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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

William P. Keesley, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

GERALD JARROD ANCRUM,

APPELLANT

APPELLATE CASE NO 2017-001335

---

RECORD ON APPEAL

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WANDA H. CARTER  
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON  
Attorney General

J. SCOTT MATTHEWS  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
(803) 734-3727

SCARLETT A. WILSON  
Solicitor, Ninth Judicial Circuit  
101 Meeting Street, Suite 400  
OT Wallace Building  
Charleston, SC 29401  
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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|-------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA | ) |                           |
|                         | ) | Court of General Sessions |
| COUNTY OF CHARLESTON    | ) | Case No. 2015-GS-10-2965  |
|                         | ) | and 2015-GS--10-2966      |
| <hr/>                   |   |                           |
| STATE OF SOUTH CAROLINA | ) |                           |
|                         | ) |                           |
| VS.                     | ) | Transcript of Record      |
|                         | ) |                           |
| GERALD JARROD ANCRUM,   | ) |                           |
|                         | ) |                           |
| Defendant.              | ) |                           |
|                         | ) | DATE: May 23 - 24, 2017   |
| <hr/>                   |   |                           |

B E F O R E:

THE HONORABLE WILLIAM PAUL KEESLEY

A P P E A R A N C E:

STEPHANIE B. LINDER and WHITT SOWARDS  
Attorneys for the State

MELISSA GAY  
Attorney for the Defendant

Karen V. Andersen, RMR, CRR  
Circuit Court Reporter

1           THE COURT: This is the matter of State of South  
2 Carolina v. Gerald Ancrum. The matter is set for a jury  
3 trial this morning. I received a number of motions by e-mail  
4 from the Defense. Are you all ready to argue those?

5           MS. LINDER: Yes, Judge.

6           MS. GAY: They are standard motions. She and I  
7 discussed them a number of times. She's actually complied  
8 with the motion to reveal the informant's information. I  
9 just was filing them to have them recorded. So we've  
10 received that information.

11           There's a few other things that are just kind of  
12 housekeeping matters. And she and I were just discussing  
13 them this morning. The motion to sequester, I believe she's  
14 going to agree to.

15           The motion regarding a statement, there's a witness  
16 that is maybe not available this morning, she tells me, but  
17 we were talking about discussing that motion right before he  
18 testifies. That's the only statement she intended to use.

19           And then we have prior bad acts, which we've had  
20 some discussion on prior to this, and prior convictions,  
21 which we also had some discussion on. We just need to put it  
22 on the record

23           THE COURT: All right. Go ahead.

24           MS. LINDER: Okay. Judge, as far as the prior bad  
25 acts, Your Honor, we don't intend to go into anything on the

1 defendant unless and until he testifies and opens the door.  
2 In fact, Ms. Gay and myself had gotten together. There is a  
3 video of a drug purchase in this case, a drug buy. And we  
4 have gone through, given her transcription, and we have  
5 agreed upon what parts need to be muted, because they  
6 potentially reference prior buy or any plans for a future  
7 buy. So we have already come to an agreement on what those  
8 items are and where those need to be muted on the video  
9 itself.

10 As far as prior convictions, we agree that we don't  
11 intend to use anything and nothing is admissible unless and  
12 until the defendant gets on the stand and chooses to testify  
13 to something that would open the door for that.

14 As far as the CI identity, I believe Ms. Gay covered  
15 it, saying that a couple weeks ago, we gave her all the  
16 information, and have actually answered a couple follow-up  
17 questions about things. So she has everything with the  
18 informant's identity.

19 I'm trying to think what else. The statement, it's  
20 a brief *Jackson v. Denno* statement. It's about two weeks  
21 later, when this defendant was arrested, he was interviewed.  
22 And it was on audio and video. And during that interview,  
23 the one part that we would be looking to admit would be they  
24 ask him his phone number and he gives his phone number. That  
25 is the extent of what we would be looking to admit, because

1 this drug buy was set up calling the same phone number that  
2 he acknowledged was his about two weeks later at the time of  
3 warrant service.

4 So, Judge, that's the very limited part. And that  
5 witness is around. He is working today. I just didn't know  
6 what time you wanted to do that hearing, so I haven't ordered  
7 him in. I can bring him in. It's about a 15-minute video.  
8 So I think that, accompanying five minutes worth of  
9 testimony, will be plenty to get that in as far as the *Denno*  
10 hearing.

11 As far as sequestration, Judge, we absolutely agree  
12 with the sequestration. And one thing I mentioned to Ms. Gay  
13 and will mention to the Court, I have ATF Agent Frank Preston  
14 here. He is sitting at the table with us. And I would ask  
15 that he be allowed to sit with us throughout the duration of  
16 the trial. And I already mentioned all of this to Ms. Gay.

17 THE COURT: Do you need to put anything on the  
18 record?

19 MS. GAY: Your Honor, the only thing I want to be  
20 clear is that when she does the *Jackson v. Denno*, she says  
21 there's a 15-minute video. But all she really wants to show  
22 the jury is the part where he's talking about his phone  
23 number and not the rest of it.

24 MS. LINDER: And, Judge, to respond to that, as far  
25 as trial itself, we don't plan to play the video at all. We

1 are just going to have that officer testify that there was an  
2 interview that was recorded and he gave his phone number. We  
3 intend to use zero part of the actual interview during the  
4 trial of the case in chief. We are just going to have that  
5 for a Court's exhibit for the *Denno* hearing.

6 MS. GAY: I understand.

7 THE COURT: Anything else?

8 MS. GAY: No.

9 THE COURT: All right. I'm kind of at your mercy as  
10 far as scheduling the *Denno* hearing, because I don't know  
11 anything about the case. So I don't know how long it's going  
12 to take other than they told me two days. I don't know. I  
13 don't know what to tell you.

14 MS. LINDER: Judge, what I would propose, and what  
15 I've spoken to Ms. Gay about, is before that witness  
16 testifies, to have about a 20-minute break for the jury. And  
17 we can get that done right before he testifies. And then I  
18 will make no reference of any sort of statement or anything  
19 like that in my opening or anywhere up to that witness, if  
20 the Court is okay with that. Otherwise, I can call him and  
21 he can be here in 20 or 30 minutes, if you would like to do  
22 that before we start the trial itself.

23 THE COURT: That's fine with me.

24 MS. LINDER: As far as scheduling, we have -- I  
25 think that we will get through probably all of our witnesses

1 today. And I think we will probably need to argue and charge  
2 tomorrow, but I believe that our witnesses will most likely  
3 get through today.

4 MS. GAY: I don't anticipate witnesses, so I also  
5 agree that we can get through all of it today.

6 THE COURT: Okay. So the chief investigating  
7 officer can stay in the courtroom throughout the trial.

8 There's no intent to go into any prior bad acts.

9 There's no intent to go into any convictions unless  
10 the defendant takes the stand.

11 The prior bad acts would only come in if the  
12 defendant in some way opened the door to that.

13 I'm a little bit confused about the muting sections  
14 of the video if you are not going to use the video.

15 MS. LINDER: I am going to use -- there are a  
16 total -- there's one disk. Two phone calls were placed to  
17 set up the buy. That, we would lay the foundation and enter  
18 that as regular evidence.

19 There is a video of the hand-to-hand purchase of  
20 drugs. That we would intend to enter as part of this. And  
21 that's where there's some portions that the undercover  
22 officer who is with the informant, for example, has  
23 conversations saying, does he usually want to you park next  
24 to him. All of those kind of comments we are going to mute,  
25 so there's actually no reference to prior or post dealings

1 with him.

2 The video that I've talked about as far as not  
3 playing during trial, that is an interview that law  
4 enforcement did with the defendant at the time of the arrest.

5 THE COURT: I understand now. Let me ask you this.  
6 You intend to offer the video into evidence that you are  
7 going to mute?

8 MS. LINDER: Yes. And then we were going back and  
9 forth as far as what parts needed to be muted. And we have  
10 the times written down. We had a transcript and the lines  
11 highlighted that were going to be muted. We don't have the  
12 software to mute certain sections. So, Judge, what I would  
13 propose and what I've done in previous trials is, when we  
14 play it, we admit it as evidence and we play it. We mute it.  
15 And if, for some reason, the jury would like to watch it  
16 again, they come back into the courtroom. And we will again  
17 abide by the agreeable times to mute the video.

18 THE COURT: Do you have anything on that?

19 MS. GAY: No. Factually, Your Honor, this  
20 confidential informant allegedly bought drugs from my client  
21 on several occasions. So that's the whole -- that's the  
22 white elephant in the room that we are trying to figure out.  
23 So she is making reference to different occasions where she's  
24 met him to buy drugs before. So that's what we agreed would  
25 have been prior bad acts information. And we agreed that

1 should not go before the jury. So we came up with the  
2 solution of muting the words, because once they -- if the  
3 words aren't heard, you won't know -- you know, it's just  
4 silence, and then it comes back on again.

5 THE COURT: Okay. Well, I will tell you, I don't  
6 particularly like having the jury come back in the courtroom.  
7 But if y'all agree, I will go along with it. I understand  
8 why you do it. There's two things about it bother me. One  
9 is, they can't talk about the video. They can only watch it.

10 The other thing is, I've heard of situations where  
11 they play the video and people left the courtroom. Everybody  
12 else left the courtroom. Well, I don't like that because  
13 there are security cameras in courtrooms.

14 So I'm assuming you are talking about us staying in  
15 here while it's being played. And I will just have to tell  
16 them they can come and hear that if they wish to, but they  
17 have to leave. Like I said, I will go along with it if both  
18 sides are in agreement. And you've got some way to preserve  
19 the record to show what you did not let the jury hear. And  
20 you said you had a transcript.

21 MS. LINDER: Yes.

22 THE COURT: So you need to mark that as a Court's  
23 exhibit at the appropriate time.

24 MS. LINDER: Yes, Judge.

25 THE COURT: Anything else?

1 MS. GAY: No, Your Honor. I think that settles it  
2 all.

3 THE COURT: So, Ms. Gay, your client has been  
4 arraigned or waived his arraignment?

5 MS. GAY: Your Honor, I would like him to be  
6 arraigned in front of the jury.

7 THE COURT: In front of the jury?

8 MS. GAY: That's usually what we do around here. If  
9 you don't do it that way -- just depends. Everybody has  
10 different ways they do things.

11 THE COURT: What do you all usually do.

12 THE CLERK: You can do it, Judge, if you want to do  
13 it, or I can do it.

14 THE COURT: I'm a visitor in a foreign land. I  
15 don't want to rock the boat. No, we don't ever do that in  
16 11th Circuit. I've never seen it or heard of it. They  
17 usually waive it, but that's fine. You want it in front of  
18 all 45 jurors?

19 MS. GAY: No -- yes, before they call, as we are  
20 introducing it, yes, sir.

21 We are ready when you are, Your Honor. I just want  
22 to look at this for just a second.

23 THE COURT: The State ready?

24 MS. LINDER: Yes, Your Honor, the State is ready.

25 THE COURT: Bring them up.

1 (Venire enters.)

2 THE COURT: Members of the jury, my name is Billy  
3 Keesley. I live in Edgefield. I'm a resident judge of the  
4 11th Judicial Circuit. So my home circuit consists of  
5 Lexington, McCormick, Saluda and Edgefield Counties. I've  
6 been assigned by the chief justice to preside over general  
7 sessions court here in Charleston this week. And it's my  
8 pleasure to be here.

9 You've been brought here this morning potentially to  
10 serve as jurors in a case that involves two separate and  
11 distinct indictments. Both of these are captioned as the  
12 State of South Carolina vs. Gerald Jarrod Ancrum.

13 Now, Ms. Gay, your client wishes to be arraigned on  
14 these charges?

15 MS. GAY: Yes.

16 THE CLERK: Please stand and face me, Mr. Ancrum.  
17 Case 2015-GS-10-2965, the State of South Carolina vs. Gerald  
18 Jarrod Ancrum, Indictment 4, distribution of crack cocaine.  
19 If you answer to that name, please raise your right hand.  
20 You may put it down. You stand indicted by the name of  
21 Gerald Jarrod Ancrum?

22 THE DEFENDANT: Yes, sir.

23 THE CLERK: The defendant Gerald Jarrod Ancrum did  
24 on or about February 25th, 2015, in Charleston County, South  
25 Carolina, manufacture, distribute, dispense, deliver,

1 purchase, or otherwise aid, abet, attempt or conspire to  
2 manufacture, distribute, dispense, deliver or purchase or  
3 possess with the intent to manufacture, distribute, dispense,  
4 deliver or purchase crack cocaine or cocaine base, in  
5 violations of the provisions of Section 44-53-370, all in  
6 violation of 44-53-0375(B) (3) of the South Carolina Code of  
7 Laws, 1976 as amended.

8 How say, are you guilty or not guilty?

9 THE DEFENDANT: Not guilty.

10 THE COURT: As to Indictment No. 2015-GS-10-2966,  
11 State of South Carolina v. Gerald Jarrod Ancrum, indictment  
12 for distribution of heroin, the defendant Gerald Jarrod  
13 Ancrum did on or about February 5th, 2015, in Charleston  
14 County, South Carolina, manufacture, distribute, dispense,  
15 deliver, purchase, aid, abet, attempt or conspire to  
16 manufacture, distribute, dispense, deliver or purchase or  
17 possess with the intent to manufacture, distribute, dispense,  
18 deliver or purchase heroin, a Schedule I controlled substance  
19 narcotic, all in violation of 44-53-0370(B) (1), of the South  
20 Carolina Code of Laws, 1976 as amended. How say, are you  
21 guilty or not guilty?

22 THE DEFENDANT: Not guilty.

23 THE CLERK: How will you be tried?

24 THE DEFENDANT: By God or my country.

25 THE COURT: May they send you a true deliverance.

1 Are you ready for trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Thank you.

4 All right. So, ladies and gentlemen, as you've  
5 heard, Mr. Ancrum has been charged under two separate and  
6 distinct indictments, one is for distribution of crack  
7 cocaine, and the other is for distribution of heroin, both of  
8 which are alleged to have occurred on or about February 5,  
9 2015, in Charleston County, South Carolina.

10 Upon his arraignment on these charges, Mr. Ancrum  
11 has entered pleas of not guilty. He is presumed to be  
12 innocent. It is incumbent upon the State of South Carolina,  
13 having brought these charges, to prove every essential  
14 element of each offense charged beyond a reasonable doubt.

15 Now, we are going to go through a process of  
16 selecting a jury to hear this case. I was not present when I  
17 believe Judge Jefferson did the general qualifications of  
18 you, so I am not privy to all that information that you gave  
19 there. And I don't know what they told you. So let me just  
20 cover some things to make sure that they are covered. And if  
21 I'm repeating things you already know, please forgive me.

22 First, you are under oath. You have an obligation  
23 to be completely truthful and honest with the Court. If I  
24 ask you anything and you have doubt about whether it applies  
25 to you, please discuss it with me and let me resolve the

1 physically show them to another juror. You may look at them  
2 and you may say whatever you would like, but you can't show  
3 them to the other jurors.

4 And the third rule is, at the end of the trial, the  
5 notes have to be destroyed. So most places shred them,  
6 obliterate them with a black magic marker if they are written  
7 on something the jury needs to keep. With those three rules,  
8 you are welcome to take notes. If we take up your notes  
9 during extended breaks, we don't ever read them. We won't  
10 read your notes. Don't worry about that.

11 All right. To keep my promise to you, I'm going to  
12 be quiet now. I'm going to invite your close attention for  
13 the opening statements. We will try to get these openings in  
14 and then we will see if we've got a witness or break for  
15 lunch.

16 MS. LINDER: Thank you, Your Honor. May it please  
17 the Court.

18 Good afternoon, ladies and gentlemen. I'm Stephanie  
19 Linder, as I have told you earlier, and I'm with the Ninth  
20 Circuit Solicitor's Office here prosecuting this case.

21 What we are here for today and what the judge told  
22 you about is we are here for the trial against Gerald Ancrum.  
23 Gerald Ancrum in this case is charged with two things. He's  
24 charged with distribution of heroin and he is charged with  
25 distribution of cocaine base or cocaine base crack or crack

1 cocaine. All of those are the same name for different  
2 things.

3 Ladies and gentlemen, we are here for something  
4 that's pretty simple. Drugs are illegal. Drugs are illegal  
5 in the state of South Carolina. It's illegal to possess  
6 drugs and it's illegal to distribute drugs. Heroin is a drug  
7 in this state and so is cocaine base track.

8 Back on February the 5th of 2015, on Savannah  
9 Highway, kind of near the Dunkin' Donuts area in West Ashley  
10 here in Charleston County, this defendant sold heroin and  
11 sold crack cocaine to an informant. All of that happened  
12 under the direction of Special Agent Frank Preston. There  
13 was an informant who placed a phone call to the defendant to  
14 set up how much drugs and how much it was going to cost. The  
15 location was set up.

16 Then it took about 20 to 30 minutes or so to get  
17 everybody into place. An operation, as you probably will be  
18 hearing a lot, began. There was an undercover police officer  
19 who drove the informant to the location, and multiple other  
20 vehicles of plain clothes law enforcement all around the  
21 parking lot in the area to observe everything. The  
22 informant, who you will hear from in this case, is Tessa  
23 Morris. She was wired up so law enforcement could hear and  
24 see things that were happening. And she went and she met  
25 with this defendant, with Gerald Ancrum in his car, in his

1 white BMW in the parking lot of that Dunkin' Donuts.

2 She got in that vehicle. And there was literally a  
3 hand-to-hand, an exchange. The defendant handed her heroin,  
4 handed her crack cocaine. She handed him cash. It happened  
5 fairly quickly. And then she gets up and goes back into the  
6 undercover police car with the undercover police officer.

7 And then after that, labs go to the evidence. It  
8 gets tested by a chemist. And we find out, indeed, these  
9 substances are heroin and crack cocaine.

10 You are going to hear from all of these witnesses  
11 that we will put up for you. And you will have the ability  
12 to listen to them. We also anticipate having video for you  
13 to watch and other things like that in the prosecution of  
14 this case.

15 Again, like I said, it's fairly simple. It all goes  
16 back to the defendant's actions back on February the 5th of  
17 2015. I ask that you pay attention to this case. And at the  
18 end of it, I will be back in front of you talking to all of  
19 you, and I submit you should find him guilty of distribution  
20 of heroin and guilty of distribution of crack cocaine.

21 THE COURT: Thank you.

22 Ms. Gay, you are recognized for your opening  
23 statement.

24 MS. GAY: Thank you, Your Honor. May it please the  
25 Court.

1 THE COURT: Yes, ma'am.

2 MS. GAY: As I said, my name is Melissa Gay. I  
3 represent Gerald Ancrum. As the judge said -- much of what I  
4 would like to have said, he already said. As the judge said,  
5 I want to thank you for being a part of this process today.  
6 One of the things that you should understand by now is how  
7 difficult it is to pick a jury. And there's a reason for  
8 that. You know, the defendant is picking -- Mr. Ancrum is  
9 picking a juror of his peers. So we get to know a lot about  
10 all of the jurors to find out different things going on in  
11 their own life. As you saw, lots of people were excused from  
12 this jury because it's about drugs.

13 And so y'all are the special jury that was picked,  
14 the jury that is the jury of his peers. And today, right  
15 now, today, May 23rd, 2017, is the most important day of his  
16 life, because he's putting his future in your hands. And he  
17 is -- as the judge said, you are the fact finders, you are  
18 the people that make the decision about what you believe, how  
19 you believe the facts played out on February 5th, 2015, which  
20 is quite a while ago. It's been two years. And the judge is  
21 the finder of the law. And the things that, as he said, the  
22 things we will do during the trial, possibly objections or  
23 whatever, he will make those decisions. But your decision  
24 about the facts will always remain.

25 Even if there's something I do wrong or there's

1 something -- please don't let the way I look or whatever is  
2 happening in my mannerisms distract from you the process  
3 here. This process is about finding justice for Mr. Ancrum  
4 and finding justice in this case. I believe that you will  
5 find he's not guilty.

6 I always tell people when the solicitor stands up  
7 and says, this is a very simple situation we have, one, two,  
8 three, four, conviction. Well, that is never the reason that  
9 you have trials. One, two, three, four conviction is not a  
10 trial. It's not even a situation where a defendant would  
11 choose to have a trial. And as you know, my client says he's  
12 not guilty. And he is here because he believes that facts  
13 and circumstances that are surrounding that day are not as  
14 the solicitor perceived. And they are not as even maybe the  
15 ATF officer perceived.

16 There was a good bit of other things going on behind  
17 the scenes. And whatever situation he had going on with Ms.  
18 Morris is not necessarily what the officers believed, that  
19 there was other information going on, other stuff, other  
20 conversations, other contacts.

21 And, you know, in the TV shows, they call it the  
22 dirty CI. Is the dirty CI somebody in a situation that  
23 happened in those circumstances the same as somebody who is  
24 not the dirty CI? Somebody said, you know, if you put  
25 lipstick on a pig, you still have pig, those types of things.



1 for the record.

2 THE WITNESS: Frank John Preston, P-r-e-s-t-o-n.

3 DIRECT EXAMINATION

4 BY MS. LINDER:

5 Q. Good afternoon. Can you please tell the jury,  
6 what's your occupation?

7 A. I'm a criminal investigator with the Bureau of  
8 Alcohol, Tobacco and Firearms, also known as ATF. It's a  
9 branch of Department of Justice United States Government.

10 Q. What are your duties with ATF?

11 A. Currently, I'm assigned to the ATF Charleston, got  
12 an office here in Charleston, South Carolina. I'm assigned  
13 to a violent crime group called Charleston Achilles Group.  
14 My duties are investigating violent crime, crimes against  
15 persons, crimes against property, drug trafficking, pharma  
16 trafficking, home vegetation, stuff of that nature.

17 Q. And how long have you been employed with ATF and law  
18 enforcement in general?

19 A. 27 years.

20 Q. And can you tell the jury just a little bit about  
21 your training and education and all your background?

22 A. Yes, ma'am. I have a bachelor's degree which I  
23 acquired from the Ashland in Ohio in computer information  
24 science and marketing. Shortly afterwards, I was employed by  
25 the ATF, moved here to Charleston, then went off to criminal

1 investigator school in Brentwood, Georgia, for six months.  
2 And a few months after that, was back for a new agent  
3 training, which I graduated successfully. I then got into  
4 crimes of violence, investigating crimes of violence,  
5 advanced interviewing techniques, advanced narcotics,  
6 advanced undercover, profiling, things of that nature.

7 Q. And is it fair to say that you have also continuous  
8 training and education that goes throughout your  
9 20-something, 27 years with ATF?

10 A. Yes, ma'am. I believe I have probably 20 hours of  
11 training per month required.

12 Q. And were you working back on February the 5th of  
13 2015?

14 A. Yes, ma'am, I was.

15 Q. And did you have the occasion to become involved in  
16 this case, the State vs. Gerald Ancrum, back on that date?

17 A. Yes, ma'am.

18 Q. And was a drug buy done that day?

19 A. Yes, ma'am, it was.

20 Q. Can you explain to the jury kind of a little bit of  
21 background. What is a controlled buy?

22 A. A controlled buy is a purchase of evidence, meaning  
23 that either a confidential informant or undercover agent or  
24 undercover officer or the combination participate in a  
25 purchase of evidence, whether that be drugs, information,

1 explosives, firearms. And with it being controlled, the  
2 undercover or the confidential informant is monitored, either  
3 by video, audio or both. They also may have -- what we would  
4 call an over-watch personnel or a person that has eyes on or  
5 in this case, surveillance. That environment is controlled.

6 In the event it goes okay, we may do a buy-walk. If  
7 it goes bad, then we can rescue the CI or the undercover. So  
8 we are actually controlling the event from start to finish.

9 Q. And the controlled buy back on February the 5th,  
10 where did that take place?

11 A. I believe it took place at Dunkin' Donuts here in  
12 Savannah Highway. The address is going to be 1843 Savannah  
13 Highway.

14 Q. Is that here in Charleston County?

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

16 Q. As the case agent for this case, what type of  
17 planning did you do in preparation for this buy?

18 A. On this particular day, I made contact with the CI,  
19 Ms. Tessa Morris, made sure she was available. Then I  
20 contacted other agencies to participate, one being the  
21 Charleston County Sheriff's Office, which is going to be Lisa  
22 Branham. I needed her to participate, because she was an  
23 undercover. She's practiced undercover. They need an  
24 undercover driver. That was similar to some of the practice  
25 the CI's done before. I needed agents to help control the

1 environment, which is going to be members of the Charleston  
2 County Sheriff's Office, as a react team just in case  
3 something went wrong. I need members to participate in the  
4 surveillance. And that was another group from Charleston PD,  
5 and then as the on-scene commander and I guess the manager of  
6 the operation, myself.

7 Q. All right. And back on this day, on February 5th,  
8 earlier you said that word "buy-walk". Did you do a buy-walk  
9 in this case?

10 A. Yes, ma'am, we did.

11 Q. What is a buy-walk?

12 A. A buy-walk is when we purchase evidence. We take  
13 control of evidence. And we release the individual who sold  
14 the evidence to the undercover or confidential informant.  
15 So, essentially, the target of the investigation is allowed  
16 to walk away without being arrested.

17 Q. And you mentioned an informant, Tessa Morris, in  
18 this case.

19 A. Yes, ma'am.

20 Q. Can you explain to the jury why you use informants  
21 and a little bit about how you first got to know Ms. Morris?

22 A. Yes. We use confidential informants because they  
23 are the way into the target. I don't know all the targets.  
24 I can't go in and say, I want to buy drugs from you if they  
25 don't know me. They won't do that. But the informant has

1 had a history with the targets. They've been there before,  
2 done it before. And they know the pattern, whether the CI's  
3 pattern or drug dealer's pattern. We have two types of  
4 informants. We have an informant that's a career informant,  
5 meaning that's all they do. That is their job. They have no  
6 pending charges. They are under no obligation other than  
7 their own to be an informant, work for the government.

8           Then there's other types of informants who have  
9 prior arrest histories. And they are working off their  
10 charges. And this is one way they can work off their  
11 charges, to provide information, provide intel, participate  
12 in controlled purchases.

13           In this particular case, Ms. Morris was brought to  
14 me by Marc Brown, who was an officer with the Charleston City  
15 Police Department. Ms. Morris had information about her past  
16 dealings, about her past drug uses and drug purchases. She  
17 identified several individuals who she's gone to before, who  
18 she's purchased drugs before. That was pretty much the  
19 background of it.

20           Q. And when she was brought to you, so to speak, did  
21 you end up signing her up, so to speak?

22           A. Yeah, ma'am.

23           Q. And what does that mean that you sign her up?

24           A. Well, there's -- I don't want to say a contract, but  
25 Ms. Morris was debriefed or interviewed. We asked her

1 specific questions about her history, who she bought before,  
2 who she's dealt with, her history, her criminal history, her  
3 family, her drug use, her past drug use, her current drug  
4 use, whether she's on probation, stuff that could potentially  
5 interfere with our investigation.

6 I wrote that up. It was satisfactory to myself and  
7 my supervisor. I got her approved to use her. And that's  
8 technically being signed up by myself, by managers, that  
9 she's okay to participate.

10 Q. And in this case Ms. Morris, did she at any time  
11 throughout her being an informant have charges?

12 A. I believe there was some charges pending on her.

13 Q. And at any point throughout your relationship with  
14 the informant, Ms. Morris, was she ever on probation?

15 A. Yeah, ma'am. I believe specifically she was on  
16 probation. I had to get permission from her PO, or probation  
17 officer, to use her.

