

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Union County

Honorable Roger E. Henderson, Circuit Court Judge

DAVID T. GALLMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002197

APPENDIX

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State of South Carolina.,)
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County of Union.)
_____)

In the General Sessions
Court of Union
Case No.: 2014-GS-44-00077

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
)
David Terrell Gallman.,)
)
_____)
Defendant.)

Transcript of Record

July 8, 9, 2014
Union, South Carolina

B E F O R E:

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

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

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Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

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

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1 (COURT IN SESSION IN THE MATTER OF STATE V. DAVID
2 GALLMAN ON TUESDAY, JULY 8, 2014 AT 10:18 A.M..)

3 THE COURT: Thank you. Good morning, you may be
4 seated.

5 Members of the jury panel, I'm John Hayes from Rock
6 Hill and I hold court over here in this - Union County is
7 part of the Sixteenth Judicial Circuit which includes York
8 and Union Counties and Judge Lee Alford and I are the
9 regulars I will call us. We are the judges assigned to
10 this circuit although we travel all over the state.

11 We are holding this week here in Union County a term
12 of General Sessions Court, Criminal Court. The cases that
13 come up this week will involve individuals who are charged
14 with violating the laws of our state. It's not automobile
15 accidents or contract disputes or homeowner disputes or
16 anything like that.

17 In a few minutes I'll have an opportunity to go over
18 with you certain qualifications, disqualifications and
19 exemptions that apply to jury service. But before we do
20 that the Clerk is gonna call the roll and wants you to give
21 for us the information he ask. I'm going to ask you to
22 stand up when he calls your name and give this information.
23 You don't have to shout but give a good strong voice so we
24 can hear you. The attorneys - I want to hear you and the
25 attorney's who possible have cases this week want to hear

1 you and of course the Clerk wants to know the answer to
2 this question. So once we do that, I'll go over the
3 qualifications, disqualifications and exemptions, and I'll
4 talk to you more about that at that time, so please respond
5 to what the Clerk request.

6 (JURY ROLL CALL AT 10:19 A.M..)

7 THE COURT: All right. Thank you. I am going to ask
8 you now to give me your attention and I'm going to go over
9 this list of qualifications, disqualifications and
10 exemptions. If you need to discuss any of these matters
11 with me, once I go through the list I will invite anyone
12 who needs to talk to me about any of these matters that
13 come up and form a line there at the break at the bar, the
14 partition there, and one of the officers will stand there
15 and have you come up at one at a time and I will step down
16 by the court reporter, Ms. Nelson, and chat with you.

17 The lawyers who have cases this week have the right to
18 come up and stand and hear what we have to say and what you
19 have to say that you won't have to stand up in front of
20 everyone and discuss whatever your issues are.

21 First, in order to serve as a juror in this court you
22 must fall into one of the following categories. You do not
23 need to fall into all three but you must fall into at least
24 one. You must either be a qualified elector, that is, a
25 registered voter, or, hold a South Carolina Department of

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1 Public Safety identification card, or, be a licensed South
2 Carolina driver. If you do not fall into one of those
3 categories please come forward in just a moment.

4 If any of you reside in a county other than Union
5 County, South Carolina, or, if you are not a United States
6 citizen please come forward in just a moment.

7 If any of you work in this courthouse or hold any
8 elected office in Union County please come forward in just
9 a moment.

10 If any of you hold a constable's license either with
11 our without pay, please come forward in just a moment.

12 If any of you have been convicted or have pled guilty
13 in a state or federal court to a crime to which you could
14 receive punishment that exceeded one year imprisonment and
15 if your civil rights have not been restored by pardon or
16 amnesty, please come forward in just a moment.

17 I call to your attention that this has to do with
18 offenses which carried a potential sentence that exceeded
19 one year imprisonment and it is not tied to any actual
20 sentence one may have received.

21 If any of you have any mental or physical health
22 issues which would prevent you from serving as juror,
23 please come forward.

24 If any of you have less than a sixth grade education
25 or it's equivalent, please come forward in just a moment.

1 If any of you cannot read, write, speak or understand
2 the English language, please come forward in just a moment.

3 If any of you are a teacher or a student and serving
4 with us this particular week will interfere with that,
5 please come forward in we can transfer you to another time.

6 If any of you have served on a circuit court jury such
7 as this within the last three calendar years, or, if you
8 have served on a state wide, or, a county grand jury within
9 the last five calendar years, please come forward in just a
10 moment. Serving on a federal, magistrate, municipal court
11 as a juror does not count.

12 If any of you are the primary care giver for a child
13 under the age of seven and do not work outside the home,
14 or, if you are the primary care giver for anyone of any
15 age, that is, if you take care of someone on a regular
16 basis, family member or a friend who cannot themselves take
17 care of themselves and you assist them, please come forward
18 in we will talk about that.

19 If any of you are sixty-five or older you have an
20 exemption if you wish to exercise it. If you are sixty-
21 five or older and wish to serve simply keep your seat.
22 If you are sixty-five or older and wish to be excused
23 please come forward when I invite you to do so.

24 Finally, if any of you have any compelling reason why
25 you could not serve as a juror with this week - with us

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1 this week, please come forward and we'll chat about that.

2 Now I'm going to step down by the court reporter and
3 the attorneys can come stand around where I am and if you
4 have any issues you need to discuss with me come form a
5 line there at the break and we'll chat about it.

6 THE BAILIFF: 133.

7 THE COURT: Good morning. Your name and number?

8 A. 133, Cody Johnson.

9 THE COURT: Yes, sir.

10 MR. JOHNSON: I have a felony pending charge. I
11 didn't know if that was gonna stop me.

12 THE COURT: It would. You probably won't get picked
13 to serve on a jury if you got a felony charge.

14 MR. JOHNSON: It was a pending trial, I didn't know.

15 THE COURT: You don't have a conviction?

16 MR. JOHNSON: A DUI.

17 SOLICITOR ANTHONY: He's not qualified but he's not
18 disqualified.

19 THE COURT: That's what I thought.

20 You can stay with us. That's what I thought - --

21 MR. JOHNSON: I thought about it.

22 THE COURT: Yeah, well I'm glad you told us that. You
23 can stay with us.

24 THE BAILIFF: Number 40.

25 THE COURT: Your name?

1 A. Bridget Childers. I thought I heard you say teacher.
2 I'm an assistant teacher. Is that the same thing?

3 THE COURT: But are you working this week as an
4 assistant teacher?

5 MS. CHILDERS: No.

6 THE COURT: Okay. That's only if it would interfere
7 with -

8 MS. CHILDERS: Okay. I have a five year old daughter
9 who has a doctor's appointment on Friday. Would that
10 interfere with this?

11 THE COURT: We'll excuse you on Friday so we'll make
12 sure you take care of that on Friday.

13 MS. CHILDERS: Okay. So just don't come on Friday?

14 THE COURT: Well, just - What we'll do is we have a
15 call in system everyday for can call in. We have you down
16 if you call and they say come in on Friday you know you
17 don't have to.

18 MS. CHILDERS: Okay.

19 THE COURT: So you just don't plan on being here
20 Friday. You need to be here Thursday. On Friday we will
21 excuse you.

22 MS. CHILDERS: Okay. Thank you.

23 THE BAILIFF: 22.

24 THE COURT: Good morning.

25 A. Good morning to you.

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1 THE COURT: Your name?

2 A. My name is Jessica Brannon and my sister-in-law has
3 children from six, seven and eleven. She's the only one
4 working and my brother is in prison so she can't afford
5 child care and I'm disabled so I do it for her.

6 THE COURT: Does she work?

7 MS. BRANNON: She works at Dollar General. She works
8 at Dollar General. I had to take them somewhere else. She
9 normally brings them to my house like four o'clock in the
10 morning and she gets up at four in the afternoon.

11 THE COURT: I'll excuse you.

12 She'll be excused.

13 MS. BRANNON: Okay. Thank you.

14 THE BAILIFF: 2-0-4.

15 THE COURT: Good morning. Your name?

16 A. Emily O'Dell, I'm currently unemployed and I take care
17 of my three month old daughter.

18 THE COURT: Okay. You can be excused. Thank you.

19 THE BAILIFF: 163.

20 A. Good morning, Your Honor.

21 THE COURT: Good morning. Your name?

22 A. I can serve if I have but I got two doctor
23 appointments Friday. If I don't call in they'll charge me.

24 THE COURT: We'll excuse you for Friday. Can you be
25 here for the rest of the week?

1 A. Yes, sir, I can be here Friday if I have to be.

2 THE COURT: No.

3 A. Okay. Thank you.

4 THE BAILIFF: 71.

5 THE COURT: Good morning.

6 A. I actually go to school in Spartanburg and I live
7 there. I've lived there for over a year.

8 THE COURT: Have you changed your license, driver's
9 license?

10 A. No, sir. I go there for school.

11 THE COURT: No but you - Your permanent home is here?

12 A. I actually live in Spartanburg.

13 THE COURT: Do you have a home here?

14 A. Yes with my parents.

15 THE COURT: If your driver's license is still with
16 your parents I'll have to let you serve with us.

17 A. That's fine.

18 THE COURT: You just need to get it changed. If
19 you're gonna live in Spartanburg permanently you need to
20 get that changed.

21 A. Okay.

22 THE COURT: But as long as you - if the indication
23 that you live in - you need to get your driver's license
24 changed. But I'll let you stay with us.

25 A. All right.

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1 THE COURT: Okay. Thank you.

2 THE BAILIFF: 125.

3 THE COURT: Good morning. Your name?

4 A. My name is Larry Jennings. The reason why I can't
5 serve on the jury is I know about seventy-eight percent of
6 the people that's going to trial.

7 THE COURT: I can't excuse you for that. If we try
8 somebody and you know them you have to stand up at that
9 time.

10 THE BAILIFF: 114.

11 THE COURT: Good morning. Your name?

12 A. Carol Hughes. I served two years ago on a trial here.

13 THE COURT: All right. Have a seat and we'll double
14 check on that.

15 Did you hear that? Ms. Hughes says she's - Here's
16 Freddy. We'll check and let you know but thank you.

17 THE BAILIFF: 34.

18 THE COURT: Your name?

19 A. Jennifer Calhoun.

20 THE COURT: All right.

21 MS. CALHOUN: I do not have a time to serve and I
22 don't work inside the courthouse walls. I work with the
23 tax assessor's office. I didn't know if that made a
24 difference.

25 THE COURT: We'll let you stay with us.

1 MS. CALHOUN: Okay.

2 THE COURT: Thank you.

3 THE BAILIFF: 35.

4 THE COURT: Good morning. Your name?

5 A. My name is Lora Callahan. I'm a charge nurse and I'm
6 on call for the rest of the week. I don't know - -

7 THE COURT: I can transfer you to another time where
8 you can make other plans.

9 MS. CALLAHAN: I don't want to -

10 THE CLERK: August 4.

11 MS. CALLAHAN: August the 4th. Okay.

12 THE COURT: Okay. You just need to let them know in
13 advance that you will not be available that week.

14 MS. CALLAHAN: I will. Okay. Thank you.

15 THE COURT: Thank you.

16 THE BAILIFF: 126.

17 THE COURT: Good morning. Your name?

18 A. Good morning. Betty Jeter. I have a disabled
19 husband and I have a caretaker that's there nine to twelve
20 and I don't have anybody.

21 THE COURT: I'll excuse you.

22 She will be excused.

23 MS. JETER: Okay. Thank you.

24 THE BAILIFF: 238.

25 THE COURT: Good morning.

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1 A. Good morning.

2 THE COURT: Your name?

3 A. Cassie Smith. I served two years ago and I believe
4 circuit court.

5 THE COURT: Well we'll check. How about that? We'll
6 double check our records and see. You will be excused.
7 Was it up here?

8 MS. SMITH: No, sir.

9 THE COURT: That's magistrate court so that won't
10 count so you will stay with us.

11 MS. SMITH: Okay. Thank you.

12 THE COURT: Thank you.

13 THE BAILIFF: 27.

14 THE COURT: Your name?

15 A. Dwayne Burnett. I have a strong armed robbery against
16 me.

17 THE COURT: You will be excused. Thank you.

18 THE BAILIFF: 188.

19 THE COURT: Your name?

20 A. Martha McKinnon. I got a rod put in my back. I just
21 don't think I can deal with this.

22 THE COURT: She'll be excused.

23 You can leave. Thank you.

24 MS. MCKINNON: Thank you so much.

25 THE COURT: Thank you.

1 THE BAILIFF: 211. 211.

2 THE COURT: Your name?

3 A. Donna Pendleton.

4 THE COURT: Okay.

5 MS. PENDLETON: I don't know if this is an excuse or
6 not but we close on our house on Thursday morning at eleven
7 o'clock and I have to meet with the lawyers to close on our
8 house.

9 THE COURT: We can transfer you to another time, after
10 another week so you can deal with that. We'll just
11 transfer you.

12 MS. PENDLETON: August the 4th. That would be fine.
13 I'm a teacher so I need to be there before we get back in
14 school.

15 THE COURT: Where do you teach?

16 MS. PENDLETON: At Union County High School.

17 THE COURT: What do you teach?

18 MS. PENDLETON: Health Science, Nurse.

19 THE COURT: All right. You'll get another letter in
20 the mail.

21 MS. PENDLETON: Okay. Thank you. So I can just leave
22 then?

23 THE COURT: Yes, ma'am.

24 THE BAILIFF: 258. 2-5-8.

25 THE COURT: Good morning.

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1 A. Good morning, sir.

2 THE COURT: Your name?

3 A. Benny Suttles. I didn't know if it relevant but
4 back in the '80s I got convicted for the offense of DUI and
5 driving under suspension.

6 THE COURT: You would be excused.

7 Gwendolyn Jeter, would you please come forward.

8 Gwendolyn Jeter.

9 THE BAILIFF: Gwendolyn Jeter.

10 THE COURT: Good morning. Did you have a failure to
11 stop offense, a 1095 failure to stop for a blue light?

12 MS. JETER: Yes.

13 THE COURT: I have to excuse you.

14 She will be excused. Thank you.

15 (COURT RETURNED TO THE BENCH.)

16 THE COURT: All right, the jury is qualified. We will
17 take a break now until 11:15. That's about a twenty minute
18 break, use the restroom, or do whatever you - but don't get
19 too far away from the premises though because we need you
20 back seated ready to draw the jury in our first case at
21 11:15. So that's about a twenty minute break, see you
22 then.

23 (COURT IN RECESS AT 10:55 A.M..)

24 (COURT BACK IN SESSION AT 11:17 A.M..)

25 THE COURT: Thank you, you may be seated.

1 I'm going to ask the Solicitor, this is Mr. John
2 Anthony the Solicitor and he's gonna call the first case
3 for the week.

4 SOLICITOR ANTHONY: Thank you, Your Honor.

5 The first case is the State versus David Gallman.
6 This is 2014-44-77, this is an indictment for possession of
7 crack cocaine with intent to distribute. It has been True
8 Billed by the Grand Jury.

9 THE COURT: All right. This as you just heard a case
10 against Mr. Gallman involving a charge with possession of
11 crack cocaine with intent to distribute it. It's alleged
12 that this occurred here in Union County on or about
13 December 19th, 2013 when Mr. Gallman is alleged to have
14 possessed a quantity of crack cocaine with intent to
15 distribute it in violations of the laws of our State.

16 He is represented by Mr. Erik Delaney.

17 Mr. Gallman, will you stand so the jury can see who
18 you are? And this his lawyer with the coat on Mr. Erik
19 Delaney.

20 (DEFENDANT AND DEFENSE ATTORNEY DELANEY STOOD.)

21 THE COURT: You may be seated.

22 I do have some questions to go over with you similar
23 to what I ask this morning. They are different because
24 they are case specific. This time if you need to respond
25 to any of these questions just stand and I will have a

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1 dialogue with you from where you are. I won't have you
2 come up like you did earlier today.

3 First, are any of you related by blood or marriage, or
4 either a close personal friend or acquaintance of Mr.
5 Anthony, Mr. Gallman or Mr. Delaney? Or, do any of you
6 have any association with - Well let me start over.

7 Are any of you related by blood or marriage, or, are
8 you a close person friend or acquaintance of Mr. Anthony,
9 Mr. Delaney or Mr. Gallman; if so, please stand?

10 No one stands.

11 Have any of you been involved with our Solicitor's
12 Office, Mr. Kevin Brackett's office as a witness or a
13 victim or in any manner, or prosecuted you or a member of
14 your family prosecuted by his office; if so, please stand?

15 No one stands.

16 Have any of you been represented by Mr. Erik Delaney
17 at any time; if so, please stand?

18 No one stands.

19 Have any of you heard about this case, do any of you
20 know about it from any source whatsoever? Or have any of
21 you formed or expressed any opinion about any matter or
22 issue which would be involved in this case, or a case of
23 this type; if so, please stand?

24 No one stands.

25 The lady that came in late and this is why we try to

1 be on time because now I've got to go back over and tell
2 you what this case is about. Start over.

3 This is the case against Mr. Gallman who is seated
4 here in the yellow shirt. He is represented by Mr.
5 Delaney. The State is represented by Mr. Anthony. Mr.
6 Gallman is charged with being in possession of crack
7 cocaine with intent to distribute back in December of 2013.

8 I've ask if anybody is related by blood or marriage to
9 Mr. Anthony, Mr. Delaney, or Mr. Gallman and no one stood.
10 I ask that of you.

11 She indicated by her shaking her head that she did not
12 fall into that category.

13 Do any of you know about this case; heard about it
14 from any source whatsoever? Or have any of your formed or
15 expressed any opinion about any matter or issue that would
16 be involved in this case; if so, please stand?

17 No one stands.

18 Were any of you members of the Grand Jury which passed
19 on this indictment at an earlier time; if so, please stand?

20 No one stands.

21 Are any of you or a member of your immediate family
22 members of organizations such as Student's Against Drunk
23 Drivers; Mother's Against Drunk Driver's; Citizen's Against
24 Violence; Trooper's Association; Sheriff's Association or
25 Fraternal Order of Police; if so, please stand?

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1 No one stands.

2 Are any of you or a member of your immediate family or
3 have you or a member of your immediate family in the recent
4 past been involved as either a law enforcement officer or a
5 prosecuting officer? That is, anything from a military
6 police to a sheriff's office to a city policeman or
7 anything from the Judge Advocate General, U.S. Marshall,
8 judge at any level; if so, please stand? Not judge, but
9 prosecutor at any level; if so, please stand?

10 Okay. Yes. We'll start from this lady and then we'll
11 go to this lady.

12 Your name and number? And if you'll just tell me your
13 name and number and then just say why you're standing.
14 That is, Uncle Joe is a policeman or something.

15 A. 176, Melinda Malone. My husband is a police officer.

16 I'm not sure what cases he sits on.

17 THE COURT: He's a police officer where?

18 MS. MALONE: He's currently a GSP airport.

19 THE COURT: Would that affect your ability to be a
20 fair and impartial in the trial of this case?

21 MS. MALONE: No, sir.

22 THE COURT: Okay. You can remain with us. Thank you.
23 Your name and number?

24 A. Bridget Childers, Number 40. My husband works for the
25 Union County Detention Center as the Assistant

1 Director.

2 THE COURT: All right. Would that affect your ability
3 to be fair and impartial in this trial?

4 MS. CHILDERS: I don't think so.

5 THE COURT: Okay. You may be seated.

6 Yes, ma'am, your name and number?

7 A. Marsha Gossett, Number 86, and my brother in law is
8 the supervisor for the highway patrol.

9 THE COURT: Would that affect your ability to be fair
10 and impartial in this trial?

11 MS. GOSSETT: No, sir.

12 THE COURT: Okay. Thank you. You may be seated.

13 Yes, ma'am, your name and number?

14 A. Robin Smith, 244. My husband works for the Union
15 Public Safety.

16 THE COURT: All right. Would that affect your ability
17 to be - Would you still be able to be fair and impartial in
18 this trial?

19 MS. SMITH: Yes, sir.

20 THE COURT: All right. Thank you. Again I appreciate
21 all of you standing.

22 Now this is of somewhat personal kind of questions so
23 I'm not going to ask you to go into great detail, but I do
24 ask you to stand and then I'll ask you about whether based
25 on your standing whether or not you would be able to be

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1 fair and impartial in this trial.

2 Have any of you or a member of your family, in your
3 opinion, been adversely affected by illegal drugs; that is,
4 somebody in your family had a problem with them, somebody
5 in your family suffered any loss because of what you think
6 related to the use of illegal drugs even including theft
7 that may have been occasion in your opinion because of
8 drugs were involved; if so, please stand?

9 All right, your name and number? Again I'm not asking
10 you to go into particulars, just your name and number.

11 A. Stephen West, Number 282.

12 THE COURT: Could you be fair and impartial in this
13 trial?

14 MR. WEST: No.

15 THE COURT: You could not? All right, we'll excuse
16 you from serving. If you'll just have a seat; don't leave.

17 Yes, sir, your name and number?

18 A. 213, Leonard Pruitt. My son - -

19 THE COURT: Well I don't want to know what - about it.
20 That's personal. But would you be able to be fair and
21 impartial in this trial?

22 MR. PRUITT: No, sir.

23 THE COURT: All right. Well we'll excuse you also.

24 Thank you.

25 Again, that's why I ask these questions.

1 THE BAILIFF: There's one more juror out.

2 THE COURT: One more juror out? Well we'll deal with
3 he, or she, when they come in.

4 All right, anything further from the State?

5 SOLICITOR ANTHONY: May we just approach a minute?

6 (SIDE BAR OFF THE RECORD OUT OF THE HEARING OF THE
7 JURY AT 11:25 A.M..)

8 THE COURT: The following are possible witnesses in
9 this case. If any of you are related by blood or marriage,
10 or, if you are a close personal friend or acquaintance of
11 any of these individuals please stand?

12 Corporal Shane Petri; Officer Jason Nix; Officer Joe
13 Smith; Captain Greg Pickens; Lieutenant Micky Parker, all
14 those from the Union Public Safety Department.

15 Then from the Spartanburg County Sheriff's Office,
16 Melissa Hendricks. And then an individual who is not
17 associated with law enforcement based on the list I have,
18 Kelly Crawford.

19 All right, I have two ladies standing and one - They
20 both stood before and now I have a third, but let's go back
21 to the ladies that have already stood. Even though you
22 stood a minute ago I still have to get your name and number
23 because we have to have a record. I'll start with the lady
24 I'm looking at.

25 A. 176, Melinda Malone. I'm acquainted with law

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1 enforcement because of my work at the hospital. It
2 wouldn't interfere.

3 THE COURT: Would you still be able to be fair and
4 impartial?

5 MS. MALONE: Yes, sir.

6 THE COURT: Okay. You can be seated.

7 Yes, ma'am.

8 A. Juror 244. My husband is with Public Safety.

9 THE COURT: All right. Well since - I am going to
10 excuse you then from serving since this does involve a
11 fellow - people who work with your husband so if you -
12 don't leave but we won't include you in this draw. Thank
13 you. You can just stay here yes, ma'am.

14 And yes your name and number?

15 A. Number 52. And my sister works in the office at the
16 City of Union Police Department.

17 THE COURT: Well I'll excuse you also then. Your
18 name? You gave us your name and your number so I'll excuse
19 you for the same reason.

20 A. Robin Cremeans.

21 THE COURT: All right, you can have a seat.

22 A. Joe Burns, Juror Number 28. I'm just acquainted with
23 Mickey Parker.

24 THE COURT: All right. Would that affect your ability
25 to be fair and impartial in this trial?

1 MR. BURNS: No, sir.

2 THE COURT: Okay. You can remain with us then.

3 All right. Do any of you know of any reason why you
4 could not or should not serve as a fair and impartial juror
5 in the trial of this particular case; if so, please stand?

6 No one stands.

7 Well I will ask this. Have any of you or a member of
8 your immediate family been charged with a criminal offense,
9 other than a traffic offense, other than speeding or
10 illegal parking or something like that, by the Union Public
11 Safety Department, charged with a crime, you or a member of
12 your family?

13 All right, yes, ma'am. I'm having a little trouble
14 hearing you.

15 A. My nephew I don't know exactly the details

16 THE COURT: Okay. Your name and number?

17 A. Stefanie Moss, 196.

18 THE COURT: All right. Would that affect your ability
19 to be fair and impartial? Yes or no.

20 MS. MOSS: No.

21 THE COURT: You shook your head and I got to get a
22 verbal response.

23 All right, this gentleman over here, your name and
24 number?

25 A. Lawrence Johnson, 138.

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1 THE COURT: All right. Would the fact that you're
2 standing would you still even though somebody has had
3 interaction with the Department of Public Safety would you
4 still in this case be able to be fair and impartial?

5 MR. JOHNSON: No, sir.

6 THE COURT: Okay. Well I'll excuse you from serving
7 then.

8 MR. JOHNSON: I mean it's a yes.

9 THE COURT: Okay. You could be fair and impartial?

10 MR. JOHNSON: I could.

11 THE COURT: Okay. Thank you. All right.

12 The way we draw jurors in this situation in trials
13 like this, names are at random generated through a computer
14 and if your name is called please come forward and stand in
15 front of the desk where the Clerk of Court is seated and
16 turn around and face first the table which would be then to
17 your left where Mr. Anthony is seated and he will say
18 either present the juror or excuse the juror.

19 If he says excuse the juror, return to your seat. If
20 he says present the juror turn to the table where Mr.
21 Gallman and his counsel are seated and Mr. Delaney will say
22 either excuse the juror which again means you may return to
23 your seat. Or he will say swear the juror. If you hear
24 those words walk to the jury box and the bailiff will tell
25 you how to situate yourself in the jury box.

1 Just come forward and when you do come forward if you
2 have a pocketbook or a book or anything with you, if you
3 have something with you go ahead and bring it up when you
4 come.

5 It will take us a couple of minutes to do this cause
6 some people are excused and we have to pull their names out
7 so we can't start running the list until we get this form.

8 (PETIT JURY STRUCK AT 11:35 A.M..)

9 THE CLERK: Number Juror Number 260 is Andrea
10 Thompson.

11 (WHITE FEMALE COMING FORWARD.)

12 THE CLERK: So say the State?

13 SOLICITOR ANTHONY: Please present the juror.

14 THE CLERK: So say the Defense?

15 MR. DELANEY: Please swear the juror.

16 THE CLERK: You can have a seat in the jury box,
17 ma'am.

18 And when you have a seat be careful cause some of
19 these seats tend to kind of tilt back very quickly so be
20 careful.

21 Juror Number 152 is Amy Knox.

22 (WHITE FEMALE COMING FORWARD.)

23 THE CLERK: So say the State?

24 SOLICITOR ANTHONY: Please present the juror.

25 THE CLERK: So say the Defense?

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1 MR. DELANEY: Please swear the juror.

2 THE CLERK: You can have a seat in the jury box,
3 ma'am.

4 Juror 144, Joshua Julian.

5 (WHITE MALE COMING FORWARD.)

6 THE CLERK: So say the State?

7 SOLICITOR ANTHONY: Please present the juror.

8 THE CLERK: So say the Defense?

9 MR. DELANEY: Please swear the juror.

10 THE CLERK: Have a seat in the jury box, sir.

11 Juror Number 241, Jasmine Smith.

12 (BLACK FEMALE COMING FORWARD.)

13 THE CLERK: So say the State?

14 SOLICITOR ANTHONY: Please present the juror.

15 THE CLERK: So say the Defense?

16 MR. DELANEY: Please swear the juror.

17 THE CLERK: Have a seat in the jury box, ma'am.

18 Juror Number 261, Linda Thompson.

19 (BLACK FEMALE COMING FORWARD.)

20 THE CLERK: So say the State?

21 SOLICITOR ANTHONY: Please present the juror.

22 THE CLERK: So say the Defense?

23 MR. DELANEY: Please swear Ms. Thompson.

24 THE CLERK: Juror Number 276, John Ward.

25 (WHITE MALE COMING FORWARD.)

1 THE CLERK: So say the State?
2 SOLICITOR ANTHONY: Please present the juror.
3 THE CLERK: So say the Defense?
4 MR. DELANEY: Please swear Mr. Ward.
5 THE CLERK: Have a seat in the jury box.
6 Juror Number 28, Joe Burns.
7 (WHITE MALE COMING FORWARD.)
8 THE CLERK: So say the State?
9 SOLICITOR ANTHONY: Please present the juror.
10 THE CLERK: So say the Defense?
11 MR. DELANEY: Please excuse Mr. Burns.
12 THE CLERK: You can return to your seat, sir.
13 Juror Number 110, William Horne.
14 (WHITE MALE COMING FORWARD.)
15 THE CLERK: So say the State?
16 SOLICITOR ANTHONY: Please present the juror.
17 THE CLERK: So say the Defense?
18 MR. DELANEY: Please swear Mr. Horne.
19 THE CLERK: Have a seat in the jury box.
20 Juror Number 159, Kirk Lanier.
21 (WHITE MALE COMING FORWARD.)
22 THE CLERK: So say the State?
23 SOLICITOR ANTHONY: Please present the juror.
24 THE CLERK: So say the Defense?
25 MR. DELANEY: Please excuse Mr. Lanier.

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1 THE CLERK: You can return to your seat, sir.
2 Juror Number 290, Robert Williams.
3 (WHITE MALE COMING FORWARD.)
4 THE CLERK: So say the State?
5 SOLICITOR ANTHONY: Please present the juror.
6 THE CLERK: So say the Defense?
7 MR. DELANEY: Please swear Mr. Williams.
8 THE CLERK: Have a seat in the jury box, sir.
9 Juror Number 31, Bobby Byrd.
10 (BLACK MALE COMING FORWARD.)
11 THE CLERK: So say the State?
12 SOLICITOR ANTHONY: Please excuse the juror.
13 THE CLERK: You can return to your seat, sir.
14 Juror Number 215, Gray Ransom.
15 (WHITE MALE COMING FORWARD.)
16 THE CLERK: So say the State?
17 SOLICITOR ANTHONY: Please present the juror.
18 THE CLERK: So say the Defense?
19 MR. DELANEY: Please swear Mr. Ransom.
20 THE CLERK: Have a seat in the jury box, sir.
21 Juror Number 68, Bernetta Ferguson.
22 (BLACK FEMALE COMING FORWARD.)
23 THE CLERK: So say the State?
24 SOLICITOR ANTHONY: Please excuse the juror.
25 THE CLERK: You can return to your seat, ma'am.

1 Juror Number 2-0-2, Karen Newton.

2 (WHITE FEMALE COMING FORWARD.)

3 THE COURT: The strikes are five and five. We will
4 draw one alternate and strikes will be one and two.

5 THE CLERK: So say the State?

6 SOLICITOR ANTHONY: Please present the juror.

7 THE CLERK: So say the Defense?

8 MR. DELANEY: Please excuse Ms. Newton.

9 THE CLERK: You can return to your seat, ma'am.

10 Juror Number 183, Tammy McCollum.

11 (WHITE FEMALE COMING FORWARD.)

12 THE CLERK: So say the State?

13 SOLICITOR ANTHONY: Please present the juror.

14 THE CLERK: So say the Defense?

15 MR. DELANEY: Please swear Ms. McCollum.

16 THE CLERK: Have a seat in the jury box, ma'am.

17 Juror Number 2, Teresa Adams.

18 (WHITE FEMALE COMING FORWARD.)

19 THE CLERK: So say the State?

20 SOLICITOR ANTHONY: Please present the juror.

21 THE CLERK: So say the Defense?

22 MR. DELANEY: Please swear Ms. Adams.

23 THE CLERK: Have a seat in the jury box.

24 Juror Number 2-0-6 Grover Owens.

25 (WHITE MALE COMING FORWARD.)

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1 THE CLERK: So say the State?

2 SOLICITOR ANTHONY: Please present the juror.

3 THE CLERK: So say the Defense?

4 MR. DELANEY: Please swear Mr. Owens.

5 THE CLERK: Have a seat in the jury box, sir.

6 THE CLERK: The alternates the strikes will be one for
7 the State and two for the Defense.

8 THE CLERK: Juror Number 20, Wendy Boyd.

9 (BLACK FEMALE COMING FORWARD.)

10 THE CLERK: So say the State?

11 SOLICITOR ANTHONY: Please present the juror.

12 THE CLERK: So say the Defense?

13 MR. DELANEY: Please swear the juror.

14 THE CLERK: Have a seat in the jury box, ma'am.

15 THE COURT: Anything from the State involving the
16 striking of the panel?

17 SOLICITOR ANTHONY: No, sir.

18 THE COURT: Anything from the Defense?

19 MR. DELANEY: No, Your Honor.

20 THE COURT: All right. Those of you who were not
21 chosen I'm gonna allow you to leave and I'm gonna ask you
22 to leave quietly because I'm gonna start talking to this
23 jury panel. Call back tonight after six. Its' very
24 important that you follow whatever instructions are on the
25 voice mail. They will either be to call back at a certain

1 time or report at a certain time. It is very important
2 that you be here and be here on time. If you are not here
3 when you're supposed to be I have to find out why and I
4 don't have to do that on my own, I can ask the Sheriff to
5 do that and I don't want to have to do that. Its not by
6 way of a threat its just that that's the way our system
7 works. When you're supposed to be here and you are not I
8 have to ask the Sheriff to find you and get you in here.

9 We're easy to deal with however. If you have an
10 emergency, if you have car trouble or if you become ill and
11 I hope you don't, or if you have some legitimate reason why
12 you cannot be here call and let the Clerk's know. We can
13 deal with that but if you are not here and we don't know
14 why then that's a problem. So have a pleasant afternoon
15 and call back tonight after six.

16 (JURY DISMISSED AT 11:46 A.M..)

17 THE COURT: Those of you who were chosen if you will
18 please stand, Mr. Gault, the Clerk will administer the oath
19 and when you sit down, Mr. Ward, I'm gonna ask you to be
20 the foreperson of the jury and you and the lady - I can't
21 remember your name - but Teresa I think is her first name -
22 I don't like to call you by your first name but I remember.

23 Mr. Ward and this lady in the pink will change places
24 and, Mr. Ward, you will always sit in that seat and the
25 alternate will always sit - Ma'am, you are the alternate

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1 you will always sit in that seat. No other assigned
2 seating. You all go ahead and swap now and the Clerk will
3 administer the oath.

4 THE CLERK: Please raise your right hand please.

5 (PETIT JURY SWORN AT 11:48

6 P.M..)

7 THE COURT: You can be seated.

8 Members of the jury panel, its almost lunch time so
9 I'm gonna make some opening remarks and then I'm gonna
10 excuse you for lunch. When you come back I'll have some
11 further remarks to make to you and I will then let the
12 attorneys make their opening statements and I'll talk to
13 you more about that now.

14 What I'm going to instruct you now is that you are on
15 this jury, you are to enter and exit as the bailiff's will
16 show you how to get in and out while you are serving as a
17 juror. While you are serving as a juror do not discuss
18 this case with anyone. If anyone tried to discuss this
19 case with you tell them you cannot do so as you're serving
20 on a juror - serving as a juror and report back to me if
21 anyone tries to discuss this case with you hopefully giving
22 you that person's identity because they would be in trouble
23 with the court for having tried to talk to a seated juror.

24 Do not try to make up your own mind or discuss this
25 case until I instruct you to jointly deliberate and return

1 an unanimous verdict. Prior to that time you do not have
2 all the tools you need to make a fair and reasonable
3 decision. Do not use any electronic media to find out
4 anything that remotely deals with this trial. Don't use
5 Google or Cloud or any electronic or even non-electronic
6 methods to find out anything about anything - to find out
7 anything about anything that would deal with this case.
8 That is you are not to look up anything about Mr. Gallman
9 or his attorney or the Solicitor or me, rules of evidence,
10 rules of law. You are under your oath required to render
11 your verdict - unanimous verdict solely on what you hear
12 and see in the trial as far as the facts and the evidence.

13 So don't go and do any independent research during the
14 course of the testimony. I don't know where this occurred.
15 You will hear where the incident happened please don't go
16 scope it out on your own. Things may change since 2013 so
17 don't do any independent research just rely on what happens
18 here in the courtroom. And based on talking to the
19 attorneys I feel confident that we will have this case in
20 your hands by lunch time tomorrow.

21 Do not even do Face book or any sort of social media.
22 Don't put on Face book that you are serving as a juror.
23 Someone may respond with something that would not be
24 helpful or help you while you are serving as a juror so
25 just don't use search social media. You can use it for

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1 other purposes but not learning anything about the trial or
2 doing anything regarding this trial.

3 Do not let yourself be exposed to any news coverage if
4 there is any. I do not know that there will be but don't
5 let yourselves - don't read about it, watch anything or
6 listen to anything that would remotely deal with this
7 trial. Again, you got to base your verdict solely on the
8 law and the evidence developed in the trial.

