

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Honorable Paul M. Burch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT LEN GAINEY,

APPELLANT

APPELLATE CASE NO. 2018-001396

RECORD ON APPEAL

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State of South Carolina) In the Court of General Sessions
County of Darlington) Fourth Judicial Circuit
2015-GS-16-1359

STATE OF SOUTH CAROLINA,)
Plaintiff,)
vs.) Transcript of Record
ROBERT LEN GAINEY,) (PORTION OF TRANSCRIPT)
Defendant.)
_____)

Darlington, South Carolina
January 29, 2018

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Samuel H. Thomas, Esquire
Mr. Kelly Jackson, Esquire
Attorneys for Plaintiff

Mr. James C. Cox, Jr., Esquire
Attorney for Defendant

LISA S. CARTER
CIRCUIT COURT REPORTER

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1 January 29, 2018

2 (Whereupon, the matter was scheduled for trail, the
3 Defendant appears along with his counsel of record. The
4 proceedings began at 11:45 a.m.)

5 THE COURT: All right. I understand we have a matter
6 with Mr. Robert Gainey, Mr. Cox?

7 MR. COX: Yes, sir.

8 THE COURT: Yes, sir?

9 MR. COX: If it please, the Court? This is Robert
10 Len Gainey. I've been representing Mr. Gainey for number of
11 years for a previous charge. He is present before the court
12 on trafficking cocaine charge. He was charged on May 30,
13 2015. Today, Mr. Gainey informs me that he did not know that
14 he was coming to court for trial. He advises me that he
15 thought we were just coming to pick a jury and that he's not
16 dressed to go to trial. He thinks that the evidence against
17 him, the case against him has been changed, that it's not the
18 facts that he was originally charged with. He thinks his
19 sister is working totally against him. He thinks that I'm
20 part of that system and I'm working against him. That I
21 failed to stand up for his rights. He tells me that he had
22 car trouble and had someone to bring him here and he has also
23 been talking with another lawyer, a highly competent lawyer
24 in Florence. We placed a call for that lawyer's office and
25 he is out but he says he has confidence in the other lawyer.

1 He is, in my opinion, he fully believes that the charges that
2 are against him are trumped up charges. That they are not
3 the charges that he was originally charged with. He was not
4 guilty of those original charges and he said he wants a
5 chance to speak to you and to tell you that he has no
6 confidence in me and that I have violated his rights.

7 THE COURT: All right, sir. Yes, sir, Mr. Gainey?

8 MR. GAINNEY: Sir, first off, these two drug charges,
9 I want -- all of this was simple possession ---

10 THE COURT: Speak up a little bit.

11 MR. GAINNEY: --- it was just simple possession. It
12 was charged with the murder charge that they want ---

13 MR. COX: Step up there so she can pick you up.
14 Right there.

15 MR. GAINNEY: Okay. It was charged with the murder
16 charge. That charge, the murder charge, if I went to trial
17 if we proved that all these are just added on or whatever
18 that -- it all relies -- it all relates together. Everything
19 relates together -- they were changed. They're saying I
20 stabbed this guy twice now, I was -- it was only once ---

21 THE COURT: Okay. We're not here about any kind of
22 ---

23 MR. GAINNEY: I know ---

24 THE COURT: --- it's a drug charge that you're here
25 to be tried on this week.

1 MR. GAINNEY: I don't understand that. But that's how
2 I was, I was charged with one of the drug charges, is by that
3 ---

4 THE COURT: Well, that's why we have the jury trial
5 system. I mean, if you dispute what's taking place that's
6 why we have a trial ---

7 MR. GAINNEY: I've -- I was saying ---

8 THE COURT: --- and you have the right to present
9 your defense ---

10 MR. GAINNEY: I've already discussed this trial three
11 times out of ten years, three times. I didn't even know I
12 was going to trial -- I'm greasy and -- I thought I was
13 trying to just get here to get this jury out -- I was rushing
14 ---

15 THE COURT: Solicitor? Solicitor? The trial,
16 itself, would not begin until tomorrow, is that correct?

17 MR. THOMAS: That's correct, judge.

18 THE COURT: We're just going to draw a jury today.

19 MR. GAINNEY: But what I ---

20 THE COURT: You can wear a Sunday suit tomorrow.

21 MR. GAINNEY: I mean, what I'm saying is I do -- it's
22 just that bad -- I've been waiting -- this is the first time
23 I see a judge so I can dismiss him on my case cuz I done
24 asked for other lawyers and wouldn't talk to me. They said
25 I have to wait and back out of trial and tell him why I

1 didn't feel -- I won't him on my case. It's been ten years,
2 I know, but this is the first time I'm talking to you, to a
3 judge, ---

4 THE COURT: Okay.

5 MR. GAINNEY: To tell you that I'm ---

6 THE COURT: Hang on just a minute. Mr. Cox, have you
7 tried to communicate with this gentleman?

8 MR. COX: Yes, sir, and I have. I will say this,
9 part of my contact was through his sister who used to work
10 for an attorney and that's where he was staying for a while.
11 And I communicated with her because she would return my phone
12 calls. My client has a cell phone but he never answers it.
13 And when it goes to voicemail it says his voicemail is full.
14 We have -- we have traveled to track him down and beat the
15 door where he's living from time to time. It is true that I
16 have not talked to him that many times but the problem has
17 been is it's been my client. My correspondence with him told
18 him that I'm sorry that you weren't in court on the date in
19 December because I wanted the solicitor to see you and see
20 your mental state. I wanted -- the solicitor was trying his
21 case to see him and to see his mental state to have an idea
22 of my client, his mentality, etc. He didn't show up. I
23 wrote him a letter and said, hey, I'm sorry you didn't make
24 that time but let's get together. Let's meet. Daily calls.
25 He -- I can't answer -- I can't give a reason why he would

1 say he didn't understand the charges against him. I have
2 nothing to show that the State has altered or changed the
3 charges. March 30, 2015, trafficking cocaine. We've
4 discussed that. We've plan for it. I mean, this is on a
5 yearly basis. To hear him talk now, make me question whether
6 he is competent. He has been through some very traumatic
7 events in his life. He's been beaten to the inch of his
8 life.

9 MR. GAINNEY: I died three times.

10 THE COURT: Sir, don't interrupt Mr. Cox.

11 MR. COX: He had an issue with a noted gang,
12 professional gang, that left him for dead and they buried
13 him. A passerby came by somehow and saw him trying to dig
14 himself out and got him out. So the only thing I would say
15 is if I can do anything, which he won't consent to, I would
16 want him to have a mental evaluation. He won't consent to
17 that.

18 THE COURT: Solicitor, have there been any type of
19 modifications to the original indictment?

20 MR. JACKSON: No, Your Honor, there has not. The
21 original indictment was, and so that the case is cleared up
22 and no confusion, he was indicted for murder and he was
23 arrested for murder. The murder happened one day and he came
24 up to the jail the next day or two and when they searched his
25 car at the jail they found some cocaine in the car and it was

1 a possession of cocaine charge in conjunction with the murder
2 ten years ago. And then in 2015, he had charges in Florence
3 County, the Twelfth Circuit, and they had general sessions
4 court and he didn't show up and they got a bench warrant,
5 listed as a failure to appear case and the bondsman got with
6 the sheriff's department here in Darlington County and
7 arrested him on that bench warrant in 2015 and he had the
8 cocaine on the night that they arrested him on the bench
9 warrant. And that's the case we're here in court about
10 today.

11 THE COURT: Okay.

12 MR. JACKSON: So there were two drug charges. One,
13 along with the murder which was possession. And this one,
14 which is trafficking. The warrant was for trafficking and
15 the indictment is for trafficking.

16 THE COURT: Okay. Thank you, Mr. Solicitor.

17 MR. JACKSON: Yes, sir.

18 THE COURT: Anything else you want to say, Mr.
19 Gainey?

20 MR. GAINNEY: Yes, sir. The trafficking I ain't saying
21 I didn't have cocaine, I had 2 grams ---

22 THE COURT: Okay. You don't need to be saying that
23 stuff right now about the facts of the case.

24 MR. GAINNEY: Well, I'm saying -- they showed video --
25 a video of me having 10 grams, ten and a half grams -- I sat

1 up there two and a half hours to Ben Weatherford who is the
2 lead investigator on all my other charges, got there, and he
3 then grabbed, grabbed the stuff and went to the back of the
4 truck ---

5 THE COURT: All right. I'm not going to get into the
6 facts.

7 MR. GAINNEY: I -- I ---

8 THE COURT: I'm not going to get into the facts.
9 That's not what we're here for now.

10 MR. GAINNEY: I -- I ---

11 THE COURT: Listen! Listen to me a minute! We're
12 here just for you to make a motion for Mr. Cox to be relieved
13 is what I take it you're trying to say ---

14 MR. GAINNEY: Yes, sir.

15 THE COURT: --- and a continuance of this case. Is
16 there anything else you want to say with regards to that,
17 nothing about the facts of the case?

18 MR. GAINNEY: It's just been changed. That's all.

19 THE COURT: Okay. Well, the solicitor has assured me
20 that there have been no changes in the indictment. Mr. Cox
21 has been representing you for ten years, now?

22 MR. GAINNEY: Yes, sir.

23 THE COURT: One of the finest lawyers in the State of
24 South Carolina.

25 MR. GAINNEY: Yes, sir.

1 THE COURT: I'm talking now so don't try to interrupt
2 me!

3 MR. GAINES: I'm sorry, sir.

4 THE COURT: One of the finest lawyers in the State of
5 South Carolina. You'll find no one any more competent than
6 Mr. Cox to represent you in this matter. I'm not going to
7 allow you to come in here at the eleventh hour and seek a
8 continuance of the case that's been pending for two years.
9 I deny your motion to have Mr. Cox relieved. He'll continue
10 to serve as your attorney and this matter will not be
11 continued. We're going to draw a jury shortly. That's my
12 ruling.

13 MR. COX: Thank you, Your Honor.

14 MR. JACKSON: Thank you, Your Honor.

15 THE COURT: Now, one other thing, if you don't want
16 Mr. Cox to represent you and you want to fire him, you can
17 represent yourself. You have the constitutional right to
18 represent yourself. I'll have him sit at the table with you
19 but you'll be on your own. But at this point in time, he's
20 your lawyer still. All right, sir.

21 MR. COX: Thank you, Your Honor.

22 THE COURT: Gentlemen, are we ready to bring the jury
23 in and select this jury? You need some more time to talk Mr.
24 Cox?

25 MR. COX: May I talk with the solicitor?

1 THE COURT: Sure. Yes, sir. If you need to go on
2 the back, help yourself.

3 (Whereupon, Mr. Cox takes a moment to talk with the solicitor
4 in this matter)

5 MR. COX: If it please, the Court?

6 THE COURT: Yes, sir.

7 MR. COX: I have conferred with my client, he will
8 not make a decision as to whether he represents himself or I
9 represent him because we're not listening to what he's
10 saying.

11 THE COURT: Okay. All right, sir. Well, I want the
12 record to clearly reflect that I listened to what he had to
13 said, to say, excuse me, and I made my ruling based on what
14 he had to say and the history of this case. So I'm confident
15 that we can move forward. Since you're with him, Mr. Cox,
16 and you're familiar with the jury selection process ---

17 MR. COX: Yes, sir.

18 THE COURT: --- whether he wants you to represent him
19 or not I'm going to require you to assist him with the
20 selection of the jury. Mr. Gainey?

21 MR. COX: Mr. Gainey, stand up.

22 THE COURT: It's critical for your sake that you
23 cooperate with Mr. Cox as we go through this jury selection
24 process. I just want to caution you about that, you
25 understand? Whether you want him to represent you or not,

1 he's familiar, very familiar with this process and it will
2 benefit you if you cooperate with him. All right. Enough
3 said. Counsel, are we ready to bring the jury back in?

4 MR. THOMAS: Yes, sir, Your Honor.

5 THE COURT: All right. You may bring the jurors in.

6 (Whereupon, this is where the selection of the jury
7 begins and the jurors enters the courtroom at 11:58 a.m.)

8 THE COURT: All right. Ladies and gentlemen, we are,
9 in a few minutes, going to select the first jury for the
10 first trial of this week. Before we do that I want to
11 caution you that if you have a cell phone on you, which you
12 should not have on you which you should've left in the car,
13 you make sure that, that cell phone is turned off. I'm sure
14 the clerk probably already covered this with you earlier this
15 morning. But I just want to re-emphasize that if you have a
16 cell phone with you and it goes off you're going to be
17 subject to the contempt powers of this court and possibly
18 fined. So word to the wise, as they say. All right.
19 Solicitor?

20 MR. THOMAS: Thank you, Your Honor. The State calls
21 Robert Len Gainey, 2015-GS-16-1359 who's charged with
22 trafficking in cocaine, 10 grams more, but less than, 28
23 grams, first offense. We are ready for trial.

24 THE COURT: All right. These jurors have they been
25 sworn?

1 THE CLERK: Yes, sir.

2 THE COURT: All right. Good. Thank you. I want to
3 remind you that, Mr. Suggs, the clerk, has sworn you earlier
4 this morning. I've got some questions that I need to ask you
5 before we actually select the jury. I caution you that these
6 responses that you give are under oath and that you must
7 respond truthfully.

8 **Jury Voir Dire**

9 Now, Ladies and gentlemen, we are about to begin the
10 trial of the case of the State of South Carolina versus
11 Robert Len Gainey as Solicitor Thomas just mentioned. Before
12 we can begin the process, as I said, there are several
13 questions that I need to ask you and now if you need to
14 respond to this question, as we did earlier this morning,
15 please stand up and then you'll be recognized and please
16 speak loudly and clearly.

17 Has anyone who is a member of the jury panel ever been
18 related by blood or marriage to Robert Len Gainey, if so
19 please stand? Mr. Gainey, would you please stand and face
20 the jury so they can see if they recognize you?

21 (Whereupon, the defendant, Robert Gainey, stands for the
22 jurors)

23 THE COURT: And Mr. Gainey is represented by Mr. Jim
24 Cox from Hartsville, South Carolina. Thank you. You may be
25 seated, Mr. Gainey. Would the two solicitors that are

1 representing the State please stand and face the jury, as
2 well? Would you identify yourself to the jury please?

3 MR. THOMAS: My name is Sam Thomas. I'm an assistant
4 solicitor here in Darlington County.

5 MR. JACKSON: Ladies and gentlemen, my name is Kelly
6 Jackson and I'm also an assistant solicitor for Darlington
7 County.

8 THE COURT: All right. Thank you, gentlemen. All
9 right. Has any member of the jury panel ever have a close,
10 personal or social relationship with the defendant, Robert
11 Len Gainey, if so please stand?

12 (Whereupon, a white female stands)

13 THE COURT: Yes, sir.

14 POTENTIAL JUROR #78: Janet Hancock.

15 THE COURT: Hold on just a minute, Ms. Hancock.

16 THE CLERK: Number 78, Your Honor.

17 THE COURT: Seventy-eight, okay. And what is the
18 nature of the relationship you may have had with the
19 defendant, Mr. Gainey?

20 POTENTIAL JUROR #78: My daughter takes care of his
21 child at my house.

22 THE COURT: Your daughter takes care of his child at
23 your house?

24 POTENTIAL JUROR #78: Yes, sir.

25 THE COURT: Okay. With the fact that you have this

1 relationship with Mr. Gainey, would that affect your ability
2 to be fair and impartial in the trial of this case? In other
3 words, can you give both the State and the defendant a fair
4 trial with that being situation or would you be bias in some
5 way towards Mr. Gainey because of the relationship?

6 POTENTIAL JUROR #78: I think I can be fair.

7 THE COURT: You think you can? I don't want you to
8 think. I have to know that you can or cannot be fair.

9 POTENTIAL JUROR #78: Okay. I can't. I just give
10 up. I can't.

11 THE COURT: I'm sorry. Say that again.

12 POTENTIAL JUROR #78: I can't.

13 THE COURT: You can't?

14 POTENTIAL JUROR #78: No, sir.

15 THE COURT: Okay. All right. Thank you for your
16 truthfulness. I'm going to excuse her for purposes of this
17 trial.

18 THE CLERK: Just have a seat and stay with us.

19 THE COURT: Stay where you are. You're not done yet.
20 All right. Yes, sir?

21 (Whereupon, a white male stands)

22 POTENTIAL JUROR #139: Jeff Nichols.

23 THE COURT: One thirty-nine, Mr. Nichols?

24 POTENTIAL JUROR #139: Yes, sir.

25 THE COURT: What's your relationship with Mr. Gainey?

1 POTENTIAL JUROR #139: I've been knowing Len for a
2 long time and we've been friends and I would not be fair.

3 THE COURT: What's the last thing you said?

4 POTENTIAL JUROR #139: I said I don't think I can be
5 fair with ---

6 THE COURT: You don't think you could be fair?

7 POTENTIAL JUROR #139: No, sir.

8 THE COURT: Would you be bias toward him or either
9 side? Would you be bias one way or the other?

10 POTENTIAL JUROR #139: Yes.

11 THE COURT: Sir?

12 POTENTIAL JUROR #139: Not towards him. You know,
13 just I don't think I could be fair me knowing him for so
14 long.

15 THE COURT: All right. So you couldn't listen to the
16 testimony and take in the evidence and make an impartial
17 decision, you say you would be bias one way or the other, is
18 that what you're telling me?

19 POTENTIAL JUROR #139: Yes.

20 THE COURT: You can't be fair to both sides?

21 POTENTIAL JUROR #139: I couldn't be.

22 THE COURT: You couldn't be fair to both sides? All
23 right. I'm going to excuse Mr. Nichols, as well. Just for
24 the purposes of this trial. All right. Is there anybody
25 else who has a close, personal, or social relationship with

1 the defendant, Robert Len Gainey, if so please stand?

2 (Whereupon, no one is standing)

3 THE COURT: All right. No one else is standing. All
4 right. Ladies and gentlemen, listen carefully. I'm going to
5 call out the names of the witnesses that the State may call
6 during the trial of this case. If any of these witnesses are
7 present and I don't believe they are, I was going to have
8 them stand to identify themselves, but listen carefully to
9 the names. I have been informed by the defendant that the
10 only witness that would testify on his behalf would be the
11 defendant, himself?

12 MR. COX: Yes, sir. But he orally told me that
13 Robert Cosby, Crystal Blackburn, Joey Lockemy, and Cheraw
14 Buck Strickland he intends to contact.