18 Q. And you also talk about pay. Did you ever pay Ms.  
19 Morris for her work as an informant?

20 A. Yes, ma'am.

21 Q. Is that based on whether she was successful or not  
22 doing a buy?

23 A. No, ma'am. I paid her based on her participation,  
24 her following directions, her honesty and her work. There  
25 were certain times that if she set up a controlled purchase

1 and it didn't go through, I wasn't going to take her away  
2 from her day, her work, to work for me without getting paid.  
3 So I would pay her.

4 Q. This buy that happened February 5th, 2015, did you  
5 pay Ms. Morris?

6 A. Yes, I did.

7 Q. How much did you pay her for that day?

8 A. 400 bucks.

9 Q. And as far as setting up this buy, what did you and  
10 Ms. Morris do to kind of set up the details of the purchase  
11 back on February the 5th?

12 A. On February 5th, I contacted Ms. Morris and gave her  
13 instruction to be in my office probably about one o'clock.  
14 From there, myself and another agent took her to a staging  
15 area, which is going to be the narcotics office of Charleston  
16 County Sheriff's Office. We met there. She went into an  
17 interview room, which was secured. Myself and Detective Lisa  
18 Branham went in there and interviewed her, setting up the  
19 controlled purchase.

20 At that time there was a cursory search of her  
21 person. I then stepped out and Detective or Deputy Branham  
22 completed, in so much a search. I won't say strip search,  
23 but search of her person.

24 Q. Why did you step out?

25 A. Because she's a woman and I'm a man.

1 Q. Go ahead.

2 A. There were no drugs found. There was no contraband  
3 found, no weapons found. We did went into our briefing. And  
4 in that briefing, the members of the Charleston County  
5 Sheriff's Office, ATF agents and CPD agents, basically set up  
6 the plan that in a few minutes we are going to make a  
7 controlled call or monitored call to the target setting up a  
8 purchase for later that day or purchase of evidence. This is  
9 the plan. This is the location. This is the time, vehicle  
10 assignments setting up electronic equipment, monitor  
11 equipment, vehicle assignments, so on and so forth.

12 Q. All right. Did you end up -- did you and the  
13 informant, Ms. Morris, did you end up making phone calls to  
14 the defendant that day?

15 A. Yes, ma'am, we did.

16 Q. Do you happen to recall what phone number was  
17 called?

18 A. Yeah. Under my control, Ms. Morris used her  
19 personal cell phone and she contacted Mr. Gerald Ancrum.  
20 Telephone number I have is [REDACTED].

21 Q. Did you record the calls?

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

23 MS. LINDER: May I approach the witness?

24 THE COURT: Sure.

25 BY MS. LINDER:

1 Q. At this time, I show you what's been marked State's  
2 Exhibit 1. Do you recognize this?

3 A. Yes, ma'am.

4 Q. How do you recognize that?

5 A. My initial is on there, or initials.

6 Q. Does that disk contain a fair and accurate  
7 representation of the phone calls made to set up the drug buy  
8 back on February 5th, 2015?

9 A. Yes, ma'am.

10 MS. LINDER: Your Honor, at this time, I would ask  
11 to admit State's Exhibit No. 1, the disk of phone calls to  
12 set up the drug buy back on February 5th, 2015.

13 THE COURT: Is there any objection?

14 MS. GAY: No, Your Honor.

15 THE COURT: Marked in evidence, Madam Court  
16 Reporter.

17 (State's Exh. 1, CD, is moved into evidence.)

18 (Video playing.)

19 BY MS. LINDER:.

20 Q. And can you explain to the jury through your  
21 training and experience what was that on the phone call?

22 A. I'm sorry?

23 Q. Can you explain to the jury what was covered on that  
24 phone call from your training and experience?

25 A. From my training and experience, what was covered

1 was the time, the location, what was being purchased.

2 Q. What's "turkey"?

3 A. "Turkey" is going to be cocaine, cocaine base or  
4 crack cocaine.

5 Q. And what's a "yard"?

6 A. A "yard" is \$100. So, in essence, they were asking  
7 for \$100 worth of cocaine or cocaine base.

8 Q. So after the phone calls were made and details were  
9 set up, can you explain a little bit about what happened at  
10 your briefing before you went out to the location?

11 A. Before we went out to location, I went back to the  
12 group. We are good for the buy, should be there in 30  
13 minutes. So surveillance went out and set up at the Dunkin'  
14 Donuts. I then, what I would call wired up Ms. Morris. I  
15 gave her an electronic monitoring device to wear I could hear  
16 what she was saying, what she was doing. And a recorder, a  
17 video and audio on recorder, that was placed on her, on or  
18 about her person.

19 She was put in an UC vehicle. Made sure the  
20 location -- I gave her \$260 in what I would call agent  
21 cashier funds or marked money or government money for the  
22 purpose of the drugs.

23 Q. What type of instructions do you give -- did you  
24 give Ms. Morris that day? What type of instructions do you  
25 give a CI before they go out and do this?

1           A.    What I do is make sure, one, that they are not  
2 robbed. And I give them instructions, specifically where to  
3 put the money. In this case, I told her to put the money in  
4 her right pocket and put money in her left pocket. So if she  
5 was robbed, she would only give half the money. In a sense,  
6 I'm responsible for the money, just like I'm responsible for  
7 the confidential informant.

8                   I give her specific instructions on what to say, how  
9 to say it, and ask questions to, I guess, spark other  
10 questions. And sometimes if we only have what we would call  
11 his street name, if the confidential informant knows his or  
12 her real name or the target's real name, I will ask them to  
13 call them by name on the wire.

14           Q.    And everyone has their duties. The location is  
15 known. The informant has already been searched and already  
16 been wired, as you said. And then what happens once all of  
17 that is done, all of that prep work is done?

18           A.    The information is given to the undercover, who is  
19 the driver. The confidential informant is the front  
20 passenger. And they drive to the location followed by  
21 surveillance units.

22           Q.    And can you just kind of briefly tell them a little  
23 bit about your operational plan in this, as far as the  
24 location itself and the security and surveillance that was  
25 going to take place?

1           A.     Dunkin' Donuts was actually picked up by us. We  
2 wanted a public area. In the past, if we go to an secluded  
3 area, we are more than likely to be robbed because targets  
4 are not afraid of being robbed, because there's no witnesses.  
5 We picked Dunkin' Donuts. It's a very popular location. I  
6 believe there's some history there with the CI. It's easy to  
7 surveil. There's many cars, many cars in the parking lot.  
8 We can be secreted and not be observed.

9           MS. LINDER: Your Honor, may I approach the witness  
10 again?

11           THE COURT: Sure.

12 BY MS. LINDER:

13           Q.     Special Agent Preston, I show you what's been marked  
14 State's Exhibit 2. Do you recognize this?

15           A.     Yes, ma'am.

16           Q.     How do you recognize it?

17           A.     I'm familiar with this location, with the Dunkin'  
18 Donuts and the tire warehouse right next to it.

19           Q.     Does Exhibit No. 2 fairly and accurately represent  
20 the location that was used back on February the 5th of 2015?

21           A.     Yes, ma'am.

22           MS. LINDER: Your Honor, at this time, the State  
23 would seek to admit State's Exhibit 2 into evidence.

24           THE COURT: Any objection?

25           MS. GAY: No, sir.

1 THE COURT: Is it marked?

2 MS. LINDER: Yes.

3 THE COURT: Marked in evidence.

4 (State's 2 is moved into evidence.)

5 BY MS. LINDER:

6 Q. Well, this isn't zooming in, so I will try to use my  
7 finger and point for you. Can you explain to the jury -- and  
8 for the jury, they will have this back there with them, so  
9 they will be able to have it close up if they need it later  
10 on. Can you explain what does this show right here?

11 A. This is an aerial map of Dunkin' Donuts, Savannah  
12 highway. There is a marker. I can't make it out, but  
13 there's a marker sitting on top of the Dunkin' Donuts you are  
14 pointing to right now.

15 Q. This building with this marker?

16 A. Yes, ma'am.

17 Q. What road is this?

18 A. Savannah Highway.

19 Q. And what is this big building right here?

20 A. That is an auto repair place that also sells tires.  
21 I believe it's NTW.

22 Q. And where did the informant go with the undercover  
23 police officer?

24 A. Initially, if you are looking at the map, the  
25 undercover drove in from -- drove in an easterly direction

1 coming from left to right, making a right turn into the  
2 Dunkin' Donuts. They then parked right next to Dunkin'  
3 Donuts facing the building. I believe right there in that  
4 parking space you are pointing to, and made contact, made  
5 several contacts or attempted contacts with Mr. Ancrum.  
6 Surveillance units were secreted on the backside of the NTW.

7 Q. Back here?

8 A. Yes, ma'am. And surveillance units were in the  
9 front on Savannah Highway in front of the building.

10 Q. Right here?

11 A. Yes, ma'am.

12 Q. And where were you located?

13 A. I believe I was one of the units in the front.

14 Q. So you were up here?

15 A. Yes, ma'am. We initially parked there because we  
16 had an eye on the undercover. Ms. Lisa, Lisa Branham and the  
17 CI, they were in a silver-colored Jeep and we could look over  
18 our shoulders and see the car. Eventually, they moved to  
19 another location and the eyeball was transferred to another  
20 unit.

21 Q. Okay. Back on February 5th, was the CI able to  
22 purchase drugs that day?

23 A. Yes, ma'am.

24 Q. From the defendant?

25 A. Yes, ma'am.

1 Q. And was she able to purchase heroin from the  
2 defendant?

3 A. Yes, ma'am.

4 Q. Was she able to purchase cocaine base crack from the  
5 defendant?

6 A. Yes, ma'am.

7 Q. At the conclusion, after the buy was done, what  
8 happened to all of the team that was all out there? Where  
9 does everybody go?

10 A. At the briefing, we decided there was not -- we were  
11 not going to follow the defendant. There was no need to. So  
12 all the units followed the undercover and the CI back to the  
13 staging location. During the drive back and just before we  
14 left, we could hear over the wire, through Stephanie's voice,  
15 that the deal was good, everything was okay and we were  
16 heading back.

17 Q. And once you are at the debriefing location, what  
18 happens with the drugs?

19 A. Well, the CI is instructed to stay in the car until  
20 I get to her. At that time, I go to her and turn off the  
21 monitoring recording device. I make an eyeball for the  
22 evidence, purchased evidence, which is maintained in the  
23 center console, but still in possession of the informant.  
24 She's then escorted back into the building. The recording  
25 devices and the monitors go into my possession. Marc Brown

1 is then given instructions to take control of the drug  
2 evidence.

3 Ms. Morris is placed into an interview room where  
4 she is then searched again, sort of a strip search. I step  
5 out of the room. There was no evidence found. No contraband  
6 found on her person. I then went back in the room and  
7 briefed her what happened, what Mr. Black was wearing, what  
8 transpired other than what I could hear or see, and she wrote  
9 a written statement for me.

10 Q. You said the console, they opened up something and  
11 tossed the drugs in there?

12 A. No, ma'am. There's actually in the center console.  
13 There is two cupholders and she drops it right there.

14 Q. And then Marc Brown, he's from Charleston City  
15 Police Department?

16 A. Yes, ma'am.

17 Q. And he took custody of those drugs?

18 A. Yes, ma'am.

19 MS. LINDER: Beg the Court's indulgence.

20 I have no further questions. Please answer anything  
21 the defense may have.

22 THE COURT: How long do you anticipate?

23 MS. GAY: It won't be long, Your Honor. Thank you.

24 CROSS-EXAMINATION

25 BY MS. GAY:

1 Q. Agent Preston, I just wanted to take you back in  
2 your testimony to sort of the beginning where you talked  
3 about your relationship with the CI-9112. CI-9112 was signed  
4 up as an informant on 7/10/2014. I have a document you can  
5 refresh your recollection with, if you would like.

6 A. I don't -- if you want to show me a document, I will  
7 look at it.

8 (Dft. Exh. 1, Informant Agreement, was marked for  
9 identification.)

10 Q. I would like to show you Defense Exhibit for  
11 identification 1. Can you identify this document, sir?

12 A. It's an informant agreement.

13 Q. And is your name on there?

14 A. Yes, ma'am.

15 Q. It's blacked out because of the identity of the  
16 informant?

17 A. Yes, ma'am.

18 Q. However, that is Tessa Morris's agreement?

19 A. Without seeing her original signature, it was an  
20 agreement that I would have her sign, yes, ma'am.

21 Q. Similar -- if it's not the exact one, it would be  
22 similar?

23 A. Yes, ma'am, it would be almost identical.

24 Q. And it was provided to me in this case?

25 A. Yes.

1 Q. Would it be fair to establish it was probably the  
2 one?

3 A. Yes, yes, it was.

4 Q. And as I said, it's 7/10/2014 up on this document?

5 A. Yes, ma'am.

6 Q. So when Tessa Morris, CI-9112, started working with  
7 you all, it was quite a while before 2/5/2015?

8 A. Yes, ma'am.

9 Q. You said, as you were describing all of this, that  
10 you interviewed her, talked to her about things. And she  
11 identified people that would be people she could call?

12 A. Yes, ma'am.

13 Q. It wasn't as if you gave her a name and said, hey,  
14 can you call this man for us? She's the one day who said, I  
15 can call Mr. Ancrum?

16 A. Yes, ma'am.

17 Q. And that's kind of how it went with her on  
18 transactions that might have occurred in '14? She would be  
19 the one identifying the people that she would call?

20 A. Yes, ma'am.

21 Q. And so you said that as she was talking -- and we  
22 heard the recorded phone call. You called her up one day and  
23 said, hey, I need you to come in at 1, or was there some  
24 predetermined plan when she was going to come in?

25 A. With Ms. Morris, she was signed up in 2014. She was

1 an active informant. This is not the only case --

2 Q. I understand.

3 A. -- that she's participated in. Ms. Morris and I had  
4 daily contact with each other. She was required to call me  
5 every day to tell me she was okay, required to call me every  
6 day to see if there was work for her to do. So the day prior  
7 to, I believe we talked about working on the 5th, February  
8 5th. And when I gave her instructions that day -- excuse me,  
9 let me back up. I probably gave her instruction on the 4th,  
10 said, I think we are going to work tomorrow. So I called her  
11 that day and instructed her to make a way to my office.

12 Q. And the work would have meant we are going to make a  
13 buy tomorrow?

14 A. That's correct.

15 Q. So be in the office or come in?

16 A. Yes, ma'am.

17 Q. You said she was required to communicate with you,  
18 almost like an employee of the ATF as the signed up CI-9112?

19 A. Yes, ma'am. It's actually -- I forget what line  
20 number it is, but -- and I explained it to her specifically,  
21 that she had to call me every day to tell me, I'm okay.

22 Q. So the question, in this relationship that you have  
23 with her, this relationship that started out July 10th of  
24 2014, part of that expectation on your part is that she would  
25 buy drugs from somebody?

1 A. Yes, ma'am.

2 Q. That's why you contacted her or she contacted you?

3 I was unclear.

4 A. Well, she understood in our agreement, in order for  
5 her, for us -- for me to report to Ms. Linder that she was  
6 working, she had to call me every day.

7 Q. I understand. And so is it true that she contacted  
8 Ms. Linder or some other person, and that's how it ended up  
9 with you, because she was on probation, had some issues?

10 A. Yes, ma'am. Mr. -- excuse me, Officer Marc Brown  
11 is the officer who brought her to me.

12 Q. And in her record, which we are not there yet, but  
13 she has an extensive criminal record?

14 A. Yes.

15 Q. Or has record?

16 A. Yes, ma'am.

17 Q. And the probation that she was on, you said that you  
18 had to go through her probation agent to get permission even  
19 for her to go out in the community and buy drugs?

20 A. Yes, ma'am.

21 Q. Or be around drugs?

22 A. Yes, ma'am.

23 Q. And as she told you during that day, she felt like  
24 she could communicate with people that had contacts or  
25 connections with the drug trade?

1 A. Yes, ma'am.

2 Q. While she was on probation?

3 A. Yes, ma'am.

4 Q. And so I believe that you said that she had come in  
5 that day, been completely searched, and went out with -- you  
6 referred to it as the undercover officer. Who was the  
7 undercover officer that day?

8 A. It's a Charleston County Sheriff's Office Deputy  
9 Stephanie -- excuse me, Lisa Branham.

10 Q. Is Lisa Branham also the person who searched her?

11 A. Yes, ma'am.

12 Q. And then after the transaction, they came back, and  
13 Ms. Branham is also the one that searched her when they came  
14 back?

15 A. Yes, ma'am.

16 Q. And when you said that she had been paid money to do  
17 this, you answered the question for Ms. Linder that she had  
18 been \$400?

19 A. Yes.

20 Q. Obviously, she made money on different transactions,  
21 different people throughout the course that started on  
22 7/10/2014. But on this stuff, she had been paid \$400?

23 A. On this particular buy.

24 Q. It wasn't on this day that she got the \$400, it was  
25 a day or so before, some time early --

1 A. No, I pay her when her work is completed.

2 Q. So it was after the fact that she had been paid  
3 \$400?

4 A. I paid her after this deal, yes, ma'am.

5 Q. Was it the same day --

6 A. Yes, ma'am.

7 Q. -- or next day? So she comes in. She gets  
8 cleansed, if you want to call it. She gets looked at by  
9 Officer Branham, and then she's handed \$400?

10 A. No, ma'am. She participated in the controlled  
11 purchase.

12 Q. After it's over, she comes back. She's told not to  
13 even get out of the car until you come back. So, right,  
14 correct? That's what you said?

15 A. Yes, ma'am.

16 Q. You come up. You say that the drugs are left in the  
17 console area?

18 A. Yes, ma'am.

19 Q. So that you can get them?

20 A. Yes, ma'am.

21 Q. And that she's then taken to be searched to make  
22 sure there's nothing strange that she obtained while she was  
23 in the car with Mr. Ancrum?

24 A. That's correct.

25 Q. And then after that, you give her cash, \$400 or a

1 check?

2 A. Cash.

3 Q. So she gets \$400 in cash for making a phone call to  
4 Mr. Ancrum to set him up that day?

5 A. And making the purchase.

6 Q. Right. I understand. That day, she gets the money  
7 that day?

8 A. Yes, ma'am.

9 MS. GAY: Your Honor, one moment, please.

10 THE COURT: Yes, ma'am.

11 BY MS. GAY:

12 Q. The search that she had before and after the  
13 encounter with Mr. Ancrum, does she take her clothes off  
14 during that search, for the most part?

15 A. I wasn't in there.

16 Q. Okay. Protocol, would protocol say that she gets  
17 basically down to skivvies?

18 A. I would let Deputy Branham go into detail on that.  
19 I wasn't there. If I was going to conduct a search of a CI,  
20 I would go from head, starting at the head and go down. If  
21 it was a male, I would pull the shirts up, collars, sleeves,  
22 beltline, underwear, inside the pants leg, crotch area, both  
23 legs, shoes off, socks off, move your toes, everything but  
24 complete clothes off.

25 MS. GAY: I understand. I have no further

1 questions, Your Honor.

2 THE COURT: Redirect?

3 MS. LINDER: No redirect, Your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 Ladies and gentlemen, you are on your own for lunch.

6 When you come back, I need you to come to the jury room. So

7 the bailiff is going to show you how to do that. Don't come

8 through the courtroom this time. I hope you have a pleasant

9 lunch. Remember all the admonitions.

10 Now, I can't start until I account for all of you.

11 So please understand that if you have some true emergency

12 that arises that prevents you from being here on time, have

13 somebody call the clerk's office and let us know what's going

14 on. Because at about five minutes after the time you are

15 supposed to be here, I start having people call and try to

16 find you and look for you. So please let us know if

17 something goes on.

18 It's 10 after 1, basically. So what will that be?

19 20 to 3? An hour would be 2:10 and another half hour would

20 be 2:40; is that right? I don't have a Mickey Mouse watch.

21 I'm trying to -- I am sometimes bad about saying the wrong

22 time to the jury. My normal court reporter has to correct

23 me.

24 2:40. Make sure you know how to get back in here.

25 Leave your notes wherever the bailiffs tells you to leave

1 them. Thank you.

2 (Whereupon, the jury leaves open court at 1:10 p.m.)

3 THE COURT: I don't know exactly who is in the  
4 courtroom. I usually give an instruction to make sure people  
5 understand. It's really important you don't have contact  
6 with jurors during the break. If you go to the restaurant,  
7 please check around. Make sure there are no jurors within  
8 earshot. I don't know how the jury leaves here, but in most  
9 court houses, they funnel back around into common areas.  
10 Make sure you don't have a conversation with any jurors that  
11 is related in any way to the case. I need you back here at  
12 2:40. Thank you.

13 (Whereupon, a recess transpired.)

14 (Whereupon, the defendant is present.)

15 THE COURT: The State ready?

16 MS. LINDER: Yes, Your Honor. For planning  
17 purposes, I wanted to let the Court know, and I already  
18 indicated to Ms. Gay, we are able to figure out how to mute  
19 the disk. So, hopefully, the jury will not have to come back  
20 out if they wish to review it. The informant has already  
21 initialed and watched the unmuted one. She is doing that  
22 right now and should be done probably within the next ten  
23 minutes. But we have another witness before her, so it  
24 shouldn't delay proceedings at all. I just wanted to let  
25 Your Honor know that. And we do have a copy of the

1 transcript with times and highlighted areas that would be  
2 muted to make it a court's exhibit

3 THE COURT: Okay. Defense ready for the jury?

4 MS. GAY: Yes, Your Honor.

5 THE COURT: Bring them in, please.

6 (Whereupon, the jury returns to open court at 2:50  
7 p.m.)

8 THE COURT: Continue with the State's case. Call  
9 your next witness.

10 MR. SOWARDS: Thank you, Your Honor. The State  
11 calls Detective Lisa Branham.

12 LISA BRANHAM,

13 having been duly sworn, testifies as follows:

14 THE CLERK: State your first and last name, spelling  
15 your last name for the record.

16 THE WITNESS: My name is Lisa Brandon,  
17 B-r-a-n-h-a-m.

18 DIRECT EXAMINATION

19 BY MR. SOWARDS:

20 Q. Thank you. Detective, where do you currently work?

21 A. For the Charleston County Sheriff's Office.

22 Q. How long have you been in law enforcement?

23 A. For approximately 16 years.

24 Q. And could you please describe for the jury your  
25 training and experience as it relates to your job in law

1 enforcement?

2 A. Yes, sir. I graduated the academy in 2001, located  
3 in Charleston, South Carolina -- I apologize, Columbia, South  
4 Carolina. I went to the City of Florence for five years, and  
5 transferred to Charleston, South Carolina, been with them  
6 ever since.

7 In regards to training and experience, at the  
8 academy, we normally -- it's changed but it's normally a  
9 nine-week process that we go through. When we get out of the  
10 academy, we normally go back to wherever the department that  
11 you have. And they also have another what they call either  
12 FTI or FTO process where you go through another eight to nine  
13 weeks of training, depending on your experience.

14 After that -- 16 years is a long time to go back for  
15 a lot of classes. You have to maintain your certifications  
16 every year. With that, there's all kinds of legal updates  
17 and qualifications outside of your normal stuff. You have  
18 other duties. Case in point, I went to training for what  
19 they call field force operations, which would be, for  
20 instance riot team. I also have been to protective services,  
21 which was a two-week training course. I've been to an  
22 extraction class, which was about a week-long as well.  
23 Crisis negotiations, that was roughly a week-long.  
24 Undercover narcotics and techniques, that was a week-long. I  
25 mean, the classes are endless. So just shy of bringing in a

1 three-ring binder, some of these classes could go on and on  
2 and on, depending what you are looking for.

3 Awards, commendations, again, 16 years is a long  
4 time to have to go back and not bring that stuff in here with  
5 me. But there was commendations for the DNC when they had  
6 that, me and several other took part in that. Different  
7 trials that we've assisted with that have been local to  
8 Charleston that we've -- myself and a few others, have  
9 received commendations for. I hate to say it, but some of  
10 them are kind of endless.

11 Q. Were you working for the Charleston County Sheriff's  
12 Department in February of 2015?

13 A. Yes, sir, I was.

14 Q. And did you have the occasion to become involved in  
15 the investigation of this case, State vs. Gerald Ancrum, on  
16 February 5th, 2015?

17 A. Yes, sir, I did.

18 Q. How did you become involved in this case?

19 A. I received a call from Agent Preston with ATF. He  
20 advised me that they had an investigation regarding the  
21 distribution of heroin in the Charleston County area and  
22 asked if I would assist in becoming one of the undercover  
23 detectives for one of the cases that he was working.

24 Q. On February 5th, 2015, what was your kind of first  
25 task as a member of the investigation team in this case?

1           A.    That day, I met with the ATF Agent Preston and the  
2 informant, the confidential informant. I was initially asked  
3 to go ahead and search the female. Normally, we try to make  
4 it common practice for females to search females. With that,  
5 I step aside for obvious reasons and begin my search. Given  
6 that it's a narcotic, anything to do with narcotics, we  
7 normally start from top to bottom. That way, if when I'm  
8 doing the search, if there's narcotics to be found, it will  
9 normal shake or fall to the ground, if that makes sense. So  
10 we normally start with hair, ears, and shoulders, begin to  
11 work down the arms, under the armpits, the bra line, inner  
12 waistline of the pants, all the way down the legs, the  
13 abdomen area, just to make sure there's nothing in a pocket  
14 or anything like that.

15           Q.    You said you normally do that. Is that what you did  
16 in this case?

17           A.    Yes, sir.

18           Q.    Did you find anything, such as narcotics, on the  
19 informant's person?

20           A.    No, sir.

21           Q.    Did you remain involved in this investigation after  
22 you searched the informant?

23           A.    I did, sir.

24           Q.    How did you remain involved?

25           A.    I was the undercover. I was going to be the driver

1 of the informant. We were driving a government-owned  
2 vehicle. And I was to drive her to where the incident was to  
3 took place, the deal was to take place.

4 Q. Did you choose the location of the deal?

5 A. No, sir.

6 Q. Who chose the location of the deal?

7 A. The informant did.

8 Q. As you are driving, did you remain silent on your  
9 way to the location, or were you able to speak?

10 A. No, sir, I was able to speak. Normally, when  
11 traveling, whether it be by cell phone or open wire, which is  
12 a small microphone, a radio in this case, I did not have my  
13 radio with me. I used my cell phone in the open wire. We  
14 normally communicate as to location and where we are going  
15 and keep at a constant update as to where we are going. If  
16 we are going through an intersection we may say, for  
17 instance, I'm driving down Meeting, passing such and such.  
18 That way, it lets the surrounding units know where exactly  
19 you are at or everyone who's involved in the case.

20 Q. When you arrived at the Dunkin' Donuts, the location  
21 of the deal, was the defendant Gerald Ancrum present at that  
22 time?

23 A. No, sir.

24 Q. When did he arrive?

25 A. I want to say roughly five to ten minutes later.

1 Q. Were you able to see the car he was driving when you  
2 arrived?

3 A. Yes, sir.

4 Q. What was he driving?

5 A. It was going to be a white BMW, dark tinted windows.

6 Q. What happened after the defendant arrived at that  
7 location?

8 A. He asked us to move from where we were sitting. So  
9 all we did was just relocate towards the back of the Dunkin'  
10 Donuts.