9 I've already assigned the seating of the alternate.
10 The Foreperson will - Mr. Ward, you will be the liaison
11 between the jury and myself and preside over the jury
12 deliberations and ultimately sign the jury's unanimous
13 decision.

14 Now I've got some matters to take up in this case,
15 some legal matters, and during the trial legal matters pop
16 up sometimes I have to excuse you for and rather than get
17 into the trial and excuse you during the trial we will go
18 ahead and take those up over lunch so we're gonna take what
19 may sound like a long lunch. It's not quite twelve but
20 we're gonna break until 1:30. That will give us time to
21 have lunch and also time for us to do the things that we
22 need to do to get out of the way so once we start the trial
23 we can move more rapidly.

24 Anything else the State wants me to cover before we
25 break for lunch?

1 SOLICITOR ANTHONY: No, sir.

2 THE COURT: Mr. Delaney?

3 MR. DELANEY: No, Your Honor.

4 THE COURT: All right, have a pleasant lunch and if
5 you will exit this way the bailiff will show you how to get
6 in and out while you are serving and see you back at 1:30.

7 (JURY DISMISSED FOR LUNCH AT 11:52 A.M..)

8 THE COURT: Did we ever have - that missing juror ever
9 come in?

10 THE BAILIFF: No, sir.

11 THE COURT: Do we know who it was?

12 THE BAILIFF: No, sir.

13 THE COURT: Okay. All right, we can't do anything
14 about that.

15 All right, we have one motion. It's my understanding
16 that the State has put the defense on notice of the
17 possible use of a prior distribution charge and conviction?

18 SOLICITOR ANTHONY: No, sir. It's not a - he hasn't
19 been to court. It's a pending case. The distribution
20 we're seeking to introduce under 404(b) is the subject of a
21 pending case.

22 THE COURT: All right. Well, now I would have to have
23 a - we talked in chambers about whether I would have to
24 have a proffer. I certainly would have to have a proffer
25 because unless it's not a conviction I have to find that by

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1 clear and convincing evidence that the prior bad act did in
2 fact occur. So I'll let the Solicitor tell me the essence
3 of what he plans to do as filed under Lyle 408 - I'm sorry
4 403 testimony - 404 testimony, and then Mr. Delaney tell me
5 his opposition and then we can go forward..

6 SOLICITOR ANTHONY: Your Honor, when Mr. Gallman was
7 arrested in December of this past - 2013 he was arrested on
8 the distribution of crack charge from a prior sale he had
9 made. He was arrested and our evidence will be that he had
10 almost six grams of crack on his person that was dropped by
11 him as the arrest was being effectuated.

12 And our position is that we would seek to introduce
13 evidence of the prior sale, that was the subject of the
14 warrant, by Mr. Gallman to our informant in order to show
15 that the possession on the day that is the subject of this
16 case, on December 19th, 2013, he was arrested, that the
17 crack that was in his possession at that time was in his
18 possession with the intent to distribute.

19 THE COURT: So under 404, it would be with the
20 evidence involving the ten.

21 SOLICITOR ANTHONY: Yes, sir.

22 THE COURT: All right. And Mr. Delaney, you oppose
23 that, of course.

24 MR. DELANEY: Yes, Your Honor, I would oppose that.
25 My main argument - our position would be under the

1 prohibitive value of the State seeking to seek is going to
2 be outweighed by the unfair prejudice to my client. As you
3 heard, the amount is well above the statutory limit, 5.9
4 grams.

5 THE COURT: That's not the limit; it's an inference.

6 MR. DELANEY: Inference.

7 THE COURT: It is just an inference.

8 MR. DELANEY: It's subject to the statutory prima
9 fascia shown in this case. The prior distribution that the
10 State wants to get into happened in June of 2013,
11 approximately six months prior to the December 13 or
12 December 19th, 2013 date. The case law that I've looked
13 at, *State v. Wilson* and *State v. Gore*, are the two primary
14 cases that deal with this issue.

15 In *State v. Wilson*, Your Honor, the reasoning that was
16 used, it was in light of the State's reliance on certain
17 substantial evidence to prove intent. The evidence of
18 prior drug transaction in *State v. Wilson* happened two days
19 prior. In *State v. Gore* it happened approximately thirty
20 days prior. In this case we have six months.

21 Both of those cases dealt with again circumstantial
22 evidence. It also dealt with construction possession
23 cases, drugs being found ultimately in hotel rooms where
24 multiple people were charged.

25 In this case, there is going to be testimony from an

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1 officer that they saw my client drop this bag to the
2 ground, so my main argument to the court is this is
3 cumulative. This will be prejudicial to my client and I
4 would ask the court to keep this out.

5 THE COURT: All right. If you'll hand the cases -
6 copies of the cases up.

7 MR. DELANEY: Yes, Your Honor.

8 THE COURT: Do you want to call a witness on this?

9 SOLICITOR ANTHONY: Yes, sir.

10 Can you get Mr. Crawford?

11 (PAUSE.)

12 THE COURT: We're back on the record. I'm now told
13 that one of the jurors indicates she is related to Mr.
14 Gallman. Let's bring her in.

15 (JUROR ENTERS COURTROOM.)

16 THE COURT: You say you think you are related to Mr.
17 Gallman?

18 A. Yes, sir. His father - my daughter married in his
19 family.

20 THE COURT: Why - You didn't say anything.

21 A. I really didn't understand what you was saying at the
22 time.

23 THE COURT: Okay. Tell me again.

24 A. My daughter - My daughter is married into his family.

25 THE COURT: Into his family? How close? Brother,

1 sister?

2 A. His father is my daughter's husband uncle.

3 THE COURT: Would you be able to be fair and impartial
4 in this trial since he's kind of related to you?

5 A. I don't know. It would be kind of hard.

6 THE COURT: All right. I'm gonna excuse you.

7 A. I appreciate it.

8 THE COURT: You said you are.

9 A. I appreciate it.

10 MADAM COURT REPORTER: Judge, Judge, get her number.

11 THE COURT: Name and number?

12 A. Linda Thompson, 261.

13 THE COURT: Okay.

14 MS. THOMPSON: Thank you.

15 THE COURT: All right.

16 THE CLERK: Billy, have her call back in tonight.

17 THE COURT: We'll seat the alternate. I don't know
18 how clear I was when I was asking that question. Anybody
19 related by blood or marriage?

20 All right, if you will come up here and be sworn.

21 THE CLERK: Put your left hand on the Bible and raise
22 your right hand.

23 (WHEREUPON, KELLY CRAWFORD,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION - IN CAMERA

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 KELLY CRAWFORD BY SOLICITOR ANTHONY:

2 Q. Would you state your name, please?

3 A. Kelly Crawford.

4 THE COURT: You need to speak up.

5 A. Kelly Crawford.

6 Q. And Mr. Crawford, where do you live?

7 A. Union, South Carolina.

8 Q. And I want to take you back now to July - I'm sorry -
9 to June of last year. Were you doing any work with the
10 public safety department in regards to buying controlled
11 substances?

12 A. Yes, sir.

13 Q. Okay. And who were you working with specifically?

14 A. Mickey Parker.

15 Q. And what was the reason that you were working with
16 Mickey Parker doing a drug buy?

17 A. For help when we went to court on a case.

18 Q. And what specifically had you been charged with?

19 A. Shoplifting.

20 Q. I want to take you now to the 6th of June of last
21 year. Did you make contact with the defendant in this
22 case, David Gallman, on that day?

23 A. Yes, sir.

24 Q. And how do you know Mr. Gallman?

25 A. From drugs I guess.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 Q. Well, how long have you known him?

2 A. A few years.

3 Q. When did you - How did you first meet him?

4 A. I snowed him in school.

5 Q. Okay. And so when you contacted him on the 6th of
6 June, what did you tell Mr. Gallman you wanted to do?

7 A. Purchase crack.

8 Q. And what did you - What kind of arrangements did you
9 all make as far as getting together to make a crack
10 purchase?

11 A. We were first suppose to meet up on the Union Mill
12 hill.

13 Q. Okay. And so after you talked to him and made that
14 plan to meet on the mill hill, what did you do next? Who
15 did you speak to next?

16 A. I called Micky Parker.

17 Q. Okay. And where did you go to meet with Mr. Parker?

18 A. Hibbitt Sports.

19 Q. No. To meet Mr. Parker.

20 A. Oh. At the Union task force.

21 Q. All right. And when you went to the Union task force,
22 what did Investigator Parker do?

23 A. He searched my car. He searched me. Put the device
24 in the car. Gave me the money to make the buy.

25 Q. And so after you went to the narcotics office and had

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 been searched and given money - Were you given anything to
2 record the buy?

3 A. Yes, sir. A little device.

4 Q. Okay. All right. And after you had done that, what
5 did you do next?

6 A. Went to the mill hill to meet Mr. Gallman. He wasn't
7 there so I went to Hibbitt Sports.

8 Q. How did you get in touch with Mr. Gallman to know to
9 go to Hibbitt Sports?

10 A. I called him on the phone.

11 Q. And is that where he told you he was? Mr. Gallman
12 told you he was at Hibbitt Sports?

13 A. Yes, sir.

14 Q. Okay. And so after going and calling him at Hibbitt
15 Sports - or after calling him and finding out that he was
16 at Hibbitt Sports, what did you do then?

17 A. Called Mickey Parker and told him where I was going.

18 Q. And then where did you go?

19 A. To the Hibbitt Sports.

20 Q. And when you got to Hibbitt Sports, what happened?

21 A. I went in and let him know I was there. Just walked
22 back outside and stood until he came out and I sat down in
23 the car.

24 Q. So you went back to your car?

25 A. Yes, sir.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 Q. Okay. And when Mr. Gallman came outside, what did he
2 do?

3 A. He got in the car with me. We exchanged some money
4 for the crack.

5 Q. All right. Was there any conversation between you and
6 Mr. Gallman before the exchange?

7 A. Very little. He ask me how much I wanted. I told him
8 and he gave it to me.

9 Q. Okay. How much did you tell him that you wanted?

10 A. Forty dollars.

11 Q. All right. And when you told him you wanted forty
12 dollars, what did Mr. Gallman do?

13 A. He pulled out a small container and dumped it in his
14 hand. He held it out and put it in my hand which we
15 switched money.

16 Q. And then what did you do with the money?

17 A. I stuck it in my pocket or stuck it —

18 Q. No. What did you do with the money in regards to Mr.
19 Gallman?

20 A. Oh. I gave it to Mr. Gallman.

21 Q. Okay. Okay. And then after you had given Mr. Gallman
22 the money and he had given you the crack, what did you do?
23 What happened to your car, I guess. What was going on with
24 your car?

25 A. The battery was dead; it wouldn't start.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 Q. Okay. And so when Mr. Gallman got in your car, what
2 was his intention as far as you taking him somewhere?

3 A. He had told a guy that he was with to go on, he would
4 meet him I guess at his house, so he was wanting me to take
5 him back to his house.

6 Q. Okay. And then when your car wouldn't start, what did
7 Mr. Gallman do?

8 A. He hollered for the guy and got him to stop and he got
9 in the car with him and left.

10 Q. Okay. And so after Mr. Gallman left, what did you do?

11 A. I called my wife. She came and jumped my car off.

12 Q. And then once she jumped your car off, what did you
13 do?

14 A. Went back to the task force with Mickey Parker.

15 Q. What did you do with the crack when you got back to
16 the task force?

17 A. I gave it to Mickey.

18 Q. And what did Investigator Parker do in regards to
19 finishing up the transaction?

20 A. He searched me. He searched my car. Removed the
21 device.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
23 IDENTIFICATION.)

24 Q. I'm handing you this DVD that's been marked for
25 identification as State's Exhibit Number One. Can you look

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 at that and tell me if you've ever watched it before, Mr.
2 Crawford?

3 A. Yes, sir.

4 Q. Okay. And how do you know you watched it before?

5 A. I initialed it and put the date on it.

6 Q. And what does that DVD depict?

7 A. It shows from the time I left the task force. It
8 shows the buy.

9 Q. Okay. All right.

10 SOLICITOR ANTHONY: Your Honor, we'd just for the
11 purpose of the Lyle hearing, we'd move this into evidence.

12 THE COURT: All right. It's in evidence as Court's
13 Exhibit for purposes of the Lyle hearing.

14 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
15 MARKED, RECEIVED INTO EVIDENCE.)

16 Q. And is the man you bought the crack from in the
17 courtroom?

18 A. Yes, sir.

19 Q. All right. Could you just point him out, please?

20 A. Right there.

21 Q. All right. Is it the man in the shirt or the man in
22 the suit?

23 A. In the yellow shirt.

24 Q. In the yellow shirt. All right.

25 SOLICITOR ANTHONY: We'd ask that the record reflect

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1 that he's pointed out Mr. Gallman.

2 That's everything on direct on the proffer.

3 THE COURT: All right.

4 MR. DELANEY: No questions.

5 THE COURT: You can step down. Thank you. Go back
6 out. They may need you later.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Anything further from the State?

9 SOLICITOR ANTHONY: I would just inquire of Mr.
10 Delaney, I can call Investigator Parker to the stand just
11 to testify that the crack was turned over to him and it was
12 analyzed and it was indeed crack cocaine if there is a - If
13 there's no agreements as to that. I assume that's not
14 really a controversy.

15 MR. DELANEY: Yeah, I think that's the only issue at
16 controversy as the Solicitor said.

17 THE COURT: Whether it was or not crack cocaine, he
18 asked to buy crack cocaine, gave money for crack cocaine to
19 Mr. Gallman. According to his testimony, gave him a
20 substance, whether or not it was crack cocaine, may have
21 some relevance as far as the charge against him, but for
22 purposes in looking at the clear and convincing evidence
23 standard, and I don't know but it's kind of novel that
24 there has to be a actual drug test recorded because the
25 question is whether or not there was a distribution of

1 anything purported to be crack cocaine in the past.

2 SOLICITOR ANTHONY: Yes, sir.

3 THE COURT: All right. Well I'm gonna allow the
4 evidence in. I've looked at both the Gore and Wilson cases
5 and the cases hold that evidence of prior drug transactions
6 are relevant on the issue of intent when a defendant has
7 been charged with possession of a controlled substance with
8 intent to distribute.

9 Two factors that perhaps come into play but I find --

10 Well first I find by clear and convincing evidence
11 that the transaction involving Mr. Gallman and Mr. Kelly
12 Crawford did in fact take place. That it purported to be,
13 whether it was or not, a distribution of an illegal
14 substance, that being crack cocaine. That - Again I find
15 that's by clear and convincing evidence and I find that
16 that would suffice under the evidence and the law to allow
17 to it in to show intent under 404.

18 The two things that have been pointed out - Well I do
19 find - Before I get to that, I find that the probative
20 value outweighs any prejudicial value. There of course
21 obviously is prejudicial value or it wouldn't be relevant,
22 but I do find that the probative value of whether the issue
23 is intent particularly because the cases have said it.

24 Not exclusive because the cases say that there is
25 probative value in this type evidence. I find that's

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1 independent of the case law that one being involved in the
2 distribution of a particular substance and it was a charge
3 of possession with intent to again distribute that
4 substance. That it is very probation and that it does go to
5 show intent and that it is not outweighed by the
6 prejudicial value which of course it obviously has and I've
7 commented on it.

8 Two things might be - would be addressed. One is the
9 timing based on these two cases where prior sales take two
10 days or so before or a month or so before. I don't find
11 that there is any stricture on a time element but I think
12 that is a matter for the trial court to determine whether
13 or not it is of any probative value with the prior bad act
14 that is again probative value and should consider the time
15 which I have and where there is two or three years before I
16 probable would not allow it in. I don't know that there is
17 any magic time but I believe this to have been within the
18 same calendar year but is sufficient nexus in time.

19 Again, I have no grounds or no guidance to that other
20 than just my idea that such a time frame is a probative
21 time frame in which a prior bad act can be used in a trial
22 for an offense. That sort of doesn't make sense but the
23 bottom line is I find that this is within a sufficiently
24 close time - sufficiently close in time to have probative
25 value as to the intent to Mr. Gallman at the time.

1 Also, the cases each one of the indicates that they
2 seem to be putting some weight, the court does, and this is
3 the Wilson case from the Supreme Court, talks about the
4 inference level. And I find that that's sort of gratuitous
5 comment. The court does make a simple statement. Here the
6 amount of crack seized was less than one gram and the
7 element of intent was not subject to the statutory prima
8 facie showing. Then it goes on to what I consider to be
9 not even related to that first sentence always in the same
10 paragraph. But I don't think that there is any requirement
11 that the State cannot produce Lyle 404 evidence in a case
12 where there is going to be evidence of an inference level
13 which would raise an inference or a weight level raise an
14 inference of intent to distribute.

15 I don't believe they are mutually exclusive. That is,
16 I don't think that if you have the inference you can't
17 bring in the Lyle or have the Lyle then you couldn't bring
18 in the inference so to speak perhaps. But I don't believe
19 there is any correlation between the two.

20 So I find by clear and convincing evidence that the
21 transaction involving Mr. Crawford and Mr. Gallman did take
22 place. It involved if not the sale of crack at least a
23 attempt to buy attempt to sell a controlled substance that
24 being crack and that it is admissible.

25 All right, anything else before we break for lunch?

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1 MR. DELANEY: Did you want me to put on the record the
2 other —

3 THE COURT: Well, we can go through the other. We
4 kind of went through these briefly in chambers. There are
5 several other pretrial motions that's fairly standard.
6 They include whether or not the State has complied with
7 discovery.

8 Has the State complied with discovery?

9 SOLICITOR ANTHONY: Yes we have, Your Honor.

10 THE COURT: They involve whether or not there is any
11 statement by Mr. Gallman that the State intends to produce.

12 SOLICITOR ANTHONY: No, sir.

13 THE COURT: They do involved the Lyle question which
14 we had visited. They involve the question about the record
15 of any lay witnesses.

16 Does Mr. Crawford have any?

17 SOLICITOR ANTHONY: Mr. Crawford has a burglary in
18 2010 and a possession of crack in 2005, we think.

19 THE COURT: All right. There is a question involving
20 sequestration and I'll grant that reciprocally.

21 There is a question of whether Mr. Gallman has any
22 impeachable offenses. How about that?

23 SOLICITOR ANTHONY: He does. He has four convictions
24 in 2006, two for distribution of crack, one for
25 distribution of crack proximity and one for possession of

1 crack with intent to distribute. And then he had another
2 distribution of crack in 2009. On all these, I would just
3 ask to be allowed to ask him if he's been convicted of
4 crimes carried over in the year relevant and obviously
5 asking him about the underlying charge. So I would ask to
6 approach it by saying in 2006, were you convicted of four
7 crimes carrying over a year. In 2009 were you convicted of
8 one crime that carried over a year.

9 THE COURT: All right. You are on notice of that.

10 MR. DELANEY: No objection to that, Judge.

11 THE COURT: All right. And I believe that covers all
12 the motions.

13 Are there any that I over looked, Mr. Delaney?

14 MR. DELANEY: No, I think that covers it.

15 SOLICITOR ANTHONY: Just as to sequestration, I would
16 just ask that Investigator Parker be exempt.

17 THE COURT: He can, certainly. He can remain in the
18 courtroom.

19 MR. DELANEY: And just a question is at this time
20 regarding Mr. Crawford. He is - His - I guess his
21 testimony was he was - has a pending shoplifting charge
22 while he was working with narcotics. Would I be able to
23 inquire how much time, exposure there is to that
24 shoplifting charge?

25 THE COURT: I think as far as bias and prejudice I

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1 think you can go into what he was looking at.

2 SOLICITOR ANTHONY: I don't think I can object to
3 that.

4 THE COURT: All right. Has Mr. Gallman been out on
5 bond?

6 MR. DELANEY: He has, sir.

7 THE COURT: We'll revoke his bond at this time and
8 require him to remain incarcerated during the pendency of
9 the trial.

10 Do we have one probation matter to take up?

11 MS. WILLIAMS: Yes, Your Honor.

12 (JOHN RUSSELL THOMAS PROBATION VIOLATION MATTER WITH
13 JENNIFER WILLIAMS @ 12:19 P.M.)

14 THE COURT: Break until 1:30. Have a good lunch.

15 (COURT IN LUNCH RECESS AT 12:31 P.M.)

16 (COURT BACK IN SESSION AT 01:46 P.M.)

17 THE COURT: Thank you. Take your seats.

18 Is the State ready?

19 SOLICITOR ANTHONY: Yes, sir. Mr. Delaney and I were
20 just speaking about the issue that he brought up in
21 chambers a few minutes ago in regards to this witness that
22 they may call, and I think we're agreed that it would
23 probably be best for the Court to wait to inquire of the
24 jury if anybody knew this person until he actually decides
25 if he would use her.

1 THE COURT: Well that crossed my mind too so let's do
2 it that way because it's an if situation at this point.

3 MR. DELANEY: Thank you, Judge.

4 THE COURT: All right. You ready for the jury?

5 SOLICITOR ANTHONY: Yes, sir.

6 MR. DELANEY: Yes, sir.

7 THE COURT: Bring in the jury.

8 (JURY REENTERS COURTROOM AT 01:47 P.M..)

9 THE COURT: The alternate will sit back there, if you
10 don't mind? And the other lady will move over. Thank you.

11 All right, I'm wrong; you are not the alternate any
12 more. You are - Have a seat. I'm forgetting where we are.
13 The other lady that was on the jury I excused because she
14 did not realize her situation involving the comment about
15 being related although not real close so I excused her.
16 You are right, you are the alternate and I apologize. I
17 had some things on my mind.

18 In just a minute the attorneys have the option of
19 coming before you and making what are called opening
20 statements. They will be telling you more about the trial,
21 giving you an outline of their viewpoint of the trial.
22 They are not arguing their case and they are not witnesses
23 so they are not giving you testimony; they're simply
24 telling you their position on what the case is about and
25 what you may expect.

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1 I have several jobs in this trial. I am the judge of
2 the law. You have to take, accept, and apply the law as I
3 charge it.

4 I rule on questions of evidence, whether certain
5 evidence, testimony or exhibits, can come into evidence.
6 And I am the logistics person. I make sure we take breaks
7 and hopefully you can hear and see, and those type things.

8 I'm giving you some legal principles now. I may
9 during the trial give you some, and at the end of the
10 trial, I will give you a concise and comprehensive charge
11 on the law you are to apply to the facts in this case.

12 You are not to infer from anything I say or do at any
13 time as indicating an opinion of mine on the facts. Our
14 law does not allow a trial judge to formulate or express to
15 a jury any opinion on the facts. That is your job.

16 It is solely up to you to examine the evidence and to
17 give to the evidence the effect, the value you believe it
18 should have. In doing this, you can believe on witness as
19 opposed to several; several as opposed to one. You may
20 believe all or part or none of a witness' testimony. Use
21 your common sense and your sense of logic and your sense of
22 reason as you analyze the evidence. And as judges of the
23 facts, you must judge the credibility of those who testify.
24 That is, their believeability.

25 Use the things I've talked about. Use the things that

1 you find as indicating truthfulness in an individual. And
2 you can use certain evaluators such as a witness' demeanor,
3 how they act on the stand. Are they hesitant and
4 straightforward in answering questions? Is their testimony
5 consistent or inconsistent?

6 You can consider whether they have any bias or
7 prejudice, that is any reason to help or hurt one side or
8 the other. And you can consider the opportunity that
9 person had to know those things about which they testified.

10 All these thing you considered and you will be in a
11 position to apply the law and return a verdict that speaks
12 the truth.

13 If you can't see - You don't need to take notes. If
14 you can't see or you can hear, let me know. Cup your ear
15 or give me a voice raising gesture or a nudging gesture and
16 I'll try to correct whatever the problem is because you
17 need to see and hear the things that are important in this
18 case to do the important job that you have.

19 We take breaks about every hour and a half. If any of
20 you need a break at any time, simply raise your right hand
21 and no questions asked, we'll take a break. It's hard to
22 pay attention if you are not comfortable and if you need a
23 break we'll take one.

24 And I extend that to counsel and Mr. Gallman.

25 So at this time, we'll turn the matter over to the

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1 attorneys.

2 SOLICITOR ANTHONY: Thank you, Your Honor.

3 Good afternoon. My name is John Anthony and I'm a
4 deputy solicitor here in Union and I'm the man that will be
5 representing the State in this case.

6 I'm sure all of you all have heard the expression used
7 hot potato. And a lot of times where hot potato is used
8 about a topic, you know something people really don't want
9 to talk about, so they talk about it so they say that's a
10 hot potato. Sometimes a hot potato is just something you
11 don't want to have. It's just something you don't need to
12 have on your person. And in this case, you are going to
13 hear about the defendant, Mr. Gallman, having a hot potato
14 and his hot potato was a bag of crack cocaine.

15 On December 19th, there was a man that works for Union
16 Public Safety and he's a animal control officer, his name
17 is Joe Smith, and he saw Mr. Gallman on Lawson Avenue and
18 he knew that there was an arrest warrant for Mr. Gallman.

19 So he contacted a couple of more officers with Public
20 Safety and they got together. Their names were Jason Nix
21 and Shane Petrie and they got together at City Park and
22 just within a few minutes of Joe Smith seeing Mr. Gallman,
23 the three of them were headed back up the hill, Lawson
24 Avenue, and they saw Mr. Gallman standing there outside in
25 the yard outside of a mobile home on Lawson Avenue.

1 And Officer Nix pulled up and he took Mr. Gallman into
2 custody and that's when Mr. Gallman - he was being walked
3 toward Officer Nix's police car - he realized he better
4 drop his hot potato.

5 But the problem was that Corporal Petrie had pulled up
6 too and Corporal Petrie saw Mr. Gallman drop a bag of crack
7 cocaine out of his left hand. Corporal Petrie saw it and
8 went and cuffed him and picked it up.

9 Now Corporal Petrie charged him, we have charged, the
10 State's charged Mr. Gallman with what's called possession
11 with the intent to distribute. And that basically means
12 that we have to prove two things.

13 First of all, we have to prove possession. And that's
14 pretty clear in this case because Mr. Gallman had the crack
15 in his hand so that's possession, carrying something around
16 in his hand like I'm carrying this pen. You're in
17 possession of it. Even if you drop it, you're still in
18 possession of it.

19 But then the other thing we have to prove is that the
20 possession is what's called the intent to distribute. And
21 really we show that in a case two ways.

22 First of all, we show it based on the amount of the
23 crack or the weight of the crack because the law provides
24 that a jury can find that somebody is in possession of
25 crack cocaine with the intent to distribute if they have

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1 over one gram of crack. Just one gram of crack creates
2 this inference that a person is holding it with an intent
3 to distribute.

4 Well, Mr. Gallman had almost six grams of crack. So
5 he had almost six times the inference level.

6 But then the other thing that we are going to do in
7 this case to show that Mr. Gallman was holding the crack
8 with the intent to distribute, is we are going to produce
9 some evidence that Mr. Gallman sells crack because a few
10 months before, there was an informant who was working for
11 the City police who made a buy of crack cocaine from Mr.
12 Gallman. And that informant, his name is Kelly Crawford,
13 he is going to testify and he is going to tell you about
14 buying crack back in June of last year from Mr. Gallman.
15 And there is a video tape of that and we will show you that
16 video tape.

17 So, basically that's how we are going to show that Mr.
18 Gallman is guilty of possession with intent to distribute.
19 We are going to prove the weight of the crack that he was
20 holding and we are going to prove that he is a drug dealer
21 and that on December 19th he sold crack to sell it because
22 that's what he does, he sells drugs.

23 So, in this case you are going to hear from the three
24 officers who recovered the crack who were there when Mr.
25 Gallman was arrested on December 19th. You will hear from

1 the animal control officer, Mr. Smith, Officer Nix,
2 Corporal Petrie. You are going to hear from Mr. Crawford,
3 the informant. You are going to hear from Investigator
4 Parker who is a narcotics officer with the city who dealt
5 with Mr. Crawford when he made the controlled buy from Mr.
6 Gallman.

7 And then there will be a couple other witnesses who
8 were dealing with testing of the drugs because the drugs
9 were sent to Spartanburg by the City police department, and
10 there is a chemist who works for the Spartanburg County
11 Sheriff's office who will come and testify about the
12 analysis she did on the drugs and weighing the drugs and
13 can verify that it was crack cocaine and tell you what it
14 weighed.

15 So, we believe that once we've presented this evidence
16 to you, which most of it will be presented this afternoon,
17 that you are going to find that Mr. Gallman is guilty of
18 possession with the intent to distribute crack cocaine.

19 Thank you all very much.

20 MR. DELANEY: Good afternoon.

21 I'm not going to talk to you for too long at all right
22 now. As you heard, these are our opening statements.
23 Myself and the Solicitor will get a chance to talk to you
24 again. I think it's looking like sometime tomorrow before
25 lunch in closing arguments I'll be up here a little longer

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1 at that time.

2 I want to thank you for your service. A week after a
3 holiday vacation people are busy with jobs, family. Your
4 job is important. It's not a job in the courtroom that's
5 more important. We all have our jobs, our roles that we
6 play. It doesn't work without you all.

7 It is an important matter. It's an important matter
8 for the State. It's an important matter for Mr. Gallman.
9 It's important.

10 Let me say and you heard at the beginning of the day
11 and it's hard to hear, my name is Eric Delaney, I'm with
12 the public defender's office. My client, David Terrell
13 Gallman, is from here in Union, twenty-nine years old, two
14 children, family, from here in Union.

15 You are going to hear throughout this process as I
16 said you're gonna hear at the end of this case from the
17 judge. And as you already heard - As you already heard in
18 this case David Gallman comes in this courtroom presumed
19 innocent. He is veiled in a cloak of innocence and that
20 cloak stays on him throughout this trial and only you
21 twelve collectively can remove it and that would be in the
22 jury's deliberation room.

23 I would ask you, ladies and gentlemen, don't begin to
24 make your mind up until you've heard everything. Until
25 you've heard Solicitor Anthony and you've heard from myself

OFFICER JOE SMITH: DIRECT BY SOLICITOR ANTHONY

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1 again and until you are back in the jury deliberation room
2 and you are talking about the case that's the time to do
3 it.

4 What I expect you are going to be hearing are
5 accusations pointed at my client. That's going to be
6 expected as you heard from the state. But I want you to
7 hold off making your decision and at the end of this case,
8 I'm going to ask you to find Mr. Gallman not guilty of
9 possession with intent to distribute crack cocaine.

10 Thank you.

11 THE COURT: Call your first witness.

12 SOLICITOR ANTHONY: We call Officer Smith.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right.

15 (WHEREUPON, JOE SMITH, BEING FIRST
16 CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 OFFICER JOE SMITH BY SOLICITOR ANTHONY:

19 Q. Would you state your name, please.

20 A. My name is Officer Joe Smith.

21 Q. And Officer Smith, how are you employed?

22 A. I'm employed with the City of Union, Public Safety
23 Department.

24 Q. And what are your - What's your position with the
25 Public Safety Department?

OFFICER JOE SMITH: DIRECT BY SOLICITOR ANTHONY

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1 A. I'm an animal control officer.

2 Q. And how long have you had that job?

3 A. Three and a half years.

4 Q. And have you had some other jobs in law enforcement?

5 A. Yes, I have.

6 Q. And where was that?

7 A. I retired from the Department of Corrections after
8 twenty-five years.

9 Q. And were you working as the animal control officer
10 back on December 19th of last year?

11 A. Yes, I was.

12 Q. And did you see David Gallman on that day?

13 A. Yes, I did.

14 Q. Where did you see Mr. Gallman?

15 A. I saw Mr. Gallman on Lawson Avenue standing with a
16 group of individuals.

17 Q. And approximately what time did you see him?

18 A. It was approximately 1:45.

19 Q. And in your responsibilities with the City, what kind
20 of vehicle do you drive?

21 A. Animal control.

22 Q. Okay. What kind of vehicle is it though?

23 A. It is a Ford pickup truck.

24 Q. Okay. And once you saw Mr. Gallman, what did you do?

25 A. I got in contact with Corporal Petrie and we met at

OFFICER JOE SMITH: DIRECT BY SOLICITOR ANTHONY

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1 city park.

2 Q. And why did you get in contact with Corporal Petrie?

3 A. Because I knew Mr. Gallman had a warrant for his
4 arrest.

5 Q. And you said you met Corporal Petrie at city park?

6 A. Yes, I did.

7 Q. Okay. Who else was there?

8 A. Officer Jason Nix.

9 Q. And how long did it take for you and Officer Nix and
10 Corporal Petrie to assemble at city park?

11 A. Approximately five minutes.

12 Q. And once you all got together at city park, where did
13 you go after that?

14 A. We drove back up Lawson Avenue.

15 Q. And what was the order that the three of you went in?

16 A. I lead them back up to Lawson Avenue where I saw Mr.
17 Gallman.

18 Q. And when you drove - When you got on Lawson Avenue,
19 what did you do specifically?

20 A. When I got on Lawson Avenue, I continued on around to
21 the back side which is Spike Avenue.

22 Q. Okay. And when you went past the location where you
23 had seen Mr. Gallman before, where was he?

24 A. Where was he?

25 Q. Yeah, where was Mr. Gallman?

OFFICER JOE SMITH: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 A. He was standing on the sidewalk in the yard basically.

2 Q. And you say that you drove on past ---

3 A. Yes, I did.

4 Q. --- and then turned and went on the road behind the
5 trailer?

6 A. Yes, I did.

7 Q. What was the purpose in doing that?

8 A. I drove on behind just in case Mr. Gallman tried to
9 run.

10 Q. Okay. And then what did you do after that while
11 Corporal Petrie and Officer Nix were making the arrest?

12 A. I sat back there until they radioed for me to come
13 back around.

14 Q. And when you came back around, where was Mr. Gallman
15 at that point?

16 A. Mr. Gallman, he had been placed in the car.

17 SOLICITOR ANTHONY: Thank you. That's everything on
18 direct.

19 THE COURT: Cross?

20 CROSS EXAMINATION

21 OFFICER JOE SMITH BY MR. DELANEY:

22 Q. Officer Smith, you testified that you saw Mr. Gallman
23 standing with a group of individuals at first; is that
24 correct?

25 A. Yes, it is.

OFFICER JOE SMITH: CROSS BY MR. DELANEY
REDIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And a half - at least a half a dozen other
2 individuals. Would that be correct?

3 A. That's correct.

4 Q. Okay. And primarily other guys; is that correct?

5 A. Yes.

6 Q. Okay. And you said you positioned yourself around the
7 back of Lawson Avenue in case he ran; is that correct?

8 A. Yes.

9 Q. Okay. At no time did Mr. Gallman run did he?

10 A. No, he didn't.

11 Q. Okay.

12 A. To my knowledge, that he didn't run.

13 Q. And Officer Smith, did you have a camera in your
14 vehicle?

15 A. No, I don't.

16 Q. All right.

17 MR. DELANEY: Thank you, Officer.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 OFFICER JOE SMITH BY SOLICITOR ANTHONY:

21 Q. Had his - the proximity of the other people changed
22 from the first time you saw him till the second time you
23 saw him?

24 A. Yes, he had walked away.

25 Q. Okay. He walked away from the people you saw him with

OFFICER JOE SMITH: REDIRECT BY SOLICITOR ANTHONY
OFFICER JASON NIX: DIRECT BY SOLICITOR ANTHONY

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1

A. Yes.

2

3

Q. --- the first time?

4

A. Yes.

5

Q. And was anybody around him when you went by him the
6 second time?

7

A. No.

8

Q. All right.

9

SOLICITOR ANTHONY: Thank you.

10

THE COURT: You can step down and be excused.

11

We appreciate your time. Thank you.

12

SOLICITOR ANTHONY: The next witness is Officer Nix.

13

THE CLERK: Put your left hand on the Bible and raise
14 your right.

15

(WHEREUPON, JASON NIX,

16

BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17

DIRECT EXAMINATION

18

OFFICER JASON NIX BY SOLICITOR ANTHONY:

19

Q. Would you state your name, please?

20

A. Jason Nix.

21

Q. And Mr. Nix, how are you employed?

22

A. Union Public Safety.

23

Q. And what is your job there?

24

A. I'm a patrol officer.

25

Q. And how long have you worked as a patrol officer with

OFFICER JASON NIX: DIRECT BY SOLICITOR ANTHONY

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1 public safety?

