on the evidence taken as a whole, that you will
21 render a verdict, a unanimous verdict of either guilty or
22 not guilty of four counts of distribution of crack cocaine.
23 A jury sometimes say "Well, we don't have unanimous verdict
24 as to guilt, but we must have a unanimous verdict as to not
25 guilty." But it's a unanimous verdict either way.

CLOSING: BY MS. LIPINSKI

-178-

1 And so I'm going to ask you, as difficult as it was to
2 watch the videos yesterday to consider them again when you
3 go back in your deliberation room. Because they are the
4 State's evidence, in addition to the testimony of Patricia
5 Littlejohn, and Lieutenant Hager, and Commander Marvin
6 Brown.

7 I must prove the defendant's guilt beyond a reasonable
8 doubt and I embrace that burden. But now you realize the
9 impact and the severity of the charges involved. I am
10 asking you to convict him of four separate counts in
11 distribution of crack cocaine beyond a reasonable doubt.
12 We hear that term on TV, but that doesn't mean we all kind
13 of have the same opinion as to what it might mean. And
14 some of us may not even know.

15 The judge is going to charge you that a reasonable
16 doubt is a doubt to which you can give reason. A doubt
17 that leaves you -- beyond a doubt that leaves you firmly
18 convinced of the defendant's guilt. A doubt that after
19 consideration, after deliberation with your jurors, leaves
20 you hesitating to convict the defendant of these four
21 counts of distribution. It does not mean a reluctance to
22 watch these videos. It does not mean a reservation to sit
23 in judgment of others or questions about the criminal
24 justice system because that is not your role. Your role is
25 quite simple: Did Harry Anthony give Patricia Littlejohn

CLOSING: BY MS. LIPINSKI

-179-

1 crack cocaine four times in 2005?

2 I want to talk to you a minute about distribution
3 because you heard some talk from Commander Brown and even
4 Lieutenant Hager who spent a little bit of time in
5 Narcotics Investigation, that most of us kind of have a
6 common concept that distribution means a true crack dealer,
7 somebody who's selling it out of his car for money, or
8 moving large quantities, or this, that, and the other. But
9 in reality here in South Carolina, distribution has a much
10 simpler meaning, and again the judge is going to charge you
11 that all is required for distribution is sharing, a
12 transfer of ownership, a giving of one thing the crack
13 cocaine to another. It does not have to be an exchange for
14 money. It does not have to be an exchange for sex. There
15 is no quid pro quo. It can be a gift. So you do not have
16 to find that the sex had to happen before the crack was
17 exchanged. Now that was some type of quid pro quo. You do
18 not have to find that Harry Anthony had computer excel
19 files of buyers and things like that, that Mr. Barrowclough
20 asked Commander Brown about. None of that is required to
21 convict the defendant of distribution in York County, South
22 Carolina. It is a much, much simpler definition. Did he
23 give it to her? That's all.

24 I come to you and provide my opening first. Mr.
25 Barrowclough gets the second closing argument. Obviously

CLOSING: BY MS. LIPINSKI

-180-

1 one of us has to go first. You wouldn't want to listen to
2 both of us at the same time. But I'm going to attempt to,
3 in some ways, predict or guess what things he may posit to
4 you. He may have even better arguments I haven't even
5 thought of. But in order to try and proceed where he's
6 going, that's part of my role here in closing argument.
7 The Defense may suggest to you that Harry Anthony and
8 Patricia Littlejohn are on the same level, that one
9 shouldn't be held more accountable than the other, that one
10 should be more blameworthy than the other. And because
11 Patricia Littlejohn wasn't charged, then you shouldn't
12 convict the Defendant. That is not your role. The judge
13 is not going to ask you at the end of this trial: who you
14 consider more blameworthy, who you find to be the lowest
15 human denominator, who you think went the farthest in these
16 videos, who would you rather have over for dinner? That is
17 not your role. Your role is, did Harry Anthony distribute,
18 give crack cocaine to Patricia Littlejohn? It is not a
19 question. You are not to go in the mind set of Lieutenant
20 Hager who has spent almost 35 years in law enforcement, and
21 led the crimes against persons, and question his decision
22 that based on the information Patricia Littlejohn was
23 giving them in an unrelated investigation, that he made
24 that executive decision not to charge her. You're not here
25 to question that because you don't know what information

CLOSING: BY MS. LIPINSKI

-181-

1 factored in, in that decision. You are here to answer the
2 question of did Harry Anthony distribute crack cocaine?

3 So ask yourself, as difficult as it may be, to think
4 back to those videos. What did you see? Did you ever see
5 Harry Anthony put crack cocaine in a pipe, and light it,
6 and tilt Patricia's head up so she could smoke it? Did you
7 ever see Harry Anthony cutting up crack rock on the dresser
8 and deciding which rock he got and which rock was
9 Patricia's? Did you ever see Harry Anthony, while he was
10 anally penetrating Patricia, take a crack rock and put it
11 on the couch in front of her, so the look of pain on her
12 face, so she'd let him keep going? Who directs these
13 videos? Who takes Patricia Littlejohn and turns her up
14 against the wall? Who tells her to keep going, we have
15 four more minutes of tape? Who tells her to take off her
16 clothes? Who, when she tries to pull the blankets over
17 her, pulls the blankets off of her, so he can continue to
18 film her even while she smokes crack cocaine? Who -- Do
19 you ever see Patricia go to her purse and go, "Oh Harry,
20 look at what I brought. Let me smoke -- and let me give it
21 to you. Let me share it with you." No.

22 To whose benefit are these sexual videos? Hers?
23 Because I've watched them, and I can't say that I ever see
24 a moment of pleasure on her face other than when she's
25 hitting the crack pipe. But all of the sex acts, even the

CLOSING: BY MS. LIPINSKI /

-182-

1 masturbation, she is apathetic, stoic, numb, and under the
2 influence of crack cocaine. She is doing whatever she has
3 to get to that point. But it is not for her benefit. She
4 is not the director of the documentary. And I am not, by
5 any stretch of the imagination asking you to find that
6 Patricia Littlejohn is some helpless victim in all of this.
7 You are not here in a sexual exploitation case or anything
8 of that nature. Does Patricia Littlejohn have to own that
9 she did this? Yes. No doubt about it. But the law says
10 that when you take your crack cocaine, and you share it
11 with others, and you exploit their addiction so that they
12 do that on your video, on your camera, that's different.

13 Harry Anthony is charged with four counts of
14 distribution of crack cocaine. So when Mr. Barrowclough
15 and Mr. Dest gets up here and asks you to speculate about
16 any number of things, ask yourself, "Does that cause me to
17 doubt his guilt as to that, as to, did he share the crack
18 cocaine with Patricia Littlejohn?"

19 Distribution has three basic elements that happen here
20 in York County. How do you know that? Lieutenant Hager
21 with the York County Sheriff's Office said that the two
22 places that he identified in the videos, clearly in York
23 County: Bookout Road location, Congress Street location.
24 The State admitted photographs of both of those. And as
25 much as I doubt you really want to go back to the videos,

CLOSING: BY MS. LIPINSKI

-183-

1 if you look at the photographs of the houses, you can see
2 things in the videos: a green lamp at the Congress Street
3 location that's the same in State's Three and Four, a
4 headboard that you can see in One and Five. When she's
5 dancing up against the wall, we pointed out the damage to
6 the dry wall. It's -- they've ripped it off so the tears
7 are very idiosyncratic. This happened in York County. Did
8 he give it to her? Did he share it with her? No doubt
9 about it. On all of those tapes, you see that over, and
10 over, and over again.

11 I would suggest to you that if Patricia Littlejohn
12 went to Lieutenant Hager and said, "I traded sex for crack
13 with Harry Anthony, and he's got videos of the sex in
14 house, in his closet, in his camera bag. And if you go
15 there, you're going to find those videos." And we looked
16 at the videos, and the videos have the sex on there without
17 the crack, without the crack pipe, without the steel wool,
18 without the steel rod cramming the Brillo Pad up into
19 there, without any of that. But she just wanted you to
20 take it on faith that she wouldn't have done that unless
21 she got crack at the end, then perhaps you would have a
22 reason to doubt the Defendant's guilt because then you
23 really are going solely on the testimony of Patricia
24 Littlejohn. But it's all on the videos. It's all there.
25 That is what he is giving to her.

CLOSING: BY MS. LIPINSKI

-184-

1 And I asked -- sometimes we lawyers, we think we come
2 up with brilliant questions and sometimes we don't, and I
3 asked her, I said, "Patricia, how did you know it was
4 crack?" And she gave me the answer I deserved. She said,
5 "I smoked it. It's crack." And in some respects, that's
6 the simplest answer. And if maybe because like the one
7 video were you see Patricia very clearly, but you only see
8 Harry Anthony in the reflection of a mirror, and it's not
9 as clear what is going on; maybe if they were all like that
10 where you couldn't really tell, maybe then you would have a
11 reason to doubt the Defendant's guilt. But he stars in his
12 own documentary just as much as she does. He gives you a
13 tutorial on how to load a crack pipe; how to put steel wool
14 in it; how to hold the pipe up so until you get the crack
15 going, and then you can put the pipe down. It's all there.
16 Proof beyond a reasonable doubt.

17 And how do you know it's crack in addition to what
18 Patricia Littlejohn tells you? You have Lieutenant Hager,
19 worked in Narcotics; worked thousands of crimes not
20 narcotic-based, but nonetheless where crack was involved.
21 You had the expert testimony of Commander Marvin Brown who
22 made the first crack case ever in York County who says to
23 you, "That's the only thing it could be. That's the only
24 drug that's smoked that way."

25 And you heard a lot about the little -- and I'm not

CLOSING: BY MS. LIPINSKI

-185-

1 going to dig for it because the last time I went there, it
2 took 25 minutes -- but you have the little rose pipe in
3 Harry Anthony's camera bag. And was there crack on it?
4 No, it hasn't been used yet. But he's carrying around the
5 paraphernalia associated with the crack. No crime against
6 thieves; they're just little rose flowers. I've got to ask
7 you, if your spouse bought you that rose at the end of the
8 day, would you be impressed with it? No. It's only
9 marketable value because it is sold next to Brillo pads and
10 lighters is to supply the drug paraphernalia to crack
11 addicts and crack dealers. The State has proven beyond a
12 reasonable doubt that the drug being ingested on State's
13 One through Six is crack cocaine.

14 The Defense, no doubt, is going to get up here and
15 say, "But you got no crack. No crack. They ain't got no
16 crack." First, there is no law in the state of South
17 Carolina that says, "If I don't have crack, I can't
18 prosecute." There is no law in the state of South Carolina
19 that says, "If I don't have crack, you can't find any --."
20 Is it worthy of your consideration? Sure. But is it the
21 end of your deliberation? No. Because we have cases where
22 when they're busting in to do the search warrant, people
23 are flushing it down the toilet. We have cases where the
24 crack addicts consume all of the crack before law
25 enforcement can get involved. We have cases where they

CLOSING: BY MS. LIPINSKI

-186-

1 simply go back, and they find none of it. Those cases
2 exist. And you as jurors must consider that evidence. Is
3 it worthy? Yes. Is it the end of your deliberation? No.
4 All of it, all the evidence -- and rarely do we have them
5 on videotape smoking it. They're smoking crack cocaine.
6 The Defense will suggest, "Well, you went to that house
7 three times, and they didn't find any crack. And if they
8 didn't find any crack three times, I've got to say, I don't
9 think he was the one with the crack." Well first of all,
10 this is all just smoke and mirrors so you forget the six
11 videos you watched where he's got the crack in his hand the
12 entire time. And second of all, I'm glad that he has at
13 least one standard that he doesn't keep his crack at his
14 momma's house. Because that's what Lieutenant Hager told
15 you. All that Harry Anthony's room is a very well kept,
16 nicely -- you can see the yard, house on Congress Street.
17 Maybe he just doesn't keep his crack at his momma's house.
18 Maybe whenever he got crack, he went and got Patricia and
19 he smoked it. I don't know. Nor do you. And you also
20 know, that wasn't what they were looking for in the first
21 place. Is it possible they missed it? Sure. Is it
22 possible there was none there? Sure. Is it possible after
23 the first time that they searched his house, he said, "You
24 know what? Even if I had any crack still on me, I better
25 get rid of it. They might come back for it again." Of

CLOSING: BY MS. LIPINSKI

-187-

1 course they didn't find it the second and third time. He'd
2 make dumbest crook news if they'd found it two and three
3 times. And if they search your house once, they come back
4 two weeks later, and you've still got it there, or you went
5 and got it and brought it when they didn't find it in the
6 first place? Really? That's not a reason to doubt the
7 Defendant's guilt. Patricia told you that for the most
8 part, they got it at his mama's house, and they went to
9 Bookout Road, and that's where most of that happened. And
10 you see them consume the crack in the videos. Just because
11 they didn't find it a couple of months later doesn't mean
12 what is depicted several different times on that video
13 wasn't crack cocaine. It wasn't cigarettes. It wasn't
14 marijuana. And according to Commander Marvin Brown who
15 teaches other commanders of drug enforcement, it couldn't
16 have been any other drug.

17 Let me posit this question to you, and let me turn the
18 tables on the Defense a little because they wanted to
19 emphasize "Oh Patricia never got charged. You can't
20 convict the Defendant." Say Lieutenant Hager did come to
21 you and say "I made these charges against Patricia
22 Littlejohn during her cooperation with us in another
23 investigation. She unknowingly revealed the existence of
24 these videos. And, you know, she admitted to us it was
25 crack cocaine." And I ask you to convict Patricia

CLOSING: BY MS. LIPINSKI

-188-

1 Littlejohn of possession of crack cocaine, would you have
2 any doubt? If she's got crack, he's got crack. This is a
3 distribution of crack cocaine case.

4 I submit that probably a lot of what the Defense is
5 going to do, and what they're going to try to do throughout
6 this entire trial, is cause you to call into question the
7 credibility and the believability of Patricia Littlejohn.
8 And I started out my closing argument by saying, "Crimes
9 conceived of in hell, don't have angels as witnesses." I
10 am not a prosecution lawyer. Harry Anthony did not go pick
11 up a Catholic nun who had never told a lie in her life or
12 never committed a sin and turned her into a sex for crack
13 addict prostitute. So, of course she's a crack addict. No
14 doubt. We would probably, although she disagrees, call her
15 a crack prostitute. No doubt about it. The Defense will
16 suggest to you that you can't believe her because she won't
17 even acknowledge that she's a prostitute.

18 If I gave the definition of crack prostitute, would
19 Patricia Littlejohn be that? Sure. If we took 9 out of 10
20 members of the community, would Patricia Littlejohn meet
21 that definition? No doubt about it. But before you
22 question her credibility, before you judge her testimony, I
23 want you to take a step back and appreciate the role in
24 which Patricia Littlejohn found herself in this
25 investigation. They have identified her as a witness in an

CLOSING: BY MS. LIPINSKI

-189-

1 unrelated investigation. They asked her for providing them
2 with information, and she did. They asked her if they
3 could corroborate anything she was saying. And she led
4 them to the videos at Harry Anthony's house. This wasn't
5 being bought and sold on the Internet. Lieutenant Hager
6 didn't go into some Mom and Pop video store in a back room
7 and find where Harry Anthony had taken his video collection
8 and put it up for sale. She led them. She didn't have to.
9 She didn't have any pending charges in '05 and '06. They
10 never caught her with possession of crack cocaine. She's
11 not working off any charges. She revealed what is
12 undoubtedly, undoubtedly the most shameful, humiliating,
13 embarrassing secret of her entire life. Video evidence of
14 how far she has sunk to feed her crack addiction. That's
15 what she did.

16 Imagine I came to you, and I said, "We're
17 investigating a crime that happened at your neighbor's
18 house." And if only we could look -- have gone back in
19 time and looked through your window, I believe that we
20 could catch the burglars breaking into your house. And
21 were you there? "Yes, I was there. I might have seen it"
22 -- or whatever. "Is there anything else that I could use
23 to corroborate your testimony?" "Well, you know, my
24 husband and I made a video that night and I'm going to show
25 it." Would you have shown it to them? And what did she

CLOSING: BY MS. LIPINSKI

-190-

1 get for this? What did she have to gain? What was her
2 motive in doing this? Did Lieutenant Hager say, "Thanks,
3 here's your free trip to Disney world." She got a ticket
4 to court, a subpoena. So that on top of having to share
5 those videos with members of law enforcement, she got to
6 know that they were played in an open courtroom where any
7 number of strangers watched. And that wasn't enough. She
8 had to come in and admit to you, that was her. That's her
9 doing all that. I'm in some ways glad she said she wasn't
10 a prostitute because what that tells me is, despite all of
11 that, she has this much shred of human dignity left that
12 she can still function. Because if those videos existed of
13 me, and I knew they were discovered, I -- you wouldn't find
14 me to serve a subpoena. I'd be living in an igloo in
15 Alaska by myself for the rest of my lifelong life.

16 So while you and I may at first blush say, "She should
17 have just owned that." She has already owned more than
18 most of us can even possibly imagine. And that does not
19 cause you to question her credibility. All it is, is
20 evidence that she's trying to hold on to some last shred of
21 dignity.

22 What else do they have? They have some magistrate
23 charges for receiving possession of stolen goods, and
24 forgeries, and things like that. Shocking. A crack addict
25 has stolen to support her habit. She doesn't have any

CLOSING: BY MS. LIPINSKI

-191-

1 convictions for crack. And she doesn't have any
2 convictions for prostitution. Does that mean she is the
3 best witness we can find? No. But as I told you, Harry
4 Anthony didn't select a nun as a partner. He picked up a
5 crack addict. He picked up someone with a past. And he
6 had to because, I've got to say, even with a crack
7 addiction, I'm not sure most women go there. It doesn't
8 question her credibility; it is consistent, congruent, and
9 comprehensive in terms of telling her story. It's not an
10 aberration; it's a reinforcement. What else do they have?
11 Some suggested she might have stolen food from McDonalds.
12 That's the best you have? And look at it, '05 and '06.
13 She didn't have any motive to lie at that point. Oh well
14 she's got charges in the Solicitor's Office now, but she
15 wasn't promised anything to come in here. Quite frankly, I
16 might have taken the forgery charge before I walked in
17 there and admitted that was me bent over on those videos.
18 Because if that's the deal, I'd rather have behind door
19 number A. But the statements were given back in '05 and '06
20 when none of that was true. She has no motive to lie. She
21 has nothing to gain, and in fact, she has everything to
22 lose because now that's out there. Before this trial, this
23 was a dirty little secret between her and Harry Anthony.
24 But you don't have to rely solely on the testimony of
25 Patricia Littlejohn. You have the testimony of Lieutenant

CLOSING: BY MS. LIPINSKI

-192-

1 Hager. You have the testimony of Commander Brown. You
2 have the documentary. All that leave you firmly convinced
3 that at least on four separate occasions in 2005 that the
4 Defendant shared, gave, or transferred ownership of crack
5 cocaine to Patricia Littlejohn. And you're not relying on
6 her testimony so much as you're relying on the videos.