11 Q. What happened after you relocated to the rear of the  
12 Dunkin' Donuts?

13 A. That's when the informant got out of the vehicle and  
14 began walking towards the white BMW, the defendant's vehicle.

15 Q. And were you able to observe her as she walked  
16 towards the white BMW?

17 A. Yes, sir. Where I was positioned, I could look over  
18 my shoulder and see her approach the passenger side of the  
19 white BMW and get into -- it was the passenger, but the front  
20 passenger seat.

21 Q. And what happened after she got into the front  
22 passenger seat?

23 A. The vehicle began to move. As it began to back out,  
24 at this point, once she's out of the vehicle, I'm on my cell  
25 phone and advising my guys as to what's going on and what I

1 can see from where I'm sitting. At that point, I'm telling  
2 them that they are leaving and it looks like they are  
3 beginning to circle around. There's a business of -- or a  
4 building where they are getting ready to circle where I can't  
5 see them.

6 Q. And what happened after she got in the car and they  
7 kind of drove out of your sight? Did they ever return to  
8 your vehicle?

9 A. Yes, sir. It wasn't long after. It was  
10 literally -- they just drove -- it's hard to explain. If  
11 there was a photo, I could show them a little bit better. If  
12 you would just imagine this is a wood line. I'm looking over  
13 my shoulder at the vehicle. The vehicle is parked facing the  
14 Dunkin' Donuts. When they pull out, they circle around the  
15 building to the left over here, which would have been my left  
16 if I'm turned around. They circle around the building next  
17 to the Dunkin' Donuts and pull up near my vehicle.

18 Q. I have something that may help you. I will show you  
19 what's been previously admitted as State's Exhibit 2. This  
20 might help. Do you recognize that?

21 A. Yes, sir.

22 Q. What is that?

23 A. Where you've got the tag or the flag, that's going  
24 to be the Dunkin' Donuts.

25 Q. And you said you were parked along the wood line?

1 A. Yes, sir.

2 Q. Would that be right here?

3 A. Yes, sir.

4 Q. And the defendant's vehicle was located front --

5 A. No. Your finger is actually probably on it, in that  
6 general vicinity right there, yes, sir.

7 Q. You said they drove around this business?

8 A. Towards the road, yes, sir, and came around.

9 Q. And back to your vehicle?

10 A. Yes, sir.

11 Q. And what happened after they returned to your  
12 vehicle?

13 A. The informant got out of that vehicle and then got  
14 into my vehicle.

15 Q. What did she do when she got in your vehicle?

16 A. She placed the narcotics that had just been  
17 purchased into the cupholder or the center console of the  
18 vehicle.

19 Q. Now, you said the defendant's vehicle pulled up next  
20 to yours. Were you able to see inside the defendant's  
21 vehicle?

22 A. No, sir, the windows were too dark.

23 Q. And so at this point, the informant is back in your  
24 vehicle. She's placed the narcotics she purchased in the  
25 cupholder. What happened next?



1 been put out in this trial that it's standard procedure to  
2 search informants before a transaction and after a  
3 transaction?

4 A. Yes, ma'am.

5 Q. You said that -- your testimony was before the  
6 transaction, you are head to toeing, doing everything you can  
7 that could involve an orifice or ear or bra line or all the  
8 way down through their panty, waistband, shoes everything.  
9 And that's because sometimes people hide things in there,  
10 don't they?

11 A. That would be correct.

12 Q. Right. And so, though this lady didn't on that day,  
13 other times, when you have maybe in the course of your duty  
14 have seen that people are trying to hide drugs that they are  
15 going to try to say somebody sold to them; that's happened in  
16 the past?

17 A. That would be correct. Yes, ma'am.

18 Q. So afterwards, when the sales are done and the  
19 informants come out, and it's standard procedure again to go  
20 through that same protocol, it's because there's sometimes  
21 people get extra drugs, and they sort of stick them in their  
22 personal places, and then that way, they give you all some,  
23 but they keep some for themselves; that happens too, right?

24 A. Yes, ma'am.

25 Q. Didn't happen in this case, but it could happen?

1 A. Yes, ma'am.

2 Q. That's why you do all the searching of people that  
3 are informants, to make sure they don't end up being able to  
4 walk away during a supervised police operation with drugs  
5 that they can go use?

6 A. Correct.

7 Q. That's why you do it, right? Okay. I have no  
8 further questions?

9 THE COURT: Did you answer?

10 THE WITNESS: I did. I said correct. I'm sorry.

11 THE COURT: Redirect.

12 MR. SOWARDS: Just a few, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SOWARDS:

15 Q. Detective Branham, you were asked about the search,  
16 was it thorough?

17 A. Yes.

18 Q. What was the result of the search prior to the buy?

19 A. Negative, no contraband.

20 Q. What was the result of the search after the buy?

21 A. No contraband.

22 MR. SOWARDS: Thank you, Your Honor. No further  
23 questions.

24 THE COURT: Recross?

25 MS. GAY: No, thank you.

1 THE COURT: Thank you. You may step down.

2 Ready to call your next witness?

3 MS. LINDER: Your Honor, she's on her way over.

4 Should be any minute.

5 MS. GAY: Can we excuse the witness?

6 MS. LINDER: Yes.

7 THE COURT: She's free to go.

8 MS. GAY: I have no objection to that, Your Honor.

9 THE COURT: She's free to go. Do you want me to  
10 send the jury out or wait?

11 MS. LINDER: My investigator should be coming up  
12 with her. He should be here in a moment.

13 THE COURT: Ladies and gentlemen, step in the jury  
14 room. As soon as they have anybody in, we will begin. Don't  
15 discuss the case.

16 (Whereupon, the jury leaves open court at 3:05 p.m.)

17 (Whereupon, recess transpired.)

18 THE COURT: Call your next witness, please.

19 MS. LINDER: The State calls Tessa Morris.

20 TESSA MORRIS,

21 having been duly sworn, testifies as follows:

22 THE CLERK: State your first and last name and spell  
23 your last for the record?

24 THE WITNESS: Tessa Morris, M-o-r-r-i-s.

25 DIRECT EXAMINATION

1 BY MS. LINDER:

2 Q. Good afternoon, Tessa.

3 A. Hi.

4 Q. Where are you originally from?

5 A. I'm from North Carolina.

6 Q. And have you ever lived in Charleston?

7 A. Yes, I have.

8 Q. And did you live in Charleston back in 2015?

9 A. Yes.

10 Q. Do you live in Charleston now?

11 A. No, I do not.

12 Q. You live out of state?

13 A. Yes.

14 Q. And how far have you gotten in school?

15 A. I graduated high school, and I'm currently in school  
16 right now.

17 Q. And that's for?

18 A. It's for phlebotomy and I'm going for medical  
19 assistant.

20 Q. And do you understand why you are here today?

21 A. Yes, I do.

22 Q. Is this the first place you would like to be?

23 A. No, not exactly, no.

24 Q. And have you met with me before today?

25 A. Yes, I have.

1 Q. And what is your understanding and what have I  
2 explained to you is the most important thing about today?

3 A. To tell the truth.

4 Q. All right. Let's just kind of jump into this. Have  
5 you ever cooperated with law enforcement before as an  
6 informant?

7 A. Yes.

8 Q. And were you signed up, so to speak, as an informant  
9 with Special Agent Preston with ATF?

10 A. Yes.

11 Q. And was one of your purposes to purchase narcotics  
12 for the government, for law enforcement?

13 A. Yes.

14 Q. Did you actually ever make a purchase of drugs while  
15 working as an informant?

16 A. I did, yes.

17 Q. Did you make a purchase from this defendant, Gerald  
18 Ancrum, back on February 5th of 2015?

19 A. Yes, I did.

20 Q. Do you see Gerald Ancrum in the courtroom today?

21 A. Yes, I do.

22 Q. What's he wearing and where is he sitting?

23 A. He's the gentleman over there in the white shirt.

24 MS. LINDER: Please let the record reflect the  
25 correct identification of the defendant by this witness.

1 THE COURT: So noted.

2 BY MS. LINDER:

3 Q. Back in February of 2015, how did you and Agent  
4 Preston go about planning this buy and setting up the details  
5 of this purchase?

6 A. Well, we would call him and make a -- arrange for me  
7 to make a buy from Mr. Ancrum.

8 Q. Before the deal itself actually happened, was there  
9 a briefing where all kinds of the plans of everything were  
10 set forth?

11 A. Yes.

12 Q. Were you searched before going to make this drug  
13 purchase?

14 A. Yes, I was.

15 Q. Who were you searched by?

16 A. A female officer.

17 Q. Were you given money to make this drug purchase?

18 A. Yes, I was.

19 Q. Who gave you money?

20 A. Officer Frank Preston.

21 Q. Were you given instructions by Special Agent Preston  
22 on what to do or not do?

23 A. Yes, I was.

24 Q. Where was the deal supposed to take place on  
25 February 5th?

1 A. At Dunkin' Donuts.

2 Q. How did you get to the Dunkin' Donuts on that day?

3 A. I rode in a car with a female officer.

4 Q. And did you see the defendant Gerald Ancrum on that  
5 day?

6 A. I did.

7 Q. What vehicle was he driving?

8 A. He was driving a white BMW.

9 Q. Did you make a purchase from him that day?

10 A. Yes, I did.

11 Q. Did you purchase crack cocaine?

12 A. Yes.

13 Q. Did you purchase heroin?

14 A. Yes, I did.

15 Q. And who did you buy from that day?

16 A. Mr. Ancrum, also known as -- I know him as Black.

17 Q. And did you do anything during the course of the  
18 purchase to indicate to law enforcement that, in fact, it was  
19 Gerald who did the buy, who did the sale?

20 A. Yes.

21 Q. What did you do?

22 A. I spoke his name.

23 Q. After the deal was done, what did you do?

24 A. I returned to the car that I arrived in and got in  
25 with the female officer.

1 Q. What did you do with the heroin and the crack  
2 cocaine that you purchased?

3 A. I put it in the console between the officer and  
4 myself.

5 Q. And were you part of the debriefing after?

6 A. I was.

7 Q. Were you searched again?

8 A. I was.

9 Q. Was anything on you?

10 A. No, ma'am.

11 Q. Were you paid for your work with ATF on that day?

12 A. I was.

13 Q. Do you remember how much you were paid for that day?

14 A. \$400.

15 MS. LINDER: Your Honor, may I approach the witness?

16 THE COURT: Yes, ma'am.

17 BY MS. LINDER:

18 Q. At this time, I'm going to show you what's been  
19 marked as State's Exhibit 6 for identification purposes. Do  
20 you recognize this?

21 A. I do.

22 Q. How do you recognize this?

23 A. I watched the video and my initials are on it.

24 Q. Does this disk contain a fair and accurate  
25 representation of what happened back on February the 5th of

1 2015?

2 A. Yes.

3 MS. LINDER: Your Honor, at this time I would ask to  
4 publish the disk for the jury.

5 THE COURT: Any objection to this being in evidence?

6 MS. GAY: No, Your Honor.

7 THE COURT: It's marked in evidence.

8 (State's Exh. 6 is moved into evidence.).

9 (Video playing.)

10 BY MS. LINDER:

11 Q. I just have a couple of questions for you. Okay?

12 A. Okay.

13 Q. We just watched that entire fairly lengthy video.  
14 Have you watched the video in its entirety with all of the  
15 sound?

16 A. Yes.

17 Q. And it's your understanding that, due to some legal  
18 things, that the Defense and the State has agreed to mute  
19 certain sections of that, right?

20 A. Yes.

21 Q. All right. For the vast majority of the beginning,  
22 it almost looks like we are staring at something super blurry  
23 when we are riding in the car. Do you know what that is?

24 A. That would be my lap.

25 Q. The camera is facing your lap?

1 A. Yes.

2 Q. And when you got out of the car, out of the  
3 undercover police officer's car and walked over to the  
4 defendant's white BMW, you stopped for a second before you  
5 actually got into the car for the drug deal. Why did you  
6 have to stop?

7 A. There was a lady getting out of the car or standing  
8 beside the car, and she was blocking my way into the -- to  
9 get into his car. And it had to do with him pulling too  
10 close to her car.

11 Q. Okay. And did you give the defendant \$260 that day  
12 to purchase drugs?

13 A. I did.

14 Q. Did he give you a bit -- a bag of heroin and a bag  
15 of crack cocaine that day?

16 A. He did.

17 Q. Did you do as instructed and call the defendant by  
18 his name Gerald on the video?

19 A. I did.

20 Q. Tessa, I just want to be frank with the jury. Have  
21 you ever in trouble with the law before?

22 A. I have.

23 Q. And you've been convicted before of some crimes?

24 A. Correct.

25 Q. You've been convicted of drug possession?

1 A. I have.

2 Q. And you've been convicted of some shopliftings?

3 A. Yep.

4 Q. And you've been convicted of things with financial  
5 transaction card, is what we call it, like credit cards or  
6 debit cards?

7 A. Right.

8 Q. In fact, you've been prosecuted by my office before?

9 A. By you.

10 Q. By me before?

11 A. Right.

12 Q. And did you receive any sort of deal on your charges  
13 that I had?

14 A. I did not.

15 Q. Did you end up pleading guilty to all of your  
16 charges as charged?

17 A. Every single one of them.

18 Q. And did you actually get a prison sentence?

19 A. I did.

20 Q. And when did you get out?

21 A. About March 1st.

22 Q. Of this year?

23 A. Right.

24 Q. And since you've been out, that's when you're  
25 starting fresh, out of state?

1 A. Correct.

2 Q. And in school again?

3 A. Right, no drugs.

4 Q. Yes. And but you are here today, as we discussed  
5 earlier on, the most important thing about today is what?

6 A. To tell the truth.

7 Q. And did you buy crack cocaine and heroin from the  
8 defendant Gerald Ancrum back on February 5th of 2015?

9 A. Yes, I did.

10 MS. LINDER: Thank you. I have nothing further for  
11 you. If you can answers anything the Defense may have.

12 THE COURT: Cross-examination.

13 MS. GAY: Thank you, Your Honor. May it please the  
14 Court.

15 CROSS-EXAMINATION

16 BY MS. GAY:

17 Q. How are you? I'm Melissa Gay.

18 A. Hi.

19 Q. Let me kind of go through the video we just watched  
20 again. As Ms. Linder said, there were some things that were  
21 quiet. We call that muted. And I would like to show you --  
22 you have reviewed the transcript before. I would like to  
23 show you a copy to refresh your recollection of the  
24 transcript. We will mark this again for ID purposes.

25 (Court's Exh. 1, Transcript, was marked for

1 identification.)

2 BY MS. GAY:

3 Q. I'm going to show you what's been marked as Court's  
4 Exhibit 1 and direct you to page -- well, it's where it's  
5 17:37, this time period here at the top. Because this is all  
6 kind of time periods. See this line right above 17:37, can  
7 you read that line to the jury, please.

8 A. "Hello. I call you back. It's going to be awhile.  
9 Probably I will call you. I don't know, Will."

10 Q. Will is your boyfriend?

11 A. Yes.

12 Q. He was your boyfriend at the time of this  
13 incident?

14 A. Oh, he's not my boyfriend now, but, yes, he was.

15 Q. In 2015?

16 A. Correct.

17 Q. Next sentence, can you read that sentence to the  
18 jury, please?

19 A. "No, I'm waiting on -- I will call you back.  
20 Impatient boyfriend."

21 Q. That's you referring to your boyfriend Will as the  
22 impatient boyfriend to Officer Branham, correct?

23 A. Yes. I was referring to him, yes, as my impatient  
24 boyfriend.

25 Q. And then so Will -- and I think that Mr. Ancrum asks

1 you even later on in the video, where is Will, and you said,  
2 this is my own thing?

3 A. I said -- no, I said, he's at the room.

4 Q. Okay. And during this period of time in 2015, it's  
5 my understanding that you were on probation for property  
6 crime enhancement charges?

7 A. I was.

8 Q. You were then and you are now?

9 A. Yes.

10 Q. Explain a little bit. Somewhere in the interim, you  
11 had a probation violation, possibly some more charges, and  
12 that's what put you in prison?

13 A. No.

14 Q. Did you go to prison after 2015? You went to prison  
15 in 2016, correct?

16 A. Right.

17 Q. Wasn't that for some type of probation violation?

18 A. I believe it was for, yeah, the property crime  
19 enhancement, yes.

20 Q. So going back before this incident, I think some  
21 time in maybe '14 is when you were placed on probation for  
22 the property crime enhancements. And for the purpose of  
23 jury, that means shoplifting more than two or three times?

24 A. Yes.

25 Q. I believe your record had two or three shopliftings

1 that were the 30-day offenses, and then you ended up getting  
2 convicted of the felony charges, which carries 10 years, for  
3 property crime enhancement, multiple shopliftings?

4 A. Correct.

5 Q. And would it be fair to say that during that period  
6 of time, because of all your shopliftings, that you had a  
7 drug problem?

8 A. Right.

9 Q. And that your drug problem was contributing to your  
10 criminal record with the shopliftings?

11 A. Yes.

12 Q. And the property crime enhancements?

13 A. Yes.

14 Q. And that all happened before 2015? I think your  
15 first possession of cocaine charge was 2003.

16 A. No, no. I didn't plead guilty to that.

17 Q. Well, then in '13 is when you plead guilty to a  
18 couple of shopliftings?

19 A. Right.

20 Q. And then in '14 is when you pled guilty to financial  
21 transaction card fraud?

22 A. Right.

23 Q. And the property crime enhancement times three?

24 A. Okay.

25 Q. Do you remember that as being your record?

1 A. I remember it was all together, one.

2 Q. So then --

3 A. I don't remember exactly all of them.

4 Q. Excuse me?

5 A. I said I don't remember exactly all of them.

6 Q. During that period of time, your life was pretty  
7 confusing, because you were using a lot of drugs at that  
8 time? Right?

9 A. Okay.

10 Q. And it's my understanding that when you met with  
11 Frank Preston from the ATF, that was in July of 2014? Do you  
12 remember it being July of 2014?

13 A. I don't recall what date it was, no.

14 Q. I would like to show you Defendant's Exhibit for ID  
15 purposes No. 1. And can you read -- do you recognize this  
16 agreement, or, trust me, this was your name.

17 A. Yeah, I recognize it.

18 Q. What is it?

19 A. It's an agreement of what I have to do to be an  
20 informant.

21 Q. So on the top of it, what does it say?

22 A. Informant agreement.

23 Q. And does it also say July 10, 2014?

24 A. Yeah.

25 Q. So --

1 A. But I don't see my name on it.

2 Q. I understand. So in July 14th of 2014, there were  
3 things that you had to do as part of being a paid informant  
4 for the ATF? Do you remember what some of these things were?  
5 You had to call them and give the names of people who you  
6 thought was connected to the drug trade?

7 A. Could you repeat the question?

8 Q. Well, as part of being an informant for them to get  
9 money, which is what you got, we call that a paid informant,  
10 you provided names to them of people that you believed you  
11 could call to get drugs from?

12 A. Okay.

13 Q. They didn't provide the names to you. They didn't  
14 say, you know, Ms. Morris, I want you to call this guy or  
15 this guy and this guy and these are their telephone numbers.  
16 You actually brought names and telephone numbers to them?

17 A. Correct.

18 Q. And so that was part of your understanding of what  
19 your obligation was under this agreement?

20 A. Okay.

21 Q. And then as part of it also, people unrelated to  
22 Mr. Ancrum from July 10th, 2014, were also people that you  
23 called and arranged to buy drugs from?

24 A. I am not aware of anybody's relation or any -- I'm  
25 not sure.

1 Q. Okay. So this happened -- this relationship that  
2 started in 2014, we go all the way to February '15 when the  
3 transaction that we are talking about today happened,  
4 correct? It was February, I think 5th, 2015?

5 A. Correct.

6 Q. And during that period of time, this guy that you  
7 were living with, Will, did he know that you had a  
8 relationship with Mr. Ancrum?

9 A. Yeah.

10 Q. He did know that you had a relationship with him?

11 A. Sure he did.

12 Q. And that relationship included sex?

13 A. No.

14 Q. Okay. So when my client tells me that, that's not  
15 true?

16 A. No, that is not true.

17 Q. And what about the fact that you had received money  
18 that day that you were rushing off to go meet with your  
19 boyfriend, that's who you were going to meet afterwards?

20 A. I was going to pick my friend up. I mean, what does  
21 that have to do with it?

22 Q. Well, during this period of time in February of  
23 2015, do you recall when your probation got violated?

24 A. I don't recall.

25 Q. Were you actively using drugs during this period of

1 time between this sale and the time you got violated on  
2 probation?

3 A. Yes, I was.

4 Q. And so at times, money that you obtained from the  
5 ATF might have been used for buying drugs at some point?

6 A. Could possibly be.

7 Q. And so when you knew Mr. Ancrum and you knew what  
8 kind of car he had and you knew things like that about him,  
9 you are telling this jury that you did not have any special  
10 kind of relationship, personal relationship with him?

11 A. No, we did not.

12 Q. And it's my understanding that you had -- as I said,  
13 in 2016, which was, you know, maybe eight or nine months  
14 later, that's when you went to prison for some new charges?

15 A. It was for everything -- what I went to prison for,  
16 it was a bundle of everything together.

17 Q. So it was things that had been pending since maybe  
18 before this time in February and also after this time in  
19 February?

20 A. No, because I was on probation. It was after what  
21 happened in February.

22 Q. Right. And so while you were on probation, you  
23 tested positive for drugs?

24 A. I did.

25 Q. Did you test positive for drugs more than one time? u

1           A.    I did.

2           MS. GAY:  Your Honor, beg the Court's indulgence.

3           THE COURT:  Yes, ma'am.

4  BY MS. GAY:

5           Q.    This is the last group of questions I wanted to ask  
6  you.  Initially, you said that Ms. Linder was prosecuting  
7  you.  And she was prosecuting you, based on your testimony,  
8  some time in '15, before you went to court in '16, correct?

9           A.    I never met her.  Someone else actually came to  
10 court, so I just found out that she was the one prosecuting  
11 me here.

12          Q.    And at some point, you made contact with the police  
13 officer, the original City of Charleston police officer, to  
14 ask them whether or not you could be set up as an informant?

15          A.    No.

16          Q.    Is it your testimony that somebody came to you and  
17 asked you, one of the members of law enforcement?

18          A.    They didn't come to me, no.

19          Q.    So it's either you came to them and presented it as,  
20 I would like to be a paid informant --

21          A.    Yeah, it happened, I asked to be one.

22          Q.    And you asked to be one, and I believe -- was it  
23 your understanding that Mr. Preston had to actually talk to  
24 your probation agent to get permission for you to be able to  
25 do that?

1 A. Right.

2 Q. So you were already on probation and had already  
3 tested positive for drugs and had some problems with  
4 probation?

5 A. Right.

6 Q. So you were -- was it your understanding -- I know  
7 Ms. Linder asked you, did you get any benefits in your case  
8 for doing any of this. But at the time that you signed up  
9 with the ATF to become a paid informant, was it your  
10 understanding that if you did that, you would get some  
11 benefits because you were testing positive for drugs and in  
12 violation of your probation?

13 A. No.

14 Q. You just did it out of the kindness of your heart?

15 A. I did -- I'm -- I don't understand what you are  
16 asking me.

17 Q. I'm asking you what your intent was when you  
18 contacted somebody --

19 A. It was to make money.

20 Q. It was to make money?

21 A. Right.

22 Q. Only to make money?

23 A. Right.

24 Q. Not to help yourself on any type of probation  
25 violation?

1 A. No.

2 Q. Just because you needed money?

3 A. I didn't get any help whatsoever. And they told me  
4 that they would not help me with any kind of help on my  
5 sentencing.

6 Q. So you already admitted that during the period of  
7 time you were doing this, some of the ATF money they gave you  
8 was probably going to some of the drugs that you were  
9 doing?

10 A. Right. I also did pay restitution with the money  
11 too.

12 MS. GAY: I have no further questions, Your Honor.

13 THE COURT: Redirect?

14 MS. LINDER: Your Honor, I think we need to have a  
15 conversation outside the jury or at the bench before I do  
16 redirect.

17 THE COURT: All right. Ladies and gentlemen, please  
18 step in the jury room. Don't discuss the case.

19 (Whereupon, the jury leaves open court at 4:16 p.m.)

20 THE COURT: Yes, ma'am.

21 MS. LINDER: Your Honor, it is the State's position  
22 that Ms. Gay, in her cross of the witness, got into some  
23 items that opens the door to further explore the  
24 "relationship" that this witness had with the defendant. Ms.  
25 Gay asked about if she provided the phone number and then

1 kind of jumped straight into accusing of a sexual  
2 relationship. And then later kept saying, so you had no  
3 relationship with him, you had no relationship with him at  
4 all, no personal relationship. And discussing how the  
5 informant wouldn't have access without a sexual relationship;  
6 whereas, I think that it takes things out of context. And I  
7 think that I should be allowed to ask very limited questions.

8 For example, I know that the witness has known the  
9 defendant for a couple of years prior to this. She and her  
10 boyfriend Will used to purchase drugs on a regular basis from  
11 the defendant. And, in fact, she purchased on two other  
12 occasions from the defendant while working and wired up for  
13 ATF. And I just believe that the questions asked on cross  
14 opened the door to that.

15 THE COURT: Ms. Gay.

16 MS. GAY: Well, Your Honor, I think that I was  
17 asking her about personal, like, did they have a physical  
18 relationship. That's actually what my client told me, that  
19 they did. And so I don't believe it opened the door for any  
20 type of other sales of drugs. She knew him. She obviously  
21 provided the name. She provided the telephone number. She  
22 knew what type of car. I was very specific when I said, you  
23 knew what type of car he drove, you knew his telephone  
24 number. I didn't say, had you ever bought drugs from him  
25 before or been partying with him, or anything like that that

1 would indicate there was some type of drug contact. My  
2 client told me they had a relationship that was involved of  
3 some sort. I asked her a question, which she denied. I  
4 didn't ever say, oh, well, yes, you did. I just asked the  
5 question and she answered it.

6           So I don't believe that it came -- it brings up the  
7 fact that she has known him for two years and bought drugs  
8 from him on a previous occasions. One of the things, we have  
9 a transcript in the record, there's statements made by her  
10 about getting money to him to buy more drugs. And we agreed  
11 to take those out as bad acts. So he never once, I believe,  
12 crossed into any type of communication about her having a  
13 relationship with him that involves drugs.

14           She acknowledged that she knew him. She  
15 acknowledged she had to give up the names to the ATF as  
16 people she thought would be involved in the drug trade. And  
17 his name was one of them as a part of this case.

18           THE COURT: Anything else?

19           MS. LINDER: Your Honor, I think I stated before,  
20 yes, Ms. Gay asked directly, was there a sexual relationship,  
21 or my client tells me you are in a sexual relationship with  
22 him, I believe is how it was stated. Yes, the witness did  
23 deny it. But later Ms. Gay went back to it, you are telling  
24 me you know his car and all this, but you have no personal  
25 relationship, no personal relationship. And she never said

1 sexual relationship again. And I think that is misleading to  
2 the jury. And I would like the ability to clarify that to  
3 them.

4 THE COURT: You can ask her about how long she had  
5 known him and that sort of thing, but I am not going to let  
6 you get into drug transactions.