15 THE COURT: Can I see those names, Mr. Cox, and make
16 sure?

17 (Whereupon, a bench conference was held off the record)

18 THE COURT: All right. I also now have a list of
19 potential witnesses for the defendant as well. I'll identify
20 them in a moment. As far as the State's witnesses, they
21 intend to call Officer Mark Anthony Tony Hayes, Officer
22 Joseph Frierson, Officer Neal Flowers, Investigator Gary
23 Billiott, is that the way you say it?

24 MR. THOMAS: Billiott.

25 THE COURT: Billiott, excuse me, Gary Billiott, Amy

1 Stevens, who is a forensic technician with the State Law
2 Enforcement Division and Willie C. Smith, III, who is also
3 a forensic scientist with the State Law Enforcement Division.
4 Potential witnesses for the defendant, call the defendant
5 himself, Robert Len Gainey, Robert Cosby, Crystal Blackburn,
6 Joey Lockemy, and Cheraw, like the town, Cheraw Buck
7 Strickland. Now, with regards to those individuals names who
8 I have just called out, has any member of the jury panel ever
9 been related by blood or marriage to any of those
10 individuals, if so please stand?

11 (Whereupon, no one is standing)

12 THE COURT: All right. No one is standing. Has any
13 member of the jury panel ever had a close, personal, business
14 or social relationship with any of those witnesses names I've
15 just called out, if so please stand?

16 (Whereupon, no one is standing)

17 THE COURT: All right. No one is standing. All
18 right. A few moments ago I had the attorneys identify
19 themselves. I identified Mr. Cox who represents the
20 defendant for you. Mr. Jackson and Mr. Thomas identified
21 themselves, they are the attorneys who will be involved in
22 the trial of this case. Has any member of this jury panel
23 ever been represented by any of these attorneys, if so please
24 stand?

25 (Whereupon, no one is standing)

1 THE COURT: All right. No one is standing. Has any
2 member of the jury panel ever been represented by any law
3 firm that these attorneys may have practice law with, if so
4 please stand?

5 (Whereupon, no one is standing)

6 THE COURT: All right. No one is standing. Has any
7 member of the jury panel ever been related by blood or
8 marriage to any of the attorneys who are going to be trying
9 this case, if so please stand?

10 (Whereupon, no one is standing)

11 THE COURT: Has any member of the jury panel ever had
12 a close, personal, business or social relationship with any
13 of the attorneys involved in this case, if so please stand?

14 (Whereupon, no one is standing)

15 THE COURT: All right. No one is standing. Has any
16 member of the jury panel formed or expressed an opinion about
17 any issue or matter involved in this case, if so please
18 stand?

19 (Whereupon, no one is standing)

20 THE COURT: Is any member of the jury panel aware of
21 any bias or prejudice towards either the State or the
22 defendant in this case, other than the two individuals who
23 have already spoken, is there anyone else who is aware of any
24 bias or prejudice towards either the State or the defendant,
25 if so please stand?

1 (Whereupon, no one is standing)

2 THE COURT: All right. No one is standing. Is there
3 any member of the jury panel that was a member of the grand
4 jury which issued the indictments in this case, if so please
5 stand?

6 (Whereupon, no one is standing)

7 THE COURT: All right. No one is standing. Is there
8 any member of the jury panel who is a member of, contributor
9 to, any group which has as its primary concern the promotion
10 of law enforcement or victims rights. These groups would
11 include groups such as MADD, SADD, CAVE, which is citizens
12 against violent crimes, the South Carolina Sheriff's
13 Association, Troopers Association, any of these
14 organizations, is there any member of the jury panel who is
15 a member or a contributor to any of these groups, if so
16 please stand?

17 THE COURT: No one is standing.

18 THE CLERK: You've got one.

19 THE COURT: Okay. Sorry about that. I didn't see
20 you. Your name and number please, sir?

21 POTENTIAL JUROR #82: Joseph Harrison, number 82.

22 THE COURT: All right. Mr. Harrison, do you
23 contribute to one of these group organization?

24 POTENTIAL JUROR #82: Yes, sir. The South Carolina
25 Sheriff's and the local police department.

1 THE COURT: Okay. And, Mr. Harrison, the fact that
2 you contribute to those organizations, would that keep you
3 from being able to be fair and impartial in the trial of this
4 case? Could you give both the State and the defendant a fair
5 trial?

6 POTENTIAL JUROR #82: Yes, sir. I sure could.

7 THE COURT: Okay. All right, sir. Have a seat.
8 Anybody else?

9 (Whereupon, no one is standing)

10 THE COURT: All right. No one else is standing.
11 There are no issues concerning alcohol in this case, are
12 there or possibly?

13 MR. JACKSON: May we approach on that?

14 THE COURT: Yes, sir.

15 (Whereupon, a bench conference was held off the record)

16 THE COURT: All right. Ladies and gentlemen, has any
17 member of the jury panel been approached by anyone on behalf
18 of the State or the victim, excuse me, there's no victim in
19 this case, by the State or by the defendant in this case?
20 Has anybody approached you on the defendant's behalf or the
21 State of South Carolina's behalf and try to talk to you about
22 this case, if so please stand?

23 (Whereupon, no one is standing)

24 THE COURT: All right. No one is standing. Does any
25 member of the jury panel know of any reason, whatsoever, why

1 he or she should not serve as a juror in this case with
2 particular emphasis being placed on your ability to be fair
3 and impartial to both the State and the defendant, if so
4 please stand?

5 (Whereupon, no one is standing)

6 THE COURT: All right. Does the State have any
7 additional questions that they would like for me to ask of
8 the jury?

9 MR. THOMAS: No, Your Honor.

10 THE COURT: Anything additional from the State ---

11 MR. THOMAS: No, Your Honor ---

12 THE COURT: I mean, from the defendant?

13 MR. COX: No, Your Honor. Thank you.

14 THE COURT: All right. Thank you. All right. That
15 concludes my questions. All right. At this time the clerk
16 will instruct you as to the selection process. The State
17 gets five strikes and the defendant gets five strikes in this
18 case. Madam -- Mr. Clerk?

19 **Jury selection**

20 THE CLERK: If your name is called out, if you would,
21 bring everything that you brought with you today and come
22 forward. And if you would stand right in the center facing
23 back this way for me please. Juror number 65, Paul Fore.

24 (Whereupon, a white male comes forward)

25 THE CLERK: What saith the State?

1 MR. THOMAS: Please present Mr. Fore.

2 THE CLERK: What saith the Defense?

3 MR. COX: Please excuse the juror.

4 THE CLERK: You've been excused in this particular
5 case, Mr. Fore. If you would just simply have a seat back
6 out in the audience for me please, sir. Juror Number 69,
7 Diane Gardner.

8 (Whereupon, a white female comes forward)

9 THE CLERK: What saith the State?

10 MR. THOMAS: Please present Ms. Gardner.

11 THE CLERK: What saith the Defense?

12 MR. COX: Swear Ms. Gardner please.

13 THE CLERK: Ms. Gardner, if you would come forward
14 and have a seat in this box, this jury box for me please.
15 Juror Number 60, Marcus Dupree.

16 (Whereupon, a black male comes forward)

17 THE CLERK: What saith the State?

18 MR. THOMAS: Please present Mr. Dupree.

19 THE CLERK: What saith the Defense?

20 MR. COX: Please seat Mr. Dupree.

21 THE CLERK: Please have a seat in the jury box for
22 me, Mr. Dupree. Juror Number 23, Sachina Lyde.

23 (Whereupon, a black female comes forward)

24 THE CLERK: What saith the State?

25 MR. THOMAS: Please present Ms. Lyde.

1 THE CLERK: What saith the Defense?

2 MR. COX: Please seat Ms. Lyde.

3 THE CLERK: Please have a seat in the jury box for
4 me, Ms. Lyde. Juror Number 1, Jamission Abraham.

5 (Whereupon, a black male comes forward)

6 THE CLERK: What saith the State?

7 MR. THOMAS: Please present Mr. Abraham.

8 THE CLERK: What saith the Defense?

9 MR. COX: Seat Mr. Abraham.

10 THE CLERK: Please have a seat in the jury box for
11 me, Mr. Abraham. Juror Number 160, Bernard Robinson.

12 (Whereupon, a black male comes forward)

13 THE CLERK: What saith the State?

14 MR. THOMAS: Beg the court's indulgence. Please
15 excuse Mr. Robinson.

16 THE CLERK: You're excused in this particular case,
17 Mr. Robinson. You can have a seat back out in the audience
18 for me please. Juror number 50, Kevin Cuffe.

19 (Whereupon, a white male come forward)

20 THE CLERK: What saith the State?

21 MR. THOMAS: Please present Mr. Cuffe.

22 THE CLERK: What saith the Defense?

23 MR. COX: Please excuse Mr. Cuffe from the trial of
24 this case.

25 THE COURT: You're excused in this particular case,

1 Mr. Cuffe. Just have a seat back out in the audience for me
2 please, sir. Juror number 186, Edward Wallace.

3 (Whereupon, a black male comes forward)

4 THE CLERK: What saith the State?

5 MR. THOMAS: Please excuse Mr. Wallace.

6 THE CLERK: You've been excused in this particular
7 case, Mr. Wallace. Thank you. Juror Number 80, Terry
8 Hannan.

9 (Whereupon, a black male comes forward)

10 THE CLERK: What saith the State?

11 MR. THOMAS: Please present this juror.

12 THE CLERK: What saith the Defense?

13 MR. COX: Please excuse Mr. Hannan for the trial of
14 this case.

15 THE CLERK: You've been excused in this particular
16 case, Mr. Hannah. If you'll just have a seat back out in the
17 audience for me please. Juror number 183, Billie Tillman.

18 (Whereupon, a white female comes forward)

19 THE CLERK: What saith the State?

20 MR. THOMAS: Please present the juror.

21 THE CLERK: What saith the Defense?

22 MR. COX: Please seat Ms. Tillman.

23 THE CLERK: Just have a seat in the jury box, if you
24 would, ma'am. Juror Number 173, Toni Springs.

25 (Whereupon, a white female comes forward)

1 THE CLERK: What saith the State?

2 MR. THOMAS: Beg the court's indulgence. Please
3 excuse this juror.

4 THE CLERK: You've been excused in this particular
5 case, Ms. Springs. Just have a seat back out in the audience
6 for me, if you would. Juror Number 49, Rebecca Cross.

7 (Whereupon, a white female comes forward)

8 THE CLERK: What saith the State?

9 MR. THOMAS: Please present Ms. Cross.

10 THE CLERK: What saith the Defense?

11 MR. COX: Please seat Ms. Cross.

12 THE CLERK: Please have a seat in the jury box for
13 me, Ms. Cross. Juror Number 116, Heather Lane,

14 (Whereupon, a white female comes forward)

15 THE CLERK: What saith the State?

16 MR. THOMAS: Please present Ms. Lane.

17 THE CLERK: What saith the Defense?

18 MR. COX: Please excuse Ms. Lane.

19 THE CLERK: You're excused in this particular case,
20 Ms. Lane.

21 THE COURT: Mr. Cox, you have one strike left.

22 THE CLERK: Juror number 67, Grady Gainey.

23 (Whereupon, a white male come forward)

24 THE CLERK: What saith the State?

25 MR. THOMAS: Please excuse Mr. Gainey.

1 THE CLERK: You're excused in this particular case,
2 Mr. Gainey. Just have a seat back out in the audience for
3 me.

4 THE COURT: The State has one strike left.

5 THE CLERK: Juror number 158, Adam Robertson.

6 (Whereupon, a white male come forward)

7 THE CLERK: What saith the State?

8 MR. THOMAS: Please present Mr. Robertson.

9 THE CLERK: What saith the Defense?

10 MR. COX: Seat Mr. Robertson.

11 THE CLERK: Please have a seat in the jury box, Mr.
12 Robertson. Juror number 174, Debra Stephens.

13 (Whereupon, a white female comes forward)

14 MR. COX: What juror number please?

15 THE CLERK: Juror number 174, Debra Stephens. What
16 saith the State?

17 MR. THOMAS: Please present Ms. Stephens.

18 THE CLERK: What saith the Defense?

19 MR. COX: Please seat the juror.

20 THE CLERK: Please have a seat in the jury box for
21 me, Ms. Stephens. Juror number 54, Tamara Davis.

22 (Whereupon, a black female comes forward)

23 THE CLERK: What saith the State?

24 MR. THOMAS: Please present Ms. Davis.

25 THE CLERK: What saith the Defense?

1 MR. COX: Please seat the juror.

2 THE CLERK: Please have seat in the jury box for me,
3 Ms. Davis. Juror number 71, Kimberly Geiger.

4 (Whereupon, a white female comes forward)

5 THE CLERK: What saith the State?

6 MR. THOMAS: Please present Ms. Geiger.

7 THE CLERK: What saith the Defense?

8 MR. COX: Seat the juror.

9 THE CLERK: Please have a seat in the jury box for
10 me, Ms. Geiger. Juror number 2, Chantel Allsbrook.

11 (Whereupon, a black female comes forward)

12 THE CLERK: What saith the State?

13 MR. THOMAS: Please present Ms. Allsbrook.

14 THE CLERK: What saith the Defense?

15 MR. COX: Seat the juror.

16 THE CLERK: Please have a seat in the jury box for
17 me, Ms. Allbrooks. Juror number 40, Frederick Caulder.

18 (Whereupon, a white male come forward)

19 THE CLERK: What saith the State?

20 MR. THOMAS: Please present Mr. Caulder.

21 THE CLERK: What saith the Defense?

22 MR. COX: Please excuse the juror.

23 THE CLERK: Excuse?

24 MR. COX: Excuse.

25 THE CLERK: You've been excused from this particular

1 case, Mr. Caulder. Thank you.

2 THE COURT: All right. The defendant has no further
3 strikes.

4 THE CLERK: Juror number 190, William Weatherford.
5 (Whereupon, a white male come forward)

6 THE CLERK: What saith the State?

7 MR. THOMAS: Please present Mr. Weatherford

8 THE CLERK: Any rule to show cause from the defense?

9 MR. COX: None.

10 THE CLERK: All right. Mr. Weatherford, have a seat
11 in the jury box for me please, sir. Do you want to get one
12 alternate, judge?

13 THE COURT: Yeah. That's fine.

14 THE CLERK: One alternate, strikes one and two.
15 Juror number 172, Taylor Smith.

16 (Whereupon, a white female comes forward)

17 THE CLERK: What saith the State?

18 MR. THOMAS: Please present Ms. Smith.

19 THE CLERK: What saith the Defense?

20 MR. COX: Seat Ms. Smith.

21 THE CLERK: Please have a seat in the first chair
22 outside of the jury box for me, Ms. Smith.

23 THE COURT: All right. Thank you, Mr. Suggs.

24 THE CLERK: Yes, sir.

25 THE COURT: Counsel, would you appreciate the bench

1 please?

2 (Whereupon, a bench conference was held off the record)

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, we have a number of matters that we have to take up
5 this afternoon. Therefore, we are not going to begin the
6 trial of this case until tomorrow morning. We will try to
7 shoot to start the trial at 9:30. I'm going to ask that you
8 be here at 9:15. Report to the jury room. The bailiffs will
9 show you where you need to report tomorrow morning. I'm not
10 going to have you sworn until tomorrow morning. But I do
11 caution you that I don't want you talking about this case to
12 anybody, any fellow jurors or when you go home, say I've been
13 selected for this jury or whatever, you're not to discuss
14 this matter until the very end of the trial when you begin
15 your deliberations in the jury room and that's the only place
16 you're to discuss the trial of this case. Hopefully, and
17 based on my questions none of you know anything about this
18 case anyway. So there's not a whole lot that you can discuss
19 but I do caution you about talking about the matter. But if
20 you will please be here at 9:15 tomorrow morning, we will try
21 to begin this trial as close to 9:30 as we possibly can. All
22 right. Good afternoon.

23 (Whereupon, the jury exits the courtroom at 12:32 p.m.)

24 THE COURT: Mr. Cox, do you have a motion you would
25 like to make?

1 MR. COX: Yes. My client is present in the
2 courtroom. He's heard the court give instructions. The jury
3 is drawn and we will start the trial in the morning at 9:30.
4 He assures me that he will be here without any problem and I
5 asked that he be allowed to stay out on the same bond.

6 THE COURT: Okay. Any position, does the State take
7 any position one way or the other?

8 MR. THOMAS: We do not, Judge.

9 THE CLERK: Has somebody checked with the bondsman to
10 make sure the bondsman is staying on the bond? That's a big
11 part of it.

12 THE COURT: Who is the bondsman, do we know? I guess
13 somebody knows.

14 THE CLERK: We've got the paperwork. We can look it
15 up.

16 THE COURT: He was -- I don't know who the bondsman
17 is because if you recall he was on the Florence, he was
18 arrested in Florence and the bondsman came off of that bond.
19 So I don't know who is on this bond.

20 THE CLERK: We'll tell you in just a minute.
21 Stephanie Galloway with In-N-Out Bonding.

22 MR. COX: I don't know who that is.

23 THE COURT: Can we check with her and see?

24 THE CLERK: Do you want the number?

25 MR. COX: Yes, sir, please.

1 THE COURT: Let's check with the bondsman and then
2 I'll rule after that.

3 THE CLERK: Her number is [REDACTED], Stephanie
4 Galloway.

5 (Whereupon, the court took a short recess)

6 MR. COX: May it please, the Court?

7 THE CLERK: Sir, if you'll raise your right hand,
8 let's put him under oath, raise your right hand. Do you
9 solemnly swear to tell the truth, the whole truth, and
10 nothing but the truth so help you God?

11 MR. GAINNEY: Yes, sir, I do.

12 MR. COX: We called Ms. Galloway, the bondsman, and
13 she says that she would stay on the bond if he gives the
14 clerk a phone number and address where he can be reached.

15 THE COURT: Okay. All right. If you'll provide that
16 information -- I caution you, Mr. Suggs has placed you under
17 oath, so give us phone numbers and address.

18 MR. GAINNEY: My phone number is -- can I have -- [REDACTED]
19 -- [REDACTED]. I'm gonna stay at [REDACTED] Rio Drive, Darlington
20 29 -- with my father.