7 The defenses raised are very good at trying to pick
8 apart little pieces of evidence. And while I tried to
9 anticipate where Mr. Barrowclough will go, he's a very
10 talented advocate. We have tried a number of cases
11 together. We work together everyday. And no doubt about
12 it, he'll probably pull out a few things I didn't
13 anticipate. But as you listen to his closing argument, and
14 as you go back into your jury deliberation room, and you
15 look at all the evidence, focus on that simple question
16 that the judge is going to pose to you: Is the Defendant
17 guilty of four counts of distribution of crack cocaine to
18 Patricia Littlejohn here in York County in 2005? Or are
19 you firmly convinced that, that is the only thing, the only
20 thing that they are smoking on those videos; the only thing
21 that she is willing to trade herself for on those videos;
22 that, that is indeed Harry Anthony on those videos; that
23 they are his videos; that they are found in his closet;
24 that they are with his camera bag?

25 Mr. Barrowclough may point out, "Oh well when they

CLOSING: BY MS. LIPINSKI

-193-

1 found the camera bags, they found her billfold." But if
2 you go through the camera bag, there aren't a lot of
3 feminine articles in there. In fact, the one thing in
4 there in addition to what is basically a lot of trash in
5 your seats, is a black head rag. And again, I won't ask
6 you if you want to see those videos again. But in one of
7 those videos, he has a very similar head rag on. Don't get
8 distracted by questions you aren't here to answer. Focus
9 on the evidence that is before you, and realize that
10 questions and dispersions and speculations do not amount to
11 reasonable doubt.

12 The documentary is compelling. Patricia Littlejohn
13 despite her flaws is a credible witness. Lieutenant Hager
14 is a credible witness. Commander Marvin Brown is a
15 credible witness. And all of them agree that is what is
16 going on in those videos because Patricia Littlejohn didn't
17 work some JEDI mind tricks on Lieutenant Hager and convince
18 him to walk in here and put his 30-year-reputation on the
19 line and tell you that in his opinion, that's them smoking
20 crack. She didn't hoodoo Commander Brown to come in here
21 and corroborate what she says, that the only thing on there
22 is them smoking crack. Don't get distracted by questions
23 of blameworthiness; and who's the victim; and this, that,
24 and the other.

25 The judge is going to tell you that you will have the

CLOSING: BY MS. LIPINSKI

-194-

1 option of convicting the Defendant of a lessor-included
2 offense of possession of crack cocaine. That in addition
3 to distribution, juries are allowed to consider the lessor-
4 included offense of possession of crack cocaine. And Mr.
5 Barrowclough will tell you that if there is any doubt, you
6 have to give the benefit of the doubt to the defendant and
7 convict him of this lessor-included offense. But for you
8 to do that, first of all, you have to answer all of my
9 questions correctly: that it happened in York County, that
10 it happened in 2005, and that it was crack cocaine. And
11 you have to believe the fiction, the fiction that he never
12 gives anything to her on those videos. You have to
13 unanimously find in some fiction that you never see him
14 light up a crack pipe and hand it to her; that you never
15 see him cut up crack and decide, "That's my rock not
16 yours"; that you never see him smoke crack cocaine and
17 never give Patricia Littlejohn any; that you never see him
18 hold her head up so she can do it; that you never see him
19 direct this documentary and control what is going on in
20 these videos, and that they just happen to be two people in
21 the same room who aren't in any way engaged with one
22 another. You have to find unanimously in that fiction to
23 find him guilty of possession. Or you can choose to
24 believe the documentary and find him guilty of the crime
25 for which he did distribution of cocaine.

CLOSING: BY MR. BARROWCLOUGH

-195-

1 Thank you, ladies and gentlemen of the jury.

2 THE COURT: Mr. Barrowclough.

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

5 THE COURT: Yes, sir.

6 MR. BARROWCLOUGH: Good morning. Ladies and gentlemen
7 of the jury, this without a doubt is going to be a
8 difficult case for you all to decide. I acknowledge that
9 there is a degree of emotionality to this case that in
10 order for you to do your jobs properly, you will have to
11 set aside that you will have to and have taken an oath to
12 decide this case on the evidence, what's in evidence as
13 well as what's missing from the evidence.

14 Ms. Lipinski did say numerous times that she doesn't
15 want you to convict Mr. Anthony based on any sort of an
16 emotional reaction to the videos. I don't either. But at
17 the same time, I noted how many times in arguing to you for
18 Mr. Anthony's guilt, she did use emotionally jarring
19 characterizations to deal with these videos: crimes
20 conceived in hell, and he's exploiting her, and all this
21 stuff, trying to appeal to your emotion because she's a
22 good lawyer too. But those emotional appeals, ladies and
23 gentlemen, are not evidence. And I'm going to ask you to
24 focus on the facts, okay, in making your decision. Again,
25 because that's what you've taken an oath to do.

CLOSING: BY MR. BARROWCLOUGH

-196-

1 Now, let's start with what we know from what's been
2 testified to in this case. What we know is that based on
3 the facts in this case, Harry Anthony is not a drug dealer.
4 We know because the evidence was testified to that there
5 were three searches done in February of 2006: February 2nd
6 of 2006, law enforcement searched his home and his vehicle;
7 February 21st of 2006, law enforcement searched his home;
8 February 27th of 2006 law enforcement searched his home.
9 And in all of those searches, no crack was ever found. No
10 crack residue was ever found. Residue would be what would
11 be left behind in an area where you stored crack. No
12 scales were ever found. Scales which drug dealers use to
13 weigh their crack that they're going to sell or trade. No
14 baggies were ever found where drug dealers use to store
15 their crack for sale or trade. No large sums of cash were
16 found. No customer lists were found, no cell phone records
17 were found, or computer records were found. Nothing was
18 found in any of these searches, which would be consistent
19 with Mr. Anthony being a drug dealer. Now I know the State
20 wants to distance itself from that. They want to lower the
21 bar for themselves and say, "We don't have to prove any of
22 this stuff. We don't have to have any of this evidence."
23 And you know what? That's true. They don't have to have
24 it. But on the other hand, the fact that this was done and
25 none of this was found means something. That is a fact

CLOSING: BY MR. BARROWCLOUGH

-197-

1 that is true. That's not a fact that we've got to rely on
2 anybody's credibility or anything. That's a fact that's
3 true, that's for your consideration. The absence of those
4 things would tend to indicate that Mr. Anthony is not
5 involved in the crack trade.

6 And what else do we know along those same lines? No
7 confidential informant buy was ever made or even attempted
8 from Mr. Anthony. And you heard me question Lieutenant
9 Hager who used to be in Narcotics. The typical way that
10 you would try -- that they would try to investigate and
11 prosecute a person they suspected of being a drug dealer
12 would be to get an informant, be it an undercover officer
13 or be it a citizen, and have that person be wired up, go to
14 the suspected dealer, engage in the transaction, and then
15 bring back a substance, whatever was purchased, and that
16 substance would be tested.

17 Now he's charged -- Mr. Anthony's charged with four
18 counts of distribution of crack. The State is alleging
19 he's a drug dealer. And yet, no buy was ever made. And
20 okay, Ms. Lipinski tries to explain that by the
21 circumstances which this case came about. But no buy was
22 ever attempted to be made. Ms. Lipinski poses the
23 question: They find these tapes, what would you have them
24 do, ignore the tapes? In good faith, I can't answer that
25 question, yeah, ignore the tapes. No, I wouldn't say that

CLOSING: BY MR. BARROWCLOUGH

-198-

1 at all. But how about this? We don't know what those
2 tapes depict. All we know about what those tapes depict is
3 the word of Ms. Littlejohn, which is obviously no good. So
4 why don't we use those tapes as a jumping-off point, and do
5 a real investigation. If you really think based on what
6 you see in those tapes, that Mr. Anthony is a drug dealer,
7 crack dealer, why not do a legitimate investigation? Why
8 not get an informant to go to Congress Street or go to
9 Bookout Road, and see whether or not Mr. Anthony has any
10 crack for sale or would sell any crack. That's the proper
11 way of doing things. That's the way to make a real case.
12 Don't just slander somebody based on some sex tapes that
13 you found in an unrelated investigation, and charge them
14 with these so serious offenses. That's not right. That's
15 not how we do things in America. The fact that they failed
16 to do that is significant. And again, the State tries to
17 distance itself from that, lower the bar for themselves,
18 but that's not right.

19 And how about this? They get Marvin Brown to testify.
20 Marvin Brown, head of the Drug Unit, established the Drug
21 Unit, teaches at drug schools. Why did they get him to
22 testify? Because they suspected that Ms. Littlejohn's
23 word, that what you see in the videos is crack, wouldn't be
24 good enough. They know she has all kinds of credibility
25 issues. Well then why wouldn't that win the case? So they

CLOSING: BY MR. BARROWCLOUGH

-199-

1 call Marvin Brown and render his "expert" opinion that it's
2 crack. And don't forget what his testimony was. Marvin
3 Brown actually works for the Solicitor's Office. He is
4 actually Ms. Lipinski's co-worker. Believe you me, I could
5 call four, five, six attorneys in my office, my co-workers
6 who have evaluated plenty of police investigations, to sit
7 in this chair and render an opinion that the police
8 investigation in this case stinks. But I mean, that's not
9 right. That's not good evidence. But that's what they did
10 with Marvin Brown. That's why they called him. But you
11 know what, I'm glad they called him. You know why?
12 Because what did -- when Mr. Dest cross examined him, what
13 did he testify to? He testified, "He didn't know anything
14 about this case. He didn't know anything about Mr.
15 Anthony." Now bear in mind, they're alleging that this
16 occurred over the span of a year in 2005. A year. A year
17 during which time Marvin Brown is commander of the Drug
18 Enforcement Unit. A year that was six years ago. It
19 encompasses a wide period of time. And the head of the
20 Drug Unit never heard of him, never heard of this? Is that
21 not circumstantial evidence that Mr. Anthony is not a drug
22 dealer. If he was, wouldn't Marvin Brown at least heard of
23 him, at least heard of this situation? I'm not saying he
24 would have personally investigated it. He said that he has
25 different supervisors. But wouldn't of he at least heard

CLOSING: BY MR. BARROWCLOUGH

-200-

1 of it? But he didn't. He didn't because Mr. Anthony is
2 not involved in the crack trade.

3 And, ladies and gentlemen, the judge will tell you
4 that the definition of "reasonable doubt" is the type of
5 doubt that would cause a reasonable person, and all of you
6 are deemed to be reasonable people, the type of doubt that
7 would cause a reasonable person to hesitate to act. Does
8 it have some hesitation with regards to the charges in this
9 matter. And the judge will tell you that, that hesitation
10 can come from the evidence in the case, but the judge will
11 tell you that, that can also come from the absence of
12 evidence in the case, the absence of all of this type of
13 evidence from which the State keeps trying to distance
14 itself. But the short of it is, there's absolutely no
15 evidence in this case consistent with Mr. Anthony being a
16 crack dealer, consistent with Mr. Anthony being someone who
17 supplies crack cocaine.

18 Now against all of this evidence, what do we have?
19 Well we have the word of Ms. Littlejohn. Okay. The word
20 of Ms. Littlejohn. The word of Ms. Littlejohn that what
21 you see in the videos is in fact crack cocaine. And also
22 the word of Ms. Littlejohn that the crack cocaine that's in
23 the videos came from him and not from her. Now
24 interestingly, interestingly they searched his place three
25 times and never found anything. And yet, they never

CLOSING: BY MR. BARROWCLOUGH

-201-

1 searched her place. What do you think they would have
2 found if they searched her place? Maybe they would have
3 found crack cocaine or crack residue. Maybe they would
4 have found scales or baggies. We don't know because they
5 didn't do it.

6 Now, ladies and gentlemen, that's not asking you to
7 just engage in speculation to try to distract you. That
8 goes to the main issue in the case. If in fact that's
9 crack cocaine, where did it come from? There is
10 circumstantial evidence it didn't come from Mr. Anthony.
11 What about Ms. Littlejohn? Now of course, Ms. Lipinski
12 says numerous times, well Ms. Littlejohn was a cooperating
13 witness in an unrelated case, and she brought out testimony
14 from Lieutenant Hager that it was a bigger case, a more
15 important case. The implication that, that's why she got
16 cut a break and didn't get charged with this. But in
17 trying to cut her a break, perhaps they misread the
18 situation. "Mr. Anthony's the guy. He must be the guy
19 supplying crack." Go get a female. They didn't search her
20 house, not one time. Is that fair? Is that right? Is
21 that how we make cases? Is that how we prosecute cases?
22 That's not right at all. That's not doing a full and fair
23 investigation. Like I said a minute ago, I'm not asking
24 them to ignore these videos. Okay. These videos are
25 evidence of something, something that bears investigating.

CLOSING: BY MR. BARROWCLOUGH

-202-

1 But there is no investigating done. It is for Mr. Anthony.
2 They didn't try and build a good case against Mr. Anthony,
3 nor did they investigate Ms. Littlejohn at all. And yet
4 they come to you six years later and ask you just to
5 convict him. That's not right. That's not right. But all
6 you have -- and this is what it really boils down to -- all
7 you have to base your verdict on is her word, her word.
8 And Ms. Lipinski wants to minimize or pooh pooh the fact
9 that she's got a criminal record, that she's a thief, that
10 she's a crack addict, that she's a prostitute. She wants
11 to ignore the fact that Ms. Littlejohn sat in this chair
12 and lied. Do you think that it's a coincidence that Ms.
13 Lipinski and I were both asking her was she convicted of
14 forgery on the same day in York County according to the
15 York County Clerk of the Court records and she said no?
16 Do you think both of us are mistaken? Or is she lying?
17 She was lying. She was lying. Their whole case stands or
18 falls on her credibility and she lied to you under oath,
19 and she has a criminal record.

20 Now one thing that Ms. Lipinski said in her opening
21 that I agree with is this: She said bring your life
22 experience into the jury room. The same skills that you
23 would use to evaluate whether or not you buy a Hyundai
24 Elantra, bring that to this case. And I would say that's
25 true. Ask yourself -- I don't know how much a Hyundai

CLOSING: BY MR. BARROWCLOUGH

-203-

1 Elantra costs, say \$15,000 dollars -- would you trust Ms.
2 Littlejohn in evaluating whether or not you'd spend \$15,000
3 dollars of your money? Would you trust her for \$15,000
4 grand? Because, ladies and gentlemen, I submit to each and
5 every one of you, the State is asking you to trust her with
6 a lot more than \$15,000 dollars. They're asking you to
7 trust Ms. Littlejohn with the freedom of another citizen
8 from our community. And grant it, you might not like his
9 morality, but he's another citizen of our community. And
10 truly if the answer is you wouldn't trust her for \$15,000,
11 how can you base a verdict by putting your trust in her
12 with regards to the defendant?

13 So that being said, we have the videos. We have the
14 videos. Now I agree the videos are offensive. And believe
15 me, I don't like looking at them either. Okay? But you
16 boil it down. Ms. Lipinski, in talking about the videos,
17 she had her own characterization as to what you see on the
18 videos. Okay. Basically, I think, factually what you see
19 on the videos, we boil it down to two adults, two
20 consenting adults who do appear comfortable with each
21 other, who engage in various, and insert your adjective,
22 offensive, disgusting, repulsive sex acts, who also engage
23 in conversation, and who are sharing smoking something.
24 That's really what the videos come down to. These videos,
25 these facts are insufficient to convict Mr. Anthony. Fair

CLOSING: BY MR. BARROWCLOUGH

-204-

1 is fair.

2 Note what is not on the videos. What do the videos
3 not show? And again, these are my characterizations of the
4 videos. She has her characterizations of the videos. But
5 really it's up to you. You saw them. There's no mention
6 in any of the videos of any type of an exchange of sex for
7 crack. Now again, Ms. Lipinski in her closing argument was
8 lowering the bar saying, "Well sharing is distribution."
9 That's not what she said in Opening. In her Opening she
10 said, "This was a sex for crack type situation." Well for
11 some reason she's changed her allegation. But there's no
12 mention of sex for crack in the videos. There's no
13 negotiating a bargain on any of the videos. There's no
14 withholding of the pipe until any type of particular act is
15 performed or occurs. There's no force, intimidation, or
16 violence on the videos. From what I saw on the videos --
17 again, take it as you saw it -- to me the videos don't show
18 either party exercising more control over either the pipe
19 or the substance than the other. And again, the videos
20 don't show who brought the alleged crack to the encounter.
21 We've just got to rely on Ms. Littlejohn's word for that.

22 And again, the video clips played in court totaled
23 about 40 minutes. But you have to think that as far as the
24 allegations in this case, those 40 minutes are probably the
25 best they've got. They don't have some other tape -- It

CLOSING: BY MR. BARROWCLOUGH

-205-

1 wouldn't make sense they would have some other tape that
2 does show an exchange, but they held that one back. There
3 were 38 tapes. Detective Hager testified there were 38
4 tapes. And this is the best --

5 MS. LIPINSKI: Your Honor, I'm going to object ---

6 THE COURT: I sustain.

7 MS. LIPINSKI: --- at this point.

8 THE COURT: I sustain --

9 MS. LIPINSKI: The other tapes ruled by the Court is
10 not relevant to this.

11 THE COURT: I sustain the objection.

12 MR. BARROWCLOUGH: All right. I'll move on.

13 So what does it mean? What does it mean? What do
14 those tapes mean? Well two people are together. Two
15 people engage in sex acts together. Two people share a
16 smoke together. That's really all we know. That's really
17 all we know. Could it be that these are people who like to
18 get together, and have sex, and use drugs? Could be.
19 Could it be that this is some horrendous, amateur homemade
20 porn, and that, that's not real drugs, that it's some other
21 smokeable substance? Could be. Could it be that Ms.
22 Littlejohn, who is the cooperating witness in this bigger,
23 more important unrelated case knows that she made these
24 tapes with Mr. Anthony and directs the police in the
25 direction of these tapes with Mr. Anthony? Could be. It

CLOSING: BY MR. BARROWCLOUGH

-206-

1 could be a lot of things.