7 MS. LINDER: Thank you, Judge.

8 THE COURT: Are you ready for the jury?

9 MS. LINDER: Yes, Your Honor.

10 THE COURT: How many more witnesses do you have  
11 after her?

12 MS. LINDER: One. And it's the one that we need the  
13 15-minute hearing for the statement beforehand.

14 THE COURT: So there's no chemical analysis?

15 MS. LINDER: We do, but we have about three chain  
16 witness that we are not going to get to today. They are  
17 going to go with the chemist.

18 THE COURT: How many witnesses do you have left,  
19 period?

20 MS. LINDER: Period? There's one very quick  
21 officer, three chain witnesses and the chemist.

22 THE COURT: Okay. Ma'am, during this break we are  
23 going to take, you can step down, if you would like, but you  
24 are not permitted to discuss your testimony with anybody. Do  
25 you understand? When you come back, it will probably be very

1 brief, but these folks have been in here a long time, I need  
2 to give everybody a break. Okay? Let's take about 5 minutes  
3 or 10. All right.

4 (Whereupon, a recess transpired.)

5 (Whereupon, the defendant is present.)

6 THE COURT: Ready?

7 MS. LINDER: Yes, Judge.

8 THE COURT: Bring them in, please.

9 (Whereupon, the jury returns to open court at 4:30  
10 p.m.)

11 THE COURT: Redirect.

12 MS. LINDER: Yes, Your Honor. May it please the  
13 Court, just briefly.

14 REDIRECT EXAMINATION

15 BY MS. LINDER:

16 Q. Tessa, I wanted to clear up a few things. First of  
17 all, when did you first get into using drugs?

18 A. My early or, say, late 20s, early 30s.

19 Q. And how did you first get into using drugs?

20 A. I was in a car accident and the doctor prescribed  
21 the drugs to me for my back injury.

22 Q. So you got prescription pills?

23 A. Right..

24 Q. And you used those?

25 A. Yes.

1 Q. Did you abuse those?

2 A. I did.

3 Q. And did you then from there start making your way  
4 into other things?

5 A. Right.

6 Q. And when was the last time you used drugs?

7 A. The last time I used drugs was in -- let's see. I  
8 just got out of prison March 1st. And I went to jail July  
9 25th of, I would say, like, 21 months ago.

10 Q. All right. When you signed up and signed that piece  
11 of paper that you were shown earlier, your agreement to work  
12 with ATF, which you freely signed, that was on July 10th of  
13 2014; does that sound about right? And as part of that  
14 agreement, as part of briefing with them, including with  
15 Special Agent Preston, you gave names and phone numbers of  
16 people who could be good targets for them?

17 A. Right.

18 Q. And one of the name and phone numbers you gave is  
19 the defendant, correct?

20 A. Correct.

21 Q. How long overall had you known the defendant; a  
22 week, a month, a year?

23 A. I've known him for several years.

24 Q. You've known him for several years before all of  
25 this happened?

1 A. Correct.

2 Q. And you were not in a sexual relationship with him?

3 A. No, we were never.

4 Q. But you knew him for several years?

5 A. From purchasing drugs.

6 Q. And, in fact, you knew him through your boyfriend?

7 A. Correct.

8 MS. GAY: Your Honor, may we approach?

9 THE COURT: Ladies and gentlemen, step in the jury  
10 room. Don't discuss the case.

11 (Whereupon, the jury leaves open court at 4:33 p.m.)

12 THE COURT: Yes, ma'am.

13 MS. GAY: I would like a motion for a mistrial, Your  
14 Honor. She just said "for purchasing drugs". I believe  
15 that's in violation of what you said in terms of how to keep  
16 the testimony away from prior bad acts. And I would make a  
17 motion for a mistrial on my client's behalf.

18 THE COURT: Solicitor.

19 MS. LINDER: Your Honor, I believe that any sort of  
20 instruction could be curative as far as that's concerned.  
21 That was not in specific response to what my question was. I  
22 was very specific in saying, you knew him for a number of  
23 years, you knew him through your boyfriend. It was not in  
24 response to the type of relationship. It was not a sexual  
25 relationship. She was just reiterating the response that was

1 given on cross to Ms. Gay. I think if it needs to be  
2 addressed, I think anything curative would solve that issue.

3 MS. GAY: Your Honor, I don't think that's possible.  
4 I think it's a bad act. It's something that we excised and  
5 muted the tape to prevent the jury to know. I think it's  
6 highly prejudicial. And there's -- I don't believe it can be  
7 corrected by a curative statement at all.

8 THE COURT: Well, I understand your position. But  
9 if the testimony has been offered several times now that she  
10 provided the targets. What other logical conclusion is there  
11 but that she is providing the target because he's involved in  
12 the drug trade in some way?

13 MS. GAY: I think that's a logical conclusion that  
14 the jury can make up on their own and discuss. The problem  
15 is the testimony from the witness indicating that there had  
16 been prior purchases was specifically excluded in this case  
17 as a bad act that would be prejudicial and not appropriate.  
18 And that's why I said we specifically went through the  
19 transcripts to make sure that nothing was -- there are lots  
20 of things in the transcripts that refer to prior contact,  
21 prior deals, prior opportunities for her to have received  
22 drugs from him. We specifically kept that out.

23 And I understand what Ms. Linder was trying to do.  
24 She repeated the question a couple of times with emphasis.  
25 And those are things she can argue as an inference. Why else

1 would he knew his man? But for the witness to specifically  
2 say it and it to be in front of the jury as evidenced from  
3 the witness that there had been prior purchases, is  
4 completely inappropriate in this case. And I believe it is a  
5 basis for a mistrial.

6 THE COURT: Anything else?

7 MS. LINDER: Your Honor, I would just state, again,  
8 that as Your Honor pointed out, it has been said numerous  
9 times that she's been using drugs, she purchased drugs, she  
10 was still actively using drugs in 2015, that she's the one  
11 who came up with the target, and the word "target" I believe  
12 was used on both sides of this as far as the target she came  
13 up with for ATF to be used into these.

14 As far as what she just said, she did say she knows  
15 him from purchasing drugs. She did say that. She did not  
16 say from purchasing drugs from him. I think that it is from  
17 purchasing drugs, because as she's been just testifying to,  
18 she was an active user and she was purchasing drugs. And, in  
19 fact, Judge, she named multiple targets. And those multiple  
20 targets are people she knew through her life of purchasing  
21 drugs and through her life as a drug abuser and user.

22 THE COURT: Anything else, anything on the record?

23 MS. GAY: Well, Your Honor, this is like ping-pong  
24 at a certain point. And I know you know the arguments. I'm  
25 sorry I don't have any case law in front of me. If we take

1 an evening break, maybe I could bring back case law in the  
2 morning. This may be a good point to stop. There's no doubt  
3 that purchasing drugs in response to Ms. Linder's question  
4 was how she knew him, not how she just knew other people that  
5 would have been purchasing drugs. It was specifically  
6 answered in response to a question about him. And it brings  
7 up prejudicial issues that were excluded in this trial and  
8 pretrial motions that we discussed and other evidence that we  
9 protected the record from. And I don't believe there's any  
10 way we can fix it.

11 THE COURT: All right. Give me a moment. Y'all  
12 have a seat.

13 All right. Here's the difficulty that I'm wrestling  
14 with. If I were to give what would be referred to as  
15 limiting instruction, it seems to me that I would have to  
16 tell the jury that the inquiry would be limited only to  
17 certain thing or a certain thing. And in this instance, I  
18 assumed it would be only to go to the issue of her giving law  
19 enforcement this number, telephone number of this individual  
20 as a target. And that doesn't really sit too well. It  
21 doesn't show motive, opportunity, those things that are  
22 traditionally in the rule.

23 So the other option is to tell the jury that they  
24 have to exclude that testimony, the testimony about any other  
25 activities involving in drugs, that would have to be excluded

1 and they are not to use it in any way against the defendant.

2           Were it a different situation, I certainly would be  
3 feeling stronger than a mistrial needs to be declared, but  
4 the difficulty I have goes back to what I said earlier.

5 Witnesses have testified, more than one witness, that she  
6 identified targets for law enforcement to go after. And the  
7 only reasonable conclusion that someone could draw from that  
8 is that she believed that those people were involved in drug  
9 transactions, and not just using drugs, but in providing  
10 drugs to other people. Otherwise, there's no basis for her  
11 to make that assertion. And so when I think about having a  
12 mistrial over this issue, it really seems to be overreaction.

13           Having said that, don't talk about any other drug  
14 deals with him.

15           THE WITNESS: Yes, sir.

16           THE COURT: I don't know where we are going with  
17 this any further. I may revisit it. I will certainly  
18 consider any law you have in the morning. But I think that  
19 what I'm going to do is instruct the jury to disregard.

20           MS. GAY: Well, Your Honor, this is the difficulty.  
21 As you said, even in your own sentence, you said that she  
22 believed that people she gave the names to would have, would  
23 have, maybe could have, had some involvement with drugs.

24           THE COURT: No, I didn't say would have, maybe could  
25 have. I never used that term at all.

1 MS. GAY: What you said, she believed people would  
2 have had involvement with drugs. But for her to testify  
3 "made purchases from" --

4 THE COURT: She didn't say "made purchases from".

5 MS. GAY: She said "from drug purchases". That was  
6 what the words were, from drug purchases. How do you know  
7 him? How long have you known him? From drug purchases.

8 So her response to Ms. Linder was that she had  
9 bought from him, from drug purchases. And that's completely  
10 different than some belief that she may have had that he  
11 might be involved in the trade of some sort or have some  
12 involvement with drug activity. That is her testifying  
13 directly, direct evidence on the stand saying that she, from  
14 drug purchases, knew Mr. Ancrum. And that is definitely  
15 something that we've excluded along the -- during the whole  
16 course of this trial. We knew this would be an issue along  
17 the way. We had rulings and decisions and agreements set up  
18 to avoid having any of this be in front of the jury.

19 I believe that this is violating all those previous  
20 decisions that had been made by you and agreements that Ms.  
21 Linder and I have made to protect this record and give my  
22 client a fair trial, Your Honor.

23 THE COURT: What decision did I make other than this  
24 afternoon when I said you can't go into the drug transaction?

25 MS. GAY: Right. Well, the motion that I made about

1 his prior bad acts is, I wanted to know ahead of time how she  
2 was going to be dealing with the prior bad acts that we knew  
3 would be relevant in this case. And she and I discussed how  
4 to avoid that. Because we both agreed that there could be  
5 Lyle information in this trial that could be harmful and  
6 prejudicial to my client. So we agreed to mute the tape in  
7 certain places. We agreed to limit testimony in terms of,  
8 you know, she argued that she thought that I had opened the  
9 door because I asked whether or not they had a personal  
10 sexual relationship, she denied that. That wasn't about  
11 drugs.

12 And then you told her what to ask. And then in the  
13 course of her questioning, the witness said "from drug  
14 purchases".

15 THE COURT: Okay. I understand. I understand your  
16 position. And I may be wrong. My question was, what ruling  
17 did I make? And I don't think I made any rulings. I think  
18 y'all stood up and said, we agreed to all those things, which  
19 the prosecution should be held to. But I guess I want to  
20 make sure there wasn't a ruling I made other than the one a  
21 short awhile ago that was violated.

22 MS. GAY: Well, I mean --

23 THE COURT: If you are going to tell me the same  
24 thing over again, you don't need to tell me a third time.

25 MS. GAY: No. Prosecutorial misconduct is something

1 that gets discussed about the prosecutor going beyond the  
2 scope of her agreement with me. And I would make that as a  
3 reason for the mistrial as well. She's asking, very  
4 pointedly, asking questions. And the witness responded based  
5 on her questions. And I just wanted to make the record  
6 clear, Your Honor, I think we should have a mistrial. And if  
7 it's not because of a Lyle violation. I think it should be  
8 because of prosecutorial misconduct, for asking questions  
9 that made her witness say things that we had agreed would be  
10 Lyle matters.

11 THE COURT: Anything else?

12 MS. LINDER: Judge, to address the misconduct, I  
13 feel that's a very strong allegation to make. I had my  
14 questions up there. And based on your ruling, that's when I  
15 asked how long had you known him, which was acceptable. And  
16 then I was going through saying it's not a sexual  
17 relationship. My next question was asking, actually knew him  
18 through her boyfriend, the two of them knew him. And so,  
19 Judge, I do not believe that I asked a question or led down a  
20 path to purposely try to do anything against Your Honor's  
21 ruling.

22 THE COURT: I don't find any prosecutorial  
23 misconduct. I find that the witness responded in a fashion  
24 that creates this problem. And the witness is not an  
25 attorney. And it all arose because of the questions related

1 to the question about how she knew this defendant.

2 Bring the jury back in. I'm going to make a call.

3 And if I'm wrong, I'm wrong. If I'm right, I'm right.

4 Again, if you all have anything you want to present in the  
5 morning, I will be happy to consider it and I may change the  
6 ruling.

7 (Whereupon, the jury returns to open court at 4:58  
8 p.m.)

9 THE COURT: Ladies and gentlemen, I told you at the  
10 outset of the trial, I have to decide the legal issues that  
11 arise in a case. I gave you the example about if there was  
12 something that was to be presented to the jury and the other  
13 side felt that that was improper.

14 I need now at this point to give you an instruction  
15 that you must follow. If you are unable to follow the  
16 instruction or you have doubt about whether you can follow  
17 the instruction, then you you must let me know that by  
18 writing me a note and giving it to the bailiff. Do not  
19 discuss this in any way with your fellow jurors. If you have  
20 any issue or any concern with following the instruction I'm  
21 about to give you, simply write me a note telling me about  
22 that, and I will make further inquire, if necessary.

23 Now, the instruction is this, ladies and gentlemen.  
24 The law does not allow evidence of other crimes, wrongs or  
25 acts to be admitted to prove the character of an accused in

1 order to show action in conformity with that character. In  
2 other words, if an accused was involved in a prior wrongful  
3 or bad act, that cannot be used as evidence that he committed  
4 either/or both of the crimes for which he is now on trial.  
5 You must disregard the statement that this witness made that  
6 in any way implied or suggested that she knew this defendant  
7 from other activities involving drugs. That portion of her  
8 testimony is stricken from your consideration. It must not  
9 be used in any way whatsoever against the defendant.

10 Now, if you have any problem following that, you  
11 can't put that out of your mind, the last portion of her  
12 testimony, then you need to let me know by writing me a note.  
13 You can do that at the end of the day or first thing in the  
14 morning, if you would like.

15 All right. You may continue, Solicitor.

16 THE COURT: I note the defense's objection.

17 MS. GAY: Thank you, Your Honor.

18 BY MS. LINDER:

19 Q. You were signed up with the ATF July 10th of from  
20 the 14; is that right?

21 A. Yes, ma'am.

22 Q. When you got signed up -- I'm going to throw some  
23 dates out here, so I just looked up some stuff, so if they  
24 sound right, or if you think they are really wrong, just let  
25 me know. When you signed up with ATF, you were already on

1 probation; is that right?

2 A. Yes.

3 Q. And then you signed up in July of 2014. This buy  
4 occurred February 5th of 2015; is that right?

5 A. Correct.

6 Q. And then from what I can tell, you were next  
7 arrested on June the 2nd of 2015, correct?

8 A. Maybe. I'm not sure of the exact date.

9 Q. Okay. Does it sound like it could be right that you  
10 were served then with a probation violation warrant August  
11 14th of 2015?

12 A. Yes.

13 Q. And then you were convicted July 22nd of 2016; does  
14 that sound about right?

15 A. Uh-huh, yes.

16 Q. So you sat in jail for almost a year?

17 A. Correct.

18 Q. Right? Before you pled guilty and then you went to  
19 prison for a little bit?

20 A. Right.

21 Q. Okay. But the new arrest, which was June of '15,  
22 the probation warrant August of '15, all of that, is that  
23 before or after this buy on February 5th of 15th? Is June  
24 after February in the course of a year?

25 A. It's after.

1 Q. Okay. In July, after February?

2 A. Yeah.

3 Q. And July 2016, is that after February of 2015?

4 A. Correct.

5 Q. And does any of that change what you testified as  
6 far as purchasing drugs from this defendant back on February  
7 the 5th 2015?

8 A. No.

9 MS. LINDER: I have no further questions. Thank  
10 you.

11 THE COURT: Recross?

12 MS. GAY: No, Your Honor.

13 THE COURT: Thank you. Thank you, ma'am. You may  
14 step down.

15 Do you have another witness we need to do today?

16 MS. LINDER: We can do tomorrow, Judge. We have one  
17 available, but we can do it tomorrow.

18 THE COURT: Do you all want to keep going or do you  
19 want to stop today? Personally, I don't like to get out at  
20 five o'clock in the big city because you will just sit in  
21 traffic, but call your witness.

22 MS. LINDER: Judge, this is the one we will need  
23 about ten minutes with Your Honor before he takes the stand  
24 in front of the jury.

25 MS. GAY: May I approach, Your Honor?

1 THE COURT: Sure.

2 (Whereupon, a bench conference takes place off the  
3 record.)

4 THE COURT: Let me work with them on what I've got  
5 to do, and you folks can fight traffic. I need you back here  
6 tomorrow at ten o'clock. Now, you should get the case  
7 tomorrow. That's my understanding. I can't say if it will  
8 be in the morning or the afternoon, but you should get the  
9 case tomorrow to decide. I hope you have a pleasant evening.  
10 Remember all the admonitions.

11 (Whereupon, the jury leaves open court at 5:04 p.m.)

12 THE COURT: Just so the record is clear, the  
13 mistrial motion was denied. I think that's obvious. And I  
14 noted the exception to the limiting instruction. Do you need  
15 to put anything else on the record, Ms. Gay, you would like  
16 to add?

17 MS. GAY: No, Your Honor. As you've done, you've  
18 preserved my objection. You've ruled against me on my motion  
19 for mistrial and my motion for mistrial based on Lyle and  
20 also based on prosecutorial misconduct. I still take the  
21 position, Your Honor, that in addressing my motions, I had  
22 the understanding that you would have been part of the ruling  
23 or decision for there not to be any type of Lyle material  
24 brought up. Maybe that's my fault, Your Honor, for not  
25 clarifying and having that decision, we had this information,

1 Your Honor, would you like to make a ruling. I thought I had  
2 protected my client's interest by working this out with the  
3 solicitor. But you said you didn't make the ruling. I hope  
4 that doesn't prejudice him in any way, because we really did  
5 agree together there wouldn't be any Lyle information used in  
6 this trial.

7 THE COURT: My ruling on the mistrial would be the  
8 same anyway. If it's interpreted that I rubber stamp what  
9 y'all agreed to, which is fine with me, the ruling on  
10 mistrial would be the same. It goes back to that one key  
11 factor.

12 All right. Who is this other witness and what do I  
13 need to decide?

14 MS. LINDER: This is Detective Marc Brown. When the  
15 defendant was arrested about a week and a half later, there's  
16 an audio and video recorded interview. And during the course  
17 of that interview, the defendant is asked what his phone  
18 number is. And he gives the same phone number as used to set  
19 up this buy. So the point of this is, we would ask that  
20 Detective Brown be able to testify very briefly about he was  
21 involved with the warrant service. He was involved with the  
22 Miranda. And this information was given and it was audio  
23 video recorded. And then there is a three-and-a-half minute  
24 clip that shows the Miranda and the defendant giving his  
25 phone number. And the whole purpose of this is, during the

1 trial, we would ask that Detective Brown be able to testify  
2 to -- not play any video -- that he was part of a  
3 post-Miranda interview with the defendant and he gave the  
4 phone number XYZ in that interview.

5 THE COURT: So you need a Denno hearing?

6 MS. LINDER: Yes, Judge.

7 THE COURT: Call your witness.

8 MS. LINDER: Marc Brown.

9 MARC BROWN,

10 having been duly sworn, testifies as follows:

11 THE CLERK: State your first and last name, spelling  
12 your last name for the record.

13 THE WITNESS: Marc Brown, B-r-o-w-n.

14 (State's Exh. 7, CD, was marked for  
15 identification.)

16 DIRECT EXAMINATION

17 BY MS. LINDER:

18 Q. Good afternoon, Detective Brown. Are you currently  
19 employed with the City of Charleston Police Department?

20 A. Yes, ma'am.

21 Q. You've been in law enforcement a number of years?

22 A. Almost 12 years, yes, ma'am.

23 Q. Were you involved in this case, State vs. Gerald  
24 Ancrum?

25 A. Yes, ma'am.

1 Q. Were you involved with an interview done of the  
2 defendant, Gerald Ancrum?

3 A. Yes, ma'am.

4 Q. Was that interview done at the City of Charleston  
5 Police Department headquarters in the interview room?

6 A. Yes, ma'am.

7 Q. And is it audio and video recorded?

8 A. Yes, ma'am.

9 Q. Do you remember the date of that interview?

10 A. I believe it was February 19th.

11 Q. And during the course of that interview, was the  
12 defendant given his Miranda rights?

13 A. Yes, ma'am.

14 Q. And was he advised of those verbally or off of a  
15 card or both?

16 A. Off of a card and he also -- they gave him a card to  
17 sign.

18 Q. Did he indicate that he understood those rights?

19 A. Yes, ma'am.

20 Q. Did he indicate that he wished to waive those  
21 rights?

22 A. Yes, ma'am.

23 Q. And did his waiver appear to you to be knowing and  
24 voluntary?

25 A. Yes, ma'am.

1 Q. And were you aware during the course of this  
2 interview with him or prior to the Miranda before the  
3 interview began the age of the defendant?

4 A. I believe so, yes, ma'am.

5 THE COURT: I didn't understand what he said. What  
6 did you say?

7 THE WITNESS: I said I believe so.

8 THE COURT: Go ahead.

9 BY MS. LINDER:

10 Q. Were you aware of the education level of the  
11 defendant?

12 A. No, ma'am.

13 Q. Did you ask him in the course of this interview how  
14 far he went in school?

15 A. Detective Williams did, yes, ma'am.

16 Q. You were in the room, however?

17 A. Yes, ma'am.

18 Q. And just to explain that, there are two people in  
19 the room interviewing the defendant?

20 A. Yes, ma'am.

21 Q. You were not the lead person interviewing, however,  
22 you were present?

23 A. Yes, ma'am.

24 Q. And did the defendant appear to have any mental  
25 defects?

1 A. No.

2 Q. Did he appear to be intoxicated during this?

3 A. No, ma'am.

4 Q. Did the defendant appear to have any physical  
5 defects during this?

6 A. No, ma'am.

7 Q. Did the defendant sign a Miranda card?

8 A. Yes, ma'am.

9 Q. Did you sign a Miranda card?

10 A. Yes, ma'am.

11 Q. Was that the same card?

12 A. Yes, ma'am.

13 Q. And did he make -- did the defendant make a  
14 statement?

15 A. Yes, ma'am.

16 Q. Did that statement he gave, did it include his  
17 current phone number?

18 A. Yes, ma'am.

19 Q. And do you recall what that phone call was?

20 A. [REDACTED], [REDACTED] area code.

21 Q. And at this time, I show you what's been marked for  
22 the limited purposes of this hearing as State's Exhibit 7.  
23 Do you recognize this?

24 A. Yes, ma'am.

25 Q. How do you recognize this?

1 A. It's the recording from the interview.

2 Q. And these initials on here, whose initials were  
3 these?

4 A. Mine.

5 Q. And does this disk contain a fair and accurate  
6 representation of what happened during that interview back on  
7 February 19th of 2015?

8 A. Yes, ma'am.

9 MS. LINDER: Your Honor, I would like to publish  
10 about a three-and-a-half, four-minute clip that shows the  
11 Miranda rights that were given and when the defendant gives  
12 his phone number.

13 THE COURT: Yes, ma'am.

14 (Video playing.)

15 BY MS. LINDER:

16 Q. Detective Brown, is that you half off the screen on  
17 the far left?

18 A. Yes, that's me.

19 Q. Is that the defendant leaning against the wall in  
20 the black shirt?

21 A. Yes, ma'am.

22 Q. Is that the same as the individual who is sitting at  
23 the defendant's table?

24 A. Yes, ma'am.

25 (Video playing.)

1 MS. LINDER: That's all the questions I have for  
2 you. If you can answer any questions the defense may have.

3 MS. GAY: I have no questions for this witness, Your  
4 Honor, or in this motion.

5 THE COURT: All right. Can you play that again? I  
6 don't need the whole thing, but I will tell you when to  
7 stop.

8 THE COURT: Is that card in evidence?

9 MS. LINDER: It's not in the courtroom. I have a  
10 copy of it.

11 (Video playing.)

12 THE COURT: All right. So is the card in the  
13 record?

14 MS. LINDER: Your Honor, I have a copy of the card  
15 that I'm happy to do -- I can get the one out of evidence and  
16 I can have it here later today or first thing tomorrow.

17 THE COURT: Well, do you have any issues about the  
18 *Denno* hearing?

19 MS. GAY: Your Honor, I think that he read him his  
20 Miranda warnings. My client signed it knowingly and  
21 intelligently. So I wasn't planning on raising any issues.  
22 I have seen the copy. And it does have my client's name on  
23 it.

24 THE COURT: All right. If there's nothing further,  
25 the Court finds beyond a reasonable doubt, I know that is not

1 standard, but I find beyond a reasonable doubt that the  
2 defendant was properly advised of his rights under the United  
3 States Constitution, and specifically under Miranda vs.  
4 Arizona. He was properly advised he had a right to remain  
5 silent, that any statement he made could and would be used  
6 against him in court, that he had the right to have an  
7 attorney present and had a right to consult with an attorney,  
8 that if he could not afford an attorney, one would be  
9 appointed for him at no charge. Basically, he had the right  
10 to have the attorney present at all interrogations and  
11 interviews.

12 And the Court finds that the State has proven that  
13 the defendant voluntarily relinquished his rights and gave a  
14 statement of his own free will and accord. The waiver was  
15 knowingly and intelligently. The Court further finds that  
16 the statement was not a product of duress, undue influence,  
17 promise or hope of a reward.

18 Now, watching the video and listening to the audio  
19 on it, the setting is appropriate. There does not appear to  
20 be anything improper in the way that the interrogation was  
21 discussed or presented.

22 So the ruling of the Court is that proper foundation  
23 is established. It's admissible in the trial of the case.

24 (State's Exh. 7 is received in evidence.)

25 THE COURT: Anything else?

1 MS. GAY: Your Honor, I just wanted to revisit. I  
2 found a case, that's *State v Bostic*. And in that case, which  
3 I think is where you got the curative instructions format  
4 from for the issue with the mistrial motions and such, says  
5 in that case that either they should have granted mistrial or  
6 given a curative instruction. And I just wanted to reiterate  
7 on the record that I don't think the curative instruction was  
8 adequate to cover the situation. And this is the Lyle case  
9 that talks about prior bad acts in a drug sale case. And I  
10 think that that's probably what you were looking up.

11 I will bring it in the morning, a hard copy of it,  
12 or I will e-mail it to you. But I would like to put on the  
13 record that I don't believe the curative instruction was  
14 enough to cure the problem and to remove the prejudice to my  
15 client.

16 THE COURT: Yes, ma'am. I was not looking at any  
17 case. I was making it off the top of my head.

18 MS. GAY: I will bring the case to put it into the  
19 record, Your Honor. I can bring you the cite tomorrow. I  
20 will e-mail it to you tonight, sir.

21 THE COURT: All right. I need you folks here at 10  
22 a.m. then. Thank you.

23 (Whereupon, the proceedings adjourn for the day.)

24 (Whereupon, the trial continues on May 24, 2017.)

25 THE COURT: I received the case last night, case

1 from the defense. And this morning I received a brief from  
2 the State regarding the issue raised on mistrial.

3 Before I go into those things, yesterday we were  
4 talking about rulings and things of that nature. And it was  
5 never my intention to indicate that I had allowed the State  
6 to go into any prior bad acts. I had, in the in-camera  
7 hearing immediately before the witness bringing that out, I  
8 had stated the State could not go into prior drug  
9 transactions.

10 I also did not mean to suggest in any way that the  
11 defense attorney was not allowed to rely upon the  
12 representation of the State as to what they would or would  
13 not go into. I would have done the same thing. It helps  
14 move trials along. So I don't want to put any kind of  
15 chilling effect on attorneys reaching agreements on motions  
16 that are filed pretrial.

17 Now, having said that, it goes back to the issue  
18 that I discussed yesterday. And the mistrial motion, I told  
19 you I would revisit it today if you wanted me to. I thought  
20 about it overnight. Obviously, it's not an ideal situation,  
21 but I haven't come up with anything changing my mind. The  
22 *Bostick* case I think is distinguishable.

23 In this instance, you have someone who, based on  
24 testimony thus far, had some prior relationship with the  
25 defendant, knew the defendant. It was unlike the *Bostick*

1 case.

2           Moreover, you have a video in this case. I don't  
3 know about that other case. The videos that I've seen in  
4 trial over the years have typically been grainy and often  
5 they were black and white. This one is about as clear a  
6 quality of video as one could hope for. And it appeared to  
7 show the defendant. It appeared to show him holding a bag of  
8 some white-looking substance.

9           So as far as the second part of the inquiry the  
10 Court of Appeals engaged in in the case cited by the defense,  
11 I would think they would come to a different conclusion, but  
12 that's not my job. That's their job, if they review this  
13 case. So if you want me to put anything else on the record,  
14 I would be happy to let you do it. I find no basis to change  
15 my ruling.

16           The State need to put anything on the record?

17           MS. LINDER: Nothing further from the State, Your  
18 Honor.

19           THE COURT: Defense need to put anything on the  
20 record?

21           MS. GAY: Your Honor, I was given a motion from the  
22 State -- or response from the State this morning. And I  
23 would just like to state a few things. Though *Bostick* is  
24 distinguishable in some facts, they are talking about a  
25 pre-existing friendship -- and all of this is about whether

1 or not it's prejudicial or cumulative, kind of what all these  
2 cases are talking about. And having any type of relationship  
3 or friendship or knowledge of a person is completely  
4 different than testifying in front of the jury in such a way  
5 that you would acknowledge and admit and put direct evidence  
6 in front of the jury that this person, my client, has sold  
7 drugs to the person who is the witness in the past. That's  
8 not cumulative. That's, you know, completely prejudicial.  
9 It's inadmissible under Lyle. And I believe it does rise to  
10 the level of mistrial.

11 In *Bostick* it states that: The inevitable tendency  
12 of such evidence is to raise a legally spurious presumption  
13 of guilt in the minds of the jury. I understand, and I said  
14 this yesterday, you have given a curative instruction. I  
15 just don't think that is sufficient to take that out of the  
16 minds of the jurors. And that comment that is often said,  
17 once the bell is rung, you hear the bell, you can't unhear  
18 it.

19 So, initially, with *Bostick*, I don't believe that  
20 the types of things that she knew about him, that she had  
21 previously testified to, would show that he would have any  
22 ability to make an inference of guilt in this case. It was  
23 just ways that she knew him.

24 And then I believe that she uses the next case, that  
25 *State v. Smith*. And she, once again, is referring to

1 cumulative evidence and is making this argument that this is  
2 all cumulative because of the other things, similar to what  
3 you are saying. Your Honor, again, this is not cumulative.  
4 This is inadmissible, constitutionally inadmissible evidence  
5 which creates an unfair trial now for my client.

6 This is not -- there's different things that  
7 witnesses had said, that the witness had said about her  
8 benign, if you want to call it, vanilla, if you want to call  
9 it, things about how she knew that he may be willing to buy  
10 drugs from her. But she never said in any other occasion, he  
11 has -- I have bought drugs from him in the past, therefore, I  
12 was calling him for that reason.

13 If she had not answered the question and we had sat  
14 down, obviously, Ms. Linder would have argued to the jury at  
15 closing argument, let's just make the assumption and  
16 inference that, yeah, you know, knew him, what is "knew him"  
17 to y'all. I understand all of that. But having the witness  
18 state that evidence in front of the jury, that she had had  
19 previous contact with him in terms of prior drug deals,  
20 crosses the lines. And it's not just cumulative. It's  
21 constitutionally damaging.

22 And then the last matter that she says is that -- it  
23 says there was no other evidence of any type of similar  
24 criminal act. I think she states a case *State v. Edwards*  
25 having something to do with somebody's state of mind that

1 said that, not offered to establish that Edwards actually  
2 ever hit her mother, as it being a state of mind. This  
3 comment went directly to guilt or innocence, selling drugs to  
4 her, not just in this case, but in other cases. And there's  
5 absolutely no way to unring that bell. There's absolutely no  
6 way that it does not create an influence on the jury to  
7 decide guilt in this case as well.

8           And I would just -- I went through her motion. And  
9 I just am distinguishing the things that her motion stated.  
10 And I just -- I don't believe that there's any way that we  
11 could just call this cumulative, because it is -- it goes to  
12 the heart of the matter of guilt. She's testifying, I bought  
13 from him before; I bought from him today. Directly the same  
14 conduct.

15           THE COURT: Once again, it's not an ideal situation.  
16 I have to make a ruling in the context of a mistrial motion,  
17 which is a rather drastic thing to do. I have to look at it  
18 overall as to whether I believe that the defendant is  
19 receiving a fair trial, allowing that evidence not to form  
20 the basis of a mistrial. I have instructed the jury. I've  
21 given them a curative instruction.

22           I mentioned yesterday, and probably inartfully, said  
23 that I wasn't going to give a limiting instruction under Rule  
24 404(b), that I thought that the more proper procedure in this  
25 instance was to give a curative instruction, which I did.

1           It may have been possible to find the evidence to be  
2 admissible under one of those Rule 404(b) aspects, but,  
3 again, having re-thought that, I still believe that the  
4 proper thing to do was to not allow a motion for a mistrial  
5 and give a curative instruction. And I can see that others  
6 may think differently. And I can see that I may be wrong,  
7 but I'm not purposely being wrong. I'm doing what I think is  
8 appropriate under the circumstances.

9           All right. You have how many more witnesses, did  
10 you say?

11           MS. LINDER: We have four or five. They are all  
12 extremely short with chain and one officer. I think we will  
13 have less than an hour testimony.

14           THE COURT: Are you ready for the jury?

15           MS. LINDER: Yes, Judge.

16           THE COURT: Is the Defense?

17           MS. GAY: Yes, I'm ready. I have -- I am not going  
18 to ask any questions. I know who her witnesses are. So it  
19 will be very quick.

20           THE COURT: Thank you. Bring the jury.

21           (Whereupon, the jury returns to open court at 10:29  
22 a.m.)

23           THE COURT: Members of the jury, before you left  
24 yesterday, I gave you a curative instruction, an instruction  
25 to disregard a portion of the testimony of Tessa Morris. And

1 I told you that if you had any doubt about your ability to  
2 disregard that, you would write me a note.

3 Anybody need to give me anything?

4 (No response from the jury.)

5 THE COURT: All right. We will proceed with the  
6 State's case. Call your witness.

7 MS. LINDER: The State would call Detective Marc  
8 Brown.

9 MARC BROWN,  
10 having been duly sworn, testifies as follows:

11 THE CLERK: State your full name and spell your last  
12 for the record.

13 THE WITNESS: Marc Brown, B-r-o-w-n.

14 DIRECT EXAMINATION

15 BY MS. LINDER:

16 Q. Good morning.

17 A. Good morning.

18 Q. Where are you employed?

19 A. Charleston Police Department.

20 Q. And what is your position with Charleston Police  
21 Department?

22 A. Team One patrol, Community Action Team.

23 Q. What was your position and your duties back in  
24 February of 2015?

25 A. I was an intelligence investigator with the field

1 Charleston unit at Charleston Police Department.

2 Q. And what items did you investigate with the  
3 intelligence unit?

4 A. Wide range of crimes, anything from counterfeit  
5 money, illegal firearm sales, illegal drug sales, shoplifting  
6 rings, that sort of.

7 Q. And how long have you been in law enforcement?

8 A. 12 years.

9 Q. Can you tell the jury a little bit about your  
10 education and training experience?

11 A. I've been in law enforcement for 12 years. Six of  
12 those I spent at the Hanahan Police Department. I was --  
13 while I was there, I was a narcotics detective for three  
14 years with the Charleston County Sheriff's Office, metro  
15 major case unit. I was also a patrol supervisor. I've been  
16 at the Charleston Police Department for about six years. And  
17 I spent over three and a half years as a field intelligence  
18 investigator.

19 Education-wise, I have a bachelor's degree in  
20 political science. I have a Master's from Charleston  
21 Southern University in criminal justice. And I'm currently  
22 pursuing a doctorate in organizational leadership from Grand  
23 Canyon University.

24 Q. And were you working back in February of 2015?

25 A. Yes, ma'am.

1 Q. And were you involved with this case, the State vs.  
2 Gerald Ancrum, back in that time frame in February?

3 A. Yes, ma'am.

4 Q. And can you tell us about your involvement on the  
5 day of February 5th of 2015 with Gerald Ancrum?

6 A. We conducted a controlled purchase of narcotics. I  
7 was -- my involvement, I was assigned to surveillance and  
8 also evidence collection and storage.

9 Q. As part of your surveillance, where did you end up  
10 going to do that surveillance?

11 A. We went to Norton Car Stereo, which is the adjacent  
12 parking lot to Dunkin' Donuts.

13 Q. Is that here in Charleston County?

14 A. Yes, ma'am.

15 Q. In West Ashley?

16 A. Yes, ma'am.

17 Q. And when you were in the vehicle, which direction  
18 were you facing? How were you parked?

19 A. Norton Car Stereo would be behind me, and in front  
20 of me was Highway 17. So I was faced out towards Highway  
21 17.

22 Q. And were you part of a briefing that took place  
23 prior to going out there and starting surveillance?

24 A. Yes, ma'am.

25 Q. And so were you aware of the details of the

1 informant and of the undercover officer and everything?

2 A. Yes, ma'am.

3 Q. I'm going to show you what's already been entered as  
4 State's Exhibit 2. If you can do your best, can you explain  
5 again where you were? And I will try to point it out for  
6 you.

7 A. Yes, ma'am.

8 Q. First of all, what's this?

9 A. This is Highway 17.

10 Q. Okay. And then what is this?

11 A. That's Dunkin' Donuts.

12 Q. And this?

13 A. That is one of the buildings adjacent to Norton Car  
14 Stereo.

15 Q. And so if you can kind of describe to me, and I will  
16 use my finger to try to point out where you were.

17 A. Okay. If you get those cars closer to Highway 17, I  
18 was about four or five spaces in faced out, facing out  
19 towards 17.

20 Q. Did four or five in facing out towards 17?

21 A. Yes, ma'am.

22 Q. Okay. So as you were doing the surveillance, were  
23 you able to be in contact with anyone else who was involved  
24 with this operation?

25 A. Yes, ma'am, via radio.

1 Q. And did you see the defendant or his vehicle that  
2 day?

3 A. I saw his vehicle, yes, ma'am.

4 Q. What vehicle was that?

5 A. It was a white BMW with a King Mack paper tag on  
6 it.

7 Q. When did you see his vehicle that day?

8 A. After the informant got in the vehicle, I saw -- the  
9 defendant drove right behind me while I was parked out facing  
10 towards 17.

11 Q. And you say drove right behind you; your vehicle is  
12 still four or five spots in?

13 A. Yes, ma'am.

14 Q. Drove behind you, so drove this direction?

15 A. Yes, ma'am.

16 Q. Okay. To your knowledge, did a drug deal happen  
17 that day?

18 A. Yes, ma'am.

19 Q. After the deal went down, did you ever handle or  
20 were you ever involved with the drugs themselves?

21 A. Yes, ma'am. After the deal, when we met back at the  
22 meeting location, I took the drugs from the vehicle.

23 Q. And where were the drugs in the vehicle?

24 A. In the cupholder.

25 Q. And how did you know they were going to be in the

1 cupholder?

2 A. I gave Branham instructions to leave them in the  
3 cupholder.

4 Q. All right. And so did you handle the drugs that  
5 day?

6 A. Yes, ma'am.

7 Q. And you retrieved them from the cupholder?

8 A. I did.

9 Q. And did you conduct any field test on those drugs?

10 A. Yes, ma'am. Once I had them in my possession, I  
11 took them back to headquarters at the Charleston Police  
12 Department. And conducted a field test for the tan powder  
13 substance. And it tested presumptive to be heroin. And I  
14 conducted a field test for the off-white rock-like substance  
15 and it field tested presumptive to be cocaine.

16 Q. Can you just explain to the jury, what is a field  
17 test?

18 A. What a field test is, it's a series of chemicals  
19 that you put in contact with the substance that you believe  
20 to be illegal substance. And it's supposed to have a instant  
21 reaction to let you know presumptive that it's either going  
22 to be heroin or cocaine, or whatever you believe it to be.

23 Q. And after conducting the field test at the city  
24 police department in evidence, what did you do with the  
25 evidence?

1           A.    After I conducted the field test, I weighed the  
2 evidence. I got an approximate weight of one gram for each  
3 substance. After that, I packaged the evidence up according  
4 to our procedures and put it into an evidence locker.

5           Q.    When you weigh them, do you dump everything out and  
6 weigh them? How do you weigh them?

7           A.    No, I left everything in the package.

8           Q.    So that one gram is package, everything?

9           A.    Yes, ma'am.

10          Q.    And did the drugs remain in your sole care, custody  
11 and control from taking them out of the cupholder all the way  
12 until you sealed them and dropped them off at city evidence?

13          A.    Yes, ma'am.

14                MS. LINDER: Your Honor, may I approach the witness?

15                THE COURT: Yes, ma'am.

16 BY MS. LINDER:

17          Q.    At this time, I show you what's been marked as  
18 State's Exhibit 4. If you can please look at this. Do you  
19 recognize it?

20          A.    Yes, ma'am.

21          Q.    How do you recognize it?

22          A.    My initials are on each package.

23          Q.    And does it appear in substantially the same  
24 condition as it did back on February 5th, 2015?

25          A.    Yes, ma'am.

1 Q. I would like to shift to about a week or so later  
2 after February the 5th. I would like to move to February  
3 19th. Were you involved with a warrant service --

4 A. Yes, ma'am.

5 Q. -- done on this defendant that day?

6 A. Yes, ma'am.

7 Q. And where did that warrant service occur?

8 A. It occurred at Ashley Oaks Apartments. That's 78  
9 Ashley Hall Plantation Road.

10 Q. Is that in West Ashley also?

11 A. Yes, ma'am.

12 Q. And did you observe the defendant that day?

13 A. I did.

14 Q. And what was he in?

15 A. He was driving a white BMW.

16 Q. Is it the same white BMW --

17 A. Yes, ma'am.

18 Q. -- that he was in on February the 5th?

19 A. Yes, ma'am.

20 Q. At this time, I would like to show you what's been  
21 marked for identification as State's Exhibit 5. Do you  
22 recognize that?

23 A. Yes, ma'am.

24 Q. How do you recognize it?

25 A. That's the white BMW the defendant was driving.

1 Q. And he was driving it, and then right outside of it  
2 when you assisted in effecting the warrant service a week or  
3 so after this drug sale?

4 A. Yes, ma'am.

5 Q. And does that fairly and accurately represent the  
6 vehicle that day?

7 A. Yes, ma'am.

8 MS. LINDER: Your Honor, at this time the State  
9 would seek to admit State's Exhibit 5 into evidence.

10 THE COURT: Any objection?

11 MS. GAY: No, sir.

12 THE COURT: Mark it in evidence.

13 (State's Exh. 5, Photo of car, is received in  
14 evidence.)

15 BY MS. LINDER:

16 Q. I'm going to put this picture up here. Can you  
17 explain to the jury what this is, what State's Exhibit 5 is?

18 A. It's a picture of the defendant's vehicle after we  
19 took him into custody at Ashley Hall Apartments.

20 Q. And this was what date?

21 A. This was February 19th.

22 Q. And this buy that we are here for today occurred  
23 when?

24 A. February 5th.

25 Q. Is this the same vehicle that pulled up behind you,

1 when you were doing surveillance in the front of that stereo  
2 place on Highway 17 in West Ashley on February 5th?

3 A. Yes, ma'am.

4 Q. After the defendant was arrested on February the  
5 19th, were you involved with any sort of interview that was  
6 done with the defendant?

7 A. Yes, ma'am. We took the defendant down to  
8 headquarters into an interview room. And myself and  
9 Detective Williams conducted an interview.

10 Q. And was that statement and interview recorded?

11 A. Yes, ma'am.

12 Q. And was the defendant Mirandized or read his  
13 rights?

14 A. Yes. He was read his Miranda rights from a card,  
15 which he initialed and signed, and I also signed.

16 Q. And during the course of that interview, did the  
17 defendant provide his current phone number?

18 A. Yes, ma'am, he did.

19 Q. What phone number did he give?

20 A. [REDACTED].

21 MS. LINDER: I have no further questions for this  
22 witness. If you can please answer anything that the Defense  
23 may have.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Cross-examination.

1 MS. GAY: Thank you, Your Honor. May it please the  
2 Court.

3 CROSS-EXAMINATION

4 BY MS. GAY:

5 Q. Detective Brown, I just have one issue. When you  
6 were describing to the jury how the weigh process is done,  
7 and that you take it out and you do all that, bottom line,  
8 you are trying to get it out of the plastic bags; is that  
9 correct?

10 A. No, ma'am.

11 Q. You weigh it with the plastic bags on?

12 A. Yes, ma'am.

13 Q. So you weigh it with the plastic bags on, and I  
14 guess, a chemist will take it out of the plastic bags?

15 A. Yes, ma'am.

16 Q. Those little plastic bags, do you have any evidence  
17 to present to this jury that there were any of my client's  
18 fingerprints on that plastic bag?

19 A. No, ma'am.

20 MS. GAY: I have no further questions, Your Honor.

21 THE COURT: Thank you. Redirect?

22 MS. LINDER: No redirect, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 Call your next witness.

25 MR. SOWARDS: The State calls Karen Ford.

1 MS. LINDER: Your Honor, I ask that Detective Brown  
2 be excused.

3 THE COURT: Any objection?

4 MS. GAY: No, sir, without objection.

5 THE COURT: You are free to go. Thank you, sir.

6 KAREN FORD,

7 having been duly sworn, testifies as follows:

8 THE CLERK: Spell your last name, stating your full  
9 name for the record.

10 THE WITNESS: F-o-r-d, Karen.

11 DIRECT EXAMINATION

12 BY MR. SOWARDS:

13 Q. Good morning, Ms. Ford. Where are you employed  
14 right now?

15 A. Charleston County Sheriff's Office.

16 Q. Prior to your employment with the Sheriff's Office,  
17 were you employed at the City of Charleston Police  
18 Department?

19 A. Yes.

20 Q. Were you employed there in February of 2015?

21 A. Yes.

22 Q. And what capacity were you employed there?

23 A. I was the administrative clerk.

24 Q. And were you also employed in the evidence unit?

25 A. Yes.

1 Q. And what were your duties as it relates to the  
2 evidence unit?

3 A. To retrieve evidence that was stored either in a  
4 locker or mailbox and submit that evidence through our  
5 evidence system.

6 Q. Can you please describe to the jury how the  
7 submission of evidence works?

8 A. We log it in. After the officer submits it, we log  
9 it into the CPD evidence per policy.

10 Q. And did you handle evidence or receive evidence in  
11 this case, State v. Gerald Ancrum?

12 A. Yes.

13 Q. When did you handle that evidence?

14 A. It was February the 5th, 2015.

15 Q. From whom did you receive that evidence?

16 A. Officer Brown.

17 Q. And what evidence did you handle?

18 A. I handled the drugs in that case and also the --

19 Q. Do you recall which drugs you handled?

20 A. It was the powder substance which was cocaine.

21 Q. Did you handle any other drugs in that case?

22 A. Per chain of custody, no.

23 MR. SOWARDS: Beg the Court's indulgence. May I  
24 approach the witness, Your Honor?

25 THE COURT: Yes.

1 BY MR. SOWARDS:

2 Q. As part of the evidence process, is there a log  
3 created indicating which evidence was received, who received  
4 it, where it was stored?

5 A. Yes.

6 Q. I'm going to hand you this.

7 (State's Exh. 8, Chain of evidence, was marked for  
8 identification.)

9 BY MR. SOWARDS:

10 Q. I will hand you what's been marked for  
11 identification purposes as State's Exhibit 8. Do you  
12 recognize that?

13 A. Yes.

14 Q. And what does that indicate that you handled on  
15 February the 5th?

16 A. It was the clear plastic bag containing tan powder  
17 substance, and a clear plastic bag containing an off-white  
18 rock-like substance.

19 Q. And did you handle that evidence again after that?

20 A. No.

21 MR. SOWARDS: Beg the Court's indulgence.

22 BY MR. SOWARDS:

23 Q. So just to be clear, you handled two different bags  
24 of drugs in this case?

25 A. Yes, uh-huh.

1 MR. SOWARDS: No further questions, Your Honor.  
2 Please answer any questions Ms. Gay might have.

3 THE COURT: Cross?

4 MS. GAY: I have no questions for this witness.

5 THE COURT: Thank you, ma'am. You may step down.

6 MR. SOWARDS: Your Honor, may Ms. Ford be excused?

7 THE COURT: Any objection?

8 MS. GAY: No, sir.

9 THE COURT: You are free to go. Thank you, ma'am.

10 MR. SOWARDS: The State calls Brian Hinton.

11 BRIAN HINTON,

12 having been duly sworn, testifies as follows:

13 THE CLERK: Say your first and last name, spelling  
14 your last name for the record.

15 THE WITNESS: Brian Hinton, H-i-n-t-o-n.

16 DIRECT EXAMINATION

17 BY MR. SOWARDS

18 Q. Good morning, Mr. Hinton.

19 A. Good morning.

20 Q. Where are you employed?

21 A. Charleston Police Department.

22 Q. How long have you been with the Charleston Police  
23 Department?

24 A. 17 years.

25 Q. And what is your position there?

1           A.    I'm the evidence custodian.

2           Q.    Could you please describe for the jury your duties  
3 as evidence custodian?

4           A.    We accept the items that are submitted into  
5 evidence, validate the voucher that matches up with what's  
6 submitted from the officers, assign it a storage location and  
7 put it in the evidence room to store it until it comes to  
8 court, maintain a chain of custody from there.

9           Q.    Can you explain from the jury how items are actually  
10 submitted into evidence?

11          A.    The officer packages it, seals it, initials it.  
12 They create a voucher for it to say what items they are  
13 submitting. And then if we are there, they will give it to  
14 us in a hand-to-hand transaction. If it's after hours, they  
15 put it in a secured locker and we get it the following  
16 morning. Once we receive it, we validate that the voucher  
17 matches up with what they are submitting into us. And at  
18 that point, validating mean sealed, initialed, says what they  
19 turned in is what we are getting. Validate all that  
20 information, assign a storage location, and then put it in  
21 the bag.

22          Q.    And once an item is submitted into evidence, is it  
23 preserved within a room until someone removes it?

24          A.    That's correct.

25          Q.    And can anyone take evidence out?

1 A. No, sir.

2 Q. And I think you may have described this earlier, but  
3 how is it tracked?

4 A. With a chain of custody. So if someone does come  
5 and take it out, they have to sign an electronic signature  
6 pad to show it went out. And same thing when they bring it  
7 back in.

8 Q. Did you handle evidence in this case?

9 A. I did.

10 Q. State vs. Gerald Ancrum?

11 A. Yes, sir.

12 Q. What evidence did you handle?

13 A. It was bag one, item one, which is a clear plastic  
14 bag containing an off-white rock-like substance; and bag two,  
15 item one, which was a clear plastic bag containing a tan  
16 powder substance; paper tag, which was bag three, item one;  
17 search warrant for a BMW.

18 Q. Mr. Hinton, I want to draw your attention to the  
19 clear plastic bag with off-white rock-like substance and the  
20 tan powder substance. Does the chain of custody indicate  
21 when those items were handled and who handled them?

22 A. It does.

23 Q. When were those items handled and who handled them?

24 A. On February 9th, 2015 at 8:56 in the morning, Ms.  
25 Linda Wilson signed them out to Susan Payne to transport to

1 the lab for testing.

2 On 2/12/2015 at 9:45 in the morning, Susan Payne  
3 brought them back to myself. And they were stored in our  
4 locker until they came down to the courthouse on 5/19/2017.  
5 That's for the off-white rock-like substance.

6 The tan powder substance, 2/9/2015, it was signed  
7 out. Ms. Wilson signed it over to Ms. Payne to take it to  
8 the lab for testing. On 2/12/2015, 9:45, Ms. Payne brought  
9 them back to me, which were stored. I stored them in our  
10 locker.

11 5/19/2017, they were signed back over to  
12 Investigator Barfield to bring to court.

13 Q. And you mentioned Linda Wilson, is she employed at  
14 the City of Charleston Police Department?

15 A. She is.

16 Q. And she's currently employed there?

17 A. She is.

18 Q. Is she working today?

19 A. She's not. She's out on medical leave.

20 THE COURT: I didn't understand what he said.

21 THE WITNESS: She's out on family medical leave.

22 Her husband had surgery.

23 MR. SOWARDS: Beg the Court's indulgence. I have no  
24 further questions at this time. Please answer any Ms. Gay  
25 might have.

1 THE COURT: Any cross-examination?

2 MS. GAY: No, sir.

3 THE COURT: Thank you, sir. You may step down.

4 MR. SOWARDS: Your Honor, may Mr. Hinton be excused?

5 THE COURT: Any objection?

6 MS. GAY: No, sir.

7 THE COURT: You may be excused.

8 MR. SOWARDS: The State calls Susan Payne.

9 SUSAN PAYNE,

10 having been duly sworn, testifies as follows:

11 THE CLERK: State your first and last name, spelling  
12 your last name for the record.

13 THE WITNESS: My name is Susan Payne, P-a-y-n-e.

14 DIRECT EXAMINATION

15 BY MR. SOWARDS:

16 Q. Good morning. Where are you employed?

17 A. City of Charleston Police Department.

18 Q. And how long have you been with the City of  
19 Charleston Police Department?

20 A. Approximately 12 years.

21 Q. And what capacity are you employed with the City of  
22 Charleston Police Department?

23 A. I'm the LIMS administrator and evidence custodian  
24 for the forensic services division.

25 Q. And what are your duties as it relates to that?

1           A.    I'm responsible for the database that we use to  
2 store the information regarding the analysis of our cases.  
3 And I'm also responsible for transporting evidence to and  
4 from our different laboratories.