21 THE COURT: That's where you're going to spend the
22 night tonight?

23 MR. GAINNEY: Yes, sir. Yes, sir.

24 THE COURT: All right. Mr. Gainney, the court is
25 going to allow you to remain out on bond since the bondsman

1 has agreed to stay on your bond. But I caution you that this
2 matter is starting at 9:30 tomorrow morning, we're going to
3 begin the trial of this case.

4 MR. GAINNEY: I'll be here.

5 THE COURT: If you failed to appear, you will be
6 tried in your absence. Do you understand that?

7 MR. GAINNEY: Yes.

8 THE COURT: And if you are tried in your absence and
9 if the jury returned a guilty verdict against you, I will
10 sentence you accordingly and at some point in time when you
11 are picked up you be brought back before this court and this
12 sentence will be in an envelope, it will be opened up and
13 read to you and there won't be anything you can do about it
14 or anybody else because the sentence will have been passed.
15 Do you understand that?

16 MR. GAINNEY: I understand.

17 THE COURT: So make sure you are here tomorrow
18 morning because we are going forward with or without you.
19 You understand?

20 MR. GAINNEY: I'm going to be here. Yes, sir.

21 THE COURT: All right. Gentlemen, I think we'll be
22 at ease. I think the grand jury may have a report for me.

23 (Whereupon, court adjured for the day on this case)
24
25

1 September 30, 2018

2 (Whereupon, this matter was scheduled for trial, the
3 defendant has not appeared but counsel has. The proceedings
4 began at 9:35 a.m.)

5 THE COURT: All right. Counsel, are we ready?

6 MR. THOMAS: Your Honor, we have one pretrial matter.
7 The witnesses that Mr. Gainey spoke of yesterday ---

8 THE COURT: Yes, sir.

9 MR. THOMAS: --- if any of them are here today, we
10 would just ask that, for their information, date of birth.

11 THE COURT: Mr. Cox, are any of those witnesses
12 present?

13 MR. COX: Those individuals are not known to me.

14 THE COURT: Okay.

15 MR. COX: He gave me those names and I have no
16 idea. In fact, of my own personal knowledge, one of those
17 gentlemen is incarcerated.

18 THE COURT: Anything else, Mr. Thomas?

19 MR. THOMAS: No, sir, Your Honor. That's all.

20 THE CLERK: We need to have the bailiff sound the
21 defendant's name outside the courtroom three times.

22 THE COURT: Mr. Cox, you still haven't heard anything
23 from your client?

24 MR. COX: I have not, Your Honor.

25 THE CLERK: Robert Len Gainey, if you'll call it

1 three times.

2 (Whereupon, the defendant's name was called three times
3 outside the courtroom)

4 THE BAILIFF: Your Honor, I've called his name three
5 times outside and he didn't answer.

6 THE COURT: No response, okay. Thank you, sir.

7 THE BAILIFF: Yes, sir.

8 THE COURT: There was no response so ---

9 THE CLERK: Do you want to issue a bench warrant?

10 THE COURT: We will, yeah, I'm gonna issue a bench
11 warrant for the defendant in this case, Mr. Gainey. All
12 right, let's go ahead and deal with Mr. Byrd before we do
13 that.

14 (Whereupon, a case was heard before the start of the trial)

15 THE COURT: Anything from you, Mr. Cox, before we
16 bring the jury out?

17 MR. COX: I would like to put on the record that
18 Robert Len Gainey whom I've been representing for an old
19 charge, almost ten years, was in court with me yesterday and
20 he came saying that he thought we were just going to draw a
21 jury that we were not going to have a trial. But he had, he
22 had previously received a letter telling him what time court
23 was, a copy of potential juries. I know that it was mailed
24 to the home that he stays with his sister. His sister
25 advised me that, yes, she got it and she sent it to his

1 second sister where he was now residing and that he had it in
2 his possession. I kept calling him and trying to get him.
3 I called several numbers 843-616-6563 and that's the phone he
4 had with him in court yesterday. But he -- his voicemail was
5 full. He will not clear it because he does not want to have
6 people leave a message for him. He never returned any of my
7 calls. He never met with me. Then yesterday after court I
8 carried him home to make sure he got home to his stepfather's
9 house and his stepfather was going to bring him to my office
10 at 4 o'clock yesterday afternoon so we could start preparing
11 for trial. He did not show up. At 5 o'clock we started
12 calling him. No response. I last called him after I got
13 home last night because my wife made me come home at six for
14 supper. I called him at 6:45, got the same recording and he
15 never called me back. So, I think we've done everything we
16 can to stay in touch with him and he's not here so I will sit
17 as his lawyer in his absence.

18 THE COURT: All right. Thank you, Mr. Cox. Anything
19 else from the State?

20 MR. THOMAS: Nothing from the State, judge.

21 THE CLERK: And we made contact with the bonds,
22 bondsman.

23 THE COURT: Did you -- okay, good. Thank you, Mr.
24 Suggs. All right. Bring me the jury.

25 (Whereupon, the jury enters the courtroom and the trial

1 begins at 9:44 a.m.)

2 MR. COX: Your Honor, on a, for precaution on his
3 behalf, Mr. Gainey, I would renew his motion for continuance.
4 I know, Your Honor, has ruled on that but he's not here. I
5 have no other way to make contact with him. I would, for his
6 protection, renew the motion for a continuance.

7 THE COURT: Okay. Does the State wish to respond?

8 MR. JACKSON: No, sir.

9 THE COURT: Okay. All right. I respectfully deny
10 your motion, Mr. Cox. As I said, I informed him yesterday
11 that we'd go forward.

12 MR. COX: Thank you, Your Honor.

13 THE COURT: We will proceed. If you folks would
14 remain standing as you come in please, jurors.

15 THE CLERK: I will ask all of you do please raise
16 your right hand to take the oath of a general sessions jury.
17 You shall well and truly try, and true deliverance make,
18 between the State of South Carolina, and the defendant, whom
19 you shall have in charge, and a true verdict render,
20 according to the law and evidence. So help you God. Do you
21 accept this oath please indicate by saying I do.

22 (Whereupon, all the jurors stated "I do")

23 THE CLERK: Everyone who took the oath can have a
24 seat.

25 (Whereupon, all the jurors took a seat)

1 THE COURT: All right. Ms. Kimberly Geiger, I'm
2 going to appoint you the foreperson of this jury. So you'll
3 need to swap seats with this lady on the end. You'll occupy
4 this seat at all times. And our alternate, Ms. Smith, you'll
5 occupy that seat at all times. All right.

6 **Judge's Instructions**

7 Ladies and gentlemen, we are about to begin the 'trial of
8 the case of the State of South Carolina versus Robert Len
9 Gainey. Before we begin the trial, I have certain
10 instructions that I need to set forth for you. And at this
11 time I would advise you that Mr. Cox represents Mr. Gainey.
12 And as you can see there is no one sitting there beside Mr.
13 Cox. Mr. Gainey has failed to appear this morning but the
14 trial will proceed just the same as he were here in this
15 courtroom. The burden is on the State of South Carolina to
16 convince you of the guilt of Mr. Gainey and they must do that
17 beyond a reasonable doubt and we'll go into that more. But
18 do not let it effect to the fact that he's not here. We will
19 go forward, as I said, with the trial in his absence.

20 Now, with that being said, what I will now say to you
21 will serve as an introduction to the trial of this case.
22 Through this procedure the remarks I make are not a charge on
23 the law in this case. I will instruct you on the law in this
24 case at the conclusion of the trial after we have completed
25 all of the testimony and the lawyers have made their closing

1 arguments to you. This is merely an explanation of the
2 procedure that we will follow in this trial so that you may
3 better understand what is going to happen.

4 Now, the defendant is charged by an indictment. This is
5 the indictment. It's filed in this court and he's charged
6 with the crime of trafficking in cocaine 10 grams or more,
7 but less than 28 grams and it's a first offense. The
8 elements of this crime will be explained to you later on.
9 The indictment that I just showed you is simply the charge by
10 which the case is brought into court and it is not, in any
11 sense, evidence of any of the allegations it contains. The
12 defendant has pled not guilty to this indictment. The State,
13 therefore, has the burden of proving each of the elements of
14 the indictments beyond a reasonable doubt. And it will be
15 your duty, ladies and gentlemen, to decide whether the State
16 has met that burden. Your purpose as jurors is to find and
17 determined the facts. You are the sole judges of the facts.
18 If at any time I make any comment regarding the facts, you
19 must disregard it. You are to determine the facts from the
20 testimony you hear and the other evidence introduced in
21 court. It is up to you to determine the emphasis which you
22 feel may properly be drawn from the evidence. It is
23 especially important that you perform your duty of
24 determining the facts diligently and conscientiously because
25 ordinary there is no way to correct an erroneous

1 determination of the facts by a jury.

2 On the other hand, and with equal emphasis, the same law
3 that makes you the judges of the facts makes me the judge of
4 the law. The law is given by the court is the only law that
5 you may consider. You must accept and follow it even though
6 you may disagree with that. I cannot tell you what the facts
7 are and you cannot disagree with me about what the law is or
8 what the law should be. Your job is to take the law as I
9 give it to you and apply it to the facts as you find them
10 from the testimony of the witnesses and any other evidence
11 that is introduced. After doing that you will render your
12 verdict. Until I advise you to begin your deliberations, you
13 must not discuss this case with anyone as I explained to you
14 yesterday. Including fellow jurors, friends, family members,
15 boyfriend, girlfriend anyone at all, you just don't discuss
16 the case until the very end of the case when I instruct you
17 to do so. Now, this also includes not just face-to-face
18 conversation with somebody but you're not to engage in any
19 type of cell phone conversation, any type of Internet
20 communication whether it be email, text, Facebook or
21 whatever, no means of communication between anyone concerning
22 this case. You also may not use a computer, cell phone, or
23 other electronic device with communication capabilities at
24 any time while in the courtroom or during your deliberations.
25 Now, during your breaks or meals or overnight, if necessary,

1 you may use these devices. However, you may not, anytime,
2 use these devices to get or send information about this case.
3 This includes information about a party, the defendant or
4 anyone, any witness that may testify, any of the attorneys
5 that are involved, or a court officer or any news accounts
6 about the case. You can't do research on your own.
7 Sometimes people want to get on there and Google and do
8 things or whatnot, you can't do that. You're to just base
9 your decision on what you hear in this courtroom through the
10 testimony and other evidence which is going to be introduced.

11 During the trial, and I don't know that we'll have this
12 situation with regards to this case, but I must caution you
13 that during the trial you do not read, listen to, or watch
14 any news reports about this case. This includes anything
15 that may be in the newspaper or on the television or on the
16 Internet. You must not consider anything you may have read
17 or heard about the case outside the courtroom whether before
18 or during the trial. After the case is submitted to you, you
19 must discuss it only in the jury room with your fellow
20 jurors. The attorneys and parties in this case had been
21 advised that they are not to talk to you at all. So if you
22 see anyone involved in this case out in the hallway or
23 somewhere and they don't even say hello to you it's because
24 I've told him not to. I don't want any appearance of any
25 type of impropriety. So they are not being, you know, aloof.

1 They're just following my instructions as far as not talking
2 to you.

3 Now, it's important that you keep an open mind and not
4 decide any issue in the case until all of the evidence has
5 been presented. The parties have made their closing
6 arguments and I have instructed you on the law in the case.
7 It is your solemn responsibility to determine the guilt or
8 innocence of the defendant. And your verdict must be based
9 solely on the evidence as it is presented to you in this
10 trial and also on the law that I will instruct you about
11 during and at the close of the trial. In just a moment, the
12 solicitor will make what is called a opening statement in
13 which he will explain to you the issues in this case or, at
14 least, what he thinks the issues are in this case. The
15 attorney for the defendant, Mr. Cox, may also make an opening
16 statement, although, he is not required to do so. What the
17 attorneys tell you during their opening statements is not
18 evidence in this case. It is only their contention as to
19 what the issues are. The evidence in this case will be
20 presented to you by the testimony of sworn witnesses from
21 this witness stand and any other exhibits that may be
22 introduced into evidence. From time to time, you may hear
23 one of the lawyers say something like, "Your Honor, I believe
24 we have a question of law or a matter of law that we need to
25 take up", when that occurs we will ask you to be excused to

1 your jury room. Reason being is that I'm the sole judge of
2 the law. I may have to make a determination as to whether
3 evidence that they wish to introduce is admissible into
4 evidence and if it's something that you should be allowed to
5 consider. Now, I am not suppose, as I told you, tell you
6 what the facts are so that's the reason you will be excused
7 from the courtroom during those discussions. In determining
8 what the true facts are in a case, ladies and gentlemen, you
9 must decide whether or not the testimony of the witnesses is
10 believable. It will be my responsibility to rule as a matter
11 of law as to whether certain testimony is admissible at all.
12 But once the testimony is admitted whether or not you believe
13 it is solely for you to determine. From deciding whether to
14 believe the witness you have the right to consider the
15 interest of any witness, the bias of any witness, the
16 prejudice of any witness, the opportunity for the witness to
17 have seen the matters and things about which the witness may
18 testify and the way the witness acts on the witness stand.
19 You have a right to consider anything that is in the record
20 that will help you evaluate the testimony of the witnesses.
21 That means it is your duty to pay close attention to these
22 witnesses. To observe the witnesses. To listen to the
23 witnesses. And to pay close attention to the attorneys and
24 to the court. Don't let your thoughts wander. But give
25 strict attention to that testimony in this case. After the

1 arguments of counsel and the charge on the law by the court,
2 you will, then, be in a position to determine what the true
3 facts are and to apply the law to those facts.

4 Madam, foreperson, it is your added duty to preside in
5 the jury room. And it will be your job to be the jury's
6 spokesperson here in court. It will also be your duty to
7 write the verdict. But I'll give you further instructions
8 about that at the conclusion of the trial.

9 All right. In order to preserve everyone's rights I
10 will give the attorneys an opportunity to object to anything
11 that I've said. Anything from the State, any objections?

12 MR. THOMAS: No objections from, the State.

13 THE COURT: From the defense?

14 MR. COX: No, Your Honor. Thank you.

15 THE COURT: Okay. All right. We will now begin the
16 trial of this case. You may make your opening statement.

17 **Opening Statement- Thomas**

18 MR. THOMAS: Thank you, Your Honor. I wasn't planning
19 on using the podium but it's I think I want to now. I've
20 changed my mind.

21 THE COURT: Okay.

22 MR. THOMAS: I'm going to keep it short and sweet.
23 I'm Sam Thomas. I introduce myself yesterday. I'm trying
24 this case with, Solicitor Kelly Jackson. Hopefully, he'll
25 keep me from screwing up to bad. Like I said, I'm going to

1 keep it short and sweet. You're here today because Robert
2 Len Gainey has been charged with trafficking in cocaine 10
3 grams, more than 10 grams, but less than 28 grams.
4 Throughout -- it's going to be a short trial. I promise you
5 that. You'll -- first up, you'll hear from Officer Tony
6 Hayes, right here with the yellow tie, he -- a little factual
7 information from the State's point of view here, he and
8 Joseph Frierson, Officer Frierson, sitting to his right, were
9 patrolling Darlington, the City of Darlington, May 30th, early
10 morning on May 30, 2015 and they're approached by bondsman
11 who says, "Hey, we have a warrant for Robert Len Gainey's
12 arrest, we now where he is." So they go to Katie's Lounge
13 right down the street here, right down Main Street at the
14 fork. He's sitting there in a parking lot and Officer Hayes
15 approaches him. And Mr. Gainey complies -- he says, "Hey, I
16 have a warrant for your arrest." He complies. He arrested
17 him. He searches him as all officers do after they arrest
18 someone. And in his front left pocket is a bag of cocaine,
19 powder cocaine. So he protects it, as he does, in ordinary
20 business. Puts it in his trunk. They take the defendant to
21 jail to book him. And then he takes the drugs to the
22 sheriff's office and puts it in a Best Kit. A Best Kit is
23 what they do with all drugs that have to be sent to sled.
24 They heat seal it. He marks the time, the date. He heat
25 seals it. He puts it in an evidence box that can't be

1 retrieved by anyone except for one of these two gentlemen.
2 Mr. Neal flowers, you'll hear from him next. He is the
3 officer that retrieves the evidence from that box and puts it
4 in a sled box to be taken to Columbia for testing.
5 Investigator Billiot here, will be our fourth witness. He
6 takes -- he actually, physically, takes the Best Kit to sled
7 in Columbia for testing. And he hands it to them and he
8 signs the date and time when he hands it to them. They run
9 their test. He picks it back up at a later date. Brings it
10 back. Puts it into evidence just as he got it and you'll
11 hear all that in testimony. And lastly we will -- we have
12 two witnesses from sled that will come and they will testify
13 to receiving the drugs from Officer Billiot and then the
14 actual chemist who did the test and then he will give you the
15 results. And that's it. It was just a warrant -- a warrant
16 was out for his arrest. He was arrested and had it in his
17 pocket and the amounts was over 10 grams. So he's charged
18 with trafficking and that's why I'm going to ask you to come
19 back with a verdict of guilty at the end of this trial which
20 will be in a few hours. Hopefully.

21 THE COURT: Mr. Cox?

22 Opening Statement- Cox

23 MR. COX: Thank you, Your Honor. Madam, forelady,
24 ladies and gentlemen of the jury, I'm Jim Cox from
25 Hartsville. Some of you may have seen me in court yesterday

1 with my client. He was alive and well and walking and
2 talking yesterday. Where he is now? I don't know. And I'm
3 not going to speculate. But my prayer is he's not lying in
4 a hospital somewhere hurt or he's in a position where he
5 can't, he can't respond. I don't know that. But the court,
6 His Honor, told you that you have a duty to listen to the
7 evidence. And when it comes time to vote, you'll have to
8 vote for guilty or not guilty. I think the court will tell
9 you, at some point in time, in it's instructions that you
10 can't hold against my client the fact that he's not here.
11 Human nature says, well, if he's not here he's scared of
12 something. Human nature. Human nature, well, if he is not
13 here he must be guilty. But that's not our system. We are
14 very fortunate that we have a greatest criminal system in the
15 world. No matter how much you despise the accuse, how much
16 you don't like him for any reason whatsoever, you have to
17 listen to the evidence and find him guilty based upon the
18 evidence presented. You ask, but what do I do? I ask you to
19 listen to the evidence. Listen to what's said. Use your
20 common sense. Your common sense will always guide you. No
21 matter what these fine law enforcement officer says, listen
22 to your common sense and ask "what -- what would Mr. Gainey
23 say, if he was here, he had a chance to reply." If you'll do
24 that then you're verdict will be a fair verdict based upon
25 the evidence. Thank you.