2 A. Two years.

3 Q. And have you been in law enforcement with some other
4 agency?

5 A. Yes. I did corrections for a year at SCDC.

6 Q. Were you working on December 19th of this past year?

7 A. Yes, I was.

8 Q. And did you arrest the defendant in this case, Mr.
9 Gallman, on that day?

10 A. Yes, I did.

11 Q. And who was there that assisted you in making the
12 arrest on Mr. Gallman?

13 A. Corporal Petrie and Joe Smith our K-9 officer.

14 Q. All right. Where were the three of you all assembled
15 before you went to arrest Mr. Gallman?

16 A. At the city ball park on Main Street or West Main.

17 Q. And once you all assembled at the city ball park, what
18 did the three of you do?

19 A. After we assembled, we talked about the warrant we had
20 in hand and we left there and went up by Grand Torres Erwin
21 and up Lawson Avenue.

22 Q. And what order did the three of you go in?

23 A. It was Joe Smith, Corporal Petrie and then myself.

24 Q. Okay. And when you turned onto Lawson Avenue, did you
25 easily see Mr. Gallman.

OFFICER JASON NIX: DIRECT BY SOLICITOR ANTHONY

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1 A. Yes. I did.

2 Q. Okay. And what was Mr. Gallman doing when you saw
3 him?

4 A. He was standing over to himself talking on his cell
5 phone.

6 Q. And what - You said that Officer Smith and Officer
7 Petrie were ahead of you. What did the two of them do?

8 A. As we approached on Lawson Avenue, Officer Smith, he
9 kept going straight across and Corporal Petrie went
10 straight across and made a u-turn and came back. As I
11 approached, I stopped immediately once I seen Mr. Gallman
12 and approached him in the yard. I think Officer Smith went
13 on around back to cover him in case he was to take off
14 running or something.

15 Q. Okay. And when you approached him, was Mr. Gallman in
16 the yard?

17 A. Yes. He was in the front yard of the house.

18 Q. Okay. And was anybody with him?

19 A. No. He was by himself talking on his cell phone.

20 Q. And what happened as you walked up to him?

21 A. As I walked up to him, I walked up to his right side.
22 He was out by himself. I walked up to him and he was
23 talking on his cell phone and I told him, I said, we got a
24 warrant for your arrest. He kind of gave me a as most
25 everybody does a little bit, ah, I got a warrant. And as I

OFFICER JASON NIX: DIRECT BY SOLICITOR ANTHONY

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1 started - we sat there and I started to walk him toward the
2 car and put him in the patrol car.

3 Q. And when you walked up to him, did you see anything on
4 the ground at his feet when you walked up to him?

5 A. No, I didn't. There was nothing on the ground at his
6 feet.

7 Q. I'm sorry.

8 A. There was nothing on the ground at his feet.

9 Q. And as you got his arm and started to walk him to the
10 patrol car, what did Corporal Petrie do?

11 A. He come up beside us and he made a couple of steps and
12 he picked up a bag with a white substance in it and said I
13 seen you drop this - Mr. Gallman. I'm not sure - remember
14 what he said, but he said something to Corporal Petrie and
15 we went ahead and went down to the car and made a search,
16 patted him down and put him in handcuffs and went ahead and
17 transported him to jail.

18 Q. And who took Mr. Gallman to jail?

19 A. I did.

20 Q. Okay. And when you booked him into jail, how much
21 money was on his person?

22 A. Ninety dollars.

23 Q. All right. I'm gonna show you what's been marked for
24 identification as State's Exhibit Number Two. I'd ask that
25 you take a look at that photo and tell me what that is a

OFFICER JASON NIX: DIRECT BY SOLICITOR ANTHONY

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1 picture of.

2 A. That's a picture of Lawson Avenue and the front yard
3 where Mr. Gallman was standing.

4 Q. Okay. And does that photo fairly and accurately
5 depict that location, the layout of Lawson Avenue as it
6 appeared on December 19th of 2013 when you made the arrest?

7 A. It does.

8 SOLICITOR ANTHONY: We'd move Exhibit Two into
9 evidence.

10 MR. DELANEY: No objection.

11 THE COURT: In without objection.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, IDENTIFIED AND
13 MARKED, RECEIVED INTO EVIDENCE.)

14 SOLICITOR ANTHONY: And I'd ask to publish.

15 THE COURT: You may.

16 SOLICITOR ANTHONY: Thank you.

17 Q. All right, I've given you a little pointer up there.

18 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT
19 02:14 P.M..)

20 Q. Officer Nix, if you could just show what direction
21 were you going when you pulled up at the curb and dealt
22 with Mr. Gallman.

23 A. I had approached from the church, approached from the
24 church coming from this direction.

25 Q. Okay. And where was Mr. Gallman standing?

OFFICER JASON NIX: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 A. When I seen him he was standing about where this car
2 is located, right in here.

3 (WITNESS INDICATED ON STATE'S EXHIBIT TWO.)

4 Q. All right. And where did you pull up?

5 A. When we approached, I come straight in and the nose of
6 my car is pointed right here on this curb pointed towards
7 this direction.

8 Q. Okay. All right. And then where did Corporal Petrie
9 pull up?

10 A. Corporal Petrie is in front of me. He went and did a
11 U-turn and came back. And his car is pointed in the
12 direction of that white vehicle.

13 Q. All right. Thank you.

14 SOLICITOR ANTHONY: That's everything on direct.

15 CROSS-EXAMINATION

16 OFFICER JASON NIX BY MR. DELANEY:

17 Q. Good afternoon, Officer.

18 A. Good afternoon.

19 Q. Now Officer Nix, when you arrive out there on Lawson
20 Avenue, there were other individuals out there besides
21 David Gallman. Correct?

22 A. There was.

23 Q. And approximately half a dozen ---

24 A. I didn't count.

25 Q. --- give or take?

OFFICER JASON NIX: CROSS BY MR. DELANEY

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1 A. Give or take. Could a been six.

2 Q. And are you familiar with Lawson Avenue?

3 A. Yes, I am.

4 Q. Would you classify Lawson Avenue as a high drug area?

5 A. There is activity. I mean there is no classification
6 that it's a high drug area. I mean there is activity, drug
7 activity as much as there is anywhere else in the city.

8 Q. And when you approached Mr. Gallman, you testified he
9 was on the phone; is that correct?

10 A. Yes.

11 Q. Okay. And you allowed him to return - give the phone
12 to a female that was at the scene; is that correct?

13 A. I did allow him to call somebody. I think it might a
14 been somebody - a family member or something like that. I
15 don't know. I don't remember if I allowed him to give the
16 phone to somebody or not. I mean I may have let him give
17 the phone to somebody. I can't remember that far. But I
18 do know that I allowed him to call somebody because he said
19 can I make a call to somebody cause he was going to jail.

20 Q. But you don't - It's your testimony you don't recall
21 if he was allowed to go and give the phone to somebody?

22 A. No. He didn't get out of my patrol car and go give a
23 phone to nobody.

24 Q. Before he was put in your patrol car.

25 A. No. I walked him from the spot that he was at to my

OFFICER JASON NIX: CROSS BY MR. DELANEY

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1 patrol car.

2 Q. Okay.

3 A. He didn't go to no phone or anything. He may - He ask
4 me to make a phone call in his - in the actual - my patrol
5 vehicle.

6 Q. And you took him to the jail; is that correct?

7 A. Yes. Union County Jail.

8 Q. And you were there when he was booked in at the jail;
9 is that correct?

10 A. Yes.

11 MR. DELANEY: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 Q. Officer, if I can just ask you to take a look at that
14 first.

15 (WITNESS COMPLIES.)

16 Q. Is that the booking report from Mr. Gallman's arrest
17 on December the 19th, 2013?

18 A. It appears to be a jail booking sheet, yes.

19 Q. And on that jail booking sheet, does it show or list
20 that a phone was taken into evidence at the jail?

21 A. No.

22 Q. If I could get that back.

23 And when you approached Mr. Gallman initially and with
24 your dealings with him out there on Lawson Ave.; he stayed
25 there at the scene. Correct?

OFFICER JASON NIX: CROSS BY MR. DELANEY .

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1 A. I mean -

2 Q. He didn't --

3 A. You're asking did he run when I come up to him?

4 No, he didn't run.

5 Q. He didn't try to resist you in any way; is that
6 correct?

7 A. Other than giving me a little bit of grief about the
8 warrant no I wouldn't say he resisted.

9 Q. And it's not unusual from your experience when you
10 pull up to a situation, you are called to a situation and
11 there is a group of individuals there, those crowds tend to
12 disburse very quickly, correct, when the police arrive?

13 A. They can.

14 Q. And that was the situation on that day or that
15 afternoon. Correct?

16 A. No. He was standing by himself outside the crowd. He
17 wasn't in a crowd and then they dispersed. They - The
18 crowd was in one location and he was over talking on the
19 phone by himself.

20 Q. You didn't go into, I guess into the crowd so to speak
21 ---

22 A. No.

23 Q. --- looking for Mr. Gallman?

24 A. I did not go into any crowd to get Mr. Gallman.

25 Q. You didn't talk to any other people there looking for

OFFICER JASON NIX: CROSS BY MR. DELANEY

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1 Mr. Gallman; is that correct?

2 A. No. I walked straight up to Mr. Gallman.

3 Q. And you don't recall or is it your testimony that
4 there were other people there in that group or crowd, did
5 they stay there or did they leave once you all arrived?

6 A. They were there when I walked to him. I don't know
7 that they stayed there or not. They wasn't my interest. I
8 had a warrant for Mr. Gallman and I went and talked to Mr.
9 Gallman.

10 Q. Did you find any other drugs out there that day?

11 A. No. I did not personally find any other drugs. I was
12 there in a warrant for Mr. Gallman. I wasn't there to
13 search everybody else.

14 Q. To your knowledge, did any other officers find any
15 other drugs out in that location that day?

16 A. To my knowledge, no.

17 Q. To your knowledge, did you or any other officers find
18 any drug paraphernalia out there in that area that day?

19 A. Not that I recall, no.

20 Q. And from my understanding, two police cars, your car
21 and Officer Petrie's car, were right there on scene.

22 Correct?

23 A. Yes.

24 Q. And I think you showed how you - how you all came in
25 and you came in at the church and Officer Petrie came in

OFFICER JASON NIX: CROSS BY MR. DELANEY

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1 from the other way. Correct?

2 A. Well initially all of us came from the church.

3 Q. Okay.

4 A. Corporal Petrie did a ---

5 Q. He didn't turn.

6 A. --- U-turn down toward Green Street and came back.

7 Q. Okay.

8 A. He didn't quite make it all the way to Green Street.

9 He did a U-turn there at Lawson and came back.

10 Q. And is your car equipped with a recording device?

11 A. It is.

12 Q. And obviously you've received extensive training to
13 become an officer; is that correct?

14 A. Yes. I went to the South Carolina Criminal Justice
15 Academy.

16 Q. And at the Academy, they teach you the importance of
17 forensic evidence; is that right?

18 A. Yes. They teach evidence, yes. I mean I don't know
19 what the importance - I meant to label it - a document -
20 put it in evidence, chain -

21 Q. Forensic evidence. Would you agree with me that
22 forensic evidence can be important because in certain
23 situations, certain cases it can tell you who did it.
24 Correct?

25 A. I guess.

OFFICER JASON NIX: CROSS BY MR. DELANEY
REDIRECT BY SOLICITOR ANTHONY

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1 Q. If we're talking DNA, we're talking fingerprints,
2 those type of things it can become important. Correct?

3 A. Yes. Fingerprints, DNA, and all that.

4 Q. And you learned about that. And SLED is at your
5 disposal for that purpose; is that correct?

6 A. Yes.

7 Q. Okay. And in this case you did not request any
8 forensics be done on the bag in this case; is that correct?

9 A. I was there for the warrant. Officer Petrie or
10 Corporal Petrie is the main officer that kept with the
11 dropping of the crack cocaine.

12 Q. And it would be Officer Petrie, he would be the one if
13 he felt the need to request it to go to SLED for analysis?

14 A. Yes.

15 Q. All right.

16 MR. DELANEY: Thank you, Officer.

17 REDIRECT EXAMINATION

18 OFFICER JASON NIX BY SOLICITOR ANTHONY:

19 Q. If you did allow somebody to take Mr. Gallman's phone,
20 would that have been before he got in the patrol car or
21 after?

22 A. It would have been after the patrol car. I had my
23 window cracked so he might have given it to somebody. But I
24 walked him from the spot that he was in to the car and he
25 never went and handed no cell phone to anybody. He was

OFFICER JASON NIX: REDIRECT BY SOLICITOR ANTHONY

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1 actually still talking on it when I was walking him.

2 Q. To the car?

3 A. To the car. He ask to use the cell phone and call.

4 He may have gave it to a girl there. I had my window down
5 where I could hear his conversation.

6 Q. And did you know Mr. Gallman before this day?

7 A. I don't know him personally. I've seen him, had a few
8 dealings with him but nothing --

9 Q. So you wouldn't have had any need to ask who he was
10 when you pulled up?

11 A. No. I knew who he was. That's why I sent directly
12 towards him.

13 SOLICITOR ANTHONY: If I could have one moment.

14 (PAUSE AT 02:28 P.M..)

15 Q. Let me must ask you one other thing. Going back to
16 this photo. When you pulled up, where was the - where were
17 the other people congregated that were there on the scene?

18 A. When I pulled up, the other people were congregating
19 here kind of back beside this car here and Mr. Gallman was
20 over here on his cell phone.

21 Q. Okay. All right. Thank you.

22 SOLICITOR ANTHONY: That's everything on redirect..

23 MR. DELANEY: I have one follow up question, Judge.

24 RECROSS-EXAMINATION

25 OFFICER JASON NIX BY MR. DELANEY:

OFFICER JASON NIX: RECROSS BY MR. DELANEY

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1 Q. Officer, I don't know if I caught it but I was just a
2 little confused. The Solicitor ask you, you testified that
3 Mr. Gallman was walking back to the car with the phone and
4 he may have handed it off to someone at that time. Is that
5 what you --

6 A. No.

7 Q. Okay.

8 A. He might of while he was in my patrol car.

9 Q. Oh. He may have given it to someone?

10 A. He didn't give nothing to nobody while we was on the
11 walk to my patrol car.

12 Q. Okay. Or before?

13 A. He ask me once he was in the patrol car if he could
14 make a phone call and I had my window cracked.

15 Q. Okay.

16 A. But he never handed anything to anybody on the walk to
17 the patrol car to get in the patrol car.

18 Q. Okay. And you've got - And you got cameras in your
19 patrol car?

20 A. I do.

21 Q. You got cameras that plays in the patrol car and out
22 the patrol car. Correct?

23 A. Yes. .

24 Q. Okay. All right.

25 MR. DELANEY: Thank you.

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 THE COURT: All right. You can step down and be
2 seated. We appreciate your time. Thank you.

3 (WITNESS LEAVING WITNESS STAND.)

4 THE COURT: Call your next witness.

5 SOLICITOR ANTHONY: We call Corporal Petrie.

6 THE CLERK: Put your left hand on the Bible and raise
7 your right.

8 (WHEREUPON, SHANE PETRIE,
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 DIRECT EXAMINATION

11 CORPORAL SHANE PETRIE BY SOLICITOR ANTHONY:

12 Q. Would you state your name, please?

13 A. Shane Petrie..

14 Q. And Mr. Petrie, how are you employed?

15 A. Sir?

16 Q. How are you employed?

17 A. I'm employed with Union Public Safety.

18 Q. And what's your position now?

19 A. I'm a corporal.

20 Q. And how long have you worked for Union Public Safety?

21 A. Approximately six and a half years.

22 Q. And do you have any other experience in law
23 enforcement?

24 A. I do. I worked approximately two and a half years on
25 the Highway Patrol.

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 Q. And were you working in that position with Public
2 Safety back on December 19th of last year?

3 A. Yes, sir, I was.

4 Q. And did you see the defendant in the case, David
5 Gallman, on that date?

6 A. Yes, sir, I did.

7 Q. And where did you see him?

8 A. On Lawson Avenue.

9 Q. And is that in the City of Union?

10 A. That's correct.

11 Q. And is it in Union County?

12 A. That's correct.

13 Q. At approximately what time did you see him?

14 A. About 2:00 p.m..

15 Q. And how did you come to see him? How did you get
16 notice that he was on Lawson Avenue?

17 A. Well I got a notification from Officer Smith who is
18 our animal control officer, he advised me that Mr. Gallman
19 was on Lawson Avenue.

20 Q. And were you aware of anything in regards to Mr.
21 Gallman being wanted on this date?

22 A. Yeah, he had an outstanding warrant for his arrest for
23 distribution of crack cocaine.

24 Q. All right. And so once you were advised by Officer
25 Smith that Mr. Gallman was on Lawson Avenue, what did you

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 do?

2 A. Officer Smith called me on the phone, myself and
3 Officer Nix met up at the city ball park.

4 Q. And about how much time passed from the time you
5 talked to Officer Smith until the time you all met at the
6 ball park?

7 A. Probably five minutes.

8 Q. Okay. And once you all met at the ball park, what did
9 the three of you do?

10 A. We just got a plan to go toward Lawson Avenue to see
11 if he was still at that location and try to apprehend him.

12 Q. And what was the order that you went up to Lawson
13 Avenue?

14 A. Joe lead the way. I was a couple a cars lengths
15 behind Joe and Officer Nix was directly behind me.

16 Q. And when --

17 A. By myself. I'm by myself.

18 Q. Okay. And when you drove down Lawson Avenue, did you
19 see Mr. Gallman?

20 A. Yes, I did.

21 Q. And where was he?

22 A. He was standing in the yard of a trailer parallel to
23 the houses.

24 Q. Okay. And when you saw him, what did you do?

25 A. I rode past him.

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 Q. And what did Officer Smith do?

2 A. Officer Smith kept riding past him too.

3 Q. Okay. What did Officer Nix do?

4 A. Officer Nix stopped his vehicle. I actually radioed
5 Officer Nix and advised him that that was Mr. Gallman
6 standing in the yard and he got out with him.

7 Q. And then what did you do once you had gone on by and
8 Officer Nix pulled up there where Mr. Gallman was?

9 A. I continued traveling down Lawson Avenue towards Green
10 Street in the middle and made a U-turn when I noticed that
11 was him that was in the yard and came back toward Officer
12 Nix.

13 Q. And when you pulled - or when you came back toward
14 Officer Nix, what did you eventually end up doing there at
15 the location?

16 A. I parked my vehicle at an angle towards where Mr.
17 Gallman was standing at.

18 Q. Okay. And what did you observe going on between Mr.
19 Gallman and Officer Nix at that time?

20 A. Officer Nix had already had him in an escort position
21 and made a couple of steps back towards the sidewalk where
22 his vehicle was.

23 Q. Okay. And when you say the escort position, what is
24 that?

25 A. He had him by his right side with his - you know both

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 hands on Mr. Gallman getting ready to place him in
2 handcuffs.

3 Q. All right. And what did you observe when you saw Mr.
4 Nix or Officer Nix there with Mr. Gallman in the yard?

5 A. When he had him in the escort position, I saw Mr.
6 Gallman drop a package from his left hand.

7 Q. And what did you do at that point in time?

8 A. I immediately got out of my patrol vehicle and walked
9 toward where he dropped that package at and I picked it up.

10 Q. And what did you - What did the substance - Well, what
11 did you recover? Let me just say that.

12 A. It appeared to be a rock like substance. I believed
13 it to be crack cocaine.

14 Q. Okay. All right. And when you pulled up, were there
15 other people there at the mobile home?

16 A. When we initially came by?

17 Q. No. When you - Well, both times. When you initially
18 came by and you pulled up.

19 A. When we initially came, he was standing out in front
20 by himself but there was a group behind him.

21 Q. Okay. But he was by himself?

22 A. Yeah, he was by himself.

23 Q. Okay. And what happened - After you recovered the
24 substance on the ground, what did Officer Nix do with Mr.
25 Gallman?

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 A. Officer Nix placed him in his patrol vehicle and
2 escorted him to the jail.

3 Q. And what did you do in regards to the substance you
4 recovered?

5 A. I just recovered the package and I took it to the
6 Union Public Safety and entered into an evidence bag, did a
7 SLED packet and immediately dropped it into the evidence
8 dropbox at Union Public Safety.

9 Q. All right. I'm showing you what's marked for
10 identification as State's Exhibit Number Three. I ask if
11 you would look at that interior bag and see if you can tell
12 me if you recognize that, please.

13 A. Yeah.. That's what I recovered from the yard mainly
14 where Mr. Gallman was standing.

15 Q. Okay. And once you recovered that substance that's in
16 the bag, what did you do as far as placing it in the
17 interior bag and packaging it up?

18 A. Well I had to do what we call a Best Packet. I had to
19 fill out all the information and we actually entered it -
20 put it in - we enter it back into a manila envelop that it
21 came in and we placed it in the evidence dropbox at the
22 city.

23 Q. And the evidence dropbox, what's the purpose of it?

24 A. So no one can get a hold of it.

25 Q. Okay. And what happens once you put evidence in the

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 evidence dropbox? What usually is done with it by Captain
2 Dickens of that department?

3 A. He'll take it to Spartanburg and have it analyzed.

4 Q. I'm going to show you now State's Exhibit Number Two.

5 And I've got a pointer up there you can use.

6 All right, if you would, just point out, where did you
7 pull up?

8 A. Is it the red button?

9 Q. Yeah. There you go.

10 A. I pulled up right here.

11 (WITNESS INDICATED ON STATE'S EXHIBIT TWO.)

12 Q. Okay. All right. Where had Officer Nix pull up?

13 A. It was over here.

14 (WITNESS INDICATED ON STATE'S EXHIBIT TWO.)

15 Q. Okay. All right. And where was Mr. Gallman when you
16 pulled up and saw him drop the crack?

17 A. He was standing in this yard right here in front of
18 the trailer.

19 (WITNESS INDICATED ON STATE'S EXHIBIT TWO.)

20 Q. Okay. And then were there other people around in the
21 yard?

22 A. When I made my U-turn and came back there was nobody
23 there. They had all disbursed.

24 Q. Okay. Where were they when you rode by the first
25 time?

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 A. A lot of them were right in here.

2 (WITNESS INDICATED ON STATE'S EXHIBIT TWO.)

3 Q. Okay.. Back towards that house?

4 A. Yeah.

5 Q. Okay. And was there any video tape of the arrest of
6 Mr. Gallman?

7 A. No, sir, there wasn't.

8 Q. And why would that be?

9 A. I didn't have my video operating at that time. I
10 failed to cut it on.

11 Q. Okay. And with your cars, do you have to cut them on
12 for the --

13 A. You either have to activate by your blue lights or you
14 have a body light that's placed on your duty belt that you
15 have to actually activate yourself. But at this time we
16 didn't have time to do all that. I was trying to apprehend
17 Mr. Gallman at the time.

18 Q. Okay. And was it necessary for you or Officer Nix to
19 turn on your blue lights?

20 A. No, not at the time.

21 Q. Okay.

22 SOLICITOR ANTHONY: If I can have one moment.

23 (PAUSE AT 02:26 P.M..)

24 Q. Do you recall Mr. Gallman talking on the phone?

25 A. Yes, sir. He was on the phone when we came by the

CORPORAL SHANE PETRIE: DIRECT BY SOLICITOR ANTHONY

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1 first time.

2 Q. Okay. And what do you recall about the phone when you
3 came by when you actually saw him drop the crack?

4 A. I just observed him on the phone. We rode by and when
5 I made a U-turn and come back is when I noticed he dropped
6 the crack when he was being escorted by Officer Nix.

7 Q. All right. Do you remember seeing him talking at that
8 time when Officer Nix was taking him back to the car?

9 A. No, sir, I don't.

10 Q. Okay. And what hand did he drop the crack out of?

11 A. His left hand.

12 Q. And Officer Nix was on which side?

13 A. Officer Nix was on Mr. Gallman's right side.

14 SOLICITOR ANTHONY: If I could have one moment.

15 Q. All right. And is Mr. Gallman here in the courtroom
16 today?

17 A. Yes, sir, he is.

18 Q. All right. What color shirt is he wearing?

19 A. A yellow shirt.

20 Q. All right.

21 SOLICITOR ANTHONY: I'd ask the record reflect that
22 Corporal Petrie has identified Mr. Gallman and that will be
23 all on direct.

24 (WITNESS IDENTIFIED THE DEFENDANT DAVID GALLMAN.)

25 THE COURT: All right. Do you want to take the

CORPORAL SHANE PETRIE: CROSS BY MR. DELANEY

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1 picture down?

2 SOLICITOR ANTHONY: Oh, yes, sir.

3 CROSS-EXAMINATION

4 CORPORAL SHANE PETRIE BY MR. DELANEY:

5 Q. So, Officer Petrie, you went by -- you say you went by
6 where he was at.

7 A. Yes, sir.

8 Q. Went down towards Green?

9 A. Green Street.

10 Q. Right. And then made the U-turn ---

11 A. And come back.

12 Q. --- and come back?

13 A. That's correct.

14 Q. And you were in the car when you say you saw him drop
15 it or you were out of the car at that time?

16 A. No. I was actually sitting in the vehicle. When I
17 come back and had my car parked at the angle where I showed
18 you I had it parked at, I actually seen him drop the crack
19 while I was inside my vehicle.

20 Q. And I heard you testify to the solicitor's question,
21 no video. Right?

22 A. No, video. That's correct.

23 Q. And the way your car was positioned it was positioned
24 directly toward the incident location. Correct?

25 A. Correct.

CORPORAL SHANE PETRIE: CROSS BY MR. DELANEY

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1 Q. Same thing with Officer Nix's car. Correct?

2 A. Correct.

3 Q. Okay. And did you take any pictures of where you
4 found the drugs?

5 A. No, sir, I didn't.

6 Q. Okay. So no pictures of the drugs ---

7 A. No pictures.

8 Q. --- at the scene?

9 A. No pictures.

10 Q. No pictures where they were found at the scene?

11 A. No, no pictures.

12 Q. And you testified about this group that you talked
13 about on your direct testimony, when you were making that
14 U-turn you basically noticed the group that dispersed at
15 that time. Correct?

16 A. The group was still there when I came by the first -
17 Before I made my U-turn the group was still there.

18 Q. Right.

19 A. When I come up - When I made my U-turn to come back
20 and the group had dispersed.

21 Q. Okay. Mr. Gallman, he were there. Correct?

22 A. He was there.

23 Q. So - And that group that you said dispersed, they got
24 out of there fairly quickly. Correct?

25 A. Yes, sir, that's correct.

CORPORAL SHANE PETRIE: CROSS BY MR. DELANEY
REDIRECT BY SOLICITOR ANTHONY

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1 Q. And that's not that unusual in your line of work in
2 certain areas, certain groups of people are getting out of
3 there. Correct?

4 A. That's correct.

5 Q. And a lot of times that's because they don't want to
6 have contact with you all. Correct?

7 A. That's correct.

8 Q. And Officer Petrie, at the academy, you learned the
9 importance of forensic evidence; is that correct?

10 A. That's correct.

11 Q. And you did not request that the baggy in this case be
12 tested for any type of fingerprint analysis; is that
13 correct?

14 A. That's correct.

15 MR. DELANEY: Court's indulgence one moment, Judge.

16 (PAUSE.)

17 MR. DELANEY: No further questions. Thank you.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 CORPORAL PETRIE BY SOLICITOR ANTHONY:

21 Q. When you drove by the first time and there was the
22 group of people that Mr. Gallman was separated from,
23 approximately how far away was he from that group of
24 people?

25 A. Probably five, ten foot maybe.

CORPORAL SHANE PETRIE: REDIRECT BY SOLICITOR ANTHONY
LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY

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1 Q. And would you normally request fingerprints on
2 evidence that you've seen dropped out of somebody's hand?

3 A. No, sir.

4 Q. And why is that?

5 A. We just don't need fingerprints when we see somebody
6 drop it out of their hand cause I mean it's in their
7 physical control.

8 Q. All right.

9 SOLICITOR ANTHONY: Thank you.

10 MR. DELANEY: No further questions.

11 THE COURT: You can step down and be excused. We
12 appreciate your time.

13 (WITNESS LEAVING WITNESS STAND.)

14 THE COURT: Call your next witness.

15 SOLICITOR ANTHONY: The next witness is Lieutenant
16 Parker.

17 (WHEREUPON, MICKY PARKER,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 DIRECT EXAMINATION

20 LIEUTENANT MICKY PARKER BY SOLICITOR ANTHONY:

21 Q. Can you state your name, please.

22 A. Micky Parker.

23 Q. And Lieutenant Parker, how are you employed?

24 A. Union Public Safety Department.

25 Q. How long have you worked for Union Public Safety?

LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY

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1 A. Thirteen years.

2 Q. And what do you do for Union Public Safety?

3 A. I'm the Lieutenant over investigations. I've been the
4 narcotics officer for the last eight, eight and a half
5 years.

6 Q. And were you working as the narcotics investigator
7 back in June of last year?

8 A. Yes, sir.

9 Q. And I want to take you now to June the 6th of last
10 year. Did you receive a call that day from Kelly Crawford?

11 A. I did.

12 Q. All right. And what time did Mr. Crawford call you?

13 A. Seem like it was in the evening. I can't remember the
14 exact time. Maybe three or four o'clock.

15 Q. Okay. All right. And what was Mr. Crawford's
16 relationship with you at that time?

17 A. He's what we call a confidential informant. Sometimes
18 he gives us information.

19 Q. And why was he working as a confidential informant at
20 that time?

21 A. At this time he was needing to see if he could get
22 some leniency on a shoplifting charge.

23 Q. Okay. And what was he going to do for the Public
24 Safety Department in regards - or in consideration for
25 getting some leniency on the shoplifting charges?

LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY

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1 A. He was going to buy some drugs, whatever type it may
2 be, from whoever he could arrange a sale to him.

3 Q. All right. Well once Mr. Crawford called you on the
4 6th of June, what did the two of you - what did you
5 instruct him to do?

6 A. We met at my office. He had contacted Mr. Gallman and
7 had arranged to purchase crack.

8 Q. Okay. And then what happened at your office?

9 A. Once they come to the office, we do a search of the
10 person, search of their vehicle and equip them with some
11 type of recording device and supply them with the money to
12 buy the narcotics with.

13 Q. All right. And how money did you give him to buy
14 narcotics?

15 A. It was Forty dollars.

16 Q. Okay. And what happened after that? What did Mr.
17 Crawford do after that?

18 A. He told me he was going to have to go to the mill hill
19 and meet Mr. Gallman. Once he got to that location, Mr.
20 Gallman wasn't there and he made a phone call to him and
21 was instructed that he was at Hibbitt and Mr. Crawford
22 agreed to meet him there. So then he called me and told me
23 that he was changing his location up there. We have to
24 keep in contact with them while they're out.

25 Q. And where did the location change?

LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY

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1 A. Hibbitt Sports on the Bypass.

2 Q. Hibbitt Sports, okay. All right. And then eventually
3 did Mr. Crawford return back to your office?

4 A. He did.

5 Q. All right. And what did he bring?

6 A. I recovered the crack cocaine that was purchased from
7 Mr. Gallman and I got the video recorder from the car.

8 Q. All right. And did you do anything else as far as
9 follow up with Mr. Crawford after the buy?

10 A. We searched the person and the car again to make sure
11 they didn't keep any of the narcotics.

12 Q. All right. I'm showing you what's been marked in
13 evidence as State's Exhibit Number Three for
14 identification, and ask if you have seen that item before?

15 A. It appears to be the Best Pak that I filled out when
16 we recovered the crack.

17 SOLICITOR ANTHONY: Let me just ask - If I could just
18 ask the court reporter something. I think she has marked
19 two of them with Number Three.

20 (PAUSE.)

21 Q. All right. We'll just change this to Number Four for
22 identification and I'd just ask you again, have you seen
23 this item before?

24 A. Yes, sir.

25 Q. All right. And what is that? The interior bag, what

LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY

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1 is that?

2 A. This first bag I just dated and put the case number on
3 it. That's when I have it in my control at the office and
4 the bag that is blue is actually a part of the Best Pak. I
5 drop it in it and seal it and it has this seal and if
6 anybody - you have to cut the bag open. There is no way to
7 pull that open. So the only way to get it out is to cut it
8 open. And then we put it in the evidence dropbox and the
9 evidence custodian takes it to Spartanburg for analysis.

10 Q. All right. Okay. Is that what you did with Exhibit
11 Four for identification?

12 A. Yes, sir.

13 Q. You put it in the dropbox?

14 A. I did.

15 Q. And this is your - These are your markings here on the
16 front of it?

17 A. Yes, sir. We had to sign it and date it. And there's
18 some other forms that go along with it that had the dates
19 and who it was from and so forth.

20 Q. Okay. All right. And have you - Would you have
21 occasion to review the videotape of the buy Mr. Crawford
22 made?

23 A. Yes, sir.

24 Q. And is there anything that is somewhat irregular with
25 that video?

LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY

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1 A. The only thing that I can say was wrong with it is the
2 recording stops before Mr. Crawford gets back to my office.
3 We have dozens of recording devices and it's hard to keep
4 them all charged, so undoubtedly the battery died on that
5 one. There is no way you can plug it up and see how much
6 battery life it has. Some of 'em you just - We plug them
7 up from time to time to make sure they have a charge and
8 put them back up and you know use different ones for
9 different occasions.

10 So with this particular one, there is no way - I knew
11 it had a charge, but I didn't know if it was going to last
12 thirty minutes or an hour. It just took a little longer
13 because we changed locations and had we not changed
14 locations it probably would have ran until he made it back
15 to me and then his car battery died so that prolonged it
16 just a little bit also.

17 Q. And then based on the evidence you had that you
18 collected and the video and what Mr. Crawford had told you,
19 did you make any charge against Mr. Gallman?

20 A. Yes. After viewing the video and seen that it was Mr.
21 Gallman we purchased from, I went and had arrest warrants
22 signed to Mr. Gallman for the distribution.

23 Q. And was there any reason why that warrant wasn't -
24 there wasn't an attempt made to serve that warrant on him
25 and charge him with that crime immediately after the buy?

LIEUTENANT MICKY PARKER: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 A. When we have our informants buying for us, we don't
2 arrest the people that made the deal because they would
3 definitely know who done it so we kind of hold on to 'em to
4 help protect their identity. And then some informants come
5 in two or three times a week and do this. And you know if
6 we picked them up right after the buy, then they would be
7 done after the first or second buy, people would catch onto
8 it and know what was going on, so we try our best to
9 protect them as much as we can.

10 Q. And the warrant that you actually took on Mr. Gallman,
11 is that the warrant that was being served by Officer Nix

12 ---

13 A. Yes, sir.

14 Q. --- and Corporal Petrie on December 19th?

15 A. It was.

16 Q. And based on your experience in narcotics
17 investigations, what does a gram of crack cocaine sell for?

18 A. Your average price on a gram at one time is roughly a
19 hundred dollars a gram.

20 Q. All right. Thank you.

21 SOLICITOR ANTHONY: That's everything on direct.

22 CROSS-EXAMINATION

23 LIEUTENANT MICKY PARKER BY MR. DELANEY:

24 Q. Investigator Parker, many times when you are working --
25 many times in narcotics you are doing surveillance on a buy

LIEUTENANT MICKY PARKER: CROSS BY MR. DELANEY

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1 where you are sending the C.I. out, and you and other
2 officers are doing surveillance, and after the buy, you go
3 in. Correct?

4 A. No.

5 Q. No?

6 A. Not unless we are doing what we call a buy bust.

7 Q. Right. But I mean that's not that unusual. Correct?

8 A. Kind of. We don't do a lot of buy busts because then
9 you lose your informants.

10 Q. Okay. And in this case I would say there was no - No
11 marked money was recovered. Correct?

12 A. No there wasn't.

13 Q. And you recovered it, but you didn't do - there are
14 cases even when it is not a buy bust, you will still do
15 surveillance of your own; is that correct?

16 A. We try to keep as close to them as we can just in case
17 something happened.

18 Q. And in this particular case, did you do that that day?

19 A. No. There were - there wouldn't have been anywhere I
20 could have parked my patrol car in the old Walmart in the
21 Hibbitt Sports parking lot for me to see what was going on
22 without being seen.

23 Q. And Investigator, there is a reason or motivation that
24 you all use equipped confidential informants with
25 audio/video recording devices. Correct?

LIEUTENANT MICKY PARKER: CROSS BY MR. DELANEY

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1 A. Yes.

2 Q. One of the main reasons is you all can't trust them.
3 Correct?

4 A. You never trust anyone fully.

5 Q. So you want that camera to back up, that video to
6 backup what they are telling you?

7 A. Exactly.

8 Q. Thank you, Officer.

9 SOLICITOR ANTHONY: No redirect.

10 THE COURT: You can step down and have a seat.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Members of the jury panel, we'll take
13 about a ten to fifteen minute break.