5           Q.    And, Ms. Payne, did you handle any evidence in this  
6 case, State v. Gerald Ancrum?

7           A.    Yes, sir.

8           Q.    And what evidence did you handle?

9           A.    I handled items 1-1 and items 2-1.

10          Q.    And what are those items?

11          A.    I don't have the description in front of me. I just  
12 have the item number.

13          Q.    What did you do with the evidence after you received  
14 it?

15          A.    After I received it, I brought it to the lab where I  
16 entered it into our database and then I placed it into our  
17 safe.

18          Q.    I guess I should ask, where did you receive it?

19          A.    The evidence room at the police department.

20          Q.    On what date did you --

21          A.    I received it on February 9th, 2015.

22          Q.    And did you handle that evidence again after  
23 February 9th?

24          A.    I did. I returned it on February 12th of 2015.

25          Q.    And did you have the sole care, custody and control

1 of the evidence while it was in your possession?

2 A. I did, yes, sir.

3 Q. And according to the City of Charleston Police  
4 Department policy, would you have accepted the evidence if it  
5 appeared to have been tampered with?

6 A. No, sir.

7 MR. SOWARDS: Beg the Court's indulgence. No  
8 further questions. Please answer any that Ms. Gay might  
9 have.

10 THE COURT: Cross?

11 MS. GAY: I have no further questions, Your Honor.

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

13 MR. SOWARDS: Your Honor, may Ms. Payne be excused?

14 THE COURT: Any objection?

15 MS. GAY: No, Your Honor.

16 THE COURT: You are free to go. Thank you, ma'am.

17 Call your next witness.

18 MR. SOWARDS: The State calls Ashley Earl.

19 ASHLEY EARL,

20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your full name and spell  
22 your last name.

23 THE WITNESS: Ashley Earl, E-a-r-l.

24 DIRECT EXAMINATION

25 BY MR. SOWARDS:

1 Q. Good morning. Were you employed at the City of  
2 Charleston Police Department in February of 2015?

3 A. Yes, I was.

4 Q. And what capacity were you employed there?

5 A. I was a criminalist for them.

6 Q. Can you explain what a criminalist is?

7 A. Yes. We get in evidence, drugs, controlled  
8 substances, fire and debris analysis and serology cases, and  
9 we analyze them using different scientific methods to  
10 determine what they are.

11 Q. What type of training and experience do you have?

12 A. I have a BS in biology. I also worked as a chemist  
13 for an environmental lab about six years and then moved over  
14 to forensics, and completed a training program through the  
15 department in order to become certified.

16 Q. And have you had the occasion to chemically analyze  
17 substances to determine whether the substances is or contains  
18 a controlled substance?

19 A. Yes.

20 Q. And how many times would you say that you did that?

21 A. During my employment at City of Charleston, I  
22 analyzed 2,696 cases.

23 Q. Was that just a regular part of your duties as a  
24 criminalist?

25 A. Yes, it was daily duty.

1 Q. What kind of equipment do you use to test items for  
2 controlled substances?

3 A. We use balances. We use control color test. We use  
4 an FTIR, which is a Fourier transform infrared spectrometer  
5 and a GCMS, which is gas chromatography-mass spectrometry and  
6 then also the microscope for some materials.

7 Q. And is that equipment precise and accurate in its  
8 testing ability?

9 A. Yes, it is.

10 Q. And after making these analyses, do you produce a  
11 report?

12 A. Yes, I do.

13 Q. Have you previously been admitted as an expert on  
14 drug analysis?

15 A. Yes, I have.

16 MR. SOWARDS: Your Honor, at this time, the State  
17 would move to have Ms. Earl designated as an expert in the  
18 area of drug analysis.

19 THE COURT: Any voir dire?

20 MS. GAY: No, Your Honor. I have no objection to  
21 the qualifications.

22 THE COURT: So recognized. You may continue.

23 BY MR. SOWARDS:

24 Q. Ms. Earl, did you analyze any substances in this  
25 case?

1           A.    Yes, I did.

2                   MR. SOWARDS:  May I approach the witness, Your  
3 Honor?

4                   THE COURT:  Yes, sir.

5 BY MR. SOWARDS:

6           Q.    I will hand you what has been marked for  
7 identification purposes as State's Exhibit 3.  Do you  
8 recognize that?

9           A.    Yes.  This is my lab report.

10          Q.    And how do you recognize that as your lab report?

11          A.    Has my signature down at the bottom.

12          Q.    When was that report prepared?

13          A.    It was prepared February 10th, 2005.

14          Q.    Who is the subject of that report?

15          A.    Gerald Jarrod Ancrum.

16                   THE COURT:  What date did you say?

17                   MR. SOWARDS:  What date?

18                   THE WITNESS:  The report was produced February 10th,  
19 2005.

20                   THE COURT:  Go ahead.

21                   MR. SOWARDS:  2005?

22                   THE WITNESS:  2015.  I'm so sorry.

23                   MR. SOWARDS:  Your Honor, at this time, the State  
24 would seek to admit Exhibit 3 and publish it for the jury.

25                   MS. GAY:  No objection, Your Honor.

1 THE COURT: Mark it in evidence, please.

2 (State's Exhibit 3, Drug analysis, is moved into  
3 evidence.)

4 BY MR. SOWARDS:

5 Q. Can you describe for the jury what we are looking at  
6 here?

7 A. Yes. If you look under the evidence tab, it has two  
8 items that were submitted with the case. The first one was a  
9 plastic bag with rock-like substance. And the second one was  
10 a plastic bag with tan powder.

11 Underneath that, you will see the item number, the  
12 weight I obtained, the result, and the methods that I used to  
13 determine.

14 Q. I will indicate, is that your signature right there?

15 A. Yes, yes.

16 Q. And what test did you perform on these drugs?

17 A. So I performed -- well, we always do a weight, which  
18 is recorded in the beginning. I did a color test on both of  
19 these. And I did an FTIR for the cocaine base. And a GC-MS  
20 with the color test for the heroin.

21 Q. What were the results of those tests?

22 A. The results were that the first item contained  
23 cocaine base and the second item contained heroin.

24 Q. I think I may have asked you, but just to clarify,  
25 were you able to determine weights for the items that you

1 tested?

2 A. Yes. And they are presented up there, 0.57 grams  
3 for item 1, and 0.80 grams for item 2.

4 Q. At this time, I will show you what has been marked  
5 for ID as State's Exhibit 4. Do you recognize those items?

6 A. Yes. These are the items that were produced in the  
7 case.

8 Q. And how do you recognize them as the items?

9 A. They have the lab number, the item number, the  
10 weight and my initials.

11 Q. Do they appear to be in substantially the same or  
12 substantially the same condition as they were when you tested  
13 them?

14 A. Yes.

15 Q. And would you have accepted those items into the lab  
16 if they appeared -- it appears they have been tampered with?

17 A. No.

18 MR. SOWARDS: Your Honor, at this time the State  
19 would seek to admit Exhibit 4 into evidence.

20 THE COURT: Any objection?

21 MS. GAY: No, Your Honor.

22 THE COURT: Marked in evidence please, ma'am.

23 (State's Exhibit 4, Drugs, was received in  
24 evidence.)

25 MR. SOWARDS: I have no further questions at this

1 time. Please answer any Ms. Gay might have.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MS. GAY:

5 Q. Hey, I'm Melissa Gay. How are you?

6 A. Good. How are you?

7 Q. When you had your stuff that was submitted to you,  
8 item 1-1 and 2-1, they came in little plastic bags?

9 A. Yes.

10 Q. And when you weigh them, you actually take it out of  
11 the little plastic bags?

12 A. We do.

13 Q. And so when you package everything up and send it  
14 back, you send it right back to the evidence lady?

15 A. Yes. We place it in the safe in our lab, and then  
16 she takes it from the safe and brings it back to the evidence  
17 department.

18 Q. You don't have any testimony today that the plastic  
19 bags were ever tested for fingerprints?

20 A. No, I do not.

21 MS. GAY: That's all I have, Your Honor.

22 THE COURT: Thank you.

23 Redirect?

24 MR. SOWARDS: None, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 MR. SOWARDS: Your Honor, may Ms. Earl be excused?

2 THE COURT: Any objection?

3 MS. GAY: No, sir.

4 THE COURT: You are free to go. Thank you.

5 Any other witnesses.

6 MS. LINDER: At this time, the State rests.

7 THE COURT: Ladies and gentlemen of the jury, I told  
8 you in my opening remarks to you that when the State rests, I  
9 have to discuss legal issues with the attorneys. This  
10 typically takes 10 to 20 minutes. As soon as I can, I will  
11 get you back out here. But I have to do this while you are  
12 back in the jury room. Don't discuss the case. I will send  
13 for you as quickly as I can.

14 (Whereupon, the jury leaves open court at 11:02  
15 a.m.)

16 THE COURT: Any motions?

17 MS. GAY: Yes, sir. At this time, I would make a  
18 motion for a directed verdict on my client's behalf.  
19 Particularly, in light of your rulings having to do with my  
20 motions to -- for mistrial for, one, the Lyle problem and  
21 prior bad acts issue, and two, the prosecutorial misconduct  
22 issue, which you also ruled against, I think that this case  
23 should have been dismissed, or, you know, grant should have  
24 been granted my motion for mistrial.

25 And in the light most favorable, if you take away,

1 you know, I believe that there's not enough evidence to  
2 establish the elements of the offense in this case, but,  
3 primarily, Your Honor, my motion for directed verdict is  
4 based on your prior rulings. And we preserve those for the  
5 record. I understand that. But I want to reiterate all that  
6 at this time.

7 THE COURT: Thank you, ma'am. They are jury issues.  
8 And your motion is effectively denied.

9 MS. LINDER: Thank you, Your Honor. My client does  
10 want to testify. I don't know if you want to do that now.

11 THE COURT: Yes, ma'am. I want to cover with him,  
12 his rights.

13 Mr. Ancrum, I have to go over certain things with  
14 the folks at this stage of the trial, regardless of what they  
15 are on trial for. And I need your responses under oath.  
16 Will you raise your right hand for me, please.

17 (Whereupon, the defendant is sworn.)

18 THE COURT: I just need you to speak up so this lady  
19 can take down what we say. All right. Mr. Ancrum, we have  
20 reached the stage of the trial where the State has rested.  
21 And the next thing that would happen, if you want it to, is  
22 that your side is given the opportunity to present evidence  
23 for the jury to consider. Do you understand where we are in  
24 the trial?

25 THE DEFENDANT: Yes, sir.

1 MS. LINDER: I think that everything in the proposed  
2 charge covers things. It's, frankly, in more detail about  
3 Miranda than I'm accustomed to, but I think this is  
4 absolutely fine. And we don't have any objection to the  
5 proposed charges and we have no objections to the jury forms,  
6 verdict forms.

7 THE COURT: All right. Well, what about the  
8 Defense?

9 MS. GAY: Well, Your Honor, there's one thing I  
10 would like to ask the Court to consider. I was reading over  
11 the reasonable doubt charge, and you referred to the "firmly  
12 convinced" asking that -- this is, obviously, litigated  
13 often. But there's also the concept of hesitate, which would  
14 cause a reasonable prudent person to hesitate to act. Under  
15 *Manning*, I believe that they quote the United States Supreme  
16 Court in *Holland*. And we would ask you to include that in  
17 your charge as well. In the past, Ms. Linder and I were  
18 discussing it, we often heard it said both ways. So I would  
19 ask you to add that to your charge, Your Honor.

20 THE COURT: Yes, ma'am. I don't charge hesitating  
21 to act. You can argue it to the jury. I don't dispute that  
22 it's still good law. I think that is a confusing charge. I  
23 know people that I think are very reasonable that hesitate to  
24 act over everything. And so I don't -- I think it's  
25 confusing to the jury. I think what I've got in the draft is

1 recognized by United States Supreme Court. And I will  
2 certainly allow it to be argued about reasonable person  
3 hesitating to act, but I am not going to charge it. And if  
4 I'm wrong, somebody will find I'm wrong in an opinion.

5 All right. So the way it's going to work is that  
6 the State is going to go first and Defense is going to go  
7 last; is that right?

8 MS. LINDER: Yes, Judge.

9 MS. GAY: Yes, sir.

10 THE COURT: Are you all ready?

11 MS. LINDER: Yes, Judge.

12 MS. GAY: Yes, Your Honor.

13 THE COURT: Some of the jurors asked if they could  
14 call their families, I guess. So as soon as they are ready,  
15 we will get started. We brought them out, put them in a  
16 separate office as they make the call.

17 MS. GAY: Also, I reviewed the verdict form, and I  
18 know Ms. Linder did as well. I have no objection to the  
19 verdict form as presented.

20 (Whereupon, the jury returns to open court at 1:06  
21 p.m.)

22 (Court's Exh. 2, Jury note, was marked for  
23 identification.)

24 THE COURT: Ladies and gentlemen, I understand we  
25 had a delay in food, so we kind of got thrown off schedule

1 today. Now it's time for us to deal with those last two  
2 stages of the trial I told you about.

3 First thing that is going to happen is, you are  
4 going to hear the closing arguments of the attorneys. I told  
5 at the opening remarks that during opening statements, the  
6 attorneys are not permitted to engage in what we refer to as  
7 argument. We have reached the point in the trial now where  
8 they may use the art of adequacy to attempt to get you to see  
9 things as they would like you to see them on behalf of their  
10 respective positions. That doesn't change the burden of  
11 proof. The burden of proof remains with the State throughout  
12 the trial. And the State has the entire burden of proof and  
13 has to prove the defendant guilty beyond a reasonable doubt  
14 on each charge.

15 Now, the way this works is that the State will make  
16 the first closing argument. And then the Defense will make  
17 its closing argument. After that, I always take a very short  
18 break, usually no more than five minutes. I get set up out  
19 here, and then I will bring you back in and tell you the law.  
20 It's going to take me about 26 minutes to explain the law to  
21 you. Shortly after that, you will get the case to decide. I  
22 invite you to pay close attention.

23 Solicitor, you will be recognized for your closing  
24 argument.

25 MS. LINDER: Thank you, Your Honor. May it please

1 the Court.

2           Good afternoon, ladies and gentlemen. I want to  
3 talk to you today about a few things. I want to start just  
4 briefly touching on the law. As the judge said, in this case  
5 and throughout the case, he is the judge of the law. He will  
6 instruct you on everything dealing with the law at the  
7 conclusion of mine and Ms. Gay's closing arguments. But I  
8 just want to kind of tell you a little bit about the law so  
9 you can get these ideas kind of going in your mind and  
10 everything.

11           First I want to talk to you about reasonable doubt.  
12 The burden is on the State to prove beyond a reasonable doubt  
13 that the defendant is guilty of the two crimes, which is  
14 distribution of heroin and distribution of crack cocaine or  
15 cocaine base crack.

16           And what is reasonable doubt? Reasonable doubt is  
17 doubt that leaves you firmly convinced. It leaves you firmly  
18 convinced of something. Kind of a real life example that I  
19 think is appropriate after the pouring rains we had  
20 yesterday, we are in this courtroom all day, there are no  
21 windows to outside. If we see someone come walk in the back  
22 and they take an umbrella down and shake water off of it.  
23 And a minute later, we see somebody with galoshes come in and  
24 with a rain coat, and you see droplets and they do that. And  
25 then moments later, you leave the courtroom, and you look

1 outside and the roads and sidewalks are all wet. You did not  
2 see the rainfall from the sky. You did not see  
3 precipitation. But beyond a reasonable doubt, it's my  
4 position that you would be firmly convinced that it just  
5 rained or recently rained.

6 And that's because you pulled together all those  
7 other things. You pulled together all of these other  
8 individuals and how they were addressed. You are observing  
9 the droplets on them. You are observing the wet ground  
10 outside. So to me, that's the best real world example that  
11 I've been able to come up with that I think really explains  
12 what reasonable doubt is. Though you yourself didn't see it,  
13 touch it, smell it, you are firmly convinced that indeed it  
14 recently did rain.

15 What I want to talk to you about is what the  
16 defendant Gerald Ancrum is charged with. He's charged with  
17 distribution of heroin. In order for him to be found guilty  
18 of distribution of heroin, there are a few elements that I  
19 have to prove to you: That this occurred in Charleston  
20 County; that it was the defendant, Gerald Ancrum; that he  
21 distributed, and the judge, when you first started, you heard  
22 him read the indictment, which says distribute, deliver,  
23 dispense, aid or abet or conspire, has all of that language.  
24 Any one of those counts, but we are here for the distribution  
25 part of it. And distribution is to give, to sell, to

1 transfer, to hand over heroin, which is an illegal drug in  
2 the state of South Carolina.

3 The other charge is distribution of crack cocaine.  
4 What I have to prove to you is I have to prove that in  
5 Charleston County, the defendant Gerald Ancrum distributed  
6 crack cocaine. That is what I have to prove to you. Those  
7 are the elements.

8 And so those elements, I believe, were proven to you  
9 by way of all the testimony and the evidence that you heard  
10 in this trial. We are here today because back on February  
11 the 5th of 2015, the defendant Gerald Ancrum made the  
12 decision and he distributed crack cocaine and heroin here in  
13 Charleston County.

14 But let's talk about each one of those elements.  
15 Let's start with Charleston County. Did this occur in  
16 Charleston County? You heard testimony -- and you will have  
17 all of this evidence back there with you. You heard  
18 testimony from Special Agent Frank Preston. And you heard  
19 testimony from Detective Marc Brown about where all of this  
20 occurred. They both specifically, when asked, is this in  
21 Charleston County, the answer is yes. This is in Charleston  
22 County. It was in West Ashley area of Charleston. It was  
23 right there on Savannah Highway. There's a Dunkin' Donuts.  
24 This map will be back there with you. And it shows the  
25 Dunkin' Donuts. It shows that car place where they were

1 parked and drove around. So I would submit to you that the  
2 State has satisfied the burden on the County of Charleston.

3 The next thing that I need to show, explain to you,  
4 prove to you, leave you firmly convinced about, is that it  
5 was the defendant. Well, okay, let's talk about that. Was  
6 it the defendant? Well, during cross-examination, the  
7 defense attorney acknowledged with the informant that  
8 Mr. Ancrum was in the car. And the response was yes from the  
9 witness. So that's the defendant.

10 The car, that BMW that happened the day of the buy,  
11 was the same car that he was arrested in a week and a half,  
12 two weeks later. You heard that through testimony that  
13 Detective Marc Brown gave. That car was registered to him  
14 and he was in it on the 5th and also then on the 19th when he  
15 was arrested. Was it the defendant? The defendant  
16 post-Miranda in an interview with Detective Marc Brown, who  
17 you heard from first thing this morning, gave the phone  
18 number, the phone number of [REDACTED], defendant's words.  
19 What's your phone number? Here's my phone number.

20 That's the same phone number that was used in the  
21 presence of Special Agent Preston. And that's the phone  
22 number that was used to call to arrange all the details of  
23 this purchase. That was also the same phone number that  
24 there was a text received and there were phone calls made  
25 back and forth while in the undercover vehicle with Detective

1 Branham.

2 Is it the defendant? Well, you heard testimony from  
3 Ms. Morris that she had known him for years. And after she  
4 contacted law enforcement saying that she had information and  
5 she wanted to work, she gave target names and phone numbers  
6 to law enforcement. She gave that information to Detective  
7 Marc Brown. And then she was breached by Special Agent  
8 Preston and gave all that information.

9 Then we have the video. The video, I would argue,  
10 is the most compelling evidence. You are not just relying on  
11 someone else's word. You get to actually see it with your  
12 own eyes. And you get to watch that video of what happened  
13 that day. And it's my position that you clearly see the  
14 defendant on that video. You see his face many times.

15 Next thing I need to prove to you is that there was  
16 a distribution. And like I told you, the judge talked about  
17 all the language that we have to use, all the legal stuff,  
18 which is to manufacture, to deliver, to dispense, to  
19 distribute, to aid, to abet, to possess with intent, that  
20 whole long list. We are here today for that. And it's my  
21 position that in the phone call that was made, well, two  
22 phone calls that were made in the very beginning that you  
23 heard when Special Agent Preston was on the phone, you heard  
24 the phone calls being made to the defendant's phone number,  
25 his admitted phone number. You heard in that phone

1 conversation negotiation of price, amount, location, all of  
2 that.

3           And then also, what is other proof that he  
4 distributed? Well, you can watch the video. You can watch  
5 the video. And the video shows actually as the defendant is  
6 sitting in the driver's seat, he ends up opening up a baggie  
7 on his lap, taking out pre-packaged, and handing them over to  
8 the informant. You see him do the distribution.

9           You also heard from Ms. Morris that he is the one  
10 that she purchased from. The last thing we have to prove to  
11 you is that they are drugs. And this morning we kind of  
12 whipped through a bunch of witnesses. And that's just to  
13 show you that everything was properly handled in this case.  
14 And what that is is that is showing you the chain of custody  
15 for everything. You heard that that is information that the  
16 police department and the forensic services division, they  
17 maintain it. And you heard everybody talk about it.

18           You heard talk about how the informant received the  
19 drugs, placed them in the cupholder. And that was in front  
20 of another officer. You heard how Marc Brown, when they  
21 arrived home, got them out of the cupholder. He did the  
22 field test. He weighed them in all their packagings. He  
23 seal them. He labeled them. He dropped them off at  
24 evidence, which is a secure facility. You heard then how  
25 Karen Ford checked it in. Linda Wilson checked it out.

1 Susan Payne took it to the lab. It was tested at the lab.

2 And then all this steps back to what we are here for today.

3 One of the things that I think is interesting and we  
4 didn't to go through it all, you will be able to go back and  
5 look at this. You can see. This will be back there with  
6 you. You can handle it. You heard from Ashley Earl. You  
7 will see on her lab report her name is Ashley Carter Earl,  
8 ACE. This is what she told you. She told you she sealed it.  
9 She told you she initialed it. She said she knew this was  
10 hers because inside of it she has written on the bags  
11 themselves her initials, the item number, item 1-2 or 2-1,  
12 1-1. She has the weights. And everything is all written in  
13 here. And the drugs are in here. The crack is right here.  
14 You've got the heroin that's in this little bag up front. So  
15 this is all going to go back there with you.

16 And Ashley Earl is way more intelligent than I am.  
17 I'm not gifted with sciences. And she complained the tests  
18 they do. And that, in fact, after doing those tests, the one  
19 substance came back as heroin, and the other came back as  
20 cocaine base.

21 So it's my position that you heard everything  
22 through the witness stand and through the exhibits to leave  
23 you firmly convinced, indeed, of the defendant's guilt.

24 What I would urge you to do when you go back and you  
25 look at everything and you listen to everything, is when you

1 go back and look at the phone calls or listen to the phone  
2 calls, in the beginning, you hear Frank Preston in the first  
3 call talk about the date. You hear him talk about who they  
4 are placing the call to. How much? One gram of heroin, one  
5 gram of cocaine. He states about how who is present in the  
6 room and he states the phone number that it's being made to.

7 He then is instructing the informant. He is with  
8 her every step of the way. He tells her, leave it on  
9 speaker, say that you are coming with your girlfriend. Tries  
10 to give all those different instructions so it's controlled,  
11 so this is a controlled buy, controlled buy of evidence, as  
12 he described to you.

13 And then shortly thereafter, there's a phone call  
14 back from the defendant's phone number. That phone number is  
15 stated again, all of these calls on speaker.

16 And then the informant, then Tessa Morris orders it  
17 up: Hey, I need to get a G and a yard. You heard from  
18 Special Agent Preston what that is. You also heard from the  
19 informant. The defendant responds back: A yard of turkey?  
20 And then they go back and forth and discuss where it's going  
21 to meet and how long it's going to be.

22 I urge you to go back and listen to that. Listen to  
23 the transaction being set up. Listen to the transaction  
24 being planned.

25 And then what I would like for you to do is I would

1 suggest you don't have to watch the whole video, because it's  
2 quite long, but think back on what was said and what was done  
3 during that video. In the beginning you hear Special Agent  
4 Preston talk about it. And he says that they are going to  
5 Dunkin' Donuts to purchase one gram of heroin and one gram of  
6 crack cocaine for 260 bucks. You hear him counting out the  
7 cash. You hear him instruct and direct Tessa to split it up  
8 in different pockets. He also told you that that's how he  
9 always instructs people when they are going to go do this.

10           And then they go through and they talk about the  
11 directions. That's a long part of it. We hear the -- you  
12 heard from Lisa Branham, and she talks about, we are turning  
13 left, we are waiting at this light, we are turning here, we  
14 are waiting hear. And kind of goes on and on. Feels like  
15 the longest drive ever from off of Leeds down to Savannah  
16 Highway. But you hear all of that and then you hear parts of  
17 the conversation where it's additional information about this  
18 defendant. He drives a white BMW. All of that information  
19 is shared. Tinted windows, all of that information is  
20 shared.

21           You also heard that certain parts had to be muted  
22 due to some evidentiary reasons. But you have that video.  
23 And that video is in evidence and part for you to listen to.

24           Also, as part of that buy video, there's phone call  
25 that's answered by the defendant because he's taking a long

1 time. He answers it. He talks about how long it's going to  
2 be, that he's on his way. And then ten minutes later, you  
3 hear actually Lisa Branham on there. And she says, hey, you  
4 got a text, because she's looking. She's overseeing. She is  
5 in the driver's seat next to the informant, the informant,  
6 whose already been searched, nothing is on her, nothing is  
7 hidden anywhere. We heard about the detailed search that was  
8 done. She's just there. She's there with the police officer  
9 right by her side.

10 So text comes. Defendant says he's five minutes  
11 out. Little more time comes. The defendant calls again.  
12 And when he calls this time, he says he's about to turn in.  
13 Where you got your people parked at? He's in charge. This  
14 is when he tells them: Move around to the back. He tells  
15 them the location. He directs them where to go. That's when  
16 the cars move to the back.

17 And on the map you will have back there, Detective  
18 Branham explains, we were parked here, and he called, so we  
19 moved back here. And you also hear her description when they  
20 were facing a 10- to 12-foot fence, and she was there. You  
21 hear that constant communication that's being done by law  
22 enforcement. You were told through direct testimony of where  
23 people are stationed throughout all of this. Everybody is  
24 there. They are paying attending to all of these details.

25 And then you see the most interesting part. And the

1 most interesting part, and just to tell you the times,  
2 because you will have this video back there with you, starts  
3 around 32 minutes, so if you want to push through to this  
4 part, this starts about 32 minutes into the video that you  
5 will have back there in evidence.

6 (Video playing.)

7 MS. LINDER: There's the white BMW, same white BMW  
8 the defendant was arrested in a week later. This is the lady  
9 who parked too darn close, she's telling him she didn't have  
10 any space.

11 (Video playing.)

12 MS. LINDER: The informant gets in the car. There  
13 he is. There's Gerald. Look at his hand on his lap, drugs.

14 (Video playing.)

15 MS. LINDER: He's looping around right behind where  
16 all these undercover police cars are. Moves the space.  
17 There's some drugs. There's the space. That's the yard  
18 confirming it. Drug type one, drug type two. Two  
19 distributions.

20 So you see his face driving around, driving around,  
21 driving around.

22 (Video playing.)

23 MS. LINDER: There's the cash in his hands. She  
24 just said Gerald. She just said Gerald. That is exactly  
25 what she was instructed to do by law enforcement. So you

1 hear her say: Thanks, Gerald. She gets back in the car and  
2 they go through and they drive all the way back.

3 Ladies and gentlemen of the jury, I urge you, like I  
4 said, to go back and look at things. These are still  
5 pictures that anybody can do. You can do it by hitting  
6 pause. I mean, that's Gerald. There's Gerald handing drugs  
7 over. There's Gerald again handing drugs over. There's  
8 Gerald again handing drugs over. And here he is, this is  
9 cash. This is the cash that he received for doing this deal.