1 THE COURT: Thank you, Mr. Cox? Mr. Thomas?

2 MR. THOMAS: The State calls Tony Hayes to the stand.

3 THE CLERK: If you'll come forward and take the oath
4 of a witness please, sir. Place your left on the Bible and
5 raise your right. You solemnly swear the testimony you give
6 this Court will be the truth, the whole truth, and nothing
7 but the truth so help you God?

8 MR. HAYES: I do.

9 THE CLERK: Thank you, sir. Have a seat.

10 TONY HAYES, first being
11 duly sworn, testified as follows:

12 **Direct Examination by Mr. Thomas:**

13 Q. Good morning, Mr. Hayes?

14 A. Good morning.

15 Q. Can you please state your name for the record?

16 A. My full name is actually Mark Anthony Hayes, Jr. I go
17 by Tony.

18 Q. Where are you employed?

19 A. Currently with the Darlington City Police Department.

20 Q. How long have you been there?

21 A. I have been there, now, for a month.

22 Q. Where were you before that?

23 A. I was with the Darlington County Sheriff's Office.

24 Q. And how long had you been with them?

25 A. Six years.

T. Hayes- Direct Examination by Mr. Thomas

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1 Q. So on May 30, 2015, you were employed with the
2 Darlington County Sheriff's Office?

3 A. Yes, sir.

4 Q. What were your duties for the sheriff's office?

5 A. Routine patrol. We will go around and check property.
6 Try and do everything we can to deter any kind of crime.
7 Protect the citizens.

8 Q. Okay.

9 A. Protect the life of the citizens and make sure everybody
10 goes home safe.

11 Q. Okay. Were you working May 30 ---

12 A. I was, sir.

13 Q. --- 2015? What shift were you working?

14 A. Night shift.

15 Q. Night shift goes from....

16 A. At that point it was, I'm not sure if I was the 5
17 o'clock man, but on a regular schedule it is six to six, 6
18 p.m. to 6 a.m.

19 Q. Six p.m. to 6 a.m. So do you remember anything
20 happening that early morning between two and 3 o'clock?

21 A. Yes, sir.

22 Q. What was that?

23 A. I was approached by a bondsman. I was at a local gas
24 station checking in on the clerk's and I was approached by a
25 bondsman. I was advised that the defendant, Mr. Gainey, had

1 an active warrant for his arrest. I was able to contact and
2 confirm that the warrant was there. I then notified my
3 supervisor of what I had. I was advised of the location to
4 where he could be at the time. At that point, myself and
5 other officers went to the location where he was at. And I
6 was able to locate him inside of a vehicle. I approached him
7 and advised Mr. Gainey that he had an active warrant for his
8 arrest. At that point, he was taken into custody and placed
9 into handcuffs. He was very compliant. No kind of issues
10 when putting him into cuffs. And upon searches to an arrest,
11 it's actually what we normally do just to make sure he's
12 safe, we're safe. I located a bulge in his left front
13 pocket. Upon retrieving that bulge, it was a clear plastic
14 bag of a white powdery substance. At that point, I did
15 believe that it was crack cocaine. Mr. Gainey was
16 mirandized. Placed in the backseat of my vehicle. The item
17 was field-tested with a Nit wipe which is what is normally
18 used to test for cocaine base and it's a little pink piece of
19 paper. I add some type of solution to it and whenever it
20 turns blue it shows that it's cocaine base. That is our
21 indicator. At that point in time, being the fact that it was
22 cocaine base, I put it into an evidence bag, secured into my
23 trunk. I transported Mr. Gainey to the local detention
24 center. At that point, he was strip-searched where no other
25 items were located on him that would be narcotics. And then

T. Hayes- Direct Examination by Mr. Thomas

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1 I went straight to the office to put that evidence into a
2 Best Kit. Before putting it into the Best Kit, I weighed it
3 on a scale that registers zeros and upon placing the bag and
4 the contents onto the scale, it registered 10.8 grams.

5 Q. I actually want to go back for a second. You said you
6 confirmed a warrant for Mr. Gainey's arrest. Can you explain
7 to us how you would know about that?

8 A. What I did was I contacted our local dispatch who was
9 able to, I give them his name and date of birth, and what
10 they do is they go into a system I call NCIC. I cannot tell
11 you what NCIC stands for. I have no clue. But it is a
12 national criminal base that places missing persons, um,
13 wanted subjects ---

14 Q. It tells you ---

15 A. Right.

16 Q. --- whether the warrant is active?

17 A. Right.

18 Q. Where were you -- where did you go to find him?

19 A. At Katie's Lounge. I do believe -- the name had changed
20 to Chin Tiki's but it was on North Main Street which is our
21 jurisdiction of Darlington County.

22 Q. You said you saw the car that you were told he was in
23 and you did what?

24 A. Well, I was advised that he had been seen in a
25 particular kind of car which is a, I do believe it was a,

1 grey Hyundai, a small grey sedan. I located the vehicle.
2 The front door, the drivers front door was open. I
3 approached the door and sure enough he was the one sitting in
4 the seat. That's when I advised him that he had a warrant
5 for his arrest.

6 Q. And you did that and he said, "hey I'm Len Gainey ---

7 A. Well, from -- I have previous knowledge of him. I was
8 able to pull his picture up in DMV to make sure I did have
9 the right person, the name and date of birth. And they gave
10 me a photo ID of what his face was. And upon getting to the
11 car and looking at him and I called out, "Len" which is what
12 he normally goes by, he looked directly at me and I said,
13 "Hey, I'm Deputy Hayes with the sheriff's office we have
14 active warrant for your arrest," and he said, "Okay." And
15 everything else went from there.

16 Q. And when you took him to jail ---

17 A. Mmm, hmm.

18 COURT REPORTER: Is that a yes?

19 A. Yes.

20 Q. And you said you put the evidence - - where did you put
21 -- what did you do with the drugs at that time or the alleged
22 drugs at that time?

23 A. After weighing it I put the clear plastic bag in the,
24 the substance still in its regular -- in it's original
25 package -- put it into a Best Kit, and heat sealed it, signed

T. Hayes- Direct Examination by Mr. Thomas

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1 it, date and time everything -- everything was sealed and I
2 placed it into evidence dropbox at the sheriff's office where
3 nobody else has access to it other than the evidence office.

4 Q. So once you drop -- what is a Best Kit?

5 A. A Best Kit is -- that's an acronym to that I have no
6 clue what it means -- but it is a package from sled that we
7 put all narcotics into after it's field-tested. We put that
8 into the Best Kit. It's a clear plastic bag. It has a chain
9 of custody form. You put all of that into a manila envelope,
10 seal it, and then we just put it into evidence. And then,
11 like I said, the evidence clerks then take it to sled for
12 analysis.

13 Q. And you mentioned when you were doing the Best Kit you
14 put it in -- you put what you field-tested in there and heat
15 sealed it, what does that mean?

16 A. It is a, the only thing I can describe it as really,
17 it's just a red piece of tape with a sticky side on it and
18 once you sell it if anybody tries to open it the whole bag
19 rips. So it's not going to come open. That way the
20 evidence, itself, stays secure and it can't be contaminated
21 at all.

22 MR. THOMAS: Your Honor, may I have this exhibit
23 marked as State's Exhibit 1?

24 THE COURT: Yes, sir.

25 MR. THOMAS: For identification ---

1 THE COURT: You can have it marked.

2 MR. COX: No objection to this evidence.

3 THE COURT: To the exhibit, itself.

4 MR. COX: To the exhibit, itself. No objection.

5 THE COURT: All right. Madam, court reporter, we'll

6 admit this into evidence as State's Exhibit 1.

7 (Whereupon, the Best Kit has been marked and entered into,
8 evidence as State's Exhibit No. 1)

9 Q. Officer Hayes, what I have is marked as State's Exhibit
10 1, I'll hand it to you, do you recognize it?

11 A. I do. Yes, sir.

12 Q. What is it?

13 A. That is a, flat out, Best Kit.

14 Q. Okay.

15 A. That also contains a white powdery substance in it.

16 Q. You recognize anything else about it? You can take a
17 look at it.

18 A. My name. 5/30 of '15. My signature. It has the
19 contents to which was located on Mr. Gainey. And -- well,
20 I'm sorry, this seal here that is the, that is the heat seal
21 to where you can't take it off at all.

22 Q. Why does -- why does it have your name on there? Who
23 put that on there?

24 A. Because I'm the one that located it on Mr. Gainey.

25 Q. Did you sign it yourself?

T. Hayes- Direct Examination by Mr. Thomas

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1 A. Yes, sir.

2 Q. So you write your name on there identifying yourself as
3 the person who did it?

4 A. Yes, sir.

5 Q. And what else did you put on there?

6 A. The date. I put the date on there. My agency that I
7 worked for at the time which was Darlington County Sheriff's
8 Office. Like I said, the date being 5/30 of '15. Yeah,
9 that's all that's on here.

10 Q. Okay.

11 MR. THOMAS: I begged the court's indulgence.

12 THE COURT: Yes, sir.

13 Q. Officer Hayes, when you saw Mr. Gainey's car, what you
14 thought was his car with the door open in the parking lot at
15 Katie's Lounge, what was he doing?

16 A. He was sitting in the vehicle, the vehicle -- the light
17 was on. Inside of the vehicle he was sitting in the vehicle
18 with another female. The female was in the passenger seat.
19 He was in the driver seat. He could have been conversing.
20 I don't know what their plans were, but that's what they were
21 doing. They were just sitting in the parking lot inside the
22 vehicle.

23 Q. Okay. And anything -- did she say anything or

24 A. No, sir.

25 Q. You didn't arrest her?

1 A. No, sir.

2 Q. You just contacted him about the warrant for his arrest?

3 A. Correct.

4 Q. And he complied with your arrest issuance of the
5 warrant?

6 A. Correct.

7 Q. Who else was with you and assisted you in the arrest?

8 A. There was my backup officer which was Deputy Joseph
9 Frierson. My lieutenant which is Alex Gainey. The corporal
10 on shift which was T.J. Christmas and also a reserve deputy,
11 Charles Vaughan.

12 Q. Okay. So Officer Frierson, he was with you in the
13 parking lot?

14 A. Correct. He was my backup officer. He was with me in
15 the parking lot. The other deputies were inside the
16 club/lounge bar area.

17 Q. Okay. Very good.

18 MR. THOMAS: That's all, judge.

19 THE COURT: Okay. Mr. Cox?

20 MR. COX: Thank you, Your Honor.

21 **Cross-Examination by Mr. Cox:**

22 Q. Officer Hayes, prior to May 30th, did you know Robert Len
23 Gainey?

24 A. Personally, no, sir.

25 Q. So you would not recognize him on-site?

T. Hayes- Cross-Examination by Mr. Cox

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1 A. Not -- not the night in question, no, sir.

2 Q. And on this occasion that was your first time to have
3 any dealings with Robert Len Gainey?

4 A. Yes, sir.

5 Q. And at any time did he not cooperate with you?

6 A. No, sir. He was very cooperative.

7 Q. Very cooperative. Do you remember the name of the young
8 lady that was in the car with him?

9 A. No, sir, I do not. Not at this point in time, I do not.

10 Q. Do you -- did you observe Mr. Gainey's demeanor, his
11 sobriety?

12 A. Yes, sir, I did.

13 Q. Did he appear to be under the influence of anything?

14 A. Alcohol. Yes, sir.

15 Q. Alcohol.

16 A. He did not appear to be what I would call entirely
17 impaired.

18 Q. Yeah.

19 A. But I did have a strong odor of alcohol coming from his
20 person. I could smell while he was speaking with me. But as
21 far as being completely inebriated, no, sir. But he had
22 drinks that I could smell.

23 Q. He was sitting outside of a club, was he not?

24 A. Yes, sir.

25 Q. Where they serve alcohol?

1 A. Yes, sir.

2 Q. Okay. And do you recall how he was dressed?

3 A. If my memory sets me right, not entirely, but I do
4 believe it was a black T-shirt and blue jeans and a hat. I
5 do believe.

6 Q. Was it a ball cap or ---

7 A. A ball cap.

8 Q. A ball cap ---

9 A. I believe.

10 Q. A ball cap. And would that fit the dress of what you
11 expect to see from somebody at that club?

12 A. It was casual, I mean, nighttime attire. Relaxing
13 attire, yes, sir.

14 Q. Yeah. Okay. And he did everything he asked you to do,
15 you did ---

16 A. Yes, sir.

17 Q. --- he did?

18 A. He did.

19 Q. And the cocaine was found in his right front pocket?

20 A. Left front pocket.

21 Q. Left front pocket. Left front pocket. Did he tell you
22 it was there or did you find it?

23 A. No, sir, I found it.

24 Q. You found it. At any time, did he say anything about
25 the cocaine?

T. Hayes- Redirect Examination by Mr. Thomas

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1 A. Well, once he was placed in handcuffs and advised that
2 he was under arrest for that active warrant, he was
3 mirandized.

4 Q. Right.

5 A. And upon the search to the arrest, once, I found it I
6 asked him did he want to speak with me about the item that
7 was in his pocket and he stated, no.

8 Q. He stated, no. And that was his right?

9 A. Yes, sir.

10 Q. And knowing and the officer you are, you followed what
11 he says?

12 A. Completely. He didn't want to talk and I didn't force
13 the issue.

14 Q. And the procedure that you told the jury about
15 everything you did once you arrived, that's the procedure you
16 were trained to do?

17 A. Yes, sir.

18 Q. You didn't have to do anything extra?

19 A. No, sir.

20 Q. With all your other fellow officers there, you didn't
21 have to call on them to help you because you knew what to do

22 --

23 A. No, sir. The ---

24 Q. --- you were trained?

25 A. Everything went smoothly is what I can say to that.

1 That was -- it was a, I don't want to call it a pleasant
2 ordeal ---

3 Q. Well, I'm sure.

4 A. --- but it was -- everything went smooth. It went very
5 smooth.

6 Q. Did he make any other statements to you other than
7 answer your questions?

8 A. No, sir.

9 Q. Thank you.

10 MR. COX: Nothing further.

11 THE COURT: Anything else, Mr. Thomas?

12 MR. THOMAS: Yes, Your Honor, briefly.

13 **Redirect Examination by Mr. Thomas:**

14 Q. Officer Hayes, is Robert Len Gainey that you arrested on
15 May 30, 2015 between two and three in the morning, is that
16 the same person that's on trial here today?

17 A. Yes, sir.

18 Q. Okay.

19 THE COURT: Anything else, Mr. Cox?

20 MR. COX: No. Thank you, Your Honor.

21 THE COURT: You can step down, sir.

22 MR. HAYES: Thank you, sir.

23 MR. THOMAS: The State calls Joseph Frierson to the
24 stand.

25 THE CLERK: Come forth and take the oath of the

J. Frierson- Direct Examination by Mr. Thomas

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1 witness please, sir. Place you left hand on the Bible and
2 raise your right. Do you solemnly swear the testimony you
3 give this Court will be the truth, the whole truth, and
4 nothing but the truth so help you God?

5 MR. FRIERSON: I do.

6 THE CLERK: Have a seat for me.

7 JOSEPH FRIERSON, first being
8 duly sworn, testified as follows:

9 **Direct Examination by Mr. Thomas:**

10 Q. Officer Frierson, can you please state your full name
11 for the jury?

12 A. Joseph Jacob Frierson.

13 Q. Where are you employed?

14 A. Jasper County Sheriff's Office.

15 Q. How long have you been there?

16 A. Since March of last year.

17 Q. Where were you employed May 30, 2015?

18 A. Darlington County Sheriff's Office.

19 Q. Okay. What were your duties while you were with the
20 sheriff's office?

21 A. I was a patrol deputy. Responsible for answering calls
22 and service.

23 Q. Okay. Were you working May 30, 2015?

24 A. I was.

25 Q. What shift were you working?

1 A. I was night shift, 6 p. to 6 a.

2 Q. Okay. Do you remember anything happening on May 30,
3 2015?

4 A. We were approached by a bondsman, Deputy Hayes was
5 approached by bondsman. We were at a local gas station
6 inside of our jurisdiction. The bondsman advised us that Mr.
7 Gainey had warrants and Deputy Hayes confirmed those
8 warrants. We responded to, I believe, it's called Chin
9 Tiki's or Katie's, I can't remember which one it was called
10 at the time, which is also inside of our jurisdiction.
11 Deputy Hayes located Mr. Gainey inside, in the parking lot,
12 advised him that he had a ---

13 Q. Where were you when he located him?

14 A. I was somewhere in close proximity of Deputy Hayes.

15 Q. So you were in the parking lot with him?

16 A. Yes, sir.

17 Q. Okay. Continue with what happened?

18 A. Okay. We located Mr. Gainey in the parking lot sitting
19 inside a vehicle. Deputy Hayes advise Mr. Gainey that he had
20 a warrant for his arrest. Deputy Hayes place Mr. Gainey
21 under arrest and did a search to arrest and located the 10.8
22 grams of a white powdery substance believed to be cocaine in
23 his pocket.

24 Q. And what did you do after that?

25 A. Deputy Hayes transported Mr. Gainey to the detention

J. Frierson- Cross-Examination by Mr. Cox

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1 center and ---

2 Q. You didn't go with him?

3 A. No, sir.

4 Q. What did you do?

5 A. I went back on patrol.

6 Q. So that was the end of your involvement?

7 A. Yes, sir.

8 Q. Thank you.

9 MR. THOMAS: Please answer any questions Mr. Cox may
10 have for you.

11 THE COURT: Mr. Cox?

12 **Cross-Examination by Mr. Cox:**

13 Q. For everything that you saw and observed, were the
14 proper procedures followed?

15 A. Yes, sir.

16 Q. And at any time, did you see Mr. Gainey do anything that
17 you thought was out of the ordinary?

18 A. No, sir.

19 Q. Did he appear, to you, to cooperate?

20 A. He did.

21 MR. COX: No further.

22 THE COURT: Anything else, Mr. Thomas?

23 MR. THOMAS: Nothing from the State, judge.

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

1 MR. FRIERSON: Thank you, sir.

2 MR. THOMAS: Neal Flowers to the stand.

3 THE CLERK: If you will come forth and take the oath
4 of the witness please. Place your left hand on the Bible and
5 raise your right. Do you solemnly swear the testimony you
6 give this Court will be the truth, the whole truth, and
7 nothing but the truth so help you God?