2 And again, anything that you, or I, or Ms. Lipinski
3 tries to interpret out of these tapes is speculation. She
4 said, "Why don't I ask you to speculate?" I'm not asking
5 you to speculate. I'm pointing out the fact that all we're
6 left to do in this case is speculate because of the poor
7 problem of the evidence in the State's case. You can't
8 base a verdict on speculation. Be it her scenario or any
9 one of the three scenarios I have said, whatever it is, it
10 is speculation, and the Constitution of the United States
11 of America demands more than that.

12 And the last point I want to make is this. There's an
13 expression that an old friend of mine uses that says,
14 "Sauce for the goose is sauce for the gander," sometimes
15 said, "What's good for the goose is good for the gander."
16 Whatever the truth is about what those tapes depict, or
17 about how those tapes came into existence, it goes without
18 saying that the moral and legal culpability between Ms.
19 Littlejohn and Mr. Anthony is the same. And Ms. Littlejohn
20 was not charged for any of this.

21 And again, Ms. Lipinski said that I will make this
22 point. But she said that I would make it trying to get you
23 to speculate to what's in Hager's brain, which I'm not
24 doing. Well my point is this, as the state of South
25 Carolina prosecuted criminal cases, you can't have it both

CLOSING: BY MR. BARROWCLOUGH

-207-

1 ways. You can't say that the truth is, is that with
2 regards to Harry Anthony, it's crack on the video. But the
3 truth is, with regards to Ms. Littlejohn, not crack, then
4 let it go. The truth is, with regard to Harry Anthony,
5 it's a distribution. But the truth is with regard to Ms.
6 Littlejohn, there's no exchange, no prostitution. They
7 can't have it both ways. It's not right. "Sauce for the
8 goose, sauce for the gander." What's fair for one is fair
9 for both. And what Mr. Dest said at the beginning in his
10 opening statement is true.

11 The best thing about the jury system is that it takes
12 the power away from the State. It takes it away from the
13 judge. It invests it in twelve citizens from our
14 community. The Prosecution does want to have it both ways.
15 The Prosecution wants the sauce for the gander, but wants
16 to let the goose go free. It's not right, ladies and
17 gentlemen. The State does not have any evidence. The
18 State has not proven their case. The State has not met its
19 burden. And on top of that, on top of that, it's extremely
20 unfair. I would ask you, ladies and gentlemen, to find Mr.
21 Anthony not guilty. Treat him the same as Ms. Littlejohn.
22 Find him not guilty, and close the book on this whole
23 thing.

24 Thank you very much.

25 THE COURT: Members of the jury panel, we'll going to

-208-

1 take a short break before I charge you the law. But you
2 can't discuss the case yet because you haven't heard my
3 charge on the law. So just -- we'll have a little
4 refresher break about between five and ten minutes.

5 Follow the Bailiff.

6 (JURY EXITS COURTROOM AT 11:18 AM.)

7 THE COURT: Anything before we break?

8 MS. LIPINSKI: Your Honor, the State feels obligated
9 to ask for curative instruction about the 38 tapes that Mr.
10 Barrowclough went into. As the State -- I know you
11 sustained the objection, and I don't want to cause any more
12 attention to it, but the reason the other tapes don't come
13 in is because they involve Margaret Matthews. And the
14 State agreed not to go there, but yet he asked the jury to
15 speculate as to what's over there in closing argument as to
16 grasp of the Defendant's guilt. He has all those 38 tapes.
17 He knows what's in there. And to ask them to speculate on
18 that is in direct violation of the Court's previous ruling
19 about what's fair game in this trial.

20 THE COURT: Mr. Barrowclough.

21 MR. BARROWCLOUGH: Judge, first of all, I do apologize
22 for doing that. I wasn't thinking of it from that
23 perspective. My point was -- and I don't think I really
24 asked them to speculate what was on the other tape. My
25 point was, with regards to the transaction alleged in this

1 case, that was a logical assumption that these tapes, what
2 was showed to the jury was most probative of the
3 transaction. That, not that anything having to do with
4 Margaret Matthews, but that the other tape wouldn't show
5 necessarily the transaction which I think that, that's
6 true. But I wasn't -- I don't know -- I wasn't coming at
7 it from the point of view she's talking about. Your Honor,
8 I did move on. For purposes the record, I did move on
9 quickly. I did -- I don't know...

10 MR. LIPINSKI: And, Your Honor, you can say that, but
11 38 tapes was written on the bottom of that dry-erase board
12 and shown to the jury for over 10 minutes. Well he talked
13 about that point. It may have only come out of his mouth
14 once, but it's sitting there with a big question mark at
15 the end of it for a good, long while. And the only way the
16 State could respond to that is to say, "You know what, the
17 evidence that it's not two people sharing crack cocaine is
18 that there's other woman that he did this with, or that he
19 branded them, or all the things the Court ruled was
20 inadmissible. I mean to sit there and say that he's
21 allowed the benefit from that in closing argument when the
22 State's not allowed there going through their direct case
23 in chief, well let's talk about what's fair for the goose
24 and the gander.

25 THE COURT: Wait, wait just a minute here. Yeah, that

-210-

1 was from a wise old man wasn't it?

2 MR. BARROWCLOUGH: That was an old friend. I like to
3 take --

4 THE COURT: A wise old friend.

5 What do you want me to do? Do you want to --
6 obviously you're not going to -- I can't tell you what
7 you're gonna do, but I can't instruct the jury disregard --
8 I've already sustained the objection.

9 MS. LIPINSKI: I think you can instruct them to
10 disregard that, I mean the same way that -- I think, at
11 least emphasize that if I sustain the objection, that means
12 that, that's not proper evidence for you to consider
13 whether it happened in closing argument -- to not draw
14 attention to it -- whether it happened in closing argument
15 or opening argument, you focus them on the evidence. I
16 think just --

17 THE COURT: Well why don't we just say this: To any
18 objections I -- because we had two that I can recall, that
19 one and one earlier about the branding -- that only
20 consider -- you may not consider any evidence where there
21 was an objection and I sustained it.

22 MS. LIPINSKI: Well and I think it -- and I'm thinking
23 loud more than taking exception is, but I think it goes
24 further to sit there and say, you -- if I sustained it then
25 you're also not to speculate as to that evidence that I've

1 ruled inadmissible.

2 THE COURT: Well I start -- I'm not going to -- I'm
3 going to stick to what I said. This is one of those
4 slippery slopes. If you start going down it, then you find
5 yourself sometimes going in a circle saying more than you
6 wish or making it confusing. But I'll be glad to say that
7 do not consider any evidence where there was an objection,
8 and I sustained it.

9 MR. EPTING: Thank you, Your Honor.

10 MS. LIPINSKI: And I'm not taking part and partial
11 again. I don't want to engage the wrath. But could it be
12 any evidence or --

13 THE COURT: You're not going to engage my wrath.
14 Don't worry about that. You used the word yesterday that
15 you didn't want to affront me. I won't be affronted.

16 MS. LIPINSKI: But could -- Could the instruction be,
17 any argument or evidence where I sustained the objection?

18 THE COURT: Right, okay.

19 MS. LIPINSKI: Thank you, Your Honor.

20 THE COURT: All right. We'll take a short break then.

21 (COURT IN RECESS AT 11:23 AM.)

22 (COURT BACK IN SESSION AT 11:35 AM.)

23 THE COURT: Thank you. Take your seats.

24 (DEFENDANT REENTERS COURTROOM.)

25 THE COURT: Bring in the jury.

CHARGE TO THE JURY

-212-

1 Let the record reflect that the Counsel and the
2 Defendant are present.

3 (JURY REENTERS COURTROOM AT 11:36 AM.)

4 THE COURT: Members of the jury panel, I appreciate
5 the attention you've given me, the attorneys, and the
6 witnesses who have testified. It is now -- we've reached
7 the point where I will charge you the law as it applies in
8 this case and you are to apply the law as I charge it, to
9 the facts in this case.

10 The indictments against Mr. Anthony, and there are
11 four of them, all charge him with the same thing, and you
12 will have those in the jury room with you. You will not
13 consider them as evidence. They are not evidence. They
14 are simply the paperwork by way of which the case is
15 processed through our court system, and it is the place
16 where the verdict of your unanimous verdict will ultimately
17 be enrolled by your forelady. The fact that Mr. Anthony
18 was charged, the fact that he is on trial, the fact that
19 this case has gone forward is not evidence of anything.
20 That's just the way our system works. When the individual
21 is arrested or thought to have been charged with an
22 offense, they are arrested, their case is processed, they
23 come to a trial, and if it comes to trial that is not to be
24 held against him in any way whatsoever. That's just the
25 way our system works. Someone is arrested, charged, and

1 tried.

2 He is -- and I will talk to you more in a moment --
3 presumed innocent of the charges against him. Again the
4 indictment is simply the paperwork by way of which this
5 case is processed through our court system.

6 The fact that there are four charges is not of any
7 merit, that is, that does not mean that he is more guilty
8 than he would have been had it only have been one charge.
9 Each charge is to be examined individually. You can find
10 him guilty on one and not guilty on the others or visa
11 versa.

12 It is up to you to determine whether as to any
13 indictment and each indictment the State has proven
14 satisfactory to you beyond a reasonable doubt that Mr.
15 Anthony is, in fact, guilty of the offense charged in the
16 indictment.

17 Mr. Anthony, as I told you earlier, is presumed
18 innocent of each of these charges. His presumption of
19 innocence is a substantial right in our legal system. It
20 is not a mere legal theory or a mere legal phrase. It is a
21 substantial right. It inures to the benefit of someone at
22 the time they are arrested. It remains with them as their
23 case is processed through our court system. The
24 presumption of innocence in Mr. Anthony's favor remains
25 with him at this moment. It even remains with him as you

CHARGE TO THE JURY

-214-

1 deliberate. The presumption of innocence in his favor is
2 removed if and when, and only if and when you as the trial
3 jury in this case determine that the State has carried its
4 burden of proof and proven his guilt beyond a reasonable
5 doubt. The State is not required to prove his guilt beyond
6 all or beyond every doubt, but beyond a reasonable doubt.

7 Now in considering this case, you are not to consider
8 any evidence or arguments presented either through
9 witnesses or counsel where there was an objection to that
10 evidence or argument, and I sustained the objection. That
11 testimony or argument is not for your consideration. As I
12 said, the State must prove, before you convict Mr. Anthony
13 that any or all of these indictments is guilty beyond a
14 reasonable doubt.

15 Our courts have described a reasonable -- or defined a
16 reasonable doubt as a kind of doubt that would cause a
17 reasonable person to hesitate to act. Proof beyond a
18 reasonable doubt is proof that leaves you firmly convinced
19 of someone's guilt. There are, of course, very few things
20 in our world that we can know with absolute certainty, and
21 our law does not require that. If based on your
22 consideration of the evidence, you are firmly convinced
23 that Mr. Anthony is guilty of one or more of the offenses
24 which he is charged, you will find him guilty. If on the
25 other hand, you think there is a real possibility that he

CHARGE TO THE JURY

-215-

1 is not guilty, you must give him the benefit of that doubt,
2 and find him not guilty. Mr. Anthony is entitled to the
3 benefit of any reasonable doubt you have as to any issue
4 and element in this case.

5 I remind you that I am the sole judge of the law in
6 this case, and that you must take, accept, and apply the
7 law as I charge it. This is true as I have already told
8 you, whether you agree with me as to the law. That is,
9 whether you think I charged the law in error, and you must
10 accept the law as I charge it, even if you think the law
11 should be different. Your oath requires you to take,
12 accept, and apply the law as I charge it. You're not to
13 infer from anything that I say or do or have said or done
14 during this trial as indicating an opinion of mine on the
15 facts. Our law does not allow a trial judge to formulate
16 or express to a jury any opinion on the facts. It is
17 solely your job to examine the evidence and to give to the
18 evidence the effect, the value, the weight, and the truth
19 you believe the evidence should have.

20 In doing this, you may believe one witness as opposed
21 to several, several witnesses as opposed to one. You may
22 believe all, part, or none of the witnesses' testimony.
23 Use your common sense, your sense of logic, your sense of
24 reason. Use your experiences in life as you analyze the
25 evidence. As judges of the facts, you would necessity must

CHARGE TO THE JURY

-216-

1 judge the credibility, that is the believability of the
2 witnesses who have testified. In assessing believability,
3 use those things I've just talked about. Use the things
4 that you find in your day-to-day life as indicating to you
5 truthfulness in an individual. And you can use certain
6 evaluators: a witness's demeanor, how they act on the
7 stand. Are they hesitant or straightforward? You can look
8 at consistencies and inconsistencies in a witness's
9 testimony. You can consider any criminal record a witness
10 may have. You may consider the opportunity a witness had
11 to know those things to which they testified. And you can
12 consider any bias or prejudice. That is, whether a witness
13 would wish to help or hurt one side or the other.
14 Determine the true facts, apply the law, and you will be in
15 a position to return a verdict that speaks the truth.

16 In this case we had testimony of someone who was
17 qualified as an expert, Officer Brown. Generally an
18 individual can only testify as to something they've
19 observed with one of their five senses. It's usually
20 something they've seen or heard, but it could be taste,
21 touch, or smell. However where an individual has certain
22 education, training, and experience in a certain area, that
23 person can take facts, and from those facts render an
24 opinion. The opinions of experts are allowed into evidence
25 to assist you. They are not binding on you. You look at

1 the expert's testimony just as you look at the testimony of
2 any other witness with all those considerations I've
3 already talked about. In addition as to an expert, you can
4 consider whether you believe they have the expertise to
5 render the opinion they reach, and whether you find that
6 the reason that they give the opinions they reached are
7 satisfactory to you. You are not bound by an expert
8 witness's testimony. Give it such weight, if any, as you
9 believe it should have.

10 Now in cases such as this, there are generally two
11 types of evidence presented: direct evidence and
12 circumstantial evidence. Direct evidence is the testimony
13 of someone who has actually seen or claims to have seen
14 something or to have actual knowledge of a fact, such as an
15 eyewitness. Direct evidence is evidence which immediately
16 establishes the main facts sought to be proven.
17 Circumstantial evidence is proof of a chain of facts and
18 circumstances which indicate the existence of a fact.
19 Circumstantial evidence is evidence which immediately
20 establishes collateral facts from which the main fact may
21 be inferred. Circumstantial is based on inference and not
22 on personal knowledge or observation. Our law makes
23 absolutely no distinction between the weight or value to be
24 given as to direct or circumstantial evidence. Our law
25 does not require a greater degree of certainty for

CHARGE TO THE JURY

-218-

1 circumstantial evidence as opposed to direct evidence.
2 What you should do in this case is weigh all of the
3 evidence. After weighing the evidence, if you are not
4 convinced of the guilt of Mr. Anthony as to one or more of
5 the charges, you would give -- or beyond a reasonable doubt
6 -- you would give him the benefit of that and find him not
7 guilty.

8 Mr. Anthony is charged in these four indictments. And
9 again, the fact that there are four is of no importance
10 other than that you have to address each one separately.
11 He is charged with distribution of a controlled substance
12 that is cocaine base, commonly called crack cocaine. He is
13 charged with distributing crack cocaine in each of these
14 indictments. As to these charges, the State must prove
15 beyond a reasonable doubt that Mr. Anthony distributed
16 crack cocaine. The State must prove that the substance
17 alleged to have been distributed was crack cocaine. They
18 must also prove that it was distributed by Mr. Anthony. To
19 distribute means to deliver or to actually, constructively,
20 or attempt to transfer a drug other than by administering
21 or dispensing. Delivery means to actually, constructively,
22 or attempt to transfer a drug. A transfer can involve an
23 exchange for money, a barter, or a gift. There does not
24 have to be anything given in exchange for the drugs for
25 there to be a transfer which constitutes distribution. Now

1 that's what he's charged with and the State must prove
2 those elements, that is was crack cocaine, and that it was
3 distributed as I've defined those for you beyond a
4 reasonable doubt.

5 Under our law, there are sometimes -- and in this case
6 there is -- what is called a lessor-included offense. If
7 you look at it as a set of steps, there's the offense with
8 which he's charged with, and then there's a step down, a
9 lessor-included offense. That step down in this case, the
10 lessor-included offense is the offense of simple possession
11 of crack cocaine. If you find the State has failed to
12 prove beyond a reasonable doubt that Mr. Anthony possessed
13 crack cocaine with intent to distribute it, you may
14 consider whether or not Mr. Anthony was in simple
15 possession of crack cocaine. Simple possession does not
16 require any distribution. To prove possession, the State
17 must prove beyond a reasonable doubt Mr. Anthony knowingly
18 or intentionally possessed crack cocaine. Knowingly means
19 that it is done with knowledge, consciously, that it is not
20 done accidentally. Intentionally means that it was done.
21 That is, any possession was willful, that the results were
22 intended, that it was not accidental or voluntarily
23 possessed. Intent may be shown by acts of a defendant and
24 from other circumstances from which you may naturally and
25 reasonably infer intent.

CHARGE TO THE JURY

-220-

1 To prove possession, the State must prove beyond a
2 reasonable doubt that Mr. Anthony had both the power and
3 intent to control the use of crack cocaine. Possession may
4 be either actual or constructive.

5 Actual possession means that the crack cocaine was in
6 the actual, physical possession of an individual.

7 Constructive possession means that an individual had
8 dominion and control or the right to exercise dominion and
9 control over either the crack cocaine itself or the
10 property on which the crack cocaine was located. Mere
11 presence at the scene where a drug is found is not enough
12 to prove possession. Actual knowledge of the presence of a
13 drug, crack cocaine here, is strong evidence of a
14 defendant's intent to control its disposition and use. A
15 defendant's knowledge and possession may be inferred when a
16 substance is found on property under their control.