10 So, ladies and gentlemen of the jury, I would ask  
11 that you go back, I would ask that you consider all of the  
12 evidence you have heard over the past day and a half. And I  
13 would ask that you consider, are you firmly convinced, in  
14 fact, that in Charleston County, on Savannah Highway back on  
15 February 5th, 2015, did this defendant, did this defendant,  
16 distribute heroin and distribute crack cocaine, which is all  
17 against the laws of South Carolina. I submit to you that  
18 after reviewing all of the evidence and taking careful  
19 deliberation, that, in fact, that you will come back with a  
20 verdict of guilty.

21 I think that it's important to note that throughout  
22 what you've heard -- and I can't anticipate exactly what Ms.  
23 Gay is going to talk with you about. But in listening to it,  
24 sitting through the same trial that you have been, most of  
25 the thing we have heard about has been the theme of the

1 opening was dirty CI. Look, you heard from Special Agent  
2 Preston, he can't go in there and buy from just anybody. You  
3 have to get certain people.

4 I mean, I would like to think that, I mean, I have  
5 no record, I have this, I have this, I think I would be a  
6 heck of a lot better of a witness. But the fact of the  
7 matter is, it is what it is. You need to have certain people  
8 to access certain people. And you have that, but you have  
9 all of these safe guards in place. You have a very in-depth  
10 search. You have a live wire. You have video that's being  
11 recorded. You have a police officer driving. You have  
12 police officers throughout. All of that is there.

13 Look, she's got a record. She told you. She owned  
14 it. She actually was on probation. She didn't do well. She  
15 did this. Sure. She then went to prison. Okay? Like, she  
16 owned it. You know, I am not asking you just to trust her.  
17 That's not what we are here for. There's so much more.  
18 There's so much extra. There's so much that proves the  
19 defendant is guilty.

20 The only other thing that I really could pick up on,  
21 I'm sure Ms. Gay is a great trial lawyer, will have a lot of  
22 things to say. She talked today a tiny bit about  
23 friendships. Fingerprints, you know, in investigation a lot  
24 of times it's, who done it. Who did it? Who did it? House  
25 is broken into. Let's try to check this window that was

1 broken, because you try to print in order to figure out who  
2 the heck was there, who did it? Well, I would submit to you  
3 that you see who did it. You have the video. You have the  
4 stills I showed you. You have the BMW. You have the phone  
5 number. And you have him and his hands on those bags. And  
6 then you have the CI take it to the cupholder to mark to the  
7 chain to the lab. It's heroin and crack.

8 I thank you so much for your time and attention  
9 during all of this. And I ask that you come back with a  
10 verdict of guilty for Gerald Ancrum for distribution of crack  
11 cocaine and guilty for Gerald Ancrum for distribution of  
12 heroin. Thank you.

13 THE COURT: Thank you, Ms. Linder. Ms. Gay, you are  
14 recognized for your closing argument.

15 MS. GAY: Thank you, Your Honor. So now we've come  
16 to the end of the trial. We've come to the end of the part  
17 where I told you yesterday that this is going to be the most  
18 important day of his life and most important process because  
19 of the jury system. And the judge is going to instruct you  
20 on many things, as Ms. Linder said, about the law and how  
21 trials work and stuff to consider when you are deliberating.

22 And, mainly, one of the things he's going to talk  
23 about is credibility of witnesses. There are some police  
24 officer witnesses and some chemists and people like that in  
25 this case. And I understand that they have no problems with

1 their credibility. But I have a problem with Ms. Morris's  
2 credibility. I think Ms. Morris is a paid liar, basically.  
3 She came in. She said, I was supposed to tell the truth.  
4 She said what she needed to be told to say. She -- there was  
5 no question that she was going to come in and say anything  
6 else, because that's what she was paid to do, was to come in  
7 and, you know, do a circus act for the ATF and solicitor's  
8 office in this case to ensnare people she knew into things  
9 because that's what she had expected -- that's what she was  
10 told she needed to do.

11           If you remember with Agent Preston he said, we had  
12 an agreement, we talked about it, this was her job. This is  
13 what -- she was like an employee of the ATF. She was -- I  
14 had expectations of her. She was to bring me people that  
15 would, you know, that we could arrest, basically. And it  
16 wasn't that they were going to find the people. She was  
17 going to find the people.

18           And, you know, I think the parts, you know, all of  
19 what Ms. Linder said is, obviously, part of the process, but  
20 there was no real discussion about the people involved here,  
21 about, you know, what was really going on in this woman's  
22 life. Not only was she on probation and in trouble, but she  
23 chose to approach them to find a way to get money so that she  
24 could continue to use heroin with the money that she was  
25 being paid by the ATF.

1           There was, I think, some of the most telling parts  
2 of this case, and as I said, as the judge is talking about  
3 all the different things, credibility is what I'm really  
4 focusing on here, is when she was being -- during the tape  
5 that you will see, we were given a transcript of it to go  
6 over, and that's what Ms. Linder was talking from when she  
7 was talking to you all. There's things that y'all will hear,  
8 that something goes on with her boyfriend Will. There's a  
9 point where he calls in, knowing what she's doing, knowing  
10 where she is, he calls into her and he says to her -- she  
11 answers the phone. So here she is, a paid employee of the  
12 ATF, knowing that she's not going to get paid until after  
13 this transaction happens, knowing she's not going to get paid  
14 until somebody produces some drugs or such, and he calls her  
15 on the phone. And the comment is: Hello, I will call you  
16 back. It's going to be awhile. Probably. I will call you.  
17 I don't know, Will.

18           And then the next sentence, which I had her read,  
19 because I had her read it: No, I'm waiting on. I will call  
20 you back. Impatient boyfriend.

21           So she's having a conversation with her man that she  
22 openly admitted on her cross-examination that she did drugs  
23 with and that the two of them were sitting around waiting for  
24 the money to go do drugs, and she says, no, I'm waiting on,  
25 I'm waiting on some stuff, some money. I'm waiting on -- she

1 wasn't going to get any drugs. They strip searched her and  
2 did all those things. She's waiting on money to go buy drugs  
3 with him. And says, I will call you back. And turns to the  
4 officer and says, impatient boyfriend.

5           What's happening is that she's waiting to get her  
6 money from the ATF so that she can go out and get high with  
7 her boyfriend. Then as it goes further on, there's a point  
8 where she says she and Mr. Ancrum, or the man in the video  
9 are talking and they say, all of them: Where is will? She  
10 answers: He's at the room. This is my deal, my business.

11           So there's Will waiting at the room for her to get  
12 the money from the ATF to come back to be able to get high.  
13 As I said, she openly admitted that she was actively getting  
14 high regularly in violation of her probation, testing  
15 positive for drugs while she was on probation during this  
16 whole period of time.

17           And then at the very end of the video, after they  
18 take her all over, they are heading their way back, the very,  
19 very last part, near the very end, she says, were you --  
20 agent Branham says: Anybody tell you we are going anywhere  
21 other than the office? Nobody told me. I got to get paid.

22           So that's what she did to get paid. As I said, you  
23 know, the credibility of the witnesses matter in this case.  
24 I don't believe anything she said. I don't see how anybody  
25 could believe anything she had. She's brought in to follow

1 through with her arrangement, her employment for the ATF to  
2 come in and, you know, to produce testimony that is  
3 consistent with what they want her to say.

4           And I think that drugs are an issue in this country.  
5 Obviously, they are an issue in this country. But they are  
6 an issue because it's interesting how with money from the  
7 ATF, an addict can continue to use. All you have to do is  
8 tell the ATF that you want to go snare up some people you  
9 know. And next thing you know, they will give you money to  
10 be able to use drugs and continue to use drugs.

11           Now, she eventually got in more trouble and she  
12 eventually, I guess, got put back in jail. This lady has --  
13 well, lets put it this way, in order to be convicted of  
14 property crime enhancements, you have to have at least two  
15 prior shoplifting convictions, just regular shoplifting  
16 convictions. She had, I believe, five counts of property  
17 crime enhancements, which meant that she committed property  
18 crimes at least five, six, seven, eight or more times. She's  
19 out stealing, not only getting money from the ATF to satisfy  
20 her drug habit, but also stealing it to get money for her  
21 drug habit.

22           She also was convicted for financial transaction  
23 card fraud. That's what she got convicted of, stealing  
24 somebody's credit card information. So this woman is not to  
25 be believed. I mean, she's just not to be believed.

1           What's interesting is that she gets rearrested, and  
2 those charges are the charges that put her in prison for 2016  
3 after this incident, and now she's a cleaned-up looking woman  
4 who's got -- done some prison time. But at the time, she was  
5 a complete basket case, complete addict, and willing to  
6 anything to get money. And what she saw as a way to get  
7 money, which I think is deplorable, is for her to get money  
8 from the ATF so she can keep doing drugs. They kept her as  
9 an addict.

10           This case is about a lot of different things.  
11 And, yes, the solicitor is standing up and saying everything  
12 is present and all the elements of the offense are here. But  
13 this whole case is disgusting. This whole case is horrible  
14 that this woman who was kept being an addict by money she was  
15 getting from the ATF, that's documented in this transcript,  
16 where she's talking to her boyfriend about, yes, I'm going to  
17 get money so we can get high, there's no way you can convict  
18 this gentleman. Thank you.

19           THE COURT: All right. Ladies and gentlemen, I'm  
20 going to ask you to step back into the jury room. I will  
21 send for you very quickly and I will give you the law. Don't  
22 discuss the case.

23           (Whereupon, the jury leaves open court at 1:38 p.m.)

24           THE COURT: We will be at ease for about three  
25 minutes.

1 (Whereupon, recess transpired.)

2 THE COURT: Bring in the jury.

3 (Whereupon, the jury returns to open court at 1:46  
4 p.m.)

5 THE COURT: Members of the jury, all the evidence  
6 has been presented. You heard the arguments of counsel.  
7 It's now time for me to instruct you on the law that applies  
8 to the case. Please continue to pay close attention during  
9 this next stage.

10 At first, you need to understand some basic ground  
11 rules. You the jury members are the sole judges of the  
12 facts. You decide all of the issues of fact, the truth of  
13 the evidence, its effect, its value and its weight. You  
14 alone will judge the credibility of witnesses, in other  
15 words, whether or not a witness's testimony is believable.

16 In evaluating testimony of witnesses, you may  
17 believe all that a witness said or none of it. You may  
18 believe part of what a witness said and not believe the  
19 balance. You may believe one witness against many or many  
20 against one. You may consider any interest, bias, or  
21 prejudice that you feel that a witness has in the case. You  
22 may consider the demeanor, the appearance of the witness, and  
23 the opportunity for knowledge that the witness had. You may  
24 consider the lack of evidence presented by the State. You  
25 may consider whether a witness has been consistent or

1 inconsistent.

2           But you are not to exercise these considerations  
3 arbitrarily. What you are to do is to use your common sense.  
4 Use your sense of logic and reason and your good judgment.  
5 It's not proper for me to give you a charge on the facts of  
6 the accident. I cannot discuss the facts with you or even  
7 convey to you an impression as to what personal opinions, if  
8 any, I may develop by the facts of this case. So if during  
9 any stage of this trial, if you developed an impression that  
10 I have a personal opinion about the facts, you must remove  
11 that belief totally from your mind. You are the sole judges  
12 of the facts.

13           I am the judge of the law that applies in this case.  
14 Under your oath, you must accept and apply the law as I give  
15 it to you. You have to abandon any conflicting ideas that  
16 you might have as to what the law is or what it should be. I  
17 give you the law. You apply it to the fact as you determine  
18 them to be. And in that way, you reach your verdict.

19           It's also my job to decide what evidence is  
20 admissible. If I have ruled something inadmissible or  
21 instructed you to disregard something, you are not to  
22 consider those things in arriving at your verdicts. Base  
23 your verdict on the competent evidence before you. Consider  
24 the competent testimony from the witnesses and the exhibits  
25 admitted.

1 I need to explain to you that the rules of evidence  
2 allow for opinion testimony to be given under certain  
3 circumstances. One area where that's allowed is for persons  
4 who, by virtue of education, training and experience, are  
5 designated as expert witnesses. Now, the mere fact that a  
6 person is allowed to give opinion testimony under our rules  
7 does not mean that you have to accept the opinions given if  
8 you choose not to do so. You may accept or reject the  
9 testimony of an expert witness just as you may with any  
10 witness in whole or in part.

11 I also need to explain to you that there are two  
12 types of evidence generally presented during a trial, direct  
13 evidence and circumstantial evidence. Direct evidence  
14 directly proves the existence of a fact and does not require  
15 deduction. Direct evidence is the testimony of a person who  
16 claims to have actual knowledge of the facts, such as an  
17 eyewitness. It is evidence that immediately establishes the  
18 main fact to be proven.

19 Now, circumstantial evidence is proof of a chain.  
20 It's proof of a chain of facts and circumstances indicating  
21 the existence of a fact. It is evidence which immediately  
22 establishes collateral facts from which the main fact may be  
23 inferred. Circumstantial evidence is based on inference and  
24 not on personal knowledge or observation.

25 Now, the law makes absolutely no distinction between

1 the weight or value to be given to either direct or  
2 circumstantial evidence, nor is a greater degree of certainty  
3 required of circumstantial evidence than direct evidence.  
4 You should weigh all the evidence in the case. And after  
5 weighing all of the evidence, if you are not convinced of the  
6 guilt of the defendant beyond a reasonable doubt, then you  
7 must find him not guilty.

8 Now, to the extent the State relies on  
9 circumstantial evidence, all of the circumstances must be  
10 consistent with each other, and when taken together, point  
11 conclusively to the guilt of the accused beyond a reasonable  
12 doubt. If the circumstances merely portray the defendant's  
13 behavior as suspicious, that's not enough to prove his fate.

14 The State has the burden of proving the defendant  
15 guilty beyond a reasonable doubt. And that burden rests with  
16 the State regardless of whether the State relies on direct  
17 evidence, circumstantial evidence, or some combination of the  
18 two.

19 I remind you and emphasize to you once again that  
20 the fact that the defendant elected not to testify is not a  
21 factor to be considered by you in any way in your  
22 deliberations and in your consideration on the question of  
23 whether he's guilty or not guilty. That decision not to  
24 testify must not be occurred by you in any manner whatsoever  
25 against the defendant. An an accused has the constitutional.

1 right to remain silent. And the assertion of that right  
2 cannot and must not be considered by you in your  
3 deliberations.

4 Under your oath, you are to reach no inference and  
5 you are to draw no conclusion whatsoever from the fact that  
6 the defendant elected not to testify. His decision not to  
7 testify should not be discussed by you in the jury room, nor  
8 should it enter into your minds in making a decision of  
9 whether he is guilty or not guilty. The burden of proof, as  
10 I told you repeatedly, is entirely on the State to prove  
11 every essential element of the offenses charged against this  
12 defendant beyond a reasonable doubt. An accused has no  
13 burden to prove anything at all.

14 The defendant in this case, Mr. Ancrum, is presumed  
15 to be innocent. This is no mere legal theory. It is a  
16 fundamental and substantial right to which everyone is  
17 entitled. It's been described as being like a robe of  
18 righteousness placed around the defendant and remains with  
19 him through every stage of the trial, and continues to exist  
20 after you retire to your jury room to deliberate, and it  
21 continues to exist so that the defendant is presumed to be  
22 innocent unless and until you the jury determine that the  
23 State has proved the guilt of the defendant beyond a  
24 reasonable doubt.

25 A defendant is not required to prove his innocence.

1 He's not required to prove anything. The burden is on the  
2 State to prove the guilt of the defendant beyond a reasonable  
3 doubt. And it's required that every essential element of the  
4 offense charged be proven by the State beyond a reasonable  
5 doubt.

6 Now, the State is not required to prove the guilt of  
7 the defendant beyond all doubt or beyond every doubt. The  
8 appropriate standard is proof beyond a reasonable doubt.

9 Some of you may have served as jurors in civil  
10 court. And if you have, you know that the burden of proof in  
11 civil court requires establishing that something is more  
12 likely than not, which is called the greater weight or  
13 preponderance of the evidence. But we are not in civil  
14 court. We are in criminal court. And in criminal court, the  
15 standard is much higher and the proof must be much stronger  
16 than what is required in a civil case. The burden of proof  
17 in a criminal case, such as these, is proof beyond a  
18 reasonable doubt.

19 So what do I mean by that term? Proof beyond a  
20 reasonable doubt is proof that leaves you firmly convinced of  
21 the defendant's guilt. There are few things in the world  
22 that we know with absolute certainty. And in criminal cases,  
23 the law does not require proof that overcomes every possible  
24 on doubt. If, based on your consideration of the evidence,  
25 you are firmly convinced that the defendant is guilty of the

1 crime charged, then you are to find him guilty of that crime.

2 If, on the other hand, you think there's a real  
3 possibility that he's not guilty, you must give him the  
4 benefit of the doubt and find him not guilty as to that  
5 charge.

6 Now, there's no obligation on the part of the  
7 defendant to raise any doubt or any other possibility. He is  
8 presumed to be innocent. And the State has the entire burden  
9 of proof and has to prove to you that the defendant is guilty  
10 of the charge to the exclusion of any other real possibility.

11 All right. Now I need to explain to you the law  
12 related to statements made to law enforcement officials while  
13 in custody. Testimony has been presented in this case,  
14 evidence has been presented in this case about a statement  
15 allegedly made by the defendant to law enforcement officers  
16 while the defendant was in custody. When an accused is taken  
17 into custody by law enforcement, the officers are not allowed  
18 to interrogate him until the accused has been advised of his  
19 rights and knowingly and intelligently waived those rights.

20 So in evaluating any statement alleged to have been  
21 made to law enforcement while the defendant was in custody,  
22 you first have to determine whether the State has proven that  
23 the defendant, in fact, made the statement. If not, then you  
24 could not consider that alleged statement in any way against  
25 the defendant.

1           If you find if you find that the defendant made the  
2 statement, the next thing you are going to have to determine  
3 is whether the defendant gave the statement in response to  
4 police questioning.

5           In order for you to know what the law requires  
6 concerning these types of statements, I need to explain some  
7 things to you. You've probably heard about Miranda warnings.  
8 Miranda warnings are that you have the right to remain  
9 silent, that any statement made can and will be used against  
10 you in court, that you have the right to an attorney, and if  
11 you do not have the resources to hire a lawyer, the court  
12 will appoint one at no expense, that you have the right to  
13 consult a lawyer at all times during all interviews and all  
14 interrogations. And you have the right to consult the  
15 attorney before answering any questions or making any  
16 statements, and that you may stop answering questions at any  
17 time.

18           Now, those exact words do not have to be used, but  
19 the substantial equivalent has to be communicated by law  
20 enforcement to the accused in order for them to constitute  
21 valid Miranda warnings. Now, Miranda warnings are required  
22 before the police may interrogate a person whom they have in  
23 custody. Police interrogation means that the police are  
24 questioning the person or engaging in the substantial  
25 equivalent of questioning. In other words, where a police

1 officer makes some statement or engages in some conduct that  
2 is designed to elicit a response, then that is the functional  
3 equivalent of interrogation.

4 Now, if you find that the defendant in question was  
5 given -- I'm sorry, if you find that the statement in  
6 question was given by the defendant while in custody and in  
7 response to police interrogation, then the next we would be  
8 whether the State has proven beyond a reasonable doubt that  
9 the defendant was properly advised of his Miranda rights  
10 before giving the statement.

11 The next thing the State has to prove before you may  
12 consider any alleged statement against the defendant is that  
13 the defendant knowingly and intelligently waived his  
14 constitutional rights and made the statement to the police.

15 And the final requirement is that the statement in  
16 question must have been given voluntarily. The State has to  
17 prove to you that the statement was the expression of the  
18 defendant's own free will, and was not improperly induced by  
19 compulsion, duress, force or fear, or by the promise of some  
20 reward or hope of a reward. Unless the State proves to you  
21 that the statement was given freely and voluntarily, you may  
22 not consider it against the defendant.

23 Now, let's turn to the specific charges that are  
24 lodged in this case. As you know, the defendant is charged  
25 under two separate and distinct indictments. One charges is

1 distribution of crack cocaine or cocaine base. The other  
2 charges him with distribution of heroin. Both indictments  
3 alleged that Gerald Jarrod Ancrum did, in Charleston County,  
4 South Carolina, on or about February 5, 2015, distribute the  
5 respective controlled substance without the authority of law.

6 Now, ladies and gentlemen, indictments have no  
7 evidentiary value. They are merely charging papers. An  
8 indictment is the formal means by which someone is charged  
9 and brought to trial. You cannot give an indictment any  
10 evidentiary value. It has none.

11 Now, the law related to distribution of controlled  
12 substances is rather simple. It is unlawful for any person,  
13 except a properly licensed medical professional, to  
14 distribute a controlled substance. Crack cocaine is the same  
15 as cocaine base. And both heroin and cocaine base are  
16 controlled substance under the law. The State has to prove  
17 to you that the substance in question was the illegal drug  
18 charged, crack cocaine on one indictment, heroin on the  
19 other.

20 Crack cocaine is referred to in the statute as  
21 cocaine base. Cocaine base is a defined term. It's defined  
22 as an alkaloid cocaine or free-base form of cocaine which is  
23 the end product of a chemical alteration whereby the cocaine  
24 in salt form is converted to a form suitable for smoking.  
25 Cocaine base is commonly referred to as rock or crack

1 cocaine.

2 To prove the defendant guilty, the State has to  
3 prove to you beyond a reasonable doubt that the defendant  
4 distributed the controlled substance in question as alleged  
5 in the indictment.

6 Now, the word "distribute" means to deliver or to  
7 transfer a drug. "To deliver" means to actually or  
8 constructively transfer a controlled substance.

9 A distribution may take place even if nothing of  
10 value had been given in exchange for the drug. In other  
11 words, while a distribution may be done for money or  
12 something of value, that is not an essential element.

13 To constitute a crime, an act has to be done with a  
14 criminal intent. The criminal intent required to be guilty  
15 of distribution of a controlled substance is that the act has  
16 to be done knowingly. To do an act knowingly means that it's  
17 done with knowledge and consciously, not accidentally. It is  
18 an act that is done intentionally, which means willfully,  
19 intending the result that actually occurs, not something that  
20 occurs by accident or involuntarily.

21 Now, intent may be shown by acts and conduct of the  
22 defendant and other circumstances from which you may  
23 naturally and reasonably infer intent. But the State has to  
24 prove to you beyond a reasonable doubt that the defendant  
25 knew that he was distributing the particular controlled

1 substance alleged at the time that he is alleged to have  
2 committed the act.

3           So to recap, in order to prove the defendant guilty  
4 of distribution of a controlled substance, the State has to  
5 prove to you these things beyond a reasonable doubt: First,  
6 that the substance in question was, in fact, the controlled  
7 substance alleged, that is crack cocaine on one indictment,  
8 heroin on the other; second, that the defendant knowingly and  
9 intentionally distributed that drug as alleged in the  
10 indictment; and, third, that the distribution occurred in  
11 Charleston County, South Carolina, on the date alleged in the  
12 indictment.

13           The final thing I have tell you about the law,  
14 ladies and gentlemen, is that the defendant is entitled to  
15 every reasonable doubt that arises in an entire case. If  
16 upon any issue of fact essential to a conviction, you have a  
17 reasonable doubt as to how that issue should be resolved, you  
18 have to resolve that doubt in favor of the defendant.

19           If upon reviewing an entire case you have a  
20 reasonable doubt as to whether the defendant has been proven  
21 guilty on that charge, he is entitled to that doubt and a  
22 verdict of not guilty.

23           On the other hand, if upon reviewing an entire case  
24 you find that the State has proved every essential element of  
25 its case against the defendant beyond a reasonable doubt, it

1 is equally your duty to find the defendant guilty of that  
2 charge.

3 That's the law.

4 Ladies and gentlemen, when you go back to the jury  
5 room to decide the case, you are going to have with you all  
6 the exhibits that have been admitted in the trial. And you  
7 are going to have these verdict forms. You are also going to  
8 be given a computer, if you wish, to play the things that are  
9 in electronic format. You will have something you can plug  
10 in.

11 Now, on these verdict forms, you are going to tell  
12 us your decisions. As I told you over and over again, there  
13 are two separate and distinct charges, each of which have to  
14 be evaluated on its own merit or lack of merit. So you have  
15 two verdict forms. I will take them in the order that they  
16 are numerically.

17 You will see this verdict form on Case No.  
18 2015-GS-10-02965, reads: As to the charge of distribution of  
19 cocaine base, and in (crack cocaine), we the jury unanimously  
20 find the defendant, and you have two options. You may find  
21 the defendant not guilty or you may find the defendant guilty  
22 of distribution of cocaine base crack cocaine.

23 The other verdict form is on Case No. 2966. And it  
24 reads: As to the charge of distribution of heroin, we the  
25 jury unanimously find the defendant, and you have two

1 options. You may find him not guilty or you may find him  
2 guilty of distribution of heroin.

3 Now, Mr. Foreman, part of your job is going to be  
4 record these verdict forms. I think you will find the form  
5 self-explanatory. Check the option chose by the jury on each  
6 form and sign your signature on the line where it's  
7 indicated.

8 Folks, how you go about taking your votes and go  
9 about your deliberation is subject to your discretion, with  
10 this requirement. The verdict has to be unanimous. All 12  
11 of you must agree on a verdict on each of these cases before  
12 the foreman can record your verdict.

13 When you have reached your verdict, knock on the  
14 door. Bailiff will respond to your knock.

15 I've told you dozen times or more not to discuss the  
16 case until I give it to you. Believe it or not, it's not  
17 time yet. The law says I have to go over with the attorneys  
18 what I just told you. That's just common sense. We don't  
19 want you back there deciding the cases using the wrong law.  
20 So I have to give them a chance to point out to me what I may  
21 have said wrong.

22 Now, the truth is, as I think you know, I printed  
23 this out. We've already been over this. It shouldn't take  
24 long, but I never read the charge verbatim. Sometimes I say  
25 things I don't even know I said. So the lawyers have to be

1 given a chance to point that out to me. Here's what you need  
2 to look for. If I'm satisfied with what I told you, I will  
3 send into the jury room, by the bailiff, the exhibits, the  
4 computer and the verdict forms. The bailiff will bring the  
5 alternate out. When it's just the 12 of you in there and  
6 you've got those things, you don't have to wait one more  
7 second, you can start talking about the case. But don't talk  
8 about it until then.

9           You may take your notes with you into the jury room  
10 now subject to those three rules I've given you previously.  
11 I sincerely appreciate your attention. You may retire to the  
12 jury room.

13           (Whereupon, the jury leaves open court at 2:07 p.m.)

14           THE COURT: Are any corrections, exceptions,  
15 additions or objections to the charge from the State?

16           MS. LINDER: None from the State.

17           THE COURT: From the Defense?

18           MS. GAY: Well, Your Honor, I would like to mark my  
19 exception that I asked you to add *State vs. Manning* in the  
20 reasonable doubt charge. And I think I have to at this time  
21 state an objection. You overruled me, I believe. So just  
22 for the record.

23           THE COURT: Yes, ma'am. The request is considered  
24 and denied.

25           All right. Folks, check the verdict forms. Check

1 the exhibits. When you are satisfied, give this to the  
2 bailiff, please.