14 (JURY EXITS COURTROOM AT 2:55 P.M.)

15 (COURT IN RECESS AT 2:55 P.M.)

16 (COURT BACK IN SESSION AT 3:14 P.M.)

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

18 SOLICITOR ANTHONY: Your Honor, we just need another
19 couple a minutes. We had to make a technology switch over
20 here. It shouldn't take much longer, I hope.

21 (PAUSE.)

22 SOLICITOR ANTHONY: Thank you, Your Honor. We're
23 ready.

24 (JURY REENTERS COURTROOM AT 3:17 P.M.)

25 THE COURT: Call your next witness.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 SOLICITOR ANTHONY: The next witness is Mr. Crawford.

2 THE CLERK: Put your left hand on the Bible and raise
3 your right hand.

4 (WHEREUPON, KELLY CRAWFORD,
5 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 DIRECT EXAMINATION

7 KELLY CRAWFORD BY SOLICITOR ANTHONY:

8 Q. Would you state your name, please.

9 A. Kelly Crawford.

10 Q. All right. And Mr. Crawford, where do you live?

11 A. Union.

12 Q. And how are you employed?

13 A. Crawford Lightening.

14 Q. All right. I'm going to take you back now to June of
15 last year. Did you have any---

16 MR. DELANEY: Your Honor, at this time for purposes of
17 the record, I would just like to renew an objection that
18 was made in pretrial regarding the testimony of this
19 witness.

20 THE COURT: Over ruled based on an earlier ruling.

21 BY SOLICITOR ANTHONY:

22 Q. Going back to June of 2013, at that time did you have
23 any kind of interaction with Investigator Parker of the
24 Public Safety Department?

25 A. Yeah.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 Q. All right. And what were you doing with the Public
2 Safety Department?

3 A. I was making a buy for Micky Parker.

4 Q. Okay. And when you say making a buy, what were you
5 buying?

6 A. Crack.

7 Q. Okay. And why were you doing this?

8 A. For help with another court case.

9 Q. And what had you been charged with?

10 A. Shoplifting.

11 Q. How many counts of shoplifting?

12 A. Two.

13 Q. And how much time did those shoplifting charges carry?

14 A. Ten years.

15 Q. All right. I want to take you now back to June 6th,
16 2013. Did you have any conversation with David Gallman on
17 that day?

18 A. Yes, sir, I did.

19 Q. All right. And how long have you known Mr. Gallman?

20 A. I've known him for a few years.

21 Q. Okay.

22 A. A little bit from school.

23 Q. All right. And when you called him, did you ask him
24 for anything?

25 A. Yes, sir, for crack.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And did you make any kind of arrangement with
2 him to buy crack?

3 A. Yes, I did.

4 Q. And what was that arrangement?

5 A. To meet him over on the Union mill hill.

6 Q. Okay. And so once you made that arrangement to buy
7 crack from him on the mill hill, where did you go?

8 A. To the Union Task Force and met Micky Parker.

9 Q. All right. And what did Investigator Parker do when
10 you went to the task force?

11 A. Searched me, searched my car, put the device in my
12 car, the audio/video device, and he gave me the money to
13 make the buy.

14 Q. Okay. And so where did you go to initially to make
15 the buy?

16 A. To the Mill Hill.

17 Q. Did Mr. Gallman arrive, show up there and meet with
18 you?

19 A. No. He didn't show up. I actually called him and he
20 changed the place to meet at Hibbitt Sports.

21 Q. And once you changed the meeting location, what did
22 you advise Mr. Gallman? I'm sorry. What did you advise
23 Investigator Parker?

24 A. I called him and told him that I was going to Hibbitt
25 Sports instead of the Mill Hill.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And is that where you went?

2 A. Yes.

3 Q. All right. And once you got to Hibbitt Sports, what
4 did you do?

5 A. Went in and let Mr. Gallman see I was there and I went
6 outside and waited.

7 Q. And where did you wait?

8 A. Stood outside the door for a few minutes and then sat
9 down in my car.

10 Q. And eventually what did Mr. Gallman do?

11 A. He came out and told the guy that was with him to go
12 on, he was going to ride with me back to the Mill Hill. He
13 sat down in the car took a container out. He had the crack
14 in a container and put it in his hand and dumped into my
15 hand. My car wouldn't crank.

16 Q. Let me back you up a minute. When he got in your car,
17 did Mr. Gallman ask you something?

18 A. He ask me how much I wanted.

19 Q. And what did you tell him?

20 A. Forty dollars.

21 Q. Okay. And after that, what did Mr. Gallman do?

22 A. He took the container out, put the stuff in his hand
23 and reached over and put it in my hand.

24 Q. And then what did you do?

25 A. Gave him the money.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And then what did you realize about your car
2 when Mr. Gallman was sitting in it with you?

3 A. My car wouldn't crank. The battery was dead so I had
4 to call somebody to come and jump it off.

5 Q. And once Mr. Gallman realized that your car wouldn't
6 crank and after he sold you crack, what did he do?

7 A. Got out and hollered for whoever he was with and he
8 rode back with them.

9 Q. So what did you do once Mr. — Once you had done the
10 buy from Mr. Gallman and he had gotten out of your car,
11 what did you do in regards to getting back to the narcotics
12 office?

13 A. I called my wife and she come and jumped my car off
14 and I went back to the task force.

15 Q. Okay. And when you got back to the task force what
16 happened?

17 A. Micky Parker came out and searched me and he searched
18 the car and got the crack that we was buying.

19 Q. Now, Mr. Crawford, you were convicted in 2010 of
20 burglary; is that right?

21 A. Uh-huh.

22 Q. And you were convicted in 2005 of simple possession of
23 crack; is that correct?

24 A. Yes, sir.

25 Q. Okay. I'm showing you what has been marked for

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 identification as State's Exhibit Number One. I'd ask if
2 you have ever seen that DVD before?

3 A. Yes, I have.

4 Q. All right. And how do you know you've seen it?

5 A. It's got my initials and date on it.

6 Q. Okay. And when did you - or where were you when you
7 watched that tape?

8 A. Here in the Solicitor's office.

9 Q. Okay. You watched that at the Solicitor's office?

10 A. Yes.

11 Q. Okay. And what is on that DVD?

12 A. The whole buy.

13 Q. The whole buy?

14 A. Yes.

15 Q. Okay. From who?

16 A. From David Gallman.

17 Q. And is the - Does the tape cut off at some point?

18 A. At the very end, yeah. After the buy and everything.

19 Q. Okay. And does the tape fairly and accurately show
20 what happened between you and Mr. Gallman back on June 6th
21 of last year?

22 A. Yeah, it does.

23 Q. All right.

24 SOLICITOR ANTHONY: We move Number One into evidence.

25 MR. DELANEY: I would just renew my objection, Your

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 Honor.

2 THE COURT: All right. Over objection its allowed in.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 SOLICITOR ANTHONY: And Your Honor, I would ask to
6 publish to the jury at this time.

7 THE COURT: Okay.

8 SOLICITOR ANTHONY: If I can just have a minute.

9 (PAUSE AT 03:27 P.M..)

10 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY AT
11 03:29 P.M..)

12 Q. Now here at the start for the next few minutes, what
13 are you doing, Mr. Crawford?

14 A. I'm on my way . . .

15 MADAM COURT REPORTER: I'm sorry, can you repeat that,
16 sir?

17 A. I'm on my way to meet Mr. Gallman.

18 Q. Where did you just pull up?

19 A. It's on the Union Mill Hill at Macbeth Church.

20 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

21 Q. So who did you just talk to?

22 A. Mr. Gallman.

23 Q. Okay. And what was Mr. Gallman telling you?

24 A. He wasn't where he was supposed to been. I called him
25 and he told me he was at Hibbitt Sports.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 Q. And did you initially think he was saying Cricket?

2 A. Yeah, I thought he said Cricket.

3 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

4 Q. And who did you just call?

5 A. Micky Parker.

6 Q. Mr. Parker?

7 A. Uh-huh. Mr. Parker.

8 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

9 Q. Who are you talking to now?

10 A. Its either my mother or my wife had called me doing
11 their job.

12 Q. Okay.

13 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

14 Q. So where are you now?

15 A. At Hibbitt Sport.

16 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

17 Q. And who is this here?

18 A. That's Mr. Gallman.

19 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

20 Q. What did you just do?

21 A. I actually at the time tried to crank the car up ---

22 Q. Uh-huh.

23 A. --- and it wouldn't crank. That's why I knew the
24 battery was dead.

25 Q. Okay. And you just got back in your car?

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 A. Uh-huh.

2 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

3 Q. Who's that you're talking to now?

4 A. That's my mother.

5 Q. Okay..

6 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

7 Q. Who's this about to get in your car?

8 A. Mr. Gallman.

9 Q. Okay.

10 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

11 Q. What did you just tell Mr. Gallman?

12 A. I couldn't hear.

13 Q. I'll just back it up a minute.

14 What did you --

15 A. I told him I wanted a forty.

16 Q. Okay. You said the word forty?

17 A. Forty.

18 Q. Okay. And then who is this?

19 A. Mr. Gallman

20 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

21 Q. And whose hand was that there?

22 A. Mr. Gallman.

23 Q. All right. And what is this little item here at the
24 bottom of the screen?

25 A. That's the plastic container with the crack in it.

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY

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1 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

2 Q. All right. And then what just happened there?

3 A. I stuck my hand over to get it.

4 Q. That's your hand?

5 A. Yes.

6 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

7 Q. What's he talking about there?

8 A. When the car wouldn't crank he hollered for the guy to
9 come back over there and get him.

10 Q. And when he got in, what were you trying to do to your
11 car once he got in the car with you?

12 A. I'm trying to crank the car.

13 Q. Okay. And would it crank?

14 A. Uh-huh.

15 (STATE'S EXHIBIT ONE CONTINUES TO PLAY.)

16 Q. So what does Mr. Gallman do?

17 A. He just got out and got in the car with the guy he
18 came with.

19 Q. I'm sorry?

20 A. He got out of my car and got into the car with the guy
21 that he came with.

22 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

23 Q. Now what did just do to your car?

24 A. I'm trying to pop the hood.

25 (STATE'S EXHIBIT ONE CONTINUED TO PLAY.)

KELLY CRAWFORD: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 Q. Is that where the tape cuts off?

2 A. Yes, sir.

3 (STATE'S EXHIBIT ONE STOPS AT 03:50 P.M..)

4 Q. And Mr. Crawford, is the man you bought the crack from
5 on the 6th of June here in the courtroom today?

6 A. Yes, sir.

7 Q. And could you point him out, please?

8 A. In the yellow shirt.

9 Q. All right.

10 SOLICITOR ANTHONY: I'd ask that the record reflect
11 he's identified Mr. Gallman.

12 That's everything on direct.

13 THE COURT: Cross?

14 MR. DELANEY: Yes, Your Honor.

15 CROSS-EXAMINATION

16 KELLY CRAWFORD BY MR. DELANEY:

17 Q. Mr. Crawford, how many shoplifting charges are you
18 hoping to get consideration from narcotics in this case?

19 A. Just the two I'd spoken about.

20 Q. So there's two. And I think you had testified you
21 understand you face up to ten years each on those charges.

22 A. Yes, sir.

23 Q. That's because those charges are enhanced?

24 A. Yes, sir.

25 Q. We heard that you have a prior record which includes

KELLY CRAWFORD: CROSS BY MR. DELANEY

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1 breaking into homes or businesses. Correct?

2 The burglary charge?

3 A. That's a burglary charge, yeah.

4 Q. And then also a possession of crack cocaine charge; is
5 that correct?

6 A. Yeah.

7 Q. And the more buys, the more drugs you bring back to
8 narcotics when you say you make a buy, that helps you.

9 Correct?

10 A. It's set up and when I leave to go get it it's not the
11 more I bring back.

12 Q. Say what?

13 A. I know what I'm gonna to get. Its not the more I that
14 I bring back. They know what's coming back before I --

15 Q. Well just let me ask you. I mean, when you bring
16 drugs back with you - make a buy - and you bring drugs back
17 to narcotic officers, you get consideration for that.

18 Correct?

19 A. Yeah, that's right.

20 Q. You hope that keeps you out of prison. Correct?

21 A. I hope it helps. Yeah.

22 Q. And the more times you do this, you think the better
23 off your situation could be. Correct?

24 A. Yeah.

25 Q. So it is important when you go out and make a buy,

KELLY CRAWFORD: CROSS BY MR. DELANEY

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1 that you deliver. Correct?

2 A. Uh-huh.

3 THE COURT: You need to answer with a yes or no.

4 A. Okay.

5 Q. It's important that you deliver?

6 A. Yeah.

7 Q. And you testified there was an arrangement to buy
8 crack with Mr. Gallman through your phone, using your
9 phone; is that correct?

10 A. Yes, sir.

11 Q. And the translation I got from the video that you
12 testified to is you said that when he got in the car you
13 said something about a forty. That's what you said he said
14 on there?

15 A. Yeah.

16 Q. You don't see any drugs on that video. Correct?

17 A. Yeah. I seen 'em in my hand, yeah.

18 Q. My question was specifically, the video that we just
19 sat and watched, we don't see any drugs on that video do
20 we?

21 A. No, I didn't see personally no.

22 Q. We don't see you giving Mr. Gallman any money on that
23 video. Correct?

24 A. Yeah. I seen me hand him the money.

25 Q. You saw that?

KELLY CRAWFORD: CROSS BY MR. DELANEY

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1 A. Yeah.

2 Q. You saw that on the video as well?

3 A. I sure did.

4 Q. And the individuals - you testified that the
5 individuals came out there that day and met with you
6 outside of Hibbitt Sports after the video shut off.

7 Correct?

8 A. Repeat your question.

9 Q. Who came out there to meet with you after the video
10 shut off to help you with your car.

11 A. My wife.

12 Q. Your wife? No one else?

13 A. Uh-huh.

14 Q. Okay. You didn't go anywhere else when you left
15 Hibbitt Sports?

16 A. No I sure didn't. I actually called Micky Parker and
17 told him to come over.

18 Q. You did what?

19 A. I called Micky Parker for him to come over and assist
20 me but my wife had gotten there at the scene so she done
21 it.

22 Q. So he didn't come over?

23 A. I told him not to.

24 MR. DELANEY: Thank you, Mr. Crawford.

25 THE COURT: Any redirect?

KELLY CRAWFORD: REDIRECT BY SOLICITOR ANTHONY
CAPTAIN GREG PICKENS: DIRECT BY SOLICITOR ANTHONY

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1 SOLICITOR ANTHONY: One moment, please.

2 REDIRECT EXAMINATION

3 KELLY CRAWFORD BY SOLICITOR ANTHONY:

4 Q. Mr. Crawford, you didn't talk to me about any
5 particular sentence on the shoplifting at this point in
6 time?

7 A. No, sir.

8 Q. Thank you.

9 SOLICITOR ANTHONY: That's everything.

10 THE COURT: You can step down and be excused. We
11 appreciate your time. Thank you.

12 (WITNESS LEAVING WITNESS STAND.)

13 THE COURT: Call your next witness.

14 SOLICITOR ANTHONY: Our next witness will be Captain
15 Pickens. He's outside.

16 (WHEREUPON, GREG PICKENS,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 CAPTAIN GREG PICKENS BY SOLICITOR ANTHONY:

20 Q. Could you state your name, please?

21 A. Yes. I'm Captain Greg Pickens.

22 Q. And Captain Pickens, how are you employed?

23 A. I'm employed with the Union Public Safety Department.
24 I am responsible for managing the day to day operations of
25 the uniform patrol division. I also serve as the evidence

CAPTAIN GREG PICKENS: DIRECT BY SOLICITOR ANTHONY

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1 and property manager of the department as well.

2 Q. And how long have you worked for Public Safety?

3 A. Next month will make twenty-seven years.

4 Q. How long have you been a patrol captain?

5 A. Since 2003.

6 Q. Ten?

7 A. Yeah.

8 Q. Ten or eleven, something like that? Okay.

9 A. Something like that.

10 Q. All right. And you said that you were responsible for
11 dealing with the property?

12 A. That's correct.

13 Q. Okay. Specifically, what's your job in regards to
14 maintaining the evidence at Public Safety?

15 A. Well, all evidence comes to me. I manage the actual
16 property in the evidence room where all the evidence is
17 stored and kept. You know David tells me assure that
18 everything is logged in correct and maintain everything
19 until the case is disposed of in court.

20 Q. And then what do you do in regards to testing of drugs
21 that are seized by officers at the department?

22 A. The drug evidence, the charging officer or the
23 arresting officer, we have a drug evidence dropbox which is
24 one big metal postal boxes, a U.S. mailbox the U.S. Postal
25 Service donated to us where it has the pull down door on

CAPTAIN GREG PICKENS: DIRECT BY SOLICITOR ANTHONY

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1 the top, you know, with a slab and once you put the stuff
2 in it and shut it, it drops in and you can't get to it from
3 there. The only access on that box, the drug evidence box,
4 is there is a door on the front that has a pad lock there
5 and I'm the only one that has the key to that - that pad
6 lock.

7 Q. Okay. And then when you recover evidence from that
8 box, where do you take it?

9 A. I transport it to the Spartanburg County Sheriff's
10 Office to their forensics lab.

11 Q. All right. I'm going to show you what has been marked
12 in evidence for identification as State's Exhibit Number
13 Four and I ask if you've seen that item before?

14 A. Yes, I have.

15 Q. All right. And where did you get that item from?

16 A. Originally I removed it from the drug evidence
17 dropbox. Its in what's known as - what's called a Best
18 Bag. That's what all drug evidence goes into. Once I
19 removed it from the drug evidence dropbox, I check the
20 packaging to make sure that the integrity of the seal is
21 there. I also check it to make sure that the arresting
22 officer or submitting officer has completed everything
23 correct, make sure everything is correct before it would go
24 to the lab for analysis.

25 Q. Okay. And when did you recover that particular item?

CAPTAIN GREG PICKENS: DIRECT BY SOLICITOR ANTHONY

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1 A. Do you have my chain?

2 Q. Would the chain refresh your recollection?

3 A. Yes. Yes, it would.

4 Q. Okay.

5 A. That is one other step that I do. Once I check for
6 accuracy in the completion of this package for it to be
7 submitted, it comes with the arresting officer or anyone
8 else that was involved in it, we do a chain of custody,
9 then I complete the chain of custody form which is known as
10 a Form C. It states that on such and such date I took
11 possession of that evidence and what I did with it. --My
12 Form C here says that shows that on July 1st of 2013, I
13 removed it from the drug evidence dropbox and I transported
14 it to the Spartanburg County Sheriff's Office to the
15 forensics lab.

16 Q. Okay. With that particular item, when you recovered
17 it from the drug box, was it in the sealed condition?

18 A. Yes, it was.

19 Q. And did everything appear in order and like the drugs
20 were ready to be transported?

21 A. I wouldn't take it for analysis if it wasn't correct.

22 Q. And when you took that item to the Sheriff's office
23 drug lab, who did you turn it over to?

24 A. There's two chemist there. One is Ashley Harris. The
25 other one is Melissa . . .

CAPTAIN GREG PICKENS: DIRECT BY SOLICITOR ANTHONY

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1 Q. Hendricks?

2 A. Hendricks. Yes, sir.

3 Q. Okay. And who would you have turned it over to?

4 A. This one it would have either been Ashley or Melissa.

5 Q. Do you turn it over to the one who performs the test?

6 A. Yes, I do.

7 Q. Okay. All right. And now I'm going to show you --

8 A. This was turned over to Melissa Hendricks.

9 Q. Okay. All right. And then I'm going to show you
10 Exhibit Number Three for identification. And I'll get you
11 the chain on that one as well.

12 A. Okay.

13 Q. I'll ask if you have seen that item before?

14 A. Yes, sir, I have. Again, the same protocol was
15 followed for this evidence as well on January 6th, 2014 is
16 when I transported this to the Spartanburg County Sheriff's
17 Office for analysis.

18 Q. And what condition was Item 3 in when you recovered it
19 from the drug box.

20 A. Once again all forms were correct and complete and the
21 package was sealed.

22 Q. And who was that turned over to?

23 A. This one was Melissa as well.

24 Q. Ms. Hendricks as well?

25 A. Yes.

CAPTAIN GREG PICKENS: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. All right. Thank you.

2 SOLICITOR ANTHONY: That's everything on direct.

3 MR. DELANEY: I have no questions for this witness.

4 THE COURT: You can step down. Thank you. We
5 appreciate your time.

6 (WITNESS LEAVING WITNESS STAND.)

7 SOLICITOR ANTHONY: May we approach?

8 THE COURT: Yes.

9 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
10 THE JURY AT 04:10 P.M..)

11 THE COURT: Members of the jury panel, there is one
12 more witness for the State and she is not available until
13 in the morning so we are going to stop for today and start
14 back at ten.

15 Keep in mind what I told you about not using any
16 electronic media, don't go on any electronic media
17 regarding anything about this case, not to access any news
18 coverage, not to do any independent research, not to
19 discuss the case and try to make up your own mind.

20 Have a pleasant evening. The bailiff will, again,
21 tell you how to get in and out and we'll see you back at
22 ten in the morning. Have a pleasant evening.

23 (JURY EXITS COURTROOM AT 4:10 P.M.)

24 THE COURT: Anything else before we stop for the day?

25 SOLICITOR ANTHONY: No, sir. Not from the State.

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1 MR. DELANEY: Nothing from the defense, Your Honor.

2 THE COURT: We'll meet with counsel, I'll meet with
3 counsel and go over the charges here in just a minute.

4 Solicitor, do you have any other business?

5 SOLICITOR ANTHONY: I don't think we do.

6 THE COURT: Let's take about five minutes and then
7 come on in and we'll go over the charge.

8 (COURT IN RECESS AT 4:15 P.M.)

9 (COURT BACK IN SESSION WEDNESDAY, JULY 9, 1964, AT
10 10:04 A.M.)

11 THE COURT: Thank you. You may take your seats.

12 All right. State ready?

13 SOLICITOR ANTHONY: Yes, sir, we are.

14 THE COURT: Defense ready?

15 MR. DELANEY: Yes, Your Honor.

16 THE COURT: Mr. Anthony, did you share with Mr.
17 Delaney the charges that you gave up to me?

18 SOLICITOR ANTHONY: No, sir, I did not.

19 THE COURT: Well at some point I will show you - I'll
20 show them to you at one of the breaks. I've doctored the =
21 Judge Anderson's quite a bit but I'll let you see what I've
22 got marked to charge. His - He repeats a lot of things
23 that I don't think need to be repeated.

24 Anyway, you ready to proceed?

25 SOLICITOR ANTHONY: Yes, sir.

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 MR. DELANEY: Yes, Your Honor.

2 THE COURT: Okay. Bring in the jury.

3 Mr. Delaney, we'll have you look at the verdict form
4 also.

5 MR. DELANEY: Okay.

6 THE COURT: It looks fine to me but just to make sure.

7 (JURY REENTERS COURTROOM AT 10:06 A.M.)

8 THE COURT: Good morning.

9 All right. Call your next witness.

10 SOLICITOR ANTHONY: Yes, sir. The State's next
11 witness will be Lieutenant Hendrix.

12 (WHEREUPON, MELISSA
13 HENDRICKS,

14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION

16 LIEUTENANT MELISSA HENDRICKS BY SOLICITOR ANTHONY:

17 Q. Would you state your name, please?

18 A. Melissa Bennett Hendricks.

19 Q. And Ms. Hendricks, how are you employed?

20 A. I'm employed with the Spartanburg County Sheriff's
21 Office as a forensic chemist.

22 Q. And how long have you worked for the sheriff's office
23 in your capacity as a forensic chemist?

24 A. At the Sheriff's office just for a year.

25 Q. And how long have you been a forensic chemist all

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 together.

2 A. I've been a forensic chemist for a little over twenty
3 years.

4 Q. And where else have you worked?

5 A. I was employed by the State Law Enforcement Division
6 for two years as a forensic drug analysis chemist and for
7 nine years as a forensic toxicologist and I ran the lab at
8 the City of Columbia for eight years as their primary
9 forensic chemist.

10 Q. And what exactly does a forensic chemist do?

11 A. In this field we test pills, powders, plant material
12 or liquids for the possible presence of any prescription,
13 over the counter or illicit drug. We render findings based
14 on our analysis. We write reports based on our analysis
15 and then we testify in court as to those analysis.

16 Q. And did you - I know you've already given a little bit
17 of your employment history, but could you tell the jury
18 what your education and training is in the field of drug
19 analysis?

20 A. Yes, sir. I have a Bachelor of Science Degree in
21 Chemistry from the University of South Carolina. I have at
22 least two years of studying in the field of madismal
23 chemistry, including pharmacology and pharmaceuticals. I've
24 been trained by drug enforcement administration in crime
25 coverage doing the analysis of drugs and poisons. I've

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 been trained at SLED's laboratory in the field of forensic
2 toxicology. I am diplomatic or was diplomatic forensic
3 toxicology certification on the Board of National
4 Certification data master certified, HAZMAT technician
5 certified. I am clandestine drug laboratory certified in
6 WMD, HAZMAT technician certified, and a certified law
7 enforcement officer.

8 Q. And have you testified in court before as an expert
9 witness about drug analysis that you have performed?

10 A. I have testified as an expert witness in drug analysis
11 on toxicology at least two hundred times.

12 SOLICITOR ANTHONY: Your Honor, at this time we submit
13 Lieutenant Hendricks as an expert in the field of drug
14 analysis.

15 THE COURT: Any voir dire?

16 MR. DELANEY: No, Your Honor.

17 THE COURT: I find she is qualified.

18 BY SOLICITOR ANTHONY:

19 Q. I am going to hand up to you first of all what's been
20 marked for identification as State's Exhibit Number Four
21 and I'd ask if you recognize this item?

22 A. Yes, sir, I do.

23 Q. Okay. And have you seen that package before?

24 A. Yes, sir. My initials are both on the Best Bag and on
25 the package where I sealed it back.

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And when did you receive that package?

2 A. I actually received this package on July 1st, 2013.

3 Q. And how did it come to you?

4 A. It was delivered to me from Pickens with the Union
5 County Sheriff's Department.

6 Q. Of the police department?

7 A. Police department, excuse me.

8 Q. Okay. You mean Captain Pickens?

9 A. Yes, sir.

10 Q. Okay. All right. And where did he bring it to you?
11 Where were you when he brought it to you?

12 A. He actually brings it to our laboratory at the
13 sheriff's department in Spartanburg and signed it over
14 directly to us.

15 Q. Okay. And was this bag signed over to you?

16 A. Yes, sir, it was.

17 Q. Okay. And then what did you do with it when Captain
18 Pickens brought it to you?

19 A. Once we log it into our laboratory information
20 management system, it's stored in a vault that only I and
21 another chemist have access to until analysis.

22 Q. And when did you do an analysis on the bag that's
23 Exhibit Number Four?

24 A. On July 2nd.

25 Q. Okay. And when you started your analysis on that

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 item, what condition was the bag in?

2 A. The actual Best bag which is the inner bag was in a
3 sealed condition. This is a tamper evident bag so if it
4 had been punctured or opened, we would not take possession
5 of it. It was completely sealed when I received it.

6 Q. And could you just briefly explain to the jury what
7 you do when something that's suspected crack cocaine is
8 brought to you, how you go about testing it to verify what
9 it is?

10 A. Yes, sir. First we make sure that the bag has not
11 been tampered with. We cut open the bag initial and date
12 it and check the security number at the top and make sure
13 it matches the control number on the paperwork the officer
14 sent us.

15 Once I open the evidence, the first thing we do is a
16 spot test. It's a color test very similar to what the
17 officers do on the street, it's a little more accurate than
18 what they have in the test kits on the street, and we look
19 for a color change. That's a presumptive test. Then we
20 take a sample for a confirmatory test; in this case Item
21 II. One is a solubility test and the chemical caltexine.
22 And then we do a gas chromatography/massspectrometry test.

23 Q. Okay. And based on those tests for that particular
24 item, Exhibit Number Four, what did you conclude?

25 A. I found this particular item to be cocaine base, which

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 is the also the same thing as crack and the amount was 0.26
2 grams.

3 Q. And once you performed your analysis on the Exhibit,
4 what did you do then?

5 A. After we do our initial analysis, we seal it back in a
6 heat sealed bag and we put the bag number, the date and our
7 initials on the inside and seal over it. These are my
8 initials and date and lab number. And it's left in our
9 vault, our sealed vaults, inside the laboratory at the
10 sheriff's department until someone from the county comes
11 and takes it back.

12 Q. And you mean from Public Safety?

13 A. Correct.

14 Q. Okay. And is the bag that you have up there, Exhibit
15 Number Four for identification, is it still in the same
16 condition that it was in when you sealed it up after you
17 performed your test on the crack cocaine?

18 A. Yes, sir, it is.

19 Q. All right.

20 SOLICITOR ANTHONY: We move Number Four into evidence
21 at this time.

22 MR. DELANEY: Without objection.

23 THE COURT: In without objection.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR, IDENTIFIED
25 AND MARKED, RECEIVED INTO EVIDENCE.)

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. We are going to trade now. I'll take Number
2 Four. And I'm going to hand you what's been marked for
3 identification as Exhibit Number Three and I'd ask if you
4 have seen this item before?

5 A. Yes, sir, I have.

6 Q. And when did you receive Item Number Three?

7 A. I actually received it on January 9th, 2014.

8 Q. Okay. And how did it come into your possession on
9 January 9th?

10 A. Captain Pickens brought it to us.

11 Q. Okay. And what did you do when you received - Well,
12 was - did he - Was Exhibit Number Three also turned over
13 into your possession on that day?

14 A. Yes, sir, it was.

15 Q. Okay. And what did you do with it once it was signed
16 over to you by Captain Pickens?

17 A. . After it was signed over to us just like again just
18 like any other evidence the laboratory information
19 management system, gave it a lab number and then put it in
20 the vault until testing.

21 Q. Okay. And when did you test that item?

22 A. I actually tested it on January 9th.

23 Q. Okay. And you don't have to go into quite so much
24 detail as you did the first time, but what test did you
25 perform on Exhibit Number Three?

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 A. I performed a spot test, a color change test, a
2 solubility test and I took a gas
3 chromatography/massspectrometry test.

4 Q. And so basically you performed the same procedure with
5 those drugs as you did the ones back in July; is that
6 correct?

7 A. Yes, sir.

8 Q. All right. And after doing that, did you make any
9 conclusions about the substance that had been presented to
10 you as Exhibit Number Three?

11 A. Yes, sir. I found this evidence to be cocaine in the
12 base form also known as crack in the amount of 5.9 grams.

13 Q. And 5.9 grams was the weight?

14 A. Five point nine grams, yes, sir.

15 Q. All right. And then once you performed that analysis,
16 what did you do?

17 A. I sealed it back in this bag. Just like the other bag
18 I initialed and dated it on the inside with the lab number
19 and it was stored in our vault until it was picked up.

20 Q. Okay. And is that bag in the same condition it was in
21 when you performed your analysis, or after you finished
22 your analysis and bagged everything up on January 9th?

23 A. Yes, sir, it is.

24 Q. Okay. All right.

25 SOLICITOR ANTHONY: Your Honor, at this time we'd move

LIEUTENANT MELISSA HENDRICKS: DIRECT BY SOLICITOR ANTHONY

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1 Exhibit Three into evidence.

2 MR. DELANEY: No objection, Your Honor.

3 THE COURT: In without objection.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
5 AND MARKED, RECEIVED INTO EVIDENCE)

6 SOLICITOR ANTHONY: Thank you.

7 That's everything on direct.

8 MR. DELANEY: I have no questions for this witness,
9 Your Honor.

10 THE COURT: Thank you. You may step down. We
11 appreciate your time.

12 (WITNESS LEAVING WITNESS STAND.)

13 SOLICITOR ANTHONY: And Your Honor, that would be the
14 State's evidence.

15 THE COURT: All right. Members of the jury panel, the
16 State has presented it's case. That is, it has presented
17 it's evidence, so we have to take up a matter of law before
18 we go forward with the trial, so you are not in the
19 position yet to make up your mind or discuss the case
20 because we haven't gotten there, but the State has
21 presented it's case. So, I'm going to let you go to the
22 jury room just for a few minutes while I take up some
23 matters that we need to take up at this point.

24 (JURY EXITS COURTROOM AT 10:17 A.M.)

25 THE COURT: Anything from the State?

1 SOLICITOR ANTHONY: No, Your Honor.

2 THE COURT: Defense?

3 MR. DELANEY: Your Honor, at this time we would just
4 renew any objections that were made up until this point in
5 the trial. And also make a motion for a directed verdict
6 in this case.

7 THE COURT: As far as the rulings, the rulings are
8 what the rulings are. As far as the motion for a directed
9 verdict, I find that there is sufficient evidence from
10 which the jury could reach a conclusion the State has
11 proven beyond a reasonable doubt that Mr. Gallman did on
12 the date in question did in fact possess the crack cocaine
13 at issue and that he possessed it, or at least there is
14 evidence from which they could determine he possessed with
15 the intent to distribute, so I deny that motion.

16 Now, Mr. Gallman, can you hear me?

17 MR. GALLMAN: Yes, sir.

18 THE COURT: We've reached the point in the trial where
19 you have a right to present a defense if you want. You can
20 call witnesses if you wish and present a defense but you
21 don't have to.

22 You are presumed innocent of the charge against you
23 and you need not prove your innocence; the State has to
24 prove your guilt beyond a reasonable doubt.

25 You have a right to testify and you also have the

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1 right to remain silent. If you testify, you will be under
2 oath and the State will ask you questions about the events
3 of that date and also they can ask you questions in
4 determining some of your prior record that we talked about
5 earlier.

6 Those questions regarding your prior record are
7 allowed to come before the jury only for the jury's
8 consideration as to whether to believe you or not.

9 I will instruct the jury that if you testify and these
10 past offenses are brought up, that they can consider those
11 only as to the question of whether to believe you or not.
12 Not as any evidence that you in fact committed this
13 offense.

14 If you chose to exercise your constitutional right to
15 maintain silent, I will tell the jury that you have done
16 that. I will remind the jury that you are presumed
17 innocent and you need not prove your innocence. And I will
18 tell the jury that the State has to prove your guilt beyond
19 a reasonable doubt before they can convict you. That they
20 cannot in the jury room discuss or even factor into their
21 own deliberations the fact that you exercised your right to
22 remain silent.

23 Do you understand all that?

24 MR. GALLMAN: Yes, sir.

25 THE COURT: Do you have any question about any of

1 what?

2 MR. GALLMAN: No, sir.

3 THE COURT: Did you discuss that with him, Mr.
4 Delaney?

5 MR. DELANEY: We have discussed this, Your Honor.

6 THE COURT: Mr. Gallman, are you going to exercise
7 your right to remain silent or are you going to testify?

8 We'll take a break and you can talk to your lawyer. I
9 know you had time to do that over the night and up until
10 now but I'll give you - We'll take about a fifteen minute
11 break and that will give you a chance to talk to your
12 attorney and also that will give your attorney a chance to
13 see what I plan to charge.

14 MR. DELANEY: Judge, I am going to have one witness,
15 additional witness. And depending on what Mr. Gallman
16 does, we will call to testify a Kimberly Young, she is here
17 and I know Your Honor will want to address the jury.

18 THE COURT: All right. Okay, that's fine.

19 We'll take a short break and after you talk to your
20 client come on back and I'll let you look at the verdict
21 form and my proposed charge. And since you are presenting
22 evidence, that would put the State in the position of
23 making a final - having the final argument of course. And
24 I'm sure your client, he's been made aware of that.

25 Okay, we'll take about a ten minute or so break.

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1 Thank you.

2 (COURT IN RECESS AT 10:21 A.M.)

3 (COURT BACK IN SESSION AT 10:37 A.M.)

4 THE COURT: Thank you. Take your seats.

5 Is the State ready?

6 SOLICITOR ANTHONY: Yes, sir, we're ready.

7 THE COURT: Let's give Mr. Delaney a minute. He's
8 here but shortly after I presume.

9 All right, Mr. Delaney, are you ready? All right.
10 Bring in the jury.

11 SOLICITOR ANTHONY: Your Honor, I'm sorry. Do you
12 want to inquire of Mr. Gallman?

13 THE COURT: I thought I had already talked to him
14 about his right to remain silent.

15 Mr. Gallman, are you going to testify or remain
16 silent?

17 MR. GALLMAN: Remain silent.

18 (JURY REENTERS COURTROOM AT 10:38 A.M..)

19 THE COURT: Members of the jury panel, the next
20 witness is a lady named Kimberly Young. I did not call out
21 her name yesterday when we drew the jury.