17 However this inference is simply an evidentiary fact to be
18 taken into consideration by you along with the other
19 evidence in the case and to be given the weight you decide
20 it should have. Two or more individuals may have joint
21 possession of a drug.

22 Now your verdict in this case must be unanimous. Of
23 course as I said, the State must prove before you could
24 find Mr. Anthony guilty of those four charges, any or all
25 of them or before you could find him guilty of any lessor-

CHARGE TO THE JURY

-221-

1 included offense of simple possession of crack cocaine, the
2 State must have convinced you of that. That is, Mr.
3 Anthony's guilt of that offense beyond a reasonable doubt.

4 Your verdict must be unanimous. All twelve jurors
5 must agree. Once all twelve jurors have agreed on a
6 verdict, your forelady will write it on your behalf.

7 And I'll go over the verdict forms with you, Ms.
8 Gwaltney, in just a moment. Your verdicts cannot be based
9 on sympathy, passion, prejudice, public opinion, or malice
10 outside the record. In South Carolina, we do not sign a
11 written charge in with the jury, but if you want me to go
12 over any part or all of my charge on the law, let me know,
13 and I will bring you back out and here in open court
14 recharge you.

15 We can have testimony replayed if you wish. And if
16 you wish to review any of the CD's, any of the videos, we
17 can bring you back out here in the courtroom, and without
18 any testimony or anybody making any comments, we can re-
19 show them if you wish.

20 If you have any questions, please write them down, and
21 knock on the door and give them to the Bailiff. The
22 Bailiff will bring them to me. After consulting with
23 counsel, I will determine how to answer the note. It may
24 be that I can write an answer on the note itself. And if I
25 do return a note to you, keep it, and hand it back at the

CHARGE TO THE JURY

-222-

1 end of the trial because it has to be part of the record.
2 It may be that I'll have to bring you back here in open
3 court and answer whatever your question may be. When
4 you've reached a verdict, knock on the door, tell the
5 Bailiff, and the Bailiff will come and get us. I'm
6 supposed to start another trial, but I will send for you as
7 promptly as I can.

8 We have lunch ordered to be here at 12:30, give or
9 take, 12:30'ish. Of course I can't guarantee it will be
10 right at 12:30. You can -- While you're eating, you can
11 take a break, or you can work while you're eating. If you
12 can take a break, all twelve of you should take a break.
13 That is, your verdict must be unanimous if all twelve of
14 you are working or all twelve of you are on break.

15 Mr. Peavy and Ms. Utegg, you all will remain in here
16 when the jury goes out. In just a moment, I -- you're
17 services will not be needed further since the jury is all
18 in tact.

19 Now there are four different verdict forms -- or there
20 are four indictments. Verdict forms on each are the same.
21 On each I have three options. The order they're in is of
22 no importance. I have to put them in some order, and this
23 is the order I always use. The first says, "We find the
24 Defendant guilty of distribution of cocaine base," that is
25 crack cocaine. That is what he is charged with. If you

CHARGE TO THE JURY

-223-

1 find the State has proven his guilt as to one or more of
2 those charges, you would in front of that line, put an "X"
3 or a check indicating that is the jury's unanimous verdict.
4 If the State has failed to prove Mr. Anthony guilty of
5 distribution of crack cocaine on one or more of these
6 indictments, you may consider whether or not he was in
7 simple possession of crack cocaine. If you find that,
8 beyond a reasonable doubt, you would use the second line
9 that says that: "We find the Defendant guilty of the
10 lesser-included offense of simple possession of cocaine
11 base," that is crack cocaine. If you find that the State
12 has failed to prove Mr. Anthony guilty as to one or more or
13 all of these indictments, fail to prove it beyond a
14 reasonable doubt, you would use the third line that simply
15 says, "We find the Defendant not guilty."

16 There's a place for you to sign Madame Forelady, and
17 to date, today is the 11th.

18 So everybody but Mr. Peavy and Ms. Utegg will go to
19 jury room. Do not start deliberating yet. I have to go
20 over my charge with the attorneys. If I have made an error
21 or neglected to tell you something that I should have, I
22 will bring you back in and correct myself. If I have not
23 made an error, we will send in the exhibits and the verdict
24 forms, and the Bailiff will tell you to start deliberating.
25 But don't start deliberating at this time. Now you may go

CHARGE TO THE JURY

-224-

1 to the jury room.

2 (JURY EXITS COURTROOM AT 11:53 AM.)

3 THE COURT: You all just have your seat. I'll be with
4 you in just a minute.

5 MS. LIPINSKI: Your Honor, we do have an issue we need
6 to bring to your attention.

7 THE COURT: Well do you want the alternates to step
8 out?

9 MS. LIPINSKI: I just don't know if you charged them.
10 They need to be recharged. No, they can step out. Sorry.

11 THE COURT: All right. Why don't you just step
12 outside the door? Don't go to the jury room.

13 (ALTERNATE JURORS LEAVE COURTROOM.)

14 MS. LIPINSKI: I didn't hear it, and I was kind of
15 taking notes, but Mr. Epting didn't check it off either.
16 I'm not sure you charged the Defendant's right to remain
17 silent --

18 THE COURT: You're right. I did not.

19 MR. BARROWCLOUGH: I was --

20 MS. LIPINSKI: And I just --

21 THE COURT: I did not, that was a slip up. You're
22 right. Anything else?

23 MS. LIPINSKI: No, that was it. I just --

24 MR. BARROWCLOUGH: That's it, Your Honor.

25 THE COURT: All right.

1 Bring the jury back in. I apologize. That's..

2 MS. LIPINSKI: No.

3 (JURY REENTERS COURTROOM AT 11:55 AM.)

4 THE COURT: Madame Forelady, and ladies and gentlemen
5 of the jury, I did neglect to tell you about a very
6 important right that Mr. Anthony has, and I neglected to
7 tell you that.

8 Mr. Anthony chose to exercise his Constitutional right
9 to remain silent in this case. That is, he chose not to
10 testify. The fact that he did that is not a factor that
11 can be considered by you in any way whatsoever. It must
12 not be discussed by you. It may not be factored into your
13 deliberation. I cannot be factored into your own
14 consideration of the issues before you. Mr. Anthony, like
15 anyone charged with any offense in our legal system, is
16 presumed innocent. I told you that on several occasions.
17 He does not have to prove his innocence. The State, as
18 I've also told you on several occasions, must prove his
19 guilt beyond a reasonable doubt. Under your oath, you will
20 not consider in any way whatsoever against Mr. Anthony the
21 fact that he exercised his Constitutional right to remain
22 silent. You are to draw no inference from it, you are not
23 to discuss it, and you are to keep in mind that the burden
24 remains on the State to prove Mr. Anthony's guilt beyond a
25 reasonable doubt, and that he is presumed innocent.

CHARGE TO THE JURY

-226-

1 So I apologize for not going over that. It is a very
2 important right of Mr. Anthony, and now I've charged you.

3 As to that, if you'll go back to the jury room, but
4 don't start deliberating until you're told to by the
5 Bailiff. And the two alternates can stay in here this
6 time.

7 (JURY EXITS COURTROOM AT 11:57 PM.)

8 THE COURT: Anything further from the State?

9 MS. LIPINSKI: Nothing. Thank you, Your Honor.

10 THE COURT: The Defense?

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

12 THE COURT: We'll check the exhibits and verdict
13 forms, and make sure everything's in order.

14 And the two alternates, we've got pizza ordered. If
15 you'd like to stay and have pizza, you can.

16 You can leave. Call back tonight after 7:00, and
17 you'll receive whatever instructions there are about
18 further reporting or being through for the week.

19 Thank you so much for your help.

20 Check everything and we'll send it back and check with
21 the Solicitor about the next trial.

22 (COURT IN RECESS AT 12:00 PM.)

23 (COURT BACK IN SESSION AT 12:27 PM.)

24 THE COURT: We received a note from the jury. They
25 asked for the definition of "distribution." So I'll bring

CHARGE TO THE JURY

-227-

1 them in and charge them with what I charged them earlier.

2 Anything before I bring them in?

3 MS. LIPINSKI: Nothing from the State.

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

5 THE COURT: All right.

6 Bring in the jury.

7 (JURY REENTERS COURTROOM AT 12:28 PM.)

8 THE COURT: Madame Forelady, ---

9 MADAME FORELADY: Yes, sir.

10 THE COURT: --- your note ask that I redefine because
11 I've already defined it once distribution as it pertains to
12 this case. Is that correct?

13 MADAME FORELADY: Yes, sir.

14 THE COURT: All right well, you can go ahead and have
15 a seat.

16 Mr. Anthony is charged in those four separate
17 indictments with distribution of crack cocaine. The State
18 in order for him to be found guilty must prove beyond a
19 reasonable doubt to your satisfaction that he distributed
20 crack cocaine. They must prove that the substance alleged
21 to be crack cocaine was crack cocaine. The term
22 "distribute" means to deliver, or to actually, or
23 constructively, or attempt to transfer a drug other than by
24 administering it or dispensing it. Deliver means to
25 actually constructive, or attempt to transfer a drug. A

CHARGE TO THE JURY

-228-

1 transfer can involve an exchange for money; a barter, that
2 is a trade; or a gift. There does not have to be anything
3 given in exchange for the drugs for a transfer to
4 constitute distribution. So in essence, that's what I
5 charged you earlier as to distribution.

6 So I'm going to let you go back and continue to
7 deliberate.

8 (JURY EXITS COURTROOM AT 12:30 PM.)

9 THE COURT: Any exceptions?

10 MS. LIPINSKI: None from the State.

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

12 THE COURT: All right. We'll remain at ease.

13 (COURT IN RECESS AT 12:30 PM.)

14 (VERDICT AT 01:47 PM.)

15 (COURT BACK IN SESSION AT 01:52 PM.)

16 THE COURT: Thank you. Take your seats.

17 I understand the jury has reached a verdict.

18 Is the State ready?

19 MS. LIPINSKI: Yes, Your Honor.

20 THE COURT: Defense?

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

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

23 MADAME COURT REPORTER: Judge, there's nobody to tell.

24 MS. LIPINSKI: I've missed, and I'm waiting on Mr.
25 Epting, I'm sorry.

VERDICTS

-229-

1 THE COURT: Just tell them to hold up just a minute,
2 if you don't mind.

3 (PAUSE..)

4 THE COURT: Is the State ready now?

5 MS. LIPINSKI: Yes, Your Honor.

6 MR. EPTING: I apologize, Your Honor.

7 THE COURT: Defense?

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

9 THE COURT: We're ready.

10 (JURY REENTERS COURTROOM AT 01:55 PM.)

11 THE COURT: Madame Forelady, I understand the jury has
12 reached verdicts?

13 MADAME FORELADY: Yes, sir..

14 THE COURT: If you'll hand them to the Bailiff, he'll
15 hand them up to me.

16 (VERDICTS RECEIVED UP BY THE COURT.)

17 THE COURT: Madame Clerk.

18 MADAME CLERK: Indictment 2007-GS-46-1072, the State
19 versus Harry Lawrence Anthony, indictment for distribution
20 of cocaine base, we find the Defendant guilty of
21 distribution of cocaine base, signed by the foreperson,
22 dated today's date.

23 Indictment 2007-GS-46-1073, the State versus Harry
24 Lawrence Anthony, indictment for distribution of cocaine
25 base, we find the Defendant guilty of distribution of

VERDICTS

-230-

1 cocaine base, signed by the foreperson, dated today's date.

2 Indictment 2007-GS-46-1074, the *State versus Harry*
3 *Lawrence Anthony*, indictment for distribution of cocaine
4 base, we find the Defendant guilty of distribution of
5 cocaine base, signed by the foreperson, dated today's date.

6 Indictment 2007-GS-46-1075, the *State versus Harry*
7 *Lawrence Anthony*, indictment for distribution of cocaine
8 base, we find the Defendant guilty of distribution of
9 cocaine base, signed by the foreperson, dated today's date.

10 Ladies and gentlemen of the jury, if that be your
11 verdict, so say you by raising your right hand.

12 Let the verdict show, all jurors affirmed this
13 verdict.

14 THE COURT: Anything from the State before the jurors
15 are dismissed?

16 MS. LIPINSKI: Nothing from the State.

17 THE COURT: Anything from the Defense?

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

19 THE COURT: Members of the jury panel, thank you for
20 your help. We are going to draw another jury, but I'm not
21 going to put you in a position to be in that jury because
22 we didn't know if you all would still be out, and they're
23 supposed to be here at Two o'clock. So this finishes your
24 work for the week. You don't have to call back, and you'll
25 be mailed a check, and we appreciate your help.

SENTENCING

-231-

1 Thank you so much.

2 (JURY DISMISSED AT 01:58 PM.)

3 (MADAME FORELADY SIGNED INDICTMENT/VERDICT FORMS.)

4 THE COURT: The jury is dismissed. Anything from the
5 State?

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

7 THE COURT: Mr. Barrowclough?

8 MR. BARROWCLOUGH: Yes, Your Honor, for purposes of
9 the record, on behalf of Mr. Anthony, I would move for a
10 new trial based on the fact that the evidence was not
11 sufficient for these verdicts. And I would also
12 incorporate the previous objections and exceptions.

13 THE COURT: I deny the motion. As I said in the
14 directed verdict stage, there was ample direct evidence and
15 ample, substantial circumstantial evidence from which a
16 jury could reach the verdicts they reached. I therefore
17 deny your motions -- any and all motions from the Defense
18 regarding a new trial and revisiting any issues addressed
19 during the trial.

20 All right, do you want to bring Mr. Anthony around for
21 sentencing?

22 Do you have sentencing sheets?

23 MS. LIPINSKI: Yes, Your Honor.

24 THE COURT: Why don't you just go ahead while she's
25 doing that. Remind me of the record, what the offenses

SENTENCING

-232-

1 would be.

2 MS. LIPINSKI: The second offense. He did have -- he
3 has two prior drug offenses, but one was a simple
4 possession of marijuana where he forfeited the bond so we
5 conceded in pretrial motion that, that would not be
6 enhanceable. But he also had a distribution of crack
7 cocaine in '98 that was not within the 10 years. I believe
8 his supervision went into, it was in '93, and I think
9 supervision went up to '98.

10 THE COURT: I'll be glad to hear anything from the
11 State involving sentencing.

12 MS. LIPINSKI: Your Honor, I just -- may it please the
13 Court. Obviously the Court's fully aware of the factual
14 ramifications of this case, in some respects that we just
15 ask the Court to take notice that this wasn't a simple
16 crack deal out of a window or something like this. This
17 was someone who was going further and exploiting other
18 addicts' addiction beyond just to obtain money in which he
19 received something of far more value, but far more
20 detriment to society, and we would ask the sentence reflect
21 that.

22 THE COURT: Mr. Barrowclough?

23 MR. BARROWCLOUGH: Thank you, Your Honor. May it
24 please the Court.

25 Your Honor, Mr. Anthony is 59 years old. He'll be 60

SENTENCING

-233-

1 years old in 11 days. He is a native of York. I think
2 that, that crack charge the Solicitor referenced from 1993
3 was his only prior General Sessions level offense. Your
4 Honor, Mr. Anthony as you know from yesterday's occurrences
5 at pretrial, he does have significant heart problems and
6 blood pressure problems, and he is under the care of
7 Carolina Cardiology who we contacted for his care while
8 he's been in the Detention Center these past two nights.
9 Your Honor, he -- he has been actually on house arrests as
10 part of his bond on these charges since, I believe, January
11 of 2007, so about five years. And he, to my knowledge, of
12 course I haven't heard him say that whole time, but Mr.
13 Roberts did, but to my knowledge, he hadn't had any bond --
14 any violations of that bond. He has obviously not been
15 fowl of the law or done anything else wrong during that
16 time period.

17 But over these past five years, at this time, I don't
18 believe he has any problem because of his heart conditions
19 and disability. But he does not have much of a prior
20 record, and it was a long time ago. He has tried to walk
21 the straight and narrow path these past five years. And he
22 is in poor health. And I would ask the Court to consider
23 all those mitigating factors in fashioning the sentence.

24 THE COURT: Mr. Dest, anything you want to say?

25 MR. DEST: No, Your Honor.

SENTENCING

-234-

1 THE COURT: Mr. Anthony, anything you want to say?

2 THE WITNESS: No.

3 THE COURT: The sentence on all of these are to run
4 concurrent. They are all for 15 years.

5 Thank you.

6 MS. LIPINSKI: Thank you.

7 MR. BARROWCLOUGH: Thank you, Your Honor.

8 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE IDENTIFIED
9 AND MARKED, RECEIVED INTO THE RECORD.)

10 (COURT ADJOURNED IN THE MATTER OF THE STATE OF SOUTH
11 CAROLINA VERSUS HARRY LAWRENCE ANTHONY AT 02:05 PM.)

12 -- END OF TRANSCRIPT OF RECORD--
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 9th, 10th and 11th days of January 1012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR - Master
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 2-23 / 2012

IN THE COURT OF GENERAL SESSIONS
YORK COUNTY, SOUTH CAROLINA

SOUTH CAROLINA

VERSUS

HARRY LAWRENCE ANTHONY, DEFENDANT

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

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

APPEARANCES:

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

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

REPORTED BY: JANET M. RICH
CIRCUIT COURT REPORTER
1992 DOWNEY STREET
ROCK HILL, SC 29732

E X H I B I T S

1			
2	D-1	LETTER	12
3	D-2	MEMO	12
4	D-3	SEARCH WARRANT	19
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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

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

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

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

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

24 THE COURT: OKAY.

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

1 JUDGE SHOPPING WHICH I THINK IS WRONG.

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

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

7 THE COURT: OKAY.

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

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

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

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

22 MR. ROBERTS: OKAY.

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

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

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

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

13 MR. ROBERTS: I DON'T KNOW.

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

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

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

7 THE COURT: OKAY.

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

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

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

18 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: YOU MAY.

4 MR. ROBERTS: MAY I HAVE THAT MARKED?

5 THE COURT: YES.

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

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

11 MR. ROBERTS: I UNDERSTAND, YOUR HONOR.

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

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

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

19 MR. ROBERTS: YES, SIR.

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

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

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

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

7 MR. ROBERTS: THAT WAS 1999 I BELIEVE.

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

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

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

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

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

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

25 THE COURT: OKAY. WHERE DID THEY GET THE

1 PIPE, FROM YOUR CLIENT'S PLACE?

2 MR. ROBERTS: NO, SIR.

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

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

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

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

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

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

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

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

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

1 AT THE BRIEF. MRS. LIPINSKI.

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

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

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

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

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

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

10 (DEFENSE EXHIBIT THREE IN EVIDENCE.)

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

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

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

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

21 MRS. LIPINSKI: THANK YOU, YOUR HONOR.

22 MR. ROBERTS: THANK YOU.

23 (END OF PROCEEDINGS.)
24
25

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

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

11
12
13 Janet M. Rich
JANET M. RICH
14
15
16
17
18
19
20
21
22
23
24
25

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case Nos. 2007-GS-46-1072; 1073; 1074; 1075; 2542; and 2543
Order Denying Petition for Rehearing En Banc filed March 25, 2008
Order denying Petition for Rehearing filed March 25, 2008

The State, ...Respondent,

V.

Harry Lawrence Anthony, ...Petitioner.

APPENDIX

RECEIVED

APR 18 2008

SC Court of Appeals

Melvin L. Roberts
Melvin L. Roberts & Associates
Post Office Box 460
York, South Carolina 29745
(803) 684-4807
Attorney for

Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W.
Elliott all of Columbia; and Solicitor Kevin
Brackett, of York, for Respondent.

INDEX

Order dated March 25, 2008.....	1
Order Denying Petition for Hearing En Banc. Dated March 25, 2008.....	3
Petition for Rehearing and Request for Hearing En Banc.....	5
Return to Petition for Rehearing and Suggestion for Rehearing En Banc.....	13
Order dated January 10, 2008.....	18
Defendant's Motion for Judge to Recuse Himself, Order the State to Present to Defendant DNA Profile that Allegedly Was Obtained From a Glass Pipe Containing DNA Profile of an Unknown Male Person, the Proficiency Test Records of the DNA Analyst and Set a Hearing Before Some Other Circuit Court Judge.....	20
Correspondence from Kenneth A. Richstad dated December 17, 2007.....	29
Memorandum in Opposition of Plaintiff's Motion to Require DNA Sample from Defendant.....	30
Memorandum as to Appealability of Intermediate Order in a Criminal Case.....	41
Memorandum on Appealability.....	46
Order dated December 4, 2007.....	51
Motion.....	54

The South Carolina Court of Appeals

The State,

Respondent,

v.

Harry Lawrence Anthony,

Appellant.

The Honorable John C. Hayes, III
York County.

Trial Court Case No. 2007-GS-46-01072

2007-GS-46-01073

2007-GS-46-01074

2007-GS-46-01075

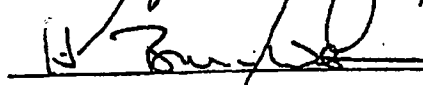
2007-GS-46-02542

2007-GS-46-02543

ORDER

By order of this Court dated January 10, 2008, the above-captioned appeal was dismissed as interlocutory. Appellant filed a petition for rehearing. After a careful consideration of the Appellant's motion and filings, the Court is unable to discover any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing of the appeal. Accordingly, we deny Appellant's petition for rehearing.

AND IT IS SO ORDERED.


_____, C.J.

_____, J.

000001

Joseph M. Curran, Jr.

Columbia, South Carolina

3/25, 2008

cc: Chief Attorney Joseph L. Savitz, III
Melvin L. Roberts, Esquire
Assistant Deputy Attorney General Salley W. Elliott
The Honorable David Hamilton
The Honorable John C. Hayes, III

FILED

3/25/08 dhp

000002

The South Carolina Court of Appeals

Harry Lawrence Anthony,

Appellant,

v.

State of South Carolina,

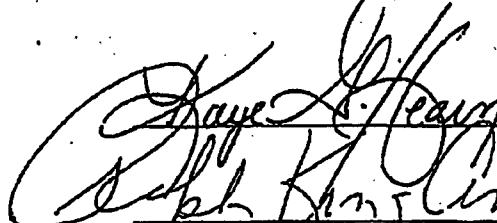
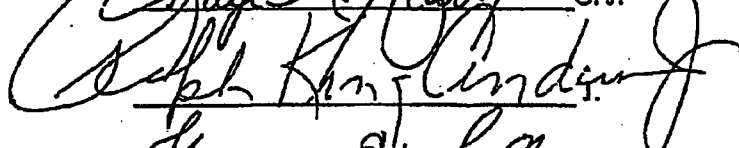
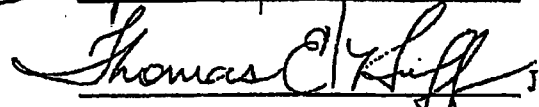
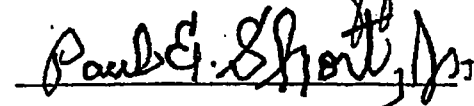
Respondent.

The Honorable John C. Hayes, III
York County
Trial Court Cases Nos. 2007-GS-46-1072,
2007-GS-46-1073, 2007-GS-46-1074, 2007-GS-46-1075,
2007-GS-46-2542, and 2007-GS-46-2543

ORDER DENYING PETITION FOR HEARING EN BANC

PER CURIAM: After a careful consideration of the Petition for Hearing En Banc, the Court has determined that en banc consideration is not necessary to secure or maintain the uniformity of its decisions, nor is the proceeding one involving a question of exceptional importance. Further, the Court finds no other ground appearing to warrant a hearing en banc.

It is, therefore, ordered that the Petition for Hearing En Banc be denied.


C.J.

J.

J.


000003

H. B. Wells J.
Paul D. Thomas J.
David Pope J.
J. R. [unclear] J.
Joseph M. Curran A.J.

Columbia, South Carolina

March 25, 2008

cc: Chief Attorney Joseph L. Savitz, III
 Assistant Deputy Attorney General Salley W. Elliott
 The Honorable David Hamilton
 The Honorable John C. Hayes, III
 Melvin L. Roberts, Esquire

FILED

3/25/08 dlp

000004

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

RECEIVED

JAN 22 2008
SC Court of Appeals

Case Nos. 2007-GS-46-1072; 1073; 1074; 1075; 2542; and 2543

Harry Lawrence Anthony, ...Appellant

V.

State of South Carolina, ...Respondent.

PETITION FOR REHEARING AND
REQUEST FOR HEARING EN BANC

The Appellant hereby petitions the Court for a rehearing in the above-entitled matter on the grounds that the following points have been overlooked or misapprehended by the Court:

1. The Court overlooked or misapprehended Appellant's Motion for the judge to recuse himself from hearing a prosecution motion to obtain DNA evidence from Appellant on the grounds that the solicitor had engaged in "judge shopping". The Appellant in this case is not alleging any impropriety on the part of the trial judge; instead the Appellant believes the trial judge should have recused himself based upon the misconduct of the prosecution by engaging in "judge shopping".

2. The Court overlooked or misapprehended South Carolina Code Section 14-3-330(2)(3) (1976) provides that "intermediate orders are appealable only when they involve

the merits or impair a substantial right." State v. Ballington, 346 S.C. 262, 551 S.E.2d 280 (2001 S.C. App). Therefore, to be appealable it must involve a substantial right or come within one of the exceptions to this statutory provision. The prosecution's Motion seeking to obtain nontestimonial evidence through intrusion into Appellant's body requires a search warrant, which must be "supported by oath or affirmation". U.S. Constitutional Amendment IV; S.C. Constitutional Article 1 Section 10. The Fourth Amendment prohibits unreasonable searches and seizures, as does the South Carolina Constitutional Article 1 Section 10. It is submitted that a constitutional right is a substantial right.

This case initially arose by way of a motion of the prosecution for an Order requiring the Appellant to be taken and a DNA sample be withdrawn from the Appellant (copy attached). The matter is captioned as a Motion, however it is actually seeking a subpoena to obtain nontestimonial evidence from Appellant. The trial judge ruled on both matters in one Order of which a copy is attached. Appellant's Memorandum submitted to the trial court on both issues are likewise attached.

This case involves a Motion by the Defendant for the judge to recuse himself from hearing a prosecution motion to obtain DNA evidence from Appellant on the grounds that the solicitor had engaged in "judge shopping". Attached to the Motion was the correspondence between defense counsel and the solicitor's office. The solicitor's office made it quite clear that only one judge of all the judges in South Carolina could hear this case and they would set it only before Judge John C. Hayes, III. The motion was set for hearing before the Honorable John C. Hayes, III. The trial court issued one Order, which disposed of Appellants Motion for the judge to recuse himself by simply stating, "the court has, on the record, denied Defendant's motion to recuse himself". The trial court did not address the issue of whether or not the judge should recuse himself

000006

when the prosecution blatantly goes "judge shopping" to select a judge that they believe would be amenable to their position. This is not a case concerning the issues addressed in State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (S.C. App. 2002), wherein this court held: "absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal...it is not enough for a party seeking disqualification to simply allege bias, the party must show some evidence of bias...furthermore, the alleged bias must be personal, as distinguished from judicial, in nature." The Defendant in this case is not alleging any impropriety on the part of the trial judge; instead the Appellant believes the trial judge should have recused himself based upon the prosecution engaging in "judge shopping".

This is a novel issue in South Carolina. The Appellant acknowledges that he does not have any right for his case to be heard by any particular judge, however, he believes the same should be true of the prosecution. He believes that the same rule that excludes the Appellant from seeking a favorable judge should also limit the prosecution from seeking the matter to be heard by a particular favorable judge. Our Appellate Courts have not yet ruled on this issue and it is submitted that if this appeal is not allowed, the practice by the prosecution will continue, and will also continue to avoid appellant review. For that reason, among other reasons, this appeal should be allowed to go forward so that our Appellate Courts can set perimeters on "judge shopping". It may be that the time is right to have a court coordinator (independent of both prosecution and defense) to set cases to be heard before any judge holding court in the circuit and not before a particular judge as requested by either of the parties.

000007

South Carolina Code Section 14-3-330(2)(3) (1976) provides that "intermediate orders are appealable only when they involve the merits or impair a substantial right." State v. Ballington, 346 S.C. 262, 551 S.E.2d 280 (2001 S.C. App).

Therefore, to be appealable it must involve a substantial right or come within one of the exceptions to this statutory provision.

The Appellant contends that the prosecution in seeking to obtain nontestimonial evidence through intrusion into Appellant's body requires a search warrant, which must be "supported by oath or affirmation". U.S. Constitutional Amendment IV; S.C. Constitutional Article 1 Section 10. The Fourth Amendment prohibits unreasonable searches and seizures, as does the South Carolina Constitutional Article 1 Section 10. It is submitted that a constitutional right is a substantial right.

Black's Law Dictionary Sixth Edition page 1428 provides under the definition of substantial: "of real worth and importance; of considerable value; valuable."

Webster's New Twentieth Century Dictionary Second Edition page 1817 provides the definition of substantial right as: "a constitution or a legal right".

The State's motion for a "search warrant" was not under oath; it did not meet other elements required of a search warrant under the State and Federal Constitutions.

The South Carolina Supreme Court in, In Re: Investigation of Death of Melinda Renee Snyder, 417 S.E.2d 572 at 574 (1992) provided three elements for the Court to consider and added additional factors to be weighed are "the seriousness of the crime and the importance of the evidence to the investigation. The judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and

000008

seizures." The Appellate Court did not give the trial bench and bar any criteria to weigh "the seriousness of the crime and the importance of the evidence to the investigation".

This writer has been unable to determine or find any cases where DNA evidence has been sought, and the search warrant approved by Appellate Courts, for the taking of DNA evidence in any type of criminal case except murder.

The South Carolina Supreme Court must have had some reason to add the additional factors "seriousness of the crime" and "importance of the evidence to the investigation". This case involves setting perimeters as to what class of cases, other than murder, a search warrant for bodily fluids may be obtained from a Defendant. Can the State obtain DNA evidence for any crimes? What is a serious crime? The trial judge did not pass upon that or the "importance of the evidence to the investigation". If this appeal is not allowed, these issues will still be unresolved and will result in varying results among the various circuits in the State. It is also probable that the issue will continue to avoid appellant review and continue to leave the bench and bar in the dark as to what the Supreme Court intended by the quoted phrases.

In a recent case from the Court of Appeals entitled The State v. Anthony Woods, Opinion Number 4319, filed November 30, 2007 and published in Advance Sheet No. 41. The Court of Appeals in that case held that a search warrant order premised upon a motion that did not meet the requirements of S.C. Code Section 17-13-140 of the 1976 South Carolina Code of Laws as amended, was not valid and the DNA samples should have been suppressed. It was not supported by a sworn oath or affirmation (the above cited code section requires a sworn affidavit for a search warrant (or court order) to be issued). Furthermore, the affidavit must set forth particular facts and circumstances

000009

underlying the existence of probable cause to allow the magistrate (or circuit court judge) to make an independent evaluation of the matter. None of these requirements were met in the court order of the trial court in this case.

In the Woods case (supra) the evidence was collected under the search warrant, was presented at trial, the Defendant was convicted then belatedly the court determined the search warrant was invalid however the court determined that it was "harmless error beyond a reasonable doubt".

Appellant submits that the Defendant should not be required to sit idly by while evidence is gathered under an invalid search warrant, being put to trial and if convicted with stand the rule "error but harmless beyond a reasonable doubt".

The Appellant also raised the issue as to his entitlement to the report of the DNA found on the "crack pipe" which the Court generally dismissed without discussion. It is submitted that this is a novel question of first impression in South Carolina. When the State seeks nontestimonial identification evidence to attempt to match a sample obtained from some other source, is Appellant entitled to a report showing exactly what was found so he could also run the necessary tests to determine a match without relying on the prosecution.

Assuming the State has found what he calls "DNA evidence" on the crack pipe, they should be required, at a minimum, to make a preliminary report available to the Defendant as to exactly what was found. How many points were they able to identify? It should not be left for the Defendant to attempt to show that there was no actual match when this determination could be made independently both by the prosecution and the defense if the DNA sample was made available to the Defendant before any DNA was

000010

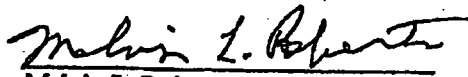
taken from him (if DNA is to be taken at all). Unless this appeal is allowed to go forward, this importance issue of first impression would escape appellate review.

For all the foregoing reasons, it is requested that this case is of such vast importance that it should be heard En Banc.

The Appellant suggests a rehearing En Banc pursuant to Rule 219 of the South Carolina Appellate Rules.

Respectfully submitted.

York, South Carolina
January 18, 2008


Melvin L. Roberts
Melvin L. Roberts & Associates
P.O. Box 460
York, South Carolina 29745
(803) 684-9966
Attorney for Appellant

000011

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case Nos. 2007-GS-46-1072; 1073; 1074; 1075; 2542; and 2543

Harry Lawrence Anthony, ...Appellant.

V.

State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petition for Rehearing and Request for Hearing En Banc in the above captioned case, along with a copy of this CERTIFICATE OF SERVICE, have been furnished to Sally W. Elliot, Assistant Deputy Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549, Mindy Hervey Lipinski, Assistant Solicitor, Moss Justice Center, 1675-1A York Hwy., York, SC 29745 by U.S. Mail, postage prepaid on January 18, 2008.

January 18, 2008
York, South Carolina

MELVIN L. ROBERTS & ASSOCIATES



Melvin L. Roberts
300 West Liberty Street
Post Office Box 460
York, South Carolina 29745
(803) 684-9966
(803) 684-4527 - facsimile
Attorney for Appellant

000012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

HARRY LAWRENCE ANTHONY,

Appellant.

RETURN TO PETITION FOR REHEARING
AND SUGGESTION FOR REHEARING EN BANC

Respondent, State of South Carolina, would respectfully show that this appeal was properly dismissed as premature and that the petition for rehearing and suggestion for rehearing en banc should be denied:

I.

Appellant has been indicted but not yet tried for four (4) counts of distribution of crack cocaine, one count of abuse of a vulnerable adult, and one count of exploitation of a vulnerable adult. On November 21, 2007, the State moved for a pre-trial order requiring Appellant to submit a DNA sample pursuant to Schmerber v. California, 384 U.S. 757 (1966). Appellant submitted a Memorandum in Opposition to the motion. The Honorable John C. Hayes, III, issued a pretrial order dated December 4, 2007 granting the State's motion and requiring Appellant to make himself available within ten (10) days to allow the taking of a DNA sample by oral swabbing. Judge Hayes also denied Appellant's motion for recusal. On December 7, 2007,

000013

Appellant filed and served notice of appeal from Judge Hayes' pretrial order. This Court requested memoranda addressing the issue of appealability. After consideration of the memoranda, this Court dismissed the appeal finding the order to be an interlocutory order not subject to immediate appeal.

II.

Appellant now petitions for rehearing and suggests rehearing en banc asserting this Court overlooked his substantial right to be free from unreasonable searches and seizures and that prosecutorial action formed the basis of his motion to recuse the trial judge. Appellant contends this Court should hear the appeal and address his claims that prosecutors were "judge shopping" and that the order impacts his constitutional right to be free from unreasonable search and seizure.

The State submits this Court properly dismissed Appellant's appeal because the order on appeal is an interlocutory order not subject to immediate appeal. Contrary to Appellant's claim, the issues Appellant asserts this Court should consider now on appeal do not involve the merits or impair a substantial right as has been defined by our appellate courts and can be presented if Appellant is later convicted and sentenced.

It is axiomatic that a criminal defendant may not appeal until sentence has been imposed. State v. Miller, 289 S.C. 426, 336 S.E.2d 705 (1986). Generally, orders involving pretrial discovery are not immediately appealable. Ferguson v. Charleston Lincoln/Mercury, Inc., 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001); Hamm v. South Carolina Pub. Serv. Comm'n, 312 S.C. 238, 439 S.E.2d 852 (1994); Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986); Kemmerlin v. Bloom, 251 S.C. 49, 159 S.E.2d 910 (1968). Our supreme court has specifically recognized that pretrial orders requiring an individual to provide blood or other samples are not

immediately appealable absent an exceptional circumstance such as the presentation of a novel issue or a matter involving the rights of a minor. State v. Register, 308 S.C. 534, 536 FN1, 419 S.E.2d 771, 772 FN1 (1992). The order Appellant appeals presents no exceptional circumstance rendering it immediately appealable. Similar to a pretrial order committing a person to the custody of the South Carolina Department of Mental Health, the order in this case may be appealed when and if Appellant is convicted and sentenced. See State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983) (stating that an order committing a defendant to the Department of Mental Health for a pretrial evaluation may not be appealed until the final judgment is rendered). Other jurisdictions have considered this issue and determined that orders such as is being presented to this Court are not appealable until the final judgment of sentencing. Robinson v. Com., 440 Mass. 1034, 800 N.E.2d 1044 (2004); Butler v. State, 311 Ark. 334, 842 S.W.2d 435 (1992); State v. Marut, 63 Ohio App. 487, 579 N.E.2d 281 (1989); In re Solomon, 465 F.3d 114 (3rd Cir 2006).

As to the denial of Appellant's motion to recuse the trial judge, the denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits and may be reviewed on appeal only after the final judgment of sentencing. Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996); Rogers v. Wilkins, 275 S.C. 28, 267 S.E.2d 86 (1980); see also State v. Miller, 289 S.C. 426, 356 S.E.2d 705 (stating the final order of disposition is the point at which an appeal arises; therefore, a criminal defendant may not appeal until sentence is imposed). This Court properly dismissed the appeal as premature.

III.

Also, Appellant's request for rehearing en banc should be denied as Appellant has not argued or shown that consideration by the full court is necessary to secure or maintain uniformity

in the Court's decisions or that the appeal involves a question of exceptional importance. See Rule 219, SCACR. At issue are rulings pertaining to a discovery request and motion to recuse the trial judge. Our appellate court decisions make it clear that both matters are considered interlocutory and not immediately appealable. Contrary to Appellant's assertion, the matters are neither novel nor of "vast importance."

WHEREFORE, the State submits the petition for rehearing and suggestion for rehearing en banc must be denied because Appellant appeals an interlocutory order that is not immediately appealable.

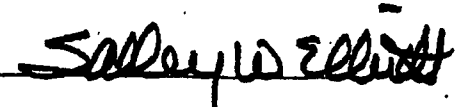
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KEVIN BRACKETT
Solicitor, 16th Judicial Circuit

BY: 

Salley W. Elliott
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 28, 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent.

vs.

HARRY LAWRENCE ANTHONY,

Appellant.

PROOF OF SERVICE

I, Kathy W. Scott, certify that I have served the Return to Petition for Rehearing and Suggestion for Rehearing En Banc by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to Melvin L. Roberts, Esquire, Post Office Box 460, York, South Carolina 29745.

I further certify that all parties required by Rule to be served have been served.

This 28th day of January, 2008.



KATHY W. SCOTT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

000017

The South Carolina Court of Appeals

The State,

Respondents,

v.

Harry Lawrence Anthony,

Appellant.

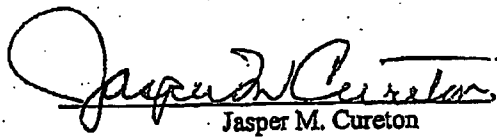
The Honorable John C. Hayes, III
York County
Trial Court Case No. 2007-GS-46-01072
2007-GS-46-01073
2007-GS-46-01074
2007-GS-46-01075
2007-GS-46-02542
2007-GS-46-02543

ORDER

Appellant appeals from the order of the trial court denying his motion to recuse himself. The order also required the Appellant to submit to DNA testing. After reviewing the trial court's order and both parties' memoranda on appealability, this Court dismisses the appeal as interlocutory. See State v. Register, 308 S.C. 534, ft. n.1, 536, 419 S.E.2d 771, 772, ft. n. 1 (1992) (citing Ex Parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986) (finding order order taking blood, saliva and hair samples is "[o]rdinarily not appealable"); see also Townsend v. Townsend, 323 S.C. 309, 313, 474 S.E.2d 424, 427 (1996) ("A denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits and, thus, is reviewable only on appeal from a final order.").

AND IT IS SO ORDERED.

000018

 A.J.
Jasper M. Cureton

Columbia, South Carolina

1/10/2008

cc: Chief Attorney Joseph L. Savitz, III
Melvin L. Roberts, Esquire
Assistant Deputy Attorney General Salley W. Elliott

The Honorable David Hamiltan
The Honorable John C. Hayes, III

FILED

1/11/08 dlp

000019

STATE OF SOUTH CAROLINA

COUNTY OF YORK

State of South Carolina,

Plaintiff,

vs.

Harry Lawrence Anthony,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
) Docket Nos.: 07-GS-46-1072; 1073; 1074; 1075
) 2542; and 2543

) DEFENDANT'S MOTION FOR JUDGE
) TO RECUSE HIMSELF, ORDER THE
) STATE TO PRESENT TO DEFENDANT
) DNA PROFILE THAT ALLEGEDLY WAS
) OBTAINED FROM A GLASS PIPE
) CONTAINING DNA PROFILE OF AN
) UNKNOWN MALE PERSON, THE
) PROFICIENCY TEST RECORDS OF THE
) DNA ANALYST AND SET A HEARING
) BEFORE OME OTHER CIRCUIT COURT
) JUDGE

The Defendant respectfully requests the Honorable John C. Hayes, III to recuse himself from hearing any issue involved in the instant case. The Defendant submits a letter from Ryan Holloway, Assistant Solicitor, 16th Judicial Circuit dated August 8, 2007 listing times for a hearing concerning another matter; a response of Melvin L. Roberts, Attorney for Defendant dated August 9, 2007 protesting that the State was judge shopping; and the response dated August 14, 2007 by Kevin Brackett, 16th Judicial Circuit Solicitor.

Basically, it is the State's position that only Judge John C. Hayes, III, of all the Circuit Court Judges in South Carolina, is qualified and can hear issues involved in the instant case. Because this appears to be judge shopping, the Defendant believes that all the matters involving this case should be heard by some other, impartial, Circuit Court Judge visiting the 16th Judicial Circuit at some appropriate time.

Normally, a judge should only recuse himself when questions of impartiality or impropriety are raised. "Furthermore, the alleged bias must be personal, as distinguished

from judicial, in nature." State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (S.C. App. 2002).

This is not a case in which the Defendant seeks to have the judge recuse himself because of a disqualification or because of impartiality or impropriety. To the contrary, this is a case which the Defendant submits the prosecution inappropriately went judge shopping and selected a judge the prosecution felt would most likely grant whatever the prosecution requested (although the defense counsel does not agree with this). Nevertheless, the Defendant believes that because of the judge shopping by the prosecution, and because the prosecution refuses to permit anything involving this case to be heard by anyone other than the Honorable John C. Hayes, III, that John C. Hayes, III should recuse himself and have the case assigned to some other Circuit Court Judge in the State of South Carolina. The Defendant is not attempting to judge shop but to simply require the State to proceed on a level playing field before a judge that is not handpicked by the prosecution.

In addition, the matter presently before the Court concerns a motion by the solicitor to obtain DNA profile samples from the Defendant to compare with DNA profile allegedly found on a "glass cocaine pipe".

The State has failed, even after request, to provide the defense with the alleged DNA profile of an unknown male found on the pipe. Defendant previously served Rule 5 and Brady Motions on April 10, 2007.

DNA methodology is very complex. The theory of DNA testing was introduced in England about the mid 1980's. The validity of the results of DNA comparisons depends upon, among other things, the analyst performing and interpreting the tests. It

also depends upon the competency level of the lab personnel and most importantly depends upon proper interpretation and the proper use of statistics. The statistics alone may very widely depend on the competency of the laboratory analyst.

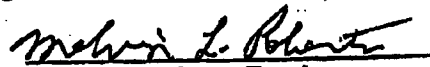
The Defendant is unable to fathom the reason the State refuses to give Defendant the DNA profiles allegedly obtained from the glass pipe. They want to get his DNA first. Why? Again, it goes back to the competency of the laboratory analysts, the techniques used and the statistics. If they have a pattern to go by, they may be able to force a match or it's also possible they could simply generate a match by using the Defendant's own DNA profile. To provide the Defendant with a copy of the DNA profiles obtained from the glass pipe would eliminate a lot of these questions and would permit the Defendant to obtain his own DNA testing and comparison.

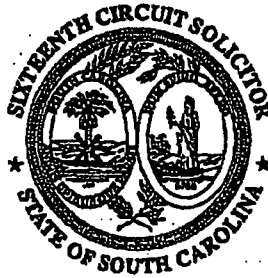
Rule 5, SCRCrimP provides in pertinent part: the Defendant, "upon request shall be permitted to inspect and copy any results or reports...of scientific tests or experiments..." State v. Proctor, 347 S.C. 587, 556 S.E.2d 418 (S.C. App. 2001)

Under Brady, the defense counsel is entitled to obtain the proficiency test results of the DNA analyst involved in the case. "The proficiency test results could be very material to Defendant's case for impeachment and important for cross-examination purposes at trial" State v. Proctor, *supra*, but more importantly, at this time, in determining whether or not this motion should be granted.

November 28, 2007

York, South Carolina


Melvin L. Roberts, Esquire
Melvin L. Roberts & Associates
P. O. Box 460
300 West Liberty Street
York, South Carolina
803-684-9966
803-684-4527 facsimile



KEVIN S. BRACKETT
SOLICITOR

August 14, 2007

Melvin L. Roberts, Esq.
300 West Liberty Street
York, South Carolina 29745

Re: State v. Harry L. Anthony

Dear Melvin:

I am in receipt of your letter dated August 9th, 2007 and am writing in response to same. I appreciate your many concerns expressed and thank you for including the letter of protection. I note that it was not on file in the clerk's office nor had we received it prior to the writing of Mr. Holloway's letter of August 1st. In light of your conflict we will obviously forbear from calling the case during the period you are protected.

As for the dates that remain, I am sure you are aware of the complexities of planning and managing a criminal docket. The fact that I am trying this case with Ryan adds in the significant wrinkle of accommodating my busy schedule which includes many administrative matters as well as two or three murder cases I hope to prosecute in this same time frame. My attendance in the court of General Sessions in Union County must also be factored in.

The schedule proposed in the letter from Mr. Holloway was dictated by me in light of the many competing obligations outlined above. I hope this satisfies your curiosity regarding this issue, but in the event it does not please do not hesitate to contact me. In light of the frustration you expressed over your communications with Mr.

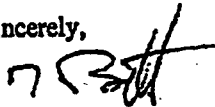
MOSS JUSTICE CENTER
1675-1A YORK HIGHWAY • YORK, SOUTH CAROLINA 29745-7422
(803)-628-3020 • FAX: (803)-628-3025

000023

Holloway I have instructed him to refer any future questions or problems you may have to me.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Brackett', with a stylized flourish at the end.

Kevin S. Brackett
Solicitor, 16th Judicial Circuit

000024

Melvin L. Roberts & Associates
ATTORNEYS AT LAW
300 WEST LIBERTY STREET
YORK, SOUTH CAROLINA 29745

MELVIN L. ROBERTS

POST OFFICE BOX 460
(803) 684-4807
(803) 684-9966
FAX (803) 684-4527

August 9, 2007

Ryan Holloway, Esquire
Solicitor, 16th Judicial Circuit
1675-1A York Highway
York SC 29745

Re: State vs. Harry Lawrence Anthony

Dear Ryan:

I received your letter of August 8, 2007 setting various possible dates to try the above-referenced case, a copy of which I am enclosing. Apparently, you and I do not communicate too well. I explained to you that I would be trying a case in Monroe, North Carolina during the first two weeks of October that is October 1, 2007 – October 12, 2007. In spite of that, you put down October 1, 2007 as a possible trial date. I have protection for those dates; a copy of my letter to Judge Hayes requesting protection with his response is attached hereto.

I do not understand what is happening and hopefully you can enlighten me. This case has been set "trial" on numerous occasions the last time was August 27, 2007. You have continued that. The other day, you called and we discussed another possible trial date but you kept skipping over anytime that Judge John C. Hayes, III was not here because you insisted that you wanted this case tried before Judge John C. Hayes, III and no other judge. When I asked you why your answer was "because". When I further persisted and asked you because of what, your answer was that I was berating you. I still would like to know why you insist that this case can only be tried before Judge John C. Hayes, III of all the other circuit court judges that we have in the State of South Carolina, all of whom are competent judges as far as I am concerned. So is Judge Hayes. I have tried many cases before him and I find him to be a very fair and reasonable judge. I have no problem with Judge Hayes, however when you say that you will only try this case before Judge Hayes, it makes me wonder what do you know that I don't know that would make Judge Hayes more favorable to the State, than any other judge in the State of South Carolina.

As I understand our conversation, this case is now scheduled for the week of November 26, 2007 beginning Monday, November 26, 2007.

I am confused by your follow up letter of August 8, 2007 which you indicate a possible trial date of October 1st, October 29th, November 26th or even possible October 15th. It would be

000025

appreciated if you will enlighten me on these questions that I have lingering in my mind. I understand Judge Hayes will be here for each and every trial date you propose, except October 15th. Also, I was just wondering why you did not set the week of September 17th as a possible trial date while Judge Manning and Judge Nettles are here.

I appreciate your earliest advice.

With kind regards, I am

Sincerely,



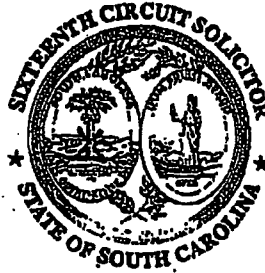
Melvin L. Roberts

MLR/adb

Enclosures

cc: The Honorable John C. Hayes, III
Kevin Brackett, Esquire
Harry Anthony

000026



KEVIN S. BRACKETT
SOLICITOR

Melvin Roberts, Esq.
300 West Liberty Street
York, SC 29745

August 8, 2007

RE: State v. Harry Anthony—Trial Notice

Dear Melvin,

The State intends to try the above-referenced case the week of October 1st, October 29th, or November 26th. The Attorney General's Office already has a trial scheduled for the week of October 15th. However, if the Attorney General's Office provides reasonable notice that its trial will not occur the week of October 15th, then the State will try Mr. Anthony that week instead.

If you wish for a continuance, please file a written motion for continuance within the next fifteen days with Judge John C. Hayes III, Chief Administrative Judge. Forward any questions you may on this matter to Mr. Kevin Brackett.

Kindest regards,

Ryan Holloway
Assistant Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF YORK

State of South Carolina,

Plaintiff,

vs.

Harry L. Anthony,

Defendant.

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Memorandum as to Appealability of Intermediate Order in a Criminal Case in the above captioned case, along with a copy of this **CERTIFICATE OF SERVICE**, have been furnished to Mindy Hervey Lipinski, Solicitor for the 16th Judicial Circuit, 1675-1A York Highway, York, South Carolina 29745, by U.S. Mail on December 20, 2007.

York, South Carolina

December 20, 2007

MELVIN L. ROBERTS & ASSOCIATES

Melvin L. Roberts

Melvin L. Roberts, Esquire

PO Box 460

300 W. Liberty Street

York, SC 29745

(803) 684-9966

(803) 684-4527 (facsimile)

000028



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 17, 2007

Melvin L. Roberts, Esquire
Melvin L. Roberts & Associates
P.O. Box 460
York, SC 29745

Re: The State v. Anthony, Harry Lawrence

Dear Mr. Roberts:

This will acknowledge receipt of your Notice of Appeal from the order of Judge John C. Hayes, III dated December 4, 2007 in the above entitled matter. A preliminary review of the accompanying order shows it might not be appealable.

Accordingly, it is requested that you submit a memorandum to the court addressing the issue of appealability within ten (10) days of the date of this letter. Opposing counsel may also submit a memorandum addressing the matter within the same time period. Upon receipt of the memorandum, the matter will be taken under consideration and you will be notified as soon as action has been taken.

The time limits for perfecting the appeal are held in abeyance pending the court's decision of appealability.

Very truly yours,

Kenneth A. Richstad
CLERK

KAR/nb

cc: Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W. Elliott

000029

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

State of South Carolina,)

Plaintiff,)

vs.)

Harry Lawrence Anthony,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUITDocket Nos.: 07-GS-46-1072, 1073, 1074,
1075, 2542 and 2543**MEMORANDUM IN OPPOSITION OF
PLAINTIFF'S MOTION TO REQUIRE
DNA SAMPLE FROM DEFENDANT**

The above-entitled matter came before the Court on Motion of the State for an Order requiring that the Defendant, Harry Lawrence Anthony, to give a DNA sample, to be withdrawn from the Defendant, forcibly, if necessary.

The basis is the Motion is that Defendant is currently charged with four (4) counts of Distribution of Crack. One Count of Abuse of Vulnerable Adult and one count of Exploitation of Vulnerable Adult. The Motion further states: "Pursuant to said Indictments, the York County Sheriff's Office collected a glass pipe from Bookout Road, a residence known to be intermittently occupied by the defendant."

FACTS

The State procured a search warrant dated January 25, 2006 to search a residence at 4902 Bookout Road, McConnells, SC. The description of property sought was "Any and all evidence relating to the presence of one Margaret Matthews, a vulnerable adult, as being inside of the residence. This to include but not limited to "crack" cocaine, a metal hanger used to brand, pictures or videos, or any other items that relate to Matthews being provided drugs, coerced into sex, and branded while in this residence." Pertinent portions

of the affidavit to procure the search warrant was that affiant is currently investigating a missing person who is considered a vulnerable adult... "The affiant believes that the items sought will aid in the investigation of this missing person and help to determine if foul play was involved in her disappearance."

The four (4) indictments which allege distribution of cocaine base (crack) are all identical in wording and phraseology and state "That on or about or between December 2004 through December 2005, in York County, South Carolina, the Defendant, Harry Lawrence Anthony, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended." All four (4) of them are identical and all four (4) of them allege that it occurred between December 2004 through December 2005. It is submitted that the four (4) combined only allege one (1) charge of distribution of crack cocaine.

The two (2) warrants involving an alleged exploitation of a vulnerable adult and abuse of vulnerable adult allege a violation of Section 43-35-85(D) and 43-35-85(B) and is submitted that it actually alleges one crime under one statute.