3 (Whereupon, the jury deliberates at 2:09 p.m.)

4 THE COURT: Bring the alternate in. Ms. Nelson,  
5 everybody made it through the case without having to use an  
6 alternate. So you are discharged from jury duty. And I want  
7 you to understand, I use alternates about half the cases I  
8 do. So once we swear in the jury, we have to continue.  
9 That's when jeopardy attaches. And so I didn't have you  
10 sitting over there for no reason. I don't think they have  
11 any more jury trials.

12 THE CLERK: No, sir, that's it. They are released  
13 for the week.

14 THE COURT: Do you need to talk to her about  
15 anything?

16 THE CLERK: We are going to be sending you your  
17 check and a letter saying how many days you were with us and  
18 that will go out tomorrow.

19 THE COURT: You are welcome to stay if you wish to  
20 stay, but you are free to go if you wish to go. Make sure  
21 you gave your notes to the bailiffs. We are at ease pending  
22 a verdict.

23 (Whereupon, a recess transpired.)

24 THE COURT: Jury has sent me a note indicating they  
25 want to hear the audio of Karen Ford and Marc Brown. So

1 bring them back in.

2 (Court's Exh 3, Jury note requesting playback of  
3 testimony of Karen Ford and Marc Brown, was marked for  
4 identification.)

5 (Whereupon, the jury returns to open court at 3:34  
6 p.m.)

7 THE COURT: All right. Mr. Foreman, I understand  
8 the jury wants to hear the testimony played back. So the  
9 first one will be Marc Brown. There's going to be a buzz in  
10 it, but we can't get that out.

11 (Whereupon, the testimony of Karen Ford and Marc  
12 Brown are played back.)

13 THE COURT: You may retire to the jury room.  
14 Assuming there's nothing to put on the record, we are at ease  
15 pending the verdict.

16 (Whereupon, recess transpired.)

17 (Court's Exh. 4, Jury note, was received for  
18 identification.)

19 THE COURT: I received a note from the jury that  
20 reads that the jury has a verdict on heroin charge. The jury  
21 is hung on cocaine charge. My proposal would be to give them  
22 an Allen charge on the cocaine charge and see where we go  
23 from there.

24 Does the State have any input?

25 MS. LINDER: I think that sounds appropriate, Judge.

1 THE COURT: Defense?

2 MS. GAY: I understand your reasoning, Your Honor.  
3 Yes. Thank you.

4 THE COURT: Okay. It's going to take me a minute to  
5 pull this up. Okay. Bring the jury in, please.

6 (Whereupon, the jury returns to open court at 4:29  
7 p.m.)

8 THE COURT: All right. Mr. Foreman, I received a  
9 note from the jury that reads: The jury has a verdict on the  
10 heroin charge. The jury is hung on the cocaine charge; is  
11 that correct?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: Hold on to that, if you would. I'm  
14 required to give you an additional instruction. So give me  
15 your attention, please.

16 Ladies and gentlemen, you've stated that you've been  
17 unable to agree on a verdict on the crack cocaine charge. As  
18 I instructed you earlier, the verdict of the jury must be  
19 unanimous. And you have advised me that you have not been  
20 able to reach a unanimous verdict on that charge. As I also  
21 told you earlier, you are the sole judges of the facts and I  
22 am not permitted to give you any indication of what, if any,  
23 opinions I may have about the facts of the case. So,  
24 obviously, nothing I'm saying to you should be construed in  
25 any way as indicating anything about my view of the facts.

1 Any time a jury sends out a note like the one that you sent  
2 to me, I'm required to give the jury an additional  
3 instruction or charge to see if the jury can make a further  
4 effort to reach a verdict, if that can be done without any  
5 juror doing violence to his or her own conscience.

6           When a matter is in dispute, it isn't always easy  
7 for even two people to agree. So when 12 people must agree,  
8 it often becomes correspondingly more difficult. You have a  
9 duty to make every reasonable effort to reach a unanimous  
10 verdict. In doing this, you should consult with each other,  
11 express your own views, and listen to the opinions of your  
12 fellow jurors. Tell each other how you feel and why you feel  
13 that way. Discuss your differences with open minds.

14           Now, although the verdict of the jury must be  
15 unanimous, every one of you has the right to your own  
16 opinion. Any verdict must be the verdict of each and every  
17 juror, the result of your own convictions. And you should  
18 not give up your firmly held convictions merely to be in  
19 agreement with your fellow jurors. The majority should  
20 consider the minority's opinion and the minority should  
21 consider majority's position. You should carefully consider  
22 and respect the opinions of each other and evaluate your  
23 position for reasonableness, correctness and impartiality.  
24 You must lay aside all outside matters and examine the  
25 questions before you based on the law and the evidence in the

1 case.

2 Now, if you do not agree on a verdict, it does not  
3 mean that anybody wins. It just means that at some future  
4 time, some on the jury will come and sit where you are  
5 sitting. Some participate will likely come and pose the same  
6 questions. And the witnesses will likely come and give the  
7 same answers. And we will go through the whole process  
8 again.

9 You were selected in the same manner and from the  
10 same source as any future jury will be. There's no reason  
11 for me to suppose that the case will ever be submitted to  
12 more intelligent, impartial, conscientious and competent  
13 jurors than you. I, therefore, ask you to return to your  
14 jury room to deliberate to see if you can reach a verdict on  
15 that one charge of crack cocaine. However, I remind you of  
16 what I said at the outset, that while it is important that  
17 litigation be ended, it should never be ended where a juror  
18 does violence to his or her own conscience. No juror is  
19 expected to give up an opinion that was reached after proper  
20 deliberation, fairly and impartially, based on reasoning that  
21 is satisfactory to that juror just for the purpose of being  
22 in agreement.

23 So I ask, ladies and gentlemen, that you please  
24 retire to your jury room to make a further effort to see if  
25 you can reach a verdict on the charge of distribution of

1 cocaine base. And let me know whether or not you are able to  
2 reach a verdict.

3 And, please, in any note you send me, of whatever it  
4 may be, don't tell me the division. Don't tell me how many  
5 vote one way and how many vote another. Okay?

6 Thank you. You may retire to your jury room.

7 (Whereupon, the jury leaves open court at 4:33 p.m.)

8 THE COURT: Please state for the record any  
9 objections or additions to the Allen charge; from the  
10 State.

11 MS. LINDER: None from the State.

12 THE COURT: The Defense?

13 MS. GAY: No, sir.

14 THE COURT: We are at ease.

15 (Whereupon, a recess transpired.)

16 (Court's Exh. 5, Jury note, was marked for  
17 identification.)

18 THE COURT: I received a note from the jury that  
19 reads: Please advise the criteria needed to convict on the  
20 cocaine charge and if lawful criteria have to apply for a  
21 conviction.

22 And the second part of the note is: Please advise,  
23 does the substance have to be identified as charged, i.e.,  
24 cocaine, or is the appearance of a plastic bag with an  
25 appearance of cocaine -- it says suffice, I'm assuming they

1 mean sufficient. Signed by the foreperson.

2 I can charge the jury again about distribution of  
3 controlled substance. And in the charge, it's pretty clear  
4 that, in my mind, that the State has to prove beyond a  
5 reasonable doubt that the substance was, in fact, cocaine  
6 base. And at the end of it, I said that they have to  
7 prove -- I had a recap session where I see in order to prove  
8 the defendant guilty of distribution of controlled substance,  
9 the State has to prove certain things beyond a reasonable  
10 doubt: First, that the substance in question was, in fact,  
11 the controlled substance alleged, crack cocaine; second, that  
12 the defendant knowingly and intentionally distributed that  
13 drug as alleged in the indictment; and third, that the  
14 distribution occurred in Charleston County, South Carolina on  
15 the date alleged in the indictment.

16 So what I would just propose is read them the charge  
17 on distribution again, which is only a couple of pages.  
18 Y'all have any input?

19 MS. LINDER: Judge, I returned the jury charges  
20 after we read them over lunch, but I am just trying to think.  
21 I know there was a section where you read kind of the  
22 description and explained that cocaine base and crack cocaine  
23 and kind of described what it is. I don't know if they are  
24 confused. I can't read what they are thinking. But, you  
25 know, the lab report says cocaine base, which is cocaine base

1 crack, which is crack cocaine. I don't know if they are  
2 confused about that or what.

3 THE COURT: I put that on there because years ago,  
4 one of the judges who writes the charge book was upset, not  
5 with me, but with another judge, because that judge was  
6 distributing materials that he felt were copyrighted. So the  
7 charge -- I can only speculate about what they are dealing  
8 with. And juries fool me all the time. So I don't know what  
9 they are wrestling with. They may be wrestling with one  
10 witness who testified about handling one drug but not  
11 handling another drug.

12 MS. GAY: I agree with you. I think it has  
13 something to do with the chain. That's my thoughts.

14 THE COURT: One witness said she didn't do anything  
15 with the heroin. You have a verdict on heroin. And then you  
16 have another witness, I mean, same witness who -- maybe they  
17 are questioning the chain. I don't know.

18 MS. GAY: But what you said you would do is go  
19 through the distribution, redo the distribution charge. And  
20 I had said to Ms. Linder that I felt that it was very  
21 important for you to establish that all elements had to be  
22 proven beyond a reasonable doubt. And I think what you read  
23 just a few minutes ago covers that, that you are telling them  
24 that they have to find -- this business about the appearance  
25 of the bag, it kind of looks like it will suffice. I think

1 in saying it has to be reasonable doubt, you covered that.

2 THE COURT: I can't get that specific. I do charges  
3 on the facts.

4 MS. GAY: I do agree what you said you will recharge  
5 sounds good.

6 THE COURT: I intend to recharge the whole  
7 controlled substance distribution.

8 MS. LINDER: The whole distribution of controlled  
9 substance, does that go to the next paragraph where it  
10 defines cocaine?

11 THE COURT: Goes to the end.

12 MS. LINDER: Perfect. Yes, Judge.

13 (Whereupon, the jury returns to open court at 5:08  
14 p.m.)

15 THE COURT: Mr. Foreman, I received a note from the  
16 jury that reads: Please advise the criteria needed to  
17 convict on the cocaine charge. And if multiple criteria, do  
18 all criteria have to apply for a conviction? And second part  
19 is: Please advise, does the substance have to be identified  
20 as charged, i.e., "cocaine" or is the appearance of a  
21 plastic bag with an appearance of cocaine sufficient?

22 Are those questions of the jury?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: All right. Folks, all I can do in  
25 response to your questions is to give you the charge again on

1 distribution. So I'm going to charge you again on  
2 distribution. It's not very long. And then if you have  
3 other matters you need me to address, you send me a note. So  
4 what I told you earlier is this. The law related to  
5 distribution of controlled substances is rather simple.

6 It is unlawful for any person except for properly  
7 licensed medical professionals, to distribute a controlled  
8 substance. Crack cocaine is the same as cocaine base.  
9 Cocaine base is a controlled substance under the law. The  
10 State must prove to you that the substance in question was  
11 the illegal drug charged, crack cocaine or cocaine base.

12 Crack cocaine is a defined term. It is referred to  
13 in the statute as cocaine base. Cocaine base is defined as  
14 an alkaloidal cocaine or free-base form of cocaine which is  
15 the end product of a chemical alteration whereby the cocaine  
16 in salt form is converted to a form suitable for smoking.  
17 Cocaine base is commonly referred to as rock or crack  
18 cocaine.

19 To prove the defendant guilty, the State must prove  
20 to you beyond a reasonable doubt that the defendant  
21 distributed the controlled substance in question as alleged  
22 in the indictment.

23 "To distribute" means to deliver or to transfer a  
24 drug.

25 "To deliver" means to actually or constructively

1 transfer a controlled substance. A distribution may take  
2 place even if nothing of value is given in exchange for the  
3 drug. In other words, while a distribution may be done for  
4 money or something of value, it is not essential that money  
5 pass hands.

6 To constitute a crime, an act must be done with  
7 criminal intent. The criminal intent required to be guilty  
8 of distribution of a controlled substance is that the act be  
9 done knowingly. To do an act knowingly means that it is done  
10 with knowledge and consciously, not accidentally. It is an  
11 act that is done intentionally, which means willfully,  
12 intending the result that actually occurs, not something that  
13 occurs by accident or involuntarily. Intent may be shown by  
14 acts and conduct of the defendant and other circumstances  
15 from which you may naturally and reasonably infer intent.  
16 But the State must prove to you beyond a reasonable doubt  
17 that the defendant knew that he was distributing the  
18 particular controlled substance alleged at the time that he  
19 is alleged to have committed the act.

20 So to recap all of that, in order to prove a  
21 defendant guilty of distribution of a controlled substance,  
22 in this instance, cocaine base or crack cocaine, the State  
23 has to prove to you certain things beyond a reasonable doubt:  
24 First, that the substance in question was, in fact, the  
25 controlled substance alleged, crack cocaine or cocaine base;

1 second, that the defendant knowingly and intentionally  
2 distributed that drug as alleged in the indictment; and  
3 third, that the distribution occurred in Charleston County,  
4 South Carolina, on the date alleged in the indictment.

5 And then I told you about reasonable doubt, that the  
6 defendant is entitled to every reasonable doubt arising in  
7 the entire case. If upon any issue of fact essential to a  
8 conviction you have a reasonable doubt as to how that should  
9 be resolved, you have to resolve the doubt in favor of the  
10 defendant.

11 If upon reviewing an entire case, you have a  
12 reasonable doubt as to whether the defendant has been proven  
13 guilty on that charge, he is entitled to that doubt and a  
14 verdict of not guilty. On the other hand, if upon reviewing  
15 an entire case, you find that the State has proved every  
16 essential element of its case against the defendant beyond a  
17 reasonable doubt, it is equally your duty to find the  
18 defendant guilty of that charge.

19 Does that help? All right. You may retire to your  
20 jury room. Thank you.

21 (Whereupon, the jury leaves open court at 5:13 p.m.)

22 THE COURT: Please state for the record any  
23 exceptions, additions or objections to the charge?

24 MS. LINDER: None from the State.

25 THE COURT: The Defense?

1 MS. GAY: No, Your Honor.

2 THE COURT: Thank you. We are at ease pending a  
3 verdict.

4 (Whereupon, recess transpired.)

5 THE COURT: I received another note from the jury  
6 that indicates they are still hung on the cocaine charge.  
7 They have a verdict on the heroin charge. So I will bring  
8 them out, ask them if -- I will explain to them the only way  
9 I can require they go any further is if they tell me they  
10 want to. Assuming that they do not go forward, then I will  
11 have to declare a mistrial on the cocaine charge and take the  
12 verdict on the heroin charge.

13 (Court's Exh. 6, Jury note indicating they are  
14 still hung on the cocaine charge, was marked for  
15 identification.)

16 THE COURT: Bring the jury, please.

17 (Whereupon, the jury returns to open court at 5:26  
18 p.m.)

19 THE COURT: All right. Mr. Foreman, ladies and  
20 gentlemen of the jury, I received a note. The first part of  
21 it reads that you are still hung on the cocaine charge.

22 Is that correct, Mr. Foreman?

23 THE FOREPERSON: Yes, Your Honor.

24 THE COURT: Mr. Foreman, we have a statute in South  
25 Carolina. It's 14-7-1330. And what it provides is that when

1 a jury returns a second time without having agreed on a  
2 verdict, the trial judge cannot send the jurors out again  
3 without the jurors' consent unless the jurors ask for further  
4 explanation of the law. And then we had a case in 2000 that  
5 interpreted that statute. And it states that I'm supposed to  
6 diplomatically discuss with you whether further deliberations  
7 would be beneficial. Do you feel that further deliberations  
8 would serve any useful purpose?

9 THE FOREPERSON: No, Your Honor.

10 THE COURT: Do you believe the jury is deadlocked?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: All right. What I'm going to do then is  
13 declare a mistrial on the charge of distribution of cocaine  
14 base. And we will receive the verdict on the heroin charge.

15 Mr. Foreman, has the jury reached a verdict on the  
16 charge of distribution of heroin?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: Will you hand it to the bailiff, please.

19 All right. This is Case No. 2015-GS-10-02966. As  
20 to the charge of distribution of heroin, we the jury  
21 unanimously find the defendant guilty of distribution of  
22 heroin, signed by the foreman.

23 Mr. Foreman, ladies and gentlemen of the jury, if  
24 I've accurately stated your verdict, that is guilty of the  
25 charge of distribution of heroin, please signify by raising

1 your right hand. All 12 hands are raised.

2 Are there any matters to take up prior to the jury  
3 being discharged, from the State?

4 MS. LINDER: None from the State.

5 THE COURT: From the Defense?

6 MS. GAY: We ask that you poll the jury.

7 THE COURT: What's going to happen now is, the clerk  
8 is going to call the roll. When he calls your name, if you  
9 will raise your hand so he knows where to look. Put your  
10 hand down when he makes eye contact with you. He's going to  
11 ask you two questions. Sometimes they ask you one question.  
12 Sometimes clerks ask two. Basically, the questions are going  
13 to be: Was this your verdict, and is it still your verdict?  
14 Answer the clerk truthfully, please. Are you ready?

15 The Clerk: Juror No. 9, was that your verdict?

16 JUROR 9: Yes, sir.

17 THE COURT: Is that still your verdict?

18 JUROR 9: Yes, sir.

19 THE COURT: Thank you. Juror No. 39, was that your  
20 verdict?

21 JUROR 39: Yes, sir.

22 THE COURT: Is that still your verdict?

23 JUROR 39: Yes, sir.

24 THE CLERK: Juror No. 58, was that your verdict?

25 JUROR 58: Yes.

1 THE CLERK: Is that still your verdict?  
2 JUROR 58: Yes.  
3 THE CLERK: Juror No. 66, was that your verdict?  
4 JUROR 66: Yes.  
5 THE CLERK: Is that still your verdict?  
6 JUROR 66: Yes.  
7 THE CLERK: Juror No. 70, was that your verdict?  
8 JUROR 70: Yes.  
9 THE CLERK: Is that still your verdict?  
10 JUROR 70: Yes.  
11 THE CLERK: Juror No. 138, was that your verdict?  
12 JUROR 138: Yes.  
13 THE CLERK: Is that still your verdict?  
14 JUROR 138: Yes.  
15 THE CLERK: Juror No. 170, was that your verdict?  
16 JUROR 170: Yes.  
17 THE CLERK: Is that still your verdict?  
18 JUROR 170: Yes.  
19 THE CLERK: Juror No. 180, was that your verdict?  
20 JUROR 180: Yes.  
21 THE CLERK: Is that still your verdict?  
22 JUROR 180: Yes.  
23 THE CLERK: Juror No. 211, was that your verdict?  
24 JUROR 211: Yes, sir.  
25 THE CLERK: Is that still your verdict?

1 JUROR 211: Yes, sir.

2 THE CLERK: Thank you.

3 Juror No. 233, was that your verdict?

4 JUROR 233: Yes, sir.

5 THE CLERK: Is that still your verdict?

6 JUROR 233: Yes, sir.

7 THE CLERK: Juror No. 263, was that your verdict?

8 JUROR 263: Yes, sir.

9 THE CLERK: Was that still your verdict?

10 JUROR 263: Yes, sir.

11 THE CLERK: Juror No. 378, was that your verdict?

12 JUROR 378: Yes.

13 THE CLERK: Is that still your verdict?

14 JUROR 378: Yes, sir.

15 THE CLERK: Was there any juror whose number I did  
16 not call? Please raise your right hand.

17 Your Honor, the jury has been polled and the verdict  
18 stands.

19 THE COURT: Anything further before the jury is  
20 discharged, from the Defense?

21 MS. GAY: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen of the  
23 jury, that's going to conclude your jury service. The clerk  
24 is going to tell you a couple of things. You are  
25 disqualified for a year from serving on the jury in state

1 court, civil or criminal, and you have an exemption for 2017,  
2 2018, 2019. So you would not have to serve on a state court  
3 jury again until 2020 at the earliest. The exemption is not  
4 a disqualification. If you are willing to serve, you can  
5 serve. Try to remember when you served in case you want to  
6 claim the exemption.

7 All right. Mr. Clerk, tell them what you told me.

8 THE CLERK: We will be mailing out your check  
9 tomorrow, along with a letter saying how many days you were  
10 with us this week for your employer, whoever may need that.  
11 So if you don't get the check by, I would say, next Tuesday  
12 or so, give us a call and we will look into it. Thank you.

13 THE COURT: Mr. Foreman, I need you to sign the  
14 original indictment before you can go. The clerk will meet  
15 you back there. It's just the heroin charge. So thank you  
16 so much. You are free to go.

17 (Whereupon, the jury leaves open court at 5:32 p.m.)

18 THE COURT: Are there any post-trial motions?

19 MS. LINDER: Not from the State?

20 MS. GAY: Yes, Your Honor. I would renew -- make a  
21 motion for a new trial based on the prior rulings that we had  
22 with my motion for directed verdict and my two motions for  
23 mistrial, Your Honor. And I don't believe that the verdict  
24 should speak the truth in this case.

25 THE COURT: Thank you. The Court believes that

1 there's sufficient evidence to support jury's verdict, and  
2 respectfully denies the motion. And having reviewed or  
3 reconsidered the mistrial motion that was made, the Court  
4 declines to change its previous rulings on that.

5 So what offense is this?

6 MS. LINDER: This is third or subsequent, Judge. So  
7 carries 10 to 30 years and a fine up to \$50,000. And the 10  
8 is a mandatory minimum without any of that part suspended.  
9 And I have a sentencing sheet, Your Honor, if I may hand it  
10 forward.

11 THE COURT: Sure.

12 MS. GAY: Would you like us to come to the podium?

13 THE COURT: Is that what you usually do? It's fine  
14 with me if you stay where you are or come to the podium.

15 Does the State have anything else on sentencing?

16 MS. LINDER: Your Honor, as far as the sentence is  
17 concerned, I've read into the record at least his felony  
18 record previously. He has, I believe, eight prior drug  
19 convictions, including distributions. He has prior strikes  
20 also. And as a result of this, he is eligible for LWOP. He  
21 actually still has at least -- I didn't bring all the  
22 files -- at least five other charges pending in my office,  
23 including distributions and traffickings.

24 And, Your Honor, he was also on probation when all  
25 of this occurred. And he is still on probation to this day

1 after serving a split sentence. In the past, he has also  
2 served the longest active sentence he has ever served before,  
3 seven years. I would respectfully request something in the  
4 middle range of that 10 to 30. And I would do that for a  
5 number of reasons. I would do that due to the defendant's  
6 prior history. I would do that also because I believe that  
7 may assist in wrapping up all of his other outstanding  
8 charges. And if that's the case, then the State would be  
9 taking LWOP off the table for future trials of his remaining  
10 charges.

11 THE COURT: Okay. Ms. Gay.

12 MS. GAY: Thank you, Your Honor. He's 35 years old.  
13 He has a 10th grade education. He does have six children,  
14 Your Honor. He has been working in the construction industry  
15 before his arrest, and has done that for a number of years.  
16 I think you know as much as we can know today about him other  
17 than he's asking for mercy, Your Honor. You know, there was  
18 reasons in his mind where he felt like he needed to exercise  
19 his right to a trial. As it went forth, they did hang him on  
20 one of his charges, Your Honor. And I would just ask you to  
21 be as lenient as possible.

22 I've explained to him that he's got all these other  
23 things out there. And I was asking him at one point, are you  
24 ready for me to try to resolve everything now. I think  
25 that's something that he wants me to do as part of it all.

1 He's going to have to let me know. We do have a probation  
2 violation. There are no probation agents in this courtroom.  
3 Normally there is. But I would assume -- his probation case  
4 was actually on the docket for Monday morning, and they  
5 continued it. So we can get him over for the probation  
6 matter quickly.

7 Do you have anything you would like to say,  
8 Mr. Ancrum?

9 THE DEFENDANT: I just ask for the leniency of the  
10 Court.

11 THE COURT: How long have you been in jail?

12 THE DEFENDANT: For these charges, probably a year  
13 now.

14 THE COURT: Do you know when he got arrested?

15 MS. LINDER: Your Honor, it was not from the arrest  
16 date. There's a bench warrant. They were looking for him.  
17 He was on the trial docket last summer and no-showed. And  
18 that's when he was picked up on a bench warrant late last  
19 summer.

20 MS. GAY: And he's been in jail ever since then,  
21 Your Honor. One of the things that we have to figure out is  
22 how much time he gets credit for this warrant number as  
23 opposed to some of the other problems he's had. But when you  
24 have a bench warrant -- when were you picked up on the day  
25 for the bench warrant? Was it the fall? Okay. It was some

1 time late last year, I believe, he was picked up. I'm sure  
2 the Department of Corrections can figure that out.

3 THE COURT: Is there any disagreement that this is  
4 his third offense?

5 MS. GAY: No, sir.

6 THE COURT: And the other ones were not all for  
7 possession, obviously?

8 MS. LINDER: Correct, Judge.

9 THE COURT: All right. Mr. Ancrum, I always make  
10 sure to put this on the record before I sentence someone  
11 after a trial where the person is found guilty. You  
12 understand that if you wish to appeal anything from these  
13 proceedings, it has to be in writing.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And there's a very short time frame in  
16 which to file an appeal. So if you want to file an appeal,  
17 you make sure you tell Ms. Gay to file a notice of appeal  
18 right away. All right? You understand, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sentence of the Court is you be  
21 committed to the South Carolina Department of Corrections for  
22 15 years, plus costs and assessments. You get credit for  
23 jail time under Section 24-1340 to be calculated and applied  
24 by the Department of Corrections. Pay your court costs  
25 within six months of being released from prison.

1           I have taken into consideration that this is a  
2 no-parole offense, which means you are going to have to serve  
3 minimum 85 percent unless something changes.

4           MS. GAY: Thank you, Your Honor.

5           THE COURT: Good luck to you, sir.

6           MS. GAY: Thank you.

7           THE COURT: Thank you, ma'am.

8           (Whereupon, proceedings are adjourned.)

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SBL/0244590/20150201246  
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER  
2015-01961

ARREST WARRANT NUMBER  
2015-GS-10-02966

DATE OF ARREST  
02/19/2015

ACTION OF GRAND JURY

**TRUE BILL**

*Nancy McKeown*  
Foreperson of Grand Jury

Date: 8. 2015

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2015-GS-10-02966

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
JUNE TERM 2015

THE STATE

VS.

GERALD JARROD ANCRUM  
B/M DOB [REDACTED]

Indictment for

DISTRIBUTION OF HEROIN

SC Code: § 44-53-0370(b)(1)  
CDR Code: 0185

**FILED**

6/17/2015 11:58:04 AM  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

## INDICTMENT

At a Court of General Sessions, convened on June 8, 2015, the Grand Jurors of Charleston County present upon their oath:

**Distribution of Heroin**

The defendant, Gerald Jarrod Ancrum, did on or about February 5, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Heroin, a schedule I controlled substance narcotic. All in violation of 44-53-0370(b)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

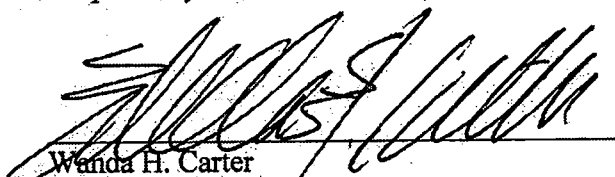


STEPHANIE B. LINDER  
ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of April, 2018.