8 MR. FLOWERS: I do.

9 THE CLERK: Have a seat for me, sir.

10 NEAL FLOWERS, first being
11 duly sworn, testified as follows:

12 **Direct Examination by Mr. Thomas:**

13 Q. Good morning, Mr. Flowers.

14 A. Good morning.

15 Q. Would you state your name for the record?

16 A. Neal Flowers. I'm an officer with the Hartsville Police
17 Department.

18 Q. How long have you been employed with the Hartsville
19 Police Department?

20 A. A little over a year.

21 Q. Where were you employed on June 9, 2015?

22 A. I was with the Darlington County Sheriff's Office.

23 Q. And what were your duties at that time?

24 A. I was the evidence custodian.

25 Q. Do you remember what occurred on June 9th midday?

N. Flowers- Direct Examination by Mr. Thomas

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1 A. Well, my normal duties are just logging in evidence that
2 have been dropped in the dropbox.

3 Q. Okay. So -- so, and I can refresh your memory if you
4 need, do you remember any specific, any specific drugs you
5 took from the evidence locker to the dropbox?

6 A. Well, normally we have numerous cases so it's usually
7 quite a few of items in there. But, you know, I remember
8 usually about every day dropping something in the

9 MR. THOMAS: Your Honor, May I approach?

10 THE COURT: Yes, sir.

11 Q. Do you recognize this document here?

12 A. Yes, it's an evidence form.

13 Q. Well, what is an evidence form?

14 A. When a deputies get evidence and drop it in the dropbox,
15 they have to fill out an evidence form for chain of custody
16 and whatnot. And this states that on June 9, 2015, 12:28
17 p.m. I actually entered it into our system after taking it
18 out of the dropbox. And once I entered it into the system,
19 I placed it in ---

20 Q. Who put -- who put that evidence and that form in the
21 dropbox?

22 A. Mark Hayes.

23 Q. And you say it's got your name on there?

24 A. Yes.

25 Q. Or the name and the time, what's the date and time on

1 there?

2 A. June 9, 2015 at 12:28 p.m.

3 Q. When you say you put it in your system, how does that
4 work?

5 A. I take it out of the dropbox. Then we actually enter it
6 into our internal system at the sheriff's office. It's
7 called a sheriff pack. (sic) We put all the information
8 that's on the evidence form, as far as what the item is, if
9 it's a Best Kit, then we actually place it in a certain
10 location inside the evidence room. And this incidence, it
11 was sled 143, which is where we put items that need to go to
12 sled for testing.

13 Q. Sled 143, is that a room? Is that a box?

14 A. It's a room inside the evidence room. But for cases
15 like this, for smaller evidence, we have a box inside of that
16 room and we put all the smaller items in it to be taken to
17 sled.

18 Q. Now, the dropbox that you retrieved the Best Kit from,
19 can anybody else get to it?

20 A. No, sir. Only myself and, at the time, Sergeant
21 Billiot.

22 Q. So there was no tampering of ---

23 A. No.

24 Q. --- evidence? Just a regular Best Kit ---

25 A. No. Once they drop that nobody can get to it except for

1 the evidence custodians.

2 MR. THOMAS: I beg the court's indulgence.

3 THE COURT: Yes, sir.

4 Q. Officer Flowers, what I'm about to show you now is
5 State's Exhibit Number 1, can you -- do you recognize this?

6 A. It's a sled Best kit. It's got the information, once I
7 log it in the system, we actually print out a label to place
8 it in that room so once, we have a scan system, so we can go
9 back, if we need to locate it or if we need to, it's safe for
10 when we take it to sled we have to scan it and put that the
11 evidence has been sent to sled. It's got the information,
12 case number, the date and time that it was entered and then
13 the room, the evidence room it was put in.

14 Q. Does that appear to be the same one you entered for this
15 case today?

16 A. Yes, sir.

17 Q. You printed out that label on there?

18 A. Yes, sir.

19 Q. Thank you.

20 MR. THOMAS: Nothing else from the State.

21 THE COURT: Mr. Cox?

22 **Cross-Examination by Mr. Cox:**

23 Q. Officer Flowers, so you did not have anything to do with
24 the arrest of Robert Len Gainey?

25 A. No, sir.

1 Q. The only thing you did, which is important, was to
2 retrieve the evidence that was left by the investigating
3 officer?

4 A. That's correct.

5 Q. Correct. And at any time to the time that you were
6 working with evidence, did you ever come in contact with
7 Robert Len Gainey?

8 A. No, sir.

9 MR. COX: Nothing further. Thank you, Your Honor.

10 THE COURT: Anything else, Mr. Thomas?

11 MR. THOMAS: Nothing from, the State, judge.

12 THE COURT: All right. Thank you, sir. You can step
13 down. Thank you.

14 MR. THOMAS: The State now calls Investigator Billiot
15 to the stand.

16 THE CLERK: Come forth and take the oath of a
17 witness. Place your left hand on the Bible and raise your
18 right. Do you solemnly swear the testimony you give this
19 court will be the truth, the whole truth, and nothing but the
20 truth so help you God?

21 MR. BILLIOT: I do.

22 THE CLERK: Please have seat for me please.

23 GARY BILLIOT, first being
24 duly sworn, testified as follows:

25 Direct Examination by Mr. Thomas:

G. Billiot- Direct Examination by Mr. Thomas

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1 Q. Officer Billiot, can you please state your full name for
2 the record, if you will?

3 A. My name is Gary Billiot. Last name spelled, B, as in
4 bravo, i-l-l-i-o-t.

5 Q. And where are you employed?

6 A. I'm employed with the Darlington County Sheriff's
7 Office.

8 Q. How long have you been there?

9 A. I've been there for about approximately fifteen years,
10 fourteen to fifteen years.

11 Q. So you're -- so you were employed there in 2015?

12 A. That's correct, sir.

13 Q. What do you do?

14 A. I was head of our evidence department, our chief
15 evidence custodian. Also, I was also in charge of our crime
16 scene unit as well.

17 Q. And did that -- is that now in 2015?

18 A. That is correct, 2015.

19 Q. What were your duties on October 7, 2015 as far as
20 evidence is concern?

21 A. Basically, being our chief evidence custodian, making
22 sure that evidence was properly logged in, stored, brought to
23 sled for analysis, etc.

24 Q. Okay. Can you remember anything about that particular
25 day, off the top of your head and looking at your notes?

1 A. Let me check for second. Pretty much from what Officer
2 Deputy Flowers had stated in reference to logging in that
3 particular piece of evidence and placing it into our sled box
4 to be taken to sled, that's pretty much all I can ---

5 Q. And ---

6 A. --- recall.

7 Q. And who takes it to sled?

8 A. It could be either one of us. It's kind of roll of the
9 dice, whoever, if things are going. But on that particular,
10 let me see, refresh my memory, I believe it was October 7,
11 2015, I actually took that piece of evidence to sled and
12 turned it over for analysis.

13 MR. THOMAS: Your Honor, May I approach, the witness?

14 THE COURT: Yes, sir.

15 Q. Do you recognize this what's marked State's Exhibit
16 Number 1?

17 A. It is a Best Kit with a control number of B-234201 which
18 is pretty much what I took to sled.

19 Q. When you say pretty much what you took to sled, what do
20 you mean, pretty much?

21 A. Well, this is pretty -- well, this is it. This is what
22 was taken to sled.

23 Q. This is?

24 A. That's correct.

25 Q. So when you to get to sled on that day, what did you do?

1 A. Normally, what we would do is we will check in the front
2 lobby. We'll let them know that we're here to drop off
3 evidence. They'll buzz us in and there's usually four sled
4 logging tech. On this particular day, it was Amy Stevens who
5 I turn the evidence over to.

6 Q. Okay. What -- when you turn evidence over to them, what
7 -- what happens then?

8 A. I sign a, well, basically it's like a electronic pad and
9 they take the evidence, I sign the pad, it's got my name, it
10 prints the date and time. Then I sign it over to them and
11 then, they'll put it in a box and I think they normally will
12 call someone from the drug department to come downstairs and
13 pick up those items for testing.

14 Q. And how detail are they about keeping records of who
15 dropped things off?

16 A. Oh, they're very detailed. I mean, everything is pretty
17 much put in a computer system and then we get printed out
18 receipts. Yeah, they're very detailed in reference to that.

19 Q. So they mark case numbers and -- do they make you sign
20 anything?

21 A. Oh, yes, sir. Yes, sir. In fact, on this here, they
22 actually have their own sort of, we have our case number, and
23 they'll have the sled lab number to identify this particular
24 piece of evidence that comes into their chamber. But, yes,
25 I did have to sign a forensic service request form.

1 Q. And do they put the date in which you signed?

2 A. Yes, sir. Right at the bottom of this particular
3 request form that I have.

4 Q. What's the date on your form?

5 A. 10/07/2015 at approximately 12:34.

6 Q. So they put -- they even put the exact minute that you
7 dropped it off?

8 A. That is correct.

9 Q. And you signed it saying you dropped it off?

10 A. That's correct.

11 Q. And then it goes to the forensic technician, is that
12 right?

13 A. That's -- that's, I guess, that's their normal
14 protocol. Yes, sir.

15 Q. And she -- she signs that paper as well?

16 A. That's correct.

17 Q. Thank you.

18 MR. THOMAS: I beg the court's indulgence.

19 THE COURT: Yes, sir.

20 Q. Officer Billiot, when -- who picks the drugs back up to
21 bring back to the Darlington County Sheriff's Department?

22 A. Again, it's kind of roll of the dice, sometimes of
23 whoever, whenever we bring evidence back. On this particular
24 occasion, I actually picked up the Best Kit evidence from
25 this case and brought it back to the sheriff's office.

G. Billiot- Direct Examination by Mr. Thomas

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1 Q. Okay. Do you remember when you did that?

2 A. According to my notes and my receipt here, let's see, it
3 appears to be 10/27/2015 at 11:27 a.m.

4 Q. Like -- is it the same as when you drop it off, they
5 make you sign ---

6 A. Yes, sir.

7 Q. --- the date and time ---

8 A. And what it -- that's an evidence, laboratory evidence
9 release receipt. Whenever, and like I said, there could
10 have been other pieces of evidence that came back with not
11 only with this case but additionally, I'll have to sign for
12 it. They release it back to me. And in this particular
13 case, it was the same lab technician that who I released it
14 to.

15 Q. And when you picked them up, in this particular case,
16 what did you do with drugs?

17 A. I would take it immediately back to the sheriff's office
18 and go back to our evidence room. It gets re-logged in.
19 And then we'll give it -- we'll sign another area for it to
20 be, for like permanent storage. And in this place, I
21 believe, it went to -- we have a filing cabinet that which we
22 actually put a lot of our Best Kits in and it went into one
23 of those drawers. And it stayed into that drawer until I
24 took it out today.

25 Q. So you, just to be clear for the jury, you take it to

1 sled, they do their testing?

2 A. That's correct.

3 Q. You go back at a later date?

4 A. That's correct.

5 Q. You pick it up and bring it back and put it back into
6 evidence?

7 A. Yes, sir.

8 Q. And you don't touch it again until you bring it to
9 court?

10 A. That's correct, sir.

11 Q. Is that Best Kit in the same condition today as it was
12 when you put it back into evidence in October of 2015?

13 A. Yes, sir. Everything appears to be, still, sealed in
14 its original container.

15 MR. THOMAS: That's all from the State, judge.

16 THE COURT: Mr. Cox?

17 MR. COX: No questions from the defense. Thank
18 you, Your Honor.

19 THE COURT: All right. You may step down. Thank you,
20 sir.

21 MR. JACKSON: Judge, may we approach?

22 THE COURT: Yes, sir.

23 (Whereupon, a bench conference was held off the record)

24 THE COURT: All right. Madam, forelady, and ladies
25 and gentlemen of the jury, I'm going to let you take a short

A. Black- Direct Examination by Mr. Thomas

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1 break right now. We've got to get a couple of witnesses back
2 in the courtroom. So if you'll just retire to your jury
3 room. Again, now, I will caution you and I'll do this every
4 time, do not talk about the case. Do not talk about what
5 you've heard so far because the case is not concluded yet and
6 they'll be more evidence to be introduced. But if you would
7 just retire to your jury room and we'll call you back out
8 very shortly.

9 (Whereupon, the jury exits the courtroom at 10:34 a.m.)

10 THE COURT: All right. Gentlemen, we'll be at ease
11 for a minute.

12 (Whereupon, the court took a short recess)

13 THE COURT: All right. Counsel, are we ready for the
14 jury?

15 MR. THOMAS: We're ready, judge.

16 MR. COX: The defendant is ready, Your Honor.

17 THE COURT: All right. Bring them back.

18 (Whereupon, the jury enter the courtroom at 10:44 a.m.)

19 THE COURT: All right. Mr. Thomas?

20 MR. THOMAS: The State calls Amy Stevens Black to the
21 stand.

22 THE CLERK: Please come forward and take the oath of
23 a witness please. Place your left hand on the Bible and
24 raise your right. You solemnly swear the testimony you give
25 this Court will be the truth, the whole truth, and nothing

1 but the truth so help you God?

2 MS. BLACK: I do.

3 THE CLERK: Have a seat up there for me please.

4 AMY BLACK, first being

5 duly sworn, testified as follows:

6 **Direct Examination by Mr. Thomas:**

7 Q. Good morning, Ms. Black.

8 A. Good morning.

9 Q. Would you please state your name for the jury?

10 A. I'm Amy Stevens Black.

11 Q. Where are you employed?

12 A. I'm employed at the South Carolina Law Enforcement
13 Division also known as sled.

14 Q. How long have you been there?

15 A. March will be twelve years.

16 Q. So you were employed there in October 2015?

17 A. Yes, I was.

18 Q. What are your duties?

19 A. I'm a forensic technician in the evidence control
20 department and our daily responsibilities are to login and
21 transfer evidence for forensic analysis.

22 Q. And your duties now, are they the same as they were in
23 2015?

24 A. Yes, they are.

25 Q. Okay. I would like to show you what's already up here

A. Black- Direct Examination by Mr. Thomas

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1 marked as State's Exhibit Number 1 ---

2 MR. THOMAS: Your Honor, May I approach?

3 THE COURT: Yes, sir.

4 Q. Do you recognize that?

5 A. Yes. The lab number that's affixed to this package
6 corresponds with the chain of custody for this case.

7 Q. Okay. And what -- did you receive this particular item?

8 A. Yes, I did.

9 Q. And what happens once you get it?

10 A. Our submitting agency will arrive at our laboratory to
11 submit evidence. We will log the information into our
12 computer system. A unique lab number is generated for every
13 case as well as an item number. We would then place that
14 unique lab number on the evidence itself and transfer it to
15 our evidence room until an analyst will pick the evidence up
16 for analysis.

17 Q. And the lab number on State's Exhibit Number 1, here?

18 A. Yes. It's L-1513398.

19 Q. And have anything that would tell us where that -- where
20 that was or who handled it once you received it?

21 A. Yes. Every case that is submitted to sled have a chain
22 of custody. A chain of custody is electronic document that
23 tracks the movement of the evidence from the time it is
24 submitted to our laboratory until the time it is returned to
25 the agency.

A. Black- Direct Examination by Mr. Thomas

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1 Q. Do you have that?

2 A. Yes, I do.

3 Q. Would you mind identifying the name of the people who
4 handle that evidence?

5 A. Yes. I physically received the evidence from Gary
6 Billiot of the Darlington County Sheriff's Department on
7 October 7, 2015 at 12:29. I then transferred the evidence to
8 the drug evidence intake storage which is located in our
9 secured evidence room. Forensic technician, Doris
10 Yarborough, (sic) who is a technician within the evidence
11 control department retrieved that evidence from that location
12 and transferred it to forensics scientists, Willie Smith, on
13 October 12, 2015. On October 23, 2015 forensic technician,
14 Jennifer Aycock, who was employed within the evidence control
15 department, received that evidence from forensic scientists,
16 Willie Smith, and transferred it to the drug for return file
17 cabinets. On October 27, 2015 I retrieved that evidence and
18 returned it to Gary Billiot with the Darlington County
19 Sheriff's Department.

20 MR. THOMAS: That's all from the State, judge. Please
21 answer any questions that Mr. Cox may have.

22 THE COURT: Mr. Cox?

23 MR. COX: Sir, I don't have any questions. Thank
24 you, ma'am.

25 THE COURT: All right. Thank you.

W. Smith- Direct Examination by Mr. Thomas

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1 MS. BLACK: Thank you.

2 THE COURT: Ms. Stevens, you may step down.

3 MR. THOMAS: The State calls Willie Smith to the
4 stand.

5 THE CLERK: If you will come forth and take the oath
6 of the witness please, sir. Please place left hand on the
7 Bible and raise your right. You solemnly swear the testimony
8 you give this court will be the truth, the whole truth, and
9 nothing but the truth so help you God?

10 MR. SMITH: I do.

11 THE CLERK: Thank you, sir. Have a seat up there for
12 me please.

13 WILLIE SMITH, first being
14 duly sworn, testified as follows:

15 **Direct Examination by Mr. Thomas:**

16 Q. Good morning, Mr. Smith.

17 A. Good morning.

18 Q. Can you please state your name?

19 A. My name is Willie C. Smith, III.

20 Q. And where are you employed?

21 A. South Carolina Law Enforcement Division also known as
22 sled.

23 Q. How long have you been there?

24 A. Seventeen years and seven months.

25 Q. And your job title?

1 A. I'm a forensic chemist in the drug analysis department
2 at sled.

3 Q. Can you give us a little bit of your educational
4 background?

5 A. I have bachelor of science degrees in biology and
6 chemistry from the University of South Carolina. I've
7 attended the Criminal Justice Academy to become a sworn law
8 enforcement officer in the State of South Carolina. I went
9 through a year of training to become an analyst in drug
10 analysis and I've taken an additional graduate course work
11 and attend trainings to keep me up-to-date.

12 Q. How many times would you say you've testified as an
13 expert witness?

14 A. Eighty-five times.

15 MR. THOMAS: Your Honor, the State would move to have
16 Mr. Smith qualified as an expert in drug analysis at this
17 time.