22 Are any of you related by blood or marriage or a close
23 personal friend of Kimberly Young?

24 No one raises their hand.

25 All right. Call your next witnesses..

KIMBERLY YOUNG: DIRECT BY MR. DELANEY

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1 MR. DELANEY: Your Honor, the defense calls Kimberly
2 Young.

3 THE COURT: Okay.

4 THE CLERK: Put your left hand on the Bible and raise
5 your right hand.

6 (WHEREUPON, KIMBERLY YOUNG.
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION

9 KIMBERLY YOUNG BY MR. DELANEY:

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

11 A. Kimberly Young.

12 Q. And Ms. Young, just please make sure you speak up so
13 everybody can hear you. Okay.

14 Kimberly, how old are you?

15 A. Twenty-one years old.

16 Q. And where are you from?

17 A. Union, South Carolina.

18 Q. And Kimberly, I'm just going to get to it. Can you
19 remember back, do you remember back to a day in December in
20 2013?

21 A. Yes, sir.

22 Q. How close to Christmas do you remember it being? Do
23 you remember that it was close to Christmas?

24 A. Yes, sir.

25 Q. Okay. And what do you remember about that day?

KIMBERLY YOUNG: DIRECT BY MR. DELANEY

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1 A. Me and like twelve of us was standing on the mill hill
2 and somebody was like there go the police so it was twelve
3 gentlemen and I was standing - and I was standing over
4 there with them. When the police pulled up two different
5 ways --

6 Q. I don't mean to interrupt you. I just want to make
7 sure we get it straight. How many people would you say
8 approximately were - and you described it, you said the
9 mill hill?

10 A. Yeah.

11 Q. Okay. We're talking Lawson Avenue?

12 A. Lawson Avenue.

13 Q. And how many people did you say were up there?

14 A. Twelve.

15 Q. Okay. Did you know everybody that was out there?

16 (WITNESS INDICATED.)

17 THE COURT: You've got to answer with words.

18 A. Yes, sir.

19 THE COURT: Yes or no.

20 A. Yes, sir.

21 Q. And was David Gallman out there?

22 A. Yes, sir.

23 Q. And how do you know David Gallman?

24 A. I met him when he started hanging out on Lawson Avenue
25 about three years ago.

KIMBERLY YOUNG: DIRECT BY MR. DELANEY

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1 Q. What was going on on mill hill on Lawson Avenue that
2 day that you remember?

3 A. We were standing outside and having a couple of
4 drinks. Just standing in the yard like a normal day.

5 Q. Okay. And I think you testified you saw or noticed
6 the police; is that right?

7 A. Uh-huh. Yes, sir.

8 Q. You saw the police. What happened next?

9 A. Okay. Two police chiefs come in two directions.
10 Somebody had already had yell there go the police. All
11 twelve of the guys started scattering. Terrell stated that
12 he wasn't gonna move cause he --

13 SOLICITOR ANTHONY: Objection. Hearsay.

14 THE COURT: I sustain the objection.

15 You can't go into what somebody else said.

16 A. Okay.

17 THE COURT: You can say what they did but you can't
18 say what they said.

19 A. Okay.

20 Q. And Kimberly, you said Terrell, who do you mean by
21 Terrell?

22 A. Terrell the guy sitting over there in the chair.

23 Q. David Gallman?

24 A. Yes, sir.

25 Q. Okay. You call him Terrell?

KIMBERLY YOUNG: DIRECT BY MR. DELANEY

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1 A. Yes, sir.

2 Q. You said people started from the police. How many
3 cars did you see? How many police cars?

4 A. Two.

5 Q. How did they come in?

6 A. Two different directions.

7 Q. Okay.

8 A. One came from the left and one came from the right.

9 Q. Did you see any lights on, flashers on?

10 A. It was broad daylight.

11 Q. And did you scatter with the other people?

12 A. No.

13 Q. You stayed there?

14 A. Yes cause I really didn't know what was going on.

15 Q. Did anybody else stay there?

16 A. Like the time the police pulled up everybody just like
17 all the guys started in and walking in different directions
18 except Terrell.

19 Q. And what happened next?

20 A. A police officer got out the car. He asked Terrell to
21 come here. Terrell he started walking towards him. He put
22 his arm around Terrell and he told him he had a charge. He
23 started puttin his hands behind his back and put handcuffs
24 on him. Another cop walked like five feet away like to the
25 left where another guy had been standing and he picked up

KIMBERLY YOUNG: DIRECT BY MR. DELANEY

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1 something off the ground and he was like, you dropped this.
2 But I was right there. I know he didn't. I saw who
3 dropped it. But they didn't ask anybody whose it was or
4 didn't question nobody out there at all.

5 Q. Did you see Terrell drop anything?

6 A. No. When the police officer grabbed Terrell, Terrell
7 gave me his cell phone. Well I followed him and the
8 officer to the jeep. The officer let Terrell give me his
9 cell phone out the jeep.

10 Q. So you got the cell phone. You went up to the car and
11 got the cell phone from the car?

12 A. Yes, sir.

13 Q. Okay. Did you tell the officers anything?

14 A. I didn't say nothing to 'em.

15 Q. Why didn't you say anything to the officers?

16 A. Because they was already like - When the police have
17 an attitude I don't get in the way of it. When the
18 situation happened everybody out there was voicing their
19 opinions but wouldn't nobody say nothin cause like I'm the
20 type person I'm not stating nothing to a police office
21 cause you can quickly be charged as well.

22 Q. And when did you talk to me about this, Kimberly.

23 A. I talked to you about it yesterday.

24 Q. Why didn't you call me and see me before that?

25 A. Terrell did ask me to come for the longest but I had a

KIMBERLY YOUNG: DIRECT BY MR. DELANEY
CROSS BY SOLICITOR ANTHONY

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1 job but I lost my job so I didn't see no reason why I
2 couldn't come.

3 MR. DELANEY: Thank you, Kimberly. Please answer any
4 questions Mr. Anthony has.

5 CROSS-EXAMINATION

6 KIMBERLY YOUNG BY SOLICITOR ANTHONY:

7 Q. Ms. Young, is it ---

8 A. Yes, sir.

9 Q. --- fair to say Mr. Gallman -- you said everybody when
10 the police pulled up, people scattered?

11 A. Yeah. They didn't want -- they slowly walked away.

12 Q. Okay. And Mr. Gallman didn't?

13 A. No.

14 Q. So Mr. Gallman was just standing there by --

15 A. He was standing in the open

16 Q. Okay. By himself?

17 A. Yes, sir.

18 Q. Okay. And he was talking on the phone?

19 A. No.

20 Q. Okay. Well did he have a phone?

21 A. Yes, sir.

22 Q. But you don't recall him talking on the phone?

23 A. No, sir.

24 Q. And one officer got out of the car and walked up to
25 him and took him by his right arm?

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1 A. He was a tall officer. I don't know nobody name.

2 Q. Well I didn't ask his name. I'm just asking one of
3 the officers walked up to him and took him by his right
4 arm?

5 A. Yeah.

6 Q. Okay.

7 A. I guess nobody thought that he was gonna arrest him
8 because he was like he just grabbed him like a friendly
9 conversation.

10 Q. Okay.

11 A. They were walking together and another officer went
12 to the left like --

13 Q. I'm sorry. What now?

14 A. The officer that was holding Terrell they was walking
15 to the jeep. The other officer was just like looking on
16 the ground where all the guys were standing at. And that's
17 when he picked something up off the ground and he was like
18 he dropped this. But he never saw who dropped it.

19 Q. So you say this other officer came up and just started
20 looking around?

21 A. Uh-huh.

22 Q. And he found something and then said it was Mr.
23 Gallman's?

24 A. Yeah.

25 Q. But he did find something?

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1 A. Yeah.

2 Q. And you said it was where some other man was standing?

3 A. Yeah. It was twelve other guys standing out in the
4 area.

5 Q. All right. I mean who was it?

6 A. Who was it?

7 Q. Yeah. Who was standing --

8 A. You want me to name all the people standing out there?

9 Q. Sure. If you know as many as you can.

10 A. Okay. It was me and Morris and Stan, Collins, Starn,
11 Ray, David. Not that David. Another David that stayed
12 next door. Ryan.

13 Q. Go ahead.

14 A. Keep naming 'em?

15 Q. Yeah, if you're not through.

16 A. Antoine and Des.

17 Q. And so the crack that you say the officer picked up,
18 was it near where one guy was standing, and who was that
19 guy?

20 A. It was like - Okay, imagine there's twelve people
21 outside. Not all of 'em standing in one group. These
22 people over here and these people over here. We all
23 together like we had --

24 Q. Well my question was who was the guy standing near
25 where the crack was found?

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1 A. Antoine. It was two guys.

2 Q. Who?

3 A. It was Desmond and Antoine.

4 Q. Okay. So it was near Desmond and Antoine?

5 A. Yes.

6 Q. Those two?

7 A. Yes, sir.

8 Q. But you saw the officer pick up the crack?

9 A. Yes, sir.

10 Q. Okay. And you never told either one of those two
11 officers that that was where Desmond and Antoine were
12 standing?

13 A. No, sir. They seen all that when they pulled up.
14 They never said is this yours or is this yours. Once the
15 arrested Terrell when he picked it up off the ground that's
16 who he said it was.

17 Q. And you say that Mr. Gallman has been talking to you
18 about coming to court?

19 A. Yeah.. He asked me plenty of times but I been working.

20 Q. Okay. And so this happened a little over six months
21 ago. Do you still live on Lawson Avenue?

22 A. I never did.

23 Q. Oh, you never did.

24 A. I was at my uncle's house. My uncle still --

25 Q. Are you still over on Lawson Avenue a lot?

KIMBERLY YOUNG: CROSS BY SOLICITOR ANTHONY

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1 A. Yes.

2 Q. Okay. Is Mr. Gallman still over there a lot?

3 A. With his kids.

4 Q. Okay, but he is there a lot?

5 A. Yes.

6 Q. Okay. So you still see Mr. Gallman a lot?

7 A. Yes.

8 Q. And Mr. Gallman had been asking you to come and talk
9 to Mr. Delaney about this?

10 A. Yeah. And I ever volunteered to write a statement but
11 he was like that's not good enough.

12 Q. And after six months of trying you finally showed up?

13 A. I don't work no more.

14 Q. The afternoon of the trial?

15 A. I don't work no more.

16 Q. Okay. And you understand Mr. Gallman had been charged
17 with a crime?

18 A. Yes, sir.

19 Q. Okay. And you are saying even though you knew he had
20 been charged with a crime, you weren't going to do anything
21 about it if you had to work?

22 A. If I had to work, I can't take off work because my
23 right is a little more important. But I see no reason why
24 I couldn't be here if I'm not working.

25 SOLICITOR ANTHONY: If I could have one moment.

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1 (PAUSE.)

2 Q. How often would you say you've seen Mr. Gallman or how
3 often do you see him?

4 A. The only time we are around each other is mostly when
5 I at my uncle house and we sit on the porch.

6 Q. Okay. Does your uncle live on Lawson Avenue?

7 A. Yes, sir.

8 Q. Okay. And how often is that?

9 A. How often do I visit there?

10 Q. Yes.

11 A. Every day.

12 Q. Every day?

13 A. Yes.

14 Q. Okay. So do you see Mr. Gallman just about every day?

15 A. Yes, sir.

16 Q. And so - I mean, I take it you consider yourself
17 friends with Mr. Gallman?

18 A. Yeah I would consider him as my friend.

19 Q. Okay. And do you have any mutual friends, you and Mr.
20 Gallman?

21 A. Do we have mutual friends?

22 Q. Uh-huh.

23 A. He have a baby by my cousin.

24 Q. Okay. And what kind of things - you say you see him
25 everyday - what kind of things do you all do?

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1 A. . Every day when he get off work he come over and spend
2 a couple hours with his kids.

3 Q. And does he live close to your uncle? .

4 A. No. Like everyday he got off from the same truck,
5 same trailer and drop him off everyday in front of my
6 uncle's house and he started chill'n with his kids and I
7 already be there.

8 Q. And what? I'm sorry.

9 A. I already be there.

10 Q. You'll already be there.

11 A. Yes, sir.

12 Q. Okay. So is your uncle's house where you would
13 already be close to where his kids stay?

14 A. His kids practically live with my uncle cause that is
15 their grandpa.

16 Q. Oh, okay. So when you say Mr. Gallman's got a baby by
17 your cousin, your uncle is the grandfather - is your
18 cousin's father. Is that what you are saying?

19 A. Yes, sir.

20 Q. Okay. So he's over there at your uncle's house seeing
21 his children?

22 A. Uh-huh.

23 Q. Okay. And then you are over there too?

24 A. Yeah.

25 Q. All right. And this is a every day thing for a couple

KIMBERLY YOUNG: CROSS BY SOLICITOR ANTHONY

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1 of hours a day?

2 (WITNESS INDICATED.)

3 Q. You need to say yes or no.

4 A. Yes, sir.

5 Q. Okay. And you said that - I believe on direct you
6 said that he dropped the crack near where one guy was
7 standing. Is that correct?

8 A. Yeah. Yes, sir.

9 Q. Okay. And I'll just ask you again, who was that one
10 guy that was standing near where the crack was found?

11 A. I told you Desmond and Antoine.

12 Q. Okay. So now it's two guys.

13 A. It was always two but like.

14 Q. Like what?

15 A. I usually like one guy the person but I ain't. I'm
16 sorry. It was two guys standing - it was a group of people
17 standing right there but where they found it at like it
18 can't be on two sides but both of 'em standing there just
19 talking.

20 Q. Okay. So now like when Mr. Delaney was asking you
21 questions, you said he dropped it near where one guy was;
22 now your saying it was dropped - you are saying the crack
23 was found where one guy was and now you are saying it was
24 found where two guys were?

25 A. Yes.

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1 Q. Okay. And Ms. Young, I mean, that's because you're
2 really just trying to help Mr. Gallman out. Right?

3 A. No, incorrect.

4 Q. That's not correct?

5 A. No.

6 Q. Okay. But you want to make sure the jury thinks that
7 Mr. Gallman didn't drop the crack but you don't want to
8 come in here into court and give one name of one person who
9 actually, you know you would say, did drop the crack?

10 A. No. I was just telling you what I saw.

11 Q. And none of these other people who were out there who
12 weren't near the crack, none of them are here today with
13 you either?

14 A. No.

15 Q. Okay.

16 SOLICITOR ANTHONY: If I can have one moment.

17 (PAUSE AT 10:37 A.M..)

18 Q. All right. One last thing. Ms. Young, do you
19 remember an incident that occurred back in November of 2012
20 where you were stopped by a Sargent Gregory with the Public
21 Safety Department?

22 A. Yes, sir.

23 Q. Okay. And during that incident, you provided false
24 information ---

25 A. I did.

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1 Q. --- to that officer; is that correct?

2 A. Correct.

3 Q. Okay. And so you are here today admitting that you
4 have lied to the police; is that right?

5 A. Correct.

6 Q. But you want this jury to believe that you are in here
7 today telling them the truth.

8 A. Two different situations.

9 Q. Two different situations, but the very same person.
10 Right?

11 A. Yes, sir.

12 SOLICITOR ANTHONY: That's everything on cross.

13 THE COURT: Any redirect?

14 MR. DELANEY: No, Your Honor.

15 THE COURT: Thank you for your time. You can step
16 down and be excused.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Do you have any further witnesses?

19 MR. DELANEY: No, Your Honor. Defense rests.

20 THE COURT: Anything in reply?

21 SOLICITOR ANTHONY: May I have just a brief recess on
22 reply, Your Honor.

23 THE COURT: Okay. We have to take a recess. I know
24 you feel like this is choppy but like a ball game we have
25 certain things we have to do and then take a break. When

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1 we at another point where we have to take a break when you
2 come back we will either have reply testimony from the
3 State or we will go forward with the closing arguments of
4 the attorneys and the charge.

5 We'll take a short break, a refresher break, but don't
6 yet try to make up your mind or discuss the case because
7 you haven't heard the arguments of the attorneys and you
8 haven't heard my charge on the law. So we'll take another
9 short refresher break.

10 (JURY EXITS COURTROOM AT 10:59 A.M..)

11 THE COURT: I'll give you about five minutes.

12 SOLICITOR ANTHONY: Thank you. Thank you, Your Honor.

13 (COURT IN RECESS AT 11:00 A.M.)

14 (COURT BACK IN SESSION AT 11:07 A.M.)

15 THE COURT: Mr. Anthony?

16 SOLICITOR ANTHONY: We do not have any reply.

17 THE COURT: All right. Motions on behalf of the
18 defense?

19 MR. DELANEY: No, Your Honor. Just renew any motions
20 and objections made earlier in the case.

21 THE COURT: Motions are denied. Again, I think in
22 this case the State has offered sufficient evidence from
23 which the jury could find beyond a reasonable doubt that
24 the State has proven the charges against Mr. Gallman so I
25 deny the motions.

CLOSING ARGUMENT: BY MR. DELANEY

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1 The State waive opening?

2 SOLICITOR ANTHONY: Yes, sir. We do.

3 THE COURT: All right. You ready to go forward?

4 MR. DELANEY: Yes, Your Honor.

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

6 (JURY REENTERS COURTROOM AT 11:08 A.M.)

7 THE COURT: Members of the jury panel, you will now
8 hear the closing arguments of the attorneys and I will give
9 you my charge on the law and turn the case over to you for
10 your consideration.

11 Mr. Delaney.

12 MR. DELANEY: May it please the Court.

13 THE COURT: Yes, sir.

14 MR. DELANEY: Good morning, ladies and gentlemen.

15 When I talked to you yesterday afternoon the main - one of
16 the things I talked to you about was presumption of
17 innocence and my client is presumed innocent, presumed
18 innocent throughout this trial, but we didn't talk about
19 why. Why is that?

20 Judge Hayes will instruct you when he charges you with
21 the law and myself and the Solicitor when he is finished he
22 will tell you that the defense in a criminal case, the
23 defendant in a criminal case, doesn't have to say a word,
24 they are presumed innocent. Why?

25 That's because the State, the State of South Carolina

CLOSING ARGUMENT: BY MR. DELANEY

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1 in this case, they have the burden. They have the burden
2 of proof. It is their job to prove to you the elements of
3 the offense my client is charged with beyond a reasonable
4 doubt. It is their job, their burden to prove to you
5 beyond a reasonable doubt.

6 What is reasonable doubt. You are going to hear that
7 reasonable doubt has been defined as the kind of doubt that
8 would lead a reasonable person not firmly convinced. The
9 kind of doubt that would leave a reasonable person hesitant
10 to act. Firmly convinced. That's what you're going to
11 have to be thinking about, asking yourselves when you are
12 back in the jury deliberation room in just a little bit,
13 are you firmly convinced.

14 Because - And I talk to you about this because in this
15 process, the standard that the State must meet is
16 important. It is so important because if you are not
17 firmly convinced you must not find my client not guilty.
18 Its important stuff. Suspicion is not enough. I would
19 argue accusations are not enough.

20 Evidence, that is what I argue to you, ladies and
21 gentlemen, that is what needs to be presented. Evidence.

22 We heard testimony throughout the trial. But what I
23 want you to ask yourself is what evidence do we have to
24 back up this testimony? Because from what we heard
25 yesterday primarily, what we heard this morning, we had

CLOSING ARGUMENT: BY MR. DELANEY

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1 two fairly different views, versions, of what people saw
2 happen out on Lawson Avenue about six days before
3 Christmas, two o'clock in the afternoon 2013. We heard
4 testimony, there is two different versions.

5 We had one version that Mr. Gallman throws down a bag.
6 We have another version that says no that didn't happen.
7 We heard testimony from both sides there was a group of
8 people out there that day. And the picture that was
9 introduced into evidence that you will have to look at,
10 when we saw when the officers testified there were pointing
11 to where people were at. I want you to look when you have
12 this back there how tight this area is. These houses, this
13 front yard where we had the officers testify between six
14 and seven.

15 Ms. Young testified up to twelve people in this little
16 front yard. And I know we had testimony that Mr. Gallman
17 was separated from everybody else. Look at the picture and
18 you will see how tight this area is.

19 Wouldn't it be nice to have certain evidence in this
20 case? You heard testimony, both of the officers vehicles
21 which you heard testimony pulled up to this location both
22 pointing directly at the incident scene and both pointing
23 right there. We heard testimony both of these cars have
24 in-car video that's operated two different ways. It
25 automatically turns on when the flashers comes on but then

CLOSING ARGUMENT: BY MR. DELANEY

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1 it also can be turned on by the officers. They've got
2 something on them that can they can flip these cameras so
3 we've got neither.

4 And what explanation did we hear from either officer
5 about that? I would submit we didn't hear an explanation.
6 If we heard one it was weak of why we don't have any video
7 of that scene on that day at two o'clock in the afternoon,
8 two cars right there pointing out there. Wouldn't you like
9 to have - wouldn't you like to have that in this case? But
10 we don't. We don't have that evidence. And remember whose
11 burden it is.

12 We don't have any type of forensic evidence in this
13 case. Wouldn't it be nice to know if my client's
14 fingerprints are on that bag. This baggie here, wouldn't
15 it be nice to know whose fingerprints are on this bag?
16 They have training in this. There is departments set up to
17 do this testing and what did we hear in this case? They
18 didn't even try. They didn't try. Where is that evidence
19 to support what's been testified to up here on this witness
20 stand? There's not.

21 I will submit what you heard in opening statement by
22 Solicitor Anthony is correct. There was a hot potato out
23 there that day. There was a hot potato out there day. A
24 hot potato that is a bag of crack cocaine that didn't
25 belong to David Gallman. The testimony you heard from both

CLOSING ARGUMENT: BY MR. DELANEY

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1 sides he stayed there. He didn't run. He didn't resist.
2 Other people did. Got out of there. Scattered.

3 You heard Ms. Young, emptying pockets. Mr. Gallman,
4 no. Is that consistent behavior with someone that's
5 holding onto almost six grams of cocaine in their hand? Is
6 that consistent? You heard the testimony. The officers
7 they're going back and forth up there with their three cars
8 went back and forth in front of this crowd of people. Its
9 not like they just went up there and surprised them. They
10 stood there. Is that consistent? Does that make sense?
11 And I will argue to you no it doesn't. Should have in a
12 perfect world. When I advise, recommend Kimberly Young to
13 talk to the police back on December the 19th, 2013 and tell
14 them what she saw. I wish she had.

15 But realistically would that have made any difference
16 in what we heard in this trial? No. The officer's minds
17 were made up to who these drugs belonged to. It wouldn't
18 have been any different what she said that day.

19 She came in here. She put her hand on the Bible and
20 she testified.

21 Now, David Terrell Gallman is on trial this week for
22 possession, for possession with intent to distribute. That
23 is what he is on trial for. That is the charge that you
24 are going to have to decide. Is he guilty, is he not
25 guilty, is he guilty of a lesser included offense of simple

CLOSING ARGUMENT: BY MR. DELANEY

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1 possession of cocaine? That's the charge in this case.

2 He is not on trial for distribution of crack cocaine.
3 You're not deciding that. And there is a reason I would
4 argue to you, ladies and gentlemen, this trial is taking
5 place, on not a trial which happened allegedly six months
6 prior to these charges. This guy had a video. We have a
7 case and we heard Investigator Parker testify how important
8 is, how they have all this audio/video equipment. They do
9 not trust these C.I.'s. They need to monitor them. And
10 what do we have presented? We had half of a video. We
11 heard an explanation that a battery ran out. I calculated
12 watching the video, there was approximately twenty minutes
13 of video and that's it.

14 And what did we see on the video? I would argue,
15 ladies and gentlemen, you did not see and I would submit to
16 you, ladies and gentlemen, we do not see any drugs on that
17 video. We heard a translation from Kelly Crawford of what
18 was said on that video. I was listening to that video.
19 Obviously you all will have that video. I did not hear any
20 conversation being made for forty dollars of cocaine. I
21 did not hear Kelly Crawford testify to that. I heard Kelly
22 Crawford testify that he got some drugs from my client but
23 I did not see that.

24 Suspicion is not enough. And the State, they are
25 wanting you - they are using this to pile on my client.

CLOSING ARGUMENT: BY MR. DELANEY

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1 Suspicion is not enough and that's what's being thrown at
2 you. What happened after that video shut off? We don't
3 know. We have no idea. Does that leave someone perfectly
4 convinced? Does that leave someone, someone confident as
5 to what someone has said? We don't know.

6 I expect when the Solicitor gets a chance to talk with
7 you, make his arguments to you in just a minute. I don't
8 want to put words in anybody's mouth but I expect the State
9 is going to want a message to be sent, send this drug
10 dealer a message. But I want you, ladies and gentlemen, do
11 not make an emotional decision in considering the evidence
12 in this case.

13 What is the evidence in this case? What evidence
14 would you like to have in this case which you don't have?
15 Who has the burden in this case? Are you firmly convinced,
16 firmly convinced of David Terrell Gallman's guilt? Firmly
17 convinced. That is what you are going to have to ask
18 yourselves.

19 And what I contend to you ladies and gentlemen, there
20 is no way. This is the amount we are talking about here.
21 We're not talking - This amount, 5.9 grams of cocaine. You
22 are going to hear about the inference level of one gram. I
23 would also argue this is possession. There is no evidence
24 as far as intent to distribute. A lot of suspicion.
25 Suspicion. It's about possession. Thank you.

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1 SOLICITOR ANTHONY: Thank you, Your Honor.

2 When you go back there to make your decision in this
3 case, there's really a few questions you have to ask and
4 you have to decide.

5 The first question would be did Mr. Gallman possess
6 the crack? And just think back on the testimony you heard
7 yesterday. All three of the officers agreed on certain
8 basic things.

9 First off, Mr. Gallman was off by himself away from
10 the group there when he was arrested.

11 The second thing, there was nothing on the ground.
12 There was nothing on the ground at his feet when Officer
13 Nix went to get him and take him to the car.

14 And the third thing and the most important thing is
15 Corporal Petrie saw him drop the crack from his hand. It
16 wasn't just that he found it on the ground at his feet. It
17 was dropped out of his hand.

18 Now, I'm sure if you told Corporal Petrie and Officer
19 Nix that Mr. Gallman was going to drop a bag with six grams
20 of crack in it, they would have turned their cameras on
21 that day. But when they drove up on him, they didn't know
22 that's what was gonna to happen. They just knew that they
23 had a warrant on somebody who was standing out there on the
24 side of the road and they needed to arrest him and that's
25 what they did. So there is no reason - you can't expect

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1 them to know that something like that was going to happen
2 so that they could turn on the video camera. And if they
3 really had just found the bag lying out in the yard, well
4 then there would be fingerprints because then they wouldn't
5 know whose it was. But you don't do fingerprints when you
6 see something come out of somebody's hand because you know
7 whose it is. You saw them drop it.

8 And bringing a person in here like they did this
9 morning who spends time every day with Mr. Gallman who is
10 basically a part of Mr. Gallman's family, who won't say who
11 the drugs really belonged to, although they claim to be
12 out there she won't say whose it was, and who has a history
13 of lying to the police. Admitted, yeah I've lied to the
14 police before. Well, that is not anything that ought to
15 create doubt about whether Officer Smith and Officer Nix
16 and Corporal Petrie told you the truth yesterday.

17 And because basically what the defense was saying,
18 what you have to believe to believe that Mr. Gallman wasn't
19 in possession of that crack, you just had to believe that
20 Corporal Petrie just lied. You know, it wouldn't be a
21 mistake, it would just be an out and out lie that he just
22 got out, he saw some crack laying off from Mr. Gallman and
23 he picked it up and said well I'm just going to say that
24 that's his. Well that would be just a blatant lie. And I
25 submit to you that there is just no reason to think that

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1 what Corporal Petrie told you happened that day, that he
2 saw Mr. Gallman drop this crack out of his hand, he just
3 went and retrieved and there it was; there is just no
4 reason to think that he came in here yesterday and he just
5 lied to you about that and just made something up to pin it
6 on Mr. Gallman. There is just no reason to think that and
7 your verdict should not reflect that.

8 Corporal Petrie saw the crack in Mr. Gallman's hand
9 and that puts him in possession of it. If it's in his
10 hands, then it's possession.

11 So, once you clear that hurdle, then the next thing
12 you have to decide is well, is it possession with intent to
13 distribute. And there are a couple ways that we've shown
14 that.

15 The first way we've show it is we've proven the weight
16 of the drugs. And Lieutenant Hendricks testified that the
17 crack that was seized that afternoon by Corporal Petrie
18 weighed 5.9 grams. And the Judge will tell you that when a
19 defendant is in possession of over a gram of crack, he can
20 be - a jury - you can find that he is possessing it with
21 the intent to distribute. You can make that finding solely
22 based on the fact that he has got over one gram of crack.
23 Mr. Gallman had 5.9 grams of crack.

24 And, you know, the thing about crack is you don't need
25 a lot of it, and a gram is not a lot, but that's what the

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1 inference amount is because of the value. It doesn't take
2 a lot of crack to amount to a lot of money. Because an
3 idea is that if you have a certain amount of crack, then
4 you are more likely to be a seller than somebody who just
5 has it to use.

6 Lieutenant Parker told you when he testified that
7 crack normally goes for a hundred dollars a gram, so Mr.
8 Gallman could have sold this by the gram for about six
9 hundred dollars. But then the other way to look at it is
10 that Mr. Gallman sold Mr. Crawford just over a fourth of a
11 gram. Remember the weight on the crack that Mr. Crawford
12 was sold was .26 grams. That's just over a fourth of a
13 gram and he sold that for forty dollars.

14 Now by that measure, if he broke what he had in
15 December up and sold that at the same rate that he sold the
16 crack to Mr. Crawford, he would be getting about a hundred
17 and sixty dollars a gram because he sold a quarter of a
18 gram for forty, so for each gram you have four sales and it
19 would be forty dollars a piece, so that would be a hundred
20 and sixty dollars a gram. And if you've got six grams,
21 then you would be looking at close to nine hundred and
22 sixty dollars worth of crack if you sell what was recovered
23 in December at the same rate that he was selling it in
24 June.

25 Now, just think about this. If you go into Hibbitt

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1 Sports over there where Mr. Gallman sold it to Mr.
2 Crawford. I'm sure you've probably been to Hibbitt Sports
3 and they probably have some pair of shoes, maybe some
4 Nike's or something like that, and you can get them for
5 forty dollars. They might be on sale but you can probably
6 get some pair of tennis shoes there for about forty
7 dollars. And if you met up with somebody and they had a
8 couple of pairs of those shoes in the same size, same kind
9 of shoes, and they had a couple a pairs of them, three
10 pairs of them, you might think well they got that just for
11 themselves.

12 But if you run into somebody and they've got twenty-
13 four of them, twenty-four pairs of shoes all the same kind,
14 then you are going to know that person is not just someone
15 who has got those shoes for personal use. They are a shoe
16 salesman and that is what Mr. Gallman is. He is not just
17 somebody who keeps crack for personal use, he is a crack
18 salesman. And if Mr. Gallman just had a gram, or maybe
19 even a little more than a gram, you could figure, well he
20 got that crack for himself but he didn't. He had six
21 grams. And the only reason somebody is going to have that
22 much crack, is because they are a drug dealer.

23 And guess what, the other way that you know that Mr.
24 Gallman had those drugs in December with the intent to
25 distribute is because he is a drug dealer and we've proven

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1 that and we know that because you can sit and watch him,
2 you sat yesterday afternoon and watched him sell crack to
3 Kelly Crawford. And you can hear - And that tape is in
4 evidence if you want to see it again, but on that tape, you
5 can hear Mr. Crawford say the word forty when he was asked
6 how much you want to Mr. Gallman and you can see Mr.
7 Gallman get out that little bottle, that little bottle at
8 the bottom of the screen that Mr. Gallman keeps his crack
9 in, and then you can see Mr. Gallman's hand go over the top
10 and Mr. Crawford's hand go under the bottle and Mr. Gallman
11 giving crack to Mr. Crawford.

12 And the reason that he did that is because we wanted
13 to show that when Mr. Gallman had that crack in December
14 that he had it with the intent to distribute because Mr.
15 Gallman is a drug dealer. He sells crack cocaine.

16 And so the best evidence that Mr. Gallman was in
17 possession with intent to distribute is that we have proven
18 that he is a crack dealer based on the fact that he sold to
19 Mr. Crawford. You can call Mr. Gallman up and go to a
20 place where people who live here go all the time that we
21 like to say - think that is a safe and a drug free place
22 and you can buy crack from up there.

23 Now, you will have three choices in this case. You
24 will have the choice to convict Mr. Gallman with possession
25 with intent to distribute crack. You'll have a choice to

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1 convict him of possession of crack. And you will have a
2 choice to find him not guilty.

3 The Judge will tell you that you have to reach a
4 unanimous verdict. And that doesn't mean that if you can't
5 agree that you have to find Mr. Gallman not guilty.

6 If you go back there and there is a difference about
7 how Mr. Gallman ought to be found, what your verdict ought
8 to be, then you just tell the Judge that. But if you
9 disagree on the verdict, that doesn't mean that Mr. Gallman
10 is suppose to be found not guilty.

11 The decision you will make in this case is called a
12 verdict. And that word verdict comes from this latin word
13 that means to speak the truth. And there is this old song
14 that I like called "The Trouble With the Truth" and there
15 is a line in that song that goes, "the trouble with the
16 truth is just what I needed to hear it rings so right deep
17 down inside my ear."

18 And ladies and gentlemen, I know that it is hard to
19 convict somebody of a crime but people need to hear the
20 truth about David Gallman. People in law enforcement need
21 to know that when they do their jobs and they present
22 sufficient evidence that a jury will follow the law and a
23 jury will convict a drug dealer. And the people of Union
24 County need to know that drug dealers aren't going to be
25 able to go to places that we like to think are safe like

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1 the parking lot there at the Belk and the Hibbitts and the
2 - and the Cherry Blossom and sell crack. But most
3 importantly, David Gallman needs to know the truth that he
4 is not going to be around to sell crack in Union County
5 because there is a right way to make money in this world
6 and there is a wrong way to make money.

7 And Mr. Gallman, who sells crack, who sells poison to
8 people in our community, is making money the wrong way.
9 And twelve people need to tap him on the shoulder and tell
10 him that he has got to stop. And I would ask you to go
11 back in the jury room, look at the evidence in this case,
12 talk about it and come back and give a verdict that tells
13 David Gallman that you know what he is and you know what he
14 has done. Find him guilty of possession with intent to
15 distribute crack cocaine.

16 Thank you all.

17 THE COURT: Members of the jury panel, I appreciate
18 the attention you've given to the attorneys and me and the
19 witnesses'. It is now time for me to charge you the law
20 that you are to apply to the facts as you determine them to
21 be in this case.

22 The fact that Mr. Gallman is on trial, the fact that
23 he was arrested, the fact that he has been indicted is not
24 evidence he committed this offense. That's just the way
25 our system works.

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1 If someone is thought to have committed an offense, a
2 warrant is issued and they are arrested, indicted and they
3 come to trial. But that is not any proof that he committed
4 this offense. That's just the way our system works.

5 The indictment that makes this charge will be with you
6 in the jury room and it is not evidence. It is simply the
7 paperwork by way of which this case is processed through
8 our court system. It contains the charge against Mr.
9 Gallman but is not evidence.

10 Our law, our jurisprudence, establishes that any
11 individual charged with an offense, including Mr. Gallman,
12 is presumed innocent of that offense unless the State can
13 prove that person's guilt beyond a reasonable doubt.

14 This presumption of innocence is a substantial right.
15 It is not just a mere legal theory or a mere legal phrase;
16 it is a substantial right. The presumption of innocence
17 attached to Mr. Gallman at the time of his arrest; has
18 traveled with him and remains with him as his case is
19 processed through our court system. The presumption of
20 innocence remains with Mr. Gallman at this moment and
21 continues with him as you deliberate.

22 The presumption of innocence in Mr. Gallman's favor
23 remains with him even as you deliberate and is proved if
24 and when, and, only if and when you determine the State has
25 proven his guilt beyond a reasonable doubt.

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1 Now, the State is not required to prove his guilt
2 beyond all or beyond every doubt. That is not possible and
3 is not required. Proof beyond a reasonable doubt is proof
4 that would lead a reasonable person to hesitate to act.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of someone's guilty. If based on your
7 consideration of the evidence you are firmly convinced that
8 Mr. Gallman is guilty of the offense of which he is
9 charged, you will find him guilty.

10 On the other hand, if you think there is a real
11 possibility that he is not guilty, you would give him the
12 benefit of that reasonable doubt and find him not guilty.