The Motion for an Intrusion Bodily Search Warrant alleged, "Preliminary tests indicate that a female DNA profile, *not that of Margaret Matthews*, and a male DNA profile, *unknown*, were identified from those swabbings. The Solicitor's Office has confirmed this via telephone conversation with Lillian Gallmun, a SLED DNA analyst." (The defense counsel has not been supplied with a copy of any such report and there is no

000031-

indication as to how many other male DNA profiles were identified.) The profile of the male DNA was not provided to Defendant and the SLED would have Defendant's DNA profile if this Motion is granted and could use that as evidence taken from the glass pipe.

The known evidence at best only identifies a possible use of or possession of crack cocaine residue (and not distribution of crack cocaine) which only carries a penalty of up to three (3) years and/or \$50,000.00. S.C. Code §44-53-375(A).

LAW

The Defendant contends that the search warrant of January 25, 2006 was defected and therefore void and of no effect.

S.C. Code §17-13-140 provides in pertinent part: "Any magistrate...may issue a search warrant to search for and seize...(4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense...a warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate..." The search warrant for Bookout Road (several other search warrants were issued and served on Bookout Road house and Defendant's residence on Congress Street in York, South Carolina but this is the only one pertinent to the matter at hand) provided "Description of Property Sought", "Any and all evidence relating to the presence of one Margaret Matthews, a vulnerable adult, as being inside the residence. This to include but not limited to "crack" cocaine, a metal hanger used to brand, pictures or videos, or any other items that relate to Matthews being provided drugs, coerced into sex, and branded while in the residence." "The affiant is a certified law enforcement officer in the state of South Carolina and has been for over 11 years. Affiant is currently investigating a missing person ...The affiant believes that the items sought will aid in the investigation of this

000032

missing person and help to determine if foul play was involved in her disappearance."

(Premise to be searched was 4902 Bookout Road, McConnells, SC.)

According to the body of the Motion in this action, the DNA analyst, Lillian Gallmun informed the Solicitor's Office by telephone conversation that a female profile "not that of Margaret Matthews" and a male DNA profile "unknown" were identified from the swabbings of a crack cocaine glass pipe. The motion itself negates involvement of Margaret Matthews with the glass crack pipe.

The Motion by the State to obtain DNA sample of Defendant's body does not even allege the existing of probable cause or a clear indication that the requested evidence is relevant to the question of the Defendant's guilt. The Motion completely fails to properly allege and submit to the Court that any evidence the Court could use to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures.

A search warrant issued for one purpose (aid in the investigation of this missing person and help to determine if foul play was involved in her disappearance) did not authorize a search for evidence of other crimes. State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572, *rehearing denied* (S.C. App. 2005).

A search warrant affidavit is sufficient if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed. State v. Williams, 262 S.C. 186, 203 S.E.2d 436 (1974), *cert. denied*, 419 U.S. 835, 42 L.Ed.2d 61, 95 S.Ct. 61. State v. Ellis, (1974), 263 S.C. 12, 207 S.E.2d 408. See also, S.C. Code §17-13-140(4).

"An affidavit in support of a search warrant authorizing the search of suspect's motel room for a weapon and clothes used in a robbery, was defective on its face where the affidavit set forth no facts as to why the police believed that the suspect had committed the robbery in question....An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause (that a crime has been committed). Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient; a magistrate's action cannot be "a mere ratification of the bare conclusions of others." State v. Smith, (S.C. 1990) 301 S.C. 371, 392 S.E.2d 182.

"In order for affidavit in support of search warrant to show probable cause, it must state facts so closely related to time of issuance of warrant as to justify finding of probable cause at that time; affidavit which fails altogether to state time of occurrence of facts alleged is insufficient." State v. Winborne, (S.C. 1979) 273 S.C. 62, 254 S.E.2d 297.

Probable cause for search warrant purposes: "...where a warrant authorizing a bodily intrusion into a potential witness is sought, the State must initially show that there is probable cause to believe a crime has been committed, and probable cause to believe that it was committed by a particular suspect." State v. Register, 419 S.E.2d 771 (S.C. 1992).

The search warrant of January 25, 2006 was invalid because search warrant lacked probable cause; the allegations were not corroborated nor were there any information as to how the officer allegedly had a good faith belief that evidence of a crime would be found in the house on Bookout Road.

000034

It is the Defendant's position that because the first search warrant of January 25, 2006 was invalid that an nontestimonial identification evidence discovered through a search and seizure of Defendant's body would be evidence seized from the first search warrant and would ^{be} but fruit of the poisonous tree. Wong Son v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). See also, State v. Johnson, 395 S.E.2d 167 (S.C. 1990).

There is no direct evidence or substantial circumstantial evidence sufficient to establish that the Defendant possessed crack cocaine and distributed same. There is no credible evidence that the Defendant was apprehended in an area known for "high crime" and "high narcotics traffic" or that he possessed any quantifiable quantity of crack cocaine. When the Defendant was arrested, he had no crack cocaine, after numerous searches of his primary residence 426 S. Congress Street, York, South Carolina no crack cocaine was found. There is no credible evidence that Defendant had exclusive control or possession of 4902 Bookout Road, McConnells, South Carolina. Defendant was neither the owner nor tenant of the Bookout Road property but was given permission from the owner to use it.

There is no credible evidence neither direct nor circumstantial that shows that the Defendant smoked cocaine in the glass pipe in which the State contends a residue of crack cocaine was found by the SLED laboratory.

ARGUMENT

This is a case, which the prosecution improperly obtained a search warrant to aid in an investigation of a missing person report, and not to secure evidence of a crime as is required by S.C. Code §17-13-140.

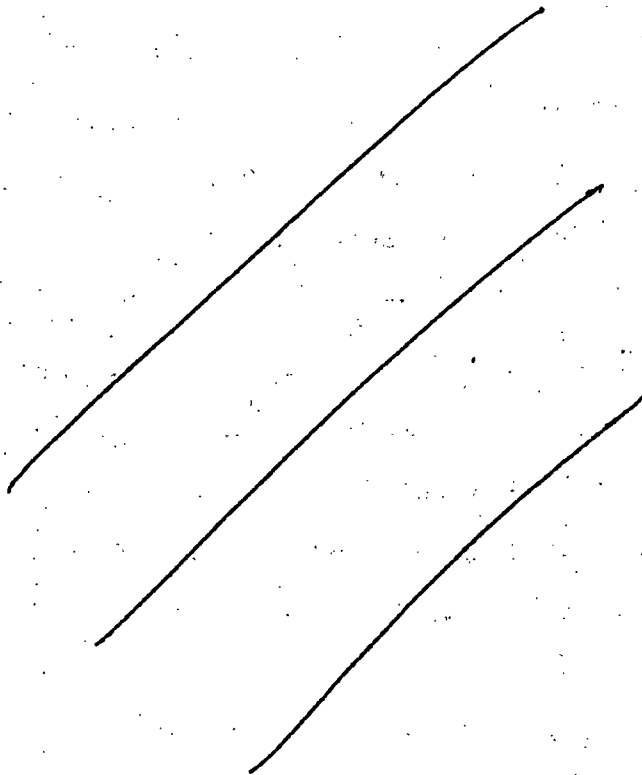
The State does not argue that the Defendant had sole possession of the Bookout Road property that he "intermittently" used it. As "intermittent user" he neither had the exclusive possession, ownership nor was he a tenant. As such, he had neither possession nor constructive possession of the glass pipe when it was recovered by the officers during an illegal search using an invalid search warrant.

There is absolutely no evidence of any kind that Margaret Matthews used the alleged glass cocaine pipe. The Solicitor unequivocally states that he was informed by telephone that "preliminary tests indicate that a female DNA profile, *not that of Margaret Matthews...* were identified from those swabbings" of the glass pipe. Therefore, the illegal purpose of obtaining the search warrant (not to solve a crime but to help solve a missing person report) cannot be used by the authorities to prosecute for a crime not embodied in the alleged search warrant affidavit.

The most that the Defendant could possibly be guilty of, from results of a DNA test of the glass pipe, would be possession or use of crack cocaine.

The South Carolina Supreme Court established in In re Investigation of Death of Melinda Renee Snyder, 417 S.E.2d 572 (1992) elements to be considered when the State seeks to take nontestimonial identification evidence are "(1) probable cause to believe the suspect has committed the crime," (what crime is the State contending that probable cause exist to believe the Defendant committed), "(2) a clear indication that relevant

000036



material evidence will be found" (of what crime), and "(3) the method used to secure it is safe and reliable" (the motion does not identify the method to be used to secure the DNA sample).

The Court identified additional factors to be weighed are "the seriousness of the crime and the importance of the evidence to the investigation. The judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures." These guidelines were established by the South Carolina Supreme Court after reviewing the following cases: In Re: An Investigation of the Death of Abe A., 56 N.Y.2d 288, 452 N.Y.S.2d 6, 7, 437 N.E.2d 265, 266 (1982). David M. v. Dwyer, 484 N.Y.S.2d 323, 107 A.D.2d 884 (1985) [citing *Matter of Abe A.*, *supra*].

The State identified the first three elements but failed to mention the additional evidence including "the seriousness of the crime and the importance of the evidence to the investigation".

The South Carolina Supreme Court has considered and approved obtaining DNA evidence in State v. Johnny Kenneth Register, 419 S.E.2d 771 (S.C. 1992) and in State v. Baccus, (South Carolina Supreme Court Opinion No.: 26094, filed January 9, 2006) in which the Supreme Court stated: "a search warrant may issue only upon a finding of probable cause (cite omitted). "The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed (citation omitted)."

"...In South Carolina, search warrants may be issued "only upon affidavit sworn to before the magistrate...establishing the grounds for the warrant." S.C. Code §17-13-

000038

140 (2003); see also State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978)."

CONCLUSION

The Defendant contends that the search warrant of January 25, 2006 was defective as above stated, that the seizure of the glass pipe was in violation of the Fourth Amendment against unlawful searches and seizures and made applicable to the State by way of the Fourteenth Amendment of the United States Constitution, that the search warrant was issued for one purpose (to aid in finding a missing person) and now is attempting to be used for another purpose (prosecution of the Defendant for drug violation).

The State would have the Court overlook the mandate of the South Carolina Supreme Court in that the Court must consider and weigh the seriousness of the crime and the importance of the evidence to the investigation. The State would further urge the Court to disregard the South Carolina Supreme Court that the "the judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures."

As stated in Register, *supra*, some of the requirements the trial judge must balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures. The trial judge must also take into consideration the seriousness of the

crime. All other cases that this writer has been able to discover involved murder cases. This writer has been unable to find any case in which the Court has authorized bodily intrusions under search and seizure order for bodily fluids for misdemeanor crimes such as simple possession of cocaine, if this be the case, then the next thing would be for less serious crimes including petty larceny. The court must have some meaning to the term that the court must consider the seriousness of the crime.

By cause of and by reason of all the aforesaid, the Defendant submits the Court should deny the motion of the State to obtain DNA sample from the Defendant forcibly, if necessary.

Respectfully Submitted.

November 29, 2007

York, South Carolina


Melvin L. Roberts, Esquire
Melvin L. Roberts & Associates
P. O. Box 460
300 West Liberty Street
York, South Carolina
803-684-9966
803-684-4527 facsimile

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

State of South Carolina,)

Plaintiff,)

vs.)

Harry Lawrence Anthony,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUITDocket Nos.: 07-GS-46-1072, 1073, 1074, 2007
1075, 2542 and 2543

DEC 27, 2007

S.C. Court of Appeals

MEMORANDUM AS TO APPEALABILITY
OF INTERMEDIATE ORDER IN A
CRIMINAL CASE

This case involves a Motion by the Defendant for the judge to recuse himself from hearing a prosecution motion to obtain DNA evidence from Appellant on the grounds that the solicitor had engaged in "judge shopping". Attached to the Motion was the correspondence between defense counsel and the solicitor's office. The solicitor's office made it quite clear that only one judge of all the judges in South Carolina could hear this case and they would set it only before Judge John C. Hayes, III. The motion was set for hearing before the Honorable John C. Hayes, III. The trial court issued one Order, which disposed of Appellants Motion for the judge to recuse himself by simply stating, "the court has, on the record, denied Defendant's motion to recuse himself". The trial court did not address the issue of whether or not the judge should recuse himself when the prosecution blatantly goes "judge shopping" to select a judge that they believe would be amenable to their position. This is not a case concerning the issues addressed in State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (S.C. App. 2002), wherein this court held: "absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal...it is not enough for a party seeking disqualification to simply

allege bias, the party must show some evidence of bias...furthermore, the alleged bias must be personal, as distinguished from judicial, in nature." The Defendant in this case is not alleging any impropriety on the part of the trial judge; instead the Appellant believes the trial judge should have recused himself based upon the prosecution engaging in "judge shopping".

This is a novel issue in South Carolina. The Appellant acknowledges that he does not have any right for his case to be heard by any particular judge, however, he believes the same should be true of the prosecution. He believes that the same rule that excludes the Appellant from seeking a favorable judge should also limit the prosecution from seeking the matter to be heard by a particular favorable judge. Our Appellate Courts have not yet ruled on this issue and it is submitted that if this appeal is not allowed, the practice by the prosecution will continue, and will also continue to avoid appellate review. For that reason, among other reasons, this appeal should be allowed to go forward so that our Appellate Courts can set perimeters on "judge shopping". It may be that the time is right to have a court coordinator (independent of both prosecution and defense) to set cases to be heard before any judge holding court in the circuit and not before a particular judge as requested by either of the parties.

This case initially arose by way of a motion of the prosecution for an Order requiring the Appellant to be taken and a DNA sample be withdrawn from the Appellant (copy attached). The matter is captioned as a Motion, however it is actually seeking a subpoena to obtain nontestimonial evidence from Appellant. The trial judge ruled on both matters in one Order of which a copy is attached. Appellant's Memorandum submitted to the trial court on both issues are likewise attached.

South Carolina Code Section 14-3-330(2)(3) (1976) provides that "intermediate orders are appealable only when they involve the merits or impair a substantial right." State v. Ballington, 346 S.C. 262, 551 S.E.2d 280 (2001 S.C. App).

Therefore, to be appealable it must involve a substantial right or come within one of the exceptions to this statutory provision.

The Appellant contends that the prosecution in seeking to obtain nontestimonial evidence through intrusion into Appellant's body requires a search warrant, which must be "support by oath or affirmation". U.S. Constitutional Amendment IV; S.C. Constitutional Article 1 Section 10. The Fourth Amendment prohibits unreasonable searches and seizures, as does the South Carolina Constitutional Article 1 Section 10. It is submitted that a constitutional right is a substantial right.

Black's Law Dictionary Sixth Edition page 1428 provides under the definition of substantial: "of real worth and importance; of considerable value; valuable."

Webster's New Twentieth Century Dictionary Second Edition page 1817 provides the definition of substantial right as: "a constitution or a legal right".

The State's motion for a "search warrant" was not under oath; it did not meet other elements required of a search warrant under the State and Federal Constitutions.

The South Carolina Supreme Court in, In Re: Investigation of Death of Melinda Renee Snyder, 417 S.E.2d 572 at 574 (1992) provided three elements for the Court to consider and added additional factors to be weighed are "the seriousness of the crime and the importance of the evidence to the investigation. The judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and

seizures." The Appellate Court did not give the trial bench and bar any criteria to weigh "the seriousness of the crime and the importance of the evidence to the investigation".

This writer has been unable to determine or find any cases where DNA evidence has been sought, and the search warrant approved by Appellate Courts, for the taking of DNA evidence in any type of criminal case except murder.

The South Carolina Supreme Court must have had some reason to add the additional factors "seriousness of the crime" and "importance of the evidence to the investigation". This case involves setting perimeters as to what class of cases, other than murder, a search warrant for bodily fluids may be obtained from a Defendant. Can the State obtain DNA evidence for any crimes? What is a serious crime? The trial judge did not pass upon that or the "importance of the evidence to the investigation". If this appeal is not allowed, these issues will still be unresolved and will result in varying results among the various circuits in the State. It is also probable that the issue will continue to avoid appellant review and continue to leave the bench and bar in the dark as to what the Supreme Court intended by the quoted phrases.

The Appellant also raised the issue as to his entitlement to the report of the DNA found on the "crack pipe" which the Court generally dismissed without discussion. It is submitted that this is a novel question of first impression in South Carolina. When the State seeks nontestimonial identification evidence to attempt to match a sample obtained from some other source, is Appellant entitled to a report showing exactly what was found so he could also run the necessary tests to determine a match without relying on the prosecution.

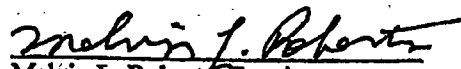
Assuming the State has found what he calls "DNA evidence" on the crack pipe, they should be required, at a minimum, to make a preliminary report available to the Defendant as to exactly what was found. How many points were they able to identify? It should not be left for the Defendant to attempt to show that there was no actual match when this determination could be made independently both by the prosecution and the defense if the DNA sample was made available to the Defendant before any DNA was taken from him (if DNA is to be taken at all). Unless this appeal is allowed to go forward, this importance issue of first impression would escape appellate review.

For all the foregoing reasons, it is submitted this appeal should be allowed to proceed and have these issues determined by our Appellate Courts.

Respectfully submitted,

December 20, 2007

York, South Carolina


Melvin L. Roberts, Esquire
Melvin L. Roberts & Associates
P. O. Box 460
300 West Liberty Street
York, South Carolina
803-684-9966
803-684-4527 facsimile
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

HARRY LAWRENCE ANTHONY,

Appellant.

MEMORANDUM ON APPEALABILITY

Respondent, State of South Carolina, would respectfully show that this appeal must be dismissed as premature:

1. Appellant has been indicted but not yet tried for four (4) counts of distribution of crack cocaine, one count of abuse of a vulnerable adult, and one count of exploitation of a vulnerable adult;
2. On November 21, 2007, the State moved for a pre-trial order requiring Appellant to submit a DNA sample pursuant to Schmerber v. California, 384 U.S. 757 (1966). Appellant submitted a Memorandum in Opposition to the motion;
3. The Honorable John C. Hayes, III, issued a pretrial order dated December 4, 2007 granting the State's motion and requiring Appellant to make himself available within ten (10)

000046

days to allow the taking of a DNA sample by oral swabbing. Judge Hayes also denied Appellant's motion for recusal;

4. On December 7, 2007, Appellant filed and served notice of appeal from Judge Hayes' pretrial order and the matter is presently pending before this Court. This Court requested memoranda addressing the issue of appealability;

5. The State submits that Appellant's appeal must be dismissed as premature. It is axiomatic that a criminal defendant may not appeal until sentence has been imposed. State v. Miller, 289 S.C. 426, 336 S.E.2d 705 (1986). Generally, orders involving pretrial discovery are not immediately appealable. Ferguson v. Charleston Lincoln/Mercury, Inc., 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001); Hamm v. South Carolina Pub. Serv. Comm'n, 312 S.C. 238, 439 S.E.2d 852 (1994); Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986); Kemmerlin v. Bloom, 251 S.C. 49, 159 S.E.2d 910 (1968). Our supreme court has specifically recognized that pretrial orders requiring an individual to provide blood or other samples are not immediately appealable absent an exceptional circumstance such as the presentation of a novel issue or a matter involving the rights of a minor. State v. Register, 308 S.C. 534, 536 FN1, 419 S.E.2d 771, 772 FN1 (1992). The order Appellant appeals presents no exceptional circumstance rendering it immediately appealable. Similar to a pretrial order committing a person to the custody of the South Carolina Department of Mental Health, the order in this case may be appealed when and if Appellant is convicted and sentenced. See State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983) (stating that an order committing a defendant to the Department of Mental Health for a pretrial evaluation may not be appealed until the final judgment is rendered). Other jurisdictions have considered this issue and determined that orders such as is being presented to

this Court are not appealable until the final judgment of sentencing. Robinson v. Com., 440 Mass. 1034, 800 N.E.2d 1044 (2004); Butler v. State, 311 Ark. 334, 842 S.W.2d 435 (1992); State v. Marut, 63 Ohio App. 487, 579 N.E.2d 281 (1989); In re Soloman, 465 F.3d 114 (3rd Cir 2006).

6. To the extent Appellant appeals Judge Hayes refusal to recuse himself from hearing the motion, the denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits and may be reviewed on appeal only after the final judgment of sentencing. Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996); Rogers v. Wilkins, 275 S.C. 28, 267 S.E.2d 86 (1980); see also State v. Miller, 289 S.C. 426, 356 S.E.2d 705 (stating the final order of disposition is the point at which an appeal arises; therefore, a criminal defendant may not appeal until sentence is imposed);

6. Accordingly, the order Appellant appeals is an interlocutory order that is not immediately appealable. Appellant's appeal must be dismissed at this time as premature.

WHEREFORE, the State submits the appeal must be dismissed because Appellant appeals an interlocutory order that is not immediately appealable.

Respectfully submitted,

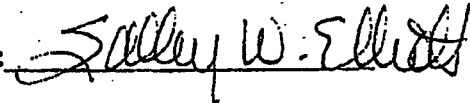
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KEVIN BRACKETT
Solicitor, 16th Judicial Circuit

BY:



Salley W. Elliott
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 27, 2007

000049

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent.

vs.

HARRY LAWRENCE ANTHONY,

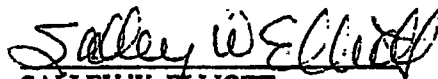
Appellant.

PROOF OF SERVICE

I, Salley W. Elliott, certify that I have served the Memorandum on Appealability on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to Melvin L. Roberts, Esquire, Post Office Box 460, York, South Carolina 29745.

I further certify that all parties required by Rule to be served have been served.

This 27th day of December, 2007.



SALLEY W. ELLIOTT
Assistant Deputy Attorney General
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

FILED-RECEIVED
 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2007 DEC -4 PM 3:28 SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) Docket Nos.: 07-GS-46-1072; 1073; 1074;
 State of South Carolina, C.C.P. & GS. 1075; 2542; and 2543
 YORK COUNTY, SC

vs.

Harry Lawrence Anthony,
 Defendant.

ORDER

CERTIFIED TRUE COPY
 2007 DEC -4 PM 3:32
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

The State has moved to obtain a Deoxyribonucleic Acid (DNA) sample from Defendant. It is related to the Court that this may be obtained by use of a swabbing of Defendant's mouth.

At the argument of this motion, counsel for Defendant, Melvin Roberts, asserted a number of objections to the motion, asked the Court to recuse itself and asked for a continuance until such time as Defendant was provided a DNA profile possessed by the State Law Enforcement Division (SLED). The profile was obtained from a "crack pipe" found in a search of a residence.

The Court has, on the record, denied Defendant's motion to recuse himself.

The Court denies the Defendant's motion to delay the State's motion pending Defendant being provided the DNA profile possessed by SLED. Here, the sole issue is whether or not the State is entitled to obtain a DNA sample from Defendant under the test established in Schember v. California, 384 U.S. 757 (1966).

000051

The record at this point is sparse. However, the State relates to the Court that video evidence has been obtained in a search of a residence.¹ The Court finds that regardless of any ultimate ruling on the search warrant, the Court may base its ruling on the motion on the evidence obtained in the search.

The video evidence, it is related to the court, shows the Defendant apparently using a controlled substance, sharing the substance with a female adult who may have been vulnerable at the time, and engaging in sex with the female adult.

The evidence extant at this time establishes probable cause that a crime has been committed and that Defendant committed these crimes.

The presentation to the Court shows a clear indication that material evidence relative to the question of Defendant's guilt (or innocence), will be found by the developing of a DNA profile of Defendant based on the sample sought and comparing Defendant's DNA profile to that currently developed by SLED.²

The method of obtaining the DNA sample from Defendant is minimally invasive and if painful then any such pain would likewise be minimal. By its nature, the method of obtaining the sample is safe and the Court is aware that DNA results are universally accepted as reliable.

Weighing and balancing the requirements of Schember, supra, the request by the State is appropriate. The Court has figured into this conclusion the very serious nature of the crimes with which Defendant is charged, the importance of the evidence sought to the

¹ Defendant argues that any "fruits" of the search should be suppressed. That matter is not before the Court at this time. At this juncture, the State is involved in an investigation, not in the presentation of evidence. If the search was illegal or defective, any and all evidence emanating from such search may be inadmissible at trial.

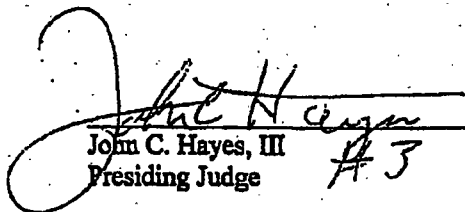
² Defendant's King Tut argument is unpersuasive.

000052

continued investigation by the State, the lack of less obtrusive means of obtaining the DNA sample, and Defendant's constitutional right to be free from bodily intrusion.

Wherefore, the State's motion for obtaining a DNA sample is granted. Defendant is to make himself available at such time and place as is designated by the State within the next ten (10) days and is to allow at that time and place the taking of a DNA sample by use of an oral swabbing.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #3

December 4, 2007
York, South Carolina

000053

11/20/2007 22:55 8036283025

16 CIRCUIT SOLICITOR

PAGE 02

STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS

COUNTY OF YORK

CERTIFIED TRUE COPY
Indictment #2007-GS46-1072, 1073
2007 NOV 21 AM 9:07 4, 1075, 2542, 2543

The State of South Carolina

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Vs.

Harry Lawrence Anthony,
Defendant.

NOW AND THROUGH THE ATTORNEY OF THE STATE, 16th Circuit

Solicitor, Kevin Brackett, moving before this Honorable Court on Thursday, November 29th, 2007, or as soon thereafter as this Motion may be heard, for an Order requiring that the Defendant, Harry Lawrence Anthony, be taken by a member or members of the York County Sheriff's Department or other law enforcement officials to a hospital in York County, South Carolina and that a DNA sample be withdrawn from the Defendant, Harry Lawrence Anthony, forcibly, if necessary, under clinical circumstances by a medical doctor or other medically qualified person, or trained forensic science technician.

This Motion is based upon the following:

The Defendant is currently charged with Four Counts of Distribution of Crack, One Count of Abuse of Vulnerable Adult, and Exploitation of Vulnerable Adult. Pursuant to said Indictments, the York County Sheriff's Office collected a glass pipe from Bookout Road, a residence known to be intermittently occupied by the defendant. The York County Sheriff's Office also seized numerous VHS tapes containing videos depicting the Defendant and at least two other females smoking what appears to be crack cocaine from a glass pipe. The seized glass pipe was swabbed for possible DNA analysis prior to being chemically tested for the presence of crack cocaine. A lab report prepared by Cynthia Mitchum confirmed that crack cocaine residue was present. The York County Sheriff's Office submitted the swabbings and a known DNA profile of Margaret Matthews to the

000054

South Carolina Law Enforcement Division for analysis. Preliminary tests indicate that a female DNA profile, *not that of Margaret Matthews*, and a male DNA profile, *unknown*, were identified from those swabbings. The Solicitor's Office has confirmed this via telephone conversation with Lillian Gallmun, a SLED DNA analyst.

This Motion is made on the grounds that such samples are necessary for comparison with known specimens in the above captioned case, and is based on the authority of Schmerber v. California, 384 U.S. 757 (1966), South Carolina Code Ann. Sec. 17-13-140(1985). The South Carolina Supreme Court laid out the following guidelines for Schmerber motions:

"In order to obtain non-testimonial identification evidence, the court must consider 1) the probable cause to believe the suspect has committed the crime, 2) a clear indication that relevant material evidence will be found, and 3) the method used to secure it is safe and reliable. In re: Snyder, 417 S.E.2d 572 (1992).

The probable cause is based on the chemical analysis of the pipe documenting the presence of crack cocaine, and the video evidence of the defendant smoking crack via a glass pipe with females, and the preliminary DNA analysis. Clearly, relevant evidence inculcating or exculpating the defendant will be shown via this supplemental testing, to wit: either the defendant's DNA will be present or that of an unknown third individual. The method used to secure a DNA sample is safe, reliable, and routine in this day and age.

WHEREFORE, for the foregoing reasons, the State of South Carolina moves before this Honorable Court for an Order compelling the defendant to provide a DNA

000055

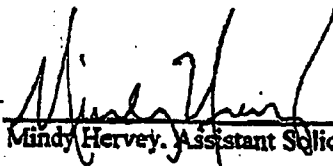
11/20/2007 22:56 8036293025

16 CIRCUIT SOLICITOR

PAGE 04

sample from the defendant, Harry Lawrence Anthony, either voluntarily, or by force if necessary, so that said sample may be transmitted to SLED for further analysis.

Respectfully Submitted,


Mindy Hervey, Assistant Solicitor

This the 21 day of November, 2007
York, South Carolina

000056



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1488

October 8, 2008

Melvin L. Roberts, Esquire
Melvin L. Roberts & Associates
P.O. Box 460
York, SC 29745

RECEIVED

OCT 09 2008

SC COURT OF APPEALS

Re: The State v. Anthony, Harry Lawrence
2007-GS-46-01072, 01073 and 01074

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

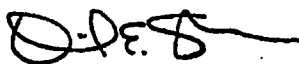
"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

October 8, 2008."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,


CLERK

DES/dmh

Melvin L. Roberts, Esquire

Page Two

October 8, 2008

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W. Elliott
The Honorable David Hamilton
The Honorable Kenneth A. Richstad

The South Carolina Court of Appeals

The State,

Respondents,

v.

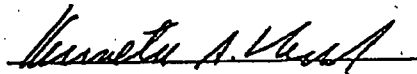
Harry Lawrence Anthony,

Appellant.

The Honorable John C. Hayes, III
York County
Trial Court Case No. 2007-GS-46-01072
2007-GS-46-01073
2007-GS-46-01074
2007-GS-46-01075
2007-GS-46-02542
2007-GS-46-02543

REMITTITUR

Petition for Writ of Certiorari in the above matter having been denied by the Supreme Court by order dated October 8, 2008, it is the Order of this Court that the appeal in this matter be and hereby is remitted to the Clerk of Court for York County.

 Clerk

Columbia, South Carolina

10/13/2008

Original to: The Honorable David Hamilton

cc: Chief Attorney Joseph L. Savitz, III
Melvin L. Roberts, Esquire
Assistant Deputy Attorney General Salley W. Elliott
The Honorable John C. Hayes, III

197
297

WITNESSES

Hager

DOCKET NO. 2007-GS-46- 01072

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

ARREST WARRANT NUMBER

Indictment:
102

ACTION OF GRAND JURY

JE BILL

David Hemmick
Person of Grand Jury
1-12-07

VERDICT

Atty

The C. J. J. 1/11/12
Person of Petit Jury

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

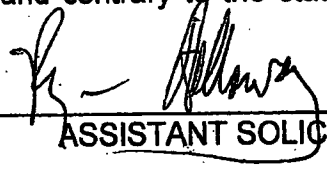
At a Court of General Sessions convened on April 12, 2007, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about or between December 2004 through December 2005, in York County, South Carolina, the Defendant, Harry Lawrence Anthony, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

299

WITNESSES

W/Hager

dm

ARREST WARRANT NUMBER

irect Indictment:
-151103

ACTION OF GRAND JURY

TRUE BILL

Oliver Hampshire
oreperson of Grand Jury
4/12-07

VERDICT

Guilty

Michelle C. Gualty 1/11/12
oreperson of Petit Jury
ate:

DOCKET NO. 2007-GS-46-01073

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2012 JAN 13 AM 11:30

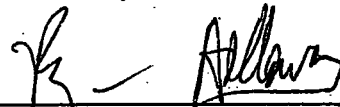
At a Court of General Sessions, convened on April 12, 2007, the Grand Jurors of York County present upon their oath

DEBRA HAMILTON
CLERK OF COURT
YORK COUNTY, SC

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about or between December 2004 through December 2005, in York County, South Carolina, the Defendant, Harry Lawrence Anthony, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

DOCKET NO. 2007-GS-46-01074

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

30
WITNESSES

Y. J. Jager

adm

ARREST WARRANT NUMBER

Direct Indictment:
J-151104

ACTION OF GRAND JURY

TRUE BILL

Oliver Thompson
Foreperson of Grand Jury
4/12-07

VERDICT

Guilty

Lynette C. Gualt
Foreperson of Petit Jury
Date: 4/11/12

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

) CERTIFIED TRUE COPY

2012 JAN 13 AM 11:28

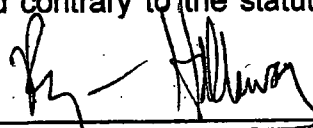
At a Court of General Sessions, convened on April 12, 2007, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about or between December 2004 through December 2005, in York County, South Carolina, the Defendant, Harry Lawrence Anthony, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

303

WITNESSES

Cathy Hager

dm

ARREST WARRANT NUMBER

Direct Indictment:
151105

ACTION OF GRAND JURY

TRUE BILL

Oliver Thompson
Foreperson of Grand Jury
4-12-07

VERDICT

Guilty

Patricia C. Gualtieri 1/11/12
Foreperson of Petit Jury
ate:

DOCKET NO. 2007-GS-46-01075

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 12, Term 2007

THE STATE

vs.

HARRY LAWRENCE ANTHONY

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK

INDICTMENT

CERTIFIED TRUE COPY

2012 JAN 13 AM 11:28

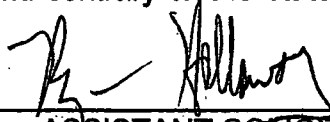
At a Court of General Sessions, convened on April 12, 2007, the Grand Jurors of York County present upon their oath:

DAVID H. WILSON
CLERK OF COURT
YORK COUNTY, SC

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about or between December 2004 through December 2005, in York County, South Carolina, the Defendant, Harry Lawrence Anthony, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

York

VS.

Harry Anthony

AKA:

Race: B Sex: M Age: 59

DOB: SS#:

Address:

City, State, Zip: York, SC 29745

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution Crack 2nd OFFENSE

in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 3015

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hervey Minky L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ 100
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 230

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

David Hamilton

Wanda Nelson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS4601072

A/W#: DIJ151102

Date of Offense: 12/1/2004

S.C. Code § : 44-53-0375 (B) (3)

CDR Code #: 3039

SENTENCE SHEET #4

☒ CONVICTED OF or ☐ PLEADS

1/11/12

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Jahut Hayes

2049

1-11-12

306 STATE OF SOUTH CAROLINA

COUNTY OF York
STATE VS.

Harry Anthony

AKA:

Race: B Sex: M Age: 59

DOB: SS#:

Address:

City, State, Zip: York, SC 29745

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution of Crack and Offense

in violation of § 44-53-325 of the S.C. Code of Laws, bearing CDR Code # 3015

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST-SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hervey Mandy

14704
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$160	\$ 160
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 230

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2049

Sentence Date: 1-11-12

Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS4601073

A/W#: DIJ151103

Date of Offense: 12/1/2004

S.C. Code § : 44-53-0375 (B) (3)

CDR Code #: 3039

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

307

COUNTY OF
STATE

York

VS.

Harry Anthony

AKA:

Race: B

Sex: M

Age: 59

DOB:

SS#

Address:

City, State, Zip: York, SC 29745

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution of Crack and Offensein violation of § 44 53 - 375 of the S.C. Code of Laws, bearing CDR Code # 3015☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hervey, Mandy

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ 100
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 230

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2049

1-11-12

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

York

VS.

Harry Anthony

AKA:

Race: B

Sex: M

Age: 59

DOB:

SS#:

Address:

City, State, Zip: York, SC 29745

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution of Crack 2nd offense

in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 3015

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hervey, Mindy L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ 100
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 230

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS4601075

A/W#: DIJ151105

Date of Offense: 12/1/2004

S.C. Code § : 44-53-0375 (B) (3)

CDR Code #: 3039

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

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 23rd, 2013



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

DEC 23 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

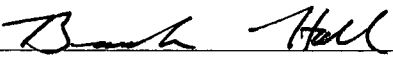
HARRY ANTHONY,

APPELLANT

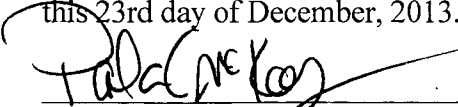
APPELLATE CASE NO. 2012-206627

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 23rd day of December, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 23rd day of December, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.