18 MR. COX: No objections.

19 THE COURT: All right. I find him to be qualified as
20 an expert in drug analysis.

21 Q. Mr. Smith, would you please explain to the jury how --
22 generally, how drug analysis are performed?

23 A. Well, basically, what we do is we receive Best Evidence
24 Kits from across the state. And when they submit the
25 evidence to our login department in a secure manner, once I

W. Smith- Direct Examination by Mr. Thomas

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1 get the evidence I look in the bag to make sure that it's
2 secured and I write the word "seal intact" and I date and
3 initial it and I write the laboratory number on it to make
4 sure that it's sealed. And once I get the evidence, I
5 examine, which it has a Best paperwork that goes with it that
6 verifies the correct evidence that's submitted with the
7 evidence that's inside the Best bag. And from there I do a
8 instrumental test and a chemical test on the substance.

9 Q. And for the record, the item that you are holding right
10 now is State's Exhibit 1, do you recognize that particular
11 exhibit?

12 A. Yes. I do recognize this exhibit. It has my initials
13 and date on this exhibit and it's for this case L-1513398
14 which corresponds to Best Kit B-234201 for the evidence that
15 I examined in this case on a chemical molecular level.

16 Q. Okay. When was the first time you saw this, this
17 evidence?

18 A. I picked up this evidence from our login department on
19 October 12, 2015.

20 Q. Okay. And you stated previously that you check it to
21 make sure it's completely sealed ---

22 A. Yes.

23 Q. --- before you do anything and you initial it, is that
24 correct?

25 A. That is correct. I write the word "seal intact" which

1 you will be able to see on the evidence and the date and my
2 initials on it to make sure this evidence was sealed and
3 intact before I did any analysis on this evidence.

4 Q. And you did write that on that evidence in this case?

5 A. That is correct. I did write this on the evidence.

6 Q. Okay. Once she received it and wrote it's "sealed and
7 intact" and signed it, what you do then?

8 A. I take out the evidence and I take and weigh the
9 evidence and I only weigh the substance only. And in this
10 case the weight of the substance, only, was 10.54 grams.

11 Q. Okay. So Officer Hayes testified when he weighed it in
12 the bag or the container it came in, it came out 10.8 grams.
13 But you take it out of that bag and you just weigh the
14 substance, is that correct?

15 A. That is correct. Because the only thing that the person
16 has, that has the actual substance in it, is just the item
17 only, the substance. And that's why I only way the substance
18 only.

19 Q. Okay. Can you explain or tell the jury the results of
20 your testing?

21 A. In this case right here I did a instrumental test and a
22 chemical test and after testing it a molecular level the
23 results of this case which was a powder substance was found
24 to be cocaine. It's a C2 drug from the substance tested and
25 had a net weight of 10.54 grams.

W. Smith- Direct Examination by Mr. Thomas

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1 Q. And how certain are you that it's cocaine, 10.54 grams?

2 A. I'm one hundred percent certain that it's 10.54 because
3 I tested it on a molecular level and the item tested as
4 cocaine. And it's a plus or minus 1 grams, is because what
5 we do is an uncertainty, because just think of a ruler, a
6 twelve inch ruler, sometimes when they make them it's a tad
7 bit more or a tad bit less than twelve inches so that's why,
8 at most, this drug could be 10.53 or 10.55 as far as what the
9 substance is and the substance is one hundred percent cocaine.

10 Q. So there is absolutely no way, no possible way, that is
11 less than 10 grams?

12 A. That is correct. This drug is 10.54 grams.

13 MR. THOMAS: And May I approach the witness, judge?

14 THE COURT: Yes, sir.

15 Q. What is it that you're reading from here?

16 A. This is my official report for this case.

17 MR. THOMAS: Your Honor, I'd like to have this marked
18 as State's exhibit Number 2?

19 THE COURT: All right. You can mark it.

20 MR. COX: No objections, Your Honor.

21 THE COURT: All right. Any objection to the
22 introduction into evidence, Mr. Cox?

23 MR. COX: No objections.

24 MR. THOMAS: So we'd move to have it introduced into
25 evidence.

1 THE COURT: All right. Madam, court reporter that
2 would be admitted into evidence as State's Number, is that
3 2 -- Number 2.

4 MR. THOMAS: Your Honor, the State would also move to
5 have State's Exhibit Number 1 introduce, offered into
6 evidence at this time as well.

7 THE COURT: Okay. I'd admitted it earlier.

8 (Whereupon, the Sled Result Report has been marked and
9 entered into evidence as State's Exhibit No. 2)

10 Q. So you did your testing, you got your results, then
11 what?

12 A. Then once I finished my testing and my results for the
13 case that's when the bag is sealed up and it's sealed back
14 from the date that I did my testing back on 10/14/2015, with
15 my initials on it. And by looking at this bag and when I
16 sealed it, it has not been tampered with and the evidence is
17 still in the same condition from when I did my original
18 testing back on the date of 10/14/2015.

19 MR. THOMAS: I beg the court's indulgence.

20 THE COURT: Yes, sir.

21 MR. THOMAS: Nothing further from the State, judge.
22 Please answer any questions Mr. Cox may have.

23 THE COURT: Mr. Cox?

24 MR. COX: I don't have questions, Your Honor.

25 THE COURT: Okay. Thank you, sir. You may step

1 down.

2 MR. THOMAS: Your Honor, the State rest.

3 THE COURT: Okay. Mr. Cox, do you have any witnesses
4 to present?

5 MR. COX: I don't. I've looked around the room, I
6 do not see Robert Len Gainey. Since I do not have any others
7 to present, the defense rest.

8 THE COURT: Okay. Counsel, would you approach the
9 bench?

10 (Whereupon, a bench conference was held off the record)

11 THE COURT: All right. Ladies and gentlemen, I know
12 we just gave you a break but I'm going to give you another
13 break. The testimony has concluded. But the attorneys need
14 to make a few preparations with regards to their closing
15 argument. I need to get together my charge on the law to you
16 so that I can read to you. That's going to take a few
17 minutes or so. So I ask that you be patient with us. But
18 rather than stop and go to lunch now because it's pretty
19 early, it's only 11 o'clock. We can go ahead and argue and
20 charge you and then send you to deliberate rather than take
21 a long break for lunch and come back and go into the
22 afternoon. So if you'll bear with me please and retire to
23 your jury room. Again, I caution you don't talk about the
24 case yet not until I instruct you to begin your
25 deliberations. Everybody remain seated while the jury goes

1 out.

2 (Whereupon, the jury exits the courtroom at 10:58 p.m.)

3 THE COURT: All right. Gentlemen ---

4 THE CLERK: All the witnesses, can they be released?

5 THE COURT: Do you want -- do your witnesses wish to
6 be excused or do they want to be here or it's up to them?

7 MR. THOMAS: Your Honor, I'd ask that my sled agents
8 here to be excuse.

9 THE COURT: They wish -- no problem is there, Mr.
10 Cox?

11 MR. COX: There's no objection. I think were done.

12 THE COURT: Thank you. You're welcome to stay with
13 us. All right. We'll stand at ease so we can get our
14 thoughts together.

15 (Whereupon, the court took a short recess)

16 THE COURT: Counsel y'all approach the bench.

17 (Whereupon, a bench conference was held off the record)

18 THE COURT: All right. Let's bring the jury out.

19 (Whereupon, the jury enters the courtroom at 11:48 p.m.)

20 THE COURT: Okay. Ladies and gentlemen, I apologize
21 for the long delay. The break took much longer than I
22 thought and it's just not an excuse. We had some computer
23 glitches. I had to get some stuff printed off. We had some
24 trouble getting that done. With that being said, though,
25 we've reached a point in the trial where the lawyers are

1 going to make their closing arguments or their closing
2 summation concerning this case. As I've explained to you
3 earlier what they say is not evidence. They're going to
4 give you their perspective of what they think the evidence
5 said and what it means and why you should make a decision
6 with regards to their particular position. But, again, it's
7 not evidence in any way whatsoever. You're going to make
8 your decision based on the evidence that was introduced from
9 this stand and any exhibits that were introduced during the
10 course of the trial.

11 All right. His counsel ready to make their closing
12 arguments?

13 MR. THOMAS: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. COX: The defense is ready, Your Honor.

16 THE COURT: Okay. Mr. Thomas?

17 **Closing arguments- Mr. Thomas:**

18 _____Thank you, Your Honor. Mr. Cox. I would like to thank,
19 y'all, first and foremost, for your attention. I promised
20 you it would be brief and I'm going to continue with it being
21 brief right now in my closing argument.

22 First, I want to address the charge -- the judge will
23 charge you the law shortly, but as I stated in my opening,
24 we're here because Len Gainey, Robert Len Gainey is charged
25 with trafficking in cocaine 10 grams or more but less than 28

1 grams. There's some language in the statute that includes
2 other people into it at times, but in particular for purposes
3 of this case I'd like to point out the language. The State
4 would ask you to consider because it applies to this case
5 that Robert Len Gainey did in Darlington that on or about May
6 30, 2015 was, excuse me, he was in actual possession or
7 attempted to become an actual for a constructive possession
8 of a quantity of cocaine in the amount of more than 10 grams
9 but less than 28 grams. There's a lot of other language in
10 there that talks about knowingly, sell, deliver, purchase,
11 that doesn't apply here. As you heard from the witness stand
12 an hour ago, Officer Hayes, went and served a warrant for Mr.
13 Gainey's arrest at the club right down the street here at
14 Katie's Lounge. Saw him in the parking lot. He had his car
15 door opened. Addressed him. Said, "Len". Len got out of
16 the car and complies -- he said, "I have a warrant for your
17 arrest." He complied. Upon the search after the arrest he
18 pulls 10.8 grams, that he weighed with the bag, he pulled
19 that out of his front left pocket. That was placed, you
20 heard from all the witnesses that handled those drugs from
21 Officer Flowers who took it from the box, once it was sealed
22 and placed into evidence box, who then took it to the sled
23 room and evidence room here in Darlington. Officer Billiot
24 then takes that to Columbia where, you heard testimony that
25 it was continued -- it was sealed up the whole time. They

1 never took it out. And then you heard testimony from Ms. Amy
2 Stevens Black who received it from Billiott at sled and she
3 told you what happened there. And then our forensic
4 scientist who signed the Best Kit saying this is sealed up
5 and has not been tampered with and dated it and then he
6 tested it. He opened it and tested it and it came out his
7 mouth that there is no possible way that, that, the amount of
8 cocaine is less than 10.53. He said it was somewhere in
9 between 10.53 and 10.55 grams. There is no way possible it
10 was less than 10 grams. And that's -- for that reason we're
11 gonna ask -- the State ask you to come back with a guilty
12 verdict against Mr. Robert Gainey. And I, again, thank you
13 for your service. I know you didn't have much choice in the
14 matter but I have enjoyed presenting this case do you and
15 thank you for your time.

16 THE COURT: Mr. Cox?

17 **Closing argument- Jim Cox:**

18 _____Mr. Solicitor, Madam foreman, ladies and gentlemen of
19 the jury, I guess you're wonder, why are we spending all this
20 time when my client didn't see fit to come back to court. I
21 don't know. I don't know where he is. Right now law
22 enforcement has no idea where he is. I trust that nothing
23 has happened to him. I trust that in a moment of panic he
24 made a bad decision. But I don't know that. But your being
25 here is one of the most important services that you can do is

1 serving on a jury. I also think about this, the solicitor
2 office, the investigating officers came forward to present
3 this case. They didn't make any bones about it. As a matter
4 of fact, went through all the steps that you're supposed to
5 go through. They protected the evidence. Sealed it. They
6 sent it to sled. And you saw two sled agents come here and
7 testify in the drug case and you heard everything they do to
8 protect the evidence to make sure what is presented is
9 correct. And then nobody tampers with that. Think about
10 that. My client didn't show up to hear that. But what
11 you're a part of is the greatest justice system in the world.
12 You hear complaints about it. I can't believe a jury did
13 this. I can't believe a jury did that. I can't believe law
14 enforcement said that. I don't like the way they conduct
15 business. But you witnessed a perfect, what we call a
16 perfect trial. What the jury of my client's peers is seating
17 here having to make that decision and that says a lot to you
18 because normally on Monday morning I can think of ten reasons
19 why I don't want to go to court. My wife makes me get up and
20 go and the judge normally tells me I have to stay. That's
21 something -- but that's something that we have to do. But
22 your being here, you're doing your civic duty. I think Your
23 Honor will tell you that you listen to the evidence and you
24 have listened to the evidence. Not one of you have nodded
25 off. You haven't been turned around looking out the window,

1 playing with the blinds, you've listen to everything that was
2 said. And so now it comes to you in the next time anyone
3 speaks for my client in this courtroom, it's going to be you.
4 Now, I would like, you have to remember I'm biased. I'm
5 biased. I'd like to think that he's not guilty but that's
6 not for me to decide. That's for you to decide based upon
7 the evidence. You saw him and in his appearance, he appears
8 to maybe having some physical problems. You know this was
9 not his first time possibly drugs because they have warrant
10 out for him. And you know he was out 3 o'clock in the
11 morning outside of the lounge with, I assume, she was a young
12 lady in the car, we don't know. We don't know what he was
13 going through or what he was thinking or what he was going to
14 do with those drugs, but he had them on him. He had the
15 drugs on him. He could have -- he could have come into court
16 and admitted that and entered a guilty plea but, he didn't.
17 He said, "I want a jury of my peers to tell me whether or not
18 I'm guilty." The court will tell you that the verdict has to
19 be unanimous. Each and every one of you have to agree. And
20 that's a big task. And I leave to your good sense that you
21 would make the decision that's appropriate and when you make
22 that decision don't second-guess it. You're doing what you
23 think is best for the citizen of Darlington County. Thank
24 you.

25 Judge's Charge on the Law:

1 THE COURT: All right. Ladies and gentlemen, I am
2 going to charge you on the law which is to be applied to the
3 facts that have been introduced in this matter. I want to
4 remind you that during this trial you and I have had certain
5 duties to perform. As the trial judge it is my
6 responsibility to preside over the trial of this case which
7 I have done. And I also have the duty to rule on the
8 admissibility of the evidence offered during this trial.
9 You're to consider only the competent evidence before you.
10 If there was any testimony ordered stricken, which I don't
11 recall having to do that in this case, you must disregard
12 that testimony. You are to consider only the testimony which
13 has been presented from this witness stand and the exhibits
14 which have been made part of the record in this case. I have
15 the additional responsibility to charge you the law which
16 applies to this case. As the presiding judge, as I told you
17 earlier, I am the sole judge of the law of this case. And it
18 is your duty as jurors to accept and apply the law as I now
19 stated to you. If you already have any ideas what the law is
20 or what the law ought to be and it does not agree with what
21 I now tell you, you must abandon this idea because you are
22 sworn to accept the law and apply the law exactly as I state
23 it to you.

24 In every case tried in this court before a jury, the
25 jury becomes the sole and exclusive judge of the facts in a

1 case. A trial judge cannot intimate, state, comment on, or
2 make any statement to a trial jury about the facts in a case.
3 Since, you, the jury are the sole judge of the facts in this
4 case, you're not to infer from what I have said during their
5 progress of this trial in ruling upon the admissibility of
6 evidence or otherwise or anything that I say now during the
7 course of these instructions to you that I have any opinion
8 about the facts in this case. The law does not allow me to
9 have an opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine. As jurors it
11 is your duty to determine the effect, value, weight and truth
12 of the evidence presented during this trial.

13 The indictment charges the defendant with trafficking in
14 cocaine. I remind you that the fact that the defendant was
15 arrested, charged, and indicted in this case is not evidence
16 in this case and cannot be considered by you as evidence of
17 guilt in this case. Nor does it create any presumption or
18 inference of guilty. This document, the indictment, is
19 simply the formal written instrument which contains the
20 charges made against the defendant. It is the formal
21 document by which this case is brought into court.

22 The State must prove beyond a reasonable doubt that a
23 defendant knowingly, sold, manufactured, cultivated,
24 delivered purchase brought into this state provided financial
25 assistance or, otherwise aided, abetted, attempted, or

1 conspired to sell, manufactured, cultivate deliver, purchase
2 or bring into this state was knowingly and actual or
3 constructive possession or knowingly attempted to become an
4 actual or constructive possession of the cocaine.

5 The State must also prove beyond a reasonable doubt that
6 the amount of the cocaine or any mixture containing cocaine
7 was 10 grams or more but less than 28 grams. The statute
8 itself which I have just read to you indicates again that
9 anyone who knowingly, sells, manufacture, cultivate,
10 delivers, purchases, or brings into the state or who provides
11 financial assistance or, otherwise, aids abets, attempts or
12 conspire to sell manufactured, cultivate, deliver, purchase
13 or bring into this state or who is knowingly, an actual, or
14 constructive possession or who knowingly attempts to become
15 an actual or constructive possession of 10 grams or more of
16 cocaine or any mixtures containing cocaine is provided in
17 section 44-53-210 b(4). That person would be guilty of a
18 felony which is known as trafficking in cocaine. Now, upon
19 conviction must be punished if 10 grams or more but less than
20 28 grams was in the possession of that individual.

21 Probable cause to arrest. Probable cause is a good
22 faith belief that a person has committed a crime when that
23 believe rest on grounds that would make an ordinary prudent
24 and cautious person under the circumstances to have the same
25 belief. Probable cause for arrest in a misdemeanor case

1 without a warrant is something more than a mere suspicion
2 that the person committed a crime. An arrest made on a hunch
3 a mere belief or a guess unsupported by facts circumstances
4 or credible information showing that the person has committed
5 the crime is not made on probable cause. Probable cause is
6 somewhere between suspicion and sufficient evidence to
7 convict. In deciding whether there was probable cause to
8 arrest, the probability cannot be technical, but must be
9 based on factual and practical considerations of everyday
10 life on which reasonable prudent and cautious people act.

11 The defendant has pled not guilty to this indictment and
12 that plea puts the burden on the State to prove the defendant
13 guilty. A person charged with committing a criminal offense
14 in South Carolina is never required to prove themselves
15 innocent. I charge you that it is an important rule of the
16 law that the defendant in a criminal trial, no matter what
17 the seriousness of the charge may be, will always be presumed
18 to be innocent of the crime for which the indictment was
19 issued unless guilt has been proven by evidence satisfying
20 you of that guilt beyond a reasonable doubt. This
21 presumption of innocence does not end when you begin your
22 deliberations. But it accompanies the defendant throughout
23 the trial until you reach a verdict of guilt based on
24 evidence satisfying you of that guilt beyond a reasonable
25 doubt. The presumption of innocence is like a robe of

1 righteousness placed around the shoulders of the defendant
2 which remains with the defendant until it has been stripped
3 from the defendant by evidence satisfying you of the
4 defendant's guilt beyond a reasonable doubt. The presumption
5 of innocence is not mere legal theory. It is just not a
6 legal phrase. It is a substantial right to which every
7 defendant is entitled unless you, the jury, are satisfied
8 from the evidence from the defendant's guilt beyond a
9 reasonable doubt. This State has the burden of proving the
10 defendant guilty beyond a reasonable doubt. Some of you may
11 have served as jurors in civil cases where you were told it
12 is only necessary to prove that a fact is more likely true
13 than not true such as by the greater weight of the
14 preponderance of the evidence. In criminal cases the State's
15 proof must be more powerful than that. It must be beyond a
16 reasonable doubt. Proof beyond a reasonable doubt is proof
17 that leaves you firmly convinced of the defendant's guilt.

18 There are very few things in this world that we know
19 with absolute certainty in a criminal case the law does not
20 require proof that overcomes every possible doubt. If based
21 on the consideration of the evidence, you are firmly
22 convinced that the defendant is guilty of the crime charged,
23 you must find the defendant guilty. If, on the other hand,
24 you think there is a real possibility that the defendant is
25 not guilty you must give the defendant the benefit of the

1 doubt and find him not guilty.

2 They're two types of evidence which are generally
3 presented during the trial, direct evidence and
4 circumstantial evidence.

5 Direct evidence is the testimony of a person who claims
6 to have actual knowledge of a fact such as an eyewitness. It
7 is evidence which immediately establishes the main fact to be
8 proof.

9 Circumstantial evidence is proof of a chain of facts and
10 circumstances indicating the existence of a fact. It is
11 evidence which immediately establishes collateral facts from
12 which the main fact may be inferred. Circumstantial evidence
13 is based on inference and not on personal knowledge or
14 observation. The law makes absolutely no distinction between
15 the weight of the value to be given to either direct or
16 circumstantial evidence. Nor is a greater degree of certainty
17 required for circumstantial evidence than of direct evidence.
18 You should weigh all of the evidence in this case. After
19 weighing all of the evidence, if you are not convinced of the
20 guilt of the defendant beyond a reasonable doubt, you must
21 find the defendant not guilty. Necessarily you must
22 determine the credibility of witnesses who have testified in
23 this case. Credibility simply means believability. It
24 becomes your duty as jurors to analyze and to evaluate the
25 evidence and determine which evidence convinces you of its

1 truth. In determining the believability of witnesses who
2 have testified in this case you may believe one witness over
3 several witnesses or several witnesses over one witness. You
4 may believe a part of the testimony of a witness and reject
5 the remaining part of the testimony of that same witness.
6 You may believe the testimony of a witness and its entirety
7 or reject the testimony of a witness and its entirety. You
8 may consider whether any witness has exhibited to you any
9 interest, bias, prejudice, or other motive in this case. You
10 may also consider the appearance and manner of a witness
11 while on the witness stand. And we had one expert witness
12 that testified in this case, the chemist from sled, and
13 normally a person cannot give opinion testimony. Normally
14 when a person testifies they must testify as to what they
15 either saw, heard, or sense my smell or something of that
16 nature. However, there is an exception when someone is
17 qualified because of education or experience. They are
18 permitted to give their opinion in certain areas if the Court
19 qualifies them that way. This witness will be qualified in
20 the area of drug analysis to give opinion testimony in that
21 area. That does not mean that you must accept the opinion
22 but it is evidence for you to use in any way you see fit.

23 I instruct you now and emphasize that the fact the
24 defendant did not appear today and did not testify is not a
25 factor to be considered by you in any way in your

1 deliberations and in your consideration on the question of
2 guilt or innocence of the defendant. It must not be
3 considered by you in any manner, whatsoever. A defendant has
4 a constitutional right to remain silent and the assertion of
5 this right must not be considered by you in your
6 deliberations. I repeat under your oath, you are to draw no
7 conclusion whatsoever from the fact that the defendant in
8 this case did not testify or did not appear. The fact that
9 this defendant did not testify should not even be discussed
10 in the jury room. The burden of proof as I have stated to
11 you is on the State. The defendant is not required to prove
12 his or her innocence. The burden of proof remains on the
13 State to prove guilt beyond a reasonable doubt.

14 In order to establish criminal liability, criminal
15 intent is required. For example the mental state required to
16 be proven by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness or criminal
18 negligence. Criminal intent must be proven by the State
19 beyond a reasonable doubt. Criminal intent is always a
20 matter that must be determined by the jury from the
21 circumstances surrounding the situation. There's no way to
22 prove intent to a mathematical certainty. There's no way
23 medical science can dissect a person's brain and determine
24 what the person had in mind. So the law says that criminal
25 intent may be inferred from the circumstances shown to have

1 existed. This is how you make a determination of whether or
2 not the element requiring intent was present. It is not
3 necessary to establish intent by direct and positive
4 evidence. But intent may be established by inference in the
5 same way as any other fact by taking into consideration the
6 acts of the parties and all the facts and circumstances of
7 the case.

8 Criminal intent is a mental state. A conscious
9 wrongdoing. It is up to you to determine what the defendant
10 intended to do based on the circumstances shown to have
11 existed. Criminal intent can arise from action or a failure
12 to act. It may arise from negligence or recklessness or an
13 inference or, an indifference, excuse me, to duty or to
14 consequences that is considered by the law to be the
15 equivalent of criminal intent.

16 Now, ladies and gentlemen, in this case there are two
17 possible verdicts which you may find, guilty or not guilty.
18 There's no significance, whatsoever, in the order in which I
19 state these possible verdicts. It is simply that one must be
20 stated first.

21 Ladies and gentlemen, your verdict must be a unanimous
22 one. Madam, foreperson, when the jury agrees on the verdict,
23 you will write the verdict on this jury verdict form which I
24 have prepared for you. You will sign your name as the
25 foreperson. You would then, at that point in time, knock on

1 the jury room door, inform the bailiff that you have reached
2 a verdict and you will be received back into the courtroom at
3 that point in time.

4 Now, at this time I'm going to ask you to return to your
5 jury room and again as I caution you earlier, do not begin
6 your deliberations yet. You're almost there. Do not begin
7 your deliberations yet. I need to make sure the lawyers have
8 no objections to what I've just explained to you. We will
9 have the exhibits brought into you. At such time as the
10 bailiff brings back the exhibits to you and give those to
11 you, you may begin your deliberations at that point in time.

12 All right. You may retire to your jury room at this
13 time.

14 (Whereupon, the jury exits the courtroom at 12:13 p.m.)

15 THE COURT: Gentlemen, do you want to review the jury
16 form? You didn't get a chance earlier, just to make sure....

17 THE CLERK: Y'all agree this goes back?

18 THE COURT: Hold on just a minute, Scott. Let me
19 make sure on the record. Any exceptions from the State
20 concerning my charge?

21 MR. THOMAS: No, Your Honor.

22 THE COURT: From the defendant?

23 MR. COX: None, Your Honor. Thank you.

24 THE COURT: All right. We will send back the
25 exhibits and the jury verdict form and they may begin their

1 deliberations.

2 (Whereupon, the jury began their deliberations at 12:14
3 p.m.)

4 THE CLERK: Do you want me to bring the alternate
5 out?

6 THE COURT: Bring the alternate out and I will excuse
7 her or if she wants to stay.

8 (Whereupon, the clerk retrieved the alternate from the
9 jury room)

10 THE COURT: All right. Counsel, we'll be at ease
11 while the jury deliberate.

12 MR. JACKSON: Thank you, Your Honor.

13 THE COURT: Ms. Smith?

14 MS. SMITH: Mmm hmm.

15 THE COURT: Your -- hold on just a minute, counsel.

16 THE CLERK: Let's come back to order.

17 THE COURT: Hold on just a minute. I've got to talk
18 to the alternate.

19 MR. JACKSON: All right.

20 THE COURT: Ms. Smith, at this point in time your
21 duties have been fulfilled as a juror. As an alternate you
22 can't participate in the deliberations. Again, I want to
23 thank you for your service and being here. You're welcome to
24 stay and see what your fellow jurors do with regards to, in
25 this case or you're free to go, go home. But I do need for

1 you to be back here at 9 o'clock tomorrow morning. We will
2 be drawing another jury for another trial at that point in
3 time.

4 MS. SMITH: Okay.

5 THE COURT: If you want to stay, you're welcome to
6 stay.

7 MS. SMITH: Okay.

8 THE COURT: And one other thing I want to tell you,
9 ma'am, if any of these lawyers want to talk to you and you
10 want to talk to them, that's fine, after it's over. If you
11 don't want to talk to them, you tell them to leave you alone
12 that you don't want to discuss it. And if any of them
13 continue to bother you or anybody else for that matter, not
14 just a lawyer, you let me or Mr. Suggs know and we'll take
15 care of it.

16 MS. SMITH: Okay. Thank you.

17 THE COURT: Thank you, ma'am. Now, will be at ease,
18 gentlemen.

19 MR. JACKSON: Thank you.

20 (Whereupon, the jury began it's deliberations at 12:14
21 p.m.)

22 (Whereupon, the court received a note from the jury)

23 THE COURT: Counsel, foreperson has sent out a note
24 saying that we want to hear Officer Hayes' testimony. Any
25 objection to that?

1 MR. JACKSON: No objection.

2 MR. COX: No objection.

3 THE COURT: We can have the court reporter play it
4 back.

5 (Whereupon, the Note from Jury has been marked and
6 entered into evidence as Court's Exhibit No. 1)

7 THE COURT: They've indicated counsel, that they want
8 to hear the testimony and then resume deliberations.

9 MR. JACKSON: Very well. Thank you, Your Honor.

10 (Whereupon, the jury enters the courtroom at 1:03 p.m.)

11 THE COURT: Madam, forelady, I understand that you
12 wish to hear the testimony of Officer Hayes again?

13 MS. GEIGER: Yes, Your Honor.

14 THE COURT: Okay. My court reporter has retrieved
15 that testimony. I want everybody to remain very quiet in the
16 courtroom while the testimony of Officer Hayes is being
17 played back for the jury. Madam Court Reporter?

18 (Whereupon, the testimony of Officer Hayes has been
19 replayed back to the jury)

20 THE COURT: All right. Madam foreperson, do you wish
21 you and your juror's, fellow jurors, wish to take a break for
22 lunch or do you want to resume your deliberations at this
23 point in time?

24 MS. GEIGER: Resume our deliberations.

25 THE COURT: Resume your deliberations. All right.

1 You may retire back to your jury room, then, and resume your
2 deliberations. Thank you.

3 (Whereupon, the jury exits the courtroom at 1:18 p.m.)

4 THE COURT: All right. Let's bring the jury back in.

5 (Whereupon, the jury enters the courtroom at 1:36 p.m.)

6 THE COURT: All right. Ladies and gentlemen, I'm
7 going to, at this point time, send you on a lunch break.
8 You've been deliberating since I believe it was 12:14 or 15
9 something in that range. I give you a chance to go and clear
10 your heads or whatever you need to do. I want you back here
11 at 2:30. It gives you a little less than an hour. Be back
12 here at 2:30. Back in your jury room at which time you will
13 resume your deliberations. Again, and I caution you at this
14 point in time, do not talk about this case while you're
15 outside of this courtroom and outside the jury room. If you
16 go to lunch together I don't want two or three of you
17 discussing it because it has to be discussed as a group of
18 all twelve jurors. Don't talk to somebody else out on the
19 street about the case. And if they asked you, well I see you
20 on the jury duty, what's going on? You tell them you can't
21 talk about it. That the judge told you, you can't talk about
22 it. Because if you do, you'll be violating my instructions.
23 All right. We're going to let you break now and as I said be
24 back in the jury room at 2:30. Once everybody is back, you
25 may resume your deliberations but wait until all twelve are

1 back in the jury room, Madam Foreperson, before you allow
2 deliberations to resume. All right. Everybody remain seated
3 while the jury leaves.

4 (Whereupon, the jury exits the courtroom at 1:38 p.m.)

5 THE COURT: All right. We'll let the jury clear out
6 and then you're welcome to get you a bite to eat or whatever
7 you want to do. We'll be back at 2:30.

8 (Whereupon, the court took a recess for lunch)

9 **Verdict:**

10 THE COURT: I understand we have a verdict?

11 THE CLERK: Yes, sir, judge.

12 THE COURT: All right. Counsel, are you ready for
13 the jury?

14 MR. THOMAS: The State's ready, judge.

15 MR. COX: The defendant is ready.

16 THE COURT: All right. Bring them in.

17 (Whereupon, the jury enters the courtroom at 2:40 p.m.)

18 THE COURT: Madam Foreman, have you and the jury
19 reached a verdict?

20 MS. GEIGER: Yes, we have, Your Honor.

21 THE COURT: Will you hand it up to the clerk please.

22 (Whereupon, the juror complies)

23 THE COURT: All right. Mr. Clerk, when you publish
24 the verdict please, sir?

25 THE CLERK: Yes, sir, Your Honor. Your Honor, this

1 is case number 2015-GS-16-1359, the State of South Carolina
2 versus Robert Len Gainey, the defendant. The verdict, we the
3 jury find the defendant, Robert Len Gainey, guilty of
4 trafficking in cocaine. Sign the foreperson, Kimberly
5 Geiger. January 30, 2018. If this is your verdict would
6 you so signify by raising your right hand please.

7 (Whereupon, the jury complies)

8 THE CLERK: All twelve jurors have risen their right
9 hand.

10 THE COURT: Okay. Thank you, Mr. Suggs. All right.
11 Ladies and gentlemen, as I told you earlier I appreciate your
12 service as jurors on this particular case. Again, you
13 provided a very valuable service to the judicial system.
14 You're not done for the week yet, though. Okay. We have
15 some other matters to dispose of. But with regards to this
16 particular case I want to tell you that you have completed
17 your work and if somebody wants to talk to you about this
18 case it's entirely up to you whether you want to talk to them
19 about it. You have the right to do so if you so desire.
20 But you also have the right to tell somebody that you don't
21 want to talk about it. And if somebody were to pursue you
22 and continue to say, "ah, you know", and you don't want to
23 talk to them and they keep aggravating you and bothering you,
24 you let me know or you let Mr. Suggs know and we'll take care
25 of that situation. But as I said you're free to talk if you

1 want to but you don't have to if you don't want to and we
2 don't want you to be harassed in any way by anybody whether
3 it's a lawyer or a member of the public or whatever. I do
4 want you to go back in the jury room right now. You've
5 completed your duties but I need before I let you -- I guess
6 we can just have them call -- I tell you, just call tonight
7 after 6 o'clock and you'll know what your instructions are
8 whether to be back at a certain time tomorrow or a certain
9 time on Thursday. So if you'll just use the call-in system
10 and Mr. Suggs I'm sure has already explained to you, we'll
11 see you either tomorrow or Thursday. Thank you.

12 (Whereupon, the jury exits the courtroom at 2:44 p.m.)

13 **Sentencing:**

14 THE COURT: All right. Counsel, any motions from
15 either the State or the defendant?

16 MR. COX: Your Honor, on behalf of the defendant I
17 would ask that the defendant be allowed to entertain any
18 post-trial motions after he is found and he knows what the
19 verdict is.

20 MR. THOMAS: Your Honor, the State would ask that you
21 proceed with sentencing at this time.

22 THE COURT: I'm sorry I can't hear you.

23 MR. THOMAS: The State would ask that you go ahead
24 proceed with sentencing at this time.

25 THE COURT: Okay.

1 MR. COX: We ask that the defendant make the post-
2 trial motions at the time he receives his sentence.

3 MR. THOMAS: No objections.

4 THE COURT: I don't have a problem with that. I'll
5 grant that motion.

6 MR. COX: Thank you, sir.

7 THE COURT: All right. Counsel, come around. I'll
8 be glad to hear from you, Mr. Cox, on behalf of your client
9 before I sentence him.

10 MR. COX: My client is a fine upstanding young man.
11 He's always present when he needs to be here. But something
12 happened in his life after leaving here that changed his mind
13 or changed his habits that put him in some type of stress he
14 couldn't be here. I ask you to take that into consideration.
15 Thank you.

16 THE COURT: Thank you, Mr. Cox. Mr. Thomas?

17 MR. THOMAS: Your Honor, I just have his record here
18 I'd like to share with the court and I'm asking for the
19 maximum sentence in this case. In 2001, he has a robbery by
20 use of a deadly weapon; 2003, assault battery conviction;
21 2004, open container; and, Your Honor, in 2009, he was
22 charged with murder, possession of a weapon during a violent
23 crime, and possession of cocaine, those three charges are
24 still pending. He was out on bond when he got this
25 particular charge and while he was out on bond he also pled

1 to assault battery second degree in Florence County. For
2 those reasons we would ask that he get the maximum sentence.

3 THE COURT: So the actual convictions are the
4 robbery, the deadly weapon, assault battery, open container
5 and another assault battery second degree?

6 MR. THOMAS: That's correct, judge.

7 THE COURT: Okay. All right. Counsel, the sentence
8 of the court as to Robert Len Gainey ---

9 THE CLERK: Judge! Judge!

10 THE COURT: The sentence will be placed in this
11 envelope and sealed and as such time as we are able to pick
12 up Mr. Gainey then the presiding judge will inform Mr. Gainey
13 as to what my sentence is in this matter. A bench warrant
14 will be issued as I indicated earlier this morning so we'll
15 try to find your client for you, Mr. Cox.

16 MR. COX: Thank you, Your Honor.

17 MR. THOMAS: Thank you, judge.

18 (Whereupon, court has adjured for the day on this case)

19

20

21

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25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 29th and 30th day of January, 2018.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa Carter

Circuit Court Reporter

December 2, 2018

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF DARLINGTON</u>	)	2015-GS-16-001359

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ROBERT LEN GAINEY	)	
<u>DEFENDANT</u>	)	

July 19, 2018
Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

SAM THOMAS, ASSISTANT SOLICITOR
Attorney for the State

KELLY JACKSON, ASSISTANT SOLICITOR
Attorney for the State

JAMES C. COX, JR., ESQUIRE
Attorney for the Defendant

Shannon Wilkes, AVL Bonding Company

HATTIE O. GORDON
Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

ROBERT LEN GAINNEY, after being duly sworn,
testified as follows:

THE COURT: Solicitor.

MR. KELLY: May it please the Court. Your Honor,
this is in reference to Robert Len Gainney. State has
several legal matters to bring before the Court this
morning on Mr. Robert Len Gainney.

The first or three matters have to do with the bond
for a murder case from 2009. That indictment number is
2010-GS-16-907 and -908. Those two indictments are for
murder and possession of a weapon during the commission of
a violent crime: He was arrested in 2009 on this murder
charge. A \$60,000 bond was set. That bond was posted by
AVL Bonding Company. And the first matter that we have
before the Court is a representative of AVL Bonding
Company would like to address the Court on going off of
that bond.

THE COURT: Yes, ma'am.

MR. KELLY: She has filed that motion and would like
to be heard.

MS. WILKES: Thank you, Judge.

THE COURT: Yes, good morning.

MS. WILKES: Good morning. The Defendant did violate
his bond. Did not stay in contact with bonding company

1 and has been rearrested while on bond. And this bond
2 violation we request that you grant the motion to be
3 relieved.

4 MR. KELLY: That is Shannon Wilkes.

5 THE COURT: Mr. Cox.

6 MR. COX: Your Honor, my client right now is not
7 going to agree or allow me to agree to anything. I think
8 he is going to ask you to remove me as his attorney before
9 sentencing purposes, but in my opinion this motion is
10 proper.

11 THE COURT: Mr. Gainey.

12 MR. GAINNEY: Yes. I would like to have another
13 attorney. This is the second -- the second judge I've
14 seen to request this. He represents the -- I guess some
15 of the people that are against me; that lied against me.
16 This case and have changed this case. Used to say one
17 thing. Now they're saying something different, and he's
18 not speaking up for me. He's not representing me at all.

19 THE COURT: Okay.

20 MR. GAINNEY: This case used to say one thing. Now
21 it's stating totally different. And how does it change
22 how does the law -- how does my case change? How does
23 it -- I don't understand that, and for you to be my
24 attorney and to not see in this, not know this, and I know
25 this. My family knows this. His family has seen this.

1 Witnesses has known there, but you don't see this.

2 THE COURT: All right. Well, the issue that you are
3 outlining to the Court certainly would play more on the
4 eventual trial of this, charges. What we're here for is
5 this bonding issue. At the present moment I'm going to
6 ask Mr. Cox to stay with you until this, and then we will
7 take action to make sure you properly have representation
8 at trial on the Court case.

9 I'm unfamiliar with all the charges, but I certainly
10 heard what the Solicitor said. So the motion to be
11 relieved from the bond is granted.

12 MR. KELLY: Thank you, Your Honor.

13 MS. WILKES: Thank you.

14 SPEAKER 1: That motion having been granted the
15 second motion that the State is asking the Court to do is
16 revoke the bond of \$60,000 or vacate that bond. In
17 support of that on his bond form it stated that he would
18 be of good behavior in the community while out on bond.
19 We believe that he violated the condition of being of good
20 behavior.

21 He was bonded out in the 2009. In 2014 he was
22 arrested in Florence County for assault and battery in the
23 first degree. He bonded out on that, and he failed to
24 show up in General Sessions Court to answer for that
25 charge. A bench warrant was issued for his arrest. That

1 bench warrant was served on him later in 2015 over here in
2 Darlington County.

3 And when he was arrested on this bench warrant in
4 2015 that's when he was charged with trafficking in
5 cocaine. He had the drugs on his person. He was charged
6 in Darlington County with trafficking cocaine. He was
7 locked up in the Florence County Detention Center on the
8 bench warrant. He later pled guilty to a reduced charge
9 of assault and battery in the second-degree and got time
10 served.

11 So he was arrested and convicted on a General
12 Sessions level offense while he was out on bond, and we
13 believe that violates the terms of him being of good
14 behavior while he was out.

15 On the drug charge in Darlington County, the
16 trafficking in cocaine, he was bonded out on that. Tried
17 on that in January of this year. During that particular
18 trial he was convicted, and another thing we will do this
19 morning is unseal his sentence. But he was convicted of
20 that trafficking in cocaine charge. And that would be a
21 second violation of the bond of being good behavior while
22 he was out in the community on the 2009 murder bond.

23 Third, Your Honor, in support of that he had two
24 bench warrants issue for him for not showing up in Court
25 on other General Sessions cases, and for those reasons we

1 would ask that this bond of \$60,000 be revoked and
2 vacated.

3 THE COURT: Mr. Cox.

4 MR. COX: May it please the Court.

5 THE DEFENDANT: You talking about how long I was
6 locked up in Florence for the assault and battery?

7 MR. COX: Yes, sir.

8 THE DEFENDANT: I'm only one got charged with it. I
9 talking about the trafficking charge. There is no plan or
10 nothing like that, whatsoever. And same police that lied
11 on me in this one is on that one. Charge that one, too.

12 MR. COX: But I want to make sure that you understand
13 for what the Solicitor stated and that they're asking that
14 your bond come off.

15 MR. GAINEY: Well, I can sit in the County Jail in
16 Darlington County forever.

17 MR. COX: I don't think.

18 MR. GAINEY: It has no statutory. I can sit in the
19 county jail forever and die cause it has no statutory.

20 MR. COX: Thank you, Your Honor.

21 THE COURT: All right. Well, based on the
22 information that's before the Court that there has been a
23 trial and sentence to be unsealed along with the fact of
24 the special cases the Solicitor has pointed out about the
25 other arrests and convictions the bond is denied at this

1 point. Won't be any reinstatement of that previous bond.
2 That clear it up?

3 MR. KELLY: Yes, sir, Your Honor. That's what we ask
4 was that the bond be denied. Revoked, vacated and denied.
5 And we've got an order to that affect for Your Honor that
6 we would like to hand up.

7 THE COURT: All right.

8 MR. KELLY: Your Honor, still in relation to the
9 murder case it was a piece of evidence collected at the
10 crime scene that we -- potentially may have D.N.A.
11 evidence on it, and we would like to get a buccal swab
12 from the Defendant while we are still in Court here today.
13 And we have offered that to the Defense attorney, Mr. Cox,
14 and it's possible that we can get a consent order on that.
15 Otherwise, we are ready for the Schmerber Hearing to
16 present evidence to get that buccal swab.

17 MR. COX: I have discussed this briefly with my
18 client, Mr. Gainey, and Mr. Gainey is not going to
19 consent. I told him that if he did not consent to it it
20 would be your decision whether or not he had to submit a
21 sample. But he does not want to agree to anything.

22 THE COURT: Is the correct, Mr. Gainey?

23 MR. GAINNEY: Say what?

24 THE COURT: The issue is will you consent to have a
25 swab for D.N.A. testing?

1 MR. GAINNEY: For D.N.A?

2 THE COURT: Not a blood draw or anything like that.
3 From my understanding it's just a swab.

4 MR. KELLY: They put a Q tip on the side of his
5 mouth. That's it.

6 MR. GAINNEY: No, I don't want to do that. I mean I'm
7 not denying that I -- this just happened, whatever. I'm
8 just saying that it's a little bit late for this, isn't
9 it. How long ago was that.

10 MR. COX: It think he's raising the point that this
11 should have been done early, early on in his arrest.

12 THE DEFENDANT: It should be like they got whatever
13 they needed, shouldn't they ...

14 THE COURT: But you just said that you're not
15 denying what happened.

16 MR. GAINNEY: I'm not denying that I was there or
17 anything. I wasn't there. I'm just saying why is it a
18 need for a D.N.A.

19 THE COURT: Well, when you sit here telling me that
20 you're not denying what happened and that you were there,
21 are you telling me that you're intending to enter some
22 type of plea?

23 MR. GAINNEY: No. No. No. I'm saying it was
24 self-defense.

25 THE COURT: I got you. Okay.

1 MR. GAINNEY: All I'm saying. But what I don't
2 understand is why do they need this now.

3 THE COURT: I can't answer that. All I can do is
4 have a hearing to determine if it's needed now. I can't
5 answer to this point.

6 MR. GAINNEY: I don't want to do that as much as
7 things have changed in my case, and word for word I'm
8 scared to.

9 THE COURT: All right.

10 MR. GAINNEY: I don't know who is for or who is
11 against me over what can change or what can't change.

12 THE COURT: Okay. Let's think about the timing of
13 this.

14 MR. KELLY: Your Honor, maybe I should withdraw that
15 motion at this particular time because he has mentioned
16 that he thinks he might want Mr. Cox removed from the
17 case. And if he starts with a new lawyer there maybe an
18 issue with the new lawyer addressing it.

19 THE COURT: We don't know wants in that sealed
20 sentence. Who was the judge?

21 MR. KELLY: The sealed sentence was issued by Judge
22 Henderson in January.

23 THE COURT: This is my procedural technical question:
24 At this point if he was given an active sentence would not
25 the Department of Corrections take a D.N.A. test?

1 MR. KELLY: Yes, they would.

2 THE COURT: So this could resolve whatever this
3 sentence may be without you having to go through that
4 later on, possibly?

5 MR. KELLY: Possibly.

6 THE COURT: Okay, all right. You're withdrawing it.

7 MR. KELLY: I withdraw the motion at this point cause
8 he may want to get a different attorney. We will move
9 forward with it quickly if he gets new representation.

10 THE COURT: Okay.

11 SENTENCE OF THE COURT

12 MR. KELLY: Your Honor, the next thing that we
13 have -- Your Honor, the next thing that we have is the
14 seal sentence. Mr. Sam Thomas in our office prosecuted
15 that case. That was prosecuted in January. That's for
16 the trafficking in cocaine, and I believe the Clerk's
17 Office has that particular document.

18 THE COURT: Mr. Thomas, come around.

19 MR. THOMAS: Thank you, Your Honor. Mr. Jackson is
20 correct. He and I tried Mr. Gainey starting January 29th
21 2018. We drew a jury. Mr. Gainey was present at that
22 time for Docket Number 2015-GS-16-1359, trafficking in
23 cocaine, 10 grams or more but less than 28 grams.

24 The second day of the trial Mr. Gainey did not show
25 up. We tried him in his absence. The jury came back

1 guilty, and Judge Henderson sentenced him and sealed that
2 sentence, and we ask that you unseal that sentence today.

3 THE COURT: All right.

4 CLERK OF COURT: Yes, sir, Your Honor. On
5 January 30th 2018 Judge Henderson put the sentencing sheet
6 in this envelope. He signed it, and it's been in my care
7 and control since.

8 THE COURT: Let the record reflect that I am
9 unsealing the sentence. All right. This sentence is
10 signed by Judge Roger Henderson on January the 30th 2018.

11 Defendant, Robert Len Gainey, to be confined in the
12 Department of Corrections for a period of ten years. And
13 straight forward sentence. I don't see any other
14 provisions in the sentence.

15 MR. KELLY: Thank you, Your Honor.

16 MR. THOMAS: Thank you, Your Honor.

17 MR. GAINNEY: I knew what was in it.

18 MR. COX: Your Honor, my client is not in agreement
19 with anything we're going to say or do. He's had family
20 support and there are family members here in the courtroom
21 today although he has not recognized them. He does have
22 that support. What we are not asking them to stand with
23 him, they there are members of the family here today still
24 praying for him.

25 THE COURT: All right. To clear the record up,

1 Mr. Gainey, I will advise you at this time that under the
2 provisions of our law you have ten days to appeal this
3 conviction and sentence. In other words, a Notice of
4 Appeal has got to be perfected with ten days from today.
5 If not you could lose your appellate rights.

6 Mr. Cox, you will have to advise him. Normally, the
7 procedure is you would contact Appellate Defense if that's
8 his desire.

9 MR. COX: Yes, sir.

10 THE COURT: But you would need to handle that they
11 way you normally would to protect yourself by making sure
12 that he understands that notice and assist him in
13 obtaining appellate defense if that's his desire.

14 MR. COX: Thank you, Your Honor.

15 THE COURT: After that is completed his motion to
16 have you relieved, what is your position on that?

17 MR. COX: Your Honor, if that's what he wants and
18 thinks is in his best interest I don't object.

19 THE COURT: All right. By the time you get through
20 with whatever you need to do about the appellate issue if
21 you will get me an order relieving you, and we'll take it
22 from there and get you an attorney appointed on these
23 other matters. Okay.

24 MR. COX: I will file with Appellate Defense for you
25 to appeal this. So I will not be appealing it myself --

1 for Appellate Defense to represent you. Yes.

2 THE COURT: Appellate Defense is the group out of
3 Columbia that normally handles these matters before the
4 Court of Appeals and the Supreme Court, and they take it
5 over. But the critical thing now is to understand that
6 that Notice of Appeal has got to be filed within ten days
7 of today.

8 MR. COX: I will file that for you. I'll contact
9 Appellate Defense.

10 THE COURT: Okay. Good luck. Thank you.

11 MR. KELLY: Thank you, Your Honor.

12 MR. THOMAS: Thank you, Your Honor.

13 MR. COX: Thank you, Judge.

14 END OF TRANSCRIPT OF RECORD

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Mark Hayes
Darlington County Sheriff's Office
P.O. Box 783
Darlington, SC 29540

DRUG ANALYSIS
October 22, 2015
SLED LAB: L15-13398
Your Case No: 201505-0786
Incident Date: 05/30/2015
[S] Robert Gainey

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 On October 07, 2015, items were received in B234201 from Garry S. Billiot of the Darlington County Sheriff's Office.

Item: 1.1 Powder substance.

RESULTS:

Cocaine (C-II) found in the sample tested; 1 tested. Net weight: 10.54 +/- 0.01 grams (162.65 +/- 0.15 grains). Confidence level for the weight is 99.7%.



TRUE CERTIFIED COPY

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

FORM A

**REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)**

I, Willie C. Smith, III, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 15 years and 3 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 76 times. I have received the following training as a Forensic Scientist.

B.S. Chemistry, University of South Carolina, Columbia, SC, 1995

B.S. Biology, University of South Carolina, Columbia, SC, 1991

Drug Enforcement Administration, Forensic Chemist Seminar, 2004

Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2001

Basic Law Enforcement Training, South Carolina Criminal Justice Academy, 2000

Sub # 1 On October 07, 2015, items were received in B234201 from Garry S. Billiot of the Darlington County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test

☐ Microscopic Exam

☐ Infrared Spectroscopy

☐ Visual Examination

☒ Gas Chromatography

☒ Mass Spectroscopy

☐ Physical Test

☐ Published Literature

See Drug Analysis Report L15-13398 for Results.

Forensic Scientist

Willie C. Smith, III
Willie C. Smith, III

Date: October 22, 2015



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Issuing Authority: Quality Manager

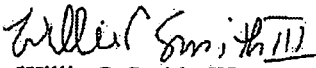


SLED Forensics Form # DDA 020, November 2013
Page 1 of 1

October 22, 2015
L15-13398

Page 2

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.


Willie C. Smith, III
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

~~Kimberly A. Lee~~

We want to hear Officers
Haye's testimony.

Kim Berger
1-30-2018



TRUE CERTIFIED COPY

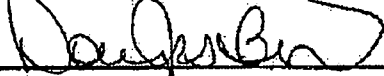
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

WITNESSES

M Hayes

Darlington County Sheriff

Law Enforcement Case #: 201505-0786



863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

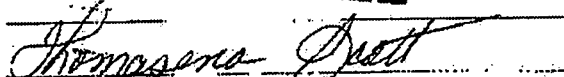
I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2015A1610200112

ARRESTED ON: 2015-05-30

ACTION OF GRAND JURY
TRUE BILL


Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2015-GS-16-1359

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
October 2015

THE STATE

vs.

Robert Len Gainey

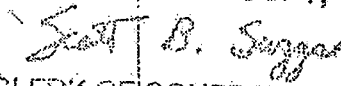
INDICTMENT FOR

Drugs / Trafficking in cocaine, 10 g or more,
but less than 28 g - 1st offense

§44-53-0370(e)(2)(a)1

CDR Code: 0278

TRUE CERTIFIED COPY,


CLERK OF COURT/CMC
DARLINGTON COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON) Drugs / Trafficking in cocaine, 10 g or more, but less
 than 28 g - 1st offense

§44-53-0370(e)(2)(a)1

At a Court of General Sessions, convened on October 08, 2015, the Grand Jurors of Darlington County present upon their oath:

TRAFFICKING COCAINE (10-28 GRAMS)

CDR: 0278 44-53-0370(e)(2)(a)(1)

That Robert Len Gainey did in Darlington on or about May 30, 2015, knowingly sell, deliver, purchase or bring into this State, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

TRUE CERTIFIED COPY,

Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
 WILLIAM B. ROGERS, JR.
 SOLICITOR

STATE OF SOUTH CAROLINA

2-10 years

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Darlington

VS.

Robert Len Gainey

AKA:

Race:

W

Sex: M

Age:

39

DOB:

-1978

SS#:

[REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2015-GS-16-1359

A/W#: 2015A1610200112

Date of Offense: 5/30/2015

S.C. Code § : 44-53-0370(c)(2)(a)1

CDR Code #: 0278

SENTENCE SHEET

TO: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(c)(2)(a)1 of the S.C. Code of Laws, bearing CDR Code # 0278

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Redmond, Karmal E

SC Bar# 104401

Defendant

Attorney for Defendant

SC Bar# 1421

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years

and/or to pay a fine of \$ 1000; provided that upon the service of 10 days/months/years and/or payment

of \$ 1000; plus costs and assessments as applicable*; the balance is suspended with probation for 10

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ 1000 plus 20% fee: \$ 200

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL

\$ 783.25

Clerk of Court/ Deputy Clerk

Michelle Norton

Court Reporter:

Hattie Gordon

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

7754

1-30-18

TRUE CERTIFIED COPY,

Scott B. Sawyer

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

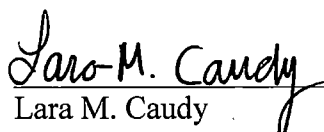
Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

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,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 2nd day of May, 2019.