13 He is entitled to all reasonable doubt that you have
14 as to an issue in this case.

15 I am the sole judge of the law in this case as I have
16 told you before. You must take, accept and apply the law
17 as I charge it even if you think I charge the law in error
18 or even if you think the law should be different. Your
19 oath requires you to take, accept and apply the law as I
20 charge it.

21 You are not to infer from anything I have said or done
22 or anything I now say or do as indicating an opinion of
23 mine on the facts. Our law does not allow a trial judge to
24 formulate or express to a jury any opinion on the facts.
25 It is solely your job to examine the evidence, give to the

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1 evidence the effect, the value, the weight, and the truth
2 you believe the evidence should have.

3 Use your common sense, your sense of logic, your sense
4 of reason. Use your experience in life as you analyze the
5 evidence. As judges of the facts, you have to analyze and
6 determine the credibility, that is the believeability, of
7 the witnesses who have testified.

8 In assessing believeability, use the things that I
9 have already talked about. Use the things that you find in
10 your day to day life as being indicators of someone telling
11 the truth. And you can use certain evaluators, how a
12 witness acts on the stand, are they hesitant or
13 straightforward. Are they consistent or inconsistent in
14 their testimony. Consider the opportunity a witness had to
15 know those things about which a witness testified. And you
16 may consider any bias or prejudice a witness may have, that
17 is whether a witness would wish to help or hurt one side or
18 the other. All these things you consider, determine the
19 true facts, apply the law, and you will be able to return a
20 verdict that speaks the truth.

21 In this case we had testimony from someone qualified
22 as an expert witness. That person was allowed to give an
23 opinion. Generally, individuals cannot give an opinion.
24 They have to testify as to facts, something they observed
25 with one of their five senses. It's usually something that

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1 has been seen or heard. It could be taste, touch or smell.
2 But when an individual has certain experience, training and
3 qualifications and education in a certain area, that person
4 can take facts and from those facts render an opinion.

5 Now, the opinion of experts are allowed into evidence
6 to assist you. They are not binding upon you. You can
7 accept or reject the opinion of an expert, the lady that
8 testified - I don't recall what her name was. You can
9 accept or reject her testimony. And you look at her
10 testimony as a witness just as you look at any witness.
11 Use those same evaluators and the same analysis of her
12 testimony as you use with any other witness in the case.

13 In addition as to an expert, look at their
14 qualifications. I found that they were qualified - that
15 she was qualified, but you determine in your mind whether
16 or not she was qualified to reach the opinion she reached.
17 And you can also look at the reasons she gave for reaching
18 the opinion she did reach. You can accept or reject, in
19 whole or in part, the expert witness' testimony.

20 The fact that Mr. Gallman has in this case exercised
21 his constitutional right to remain silent cannot be used
22 against him in any way whatsoever. He is ensued with the
23 absolute constitutional right to remain silent. The fact
24 that he exercised that cannot be used to litigate against
25 him in any way whatsoever.

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1 I remind you, he does not have to prove his innocence;
2 he is presumed innocent. The State has to prove his guilt
3 beyond a reasonable doubt. This is true and you cannot in
4 your deliberations discuss among yourselves or ever mention
5 the fact that he chose to exercise his constitutional right
6 to remain silent and you cannot factor that into your own
7 deliberations. He has that right and it cannot be used
8 against him in any way whatsoever.

9 Now, there has been evidence in this case of an
10 incident that occurred in June of 2013 involving Mr.
11 Crawford and Mr. Gallman. That was allowed into evidence
12 solely for your consideration of the question of the intent
13 the State alleges in the incident case. You are to
14 consider the evidence of the June 2013 incident only if you
15 are convinced beyond a reasonable doubt that it did in fact
16 take place, and you may only consider it in consideration
17 of the question of Mr. Gallman's intent to distribute crack
18 cocaine as charged in this indictment, and only if you
19 determine that Mr. Gallman did in fact in December of this
20 past year possession the substance put into evidence as
21 crack cocaine, and find that he did possess that substance
22 and that he possessed it with intent to distribute.

23 That is, you cannot use the prior incident as evidence
24 that the incident which he is charged occurred, but you can
25 only use it to determine whether or not he did possess, and

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1 find that he did possess crack cocaine and whether or not
2 he did it with the intent to distribute it.

3 Now, there are as mentioned by one of the attorneys
4 levels of offenses.

5 In this case, he is charged with possession of crack
6 cocaine with intent to distribute. But the law allows the
7 jury to look and see if they determine that he has not been
8 proven beyond a reasonable doubt to possess crack cocaine
9 with the intent to distribute or whether or not he just
10 simply possessed the crack cocaine in violation of the laws
11 of this State.

12 Think of it as stair steps. At the top is the charge
13 of possessing crack cocaine with intent to distribute. If
14 the State has not proven that, you may go down a step to
15 what would be considered a lesser charge that he just
16 simply possessed crack cocaine in violation of the laws of
17 this State. He cannot be convicted of either unless you
18 are convinced beyond a reasonable doubt he is guilty.

19 As to those charges, the State is required to prove
20 beyond a reasonable doubt that he possessed crack cocaine
21 at the time alleged. But the higher one that he is charged
22 with, they have to also prove he possessed it with the
23 intent to distribute it they also have to prove that the
24 substance was in fact crack cocaine.

25 So the elements of the offense of possession of crack

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1 cocaine with intent to distribute, the State must prove
2 beyond a reasonable doubt is that the substance at issue
3 was in fact crack cocaine. That Mr. Gallman had possession
4 of that crack cocaine to either actually or constructively
5 and that he possessed it with intent to distribute it. The
6 State must prove possession of the crack cocaine by Mr.
7 Gallman and further that he had the crack in his possession
8 with intent to distribute.

9 There are two kinds of possession to both the higher,
10 possession with intent to distribute, or the lower is
11 simple possession. There are two types of possession,
12 actual and constructive.

13 Actual possession occurs where a controlled substance
14 is found to be in someone's actual physical custody.

15 Constructive possession is when a person has dominion
16 or control or the right to oversee the dominion or control
17 of a substance or the premises where the substance is
18 located.

19 Possession may be inferred from the circumstances and
20 may be imputed to anyone who has the power and intent to
21 control the disposition of the subject - of the object at
22 issue. In other words, possession of an object or the
23 premises where the object is found gives rise to an
24 inference that the person charged had both the power and
25 the intent to control and disposition of the substance.

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1 Actual knowledge of the presence of the substance is
2 strong evidence of intent to control it's disposition or
3 use. However, the mere presence of a person in the area
4 where an illegal substance is found is not alone and is not
5 enough by itself to give rise to the necessary inference.
6 The State must prove that Mr. Gallman had both the power, t
7 that is the actual or constructive control, and the intent
8 to control the disposition of the substance.

9 Actual control occurs when a controlled substance, and
10 crack cocaine is by the laws of our State a controlled
11 substance, is found to be in the actual physical custody of
12 the person charged.

13 Constructive possession occurs when the person charged
14 with possession has dominion and control over either the
15 controlled substance itself or the premises upon which the
16 controlled substance is found.

17 Constructive control, constructive possession means
18 that the defendant's knowledge and possession may be
19 inferred that the controlled substance was found on the
20 premises under his control. This is a permissive
21 inference. You are free to accept or reject this inference
22 depending upon your view of the evidence.

23 Constructive control may be established by
24 circumstantial as well as by direct evidence and
25 constructive control may be shared by two or more

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1 individuals.

2 The State must also prove that the possession of the
3 crack cocaine, if you determine that he did in fact - First
4 they have to prove that he did in fact possess, either
5 actually or constructively, the crack cocaine at issue, and
6 they have to prove beyond a reasonable doubt that the
7 substance was in fact crack cocaine.

8 The State must also prove that he possessed it with
9 the intent to distribute it.. The State is not required to
10 prove that he in fact distributed it. The State is only
11 required to show that he possessed it with the intent to
12 distribute it.

13 Intent may be shown by acts and conducts of the
14 defendant and from other circumstances from which you may
15 naturally and reasonably infer intent.

16 The word distribute means to deliver either with or
17 without payment.

18 There is a further provision in our law dealing with
19 possession of crack cocaine with the intent to distribute
20 that provides that the possession of one or more gram of
21 crack cocaine gives rise to the permissive inference of a
22 violation of the statute. That is, possession of more than
23 a gram or more of crack cocaine gives rise to the
24 permissive inference that the possession was with the
25 intent to distribute the crack cocaine.

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1 The inference of the violation of the law by
2 possession of one or more grams of crack cocaine may be
3 drawn from proof of the quantity of the drug.

4 The implication of that inference only permits you,
5 rather than requires you, to infer that it was possessed
6 with intent to distribute.

7 Permissive inference of a violation of our law the
8 possession of a quantity of crack cocaine is simply an
9 evidentiary fact to be taken into considering by you along
10 with the other evidence in the case and it is to be given
11 such weight as you determine it should receive.

12 This inference, that is the inference based on the
13 weight of the crack cocaine, you may reject or accept
14 depending on your view of the evidence. Again, the State
15 must prove those elements beyond a reasonable doubt.

16 Now if the State has proven simply that the substance
17 was crack and simply that he possessed it not with the
18 intent to distribute, then you would consider whether or
19 not he was guilty of what I told you earlier was the lesser
20 included offense of simple possession or possession of
21 crack cocaine.

22 Your verdict in this case must be unanimous. All
23 twelve jurors must agree. Once all twelve jurors have
24 agreed on the verdict - I will go over the verdict form
25 with you in just a moment, Mr. Foreman, the foreman will

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1 write the unanimous verdict.

2 Your verdict cannot be based on sympathy, passion,
3 prejudice, or matters outside the record. If you have
4 questions while you are deliberating, write them down, give
5 them to the bailiff the bailiff will come and bring them to
6 me.

7 I will go over with the attorneys any questions you
8 have and respond. It may be if you have questions that I
9 can write the answer to that question on the note itself
10 and send it back. And if I do that, keep the note and
11 don't throw it away. It has to be turned in with the
12 evidence. It may be that I will have to bring you back in
13 and go over whatever questions you have here in open court.

14 You will not have with you in the jury room a written
15 charge on the law but if you wish me to go over any part or
16 all of my charge, let me know and I will bring you back in
17 here in open court and recharge you any part or all of the
18 law.

19 When you've reached a verdict, knock on the door and
20 tell the bailiff. The bailiff will tell me and we will
21 send for you as promptly as we can.

22 If you wish to have testimony replayed, we can do
23 that.

24 Do not when you first go in the jury room start
25 deliberating. I have to go over with the attorneys my

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1 charge. If I have made an error in my charge, I have to
2 bring you back in and correct it. If not, the bailiff will
3 bring in a verdict form and the exhibits and tell you to
4 start deliberating.

5 The verdict form has three options on it. The order
6 they are in is of no importance. I have to put them in
7 some order and this is the order I always use on verdict
8 forms. Remembering that your verdict must be unanimous,
9 the top verdict says, we find defendant guilty of
10 possession of crack cocaine with the intent to distribute.
11 That's the charge of course with which he is charged in the
12 indictment.

13 If you find the State has proven his guilt of that
14 beyond a reasonable doubt, you would put an X or a check in
15 front of that, Mr. Foreman.

16 If the State has not, you could consider if you
17 determine it appropriate, whether or not the defendant is
18 guilty of the lesser included offense of possession of
19 crack cocaine. If you find that the State has proven that
20 offense, as opposed to the intent to distribute offense,
21 you would put an x or a check mark in front of that second
22 line.

23 If you find the State has failed to prove Mr. Gallman
24 guilty of either offense, you would put a check in front of
25 the third line that says we find the defendant not guilty.

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1 And there is a place for you to sign.

2 So I'm going to let you go to the jury room but do not
3 start yet deliberating.

4 (JURY EXITS COURTROOM AT 11:54 A.M.)

5 THE COURT: Anything from the State?

6 SOLICITOR ANTHONY: No, sir.

7 THE COURT: Defense?

8 MR. DELANEY: No, Your Honor.

9 THE COURT: All right. Take a look at the exhibits
10 and make sure that they are order and the verdict form and
11 we'll send them in.

12 Solicitor, do you have anything to do while we're
13 waiting?

14 SOLICITOR ANTHONY: Not that I know of right now.

15 THE COURT: We'll be at ease for a few minutes.

16 (COURT IN RECESS AT 11:56 A.M.)

17 (JURY NOTE RECEIVED AT 12:15 P.M..)

18 (COURT BACK IN SESSION AT 12:25 P.M..)

19 THE COURT: Is the State ready?

20 SOLICITOR ANTHONY: Yes, sir.

21 THE COURT: Mr. Gallman is present. We received a
22 list of questions from the jurors. I've gone over them
23 with the attorneys and the court reporter. We are going to
24 hear some testimony.

25 Bring the jury in and I will respond to all five - of

1 course make this a Court's Exhibit, so let's bring in the
2 jury.

3 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 (JURY REENTERS COURTROOM AT 12:26 P.M..)

6 THE COURT: Members of the jury panel, I have gone
7 over with the attorneys and the court reporter your note.
8 Here is the way I'm going to respond.

9 First is that you would like to hear Corporal Petrie's
10 testimony again and then you say specifically on dropping
11 the bag. His testimony is only about twenty minutes and
12 rather than trying to find a particular point, part, it's
13 just easier to play the whole thing.

14 The same is true for your next question about Officer
15 Nix. You're particularly concerned about the escort
16 position but his testimony also is only about twenty
17 minutes. It's quicker than to try to find it just play it.

18 Number three is where was the location of the crack
19 bag in the vicinity of Gallman versus the others? I can't
20 answer that. That's up to you to determine based on the
21 testimony. That's one of the things that you have to
22 wrestle with based on the testimony which you determine the
23 facts to be. I cannot answer that.

24 I'm gonna skip forward and go to Number Five. We are
25 gonna get you a laptop ready to go back in with you so you

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1 can watch the video.

2 Number Four, I'm not real sure how to respond to that
3 because it ask for certain answers and I can't answer them.
4 Again you've got to rely on the evidence. But if you want
5 I can go back in to hear her testimony again. We can play
6 the testimony but I can't answer, you ask how many people
7 she saw and then you say drop the bag and then you say next
8 we heard a description of the escort position was he
9 cuffed. I can't answer those but we can if you want after
10 you go back after hearing these two officers if you want to
11 replay her's we certainly can do that also. Her's was not
12 lengthy either so whatever you are comfortable with but I
13 can't answer those questions but we can play her testimony.
14 All right, play Corporal - -

15 MADAM COURT REPORTER: Nix first, Judge.

16 THE COURT: Nix first.

17 MADAM COURT REPORTER: He's up first.

18 THE COURT: Okay. He came up, even though that flips
19 the way you all ask the questions it will be Nix and then
20 Petrie.

21 (OFFICER NIX'S TESTIMONY REPUBLISHED TO THE JURY AT
22 12:28 P.M..)

23 (CORPORAL PETRIE'S TESTIMONY REPUBLISHED TO THE JURY
24 AT 12:49 P.M..)

25 THE COURT: All right. Members of the jury panel,

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1 we're gonna send in the CD, a laptop, and again, as to Ms.
2 Young's testimony if you wish after you get in there decide
3 you want to hear it played we can bring you back out.

4 But I cant' really answer the questions. That would
5 be invading your providence.

6 We do have pizza ordered. I don't know if its here or
7 not but we will have some lunch for you. And again, if you
8 have any further questions or you want to hear Ms. Young's
9 testimony just let us know.

10 (JURY EXITS COURTROOM AT 01:03 P.M..)

11 THE COURT: Mr. Anthony, you want to make sure the
12 laptop goes - give it to the bailiff to hand in.

13 While he's doing that before we break for lunch,
14 we'll go ahead and break in this case but I want to take
15 care of a matter involving Mr. Chiarenza.

16 (COURT IN RECESS AT 01:05 P.M..)

17 (COURT BACK IN SESSION IN THE MATTER OF STATE V.
18 DANIEL LEANDER WOODS WITH DEREK CHIARENZA AT 01:05 P.M.)

19 (COURT IN RECESS AT 01:12 P.M..)

20 (COURT BACK IN SESSION AT 02:17 P.M., IN THE MATTER OF
21 THE STATE V. SHERRY JOHNSON, PLEA, WITH ATTORNEY DOUG
22 BRANNON.)

23 (COURT IN RECESS AT 02:53 P.M..)

24 (COURT'S EXHIBIT NUMBER THREE, IDENTIFIED AND MARKED,
25 RECEIVED INTO EVIDENCE - JURY NOTE AT 02:55 P.M..)

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1 (COURT BACK IN SESSION AT 3:16 P.M.)

2 THE COURT: Thank you. You may take your seats.

3 I've received word from the jury that we have a
4 verdict.

5 Anything before the jury comes in from the State?

6 SOLICITOR ANTHONY: No, sir.

7 THE COURT: Anything from the Defense?

8 MR. DELANEY: No, Your Honor.

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

10 (JURY REENTERS COURTROOM AT 3:17 P.M.)

11 THE COURT: Mr. Foreman, I understand the jury has
12 reached a verdict?

13 MR. FOREMAN: Yes, Your Honor.

14 THE COURT: If you will hand it to the bailiff and
15 he'll hand it up to me.

16 All right. You've got two places marked.

17 It's the top one. Do you want to go back and mark out
18 and initial it.

19 THE FOREMAN: I can.

20 THE COURT: I think the whole jury needs to go back
21 out and correct it. Whichever one is inappropriate, just
22 strike through it and initial it.

23 Of course I will show it to everybody but the top two
24 lines both have been checked.

25 (JURY EXITS COURTROOM 03:18 P.M..)

VERDICT:

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1 (JURY REENTERS COURTROOM 03:19 P.M..)

2 THE COURT: The jury has returned to the courtroom and
3 you will hand this up to the bailiff and the bailiff . . .

4 (VERDICT RECEIVED UP BY THE COURT.)

5 THE COURT: Mr. Clerk.

6 THE CLERK: In the case of State of South Carolina
7 versus David Terrell Gallman, we the jury find the
8 defendant guilty of possession of crack with intent to
9 distribute.

10 THE CLERK: If this be your verdict all raise your
11 hand and confirm it.

12 (ALL JURORS AFFIRMED.)

13 THE CLERK: All raised their hand, Your Honor.

14 THE COURT: Anything before the jury is dismissed from
15 the State?

16 SOLICITOR ANTHONY: No, sir.

17 THE COURT: Anything from the Defense?

18 MR. DELANEY: No, Your Honor.

19 THE COURT: All right. Members of the jury panel,
20 thank you for your help. We are going to try another case
21 but we're not going to include you as a possible juror. We
22 already have a crowd in the grand jury room waiting. We
23 had them over here, we had some other matters to take up
24 while you were out. We appreciate your help this week.
25 You will be mailed a check. If any of you need any sort of

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1 excuse to take to go back to work, go by the Clerk's office
2 and they will prepare you one.

3 You can leave at this time and thank you for your
4 help.

5 (JURY DISMISSED AT 03:20 P.M..),

6 THE COURT: All right, the jury has been dismissed.
7 Anything from the State?

8 SOLICITOR ANTHONY: Yes, Your Honor.

9 THE COURT: Well I'll get the sentencing --

10 SOLICITOR ANTHONY: Not as to the trial.

11 THE COURT: Anything else from the Defense?

12 MR. DELANEY: At this time I would just for the record
13 renew any and all objections that were made earlier in the
14 trial.

15 THE COURT: Again, motions denied. Again, I think
16 this was a case that factually was sufficient to go to the
17 jury and the jury has returned a verdict. I'm going to
18 hand this to back to the State to fill in. I started to
19 fill it in myself but I feel more comfortable as the
20 sentencing sheet is filled out by the State. And then
21 we'll discuss sentencing.

22 Tell Freddie to catch the Foreman.

23 (JURY FOREMAN REENTERS COURTROOM.)

24 THE COURT: Just a little paperwork. I didn't tell
25 you this because I didn't intend to. You just need to

SENTENCING:

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1 write the jury's verdict there.

2 (JURY FOREMAN COMPLIED WITH THE COURT'S REQUEST.)

3 THE COURT: Thank you so much.

4 (SOLICITOR ANTHONY COMPLIED WITH COURT'S REQUEST.)

5 THE COURT: I'm sorry, go ahead and make your motions.

6 You moved and -

7 MR. DELANEY: I'm sorry, Judge, I just did.

8 THE COURT: All right. Well I deny - Kind of lost my
9 place. You did, you moved to for a new trial. Restate
10 your motion.

11 MR. DELANEY: Judge, just for the purposes of the
12 record, I renew all objections that I made throughout the
13 trial. I also make the standard motion for a new trial at
14 this time.

15 THE COURT: All right. Motions are denied. Again, as
16 I stated several times, I believe the facts were sufficient
17 from which the jury could reach the conclusion they
18 reached.

19 Now if you will bring Mr. Gallman around for
20 sentencing. I will hear from the State regarding
21 sentencing and then I'll hear from Mr. Delaney and then Mr.
22 Gallman and anyone on his behalf.

23 And this is his third?

24 SOLICITOR ANTHONY: Yes, sir.

25 Your Honor, I can give the Court Mr. Gallman's record.

SENTENCING:

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1 THE COURT: All right.

2 SOLICITOR ANTHONY: He was convicted in 2005 of
3 fighting, had a trespass in - Well, in 2009 he had a DUI,
4 open container, and a DUS. He had a trespass in 2012.
5 That is his non-drug record.

6 And then in 2006, he was convicted of distribution of
7 crack and distribution of crack in proximity. And then
8 another distribution of crack and a possession of crack
9 with intent to distribute. Those were all 2006
10 convictions.

11 And then in 2009, he was convicted of two more counts
12 of distribution of crack. And so I have certified copies
13 of these convictions from the Clerk's office and I would
14 ask the court reporter to just make these one Court's
15 exhibit and ask to include them in the court file as his
16 prior record is important for the sentence he is exposed
17 to.

18 It would be the State's position that this would be a
19 third offense. It would be a ten to thirty year crime, and
20 because both sets of drug charges are distribution level
21 drug charges, he is in the eighty-five percent sentencing
22 range.

23 THE COURT: Mr. Delaney, I will hear from you and then
24 Mr. Gallman.

25 MR. DELANEY: Thank you, Your Honor.

SENTENCING:

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1 Mr. Gallman, twenty-nine years old. He has two
2 children, a four-year-old and a one-year-old. Born and
3 raised in Union County. Family from Union County. He has
4 a brother in the courtroom, Dennis Byrd who is here.

5 In 2009 from looking at the records it looks like Mr.
6 Gallman served five years or had a five year sentence he
7 served approximately half of that sentence. That's been
8 the most amount of time that he has spent incarcerated.
9 That is close to two and a half to three years. Obviously
10 with this what he is looking at, mandatory minimum ten at
11 eighty-five percent, this is going to be the most amount of
12 time that he is ever going to have to do up until this
13 point in his life and hopefully things can get turned
14 around for him but we would ask the Court for any mercy the
15 Court could have given what he is facing.

16 His brother, Dennis Byrd, would like to address the
17 Court.

18 THE COURT: Okay. Come on up so we can hear you and
19 see you.

20 Your name?

21 MR. BYRD: My name, Dennis Byrd.

22 THE COURT: What's your first name?

23 MR. BURD: Dennis.

24 THE COURT: Dennis Byrd. Okay.

25 MR. BYRD: I just wanted to say man, this my brother,

SENTENCING:

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1 man, and you know we done been through a lot. I know these
2 charges or whatever might seem bad, you know what I'm
3 saying, but he ain't no bad person. Don't nobody deserve
4 to get a whole bunch of time. You know what I'm saying, I
5 mean, I hate we got to go through it. I mean, I know you
6 all got to do something, man. I just ask you to be
7 lenient. He got two kids that love him to death, man, and
8 everything is just hard. Our family going through it, you
9 know what I'm saying. I don't know too much to say, man.
10 My brother, man, just be as lenient as possible.

11 THE COURT: Thank you.

12 Anything else from the State? What's going to happen
13 - Are you going to try him on that other distribution a
14 year ago?

15 SOLICITOR ANTHONY: Your Honor, we haven't really made
16 a decision about what we are going to do with these other
17 two pending charges. I'll just --

18 THE COURT: Two?

19 SOLICITOR ANTHONY: He has another distribution
20 pending as well. He has two pending distributions and I
21 don't know. We would - I would just have to talk to Public
22 Defender and make a decision about that.

23 THE COURT: Okay. All right, Mr. Delaney, anything
24 else?

25 Mr. Gallman, anything you want to say?

SENTENCING:

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1 MR. GALLMAN: I know what I done, you know what I'm
2 saying, in the past was wrong. I done it. I can't take it
3 back, but you know what I'm saying, these last couple of
4 what, year or so, I been working, staying on the right, you
5 know staying on the right road. I try to be there for my
6 kids when I can. Take care of them when I can. I'm really
7 there you might as well say 24/7 with my kids and family. I
8 work with my kids. I just really - the charge they got me
9 on now you understand they didn't catch me with nothing on
10 me. Nobody ain't seen me throw nothing. I ain't throwed
11 nothing. Like I told Delaney when I first started - when
12 we first started going through the case, I ain't throwed
13 nothing. I said I ain't throwed nothing. You know what
14 I'm saying. The other police saying I throwed something.
15 I ain't throwed nothing. I said we'll take it trial and I
16 told him take it to trial you all find me guilty. You know
17 what I'm saying. They didn't find no evidence on me, no
18 camera showing me that I done throwed something on the
19 ground and I ain't throw nothing. I be over there with my
20 kids every day. You know, there people running up and down
21 that street every day doing God knows what. I don't know.
22 I be with most of the time with my kids.

23 But you all found me guilty and hope you be lenient on
24 me. I know what I done in the past is wrong. I wish I
25 could take it back but I can't take it back so I done that

SENTENCING:

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1 but I wish I could. If I could, I would take back
2 everything I've done bad in the past but I can't take that
3 back. That's part of life. I just hoping you could be
4 lenient on me and think about my kids. I love my kids to
5 death. That's all I got. That's all I got. They with my
6 family and I love my kids to death.

7 THE COURT: Has he already served any time in jail?

8 MR. DELANEY: He would be entitled to one or two days.

9 SOLICITOR ANTHONY: He bonded out. It would be a day.
10 He bonded out the next day.

11 THE COURT: Well, it's unfortunate these are always
12 the kind of sentences the Court hates to give out cause - I
13 hate to use the word some finality of them but the maximum
14 begged for in this case is not begged for in any - I don't
15 know why you never have gotten the message, Mr. Gallman.

16 The sentence is thirty years and a fine of Fifty
17 Thousand dollars.

18 MR. GALLMAN: Huh?

19 THE COURT: Yeah.

20 Take a break.

21 (WHEREUPON, COURT'S EXHIBIT NUMBER FOUR, IDENTIFIED
22 AND MARKED, RECEIVED INTO EVIDENCE.)

23 (COURT IN RECESS IN THE MATTER OF STATE VERSUS DAVID
24 GALLMAN AT 03:31 P.M..)

25 (END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

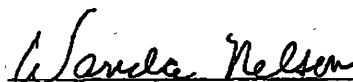
State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Union County, South Carolina, on the 8th and 9th days of July, 2014.

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



Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE:

September 2, 2014

County: York
 Date: July 8, 9, 2014

VOIR DIRE/BATSON SHEET

Case No.: 2014- GS-44-00077

Judge: Honorable John C. Hayes, III

Pl./State: State of South Carolina

Pl.State Atty's.: Deputy Solicitor John Anthony

Defendant: David Terrell Gallman

Defense Atty: PD Erik Delaney

Court Reporter: Wanda Nelson, CVR-M

Juror No.	Name	Race	Sex	STRIKES			
				*Court	Plaintiff	Defense	Accept
260	Andrea K. Thompson	W	F				X
152	Amy L. Knox	W	F				X
144	Joshua R. Julian	W	M				X
241	Jasmine D. Smith	B	F				X
261	Linda D. Thompson	B	F				X
276 **	John L. Ward, Jr.	W	M				X
28	Joe R. Burns	W	M			X	
110	William D. Horne	W	M				X
159	Kirk D. Lanier	W	M			X	
290	Robert W. Williams	W	M				X
31	Bobby L. Byrd	B	M		X		
215	Gray E. Ransom	W	M				X
68	Bernetta Y. Ferguson	B	F		X		
202	Karen S. Newton	B	F			X	
183	Tammy V. McCollum	W	F				X
2	Teresa L. Adams	W	F				X
206	Grover A. Owens	W	M				X
20	Windy K. Boyd	B	F				X

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

Union County Courthouse RANDOM STRIKE SHEET

-196-

JUDGE NAME: John C. Hayes III

TRIAL TYPE: Criminal

CASE ID: 2014GS4400120

COURTROOM 1ST

DESCRIPTION: 2014GS4400120

Sorted by: Random Nbr

Trial

1	Thompson, Andrea K	260	W	F	()	()	()	<u>Seated -1</u>
2	Knox, Amy L	152	W	F	()	()	()	<u>Seated -2</u>
3	Julian, Joshua R	144	W	M	()	()	()	<u>Seated -3</u>
4	Smith, Jasmine D	241	B	F	()	()	()	<u>Seated -4</u>
5	Thompson, Linda D	261	B	F	()	()	()	<u>Seated -5</u>
*6	Ward, John L Jr. <i>for person</i>	276	W	M	()	()	()	<u>Seated -6</u>
7	Burns, Joe R	28	W	M	()	(X)-1	()	<u>excused</u>
8	Horne, William D	110	W	M	()	()	()	<u>Seated 7</u>
9	Lanier, Kirk D	159	W	M	()	(X)-2	()	<u>excused</u>
10	Williams, Robert W	290	W	M	()	()	()	<u>Seated -8</u>
11	Byrd, Bobby L	31	B	M	(X)-1	()	()	
12	Ransom, Gray E	215	W	M	()	()	()	<u>Seated -7</u>
13	Ferguson, Bernetta Y	68	B	F	(X)-2	()	()	<u>excused</u>
14	Newton, Karen S	202	W	F	()	(X)-3	()	<u>excused</u>
15	Mccollum, Tammy V	183	W	F	()	()	()	<u>Seated -10</u>
16	Adams, Teresa L	2	W	F	()	()	()	<u>Seated -11</u>
17	Owens, Grover A	206	W	M	()	()	()	<u>Seated -12</u>
18	Boyd, Windy K	20	B	F	()	()	()	<u>Seated -13</u>
19	West, Janie M	281	B	F	()	()	()	
20	Lawson, Brenda A	160	B	F	()	()	()	
21	Hawkins, William M Jr.	102	W	M	()	()	()	
22	Tucker, Tressia A	268	B	F	()	()	()	
23	Cook, Ronnie D	47	W	M	()	()	()	
24	Clayton, Tina A	45	W	F	()	()	()	

Union County Courthouse RANDOM STRIKE SHEET

JUDGE NAME: John C. Hayes III
 TRIAL TYPE: Criminal
 NEL ID: 2014GS4400120
 JURY ROOM: 1ST

DESCRIPTION: 2014GS4400120

Sorted by: Random Nbr
 Trial

25	Goudelock, John M	87	W	M	()	()	()	
26	Mccutcheon, Dennis C	184	W	M	()	()	()	
27	Smith, Cassie D	238	B	F	()	()	()	
28	Alexander, Genelle C	4	W	F	()	()	()	
29	Sprouse, Johnathan L	250	W	M	()	()	()	
30	Rhinehart, Angela B	216	W	F	()	()	()	
31	Watters, Jennifer S	277	W	F	()	()	()	
32	Canzater, Leon	37	B	M	()	()	()	
33	Wilbanks, Justin D	287	W	M	()	()	()	
34	Inabinet, Jason A	118	W	M	()	()	()	
35	Ham, Michael A	96	W	M	()	()	()	
36	Tucker, Kent L	265	B	M	()	()	()	
37	Neal, Bernard	199	B	M	()	()	()	
38	Boyd, Derrick J	19	B	M	()	()	()	
39	Wingfield, Brenda D	292	B	F	()	()	()	
40	Jones, Cleoties II	141	B	M	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

FORM 5

FILED FOR RECORD

2016 -CP-44-10489

STATE OF SOUTH CAROLINA

2016 DEC 19 AM 11 50

IN THE COURT OF COMMON PLEAS

COUNTY OF UNION

CLERK OF COURT

David T. Gallman #313796

UNION, SC

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Perry Corr. Inst. 430 Oaklawn Rd. Pelzer,
- S 1. Place of detention SC. 29669
 2. Name and location of Court which imposed sentence Union County Court of General Sessions
 3. Name(s) of co-defendant(s) (if any) none
 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2014-GS-44-000777 (possession with intent to distribute crack cocaine)
 - (a) _____
 - (b) _____
 - (c) _____
 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 9, 2014
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. denied relief and affirmed conviction
- iii. _____
- (c) the date of each such result:
- i. January 20, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2016-UP-041
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached Issue (A)
- (b) see attached Issue (B)
- (c) counsel failed to object to the trial court telling the jury cross out one of the verdicts and leave the top one, which was the greater offense.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: n/a
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. n/a
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
first filing for post conviction relief
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. n/a
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. n/a
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) first filing for post conviction relief
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? n/a
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. Erik Delaney Union County Bar
 - iii. Benjamin J. Tripp , S.C. Indigent Defense
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. trial and sentencing
 - iii. direct appeal

19. State clearly the relief you seek in filing this application:
vacate sentence and conviction

20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA
COUNTY OF UNION
IN THE COURT OF COMMON PLEAS

Indict. No. 2014-GS-44-00077

David T. Gallman -- Applicant,

-vs-

State of South Carolina -- Respondent,

MEMORANDUM IN SUPPORT OF APPLICATION
FOR POST CONVICTION RELIEF

David Gallman
SCDC# 313796
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Applicant, pro-se

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF UNION)

David T. Gallman) Indict.No.2014-GS-44-00077
Applicant,)
-vs-)
State of South Carolina) MEMORANDUM IN SUPPORT OF
Respondent,) APPLICATION FOR POST CONVICTION
RELIEF

COMES NOW, above captioned Applicant, David Gallman, pro-se, seeking relief in this Honorable Court pursuant to S.C. Code §§17-27-20 through 17-27-160, claiming the his Sixth Amendment right to the effective assistance of counsel was violated at trial in a number of ways, and that his Fourteenth Amendment right to a fair trial was violated as a result thereof.

Applicant submits that through the issues presented, statement of facts and citations of authorities relied on he will respectfully show unto this Court his entitlement to relief requested.

Respectfully Submitted,

/s/ David T. Gallman

David T. Gallman

Applicant, pro-se

ISSUE (A)

WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL JUDGE'S JURY INSTRUCTIONS THAT NOT ONLY SHIFTED THE BURDEN OF PROOF IN VIOLATION OF DUE PROCESS, BUT THE JURY COULD HAVE EASILY INTERPRETED THE COMMENT AS AN IMPERMISSIBLE COMMENTS ON THE FACTS WHICH IS PROHIBITED IN SOUTH CAROLINA

FACTS

During trial the State was allowed to use an alleged [prior - unadjudicated] offense for the purposes of "intent". Id. During the court's charge to the jury the following was recorded:

THE COURT:

Now, there has been evidence ion this case of an incident that occurred in June of 2013 involving Mr. Crawford and Mr. Gallman. That was allowed into evidence solely for your consideration of the question of the intent the State alleges in the incident case. You are to consider the evidence of the June 2013 incident only if you are convinced beyond a reasonable doubt that it did in fact take place, and you may only consider it in consideration of the question of Mr. Gallman's intent to distribute crack cocaine as charged in this indictment, and only if you determine that Mr. Gallman did in fact in December of this past year possession the substance put into evidence as crack cocaine, and find he did possess that substance and that he possessed it with intent to distribute.

Tr.p.173, L.9-22.

Coming directly after these instructions the Court instructed the jury on "constructive possession" as was recorded:

Actual knowledge of the presence of the substance is strong evidence of intent to control it's disposition or use.

Tr.p.176, L.1-3.

Constructive possession occurs when the person charged with possession has dominion and control over either the controlled substance itself or the premises upon which the controlled substance is found.

Tr.p.176, L.13-16.

As is seen in the above the Court has defined "constructive possession." However, the Court goes on to charge the jury on "constructive control" as was recorded:

Constructive control, constructive possession means that the defendant's knowledge and possession may be inferred that the controlled substance was found on the premises under his control.

Tr.p.176, L.17-20.

The Court has instructed the jury that "constructive control" means that "the defendant's knowledge and possession may be inferred that the controlled substance was found on the premises under his control." Here the Court has engaged in a dimension of law lessening the State's burden of proof as the Court told the jury they could infer the defendant's knowledge and possession that the controlled substance was found on premises under Petitioner's control."

While the Court did charge this as a permissive inference it does not negate the fact the Court has impermissibly commented on the facts and prematurely directed a verdict for the State. Surely counsel should have lodged an objection. Here the trial court has told the jury they could infer Petitioner's knowledge and possession that the controlled substance was found under Petitioner's control. This was for the State to prove and the trial Court's erroneous "constructive control" charge shifted the State's burden of proof and at the same could easily be construed as an impermissible comment on the facts.

DISCUSSION

Petitioner was denied the effective assistance of counsel when counsel failed to object to the trial court's erroneous "constructive control" charge that shifted the State's burden of proof and prematurely directed a verdict for the State. *Strickland v. Washington*, 466 U.S. 668 (1984).

South Carolina Constitution art. V, §21 states: "Judges shall not charge juries in respect to matters of fact, * * * but shall declare the law. This was echoed by our courts in *State v. Hartley*, 307 S.C. 239, 414 S.E.2d 182 at 183 (S.C.App.1992); citing *State v. Bagwell*, 201 S.C. 387, 23 S.E.2d 244 (1942)(a judge cannot express in his charge, or intimate any opinion as to the weight or the sufficiency of testimony without violating the prohibition of the Constitution as to charging upon the facts), 75A Am Jur.2d Trial§1203 at 693 (1991)(the trial court may not instruct the jury what weight should be given [to the evidence], or even that any particular evidence is or is not entitled to receive weight or consideration from them). C.f. *State v. Edwards*, 127 S.C. 116, 120 S.E. 490 (1923)(wherein our Supreme Court held the absence or motive is a mere circumstance to be considered by the jury and rejected an instruction that the absence of motive may raise a reasonable doubt as to the defendant's guilt because it was a charge on the facts). Id.

The error complained of here is structural in that it had a substantial and injurious affect on the juries verdict.

In *Arizona v. Fulminante*, 499 U.S. 279 (1991), a five-Justice majority of the Court (499 U.S. at 306-312) elucidated this rule

of per se prejudice (sometimes called the "rule of automatic reversal")(Id at 294), by distinguishing between the concepts of "structural" and "trial" error: "structural defects in the constitution of the trial mechanism" Id at 309, are per se prejudicial and trial errors occurring "during the presentation of the case to the jury" Id at 307 are subjected to harmless error analysis, Id at 308-310.

Structural errors must be corrected regardless of their effect on the trial because they violated basic protections without which a criminal trial can reliably serve it's function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regards as fundamentally fair. Id at 310.

The effect suffered here is the State's burden was substantially lightened by the erroneous instruction. The U.S. Supreme Court recognized that the burden of proof on any element cannot be shifted to the defense because doing so decreases the State's burden of proving the crime beyond a reasonable doubt. In re Winship 397 U.S. 158 (1970).

Counsel should have lodged an objection and allowed the trial court to correct the error. Petitioner should be granted a new trial on this issue.

ISSUE (B)

WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO
OBJECT TO THE SOLICITOR'S IMPROPER CLOSING
SUMMATION THAT VIOLATED THE "GOLDEN RULE."

FACTS

Petitioner submits counsel rendered ineffective assistance of counsel when counsel failed to object to the solicitor's improper closing argument to the jury that violated the "Golden Rule". During trial the State had alleged that Applicant "threw" drugs to the ground. Nonetheless, the State was trying prove that Applicant was distributing and selling crack cocaine. During closing summation that solicitor told the jury, "Lieutenant Parker told you when he testified that crack normally goes for a hundred dollars a gram, so Mr. Gallman (Applicant) could have easily sold this by the gram for about six hundred dollars. But then the other way to look at it is that Mr. Gallman (Applicant) sold Mr. Crawford just over a fourth of a gram. Remember the weight on the crack that Mr. Crawford was sold was .26 grams. That's just over a fourth of a gram and he sold that for forty dollars. Now by that measure, if he broke what he had in December up and sold that at the same rate that he sold the crack to Mr. Crawford, he would be getting about a hundred and sixty dollars a gram because he sold a quarter of a gram for forty, so for each gram you have four sales and it would be forty dollars a piece, so that would be a hundred and sixty dollars a gram. And if you have six grams, then you would be looking at close to nine hundred and sixty dollars worth of crack if you sell what was recovered in December at the

same rate that he was selling it in June." (Tr.p.164, L.6-24).

The solicitor went on the argue:

Now, just think about this. If you go into Hibbitt Sports over there where Mr. Gallman sold it to Mr. Crawford. I'm sure you've probably been to Hibbitt Sports and they probably have some pairs of shoes, maybe some Nike's or something like that, and you can get them for forty dollars. They might be on sale but you can probably get some pair of tennis shoes there for about forty dollars. And if you met up with somebody and they had a couple of pairs of those shoes in the same size, same kind of shoes, and they had a couple of pairs of them, three pairs of them, you might think well they got that just for them selves.

But, if you run into somebody and they've got twenty-four of them, twenty-four pair of shoes all the same kind, then you are going to know that person is not just someone who has those shoes for personal use. They are a shoe salesman and that is what Mr. Gallman is. He is not just somebody who keeps crack for personal use, he is a crack salesman. And if Mr. Gallman just had a gram, or even a little more than a gram, you could figure, well, he got crack for himself but he didn't. He had six grams.

(Tr.p.164, L.25-p.165, L.21).

Applicant submits the above portions of the solicitor's closing has invoked the "Golden Rule." The solicitor's "shoe saleman metaphor has invited the jury to render their verdict from the shoes of the State and in doing has violated the Golden Rule.

DISCUSSION

A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and it's contents should stay within the record and reasonable inferences to it." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); accord *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998); see also *State*

v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999)(A solicitor's closing argument must be carefully tailored so it does not appeal to the personal biases of the jurors).

The Golden Rule argument "ask(s) the jurors to become advocates for the plaintiff or victim and to ignore their obligation to exercise calm and reasonable judgment." Black's Law Dictionary, 700 (7th ed. 1999); see also John W. Reis, Improper Jury Argument: Gilding the Lustre of the Golden Rule, 69-JAN Fla.B.J. 60, 60 (1995)(The traditional notion of the Golden Rule, though not contained in any rule of evidence or procedure, holds that a lawyer shall not not urge jury members, either in a civil or criminal case, to imagine themselves or their family members or friends in the place of the offended litigant or victim and to render their verdict from that prospective). Although the forbiddance of Golden Rule Arguments began in civil trials to hinder the plaintiff from urging the jury to put itself in the place of the victim in order to obtain higher damages, the prohibition has now been made applicable to criminal actions. 75A Am.Jur.2d Trial §650 (1991); see Lucas v. State, 335 So.2d 566, 568 (Fla.Dist.Ct.App.1976)(holding that "[t]he technique of asking jurors to place themselves in the position of the victim has been held to be improper in both criminal and civil cases").

The "Golden Rule" argument, suggesting to jurors as it does that they put themselves in the shoes of one of the parties, is generally impermissible because it encourages the jurors to depart from neutrality and to decide the case on the basis of personal bias rather than on the evidence: 75A Am.Jur.2d Trial §650 (1991). Regardless of the nomenclature used, any argument that "importunes" the jurors to place themselves in the victim's shoes is

disallowed Golden Rule Argument. *Johnson v. State*, 263 Ga.App.443 , 587 S.E.2d 775, 781 (2003).

Golden Rule arguments are generally improper and may constitute reversible error. *State v. McHenry*, 276 Kan. 513, 78 P.3d 403 , 410 (2003).

In the instant case the solicitor clearly started out by telling the jury that "if you" go into... which clearly invoked Golden Rule argument as the solicitor using a hypothetical example regarding sporting goods and Applicant being the shoe salesman has explicitly placed the juror in the equation and swayed the jury into rendering their verdict from that standpoint. Clearly counsel should have objected to this line of argument and allowed trial court to correct this error. *Strickland v. Washington*, 466 U.S. 668 (1984). Applicant should receive a new trial on this ground.

CONCLUSION

WHEREFORE, based on the foregoing issues, statement of facts and citations of authorities relied on Applicant respectfully ask -s this Honorable Court to grant a new trial.

Respectfully Submitted,

/s/

David T. Gallman

David T. Gallman

Applicant, pro-se

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

- - VERIFICATION

I, David T. Gallman, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David T. Gallman ✓

SWORN to and subscribed before me this 30th
day of November, 2016.

Nancy C. Murchest (L.S.)
Notary Public

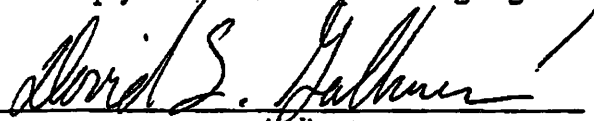
My Commission Expires: 1-23-2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

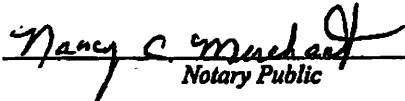
David T. Gallman

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
30th day of November, 2016.


Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)
David T. Gallman,)
S.C.D.C. # 313769,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-44-489

RETURN

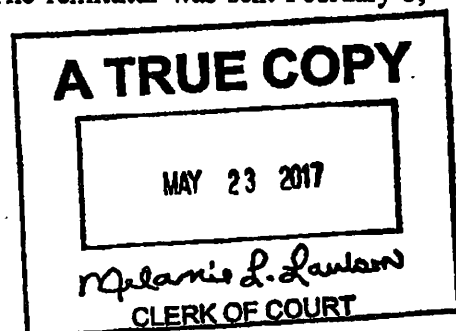
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UNION, SC

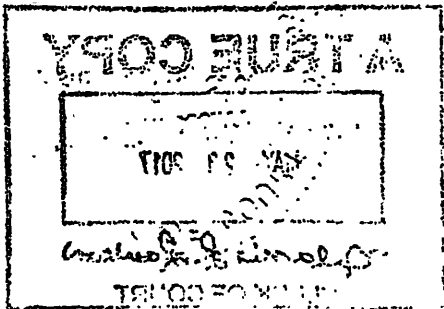
The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 19, 2016, would respectfully show this Court

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. Applicant was indicted at the March 2014 term of the Union County Grand Jury for possession of crack with intent to distribute (2014-GS-44-0077). Erik Delaney, Esquire, represented him. John Anthony, Esquire, represented the State. On July 8-9, 2014, Applicant proceeded to a trial before the Honorable John C. Hayes, III, after which Applicant was found guilty. Applicant was sentenced to imprisonment for thirty years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by the filing of an Anders brief by Appellate Defender Ben Tripp. The South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Anders. The remittitur was sent February 5, 2016.





II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel

- a. "Was counsel ineffective for failing to object to the trial judge's jury instructions that not only shifted the burden of proof in violation of due process, but the jury could have easily interpreted the comment as an impermissible comments on the facts which is prohibited in South Carolina"
- b. "Was trial counsel ineffective for failing to object to the solicitor's improper closing summation that violated the 'golden rule.'"
- c. "Counsel failed to object to the trial court telling the jury to cross out one of the verdicts and leave the top one which was the greater offense"

Attached herewith and incorporated herein by reference are the York County Clerk of Court records regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[Signature block on following page]

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

May 18, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF UNION)

DAVID GALLMAN, # 313769)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2016-CP-44-489

AFFIDAVIT OF SERVICE BY MAIL

CLERK OF COURT
UNION, SC

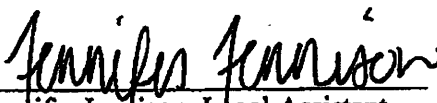
2017 MAY 23 PM 2 16

FILED FOR RECORD

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Beth Ramsey Faulkner, Esquire
Faulkner Law Firm, LLC
PO Box 1030
York, SC 29745

DATED this the 18th day of May, 2017.


Jennifer Jennison, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 DAVID T. GALLMAN,

4 Applicant,

5 Case No.

6 -against-

2016-CP-44-00489

7 STATE,

8 Respondent.

9 -----x

10 April 17, 2018

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER E. HENDERSON

15

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

17 BETH FALKNER, Esquire

18 Attorney for the Petitioner

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1	David T. Gallman			
2				
3	Ms. Falkner	5		
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6	Eric Delaney			
7	Mr. Hunter	25		
8	Ms. Falkner		36	
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1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
3	A-1	Verdict form		13
4	A-2	Document		16
5	A-3	Document		18
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1 MR. HUNTER: Yes, sir. May it please the Court.
2 The first case today is David Gallman versus State of
3 South Carolina, 2016-CP-44-489.

4 Your Honor, he was indicted February 2014 by the
5 Union County Grand Jury for possession with intent to
6 distribute crack cocaine, 2014-GS-44-77. He was
7 represented by Mr. Eric Delaney.

8 On July 8th to 9th, 2014, he proceeded to a jury
9 trial before Judge John Hayes and was found guilty as
10 indicted. He was sentenced to imprisonment for 30
11 years. He did file a direct appeal and Public
12 defender Ben Tripp out of Anderson did file an Anders
13 brief. The Court of Appeals dismissed this appeal
14 pursuant to Anders procedure and the remittitur was
15 sent February 5th, 2016. He filed this current action
16 December 19th 2016.

17 He is present today and is represented by Miss
18 Beth Falkner.

19 THE COURT: All right. Miss Falkner.

20 MS. FALKNER: May it please the Court, Your Honor.
21 Your Honor, before -- I'm ready to proceed and call my
22 client to the stand who is my first witness. Before I
23 do that I would like to put on the record I did hand
24 up to the Court and filed with the Court an amended
25 and supplemental PCR petition. It adds an issue my

1 client previously raised and Mr. Hunter with the State
2 has been aware of this issue, but it is my mistake
3 that it had not been amended. But I am filing this
4 amendment this morning and Mr. Hunter I discussed this
5 with him and he is in agreement that it is timely
6 filed and served and we are going to present testimony
7 on this issue Your Honor.

8 THE COURT: Mr. Hunter?

9 MR. HUNTER: No objection from the State, Your
10 Honor.

11 THE COURT: All right. Miss Falkner, you may call
12 your first witness.

13 MS. FALKNER: I call David Gallman to the stand.

14 DAVID GALLMAN: Called as a witness, having been
15 duly sworn by the clerk, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. FALKNER:

19 Q Mr. Gallman, will you please state your full name for
20 the record?

21 A David Terrell.

22 Q And how old are you Mr. Gallman?

23 A Thirty-three.

24 Q And you're currently incarcerated at SCDC, is that
25 correct?

- 1 A Yes, ma'am.
- 2 Q And what facility are you currently located?
- 3 A Broad River Correction.
- 4 Q And you are in there serving time on what charge?
- 5 A Possession with intent to distribute.
- 6 Q Of what substance?
- 7 A Crack cocaine.
- 8 Q Okay. And you are currently serving what sentence?
- 9 A Thirty years.
- 10 Q Okay. And did are you serving that sentence by reason
- 11 of a plea or a guilty verdict reached at trial?
- 12 A A guilty verdict reached at trial.
- 13 Q And when was your trial?
- 14 A July the 9th, 2014.
- 15 Q It was actually a two-day trial, is that right?
- 16 A Yes, ma'am.
- 17 Q So it started on the 8th and finished on the 9th, is
- 18 that correct?
- 19 A Yes, ma'am.
- 20 Q Okay, and who was your trial judge, do you recall?
- 21 A Judge Hayes.
- 22 Q Judge John Hayes?
- 23 A Yes, ma'am.
- 24 Q Okay. And so your sentence started at the end of your
- 25 trial, correct?

1 A Ma'am?

2 Q Your sentence started at the end of your trial?

3 A Yes, ma'am.

4 Q Okay. And who represented you during your criminal
5 prosecution?

6 A Eric Delaney.

7 Q Okay. And Mr. Delaney is present here today, is that
8 correct?

9 A Yes, ma'am.

10 Q Okay. And during the time do you recall how long Mr.
11 Delaney represented you during the time of your prosecution and
12 proceedings?

13 A I met with up with him possibly three, four times.

14 Q And what did you all talk about or discuss during those
15 meetings that you had with will Mr. Delaney?

16 A We talked about my case. He really tried to get me to
17 plead. He talked about my case mostly.

18 Q Okay. Did he request to your knowledge Discovery in
19 this case, your case?

20 A Yes, ma'am.

21 Q And did he go over the evidence that State had against
22 you?

23 A Yes, ma'am.

24 Q And what charges -- tell the Court what charges you
25 were actually facing at that time?

1 A I had possession, two distribution and assault and
2 battery.

3 Q And possession of what?

4 A Crack cocaine.

5 Q Okay. And you had two distribution charges?

6 A Yes, ma'am.

7 Q And did those stem from the same incident or separate
8 incidents?

9 A Separate incident.

10 Q Okay. And then you had the assault and battery,
11 correct?

12 A Yes, ma'am.

13 Q So when you went to trial on July 8th and 9th, 2014,
14 what trial did you go -- or what charge did you go to trial on?

15 A The the possession charge.

16 Q The possession charge?

17 A Yes, possession with intent.

18 Q With intent to distribute?

19 A Yes, ma'am.

20 Q Is that separate then what you call the distribution
21 charges earlier?

22 A Yes, ma'am.

23 Q So that's separate. So are you talking about
24 distribution with intent -- possession with intent to
25 distribute?

1 A Yes, ma'am.

2 Q So you had two of those or did you have one of those?

3 A I had two of those and I had a possession charge.

4 Q Okay. But you were actually convicted on one of the
5 distribution charges, right?

6 A No, ma'am. No, ma'am.

7 Q You were convicted on a possession with intent to
8 distribute, right?

9 A Yes, ma'am.

10 Q Okay. What offense were you convicted on?

11 A Third offense.

12 Q Okay. When you went to trial, the start of your trial,
13 what was your understanding from your discussions with Mr.
14 Delaney that you were facing? What sentence did you think you
15 could possibly get, or what's the maximum you could get out of
16 this?

17 A He told me zero to ten. So I thought the most I could
18 get was ten years.

19 Q Okay. And did you have discussions with Mr. Delaney
20 about any pleas? Were any pleas offered to you?

21 A Yes, ma'am.

22 Q And what were they?

23 A Zero to ten.

24 Q Okay. At any time did you ever know or think that you
25 could have faced 30 years?

1 A No, ma'am.

2 Q Okay. Did Mr. Delaney ever even discuss with you the
3 possibility or what time, the percentage of the time that you
4 would have to serve if you were in fact convicted of the offense
5 that you were convicted of and sentenced to the 30 years?

6 A The most I thought I could get was ten years.

7 Q Okay. So he never had any discussions about your time
8 you would have to serve if you were ordered to serve a 30-year
9 sentence?

10 A Ma'am?

11 Q He never had any conversations with you about the time
12 you would have to serve if you were sentenced to 30 years?

13 A No, ma'am.

14 Q Okay. Now of course you are serving the 30-year
15 sentence as you said, correct?

16 A Yes, ma'am.

17 Q And would you have taken that plea offer? In hindsight
18 would you have taken that plea offer of ten years if you knew
19 there was any possibility you would have to serve the 30-year
20 sentence?

21 A Yes, ma'am.

22 Q Okay. Now I want you tell the Court a little bit about
23 the background. During the case of your trial there was a Mr.
24 Crawford that testified against you, is that correct?

25 A Yes, ma'am.

1 Q And tell the Court was there an incident that happened
2 with Mr. Crawford, between you and Mr. Crawford?

3 A At the Hibbett sports.

4 Q And when was that in June of 2014, is that right?

5 A Yes, ma'am.

6 Q And was that incident one of the reasons for one of
7 your charges that was pending at the time of your trial?

8 A Yes, ma'am.

9 Q But that's not what you were actually convicted of, is
10 that correct?

11 A Yes, ma'am.

12 Q The Crawford incident, that is not what you were
13 convicted of?

14 A No, ma'am.

15 Q But during it the time Mr. Crawford actually testified
16 against you in this trial, correct?

17 A Yes, ma'am.

18 Q Tell the Court about those discussions you had with Mr.
19 Delaney about the the Crawford incident?

20 A Are you talking about --

21 Q What you had told me tell the Court about that. About
22 what happened. The conversation you had with Mr. Delaney about
23 the Crawford incident.

24 A You're talking about what -- I forgot.

25 Q Did you have a conversation with Mr. Delaney about not

1 worrying about Crawford? Him telling you you didn't have to
2 worry about the Crawford incident?

3 A Yes, ma'am.

4 Q Tell the Court about that.

5 A So, when I got Discovery he showed me the -- he showed
6 me the evidence or whatever they had. He showed me pictures at
7 the time. He said we're not worried about this case. We're
8 worried about another case. So I'm like, okay.

9 Then I was getting ready to go to trial on another case.
10 They stopped that and hit me with the Crawford case. The case
11 he told me not to worry about.

12 Q So you thought you were going to trial on a different
13 -- basically a different charge, a different incident then you
14 actually ended up trying that day?

15 A Yes, ma'am.

16 Q Okay. Now, you were, as we already talked about, you
17 were ultimately convicted of possession with intent to
18 distribute, third offense, correct?

19 A Yes, ma'am.

20 MS. FALKNER: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes.

23 Q Mr. Gallman, do you recognize this document that I am
24 showing you?

25 A Yes, ma'am.

1 Q What is it?

2 A It's my verdict form.

3 Q Okay. And that was -- what is the date? What is the
4 date of it?

5 A July the 9th, 2014.

6 Q Okay.

7 MS. FALKNER: Your Honor, I seek to introduce this
8 into evidence as Applicant's Number One.

9 MR. HUNTER: No objection.

10 THE COURT: All right. Received into evidence
11 Applicant's One.

12 (Applicant's Exhibit One, Verdict form, received in
13 evidence as of this date.)

14 Q Mr. Gallman, you are still looking at the copy of the
15 verdict form, can you tell me what charges is checked on that
16 verdict form?

17 A It's two spots check on it. The top one says we find
18 the defendant guilty of possession of crack cocaine with intent
19 to distribute. The second one, we find the defendant guilty of
20 lesser offense of possession of crack cocaine.

21 Q And the second one, what's the marking beside the
22 second one that you just read?

23 A It's got J.W. and it got it marked out it looked like.

24 Q Okay. Tell the Court what happened after, when the
25 foreman from the jury came back with a verdict form what

1 happened?

2 A He gave it to the judge. The judge looked at it and
3 said hold on.

4 Q Do you have the transcript from the proceeding with
5 you?

6 A Yes, ma'am.

7 Q I will direct you to page 185 line 14. Are you on page
8 185?

9 A Yes, ma'am.

10 Q Can you read what that line 14 says?

11 A Yes, ma'am. If you will hand it to the bailiff and he
12 will hand it to me. All right. You got two places marked.
13 It's the top one. Do you want to go back out and mark and
14 initial?

15 Q Okay. And that was Judge Hayes who actually instructed
16 the jury, is that correct?

17 A Yes, ma'am.

18 Q Or actually instructed the foreman of the jury,
19 correct?

20 A Yes, ma'am.

21 Q And what's troublesome to you about that?

22 A He told the jury which one to pick. He said it's the
23 top. You all need to go out and correct it.

24 Q So when he got the verdict form back they had actually
25 checked --

1 A They checked two spots on the verdict form.

2 Q Possession with intent to distribute and the lesser
3 included offense, correct?

4 A Yes, ma'am.

5 Q Okay. And you're saying that he actually told them
6 which one to go back out and check?

7 A Yes, ma'am.

8 Q Is that correct?

9 Q Okay. And did Mr. Delaney object to that?

10 A No, ma'am.

11 Q Okay. Do you believe that he was ineffective for not
12 objecting to that?

13 A Yes, ma'am.

14 Q Because in fact the foreman of the jury was only gone
15 for a very brief time, correct?

16 A Yes, ma'am.

17 Q Do you think he had time to converse with the rest of
18 the jury?

19 A No, ma'am.

20 MS. FALKNER: May I approach the witness again?

21 THE COURT: Yes, ma'am.

22 Q Mr. Gallman, do you recognize the document I am showing
23 you here?

24 A Yes, ma'am.

25 Q What is this document?

1 A They came -- they came to me at Perry's and told me --
2 they called me the operations -- I mean program service, and
3 told me I need to sign my time that they giving my -- they gave
4 me my 85 percent back.

5 Q Okay. So they were changing at Perry's, they had
6 changed your parole eligibility and your max out date?

7 A Yes, ma'am.

8 Q Is that correct?

9 A Yes, ma'am.

10 MS. FALKNER: Your Honor, I seek to introduce this
11 into evidence as Applicant's Number Two.

12 MR. HUNTER: No objection.

13 THE COURT: All right. Received without
14 objection. Admitted into evidence as Applicant's Two.

15 (Applicant Exhibit Number Two, Document, received
16 in evidence as of this date.)

17 Q I am looking at a copy of that document. What is your
18 parole eligibility date on that new document?

19 A I do not have one.

20 Q It says zero, zero?

21 A Zero, zero, zero, zero.

22 Q And what date did they come and ask you to sign this?
23 What is the document's date?

24 A February the 2nd, 2016.

25 Q Okay. And this is almost two years after -- or a year

1 and a half after you have been incarcerated, correct?

2 A Yes, ma'am.

3 Q Okay. And prior to that which was shown on the
4 department of corrections you recognize -- well, let me strike
5 that from the record.

6 Prior to that what was your max out date?

7 A 2039.

8 Q Okay. And were you parole eligible before that?

9 A Yes, ma'am.

10 Q Okay. Do you recognize this document that I am showing
11 you?

12 A Yes, ma'am.

13 Q What is this document?

14 A That's a document with my parole, my parole date, my
15 max out date and my job.

16 Q Okay. What does your max out date say on this
17 document?

18 A 2030.

19 Q And this is actually a printout from the Department of
20 Corrections, is that correct?

21 A Yes, ma'am.

22 Q And you printed this out on when? What is the date on
23 the document?

24 A January the 9th, 2017.

25 MS. FALKNER: Your Honor, I seek to introduce this

1 into evidence as Applicant's Number Three.

2 MR. HUNTER: No objection.

3 THE COURT: All right. Received without
4 objection. Applicant's Three.

5 (Applicant's Exhibit Number Three, document,
6 received in evidence as of this date.)

7 Q Okay. I want you to look at this document. A minute
8 ago, you said your max out date a minute ago was 2039. What
9 does it say on this document?

10 A 2030.

11 Q So at some point was your max out date 2030 while you
12 were at SCDC?

13 A Yes, ma'am.

14 Q And tell the Court when you first went to SCDC when was
15 your max out date?

16 A 2039.

17 Q Okay. And at what point was it changed?

18 A When the law changed. They done the drug laws. It
19 dropped. It changed. It dropped my time down to 2029 -- or
20 2030. And I have parole date it dropped down to 2020.

21 Q And you say when the law change. Do you know what law
22 you are talking about?

23 A That's the drug -- the drug laws. I don't know all
24 that.

25 Q You just know the law change, is that right?

1 A They came to the institution and called me the program
2 service and told me the law changed and they reduced my
3 sentence. They reduced my sentence and reduced my parole date.

4 Q Do you remember when that was the approximate
5 timeframe?

6 A I want to say Around May 2015.

7 Q '15. Okay. So you thought at that time how long were
8 you going to have to serve?

9 A Fifteen years.

10 Q Okay. And then the document that I introduced as
11 Applicant's Number Two, that document they made you sign on
12 February 2016. How did that come about? What did they tell you
13 then?

14 A They called me, the program. They called me the
15 program service, so I go up there. They say we got this paper
16 you need to sign. They hand me this paper. They hand me this
17 paper right here. They're like, you got to sign it. I'm like,
18 what is this? They're like the law ain't effect you so we got
19 to give your time back. I said, what happened to my parole
20 date? They're like, we took that too.

21 I was like, how did you all took that when I already had a
22 parole date before the law even came in effect. I'm like, I
23 ain't sign it. I told them I wouldn't sign it because I had a
24 parole date. They're like, if you don't sign it you're going to
25 lock-up. And I'm like, I ain't going to lock-up so I sign the

1 paper and they sent me on back to the dorm.

2 Q Okay. So, at any point did you ever have any
3 conversation with Mr. Delaney about how much time you were going
4 to have to serve?

5 A No, ma'am.

6 Q So you had no idea that you wouldn't be eligible for
7 parole if you were convicted on that offense which you are
8 currently serving, is that correct?

9 A Yes, ma'am.

10 Q So -- I want to direct you back to your application
11 that you originally filed and you raised two additional issues
12 in that application. Your first issue was regarding the
13 Crawford incident, is that right?

14 A Yes, ma'am.

15 Q And if you will look at your application and refresh
16 your recollection, can you tell the Court what your issue is and
17 what issue you want to raise on appeal regarding the Crawford
18 incident?

19 A Yes, ma'am.

20 Q I mean, raised on your post conviction relief
21 application?

22 A What we talked about earlier, right?

23 Q Yes. Tell the Court about it.

24 A During the evidence --

25 Q Let me ask you this. Mr. Crawford testified against

1 you, is that correct?

2 A Yes, ma'am.

3 Q And that was from an incident that happened some number
4 of months before the incident occurred which you were on trial,
5 is that correct?

6 A Yes, ma'am.

7 Q Okay. And that evidence regarding that incident
8 between you and Mr. Crawford was allowed into evidence, correct?
9 His testimony was allowed into evidence?

10 A Yes, ma'am.

11 Q And tell the Court what the allegation was between you
12 and Mr. Crawford? What allegedly happened?

13 A It's suppose to be a transaction but it wasn't no
14 transaction.

15 Q I'm asking you about the allegation. What was the
16 allegation? Not asking you if it happened. What was the
17 allegation? What did Mr. Crawford said happen?

18 A He said I sold him crack cocaine.

19 Q Okay. Some number of months before the possession with
20 intent to distribute that you were convicted on occurred?

21 A Yes, ma'am.

22 Q Okay. Now, when Judge Hayes charged the jury he
23 actually charged the jury regarding that testimony and told them
24 to consider it for purposes of intent, is that correct?

25 A Yes, ma'am.

1 Q And you think that he shouldn't have charged the jury
2 regarding that, correct? .

3 A Yes, ma'am.

4 Q Okay. And that was one of the issues that you raised?
5 That is issue A on your application, correct?

6 A Yes, ma'am.

7 Q And did Mr. Delaney object to that?

8 A No, ma'am.

9 Q Okay. And do you believe there is likelihood that the
10 jury would have reached a different verdict if they had not been
11 considering that evidence regarding the incident with Mr.
12 Crawford?

13 A Yes, ma'am.

14 Q Okay. So you're asking the Court to find that Mr.
15 Delaney was ineffective in his assistance of counsel because he
16 didn't object to that?

17 A Yes, ma'am.

18 Q All right. You raised one final issue in your
19 application. I want you to tell the Court about that one final
20 issue regarding the golden rule?

21 A The shoe salesman metaphor he had used.

22 Q What did he do? You are talking about he. Clarify who
23 you are talking about?

24 A The solicitor. I forgot the solicitor's name.

25 Q John Anthony?

1 A John Anthony.

2 Q What did he do though?

3 A He used a shoe -- he used a shoe metaphor to get the
4 jury -- to try to tell the jury what was going on. He used a
5 shoe metaphor.

6 Q When you say he used a "shoe metaphor". What did he do?
7 How did he use a shoe metaphor. Tell the Court what Mr. Anthony
8 said to the jury?

9 A He said -- he like -- he said I'm sure you probably
10 went to Hibbett Sports and they have a -- probably have a pair
11 of shoes maybe from Nike or something like that and you get them
12 on sale. Probably get a pair of tennis shoes on sale for \$40.
13 And if you meet up with somebody and had a couple pairs of shoes
14 and the same size shoe, the same kind of shoe and a couple pair
15 of shoes -- a couple pairs of them -- three pairs of shoes you
16 might think well, they got them from the sale. If you run
17 across somebody that had 24 shoes -- 24 of the shoes all the
18 same kind and all going to know that -- to know that the person
19 is not someone who has those shoes for a person to use. They're
20 a shoe salesman and that is what Mr. Gallman is. He is not just
21 somebody who keeps crack for personal use. He's a crack
22 salesman man and if Mr. Gallman just had a gram or even a little
23 bit more than a gram you could figure where he's got crack for
24 himself, but he didn't. He had six grams.

25 Q Okay. And you're alleging that is a violation of the

1 golden rule, is that right?

2 A Yes, ma'am.

3 Q And did Mr. Delaney object to that?

4 A No, ma'am.

5 Q Okay. And do you believe that he was ineffective
6 because he didn't object to that?

7 A Yes, ma'am.

8 Q And do you believe that if the jury had been given that
9 argument that may be they would have reached a different result?

10 A Yes, ma'am.

11 Q And you still believe they may be intending to find you
12 guilty of the lesser included offense anyway?

13 A Yes, ma'am.

14 Q Do you have anything else you want to tell the Court
15 while you are on the stand about your post conviction relief
16 application?

17 A No ma'am.

18 MS. FALKNER: I have no further questions for this
19 witness.

20 THE COURT: Mr. Hunter.

21 MR. HUNTER: No questions for this witness.

22 THE COURT: You may step down.

23 MS. FALKNER: Your Honor, the applicant has no
24 further witnesses.

25 THE COURT: Okay. Mr. Hunter.

1 MR. HUNTER: The State would call Mr. Erik
2 Delaney.

3 ERIK DELANEY, called as a witness, having been
4 duly sworn by the clerk, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. HUNTER:

8 Q Good morning. Please state your name for the record.

9 A Erik Delaney.

10 Q Where are you currently employed?

11 A Union County public defender's office.

12 Q And can you just explain how you became involved in Mr.
13 Gallman's case?

14 A Appointed, as all my cases are. So I was appointed
15 with Mr. Gallman. My file shows initial appearance of August
16 6th of 2013 and then there is an additional initial appearance
17 of December 3rd, 2013.

18 Q Did he make bond on these charges?

19 A Yes.

20 Q Okay. How many times did you meet with him total from
21 I guess the beginning of representation to the trial?

22 A Best that I can recall looking back at notes I would
23 say at least a dozen times.

24 Q Were did those take place?

25 A Office, courtroom, outside the courtroom. I remember

1 meeting with him; Grand Jury room, outside the courtroom. Also
2 my office which at the time was upstairs in the courthouse.

3 Q Okay. And as far as the Discovery is concerned, were
4 you in contact with the solicitor's office in receiving
5 Discovery?

6 A I was.

7 Q And did you share the Discovery or go over it with Mr.
8 Gallman?

9 A I did.

10 Q And can you just explain, I guess in your words, can
11 you just explain what the State entered at trial?

12 A I guess I could classify it -- it started as a drop
13 case. An officer testified, they had supposedly a warrant.
14 They had a warrant for Mr. Gallman and they got some information
15 he was in a particular area. Police arrived. Say there's a
16 crowd of people. Police -- one officer -- at least one officer
17 said they saw him throw down something and they found a small --
18 I'd say a small amount. They found approximately five to six
19 grams.

20 The case was complicated from our perceptive because as we
21 heard there were other incidents, other times he was charged
22 with two counts of distribution on different dates. The State
23 put us on notice that they were going to use at least one of
24 those as we heard to show intent in this case.

25 Q Okay. Can you just explain what happened at the

1 beginning of the trial with that, that Lyle evidence?

2 A We as I said we were given notice that that was going
3 to happen. We tried to prevent that from happening. There was
4 approximately a six-month gap. The distributions had happened
5 approximately, alledgedly, six months prior. That was our
6 argument. But the research that I did and what we were up
7 against the State had to much there in my opinion and the judge
8 ruled that way as well.

9 Q Okay. So you all had pretrial hearings where you
10 objected to that?

11 A I did.

12 Q And the judge overrule you you just said?

13 A Yes.

14 Q And I guess eventually we heard testimony so far that
15 had somehow developed into the jury charge. Can you explain
16 that?

17 A I'm sorry.

18 Q Can you explain how the Lyle evidence was mentioned in
19 the jury charge, if you recall?

20 A From what I recall, the judge said that testimony that
21 was presented from the informant, a Mr. Crawford, could be used
22 for the purposes of intent and that is what it was limited to.

23 Q Okay. And as far as that charge goes, do you see that
24 as helping or hurting Mr. Gallman here?

25 A Well, none of it helped Mr. Gallman, but as far as

1 limiting it to -- you know -- that it's for intent. It's not to
2 be considered whether or not the jury -- there's enough evidence
3 to find him guilty of possession with intent to distribute from
4 that particular date. That was -- it was limited. So that was
5 not -- I wasn't against that.

6 Q Right. It was essentially limited how they can use
7 that. Is that what you are saying?

8 A Yes, sir.

9 Q And as far as that evidence goes did you explain all of
10 that and what the State intended to do with him prior to trial?

11 A I did.

12 Q And what did you all talk about?

13 A We talked about how that -- you know, in my opinion was
14 going to be something that was going to be extremely difficult
15 to overcome at trial, with what was already going to be
16 presented. And my thoughts were that if it was going to be
17 allowed in -- there were two. As I said, there were two
18 different incidents and the State ultimately choose to present
19 one where there was video. A question of what exactly occurred
20 on that video we tried to argue and minimize. But my
21 conversation with Mr. Gallman was that was going to make things
22 more difficult at trial.

23 Q Okay. And in your discussions with him prior to trial
24 did he give you any, I guess, different versions of events, any
25 leads or witnesses for you to follow?

1 A There was a group of people out there that day. How
2 many, that was kind of a question, but there was a number of
3 people that were out in this area that particular day. I tried
4 to get names of who those people were and that was -- I wasn't
5 successful.

6 There was a girl that came in -- I think her last name was
7 Young -- right before trial and told me that she was there and
8 we ultimately called and put her up. But that was the only
9 person of that group of people that we were able to get to come
10 in to trial.

11 Q Okay. And was there any -- I guess overall, did he
12 help assist in the defense with you? Was he cooperating?

13 A Yes, he was cooperative.

14 Q And did he have any trouble -- I guess in your opinion,
15 did he have any trouble understanding these charges and what
16 specifically he was going to trial on that day?

17 A No, I don't believe so.

18 Q Okay. And again, he was going to trial on the PWID
19 charge, is that correct?

20 A That's correct.

21 Q And you believe he knew exactly I guess which set of
22 facts he was going to trial on?

23 A I do.

24 Q Okay. Now, can you explain as far as this charge is
25 concerned what plea offers were extended?

1 A First offense, I don't know if it was going to be
2 technically a distribution or PWID, but positive was going to be
3 a first offense. I believe it was capped at ten. So it was zero
4 to ten as first offense.

5 Q So first offense carries ten. Did you explain to him
6 that was a first offense which would be different then what he
7 would face in a trial?

8 A Yes, that was one of the big things. I tried to David
9 about, Mr. Gallman about as far as not taking the risk of trial
10 because the deal we would have got was a first offense.

11 Q Okay. And as far as you know, or in your opinion, do
12 you believe that he understood if he was going to trial he was
13 facing thirty years?

14 A I do.

15 Q So you had the discussion with him?

16 A I did.

17 Q And did you explain to him the elements of the charges
18 and what the State would have to prove to find him guilty?

19 A Yes.

20 Q Okay. And I am just going to move to the verdict form.
21 Do you recall that occurring at trial?

22 A I do.

23 Q Do you recall what -- I guess in your words what
24 happened?

25 A From what I remember, refreshing with the transcript,

1 when the jury first came out with the verdict when he said there
2 was a verdict, the judge looked at it and as we heard there were
3 two boxes that were marked. The first two; intent to distribute
4 and the possession.

5 Q Okay. And do you recall what the judge then told the
6 jury?

7 A I know they needed to go back collectively and make a
8 decision as far as which one was appropriate. I think the words
9 were mark out which one is inappropriate.

10 Q Okay. And do you -- after that occurred did you talk
11 with him at the time of what was going on? Do you think he
12 understood what was happening?

13 A I don't recall. I don't recall at that time as far as
14 us having a conversation or not about that.

15 Q Okay. Well, after that incident occurred did you see
16 any reason you should object?

17 A Well, once the judge gave the instruction of, you know,
18 you all need to go back together collectively and mark out the
19 one that is inappropriate I didn't raise any objection at that
20 time.

21 Q Okay. And just to briefly touch on this issue, did you
22 have any discussions with him about parole eligibility?

23 A I advised -- my advice to Mr. Gallman was that if you
24 were convicted of a third offense, possession with intent to
25 distribute, that would be 85 percent, no parole, is how I would

1 have advised him. How I did advise him.

2 Q That would have been before trial?

3 A Yes.

4 Q Okay. I want to talk about the -- let's skip ahead to
5 the golden rule allegation that was brought up.

6 Do you recall the solicitor's closing argument making that
7 shoe story analogy?

8 A I do.

9 Q Can you just briefly explain what he was saying? What
10 you understood the solicitor to say?

11 A It was as far as the solicitor trying to look at these
12 different hypotheticals when they are trying to relay how much
13 money someone is making from selling. There are allegations
14 they were selling. They had in their possession three grams or
15 four grams and trying to split it up. So he was trying to use
16 shoes and obviously he was using the Hibbett Sports because the
17 distribution case that was Lyle'd in that happened inside the
18 Hibbett Sports in Union which is a sporting good store. So he
19 used that particular store and used shoes as an example of -- or
20 trying to compare that with the drugs and someone had 24, I
21 think he said -- I think if he had 24 pairs of the same type of
22 shoe, you know, he would be -- he wouldn't have all those for
23 his personnel use or something to that degree.

24 Q So given that, I guess that analogy, that story he was
25 telling, do you find that objectionable?

1 A I didn't. I didn't object.

2 Q Okay. And do you know what the golden rule is as far
3 as closing arguments are concerned?

4 A I do. And I guess when I hear golden rule I think of a
5 case, you know, with victims and putting the jury in their shoes
6 is I guess the way I've always thought of when I heard the
7 golden rule. But a solicitor using a hypothetical like this in
8 a PWID case I've seen and heard it before.

9 Q So as far as this hypothetical is concerned, do you see
10 that as violating the golden rule?

11 A I didn't.

12 Q Okay. And I guess as a drug case there is no victim,
13 is that fair to say?

14 A Yeah, I would say this was no victim.

15 Q Okay.

16 MR. HUNTER: Beg the Court's indulgence one
17 second.

18 THE COURT: Yes, sir.

19 Q Now, I want to go over what was alleged in the
20 application the constructive possession jury charge. Do you
21 recall how that was I guess stated by the judge? Do you recall
22 him giving the constructive possession charge?

23 A I do.

24 Q And just in your experience what do you -- how do you
25 define constructive possession?

1 A You got to have -- it has got to be element of
2 knowledge and then control. It is kind of my --

3 Q I am just going to read from the charge. So, if the
4 judge charges, "that constructive possession means that the
5 defendant's knowledge and possession may be inferred if the
6 substance is found on a premises under his control", do you find
7 that objectionable in how you understand constructive
8 possession?

9 A No.

10 Q All right. Okay. And are aware of any case law that
11 would go against that?

12 A I do not.

13 Q Okay. And he also mentioned the judge's use of strong
14 evidence, and it's actual knowledge of the presence of a drug is
15 strong evidence of intent to control its distribution or use.
16 Do you recall that sentence being said during the jury charge?

17 A I've since reviewed it and I see that it was.

18 Q And after reviewing what do you know about that jury
19 charge, that sentence?

20 A I think that is good. I don't think I could have
21 objected to that charge.

22 Q Well, please explain, just to give the judge some
23 background, but can you just explain what the State alleged as
24 far as the drugs how they were -- I guess how they were in his
25 possession?

1 A Right.

2 Q What they said at trial?

3 A Yeah, as far as the officer testified that he saw Mr.
4 Gallman dropping something. Nothing was found actually on him.
5 It was found in the area where they placed him in custody on the
6 warrants they were looking for him on.

7 So the drugs were found in a pretty close proximity to
8 where -- I guess where the officer testified I saw him drop this
9 and they arrested him and placed him in custody in that same
10 area.

11 Q So you're saying I guess drugs were found in his
12 proximity?

13 A Right.

14 Q But at same time you had a witness testify that they
15 saw him drop it? The saw it in the hand --

16 A Right.

17 Q -- and fall to the ground?

18 A Right. I did. Exactly.

19 MR. HUNTER: I beg the Court's indulgence one more
20 second.

21 THE COURT: Yes, sir.

22 MR. HUNTER: That's all I have of this witness.

23 Thank you.

24 THE COURT: Miss Falkner.

25 MS. FALKNER: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MS. FALKNER:

3 Q Mr. Delaney, you said that you met with my client, your
4 client, then Mr. Gallman, a dozen times?

5 A Approximately.

6 Q At least a dozen times?

7 A I said approximately.

8 Q Did you document those times in your notes?

9 A No, not all the times. But I know I documented as far
10 as different appointments that he had at my office and per my
11 file, it looks like six or so appointments scheduled at the
12 office. But as I said, there were a number of meetings I had
13 with Mr. Gallman that were in different parts of the courthouse.
14 We have roll call in Union once a month and so either at roll
15 call and a lot of times during court week we had a number of
16 conversations.

17 Q Okay. And you testified earlier on direct examination
18 by Mr. Hunter that there was -- that you did talk to Mr. Gallman
19 about him having to serve 85 percent of the possible 30 years if
20 he was convicted?

21 Is there any question in your mind that you had that
22 discussion with him?

23 A No question.

24 Q Did you document that in your notes anywhere where you
25 had that discussion with him?

1 A No, ma'am.

2 Q How long was the plea offer for the ten years open?

3 A It was open -- I don't know. I can't recall if it was
4 still -- I want to say to the day of trial. The solicitor in
5 this case is, in my opinion, good about keeping plea offers on
6 the table. So we had a plea offer on the table real close up
7 until at least I would say the eve of trial.

8 Q Okay. As far as the verdict form, you testified
9 earlier that you -- it was your understanding that Judge Hayes
10 instructed the jury to go back out and mark through the one that
11 was wrong and mark the one that was right.

12 A Well, I see --

13 Q I'm sorry, I didn't meant mean to interrupt you. Go
14 ahead.

15 A That's what -- when I reviewed the transcript I see
16 that's what took place.

17 Q Okay. All right. And you have recently reviewed the
18 transcript, is that right?

19 A I have.

20 Q Do you dispute the fact that it says on page 185, line
21 16, Judge Hayes says, "All right. You got two places marked.
22 It's the top one?

23 Do you dispute that he said that?

24 A No, I don't dispute what's in the transcript.

25 Q Okay. But you certainly did not object to that, did

1 you?

2 A I think what I testified to earlier, what I recall
3 looking at the transcript is when I -- when the judge sent the
4 jury out because after that the judge said -- made a comment
5 that I think we need to have everybody collectively go back.
6 Leave the courtroom. Go back in the jury room. Mark out the
7 inappropriate.

8 From what I remember, the foreman, when this was -- when the
9 judge looked at it and said we got two boxes, the foreman stood
10 up and there was some type of communication there. I don't know
11 if that was the judge's response to the foreman or what that
12 was. Why that was said. But to answer the question, no, I did
13 not object to that.

14 Q Okay.

15 MS. FALKNER: I beg the Court's indulgence for one
16 moment.

17 THE COURT: Yes, ma'am.

18 MS. FALKNER: I have no further questions for this
19 witness.

20 THE COURT: Anything else Mr. Hunter?

21 MR. HUNTER: Nothing else from this witness.

22 THE COURT: You may step down.

23 MR. HUNTER: Your Honor, the State has no more
24 witnesses but I would like to make a brief argument if
25 I could.

1 THE COURT: Sure. Okay.

2 MR. HUNTER: I just want to I guess respond to the
3 allegations. First, Your Honor, about the Lyle
4 evidence being mentioned during the jury charge. The
5 State believes it's not objectionable. It is a
6 limited instruction where the judge essentially says
7 when you heard about this prior conduct you can only
8 use that for intent. So, I mean, I would argue in a
9 way it helps them because it tells them they can only
10 use it as the judge ruled after the Lyle hearing.

11 Your Honor, I would also argue the constructive
12 possession charge with the permissive inference is
13 word for word from State versus Adams which says is
14 the proper charge on constructive possession to
15 instruct the jury that the defendant's knowledge and
16 possession may be inferred if the substance was found
17 on premise under his control. Again, that is word for
18 word for the State versus Adams, 291 S.C. 132.

19 About the strong evidence charge, Your Honor, that
20 sentence used where the actual knowledge of the
21 premises and the drugs is strong evidence of intent
22 and control to distribute and use, Your Honor, State
23 versus Cheeves (phonetics) does say that that charge
24 should not be given. However, similar to Cheeves,
25 Cheeves found that if there was no prejudice then the

1 defendant in that case wasn't merely present, he was
2 actively cooking the drug.

3 In this case, Your Honor, if it was solely
4 circumstantial evidence that would be a different
5 story, but here you have an evidence of actual
6 possession where the officer sees him drop it. So I
7 would argue there is no prejudice there.

8 As far as the golden rule is concerned, clearly
9 there was no victim in this case. There was no golden
10 rule violation. He's not asking anyone to place
11 themselves in the victim's shoes.

12 As far the verdict goes, Your Honor, I think we
13 heard from defense counsel that there may have been
14 some conversation going on between the judge and the
15 foreperson about the top one is concerned. If you
16 look at the rest of the line there on page 185 the
17 judge does say strike through whichever one is
18 inappropriate.

19 And lastly, as far as the parole eligibility is
20 concerned, Your Honor, since this was just presented
21 today, the State will move to dismiss that allegation
22 as its not proper for PCR. It's a collateral
23 consequence. Parole eligibility does not need to be
24 advised in any sentence especially before trial and
25 that's the basis for our motion to dismiss on that

1 one.

2 Your Honor, that's I guess the State's outline for
3 the allegations.

4 THE COURT: Miss Falkner.

5 MS. FALKNER: Your Honor, as you have heard my
6 client basically raised four separate issues. The
7 first and most important of which we have presented
8 testimony on is the verdict form. I think the
9 transcript is clear and it speaks for itself that
10 Judge Hayes did say, "clearly it's the top one". He
11 did go back and I think make some amendments which you
12 can read in the transcript. I think it's page 185.
13 But I think there is no dispute that initially he told
14 them it's the top one. Do you want to go back and
15 mark out and initial it. I think that was prejudicial
16 to my client. The foreman was only gone a for a very
17 brief time and came back with the top which is the
18 PWID marked and my client was convicted of that and
19 sentenced on that charge.

20 He also raised the issue of the sentencing which
21 was part of the amendment that we filed this morning.
22 He raised the sentencing was changed to 85 percent.
23 Your Honor, my client presented testimony and I think
24 it's believable that he did not and was not advised by
25 Mr. Delaney of the possible sentence ramifications and

1 he actually indicated in Court he thought he was going
2 to trial on possibly a different charge and not facing
3 more than ten years and he would have taken a plea if
4 he thought there was any possibility he could have
5 been serving a sentenced up to thirty years which is
6 now not even parole eligible. He has to serve 85
7 percent.

8 Your Honor, as far as the other two issues, as Mr.
9 Gallman presented evidence on the issue as it relates
10 to the Lyle evidence; the Crawford evidence between
11 Mr. Gallman, he -- that testimony -- I mean, that
12 incident occurred at least I think it's approximately
13 six months before the alleged incident from the fact
14 in which Mr. Gallman ultimately convicted in this
15 case. And Your Honor, I think that the charge, that
16 could have been used as far as intent is concerned. I
17 think it's inappropriate Mr. Delaney did not object to
18 that, and we gave the Court testimony he didn't think
19 he needed to object to that. I think it was
20 ineffective for his failure to do so.

21 As far a golden rule, I understand the argument
22 that Mr. Hunter made that there was no victim in this
23 case, but, Your Honor, he did -- he did basically ask
24 the jury to put themselves in the shoes and as if they
25 were buying shoes from a salesman as opposed to all

1 man's shoes. I think that can be basically putting
2 someone in the victim's shoes and I think it would be
3 a violation of the golden rule and Mr. Delaney did not
4 object.

5 On those basis, Your Honor, my client would ask
6 the Court to find there was ineffective assistance of
7 counsel. I've explained to him, he understands that
8 he could essentially be granted a new trial if the
9 application is granted, Your Honor.

10 THE COURT: Okay. Anything else Mr. Hunter?

11 MR. HUNTER: Nothing else from the State.

12 THE COURT: All right, counsel, I will take this
13 matter under advisement. You will hear from me in the
14 next couple of days.

15 MR. HUNTER: Thank you.

16 MS. FALKNER: Thank you, Your Honor.

17 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter
for the 16TH Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete transcript of record of all the proceedings in the
captioned case, in the Circuit Court for York County, South
Carolina, on the 25th day of January, 2019.

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

January 25, 2019.

s/Aileen Butler

EXHIBITSCOURT OF GSDATE 4-17-18COUNTY York

JUDGE _____

^{Applicant}
~~PLAINTIFF~~ David Gallman^{Respondent}
~~DEFENDANT~~ StateATTORNEY B FaulknerATTORNEY Justin HunterCASE NUMBER 2016-LP-44-0487PLAINTIFF

- | | | |
|------------------------|-------|----------|
| 1. <u>Verdict Form</u> | _____ | 1. _____ |
| 2. <u>Record</u> | _____ | 2. _____ |
| 3. <u>sc Report</u> | _____ | 3. _____ |
| 4. _____ | _____ | 4. _____ |
| 5. _____ | _____ | 5. _____ |
| 6. _____ | _____ | |
| 7. _____ | _____ | |
| 8. _____ | _____ | |
| 9. _____ | _____ | |
| 10. _____ | _____ | |
| 11. _____ | _____ | 1. _____ |
| 12. _____ | _____ | 2. _____ |
| 13. _____ | _____ | 3. _____ |
| 14. _____ | _____ | 4. _____ |
| 15. _____ | _____ | 5. _____ |

RECEIVED OF Allen Butler, COURT REPORTER ALL OF THE ABOVE EXHIBITS.DATE 4-17-18CLERK Lynn Shaw

Sent to Union w/ Form 4

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF GENERAL SESSIONS
OF THE SIXTEENTH JUDICIAL CIRCUIT

Indictment No. 2014-GS-44-0077

STATE OF SOUTH CAROLINA,)

vs.)

VERDICT FORM

DAVID TERRELL GALLMAN,)

Defendant.)

PLEASE MARK BY CHECKING THE APPROPRIATE VERDICT BELOW.

☒

We find the Defendant Guilty of Possession of Crack Cocaine with Intent to Distribute.

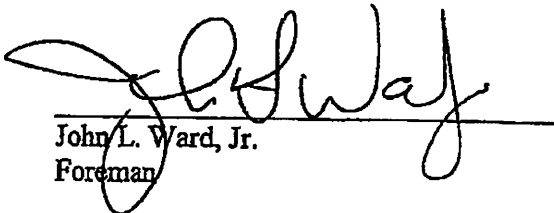
☒

We find the Defendant Guilty of the lesser included offense of Possession of Crack Cocaine.

☐

We find the Defendant Not Guilty.

July 09, 2014
Union, SC


John L. Ward, Jr.
Foreman

EXHIBIT

A-1 as
4-17-18

Attorney
Faint
To Respond

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD OF DUE PROCESS HEARING
3rd Offense Drug Offenders

TO INMATE: David Gallman SCDC #: 313796

INSTITUTION: Perry

SCDC General Counsel's recent interpretation of S.C. Code § 44-53-0370 and § 44-53-375, in conjunction with Bolin v. South Carolina Department of Corrections, is that inmates convicted of 3rd offense drug offenses are to be treated as 85% offenders unless all of the offender's prior drug offense are for simple possession under the same subsection (either § 44-53-0370 and § 44-53-375). If an offender has prior drug convictions for Manufacturing, Distribution, Possession with Intent to Distribute, or Conspiracy, he or she must be treated as an 85% offender on the 3rd or subsequent offense.

The Inmate Records Office has been informed that because of your prior conviction (s) for Manufacturing, Distribution, Possession with Intent to distribute, or Conspiracy, your current sentence of a 3rd or Subsequent Drug Offense should be calculate at 85%.

Your new projected dates are:

Projected Maxout Date: 12/31/2039 Projected Parole Date: 00/00/0000

If you provide additional information to counter this interpretation, that information will be forwarded to the SCDC General Counsel's office for review and necessary action (if warranted).

You have the right to appeal this decision by filing an inmate grievance pursuant to SCDC Policy GA-01.12, "Inmate Grievance System".

Classification Case Manager/Designee (Print Name): Felicia Ogunsile

Signature: [Signature]

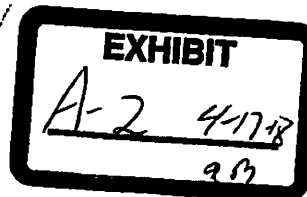
Inmate Signature: [Signature]

Date: 2/2/16

Time: 11:44 AM

Original: Central Record
cc: Institutional Record
Inmate

Revised 1/30/17



South Carolina Department of Corrections

Classification Summary Reports

Date: Monday, January 9, 2017

Classification Summary Reports

Inmate Number **313796**

Submit

Classification Summary Report for GALLMAN, DAVID TERRELL :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 01/09/2017

SCDC# 00313796

GALLMAN, DAVID TERRELL

FBI# 282756CC3

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

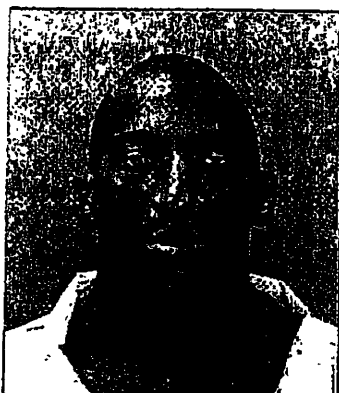
INSTITUTION: PERRY

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC SENT: 30 YRS 0 MOS 0 DAYS

VICTIM WITNESS: SEPREQ:N

MED CLASS:



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: Q3A 0205 T

PROJ MAXOUT DATE: 05/16/2030

PROJ PAROLE DATE: 07/11/2020

EWC JOB: BRICKMASON HELPER

ASSIGNMENT: VOC SCHOOL

EWC LEVEL: 3F5 EEC LEVEL:

EDUC PGM: MASONRY (ABE)

INST RESTRICT: NO RESTRICTION

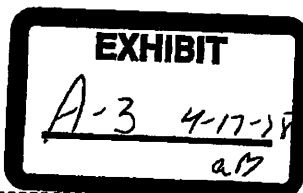
MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 31



PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE DYS	COUNTY	START	SENTENCE V/NV	CAT	INDICT
MANU/DIST CRACK-3RD,SUB.	30	0	0	UNION	07/08/2014	N	3	14GS440077

Rec'd
11-29-18STATE OF SOUTH CAROLINA
COUNTY OF UNIONIN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

David T. Gallman, #313769,

2016-CP-44-489

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED FOR RECORD
2018 NOV 19 PM 11 19
CLERK OF COURT
UNION CO

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 19, 2016. Respondent submitted its Return on May 18, 2017. An evidentiary hearing was convened on April 17, 2018, at the York County Courthouse. Applicant was present at the hearing and was represented by Beth Faulkner, Esquire. Respondent was represented by Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Eric Delaney, Esquire ("Trial Counsel"). This Court had before it the records of the Union County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, Applicant's records for the Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate David T. Gallman ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. Applicant was indicted at the March 2014 term of the Union County Grand Jury for possession of crack with intent to distribute (2014-GS-44-0077). Erik Delaney, Esquire, represented him. Deputy Solicitor John Anthony prosecuted the case. On July



8-9, 2014, Applicant proceeded to a trial before the Honorable John C. Hayes, III, after which the jury found Applicant guilty as indicted. Judge Hayes sentenced Applicant to imprisonment for thirty years.

Applicant filed a timely Notice of Appeal. Appellate Defender Benjamin Tripp perfected an appeal on Applicant's behalf by filing an Anders¹ brief. The South Carolina Court of Appeals dismissed the appeal after review pursuant to Anders. State v. David Terrell Gallman, Un. Op. No. 2016-UP-041 (S.C. Ct. App. Filed January 20, 2016). The remittitur was issued on February 5, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Was counsel ineffective for failing to object to the trial judge's jury instructions that not only shifted the burden of proof in violation of due process, but the jury could have easily interpreted the comment as an impermissible comments on the facts which is prohibited in South Carolina"
 - b. "Was trial counsel ineffective for failing to object to the solicitor's improper closing summation that violated the 'golden rule.'"
 - c. "Counsel failed to object to the trial court telling the jury to cross out one of the verdicts and leave the top one, which was the greater offense"

Applicant filed a *pro se* amendment to his application on June 21, 2017, adding an allegation of "Ex post Facto Violation due to the change of my 65% sentence to 85% percent [sic] thus a harsher sentence in violation of the Ex post factor Clause." The State did not oppose the filing of the amendment at the evidentiary hearing.

¹ Anders v. California, 386 U.S. 738 (1967).

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he met with Trial Counsel three or four times before his trial on July 9, 2014. Applicant stated that during their meetings, Trial Counsel and he discussed his case. Applicant testified that Trial Counsel really tried to get him to plead guilty but Applicant did not want to plead guilty. Applicant testified he was facing charges of possession of crack-cocaine, two distribution charges from separate incidents, and assault and battery. Applicant stated he went to trial on the possession with intent to distribute charge, third offense, and was convicted. Applicant testified he was given a plea offer for zero to ten years but he rejected it. Applicant stated he did not know he could even face thirty years at trial because Trial Counsel never advised him of his exposure. He asserted that he would have taken the plea offer if he had known he could get thirty years at trial.

Applicant testified he thought he was going to trial on a different charge when he showed up for his trial. He stated Trial Counsel showed him discovery including pictures from the discovery file but Trial Counsel told him he wasn't worried about this case. Applicant testified that Trial Counsel should have objected when the trial court instructed the jury to correct their verdict sheet. Tr. 185, line 14. Applicant testified that they came to him at Perry and told him to sign his new eighty-five percent date—they changed his parole eligibility and maxout date a year and a half after he was incarcerated. Applicant stated that before this he was eligible for parole but that the drug law changed, changing his parole date. He stated he did not know this would happen when he was sentenced.

Applicant testified that the State introduced evidence of another alleged drug transaction as evidence of a prior bad act. He stated the trial judge charged the jury to consider the prior bad



act only for purposes of intent and Trial Counsel did not object to the evidence coming in at trial. Applicant stated Trial Counsel should have kept out this prior bad act evidence. He testified that Deputy Solicitor Anthony used a shoe metaphor in the closing argument to the jury, which violated the Golden Rule.

Trial Counsel's testimony

At the evidentiary hearing, Trial Counsel testified he was appointed to Applicant's case on August 6, 2013, through the Union County Public Defender's Office. He testified that he met with Applicant at least a dozen times before the trial, in his office, in the courtroom, and in the grand jury room. He stated he received the discovery from the State and reviewed it with Applicant. Trial Counsel testified this started as a "drop" case. He stated the police had a warrant, they saw Applicant drop a small amount of illegal drugs, and they found five or six grams of drugs. Trial Counsel stated Applicant was also charged with two counts of distribution. He testified that the State put them on notice that they would use at least one of those incidents to show intent at this trial. Trial Counsel testified that he objected to this evidence being admitted at a pre-trial hearing because there was a six month gap between the incidents but the judge overruled his objection. Trial Counsel testified the jury charge over this evidence was not objectionable because Crawford's testimony about this evidence was limited to Applicant's intent and the court gave a limiting instruction. Trial Counsel stated that he explained this evidence to Applicant. Trial Counsel testified that he told Applicant he thought the evidence would be allowed in and it would make it more difficult at trial.

Trial Counsel testified he tried to get the names of people who were at the crime scene as potential witnesses but he could only get one of them to testify at trial. He stated Applicant was cooperative during the course of his representation and Applicant understood the charges and

knew what he was going to trial on that day. Trial Counsel testified that the State offered Applicant a plea offer to plead guilty to PWID first offense with a cap of ten years. Trial Counsel stated he explained to Applicant that a first offense was different than what he was facing at trial, and he tried to convince Applicant to accept the plea offer. He stated that he did tell Applicant that he could get thirty years at trial.

Trial Counsel testified that when the jury came back with an incorrect verdict form, the trial judge told the jury to go back and make a collective decision to mark out whichever one was incorrect. He stated there was no reason to object to the verdict form after the judge's instruction because it was neutral and corrected the issue. Trial Counsel testified that he told Applicant before the trial that he would serve an eighty-five percent "no parole" sentence if convicted. Trial Counsel stated he did not find the Solicitor's closing argument to be objectionable, as it was not a violation of the Golden Rule. He explained that the Golden Rule prevents solicitors from asking the jury to put themselves in the victim's shoes, metaphorically, but there was no victim in Applicant's case. He stated the Solicitor's shoe store analogy was unrelated to the Golden Rule, so he did not object on those grounds.

Trial Counsel testified he did not find the trial court's jury instruction on constructive possession to be objectionable. He testified the charge correctly explained that constructive possession requires an element of knowledge and control and that the evidence in this case satisfied this element. Trial Counsel stated the officer testified at trial that he saw Applicant dropping the drugs and the drugs were found in close proximity.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Trial Counsel was ineffective in his representation before and during his trial. This Court finds Applicant has failed to meet his burden of proving any of his allegations and that Trial Counsel was not ineffective in any of his actions or inactions. Each individual allegation is addressed as follows:

Failure to object to jury instructions

Applicant's allegation that Trial Counsel was ineffective for failing to object to the trial court's jury instructions is meritless. First, although Applicant alleges he failed to object to the introduction of evidence of a prior bad act, the record shows Trial Counsel did object to this evidence in a pre-trial hearing, but his motion was denied. Applicant has failed to prove anything further Trial Counsel could have done that would have resulted in the suppression of this evidence, and this allegation is denied.

Second, Applicant asserts Trial Counsel was ineffective for failing to object to the jury instruction on "constructive possession." At trial, the court gave the following instruction:

There are two kinds of possession to both the higher, possession with intent to distribute, or the lower is simple possession. There are two types of possession, - actual and constructive.

Constructive possession is when a person has dominion or control or the right to oversee the dominion or control of a substance or the premises where the substance is located.

Possession may- be inferred from the circumstances and may be imputed to anyone who has the power and intent to control the disposition of the subject - of the object at issue. In other words, possession of an object or the premises where the object is found gives rise to an inference that the person charged had both the power and the intent to control and disposition of the substance.

Actual knowledge of the presence of the substance is strong evidence of intent to control its disposition or use. However, the mere presence of a person in the area

where an illegal substance is found is not alone and is not enough by itself to give rise to the necessary inference. The State must prove that Mr. Gallman had both the power, that is the actual or constructive control, and the intent to control the disposition of the substance.

Actual control occurs when a controlled substance, and crack cocaine is by the laws of our State a controlled substance, is found to be in the actual physical custody of the person charged.

Constructive possession occurs when the person charged with possession has dominion and control over either the controlled substance itself or the premises upon which the controlled substance is found.

Constructive control, constructive possession means that, the defendant's knowledge and possession may be inferred that the controlled substance was found on the premises under his control. This is a permissive inference. You are free to accept or reject this inference depending upon your view of the evidence. Constructive control may be established by circumstantial as well as by direct evidence and constructive control may be shared by two or more individuals.

Tr. 175, line 9 – 177, line 1.

This Court finds the trial court's jury instructions on this topic were proper and correct under South Carolina law. Although the instruction did include an improper comment on the facts under State v. Cheeks, 408 S.C. 198, 758 S.E.2d 715 (2014)², the instruction did not prejudice Applicant. Here, as in Cheeks, there was no evidence that Applicant was "merely present," and there was evidence presented of actual possession by Applicant. As Trial Counsel testified, the officer testified at trial that he actually saw Applicant drop the drugs before he was arrested. Accordingly, Applicant has failed to prove both prongs of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to object to Golden Rule violation

Applicant's allegation that Trial Counsel was ineffective for failing to object to a Golden Rule violation in the solicitor's closing argument is meritless. A solicitor violates the

² Holding that the instruction "actual knowledge of the presence of the crack cocaine is strong evidence of intent to control its disposition or use" was an improper comment on the facts and unduly emphasized the evidence.

"Golden Rule" when they appeal to the personal biases of the jury and arouse the jury's passions or prejudices by asking them to imagine themselves as the victims in the case. "A Golden Rule argument *asking the jurors to place themselves in the victim's shoes* tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." Brown v. State, 383 S.C. 506, 515-16, 680 S.E.2d 909, 914 (2009) (citing State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)) (emphasis added).

Here, in Deputy Solicitor Anthony's closing argument, he used an example of meeting someone who has twenty-four different pairs of shoes, all of the same kind, and using common sense to assume that they don't have them all for personal use, but are selling them. Tr. 164, line 25-165, line 22. His example was, literally, about shoes. Applicant now claims this example was improper because it asked the jurors to put themselves in the victim's shoes. However, as Trial Counsel credibly testified at the evidentiary hearing, there was nothing objectionable about this statement because this argument was not a Golden Rule violation and there are no victims in Applicant's drug case. Accordingly, because the argument was not objectionable, Trial Counsel was not deficient for failing to object, and there is no resulting prejudice. Therefore, Applicant has failed to prove he was ineffective under Strickland, and this allegation is denied and dismissed with prejudice.

Failure to object to trial court jury instruction

Applicant's allegation that Trial Counsel was ineffective for failing to object to the trial court telling the jury to cross out one of their verdicts on the verdict form is meritless. At trial, the jury returned from its deliberations and handed the judge the verdict form. The judge announced:

THE COURT:

All right. You've got two places marked.
It's the top one. Do you want to go back and mark out and initial it.

THE FOREMAN: I can.

THE COURT: I think the whole jury needs to go back out and correct it. Whichever one is inappropriate, just strike through it and initial it. Of course I will show it to everybody but the top two lines both have been checked.

Tr. 185, line 14-24. When the jury returned, they had crossed out the lesser offense and found Applicant guilty of possession of crack with intent to distribute. Tr. 186.

Applicant claims Trial Counsel should have objected to the court's instruction. Trial Counsel testified he saw no reason to object after the trial judge told the jury to go back together and choose whichever one was correct. This Court agrees that the curative instruction was neutral and properly instructed the jury to choose whichever verdict they agreed upon. Accordingly, this instruction was not objectionable, and Trial Counsel was not deficient for failing to object. Any objection would not have changed the outcome of the trial, and thus there is no prejudice. Therefore, this allegation is denied and dismissed with prejudice.

CONSTITUTIONAL VIOLATION

Applicant's allegation of an "ex post facto" violation based on the alleged changing of his sentence from parole eligible to not parole eligible is denied and dismissed. First, this allegation is improper for post-conviction relief, as it is an attack on collateral consequences of his sentence, which should be raised in administrative courts. Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (holding an ex post facto claim is not appropriate for PCR, as "PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence."); Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (holding an ex post facto claim arising out of change from annual to biannual review for parole was not cognizable under the PCR statute, as the ex post facto claim was not a collateral attack on the validity of petitioner's conviction or sentence.).

Regardless, Trial Counsel credibly testified at the evidentiary hearing that he advised Applicant that he would serve an eighty-five percent "no parole" sentence if he were convicted of this offense. Applicant was aware of his parole eligibility, which was a factor he took into consideration when choosing to plead guilty or go to trial. Applicant has failed to prove any sort of constitutional violation regarding this claim that entitles him to a new trial. Accordingly, this allegation is denied and dismissed with prejudice.

[signature page to follow]

A handwritten signature in dark ink, appearing to be "MM", is located at the bottom right of the page.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8th day of November, 2018.



 ROGER E. HENDERSON
 Presiding Judge
 Sixteenth Judicial Circuit

 South Carolina

FILED FOR RECORD
2018 NOV 19 AM 11 19
CLERK OF COURT
UNION, CO

WITNESSES

Petrie/UPSD

ARREST WARRANT NUMBER

2013A4420200596

ACTION OF GRAND JURY

TRUE BILL

Keith Wright
Foreperson of Grand Jury

Date:

FEB 27 2014

VERDICT

Guilty

Janet
Foreperson of Petit Jury

Date:

7/9/14

DOCKET NO. 2014-SS-44-0077

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

MARCH 03, TERM 2014

THE STATE

vs.

DAVID TERRELL GALLMAN

Indictment for

**POSSESSION OF CRACK COCAINE
WITH INTENT TO DISTRIBUTE**

SC Code: 44-53-375

CDR Code: 3039

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

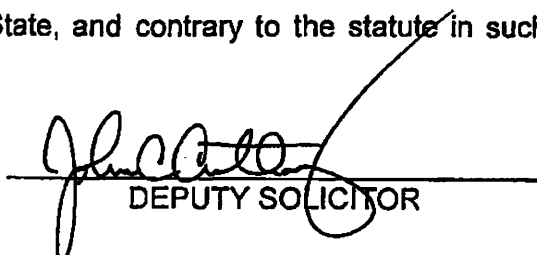
INDICTMENT

At a Court of General Sessions, convened on February 27, 2014, the Grand Jurors of Union County present upon their oath:

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE

That in Union County, South Carolina, on or about December 19, 2013, David Terrell Gallman did possess with intent to distribute a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina (1976, as amended), such possession with intent to distribute not having been authorized by law, in violation of Section 44-53-375 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR