

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

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S.C. SUPREME COURT

LEROY CLIFTON GIBBS, III,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002044

APPENDIX

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INDEX

INDEX	i
MISTRIAL TRANSCRIPT DATED FEBRUARY 21-23, 2013	1
PRETRIAL TRANSCRIPT DATED MAY 23, 2013	433
TRIAL TRANSCRIPT DATED JUNE 3, 2013	443
TRIAL TRANSCRIPT DATED JUNE 4-5, 2013	515
FINAL BRIEF OF APPELLANT	776
FINAL BRIEF OF RESPONDENT	802
UNPUBLISHED OPINION NO. 2016-UP-121 (S.C. Ct. App. filed March 2, 2016)	830
REMITTITUR	833
APPLICATION FOR POST-CONVICTION RELIEF	834
RETURN	840
AMENDMENT TO PRIOR PCR APPLICATION	847
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 26, 2018	849
PLAINTIFF'S EXHIBIT NO. 1 (MOTION FOR RELIEF OF COUNSEL)	898
ORDER OF DISMISSAL	900
INDICTMENT	911
SENTENCE SHEETS	915

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF GENERAL SESSION

State of South Carolina,)
PLAINTIFF,)
v.)
Leroy Clifton Gibbs, III,)
DEFENDANT.)

TRANSCRIPT OF HEARING
2011-GS-43-1125

Sumter County Courthouse
February 21, 22 and 23, 2013

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING JUDGE

APPEARANCES:

Assistant Solicitor John Meadors
Assistant Solicitor Tyler Brown
Attorneys for The State of South Carolina

Charles Brooks, Esquire
Attorney for Leroy Clifton Gibbs, III

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

INDEXWITNESS (ES)PAGES**PROFFER TESTIMONY**

WAYNE CHARLES DUBOSE

Exam by Mr. Meadors

25

Cross by Mr. Brooks

52

Redirect by Mr. Meadors

62

Recross by Mr. Brooks

64

CHRISTOPHER MOORE

Exam by Mr. Brown

65

Cross by Mr. Brooks

70

Redirect by Mr. Brown

77

DALE HORTON

Exam by Mr. Brown

79

Cross by Mr. Brooks

83

WITNESS (ES)

WAYNE CHARLES DUBOSE

Exam by Mr. Meadors

120

Cross by Mr. Brooks

153

Redirect by Mr. Meadors

161

CHRISTOPHER SHANE MOORE

Exam by Mr. Brown

163

Cross by Mr. Brooks

168

DALE HORTON

Exam by Mr. Brown

171

Cross by Mr. Brooks

175

MITCH HANSEN

Exam by Mr. Brown

178

KIMBERLY GIBBS

Exam by Mr. Meadors

195

Cross by Mr. Brooks

217

CINDY PIERSON

Exam by Mr. Brown

228

JIM ATKINSON

Exam by Mr. Brown

234

WAYNE CHARLES DUBOSE	
Exam by Mr. Meadors	261
Cross by Mr. Brooks	262
LEROY CLIFTON GIBBS, III	
Exam by Mr. Brooks	272
Cross by Mr. Meadors	277
DIANNE WILLIAMS	
Exam by Mr. Brooks	304
Cross by Mr. Meadors	305
DARNELL GREEN	
Exam by Mr. Brooks	306
Cross by Mr. Meadors	308
LATROY GIBBS	
Exam by Mr. Brooks	309
Cross by Mr. Meadors	310
WAYNE CHARLES DUBOSE	
Reply Exam by Mr. Meadors	312
Reply Cross by Mr. Brooks	320
Reply Redirect by Mr. Meadors	321
Certificate of Service	432

EXHIBITS

State's Exhibit One - Consent to Search
 State's Exhibit Two - Photo of house
 State's Exhibit Three - Photo of inside house dining area
 State's Exhibit Four - Photo of inside house, livingroom
 State's Exhibit Five - Photo of inside house, livingroom, dining
 State's Exhibit Six - Photo of inside house, bedroom
 State's Exhibit Seven- Photo of inside house, kitchen
 State's Exhibit Eight - Photo of razor, bags, baking soda
 State's Exhibit Nine - Photo of 4 razors, cd with residue
 State's Exhibit Ten - Photo of measuring cups with fork
 State's Exhibit Eleven - Photo of plate
 State's Exhibit Twelve - Photo of Razors (4), cd
 State's Exhibit Thirteen - Photo of bag with baby wipes
 State's Exhibit Fourteen - Photo of Ashtray
 State's Exhibit Fifteen - Photo of baggies, razor
 State's Exhibit Sixteen - Photo of purse with baby wipe bag
 with white powder substance
 State's Exhibit Seventeen - Photo of white bucket with powder
 residue
 State's Exhibit Eighteen - Bag containing crack cocaine, 18(a)
 (Shown in Exhibit 17); 18b (Shown in 15); 18c (Exh. 8)

State's Exhibit Nineteen - Items from purse (Exhibit 13)
State's Exhibit Twenty - (Ashtray) blunt, funds, ashtray
State's Exhibit Twenty-One - Drug Analysis Case #08142764
State's Exhibit Twenty-Two - Lease Agreement
State's Exhibit Twenty-Three - Photo of Items, kitchen bags
State's Exhibit Twenty-Four - Photo of vent with pistol
State's Exhibit Twenty-Five - Photo of pistol

Court Exhibit Number One - Note from jury, copy of Mr. and Mrs. Gibbs testimony
Court Exhibit Number Two - Note from jury. Copy of Officer Dubose testimony
Court Exhibit Number Three - Note from jury. Wants to hear testimony
Court's Exhibit Number Four - Note from jury. Does not want to hear Mr Gibbs testimony
Court's Exhibit Number Five - Note from jury. Definition of possession
Court's Exhibit Number Six - Note from Jury. Can't come to decision on any charges
Court's Exhibit Number Seven - Note from Jury. Cannot reach verdict

State of South Carolina vs. Leroy Clifton Gibbs, III 5

1 The Court: Mr. Brown.

2 Mr. Brown: Yes, Your Honor. The next matter
3 is the State of South Carolina vs. Leroy Clifton Gibbs.
4 This is under indictment 2011-GS-45-1125. He's entering
5 a plea of not guilty and the State is ready to proceed on
6 one count of trafficking in cocaine base, ten to twenty-
7 eight (28) grams; one count of manufacturing cocaine
8 base; and one count of possession with intent to
9 distribute cocaine. Permission to approach, Your Honor.

10 The Court: Yes, sir. Any written voir dire
11 from either side?

12 Mr. Brooks: No, Your Honor.

13 Mr. Brown: Not from the State, Your Honor.

14 The Court: All right. Ladies and Gentlemen of
15 the jury panel. Of course, you are under oath. I'll be
16 asking you questions that are designed to make sure we
17 impanel a jury that is fair and impartial and one which
18 will weigh the evidence in that fashion. The fact that a
19 person is arrested or charged or indicted for any
20 criminal offense is not evidence of guilt at all. The
21 defendant has entered a plea of not guilty to all of
22 these charges. He has no burden at all. He is presumed
23 innocent. The State has the sole burden of proving the
24 elements of the offense as charged. The fact that I
25 refer to the charges in the indictment is not intended to

State of South Carolina vs. Leroy Clifton Gibbs, III 6

1 be a comment by me on the facts. Obviously, as you know
2 by now, I simply have to recite to you what the charges
3 are so that you will know how to answer the first
4 question. That specifically would be is there anyone who
5 knows anything about this case.

6 The Defendant is charged with the offense of
7 trafficking in cocaine base and the indictment alleges
8 that on or about December 23, 2008, the defendant did
9 engage in that offense of trafficking in cocaine base in
10 the amount of more than ten (10) grams but less than
11 twenty-eight (28) grams here in Sumter County. The
12 State also alleges that the defendant on or about the
13 same date engaged in the manufacturing of a quantity of
14 cocaine base. And the State also alleges that on or
15 about the same date, the defendant did possess a quantity
16 of cocaine with the intent to distribute. Mr. Meadors or
17 Mr. Brown is there an incident location within the county
18 that might alert any of the jurors as to whether or not
19 they know anything about it?

20 Mr. Brown: Your Honor, the address should be
21 listed as [REDACTED] Madison Avenue in Sumter, South Carolina.

22 The Court: All right. The address where the
23 events allegedly occurred is on Madison Avenue here in
24 the City of Sumter. Is there anyone on this jury panel
25 who knows anything about this case from any source at all

State of South Carolina vs. Leroy Clifton Gibbs, III 7

1 other than what I just referenced from the indictment?

2 Anyone at all.

3 All right. The defendant is Leroy Clifford
4 Gibbs, III. Mr. Gibbs, if you would please stand and
5 face the jury panel. He is standing with his attorney
6 Mr. Charles Brooks. Mr. Gibbs is in the grey shirt. Is
7 there anyone on this jury panel or anyone to your
8 knowledge in your immediate family who first of all might
9 be related to Mr. Gibbs by blood or marriage. Anyone on
10 the jury panel or to your knowledge anyone in your
11 immediate family who has any type of connection or
12 acquaintance or association with Mr. Gibbs obviously now
13 or in the past and that would be by any degree; however,
14 slight? Thank you. Thank you gentlemen, you can have a
15 seat. No one stood.

16 The State of South Carolina is represented by
17 Mr. Tyler Brown and Mr. John Meadors of the Third Circuit
18 Solicitor's Office. They are seated at counsel table.
19 Face the jury panel just for a moment. Of course, Mr.
20 Brooks is a member of the Sumter County Bar represents
21 the Defendant. Charles T. Brooks, III. Is there anyone
22 on this family or anyone in your immediate family who,
23 first of all, might be kin to any of these lawyers or
24 secondly have any connection or acquaintance, even a
25 social one with any of these attorneys or their offices.

State of South Carolina vs. Leroy Clifton Gibbs, III 8

1 Mr. Brooks office in on Broad Street.

2 (Jurors standing)

3 The Court: All right. Your name, please,

4 ma'am.

5 Juror: Delores Brooks.

6 The Court: All right. Ms. Brooks, I'll ask you
7 questions. Because of your last name, are you related to
8 Mr. Brooks?

9 Ms. Brooks: No, sir.

10 The Court: Okay. Which attorney is it that
11 you may have a connection with?

12 Ms. Brooks: Mr. Brooks.

13 The Court: All right. Has he represented you
14 in the past?

15 Ms. Brooks: Yes, sir.

16 The Court: Okay. I'm not going to get into
17 the details in front of everybody. I'll have you come
18 in just a minute. Your name, sir, is Mr. Brown?

19 Mr. Brown: Yes.

20 The Court: George Brown?

21 Mr. Brown: Yes.

22 The Court: All right. Do you have a family
23 relationship or a social relationship or a professional
24 relationship?

25 Mr. Brown: Professional.

State of South Carolina vs. Leroy Clifton Gibbs, III 9

1 The Court: All right. You two folks can get
2 in the center, it's kind of a private issue for you, so
3 come up, please. All right, come on up Ms. Brooks.

4 (Juror approaches)

5 The Court: Yes, ma'am. What's your answer?

6 Ms. Brooks: To what?

7 The Court: You said you were represented by
8 Mr. Brooks?

9 Ms. Brooks: Yes.

10 The Court: About how long ago?

11 Ms. Brooks: About two years.

12 The Court: Was it you?

13 Ms. Brooks: It was my daughter.

14 The Court: Is the case over with?

15 Ms. Brooks: Yes.

16 The Court: Could you be fair to the state and
17 the defendant?

18 Ms. Brooks: Yes, sir.

19 The Court: Could you be fair to either side,
20 the State or to Mr. Brooks?

21 Mr. Brooks: Yes, sir.

22 (Discussion with counsel off the record)

23 The Court: All right. Come on up Mr. Brown.

24 (Juror approaches)

25 The Court: Mr. Brown

State of South Carolina vs. Leroy Clifton Gibbs, III 10

1 Mr. Brown: Juror 23.

2 The Court: Yes, sir.

3 Mr. Brown: I consulted Mr. Brooks on my
4 divorce.

5 The Court: Would you be able to weigh all the
6 evidence and be fair and impartial to both the State and
7 the Defendant?

8 Mr. Brown: Yes, sir.

9 (Discussion with counsel off the record)

10 The Court: Is there anyone on the jury panel,
11 of course, I've indicated the fact that a person who is
12 arrested or charged is not evidence of guilt. Is there
13 anyone on the jury panel who is so absolutely
14 fundamentally opposed to the notion of illegal drugs that
15 you could not be fair and impartial just because there is
16 an accusation of the trafficking of or possession or
17 manufacturing of illegal drugs? No one stood.

18 Is there anyone other panel who does have any
19 reason why you cannot be fair and impartial in this case?

20 I will call out the names of some possible
21 witnesses. I see that some of the witnesses may be
22 present and if you are present please stand and face the
23 jury panel when I call out your name. James Atkinson of
24 the Sumter County Sheriff's Department. Cindy Pierson,
25 formerly of the Sumter County Sheriff's office. Mitch

State of South Carolina vs. Leroy Clifton Gibbs, III 11

1 Hanson, also formerly from the Sumter County Sheriff's
2 office. Investigator Wayne Dubose of the Sumter County
3 Sheriff's office. Lieutenant Chris Moore of the Sumter
4 County Sheriff's Office, Lieutenant Dale Horton of the
5 Sheriff's Office and Kimberly Gibbs. Is there anyone on
6 this jury panel or anyone in your immediate family who
7 first of all might be related by blood or marriage to any
8 of these witnesses or do you have any connection or
9 acquaintance or association with them at all and that
10 would include obviously perhaps go to school with them or
11 go to church with them or be in any type of organization
12 with them or have any type of connection or acquaintance
13 with them at all. Personally, professionally or perhaps
14 otherwise.

15 (Jurors stand)

16 The Court: Your name, please ma'am?

17 Juror: Natalie Johnston.

18 The Court: All right. Ms. Johnston, first of
19 all just the name of the potential witness. I don't need
20 to know anything else just the name.

21 Witness: Investigator Wayne Dubose.

22 The Court: All right. Do you know him or are
23 you related to him?

24 Ms. Johnston: Previous acquaintance.

25 The Court: How long have you known him, do you

State of South Carolina vs. Leroy Clifton Gibbs, III 12

1 think?

2 Ms. Johnston: Maybe fifteen, twenty years.

3 The Court: Could you be fair and impartial if
4 you were a juror in this case and he were to testify?

5 Ms. Johnston: Yes.

6 The Court: Could you set aside the fact that
7 you know him or have known him and base your verdict
8 entirely on the evidence of the law?

9 Ms. Johnston: Yes, sir.

10 The Court: Your name, sir?

11 Mr. Hetsel: John Hetsel.

12 The Court: Your last name again?

13 Mr. Hetsel: Hetsel.

14 The Court: All right Mr. Hetcel is number 71.
15 Just the name, first. Which witness or witnesses?

16 Mr. Hetcel: Lieutenant Chris Moore.

17 The Court: You know him or are you related to
18 him?

19 Mr. Hetcel: I know him.

20 The Court: How long have you known him?

21 Mr. Hetcel: I would say seven years.

22 The Court: Is that job-related or is that a
23 social acquaintance?

24 Mr. Hetcel: Job related.

25 The Court: What is it that you do?

State of South Carolina vs. Leroy Clifton Gibbs, III 13

1 Mr. Hetcel: I'm a manager at the Piggly Wiggly
2 and he's worked security there.

3 The Court: Okay and if that is the case, sir,
4 could you be completely fair and impartial if you were a
5 juror in this case and he were to testify?

6 Mr. Hetcel: Yes, sir.

7 The Court: Would you completely set aside that
8 circumstance and base your verdict on the evidence in the
9 law?

10 Mr. Hetcel: Yes, sir.

11 The Court: Which Piggly Wiggly was it?

12 Mr. Hetcel: The one on Broad Street.

13 The Court: Are you still employed there?

14 Mr. Hetcel: No, I'm at Pinewood Road now.

15 The Court: Does he ever work security at
16 Pinewood Road?

17 Mr. Hetcel: No.

18 The Court: All right. Thank you, Mr. Hetcel.
19 Your name, sir.

20 Juror: Talmadge Riddick.

21 The Court: Last name?

22 Mr. Riddick: Riddick.

23 The Court: All right. Mr. Riddick. First of
24 all, just the name or names of the witnesses?

25 Mr. Riddick: Dale Horton.

State of South Carolina vs. Leroy Clifton Gibbs, III 14

1 The Court: Are you related to him or are you
2 just acquainted with him?

3 Mr. Riddick: Just know him

4 The Court: How long have you known him?

5 Mr. Riddick: About 15 years.

6 The Court: Is that job-related or personal
7 acquaintance?

8 Mr. Riddick: His wife was my choir teacher in
9 high school.

10 The Court: All right. How long ago was that,
11 sir?

12 Mr. Riddick: Fifteen years, I guess.

13 The Court: Okay. If you were a juror in this
14 case, could you set all of that aside completely and base
15 your verdict on the evidenced in the law and be
16 completely fair and impartial?

17 Mr. Riddick: Yes, sir.

18 The Court: Thank you, sir.

19 Mr. Meadors: Judge, could we approach?

20 The Court: Yes, sir.

21 (Counsel approach the bench)

22 The Court: All right. Two other possible
23 witnesses Ladies and Gentlemen that I simply overlooked
24 on the list. Investigator Tripp Mayes of the Sumter
25 County Sheriff's Office and Investigator William Welch of

Jury Selection

15

1 the Sumter County Sheriff's Office. Is there anyone who
2 knows of any bias or prejudice that you might have for or
3 against the State or the Defendant, any of the attorneys
4 or any of the possible witnesses? Is there anyone who
5 knows of any reason why you should not serve as a juror
6 during the trial of this case? In additional questions
7 from the State?

8 Mr. Meadors: No sir, Your Honor. Thank you.

9 The Court: Any from the Defendant?

10 Mr. Brooks: No, sir.

11 The Court: Okay. Both sides agree five and
12 five?

13 Mr. Meadors: Yes, sir.

14 The Court: Mr. Brooks, five and five?

15 Mr. Brooks: Yes, sir.

16 The Court: Does one alternate suit everyone?

17 Mr. Meadors: Yes, sir.

18 Mr. Brooks: Yes, sir.

19 The Court: Okay. You know the procedure Ladies
20 and Gentlemen. If your name is called please come forward
21 down the center or middle aisle whichever is convenient
22 for you, come forward and face the back of the courtroom.

23 Bailiff: Please the Court, Your Honor.

24 The Court: Yes, sir.

25 **(Jury selection begins)**

Jury Selection

16

1 Bailiff: Juror number 49. Ronald Floyd. What
2 sayeth the State.

3 Mr. Meadors: Please present the juror.

4 Bailiff: What sayeth the defendant.

5 Mr. Brooks: Please seat the juror.

6 Bailiff: Have a seat in the jury box. Juror
7 number 109 Lisa McCoy. What sayeth the state?

8 Mr. Meadors: Please present the juror.

9 Bailiff: What saith the defendant?

10 Mr. Brooks. Please seat the juror.

11 Bailiff: Have a seat in the jury box, please
12 ma'am. Juror number 50, Eric Fortin. What sayeth the State?

13 Mr. Meadors: Please present the juror.

14 Bailiff: What sayeth the defendant?

15 Mr. Brooks: Give me just a moment. Seat the
16 juror.

17 Bailiff: Have a seat in the jury box. Juror
18 number 97 Clifton Lane. What sayeth the state?

19 Mr. Meadors: Please present the juror.

20 Bailiff: What sayeth the defendant?

21 Mr. Brooks: Indulge the court. What is the juror
22 number again?

23 Bailiff: Juror 97.

24 Mr. Brooks: Please seat the juror.

25 Bailiff: Please have a seat in the jury box.

Jury Selection

17

1 Juror number 71 John Hetcel. What sayeth the State?

2 Mr. Meadors: Please present the juror.

3 Bailiff: What sayeth the defendant?

4 Mr. Brooks: Excuse this juror.

5 Bailiff: Have a seat back with the jury panel,
6 you've been excused from this trial. Juror number 119
7 Frank Montgomery. What saith the State?

8 Mr. Meadors: Please excuse the juror.

9 Bailiff: Have a seat back out with the jury
10 panel. You have been excused from the trial of this case.
11 Juror number 73 Frederick M. Hodge. What saith the State?

12 Mr. Meadors: Please present the juror.

13 Bailiff: What sayeth the Defendant?

14 Mr. Brooks: Excuse the juror from the trial of
15 this case.

16 Bailiff: Please have a seat back with the jury
17 panel, you have been excused from this trial, please.
18 Juror number 23 George Brown. What saith the State?

19 Mr. Meadors: Please excuse the juror.

20 Bailiff: Please have a seat back with the jury
21 panel, you have been excused from the trial of this case.
22 Juror number 1 Aaron B. Abercrombie. What sayeth the state?

23 Mr. Meadors: Present the juror.

24 Bailiff: What sayeth the defendant?

25 Mr. Brooks: Please seat the juror.

Jury Selection

18

1 Bailiff: Have a seat in the jury box, please,
2 sir. Juror number 143, Talmadge Riddick. What sayeth
3 the State?

4 Mr. Meadors: Please present the juror.

5 Bailiff: What says the Defendant?

6 Mr. Brooks: Please excuse this juror.

7 Bailiff: Please have seat back with the jury
8 panel. You have been excused from the trial of this
9 case. Norma J. Crosby, Juror number 41. What sayeth the
10 state?

11 Mr. Meadors: Please present the juror.

12 Bailiff: What says the Defendant.

13 Mr. Brooks: Please excuse this juror.

14 Bailiff: Please have a seat back with the jury
15 panel, you've been excused from this trial. Jennifer N.
16 Keith, Juror number 89. What sayeth the State?

17 Mr. Meadors: Please present the juror.

18 Bailiff: What sayeth the Defendant?

19 Mr. Brooks: Please seat the juror.

20 Bailiff: Have a seat in the jury box. James E.
21 Johnson, Juror number 84. What sayeth the State?

22 Mr. Meadors: Please excuse the juror from the
23 trial of this case.

24 Bailiff: Please have a seat back with the jury
25 panel, you've been excused from the trial of this case.

Jury Selection

19

1 Calina C. Floyd, Juror number 48. What sayeth the State?

2 Mr. Meadors: Please present the juror.

3 Bailiff: What says the Defendant?

4 Mr. Brooks: Please seat the juror.

5 Bailiff: Please have a seat in the juror box.

6 Tabatha D. McLeod, Juror number 114. What sayeth the
7 State?

8 Mr. Meadors: Please present the juror.

9 Bailiff: What says the Defendant?

10 Mr. Brooks: Please seat the juror.

11 Bailiff: Have a seat in the jury box. Vallira

12 D. Johnson, Juror number 86. What sayeth the State?

13 Mr. Meadors: Please seat the juror.

14 Bailiff: What says the Defendant?

15 Mr. Brooks: Please seat the juror.

16 Bailiff: Have a seat in the jury box. Daniel

17 M. Welch, Juror number 170. What sayeth the State?

18 Mr. Meadors: Please seat the juror.

19 Bailiff: What says the Defendant?

20 Mr. Brooks: Please seat the juror.

21 Bailiff: Please have a seat in the jury box.

22 John E. Capers, Juror number 29. What sayeth the State?

23 Mr. Meadors: Please excuse the juror.

24 Bailiff: Please have a seat back with the jury
25 panel you've been excused from the trial of this case.

Jury Selection

20

1 Susan L. Bessette, Juror number 14. What sayeth the
2 State?

3 Mr. Meadors: Please present the juror.

4 Bailiff: What says the Defendant?

5 Mr. Brooks: Please excuse the juror.

6 Bailiff: Have a seat back with the jury panel,
7 you've been excused from the trial of this case. Linda
8 F. Garrett, Juror number 57. What sayeth the State?

9 Mr. Meadors: Please present the juror.

10 Bailiff: What says the Defendant?

11 Mr. Brooks: Please seat the juror.

12 Bailiff: Please have a seat in the jury box.

13 Alexis R. Navarre, Juror number 124. What sayeth the
14 State?

15 Mr. Meadors: Please present the juror.

16 Bailiff: Any reason for cause from the
17 Defendant?

18 Mr. Brooks: Yes, sir. May we approach?

19 The Court: All right.

20 (Counsel approach bench)

21 The Court: All right. You can have a seat in
22 the jury box. One Alternate.

23 Bailiff: Alternate Juror. Juror number 134,
24 Tiffani L. Porter. What sayeth the State?

25 Mr. Meadors: Please present the juror.

State of South Carolina v. Leroy Clifton Gibbs, III

21

1 Bailiff: What says the Defendant?

2 Mr. Brooks: Please seat the juror.

3 Bailiff: Please have a seat in the juror box,
4 you are the alternate juror.

5 The Court: All right. From the State or the
6 Defendant are there any motions or other issues or
7 matters pertaining to jury selection?

8 Mr. Meadors: Nothing from the State, Your
9 Honor.

10 The Court: Mr. Brooks?

11 Mr. Brooks: One issue, Judge, that we
12 approached the bench on.

13 The Court: All right, Ladies and Gentlemen that
14 were not selected for the trial of this case if you will
15 call the number that you have after 6:00 this evening as
16 you have this week simply follow the instructions that
17 you hear. If I do see you tomorrow, we'll go forward at
18 that time. If not, I certainly do appreciate your
19 patience and your service this week. Please call that
20 number after 6:00 this evening.

21 (Panel excused at 10:26 a.m.)

22 The Court: We will begin the trial in just a
23 minute. If you'll please go to your jury room for just a
24 minute. Of course, some of you have already been picked
25 to be a jury this week so you know what I'm going to tell

1 you and that is that you can't talk about this case at
2 all. There will be issues present, evidence presented and
3 you will be taking an oath in just a few minutes to try
4 the case. The law says that you can't talk about the
5 case until I tell you that you can. The oath that you
6 will take will be one that you will base your verdict on
7 the evidence so don't talk about the case until exactly I
8 tell you that you can. Also, don't undertake to do any
9 research. I know that once you are back there in the jury
10 room there is no anyway you can do that, but please go
11 back in your jury room and take this opportunity to get
12 to know one another but don't talk about the case. Ms.
13 McLeod, I'm going to appoint you as foreperson of this
14 jury and Mr. Jones will tell you where to sit, Mr.
15 Bradley will tell you where to sit when you come back
16 out. Thank you.

17 (Jury break 10:29 a.m.)

18 The Court: All right. In a brief pretrial
19 conference up here, Mr. Brooks, you indicated that you
20 have a Jackson vs. Denno issue and a issue pertaining to
21 a juror that you just made a motion up here at the bench
22 and there are a couple of more?

23 Mr. Brooks: The Motion is based on the incident
24 report and the substance of the case, the officers had
25 retained arrest warrants for my client and that's what

1 they are testifying to what precipitating them to go to
2 this particular residence looking for my client. These
3 arrest warrants, it's my understanding, they come about
4 because of other buys, things in the incident report
5 about a CI participating in such buys, so I was just
6 wanting to challenge the validity of the arrest warrants
7 whether or not they actually have cause to have these
8 arrest warrants. Obviously, if they didn't there would
9 be no reason to go to the residence. So, in essences
10 that's my motion.

11 The Court: Okay. Let's take care of the juror
12 motion first. You made that motion up here and that was
13 dealing with Mr. Navarre, Juror Number 124. You had a
14 motion up here. I want you to put that on the record.

15 Mr. Brooks: Yes, sir. That's correct, Judge.
16 We would ask that she be stricken for cause. According
17 to her jury information she is married to a gentlemen who
18 works with the United States Air Force as a K-9 handler.
19 In this particular case, I believe, there is going to be
20 some testimony about they brought the K-9 into the
21 residence and the K-9 indicated where the drugs were and
22 that's what participated them to find the drugs in the
23 residence so in light of that we only had five strikes,
24 Judge, it would have been my position that I would have
25 stricken her if I had some strikes left. So, that's why

1 I asked the Court to strike her for cause.

2 The Court: Anything from the State?

3 Mr. Meadors: Your Honor, she indicated that she
4 could be a fair and impartial juror. She answered all the
5 questions, Your Honor, asked. I don't know if we are
6 going to call that K-9 handler or not but I don't think
7 that's an issue in this case. She said she could be fair
8 and impartial.

9 The Court: Mr. Brooks?

10 Mr. Brooks: I think it will become a issue
11 because obviously they are going to have to talk about
12 where they all found the drugs and in order to talk about
13 where they found the drugs, they are going to have to
14 mention the fact that they brought a K-9 in.

15 The Court: I'm just curious. Is there any
16 dispute that whatever they did find was in fact either
17 crack cocaine or powder cocaine. Is there any dispute
18 that that's what it was? I assume that the defense would
19 be that it's not his. Not that it wasn't there.

20 Mr. Brooks: That's correct.

21 The Court: Well, two things. I respectfully
22 deny your motion. There was no request for voir dire on
23 that. The jury could have been question about, in light
24 of what her husband does could she be fair and impartial
25 if there were a witness in this case that was a K-9

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 25

1 handler. Absent that question, there's -- I'm not going
2 , to go back and question her now. Once the striking
3 starts, no other questions are permitted. Also, I don't
4 see, for whatever it's worth, any issue with what was
5 found, whether it was found with the dog, a cat or a
6 human being. The drugs were found and I assume the
7 defense is going to be, well, the State has to prove they
8 are his.

9 Mr. Brooks: Right.

10 The Court: He doesn't have to prove they are
11 not his. That's going to be a issue in the case and it
12 really won't matter whether a dog found them or something
13 else found them. So, I'm going to deny your motion. All
14 right. What's the suggested order that we go with the
15 next motion. Jackson vs. Denno or the probable cause
16 issue?

17 Mr. Meadors: I think I can do both at one.

18 The Court: Okay. We need to separate it if we
19 can. Okay. Call your first witness, Mr. Meadors.

20 Mr. Meadors: Wayne Dubose.

21 Bailiff: Place your left hand on the Bible,
22 raise your right hand, please. State your name, please.

23 Mr. Dubose: Wayne Charles Dubose.

24 Bailiff: Do you solemnly swear or affirm that
25 the testimony you give to the Court to be the truth, the

1 whole truth and nothing but the truth, so help you God?

2 Mr. Dubose: Yes, sir.

3 Bailiff: Thank you. Have a seat up here,
4 please.

5 Mr. Brooks: Judge, before we begin can we deal
6 with the representation issue?

7 The Court: I'm sorry. Why don't you step down
8 just for a second Mr. Dubose. Do you have a issue with
9 that?

10 Mr. Brooks: Not the stuff that we had
11 previously talked about, Judge, you've already taken care
12 of that. But, this is a issue with my client, he wants to
13 address the court about me representing him.

14 The Court: All right.

15 Mr. Brooks: He says that he needs to speak to
16 the Court.

17 The Court: All right. Mr. Gibbs, come closer
18 to the microphone if you will, please, sir. I need to
19 hear you. He doesn't need to be sworn in. Just let me
20 know what your issue is, please.

21 Mr. Gibbs: Yes, my issue is I was informed that
22 I was going to trial this court term for a different
23 charge.

24 The Court: For a different charge?

25 Mr. Gibbs: Yes, sir.

State of South Carolina v. Leroy Clifton Gibbs, III

27

1 The Court: What charge was that?

2 Mr. Gibbs: If I'm not mistaking for ...

3 The Court: Does it have like a little number up
4 there?

5 Mr. Gibbs: Yeah, it's a form that I had with a
6 charge number on it.

7 The Court: On the upper right hand corner,
8 what's the number, 2000 and what?

9 Mr. Gibbs: 2009-CP-43-01526.

10 The Court: CP?

11 Mr. Brooks: Yes. He's quoting a civil statute,
12 a drug forfeiture action.

13 The Court: Okay. All right.

14 Mr. Brooks: There was a drug seizure.

15 The Court: All right. So, you thought you were
16 going to trial on a drug forfeiture case or a forfeiture
17 case?

18 Mr. Gibbs: Another case; yes, sir; yes, sir. I
19 had my attorney here to represent me on that case.

20 The Court: Who was that?

21 Mr. Gibbs: Mr. Will Brunson.

22 The Court: Okay.

23 Mr. Gibbs: And I was only informed yesterday
24 that I was being on trial for this case for today. I
25 never got a chance to, you know, subpoena my witnesses on

1 my behalf. I never receive any type of motion from the
2 public defender office, I mean, the prosecutor office,
3 this office.

4 The Court: What kind of motion would that be?

5 Mr. Gibbs: A motion for discovery on this case?

6 The Court: You never saw any discovery?

7 Mr. Gibbs: I never seen discovery from my prior
8 attorney for my present attorney. I haven't seen - and
9 it's been four years and ten months.

10 The Court: How many other cases do you have
11 pending?

12 Mr. Gibbs: Like twenty something.

13 The Court: Twenty something counts?

14 Mr. Gibbs: Yes, sir. And I have no motion from
15 any one of them. The only motion that I had was charges
16 that I was going to get my paid attorney. That's the
17 only motion that I ever received. My other prior charges
18 that I have with the public defender or my other charges
19 I have never receive no motion of discovery from them.
20 This attorney or prior attorney I had before him.

21 The Court: Who was that?

22 Mr. Gibbs: David Sullivan.

23 The Court: All right. Anything else you'd like
24 to tell me at this point.

25 Mr. Gibbs: It's due process. I asked for a

State of South Carolina v. Leroy Clifton Gibbs, III

29

1 motion for discovery, I mean, I also ask for a motion for
2 a speedy trial.

3 The Court: Well, you go a speedy trial, it's
4 here. Speedy or not your trial is here.

5 Mr. Gibbs: And I also, you know, what I'm
6 saying misrepresentation because of the fact I asked my
7 attorney to get this motion so I could have my case. I
8 don't have no type of motion I don't feel like we ...

9 The Court: You keep saying you don't have know
10 type of motion, you ...

11 Mr. Gibbs: Yeah, or discovery. Basically, I
12 don't have no discovery dealing with this case that we,
13 you know, go with today, Your Honor.

14 The Court: Okay. Anything else at this point?

15 Mr. Gibbs: That's it.

16 The Court: Mr. Brooks?

17 Mr. Brooks: Judge, regards to the particular
18 case. As he's indicated he has got numerous charges. I
19 contacted the solicitor's office they told me they were
20 going to call a case. They told me and Mr. Brunson out
21 there a few weeks ago, they said we going to call one of
22 ya'll's cases up. So, we knew what the situation was.
23 Also, we were in negotiations. And this week, today is
24 Thursday, Tuesday, as Your Honor, knows Mr. Brown, Mr.
25 Meadors, said, hey it's going to be your case Mr. Brooks

1 and, of course, I still have a lot of them and I asked them
2 yesterday which one and they told me which one. December
3 23, 2008. They specified to me, the house, which house,
4 when they went into the house and what they found. They
5 being the police. I told my client that yesterday. As a
6 matter of fact, as Mr. Meadors may indicate, my client
7 actually went to Mr. Meadors yesterday and asked him and
8 Mr. Meadors told him the December 23, 2008. All of this
9 took place around yesterday morning.

10 The Court: Okay. How about the discovery part
11 from you. Do you care to comment on the fact that Mr.
12 Gibbs says he hasn't seen him discovery?

13 Mr. Brooks: Well, once we knew exactly what the
14 case was, which one they were going to call, I told him,
15 I said, we pulled it, based on what we've got this is the
16 discovery, which is they are going to come in. They are
17 going to say we came to your house looking for you. This
18 is what we got. Your wife, Kimberly, who is a co-
19 Defendant gave us consent to search. Prior to the start
20 of the case all I did was I showed him the incident
21 report, which - I don't know what discussions he had with
22 David Sullivan prior to me, you know, getting his case
23 but I basically said this is what they are going to testify
24 to, which is, from my standpoint is real simple, they are
25 going to come in and they are going to say we were coming out

1 there to arrest you and this is what happened. And then
2 Kimberly Gibbs gave us consent to search and this is what we
3 found. Mr. Meadors, may correct me if I'm wrong, that's
4 basically the discovery.

5 The Court: It's going to be proving that it's
6 under this dominion and control of the drugs?

7 Mr. Brooks: That's correct. Mr. Meadors called
8 me yesterday and said they had some pictures of the house
9 and they gave them to me this morning, which is a couple
10 of photos. So, when my client talks about discovery,
11 Judge, that's basically it along with the drug analysis,
12 which is standard, you know, chain of custody, went from
13 A to B.

14 The Court: Mr. Gibbs, what is it that you're
15 asking me to do?

16 Mr. Gibbs: Everything that he stating that he
17 have he never brought it to my attention.

18 The Court: Have you seen it now?

19 Mr. Gibbs: No, sir. The only thing I've seen is
20 what he brought me here yesterday telling me that my
21 trial was being today on this case. I asked him dealing
22 with my motion, what motion, I mean, what discovery do
23 you have with my case. He told me that he don't have no
24 motion. The only thing he had is what they are going to
25 present. What they said that they were going to present

1 to him.

2 The Court: Well, that's what discovery
3 typically is.

4 Mr. Gibbs: Okay. Then they give me time to
5 subpoena my witnesses. I never, this is - because like I
6 say ...

7 The Court: Have you given him names?

8 Mr. Gibbs: Yeah, I gave him and my prior
9 attorney names.

10 The Court: What were the names?

11 Mr. Gibbs: It was Darnell Green, Jameco(sp)
12 Jackson and ...

13 The Court: Are any of those people here? If
14 you are here, stand up. All right. There's one witness.
15 Your witness is here. What's your name?

16 Witness: My name is Latroy Gibbs.

17 The Court: All right. You're under subpoena.
18 Your name, please.

19 Witness: Darnell Green.

20 The Court: All right. You're under subpoena.
21 All right. You've got two of them here.

22 Mr. Gibbs: And Jameco Jackson.

23 The Court: Is Jameco Jackson here? Do y'all
24 know where he is?

25 Speaker: He died.

1 The Court: He died. Well, then he can't be
2 subpoena. You said Mr. Gibbs, Mr. Green and another one.

3 Mr. Gibbs: Jameco Jackson.

4 The Court: All right. So, there's three people.

5 Mr. Gibbs: Those three.

6 The Court: Those two are here. They can't leave
7 until I tell them they can. Okay?

8 Mr. Gibbs: All right. Also, Your Honor,
9 dealing with -- from the hearing that I heard, they stated
10 that they had audio and video. I never get a chance to
11 see the audio and video, which I requested.

12 The Court: Any audio or video in this case?

13 Mr. Meadors: No, sir.

14 The Court: All right. Are you talking about
15 the preliminary in this case or ...

16 Mr. Gibbs: The preliminary on this case. They
17 stated at my preliminary hearing that ...

18 The Court: Do you have a transcript?

19 Mr. Gibbs: Yes, sir.

20 The Court: Your lawyer can cross examine them
21 on it. Okay. Mr. Meadors is saying it doesn't exist. If
22 your lawyer cross examines him on it I'll allow that testimony
23 if it's relevant, otherwise ...

24 Mr. Gibbs: Okay. Also, dealing with the ... search
25 and seizure.

1 The Court: He's going to bring everything.

2 Mr. Gibbs: I request that because my prior
3 attorney concerning the consent form they said they have.
4 It was said from the officer that it was signed while I
5 was present ...

6 The Court: Okay. That's going to be covered in
7 just a minute.

8 Mr. Gibbs: Okay.

9 The Court: That's one of the issues that your
10 lawyer, Mr. Brooks has made. So, that's going to be
11 covered in just a minute. You will be able to talk to
12 him about that as that motion is being presented.

13 Mr. Gibbs: Okay. I also feel that the Court
14 should give me a chance to prepare my case because I
15 never had no time for discovery or anything to show my
16 innocents.

17 The Court: You've covered that. Are there any
18 other issues that you want to bring to my attention?

19 Mr. Gibbs: That's it.

20 The Court: Thank you, sir. You can have a
21 seat. Any other comments Mr. Brooks?

22 Mr. Brooks: Judge, that's it.

23 The Court: Mr. Meadors, Mr. Brown?

24 Mr. Meadors: May it please the Court. This case
25 and indictment number was put on the list, excuse me, the

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 35

1 trial list and the appropriate number of days previously
2 it was published. It had the case number and another case
3 number. Mr. Brunson - Mr. Brown had been in contact
4 with Mr. Brunson and Mr. Brooks and told them one of
5 these two cases was going to be tried. So, we think they
6 did get sufficient notice of the particular case that was
7 going to be called. On August 21, 2009, Kathryn Fant
8 shows a receipt of discovery by David Sullivan in this
9 particular case, Your Honor. I believe Mr. Brooks has
10 all these discovery materials and has had those. The
11 only addition would be the pictures I became aware of and
12 gave to Mr. Brooks yesterday and those are some pictures
13 of the inside of the house. Other than that I think he's
14 had discovery through his attorney for quite some time.
15 Particular since Mr. Sullivan left. Judge, I think
16 that's all I have as to that. That's all we have. We
17 are prepared to proceed with Mr. Brooks Motion.

18 The Court: Anything else, Mr. Brooks?

19 Mr. Brooks: Nothing else, Judge.

20 The Court: Anything else, Mr. Gibbs? Anything
21 in response to what Mr. Meadors said would be a better
22 way for me to put it.

23 Mr. Gibbs: Nah, nothing.

24 The Court: All right. Call your first witness,
25 please.

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 36

1 Mr. Meadors: May it please the Court?

2 The Court: Yes, sir.

3 Mr. Meadors: We call Wayne Dubose.

4 Bailiff: Come up Mr. Dubose and be sworn. State
5 your full name and spell your last name for the record.

6 Mr. Dubose: Wayne Charles Dubose, D-U-B-O-S-E.

7 Mr. Meadors: May it please the Court.

8 The Court: Yes.

9 Proffer Testimony Mr. Dubose - Examination by Mr.

10 Meadors:

11 Q: Mr. Dubose, on December 23rd of 2008, what was
12 your job at the Sheriff's Department?

13 A: I was a narcotics investigator.

14 Q: I'm going to ask you questions specifically for
15 this proceeding in regard to the Defendant Mr.
16 Gibbs. And that is the Leroy Clifton Gibbs,
17 III?

18 A: Yes, sir.

19 Q: Please tell the Judge prior to December 23,
20 2008, had you and/or some of your members of
21 you drug unit made uncovered purchases from Mr.
22 Gibbs?

23 A: Yes, sir. We had.

24 Q: Can you tell the Judge when these undercover
25 purchases were made?

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 37

1 A: Yes, sir. October 29, 2008 an officer with the
2 Sumter County Sheriff's Office purchased crack
3 cocaine from Mr. Leroy Gibbs at [REDACTED] Madison
4 Avenue.

5 Q: Was there a time in November where a purchase
6 was made?

7 A: Yes, sir. There was another purchase made
8 November 24, 2008 from Mr. Gibbs. Also, out of
9 the residence of Madison Avenue.

10 Q: When you say out of the residence, was the
11 purchase made, was Mr. Gibbs identified coming
12 from that particular residence?

13 A: That's correct. We have an informant. He
14 called Mr. Gibbs and the three instances, all
15 the purchases, Mr. Gibbs told the informant
16 where to come, where to meet him for each
17 purchases. Those first two cases Mr. Gibbs
18 told him to meet him at [REDACTED] Madison Avenue.

19 Q: Did you make another undercover purchase from
20 Defendant Gibbs?

21 A: We did. On December 1, 2008, again, we made
22 another purchase of crack cocaine from Mr.
23 Gibbs at the Madison Avenue.

24 Q: That's [REDACTED] Madison Avenue?

25 A: That's correct.

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 38

1 Q: Now, were there two other undercover purchases
2 against Mr. Gibbs?

3 A: There were two more purchases after those.

4 Q: Was that on 12-17-08 and 12-18-08?

5 A: They were.

6 Q: But those were not made at the residence,
7 correct?

8 A: They were not made at the residence but they
9 were made by Mr. Gibbs and both of them were
10 crack cocaine.

11 Q: Now, after you made three purchases from [REDACTED]
12 Madison Avenue, you didn't do a search warrant?

13 A: No, sir. I was going to do a search warrant
14 after the purchase on December 1st. We didn't -
15 I didn't get a search warrant within the 72
16 hours so therefore we went ahead and tried to
17 do another buy from Mr. Gibbs. That next buy
18 we did on Mr. Gibbs was December 17th, which was
19 sixteen days later. I did not get a search
20 warrant. On the other two buys we did on the
21 17th and 18th, were not ...

22 Q: When you say other two buys, there's a buy on
23 the 17th of December of '08 and 18th, December
24 of '08. Those were not at Madison Avenue?

25 A: That's correct. The buy on December 17, 2008

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 39

1 occurred at Manning Avenue on Patricia Drive
2 where the Young's Market is.

3 Q: And the one on the 18th was Vernon?

4 A: That's correct.

5 Q: So, in your opinion, too much time had gone by
6 for you to grab a search warrant?

7 A: Yes, sir.

8 Q: On Madison Avenue?

9 A: 72 hours had passed so I didn't get a search
10 warrant.

11 Q: What decision did you make on December 23, 2008
12 to do in relation to the Defendant, Leroy
13 Clifton Gibbs, III?

14 A: We were doing a warrant roundup or we were
15 going to serve some arrest warrants that we
16 had. At that time, I did have warrants for all
17 these purchases and we went to that residence
18 looking for Mr. Gibbs on those distribution
19 warrants.

20 Q: About what time of day was it, if you remember?

21 A: I don't recall.

22 Q: The incident report says it was approximately
23 12:00, is that right, or do you need to look at
24 it?

25 A: Yes, sir. I can look at it. It would have

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 40

1 been that morning. I believe we left around
2 12:00 that day. Yes, sir. We actually arrived
3 at 12:00 and we were there until 2:00.

4 The Court: Is that noon?

5 A: Yes, sir.

6 Q: Now, let's take the Judge to [REDACTED] Madison. Now,
7 you're there. Who else is with you on December
8 23rd of '08 at high noon.

9 A: When we went to the residence - do you want me
10 to go through ...

11 Q: Yes, sir.

12 A: That morning we went to [REDACTED] Madison Avenue. We
13 were looking for Mr. Gibbs. We arrived at the
14 residence. We noticed a White Neon parked in
15 the back yard, which Mr. Gibbs was driving that
16 White Neon on the purchases. We believed at
17 that time he was there. We knocked on the
18 door. Officers heard some noise inside. In a
19 minute of two someone peeked out of the window
20 and then finally Ms. Gibbs came to the door.

21 Q: Ms. Kimberly Gibbs?

22 A: That's right. We informed her at that time
23 why we were there. That we had arrest warrants
24 for Leroy Gibbs. At that time, she advised
25 that he was in there.

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 41

1 Q: Did she give you permission to come in?

2 A: She told us to come on in. We started in and
3 we encountered Mr. Gibbs basically in the
4 hallway. He had come out of the bedroom. He
5 appeared to have been in the bed because he on
6 a t-shirt and boxers.

7 Q: So you encountered -- you knew him by name and
8 sight, I presume?

9 A: That's correct.

10 Q: So it was Mr. Leroy Clifton Gibbs, III?

11 A: That's right.

12 Q: And you had arrest warrants for these prior
13 buys you had made, correct?

14 A: That's correct.

15 Q: So, you're now there confronted with Mr. Gibbs
16 in the hallway going toward his bedroom. What
17 happened?

18 A: At that time he was handcuffed and mirandized.
19 He was placed in the living room on the couch.

20 Q: What was he wearing when he got up. You said it
21 looked like he had been in the bed?

22 A: I believe he had on a t-shirt. He had boxers
23 on.

24 Q: What, if anything, did you or he do as far as
25 putting pants on?

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 42

1 A: Well, they handcuffed him and Mr. Gibbs and
2 Mrs. Gibbs were sitting in the livingroom on
3 the couch. He asked about getting his pants.
4 His pants were in the bedroom. I went and got
5 his pants. For safety I went through them to
6 make sure there wasn't any weapon and located -
7 I saw the money in the pocket.

8 Q: How much was it. Was it \$1,355.00?

9 A: It was \$1,355.00 in the pocket.

10 Q: Okay.

11 A: At that time, I went ahead and let him put his
12 pants on . While were in there in the bedroom,
13 we could smell a slight odor of marijuana. Ms.
14 Gibbs was asked about it. Mr. Gibbs was asked
15 about it. I asked Ms. Gibbs at that time - we
16 had a certified drug dog on the scene. I asked
17 her at that time if there was any drugs in the
18 residence? She said there was none. Mr. Gibbs
19 said there was none. We had the drug dog come
20 in after we asked her if she mind that we
21 brought the dog in. She said no. We brought
22 the dog in the bedroom and the dog didn't
23 indicate in the room. We did notice when we
24 were getting the pants there was also a small
25 marijuana blunt or roach in the ash tray in the

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 43

1 bedroom.. That led us to believe that probably
2 was more marijuana in the house. We approached
3 Mr. Gibbs, asked Mr. Gibbs for consent. Asked
4 Ms. Gibbs, Kimberly Gibbs for consent. Mr.
5 Gibbs advised us at that time that he did not
6 live at the house. And Ms. Gibbs, at that
7 time, told us that she didn't have anything
8 illegal in the house. She gave us verbal
9 consent. We also went through a written
10 consent that the sheriff's office had. She
11 signed the written consent saying that we could
12 search the house.

13 Mr. Meadors: Beg the Court's indulgence. May I
14 approach, Judge.

15 The Court: Yes.

16 Q: I'm going to show you what's State's Exhibit
17 Number One for I.D., you mentioned a Consent to
18 Search, is that it?

19 A: Yes, sir.

20 Q: Were you able to get - did Ms. Gibbs' sign
21 that?

22 A: Yes.

23 Q: And agreed to let you search that residence?

24 A: Yes.

25 Q: And I believe you said Mr. Gibbs denied that he

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 44

1 stayed there, correct?

2 A: Mr. Gibbs said that he did not live there.

3 Q: Now, before we, let's just back up just a bit.

4 You mentioned earlier that Mr. Gibbs, at this
5 point, was advised of his Miranda Rights. Who
6 did that?

7 A: I did. I advised Mr. and Mrs. Gibbs.

8 Q: Where were you when you did that?

9 A: We were in the livingroom area.

10 Q: Tell the Judge how you did that.

11 A: I carry a card and mirandized them from my
12 card.

13 Q: Can you tell us what you told them?

14 A: I have the card in my pocket.

15 Q: Take your time.

16 A: This may not be the exact card. I have a couple of
17 them.

18 Q: Can you do it for the Judge like you did for them?

19 A: You have the right to remain silent. Anything
20 you say can and will be used against you in
21 court. You have a right to consult with an
22 attorney and have an attorney present during
23 question. If you cannot afford an attorney one
24 will be provided to you at no costs. One will
25 be provided.

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 45

1 Q: All right. You've been around. I don't mean
2 that bad. For these purposes, Mr. Gibbs has
3 had contact with law enforcement before,
4 correct?

5 A: Yes, sir.

6 Q: When you read him his rights at this point in
7 the house, I don't know if you said the
8 livingroom or where, did he appear to
9 understand his rights?

10 A: Yes, sir.

11 Q: And did he tell you I understood?

12 A: I don't recall if he told us if he did or not.

13 Q: So, at that time he didn't tell you anything
14 anyway. He just said he didn't live there,
15 correct?

16 A: I advised him that we had an arrest warrant for
17 him for purchased at that house. He denies
18 that he had anything to do with them.

19 Q: Now, after that ...

20 Mr. Meadors: Beg the Court's indulgence.

21 The Court: Okay.

22 A: I read him his rights and I understood he
23 understood his rights.

24 Q: Was he taken away at that point by two other
25 officers?

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 46

1 A: Yes. Officer Moore and Horton.

2 Q: Sitting right here in the Courtroom?

3 A: Yes. At that time, they transported him to the
4 jail.

5 Q: And you don't know anything about what happened
6 when they transported him?

7 A: No, sir.

8 Q: After that what did you do at the scene?

9 A: At that time, I had Ms. Gibbs sit down at the
10 kitchen table or dining room area and had the
11 officers begin searching the house.
12 Investigator Mayes was there and he started
13 photographing the house before we started
14 searching it. As things were located he would
15 photograph it. They would make me aware of what
16 was found and I would go get it and log it on
17 this consent and then I would place it into a
18 bag and put it into evidence.

19 Q: For these purchases, I don't believe it's
20 specific but you did find a little bit of
21 marijuana and some cocaine in that residence,
22 correct?

23 A: Yes, sir.

24 Q: Took pictures of it?

25 A: Yes, sir.

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 47

1 Q: And you were the scrivener and you put it down
2 on a list where it was found?

3 A: Yes.

4 Q: Okay. After that did you have an occasion to
5 talk to the Defendant, Mr. Gibbs after that
6 this same day or the next day?

7 A: The next day I did.

8 Q: Okay. Tell the Judge about that. Where was
9 that?

10 A: The next day after we located all the items at
11 the residence there was going to be additional
12 charges other than the arrest warrant we had.
13 I went down to the jail the next day and
14 obtained those warrants.

15 Q: Would that be for the charges that you found at
16 the house?

17 A: That's correct.

18 Q: Okay.

19 A: Before I served the warrants because it was a
20 new day I mirandized him again while I was
21 there to serve those warrants.

22 Q: Let me stop you. How did you mirandize him,
23 now. Where are you?

24 A: We were in the little interview room by the
25 jail.

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 48

1 Q: Specifically, tell the Judge what you advised
2 him?

3 A: I advised him for my card.

4 Q: Do it again, for the record.

5 A: I advised him that he had a right to remain
6 silent. Anything he said would be used against
7 him in Court. He had a right to consult an
8 attorney and have him present during
9 questioning. If he could not afford an
10 attorney that one would be provided for him. I
11 asked him if he understood his rights and if he
12 wished to talk to me.

13 Q: Did he say he understood them and he wished to
14 talk to you?

15 A: I don't recall if he understood. I advised him
16 at that time. He didn't tell me that he didn't
17 understand them.

18 Q: As you read through the rights, did he indicate
19 verbally or by nod that he understood them?

20 A: I don't recall.

21 Q: After you read him his rights, the last thing
22 you read you said ... what's the last thing you
23 read to him?

24 A: I actually read to him ever warrant that I had.
25 I read those warrants out to him. At some

Proffer Testimony of Wayne C. Dubose - Exam by Mr. Meadors 49

1 point, while going through warrants, he advised
2 me that none of the drugs were his, nothing in
3 the house was his. That apparently his wife
4 must have had somebody else in the house. They
5 must have been hers because they weren't his.

6 Q: So, after you read him his rights and then you
7 asked him if he understood his rights, did he
8 appear to you to understand them?

9 A: To me; yes, sir.

10 Q: Did he say he didn't understand them?

11 A: He never told me he didn't understand them.

12 Q: Did he tell you I don't want to talk to you?

13 A: No, sir.

14 Q: Based on your experience, he appeared to
15 understand his rights?

16 A: Yes, sir. I think he did.

17 Q: You didn't do any written waiver of rights?

18 A: No, sir.

19 Q: And you're not sure if he indicated orally if
20 he understood his rights or not?

21 A: I don't know if he said he did.

22 Q: Now, was he under the influence of alcohol or
23 drugs, in your opinion?

24 A: No, sir. Not that I know of.

25 Q: Again, we are at the next day at the detention

1 center?

2 A: Yes,

3 Q: And that would be the defendant.

4 A: Yes, sir.

5 Q: Did you hold out any promise, hope or reward?

6 A: No, sir. He denied they were his.

7 Q: Did you serve any warrants on him?

8 A: I did.

9 Q: Did he say anything about, during this process,
10 after you read him his rights. Did he say
11 anything about how he made a living? At this
12 point, had you learned of a statement that he
13 had made previously and did you ask him about
14 this statement?

15 A: I did. After I read him his warrants, the day
16 of the incident, the 23rd, after Moore and
17 Horton returned after transporting him to the
18 jail, I was advised that Mr. Gibbs made a
19 statement in the patrol car, just an out and
20 out question he was just talking and made a
21 statement, I was advised that he made while
22 transporting to get him to the jail he advised
23 Corporal Moore and Sergeant Horton that selling
24 drugs was just a lifestyle for him. The day
25 that I served him with warrants, the next day

Proffer Testimony of Wayne Dubose - Cross by Mr. Brooks 51

1 the 24th, I asked him specifically about that
2 statement that he made to Moore and Horton and
3 his response was - I asked him about the
4 comment he made to Corporal Moore and Sergeant
5 Horton about being a lifestyle and he did
6 response he had to support his family.

7 Q: Is that all the contact you had with Mr. Gibbs
8 regarding this incident?

9 The Court: Was that statement made to you or
10 your conversation with the Defendant is that also made on
11 the 24th where he allegedly said in the patrol car?

12 A: That statement to me was on the 24th. The
13 statement on the 23rd was made to the officers.

14 Q: Okay. Was that the last contact you had with
15 Mr. Gibbs regarding this incident?

16 A: Yes, sir. I believe so. I had no more contact
17 with them.

18 Q: I believe I've represented to the Court before
19 and I want to be sure based on my conversation
20 with you there was no audio or video of this
21 incident?

22 A: No, sir.

23 Q: Is Mr. Gibbs in the courtroom, the person you
24 talked to the jail, who denied this was his
25 stuff and told you this was just his way of

1 making a living, in the courtroom?

2 A: Yes, sir. That's Mr. Gibbs beside Mr. Brooks.

3 Mr. Meadors: Beg the Court's indulgence.

4 The Court: All right.

5 Mr. Meadors: That's all.

6 The Court: Mr. Brooks.

7 Mr. Brooks: Yes, sir.

8 **Proffer Testimony Mr. Dubose - Cross by Mr. Brooks:**

9 Q: Officer DuBose, you testified earlier about
10 buys that were made from Mr. Gibbs.

11 A: Yes, sir.

12 Q: Were these buys made by a CI?

13 A: Yes, sir.

14 Q: The buys themselves were made by the CI?

15 A: Yes, sir.

16 Q: So earlier I think you testified undercover
17 buys. So they are not undercover buys, they
18 were CI buys?

19 A: Yes, sir. It was a confidential informant. We
20 were sending an informant there.

21 Q: Okay. I just want to get clarification. You
22 testified earlier they were undercover buys.
23 When I hear the word undercover, I'm thinking
24 undercover cop goes in. These were not
25 undercover cops, these were CI purchases?

Proffer Testimony of Wayne Dubose - Cross by Mr. Brooks 53

1 A: That's right.

2 Q: Okay. So, all of these purchases that you
3 described and I believe there were about three
4 purchases at the residence and about three
5 purchases some place else other than the
6 residence?

7 A: Yes, sir.

8 Q: There were all CI buys?

9 A: Yes, sir.

10 Q: Okay. You had no audio video of this incident,
11 but you had audio and video of other incidents?

12 A: Some of the buys that were made, we had audio
13 and video, for a couple of them we did have
14 videos of the buys.

15 Q: Okay. But as Mr. Meadors had asked you
16 earlier, for this particular incident coming to
17 the residence where Kimberly Gibbs was arrested
18 also, there is no audio and there was no video?

19 A: NO, sir.

20 Q: Okay. And it's your testimony that after Mr.
21 Gibbs was taken away, Kimberly Gibbs had given
22 you guys verbal consent as well as written
23 consent?

24 A: No, she gave that consent while Mr. Gibbs was
25 still there at the residence and then Mr. Gibbs

1 had said he didn't live there so we went ahead
2 and had the warrant served on him and carried
3 him to the jail. Since she gave us consent I
4 kept her at the residence while we did the
5 search.

6 Q: Okay. So, I'm just trying to fix it in my mind,
7 time wise. She had given you guys permission
8 to search the residence while he was still
9 present?

10 A: Yes, sir.

11 Q: But you had not begun the search at the time,
12 while he was still there?

13 A: No.

14 Q: So, the search was conducted after he was
15 transported away?

16 A: As far as I recall, I believe, he was already
17 taken away when we started the search.

18 Q: Did she sign the written consent to search
19 before or after you guys had conducted the
20 search?

21 A: She signed it before --- I read the form to
22 her, this is a consent search, she had given a
23 verbal consent but then I actually went through
24 the verbal consent and read it to her and had
25 her sign it and then we proceeded to search the

Proffer Testimony of Wayne Dubose - Cross by Mr. Brooks 55

1 residence.

2 Q: So, the top part of this form you had filled
3 out and was explaining this to her, is that
4 correct?

5 A: That's correct.

6 Q: And then she signed it?

7 A: That's correct.

8 Q: And then you and the rest of law enforcement
9 conducted the search and then you wrote down
10 what was obtained during the search?

11 A: The other officers conducted the search and
12 after they found items they contacted me and I
13 would take them.

14 Q: There's a signature down here and it looks like
15 it was signed by Tripp Mayes, down at the right
16 column, is that Tripp Mayes that signed that?

17 A: That is correct.

18 Q: And it looks like that is 12:35 p.m.

19 A: Right.

20 Q: Is that your handwriting there?

21 A: Yes, sir.

22 Q: So, at 12:35 p.m. the search was over?

23 A: Yes, sir.

24 Q: Okay.

25 A: The search for the drugs, the date, time and

1 date that finished that.

2 Q: So, at that time the search was over?

3 A: That's correct.

4 Q: Okay. And you don't necessarily have a time
5 for when Ms. Gibbs actually signed this, do
6 you?

7 A: It would have been - she signed it when we got
8 there, I believe the report says about 12:00.
9 So, I would just take a guess and say probably
10 12:08, 12:09.

11 Q: Prior to her signing this written consent Mr.
12 Gibbs was already taken out of the residence
13 and on his way to the detention center?

14 A: He may have. I don't remember exactly. I know
15 that I asked for verbal consent to start with
16 and she said yeah.

17 Q: Before that he said he didn't live there and
18 ...

19 A: That's right.

20 Q: ... that's what he indicated?

21 A: That's correct.

22 Q: That I don't live here?

23 A: That's correct.

24 Q: Okay. Then you went to her?

25 A: No, sir. I was actually speaking to her first.

1 Q: Okay.

2 A: When I asked her for consent, another officer
3 had him in the livingroom. He was already
4 handcuffed. He was getting his pants. I
5 advised him that he was under arrest for the
6 purchases ...

7 Q: From the previous purchases with the CI?

8 A: Yes, sir.

9 Q: Okay.

10 A: And he advised us that he didn't live there.
11 So, we went ahead and we got this form and went
12 through it with Ms. Gibbs and at that time he
13 was transported to the jail. I don't know if he
14 was still in the house when she signed it or
15 whether he had already left. All I know is I
16 went through this form with Ms. Gibbs and at
17 that time he was transported to the jail.

18 Q: Now, these prior purchases, these prior
19 purchases that were made involving Mr. Gibbs,
20 they were made by the same CI?

21 A: Yes, sir.

22 Q: Can you tell us anything about the reliability
23 of the CI in these purchases?

24 Mr. Meadors: Objection to the relevance.

25 The Court: Mr. Brooks.

1 Mr. Brooks: Our issue is whether or not
2 ...

3 The Court: It's probable cause. I'll
4 allow it. If it's probable cause to arrest that might
5 depend on the liability of the informant.

6 A: I'm not sure at this point if he had purchased
7 from other, but given liability, when we sent
8 him to this residence, he was wired with audio
9 and video and he made at least five (5)
10 purchases from Mr. Gibbs.

11 Q: Are all of them audio-video?

12 A: All of them were audio and video. I believe a
13 couple of them they didn't turn out, either the
14 equipment failed or whatnot but they were all
15 recorded on video or audio. Three of the five,
16 I believe.

17 Q: Okay. I want to make sure I understand this.

18 The Court: Three of the five were
19 preserved.

20 Mr. Brooks: Okay.

21 Q: Two of the five, the audio-video didn't pan
22 out?

23 A: That's correct.

24 Q: So, there were attempts to audio-video on all
25 five of them but only three of them ...

Proffer Testimony of Wayne Dubose - Cross by Mr. Brooks 59

1 A: That's correct.

2 Q: ... were preserved?

3 A: That's correct.

4 Q: And this is the basis for which you got these
5 arrest warrants in regard to Mr. Gibbs.

6 A: Yes sir. It's a step by step process.

7 Basically what we did we met with this
8 informant and he was documented.

9 Q: The money was documented?

10 A: Yes, sir. He was documented and the money was
11 documented. He said he could give Mr. Gibbs.
12 He actually made a phone call to Mr. Gibbs.

13 Q: In your presence?

14 A: Yes sir. Mr. Gibbs advised him, at least on
15 the first three buys, to come to [REDACTED] Madison
16 Avenue where the CI was searched before. Had
17 no drugs prior to getting the money.

18 Q: Did you conduct a search of the CI prior to
19 that?

20 A: Either me or another officer. And he went
21 straight to the house from where we searched
22 him and give him the money.

23 Q: Y'all actually went with the CI?

24 A: We actually followed behind him and sat down
25 the street. We could hear by radio what was

1 going on. I could see him when he made contact
2 with Mr. Gibbs. Went inside, made the purchase,
3 left and we went directly back to another spot
4 we have set aside and retrieved the drug that
5 was purchased and did our paperwork. That
6 happened on all five occasions, specifically
7 the first three occurred on Madison Avenue.

8 Q: Which is the particular residence that we're
9 talking about?

10 A: That's correct. Now on all three occasions on
11 Madison Avenue, Mr. Gibbs was the only person
12 present at the residence other than a small
13 child.

14 Q: So, as I --- You didn't go inside the residence
15 on any of these purchases, correct?

16 A: No, sir.

17 Q: So, you can't say for sure whether there was
18 another adult in the house?

19 A: No, sir. I can only see what we see on the
20 video. There could have been someone else in the
21 house.

22 Q: Okay. And it was known that Kimberly Gibbs lived
23 there at that time?

24 A: I don't know if we knew who lived there. All I
25 know is Mr. Gibbs said to come to that residence

Proffer Testimony of Mr. Dubose - Cross by Mr. Brooks

61

1 and we didn't know who lived in that house at the
2 time. I assumed Mr. Gibbs did.

3 Q: Now, in regards to the statement. You weren't with
4 Mr. Gibbs when he allegedly made this statement of
5 selling drugs is just a lifestyle, the other
6 officers will testify to that?

7 A: Yes, sir.

8 Q: Okay. You just got reports that he had given that
9 statement and that's was prompted you the next day
10 to go see him at the jail?

11 A: No, actually the next day I was going to serve him
12 additional warrants on what we found the day after
13 my original warrant got there.

14 Q: Okay. And while you were there you asked him about
15 ...

16 A: If anybody else lived there?

17 Q: And, according to your testimony, his response was
18 he had to do this to support his family?

19 A: He had to support his family.

20 Q: Okay. And it was just the two of y'all when you
21 asked him that question?

22 A: Yes, sir.

23 Q: Nobody else was around?

24 A: No, sir. Not that I recall.

25 Q: And it's your testimony that you had actually

Proffer Testimony of Wayne Dubose-redirect by Mr. Meadors 62

1 Mirandized him again prior to that statement?

2 A: Before I served him. The purposes in doing that is
3 when I serve the warrants he could very well have
4 said this stuff is mine and whatever. I want to
5 make sure. That's what I do. Anytime I do a
6 search warrant I make sure before we ask anybody
7 any questions that everyone is mirandized and
8 before I serve warrants and do an investigation, I
9 make sure that everyone is advised of their rights.

10 Q: Before that time you had not gotten any indication
11 that he had gotten representation at that time?

12 A: No, sir. This was the next day; no, sir.

13 Mr. Brooks: No other questions, Judge.

14 The Court: Redirect?

15 Mr. Meadors: Very briefly.

16 Proffer Testimony of Mr. Dubose - Redirect by Mr.

17 Meadors:

18 Q: So, these first three buys that were from
19 Madison Avenue your testimony, in response to
20 Mr. Brooks, is that the Defendant told the CI
21 where to go, told him this address?

22 A: That's correct.

23 Q: And you had search the CI before giving him
24 documented funds?

25 A: That's correct.

Proffer Testimony of Wayne Dubose-redirect by Mr. Meadors 63

1 Q: Do you search him before to see if he has any
2 other?

3 A: Basically what we do is we search the informant
4 to make sure they have no drugs, no money. If
5 they do have money, we take the money from
6 them. Then we search the vehicle. We send the
7 informant to the location. We follow them.
8 They will make a stop after the purchase is
9 made from point A. Then we call the informant
10 and say meet us at this location, I will change
11 locations depending on where some of the homes
12 are. And then make them go through the same
13 steps again. Retrieve the drugs and give them
14 a statement form to fill out.

15 Q: Search him again, correct?

16 A: That's correct.

17 Q: So, when he came back, the CI, that's when you
18 got the drugs on these three occasions at
19 Madison Avenue, correct?

20 A: That's correct.

21 Q: And the CI had identified the Defendant as the
22 individual who came him the drugs, correct?

23 A: That's correct.

24 Q: And Mr. Brooks asked you, this was on at least
25 three of the five, I don't know which three of

1 the five on audio-video, were they the first
2 three?

3 A: The first three ...

4 Q: That came out ...

5 A: Yes, sir.

6 Q: ... that you could see?

7 A: Yes, sir.

8 Q: Did you Dubose look at that and could identify
9 this was the individual Mr. Gibbs that was on
10 this audio-video?

11 A: Yes, sir.

12 Q: Was there any question about that?

13 A: No, sir.

14 Mr. Meadors: Thank you. That's all.

15 The Court: Okay. Real briefly. Do y'all
16 have any response to what he brought up?

17 Proffer Testimony of Mr. Dubose - recross by Mr.

18 Brooks:

19 Q: Mr. Meadors had asked you that the CI came,
20 y'all searched him and then y'all followed the
21 CI to make sure no stops were made, isn't that
22 correct?

23 A: Yes. When the CI leaves the residence?

24 Q: No, no. The CI came to you first?

25 A: That's right.

Proffer Testimony of Lt. Moore - Exam by Mr. Brown

65

1 Q: And then the CI leaves you said we make sure
2 there is no stops. We got all the way to the
3 residence?

4 A: That's correct.

5 Q: Did the CI ride with you?

6 A: The CI drove his own vehicle.

7 Q: Did y'all check is vehicle?

8 A: Yes, sir.

9 Q: And searched it before going to the residence?

10 A: Yes, searched his residence before and after
11 the buy.

12 Q: And you searched the vehicle?

13 A: It would have been me or another officer,
14 whoever would have searched it.

15 Q: Okay.

16 Mr. Brooks: No other questions.

17 The Court: Okay. Anything else of this
18 witness?

19 Mr. Meadors: Not of this witness.

20 The Court: Thank you, sir. You may step
21 down. Next witness.

22 Mr. Brown: The State will call Lieutenant
23 Chris Moore of the Sumter County Sheriff's Office.

24 Bailiff: Place your left hand on the Bible
25 and raise your right hand. State your name, please.

1 Mr. Moore: Christopher Moore.

2 Bailiff: Solemnly swear or affirm that
3 your testimony to the Court shall be the truth, the whole
4 truth and nothing but the truth so help you God?

5 Mr. Moore: I do.

6 Bailiff: Thank you. Have a seat up there.

7 (Mr. Moore complies)

8 Bailiff: Please state your full name and
9 spell your last name for the record.

10 Mr. Moore: Christopher Shane Moore, M-O-O-
11 R-E.

12 Proffer Testimony of Mr. Christopher Moore -

13 Examination by Mr. Brown:

14 Q: It's Lieutenant, correct?

15 A: Correct.

16 Q: Back in 2008, what was your rank?

17 A: I was Corporal.

18 Q: You've heard the testimony about this
19 particular arrest that day. Were you present
20 that day?

21 A: I was.

22 Q: What was your role that day?

23 A: Myself and Lieutenant Horton or Sergeant
24 Horton, at the time, were assisting the drug
25 unit in going to the residence at Madison

1 Avenue.

2 Q: And did you go to that residence?

3 A: We did.

4 Q: Were you joined by, at that time, Sergeant now
5 Lt. Horton?

6 A: Correct.

7 Q: The gentlemen seated right here, right behind
8 me?

9 A: That's him.

10 Q: Once you arrived at that residence, what was
11 your role in the arrest and everything of that
12 nature?

13 A: Basically to provide a marked patrol car and to
14 provide assistance at the scene for officers
15 going to the residence. Just to provide the
16 visibility of a marked patrol vehicle and if
17 any arrest were made to be responsible for
18 transport.

19 Q: Was an arrest made in this case?

20 A: It was.

21 Q: Of whom?

22 A: Mr. Gibbs.

23 Q: Were you Sergeant now, then Lieutenant Horton
24 then charged with the responsibility of taking
25 Mr. Gibbs to the Sumter-Lee Regional Detention

1 Center?

2 A: We were.

3 Q: Did y'all do that?

4 A: We did.

5 Q: Now, this house on Madison Avenue, is that in
6 Sumter County?

7 A: That is correct.

8 Q: And Sumter-Lee Regional Detention Center is in
9 Sumter County?

10 A: That's correct.

11 Q: About how far of a drive is that between the
12 two of them?

13 A: Probably ten minutes.

14 Q: Okay.

15 A: Maybe a little less depending on traffic.

16 Q: And you two were in the front seat and he was
17 in the back, is that right?

18 A: Correct. We had a caged vehicle, a petition
19 between the front and the back.

20 Q: Now, take us into that vehicle. Let us know
21 what was going on. Were y'all have conversation
22 with him, what was going on?

23 A: We didn't actually engage him in conversations.
24 He was talking in the back, just rambling on
25 and on.

Proffer Testimony of Lt. Moore - Exam by Mr. Brown

69

1 Q: Did y'all do anything to encourage this
2 rambling?

3 A: No, we didn't.

4 Q: Did you all, at any point, attempt to start
5 conversation or to further conversation after
6 this rambling?

7 A: We did not.

8 Q: While Mr. Gibbs was in the back seat, and is
9 that Mr. Gibbs seated there at the defense
10 table?

11 A: Next to Mr. Brooks; yes, sir.

12 Q: While he was in the back rambling, did he say
13 anything that stood out to you during this
14 ride?

15 A: He stated that selling drugs was a lifestyle
16 for him.

17 Q: Okay. Do you remember anything else particular
18 that stood out?

19 A: Not that I recall?

20 Q: Did you ask any follow up to him when he made
21 that statement?

22 A: I didn't. I didn't question him about it.

23 Q: Did you use any force or intimidation to
24 encourage him to make that statement?

25 A: I did not.

1 Q: Did you do anything to engage him in any way,
2 shape or form to have that statement made?

3 A: No, sir.

4 Q: To your knowledge, by the time he had been
5 placed in your patrol car had he already been
6 placed under arrest?

7 A: That is correct.

8 Q: And to your knowledge by the time he was placed
9 in the patrol car had he already been read his
10 Miranda Rights?

11 A: I wasn't present for it but it was advised to
12 me when I put him in the car that he had been
13 mirandized.

14 Q: All right. Did you mirandize him?

15 A: I did not.

16 Q: But you were informed that he had been
17 mirandized?

18 A: Correct.

19 Mr. Brown: Court's indulgence.

20 The Court: All right.

21 Mr. Brown: No further questions.

22 The Court: Mr. Brooks.

23 **Proffer Testimony of Christopher Moore by Mr. Brooks:**

24 Q: Officer Moore, did you have a prior history
25 with Mr. Gibbs?

1 A: Not that I can recall?

2 Q: Did you go to school with his brother?

3 A: Possibly.

4 Q: Okay.

5 A: It's a possibility. There were 600 people that
6 graduated with me.

7 Q: Okay. It's your testimony that you never
8 engaged in any type of conversation with Mr.
9 Gibbs on that ride to the jail?

10 A: Not on the ride to the jail.

11 Q: I mean, did you place him in the vehicle?

12 A: I don't recall who exactly placed him in the
13 car. It was my vehicle.

14 Q: Okay. Was it just the two of you all in the
15 vehicle?

16 A: Myself and Lieutenant Horton and Mr Gibbs was
17 in the back.

18 Q: Do you recall who placed him in the vehicle?

19 A: I don't recall who actually placed him in it.

20 Q: Okay. And did you take him out of the vehicle
21 once getting to the jail?

22 A: Once we got to the jail, one of the two of us
23 would have opened the door and got him out.

24 Q: Okay. The other officer that was in the car
25 with you is it your testimony that that officer

1 never engaged in conversation with Mr. Gibbs?

2 A: He didn't.

3 Q: Were you two officers talking with one another?

4 A: It's a possibility. I don't recall exactly. I
5 assume we would be.

6 Q: Okay. Do you recall what you and the other
7 officer said?

8 A: I sure don't.

9 Q: But you do acknowledge that you guys probably
10 did have some conversation?

11 A: Correct.

12 Q: Because you testified this is what about a
13 twenty minute ride?

14 A: No, ten.

15 Q: Ten minutes.

16 A: Yeah. Ten minutes or so. Given the middle of
17 the day, traffic give or take.

18 Q: Ten minute ride from thee residence to the
19 detention center?

20 A: To the detention center.

21 Q: Okay. And, you know, it would probably be
22 usual for you and the other officer to engage
23 in some type of situation?

24 A: Correct.

25 Q: And you had just picked up this individual who

1 is in your car?

2 A: Correct.

3 Q: And basically what you are saying is y'all

4 didn't say anything about his case or what had

5 taken place?

6 A: Not that I recall.

7 Q: Not that you recall?

8 A: No, sir.

9 Q: Now granted this incident is about five (5)

10 years old, isn't that correct

11 A: That's correct.

12 Q: Okay. And so it's safe to say that your memory

13 might not be as sharp as it was, say the day

14 after the incident?

15 A: Possibility.

16 Q: Okay. And I'm sure you have placed a lot of

17 people in your car since then, isn't that

18 correct?

19 A: I have.

20 Q: And during that time a lot of people may have

21 said something, a lot of people may have not

22 said something?

23 A: Correct.

24 Q: But on this particular occasion back in

25 December of 2008, which is a long time ago with

1 another officer, would it be safe to say you
2 and he, the other officer, would have engaged
3 in some type of conversation?

4 A: With Mr. Gibbs?

5 Q: In general. There was some chatter?

6 A: Oh, I'm sure between myself and Lieutenant
7 Horton there was some chatter.

8 Q: And it would have been chatter enough for any
9 individual, whether it be Mr. Gibbs, or any
10 individual in the back seat of your car to be
11 able to hear what's going on?

12 A: I couldn't say. With that partition up, you
13 have to speak up. I mean you can't whisper or
14 anything like that, you wouldn't be able to
15 hear.

16 Q: And on this particular occasion the window was
17 closed in your car, is that correct?

18 A: That's correct.

19 Q: Okay. And even though it was almost five years
20 ago, you specifically remember that?

21 A: That the window was closed?

22 Q: Correct.

23 A: I keep it closed all the time.

24 Q: So, no matter if somebody ask you about
25 somebody placed in the car last month, it would

1 have been closed?

2 A: It would have been closed.

3 Q: And being closed, you don't necessarily know if
4 somebody is hearing any chatter from you and
5 the other officer in the front seat, you don't
6 know if anybody in the back seat is hearing
7 that chatter because the partition is closed?

8 A: Correct.

9 Q: Okay. So, it's fair to say that if you don't
10 know if the sounds are going from the front to
11 the back, you're not necessarily really assured
12 that any sounds are coming from the back to the
13 front with the partition closed?

14 A: I mean if it's spoken loudly enough you can
15 hear.

16 Q: Okay. And you said he was rambling?

17 A: Correct.

18 Q: But at the same time you were in some type of
19 chatter with the other officer?

20 A: Possibly but it wouldn't have necessarily been
21 consistently.

22 Q: Okay. And at the same time you guys obviously
23 would have your radio on because you have your
24 radio on all the time, is that correct?

25 A: Correct.

1 Q: So there might have been some chatter on the
2 radio?

3 A: Could have been.

4 Q: So between the chatter on the radio and the
5 chatter between you and the other officer and
6 the partition, you still say that you heard
7 this gentlemen rambling onto himself in the
8 back seat?

9 A: Yes, sir.

10 Q: And the statement --- you say he was rambling
11 but the only specific thing you heard was
12 *selling drugs is a lifestyle for me.*

13 A: Correct. That I recall him saying.

14 Q: And you don't recall him saying anything else?

15 A: No, sir.

16 Q: You don't recall him saying, hey this ain't my
17 drugs?

18 A: I don't recall that.

19 Q: Okay. But he could have said that?

20 A: Possibly.

21 Q: But you particularly remember this particular
22 phrase?

23 A: Correct.

24 Q: Okay.

25 Mr. Brooks: No further questions.

Proffer Testimony of Lt. Moore - Redirect by Mr. Brown

77

1 The Court: Redirect?

2 Mr. Brown: Briefly, Your Honor.

3 Proffer Testimony of Chris Moore - Redirect by Mr.

4 Brown:

5 Q: Is there any doubt in your mind whether or not
6 Leroy Gibbs made that comment, *selling drugs is*
7 *a lifestyle?*

8 A: No, sir.

9 Q: And did you, immediately upon getting back to
10 the law enforcement center, did you inform your
11 supervisor of that statement?

12 A: I actually returned back to the scene on
13 Madison Avenue and advised Investigator Dubose
14 of the statement that was said in the car.

15 Q: That same day, the next week, when?

16 A: That same day. As soon as I -- we were told to
17 return back to the residence after we left the
18 jail.

19 Q: So was it in hours or minutes?

20 A: Maybe an hour, if that. Long enough to drop
21 him off and drive back.

22 Q: Do you have any doubt in your mind, he said
23 that?

24 A: No, sir.

25 The Court: That's asked and answered.

1 Mr. Brown: I apologize, Your Honor. No
2 further questions.

3 The Court: All right. Anything else from
4 this witness? Step down, please. Your next witness.

5 Mr. Brown: Lieutenant Dale Horton, Your
6 Honor.

7 The Court: All right. It's 11:30. Any
8 objection to me having the jury come in and telling them
9 to come back at 1:30. How much longer is this going to
10 take.

11 Mr. Brown: This is our last witness.
12 He'll be the same length of time as our last witness
13 Officer Moore.

14 The Court: All right. Any objection to me
15 bringing the jury in at this point and telling them to go
16 to lunch?

17 Mr. Meadors: None from the State.

18 Mr. Brooks: No, sir.

19 The Court: Bring in the jury, please.

20 (Jury enters courtroom 11:34 a.m.)

21 Bailiff: Your Honor, we have all the
22 jurors present in the courtroom.

23 The Court: Thank you for your patience
24 Ladies and Gentlemen. We're going to begin this trial at
25 1:30. I apologize for having you in that jury room for

Proffer Testimony of Lt. Horton - Exam by Mr. Brown

79

1 the last hour, you can blame me because I was trying to
2 make sure we were ready to go but I have mis-estimated,
3 if that's even a word, but I've mis-estimated how long it
4 would take. You still may not discuss this case at all.
5 Don't understand to do any type of research of any kind
6 about it at all. Don't go to any physical locations that
7 you may have heard about so far. Be back in your jury
8 room promptly at 1:30 and we will start on that dot. So,
9 please be on time. I can guarantee you we will start at
10 1:30. Okay. Thank you.

11 (Jury excused for lunch break 11:35 - 1:30 p.m.)

12 The Court: All right. Mr. Brown.

13 Mr. Brown: Lieutenant Dale Horton.

14 Bailiff: Place your left hand on the
15 Bible, raise your right hand. State your name, please.

16 Mr. Horton: Lieutenant Dale Horton.

17 Bailiff: Do you solemnly swear or affirm
18 that your testimony to the Court shall be the truth, the
19 whole truth and nothing but the truth so help you God?

20 Mr. Horton: I do.

21 Bailiff: Thank you. Have a seat up there,
22 please.

23 (Witness complies)

24 Bailiff: State your full name. Spell your
25 last name for the record.

1 Mr. Horton: Dale Horton, H-O-R-T-O-N.

2 Proffer Testimony of Dale Horton - Examination by

3 Mr. Brown:

4 Q: And you're now a Lieutenant as well, correct?

5 A: That's correct.

6 Q: Does that mean you were a sergeant in 2008?

7 A: That's correct.

8 Q: And you've been here for the testimony of
9 Officer Dubose and Officer Moore?

10 A: Yes, I have.

11 Q: Were you present on the scene on Madison Avenue
12 back in December of 2008?

13 A: That's correct?

14 Q: What was your role there?

15 A: We were in a marked vehicle and once we arrived
16 at the scene we secured the parameter and once
17 an arrest was made we did the transport.

18 Q: Was an arrest made?

19 A: It was.

20 Q: Of Leroy Gibbs?

21 A: That's correct.

22 Q: Did you take part in the transport of him?

23 A: That's correct. I was the passenger in the
24 front of that patrol vehicle.

25 Q: So, Lieutenant Moore who just now testified he

1 was the driver and you were the passenger?

2 A: That is correct.

3 Q: Approximately how far a drive was it?

4 A: I'd say ten minutes.

5 Q: During that drive was any conversation had by
6 you and Mr. Gibbs or by Lieutenant Moore and
7 Mr. Gibbs?

8 A: I didn't engage in conversation with Mr. Gibbs.

9 Q: Did Lieutenant Moore engage in any?

10 A: No. I just listened. He did a lot of --- a
11 lot of talking, non-stop talking.

12 Q: At any point during that talking that he was
13 doing, did anything stand out that he said?

14 A: Yes. He said, *selling drugs was a lifestyle*
15 *for him.* The reason that I remember it is if
16 somebody admits to doing something illegal that
17 stands in your mind.

18 Q: Did you ask any follow up questions when he
19 made that statement?

20 A: No.

21 Q: Did you ask him any questions to cause him to
22 make that statement?

23 A: No.

24 Q: Did you do anything that in your mind was
25 threatening or intimidating him to make any

1 statements to you?

2 A: No.

3 Q: Did y'all take him to Sumter-Lee Regional
4 Detention Center?

5 A: That is correct.

6 Q: Following that did y'all come back to the
7 location on Madison Avenue?

8 A: That is correct.

9 Q: Were you an Officer Moore having conversations
10 between yourselves during that whole thing?

11 A: During the transportation we didn't hardly talk
12 at all because he was doing all the talking and
13 I remember whenever we said that I just looked
14 at Chris Moore, just looking at him like did he
15 just say that and then we continued on letting
16 him talk.

17 Q: After you dropped him off, what did y'all do
18 then?

19 A: After we booked him in we had to go back to the
20 scene.

21 Q: And Officer Moore that he had told someone.
22 Did you take any action to tell any supervisor
23 or any higher up about the comment that was
24 made in the car that day?

25 A: When we both went to Investigator Dubose at the

Proffer Testimony of Lt. Horton - Cross by Mr. Brooks

83

1 time and Chris Moore, Lieutenant Moore he went
2 and told him and I confirmed what he said to
3 Investigator Dubose.

4 Q: And the man who rode in the back of your car,
5 the man who made that statement, the man you
6 took to the Sumter-Lee Regional Detention
7 Center is he here in this courtroom today?

8 A: He is. He's right beside Mr. Brooks.

9 Mr. Brown: I'd ask the record to reflect
10 that he has identified the Defendant.

11 The Court: Anything else, Mr. Brown?

12 Mr. Brown: Nothing further, Your Honor.

13 The Court: Mr. Brooks.

14 Proffer Testimony of Dale Horton - Cross Examination

15 by Mr. Brooks:

16 Q: Officer Horton, you were in the car with
17 Officer Moore, you were in the passenger seat,
18 is that correct?

19 A: That's correct.

20 Q: And Mr. Gibbs was in the back?

21 A: That's correct.

22 Q: And you acknowledge this was 2008 or some four
23 and a half years ago?

24 A: That is correct.

25 Q: And you recall the partition being closed?

1 A: That's correct.

2 Q: And you do recall it being about a ten to
3 fifteen minute ride?

4 A: That's correct.

5 Q: And you recall having some chatter between
6 yourself and/or the radio?

7 A: And/or the ...

8 Q: There was some other noise going on whether
9 you're talking to Officer Moore or ...

10 A: Not on the radio because we are on a separate
11 channel. Before we leave the briefing we go on
12 a special chat and they usually assign us a
13 dispatcher or something like that so there was
14 no other chatter on the radio due to the fact
15 that everybody was on scene already because it
16 was a warrant sweep so we already had special
17 dispatcher and all that so there was no radio
18 chatter.

19 Q: So, in this entire ride the only noise that was
20 coming, was from the back. You didn't open
21 your mouth?

22 A: No.

23 Q: Officer Moore didn't open his mouth?

24 A: You had to be in the car. He talked non-stop.
25 It was just kept on going and going and going.

Proffer Testimony of Lt. Horton - Cross by Mr. Brooks

85

1 And whenever he said *selling drugs is a*
2 *lifestyle* that's something that you're going to
3 remember. I remember looking at Moore, just
4 looking at him, thinking did he just say that.

5 Q: While he was talking non-stop what else did he
6 say?

7 A: Like I said it was like, there was a bunch of
8 non-stop stuff and I can't remember everything
9 that he was saying but you remember when
10 someone just says, a lifestyle.

11 Q: Okay. But you acknowledge that he was
12 basically talking non-stop for a ten to fifteen
13 minute ride?

14 A: Yes. He just kept going.

15 Q: And the only thing you remember is the phrase
16 *selling drugs was a lifestyle for ...*

17 A: When you have someone that admits to committing
18 a crime like that, that is going to stick out.
19 You're going to remember that.

20 Q: Okay.

21 A: That's why I remember that.

22 Q: And it's safe to say that a person making a
23 statement saying that he or she didn't do
24 something, it's safe to say that you might not
25 remember that?

1 A: They always say like I didn't do it or
2 whatever, but that's not what was said.

3 Q: But out of all the chatter, you're saying there
4 was a lot of chatter.

5 A: Oh, it was non-stop.

6 Q: It was non-stop. So, there's a lot of things
7 he was saying that you don't remember?

8 A: That's correct.

9 Q: So, there's a lot of things that could have
10 been hey this isn't mine and you might not
11 remember that, is that correct?

12 A: That's correct.

13 Q: Okay.

14 The Court: All right. Redirect?

15 Mr. Brown: No, Your Honor.

16 The Court: Okay. Step down. Next witness?

17 Mr. Brown: Your Honor, I think that's all
18 we have.

19 The Court: Witnesses, Mr. Brooks?

20 Mr. Brooks: No, sir.

21 The Court: Okay. First of all, your
22 argument on --- let me ask this Mr. Meadors and Mr.
23 Brown, as far as statement is concerned, you are seeking
24 to introduce the statement made in the patrol car,
25 according to what Lieutenant Moore and Lieutenant Horton

1 said?

2 Mr. Meadors: Yes, sir.

3 The Court: And that would be offered to
4 prove what?

5 Mr. Meadors: The statement by the
6 Defendant against his interest, Your Honor. Volunteer.

7 The Court: I'm just trying to see whether
8 it's a statement about trafficking, PWID and the ...

9 Mr. Meadors: Manufacturing.

10 The Court: Manufacturing.

11 Mr. Meadors: Yes, sir.

12 The Court: Whether or not it's an
13 inculpatory statement by the undercover or the CI buy.

14 Mr. Meadors: It's about what was found at
15 the residence which we think ...

16 The Court: Okay. All right. Mr. Brooks
17 what is your argument? First of all, about Jackson v.
18 Denno issue?

19 Mr. Brooks: Judge, it's our position that
20 these statements should be suppressed that's why we made
21 the motion. Even though we, you know, heard the officers
22 testimony, it remains the defense position that these
23 statements should be suppressed for the grounds of
24 voluntariness and not being coerced. We would just stand
25 by the motions that we have presented with regards to

1 that.

2 The Court: How about the probable cause
3 issue. Of course that leads to what the State claims
4 occurred?

5 Mr. Brooks: Judge, we feel like our
6 position is that this is not a CI, they have not
7 substantiated the liability of the CI and the purchases
8 and the search. The officer didn't necessarily talk
9 about whether or not they searched his vehicle every
10 single time because the CI transported himself and was
11 not actually in the presence of the officers to and fro.
12 They only followed him to make sure, presuming that he
13 did not made any stops from law enforcement to the
14 residence and the residence back to the designated area.
15 So, our position is that they have not substantiated
16 there liability and trustworthiness of the CI to
17 substantiate these arrest warrants.

18 The Court: All right. Anything from the
19 State on either of those points?

20 Mr. Brown: Your Honor, the probable cause,
21 you heard testimony from each officer that the
22 confidential informant went to the residence. He viewed
23 the video, a search was done of the defendant before and
24 after of both his person and of his car. There was
25 following information that at the stop the video does

1 display the sell of narcotics. The video on at least
2 three separate occasions is clear enough to display the
3 sell of those narcotics at his residence. Your Honor, I
4 certainly think there was probable cause to make an
5 arrest on those grounds. So, I certainly think that
6 arrest in and of itself were warranted and there were
7 proper arrest warrants out there.

8 Mr. Meadors: Your Honor, do you want to
9 address the Jackson v. Denno, too?

10 The Court: Yes. Either one of you.

11 Mr. Meadors: As far as that, Your Honor.
12 As far as the statements of the two patrol officers, Your
13 Honor, the testimony was it was just spontaneous, the
14 defendant was talking, volunteered this. It wasn't in
15 response to questioning, he just said that's my
16 lifestyle. It was just a, I don't know if significant is
17 the right word, but here you are, you've served arrest
18 warrants on a suspected person that deals in drugs. He
19 makes this statement when he's leaving, they remember it.
20 He says this is my lifestyle, this is what we do. They
21 remember it enough they immediately told Dubose when they
22 came back and that was documented in his report. It's be
23 like an analogy if you kill somebody and say I do that
24 for a lifestyle. Anyway they felt that was enough in
25 their minds that they went back and told him. And, Judge,

1 it wasn't in response to anything. They went back and
2 told him. He was just talking. No follow up from my
3 understanding so we would just respectfully submit that
4 was a spontaneous utterance by the defendant not in
5 response to questioning.

6 As far as Dubose, the next day, Judge,
7 obviously most of the statements I think are denials, as
8 far as the rights in that case and I know there's a case
9 that says and I'll try to find the cite. The defendant
10 when he is invoking his counsel must say I don't want to
11 talk to you. I know there's a case out there that is
12 Berghuis vs. Thompkins. I apologize I don't have the
13 cite. But anyway Investigator Dubose said for these
14 purposes, in Your Honor's hearing, he knew that the
15 defendant had been arrested before. He read him his
16 waiver of rights. He didn't say anything or he couldn't
17 remember if he said anything, Judge. Pretty incredible
18 testimony up there, Judge. But he didn't say I don't
19 want to talk to you. He didn't say I don't want a
20 lawyer. And then he asked him about the statement he
21 made to the two officers and he confirmed that statement
22 he had made to Dubose. That is all we would be offering
23 that for in that case.

24 The Court: He said, *I've got to support my*
25 *family.*

State of South Carolina v. Leroy Clifton Gibbs, III 91

1 Mr. Meadors: Yes, sir. And, again, we
2 would say the fact that he appeared to understand his
3 rights to investigator Dubose. That he wasn't under the
4 influence. That he wasn't threatened or coerced. He
5 just served the arrest warrants on him and he didn't say
6 that I don't want to talk to you. That I want a lawyer
7 because that would implicitly mean, based on the officers
8 observations that he understood his rights. That's all
9 we have, Your Honor.

10 The Court: Anything else, Mr. Brooks?

11 Mr. Brooks: Judge, not on that issue. I
12 state an opposition with regards to that. I would say
13 that once we get in the trial that we would ask that the
14 State be excluded from saying what the arrest warrants
15 were for that participated them going to the residence.

16 The Court: So that's another motion?

17 Mr. Brooks: That's correct. That's a
18 Motion in Limine. What I'm saying is obviously we went
19 to the residence to serve arrest warrants on Mr. Gibbs.
20 We think it would be prejudicial for them to say we were
21 going there to serve arrest warrants for drugs for Mr.
22 Gibbs.

23 The Court: Okay. Well, we'll get to that
24 in a minute. Let me deal with the immediate issue. Do
25 you have any more comments on the Denno issue or the

1 probable cause issue?

2 Mr. Brooks: Nothing other than what we've
3 already brought up to the court.

4 The Court: All right. We'll get to that
5 other point in just a second. All right. On the issue
6 of probable cause as everybody knows that defines a good
7 faith belief that a person committed a crime as long as
8 that good faith belief rest on the ground that would make
9 an ordinary, reasonable and prudent person hold the same
10 belief. Probable cause is somewhere between mere
11 suspicious and sufficient evidence to convict and the
12 probability or that term probability in the context of
13 probable cause is not something that is based on
14 technical grounds but instead on factual and practical
15 considerations made in everyday life.

16 In this particular case on the probable
17 cause issue, Investigator Dubose testified that at least
18 three, all five occasions of the CI buys, the CI was
19 searched, the vehicle was search and made sure he didn't
20 stop anywhere between point A and point B, Point B being
21 the place of the buy. There was audio and video on three
22 of those occasions. Mr. Dubose identified the defendant
23 as being the one on the video. Obviously there is
24 probable cause to arrest him on the distribution
25 warrants. Whether or not he would ever end up being

1 convicted is a different story, there is probable cause
2 to arrest. The motion for that encounter, if you will,
3 at Madison Avenue should be suppressed and this case be
4 dismissed will be the ultimate outcome. That motion is
5 denied.

6 On the Jackson vs. Denno issue, my finding
7 by the greater weight of the evidence is that at the time
8 Mr. Dubose initially encountered the defendant at the
9 home he was fully advised of his rights and Miranda. He
10 was advised that he had the right to remain silent and
11 that prior to any questioning he was advised that if he
12 made any statements those will be used against him in
13 Court. He was also advised that he had the right to an
14 attorney and that if he could not afford an attorney one
15 would be appointed to represent him at no costs.

16 All right. With regard to the alleged
17 statements made in the vehicle. I find by the greater
18 weight of the evidence that first of all there was no
19 interrogation. So, technically, on that basis, Miranda
20 doesn't even apply. Lieutenant Moore and Lieutenant
21 Horton testified and I don't have any other evidence. I
22 find that they are credible, at least for my purpose in
23 this stage, that they did not interrogate or otherwise
24 act in anyway that would reasonably elicit a response
25 from the defendant and that the statement he supposedly

1 made was voluntary and in the absence of any
2 interrogation. If Miranda was a issue, he had just been
3 mirandized and fully aware of his rights. If anything
4 was said or done by the officers that would reasonably
5 illicit an incriminate a response he had been mirandized
6 and was fully aware of his rights. If anything was said
7 or done by the officers that would reasonably illicit an
8 incriminating response he had been mirandized so he knew
9 his rights.

10 With regard to the statement the next day
11 that investigator Dubose maintains that the defendant
12 made when investigator Dubose asked him, hey what about
13 the statement you made in the car yesterday. He had also
14 just been Mirandized and the statements that he made in
15 the car and the next day at the jail were made freely,
16 voluntarily, without duress, coercion, there was no hope
17 of reward, there was no promise so forth and so own. His
18 statements were a voluntary product of his free and
19 unconstrained will.

20 Those are my rulings at this point. Of
21 course, if the State would like to illicit the same
22 testimony on the voluntariness in front of the jury, if
23 requested I'll give the jury charge on the Miranda.

24 All right. As far as your other motion we
25 can do that and I meant it to the jury when I said we are

1 going to start at 1:30. That is going to be when we
2 start. If I come in at 1:29, there's not going to be oh,
3 we need to take up one more matter, there will be no
4 more. So, what is your other issues about the
5 circumstances behind the arrest?

6 Mr. Brooks: It is that, I believe, the
7 testimony is going to be that we as the police were going
8 to serve arrest warrants on Mr. Gibbs. That's what
9 prompted them to go to the residence December 23, 2008.
10 I just ask that the police be precluded from saying we're
11 going out here to arrest him for drugs or a arrest
12 warrant is for drugs.

13 The Court: All right.

14 Mr. Brooks: I think it's sufficient enough
15 for them to just say we're going out here to serve a
16 valid arrest warrant. And that's what we are asking for.

17 The Court: Okay, Mr. Meadors, Mr. Brown.

18 Mr. Meadors: Okay. Okay. We'll just say
19 arrest warrants.

20 The Court: All right.

21 Mr. Meadors: I mean, if he is asking us to
22 do to save time with the court, we can be clear what, Your
23 Honor ...

24 The Court: If you agree with what he says,
25 I'll allow that to carry the day. If there is any fine

1 line that you need a ruling on, I guess that is what we
2 need to resolve right now.

3 Mr. Meadors: Maybe I misunderstood.

4 The Court: I think what Mr. Brooks is
5 saying is that when the officers testified, Mr. Brooks
6 says, well I really don't mind if he says we were going
7 to serve some arrest warrants and as part of that process
8 we asked for consent to search. Kimberly signed the form
9 consenting and we found all this stuff.

10 Mr. Brooks: Right, I just don't want them to
11 say we are going out here to serve arrest warrants for drugs.

12 The Court: The reason I'm asking this is
13 because the statement he made in the car and the statement he
14 made the next day, I don't know which one he is talking about.
15 This is a lifestyle for me. Is it a lifestyle for me to
16 manufacture crack or is it to distribute crack or both because
17 he's not being tried for distribution. Trafficking maybe in
18 the eyes of a jury and obviously in some circumstance is just
19 magnified distribution but trafficking can just be based on
20 possession alone. It's of a certain amount. So, I don't
21 know whether he was saying, *this is a lifestyle for me to*
22 *sell drugs out of my house or the house.* So, I don't
23 know what he's talking about. So, that's why I'm saying
24 there may be some hair splitting there. If y'all got a
25 resolution of it, I'll stay out of it.

1 Mr. Meadors: Now, I fully understand. I
2 don't know which he's referring to either. I mean ...

3 Mr. Brooks: What I'm saying is, in
4 reading the incident report and hearing Officer Dubose
5 testify, the reason they went to the house December 23rd,
6 this is what he said, Officer Dubose. We are going out
7 to serve arrest warrants. We are looking to arrest Leroy
8 Gibbs.

9 The Court: Five counts of distribution.

10 Mr. Brooks: I wanted to make sure they
11 didn't say we're out here to arrest him for five counts
12 of distribution. We are just out here to serve arrest
13 warrants.

14 The Court: Well, that puts the jury ---
15 I'm going to stay out of that. All that is just me
16 looking at the evidence as if I was a jury member and
17 that's really not the point. So, do you agree with what
18 he says.

19 Mr. Meadors: Well, Your Honor, has got me
20 thinking now and not just you. I'm thinking now and I
21 understand his argument, Your Honor. There is probable
22 cause for the arrest.

23 The Court: There is some degree of
24 prejudice. What I have to determine is under 403 whether
25 or not that probative value is substantially outweighed

1 by the unfair prejudice. Of course, there is a line of
2 cases that talks about the jury being entitled to have a
3 full picture of everything. So, I've got to do some
4 balancing here.

5 Mr. Meadors: Well, maybe the happy medium
6 we'd ask you to consider is that instead of saying
7 distribution just say drug warrants.

8 Mr. Brooks: I would just prefer that they
9 say arrest warrants because that is what the incident
10 report said. We are out here to serve arrest warrants.

11 The Court: All right. I'll just think
12 about it and I'll let you know before we start.

13 Mr. Meadors: Judge, other than that, we
14 don't have any other issue that I'm aware of.

15 The Court: All right. Please make sure
16 that Lieutenant Horton, Lieutenant Moore and Investigator
17 Dubose are prepared either way so that if I rule in favor
18 of Mr. Brooks completely that they don't blurt something
19 out that ...

20 Mr. Meadors: We understand. But, Judge.

21 The Court: Yes.

22 Mr. Meadors: I'm sorry. I didn't mean to
23 interrupt you.

24 The Court: That's all right.

25 Mr. Meadors: The jury has been sworn.

State of South Carolina v. Leroy Clifton Gibbs, III

99

1 It's been my practice over ...

2 The Court: They have not been sworn.

3 Mr. Meadors: Well, they have been picked.

4 We'd ask, Your Honor, that the case has been called, that
5 the defendant be detained at this time.

6 The Court: All right. Let me get to that
7 in just a minute. Mr. Darnell Green, are you still in
8 the courtroom?

9 Mr. Green: Yes, sir.

10 The Court: Okay. And the other
11 gentleman's name, Mr. Brooks?

12 Mr. Brooks: Letroy Gibbs.

13 The Court: Letroy Gibbs. If you two
14 gentlemen, make sure you are under my subpoena so you
15 have to be back at 1:30, okay. All right. Mr. Brooks,
16 any argument about the request from the State that your
17 client be incarcerated?

18 Mr. Brooks: Judge, he has reported to
19 court. I don't think there has ever been issues of bench
20 warrants. He has reported all this week. He's reported
21 all these years. He's present. He's on bond. We would
22 ask the Court to allow him to stay out, you know, for
23 lunch.

24 The Court: All right. Anything else on
25 that point, Mr. Meadors?

1 Mr. Meadors: Whatever, Your Honor,
2 decides. Obviously we'd ask that he be detained. If
3 not, we'd ask that he not have any contact with of the
4 State's witnesses direct or indirect.

5 The Court: All right. Will you please
6 stand up. All right. Here's what I'm going to do. He's
7 not on bond anymore. The bondman's has done his job,
8 he's in court. So that's done. I'm going to allow you
9 to stay out this afternoon, I don't know about tonight.
10 You are permitted to have no contact with any witness
11 listed by the State. Is that clear?

12 Mr. Gibbs: Yes, sir.

13 The Court: That would include but is not
14 limited to Kimberly Gibbs. If you contact her in anyway
15 and Mr. Brooks knows how to do it. He can talk to her,
16 if she'll talk to him, but she doesn't have to talk to
17 anybody, but if you have any contact with her verbally or
18 non-verbally, that means going up and looking at her, or
19 if you ask any of these other folks or anybody else in
20 the world other than Mr. Brooks, you are going to be in
21 contempt of court. Is that clear?

22 Mr. Gibbs: Yes, sir.

23 The Court: Of course, the State can lodge
24 charges if it sees fit for intimidating a witness. So,
25 you better stay away from her. Do you understand that.

State of South Carolina v. Leroy Clifton Gibbs, III

101

1 Okay. Be back in this courtroom no longer than 1:15. If
2 you are not present at 1:15, that will make my decision
3 easy for the rest of the trial. If you just chose not to
4 come back this trial will move on without you. Do you
5 understand that?

6 Mr. Gibbs: Yes, sir.

7 The Court: If you come into the courtroom
8 at 1:35, you will miss five minutes of your trial. So,
9 when I say a time, that means that time. If Mr. Brooks
10 wants you somewhere --- if he wants you back in the
11 courtroom before 1:15 that's between you and him but my
12 instruction is to be back no later than 1:15. On the
13 issue of the continuance and so forth that motion is
14 denied. I am certain Mr. Brooks is prepared and
15 everybody knew what case was going to be called and the
16 fact that you have so many warrants really doesn't make a
17 difference to me. You and your lawyer were aware of this
18 trial today and these particular charges.

19 Okay. I'll see the lawyers in the
20 courtroom no later than twenty after one. If there's
21 anything that we need to do before we start, please keep
22 in mind that we will start with that jury at 1:30.

23 Mr. Brooks: Yes, sir.

24 Mr. Meadors: Thank you, Your Honor.

25 The Court: Thank you.

1 (Lunch break)

2 (February 21, 2013 P.M.)

3 (Back on the record 1:20 p.m.)

4 The Court: All right. The door is wide
5 open.

6 Mr. Brooks: I understand.

7 The Court: Okay. In other words, it is
8 apt to be open, do you see what I'm saying?

9 Mr. Brooks: Yes, sir.

10 The Court: Secondly, if your client
11 testifies, and I don't know that he will, his testimony
12 could depending upon his own language open the door to
13 allow, maybe not evidence, they arrested him on drug
14 warrant but they may have him on film dealing drugs.
15 Those are the minefields that we may not even walk
16 across, but, I just was kind of looking at the big
17 picture. So, Mr. Meadors, what you are going to do is
18 have your folks testify, at least preliminarily, that
19 they were there to serve arrests warrants.

20 Mr. Meadors: That's it. Without them
21 describing beyond that at all.

22 The Court: Okay. Let me have your
23 attention, if you would. You can talk to him in just a
24 second. On cross examination if you challenge the issue
25 in some way pertaining to probable cause, again, that

1 door may be open.

2 Mr. Brooks: And if my client should
3 desire, we don't know yet but if he did desire to take
4 the stand, obviously ...

5 The Court: There is somewhat of a tight
6 rope to walk. Obviously, the lawyers are familiar with
7 it, it will be up to you educate your client on how to
8 avoid those mis-steps. Really these so may possible ones
9 on both sides that I couldn't even begin to say what they
10 were. Okay. Go ahead Mr. Brooks. I didn't mean to
11 interrupt you.

12 Mr. Brooks: Okay,

13 The Court: Well, I did but I apologize to
14 you.

15 Mr. Brooks: That's it, Judge.

16 The Court: Okay, just to be clear. I
17 have appointed a foreperson. The foreperson is Tabatha
18 McLeod. As soon as the jury comes in and is sworn, Mr.
19 Brooks and Mr. Meadors, as y'all know, what I typically
20 do is tell them what the road map is. Mr. Brooks, you
21 can give your opening statement right after his or you
22 can wait til the close of the State's case, which ever
23 you want to do. I will leave that up to you.

24 Going back to the issues we just talked
25 about. I don't know how, especially how investigator

1 Dubose will hand the question. There really is no Miranda
2 issue at the house. He didn't make any inculpatory or
3 any incriminating statements. I don't know whether you
4 can touch that or not. That's just kind of a point. Just
5 make sure you tailor the question or he knows how to
6 tailor his answer to avoid saying he denied
7 responsibility for the drugs that you were there to
8 arrest him about.

9 Mr. Meadors: Judge, I may not even ask
10 him about that because his general denial, and if he
11 wants to get up and say denial and put his client on the
12 stand so I won't go into that.

13 The Court: I've got you. Okay.

14 Mr. Meadors: Judge, there's another ---
15 it's not a issue, two guns were found. We have pictures
16 of them. I don't --- you know one was in a drain, one
17 was in top of a closet underneath --- I say a drain, a
18 air condition return and another was up in top of the
19 closet. I don't plan on going into that now. That's
20 something else that might be opened up.

21 The Court: Okay. All of the jury is
22 here. It is 1:30, right?

23 Court Reporter: Yes, sir. Two thru
24 Seventeen only ID photos

25 The Court: Two thru Seventeen, ID only on

State of South Carolina v. Leroy Clifton Gibbs, III

105

1 the photos. Okay.

2 Mr. Meadors: Your Honor, two through 17
3 and without objection.

4 The Court: Okay.

5 **(State's Exhibits Two through 17 marked for ID only)**

6 The Court: Bring in the jury.

7 (Jury enters courtroom at 1:30 p.m.)

8 Bailiff: Your Honor, we have all the
9 jurors present in the courtroom.

10 The Court: Okay. Ladies and Gentlemen, we
11 are now ready to begin the trial of this case. While you
12 are being sworn I'm going to call the lawyers up here to
13 ask them about one more thing. The first order of
14 business will be for you to stand with Mr. Bradley ask p
15 you to and you will receive an oath. Please pay very
16 close attention to that oath you will be taking. All
17 right, Mr. Bradley.

18 Bailiff: Ladies and Gentlemen of the
19 jury, please stand and raise your right hand and be
20 sworn.

21 (Jury complies)

22 Bailiff: The State of South Carolina, the
23 County of Sumter in the Court of General Sessions, Docket
24 Number 2011-GS-43-1125, State of South Carolina vs. Leroy
25 Clifton Gibbs, III. You shall well and truly try and

1 true deliverance make between the State of South Carolina
2 and the Defendant Leroy Clifton Gibbs, III, whom you
3 shall have in charge and a true verdict give according to
4 the evidence so help you God. Please respond by saying I
5 will.

6 (Jury complies)

7 Bailiff: Thank you Be seated.

8 The Court: Counsel come up.

9 (Counsel approaches bench without court reporter)

10 The Court: Thank you Ladies and Gentlemen
11 for your patience. What I'm going to talk to you about
12 now for the next few minutes is intended to be an
13 introduction for me about the trial of this case.

14 How many of you have ever actually sat on
15 the jury where the issues have been tried and a verdict
16 actually rendered? Have any of you ever been on a jury
17 like that? Okay. A couple of you. All right. So this
18 may somewhat old habit to the two of you but to the rest
19 of you this is new.

20 In this particular case and under the law
21 in this State, and in this country, a jury sits as the
22 sole finder of facts. A simple way to put that is you
23 are the only people in the world who will be able to
24 decide at the end of this case as to whether or not the
25 State has met its burden of proving the elements of the

1 crimes charged beyond a reasonable doubt. You are the
2 only people who can do that. I cannot do it, the lawyers
3 can't do it, no one else can do it. The reason that we
4 have the jury system is that twelve citizens are selected
5 to be on the jury to sit through the evidence and make
6 the necessary factual determination. So, for all
7 practical purposes, you are the judges of the facts. You
8 hear evidence, you look at evidence, you consider it and
9 use your common sense and weigh it. I'll go into that in
10 a little more detail later. You are the judges of the
11 facts.

12 Now, with regard to the evidence.
13 Evidence is going to come to you in any given trial
14 including this one in different ways. One way the
15 evidence comes to a jury is by way of testimony. That is
16 when someone is sworn to tell the truth, they sit in this
17 chair and the lawyers ask questions. That is one way.
18 Another way evidence comes in is by way of an exhibit.
19 Those are things you can typically see or touch. It
20 might be a picture, it might be a piece of paper,
21 sometimes in a case it might be rock, it might be a
22 automobile tire, it could be the actual car itself parked
23 outside on the street for you to go look at. So,
24 exhibits are things that you can typically see or touch.
25 Also, another way evidence comes in is by way of

1 stipulation, that is typically the rarest way but that is
2 when the two sides agree beforehand or during the trial
3 that a certain fact or set of facts is true. Like for
4 example that today is February 21st and there are certain
5 things that happened on a particular day or that such and
6 such evidence is, in fact, true. That's a way evidence
7 comes in. Now, it is going to be up to you to weigh all
8 of that evidence in the manner that our earlier indicated
9 for you to make a determination as to whether or not the
10 State has met it's burden of proof.

11 Specifically, in this case, the defendant,
12 has been charged with three criminal offenses. Please
13 remember that he is presumed innocent, has entered pleas
14 of not guilty and does not have to prove or disprove
15 anything. But these offenses are, as indicated to you at
16 the beginning of the jury selection, trafficking in
17 cocaine base, manufacturing cocaine base, and also
18 possession with intent to distribute cocaine. Those are
19 the three offenses. Now, as the trial goes along you will
20 evidence as to certain things and at the end of the case
21 I will tell you what the elements of these crimes charged
22 that the State would have to have proven to you.

23 In a moment, the lawyers are going to
24 stand up. One of the lawyers for the State will stand up
25 and perhaps Mr. Brooks will stand up and give you their

1 position as to what they believe the evidence will or
2 will not show. They will give you their own little road
3 map. Keep in mind, however, that the lawyers are not
4 witnesses. What they say is evidence is not necessarily
5 evidence but it comes in by way of a witness, by way of
6 the exhibit or by way of the stipulation. So, you are to
7 be the sole finders of the fact. You are the only ones
8 that can weigh the evidence.

9 Now, Ladies and Gentlemen during the
10 course of the trial, if at any time I tell you that you
11 have to disregard a question that you just heard or if I
12 tell you that you must disregard an answer that you just
13 heard or something that you may have just seen, under the
14 oath that you've taken for follow the law, you have to
15 abide by my instructions not to take something into
16 account or a fact that you must disregard if I tell you
17 to disregard.

18 Now, Ladies and Gentlemen, when you talk
19 about witness testimony, you have to determine in your
20 mind whether or not you believe that witness. Another
21 word for believability is called credibility. Every day
22 when you watch somebody talk and somebody is telling you
23 something, you decide in your mind, whether you realize
24 it or not, do I believe what he or she is telling me. You
25 are using your good common sense at any given time to

1 determine whether or not you believe somebody that is
2 what you have to do when these witnesses testify. You can
3 believe every word of what a witness says. You can
4 disbelieve every word or you can believe parts and
5 disbelieve the rest. It is entirely up to you. Again, you
6 use your good common sense in that regard. You can take
7 things into account if you would like. Such as what is
8 that witnesses demeanor on the stand. In other words, how
9 did he or she appear. Were they hesitant or
10 straightforward when they were answering questions. You
11 can also take into account, in your mind, well what was
12 that witness's ability to really know what he or she
13 claims to know. You can also take into account whether or
14 not that witness's testimony has been strengthened or
15 weakened by other evidence that's in the record or you
16 can take into account anything else that you think is
17 appropriate as far as common sense is concerned in
18 determining whether or not you believe that person.

19 Now, during the course of the trial you
20 will also more than likely hear, at certain times, one of
21 the lawyers stand up and make an objection. I can tell
22 you they don't do it here like they do on TV, there is
23 not a whole lot of hollering and screaming. They are not
24 going to slam things around and make smart alec comments
25 like they do on television. An objection is a legal

1 point. A lawyer will stand up and say, Your Honor, I
2 have an objection or may say I object. That's a signal
3 to me that they have a point of law that they want me to
4 consider. You are the judge of the facts. The same law
5 that makes you that makes me the judge of the law. So,
6 if an objection is made, it's not going to be a factual
7 argument in front of you, it's going to be a legal point
8 for me to resolve. If I rule on an objection in your
9 presence, don't start keeping score in your mind as to
10 who I'm ruling in favor of more than the other because I
11 certainly don't. I don't have any preconceived notion to
12 rule on evidence just because I think one position ought
13 to prevail. My rulings are based on what the law says.
14 The South Carolina Rules of Evidence are in this brown
15 book. The Rules actually take up a little small part.
16 The rest of it is interpretation. So, the lawyers will
17 have a good faith reason to make an objection and they'll
18 be a good faith difference of opinions as to whether or
19 not the question is proper or whether or not the answer
20 is admissible or whether or not and exhibit is
21 admissible. So don't think if a lawyer makes an
22 objection that he is trying to hide something that you
23 ought not here. By the same token if a lawyer asked a
24 question that is objected to don't think that lawyer is
25 trying to slip something in that really ought not to come

1 in. They have a job to do. These lawyers are very well
2 trained, very experienced and they know what objections
3 to make. Sometimes I may have to send you out of the
4 courtroom. Typically, that is because I don't know what
5 they may want to tell me so to be on the safe side I may
6 either bring them up here to discuss it up here so that I
7 can get a better picture or I may have to send you out of
8 the courtroom very briefly to do that. Please don't take
9 offense at that. If you get angry at anybody, take it out
10 on me because I'm the one that will be asking you to
11 leave. Once I rule the trial will proceed. Sometimes,
12 it's not unheard of for me to make a ruling with you in
13 the jury room and you come back out within minutes and
14 the same or similar thing happens again and I may have to
15 send you out again. So don't take offense at that. It
16 does happen from time to time.

17 The case will basically progress like
18 this. In a moment, the lawyers will stand up and give
19 you their opening statements. The State, either Mr.
20 Brown or Mr. Meadors will give an opening statement.
21 That's when they get to tell you what they think the
22 evidence is going to show. After that, Mr. Brooks, for
23 the Defendant, can if he wants, even though he does not
24 have to, can give you an opening statement as well. Mr.
25 Brooks can give one not at all or he can wait until the

1 State rest or finishes with its evidence and give you an
2 opening statement at that time. After the opening
3 statements, the State will present its case and chief and
4 the State will do that by calling witnesses, offering
5 other evidence so forth and so on. Once the State rest,
6 we typically will take a recess, whether that's today or
7 tomorrow, I don't know. Then the defendant, if he
8 chooses, can present evidence. The defendant does not
9 have to present any evidence at all. And the reason for
10 that is because he has no burden and the sole burden of
11 proof remains on the State's shoulders. After all of the
12 evidence is in, the lawyers will give you a closing
13 argument. After that I will give you a charge on the
14 law. In other words, I will tell you what the law is. I
15 will tell you again, you must accept the law exactly as I
16 give it to you and set aside any preconceived notions of
17 what you think the law is or what you think it ought to
18 be.

19 One final thing. During the course of the
20 trial, you cannot discuss this case at all. For example,
21 you take a break at 3:00 or 4, you can't go back to the
22 jury room and talk about what you just seen or heard.
23 You can't do that. You may want to but you are not
24 permitted to do that because the law says you cannot.
25 Here's the reason for that. The testimony of the first,

1 second, third, firth, tenth, fiftieth or hundredth
2 witness is no more or no less important than the
3 testimony of any other witness. It would be terribly
4 inappropriate for you to begin, even in your mind, to
5 start making up your mind about what your verdict might
6 be. If you start talking about things that may make you
7 feel in tranced on one particular point and you may
8 choose to disregard something because you may think
9 you've got your mind made up. The law says you cannot
10 begin deliberating or even determining in your mind what
11 your verdict is going to be until you have seen and heard
12 everything.

13 So, goal number one. Pay close attention.
14 These cases are prepared by the lawyers and they are
15 counting on you to render a verdict that speaks the truth
16 and the only way that you can give them what you have
17 sworn to do is to pay very, very close attention. It's
18 the afternoon. I had lunch. You've had lunch. You know
19 what you do if you eat in the early afternoon, you might
20 start to get a little groggy and it might be a natural
21 thing for you to take a little snooze. You can't do that
22 today because the State and the Defendant both expect and
23 they are entitled to a fair trial. You cannot do that if
24 you are not paying close attention.

25 Now, if somebody does need to take a break

Opening by Mr. Brown

115

1 on the jury, and the lawyers know this too, if you need
2 to take a break just raise your hand. Mr. Bradley or I
3 will be watching to make sure, I want to make sure you
4 don't feel uncomfortable about asking for a break.

5 All right. Any objections to those
6 remarks Mr. Meadors, Mr. Brown?

7 Mr. Brown: None, Your Honor.

8 The Court: Mr. Brooks?

9 Mr. Brooks: No, sir.

10 The Court: Okay. Opening from the State?

11 Mr. Brown: Yes, Your Honor. If it
12 pleases the Court.

13 The Court: All right.

14 Mr. Brown: Selling drugs is a lifestyle
15 for me. Is a lifestyle for me. Good-morning Ladies and
16 Gentlemen, my name is Tyler Brown. I'm joined with my
17 co-counsel John Meadors and we are both prosecutors for
18 the Third Circuit of South Carolina. We are employed by
19 The Honorable Ernest A. Finney, your selected Solicitor,
20 and it is our job in this county to prosecute when we
21 have evidence that a felony was committed in our county.
22 Today, you have been summoned as jurors and you have been
23 selected as jurors in the case against Leroy Gibbs. Mr.
24 Gibbs, who is represented by Mr. Charles Brooks, has been
25 charged with three counts on which we are going forward

Opening by Mr. Brown

116

1 with today. He has been charged with trafficking cocaine
2 base, manufacturing cocaine base and possession with
3 intent to distribute cocaine.

4 Before I really start talking about what
5 we can show in this case, I'm going to talk to you about
6 what the law is and what we as the State have the burden
7 of proof to you as the jurors in this case.

8 When we talk about trafficking cocaine,
9 cocaine base, which most of y'all probably know is crack
10 cocaine. When we talk about that, what the State of
11 South Carolina recognizes is that whenever you have over
12 a given quantity of crack cocaine, that quantity being
13 ten grams you are presumed guilty of it. You have to have
14 actual constructive possession of it but if you possess a
15 quantity of crack cocaine that exceeds ten grams you are
16 guilty of that offense. Manufacturing crack cocaine that
17 means that you make it, you manufacture it, you attempt
18 to make crack cocaine. Finally, the last charge he is
19 facing today is possession with intent to distribute
20 cocaine. Possession with intent to distribute you have
21 to possess a quantity of powdered cocaine and the State
22 has to prove that there was intent to distribute. This
23 can be done by a number of means and those are the things
24 we talked about. If you cross over a gram of cocaine
25 that creates an inference for the jury that y'all can

Opening by Mr. Brooks

117

1 rely on. Imagine scales, if you have razors, if you have
2 baggies, you have statements those can all be used by you
3 as jurors. Ladies and Gentlemen, when we talk about
4 actual and constructive possession you are going to hear
5 a lot talk about that. Actual possession means it's on
6 your persons, you have it in your pocket, you have it in
7 your hand. Constructive possession means that you may
8 not have it on your person, you may not have it in your
9 hands but you have the ability to control, you have the
10 ability to get to it, it is yours. If I left something,
11 my paperwork over there, that is constructive possession
12 and we as the State have to proof this beyond a
13 reasonable doubt.

14 What the State plans to introduce today
15 and we believe we will be able to prove is that on the
16 date of December 23, 2013, law enforcement went to the
17 home of Leroy Gibbs. Once they got there they were given
18 consent to search the residence by Ms. Kimberly Gibbs,
19 who also lived there. During the search, they recovered
20 a quantity of crack cocaine. They recovered a large
21 quantity of cocaine but they also recovered all the
22 debris and cocaine that we believe also, that has Mr.
23 Gibbs being driven away from that home by law
24 enforcement. As he's being taken away to Sumter-Lee
25 Regional Detention Center he made a statement to law

Opening by Mr. Brooks

118

1 enforcement where he said that selling crack or selling
2 drugs, I'm sorry, selling drugs is a lifestyle.

3 We ask you all to give us your undivided
4 attention throughout this case. Both the State and also
5 the Defendant deserve your undivided attention. We ask
6 you to consider all the facts, all the witnesses and all
7 the testimony that goes forward today. At the end of this
8 case we will be coming forward, we will be closing and we
9 will be asking for a guilty verdict. Thank you.

10 The Court: Thank you, Mr. Brown. Any
11 opening statement, Mr. Brooks?

12 Mr. Brooks: Yes, sir.

13 The Court: All right.

14 Mr. Brooks: Ladies and Gentlemen, again
15 my name is Charles Brooks and I represent Mr. Gibbs who
16 is seated at the table. I'm a lawyer just like Mr.
17 Meadors and Mr. Brown there. Of course, I don't
18 represent the State, I represent Mr. Gibbs.

19 One of the things that I would like to
20 remind you of is that any person who comes in this
21 courtroom is innocent until proven guilty. And that also
22 applies to my client, Mr. Gibbs, who is a citizen of this
23 country, this State. That means the State has the burden
24 of proving their case beyond a reasonable doubt. And
25 that's a very, very important rule. It's a very

Opening by Mr. Brooks

119

1 fundamental thing about our entire criminal judicial
2 system. That means we come into this courtroom in a
3 clothe of innocents. We don't have to prove anything and
4 the State and all the officers involved, the entire team
5 have to prove beyond a reasonable doubt. Beyond a
6 reasonable doubt is really, really important. It's very
7 instrumental and critical to our criminal justice system.
8 It means that they must establish beyond a reasonable
9 doubt. Now, most folks who are not involved in the
10 criminal justice system, lawyers, judges, court
11 reporters, things of that sort, you may have heard that
12 term but not know what that actual means. I'd like to
13 kind of give you a point of reference. For those of you
14 guys that are maybe sport fans, I would look at beyond a
15 reasonable doubt is the team has the ball all the way
16 into the end zone, not pass the fifty yard line, pass the
17 forty. They've got to get the ball in the end zone. Now,
18 Mr. Gibbs, we do not have intercept the ball, make them
19 turn it over, but they got to get the ball in the end
20 zone and that's what I would equate to beyond a
21 reasonable doubt. For those of you guys you are into
22 baseball. It would by they would have to get the ball to
23 first base before the runner gets there. Any type of tie
24 would go to the runner. This is not a public opinion
25 pole where you make a decision as to what democrats or

Mr. Wayne Dubose - Examination by Mr. Meadors

120

1 republicans or what choice the President should make.
2 This is a trial to where you have a serious task to
3 determine whether or not they got the ball in the end
4 zone. You are being placed in the position as the
5 official. Did they get the ball in the end zone. Now,
6 it's my position, is that when you listen to all the
7 facts and listen to when Mr. Brown or Mr. Meadors
8 question their witnesses and also take an opportunity to
9 keep an open mind when I question them that you will
10 determine that they did not get the ball into the end
11 zone. They failed on their case miserable. And, once
12 you decide that and you agree they did not get the ball
13 to the end zone that you can come back with one verdict,
14 which is not guilty on behalf of my client. Thanks.

15 The Court: Thank you, Mr. Brooks. First
16 witness for the State.

17 Mr. Meadors: May it please the Court,
18 Your Honor.

19 The Court: Yes.

20 Mr. Meadors: We would call Investigator
21 Wayne Dubose.

22 Bailiff: Place your left hand on the
23 Bible, raise your right hand. State your name, please.

24 Mr. Dubose: Wayne Charles Dubose.

25 Bailiff: Do you solemnly swear or affirm

Mr. Wayne Dubose - Examination by Mr. Meadors

121

1 that your testimony to the Court shall be the truth, the
2 whole truth and nothing but the truth so help you God?

3 Mr. Dubose: Yes, sir.

4 Bailiff: Thank you. Have seat up here,
5 please. Please state your full name and spell your last
6 name for the record.

7 Mr. Dubose: Wayne Charles Dubose. D-U-B-
8 O-S-E.

9 Investigator Wayne Charles DuBose - Examination by

10 Mr. Meadors:

11 Q: Good afternoon, Investigator Dubose. Please
12 tell the Ladies and Gentlemen of this jury a
13 little bit about yourself. Specifically where
14 you are from, your background, your training
15 and in particular your training in law
16 enforcement.

17 A: My name is Wayne Dubose. I was born here in
18 Sumter. I have lived here my whole life. In
19 1996, I joined the Sheriff's office. I went to
20 the Criminal Justice Academy. I'm certified as
21 a police officer. I've been in law enforcement
22 for 16 years now. At this time, I am employed
23 as a criminal investigator with the Sumter
24 County Sheriff's office.

25 Q: What different positions are parts of the

1 Sheriff's department have you worked besides
2 investigation?

3 A: I have been on patrol, the Family Court
4 division, Narcotic our CAT Team and criminal
5 investigation.

6 Q: What is a CAT team?

7 A: It's a community action team. Basically we work
8 in areas where they have problems and address
9 the problems in that area.

10 Q: I want to take you back to December 23, 2008.
11 Were you employed with the Sumter County
12 Sheriff's Department?

13 A: Yes, sir.

14 Q: And in what capacity, what division were you
15 working in there are you working in?

16 A: Investigator of narcotics.

17 Q: At that time how long had you been in
18 narcotics?

19 A: Four years. I went to narcotics in 2004.

20 Q: How long did you stay in narcotics?

21 A: Six years.

22 Q: Specifically on December 23 of 2008 did you
23 have an occasion to serve some arrests warrants
24 at [REDACTED] Madison Avenue here in Sumter County

25 A: Yes sir, I did.

Mr. Wayne Dubose - Examination by Mr. Meadors

123

1 Q: Who were those warrants for?

2 A: The warrants were for Leroy Clifton Gibbs,
3 III.

4 Q: Is that the defendant here today sitting by Mr.
5 Brooks?

6 A: That is Mr. Gibbs there, correct.

7 Q: About what time did you go to Madison Avenue?

8 A: I went to this address approximately about 12
9 o'clock that afternoon around lunch time.

10 Q: Who else was with you investigator?

11 A: Myself, several officers with the Narcotics
12 Unit, Investigator Mays, Lieutenant Moore,
13 Lieutenant Horton with the patrol division and
14 we had a couple of agents with SLED with us.

15 Q: I'm showing you what's been entered as State's
16 Two, do you recognize that?

17 A: Yes, sir. That would be the residence on
18 Madison Avenue.

19 Q: The residence on Madison Avenue. And I think I
20 said it, that is in Sumter County?

21 A: It is in Sumter County.

22 Q: Tell the ladies and gentlemen of this jury, who
23 went to the front door?

24 A: Myself, Investigator Mays and there may have
25 been another officer. I actually went to the

1 door and knocked on the door.

2 Q: What happened after you knocked on the door?

3 A: I knocked on the door, at that time we heard
4 some movement inside the residence. Someone
5 looked out of a bedroom window just to the
6 right of the door. After about a minute or two
7 someone came to the door, opened the door for
8 us.

9 Q: Did that person identify themselves or did you
10 know who that person was?

11 A: At that time, I asked who they were and that
12 person identified herself as Kimberly Gibbs.

13 Q: Kimberly Gibbs?

14 A: That's correct.

15 Q: And did you tell this Kimberly Gibbs while you
16 were at this residence?

17 A: I did. I explained to her at that time that we
18 have an arrest warrant for Mr. Gibbs.

19 Q: What happened after that?

20 A: At that time, Ms. Gibbs stated that Leroy Gibbs
21 was in the bedroom and at that time I asked if
22 we could come in and she said yes. We went into
23 the living room and started toward the bedroom
24 where Mr. Gibbs has at and I encountered him in
25 the hallway. Basically just coming out of the

1 bedroom.

2 Q: Could you describe his attire to the ladies and
3 gentlemen, what was he wearing?

4 A: He was wearing a T-shirt and a pair of boxer.

5 Q: What happened next?

6 A: At that time we were dealing with Mr. Gibbs at
7 time. We placed him under arrest and
8 handcuffed him and we took him into the living
9 room and sat him on the couch. At that time I
10 went ahead and mirandized Mr. Gibbs and Ms.
11 Gibbs in the residence because when I
12 encountered Mr. Gibbs in the hallway of the
13 bedroom area, at that time, I smelled a slight
14 odor of marijuana in that area.

15 Q: Prior to bringing him into the living room, did
16 he ever put pants on, Mr. Gibbs

17 A: Not at that time. When we handcuffed him he
18 was still in boxers.

19 Q: I apologize. At some point, did he request for
20 his pants?

21 A: He did.

22 Q: Tell us about that please.

23 A: He was sitting in the livingroom. He was
24 sitting on the couch. At that time, he asked
25 if he could get a pair of pants to put on. I

1 asked him where the pants were at, he said the
2 pants were in the bedroom that he had just came
3 out of. We did locate a pair of pants on the
4 floor beside the bed.

5 Q: At that point, had you already smelled the
6 smell you described earlier?

7 A: Yes, sir the smell of marijuana.

8 Q At that time, what did you do with the pants?

9 A: He was requesting pants, I went and got pants
10 for him. I went ahead and searched the pants
11 to make sure there wasn't a weapon on them.
12 And in the pocket I found a large sum of
13 currency.

14 Q: Do you remember how much that was?

15 A: It was \$1,355.00, I believe it was.

16 Q: After --- you confiscated the money, you took
17 the money?

18 A: Yes, sir.

19 Q: After that did you give him the pants, Mr.
20 Gibbs?

21 A: We did give him the pants and he went and put
22 the pants on.

23 Q: And I think you testified that you read him his
24 Miranda rights, correct?

25 A: That's right.

Mr. Wayne Dubose - Examination by Mr. Meadors

127

1 Q: At this point, where is Mr. Gibbs?

2 A: Mr. Gibbs?

3 Q: Yes.

4 A: He was sitting in the living room, we set him
5 on the couch.

6 Q: Did you inform him that you had warrants for
7 him?

8 A: I did.

9 Q: What did you do and what happened with Mr.
10 Gibbs after that?

11 A: At that point, we Mirandized him. Explained the
12 warrant to him and the patrol officers Horton
13 and Moore then took him from the residence.

14 Q: That are these two officers here? Moore and
15 Horton?

16 A: Yes.

17 Q: And was part of the plan to bring them along in
18 case you did find Mr. Gibbs so he could be
19 taken away on the arrest warrant?

20 A: That's right

21 Q: That was just procedure?

22 A: That's right.

23 Q: Had you started looking through the house prior
24 to the defendant, Mr. Gibbs, leaving?

25 A: Not at that time. Mr. Gibbs was handcuffed he

1 was sitting on the couch. We had smelled the
2 odor of marijuana throughout the house. At
3 that time I did ask Kimberly Gibbs, which was
4 the female at the residence and Mr. Gibbs for
5 consent to search the residence. Mr. Gibbs
6 advised me at that time that he didn't live
7 there. So, therefore, I asked Ms. Gibbs if she
8 mind. I told her we smelled marijuana and
9 asked if she would give consent and she
10 verbally gave us consent at that time.

11 Q: Did she subsequently give written consent?

12 A: She did. I got a consent to search form that
13 that the Sheriff's office has. It's a two page
14 form. I went over that form with her and
15 basically advised her that she doesn't have to
16 give consent and it was voluntary and we went
17 over that and she did sign it and stated that
18 we could search the residence.

19 Q: First, she orally gave you consent?

20 A: That's correct.

21 Q: Was there any hesitation after you said will
22 you give us consent, did she hesitate before
23 she gave you consent?

24 A: She said we could look through the residence.

25 Q: I'm showing you what's marked State's 1 for ID

Mr. Wayne Dubose - Examination by Mr. Meadors

129

1 at this point. Does that relate to what you
2 were just testifying about?

3 A: That is the consent to search that Ms. Gibbs
4 signed.

5 Q: And was your signature also on there?

6 A: It is.

7 Mr. Meadors: Your Honor, we would offer
8 State's Exhibit Number 1.

9 The Court: Any objection?

10 Mr. Brooks: Yes, Judge.

11 The Court: All right. We will leave it
12 for ID at this point. Thank you Mr. Brooks.

13 Q: Is it your testimony that after you received
14 oral and written consent to search, did you
15 search?

16 A: Yes, sir. We did.

17 Q: Can you explain that process to the Ladies and
18 Gentlemen of the jury?

19 A: At that time we obtained consent to search.

20 Mr. Gibbs advised me that he didn't live there.

21 We had the warrants on him so we went ahead and

22 the officers transported him to the jail. Ms.

23 Gibbs was there in the residence. She stayed

24 in the residence with us. We went into the

25 dinning room area where there was a kitchen

1 table and that's where we sat and started ---
2 other officers were searching through the
3 residence and at that time I took that consent
4 form and everything that was located
5 Investigator Mays photographed it and would
6 tell me where it was at and I would pick it up.

7 Q: So, State's Number 1 that you've identified as
8 the Consent, did you put on their where the
9 items were found?

10 A: Yes. I put on this form everything that was
11 taken from the residence.

12 Q: Now, this is State's 2.

13 The Court: Can everyone on the jury see
14 the screen? Okay.

15 Q: Now, this is what has already been entered as
16 State's 2. I think you mentioned it earlier.
17 What is that?

18 A: That's a picture of the residence at [REDACTED]
19 Madison Avenue.

20 Q: I believe you testified, do you recognize
21 State's Number 3?

22 A: That would be, I believe, looking from the
23 front room area that would be the dining room
24 area. We actually sat down where I filled out
25 the consent. Ms. Gibbs sat at that table with

1 me.

2 Q: This is where Ms. Gibbs signed the written
3 waiver, your testimony is?

4 A: That's right.

5 Q: I believe you testified earlier when I asked
6 you was there any delay in her informing you
7 orally whether or not to consent. When you
8 asked her to put that in writing did she
9 hesitate?

10 A: No. She was very cooperative.

11 Q: This is State's Number Four.

12 A: That would be a photo of the livingroom area.
13 That would be the room that Mr. Gibbs was
14 placed in.

15 Q: And I guess, what we are in the process now,
16 you are telling the jury how the search went
17 down, right?

18 A: Yes, sir.

19 Q: Let me go to State's Five, now.

20 Mr. Meadors: Your Honor, all of these
21 State's 2, 3, 4 and 5 are all in without objection.

22 The Court: Okay.

23 (State's 2, 3, 4 and 5 were entered)

24 A: That was the couch that Mr. Gibbs was placed on
25 and as you see to the left there, that's the

1 table we were sitting out when I give the
2 consent to search.

3 Q: That we just looked at State's number 4?

4 A: Yes, sir.

5 Q: And this is State's Number 5 now?

6 A: That's right.

7 Q: Did it look like this house was furnished?

8 A: Sir?

9 Q: Did it look like to you that this house was
10 furnished?

11 A: Yes, sir.

12 Q: Did it look like people lived in there?

13 A: Yes, sir.

14 Mr. Meadors: This is State's Number 6
15 without objection.

16 **(State's Number Six was entered into evidence)**

17 A: That would be a picture of the master bedroom.

18 That would be where Mr. and Mrs. Gibbs, that

19 was the room that they came out of. Just to

20 the bottom left side of the bed you'll see a

21 pair of pants, that was the pair of pants I got

22 and gave Mr. Gibbs. That's the pants that had

23 the \$1,355.00 in it.

24 Q: You're talking about right here?

25 A: That's correct.

Mr. Wayne Dubose - Examination by Mr. Meadors

133

1 Q: You checked those pants, got the money and then
2 gave them to him?

3 A: Yes, sir.

4 Mr. Meadors: State's Seven without
5 objection.

6 (State's Exhibit Number Seven was entered into
7 evidence)

8 A: This would have been a photo from the kitchen
9 area covering the cabinets, microwave, sink
10 area.

11 Q: At this point, had you found any evidence of
12 any drugs?

13 A: All these photos that Investigator Mays had
14 shot of how things looked before we started
15 searching.

16 Mr. Meadors: The State's Number Eight
17 without objection.

18 **(State's Exhibit Number Eight was entered)**

19 Q: What is that?

20 A: These would have been some items that were
21 located in the kitchen cabinet. There's a box
22 of baking soda, there some Pyrex measuring
23 glasses, then there's a bag that contained some
24 cocaine, crack cocaine, it's in the little
25 pocket back there.

1 Q: Based on your experience and training you said
2 you were in narcotics how long?

3 A: About six years.

4 Q: Baking soda. What was the other item you said
5 was in there?

6 A: There's baking soda, there's some glass jars in
7 the back. There's measuring cups. There's razor
8 blades just to the left of that bag. Then in
9 that bag there was a quantity of cocaine and
10 also crack cocaine.

11 Q: The baking soda, are you familiar with that in
12 your business, specifically narcotics how, if
13 anything, that relates to cocaine or crack
14 cocaine?

15 A: The baking soda probably everybody has got it
16 at home but baking soda is an ingredient that
17 is used to mix with the cocaine. Basically
18 what they do is if you premixing in a
19 microwave.

20 Q: Cocaine and baking soda are used to make crack
21 cocaine?

22 A: Yes, sir.

23 Q: And you found what you believe to be cocaine
24 and baking soda and there's a, looks like a
25 razor blade there?

Mr. Wayne Dubose - Examination by Mr. Meadors

135

1 A: Yes, sir.

2 Q: Based on your experience and training in
3 narcotics is that used in the field of drug
4 activity, if you will, illegal ...

5 A: Seeing what I see there in that photo that
6 would lead me to believe that someone was
7 making cocaine and crack cocaine and they were
8 cooking crack cocaine. Measuring stuff out in
9 the measuring glasses. You have cocaine in the
10 bag and baking soda. You also have the razor
11 blade there after the crack is cut up in little
12 pieces.

13 Q: So, in your line of work, these would be tools
14 of the trade so to speak?

15 A: Yes, sir.

16 Q: Making cocaine ...

17 A: Yes, sir.

18 Q: ... and crack cocaine?

19 A: Yes, sir.

20 Mr. Meadors: Go back to that last one,
21 please, Mr. Brown. What was the number for it?

22 Mr. Brown: Number 7.

23 Q: Is Number 8 depicted in Number 7?

24 A: The cabinet just above the microwave.

25 Q: This is what we just looked at in Number 8,

1 inside of it.

2 A: Yes, sir.

3 Mr. Meadors: Number 9 without objection.

4 **(State's Number 9 entered)**

5 A: That would just be some more razor blades we
6 found on those shelves. It appeared that some
7 of the razor blades had residue.

8 Q: And that's the same cabinet depicted in State's
9 7?

10 A: Yes, sir.

11 Mr. Meadors: State's 10 without objection.

12 **(State's Number Ten was entered)**

13 Q: What is that?

14 A: These are other measuring jars. These jars here
15 are not the ones we seen in the picture before.
16 These were actually inside of the microwave and
17 you can see down on the inside of the jar the
18 white residue, which is going to be the crack
19 cocaine.

20 Mr. Meadors: Thank you, sir.

21 Q: Are you referring to this?

22 A: Yes.

23 Q: This is State's Ten. Where was this?

24 A: That was inside the microwave.

25 Q: Okay.

Mr. Wayne Dubose - Examination by Mr. Meadors

137

1 A: That photo is taken after we had opened the
2 microwave and that's what we found inside of
3 it.

4 Mr. Meadors: This is State's Eleven
5 without objection.

6 **(State's Number Eleven was entered)**

7 Q: Investigator Dubose do you recognize that and
8 if you do what is that?

9 A: That is a, it's a - if found what we believed
10 to be cocaine, crack cocaine and we could open
11 up and wipe that material and it will turn blue
12 and it will test positive for cocaine. That
13 little plate there is actually the turning
14 table inside the microwave. That's what we
15 wiped. You'll see on there a slight color
16 change on that test kit.

17 Q: So, State's Eleven here is the inside of what
18 we just saw of State's Ten without the jars in
19 there?

20 A: Yes, sir.

21 Q: Does that make sense? You removed the jars and
22 then took pictures of this?

23 A: That's correct.

24 Q: And then field tested this for what?

25 A: For marks.

1 Mr. Meadors: State's 12 without objection.

2 **(State's Exhibit Number 12 entered)**

3 Q: Do you recognize that and if so how does it
4 relate to this case and what is it?

5 A: Two pictures before were razor blades. That
6 again is the kit wipe where we wiped the razor
7 blades. Again, you can see where the color
8 change there where blue showed up for positive
9 where two of these had cocaine.

10 Q: You still collect this and send it to a
11 chemist, correct?

12 A: No, sir. We do not. Needles, razor blades and
13 stuff like that we usually do not package stuff
14 like that.

15 Q: Other potential evidence of cocaine and crack
16 cocaine you do send that forward for further
17 testing?

18 A: That's correct. The powder and stuff we were
19 taken, drugs and stuff we were just basically
20 photograph and it would be taken and destroyed.

21 Q: And you did that in this case?

22 Mr. Meadors: State's 15 without objection.

23 **(State's Exhibit 15 was entered)**

24 A: That is just a couple of pictures back you seen
25 the bag with some items in it. These would be

Mr. Wayne Dubose - Examination by Mr. Meadors

139

1 the items. The bag with the white powder
2 cocaine that would be what was in the plastic
3 bag which was taken pictures of.

4 Mr. Meadors: State's 17 without objection.

5 **(State's Exhibit 17 was entered)**

6 Q: What is that?

7 A: That was a cup that was, it came from the
8 kitchen area and down on the side it has a
9 white substance on it.

10 Q: Is this the same kitchen?

11 A: Yes, sir.

12 Q: What appeared like to you had been going on in
13 your observation with baking soda, cocaine and
14 the other items you found?

15 A: It appeared someone had been taking cocaine and
16 cooking crack cocaine in the microwave.

17 Mr. Meadors: Beg the court's indulgence.

18 The Court: Okay.

19 Mr. Meadors: State's Fourteen without
20 objection.

21 **(State's Exhibit Number 14 was entered)**

22 A: This would be in the master bedroom. When I
23 initially went in and smelled marijuana or
24 smelled like burning marijuana, in the ashtray
25 you will see a roach, a little brown piece that

1 was a piece of a marijuana cigarette.

2 Mr. Meadors: State's Thirteen and State's
3 Sixteen without objection.

4 A: That is a purse that was actually, I believe,
5 the second picture there was a table that was
6 in the livingroom where we sat that I did the
7 consent to search warrant there was Mrs. Gibbs
8 purse that was on the kitchen table. Inside
9 there were a bag of baby wipes. Inside the
10 baby wipes there was a bag of marijuana and a
11 bag of crack cocaine.

12 Q: Tell me about this. Did you ask -- was this
13 searched first or last?

14 A: That was the very last item where we found
15 anything. We searched the residence and
16 documented what we had found. We were actually
17 fixing to leave at that time and Mrs. Gibbs was
18 there at the table. Her purse was there so we
19 went ahead and opened her purse up. We asked
20 her if it was her purse. She said it was her
21 purse. So, we looked in it. We opened it up
22 and inside is where we found that marijuana and
23 that cocaine.

24 Q: Did she give you consent to search that?

25 A: She did.

Mr. Wayne Dubose - Examination by Mr. Meadors

141

1 Mr. Meadors: Judge, could I ask
2 Investigator Atkinson to come up he's got the drugs and
3 it might make this easier as far as handling.

4 The Court: Of course, he's not to testify.

5 Mr. Meadors: No, no. Beg the court's
6 indulgence.

7 The Court: Everybody on the jury okay?

8 (Jury acknowledges in the affirmative)

9 Mr. Meadors: Judge, these have been marked
10 18 for i.d. at this point.

11 The Court: Eighteen for i.d.

12 **(State's Exhibit Eighteen for I.D. only)**

13 Q: Why are you doing that?

14 A: So that I don't get contaminated and get
15 cocaine on my skin.

16 Q: And for the record, why are you putting those
17 gloves on. I'd like for you to go through and
18 you said it's on your consent, which is State's
19 Exhibit One for i.d., if you would go through
20 and tell the judge and the ladies and gentlemen
21 of the jury where you found what you believe to
22 be illegal drugs in this house.

23 A: All of these items were bagged up in one
24 bagged. We sectioned them out and place them
25 in a Best Kit.

1 Q: What is a Best Kit?

2 A: This is evidence kept that is usually sent to
3 SLED and at this time we had a chemist who
4 handled our drugs here. All of the drug items
5 are placed into this kit. It's sealed. It is
6 placed into a drug evidence locker. And then
7 the chemist or evidence custodian at that time
8 will take it out and deliver it to the chemist
9 who will go through and analyze each and every
10 item and determine what it is.

11 Q: Were you present when Mr. Brooks and I agreed
12 that to help us make this some what smoother we
13 opened that just before this hearing so you
14 could pull them out, correct?

15 A: This was sealed until probably thirty minutes
16 before trial and we did cut them open to
17 actually take this stuff out to identify
18 because it was all packaged in.

19 Q: Now, could you go through bit by bit if you
20 will and tell us where you received it from?

21 A: I'll do the best I can on it. All right. This
22 bag would have been one of the bags you seen on
23 one of the photos. These bags - these bags
24 would have had these items, these ziplock bags
25 here.

Mr. Wayne Dubose - Examination by Mr. Meadors

143

1 Q: Yes, sir.

2 A: That's something that the chemist had. These
3 bags were individual bags such as those three
4 bags. The chemist took them out and analyzed
5 them. These items would have been in bags.
6 These are the items that you saw in the
7 pictures.

8 Q: In the shelves in the kitchen?

9 A: Correct.

10 Q: Let's keep these separate. What was the
11 potential evidence of the narcotics that you
12 found in the shelves earlier in the kitchen?

13 A: These are just the empty bags and then inside
14 the bags there were - this would be crack
15 cocaine. This would be crack cocaine wrapped
16 in a bag.

17 Q: Where was that?

18 A: All this stuff was found in the kitchen
19 cabinet.

20 Q: Okay.

21 Mr. Meadors: Beg the court's indulgence.

22 Q: I'm going to show you State's 15 and State's
23 ... let me show you State's 15 to start with.
24 There's State's 15. What was taken from State's
25 15?

1 A: Theses bags. These are the bags that the
2 chemist had. They were taken from these bags.

3 Q: When you say these are the bags ...

4 A: It's confusing.

5 Q: No, sir. It's not. When you say these bags are
6 the bags the chemist had after he had tested
7 them he can come to court and say this is what
8 I tested and put them in these bags, right?

9 A: Right. He can testified where he had them in
10 his bags Basically repackaging.

11 Q: There you go. All right. State's 15, the
12 drugs that came from State's 15 ...

13 A: That's right. That would be these and there's
14 also the picture of the cup that had the item
15 down in it.

16 Q: State's 17.

17 A: In the other bag would have been these items
18 and there was also in that bag, I don't think
19 we have a photo that may still be inside that
20 bag.

21 Q: There's no question it came from State's 18?

22 A: That's correct.

23 Q: Now, for these purposes, can we mark ...

24 Mr. Meadors: Your Honor, for these
25 purposes can we mark 18a and 18b what he just showed us

Mr. Wayne Dubose - Examination by Mr. Meadors

145

1 there?

2 The Court: All right. These are for i.d.
3 at this point.

4 Mr. Meadors: Beg the court's indulgence.
5 I.D.

6 The Court: 18a and b for i.d.

7 **(State's 18a and 18b for id only)**

8 Q: I've got sticker 18a and where did this come
9 from?

10 A: This would be from the cup.

11 Q: That is the cup from State's 17, correct?

12 A: Seventeen, that's showing 18.

13 Q: I understand. Eighteen is off the cup, State's
14 17.

15 A: Okay.

16 Q: Put 18b in what depicted in State's 15, please.

17 A: This would have also been in that bag. That's
18 in that same bag.

19 Q: That's depicted ...

20 A: Yes, sir.

21 Mr. Meadors: Your Honor, we'd ask that
22 that be marked 18c.

23 The Court: For i.d?

24 Mr. Meadors: Yes, sir.

25 **(State's 18c marked for i.d.)**

1 Q: Is that it for the kitchen?

2 A: Yes, sir. This would have been items found in
3 the purse.

4 Mr. Meadors: Your Honor, Nineteen for i.d.
5 items from her purse.

6 The Court: Nineteen?

7 Mr. Meadors: For identification.

8 **(State's 19 was marked for i.d.)**

9 Q: State's Fourteen, photo of the ashtray, you've
10 already testified to, was that collected also?

11 A: It was.

12 The Court: This is 19 for i.d., is that
13 correct Mr. Meadors?

14 Mr. Meadors: 19 for i.d. I believe 20 is
15 without objection.

16 (State's Exhibit 19 for i.d.)

17 (State's Exhibit 20 entered)

18 Q: Is 20 what was found in State's 14?

19 A: Yes, sir.

20 Q: This is December 23rd of '08, correct?

21 A: Yes, sir.

22 Q: Y'all search the residence found these
23 potential drugs, correct?

24 A: Yes, sir.

25 Q: Illegal narcotics. Going back at this point,

Mr. Wayne Dubose - Examination by Mr. Meadors

147

1 the State's i.d., did you list all these items
2 at the bottom of the Consent to Search Form?

3 A: Yes, sir. I did.

4 Q: What we just went through, not so gracefully,
5 all of that is on there, correct?

6 A: Correct. Items on the consent would be the
7 items we removed from the pants pocket \$1,355.
8 Small amount of suspect of marijuana that was
9 in the ashtray.

10 Q: And that is what is 20, correct?

11 A: That's correct. There's four containers of
12 U.S. Mail located in one of the rooms and a 45
13 caliber Springfield gun.

14 Q: List the items of the - go ahead.

15 A: A Taurus 38 special was found in the closet. A
16 quantity of suspect cocaine in the kitchen
17 cabinet. Glassware with white residue on it. A
18 small bag of crack cocaine. Bullets found in
19 the hallway closets and baby wipes in the purse
20 that contained marijuana and crack cocaine and
21 also \$40 U.S. Currency.

22 Q: And that came from the purse, correct?

23 A: That's right.

24 Q: Now, Mr. Gibbs had already departed the
25 residence, I believe you said, when you

1 conducted the search?

2 A: I didn't hear you.

3 Q: I'm sorry. I didn't mean to turn my back to
4 everybody. Had Mr. Gibbs left the residence
5 prior to this search?

6 A: Yes.

7 Q: Okay. Did you have an occasion to see Mr.
8 Gibbs again?

9 A: I seen him the next day.

10 Q: Was that to serve these warrants on him from
11 this day?

12 A: That's correct.

13 Q: Did you have an occasion to read him his
14 Miranda Rights?

15 A: At the jail that day I read him his rights that
16 day to serve him those warrants.

17 Q: Can you read the rights now as you did that day
18 to Mr. Gibbs on December 24, 2008?

19 A: Yes, sir. On the 23rd I read them off my card
20 and I also read them off my card that day at
21 the jail.

22 Q: Okay. Would you mind doing that now like you
23 did then, please Investigator?

24 A: It may not have been this Miranda card but it
25 was one I have. I advised him again that you

Mr. Wayne Dubose - Examination by Mr. Meadors

149

1 have the right to remain silent. Anything you
2 say can and will be used against you in court.
3 You have a right to consult with an attorney
4 and have an attorney present during question.
5 If you cannot afford to hire an attorney one
6 will be provided to you before questioning at
7 no costs. I asked him if he understood his
8 rights and if he wished to talk to me?

9 Q: Did Mr. Gibbs on December 24, 2008 - he was at
10 the Detention Center, right, when you read him
11 his rights?

12 A: That's correct.

13 Q: Did he appear to be under the influence of
14 alcohol or drugs or any other intoxicants?

15 A: No, sir.

16 Q: Did he appear to you, based on your experience
17 and training to understand the rights as you
18 read them to him?

19 A: I believe when I read them to him that he
20 understood them. He didn't tell me he didn't
21 understand them.

22 Q: At any point during the process of reading his
23 Miranda Rights and the Waiver of Rights, did y
24 you Investigator Dubose threaten, coerce, hold
25 out any hope of reward to Mr. Gibbs in exchange

1 for any kind of statement or anything?

2 A: All I did was I read him his rights and read
3 the warrants to him that I was serving on him.

4 Q: Is that your procedure when you are serving
5 warrants you read the Miranda Rights?

6 A: Yes, sir.

7 Q: Go back to December 23rd, had Lieutenant Moore
8 and Lieutenant Horton, did they come back to
9 the house after they transported Mr. Gibbs to
10 the Detention Center?

11 A: Yes. They transported Mr. Gibbs away from the
12 house to the jail and then they returned back
13 to the scene. When they returned back they
14 told me something that was said inside of the
15 patrol car.

16 Q: Okay. And as the result of that, after you
17 read Mr. Gibbs his Miranda Rights, did he ask
18 for an attorney?

19 A: Not to me he didn't. No, sir.

20 Q: After you read him his rights, did he say
21 Officer Dubose I don't want to talk to you?

22 A: No, sir.

23 Q: Did you ask him about that statement that he
24 had made to Horton and Moore?

25 A: I did. When I mirandized him and advised him

Mr. Wayne Dubose - Examination by Mr. Meadors

151

1 of the warrants that I had and I was going to
2 serve and then I asked him about the statement
3 that he made the day prior while he was being
4 transported to the jail.

5 Q: What did he say about that? He being the
6 defendant, Mr. Leroy Clifton Gibbs.

7 A: I advised him that Corporal Moore told me that
8 he made a statement in the patrol car while
9 going to the jail that he and Horton said that
10 Mr. Gibbs made this statement that selling
11 drugs was just a lifestyle for him. I asked
12 him about that, why he made that statement and
13 at that time his response was he just had to
14 support his habit.

15 Q: How long after Horton and Moore came back on
16 the 23rd was it before they told you, hey here's
17 the statement he made?

18 A: As soon as they got back they said what he told
19 them.

20 Mr. Meadors: Beg the court's indulgence.

21 The Court: All right.

22 Q: Based on your training and law enforcement
23 specifically in the division of narcotics, do
24 you have knowledge and did you have knowledge
25 then of the street value of the gram of cocaine

1 or the gram of crack cocaine?

2 A: A gram of crack cocaine I believe is at \$200 a
3 gram and I believe cocaine is \$200 a gram also.

4 Q: Now, the individual that you came to arrest on
5 December 23 at Madison Avenue at specifically
6 ■ Madison Avenue that you say you saw in the
7 bedroom to start with, is that person in the
8 courtroom?

9 A: Mr. Gibbs is.

10 Q: Is the person that you, after you read him his
11 Miranda Rights, the person that said it's just
12 a way of life I have to support my family,
13 taking about drugs is that person in the
14 courtroom?

15 A: That's Mr. Gibbs.

16 Q: Sitting next to Mr. Brooks?

17 A: Yes, sir.

18 Mr. Meadors: We'd ask the record to so
19 reflect, Your Honor.

20 Q: Did you arrest Kimberly Gibbs that day?

21 A: That day we did not arrest her. I don't know
22 what day it was, she was arrested on December
23 29th, we arranged for her to come down and turn
24 herself in. I advised her we had warrants on
25 her.

Mr. Wayne Dubose - Cross Examination by Mr. Brooks

153

1 Q: Was there a child there also when you served
2 the arrest warrant on Mr. Gibbs?

3 A: There was a small child there at the residence.

4 Q: Was there anybody else there besides Mr. Gibbs,
5 Mrs. Gibbs and this child?

6 A: No, sir.

7 Q: Besides law enforcement.

8 A: Yes, sir. Besides law enforcement.

9 Q: So there was nobody else there besides law
10 enforcement and these three individuals?

11 A: No, sir.

12 Mr. Meadors: That's all. Thank you.

13 The Court: Mr. Brooks.

14 Investigator DuBose - Cross Examination by Mr.

15 Brooks:

16 Q: Officer Dubose, I think you stated earlier in
17 regards to this picture which is State's
18 Exhibit, it looks like number 16 the purse that
19 belonged to Mrs. Gibbs, is that right?

20 A: No one took possession of any of the drugs in
21 the house but they were in her purse.

22 Q: Clearly this was her purse, she said it was her
23 purse and you found drugs in it.

24 A: (Nods head affirmatively).

25 Q: Is that a yes?

1 A: We did find drugs in that purse. I did ask her
2 to see if they were hers and she told me no
3 they were not hers. She did tell me something
4 else.

5 Q: Let me ask you this. She indicated to you that
6 this is her purse?

7 A: Yes, sir.

8 Q: You found drugs in her purse?

9 A: Yes, sir.

10 Q: Okay.

11 Mr. Meadors: Your Honor, can he finish
12 his answer now in response to that?

13 The Court: Mr. Brooks?

14 Mr. Brooks: I mean he finished his answer.
15 I mean, he answered my question. It's a yes or no. Is
16 it her purse. She says yes.

17 The Court: All right. Go ahead, Mr.
18 Brooks.

19 Q: Officer Dubose, you indicated that you had
20 questioned my client, you stopped him as he was
21 coming out the bedroom and met him in the
22 hallway, is that correct?

23 A: Yes.

24 Q: At some point you asked could you search the
25 house.

1 A: Yes, sir.

2 Q: He indicated to you that he did not live there.

3 A: Yes, sir.

4 Q: She indicated to you yes you can search.

5 A: That's correct.

6 Q: Okay. Subsequent to that you placed Mr. Gibbs
7 under arrest and he was transported to the
8 jail, is that correct?

9 A: Yes, sir.

10 Q: After he was removed from the premises, you
11 continued your search that was consented to by
12 Ms. Gibbs, is that correct?

13 A: Yes, sir.

14 Q: And that is when you found the items that you
15 listed as a part of Mr. Meadors questioning to
16 you?

17 A: Yes, sir.

18 Q: And those were the items that you had packaged
19 up that you took out that was basically the
20 cocaine, isn't that correct?

21 A: Yes, sir.

22 Q: Along with other various items. The guns and
23 the drugs, is that correct?

24 A: Yes, sir.

25 Q: One of the pictures that Mr. Meadors had

1 pointed out to you, which was Exhibit number
2 eight and this is baking soda, razor, bag, is
3 that correct?

4 A: Yes, sir.

5 Q: And Mr. Meadors had questioned you about the
6 knowledge and expertise of being a narcotics
7 officer. I believe one of his questions was
8 just tools of the trade, isn't that correct

9 A: Yes.

10 Q: This particular picture was a picture of the
11 entire cabinet, is that correct?

12 A: There was a picture of the overall kitchen
13 close and then there was a picture, that one
14 there, of what was on the shelf.

15 Q: This would have been in plain view, is that
16 correct?

17 A: When you opened the cabinet it would have been.

18 Q: So there was a cabinet door to it?

19 A: (Nods head affirmatively).

20 Q: Is that a yes?

21 A: Yes.

22 Q: Okay. So once you open the cabinet door, any of
23 us, it would have been clearly in plain view,
24 is that correct?

25 A: Yes, sir.

Mr. Wayne Dubose - Cross Examination by Mr. Brooks

157

1 Q: It wasn't hidden in any way, is that correct?

2 A: No, sir.

3 Q: Okay, nor were these razors, is that correct?

4 A: That's right, they were on, I believe, those
5 razors may have been on a shelf above, I
6 believe. They were in that same cabinet.

7 Q: I guess this is a, I guess a wider picture of
8 those items, is that correct, Exhibit Number
9 Five?

10 A: That would be?

11 Q: Clearly in plain view with the exception of the
12 cabinet door?

13 A: Yes, sir.

14 Q: Once you opened the cabinet door you could
15 clearly see it?

16 A: Yes, sir.

17 Q: It's not like you had to hunt around for it?

18 A: That's right.

19 Q: Clearly Ms. Gibbs indicated to you that she
20 lived there?

21 A: She did.

22 Q: And Mr. Gibbs indicated he did not live there?

23 A: He did.

24 Q: Okay. At some point, as a part of your search,
25 four containers of undelivered US mail was at

1 the residence as well, is that correct?

2 A: That's correct.

3 Q: Those things are actually part of Mrs. Gibbs
4 job being a postal worker, is that correct?

5 A: Yes, sir.

6 Q: And you guys had actually contacted the Post
7 Office, isn't that correct?

8 A: Yes, sir, we did.

9 Q: Okay. And you had found out and you put it in
10 your report that she was a mail carrier and had
11 not delivered her mail, is that correct?

12 A: That's correct.

13 Q: As part of her job?

14 A: Right.

15 Q: And you found four containers, is that correct?

16 A: Yes, sir.

17 Q: I'm a layperson, I have no idea what a
18 container of mail is and I can only go by what
19 you saw. Could you give me some type of point
20 of reference as to how big this container was,
21 was it a small container was it ...

22 A: It was a container like that big (indicating).

23 Q: So there was four of those?

24 A: Four containers.

25 Q: Four containers of what you just described. I

1 guess, you know, I guess for purposes of the
2 court reporter would you say that's about, you
3 want to hold your hands up again Officer Dubose
4 in describing those containers?

5 A: How big?

6 Q: Yes.

7 A: They are probably, I'm going to say probably
8 this long (indicating), maybe that wide
9 (indicating), probably that deep (indicating)
10 like a large Tupperware tote.

11 Q: Okay. That trash can there, it's bigger than
12 that trash can, the trash can sitting at
13 defense table about twice as big as that?

14 A: It was a little bigger than that.

15 Q: Okay and there were four of those?

16 A Yes.

17 Q: Filled with capacity with mail that she was not
18 delivering, is that correct or had not
19 delivered?

20 A: That's correct.

21 Q: And that was why you guys called the Post
22 Office?

23 A: Yes, sir.

24 Q: Do you recall what day of the week this was on
25 the 23rd of 2008?

1 A: I don't. It was the 23rd, 2008.

2 Q: Okay. All right. And you indicated that this
3 search occurred on the 23rd, the incident coming
4 to the house was on the 23rd and Mrs. Gibbs was
5 not even arrested until almost a week later the
6 29th, is that correct?

7 A: That's correct. Yeah, the 29th.

8 Q: Okay.

9 A: That point for that is that the child was at
10 the residence. We left her there with the
11 child and then I told her we'd get the warrants
12 and she could turn yourself in.

13 Q: And that is the reason why you did not arrest
14 her that day because of the child?

15 A: That's right.

16 Q: All right. Have you arrested people before
17 when there were small children around?

18 A: We have. Usually we make arrangements. It
19 seemed like that day we were going to try to
20 contact some family members but we couldn't get
21 a hold of family members right away to avoid
22 calling DSS and putting the child through that.
23 We were going to leave her there but at some
24 point in time I believe Mr. Gibbs' family
25 showed up before we left.

Mr. Wayne Dubose - Redirect Examination by Mr. Meadors 161

1 Q: Okay. So his family showed up before you left
2 yet you still did not place Mrs. Gibbs under
3 arrest until the 29th of December?

4 A: That's correct.

5 Q: And that is almost an entire week, that's 6
6 days later?

7 A: That's correct.

8 Q: Okay.

9 Mr. Brooks: No other questions, Judge.

10 The Court: Any re-direct?

11 Mr. Meadors: Very briefly.

12 **Investigator Dubose-Redirect by Mr. Meadors:**

13 Q: Mr. Brooks asked you about the cabinet being in
14 plain view, did you have to open the cabinet
15 before you could be able to see the items?

16 A: Yes, sir.

17 Q: Did you all take a picture of the cabinet with
18 the door closed and then one with it opened?

19 A: Yes, sir.

20 Q: Would you have known what was inside if you had
21 not opened the cabinet?

22 A: No, sir.

23 Q: And finally, did Mrs. Gibbs deny what you found
24 in her purse was hers?

25 A: Did she deny it?

1 Q: Did she deny it?

2 A: She did say that was not hers.

3 Q: And without saying what it was, did she give
4 you an explanation of how she thought it got
5 there?

6 A: Yes, sir.

7 Q: Is that a yes?

8 A: Yes, sir. She did give me an explanation.

9 Mr. Meadors: That's all. Thank you.

10 The Court: Mr. Brooks anything else?

11 Mr. Brooks: No, sir.

12 The Court: All right, Ladies and Gentlemen
13 we will take a recess. You can step down, Sir. We will
14 take a recess for a few minutes you are not to discuss
15 this case. If you need anything in that jury room a soft
16 drink or whatever just let your foreman lady know she
17 will tap on the door and let the Bailiff know what you
18 might need. When you come back out you can certainly
19 bring that with you. Thank you. We will be with you in
20 just a few minutes.

21 (Jury exits courtroom)

22 The Court: All right. We will take about
23 10 minutes.

24 There was a recess taken/back on the record

25 The Court All right. Are you ready for the

State of South Carolina v. Leroy Clifton Gibbs, III

163

1 jury?

2 Mr. Meadors: As soon as I find my co-
3 counsel.

4 The Court: Okay. Please bring the jury.

5 Bailiff: Your Honor we have all the jury
6 in the courtroom.

7 The Court: Okay, Mr. Brown.

8 Mr. Brown: If it please the Court. Your
9 Honor, at this time we call Christopher Moore of the
10 Sumter County Sheriff's office.

11 (Mr. Moore is sworn in)

12 Bailiff: Please state your full name and
13 spell your last name for the record.

14 Witness: Christopher Shane Moore.

15 **Mr. Moore - Examination by Mr. Brown:**

16 Q: And is that Lieutenant Christopher Moore?

17 A: That's correct.

18 Q: Who are you employed with?

19 A: Sumter County Sheriff's Office.

20 Q: How long have you been with the Sumter County
21 Sheriff's office?

22 A: Since 2008.

23 Q: So you been employed with the Sumter County
24 Sheriff's department since 2008?

25 A: Yes, sir.

1 Q: What was your rank then?

2 A: Corporal.

3 Q: And you were here when investigator Dubose just
4 now testified. The events he talked about, were
5 you there that day?

6 A: I was.

7 Q: Was anyone else with you in your car?

8 A: Lieutenant Horton.

9 Q: What was your role that day, what were your
10 duties that day?

11 A: We were there to provide a marked unit to go
12 over to the residence to serve the warrants and
13 provide transport if the person we were looking
14 for was arrested.

15 Q: Were you the one that actually went in and
16 arrested him or were you just transporting if
17 that happened?

18 A: I was just transporting if that happened.

19 Q: Did an arrest happen that day?

20 A: Yes, sir.

21 Q: Did it happen at the address of [REDACTED] Madison
22 Avenue?

23 A: That's correct.

24 Q: Is that in Sumter, South Carolina?

25 A: It is.

It. Moore - Examination by Mr. Brown

165

- 1 Q: Were you in charge of transporting him after
2 that?
3 A: I was.
4 Q: Who was it that was arrested, sir?
5 A: Mr. Gibbs.
6 Q: The gentlemen seated right over here beside Mr.
7 Brooks?
8 A: That's correct.
9 Q: When you were given custody of Mr. Gibb was it
10 your understanding that he'd already been
11 mirandized?
12 A: I was told he had.
13 Q: What did YA'LL do at that point?
14 A: Mr. Gibbs was placed in the back seat of my
15 patrol car and we transported him to the
16 Sumter-Lee Regional Detention Center.
17 Q: Is that in Sumter or Lee County?
18 A: Sumter.
19 Q: Approximately how far a drive was that from the
20 [REDACTED] Madison Avenue address you were coming
21 from?
22 A: Approximately about 10 minutes.
23 Q: Were you the driver or the passenger?
24 A: I was the driver.
25 Q: Was officer Horton in the front seat or the

1 back seat?

2 A: He was in the front passenger seat. My vehicle
3 is equipped with a partition separating the
4 front and the back. Mr. Gibbs was in the back
5 seat.

6 Q: When we watch TV is that that little caged area
7 you always see on cars. Was Mr. Gibbs in the
8 back.

9 A: He was.

10 Q: Were YA'LL taking to Mr. Gibbs on the ride?

11 A: We didn't engage Mr. Gibbs in any kind of
12 conversation.

13 Q: At any point, did Mr. Gibbs begin talking to
14 you all?

15 A: He was rambling on and talking a lot in the
16 back seat.

17 Q: Before we get into anything he said, whenever
18 he would make comments or whenever he would
19 talk were YA'LL responding to him or ...

20 A: We didn't respond to him.

21 Q: Were YA'LL asking follow up questions to
22 anything he was asking?

23 A: We didn't question him at all.

24 Q: During that ride from the address on Madison
25 Avenue to the Sumter-Lee Regional Detention

It. Moore - Examination by Mr. Brown

167

1 Center was anything said that stood out in your
2 mind by Mr. Gibbs?

3 A: Mr. Gibbs stated that selling drugs was a
4 lifestyle for him.

5 Q: Did you ask him what he meant by that?

6 A: I didn't follow-up any questions with him after
7 that.

8 Q: Before he, and I know I keep asking this
9 question, but before he made that comment, did
10 you ask him to make any comments?

11 A: We didn't.

12 Q: Did you make him any promises if he made any
13 comments?

14 A: No, sir.

15 Q: Tell us what happened next?

16 A: We dropped Mr. Gibbs off at Sumter-Lee County
17 Detention Center. Myself and Lieutenant Horton
18 returned back to the scene on Madison Avenue
19 and advised Investigator Dubose of the
20 statement that Mr. Gibbs made.

21 Q: Was Investigator Dubose, I guess, searching the
22 home?

23 A: They were still there.

24 Q: And you said you advised him of what was said?

25 A: Of the statement that Mr. Gibbs made.

1 Q: Did anything else stand out in your mind Mr.
2 Gibbs said by chance?

3 A: No, sir.

4 Q: Were you and, at the time, Sergeant Horton, now
5 Lieutenant Horton, were YA'LL having your own
6 private conversations or anything of that
7 nature?

8 A: We might have had some idle chit chat back and
9 forth but not nothing significant between the
10 two of us.

11 Q: Was any of it directed towards Mr. Gibbs?

12 A: No it was not.

13 Q: The individual who was in the back seat of your
14 car, the individual who made that comment, the
15 individual that YA'LL took to Sumter-Lee
16 Regional Detention Center, the individual YA'LL
17 took from this [REDACTED] Madison Avenue is he here I
18 the Courtroom today?

19 A: He is.

20 Q: Can you please point him out?

21 A: That's Mr. Gibbs in the grey shirt next to Mr.
22 Brooks.

23 Q: The gentlemen at the defense table?

24 A: That's correct.

25 Mr. Brown: We would ask that the record

It. Moore - Cross Examination by Mr. Brooks

169

1 reflect. No further questions, Your Honor.

2 The Court: Mr. Brooks?

3 **Mr. Moore - Cross-Examination by Mr. Brooks:**

4 Q: Officer Moore, now you said that there may have
5 been nothing more than idle chit chat between
6 you and Officer Horton, is that right?

7 A: Yes, sir.

8 Q: And that my client Mr. Gibbs was talking on and
9 on, is that right?

10 A: That's correct.

11 Q: Now you never heard him at the residence deny
12 any involvement in this, you never heard that
13 right?

14 A: No, sir.

15 Q: Okay. And it's fair to say you never heard
16 anything are you don't recall hearing anything
17 before the statement *selling drugs is a*
18 *lifestyle*. You didn't hear anything before
19 that?

20 A: That's correct.

21 Q: And you don't recall hearing anything after
22 that?

23 A: Correct.

24 Q: And this was, as you call it maybe a ten to
25 fifteen minute ride from the residence to the

1 detention center.

2 A: Give or take a few minutes; yes, sir.

3 Q: So, it's possible he could have gone on
4 rambling about I ain't do this, I ain't do
5 this, isn't that correct?

6 Mr. Brown: Objection, it calls for
7 speculation.

8 The Court: Overruled.

9 Q: And he could have said that before making this
10 statement, right?

11 A: He could have.

12 Q: And you weren't paying attention to it, right?

13 A: Correct.

14 Q: And he could have said I ain't do this, I ain't
15 do this, afterwards and you weren't paying any
16 attention to it?

17 A: Right.

18 Q: Because this was, as you call it a ten to
19 fifteen minute ride from the residence to the
20 detention center.

21 A: Ten minutes, approximately; yes, sir.

22 Q: Ten minutes.

23 A: Yes, sir.

24 Mr. Meadors: No other questions.

25 The Court: Redirect?

Lt. Horton - Examination by Mr. Brown

171

1 Mr. Brown: None, Your Honor.

2 The Court: All right. Thank you. You
3 can step down. Mr. Brown.

4 Mr. Brown: Your Honor, at this time we
5 would call Lieutenant Dale Horton of the Sumter County
6 Sheriff's Office.

7 Bailiff: Place your left hand on the
8 Bible, raise your right hand, state your name, please.

9 Witness: Dale Horton.

10 Bailiff: Do you solemnly swear or affirm
11 your testimony to the Court shall be the truth, the whole
12 truth and nothing but the truth so help you God?

13 Lieutenant Horton: I do.

14 Bailiff: Have a seat, please.

15 (Witness complies)

16 Bailiff: Please state your full name and
17 spell your last name for the record.

18 Witness: Dale Horton, H-O-R-T-O-N.

19 **Lieutenant Horton - Examination by Mr. Brown:**

20 Q: Lieutenant Horton, were you employed with the
21 Sumter County Sheriff's Office in 2008?

22 A: I was.

23 Q: What was your rank back then, sir?

24 A: I was a sergeant.

25 Q: How long have you been employed with them?

- 1 A: I've been with the Sheriff's Office for just
2 about sixteen (16) years.
- 3 Q: You've been here to hear the testimony. Were
4 you working on the day of December 23, 2008?
- 5 A: Yes.
- 6 Q: What were your duties that day?
- 7 A: We were in a marked vehicle. Whenever we would
8 go execute the arrest warrant and they made an
9 arrest, we would be the transport.
- 10 Q: You were there with Lieutenant Moore?
- 11 A: Yes.
- 12 Q: And was an arrest made that day?
- 13 A: Yes.
- 14 Q: Of whom?
- 15 A: Mr. Gibbs.
- 16 Q: The defendant seated at the defense table?
- 17 A: That is correct.
- 18 Q: Now, I heard that you were the passenger. Do
19 you know who placed Mr. Gibbs into the patrol
20 car that day?
- 21 A: I believe it was probably both of us. One
22 would put him in the back seat of the vehicle
23 and one would stand by. Which one of us did it,
24 I'm not sure.
- 25 Q: At that point, did ya'll leave the address on

It. Horton - Examination by Mr. Brown

173

1 Madison Avenue and go to the Sumter-Lee
2 Regional Detention Center?

3 A: That is correct.

4 Q: What is your estimation about how far that is?

5 A: About ten minutes, maybe a little bit more
6 depending on the traffic. We weren't too far
7 from it.

8 Q: Were you having any conversations with Mr.
9 Gibbs along the ride?

10 A: No.

11 Q: Did you hear your co-worker, Lieutenant Moore
12 having any conversations on the ride?

13 A: No, sir.

14 Q: Were either one of ya'll engaging Mr. Gibbs in
15 anyway, shape or form?

16 A: No, sir.

17 Q: Were you all having conversation amongst
18 yourselves?

19 A: We might have said a few words to each other
20 but I don't remember any thing specific. I
21 don't remember.

22 Q: Was anyone else talking in the car?

23 A: Yes, Mr. Gibbs was talking non-stop, just
24 rambling about a bunch of stuff.

25 Q: Okay. Did he say anything that stood out to

1 you?

2 A: Yeah, whenever -- during his rambling he said
3 that *selling drugs is a lifestyle* and I
4 remember when I heard that I just looked over
5 at Lieutenant Moore, did he just say that.
6 Now, I didn't say anything to Lieutenant Moore,
7 but I just looked over like I can't believe he
8 just said that.

9 Q: Now, you say you didn't say anything to Lt.
10 Moore, how about Mr. Gibbs, did you say
11 anything to him?

12 A: No, I didn't say anything to him. I just let
13 him keep on talking.

14 Q: Did you follow up on what he said?

15 A: No.

16 Q: Did you ask him any questions beforehand?

17 A: No.

18 Q: Did you threaten him or offer him anything to
19 make any statements?

20 A: No.

21 Q: Is that an accurate reflection of what you just
22 now said as to what Mr. Gibbs said in the back
23 of the patrol car that day?

24 A: Yes.

25 Q: What happened after that?

It. Horton - Cross Examination by Mr. Brooks

175

1 A: After we got him booked into the jail, we went
2 back to where we, at the scene and made contact
3 with Investigator Dubose and informed him of
4 the statement that Mr. Gibbs told us while we
5 were transporting him.

6 Q: Did you tell Investigator Dubose or did ...

7 A: Lieutenant Moore told him and I was right there
8 with him and I said, yeah.

9 Q: Did you corroborate that?

10 A: Yes. I just was corroborating what Lieutenant
11 Moore said.

12 Q: Do you remember anything else that he happen to
13 say that day?

14 A: No, it was a lot.

15 Q: Did anything else stand out to you?

16 A: No, the only reason --- when I heard that.
17 When someone admits to something like that
18 you're going to remember that. Everything else
19 was just pretty much rambling. I don't
20 remember anything else.

21 Q: Is there any doubt in your mind he said it?

22 A: No, doubt.

23 Q: Is the individual who made that comment, who
24 rode in the back of your patrol car, the
25 individual you dropped off at Sumter-Lee

Lt. Horton - Cross Examination by Mr. Brooks

176

1 Regional Detention Center is he present in the
2 courtroom today?

3 A: He is.

4 Q: Can you please point him out for the Court.

5 A: Mr. Gibbs right there sitting by his attorney.

6 Q: Okay.

7 Mr. Brown: No further questions.

8 The Court: Mr. Brooks.

9 Lt. Horton - Cross Examination by Mr. Brooks:

10 Q: As you indicated, Mr. Gibbs was talking
11 constantly, is that right?

12 A: Yes, sir.

13 Q: Is that a fair way to characterize it?

14 A: Yes, sir.

15 Q: For the ten minute ride he was gibber, gibber,
16 gibber?

17 A: Yes, sir.

18 Q: Now, you weren't present when he told Officer
19 Dubose, I don't live here, right?

20 A: No, sir. We were outside.

21 Q: And you only recall that phrase, isn't that
22 correct?

23 A: Yes, sir.

24 Q: Out of all the constant talking he was doing?

25 A: Yes, sir.

It. Horton - Cross Examination by Mr. Brooks

177

1 Q: And you wouldn't recall him saying, I'm not
2 involved in this. You don't recall that?

3 A: No, sir.

4 Q: Before the alleged statement?

5 A: No, sir.

6 Q: Nor after the statement?

7 A: No, sir.

8 Q: Fair to say this is roughly about four and half
9 years ago, is that correct?

10 A: Yes, sir.

11 Mr. Brooks: No other questions..

12 The Court: Redirect?

13 Mr. Brown: None, Your Honor.

14 The Court: Next witness.

15 Mr. Brown: Your Honor, before I call the
16 next witness, can we just in case Officer Moore and
17 Officer Horton need to go, can we excuse them?

18 The Court: Any objection, Mr. Brooks?

19 Mr. Brooks: No, sir.

20 The Court: All right. You gentlemen can
21 leave or stay, whichever you like.

22 Mr. Brown: Your Honor, as this time, the
23 State will call Mitch Hansen.

24 _____ Bailiff: Place your left hand on the
25 Bible, raise your right hand.

Mr. Hansen - Examination by Mr. Brown

178

1 (Witness complies)

2 Bailiff: State your name, please.

3 Witness: Mitchell Hansen.

4 Bailiff: Do you solemnly swear or affirm
5 to tell the truth, the whole truth and nothing but the
6 truth, so help you God?

7 Mr. Hansen: I do

8 Bailiff: Thank you. Please state your
9 full name and spell your last name for the record.

10 Mr. Hansen: Mitchell R. Hansen, H-A-N-S-
11 E-N.

12 **Mr. Hansen - Examination by Mr. Brown:**

13 Q: Good-morning Mr. Hansen.

14 A: Good-morning.

15 Q: How are you today?

16 A: Fine.

17 Q: Mr. Hansen, why don't you go ahead and tell us
18 a little bit about yourself. Where do you work
19 right now?

20 A: I work at Florence County Sheriff's Office in
21 Drug Analysis. I run the drug lab.

22 Q: How long have you been there?

23 A: A little over two years.

24 Q: What did you do before that?

25 A: I worked at Sumter County drug lab.

Mr. Hansen - Examination by Mr. Brown

179

1 Q: How long were you at the Sumter County
2 Sheriff's Office?

3 A: I think a little over five years.

4 Q: Do you know what your rank was while you were
5 there?

6 A: A chemist.

7 Q: Is that your rank with the Florence County
8 Sheriff's Department?

9 A: I was chemist/lieutenant.

10 Q: Were you the drug analyst for the Sumter County
11 Sheriff's Office in 2008?

12 A: Yes, I was.

13 Q: And 2009 time frame? Will you tell us a little
14 bit about your education background and how you
15 became a drug analyst?

16 A: I have an associates in science, an associates
17 in arts, a bachelor in chemistry. I have
18 training in drug analysis from SLED and basic
19 law enforcement training from the academy.

20 Q: Have you been qualified by the South Carolina
21 Law Enforcement Division or any other agency to
22 analyze drugs?

23 A: I've been trained by SLED to analyze drug
24 substances.

25 Q: Have you ever testified in the court of law in

1 South Carolina as a drug analyst?

2 A: Yes, I have.

3 Q: How many times have you testified?

4 A: Thirty-five times.

5 Q: Have you ever been qualified as a expert
6 witness as a drug analyst in a court of law?

7 A: Yes.

8 Q: Have you ever been denied qualification?

9 A: No, I have not.

10 Mr. Brown: Your Honor, at this time, I
11 would offer Mitch Hansen as expert witness in drug
12 analyzation.

13 The Court: Any questions or objections,
14 Mr. Brooks?

15 Mr. Brooks: No, sir.

16 The Court: All right. Ladies and
17 Gentlemen, let me have your attention just for a moment.
18 Typically, when a witness testifies, that witness cannot
19 give an opinion. In other words, the witness can testify
20 as to him or her knowledge such as what they saw or
21 heard, things of that nature. There is an exception in
22 our rules of evidence for people who are called expert
23 witnesses and that rule basically states that if someone
24 is qualified by reason of education, training or
25 experience in a particular field that person can give

Mr. Hansen - Examination by Mr. Brown

181

1 opinions and can give reasons for those opinions.

2 That does not mean that you are bound by
3 the opinion just because it comes from an expert. If you
4 are not satisfied that the reasons for the opinion are
5 sufficient or that the persons education or training is
6 sufficient, you can disregard the opinion entirely. In
7 short, you give the testimony of an expert the weight you
8 believe it deserves.

9 All right. The witness is qualified as an
10 expert in the area of drug analysis, is that how he's
11 been offered?

12 Mr. Brown: Yes, sir, Your Honor.

13 The Court: Okay. Go ahead Mr. Brown.

14 Q: Mr. Hansen, in 2008 you were an analyst with
15 the Sumter County Sheriff's Office?

16 A: Yes.

17 Q: What were your duties as the analyst? Did you
18 test all the drugs that came in or just types -
19 -- tell us a little bit about that.

20 A: We test everything that comes in. It would
21 come in, we maintain the chain of custody. The
22 drugs would come in we would actually weigh
23 them, test them and repackage them. When they
24 would also come on we would make sure they were
25 secured and they hadn't been tampered with. We

1 would write a report.

2 Q: Do you write a report on all of your drug
3 analyst?

4 A: Yes.

5 Q: At the request of either myself or someone else
6 from the Solicitor's Office, did you look up a
7 report number that was associated with this
8 case here today?

9 A: I'm sorry, I didn't hear you.

10 Q: Did you bring a report ...

11 A: Yes, sir.

12 Q: ... on the case here today? Did you bring that
13 here with you today?

14 A: Yes, sir.

15 Q: Do you have it up there with you?

16 A: Yes, I have it.

17 Q: Can you please tell us the date you analyzed
18 the drugs that were provided in this particular
19 case?

20 A: The drugs were analyzed on 1/8/2009 and the
21 report was wrote January 21st.

22 Q: Can you kind of tell us how you know this is
23 the drug report for this particular case and
24 not another one?

25 A: I had the work sheets in front me with the

Mr. Hansen - Examination by Mr. Brown

183

1 dates on them with the case numbers and lot
2 numbers and the report with the case number.

3 Q: Does it have incident dates?

4 A: Yes, it does.

5 Q: Does it have subject names?

6 A: Yes, it does.

7 Q: Is that how you actually determined that you're
8 looking at the right report?

9 A: Yes.

10 **(State's Exhibit Number 18 was marked for**
11 **identification purposes)**

12 Q: I'm going to hand up to you what's been marked
13 for identification only as State's Exhibit
14 Number 18. Now, you may not have been in here
15 when that bag was initially opened, so, I'll
16 just let you know it was opened earlier in the
17 courtroom. Can you please open that bag and
18 examine its contents and tell us what you have
19 in there.

20 A: Do you want to go by each piece or ...

21 Q: By each piece and they will have 18a, 18b, 18c.
22 If you will tell us which one you are looking
23 at on each one of those. That red sticker on
24 that one right there, what does that say, does
25 that say 18.

- 1 A: That says Exhibit 19, I think.
- 2 Q: Okay. What is displayed there on Exhibit 19?
- 3 A: I'm sorry, I didn't hear you.
- 4 Q: What is displayed there on Exhibit 19?
- 5 A: That would be Item Number 7 on our report.
- 6 Q: Okay. Now, on your report did you test your
- 7 item number 7?
- 8 A: Yes, I did.
- 9 Q: What did you test it for?
- 10 A: We did a clinical test and an instrument test.
- 11 Q: Did it come back positive as a controlled
- 12 substance?
- 13 A: Yes, it did.
- 14 Q: What control substance was that?
- 15 A: Crack cocaine.
- 16 Q: Was that also cocaine base?
- 17 A: Cocaine base.
- 18 Q: How much?
- 19 A: 2.48 grams.
- 20 Q: What's the next item on the list?
- 21 A: It would be Exhibit 18.
- 22 Q: Is there a 18a, b, c or d?
- 23 A: 18a. And that would Item number 4 on my
- 24 report.
- 25 Q: Did you test Item number 4?

Mr. Hansen - Examination by Mr. Brown

185

- 1 A: Yes, I did.
- 2 Q: That's 18a, you said?
- 3 A: Yes.
- 4 Q: What test did you perform on Item number 4?
- 5 A: We did a chemical test and an instrument test.
- 6 Q: Did it come back positive as a control
- 7 substance?
- 8 A: Yes, it did.
- 9 Q: What controlled substance did it come back as?
- 10 A: It come back as cocaine base and crack.
- 11 Q: Okay. How much crack cocaine?
- 12 A: 4.83 grams.
- 13 Q: What is the next item that you have up there?
- 14 A: 18c.
- 15 Q: Can you tell what item number that was?
- 16 A: It's item number 5.
- 17 Q: On your report, do you have item number 5?
- 18 A: Yes, I do.
- 19 Q: Did you test that item?
- 20 A: Yes, I did.
- 21 Q: Did it come back as a controlled substance?
- 22 A: Item number 5 did not come back controlled.
- 23 Q: Okay. What's the next item up there?
- 24 A: The next item I have is item 18b.
- 25 Q: That's Exhibit Number 18b.

- 1 A: Exhibit Number 18b.
- 2 Q: Do you have an item number that matches up with
- 3 your report?
- 4 A: That is item number 6.
- 5 Q: Did you test an item number 6 on your report?
- 6 A: Yes.
- 7 Q: What test did you perform on it.
- 8 A: A chemical test and a instrumental test.
- 9 Q: Did it come back positive as a controlled
- 10 substance?
- 11 A: Yes, it did.
- 12 Q: What controlled substance?
- 13 A: Cocaine base.
- 14 Q: What quantity?
- 15 A: 6.72 grams.
- 16 Q: What is the next item up there that you've got?
- 17 A: Item number 1.
- 18 Q: Item number 1, you say?
- 19 A: Yes.
- 20 Q: Is that marked as an Exhibit?
- 21 A: No, it's not.
- 22 Mr. Brown: I believe that is in 18b, just
- 23 for the Court's record..
- 24 Q: Did you test item number 1?
- 25 A: Yes, I did.

Mr. Hansen - Examination by Mr. Brown

187

1 Q: What test did you perform on it?

2 A: A chemical and instrumental.

3 Q: Did it come back as a control substance?

4 A: No, it did not.

5 Q: What's the next item you have up there?

6 A: We have item number 2.

7 Q: Do you have an exhibit sticker on that?

8 A: No, it does not.

9 Mr. Brown: I believe for the court's
10 record that is also exhibit 18(b).

11 Q: Did you test that item?

12 A: Yes, I did.

13 Q: Did it test positive as a controlled substance?

14 A: Yes, sir. Actually there was three of them.

15 Three bags. An evidence bag marked number 2

16 containing three plastic bags containing powder
17 substance.

18 Q: Now, the three plastic bags, would you put them
19 back as three plastic bags or do you repackage
20 it ...

21 A: I repackage it into one. Everything is spot
22 tested the same and we repackage it as one.

23 Q: That's why there is only one bag there right
24 now?

25 A: Right.

- 1 Q: What did it test positive for?
- 2 A: It tested positive for cocaine.
- 3 Q: Is that different than crack cocaine?
- 4 A: It is. It is cocaine, it's in a soft form.
- 5 Q: Okay. Are there any other items up there? Oh,
- 6 I'm sorry. What was the item number 2?
- 7 A: It would have been a combined weight of 3.35
- 8 grams.
- 9 Q: And were there any other items that you tested?
- 10 A: Yes. There's a item 2.3. Sorry. I believe
- 11 this one would be item number 3, it's looks
- 12 like the number has been rubbed off of it?
- 13 Q: Okay. Does it have an exhibit number on it?
- 14 A: No it does not.
- 15 Mr. Brown: I believe that actually falls
- 16 under exhibit number 18(b) for the court's records.
- 17 Q: Did you test that a controlled substance?
- 18 A: Yes, I did.
- 19 Q: Did it test positive as a controlled substance?
- 20 A: No, it did not.
- 21 Q: Other than after measuring and testing these
- 22 items and putting them in different bags is
- 23 that what you have up there before you is that
- 24 generally the condition that you received all
- 25 of that in?

Mr. Hansen - Examination by Mr. Brown

189

1 A: I receive it in the Best Kit bag. In this case
2 they were in that Best Kit bag itself. This is
3 what we call the Best Kit bag, which is a
4 tampered bag. The printing around it, if
5 somebody tries to pull this and cut it that's
6 why we call it a bag inside this bag were
7 evidence bag which also are tamper proof bags
8 with the suspected controlled substances were
9 in.

10 Q: Were there any evidence on those bags that any
11 tampering had been done prior to your receiving
12 it?

13 A: No, there was not. I actually checked it out.
14 Wrote on the seal in tact, dated it and
15 initialed it.

16 Q: So, the way that you received it would have
17 been the way put into evidence?

18 A: (No response).

19 Q: The way that you received it when you started
20 testing it, that was the way that it was put
21 into evidence?

22 A: Yes.

23 Mr. Brown: Court's indulgence.

24 Q: Now, just going back through logistics, going
25 through all the items, and we just summarized

1 some of them. Is it my understanding that items
2 2, 4, 6 and 7 did test positive for a
3 controlled substance?

4 A: Items number 2, items number 4, 6 and 7 tested
5 positive for a controlled substance.

6 Q: Was 2 the only one that was a powder cocaine?

7 A: Yes.

8 Q: And that was Exhibit 18(b)?

9 A: Yes.

10 Q: And items 4, 6 and 7 all tested positive for
11 cocaine base or crack cocaine?

12 A: Yes.

13 Q: I believe those were Exhibits 18(a) and 18(b)
14 and also 18(c), I'm sorry.

15 A: Yes.

16 Q: Was it 4.38 grams on item 4, cocaine base?

17 A: Item 4 was 4.38 grams.

18 Q: Item 6 was 4.83 grams of cocaine base?

19 A: Correct.

20 Q: Item 7 was 2.48 grams of cocaine base?

21 A: Correct.

22 Q: Item 2 was 3.35 grams of cocaine base?

23 A: Correct.

24 Q: Items 1, 3 and 5 were all no controlled
25 substance?

Mr. Hansen - Examination by Mr. Brown

191

1 A: Correct.

2 Q: Can you tell us what that means?

3 A: That means the --- looking at the substance
4 that come back the substance was not
5 controlled. They were negative for any
6 cocaine, cocaine base. Item 1 actually come
7 back Benzocaine. Item number 3 came back
8 Benzocaine and caffeine.

9 Q: What's Benzocaine?

10 A: Benzocaine is basically a numbing agent. It is
11 also used as a for cocaine.

12 Q: How about item number 5, what did that come
13 back as?

14 A: Item number 5 come back as Benzocaine and
15 caffeine.

16 Q: Do you have a copy of that report up there with
17 you.

18 A: Yes, sir. I do.

19 Mr. Brown: Permission to approach.

20 Q: Is this the report you've been reading from
21 this entire time?

22 A: Yes.

23 Q: Is that your signature there at the bottom?

24 A: Yes, it is.

25 Mr. Brown: Your Honor, at this time, I

Mr. Hansen - Examination by Mr. Brown

192

1 would offer this report as State's Exhibit Number 21.

2 Have you seen it Mr. Brooks?

3 Mr. Brooks: I've seen it.

4 Mr. Brown: At this time I would offer
5 this as State's Exhibit 21.

6 The Court: Any objection?

7 Mr. Brooks: This is just for
8 identification, correct?

9 The Court: He's offering it into evidence
10 now. Do you object to that?

11 Mr. Brooks: I object to that.

12 The Court: All right. We will take that
13 up later. Eighteen is still for i.d. and also the parts
14 of 18 are still for i.d. as well.

15 Mr. Brown: And, Your Honor, at this time
16 I would offer Exhibit 18 along with the subparts in as
17 well as number 19 for evidence.

18 The Court: All right. Any objection to
19 those?

20 Mr. Brooks: Which ones?

21 The Court: 18 which would include a, b
22 and c and also 19.

23 Mr. Brooks: I have any objection to him
24 offering them as evidence at this time.

25 The Court: All right. I'll review that

State of South Carolina v. Leroy Clifton Gibbs, III 193

1 in just a few minutes. Okay. So, 18 and subparts and 19
2 and 21 remain for i.d. at this time.

3 Mr. Brown: No further questions at this
4 time.

5 Mr. Brooks: No questions.

6 The Court: Okay. Mr. Hansen, you may
7 step down. May sure that all those are put back in
8 order.

9 Mr. Meadors: Judge, can we take a brief
10 recess while he is doing that to discuss another matter.

11 The Court: Would you like me to send the
12 jury out?

13 Mr. Meadors: Just for a brief recess.

14 The Court: Ladies and Gentlemen, if you
15 would please go to your jury room. Of course, you may
16 not discuss the case.

17 (Jury break 3:45 p.m.)

18 The Court: I'm sorry. I didn't quite
19 hear you. Did you need to talk to Mr. Brooks or did you
20 need to talk to me?

21 Mr. Meadors: Both.

22 The Court: All right.

23 Mr. Meadors: I know that Mr. Brown just
24 offered that into evidence. Previously, Mr. Brooks said
25 that he was waiting for the chemist to come, I just

1 didn't know what his further objection was. For my
2 planning purposes.

3 The Court: Okay.

4 Mr. Brooks: The chain of custody because
5 I haven't heard any evidence. All I hear is totals. And
6 I think the custodian has got to establish the chain of
7 custody.

8 Mr. Meadors: We've got Cindy Pearson
9 stand by. If we need to get her here, plus Jim Atkinson
10 because she's no longer there and he brought it from
11 there to here. If he wants that too. I just want to be
12 clear on who we need to call.

13 Mr. Brooks: Just protecting my client,
14 Judge. Got to establish a chain of custody.

15 The Court: Okay.

16 Mr. Meadors: Could you give me a minute
17 to make a phone call then just to get her up here.

18 The Court: Is that all you need?

19 Mr. Meadors: That's all.

20 The Court: I'll step down for a minute.

21 (There was a court break)

22 The Court: Mr. Hansen, you can leave if
23 you'd like or you can state if you want to.

24 Mr. Brooks: Give me just one minute
25 before you bring the jury back in.

Ms. Kimberly Gibbs - Examination by Mr. Meadors

195

1 The Court: Okay.

2 Mr. Brooks: Okay, Judge.

3 The Court: Okay. Bring the jury in if
4 they are ready.

5 Bailiff: Yes, sir.

6 (The jury enters courtroom 4:01 p.m.)

7 Bailiff: We have all the jurors back in
8 the courtroom, Your Honor.

9 The Court: Thank you, sir. Okay. The
10 next witness for the State.

11 Mr. Meadors: May it please the Court?

12 The Court: Yes, sir.

13 Mr. Meadors: The State will call Kimberly
14 Gibbs.

15 Bailiff: Place your left hand on the
16 Bible, raise your right hand. State your name, please.

17 Witness: Kimberely Gibbs.

18 Bailiff: Do you solemnly swear or affirm
19 the testimony to the Court shall be the truth, the whole
20 truth and nothing but the truth so help you God?

21 Ms. Gibbs: Yes.

22 Bailiff: Thank you. Have a seat up here,
23 please.

24 (Witness complies)

25 Bailiff: Please state your full name and

1 spell your last name for the record.

2 Witness: Kimberly Gibbs, G-I-B-B-S.

3 **Kimberly Gibbs - Examination by Mr. Meadors:**

4 Q: Ms. Gibbs, if you will please, speak in that
5 microphone, please, ma'am, just so the ladies
6 and gentlemen of the jury and this fine lady,
7 the court reporter can hear you and His Honor,
8 please, ma'am. Ms. Gibbs, tell the ladies and
9 gentlemen and this Court about you? Where
10 were you born?

11 A: In Manning, South Carolina.

12 Q: Say that again, please.

13 A: In Manning, South Carolina.

14 Q: Were you raised there?

15 A: No, I was raised in Sumter.

16 Q: Where did you go to Elementary School?

17 A: Wilder Elementary.

18 Q: Where did you go to middle?

19 A: Bates Middle.

20 Q: Where did you go to high school?

21 A: Sumter High.

22 Q: When did you get out of Sumter High?

23 A: 2005.

24 Q: What did you do after that?

25 A: Went into the Navy.

Ms. Kimberly Gibbs - Examination by Mr. Meadors

197

- 1 Q: Went into the Navy. Can you tell these folks
2 where you went. Where did you go to your
3 basic?
- 4 A: In Illinois.
- 5 Q: In Chicago?
- 6 A: Uh-huh (affirmative response).
- 7 Q: How long were you there?
- 8 A: Basic was eight weeks.
- 9 Q: Where did you go after that?
- 10 A: Texas.
- 11 Q: Where did you go in Texas, specifically?
- 12 A: Wichita Falls, Air Force Base.
- 13 Q: What did you do there?
- 14 A: Construction, electrician.
- 15 Q: What specifically does that mean, Ms. Gibbs?
- 16 A: Climbing poles and doing electrical work?
- 17 Q: Climbing poles and doing electrical work?
- 18 A: Uh-huh (affirmative response).
- 19 Q: How long did you do that?
- 20 A: The whole time I was there.
- 21 Q: How long was that?
- 22 A: Two and a half years.
- 23 Q: After Wichita Texas, where did you go after
24 that while you were in the Navy?
- 25 A: San Diego, California.

1 Q: What did you do in San Diego?

2 A: The same thing.

3 Q: How long did you do that?

4 A: About a year and a half.

5 Q: At what point did you come back to South
6 Carolina?

7 A: In the middle of '07

8 Q: Middle of what?

9 A: '07.

10 Q: When did you meet the Defendant Clifton Gibbs?

11 A: When did I meet him?

12 Q: Yes, ma'am.

13 A: The beginning of 2005.

14 Q: And at some point did ya'll get married?

15 A: In 2006.

16 Q: Okay. So, based on what you just told us, you
17 were married but you were out in California in
18 the Navy?

19 A: Uh-huh (affirmative response).

20 The Court: You need to ...

21 Mr. Meadors: You need to say yes ...

22 The Court: You need to say yes or no, not
23 uh-huh, uh-uh, so she can get down what you're saying,
24 okay?

25 A: Okay.

Ms. Kimberly Gibbs - Examination by Mr. Meadors

199

1 Q: If you said this, I apologize. When did you
2 come back to South Carolina?

3 A: June of 2007.

4 Q: Okay. When you came back in June of 2007,
5 where did you live?

6 A: With the Defendant's family for a little while.

7 Q: Okay. That being Mr. Gibbs' family?

8 A: Yes.

9 Q: How long did you state there?

10 A: Couple of months.

11 Q: Ma'am?

12 A: Couple of months.

13 Q: Was that on Thomas Sumter Highway?

14 A: Yes.

15 Q: And this is 2007, do you all have a child
16 together?

17 A: Yes.

18 Q: When was that child born?

19 A: In March 2007.

20 Q: After Thomas Sumter Highway when you were with
21 his defendant and his, let me say your in-laws,
22 did you and the defendant move to another
23 residence?

24 A: [REDACTED] Branch Street.

25 Q: Who lived there?

1 A: Me, the defendant and my son.

2 Q: How long did you, the defendant and your son
3 reside at [REDACTED] Branch Street, Ms. Gibbs?

4 A: We stayed there. It wasn't long. I don't
5 think it was a year. It could have been a
6 year, I'm not quite ...

7 Q: Okay. After that, after [REDACTED] Branch Street, did
8 you Clifton Gibbs and your son move to another
9 residence?

10 A: Yes.

11 Q: Where was that?

12 A: [REDACTED] Madison.

13 Q: [REDACTED] Madison. How far is that from the
14 courthouse?

15 A: Not to far.

16 Q: In Sumter County?

17 A: Yes.

18 Q: Do you remember the month that you moved in?

19 A: It was April.

20 Q: April?

21 A: April.

22 Q: Of 2008?

23 A: Yes.

24 Q: Were you buying that home or renting that home?

25 A: Renting.

Ms. Kimberly Gibbs - Examination by Mr. Meadors

201

- 1 Q: You had you rented that home from, do you
2 remember the agency?
3 A: Prudential real estate.
4 Q: I'm sorry, ma'am, say it again.
5 A: Prudential real estate.
6 Q: Do you remember that you entered that lease in
7 April of '08?
8 A: Yes, sir.
9 Q: Who signed the lease?
10 A: I did.
11 Q: Was there a part of the lease, this particular
12 lease that you had to put in the lease who else
13 resided there?
14 A: Yes.
15 Q: Who did you put who else resided there?
16 A: My son and the Defendant.
17 Q: Your son and Mr. Gibbs, the Defendant?
18 A: Yes.
19 Q: And that's included in the lease?
20 A: Yes.
21 Q: Was that a month to month lease?
22 A: No, a year lease.
23 Q: So fair to say from April of 2008 to December
24 2008, you were residing at [REDACTED] Madison Avenue?
25 A: Yes, sir.

1 Q: Tell these folks where were you working?

2 A: U.S. Postal Service.

3 Q: I'm sorry. When you came back from California,
4 did you work some place else before you worked
5 at the Postal Service?

6 A: No, sir.

7 Q: When did you start working at the Postal
8 Service?

9 A: It was January.

10 Q: What was your route?

11 A: It went from Florence Highway, 401, all the way
12 to the Boulevard Road.

13 Q: Let me ask you about your day to day schedule.
14 What was your day to day schedule as a route
15 carrier, how many days a week would you work?

16 A: Between three to five days when necessary.

17 Q: I'm sorry ma'am. Can you say that again?

18 A: Three to five days when necessary.

19 Q: I'm sorry. I just can't hear you.

20 A: Three to five days when necessary.

21 Q: Three to five days when necessary. So, would
22 you work on Saturdays?

23 A: Sometimes.

24 Q: Well, tell me this way. If you didn't work on
25 Saturdays when did you work?

Ms. Kimberly Gibbs - Examination by Mr. Meadors

203

1 A: Mondays, Wednesdays.

2 Q: If you did work on a Saturday, when would you
3 be working?

4 A: On a Saturday?

5 Q: Yes, ma'am.

6 A: It would be from probably like 6, 6, 7 in the
7 morning to 3 or 4 in the afternoon.

8 Q: Okay. During this time period, specifically,
9 2008 and very specifically 2008 December of
10 2008, when you were working where was your
11 child?

12 A: With the Defendant.

13 Q: With the Defendant, Mr. Gibbs?

14 A: Yes.

15 Q: Did Mr. Gibbs have a job in December of 2008?

16 A: Not at the time.

17 Q: Now, I want to take you specifically to
18 December 23rd of 2008, please, ma'am. Ms.
19 Gibbs, you don't want to be here, do you?

20 A: No.

21 Q: You don't want to be testifying, do you?

22 A: No.

23 Q: On December 23rd of 2008, were you at your
24 house at [REDACTED] Madison Avenue?

25 A: Yes, sir.

- 1 Q: Were you working that day?
- 2 A: No.
- 3 Q: Were you scheduled to work that day?
- 4 A: No.
- 5 Q: Who else was at your residence on December 23,
- 6 2008, specifically?
- 7 A: The Defendant and my son.
- 8 Q: Okay. The Defendant, Mr. Gibbs and your son.
- 9 And from April to May to June to July, August,
- 10 September, October, November, December, who
- 11 stated at [REDACTED] Madison Avenue?
- 12 A: Me, my son and the Defendant.
- 13 Q: Did anybody else stay there?
- 14 A: No, sir.
- 15 Q: That was your home, all of ya'll's home?
- 16 A: Yes, sir.
- 17 Q: (Counsel makes knocking noise). Did you hear a
- 18 knock on the door, December 23, 2008?
- 19 A: It was sometime that morning.
- 20 Q: Some time that morning, did you hear a knock at
- 21 the door?
- 22 A: I did.
- 23 Q: What were you doing?
- 24 A: Sleeping.
- 25 Q: As a result of that knock, what did you do?

Ms. Kimberly Gibbs - Examination by Mr. Meadors

205

1 A: Get up. Well, look through the blind and see
2 who it was. I went to the door and opened the
3 door.

4 Q: You got up, did you have a certain room that
5 you stayed in?

6 A: In the bedroom.

7 Q: Was it your room?

8 A: Yes.

9 Q: Was it the Defendant's room?

10 A: Yes.

11 Q: Was that the master bedroom?

12 A: Yes.

13 Q: You got up, you peeped through the window, what
14 did you see?

15 A: I saw Mr. DuBose along with some other people
16 behind him.

17 Q: After that Ms. Gibbs what did you do?

18 A: I put on some clothes and went to the door.

19 Q: Did Mr. DuBose tell you I've got some arrest
20 warrants for Mr. Gibbs?

21 A: Yes.

22 Q: As a result of that, did you tell him that he
23 was here?

24 A: Yes.

25 Q: And did you tell him he could come in?

1 A: Well, Mr. Gibbs was behind me, once he saw him
2 he came and got him.

3 Q: When he was behind you, Mr. Gibbs, you mean he
4 was behind you?

5 A: Yes. He saw him around me.

6 Q: And Mr. DuBose came in the house and did he
7 arrest Mr. Gibbs?

8 A: Yes.

9 Q: Where were you when that happened?

10 A: I was by the door.

11 Q: Okay.. What happened to Mr. Gibbs then, was he
12 taken away.

13 Mr. Meadors: If I may approach, please,
14 Judge.

15 The Court: Yes, sir.

16 Q: I'm going to show you what's marked as State's
17 1 for identification. After Mr. DuBose and
18 maybe some other folks had came in and you said
19 that the defendant was arrested, did Mr. DuBose
20 ask you if it was okay if he searched the
21 residence?

22 A: Yes, he asked me could he bring in the dog to
23 search for any drugs? I told him that was
24 okay.

25 Q: Did you orally tell him that's okay, Ms. Gibbs?

Ms. Kimberly Gibbs - Examination by Mr. Meadors

207

1 A: Yes.

2 Q: Did you also sign a sheet saying it's okay, you
3 can come in and search my house.

4 A: I didn't sign a sheet.

5 Q: Did you sign it at some point?

6 A: Uh-huh (affirmative response).

7 Mr. Meadors: And again, as the Judge
8 instructed, no offense, but you've got to say yes or no
9 just so the court reporter can take it down.

10 A: Yes.

11 Q: And, I'm showing you State's 1 for I.d. Sumter
12 County Consent to Search, is that your
13 signature down there?

14 A: Yes, sir.

15 Q: And you wrote there?

16 A: Yes, sir.

17 Q: Is it printed above there Kimberly Gibbs?

18 A: Yes, sir.

19 Q: Is that where you signed you consented to the
20 search of your premises?

21 A: Yes, sir.

22 Q: Does it name the premises [REDACTED] Madison Drive?

23 A: He put Avenue, but yes.

24 Q: I'm sorry. It says Drive but that was
25 residence, [REDACTED]?

1 A: Yes.

2 Mr. Meadors: Beg the court's indulgence.

3 The Court: All right.

4 Q: Now, Mrs. Gibbs.

5 A: Yes, sir.

6 Q: Did Officer DuBose ask you, after they had
7 searched, whether or not he could look in your
8 purse?

9 A: Well, there was a female officer.

10 Q: Okay. Did an officer ask you if they could
11 look in your purse?

12 A: Yes.

13 Q: Did you say they could?

14 A: Yes. It was sitting on the table the whole
15 time.

16 Q: And did you say you can look in my purse?

17 A: Yes, sir.

18 Q: Had you put any illegal substance in your
19 purse?

20 A: No, sir.

21 Q: And, in your presence there, did the officers
22 say they had found a illegal substance in your
23 purse, did they tell you it appeared to be?

24 A: Yes, sir.

25 Q: That it was found in your purse?

Ms. Kimberly Gibbs - Examination by Mr. Meadors

209

1 A: Yes.

2 Q: What did you tell them when they said this
3 appears to be an illegal substance in your
4 purse. What did you tell them?

5 A: It wasn't mines.

6 Q: Did you give them an explanation for how it
7 must have gotten in there?

8 A: Yes, sir.

9 Q: What did you tell them?

10 A: I told them he must have put it there.

11 Mr. Brooks: Objection, Your Honor.

12 Speculation. There's been no first hand.

13 The Court: Mr. Meadors?

14 Q: Was it in there when you came in the house?
15 When you put your purse down, did you have any
16 illegal substance in that purse?

17 A: No, sir.

18 Q: After the knock at the door, was your purse
19 with you when you answered the door?

20 A: No, sir.

21 Q: Was the Defendant in reach of that purse when
22 you went to answer the door for DuBose?

23 A: Yes, sir.

24 Q: And the next time you saw the purse is when the
25 officers told you there was an illegal

1 substance in there?

2 A: Yes, sir.

3 Q: And your explanation to them was he must have
4 put it in there?

5 A: Yes, sir.

6 Q: Is that because you didn't put it in there?

7 A: Yes, sir.

8 Q: Was there anybody else in your house?

9 A: No, sir.

10 Q: Do you believe your son put it in there?

11 The Court: Objection is overruled. You
12 can cross-examine her on that.

13 Q: Did you believe your son put it in there?

14 A: No, sir.

15 Q: So, you gave consent to search your purse, then
16 you said the Defendant must have put it in
17 there, correct?

18 A: Yes, sir.

19 Q: Were those your drugs, Mrs. Gibbs?

20 A: No, sir.

21 Q: That's your kitchen, isn't it?

22 A: Yes, sir.

23 Q: I mean --- well, it's ya'll's kitchen, right?

24 A: Yes, sir.

25 Q: But as the woman of the house, you cook in the

1 kitchen, correct?

2 A: Yes.

3 Q: And if something else is going on in the
4 kitchen are you aware of it?

5 A: Yes, sir.

6 Q: All right. Then I want to ask you specifically,
7 Mrs. Gibbs, were you aware during this time
8 period specifically in December or between at
9 least between April and December of 2008, did
10 you ever see the Defendant cooking crack
11 cocaine in the kitchen at [REDACTED] Madison Avenue?
12 Did you observe him turning cocaine into crack?

13 A: Yes, sir.

14 Q: And it's tough to do, isn't it.

15 Q: Did you say, yes, sir?

16 A: Yes, sir.

17 Q: Did you make cocaine into crack?

18 A: No, sir.

19 Q: Did the defendant make cocaine into crack
20 cocaine in the kitchen at [REDACTED] Madison Avenue?

21 A: I don't know the process of it.

22 Q: Did you see him attempt to do that?

23 A: Yes, sir.

24 Q: You don't even know the process?

25 A: No.

1 Q: Had you ever sold drugs from [REDACTED] Madison
2 Avenue?

3 A: No, sir.

4 Q: Were you aware that the Defendant has sold
5 drugs from [REDACTED] Madison Avenue?

6 Mr. Brooks: Objection, Your Honor.

7 The Court: Mr. Meadors? Ya'll come up,
8 please.

9 (Counsel approach, off the record)

10 The Court: Mr. Brooks, I'll overrule your
11 objection. You may clearly stated it later on. Go ahead
12 Mr. Meadors, you can restate your question, if you'd
13 like.

14 Q: Did the Defendant, Mr. Gibbs, sell drugs from
15 [REDACTED] Madison Avenue?

16 A: From what I heard, yes.

17 The Court: That's not ...

18 Q: Do you know of your own knowledge whether he
19 sold drugs from [REDACTED] Madison Avenue?

20 A: Yes.

21 Q: That's a yes?

22 A: Yes.

23 Q: Mrs. Gibbs, were you aware that there were
24 drugs in that house on December 23, 2008?

25 A: Not really aware of it, but ...

1 Q: Explain that to me.

2 A: I don't know of any reason to put drugs in the
3 house if he was doing it.

4 Q: I don't understand. Did you know there were
5 drugs in the house on December 23, 2008?

6 A: No.

7 Q: The drugs in the cabinet we've seen, I think
8 State's 8. Had you seen drugs in that cabinet
9 specifically cocaine or crack before along with
10 baking powder?

11 A: I saw them before; yes, sir.

12 Q: During this saw time period?

13 A: You mean on that date or ...

14 Q: On or about, during that time period, you say
15 you did see drugs and/or baking powder in that
16 cabinet at [REDACTED]?

17 A: Yes, sir.

18 Q: Were those yours?

19 A: No, sir.

20 Q: Were they the defendants?

21 A: Had to have been.

22 Q: When you say had to have been. Was anybody
23 else living there?

24 A: No, sir.

25 Q: Was there another man there?

1 A: No, sir.

2 Q: Was there another woman there? I don't mean
3 anything by that but was there any other adult
4 there, let me just say that.

5 A: No, sir.

6 Q: Just the three of ya'll?

7 A: Correct.

8 Mr. Meadors: Can you mark this?

9 Court Reporter: Yes, sir. Exhibit 22.

10 The Court: 22?

11 Court Reporter: Yes, sir.

12 **(State's Exhibit 22 was marked for identification**
13 **purposes)**

14 Mr. Meadors: May I approach?

15 The Court: Yes, sir.

16 Q: Mrs. Gibbs, I asked you about this a little
17 while ago but I couldn't find it quite frankly.
18 This is State's 22. I'd asked you about a
19 lease that you had entered regarding the
20 residence at [REDACTED] Madison Avenue. Do you
21 recognize this?

22 A: Yes.

23 Q: Is that your signature at the end of the lease?

24 A: Yes, sir.

25 Q: Is this the lease you were referring to?

Ms. Kimberly Gibbs - Examination by Mr. Meadors

215

1 The Court: Speak into the microphone.

2 A: Yes, sir.

3 Mr. Meadors: Your Honor, we'd offer
4 State's 22.

5 The Court: Mr. Brooks?

6 Mr. Brooks: No objection, Your Honor.

7 The Court: State's 22 is in.

8 **(State's Exhibit Number 22 was entered into**
9 **evidence)**

10 Q: On page 2 of number 7, it has occupants, who is
11 listed?

12 A: Kimberly Gibbs, Leroy Gibbs and their son.

13 Q: I asked you earlier and we talked briefly about
14 consent. After you had consented, did the
15 officers also come back and show you items that
16 had been taken from the residence?

17 A: Yes, sir.

18 Q: Did you sign the consent and below those items,
19 also. Is that your signature?

20 A: Yes.

21 Q: Is that below what is marked as description of
22 property removed?

23 A: Yes.

24 Mr. Meadors: Your Honor, we now offer
25 State's 1.

1 The Court: Any objection to State's 1?

2 Mr. Brooks: No objection.

3 The Court: Okay. One is in.

4 **(State's Exhibit Number One was entered)**

5 Mr. Meadors: Your Honor, a moment,
6 please.

7 The Court: Okay.

8 Q: When you would be at work, you said the
9 Defendant, Mr. Gibbs would be the babysitter?

10 A: Yes, sir.

11 Q: So, you would be gone for hours at the time
12 when he would be at home with just the child?

13 A: Yes, sir.

14 Q: That would happen every time you went to work?

15 A: Yes, sir.

16 Q: And you were not arrested on the 23rd, is that
17 correct?

18 A: No, sir.

19 Q: Were you subsequently arrested on December
20 29th?

21 A: Yes, sir.

22 Q: Were these your drugs?

23 A: No, sir.

24 Q: Do you deal or distribute drugs?

25 A: No, sir.

Ms. Kimberly Gibbs - Examination by Mr. Meadors

217

1 Q: Who was paying the bills for you and your child
2 during that time period?

3 A: I was.

4 Q: Did the defendant ever help with anything?

5 A: When necessary.

6 Q: You had to be drug tested at the Post Office,
7 didn't you?

8 A: Yes, sir.

9 Q: You ended up not having that job after this,
10 correct?

11 A: Yes, sir.

12 Q: Tell these folks after this, where are you
13 working now?

14 A: McDonald's.

15 Q: Ma'am?

16 A: McDonald's.

17 Q: Which one.

18 A: Highway 15.

19 Q: What is your position?

20 A: Management.

21 Q: You're the manager?

22 A: Yes, sir.

23 Q: After this incident, did you move in with your
24 mother?

25 A: Yes, sir.

- 1 Q: Did you go back to school?
- 2 A: Yes, sir.
- 3 Q: Did you get another degree?
- 4 A: Yes, sir.
- 5 Q: In what?
- 6 A: Associates in accounting.
- 7 Q: Is Leroy Clifton Gibbs, III, that lived with
- 8 you and your son at [REDACTED] Madison Avenue on
- 9 December 23, 2008 in the courtroom?
- 10 A: Yes, sir.
- 11 Q: Would you please point him out?
- 12 A: Right there (pointing gesture to Defendant).
- 13 Mr. Meadors: Beg the court's indulgence.
- 14 Thank you.
- 15 Q: After this arrest, did the defendant ever tell
- 16 you, I'm sorry I got you into this?
- 17 A: Yes, sir.
- 18 Q: He did?
- 19 A: Yes, sir.
- 20 Mr. Meadors: That's all I have. Thank
- 21 you.
- 22 The Court: Mr. Brooks.
- 23 **Kimberly Gibbs - Cross by Mr. Brooks:**
- 24 Q: Mrs. Gibbs, on this day that the police came
- 25 they found four containers of mail, undelivered

Ms. Kimberly Gibbs - Cross by Mr. Brooks

219

1 mail, is that correct?

2 A: Yes, sir.

3 Q: And you were supposed to work that day, is that
4 correct?

5 A: No, sir. Suppose to be the next day.

6 Q: Suppose to be the next day?

7 A: Yes, sir.

8 Q: As a postal carrier, do you normally take other
9 folks mail home with you?

10 A: No.

11 Q: Yet you had four containers of other folks mail
12 at home, is that correct?

13 A: Yes, sir.

14 Q: You were suppose to have delivered that mail,
15 is that correct?

16 A: Yes, sir.

17 Q: As far as the post office was concerned, they
18 thought you had delivered that mail, is that
19 correct?

20 A: Yes, sir.

21 Q: So, you let them have the impression that you
22 had delivered other folks mail when you had
23 not, is that correct?

24 A: Yes, sir.

25 Q: So, you in affect had lied to your employer?

- 1 A: Yes, sir.
- 2 Q: And you admit to that, is that correct?
- 3 A: Yes, sir.
- 4 Q: When the police came out there they also called
5 your employer and they came out there and found
6 all that mail, isn't that correct?
- 7 A: Yes, sir.
- 8 Q: That's one of the reasons you got terminated
9 from your job?
- 10 A: No, sir.
- 11 Q: Well, the fact that you had other folks mail,
12 four containers full, that didn't have any
13 relevance to your losing your job?
- 14 A: No, sir.
- 15 Q: Okay. Your employer had thought you had
16 delivered that mail, right?
- 17 A: Yeah.
- 18 Q: You told them that you had delivered it, right?
- 19 A: I hadn't told them anything.
- 20 Q: You didn't tell them anything?
- 21 A: No.
- 22 Q: You took the mail from the post office right?
- 23 A: Yes, sir.
- 24 Q: You were suppose to deliver it?
- 25 A: Right. It was going to get delivered.

Ms. Kimberly Gibbs - Cross by Mr. Brooks

221

1 Q: I'm sorry.

2 A: It was going to get delivered.

3 Q: It was going to get delivered?

4 A: Uh-huh (affirmative response).

5 Q: Was it supposed to be delivered the day before?

6 A: Yes.

7 Q: And you didn't do it?

8 A: Right.

9 Q: And you only worked three to five days when
10 necessary, is that correct?

11 A: Right.

12 Q: You paid all the bills.

13 A: Right.

14 Q: And your husband, he helped you when necessary?

15 A: Right.

16 Q: You guys had lived at this residence since
17 April. That was about eight months prior to the
18 police coming out there.

19 A: Right.

20 Q: You got charged with this offense to, isn't
21 that correct?

22 A: Yes, sir.

23 Q: Did they promise you anything to get you to
24 testify here today?

25 A: No, sir.

- 1 Q: So you're not expecting to get anything out of
2 this today?
- 3 A: No, sir.
- 4 Q: And you're still charged with that?
- 5 A: Yes, sir.
- 6 Q: And you understand what you're facing with
7 these charges?
- 8 A: Yes, sir.
- 9 Q: Okay. You are mad a Mr. Gibbs, right?
- 10 A: No, sir.
- 11 Q: You're not mad at him?
- 12 A: No, sir.
- 13 Q: Mr. Meadors had asked you about the fact that
14 you had this job at the post office and you
15 said you don't have it anymore, is that
16 correct?
- 17 A: Correct.
- 18 Q: And now you're working at McDonald's?
- 19 A: (Nods head affirmatively).
- 20 Q: Is that a yes?
- 21 A: Yes.
- 22 Q: You would consider the post office being a
23 better job than working at McDonald's, isn't
24 that correct?
- 25 A: Yes.

Ms. Kimberly Gibbs - Cross by Mr. Brooks

223

1 Q: And you feel Mr. Gibbs is responsible for you
2 not working at the post office anymore, isn't
3 that correct?

4 A: No, sir.

5 Q: No, sir?

6 A: No.

7 Q: So, you don't blame him in anyway?

8 A: No.

9 Q: Okay. Because you blame yourself for lying to
10 your employer for not having that job, right?

11 A: Right.

12 Q: Okay. And I'm sure you would tell this jury,
13 you're not lying here today, right?

14 A: Right.

15 Q: You're telling the truth today?

16 A: Yes.

17 Q: Like you were telling the truth about
18 delivering the mail?

19 A: Yes.

20 Q: That you didn't deliver?

21 A: Nobody didn't say anything about it.

22 Q: Okay. But you do acknowledge that you were
23 being untruthful to your employer?

24 A: Yes.

25 Q: And, you do acknowledge that that purse was

1 your purse?

2 A: Yes.

3 Q: That the drugs were found in?

4 A: Yes.

5 Q: This was your residence that you signed the
6 lease for, is that correct?

7 A: Correct.

8 Q: I mean, Mr. Gibbs didn't sign this lease, is
9 that right?

10 A: Correct.

11 Q: You were present when they took him away, isn't
12 that correct?

13 A: Correct.

14 Q: Do you recall whether or not this was a weekday
15 that the police came out there or was it a
16 weekend?

17 A: I'm not sure.

18 Q: But it was a day that you were supposed to be
19 at work?

20 A: No.

21 Q: Did you lose your residence because of this
22 arrest?

23 A: Yes.

24 Q: Is that why you took up residence with your
25 mother?

Ms. Kimberly Gibbs - Cross by Mr. Brooks

225

1 A: Yes.

2 Q: Do you blame your husband for that too?

3 A: Yes.

4 Q: You and your husband were in the bed when the
5 police came there?

6 A: Yes.

7 Q: And you went to the door?

8 A: Yes.

9 Q: You went to the window first and looked outside
10 the window?

11 A: Yes. I looked outside the window and then I
12 went to the door when I saw the police.

13 Q: The police came in and you allowed them to come
14 in, you gave them permission to come in, is
15 that correct?

16 A: Well, they came in, because they saw him in
17 there.

18 Q: Okay. And you told the police that they could
19 search around the house, is that correct?

20 A: Yes.

21 Q: And as they searched, your husband was already
22 gone, isn't that correct?

23 A: Yes.

24 Mr. Brooks: Beg the court's indulgence,
25 Your Honor.

1 Q: Officer DuBose indicated there was a smell of
2 marijuana, you smelled it too, right?

3 A: No, he found it once the dog came in.

4 Q: Okay. Well, he had indicated that he smelled
5 marijuana, did you smell marijuana?

6 A: No.

7 Q: You didn't smell marijuana?

8 A: No.

9 Q: Had you been smoking marijuana?

10 A: No.

11 Q: Had you ever used marijuana?

12 A: No.

13 Q: At all?

14 A: No.

15 Q: Had you used any illegal substance such as
16 crack or cocaine while you stay at the
17 residence?

18 A: No.

19 Q: At all?

20 A: No.

21 Q: Had you take drug test as part of your
22 employment?

23 A: Yes.

24 Q: How often did you take drug test?

25 A: Just before I was hired.

Ms. Kimberly Gibbs - Cross by Mr. Brooks

227

1 Q: Is that the only drug test you took?

2 A: Yes.

3 Q: How long did you work for the post office?

4 A: Up until December. From January to December.

5 Q: January of 2008.

6 A: Til December.

7 Q: Til December and you took one drug test prior
8 to employment?

9 A: Yes, sir.

10 Q: No other drug test during that year?

11 A: No, sir.

12 Q: Okay.

13 Mr. Brooks: No further questions.

14 The Court: Redirect?

15 Mr. Meadors: No, sir.

16 The Court: Thank you, ma'am. You can
17 step down.

18 (Witness complies)

19 The Court: We have time for one more
20 witness Mr. Meadors and Mr. Brown.

21 Mr. Brown: Yes, sir, Your Honor. If it
22 please the Court, the state will call Cindy Pierson.

23 Bailiff: Put your left hand on the Bible
24 and raise your right hand.

25 (Witness complies).

Ms. Cindy Pierson - Examination by Mr. Brown

228

1 Bailiff: Do you solemnly swear or affirm
2 the testimony to the Court shall be the truth, the whole
3 truth and nothing but the truth so help you God?

4 Ms. Pierson: I do.

5 Bailiff: Thank you. Have a seat, please.

6 (Witness complies)

7 Bailiff: Please state your full name,
8 spell your last name for the record.

9 Ms. Pearson: Cindy C. Pierson, P-I-E-R-S-
10 O-N.

11 **Cindy Pearson - Examination by Mr. Brown:**

12 Q: Ms. Pierson, were you employed in 2008 as the
13 evidence custodian at the Sumter County
14 Sheriff's office?

15 A: Yes, sir, I was.

16 Q: What do you do now?

17 A: I manage a dog grooming.

18 Q: When did you leave the Sheriff's Office?

19 A: April 7, 2010.

20 Q: As the evidence custodian in 2008, what were
21 your duties? Just kind of describe for the
22 jury what you did.

23 A: All the evidence that came into the Sheriff's
24 Office was kept in my custody. I transported
25 the evidence to Sled, I picked it up from Sled.

Ms. Cindy Pierson - Examination by Mr. Brown

229

1 All drugs at that time were analyzed inside the
2 office. I kept control of those until they
3 were turned over for analysis.

4 Q: Tell us about how evidence is brought in when
5 dealing with drugs like we are in this case,
6 how its taken to drug analyst and just the
7 process of checking drugs or any other evidence
8 in and out.

9 A: What we had at that time was a drop box. Any
10 drugs that were taken in through the night were
11 dropped in that box which is locked and
12 secured. Nobody has a key but myself. At the
13 time myself had a key and I think the shift
14 lieutenant, if I'm not mistaken. It's been a
15 while I don't quite remember. Once those items
16 were seized out of the locker they stayed in my
17 control. I then took them back to the
18 Sheriff's Department, back to the evidence room
19 and logged them in and kept them until they
20 were turned over for analysis.

21 Q: Do ya'll prepare or maintain any forms as ya'll
22 had this evidence come in and out of your
23 control to keep records of that?

24 A: Yes, sir. There's a change of custody.

25 Q: And you have that here with you today?

1 A: I do.

2 Q: I'm going to bring up to you, before I do that,
3 I'm going to bring up the gloves to you.

4 Mr. Brown: Permission to approach the
5 witness, Your Honor.

6 The Court: Yes, sir.

7 Mr. Brown: I'll hand you some gloves for
8 your protection.

9 Q: I'm handing you what has been marked for
10 identification purposes as State's 18 and I
11 believe State's 19. And as a precursor I'll
12 tell you those were opened today. Can you
13 please check that bag and see whether or not
14 you have any marks that you checked that that
15 evidence in and whether or not that goes in
16 line with your chain of custody that you have
17 with you today?

18 A: Yes, sir. This was actually turned into me.
19 It's what we call a Best Kit.

20 Q: Okay.

21 A: The officer puts the drugs inside this pouch
22 and they seal it. Once they seal it, it cannot
23 be opened.

24 Q: How do they seal it, do you know?

25 A: It's a tab, actually, you can see. It's opened

Ms. Cindy Pierson - Examination by Mr. Brown

231

1 at the top. Once you take that tape off it
2 seals across and you can tell if it's been
3 opened or tampered with because you can't seal
4 it back. You actually have to cut it.

5 Q: Okay. And do you have any signs on that best
6 kit or any signs on your chain of custody or
7 both that you checked that particular best kit
8 in?

9 A: Yes, on my chain of custody I have it listed as
10 Best Kit SC000929 seal intact.

11 Q: Okay.

12 A: That would be this pouch right here and all the
13 drugs contained were inside of this sealed.

14 Q: All the stuff that was inside that bag that was
15 inside the best kit at that time?

16 A: Correct. This is what was listed on the chain
17 of custody on the B form from the officer.

18 Q: Did you bring that evidence over today?

19 A: No, sir. I did not.

20 Q: But while you were at the Sheriff's Department
21 you are the one who signed it in and signed it
22 out if need be?

23 A: Yes, sir.

24 Q: At any point was it signed out while it was in
25 your custody?

1 A: It was. It was signed out to our chemist which
2 was Mitchell Hansen.

3 Q: Okay. Do you have a date on which it was
4 signed out?

5 A: It was signed out on December 24, 2008.

6 Q: Was it signed back into you following his needs
7 for that item?

8 A: Right. After he analyzed it, it brings it all
9 back to me and they are signed back in and
10 placed in a vault until court.

11 Q: Since you've left the Sheriff's Department have
12 you been in control or maintained that evidence
13 since that time?

14 A: No, sir.

15 Q: By the time you had left had you signed it in,
16 up to basically to that point, had you done all
17 signing out and signing out of that evidence,
18 right there?

19 A: To my knowledge; yes, sir.

20 Q: And to your knowledge was there any juncture in
21 which that evidence was disturbed or messed
22 with that is not listed on that chain of
23 custody that you've testified to here today?

24 A: No, sir. Not to my knowledge.

25 Mr. Brown: Court's indulgence.

Ms. Cindy Pierson - Examination by Mr. Brown

233

1 The Court: All right.

2 Mr. Brown: At this time the State would
3 move items 18 along with the sub-parts and item 19 into
4 evidence.

5 The Court: Okay. Mr. Brooks, first of all
6 you can cross examine the witnesses and we'll take up
7 that offer, whichever you'd like to do.

8 Mr. Brooks: I have no questions of this
9 witness.

10 The Court: Thank you, ma'am. You can
11 step down.

12 Mr. Brown: May we approach, Your Honor?

13 The Court: Sure.

14 (Counsel approach bench without court reporter)

15 Mr. Brown: Your Honor, at this time, we'd
16 like to call Jim Atkinson from the Sumter County
17 Sheriff's Office.

18 The Court: Okay.

19 Bailiff: Place your left hand on the
20 Bible, raise your right hand. State your name, please.

21 Witness: James Atkinson.

22 Bailiff: Solemnly swear or affirm your
23 testimony to the Court shall be the truth, the whole
24 truth, nothing but the truth, so help you God?

25 Mr. Atkinson: I do, sir.

Mr. Jim Atkinson - Exam by Mr. Brown

234

1 Bailiff: Thank you. Have a seat up here,
2 please. Please state your full name and spell your last
3 name for the record.

4 Mr. Atkinson: James Atkinson, A-T-K-I-N-
5 S-O-N.

6 Jim Atkinson - Examination by Mr. Brown:

7 Q: Mr. Atkinson, what is your role at the Sumter
8 County Sheriff's Office?

9 A: I work with the crime scene unit as an
10 investigator.

11 Q: Are you the evidence technician now at the
12 Sumter County Sheriff's Office?

13 A: Yes.

14 Q: Are you the one following Ms. Pierson?

15 A: Yes, sir.

16 Q: Do you have the chain of custody form that she
17 was just now looking at?

18 A: Yes, sir.

19 Q: What she just now testified to following her
20 leaving were you the one who then took control
21 and custody of all the evidence that has been
22 testified to here today?

23 A: Yes, sir, I have.

24 Q: Did you, at some point, sign that evidence out
25 of the evidence room at the Sumter County

1 Sheriff's Office?

2 A: I brought it over here today. I had to sign it
3 out.

4 Q: Were you the person to bring it over today?

5 A: Yes, sir.

6 Q: Has it left your site at any point today?

7 A: No, sir, it's been right here.

8 Q: Okay.

9 Mr. Brown: No further questions. Your
10 Honor, at this time we would offer State's 18 along with
11 the sub-parts and 19 into evidence.

12 The Court: All right. Mr. Brooks, any
13 questions of the witness?

14 Mr. Brooks: No questions.

15 The Court: All right. You can step down.
16 Thank you.

17 Mr. Brown: Your Honor, at this time we
18 would renew our motion and put State's 21 in which was
19 the drug report.

20 The Court: Okay. Could you all come up
21 just a minute.

22 **(Counsel approaches bench without court reporter)**

23 The Court: Ladies and Gentlemen, we are
24 going to stop for today. We made some good progress
25 moving through the evidence. We are going to stop for

1 today and start back tomorrow at 10:00. We will start
2 promptly at that time. In the meantime, you may not
3 discuss this case with anyone at all. That includes
4 anyone in the universe. You can't talk to anyone about
5 it. You cannot undertake to do any research about any
6 issues, any terms, any locations or anything else
7 involving any of the issues or the parties or lawyers or
8 anything involving this case. That includes internet
9 research. You can't do it. Don't read anything about it.
10 Should you come across something remotely involving an
11 issue in this case or specifically about this case, put
12 it aside, do not read about it. We'll see you tomorrow
13 morning at 10:00 and we'll move forward to the conclusion
14 of the trial at that time. Thank you very much.

15 **(Jury excused from Courtroom for the day 4:50 p.m.)**

16 The Court: All right. Mr. Brooks, do you
17 still have an objection to 18 sub-parts and 19?

18 Mr. Brooks: Not now that they have
19 established the chain of custody, Your Honor.

20 The Court: All right. Those are in
21 evidence.

22 **(State's Exhibit Numbers 18(sub-parts) and 19 in**
23 **evidence)**

24 The Court: All right. Number 21 is the
25 report?

1 Mr. Brown: That's correct, Your Honor.
2 The drug analysis.

3 The Court: Any objection to that?

4 Mr. Brooks: No, sir.

5 The Court: Okay. So, that is in too.

6 **(State's Exhibit Number 21 was entered)**

7 The Court: All right, so I believe
8 everything that is marked for i.d. is in and the State
9 hasn't rested so that will be open to cure tomorrow
10 morning but ya'll can check with her tomorrow morning
11 when we finish on that. How many more witnesses does
12 the State have?

13 Mr. Meadors: Your Honor, we may not have
14 any but just would like to leave it open just in case to
15 be sure, but if we did it would be one but it may not be
16 any.

17 The Court: Mr. Brooks, in that regard,
18 please make sure you educate your client on the specific
19 issues that I will be talking to him about specifically
20 his Fifth Amendment Rights, we can do it now if you would
21 like. I would prefer to wait until in the morning, but
22 we can do it now if you'd like. Does he have any type of
23 record that the State would seek to introduce that Mr.
24 Brooks needs to know about?

25 Mr. Meadors: Your Honor, there is. If

1 we're going to do that in the morning, I'd like to ...

2 Mr. Brooks: If they could tell me which
3 ones he feels ...

4 The Court: Okay. Ya'll can talk about
5 that this afternoon perhaps first thing in the morning.
6 I said we'd start at 10:00. What I'd like to do if at
7 all possible get together at 9:30 so we can review any
8 jury charges or anything else so that we can get started
9 promptly at 10:00, okay.

10 Mr. Meadors: Judge, and again, not to, to
11 all due respect and I've done it my whole career, I've
12 always said I've done it so I don't know, I again ask
13 Your Honor to consider taking the Defendant into custody
14 at this point.

15 The Court: All right. I'll let him
16 remain out. Mr. Gibbs, you heard what I told you around
17 lunch time. I'd like you to be back in this courtroom no
18 later than 9:15 tomorrow. My instruction and my order
19 that you not have any contact direct or indirect with any
20 state's witnesses including but not limited to Kimberly
21 Gibbs. That still stands. Certainly if someone does and
22 they think they are doing you a favor by talking to her
23 it's going to look bad on you, so I'm just going to warn
24 you there. Don't call her, don't text her, don't have
25 any communication with her at all and don't prompt or

State of South Carolina v. Leroy Clifton Gibbs, III

239

1 suggest or just thinking out loud, hey maybe you want to
2 give her a call, just don't do it. If you're not present
3 tomorrow morning when we are ready to resume, we will go
4 on in your absence. Okay. All right. Thank you.

5 Mr. Meadors: Your Honor, just to save
6 time, I know there were three potential witnesses, if Mr.
7 Brooks could provide us with their date of birth, their
8 other identifying characteristics it might help instead
9 of stopping in the morning if they do testify.

10 The Court: There's Mr. Green and Mr.
11 Latroy Gibbs and I don't remember a third but ...

12 Mr. Brooks: There was a third, but the
13 third is deceased.

14 The Court: The third was Mr. Jackson,
15 deceased.

16 Mr. Meadors: I've got that. So, Mr.
17 Gibbs and Mr. Green.

18 The Court: All right. Mr. Gibbs and Mr.
19 Green if you could just kindly give Mr. Meadors your date
20 of birth. Is that all you need?

21 Mr. Meadors: I'd like there social
22 security number and I will tear it up as soon as I get
23 it. It comes out on the sheet anyway. It makes it
24 easier.

25 The Court: Well, I'll leave it up to

25 The Court: Are you going to have anymore

1 witnesses?

2 Mr. Brown: I believe I'll be putting up
3 one more witness very briefly. It will be Officer
4 DuBose.

5 The Court: Okay.

6 Mr. Brown: Just on one more issue.

7 The Court: You are going to recall him?

8 Mr. Brown: Very briefly, Your Honor.

9 The Court: And, of course, they have a
10 right to take issue with that but if they don't I will
11 allow it. It's in my discretion. What's the purpose of
12 it?

13 Mr. Brown: Your Honor, there is one issue
14 that we forgot to put in and it goes to one of the
15 elements.

16 The Court: All right. Mr. Brooks.

17 Mr. Brooks: Judge, for my client I would
18 note an objection.

19 The Court: It would be very brief?

20 Mr. Brown: Two minutes, Your Honor.

21 The Court: Will there be any other
22 witnesses who you would call after that?

23 Mr. Brown: I do not believe so, Your
24 Honor. That would be the State's case.

25 The Court: Okay. Have you discussed with

Mr. Leroy C Gibbs, III - Exam by Mr. Brooks

242

1 your client about the issue of testifying or not
2 testifying?

3 Mr. Brooks: Yes, sir.

4 The Court: Okay. He can come forward and
5 be sworn, please.

6 (Defendant comes forward)

7 Bailiff: Place your left hand on the
8 Bible, raise your right hand. State your name, please.

9 Defendant: Leroy Gibbs.

10 Bailiff: Do you solemnly swear or affirm
11 your testimony to the Court will be the truth, the whole
12 truth, nothing but the truth so help you God?

13 Mr. Gibbs: Yes, sir.

14 The Court: All right. Mr. Gibbs, listen
15 carefully. Over the next few minutes, I'm going to be
16 talking to you about certain rights that you have under
17 the Fifth Amendment of the United States Constitution.

18 Mr. Brown of the State has indicated that
19 they are going to request to recall a witness to testify
20 about one particular point. If that occurs, he's
21 indicated that they will be calling no more witnesses, so
22 what I'm going to do at this stage is let you know that,
23 very, very soon more than likely at 10:00 or shortly
24 after that we will reached a stage in the trial where you
25 may present your defense. Do you understand that?

2 The Court: Within your right to present a
3 defense, you have a right to testify or not to testify.
4 Specifically, with regard to that, you have the right to
5 claim the protection given to you under the Fifth
6 Amendment to the United States Constitution. That
7 Amendment states in pertinent part that no person in any
8 criminal case shall be compelled or forced to be a
9 witness against himself. What that basically means is
0 that you cannot be required to testify against your free
1 will, do you understand that?

12 Mr. Gibbs: Yes, sir.

13 The Court: You have the right to
14 testify, you have the right not to testify, the choice
15 would be entirely up to you. The reason for that is that
16 the right that you have under the Fifth Amendment is a
17 personal right. Since it is a personal right, you are
18 the only one who can give it up. Do you understand that?

19 Mr. Gibbs: Yes, sir.

20 The Court: All right. If you decide to
21 testify you'll be subject to basically the same rules
22 that govern the questioning of any other witness in this
23 case, do you understand that?

24 Mr. Gibbs: Yes, sir.

25 The Court: In other words, Mr. Brooks is

1 going to ask you questions on direct examination and then
2 either Mr. Meadors or Mr. Brown would ask you questions
3 on cross examination. And in short you can be examined
4 in cross on any relevant issues in the case. In
5 addition, if you have any convictions involving dishonest
6 or false statements and you were released from
7 confinement within the last ten years, those convictions
8 can be introduced for the jury to consider only as to
9 whether or not you are believable. Do you understand
10 that?

11 Mr. Gibbs: Yes, sir

12 The Court: Similarly, if you have any
13 convictions that may not be for dishonesty or false
14 statement but instead punishable by imprisonment for more
15 than one year and if I determine the probative value of
16 that conviction outweighs the prejudicial effect to you
17 that also can be introduced to the jury solely for the
18 purpose of their determining whether or not they believe
19 you. Do you understand that?

20 Mr. Gibbs: Yes, sir.

21 The State: Is the State seeking to
22 introduce any convictions?

23 Mr. Brown: Just one, Your Honor, in 1996,
24 he was convicted of accessory after the fact of armed
25 robbery. He started his probation on that offense

State of South Carolina v. Leroy Clifton Gibbs, III

245

1 December 1, 2003 and that was conditionally closed
2 January 13, 2006 based on when this ended ...

3 The Court: I'm sorry, you're talking to
4 fast.

5 Mr. Brown: My apologies, Your Honor, it
6 was a 1996 conviction, accessory after the fact of an
7 armed robbery. He was released to the Department of
8 Probation on December 1, 2003, that was judicially closed
9 January 13, 2006. We believe this falls within the ten
10 year time frame, also we believe that is a crime of
11 dishonesty.

12 The Court: When was he released from
13 confinement?

14 Mr. Brown: Confinement was December 1,
15 2003.

16 The Court: He was released within the
17 last ten years?

18 Mr. Brown: Yes, Your Honor.

19 The Court: Probation doesn't count unless
20 it was revoked and he went to jail.

21 Mr. Brown: Right.

22 The Court: So, you claim accessory after
23 the fact?

24 Mr. Brown: After the fact, Your Honor.

25 The Court: Are you claiming that's a

1 crime of dishonesty or are you claiming it falls under
2 the ...

3 Mr. Brown: We believe it would be a crime
4 of dishonesty, Your Honor, he would have help conceal the
5 identity of the actual person who committed the offense
6 plus armed robbery in and of itself is a crime of
7 dishonesty.

8 The Court: Well, the Court of Appeals
9 ruled last month that it is not. Armed Robbery is not a
10 crime of dishonesty. They go on with a Supreme Court
11 opinion that parenthetically stated that, I don't know
12 what the status of it is but, in order for you to
13 establish a crime of dishonesty, what they require us to
14 do now is have a little mini hearing on the circumstances
15 of that conviction to determine whether or not it
16 actually involved dishonesty or a false statement. You
17 could imagine how impossible it would be for you to do on
18 something that happened seventeen years ago. But, in any
19 event, accessory is punishable by imprisonment for more
20 than one year and I will have to determine whether or not
21 the probative value of admitting that conviction
22 outweighs his prejudicial effect to you. In other words,
23 if I allow that conviction to come in I will tell the
24 jury they can consider it only on the issue of whether or
25 not they believe what you say on the witness stand, do

2 | Mr. Gibbs: Yes, sir.

3 The Court: I'm not going to make any
4 determinations on that right this second but you
5 understand that is kind of the lay of the land?

6 | Mr. Gibbs: Yes, sir.

7 The Court: All right, Mr. Brooks, do you
8 think I've so far explained that to him satisfactorily?

9 Mr. Brooks: I think you've explained the
10 Fifth Amendment Rights, Judge.

11 The Court: All right. If you decide to
12 testify that decision on your part must be made freely
13 and voluntarily and intelligently by you of the full
14 knowledge or your rights and the full knowledge of the
15 consequences to testify. If you decide not to testify,
16 what I tell the jury is this. Ladies and Gentlemen, you
17 cannot even think about it. You can't talk about it and
18 you cannot consider the fact that Mr. Gibbs did not
19 testify in any manner whatsoever because he has no burden
20 of proof, the State has the sole burden and you are
21 exercising your right of the Fifth Amendment not be used
22 in anyway by that jury against you. Do you understand
23 that?

24 Mr. Gibbs: Yes, sir.

25 The Court: I also tell the jury that if

1 you decide to testify they cannot consider that to be any
2 assumption by you of any burden proving or disproving
3 anything. Do you understand?

4 Mr. Gibbs: Yes, sir.

5 The Court: All right. Do you understand
6 everything that I have explained to you so far?

7 Mr. Gibbs: Yes, sir.

8 The Court: Do you have any questions?

9 Mr. Gibbs: No, sir.

10 The Court: Have you discussed with Mr.
11 Brooks whether or not you will or will not testify?

12 Mr. Gibbs: Yes, sir.

13 The Court: Have you made your decision?

14 Mr. Gibbs: Yes, sir.

15 The Court: What is that?

16 Mr. Gibbs: I'm testifying.

17 The Court: Sir?

18 Mr. Gibbs: I'm testifying.

19 The Court: Okay. Has anyone forced you
20 to make that decision?

21 Mr. Gibbs: No, sir.

22 The Court: Have you had full opportunity
23 to consult with your lawyer about that?

24 Mr. Gibbs: No, sir.

25 The Court: Do you want to talk to him

1 some more?

2 Mr. Gibbs: Yes, sir.

3 The Court: All right. That will
4 certainly be fine, but in the end what I will probably do
5 or what I will definitely do is I will come back to you
6 again and ask you some more questions. Now, one other
7 thing before we go onto something else. If you tell me,
8 after you talk to Mr. Brooks, this is my decision, that
9 doesn't mean that you can't change it at any time but as
10 soon as you are sworn and sit on that stand and once the
11 questioning starts you must continue it, okay?

12 Mr. Gibbs: Yes, sir.

13 The Court: Any objections or additions
14 from the Defendant or Mr. Brooks?

15 Mr. Brooks: No, sir.

16 The Court: All right. Ya'll can have a
17 seat.

18 Mr. Meadors: Your Honor, he does have
19 other convictions for drugs that are outside the time
20 limit.

21 The Court: Do ya'll want to introduce
22 those?

23 Mr. Meadors: We talked about it last
24 night. He didn't bring them up. I think they are outside
25 the time, I don't think we can. I just want to make the

1 court aware that if he takes the stand they are out
2 there. I'm just wanting to let you know there were other.

3 The Court: You're talking about remote
4 convictions?

5 Mr. Meadors: Yes, sir.

6 The Court: Of course, you're up against a
7 big bolder getting that in but if he opens the door ...

8 Mr. Meadors: That's all I'm saying.

9 The Court: I agree that has nothing to do
10 with the Fifth Amendment. Also, while you're standing up,
11 let me ask you this question. There has been discussion
12 in this case without the jury in the courtroom about
13 other charges that they were there to arrest you on, you
14 have the right to remain silent as to those charges.
15 Anything you say in this proceeding --- anything you say
16 in this questioning, if I allow certain questions to be
17 asked, anything you say can be used against you with
18 regard to the other charges that are not being tried this
19 week. Do you understand that?

20 Mr. Gibbs: Yes, sir.

21 The Court: Okay. All right. You can
22 have a seat.

23 Mr. Brooks: Judge, one other thing we may
24 have another potential witness.

25 The Court: Who is that?

1 Mr. Brooks: His mother seated in the
2 courtroom. The only thing that she can testify to is
3 whether or not he is actually living there.

4 The Court: Living there?

5 Mr. Brooks: There is at [REDACTED] Madison
6 Street, verses living with her at [REDACTED] ...

7 The Court: Okay.

8 Mr. Meadors: Your Honor, I don't believe
9 that name was called out to the jury.

10 The Court: None of those names were
11 called out to the jury. Not a single one because I
12 didn't get the names until after Mr. Gibbs told me that
13 none of those witnesses or Mr. Brooks hadn't talk to any
14 of those witnesses and that was after the jury had been
15 picked. I'll need the name and date of birth if she will
16 give it to them her social security number.

17 Mr. Meadors: If, Your Honor, allows them
18 to testify would you inquire to the jury if they know any
19 of them?

20 The Court: I'm going to have to. I'd
21 like somebody to --- I know it's Darnell Green, Letroy
22 Gibbs and I don't know her name.

23 Mr. Brooks: Diane Williams.

24 The Court: All right. How do you spell
25 her name?

1 Mr. Brooks: D-I-a-n-e.

2 Ms. Gibbs: D-I-a-n-n ...

3 Mr. Brooks: Two n's. She indicated she
4 desires not to testify

5 The Court: Well, it's not up to her, but
6 I understand what you're saying.

7 Mr. Brooks: Right.

8 The Court: Darnell Green, Letroy Gibbs,
9 Dianne Williams is a potential witness. All right.
10 Lastly, before we go any further because I don't want to
11 forget. The count numbers on the indictment that are
12 being tried. Count One, trafficking. The Defendant has,
13 Mr. Brooks you have agreed to scriveners's amendment of
14 the indictment to reflect that it is cocaine base, is
15 that correct?

16 Mr. Brooks: That's correct, Judge.

17 The Court: All right. Count number
18 three, scrivener's amendment to manufacturing cocaine
19 base, is that correct?

20 Mr. Brooks: Yes, sir.

21 The Court: The fifth count, possession
22 with intent to distribute cocaine is ...

23 Mr. Brown: Correct. There's no
24 scrivener's error.

25 The Court: I think somebody in my office

State of South Carolina v. Leroy Clifton Gibbs, III

253

1 put the possible proposed verdict on your desk this
2 morning.

3 Mr. Brown: Yes, Your Honor.

4 The Court: I certainly propose it has
5 kind of like a little recipe of lesser offenses and I
6 need ya'll to look at that and let me know in conjunction
7 with our discussion about the jury charge whether or not
8 all that appears to be in order.

9 Mr. Brown: Your Honor, my only concern
10 and I'm not opposed to PWID cocaine base being on the
11 form on number one but I'm not positive it is a lesser
12 included and I don't want that to come back. PWID
13 requires only the inference of intent to distribute is
14 created by the one gram or more.

15 The Court: The gram is the threshold for
16 both drugs, right?

17 Mr. Brown: Right.

18 The Court: For PWID.

19 Mr. Brown: Right, but the difference is
20 trafficking once it is over that amount it is
21 trafficking. You only have to proof possession, you
22 don't have to prove intent to distribute but PWID you
23 have to prove the intent to distribute. So there's an
24 element of what you have to proof and I just don't want
25 to create an appellant issue on that matter.

1 The Court: Well, let me ask this question
2 to Mr. Brooks first. Do you want a lesser included on
3 trafficking or do you want to go all or nothing on
4 trafficking?

5 Mr. Brooks: Give me a second to consult
6 with my client.

7 (Mr. Brooks and Defendant Gibbs consult)

8 The Court: I do believe it is a lesser
9 included offense by case law. What the charge says if
10 you find the defendant is not guilty of trafficking, you
11 must consider the lesser offense of possession with
12 intent to distribute that drug. It includes all of the
13 elements except the amount. In addition, you have to
14 prove that he intended to distribute the drugs.

15 Mr. Brown: Yes, Your Honor. I haven't
16 had a chance to research it yet. I just wanted to make
17 sure to preserve it.

18 The Court: All right. I will allow Mr.
19 DuBose to be called over the defendant's objection to
20 testify about that one picture. Is that right?

21 Mr. Meadors: Just one picture, Your
22 Honor.

23 The Court: That one picture. So, in
24 other words, we won't go back to any statements, we won't
25 go back to anything else except that one picture.

1 Mr. Meadors: Yes, State's 23.

2 The Court: All right. That's over the
3 Defendant's objection.

4 Mr. Brown: And, Your Honor, the only
5 other thing that I would ask is that the jury be informed
6 that 18 and sub-parts 19 and 21 are officially into
7 evidence. Otherwise, we are ready to go. I think that
8 was outside the jury's presence when you did admit it.

9 The Court: All right. Eighteen, nineteen
10 and twenty-one?

11 Mr. Brown: Yes, Your Honor.

12 The Court: Can we take the next few
13 minutes while we wait, is everybody here? Okay. Let's
14 take a few minutes before we start. Okay. The generic
15 part, if you will, will be my explanation to the jury
16 about its basic role. The fact that the charge, arrest
17 and indictment are not evidence. The multiple charge
18 which means that their verdict on one does not control
19 their verdict on the other. The presumption of
20 innocence, reasonable doubt, direct and circumstantial
21 evidence, credibility of witnesses, expert witnesses, if
22 the defendant does not testify, I will talk to them about
23 that. If he does I'll explain that it doesn't shift any
24 burden of proof. I've got in here mere presence at the
25 scene, specifically with regard to drug offenses there's

1 a more specific one but I usually give the broader mere
2 presence and then I'll get into the drug offenses and
3 computed within all of those is the statement that mere
4 presence at the scene where drugs were found was not in
5 and of itself proof of guilt. On trafficking cocaine
6 base, the State must proof beyond a reasonable doubt and
7 here is where it gets clumsy, but this is what the
8 statute says. It says the State must prove beyond a
9 reasonable doubt the defendant knowingly sold,
10 manufactured, cultivated, delivered, purchased, brought
11 into this State, provided financial assistance to or
12 otherwise aided, abetted or inspired to do any one of
13 those things or was knowingly in actual or constructive
14 possession or knowingly attempting to become in actual or
15 constructive possession of more than ten grams of cocaine
16 base. Obviously, in this case, all of this business
17 about selling, cultivating, delivering and so forth has
18 nothing to do with anything. This is a case where
19 trafficking is alleged because the State claims that he
20 was in constructive possession of it. Or if you want to
21 argue actual, I don't know if you will or not.

22 It also includes the word manufacturing in
23 there and in this case it's a separate count under
24 another subsection of the code. The easiest thing for
25 the jury to understand would be if I tell the jury that

1 the State must prove that the defendant was knowingly in
2 actual constructive possession of more than ten grams of
3 a cocaine base. That's a easy thing to say.

4 Does anybody have any comment on that?

5 Mr. Brown: Your Honor, I wouldn't have
6 any objection to using that.

7 The Court: Mr. Brooks? The rest of it is
8 pretty confusing because it doesn't have anything to do
9 with it.

10 Mr. Brooks: I believe that would simplify
11 it for the jury, Judge.

12 The Court: Because it gets them right
13 down to whether or not they think these were his, this
14 crack was his or whether or not it wasn't. Now, also,
15 the trafficking, the stages or the levels of trafficking.
16 Ten to twenty-eight grams, more than twenty-eight grams,
17 those have to do with I believe just sentencing, is that
18 right?

19 Mr. Brooks: Yes, sir.

20 Mr. Brown: Yes, Your Honor.

21 The Court: It's ten to twenty-eight grams
22 trafficking. The first offense is three to ten years.
23 If it's twenty-eight grams or a hundred grams it's seven
24 to twenty-five. For the juries purposes to find
25 trafficking, based on the way the indictment is framed

1 they just have to find that it was more than ten grams
2 but there is a part of the charge that talks about the
3 State having to prove that it was ten to twenty-eight.
4 So, the easiest thing for me to charge is the State has
5 to prove that it was more than ten grams. Is that
6 sufficient to the State?

7 Mr. Brown: That's sufficient, Your Honor.
8 I think that would may it clear to the jury.

9 The Court: Mr. Brooks?

10 Mr. Brooks: Yes, sir, Judge.

11 The Court: All right. I'll define
12 possession. I will tell them if I use the word
13 possession with regard to any count in the indictment
14 those definitions apply to any of those counts. If we go
15 into PWID, if you consider a lesser included offense what
16 all of that means, then also, according to your verdict
17 form there is also a lesser included PWID, which is just
18 simple possession.

19 Mr. Brown: Right.

20 The Court: All right. Then I can circle
21 back and do PWID cocaine. After trafficking and I will
22 do manufacturing. Manufacturing has a definition which
23 is to produce or to prepare or work, process a drug. I
24 define knowingly and intentional and I'll give mere
25 presence at the scene where drugs are found is not enough

1 to prove possession and then I will give a criminal
2 intent charge.

3 Mr. Meadors: Judge, could you
4 manufacture, again. Will you go over that definition
5 again, I'm sorry.

6 The Court: Yes, sir.

7 Mr. Meadors: Just the word itself. I'm
8 sorry.

9 The Court: I'll be glad to give you
10 parts of whatever you want as long as you don't read them
11 to the jury. Let me see if I can find it. Manufacture
12 means to produce, prepare, convert or process a drug
13 naturally or chemistry.

14 Mr. Meadors: Thank you.

15 The Court: Does anybody have any proposed
16 written charges or any other charges you would like for
17 me to consider? Any from the State?

18 Mr. Brown: No, Your Honor.

19 The Court: Mr. Brooks?

20 Mr. Brooks: No, sir.

21 The Court: So, the question we have at
22 this point is whether or not the State and the Defendant,
23 either one or both want the lesser included on the
24 trafficking or lesser included on the PWID crack cocaine.
25 I've got my own thoughts on it but we will address that

1 when the time comes.

2 Mr. Brown: Your Honor, I'm \sorry, but if
3 we could go back to the manufacturing, did your charge
4 include attempting to do those things also, I just want
5 to make sure.

6 The Court: Where is the evidence of the
7 attempt, just by where the microwave was?

8 Mr. Brown: The microwave, the residue, all
9 the stuff right there at the microwave. The residue on
10 the utensils.

11 The Court: I'll have to get my copy of
12 Title 44, but I believe ... I'll take a look at that.

13 Mr. Brown: Yes, sir.

14 The Court: Is all the jury here?

15 Bailiff: Yes, sir.

16 The Court: Okay. After Mr. DuBose
17 testifies again, of course, you said you are going to
18 rest. Is that right?

19 Mr. Brown: That's correct, Your Honor.

20 The Court: Then we will take a recess Mr.
21 Brooks and you can make any motions that you want to make
22 and then we will hear your clients decision and then I'll
23 have to make a decision on the attempted armed robbery
24 when he was released from confinement of nine years and
25 nine months ago. Okay. Bring in the jury.

Mr. Wayne Dubose - Examination by Mr. Meadors

261

1 (Jury enters courtroom)

2 Bailiff: All the jurors are back in the
3 courtroom.

4 The Court: Thank you ladies and
5 gentlemen, we are ready to continue. The State can call
6 its next witness.

7 Mr. Meadors: Thank you, Your Honor.
8 Investigator Wayne DuBose.

9 The Court: All right. Mr. DuBose, you
10 are still under oath, come on around and have a seat.
11 Ladies and Gentlemen, he was sworn previously and does
12 not have to be sworn again.

13 **Mr. DuBose - Recall Examination by Mr. Meadors:**

14 Q: Good-morning Investigator.

15 A: Good-morning.

16 Q: I've just got one question for you, I forgot to
17 ask you this yesterday. I'm going to show you
18 what is marked State's 23.

19 Mr. Meadors: Your Honor, without
20 objection, I believe.

21 Q: Do you recognize that?

22 A: I do.

23 Q: Does it relate to this case as part of your
24 testimony yesterday?

25 A: Yes, sir. It's a photo of items, kitchen,

1 bags.

2 Mr. Meadors: Your Honor, without
3 objection.

4 The Court: All right. That's in.

5 Mr. Meadors: 23.

6 **(State's Exhibit Number 23 was marked)**

7 Q: Was this also in the kitchen at Madison Avenue?

8 A: Yes, sir. These are items that were on the
9 cabinets in the kitchen area.

10 Q: Could you tell the jury based on your
11 experience especially what, if anything, these
12 potentially might tell you as an investigator
13 in narcotics?

14 A: These kitchen bags are consistent with bags
15 that people package drugs in whether they sell
16 them or whatever they do. Those bags are also
17 consistent of the bags that we showed pictures
18 of earlier.

19 Mr. Meadors: Thank you. That's all.

20 The Court: Any questions, Mr. Brooks?

21 **Investigator DuBose - Recall Cross by Mr. Brooks:**

22 Q: Officer, that last part that you just stated,
23 that's just your opinion, isn't that correct?

24 A: Yes, sir. It's consistent with the picture we
25 showed earlier of packaging.

State of South Carolina v. Leroy Clifton Gibbs, III 263

1 Mr. Brooks: Thank you. No other
2 questions.

3 The Court: All right. Thank you, sir, you
4 can step down. Oh, I'm sorry, any follow-up?

5 Mr. Meadors: No, sir.

6 The Court: You can step down. All
7 right. Next witness for the State.

8 Mr. Brown: Permission to approach, Your
9 Honor.

10 (Counsel approach bench without court reporter)

11 The Court: All right. Ladies and
12 Gentlemen, exhibits 18 and the sub-parts of 18, 19 and 21
13 are now in evidence. Any other witnesses for the State?

14 Mr. Brown: Your Honor, at this time, the
15 State of South Carolina rest.

16 The Court: All right. Ladies and
17 Gentlemen, I mentioned to you earlier that cases are
18 tried under certain rules, rules that we operate under
19 which are mandatory, we are required to take a brief
20 recess at this point to discuss certain issues with the
21 attorneys so if you would please kindly go to your jury
22 room. You may be wondering I just came out here. That's
23 what the rules are and we will follow those. Please go
24 back to your jury room. You may not under any
25 circumstances discuss the case.

1 (Jury exits courtroom 10:09)

2 The Court: Are there any motions from the
3 Defendant?

4 Mr. Brooks: Yes, sir, Your Honor. We
5 would respectfully ask the court for a motion on a
6 directed verdict on this matter. We feel the State has
7 not provided sufficient evidence that these drugs
8 belonged to my client. They have not proved possession,
9 actual constructive as it relates to Mr. Gibbs. In
10 addition to that Judge some of the charges carry elements
11 that would have to prove intent to distribute. We would
12 as a part of that ask the court to grant us a directed
13 verdict on those charges. For those charges that have
14 that as an element as well we feel the State is not put
15 forth sufficient evidence to overcome a directed verdict
16 motion to overcome those charges as well.

17 The Court: Okay. Mr. Brown or Mr.
18 Meadors, whoever, I just have one question. Of course, I
19 haven't seen any of the pictures except sideways and
20 there isn't any reason for me to, but is the PWID, is it
21 a weight inference that you are going on exclusively?

22 Mr. Brown: A weight inference, the, I
23 guess, outcry to law enforcement that selling drugs is a
24 lifestyle. The bags themselves, that's part of the
25 reason we wanted those in there.

1 The Court: Well, the bags with cocaine, I
2 guess, is what we are talking about or perhaps crack,
3 depending on the lesser included. Was cocaine packaged
4 in separate bags or one bag and there were empty bags
5 available?

6 Mr. Brown: It was three separate bags
7 when they actually found it so it was divided into
8 separate bags. Also, Your Honor, the \$1,355.00 can also
9 be used for the jury to consider just the money itself.
10 I certainly think we've established all of those to a
11 degree warranting it to become a jury questions and
12 wanting the jury to make a decision as to PWID cocaine.

13 The Court: Okay.

14 Mr. Meadors: Your Honor?

15 The Court: Yes, sir.

16 Mr. Meadors: The two bags or more, one of
17 them may have come back negative which would have been
18 the cut but the other bag was the cocaine so I think
19 there were separate bags, but anyway, the intent to
20 distribute I think would be there to.

21 The Court: All right, Mr. Brooks,
22 anything in response?

23 Mr. Brooks: Judge, just basically we just
24 feel that they have not put forth sufficient evidence. I
25 think the money along is not sufficient enough. I don't

1 think that they are relying on those quotes to show
2 intent, we don't think that's enough. Possession
3 obviously we feel there was another pers on in the house.
4 We feel that the State has not put forth ample evidence
5 in order to get past the possession as well.

6 The Court: All right.

7 Mr. Meadors: Judge, before we clear the
8 court, I just checked with Investigator DuBose and the
9 cocaine in the purse, I guess, would be the easiest way
10 to say it. I think there were a couple of bags in there.
11 One may have been marijuana, one was cocaine. There was
12 one bag in there. I just want to be sure I'm clear with
13 the court.

14 The Court: Okay. What I'm going to do,
15 Mr. Brooks is deny your motion on the trafficking part.
16 There is evidence that he was a occupant or a resident of
17 the house by virtue of his wife's testimony. She said he
18 lived there. Also, the police would argue to create that
19 inference and the jury could conclude that he had
20 dominion and control over the premises and therefore over
21 the drugs, therefore over the crack. That he was in
22 actual, constructive possession of those.

23 Similarly, PWID there is a weight
24 inference, where's there's a weight inference on both
25 crack and the powder sufficient for PWID. The packaging

1 on the cocaine, I think would be, with that inference I'm
2 not sure what the evidence in on the packaging on crack
3 but I'm sure there's enough to go to PWID on both and
4 obviously possession. Manufacturing, his wife said that
5 he had done it before. If they believe her, they will
6 believe that. If they believe he is the one that cooks
7 it, then that's another manufacturing. Similar she said
8 she knew there were drugs in the house and they were her
9 husbands. That's enough if they believe her on those
10 isolated points. So, I'll deny your motion.

11 Okay. Are you going to call any witnesses
12 in any particular order or do you know at this time?

13 Mr. Brooks: I do not. If you'll give
14 me a few minutes to consult with my client.

15 The Court: Okay. Let's do this first
16 before we take a recess. Mr. Meadors and Mr. Brown,
17 ya'll listen to this. Accessory after the fact of armed
18 robbery, is that what it was?

19 Mr. Brown: Yes, Your Honor.

20 The Court: Convicted in '96?

21 Mr. Brown: Yes, Your Honor.

22 The Court: Released from confinement in
23 December of 2003. Does the Defendant dispute the date of
24 release from confinement? That's an in camera issue that
25 you have to take up outside the present of the jury.

1 Mr. Brooks: We do not dispute that.

2 The Court: Okay. Do you object to the
3 admission of that conviction for credibility purposes?

4 Mr. Brooks: I would, Judge.

5 The Court: All right, sir. The State has
6 to establish the probative value admitting the conviction
7 outweighs the prejudicial effect to Mr. Gibbs and there's
8 a five point analysis. You have to employee State vs.
9 Colf, 337 SC 622. Ya'll ready to argue those points, Mr.
10 Brown?

11 Mr. Brown: Your Honor, I don't have the
12 case in front of me so I can't remember what all ...

13 The Court: The first one is whether or
14 not the underlying --- alright. I do find that accessory
15 after the fact of armed robbery beyond the basic crime
16 itself is not a crime of dishonesty or false statements
17 based on State vs. Broaden, which is January of this
18 year. However, the State can prove to the extent it's
19 possible any given circumstance that the circumstances of
20 that particular offense did involve dishonest or false
21 statements. I would say it's pretty hard to do unless
22 you have some evidence that you have submitted in camera
23 as to whether or not involved dishonesty. If it did
24 involve dishonesty or false statement we have to deal
25 with the five factors. So, do you have any evidence that

State of South Carolina v. Leroy Clifton Gibbs, III

269

1 you would present like an indictment or statement or
2 guilty plea transcript or anything like that?

3 Mr. Brown: We don't have anything like
4 that, Your Honor.

5 The Court: So, the first factor is the
6 impeachment value of a conviction for accessory after the
7 fact of armed robbery. That's the first factor. What's
8 the State's position on whether or not they have any
9 impeachment factor?

10 Mr. Brown: Your Honor, we just withdraw
11 this offer.

12 The Court: All right. You withdraw that
13 offer?

14 Mr. Brown: Yes, sir.

15 The Court: Okay. Any other convictions
16 that you would seek to introduce?

17 Mr. Brown: None other than what Mr.
18 Meadors said, if the door is opened as to distribution.

19 The Court: Okay. So that removes that
20 from the equation. Mr. Brooks, do you all still need
21 some time to discuss ...

22 Mr. Brooks: Yes, sir.

23 The Court: All right. Let's take ten
24 minutes and that should take care of it.

25 (There was a court break taken)

1 The Court: All right, Mr. Brooks is the
2 Defendant ready?

3 Mr. Brooks: Yes, sir.

4 The Court: You're still under oath Mr.
5 Gibbs. Could you stand up so that the court reporter can
6 hear you. Have you made your decision about whether or
7 not you will or will not testify?

8 Mr. Gibbs: Yes, sir.

9 The Court: And has that decision been
10 made by you based on your own freewill without any type
11 of threat, force, coercion or any type of promises?

12 Mr. Gibbs: Yes, sir.

13 The Court: And what is your decision?

14 Mr. Gibbs: I will testify.

15 The Court: Sir?

16 Mr. Gibbs: I will testify.

17 The Court: Okay. Will I be voir diring
18 the jury on the other names?

19 Mr. Brooks: The other names of witnesses?

20 The Court: Yes.

21 Mr. Brooks: Yes, sir. He wants me to
22 call them as witnesses; yes, sir.

23 The Court: All three of them?

24 Mr. Brooks: Yes, sir.

25 The Court: Okay.

Mr. Leroy C. Gibbs, III - Examination by Mr. Brooks

271

1 Mr. Brooks: I will --- before we bring
2 the jury out I want to put on the record that I do not
3 agree with that decision but ...

4 The Court : Okay. Now, does the State
5 have any problem with me asking the standard question to
6 the jury about whether or not they know any of these
7 people or related to them or have any connection to them
8 at all?

9 Mr. Meadors: If they say they do, what
10 is, Your Honor, going to do?

11 The Court: I don't know. I will
12 obviously ask him --- probably what I will do is excuse
13 the ones that don't raise their hand and question the
14 other ones individually to find out whether not they can
15 be fair so forth and so on.

16 Mr. Meadors: Thank you.

17 The Court: Does that suit you Mr. Brooks?

18 Mr. Brooks: Yes, sir.

19 The Court: All right. You can bring in
20 the jury. While they are coming in, can the lawyers come
21 up here for just a minute?

22 **(Counsel approaches bench without court reporter)**

23 Bailiff: Your Honor, all jurors are
24 present in the courtroom.

25 The Court: Okay. Ladies and Gentlemen,

1 thank you for your patience. The State has rested as
2 you've heard, which means the State has presented all the
3 evidence that it is going to put in in it's case and
4 chief. Now, comes the part of the trial where the
5 Defendant, if he chooses, can present evidence as well.
6 Mr. Brooks will the Defendant be calling any witnesses?
7 If so, you can call your first witness.

8 Mr. Brooks: Yes, sir. We call Mr. Gibbs.

9 The Court: Come on up Mr. Gibbs and be
10 sworn.

11 Bailiff: Place your left hand on the Bible
12 and raise your right hand. State your name please.

13 Mr. Gibbs: Leroy Gibbs.

14 Bailiff: Do you solemnly swear or affirm the
15 testimony to the Court to be the truth, the whole truth
16 and nothing but the truth, so help you god?

17 Mr. Gibbs: Yes sir.

18 Bailiff: Thank you. Have a seat please sir.
19 State your full name and spell your last for the record.

20 Mr. Gibbs: Leroy Gibbs. G-I-B-B-S.

21 **DIRECT EXAMINATION OF MR. GIBBS BY MR. BROOKS:**

22 Q: Mr. Gibbs, how are you today?

23 A: Fine.

24 Q: Alright, I know you may be a little nervous, so
25 I want you to take a deep breath and make sure

Mr. Leroy C. Gibbs, III - Examination by Mr. Brooks 273

1 you speak up for the Court Reporter and all of
2 us we need to hear you. You're married to
3 Kimberly. Is that right?

4 A: Yes sir.

5 Q: And at this moment you're still married to her.
6 Is that correct?

7 A: Yes sir.

8 Q: Now, this address of [REDACTED] Madison Avenue, were
9 you living there?

10 A: Off and on sir.

11 Q: Off and on?

12 A: Yes sir.

13 Q: Okay and can you, can you explain that?

14 A: Yes sir. Me and my wife were still married, but
15 we separated. We live separate lives. I live
16 my life, she lives hers. We hadn't made a
17 decision on actually getting divorced because
18 we have a child involved.

19 Q: Okay, now when you say you're there off and on.
20 When it's off, where is the other place you
21 live?

22 A: I live at the address of [REDACTED] S. Pike with my
23 mother.

24 Q: Okay, and what's your mother's name?

25 A: Diane Williams.

1 Q: Okay, now Leroy, I'll get to the heart of the
2 matter; you've sat here for the last day and
3 you heard about all these things that the
4 police found there, the drugs. Are these your
5 drugs?

6 A: No sir.

7 Q: Whose drugs are they?

8 A: I don't know sir.

9 Q: Do you think it's your wife's?

10 A: I don't know sir. I can't speak on behalf of
11 the house, because I wasn't living there at the
12 time the officer came to the house to serve a
13 warrant.

14 Q: Okay, now you, had you been there the night
15 before?

16 A: No sir. I was there the day before. I came
17 back, I came, I was over there the day before
18 because I was babysitting my son and when she
19 came home I left. She called me that night and
20 asked me can she said she was off the next
21 morning and she ask me would I come over and
22 spend time with her and my son.

23 Q: Okay, so you came home that morning?

24 A: Yes, sir.

25 Q: And you got dropped off?

- 1 A: Yes sir.
- 2 Q: Who dropped you off?
- 3 A: My brother.
- 4 Q: What's your brother's name?
- 5 A: Latroy Gibbs.
- 6 Q: Alright, okay, and you, you heard your wife
- 7 testify here yesterday?
- 8 A: Yes sir.
- 9 Q: Okay, there were some things you wanted to say
- 10 in response to that, is that correct?
- 11 A: Yes sir.
- 12 Q: What else do you want to say in response to
- 13 that?
- 14 A: Even though me and her are married, we live in
- 15 two different residence, she deals with other
- 16 people. I respect her privacy and she respect
- 17 mine.
- 18 Q: So are you saying that other guys would come to
- 19 this house?
- 20 A: Yes sir.
- 21 Q: Okay, do you know any in particular?
- 22 A: Not by names.
- 23 Q: Okay, but she had other gentlemen coming over?
- 24 A: Come over there.
- 25 Q: Okay, I don't mean to cut you off; go ahead and

1 finish with what you were saying.

2 A: There were times that I come over to the house
3 to pick my son up and you know, she had tell me
4 she had company.

5 Mr. Meadors: Objection, hearsay.

6 The Court: Alright, sustained.

7 Q: You can't really say what somebody else said,
8 but you can say ...

9 A: What I, whenever I goes over to the house,
10 she'd have a car or something there and when
11 she comes out to bring my son ...

12 Q: Do you see another man there?

13 A: No, I seen another vehicle that don't belongs
14 to her.

15 Q: Alright, and she works at the Post Office, is
16 that right?

17 A: Yes, sir.

18 Q: Okay, she indicated that she no longer works at
19 the Post office. Do you know that to be true?

20 A: Yes sir.

21 Q: Do you know why she's no longer working at the
22 Post Office?

23 A: Because of the drugs and the mail that she had
24 in her car.

25 Q: Okay, the four containers of mail that she

1 didn't deliver?

2 A: Yes sir.

3 Q: And the drugs? Is it your understanding the
4 Post Office fired her because of the drugs?

5 A: Yes.

6 Q: Okay. Is there anything else you want to tell
7 the jury about this? The drugs found at this
8 residence and whether or not you were involved
9 in this?

10 A: The only thing I can say is that morning I got
11 dropped off and around eleven, there was a
12 knock at the window and it was the police
13 department.

14 Q: Did she go to the window?

15 A: Yeah, she opened the window because she was
16 closer to it.

17 Q: Okay, now the, the, the police officers
18 testified that they got thirteen hundred
19 dollars out of your pants. Is that true?

20 A: Yes sir.

21 Q: And you said, you said something about thirteen
22 hundred dollars. How did that get there?

23 A: Sir?

24 Q: The thirteen hundred dollars, how did that get
25 there? What was that for?

1 A: Oh, I had just got a settlement back for a car
2 accident.

3 Q: Okay.

4 A: And that's where that money came from.

5 Q: Is that where that money came from?

6 A: Yes sir.

7 Q: Okay.

8 A: I also submitted the actual check stub when I
9 went to civil court and submit it, you know to
10 get my money back because the reasoning why
11 they wanted to see some type of document.

12 Q: Okay, now is there anything else you want to
13 tell this jury? That about sums it up?

14 A: Yes sir.

15 Q: Okay, answer any questions that they may have
16 okay?

17 The Court: Cross examination?

18 Mr. Meadors: May it please the Court?

19 The Court: Yes sir.

20 **CROSS EXAMINATION OF MR. GIBBS BY MR. MEADORS**

21 Q: You had a key to get in on the morning of the
22 23rd when you say you got there, right?

23 A: Sir?

24 Q: You've got a key to the residence, don't you?

25 A: No sir.

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

279

1 Q: You don't have a key?

2 A: No sir.

3 Q: Where had you been the night before, the 22nd?

4 A: If I'm not mistaken I was with my brother and a
5 friend.

6 Q: Your brother and who?

7 A: My brother and a couple of friends.

8 Q: Who are they?

9 A: Darnell Green, Marcio Jackson and ... I just
10 remember those.

11 Q: What did YA'LL do?

12 A: We just hang around at a friend's house
13 talking.

14 Q: What was your friend's house? Who's house?

15 A: Darrell's.

16 Q: And who were you working with?

17 A: I was going to school full time at Central
18 Carolina.

19 Q: You were babysitting your child during the day
20 when Kimberly would work at the post office
21 weren't you?

22 A: That was on certain days.

23 Q: When she was working, you were at the house,
24 right?

25 A: Yes.

1 Q: And when you got there on the morning, when you
2 say, the morning of the 23rd, what did you do?

3 A: She called me the night before and asked me
4 could I come over that next morning to spend
5 time with her and my son.

6 Q: What did you do when you got there that next
7 morning?

8 A: That morning I went to the house, knocked on
9 the door, I called her and told her I was
10 coming she opened the door. I went in the
11 bedroom to speak to my son. Me and her went to
12 our bedroom, to her bedroom and then we sit
13 down and started talking and you know we laid
14 down and probably thirty or forty minutes later
15 that's when the knock at the door.

16 Q: So you didn't go to sleep?

17 A: No.

18 Q: And those were your pants on the floor right?

19 A: Yes sir.

20 Q: And your money, the 1,355?

21 A: Yes sir.

22 Q: And where's the receipt, where was that
23 accident you got into?

24 A: I can't recall.

25 Q: You got in an accident and you can't remember

1 where it was?

2 A: I done been in different accidents. I can't
3 recall which one was at the time I got the
4 \$1300.

5 Q: And you don't have that stub you're talking
6 about, that receipt?

7 A: I submitted it in evidence in civil court
8 because I had wanted the money back and I
9 submitted the actual receipt to Clerk of Court.

10 Q: You don't have that with you?

11 A: No sir.

12 Q: And you're not sure where the accident was?

13 A: No sir, I can't exactly remember, I know me and
14 her got into an accident on, I can't remember
15 what street it was and I got into another
16 accident on Lewis Road.

17 Q: But you won't deny that your names on this
18 lease, State's 22 will you, Mr. Gibbs?

19 A: No sir.

20 Q: And your son, correct?

21 A: Yes, sir.

22 Q: And you loved didn't you?

23 A: Sir?

24 Q: You loved Kimberly?

25 A: Yes sir.

- 1 Q: And it wasn't easy for her to testify up here
2 yesterday was it? You saw her.
- 3 A: Sir?
- 4 Q: It wasn't easy for her to testify up here
5 yesterday was it?
- 6 A: No sir.
- 7 Q And you know she didn't have nothing to do with
8 these drugs, did she?
- 9 A: No, sir.
- 10 Q: I mean you know, you just automatically said
11 it. Kimberly didn't mess with drugs. Kimberly
12 didn't cook drugs, Kimberly didn't even know
13 how to do that, did she?
- 14 A: Not to my knowledge.
- 15 Q: She didn't.. So these weren't Kimberly's drugs,
16 were they?
- 17 A: I ...
- 18 Q: I mean you're not trying to say that are you?
- 19 A: No, I'm not.
- 20 Q: You were there when the officers came to serve
21 the warrant on you, weren't you?
- 22 A: Yes sir.
- 23 Q: And I believe you told Mr. Brooks she deals
24 with other people, but you don't know of them's
25 names?

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

283

1 A: Yes. I don't know them. I don't get involved
2 with who she deals with.

3 Q: You love her and you had a child with her and
4 you're saying she deals with other people and
5 you have no idea who it is?

6 A: No, I'm dealing with other people as well.

7 Q: Well that's not Kimberly either is it?

8 A: Sir?

9 Q: That's not Kimberly's either, is it? She
10 doesn't do that? Didn't she go to work in the
11 Navy?

12 A: Yes sir.

13 Q: She went to Chicago to train?

14 A: Yes sir.

15 Q: Then she went to Wichita Falls in Texas, then
16 she went to California; she worked hard didn't
17 she?

18 A: Yes sir.

19 Q: She climbed up those poles and was like a
20 construction, an electrician wasn't she?

21 A: Yes sir.

22 Q: And it was during that time that she, YA'LL got
23 married in '06?

24 A: Yes.

25 Q: Was it March '06, do you remember?

1 A: March of '06.

2 Q: Okay and then she went back California and she
3 kept working didn't she?

4 A: Yes sir.

5 Q: Working bringing money into the family right?
6 And then at some point she comes back and YA'LL
7 initially live with your in-laws, don't you?

8 A: Yes.

9 Q: That's right and she's loyal, loves you, loves
10 her kid doesn't she?

11 A: Yes, sir.

12 Q: That's Kimberly isn't it?

13 A: Yes, sir.

14 Q: Kimberly wasn't fooling around with anybody Mr.
15 Gibbs. You don't believe that.

16 A: I've seen it.

17 Q: But you don't know who they were?

18 A: I mean I don't know their actual names, but I
19 have seen her deal, you know other individuals.
20 There's been plenty of time that she been
21 dropping our son off to me at my mama's house
22 with another individual.

23 Q: But you don't know who that is?

24 A: I don't know. That's not my business.

25 Q: And you don't know what car they're driving? Or

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

285

1 what type car they're driving right?

2 A: The only thing, I know she driving her green
3 Corolla of some type.

4 Q: She drives a white car doesn't she?

5 A: Who she?

6 Q: Yeah, who you talking about "she" drives? Her
7 car's a white car isn't it?

8 A: The individual she was dealing with had that
9 car.

10 Q: Who she's dealing with, but you don't know
11 their name?

12 A: Deshawn, all I know is Deshawn.

13 Q: And you're trying to tell this jury that
14 whoever this person is you don't, you don't
15 even know those are, you're trying to say that
16 might be their drugs.

17 A: I don't, I can't say what they find inside the
18 house, at the residence because I wasn't
19 living there, you know, at the time. I was
20 just visiting.

21 Q: Now Kimberly went up and answered the door when
22 the police knocked on the door and you were
23 still in bedroom, correct?

24 A: No sir, I was right behind her.

25 Q: And you admit you asked the officers, can I put

1 my pants on?

2 A: Yes sir.

3 Q: And they took \$1,355 right?

4 A: Yes sir.

5 Q: And you didn't say anything about that came
6 from an accident then, did you?

7 A: I did, sir.

8 Q: Where were you working in December of 2008?

9 A: I was going to school full time sir.

10 Q: Where?

11 A: At Central Carolina.

12 Q: And how were you getting there?

13 A: I was transferred back and forth by my mama or
14 Kimberly or my brother. Someone with
15 transportation at the time.

16 Q: What time were your classes?

17 A: Morning times on certain days. Tuesdays and
18 Thursdays. One semester it was Monday and
19 Wednesday and also had online classes.

20 Q: And did you get your degree?

21 A: I'm still in the process of graduating this
22 semester sir.

23 Q: When you were with your son at your house on
24 Madison Avenue when Kimberly was working, it
25 was just the two of you correct?

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

287

1 A: Sir?

2 Q: When Kimberly was working and you were
3 babysitting your son, it was just the two of
4 you at that house right?

5 A: Sometimes it would be me and my friend, my
6 brother, I mean ...

7 Q: People would stop by?

8 A: Sir?

9 Q: People would come by?

10 A: Yes people would come by.

11 Q: You did tell Kimberly you were sorry you got
12 her into this didn't you?

13 A: No sir.

14 Q: You told her recently that hey everything was
15 going to work out, don't worry about it?

16 A: No sir.

17 Q: Mr. Gibbs, this is a life style for you, isn't
18 it?

19 A: No sir.

20 Q: That's what you told the police.

21 A: I didn't state that to police, sir.

22 Q: A life style; \$1,355 in your pants, not
23 working. Do you know how to cook cocaine into
24 crack?

25 A: No sir.

- 1 Q: You don't deny it was in that cabinet do you?
- 2 A: Sir?
- 3 Q: You don't deny what's in that cabinet do you?
- 4 A: I wasn't there sir.
- 5 Q: You know Kimberly didn't do it.
- 6 A: I don't know; like I said sir, I don't know
- 7 what was going on, you know, inside, what goes
- 8 on at her house when I'm not there.
- 9 Q: Excuse me?
- 10 A: I don't know what goes on at that house when
- 11 I'm not there.
- 12 Q: What about when you are there?
- 13 A: When I'm there all I can testify to is what
- 14 happened when I'm there.
- 15 Q: No name of the boyfriend, don't know where your
- 16 wreck was and they're not Kim's drugs right?
- 17 A: Not that I know of. Now, she did plead guilty
- 18 to ...
- 19 Q: No sir, no she didn't.
- 20 A: ... on marijuana charge.
- 21 Q: No she didn't; no she didn't.
- 22 A: Yes sir.
- 23 Q: No she didn't.
- 24 A: She's paying for, she's paying on a ...
- 25 Q: The only charges she's ever had was because of

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

289

1 you and this incident. You cost her her job,
2 her family, after she came back here, sir.

3 A: No sir. She pled guilty to the marijuana charge
4 that was found inside the vehicle.

5 Q: The marijuana you were also charged with and we
6 didn't go forward on that?

7 A: Yes sir.

8 Q: Were you smoking any of that?

9 A: No sir.

10 Q: Where was this?

11 A: I don't know sir.

12 Q: Tell me this much, where did these guns come
13 from?

14 A: I don't know sir.

15 Q: Whose guns were those?

16 A: I do not know sir.

17 Q: You don't deny they were in the house, do you?

18 A: Yes sir, I don't know because I didn't know
19 that any guns were in the house.

20 Q: Your name's on the lease. Why are you trying to
21 make Kimberly look bad? She didn't do nothing;
22 she's raising your child.

23 A: I'm not trying to make Kimberly look bad.

24 Q: You're blaming it on her; you're blaming it on
25 everybody else, but yourself.

- 1 A: I'm not blaming it on her either.
- 2 Q: Why don't you stand up and take possession of
- 3 what's yours, Mr. Gibbs?
- 4 A: I don't have no drugs, I don't have nothing
- 5 that consist of ... I don't have guns around
- 6 me.
- 7 Q: You don't have guns around you? State's 24, you
- 8 recognize that?
- 9 A: No sir.
- 10 Q: That's a vent in your house where you were
- 11 living.
- 12 A: Yes, sir.
- 13 Q: Kimberly didn't put that there. Kimberly
- 14 doesn't mess with guns, does she? You know
- 15 Kimberly didn't put that there. What about
- 16 State's 25, that's in your house. Do you
- 17 recognize that?
- 18 A: No sir.
- 19 Q: You ever been around guns?
- 20 A: No sir.
- 21 Q: Ever handed a gun?
- 22 A: No sir.
- 23 Mr. Meadors: Your Honor, State's twenty
- 24 four and twenty five.
- 25 The Court: You're offering those?

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

291

1 Mr. Meadors: Yes sir.

2 The Court: Mr. Brooks?

3 Mr. Brooks: No objection.

4 The Court: Alright, twenty four and twenty
5 five are in.

6 (State's 24 and 25 were marked)

7 Q: You don't dispute those came from your house do
8 you?

9 A: Sir?

10 Q: You do not dispute they came from your house do
11 you Mr. Gibbs?

12 A: I don't know where they came from, sir.

13 Q: Let me ask you, state's twenty, sixteen ---
14 Judge can I approach?

15 The Court: Yes sir.

16 Q: State's sixteen. That's her purse isn't it?
17 Kimberly's?

18 A: I don't know.

19 Q: You don't recognize that as her purse?

20 A: No, I can't say it been hers or not. I know
21 it's not mine.

22 Q: Right in top there appears to be some drugs
23 like somebody just drop some in there, doesn't
24 it?

25 A: Yes, sir.

1 Q: If you're going to hide some drugs you don't
2 put things right on top, do you?

3 A: I don't know, sir.

4 Q: Do you remember talking to this man back at the
5 jail when he served the warrants on you right?

6 A: Yes sir.

7 Q: You actually tried to blame it on Kimberly when
8 you talked to him, didn't you?

9 A: No sir. The only thing that I told the officer
10 was that I didn't have no knowledge of anything
11 that was found inside the house, because I was
12 only locked up on warrants.

13 Q: Sir? The only what?

14 A: I was only locked up on a warrant.

15 Q: Warrants?

16 A: At the detention center. Anything that was
17 found in the house I was charged after which I
18 didn't know the reason why but the fact that I
19 wasn't there when these things was found.

20 Q: And you told him it must have been Kimberly's
21 right?

22 A: I can't say it was no drugs. I didn't come
23 there that morning with no warrant.

24 Mr. Meadors: Beg the Court's indulgence.

25 Q: So you didn't have any income? I'm not trying

Mr. Leroy C. Gibbs, III - Cross Exam by Mr. Meadors

293

1 to be mean, but if you're going to school, you
2 had no access to income during this time
3 period.

4 A: Yes sir. I could get a student loan, which I
5 did.

6 Q: You got a student loan?

7 A: Yes sir.

8 Q: Okay.

9 A: Still receiving it.

10 Q: You didn't have a car? Finally you told
11 Investigator DuBose you were selling drugs to
12 support your family?

13 A: No sir.

14 Q: Okay, you deny that?

15 A: Yes sir.

16 Q: But you are supporting your family?

17 A: No sir.

18 Q: You were not supporting your family?

19 A: I was only giving her money whenever I could,
20 you know, come into any type of income, you
21 know, school, my financial loan and subsidized
22 loans and things like that or do side jobs. I
23 would give her money to go towards my son.

24 Q: But these were not Kimberly Gibbs' drugs?

25 A: I can't say she did.

1 Q: You did earlier. You said earlier she would,
2 she couldn't have done that.

3 A: I mean, the only thing I can say is that drugs
4 that was found, the guns that were found inside
5 the house was not mine. I came there that
6 morning; I didn't come there with drugs, I
7 didn't leave with drugs.

8 Q: Because you don't surround yourself with drugs
9 correct?

10 A: Yes sir.

11 Q: Was that a yes sir?

12 A: Yes sir.

13 Mr. Meadors: May we approach?

14 The Court: Yes sir. Alright, ladies and
15 gentlemen, if you would please step to the jury room. You
16 may not discuss the case in any way. Thank you.

17 (Jury break 11:00)

18 Mr. Meadors: He basically said he had no
19 knowledge of any drugs in particular, in general and then
20 specifically earlier, when I asked him, I asked him about
21 he had no knowledge what went on in that house in
22 response to a question regarding drugs generally and
23 specifically. I think he's opened the door to all three
24 of those distributions that occurred at his house,
25 specifically Investigator DuBose testified in camera, so

State of South Carolina v. Leroy Clifton Gibbs, III

295

1 clearly, he did and was aware of drug activity at his
2 house and he was involved in and he distributed.

3 The Court: Okay, Mr. Brooks?

4 Mr. Brooks: It's the Defendant's position
5 that opening the door, we should only be looking at what
6 he may have said on direct and I don't recall asking him
7 any questions where there were any, it could be
8 interpreted in any way as any door opened for him to go
9 down this road. It's not fair for prosecution to come in
10 and say, hey do you know anything about what was going on
11 at the house and then based on his answer then turn
12 around and say, well he opened the door. That would only
13 be appropriate if I asked him the particular question and
14 I don't recall asking him anything along these lines that
15 can be interpreted as opening the door for them to go
16 down this road.

17 Mr. Meadors: I'm not sure it was a
18 response to my question when he says I don't know what
19 goes on in that house.

20 The Court: Well, here's what I wrote down
21 and we had this discussion yesterday Mr. Brooks, you
22 certainly indicated you were well aware of the hazards if
23 somebody were to testify, it wasn't that I kept it out it
24 was the state indicated it would not try to explore the
25 underlying facts behind the warrants that were being

1 served. On direct, somewhere between ten thirty and ten
2 thirty nine this morning you didn't ask him the question,
3 but it was something to do with the drugs in that house
4 and he said, not in response to a question from you, he
5 said I can't speak to what goes on in that house and I
6 wrote it down thinking this was going to be an issue. He
7 said it, I don't think you asked him and then he went on
8 to say, I'm not there all the time. Now, I'll have to
9 hear if we can play the tape, but he did say I can't
10 speak for what goes on in that house. If that is his
11 testimony on direct. He can be cross examined on what
12 goes on in that house, because he can't cloth himself in
13 snow and then say you can't touch me on these other
14 things, because it's not in because it hasn't been
15 explored. I'm going to ask the Court Reporter to please
16 try to find that. What time do you have that?

17 Court Reporter: The jury came in at ten thirty
18 three and then he went on the stand right after.

19 The Court: So it would be within probably three
20 or four minutes after that.

21 Court Reporter: Okay.

22 The Court: Okay so, Mr. Gibbs, if you would
23 have a seat in that jury box over there for the time
24 being and of course you can't discuss your testimony with
25 anyone. Mr. Brooks you can consult him on other issues,

1 but nothing remotely regarding his testimony.

2 Mr. Brooks: Yes sir.

3 Court Reporter: What am I trying to find,
4 Judge?

5 The Court: I can't speak on what goes on in
6 that house.

7 (Off the record)

8 The Court: Alright the question Mr. Brooks
9 asked was whose were they, talking about the drugs, you
10 can have a seat for right now. And the answer to the
11 question was I don't know. Mr. Brooks then asked anything
12 else at that time, but the defendant said, I can't speak
13 on behalf of the house; I wasn't living there at the
14 time. Now, when were the events of the five
15 distributions? What are the dates of those, please or
16 what was the in camera testimony of that?

17 Mr. Meadors: October 29, '08, November 24, '08
18 and December 1, '08.

19 The Court: And there was ...

20 Mr. Meadors: I'm sorry. There were two more
21 after that and they were, one was December 17, '08 and
22 that was at Manning Avenue and Patricia.

23 The Court: Okay.

24 Mr. Meadors: And the other one was ...

25 The Court: Mr. Brooks, I wasn't living there at

1 the time. Now, you don't have to be living somewhere to,
2 be in actual constructive possession. All there has to be
3 is a showing of dominion and control. He said I can't
4 speak on behalf of the house. I wasn't living there at
5 the time. I'm not going to let the Defendant isolate this
6 down to a day where he does or does not know and not let
7 the jury hear. You didn't open the door, he did. You
8 asked a question, whose drugs were they? Answer; I don't
9 know. The door is still closed, but when he volunteers, I
10 can't speak on behalf of the house; I wasn't living there
11 at the time. I'm not going to permit that curtain to
12 remain. So, the motion, here's what I will permit the
13 State to do, I don't necessarily think you're permitted
14 to go into an arrest and being handcuffed and so on; you
15 can ask him, is it not true. And I can tell him right
16 now, he's got a right to remain silent in those because
17 those are pending charges. He knew all this going in,
18 because I told him he was going to be subject to rules on
19 direct and cross examination. You can ask him, did you
20 or did you not distribute whatever drug you're talking
21 about on these three dates from that house. And if he
22 says yes, you move on. If he says no, you can call
23 somebody in reply to establish that provided that proof
24 is, there's a foundation for it.

25 Mr. Brooks: Am I permitted to consult with my

Mr. Leroy C. Clifton, III - Cont'd Cross by Mr. Meadors 299

1 client in light of Your Honor's ruling?

2 The Court: I will let you consult with him on
3 his right to remain silent on those other three charges
4 and I will allow you to consult him, not on what his
5 answer is going to be to those questions, but on whether
6 or not he understands his right to remain silent and
7 anything he says can be used against him and also any
8 other issue not related to questions and answers while
9 he's on direct. Okay? Alright, you can step down sir and
10 with those instructions you can talk to your lawyer.

11 (Mr. Brooks consults with client)

12 The Court: Okay, any other issues on this Mr.
13 Brooks other than your objection claiming the door has
14 not been opened?

15 Mr. Brooks: That is correct, just note my
16 objection.

17 The Court: The objection is overruled again.
18 The question you asked was were they your drugs and he
19 said no and then you said whose drugs were they and he
20 said I don't know. As I mentioned earlier, that would
21 have been fine, but he went on to say, on his own, I
22 can't speak on behalf of the house; I wasn't living there
23 at the time. In light of the time frame of the other
24 claimed distribution or the distributions that the State
25 claims, I'm going to allow him to be cross examined on

Mr. Leroy C. Clifton, III - Cont'd Cross by Mr. Meadors 300

1 that. If he says that he did not commit that act, then
2 the State can move on and you can decide whether or not
3 you want to call those reply witnesses. Does the State
4 have any objection to that road map?

5 Mr. Meadors: No, sir.

6 The Court: Ready for the jury?

7 Mr. Meadors: Yes Your Honor.

8 Mr. Brooks: Yes sir.

9 (Jury enters court room 11:31 a.m)

10 Bailiff: Your Honor all of the jurors are back
11 in the courtroom.

12 The Court: Alright, ladies and gentlemen, Mr.
13 Meadors you can continue.

14 Mr. Meadors: May it please the Court?

15 The Court: Yes sir.

16 CONTINUED CROSS EXAMINATION OF MR. GIBBS BY MR.

17 MEADORS:

18 Q: Mr. Gibbs on direct examination, in response to
19 Mr. Brooks questions about drugs and drugs at
20 that house, you said I can't speak on behalf of
21 the house; I wasn't living there at the time.
22 Do you remember that?

23 A: Yes sir.

24 Q: And you said that correct? Let me ask you
25 specifically please sir, on or about October 29

Mr. Leroy C. Clifton, III - Cont'd Cross by Mr. Meadors. 301

1 of 2008, at this residence, your residence, [REDACTED]
2 Madison Avenue, did you or did you not
3 distribute a quantity of crack cocaine to an
4 individual at approximately 1:29 on October 29,
5 2008? Sir?

6 A: No sir.

7 Q: And specifically Mr. Gibbs, on or about
8 October, excuse me, November 24, 2008 at
9 approximately 12:28 pm, did you or did you not
10 distribute a quantity of crack cocaine to an
11 individual from [REDACTED] Madison Avenue?

12 A: No sir.

13 Court Reporter: What did he say?

14 Mr. Meadors: He said no sir. And on
15 December 1, 2008, and you were staying at this residence
16 then right?

17 A: No, sir.

18 Q: At Madison Avenue?

19 A: At that point in time?

20 Q: Yes sir.

21 A: No.

22 Q: And let me ask you specifically of December 1,
23 2008, Mr. Gibbs, at approximately 4:43 pm,
24 again on December 1, 2008, did you or did not
25 distribute a quantity of crack cocaine to an

1 individual at your residence in exchange for
2 some money?

3 A: No sir.

4 Q: Do you know where you were on these dates?

5 A: I can't recall, sir.

6 Q: Excuse me?

7 A: I can't recall sir.

8 Mr. Meadors: Thank you. That's all.

9 The Court: Re direct?

10 Mr. Brooks: No other questions.

11 The Court: You may step down. All right.

12 Mr. Brooks, you can call your next witness.

13 Mr. Brooks: Your Honor, we would call Ms.

14 Dianne Williams.

15 The Court: All right. Have a seat,
16 please, ma'am. Let me have your attention Ladies and
17 Gentlemen. Let me have your attention for just a minute.
18 I want to ask you this question, Ladies and Gentlemen, if
19 you do answer yes, just raise your hand. There are
20 potential witnesses that I'm going to call their name out
21 now. Darnell Green. Is Mr. Green here?

22 Mr. Brooks: Judge, they were here.

23 The Court: All right. Latroy Gibbs and
24 Dianne Williams. Ms. Williams, you can stand where you
25 are. Darnell Green, Latroy Gibbs and Dianne Williams.

Ms. Dianne Williams - Examination by Mr. Brooks

303

1 Mr. Brooks: They are coming in.

2 The Court: All right. They need to be in
3 here now.

4 Mr. Brooks: Mr. Gibbs and Mr. Green. Mr.
5 Gibbs in the burgundy ...

6 The Court: All right. Latroy Gibbs is in
7 the burgundy color top and Mr. Green is in the dark
8 jacket with the white diagonally. You can have a seat.
9 Thank you gentlemen. Ms. Williams has already stood.

10 Is anyone on the jury, Ladies and
11 Gentlemen, first of all that might be kin to these
12 individuals or to your knowledge any member of your
13 immediate family have any type of connection or
14 association with any of these individuals? Is so, raise
15 your hand.

16 (No one responded)

17 The Court: All right. Mr. Brooks.

18 Mr. Brooks: Judge, we call Ms. Williams.

19 The Court: All right. Ms. Williams, come
20 on up.

21 Bailiff: Place your left hand on the
22 Bible, raise your right hand. State your name, please.

23 Witness: Dianne Williams.

24 Bailiff: Do you solemnly swear or affirm
25 your testimony to the Court will be the truth, the whole

Ms. Dianne Williams - Cross Examination by Mr. Meadors 304

1 truth and nothing but the truth, so help you God?

2 Witness: Yes.

3 Bailiff: Thank you. Have a seat here.

4 (Witness complies)

5 Bailiff: State your full name and spell
6 your last name for the record.

7 Witness: Dianne Williams, W-I-L-L-I-A-M-
8 S.

9 **Ms. Williams - Examination by Mr. Brooks:**

10 Q: Ms. Williams, how are you doing today?

11 A: Okay.

12 Q: Want you to take a deep breath. I know you
13 don't do this often. You know that gentleman
14 sitting at the table with me?

15 A: Yes, sir.

16 Q: Okay. Now, where do you live Ms. Williams?

17 A: [REDACTED] S. Pike East, Lot [REDACTED].

18 Q: [REDACTED] S. Pike East, Lot [REDACTED]. How long have you
19 lived there.

20 A: Twenty-seven years.

21 Q: Does your son live there?

22 A: Who.

23 Q: Leroy, your son, does he live there?

24 A: No. Not at this time.

25 Q: Say that again.

Mr. Darrell Green - Examination by Mr. Brooks

305

1 A: Not at this time.

2 Q: Back in the latter part of 2008, was he living
3 there with you then.

4 A: Back and forth.

5 Q: What do you mean back and forth.

6 A: They husband and wife. He has a disagreement or
7 whatever, he come over like that.

8 Q: Okay. Did he still receive mail at this
9 residence where you at?

10 A: Yes.

11 Q: Okay. So, he had clothes and stuff there too?

12 A: Yes.

13 Mr. Brooks: Beg the Court's indulgence,
14 Your Honor.

15 The Court: All right.

16 Mr. Brooks: No other questions, Judge.

17 The Court: Cross-Examination?

18 Mr. Meadors: Just one.

19 **Ms. Dianne Williams - Cross by Mr. Meadors:**

20 Q: They were husband and wife in 2008, correct?

21 A: Yes.

22 Mr. Meadors: Thank you. That's all.

23 The Court: Redirect?

24 Mr. Brooks: No, sir.

25 The Court: Okay. Mr. Brooks.

1 Mr. Brooks: We'll call Mr. Darnell Green.

2 Bailiff: Place your left hand on the
3 Bible and raise your right hand.

4 (Witness complies)

5 Bailiff: State your name, please.

6 Witness: Darnell Green.

7 Bailiff: Do you solemnly swear or affirm
8 your testimony to the Court will be the truth, the whole
9 truth and nothing but the truth, so help you God?

10 Witness: Yes.

11 Bailiff: Thank you. Have a seat here.

12 (Witness complies)

13 Bailiff: State your full name and spell
14 your last name for the record.

15 Witness: Darnell Green, G-R-E-E-N.

16 **Darrell Green - Examination by Mr. Brooks:**

17 Q: Mr. Green, how are you doing today?

18 A: I'm alright.

19 Q: I know you might be a little nervous so why
20 don't you go ahead and take a deep breath and
21 try to relax, okay. You want be up here long.
22 Do you know Leroy?

23 A: Yes, sir.

24 Q: Okay. Is he a friend of yours?

25 A: Yes.

Mr. Darrell Green - Cross Examination by Mr. Meadors

307

1 Q: Now, on December 23, 2008, do you remember
2 where you were in relationship to Leroy?

3 A: December ... when?

4 Q: December 23, 2008.

5 A: The only thing I can remember we was together
6 like before, before his brother drop him off
7 that morning. He was at my house.

8 Q: He was at your house?

9 A: The night, the following night he was at my
10 house. We was just talking.

11 Q: Did he spent the night there?

12 A: No. See I stay right by his mother. I only
13 stay about five minutes. I mean, walking
14 distance a few minutes.

15 Q: Were you with him when he was dropped off at
16 Madison Avenue?

17 A: Me and his brother drop him off that morning.

18 Q: The next day?

19 A: Yeah, the next day.

20 Q: Okay. Did he live at [REDACTED] South Pike, is that
21 where you knew him to live?

22 A: That's where I knew him to live.

23 Q: Okay.

24 Mr. Brooks: Beg the court's indulgence
25 one second, Your Honor.

Mr. Latroy Gibbs - Examination by Mr. Brooks

308

1 The Court: Yes, sir.

2 Mr. Brooks: No other questions, Your
3 Honor.

4 **Mr. Green - Cross Examination by Mr. Meadors:**

5 Q: You dropped him off the next day?

6 A: The next day. His brother dropped him off.

7 Mr. Meadors: No questions.

8 Mr. Brooks: No further questions.

9 The Court: All right. Mr. Green, you can
10 step down.

11 Mr. Brooks: We will call Latroy Gibbs.

12 Bailiff: Place your left hand on the
13 Bible, raise your right hand.

14 (Witness complies)

15 Bailiff: State your name, please

16 Witness: Latroy Gibbs.

17 Bailiff: Do you solemnly swear or affirm
18 the testimony to the Court shall be the truth, the whole
19 truth and nothing but the truth?

20 Witness: Yes, sir.

21 Bailiff: Thank you. Have a seat. State
22 your full name, spell your last name for the record.

23 Witness: Latroy Gibbs, G-I-B-B-S.

24 **Mr. Latroy Gibbs - Examination by Mr. Brooks:**

25 Q: Latroy Gibbs.

Mr. Latroy Gibbs - Cross Examination by Mr. Meadors

309

1 A: Uh-huh (affirmative response).

2 Q: I know you don't do this often. Take a deep
3 breathe. Who is that over there?

4 A: That's my brother.

5 Q: Okay. Back in the latter part of 2008, where
6 did you know him to live?

7 A: At [REDACTED] S. Pike.

8 Q: Is that with your mother?

9 A: Yes, sir.

10 Q: Okay. Now, Ms. Gibbs, that's his wife, you
11 knew her, right?

12 A: Uh-huh (affirmative response).

13 Q: Is that a yes?

14 A: Yes.

15 Q: She lives on Madison Avenue?

16 A: Yes, sir.

17 Q: And you dropped him off that morning to visit
18 her?

19 A: Well, I dropped him off that morning before I
20 went to the store.

21 Q: And that was to visit her, is that correct?

22 A: Uh-huh (affirmative response).

23 Q: Is that a yes?

24 A: Yes, sir.

25 Q: Okay. All right.

Mr. Latroy Gibbs - Cross Examination by Mr. Meadors

310

1 Mr. Brooks: No other questions, Judge.

2 The Court: All right. Mr. Meadors.

3 **Mr. Latroy Gibbs - Cross Examination by Mr. Meadors:**

4 Q: What morning?

5 A: The same morning that situation happened. The
6 incident.

7 Q: You've been to Madison before, visiting right?

8 A: Yeah, off and on.

9 Q: Because he stayed there a good bit, didn't he?

10 A: No. He stayed off and on because him and Kim
11 use to always get into it so he stayed at my
12 moms. He'd go over.

13 Q: But he stayed at Madison some, too. Right?

14 A: Not to my knowledge.

15 Q: He didn't stay there at all?

16 A: Not to my knowledge.

17 Q: Okay.

18 Mr. Meadors: Thank you.

19 The Court: Redirect?

20 Mr. Brooks: No, sir.

21 The Court: Okay. Sir, you can step down.

22 (Witness complies)

23 The Court: Mr. Brooks?

24 Mr. Brooks: The Defendant rest, Your

25 Honor.

Mr. Wayne Dubose - Reply - Examination by Mr. Meadors 311

1 The Court: Okay. We will note any
2 appropriate motions having been made. Does the State
3 have any reply evidence?

4 Mr. Meadors: Could I have a few, just a
5 minute.

6 The Court: Yes, sir. Would you like ...

7 Mr. Meadors: A quick recess.

8 The Court: Okay. Ladies and Gentlemen,
9 please go to your jury room. You may not discuss the case
10 (Jury break 11:42)

11 The Court: Mr. Meadors, are you ready?

12 Mr. Meadors: I think so.

13 The Court: Mr. Brooks?

14 Mr. Brooks: Yes, sir.

15 The Court: Okay. You can bring in the
16 jury.

17 Bailiff: Your Honor, we have all the
18 jurors present in the Courtroom, Your Honor.

19 The Court: Thank you, Mr. Bradley.
20 Okay, Ladies and Gentlemen, the rules we do operate under
21 do permit the State on certain circumstances to present
22 what is call a reply or rebuttal evidence. The Defendant
23 has rested. Mr. Meadors, does the State have anything in
24 reply?

25 Mr. Meadors: Yes, Your Honor. May it

1 please the Court?

2 The Court: Yes, sir.

3 Mr. Meadors: Investigator Wayne DuBose.

4 The Court: All right. Mr. DuBose, you are
5 still under oath, you can have a seat.

6 Mr. Meadors: Your Honor, can we approach
7 about one other matter?

8 The Court: Yes, sir.

9 (Counsel approaches bench without court reporter)

10 Mr. Meadors: May it please the Court?

11 The Court: Yes, sir.

12 **Reply Testimony Wayne Dubose - Mr. Meadors:**

13 Q: Investigator DuBose, on October 29, 2008, did
14 you have an occasion to be a part of an
15 attempted drug purchase at [REDACTED] Madison Avenue?

16 A: Yes, sir.

17 Q: Can you please tell us about. Specifically,
18 what did you do to arrange that.

19 The Court: Say the date again.

20 Mr. Meadors: October 29, 2008.

21 Mr. Brooks: Judge, I want to make sure my
22 objection is noted.

23 A: Yes, sir. On October 29, 2008, myself and
24 Investigator Bolen met with a confidential
25 informant at a location. The informant

Mr. Wayne Dubose - Reply - Examination by Mr. Meadors 313

1 attempted to contact Mr. Gibbs for a quantity
2 of crack cocaine. The informant called Mr.
3 Gibbs on a cell phone. He was unable to make
4 contact. At that particular time this was
5 around 12:18 in the afternoon. Later, we did
6 make contact with Mr. Gibbs by phone and on
7 this date we did go to the resident at [REDACTED]
8 Madison Avenue. Had the informant go there and
9 the informant did purchase a quantity of crack
10 cocaine against Mr. Gibbs from that residence.

11 Q: Did you have a cell number for Mr. Gibbs?

12 A: I did. The cell phone that was called was 968-
13 6023.

14 Q: Just for the juries edification, prior to this
15 informant going to [REDACTED] Madison Avenue, were
16 they searched?

17 A: We met with the informant at a secure location.
18 They are searched, their vehicle is searched.
19 If they have any money, that money is taken
20 away from them and we give them documented
21 funds which we photo copy.

22 Q: How much funds was this informant given on
23 October 29, 2008.

24 A: It was \$60.00. Actually, here's a photocopy of
25 the money that was. The informant was

Mr. Wayne Dubose - Reply - Examination by Mr. Meadors 314

1 contacted by Mr. Gibbs and then Mr. Gibbs
2 advised the informant he come to the house. We
3 followed the informant from point A to point B,
4 didn't stop anywhere in between. We observed
5 the informant pull up in the yard, go in the
6 house. We can hear with the equipment they
7 have on. We can actually hear what is going on
8 during the informant purchase the crack cocaine
9 and the go back to another location that we had
10 already set up.

11 Q: Were these the \$60.00 document funds that were
12 given to Mr. Gibbs in exchange for crack
13 cocaine?

14 A: Yes, sir.

15 Q: Was it determined that that was crack cocaine?

16 A: It was analyzed by our chemist and it was
17 determined to be crack cocaine.

18 Q: After the informant left [REDACTED] Madison Avenue,
19 and again, you said that this was audio, was
20 there any video involved?

21 A: There was on this purchased.

22 Q: And this is kind of what ya'll do in narcotics,
23 correct. Attempt to make purchase?

24 A: Yes, sir.

25 Q: The video, the equipment, how was it videoed?

Mr. Wayne Dubose - Reply - Examination by Mr. Meadors

315

1 And if you don't want to go into detail ...

2 A: I don't want to go into detail.

3 Q: I understand. Have you seen the video?

4 A: Yes, sir..

5 Q: Was Mr. Gibbs on the video?

6 A: Has Mr. Gibbs seen it?

7 Q: No, sir. Have you --- did you see Mr. Gibbs on
8 the video?

9 A: Yes, sir.

10 Q: After the informant brought the drugs back you,
11 what did you do?

12 A: Again, the informant is searched, the drugs are
13 turned over, and the vehicle was also charged.
14 Then we have the informant write a brief
15 statement about where he went, what he did, who
16 he brought drugs from. After they finish the
17 paperwork, we will take it back into evidence,
18 where is tested.

19 Q: That was on October 29, 2008, did you have
20 occasion to make another purchased on Madison
21 Avene on December 1, 2008 from the defendant
22 Mr. Clifton Gibbs?

23 A: Yes.

24 Q: If you would, take your time, and tell the jury
25 how that was set up and then do exactly the

1 procedure you used.

2 A: Again this purchase took place on November 24,
3 2008. We met with the informant about 12:00 in
4 the afternoon. Again, the informant was
5 searched and the informant was given a hundred
6 dollars on this occasion. We made contact with
7 Mr. Gibbs on the same cell phone number. Mr.
8 Gibbs told him to come to the house on Madison
9 Avenue, which the informant did follow him into
10 the residence. He went in and did purchase a
11 quantity of crack cocaine at 12:28 then left
12 the residence and returned to another spot
13 where I took the crack cocaine from him and got
14 him to write a statement. The crack cocaine
15 was placed into evidence and it was later
16 tested and it did test positive for crack
17 cocaine.

18 Q: This purchase was made at Madison Avenue from
19 Mr. Gibbs?

20 A: Yes, sir.

21 Q: Was there any type of audio or video on this
22 purchase on November 21, 2008?

23 A: I have noted on the front of this case file
24 that there were no video apparently the
25 equipment failed on the video and audio.

Mr. Wayne Dubose - Reply - Examination by Mr. Meadors

317

1 Q: Did you listen to the transaction?

2 A: Yes, sir. After every purchase that's what I
3 do is go back to determine if we have video or
4 not. And then verify, I knew Mr. Gibbs at this
5 time that we were purchasing from him. I went
6 ahead and run a photo to verify who we would be
7 looking for and verified it was Mr. Gibbs also
8 the informant verified that it was Mr. Gibbs
9 that he purchased from.

10 Q: I don't want you to give away any trade secrets
11 but are you able to from [REDACTED] Madison Avenue
12 when you're able to see actually with your own
13 eyes the informant going to this residence?

14 A: Yes, sir. We actually have went to this ---
15 when the informant went to the residence, I'm
16 not sure what the street name is but the
17 residence sits on Madison across the street
18 becomes, maybe a 150 yards from the residence
19 we actually sat in a yard on the corner of
20 Madison and that other road watched the
21 informant go listen the whole time over the
22 wire until the informant left and then we call
23 the informant back and tell him where to go.

24 Q: Search the informant before then, give them
25 documented funds, search the car, watch them go

1 to the residence?

2 A: Yes, sir.

3 Q: Meet at a predetermined location afterwards?

4 A: Yes, sir.

5 Q: Search again?

6 A: Yes, sir.

7 Q: And get the drugs.

8 A: Yes, sir.

9 Q: And you're listen to the audio?

10 A: We don't actually listen to the audio there we
11 have to take it back to the office and download
12 it.

13 Q: Did you also, where you a part of or in charge
14 of a purchase from Mr. Gibbs on December 1st of
15 2009 at [REDACTED] Madison Avenue?

16 A: Yes, sir.

17 Q: Please tell the Ladies and Gentlemen of this
18 jury about that.

19 A: Again, the other buy occurred on December 1st
20 of 2008. Again, we made contact with the
21 informant at 4:18 that afternoon. The
22 informant was given \$140 of documented funds at
23 this time. Called Mr. Gibbs at that cell phone
24 number. The first call there was no answer,
25 later made contact with Mr. Gibbs through that

Mr. Wayne Dubose -Reply- Cross by Mr. Brooks

319

1 phone number and Mr. Gibbs advised to come back
2 to the residence on Madison Avenue. Again, the
3 informant was searched, the vehicle was
4 searched and he was given the documented funds.
5 We followed him in the residence. He went into
6 the residence. Made the purchase of crack
7 cocaine. Came back and went through the same
8 vehicle again.

9 Q: What time was the purchase made on December 10,
10 2008?

11 A: The purchase was made at 4:43 p.m.

12 Q: You made have said it, I just can't remember.
13 What time was the purchase made on October 29,
14 2008? If you said it, I just can't ...

15 A: October 29th?

16 Q: Yes, October 29th.

17 A: The purchase was made on October 29th, it was
18 made at 1:29.

19 Q: P.M.?

20 A: Yes.

21 Q: Again, was Mr. Gibbs the individual that the
22 crack cocaine was purchased from on September
23 1st, 1998 --- 2008, I'm sorry, Judge.

24 The Court: September 1st?

25 Mr. Meadors: December 1st, 2008. I just

1 don't have my glasses.

2 Q: Is Mr. Gibbs, who made through you or the
3 confidential informant made a purchase from
4 October 29, 2008, November 24th, 2008 and
5 December 1, 2008 in the courtroom?

6 A: Yes. He's sitting beside Mr. Brooks.

7 Mr. Meadors: May we approach?

8 The Court: Yes, sir.

9 (Counsel approaches bench without court reporter)

10 Mr. Meadors: No further questions.

11 The Court: Cross examination?

12 **Wayne Charles DuBose - Cross by Mr. Brooks**

13 Q: Investigator DuBose, based on what you just
14 talked about here, the informant was the one
15 that went to the house. Is that correct?

16 A: Yes, sir.

17 Q: The informant was the one that made the call,
18 is that correct?

19 A: To Mr. Gibbs?

20 Q: Based on what you've testified to.

21 A: He made the phone call.

22 Q: Okay. And this is the same informant on all
23 these three occasions that Mr. Meadors just
24 asked you about?

25 A: Yes, sir.

Mr. Wayne Dubose - Reply- Redirect by Mr. Meadors

321

1 Q: Is that informant anywhere in the courtroom?

2 A: No, sir.

3 Q: When the informant went up to the door, I mean,
4 you weren't at the door, you were at a
5 predesignated spot at least 100 yards away, is
6 that correct?

7 A: Yes, approximately.

8 Q: Would it be fair to characterize more than a
9 football field?

10 A: I actually believe it was that street pretty
11 close to the house, about a hundred yards.
12 Maybe from just past the back hall out there
13 just a little bit further I would say.

14 Q: Okay. So, right at a hundred yards. You said
15 to Mr. Meadors there was something about audio
16 and video?

17 A: Yes, sir. We have equipment in our video we put
18 on there so we can hear and we also record
19 video.

20 Q: Okay. As I said, that informant is not here,
21 is that correct?

22 A: No, sir.

23 Q: And this was the same informant used on these
24 three occasions that you answered Mr. Meadors
25 questions on, the same guy?

1 A: Yes, sir.

2 Q: When this informant went up to the door you
3 were not with this informant, is that correct?

4 A: No, sir, but we could see him.

5 Q: You could see from more than a hundred yards?

6 A: Yes, sir.

7 Q: And you could pick out exactly who it was, is
8 that correct?

9 A: Could pick out who?

10 Q: Who came to the door?

11 A: No, sir. Not from where we were, no.

12 Q: Okay. So, basically what you were relying on
13 is the information you were given from the
14 informant as to opened the door, is that
15 correct?

16 A: Yes, sir.

17 Mr. Brooks: No other questions.

18 The Court: Mr. Meadors?

19 Investigator DuBose - Redirect Examination by Mr.

20 Meadors:

21 Q: Did the informant

22 A: No, sir.

23 Mr. Meadors: That's all.

24 The Court: Mr. Brooks?

25 Mr. Brooks: No other questions.

1 The Court: Thank you. You can step down.

2 (Witness steps down)

3 The Court: Anymore reply, Mr. Meadors?

4 Mr. Meadors: No, sir.

5 The Court: Okay. All right, Ladies and
6 Gentleman all the evidence is in in the case and will be
7 presented. The next part of the trial is going to be
8 when the lawyers give you a closing argument and then I
9 will give you a charge on the law. We are going to take
10 a break now for lunch. This is going to be a little
11 shorter lunch. I do have some issues in another case to
12 take care of. If you would please be back in your jury
13 room at 1:30. We will start at that time with the
14 closing arguments and the charge. You may think, oh, I
15 can talk about the case now because all of the evidence
16 is in, but you cannot. You cannot talk about the case
17 amongst yourselves or with anyone else until I tell you
18 that you can. That time will be coming sometime after
19 1:30, but please continue to follow my instructions.
20 Thank you for your patience and I'll see you at 1:30

21 **(Jury excused from courtroom for lunch break)**

22 The Court: All right. Mr. Brooks,
23 motions?

24 Mr. Brooks: Yes, sir. I renew my motions
25 for direct verdict we presented at the end of the State's

1 case and chief. Proof of possession, actual versus
2 constructive, also condition to that would be the ones we
3 had put in with regards to the elements, proof of intent
4 that we have already put forth in the case.

5 The Court: All right. Those motions are
6 respectfully denied. If anything the testimony that your
7 client made will be even more so an indication why the
8 motion should be denied. I think it's a jury question.
9 The jury can conclude that he didn't have anything to do
10 with it or that the State has to prove that he did. As
11 far as any one or more or all of the elements of the
12 crime the jury could decide beyond a reasonable doubt.
13 So, I'm going to respectfully deny your motion. I am
14 going to require that the defendant be held at this
15 point.

16 What I'd like to talk to you gentlemen
17 about right now is specifically any request to charge.
18 I'm thinking of one issue that I've got to resolve as far
19 as what I tell the jury how to handle this reply evidence
20 and the cross-examination based on my ruling that Mr.
21 Gibbs opened that door to the series of drug transactions
22 the State claims occurred on the other dates. It wasn't
23 offered for Lyle evidence. If it was offered for that I
24 found that those events did occur by clear and convincing
25 evidence. I would charge the jury that it's admissible

1 only for purposes of establishing this case for intent.

2 In other words, intent to possess and intent to

3 distribute or both. The allegation is he was making crack

4 cocaine and the evidence of these other transactions

5 would be evidence of why. His motive for making crack

6 cocaine, that is to sell it. There is a different charge

7 for the jury for prior or other bad act for Lyle purposes

8 as opposed to evidence which is limited to impeachment so

9 we don't need to resolve all of that now but I've got a

10 copy of both and if I had a key to my office I could get

11 in there and make a photocopy of it but I think I left my

12 keys on my desk and nobody is in my office to unlock the

13 door. I think the Clerk's office has a key. Okay. So,

14 I will give that to you. It may not make a difference in

15 the long run but it will make a difference as to how the

16 State argues this on a technical standpoint.

17 Are there any other issues pertaining to

18 the verdict form to include but not be limited to the

19 lesser included or anything else?

20 Mr. Meadors: No, sir.

21 Mr. Brooks: No, sir.

22 The Court: Okay. Do you want a lesser

23 included on trafficking, a step down from PWID crack and

24 another step down would be possession of crack or do you

25 want an all or nothing? And you can discuss that with

1 your client. What's the State's position.

2 Mr. Meadors: Whatever, Your Honor,
3 decides, we're okay with that.

4 Mr. Brooks: We would ask for lesser
5 included, Judge.

6 The Court: On both. I think the facts
7 would fit it. I think the jury could conclude it makes
8 for a little bit of the approach to the jury but I will
9 do the best I can.

10 Mr. Meadors: Can I have at least a copy
11 of the jury verdict form.

12 The Court: Ya'll got it.

13 Mr. Meadors: I did. I'm sorry.

14 The Court: I'll look at it to make sure I
15 didn't make any spelling mistakes on it. I don't have a
16 law clerk for a few weeks so I did the best I could.

17 Okay, if the lawyers could be back in, and
18 I'm thinking out loud. If there is to be a pre-verdict
19 resolution, in this case, a plea, a nolle prosequere or
20 whatever it is, if ya'll would kindly let me know by
21 1:00. I don't think Melissa and I will be going much of
22 anywhere so if anybody wants to take care of that, I'd
23 like to do it so that it doesn't substantially spill over
24 into the jury sitting in the jury room. I do appreciate
25 the way the lawyers have tried the case for the State,

State of South Carolina v. Leroy Clifton Gibbs, III

327

1 Mr. Meadors and Mr. Brown. I appreciate the way you've
2 followed the rules. Mr. Brooks, I think you've done an
3 excellent job in representing your client and thank you
4 for allowing, at least allowing the case to be presented
5 in an orderly fashion. All right. Anything before we
6 break?

7 Mr. Meadors: Briefly. If it please The
8 Court. Of course, we all thank, Your Honor, for the way
9 you handled it to, sincerely. Judge, is the defense
10 going to require us to open on the law?

11 Mr. Brooks: Yes.

12 The Court: You can open on the law, if he
13 ask you to then I will require that. I will give you
14 leeway on how you do that, but in any event, it will be
15 you, Mr. Brooks and you again. When I say you, it's you
16 or Mr. Brown.

17 Mr. Meadors: Okay. Thank you.

18 The Court: And I don't hold a time limit
19 on arguments. The only thing I ask you to do is follow
20 the preacher rule, they quit listening to you after a
21 while.

22 Mr. Meadors: My dad's a preacher. I
23 understand.

24 Mr. Brooks: Judge, what time do you want
25 us back.

1 The Court: If there is a resolution, I'd
2 like to know by one. We will back on the record, on this
3 case, hopefully by 10:15 or 1:20. Mr. Gibbs, I'm going
4 to ask that you be held in the holding cell until then.

5 (There was a court break taken)

6 **(PM Begins - Court in session 1:55 p.m.)**

7 The Court: Is the Defendant ready?

8 Mr. Brooks: Yes, sir.

9 The Court: Okay. Any discussion on how I
10 handle the other bad acts that are alleged, not saying
11 that they occurred but how they handle telling the jury
12 about that? Do I tell them by a Lyle charge or
13 impeachment charge?

14 Mr. Meadors: Your Honor, I was thinking
15 about it over lunch. I would ask for both. I think it
16 goes to show intent and motive as far as his lifestyle
17 distributing and I also think it goes for impeachment of
18 credibility.

19 The Court: All right. Mr. Brooks.

20 Mr. Brooks: Judge, I obviously have a
21 different take on it then Mr. Meadors. I don't think
22 Lyle is appropriate because, you know, making a purchase
23 at a house doesn't necessarily create any type of pattern
24 or bad act. Just making a purchase at a house even if
25 it's, you know, two purchases because obviously, you

1 know, he don't necessarily have the informant here and
2 Mr. Dubose indicated that he could not see the actual
3 transaction at the time.

4 The Court: He's in one of the pictures.

5 Mr. Brooks: My client is in one of the
6 pictures?

7 The Court: That's what Mr. DuBose said.
8 He said he saw a steal shot. I know we don't have a
9 photo, but he said I saw the defendant and it's Mr. Gibbs
10 on the picture.

11 Mr. Brooks: And, I think, in light of it
12 altogether I just think that is a problem if you're going
13 to talk about that under Lyle. Obviously, we objected to
14 it for purposes of entering because our original position
15 was he had picked up from there before.

16 The Court: That's a slam dunk. I'll
17 overrule you on that. The other one is certainly some
18 may consider it to be an academic argument as far as the
19 jury is concerned it may get lost in the shuffle but it's
20 my job to charge them the correct law under the correct
21 circumstance. What I'm turning over is that evidence of
22 other acts may be admissible to show motive, intent,
23 absence of mistake or accident or a common scheme or plan
24 in the commission of two or more crimes so related to
25 each other the proof of one tends to establish the other

1 or the fifth one the identity of the perpetrator.

2 In this particular case, in all
3 circumstances in that content I have to make a finding in
4 clear and convincing evidence that the other acts did
5 occur. Of course, I will not tell the jury, if I found
6 that. I do find that there is clear and convincing
7 evidence that Mr. Gibbs did commit those other acts.
8 That's my call. I'm not going to tell the jury that I'm
9 making that call. I further find that those prior
10 transactions established motive in the context of why he
11 would have been making crack. He would have been making
12 crack to sell it. Intent, criminal intent, an intent to
13 commit the crime of manufacturing crack cocaine and the
14 intent to commit the crime of trafficking, I think are
15 born out by these other events. Common scheme or plan is
16 easy to say but I don't find that it arises to that
17 because I would have to find that the plan embraced the
18 commission of two or more crimes so related that proof of
19 one intends to establish the other. On the other hand, I
20 think it probably does establish it. And also would
21 establish identity. Mr. Gibbs as being the one who was
22 the perpetrator. Over your objection I'm going to charge
23 that. I will also charge it on the issue of impeachment
24 because he's the one that opened that door. If he had
25 just not said it, he wouldn't have this heartache right

1 now. He did it. Nobody else.

2 Now, I also have to engage in a balancing
3 test under 403. I have found what I have found under
4 404. I also am requiring him to determine whether or not
5 even though I've made the finding by clear and convincing
6 evidence of those four things whether or not the
7 probative value is substantially outweighed by the danger
8 of unfair prejudice, confusion of the issues or
9 misleading the jury. What's the defendant's argument on
10 the prejudice. In other words, you have to establish
11 that any probative value is substantially outweighed by
12 the danger of unfair prejudice, confusion of the issues
13 or misleading of the jury. I suspect your arguments are
14 pretty much the same that the jury is going to be
15 inclined to say, hey, we've got these three
16 distributions, he must have been the one who's drugs they
17 were in the house this time and it so clouds the issue
18 that they can't logically separate.

19 Mr. Brooks: That's exactly, Judge. We
20 think it's prejudicial. It does create ...

21 The Court: What's the State's position on
22 that.

23 Mr. Meadors: Your Honor, obviously it's
24 prejudicial there's no question about it. We think in
25 fairness, again, he's clothe himself in front of the jury

1 he's pure that he didn't know what happened at that house
2 and I think that this clarifies the issues and makes it
3 clear specific as to the intent, motive and common scheme
4 and plan and we think that outweighs the prejudice value
5 for all parties quite frankly.

6 The Court: I do find that the 403
7 analysis tells me that the probative value is not
8 substantially outweighed by any of those considerations
9 that I just mentioned. It's interesting to note ---
10 we'll get started in a minute. It's interesting to note
11 that the Lyle evidence could have been offered by the
12 State who could have examined it in it's case and chief.
13 It wasn't until the door opened that became an
14 impeachment issue and then on the other hand a Lyle
15 issue, I think my analysis is sound, of course, and both
16 disagree with that. So, I'll give an appropriate charge
17 on impeachment and Lyle and I think we'll move forward.
18 Okay. Mr. Meadors, to the extent it matters, who is
19 going to do what argument?

20 Mr. Brown: I'll be opening on law, Your
21 Honor. Mr. Meadors will be closing on the facts.

22 The Court: All right. Then Mr. Brooks,
23 you'll go in the middle.

24 Mr. Brooks: Yes, sir.

25 The Court: Everybody ready?

State of South Carolina v. Leroy Clifton Gibbs, III

333

1 Mr. Meadors: Yes, sir.

2 Mr. Brooks: Yes, sir.

3 The Court: Bring the jury in.

4 (Jury enters courtroom 2:02 p.m.)

5 Bailiff: Judge, the jurors are in the
6 courtroom.

7 The Court: Thank you. Ladies and
8 Gentlemen, I apologize for the delay in starting. I
9 really like to start on time. We started another
10 proceeding about 12:30 after you left and that ended
11 about ten minutes ago. It had nothing to do with this
12 case. These folks everybody, Mr. Gibbs, Mr. Brooks, Mr.
13 Meadors, Mr. Brown, they were all here. They were waiting
14 to start and the other proceeding just went long and
15 there was nothing I could do about it. Please accept my
16 apology on that.

17 We are now going to go forward on the
18 closing arguments. The way this work is like this. The
19 State will give what is called an opening. They will open
20 on the law telling you what they contend the law is.
21 After that Mr. Brooks will present his closing argument
22 on behalf of Mr. Gibbs. After that the State will have
23 the final argument and shortly after that you'll
24 deliberate. A couple of points. The lawyers are
25 permitted, under the rules, to tell you what they believe

1 the evidence has or have not established. What certain
2 things it has or has not established. Please remember
3 that you are the judges of the facts. The lawyers will
4 not purposely misquote or mis-characterize any evidence
5 but if they make an argument about evidence that does not
6 correspond with your collective view of what the evidence
7 actually was, you go with your view of the evidence not
8 necessarily with what a lawyer tells you it is.

9 Also, they will be permitted to argue to
10 you the points of law that I have been over with them and
11 that I am going to charge you. These will include but
12 certainly aren't limited to things like reasonable doubt,
13 presumption of innocence, criminal intent, the elements of
14 these crimes charged so forth and so on. If they recite
15 or point to or argue a point of law that does not match up
16 to what I tell you the law is, you go with what I tell you
17 the law is and we'll approach it just like that.

18 I believe that covers everything that I
19 need to tell you, so Mr. Brown or Mr. Meadors you can
20 certainly open on the law at this point.

21 Mr. Brown: Thank you, Your Honor. If it
22 please the Court. Good afternoon everyone. As you all
23 know by now, I'm Tyler Brown. I'm one of the solicitors
24 here. I am joined by Mr. John Meadors and we are charged
25 with prosecuting this case. As the Judge just now

1 informed you, my duty at this point is to open on the law
2 in opening arguments. You've heard all the facts. You've
3 heard everything that the State has that we believe shows
4 guilt. In a short period of time we will finish with our
5 closing arguments and the judge will charge you on the law
6 and at that juncture you will get the case. You will
7 finally have enough time to talk about this case and make
8 your determinations.

9 Before we get to that point, I want to talk
10 to you briefly about the law as the State understands it
11 and what led us here today so that you have a background
12 under the law about the facts that Mr. Meadors and Mr.
13 Brooks will be coming and talking to you about shortly.

14 As you are aware, Mr. Gibbs has been
15 charged with three counts and that is why we are here
16 today. He's been charged with trafficking in cocaine base
17 which most of ya'll have probably heard crack cocaine,
18 over ten grams. He has been charged with manufacturing
19 crack cocaine and he has been charged with possession with
20 intent to distribute cocaine. To briefly talk to you
21 about those. What trafficking is, it's a term in the law,
22 a lot of people they look back and the whole reason they
23 think trafficking is about running up and down the
24 interstates. Under the law of South Carolina, once you
25 cross over a threshold, once you cross over ten grams of

1 cocaine that is considered trafficking quantity. It is
2 your determination, it is your job to determine whether or
3 not Mr. Gibbs possessed and had actual or constructive
4 possession of a quantity of cocaine in excess of ten
5 grams. And if you do not find that you did, then you
6 cannot convict, but if you do it will be in ya'lls
7 discretion to render a conviction on that charge.

8 The other charge is possession with intent
9 to distribute cocaine. Possession with intent to
10 distribute cocaine can be shown by a number of things. And
11 you will be hearing a lot more about these through Mr.
12 Meadors as he talks about his facts, but the law tell us
13 that anything over one gram creates an inference that
14 ya'll can draw the intent to distribute from. But, that's
15 not all that you can draw it from. You can draw from
16 everything else drawn in the case. Did he have scales,
17 did he have razors, did he make any statements, did he
18 divide the bags. Those can often times be used to
19 determine an intent to distribute. It will be y'all's job
20 to determine whether or not he did distribute that
21 quantity of cocaine. Another thing that might help you in
22 that is whether or not he had cutting to make more.
23 Anything in that nature.

24 Finally, he has a charge for manufacturing.
25 Now, what is important to note about that is, it does not

State of South Carolina v. Leroy Clifton Gibbs, III

337

1 required that he gets caught in the act of manufacturing.
2 It can be that he is manufacturing or that he is
3 attempting to manufacture. He has been charged with
4 manufacturing in crack cocaine. To prove that, and just
5 to break that down, all that word means in the law is he
6 is making crack cocaine. It will be your determination to
7 determine whether or not he either has done that or he is
8 attempting to do that. Now, to go back and talk to you a
9 little bit about possession that you have to have when you
10 talk about PWID or possession or trafficking or anything
11 of that nature, that can be shown in multiple ways. It
12 can be either actual possession or something you hold in
13 your hand, something you have right there with you.
14 Something on your person or it can be constructive
15 possession. In law school they say that means exhibiting
16 dominion, control, but in real world terms what we are
17 talking about is it is under your control. You have the
18 ability to take possession of it, to control it. It's
19 yours. To make it simple everything at your house right
20 now, if you've got t.v. at your house, you have
21 constructive possession of that t.v. If I left something
22 over at my desk right over there while I come up and talk
23 to you I have constructive possession over that even if
24 it's not on my person right now. That's constructive
25 possession. You will be responsible for making a

1 determination as to whether the Defendant Leroy Gibbs had
2 either actual or constructive possession over this stuff.
3 At the end of the day you have to do it on a reasonable
4 doubt scale.

5 I know, at the opening, Mr. Brooks talked
6 about football and I think baseball analogy and those are
7 all well and good. In law school we always talk about
8 reasonable doubt being what we call a reasonable person
9 would hesitate to act. I believe that's the term they
10 use. But the analogy they always gave us and the one I
11 always found to be helpful was if you're getting up in the
12 morning and you're going to work and you get up and you
13 want to look neat and you iron your clothes. Assuming you
14 don't have a iron with an automatic shutoff you get in
15 your car and you start driving to work. You get about two
16 or three miles down the road and you think maybe I didn't
17 turn that off, maybe it's still on. If you stop your car
18 and you turn around and go back to your house to turn that
19 thing off, you had a reasonable doubt, it caused you as
20 reasonable people to act. But if you keep going if you're
21 going to work that would not be reasonable doubt. And,
22 you Ladies and Gentlemen of the jury are reasonable
23 people. That's why we use you. You are brought in here.
24 Every single one of you has had the opportunity in your
25 life to sit there and listen to conversations and

State of South Carolina v. Leroy Clifton Gibbs, III

339

1 determine about how much you believe. You listen to one
2 person and see if they are credible. There are
3 conflicting stories, determining whether which side you
4 believe if anyone. That's why we have juries. So, in a
5 short period of time you're be hearing the rest of the
6 story. You'll listen to the law. At that time we're
7 going to ask that you go back to the jury room and you
8 weigh all this evidence. You use your reasonableness.
9 When you go back there, ya'll determine the credibility.
10 YA'LL determine whether or not ya'll believe Leroy Gibbs
11 did commit these offenses. At that time I'm going to ask
12 that ya'll come back with a guilty verdict. Thank you.

13 The Court: Mr. Brooks.

14 Mr. Brooks: Ladies and Gentlemen, thank
15 ya'll for being very attentive here and I want to thank
16 you for having such an open mind. This is all the
17 evidence. I like the way the Solicitors, you know, it's
18 kind of a form of flattering, you know, their taking my
19 analogies and putting them forth to you and talking about
20 baseball and football.

21 Folks, what I also want to talk to you
22 about is if you listen to the evidence, please note the
23 fact that you've got two people charged with this. And,
24 of course, one of which is the wife of my client who has
25 indicated that she was facing all these same charges.

1 She's already admitted to lying to her former employer or
2 who was her employer at the time about doing her very job
3 which was delivering mail to the post office. She took
4 her mail, four containers of which of average ordinary
5 citizens out here to wait for their mail and leave it at
6 her house. So, here's a lady who has basically lied and
7 admitted to lying to you guys. So, whose drugs are they?
8 She's the one that signed the lease that says she lives
9 there. My client, and you heard from his mother, you
10 heard from his brother, basically, at the very minimum, was
11 back and forth there. You heard my client indicate that
12 he didn't stay there all the time, that they had marital
13 problems. That he was basically staying off S. Pike where
14 his mother resided, he was getting mail there. That's
15 where he basically was. You heard from his brother, you
16 heard from a friend that talked about he dropped him off
17 that day. Kimberly Gibbs is the one that stayed at this
18 residence. So, she would be the number one primary person
19 who you need to look for as far as whose drugs these were
20 that these drugs belonged to.

21 There is nothing that the prosecutor has
22 presented to say that she didn't have anything to do with
23 it. Remember, they found drugs in her purse and she
24 admitted that this was her purse. Drugs in her purse.
25 This was her house, she stayed there full time. And, she

1 has admitted to lying. To being a liar to the Federal
2 Government, the Post Office. She admitted to not
3 delivering the mail when she was supposed to. That is
4 very important.

5 Obviously, the prosecution gets the last
6 word. They may come up and say, that's not really
7 anything you need to talk about. This lady Kimberly she
8 was a woman, she was the one working, we really don't want
9 to look at. She was the one that really had ample
10 opportunity. She had the money to go out and get the crack
11 if you're going to believe the prosecution because they
12 are going to say my client wasn't working. Okay. He
13 wasn't working so he had to be the one doing drugs. Well,
14 you've got to have some money to buy the drugs so if
15 you're going to believe that Kimberly is the one with the
16 money, she's the one with the job. She had to be the one
17 these drugs belonged to. They want to try to clean it up.
18 And, Ladies and Gentlemen, keep this in mind. There's
19 what we call an unwritten rule about this. Ms. Gibbs
20 testified that, you know, there's no deal in place. I'm
21 willing to bet, willing to bet and this is all
22 speculative, this is all argument. She's probably going
23 to get a free ride. I don't know that for sure. I'm
24 pretty confident that there is some reason for her to get
25 up here and point the finger at her husband at her house.

1 Okay. This is her house, these were her drugs. Leroy,
2 sometimes married couples go through problems, he pretty
3 much was staying at his mother's house.

4 Now, back to the things I talked about as
5 far as the sports analogies that people like to, you know,
6 copy. Remember, even though they already got on the stand
7 and told you guys his piece, it's the State's duty to
8 prove him guilty beyond a reasonable doubt. You heard the
9 State come back up on the second time around and talk
10 about some alleged transactions at this residence.
11 Where's the gentlemen who was there at the residence? I
12 don't see him in court. They say he's dead? I don't
13 know. He's not here. He's not here to say without a
14 shadow of a doubt who he bought drugs from from this
15 residence. He could have made these purchases from
16 Kimberly. He could have made these purchases from
17 somebody else that Kimberly had. My client indicated that
18 he wasn't there and he wasn't in her business. That's the
19 nature of their relationship. Who am I to make a
20 judgement call about how a man and woman is going to
21 conduct themselves. Who is to say beyond a shadow of a
22 doubt that my client was the one who was involved in these
23 purchases. Officer DuBose, he said when I asked him he
24 couldn't really see because he was more than a hundred
25 yards away. He's only going off of the word of the

1 informant. He's not necessarily participating in the
2 transaction, Officer DuBose himself. So, that's all
3 they've got there basically is what I often like to say is
4 what the State wants you to do is to fill in the gap.
5 These are questions that you may have to come up with.
6 Use what Mr. Brown talks about as far as the iron shutting
7 off and you leave the house, these are questions that come
8 up. These are reasonable questions. These are reasonable
9 questions that equate to what we call reasonable doubt.
10 Somebody else could have been in the house.. This is
11 Kimberly's residence. My client never signed the lease.
12 She put his name on it. She could have put your name on a
13 lease. That doesn't mean that you actually living there
14 with me. So, bare in mind that these are things that you
15 really have to ask yourself and focus in on. Keep this in
16 mind, Leroy doesn't have the burden of proving anything.
17 It's the State's obligation to prove this case beyond a
18 reasonable doubt.

19 As I told you earlier, it's their
20 responsibility to get the ball over to the end zone.
21 Even though they had Kimberly up on the stand they have
22 not done so. They talked about some other things that my
23 client is not on trial for today and I want to make sure
24 that's, the Judge will tell you he's not on trial for
25 anything else other than what happened on December 23 or

1 alleged to have happened on December 23, 2008. So, when
2 you look at it in its proper perspective and you look at
3 it and focus on that issue, they have not proving their
4 case in a reasonable doubt to say that these things belong
5 to my client. I submit to you that these things that they
6 found belonged to Kimberly. She's the primary person
7 there. She's the one that had the job and the one that
8 had money to go out and buy the drugs. She had that and,
9 of course, now she comes in here four and a half years
10 later with charges on her like charges on him and, of
11 courses, she wants to tell the prosecution and then you
12 guys that it was him. That's a easy scapegoat.

13 So what do we have. We've got a wife who
14 is obviously pointing the finger at her husband. Scared
15 because she got caught with her hands in the cookie jar
16 and lost her job. Now, she's going to point the finger at
17 him and the prosecutions going to follow. They are asking
18 you to find him guilty. And we think, as a matter of
19 fact, we feel strongly that once you look at it, you'll
20 have no other duty but to come back not guilty. Tell the
21 State that have got to do a better job. Just because they
22 say somebody's drugs are there, they might be mistaken.
23 Thank you.

24 The Court: Thank you Mr. Brooks. Mr.
25 Meadors, Mr. Brown, any additional argument.

1 Mr. Meadors: Please the Court?

2 The Court: Yes.

3 Mr. Meadors: Madam forelady, Ladies and
4 Gentlemen, good afternoon. He couldn't even blame it on
5 Kimberly. Mr. Gibbs couldn't even blame it on Kimberly.
6 He said no. Then he came back and said well, it could
7 have been I don't know. But, at first, he couldn't even
8 blame it on Kimberly. His defense now is Kimberly selling
9 drugs, are you for real.

10 Ladies and Gentlemen, what is this case
11 about? Selling drugs is a lifestyle for me. Selling
12 drugs is a lifestyle for me. It's a matter of living.
13 It's a routine a person does in their everyday life. It's
14 been displayed to you over the past two days, incredibly I
15 might say. Selling drugs is a lifestyle for me. And
16 those aren't my words. Those aren't my words, those are
17 his words. And I want to address that right off the bat.
18 When you had more importantly the officers. They are just
19 transporting somebody that is getting arrested for
20 warrants back to the jail and they take him back and they
21 say, you know, all you got is the credibility and
22 believability. It's like the Judge said initially. You
23 use your common sense you gather your whole life and you
24 look at people and you decide what the truth is based on.
25 their demeanor and what they say and you watch them

1 testify and that was as true in this case as there was in
2 any case. Do you remember when Horton and Moore said they
3 took him out there and he just starting talking and then
4 all of a sudden he said, it's just a lifestyle for me.
5 Selling drugs is a lifestyle. Do you remember Horton's
6 reaction up here. He said he looked and he looked over
7 and said did he just say what I thought he said. I mean,
8 isn't that real, credible? And what do they do. They
9 come back and they immediately tell DuBose. Now, they
10 didn't come back and say those are my drugs, I did all the
11 crack, all that stuff. They didn't try to set him up and
12 say all that. That's what makes it real. If they had come
13 back and said, oh, he confessed to everything. They come
14 back say, you know what this guy said, selling drugs is a
15 lifestyle for me. They think it was important enough that
16 they came back and told him that day and it was documented
17 on December 23, 2008. That didn't come out here for the
18 first time. That was told to DuBose the same day and he
19 documented it. It is a lifestyle. Thirteen Hundred and
20 Fifty-Five (\$1,355.00) Dollars cash in his pocket. I
21 want to put my pants on. That's fine. They checked it.
22 That's what officers do. There was an arrest warrant.
23 Ya'll are too young, all of you are to young, the Beverly
24 Hill Billies, Jed Clampett use to have his walking around
25 money. I don't know if any of ya'll remember. He's got

1 thousands of dollars. Who has got \$1,355.00 in their
2 pocket? Jed Clampett and a drug dealer? This isn't
3 Beverly Hills. That's not Jed Clampett. When I asked him
4 where did you get the money, it's a wreck. Where is the
5 wreck? This is when you weigh the demeanor and look at
6 people. The expression. There wasn't a wreck and then
7 you watch his reaction. I'm not sure I've been in such
8 ... that's what you judge it on. Credibility and
9 believability. Those are proceeds from the drug deal.
10 It's a lifestyle. Baking soda, razors, that's part of the
11 lifestyle. Part of the making, the manufacturing, the
12 distribution of illegal drugs. I'm not doing this to be
13 mean. He's the one that said it. They were in his house
14 and his drugs. Baking soda, razors, Benzocaine, which
15 DuBose said you also used to cut. That's what happens, you
16 get drugs and then when you sell them to your customer,
17 they are poison. The illegal medicine. It's illegal, they
18 are narcotics, so there's not question about it. When you
19 sell it, do you sell it straight, you cut it. You get
20 these cutting edges and you get cocaine and you cut it.
21 Why do you do that. So, you can make more. It's not pure
22 but you make more, you can sell more. You're cheating
23 your customers. That's what they do with the cocaine, the
24 cutting edges. The razors, the baking --- Razors in you,
25 just get practicable. Common sense up in your Colbert, in

1 your kitchen and little razors down there right beside
2 baking soda. Guns. Two guns. Don't know about that.
3 That's the lifestyle. Working at home. Not working at
4 home on the computer. Not selling goods, working at home.
5 Now, the Judge will tell you these prior distributions,
6 we're not here trying distribution cases. That's not what
7 this is about. We're not trying to say that, but when he
8 said he was not --- specifically, let me just read it. I
9 can't speak on behalf of the household, I wasn't living
10 there at the time. Trying to distance himself. Oh, I
11 don't live here, these aren't my drugs, I don't live here.
12 The police officers come there, I don't live here. Sounds
13 like a child when you're caught, oh, I don't live here,
14 first thing. I'm going to get to it later, credibility,
15 but yes you do. Yes, sir, you did. That's your wife,
16 that's your house, you were there. You do live there.
17 Oh, I don't live here. He's distanced himself from his
18 drugs from day one.

19 Working at home and the Judge will instruct
20 you, I'm not offering this to prove this distribution
21 case, I'm not offering that. I'm offering those
22 distributions in October, November and December to show
23 intent. His intent was to distribute the drugs. His
24 motive. The drugs were sold from that house. You heard
25 this officer testify. We had an undercover agent watched

1 him, searched him, sent him over there. Of all the houses
2 in Sumter, on he went to this house with documented funds
3 and guess what he came back with crack cocaine. And he
4 identified that Defendant as the person who sold it to his
5 undercover agent. Where's the undercover agent, he's
6 dead. We're not trying the distribution case. That man,
7 DuBose, said it was the Defendant who sold the drugs to an
8 undercover agent. Identified him. Identified him,
9 identified the house. But, that's gone to show not the
10 distribution case, this is a trafficking, PWID, don't get
11 lost in that smoke screen. That goes to show intent,
12 motive as far as this case is concerned. Possession with
13 intent to distribute. And it goes to credibility.

14 I'm jumping ahead of myself and I don't
15 know why. It's been such a long day. Credibility, I'll
16 slow down, believability. I don't know what went on in
17 that house. Yes, you did. He actually distributed it.
18 And we're allow to ask that for credibility and
19 believability. We believe he did do it. That he did know
20 what was going on. And as the investigator told you that
21 was the warrants basis when they went this day. Then they
22 find these other drugs. That's what we are here about
23 today. A lifestyle, working at home.

24 You know beyond a reasonable doubt, I
25 realized a long time ago sometimes questions or just

1 questions. And I think inadvertently Mr. Brooks said
2 beyond a shadow of a doubt well that's not the law. The
3 law is beyond a reasonable doubt. The doubt that
4 reasonable folks hesitate to act. And sometimes if you
5 have a question, they are just questions. The State isn't
6 required to prove something beyond all doubt. The Judge
7 will tell you that. If that was the burden we would quit
8 dealing with the courthouse. Beyond a reasonable doubt.

9 Go back and look at State's 13, Ms. Gibbs
10 gives permission for the officers to search her house. She
11 signs a consent. When they get through, there is her
12 pocketbook and they hadn't searched it and Dubose asked
13 her can we search your pocketbook. Search the pocketbook,
14 search the pocketbook. Inside, I believe, there's some
15 cocaine and maybe some other evidence, some marijuana in
16 there. Right on top. It's right on some baby wipes. While
17 YA'LL talk about it, pass it around, talk about it. If
18 you're going to hide cocaine in your purse are you going
19 to put it right on top while somebody is there. The
20 testimony was she said that ain't mine. Couldn't bring
21 that out in direct through him because it's hearsay, but I
22 asked him did she give an explanation. Yes, sir. When did
23 she give an explanation yesterday? No, sir, no ma'am,
24 December 23 she told him that's not mine. When I went to
25 the door, he must have put that in there. And it's right

1 on top and that's pretty reasonable. Do you know why he
2 did that? He hid the drugs because he wants to continue,
3 I wish you could answer me, the lifestyle. He will set up
4 anybody, he'll set up his wife, because he wants to
5 continue the lifestyle.

6 And then when she took the stand, has he
7 said anything to you before this came up, he said I'm
8 sorry I got you into this. Maybe he is and maybe that's
9 when he testified and said no, at one point, that ain't
10 Kimberly's. Then he come back, well, I'm not sure. Well,
11 it might be somebody elses. God bless his mother she said
12 he might come over here if they fight sometimes but I'm
13 not going to worry if she's with another man. Somebody
14 over there. Oh, I'm not going to worry about that.
15 Somebody over there. That must be their drugs. Are you
16 kidding me. Is that credible or believable. That's okay.
17 It's not her drugs, must be somebody elses. Well, who was
18 she out with over there. You've got a kid with her, you
19 stay there. Who is the man she's with sleeping with
20 you're implying. Well, I don't know. I know you don't
21 know because there isn't a man.

22 And I talked to you about the buys there.
23 Again, we're offering that for intent, motive, actions of
24 mistake. Really to show and corroborate his lifestyle. To
25 impeach his credibility. Let's get down to specifics.

1 Possession with intent to distribute
2 cocaine. Now, he had possession. You can really have
3 possession with intent to distribute even if you've got a
4 little tennie bit of drugs. If you got a small amount of
5 drugs, but if you've got other indicators that there was an
6 intent to distribute. Like baking soda or razors or
7 scales or baggies. That's enough really to show there was
8 an intent to distribute even if you didn't have a certain
9 amount. Well, then the law says, well, it's over a
10 certain amount. It's over the amount. In this case, one
11 gram, then it's permissible for you as jurors to infer an
12 intent to distribute. I'm going to ask you to infer that.
13 The law says you can, please do.

14 Possession with intent to distribute, in
15 this case cocaine. Do we have a gram. In this case, no,
16 ma'am; no, sir. Do we have two grams, no, do we have three
17 grams, no, we've got 3.35 grams of cocaine. Possession
18 with intent to distribute. That in and of itself is
19 enough for you to decide PWID cocaine. That's enough. But,
20 we've got other indicators, don't we? What did the
21 evidence show. The razors, the baggies, the money, that's
22 kind of an indicators of you sold, you've got some cash
23 \$1,355.00 no job. Now, I'm not saying that to be mean or
24 disrespectful, but there's no job. There's no receipt for
25 the accident, you don't know whether it happened. Did it

State of South Carolina v. Leroy Clifton Gibbs, III

353

1 come from drug money? Is that reasonable? It's wrong.
2 The Benzocaine, the baking soda. Kimberly, are these your
3 drugs? No. She didn't want to testify. That's the
4 father of her child. I don't want to put her on the stand.
5 I don't like doing that. I've been doing this twenty-six
6 years, I don't like doing it. Ladies and Gentlemen, it's
7 not my fault, it's not Kimberly's fault, it's his fault
8 that I had to put Kimberly on the stand. Oh, it must be
9 her drugs. Oh, it must be somebody else. But, she did it.
10 She took the stand. You observe her demeanor. Did she
11 hesitate in her answer. Think about it, not sure. That's
12 what you weigh it on. Not sure. Was those your drugs,
13 no. Were they his drugs, yes. She didn't want to say it,
14 she said it. And then the buys, as I said shows intent,
15 motive shows intent. Again, those show intent to
16 distribute for this case. Nothing more, nothing less.
17 The statement itself. It's quite incredible, we submit.
18 It's my lifetime. Now, the judge is going to charge you
19 that if you don't think you've got a right to distribute
20 cocaine but then you want to find him guilty of possession
21 of cocaine, some dispute about you don't know if there's
22 intent to distribute or not, you'll have the right to
23 convict him with intent to distribute cocaine. That's
24 your right. Your Honor, is the law and he is the law. The
25 smartest Judge that I know and I'm not just saying it to

1 suck up. He knows the law. He knows what he's doing.
2 You have the right to submit that. We submit that it's
3 not here. We submit that it's PWID or nothing but you
4 have the right to that and that's your prerogative. It's
5 not there. He distributed it, he's got the amount, he's
6 got the tools, he's got the statement, he's got the tool,
7 he's got the customer. I almost want to say let him go if
8 you don't have possession, but it's up to you.

9 Manufacturing. Now, this is manufacturing
10 cocaine base. I don't know when they started calling
11 crack cocaine, cocaine base. It's crack cocaine. So, this
12 is cocaine base in the law now. What evidence do we not
13 have for manufacturing. Again, as Mr. Brown said you
14 don't have to catch them in the act. It would just be
15 rare to not have evidence. Well, I don't mean to be
16 simple, but you've got a microwave. You have to cook
17 cocaine to make it crack with the other ingredients. You
18 have a glass turn table that was field tested positive for
19 cocaine. That's good evidence. You mean there's a
20 microwave. You find crack cocaine on the shelves. Stuff to
21 cut the stuff and make it. You look inside the microwave
22 any you found a glass plate that is tested for cocaine.
23 Somebody is making crack. A bowl with a plate and turn
24 table, glass turn table inside that residue on it with a
25 fork in it. Crack cocaine if being sold in that residence.

1 Measuring copy. You'll see it in here. I think there's a
2 picture in here. It looks like it's coming from a sink,
3 it looks like a white bowl. It's got residue in it. The
4 razors, the baking soda, the cooked --- it just hit me
5 coming over here this morning. The cooked crack itself
6 shows manufacturing. The crack itself is great evidence
7 that it was cooked there with these items. What I forgot
8 to put in yesterday, the baggies up at top. They are
9 consistent with the drug and wrapping according to this
10 man, Mr. Dubose, are all evidence of manufacturing.
11 Kimberly, did you cook, no. Did you know how to cook, no.
12 Who was cooking crack cocaine? He was. Anybody else in
13 there with you when he was doing that? No. Who was
14 cooking it. He was. Credibility, believability.

15 Ladies and Gentlemen, the testimony was
16 there was a 11.55 grams of crack cocaine in the kitchen.
17 That's what the evidence was, that's what the officer
18 testified to. The fine chemist came in and said 11.55.
19 That's already over the trafficking and I'm now in the
20 trafficking. Now, with trafficking, obviously it's over
21 the inference for PWID, okay, possession with intent.
22 Trafficking the Legislature has said when it gets to a
23 certain amount, when you possess actual or constructive.
24 When it gets to a certain amount its just called
25 trafficking. Obviously it's over the permissible inference

1 for an intent to distribute but it's not that simple when
2 you get to this point. Ten to twenty-eight grams. Over
3 ten grams to twenty-eight grams the Judge will instruct
4 you that's trafficking. Ten to twenty-eight grams. The
5 testimony was 11.55 grams was found in the kitchen cabinet
6 itself. Now, there's also 2.48 grams of crack cocaine
7 found in the purse which we submit that the Defendant put
8 in this purse. You don't need both of them to get
9 trafficking. You just need this one. We submit they are
10 both his, which brings it to 14.03 grams of crack cocaine,
11 trafficking. Now, the Judge is going to charge it.

12 Okay, the drugs there. We know this is the
13 amount if you think well, this is your prerogative, well,
14 I'm not sure if it's trafficking or not, you'll have the
15 right to consider a lesser included offense of possession
16 of intent to distribute crack. It's over a gram, well,
17 actually it's over 14 grams but you'll have a right to
18 consider possession with intent to distribute if you want
19 to. We submit it's trafficking. Then you'll have the
20 right, which is the right thing. I don't think it's
21 appropriate in this case but it's right under the law to
22 consider possession of crack if you want to. It's up to
23 you. I submit might come back not guilty if you do that
24 because this is a trafficking case but you have a right to
25 do that.

1 What does it come down as in all cases,
2 it's credibility and believability for the witnesses that
3 you've heard testify today. Now, I've already talked about
4 the officer serving the warrant. If they wanted to set
5 him up wouldn't they have said he admitted to everything.
6 But, they just say, this is my lifestyle. He almost had
7 to tell them because it is his lifestyle. The Defendant.
8 I've talked about this a little bit. I don't live here.
9 Well, you do. Even his mother. My mother is in Heaven, I
10 wish I still had her, but even his momma said, well, they
11 are still married. You know how couples will fight
12 sometimes and he comes over. He's living at the marital
13 home. I mean, he goes to see mom every now and then,
14 maybe, but this is his residence with his wife and his
15 child. She had to get up here and testify but you're
16 telling me where he stays, you're telling me he wouldn't
17 have been upset if another man would have been with his
18 wife. Just trying to push it off on everybody but himself.
19 Even his own wife and some mysterious person. I've talked
20 about that. I don't know where the accident occurred. I
21 can't speak on behalf of the house. I've covered that.
22 The prior, I'm not going to go over that anymore.

23 Let's look at Kimberly. It's like most
24 cases when witnesses are put on trial. One of my
25 granddaddy's delivered mail. I didn't particularly like

1 it when I saw there was mail in their house, but this
2 isn't' about the United States Postal Service. She
3 testified, I didn't take the mail the last day or two. I
4 was going to take it. Should she have? Yes. Does that
5 bother me a little bit, yes. But she said I was going to
6 take it. I had this rural route. You think she didn't
7 know her customers and was going to take it back and run
8 late one day. I don't know. She said I was going to take
9 it back. She said this is the mail, I missed a day or two
10 and I was going to take it. And they harped on that and
11 hammered her. Are you kidding me. Now she's a drug
12 dealer. Look at her. Chicago training. Wichita Falls,
13 she went out. She's working legitimate work. She goes to
14 Wichita Falls and get a construction engineer degree
15 climbing those poles. Then she goes to California to
16 continue it. She gets married at some point to the
17 Defendant and they have a child and she keeps working.
18 She comes back with UPS, she worked there a year and she
19 most have been delivered that mail or someone would have
20 called before this incident. And then when this gets
21 through she leaves. Goes with her mother for a while.
22 Goes back and gets an accounting degree and now she's the
23 manager of McDonald's. Credibility, believability. Mr.
24 Brooks tried to say they were her drugs, no, sir. His
25 client couldn't even say that. They are his drugs. It's

1 his lifestyle. He blames it on everybody but himself. He
2 lives at the house. Here's the lease.

3 Possession with intent to distribute,
4 Possession with intent to distribute crack. His Honor,
5 will tell you, possession means actual or having dominion
6 and control or the right to have dominion and control. He
7 lives there. His child's there. He's got control over
8 that house. That's his place. That's his crack cocaine.
9 It's not just because I'm saying it. His wife, you saw her
10 demeanor. The buys that were made from there the
11 investigator told you about, which are indicative of
12 intent to distribute, or indicative of manufacturing
13 something to make cocaine to distribute it or indicative
14 of the lifestyle. The lifestyle that he told the officers
15 he lived on December 23, 2008.

16 Ladies and Gentlemen, that's all I have.
17 Your role --- a female Judge I heard said this years ago
18 and it has always stayed with me. And this isn't a game.
19 This is hardcore. This is as serious as you can get but
20 Mr. Brooks gave an analogy. She was talking to the jurors
21 one Monday morning in Richland County talking about the
22 different roles everybody plays. 'I love this job. I love
23 what I do. We are all part of this week in and week out.
24 His Honor is the law. She said, jurors like you, you come
25 in, you come in with your common sense and she said it's

1 like a basketball game. We are here everyday, we're here
2 everyday playing, it's not a game. YA'LL come in as the
3 most valuable player week in and week out and YA'LL
4 determine what the outcome is, but it's not a game. Now,
5 you've got to follow the rules. You've got to listen to
6 His Honor, he is the law for this courtroom and he tells
7 you what the law is. You'll take the law as Your Honor
8 gives you and you'll decide what's credible, what's
9 believable and you'll apply those facts based on the
10 evidence you've heard and the items that you've seen and
11 decide what the truth is. And apply it to the law and you
12 will come back with a verdict, which means to speak the
13 truth.

14 Ladies and Gentlemen, I want to thank you
15 for being here. Thanks for listening to me. Thanks for
16 listening to all of us. I submit to you that on December
17 23, 2008, I'm almost through, I promise, the Defendant's
18 lifestyle was exposed. And it's a lifestyle that puts -
19 it's a lifestyle that destroys lives. It's a lifestyle
20 that dispenses poison. And it's a lifestyle of
21 distributing, possessing, trafficking illegal narcotics
22 that needs to stop that we submit based on the evidence
23 it's going to stop it. It's going to stop here in this
24 courtroom now.

25 Thank you.

1 The Court: Thank you, Mr. Meadors. All
2 right. Ladies and Gentlemen we are going to take a very
3 brief recess. The reason for that is that when you do come
4 back out and start listening to the charges that everybody
5 is going to pay complete attention. You may not discuss
6 the case quite yet that time is coming very quickly. The
7 charges I am going to give you necessarily will take some
8 time. Please go to your jury room. This will be no less
9 than five minutes, excuse me no more than five minutes.
10 If you're not ready when he knocks on the door you just
11 let him know.

12 (Jury break 2:47 p.m.)

13 The Court: All right. Everybody realizes
14 that once I start the Bailiffs will lock the door, okay.
15 Are you ready Mr. Meadors and Mr. Brown?

16 Mr. Meadors: Yes, sir.

17 Mr. Brown: Yes, Your Honor.

18 The Court: Mr. Brooks?

19 Mr. Brooks: Yes, sir.

20 The Court: Bring in the jury.

21 (Jury enters courtroom 2:57 p.m.)

22 Bailiff: Your Honor, we have all the jurors
23 present in the courtroom.

24 The Court: Thank you. Ladies and
25 Gentlemen, what I am going to do now is give you what I

1 call a charge on the law. Typically when cases are tried
2 on television you get to watch all the testimony and get
3 to watch the lawyers talk but the one thing you never see
4 is the judge telling the jury what the law is. In other
5 words, you just see the jury walking out and walking back
6 later with a verdict. The reason you don't see that on
7 television is because it is not terribly exciting. I'll
8 tell you that right now. One of the advantages is the
9 attorneys have is they are able to stand up and give you
10 their closing arguments and so forth and they get to do
11 that contemporaneously without reading notes. That's why
12 you are able to follow those. They are naturally given
13 and they give those very well. I will apologize in
14 advance, the charge that I have is in writing. I'm not
15 going to read it all because hopefully I know enough about
16 most of it to tell you without referring to my notes but I
17 will perhaps bore you sometime if I have to read some of
18 it. There are a few other things that I will tell you and
19 one of those is I guarantee you absolutely that I will
20 repeat myself during the course of this charge. That is
21 because during this charge I will be explaining to you
22 what the law is. For example, and not to draw any
23 particular attention to any one point. I will be talking
24 to you about the issues of credibility. I will be talking
25 to you about the presumption of innocence, the burden of

State of South Carolina v. Leroy Clifton Gibbs, III

363

1 proof beyond a reasonable doubt. I will talk to you about
2 certain elements of the crimes charged such as trafficking
3 in cocaine base. Manufacturing in cocaine base and
4 Possession with Intent to Distribute Cocaine.

5 I will be also explaining to you terms or a
6 term known as lesser included or a lesser offense. When I
7 go over these principles of law necessarily I will have to
8 repeat myself because the same principles will control
9 when I'm talking about one and on down the line. In other
10 words, I will be talking about them numerous times. So,
11 please don't think that I've lost my place or that I've
12 lost my mind, it's just simply that I am required under
13 the law to give you a complete charge and to do that I am
14 going to have to repeat myself.

15 Now, your deliberations that you will begin
16 in just a few minutes will end with your foreperson's
17 completion of this verdict form. It has the word Verdict
18 on it. It says Verdict Form. The word verdict comes from
19 the Latin word which means to speak the truth. That's what
20 your verdict has to do. And I will tell you now and I
21 will likely tell you again that your verdicts in this case
22 have to be unanimous. That means all of you have to agree
23 on what the verdict will be. This is not going to be a ten
24 to two, eleven to one or any vote other than a twelve to
25 zero vote. That's what your verdict will have to be. And

1 madam forelady it is your responsibility that when you
2 record these verdicts that they are unanimous. I will go
3 over that in more detail later.

4 There is kind of a pecking order on this
5 verdict form. You are not required to reach a verdict on
6 this case in any particular order. But at some point your
7 verdict, whatever they may be must be unanimous.

8 Now, obviously as you know during the
9 course of this trial you and I have had certain duties to
10 perform. It is your responsibility and your
11 responsibility alone to be the judge of the facts. That
12 is where you come in. That's why you are so important.
13 And you have paid attention through out the case and I
14 certainly do appreciate that. You'll notice how some of
15 the photographs that have been introduced I have not even
16 seen that. The television was put up was pointed to you,
17 not to me because it doesn't matter what I think about any
18 of that. Also, some exhibits that have been introduced, I
19 have not even seen those because since you are the judge
20 of the facts, it doesn't matter what I think about the
21 particular exhibit. On the other hand, I'm the judge of
22 the law. If there has been any dispute about a document,
23 a photograph or any piece of evidence be a question or
24 answer is admissible, then I make that determination
25 that's the only time it really matters what I think about

1 it because I make those rulings on the judge of the law
2 because I am the judge of the law.

3 If I have ordered you to disregard
4 something under your oath you have to disregard what I
5 have told you to disregard. Likewise, I'm going to tell
6 you what the law is in just a minute. You may come into
7 this case with the preconceived notion of what you think
8 the law is or what you think it ought to be. Put that out
9 of your mind, because under the oath you are required to
10 accept the law exactly as I give it to you even if you
11 might disagree with it. That's what the law says. For
12 example, you might think the speed limit on Liberty Street
13 ought to be 50 miles an hour down there near Swan Lake and
14 somebody got a speeding ticket trial and you heard
15 evidence what their speed was. You can't base your
16 verdict on the fact that you think the speed limit ought
17 to be fifty, you have to base your verdict on what the
18 speed limit actually is and that's a very fundamental
19 example of how you have to approach this particular case.
20 When I make rulings in the case don't take - you shouldn't
21 be keeping score, I talked about that earlier. I don't
22 make my rulings based on who I think should prevail on
23 certain points except as far as the law is concerned.
24 Also, you may have seen me taking notes during the trial.
25 The reason that I do that is typically I write down what

1 time something happened during the trial. Like, Exhibit X
2 was introduced at 11:12 a.m. I write that down. Not that
3 I think the exhibit is important, because I probably
4 haven't seen it, but just in case you have a question
5 later on about some testimony or an exhibit and you want
6 to hear it again, the court reporter and I keep those
7 notes together so that we know we can go to this point and
8 find it because the jury wants to know about it. So, if
9 you saw me taking notes, I wasn't doing that to draw any
10 attention to anything. If I've said or done anything
11 during the course of the trial that makes you think that I
12 favor one side over the other, you can put that out of
13 your mind because I don't. I would certainly respect your
14 role in this case.

15 Now, the indictment in this case charges
16 the Defendant with certain criminal offenses, as you know.
17 Trafficking in cocaine base. Manufacturing cocaine base
18 and Possession with intent to distribute cocaine. I
19 charge you Ladies and Gentlemen that your verdict on one
20 charge does not control your verdict on the other. In
21 other words you may find the Defendant not guilty of all
22 three or you may find him guilty of all three or you may
23 find him guilty of some and not guilty on others. That's
24 entirely up to you. In other words, your evaluation of
25 the evidence is to be separate for each distinct offense

1 that is charged.

2 Now, the fact that a person is arrested or
3 charged or indicted as you know is not evidence of guilt.
4 The case has to come into the court room in some
5 particular way and in this state and across the nation
6 cases come into a court room by way of indictment process.
7 The Defendant is presumed innocent, has entered pleas of
8 not guilty and as I will tell you in more detail, the
9 State has to prove the elements of the crime charged
10 beyond a reasonable doubt before you can find him guilty.

11 Now, the Defendant, again, has entered
12 pleas of not guilty to these charges and that plea puts
13 the burden on the State to prove the Defendant guilty
14 beyond a reasonable doubt. A person who is charged with
15 committing a criminal offense in this state literally from
16 A to Z, whatever the charge is, is always presumed
17 innocent no matter what the charge. Now, Ladies and
18 Gentlemen, that presumption of innocence does not end in a
19 few minutes when you stand up and walk out and begin your
20 deliberations. The presumption of innocence remains with
21 the Defendant unless and until the State has proven the
22 elements of the crime charged beyond a reasonable doubt.
23 Some say that the presumption of innocence is like a robe
24 or a cloak of righteousness and that robe stays on that
25 Defendant until it is stripped by evidence that satisfies

1 you of guilt beyond a reasonable doubt. So in closing on
2 that point, the presumption of innocence is not a mere
3 legal theory, it is not a casual phrase that is tossed
4 around, the presumption of innocence is a substantial
5 right that every Defendant is entitled to unless a jury is
6 satisfied from evidence that the Defendant is guilty
7 beyond a reasonable doubt. If you, you probably haven't
8 been but I can probably calculate that I have used the
9 word seven or eight times already. I'm going to tell you
10 what that is.

11 So, what is a reasonable doubt in the law.
12 A reasonable doubt is the kind of doubt that would cause a
13 honest and sincere and reasonable person in any given
14 circumstance to hesitate to act. The State does have the
15 burden of proofing the Defendant's guilt beyond a
16 reasonable doubt. So, if I tell you later on that the
17 State has to prove something and I don't specifically
18 mention it, whatever they have to prove they have to prove
19 beyond a reasonable doubt. Some of you may have been on a
20 jury in a civil case. Well, typically in a civil case a
21 jury is told that the burden of proof is by the greater
22 weight of the evidence. If you imagine scales that are
23 perfectly even, if the party has the burden of proving
24 something by the greater weight of the evidence in your
25 mind's eye they have to present enough evidence to barely

1 tip those scales ever so slightly. That is called prove
2 by the greater weight of the evidence.

3 In criminal cases the State's proof must be
4 more powerful than that. It must be proof beyond a
5 reasonable doubt. Proof beyond a reasonable doubt is
6 proof that leaves you firmly convinced of the Defendant's
7 guilt. Now, obviously, there are very few things that we
8 know on this earth with absolute certainty. In criminal
9 cases the law doesn't require the State to present proof
10 that overcomes every possible doubt, but it does require
11 the State to present proof that overcomes every reasonable
12 doubt. If, based on your consideration of the evidence,
13 depending on which charge you are considering at that
14 time, if you are firmly convinced that the Defendant is
15 guilty, find him guilty. If, on the other hand, you think
16 there is a real possibility that he is not guilty you must
17 give him the benefit of the doubt and find him not guilty.

18
19 Now, Ladies and Gentlemen, the fact that
20 the Defendant has testified and offered other evidence to
21 you does not mean that the Defendant has assumed or taken
22 on any burden of proofing or disproving something. At all
23 times the burden remains on the State to prove guilt
24 beyond a reasonable doubt.

25 Now, I talked to you earlier in the trial

1 about the different ways evidence comes in. Testimony,
2 exhibits and stipulations. Just to shift gears a little
3 bit away from that there are two types of evidence which
4 are generally presented at a trial. Direct evidence and
5 circumstantial evidence. Direct evidence is evidence that
6 immediately establishes the main fact to be proven. For
7 example, you had a witness who said I saw the dog cross
8 the road at three o'clock. If you believe that witness
9 that is evidence that directly establishes that the dog
10 walked across the road at three o'clock. That's just a
11 fundamental example of it. So, direct evidence can be the
12 testimony of a person who claims to have actual knowledge
13 of a fact. Example of that, of course, would be an eye
14 witness. Now, Circumstantial evidence is proof of a chain
15 of facts and circumstances that indicate the existence of
16 a fact. Circumstantial evidence is evidence that
17 immediately establishes collateral evidence from which the
18 main fact may be inferred. So, instead of being based on
19 personal knowledge or observation circumstantial evidence
20 is based on inference.

21 Now, the law makes not distinction between
22 the weight or value you are to give either direct or
23 circumstantial evidence nor is a greater weight required
24 of circumstantial evidence than of direct evidence. In
25 other words, whatever the evidence, direct or

1 circumstantial evidence you weigh it in your mind. After
2 weighing all the evidence if you are convinced of the
3 Defendant's guilt beyond a reasonable doubt on the charge
4 you are considering you find him guilty. If, after
5 weighing all the evidence, you are not convinced of the
6 Defendant's doubt, you must find him not guilty.

7 You've heard several times about
8 credibility. It is your decision and your decision along
9 about who to believe and what to believe. You can believe
10 one witness over a hundred. You can believe a hundred
11 over one. What you don't do is count up the number of
12 witnesses, well, twelve people said it was 2025, the year
13 2025, eight people said it was 2013. I've got to believe
14 the larger number of witnesses. That's not the way you do
15 it. You use your common sense in determining who to
16 believe and what to believe. You can believe every word,
17 none of the words or believe parts and disbelieve the rest
18 of what a witness has to say. It's your duty to analyze
19 the evidence including the credibility of the witnesses
20 and to evaluate which evidence convinces you of it's truth
21 in determining believable to take into account a witnesses
22 demeanor. How did she or he appear hesitant or straight
23 forward when answering questions. You can also take into
24 account what was that witnesses ability to know what they
25 claim to know. Also, was their testimony strengthen or

1 weakened by other testimony or evidence that's in the
2 record. Obviously, anything else that you think is
3 appropriate in your realm of common sense, you can take
4 that into account in determining whether or not you
5 believe a witness.

6 Now, you have heard evidence that the
7 Defendant committed an act that is not the subject of the
8 crimes being tried in this courtroom today. Any evidence
9 of any other acts may be considered by you, if all, if you
10 believe it's true only in deciding whether that witnesses
11 testimony is credible or believable and for no other
12 purpose. And, Ladies and Gentlemen, with regard to that
13 evidence that the Defendant may have committed acts other
14 than the one which he is now on trial, that testimony and
15 that evidence if you conclude it is true may also be used
16 by you on the issues of intent, motive, common scheme or
17 plan or identity and for no other purpose. You give that
18 evidence the weight and value you belief it should have on
19 the issues of intent, motive, identity and or common
20 scheme or plan.

21 Now, Ladies and Gentlemen, you must not
22 consider any evidence of the commission of any other acts
23 as prove of the Defendant's actual guilt of the charge
24 that you are considering today. As I mentioned to you
25 earlier during the trial, the rules of evidence ordinarily

1 do not permit a witnesses to testify to opinions or
2 conclusions. There is an exception under the rules for
3 witnesses we call expert witnesses. A witness who has
4 been qualified by education, training or experience in a
5 particular field they can give opinions and the reasons
6 for those opinions. You do not have to accept the
7 opinions of an expert just because it comes from somebody
8 who is an expert. You weigh that opinion just like you
9 would any other evidence and give it the weight you
10 believe it deserves. If you believe the experts opinion
11 is not based on sufficient education or experience or if
12 you conclude the reason given for the opinion are not
13 sufficient or sound, you can disregard the opinion
14 entirely.

15 Now, Ladies and Gentlemen, I will get into
16 more detail now, I charge you preliminarily that a
17 person's mere presence at the scene of the crime is not
18 sufficient in and of itself to prove that person guilty of
19 a crime. That persons presence where a crime is being
20 committed or mere association with the person who may have
21 committed a crime does not make that Defendant guilty of a
22 crime in and of itself. The burden is on the State to
23 prove every element of the crime charged and if you find
24 after reviewing all that evidence that the State has
25 proved that the Defendant was only present at the scene of

1 the crime and that the State has not proved beyond a
2 reasonable doubt actual participation in the crime then
3 you must find him not guilty. The law is that proof at
4 the scene of a crime again is not sufficient in and of
5 itself to find someone guilty.

6 I am going to talk to you now Ladies and
7 Gentlemen about these charges that the State has lodged
8 against the Defendant. We are going to talk about these
9 in a certain order, I've got to start somewhere so don't
10 think that I'm going to the first one for any
11 significance to it, I've just got to start somewhere.

12 With regard to all of these that I go
13 through I'll be using such terms just as the word
14 possession. I'll define that for you. I'll define the
15 word distributive. I will define the word manufacture. I
16 will define what criminal intent is. In the regard,
17 Ladies and Gentlemen, if I define those terms throughout
18 this charge those words mean the same thing regarding
19 which charge I'm talking about. I'll do the best I can
20 because I don't want to repeat myself because I've already
21 told you what those words meant.

22 The Defendant is charged with trafficking
23 in cocaine base. So, you're saying what's the State got
24 to prove. I'm going to tell you what the State will have
25 to prove. The State must prove beyond a reasonable doubt

State of South Carolina v. Leroy Clifton Gibbs, III 375

1 that the Defendant was knowingly in actual or constructive
2 possession or knowingly attempted to become in actual or
3 constructive possession of more than 10 grams of cocaine
4 base.

5 Now, the word possession, I just told you
6 about actual and constructive possession. To prove
7 possession, the State must prove beyond a reasonable doubt
8 that the Defendant had both the power and the intent to
9 control the disposition or use of the cocaine. Possession
10 may be actual or constructive. And the foregoing
11 definitions of actually constructive possession will apply
12 here in their entirety. Actual possession means that the
13 drug was in the actual physical custody of the defendant.
14 Constructive possession means that the Defendant had
15 dominion and control or the right to exercise dominion or
16 control over either the drug itself or the property in are
17 on which the drug was found. Mere presence at a scene
18 where drugs are found is not in and off itself sufficient
19 if ya'll can find that the defendant is guilty of that
20 offense. Now, actual knowledge of the presence of the
21 cocaine is, if you choose it to be, evidence of the
22 Defendant's knowledge and possession and that can be
23 inferred with the substance is found on the property under
24 the Defendant's control. That inferences that I've just
25 mentioned or simply evidentiary issues to be taken by you

1 in consideration along with other evidence in the case and
2 you are to give those the weight you think it should have.
3 Again, two or more persons can have joint possession of a
4 drug.

5 Possession of intent to distribute cocaine
6 the State must also prove beyond a reasonable doubt that
7 the Defendant intended to distribute cocaine. And again
8 the word distribute means to deliver other than by
9 administering or dispensing a drug. Back to intent and to
10 distribute. Intent maybe shown by acts and conduct that
11 the Defendant and any other circumstances from which you
12 could naturally and reasonably infer intent. And, again,
13 in determining whether the defendant had the intent to
14 distribute the cocaine, you can consider the circumstances
15 surrounding his alleged possession. You can consider the
16 amount of the substance alleged to have been possessed,
17 the manner in which it was allegedly possessed, the place
18 it was allegedly possessed and any other factors you think
19 are important and you must find that the Defendant did not
20 intend to have the cocaine solely for his own use.

21 Possession of more than one gram of cocaine creates an
22 inference that the Defendant possessed it with an intent
23 to distribute but that inference does not relieve the State
24 from proving beyond a reasonable doubt that the Defendant
25 did have the intent to distribute. The amount or the

1 weight is simply a evidentiary issue to be taken into
2 consideration by you along with other evidence and you
3 give that weight the weight you think it deserves.

4 Now, guess what Possession with Intent to
5 Distribute Cocaine. There is a lesser included component
6 of that. On the verdict form it walks you thought that.
7 If you find the State hasn't proven possession with intent
8 to distribute cocaine, you've got to decide whether or not
9 the evidence proves to you beyond a reasonable doubt
10 whether the Defendant had simple possession of cocaine.
11 And, again, Ladies and Gentlemen, the crime of possession
12 of cocaine and simple possession of cocaine contains all
13 of the elements of possession with intent to distribute
14 except the intent to distribute.

15 Now, Ladies and Gentlemen, the terms
16 knowingly and intentionally that I have used during the
17 course of this charge with regard to the requirement that
18 the State must use prove that the Defendant knowingly and
19 intentionally that I have used during the course of this
20 charge with regard to what the State must proof the
21 Defendant knowingly and intentionally possessed the drug,
22 I charge you the word, knowingly, means with knowledge,
23 consciously and not accidentally. The word intentionally
24 means willfully and intending the result that actually
25 occurred and not accidentally or involuntarily.

1 Now, intent as I will go into detail right
2 now to you. This is the last thing I'm going to talk
3 about, I promise. The word Intent on the part of a party
4 may be shown by acts and conduct and other circumstances
5 from which you may naturally and reasonably infer intent.

6 Now, in order to establish criminal liability
7 the State must prove the element of criminal intent beyond
8 a reasonable doubt. Criminal intent is always a matter
9 that must be determined by a jury by circumstances
10 surrounding the situation. There's no way that way that
11 medical science can, at least yet, dissect a person's
12 brain or look into it with a machine and say ah ah that
13 proves what she or he intended to do. So, the law says
14 that criminal intent may be inferred or derived from
15 circumstantial evidence. It's not necessary to establish
16 criminal intent by direct evidence but again it may be
17 established by circumstantial evidence in the same way any
18 other factors by taking into account the actions of the
19 parties and all of the facts and circumstances of the
20 case. Criminal intent, Ladies and Gentlemen, is a mental
21 state. It's a conscious wrongdoing. It's up to you to
22 determine what if anything the Defendant intended to do
23 based on the circumstances shown to have existed.

24 That concludes the academic part of the
25 charge. I'm going to talk to you a little bit more and

1 then you'll be free to go to your jury room.

2 Madam Forelady you don't' have any greater
3 authority then anybody in that jury room. You have been
4 given this job by me to make sure that the verdicts are
5 unanimous. Your are also to make sure that everyone who
6 wants to speak on particular issues has full right to do
7 that. You may have presided over a meeting before where
8 you used rules of order where you say okay that's enough
9 and we're going to move on. You don't have the right to
10 do that. In order words, you can't cut off the debate
11 when you think enough time has gone by. If someone
12 doesn't want to talk they just want to make their vote
13 known, nobody can make you talk. It is your
14 responsibility to make sure that the deliberations are
15 done in an orderly fashion. Also, if you have any
16 questions during the course of your deliberations there is
17 a note pad in there you write it down. You sign the note,
18 tap on the door and let the Bailiff know you've got a
19 question. The law says number one, if I can respond and
20 number two, how I can respond. You are not going to
21 receive any other evidence. You're not going to receive
22 any new information so I'll go out on a limb and say don't
23 ask for anything new, but if you have any questions I'll
24 certainly, don't be shy about sending a note out. Also,
25 if someone does have to use the restroom even though the

1 restroom is right there, wait until they come back before
2 you start talking again. Also, if anybody needs to use the
3 phone, I know what time it is. If somebody needs to use
4 the phone, first of all, you've got to get permission, if
5 somebody does leave the jury room for any reason you have
6 to stop and wait for that person to come back.

7 Now, Ladies and Gentlemen, finally, I'm not
8 concerned about what your verdicts are going to be. I do
9 want to make sure you understand that your job is really
10 just starting. The State of South Carolina and the
11 Defendant both expect that they are certainly entitled to
12 a fair and impartial verdict. The only way you can give
13 them what you have sworn to do is to make sure that you
14 discuss these issues clearly and logically and render
15 verdicts that speak the truth.

16 Now, what I'm going to let you do now is
17 get up and go back to the jury room. However, these rules
18 that I talk about frequently say this. You can't talking
19 yet because we've got to do two things when you're in that
20 jury room. I have to ask the lawyers if I said anything
21 incorrectly or if I left something out. Number two,
22 they've got to get with the court reporter and make sure
23 that all the exhibits are there. So, in the end, you've
24 got some things with you in the jury room. You've got your
25 collective evidence, you've got your common sense and

State of South Carolina v. Leroy Clifton Gibbs, III

381

1 you've got the charge in your mind that I've given to you
2 on the law. You take all of those things, put them
3 together and I'm sure you'll reach a verdict that speaks
4 the truth. Once you have completed the jury form, signed
5 it. Make sure that its unanimous. You tap on the door,
6 don't hand them the form but let them know that you have
7 reached a verdict and we will receive those very shortly.
8 Okay. Don't start talking yet. The alternate can stay
9 right there for the time being. The rest of you can go to
10 your jury room.

11 **(Jury exits courtroom 3:32 p.m.)**

12 The Court: Any exceptions or additions from
13 the State?

14 Mr. Brown: No, sir, Your Honor.

15 The Court: Any from the Defendant?

16 Mr. Brooks: No, sir.

17 The Court: Okay. Have you got everything
18 in order, Melissa?

19 Court Reporter: Yes, sir.

20 The Court: Have you got the verdict form.

21 All right. Ladies and Gentlemen, who were not directly
22 involved in the trial, just so you know. I will wait a
23 reasonable period of time for you do come back if you want
24 to hear a question or hear what the verdict is. If they
25 go past five the door to the outside locks. Otherwise, of

1 course, Mr. Gibbs will be in a holding cell to have him
2 back quickly. Thank you again gentlemen for the way you
3 tried the case. If you want to check with Melissa one
4 more time about the exhibits you can do that.

5 Mr. Meadors: Thank you, Your Honor.

6 The Court: Any objection to me relieving
7 the alternate?

8 Mr. Meadors: No, sir.

9 Mr. Brooks: No, sir.

10 The Court: You can relieve her.

11 Court Reporter: Judge, these are sealed so
12 that they can't open it.

13 The Court: I need to tell the jury that.
14 Mr. Brooks do you mind if I bring the jury back in and
15 tell them that?

16 Mr. Brooks: No, I'm fine with that Judge.

17 The Court: Why don't you have the whole
18 jury come in so that I can tell them that. They don't
19 even need to sit down, they can just stand there on the
20 carpet.

21 (Jury enters in court room)

22 The Court: YA'LL can just stand right out
23 front. No need to sit down, you'll be right back up
24 again. One more thing and then you can start
25 deliberating. There have been some substances that have

1 been testified to and they were somewhat loose in some
2 other containers, they have been put in a clear sealed
3 plastic bag. Don't open it up. If there is anybody who
4 wants to actually look at it, if I permitted, I could do
5 that in open court but it would mean opening up those bags
6 and putting what has been testified to so, if you'll just
7 follow that instruction. Other than that the Bailiff is
8 going to go into the room with the exhibits and the
9 verdict form and you can begin your deliberations. Thank
10 you. That means you can talk all you want.

11 **(Jury exits courtroom and deliberations begin 3:36**
12 **p.m.)**

13 The Court: All right. We'll take a break
14 for few minutes. You folks are all at ease. Mr. Gibbs you
15 can go back. We want do anything on this case outside of
16 your presence.

17 (There was a break taken)

18 (Back on the record)

19 **(Court's Exhibit Number 1 was marked)**

20 The Court: Okay. Marked as Court's Exhibit
21 One is a note from the jury signed by the foreperson. It
22 says can we get a copy of Mr. and Mrs. Gibbs testimony.
23 The short answer is they cannot get a copy. The long
24 answer is they can hear it in it's entirety if they want
25 or if they want a certain portion of it they can hear it

1 if they are able to identify that. Ms. Gibbs, according
2 to my clock, of course, I use the back clock, which is not
3 really accurate it was 3:58 p.m. yesterday that she
4 started her testimony, cross examination started at 4:25
5 and we finished at 4:26. So her's is about 50 minutes if
6 that's what they want to hear they can certainly hear it.
7 Mr. Gibbs stated this morning at 10:30. At 10:39 cross
8 examination was started and we took a recess at some point
9 and that resumed at some point after 10:54 and went on to
10 about 11:30. All right. Does the State have any input at
11 all on how I respond to this inquiry?

12 Mr. Meadors: No, sir.

13 The Court: Does the Defendant?

14 Mr. Brooks: No, sir.

15 (There was a break in the trial)

16 (Back on with the trial)

17 The Court: Bring the jury in, please.

18 (Jury enters court room at 3:58 p.m.)

19 The Court: Okay. I do have the notes,
20 Ladies and Gentlemen. Those have been marked as Exhibits.
21 Number One says can we get a copy of Mr. And Mrs. Gibbs
22 testimony and the second one says can we receive Officer
23 Dubose's testimony. Here's the answer to your specific
24 question. You will not be getting a copy. In other
25 words, it's not going to be typed up and sent back there

State of South Carolina v. Leroy Clifton Gibbs, III

385

1 to you. It's just not, time will not permit that. You
2 can listen to it played back. For your edification,
3 remember I told you I wrote down times and so forth. Ms.
4 Gibbs testimony is about 50 minutes yesterday. The
5 testimony of Investigator Dubose was by my account exactly
6 an hour yesterday. Mr. Gibbs testimony today was roughly
7 45 minutes to an hour. Now, all of those can be replayed
8 for you if you'd like to hear all those. In addition,
9 Investigator Dubose was recalled for about a minute or two
10 yesterday and replied for recall today. So there were
11 three instances of his testimony. Certainly, you may know
12 which one you want to hear again. I'll just tell you
13 this. If you want to hear all of those in their entirety,
14 we can make arrangements to do that. You will just come
15 out here and listen to it again. If there is anything
16 that you want pinpointed, we will do our best to pinpoint
17 that. I can't assume that from your questions. So, with
18 regard to all of these we can replay those in their
19 entirety or replay the parts that you specifically
20 identify. So, if you will just go back to your jury room.
21 If there is any refinement you want to make or any other
22 specific things you want let me know of if you just want
23 hear it all again we will play those things for you again.
24 Okay. Thank you.

25 (Jury leaves courtroom 4:00 p.m.)

1 The Court: Any objection to that?

2 Mr. Meadors: No, sir.

3 Mr. Brooks: No, sir.

4 The Court: All right. We will wait to hear
5 what they have to say. I'm going to stay in here for a
6 minute or two to see what they decide.

7 (There was a break).

8 (Court's Exhibit Number #3)

9 The Court: The third note from the jury and
10 that's Exhibit Number 3. They want to hear Kimberly Gibbs
11 testimony. We'll have that played back for them. Bring us
12 the jury.

13 (Jury enters courtroom 4:24)

14 The Court: All right. We are going to play
15 back Kimberly Gibbs testimony at this time.

16 (Kimberly Gibbs testimony is played back)

17 Kimberly Gibbs - Examination by Mr. Meadors:

18 Q: Ms. Gibbs, if you will please, speak in that
19 microphone, please, ma'am, just so the ladies
20 and gentlemen of the jury and this fine lady,
21 the court reporter can hear you and His Honor,
22 please, ma'am. Ms. Gibbs, tell the ladies and
23 gentlemen and this Court about you? Where were
24 you born?

25 A: In Manning, South Carolina.

1 Q: Say that again, please.

2 A: In Manning, South Carolina.

3 Q: Were you raised there?

4 A: No, I was raised in Sumter.

5 Q: Where did you go to Elementary School?

6 A: Wilder Elementary.

7 Q: Where did you go to middle?

8 A: Bates Middle.

9 Q: Where did you go to high school?

10 A: Sumter High.

11 Q: When did you get out of Sumter High?

12 A: 2005.

13 Q: What did you do after that?

14 A: Went into the Navy.

15 Q: Went into the Navy. Can you tell these folks
16 where you went. Where did you go to your basic?

17 A: In Illinois.

18 Q: In Chicago?

19 A: Uh-huh (affirmative response).

20 Q: How long were you there?

21 A: Basic was eight weeks.

22 Q: Where did you go after that?

23 A: Texas.

24 Q: Where did you go in Texas, specifically?

25 A: Wichita Falls, Air Force Base.

- 1 Q: What did you do there?
- 2 A: Construction, electrician..
- 3 Q: What specifically does that mean, Ms. Gibbs?
- 4 A: Climbing poles and doing electrical work?
- 5 Q: Climbing poles and doing electrical work?
- 6 A: Uh-huh (affirmative response).
- 7 Q: How long did you do that?
- 8 A: The whole time I was there.
- 9 Q: How long was that?
- 10 A: Two and a half years.
- 11 Q: After Wichita Texas, where did you go after that
- 12 while you were in the Navy?
- 13 A: San Diego, California.
- 14 Q: What did you do in San Diego?
- 15 A: The same thing.
- 16 Q: How long did you do that?
- 17 A: About a year and a half.
- 18 Q: At what point did you come back to South
- 19 Carolina?
- 20 A: In the middle of '07
- 21 Q: Middle of what?
- 22 A: '07.
- 23 Q: When did you meet the Defendant Clifton Gibbs?
- 24 A: When did I meet him?
- 25 Q: Yes, ma'am.

1 A: The beginning of 2005.

2 Q: And at some point did ya'll get married?

3 A: In 2006.

4 Q: Okay. So, based on what you just told us, you
5 were married but you were out in California in
6 the Navy?

7 A: Uh-huh (affirmative response).

8 The Court: You need to ...

9 Mr. Meadors: You need to say yes ...

10 The Court: You need to say yes or no, not
11 uh-huh, uh-uh, so she can get down what you're saying,
12 okay?

13 A: Okay.

14 Q: If you said this, I apologize. When did you
15 come back to South Carolina?

16 A: June of 2007.

17 Q: Okay. When you came back in June of 2007, where
18 did you live?

19 A: With the Defendant's family for a little while.

20 Q: Okay. That being Mr. Gibbs' family?

21 A: Yes.

22 Q: How long did you state there?

23 A: Couple of months.

24 Q: Ma'am?

25 A: Couple of months.

1 Q: Was that on Thomas Sumter Highway?

2 A: Yes.

3 Q: And this is 2007, do you all have a child
4 together?

5 A: Yes.

6 Q: When was that child born?

7 A: In March 2007.

8 Q: After Thomas Sumter Highway when you were with
9 his defendant and his, let me say your in-laws,
10 did you and the defendant move to another
11 residence?

12 A: ■ Branch Street.

13 Q: Who lived there?

14 A: Me, the defendant and my son.

15 Q: How long did you, the defendant and your son
16 reside at ■ Branch Street, Ms. Gibbs?

17 A: We stayed there. It wasn't long. I don't think
18 it was a year. It could have been a year, I'm
19 not quite

20 Q: Okay. After that, after ■ Branch Street, did
21 you Clifton Gibbs and your son move to another
22 residence?

23 A: Yes.

24 Q: Where was that?

25 A: ■ Madison.

- 1 Q: [REDACTED] Madison. How far is that from the
2 courthouse?
- 3 A: Not to far.
- 4 Q: In Sumter County?
- 5 A: Yes.
- 6 Q: Do you remember the month that you moved in?
- 7 A: It was April.
- 8 Q: April?
- 9 A: April.
- 10 Q: Of 2008?
- 11 A: Yes.
- 12 Q: Were you buying that home or renting that home?
- 13 A: Renting.
- 14 Q: You had you rented that home from, do you
15 remember the agency?
- 16 A: Prudential real estate.
- 17 Q: I'm sorry, ma'am, say it again.
- 18 A: Prudential real estate.
- 19 Q: Do you remember that you entered that lease in
20 April of '08?
- 21 A: Yes, sir.
- 22 Q: Who signed the lease?
- 23 A: I did.
- 24 Q: Was there a part of the lease, this particular
25 lease that you had to put in the lease who else

1 resided there?

2 A: Yes.

3 Q: Who did you put who else resided there?

4 A: My son and the Defendant.

5 Q: Your son and Mr. Gibbs, the Defendant?

6 A: Yes.

7 Q: And that's included in the lease?

8 A: Yes.

9 Q: Was that a month to month lease?

10 A: No, a year lease.

11 Q: So fair to say from April of 2008 to December
12 2008, you were residing at [REDACTED] Madison Avenue?

13 A: Yes, sir.

14 Q: Tell these folks where were you working?

15 A: U.S. Postal Service.

16 Q: I'm sorry. When you came back from California,
17 did you work some place else before you worked
18 at the Postal Service?

19 A: No, sir.

20 Q: When did you start working at the Postal
21 Service?

22 A: It was January.

23 Q: What was your route?

24 A: It went from Florence Highway, 401, all the way
25 to the Boulevard Road.

1 Q: Let me ask you about your day to day schedule.

2 What was your day to day schedule as a route
3 carrier, how many days a week would you work?

4 A: Between three to five days when necessary.

5 Q: I'm sorry ma'am. Can you say that again?

6 A: Three to five days when necessary.

7 Q: I'm sorry. I just can't hear you.

8 A: Three to five days when necessary.

9 Q: Three to five days when necessary. So, would
10 you work on Saturdays?

11 A: Sometimes.

12 Q: Well, tell me this way. If you didn't work on
13 Saturdays when did you work?

14 A: Mondays, Wednesdays.

15 Q: If you did work on a Saturday, when would you be
16 working?

17 A: On a Saturday?

18 Q: Yes, ma'am.

19 A: It would be from probably like 6, 6, 7 in the
20 morning to 3 or 4 in the afternoon.

21 Q: Okay. During this time period, specifically,
22 2008 and very specifically 2008 December of
23 2008, when you were working where was your
24 child?

25 A: With the Defendant.

1 Q: With the Defendant, Mr. Gibbs?

2 A: Yes.

3 Q: Did Mr. Gibbs have a job in December of 2008?

4 A: Not at the time.

5 Q: Now, I want to take you specifically to December
6 23rd of 2008, please, ma'am. Ms. Gibbs, you
7 don't want to be here, do you?

8 A: No.

9 Q: You don't want to be testifying, do you?

10 A: No.

11 Q: On December 23rd of 2008, were you at your house
12 at [REDACTED] Madison Avenue?

13 A: Yes, sir.

14 Q: Were you working that day?

15 A: No.

16 Q: Were you scheduled to work that day?

17 A: No.

18 Q: Who else was at your residence on December 23,
19 2008, specifically?

20 A: The Defendant and my son.

21 Q: Okay. The Defendant, Mr. Gibbs and your son.
22 And from April to May to June to July, August,
23 September, October, November, December, who
24 stated at [REDACTED] Madison Avenue?

25 A: Me, my son and the Defendant.

1 Q: Did anybody else stay there?

2 A: No, sir.

3 Q: That was your home, all of ya'll's home?

4 A: Yes, sir.

5 Q: (Counsel makes knocking noise). Did you hear a
6 knock on the door, December 23, 2008?

7 A: It was sometime that morning.

8 Q: Some time that morning, did you hear a knock at
9 the door?

10 A: I did.

11 Q: What were you doing?

12 A: Sleeping.

13 Q: As a result of that knock, what did you do?

14 A: Get up. Well, look through the blind and see
15 who it was. I went to the door and opened the
16 door.

17 Q: You got up, did you have a certain room that you
18 stayed in?

19 A: In the bedroom.

20 Q: Was it your room?

21 A: Yes.

22 Q: Was it the Defendant's room?

23 A: Yes.

24 Q: Was that the master bedroom?

25 A: Yes.

1 Q: You got up, you peeped through the window, what
2 did you see?

3 A: I saw Mr. Dubose along with some other people
4 behind him.

5 Q: After that Ms. Gibbs what did you do?

6 A: I put on some clothes and went to the door.

7 Q: Did Mr. Dubose tell you I've got some arrest
8 warrants for Mr. Gibbs?

9 A: Yes.

10 Q: As a result of that, did you tell him that he
11 was here?

12 A: Yes.

13 Q: And did you tell him he could come in?

14 A: Well, Mr. Gibbs was behind me, once he saw him
15 he came and got him.

16 Q: When he was behind you, Mr. Gibbs, you mean he
17 was behind you?

18 A: Yes. He saw him around me.

19 Q: And Mr. Dubose came in the house and did he
20 arrest Mr. Gibbs?

21 A: Yes.

22 Q: Where were you when that happened?

23 A: I was by the door.

24 Q: Okay. What happened to Mr. Gibbs then, was he
25 taken away.

1 Mr. Dubose: If I may approach, please,
2 Judge.

3 The Court: Yes, sir.

4 Q: I'm going to show you what's marked as State's 1
5 for identification. After Mr. Dubose, maybe
6 some other folks that came in and you said that
7 the defendant was arrested, did Mr. Dubose ask
8 you if it was okay if he searched the residence?

9 A: Yes, he asked me could he bring in the dog to
10 search for any drugs? I told him that was okay.

11 Q: Did you orally tell him that's okay, Ms. Gibbs?

12 A: Yes.

13 Q: Did you also sign a sheet saying it's okay, you
14 can come in and search my house.

15 A: I didn't sign a sheet.

16 Q: Did you sign it at some point?

17 A: Uh-huh (affirmative response).

18 Mr. Meadors: And again, as the Judge
19 instructed, no offense, but you've got to say yes or no
20 just so the court reporter can take it down.

21 A: Yes.

22 Q: And, again, I'm showing you State's 1 for I.d.
23 Sumter County Consent to Search, is that your
24 signature down there?

25 A: Yes, sir.

1 Q: And you wrote there?

2 A: Yes, sir.

3 Q: Is it printed above there Kimberly Gibbs?

4 A: Yes, sir.

5 Q: When you signed, you consented to the search of
6 your premises?

7 A: Yes, sir.

8 Q: Does it name the premises [REDACTED] Madison Drive?

9 A: Avenue, but yes.

10 Q: I'm sorry. It says Drive but that was residence,
11 [REDACTED]?

12 A: Yes.

13 Mr. Meadors: Beg the court's indulgence.

14 The Court: All right.

15 Q: Now, Ms. Gibbs.

16 A: Yes, sir.

17 Q: Did Officer Dubose ask you, after they had
18 searched, whether or not he could look in your
19 purse?

20 A: Well, there was a female officer.

21 Q: Okay. Did an officer ask you if they could look
22 in your purse?

23 A: Yes.

24 Q: Did you say they could?

25 A: Yes. It was sitting on the table the whole

1 time.

2 Q: And did you say they could?

3 A: Yes, sir.

4 Q: Had you put any illegal substance in your purse?

5 A: No, sir.

6 Q: And, in your presence there, did the officers
7 say they had found any illegal substance in your
8 purse, did they tell you it appeared to be?

9 A: Yes, sir.

10 Q: That was found in your purse?

11 A: Yes.

12 Q: What did you tell them when they said this
13 appears to be an illegal substance in your
14 purse. What did you tell them?

15 A: It wasn't mine.

16 Q: Did you give them an explanation for how it must
17 have gotten in there?

18 A: Yes, sir.

19 Q: What did you tell them?

20 A: I told them he must have put it there.

21 Mr. Brooks: Objection, Your Honor.

22 Speculation. There's been no first hand.

23 Q: Was it in there when you came in the house?

24 When you put your purse down, did you have any
25 illegal substance in that purse?

1 A: No, sir.

2 Q: After the knock on the door, was your purse with
3 you when you answered the door?

4 A: No, sir.

5 Q: Was the Defendant in reach of that purse when
6 you went to answer the door for Dubose?

7 A: Yes, sir.

8 Q: And the next time you saw the purse is when the
9 officers told you there was an illegal substance
10 in there?

11 A: Yes, sir.

12 Q: And your explanation to them was he must have
13 put it in there?

14 A: Yes, sir.

15 Q: Is that because you didn't put it in there?

16 A: Yes, sir.

17 Q: Was there anybody else in your house?

18 A: No, sir.

19 Q: Do you believe your son put it in there?

20 The Court: Objection is overruled. You
21 can cross-examine on that.

22 Q: Did you believe your son put it in there?

23 A: No, sir.

24 Q: So, you gave consent to search your purse, then
25 you said the Defendant must have put it in

1 there, correct?

2 A: Yes, sir.

3 Q: Were those your drugs, Ms. Gibbs?

4 A: No, sir.

5 Q: That's your kitchen, isn't it?

6 A: Yes, sir.

7 Q: I mean --- well, it's ya'll's kitchen, right?

8 A: Yes, sir.

9 Q: But as the woman of the house, you cook in the
10 kitchen, correct?

11 A: Yes.

12 Q: And if something else is going on in the kitchen
13 are you aware of it?

14 A: Yes, sir.

15 Q: All right. Then I want to ask you specifically,
16 Ms. Gibbs, were you aware during this time
17 period specifically in December or between at
18 least between April and December of 2008, did
19 you ever see the Defendant cooking crack cocaine
20 in the kitchen at [REDACTED] Madison Avenue? Did you
21 observe him turning cocaine into crack?

22 A: Yes, sir.

23 Q: And it's tough to do, isn't it.

24 A: Yes, sir.

25 Q: Did you say, yes, sir?

1 A: Yes, sir.

2 Q: Did you make cocaine into crack?

3 A: No, sir.

4 Q: Did the defendant make cocaine into crack
5 cocaine in the kitchen at [REDACTED] Madison Avenue?

6 A: I'm not sure if he processed it.

7 Q: Did you see him attempt to do that?

8 A: Yes, sir.

9 Q: You don't even know the process?

10 A: No.

11 Q: Had you ever sold drugs from [REDACTED] Madison Avenue?

12 A: No, sir.

13 Q: Were you aware that the Defendant has sold drugs
14 from [REDACTED] Madison Avenue?

15 Mr. Brooks: Objection, Your Honor.

16 The Court: Come up, please.

17 (Counsel approach, off the record)

18 The Court: Mr. Brooks, I'll overrule your
19 objection. Go ahead Mr. Meadors, you can restate your
20 question, if you'd like.

21 Q: Did the Defendant, Mr. Gibbs, sell drugs from
22 [REDACTED] Madison Avenue?

23 A: From what I heard, yes.

24 The Court: That's not ...

25 Q: Do you know of your own knowledge whether he

- 1 sold drugs from [REDACTED] Madison Avenue?
- 2 A: Yes.
- 3 Q: That's a yes?
- 4 A: Yes.
- 5 Q: Ms. Gibbs, were you aware that there were drugs
- 6 in that house on December 23, 2008?
- 7 A: Not really aware of it, but ...
- 8 Q: Explain that to me.
- 9 A: I don't know of any reason to put drugs in the
- 10 house if he was doing it.
- 11 Q: I don't understand. Did you know there were
- 12 drugs in the house on December 23, 2008?
- 13 A: No.
- 14 Q: The drugs in the cabinet we've seen, I think
- 15 State's 8. Had you seen drugs in that cabinet
- 16 specifically cocaine or crack before along with
- 17 baking powder?
- 18 A: I saw them before; yes, sir.
- 19 Q: During this saw time period?
- 20 A: You mean this date or ...
- 21 Q: On or about, during that time period, you say
- 22 you did see drugs and/or baking powder in that
- 23 cabinet at [REDACTED]?
- 24 A: Yes, sir.
- 25 Q: Were those yours?

1 A: No, sir.

2 Q: Were they the defendants?

3 A: Had to have been.

4 Q: When you say had to have been. Was anybody else
5 living there?

6 A: No, sir.

7 Q: Was there another man there?

8 A: No, sir.

9 Q: Was there another woman there? I don't mean
10 anything by that but was there any other adult
11 there, let me just say that.

12 A: No, sir.

13 Q: Just the three of Ya'll?

14 A: Correct.

15 Mr. Meadors: Can you mark this?

16 Court Reporter: Yes, sir. Exhibit 22.

17 The Court: 22?

18 Court Reporter: Yes, sir.

19 (State's Exhibit 22 was marked for identification
20 purposes)

21 Mr. Meadors: May I approach?

22 The Court: Yes, sir.

23 Q: Ms. Gibbs, I asked you about this a little while
24 ago but I couldn't find it quite frankly. This
25 is State's 22. I'd asked you about a lease that

1 you had entered regarding the residence at [REDACTED]
2 Madison Avenue. Do you recognize this?

3 A: Yes.

4 Q: Is that your signature at the end of the leases?

5 A: Yes, sir.

6 Q: Is this the lease you were referring to?

7 The Court: Speak into the microphone.

8 A: Yes, sir.

9 Mr. Meadors: Your Honor, we'd offer
10 State's 22.

11 The Court: Mr. Brooks?

12 Mr. Brooks: No objection, Your Honor.

13 The Court: State's 22 is in.

14 (State's Exhibit Number 22 was entered into
15 evidence)

16 Q: On page 2 of number 7, it has occupants, who is
17 listed?

18 A: Kimberly, Leroy Gibbs and their son.

19 Q: I asked you earlier and we talked briefly about
20 consent. After you had consented, did the
21 officers also come back and show you items that
22 had been taken from the residence?

23 A: Yes, sir.

24 Q: Did you sign the consent and below those items,
25 also. Is that your signature?

1 A: Yes.

2 Q: Is that below what is marked as description of
3 property removed?

4 A: Yes.

5 Mr. Meadors: Your Honor, we now offer
6 State's 1.

7 The Court: Any objection to State's 1?

8 Mr. Brooks: No objection.

9 The Court: Okay. One is in.

10 Mr. Meadors: Your Honor, a moment, please.

11 The Court: Okay.

12 Q: When you would be at work, you said the
13 Defendant, Mr. Gibbs would be the babysitter?

14 A: Yes, sir.

15 Q: So, you would be gone for hours at the time when
16 he would be at home for hours with the child?

17 A: Yes, sir.

18 Q: That would happen every time you went to work?

19 A: Yes, sir.

20 Q: And you were not arrested on the 23rd, is that
21 correct?

22 A: No, sir.

23 Q: Were you subsequently arrested on December 29th?

24 A: Yes, sir.

25 Q: Were these your drugs?

- 1 A: No, sir.
- 2 Q: Do you deal or distribute drugs?
- 3 A: No, sir.
- 4 Q: Who was paying the bills for you and your child
5 during that time period?
- 6 A: I was.
- 7 Q: Did the defendant ever help with anything?
- 8 A: When necessary.
- 9 Q: You had to be drug tested at the Post Office,
10 didn't you?
- 11 A: Yes, sir.
- 12 Q: You ended up not having that job after this,
13 correct?
- 14 A: Yes, sir.
- 15 Q: Tell these folks after this, where are you
16 working now?
- 17 A: McDonald's.
- 18 Q: Ma'am?
- 19 A: McDonald's.
- 20 Q: Which one.
- 21 A: Highway 15.
- 22 Q: What is your position?
- 23 A: Management.
- 24 Q: You're the manager?
- 25 A: Yes, sir.

1 Q: After this incident, did you move in with your
2 mother?

3 A: Yes, sir.

4 Q: Did you go back to school?

5 A: Yes, sir.

6 Q: Did you get another degree?

7 A: Yes, sir.

8 Q: In what?

9 A: Associates in accounting.

10 Q: Is Leroy Clifton Gibbs, III, that lived with you
11 and your son at [REDACTED] Madison Avenue on December
12 23, 2008 in the courtroom?

13 A: Yes, sir.

14 Q: Would you please point him out?

15 A: Right there (pointing gesture to Defendant).

16 Mr. Meadors: Beg the court's indulgence.

17 Thank you.

18 Q: After this arrest, did the defendant ever tell
19 you, I'm sorry I got you into this?

20 A: Yes, sir.

21 Q: He did?

22 A: Yes, sir.

23 Mr. Meadors: That's all I have. Thank
24 you.

25 The Court: Mr. Brooks.

1 Kimberly Gibbs - Cross by Mr. Brooks:

2 Q: Ms. Gibbs, on this day that the police came they
3 found four containers of mail, undelivered mail,
4 is that correct?

5 A: Yes, sir.

6 Q: And you were supposed to work that day, isn't
7 that correct?

8 A: No, sir. Suppose to be the next day.

9 Q: Suppose to be the next day?

10 A: Yes, sir.

11 Q: As a postal carrier, do you normally take other
12 folks mail home with you?

13 A: No.

14 Q: Yet you had four containers of other folks mail
15 at home, is that correct?

16 A: Yes, sir.

17 Q: You were suppose to have delivered that mail, is
18 that correct?

19 A: Yes, sir.

20 Q: As far as the post office was concerned, they
21 thought you had delivered that mail, is that
22 correct?

23 A: Yes, sir.

24 Q: So, you let them have the impression that you
25 had delivered that you had delivered other folks

- 1 mail, when you had not, is that correct?
- 2 A: Yes, sir.
- 3 Q: So, you in effect had lied to your employer?
- 4 A: Yes, sir.
- 5 Q: And you admit to that, is that correct?
- 6 A: Yes, sir.
- 7 Q: When the police came out there they also called
- 8 your employer and they came out there and found
- 9 all that mail, isn't that correct?
- 10 A: Yes, sir.
- 11 Q: That's one of the reasons you got terminated
- 12 from your job?
- 13 A: No, sir.
- 14 Q: Well, the fact that you had other folks mail,
- 15 four containers full, that didn't have any
- 16 relevance to your losing your job?
- 17 A: No, sir.
- 18 Q: Okay. Your employer had thought you had
- 19 delivered that mail, right?
- 20 A: Yeah.
- 21 Q: You told them that you had delivered it, right?
- 22 A: I hadn't told them anything.
- 23 Q: You didn't tell them anything?
- 24 A: No.
- 25 Q: You took the mail from the post office right?

1 A: Yes, sir.

2 Q: You were suppose to deliver it?

3 A: Right. It was going to get delivered.

4 Q: I'm sorry.

5 A: It was going to get delivered.

6 Q: It was going to get delivered?

7 A: Right.

8 Q: Was it supposed to be delivered the day before?

9 A: Yes.

10 Q: And you didn't do it?

11 A: Right.

12 Q: And you only worked three to five days when
13 necessary, is that correct? You paid all the
14 bills.

15 A: Right.

16 Q: And your husband, he helped you when necessary?

17 A: Right.

18 Q: You guys had lived at this residence since
19 April. That was about eight months prior to the
20 police coming out there.

21 A: Right.

22 Q: You got charged with this offense to, isn't that
23 correct?

24 A: Yes, sir.

25 Q: Did they promise you anything to get you to

1 testify here today?

2 A: No, sir.

3 Q: So you're not expecting to get anything out of
4 this today?

5 A: No, sir.

6 Q: And you're still charged with that?

7 A: Yes, sir.

8 Q: And you understand what you're facing with these
9 charges?

10 A: Yes, sir.

11 Q: Okay. You are mad a Mr. Gibbs, right?

12 A: No, sir.

13 Q: You're not mad at him?

14 A: No, sir.

15 Q: Mr. Meadors had asked you about the fact that
16 you had this job at the post office and you said
17 you don't have it anymore, is that correct?

18 A: Correct.

19 Q: And now, you're working at McDonald's?

20 A: (Nods head affirmatively).

21 Q: Is that a yes?

22 A: Yes.

23 Q: You would consider the post office being a
24 better job than working at McDonald's, isn't
25 that correct?

1 A: Yes.

2 Q: And you feel Mr. Gibbs is responsible for you
3 not working at the post office anymore, isn't
4 that correct?

5 A: No, sir.

6 Q: No, sir?

7 A: No.

8 Q: So, you don't blame him in anyway? Okay.
9 Because you blame yourself for lying to your
10 employer for not having that job, right?

11 A: Right.

12 Q: Okay. And I'm sure you would tell this jury,
13 you're not lying here today, right?

14 A: Right.

15 Q: You're telling the truth today?

16 A: Yes.

17 Q: Like you were telling the truth about delivering
18 the mail?

19 A: Yes.

20 Q: That you didn't deliver?

21 A: Nobody didn't say anything about it.

22 Q: Okay. But you do acknowledge that you were
23 being untruthful to your employer?

24 A: Yes.

25 Q: And, you do acknowledge that that purse was your

1 purse?

2 A: Yes.

3 Q: That the drugs were found in?

4 A: Yes.

5 Q: This was your residence that you signed the
6 lease for, is that correct?

7 A: Correct.

8 Q: I mean, Mr. Gibbs didn't sign this lease is that
9 right?

10 A: Right.

11 Q: You were present when they took him away, isn't
12 that correct?

13 A: Correct.

14 Q: Do you recall whether or not this was a weekday
15 that the police came out there or was it a
16 weekend?

17 A: I'm not sure.

18 Q: But it was a day that you were supposed to be at
19 work?

20 A: No.

21 Q: Did you lose your residence because of this
22 arrest?

23 A: Yes.

24 Q: Is that why you took up residence with your
25 mother?

1 A: Yes.

2 Q: Do you blame your husband for that too?

3 A: Yes.

4 Q: You and your husband were in the bed when the
5 police came there?

6 A: Yes.

7 Q: And you went to the door?

8 A: Yes.

9 Q: You went to the window first and looked outside
10 the window?

11 A: Yes. I looked outside the window and then I
12 went to the door when I saw the police.

13 Q: The police came in and you allowed them to come
14 in, you gave them permission to come in, is that
15 correct?

16 A: Well, they came in, they saw something him in
17 there.

18 Q: Okay. And you told the police that they could
19 search around the house, is that correct?

20 A: Yes.

21 Q: And as they searched, your husband was already
22 gone, isn't that correct?

23 A: Yes.

24 Mr. Brooks: Beg the court's indulgence,
25 Your Honor.

1 Q: Officer Dubose indicated there was a smell of
2 marijuana, you smelled it too, right?
3 A: No, he found it once the dog came in.
4 Q: Okay. Well, he had indicated that he smelled
5 marijuana, did you smell marijuana?
6 A: No.
7 Q: You didn't smell marijuana?
8 A: No.
9 Q: Had you been smoking marijuana?
10 A: No.
11 Q: Had you ever used marijuana?
12 A: No.
13 Q: At all?
14 A: No.
15 Q: Had you used any illegal substance such as crack
16 or cocaine while you stay at the residence?
17 A: No.
18 Q: At all?
19 A: No.
20 Q: Had you take drug test as part of your
21 employment?
22 A: Yes.
23 Q: How often did you take drug test?
24 A: Just before I was hired.
25 Q: Is that the only drug test you took?

1 A: Ye.

2 Q: How long did you work for the post office?

3 A: Up until December. From January to December.

4 Q: January of 2008.

5 A: Til December.

6 Q: Til December and you took one drug test prior to
7 employment?

8 A: Yes, sir.

9 Q: No other drug test during that year?

10 A: No, sir.

11 Q: Okay.

12 Mr. Brooks: No further questions.

13 The Court: Redirect?

14 Mr. Meadors: No, sir.

15 The Court: Thank you, ma'am. You can step
16 down.

17 (End of Kimberly Gibbs replayed testimony)

18 The Court: Okay. You may return back to
19 the jury room to continue your deliberations.

20 (Jury excused from courtroom)

21 (There was a break)

22 (Back on)

23 (Court's Exhibit Number #4)

24 The Court: The fourth note from the Jury
25 and that's Exhibit Number 4 if you want to look at it.

1 They say they do not want to hear Mr. Gibbs testimony.
2 That's what it says. They have the authority at this
3 point, so that's what they said and they are continuing
4 with their deliberations. Show that to your client. Any
5 comments from the State?

6 Mr. Meadors: No, sir.

7 The Court: Anything Mr. Brooks?

8 Mr. Brooks: No, sir.

9 The Court: You can remain at ease and we
10 will continue to wait and Mr. Bradley will make sure the
11 jury understands they can continue their deliberations.

12 Bailiff: Yes, sir.

13 **(There was a break)**

14 **(Back on)**

15 The Court: Mr. Brooks, Mr. Meadors, Mr.
16 Brown, the jury does have another question. It's Court's
17 Exhibit Number 5. And it states, I'll just read it. It
18 says that Court's definition of possession. I assume that
19 means they want to define possession. Any input from the
20 State?

21 Mr. Meadors: Nothing.

22 The Court: Any from the Defendant?

23 Mr. Brooks: No, sir.

24 The Court: Okay. I will define possession
25 to include all the parts of that and while the jury is out

State of South Carolina v. Leroy Clifton Gibbs, III

419

1 here I will just tell them if they want, they don't have
2 to but if they want we can order something for them to
3 eat. That will only be done if that's what they want and
4 we will have a majority vote on that. Okay. All right.
5 You can bring in the jury.

6 (Jury enters courtroom 5:14 p.m.)

7 The Court: All right. Ladies and Gentlemen
8 I do have the note and evidentially according to the note
9 you'd like me to define the term possession again. All
10 right. I'll do that. I'll pull it up on my resource here
11 and make sure I'm in the right place. Okay. Ladies and
12 Gentlemen, in the context of the law as I've charged it to
13 you the term possession has been used and I'll define that
14 in all regards if there is a issue pertaining to
15 possession that is something that the State must prove
16 beyond a reasonable doubt. Possession may be either actual
17 or constructive. I want to make sure that I get it
18 completely. To prove possession whether you are talking
19 about crack cocaine or cocaine, to prove possession the
20 State must prove beyond a reasonable doubt that the
21 Defendant had both the power and the intent to control the
22 disposition or use of the substance whether it be either
23 one of those or both. Possession may be either actual or
24 constructive. Actual possession means that the drugs was
25 in the actual physical custody of the Defendant.

1 Constructive possession means that the Defendant had
2 dominion and control or the right to exercise dominion and
3 control over either the drug itself or the property in or
4 upon which the drug was found. Mere presents at the scene
5 where drugs are found is not enough in and of itself to
6 prove possession. Actual knowledge of the presence of the
7 drug may be considered by you as to evidence or the
8 Defendants intent to control it's disposition or use and
9 the Defendant's knowledge and possession may be inferred
10 when a substance is found in or on property under the
11 Defendant's control. However, those inferences are simply
12 evidentiary issues to be taken into consideration by you
13 along with other evidence in the case and you give those
14 the weight that you determine that you have. Further, in
15 finding two or more people may have joint possession of a
16 drug.

17 I believe that concludes the definition of
18 possession that you have asked me for. However, if you
19 think it is lacking in any way and if there is something
20 else you want to hear, simply let me know the same way
21 you've let me know so far.

22 Also, if you could just take a poll and
23 this will be a majority decision on the part of the jury.
24 If you want something to eat we can get it up here. We
25 just need a little lead time to get it up here for you,

State of South Carolina v. Leroy Clifton Gibbs, III

421

1 okay. If you will just tap on the door in the next few
2 minutes and let me know the answer to that question then
3 we can do what we have to do. Okay. Thank you.

4 (Jury exits courtroom)

5 The Court: Any objections or any other
6 comments from the State?

7 Mr. Brown: None, Your Honor.

8 The Court: From the Defendant?

9 Mr. Brooks: No, Your Honor.

10 The Court: Okay. Thank you.

11 (Jury continues deliberations 6:09)

12 (Back on 6:40 p.m.)

13 (Court's Exhibit Number 6 was marked)

14 The Court: We have another note from the
15 jury. This is Court's Exhibit Number 6. It says, the
16 jury was unable to make a decision on any of the charges.
17 Let's put it this way. If YA'LL want to leave it up to me
18 I'll handle it, but if you agree that there should be an
19 immediate mistrial now, I'll declare a mistrial. If
20 either one of you wants an Allen charge, I'll give it.

21 Mr. Brooks: What's ya'll's position?

22 Mr. Meadors: Leave it up to him.

23 Mr. Brooks: That's fine, Judge, whatever
24 you decide.

25 The Court: All right. I'm going to declare

1 a mistrial --- Again, either one of you wants a Allen
2 Charge I'll give it. If YA'LL are leaving it up to me
3 after three hours I think the jury could have made a
4 decision if they were going to make it. But, I'm going to
5 leave it up to YA'LL.

6 Mr. Meadors: What does the note say?

7 The Court: It says, the jury is unable to
8 make a decision on any of the charges.

9 Mr. Meadors: We would request the Allen
10 charge.

11 The Court: All right. I'll give an Allen
12 Charge. Okay. Bring me the jury.

13 (Jury enters courtroom 6:41 p.m.)

14 Bailiff: Your Honor, we have all the jurors
15 present in the courtroom.

16 The Court: All right. Ladies and
17 Gentlemen, you stated in your note that you are unable to
18 make a decision on any of the charges. What I'm going to
19 do is talk to you a few minutes. As I mentioned to you
20 earlier what I'm required to do right now is talk to you.
21 I'm not going to take long and I'm not trying to hold any
22 sledge hammer over your head but I'm going to explain some
23 things to you. As I instructed you earlier, and obviously
24 you've taken that to heart the verdicts that you reach in
25 this case have to be unanimous. In other words, all of

1 you have to agree. When something is in dispute it's a
2 lot of times hard to get two people to agree much less
3 twelve people. And in most cases, absolute certainty
4 can't be reached or expected and that applies to a jury
5 verdict too. However, obviously you've been deliberating
6 for a little over two and a half hours, almost three and I
7 certainly am not questioning your commitment to reach a
8 verdict in this case but I do want to remind you that you
9 do have a duty within your good conscious to make every
10 reasonable effort to reach unanimous verdicts.

11 In doing that obviously you probably have
12 been doing you should consult one another, explore your
13 differences and try to find some type of way to reach
14 unanimous verdicts in the case. Express your own views,
15 listen to the views of the other people who may disagree
16 with you. The majority shall listen to the minority. I
17 have no clue and I don't want to know where you stand. The
18 majority should listen to the minority and the minority
19 should listen to the majority and discuss all your
20 differences with a open mind. Even though your verdict
21 has to be unanimous, every single one of you has a right
22 to your own opinion as to what the evidence has or has not
23 proven. The verdict that you agree to must be your own
24 verdict and it must be the result of your convictions.
25 Not necessarily yielding to the will of another person and

1 you shouldn't give up those firmly held beliefs simply to
2 be in agreement with the other people on the jury.

3 Now, I know you understand that you have to
4 consider respecting opinions of other folks on the jury.
5 What I want you to do is lay all outside influences or any
6 outside matters and re-examine the questions before you
7 that are law and the evidence in the case and here is why.
8 If you're not able to reach a verdict in this case, the
9 same lawyers will come forward with the same witnesses
10 with a different jury, present the same evidence over
11 again and the issues will be put to another jury for
12 determination at some point in the future. And I
13 certainly don't have any reason to suspect that any other
14 jury would be anymore conscientious and pay any more
15 attention than you have throughout this trial process.
16 I'm going to stop after I say this. You've been selected
17 from a jury pool just in the exact same matter as another
18 jury will be selected in this case. And, again, there's
19 no reason for me to suspect that anymore intelligent or
20 impartial or conscientious juror will be selected in the
21 future.

22 Here's what I would like for you to do.
23 There's no time table on this. If you get in there and
24 thirty seconds your decision is the same, that's fine.
25 What I would like for you to do is to simply go back in

State of South Carolina v. Leroy Clifton Gibbs, III

425

1 the jury room and see if you have any common ground and if
2 you do continue to deliberate. If you don't, you signal
3 just like you did a few minutes ago and I'll take care of
4 it at that time. All right. Thank you very much. Kindly
5 go to your jury room. If you want to continue
6 deliberating after you discuss what I just talked to you
7 about, I'll get you another form because I wrote on this
8 one.

9 (Jury excused from courtroom 6:47)

10 The Court: Okay. So any thing to the
11 Allen charge, Mr. Brooks?

12 Mr. Brooks: No, sir.

13 The Court: Mr. Meadors?

14 Mr. Meadors: No, sir.

15 The Court: Okay. There's a case called
16 Buff vs. Department of Transportation, if they come back
17 again I kind of have a feeling what I'm going to do if
18 they come back again if they are not able to reach a
19 verdict, I'm supposed to make my own judgment based on
20 their body language and demeanor as to whether or not I
21 think they can continue.

22 Mr. Meadors: We'll stay right here.

23 The Court: Stay right here. Mr. Gibbs,
24 we'll have you back out shortly.

25 (There was a break in the trial)

1 (Court's Exhibit Number 7)

2 The Court: Okay. Everyone is back in the
3 courtroom. Exhibit Number 7. We the jury are unable to
4 come to a unanimous decision in this case. Under Buff vs.
5 DOT, I'm required to diplomatically discuss with the jury
6 whether further deliberations could be beneficial. The
7 juries consent to resume or discontinue is determined
8 either expressly or implied by its response to my
9 comments. The judge need not advise the juror that their
10 consent to further deliberations is required. Again, if
11 both of you want me to immediately require a mistrial,
12 I'll do so. If either of you want me to diplomatically
13 discuss, that will take about ten seconds. I'll be glad to
14 hear from the State and the Defendant.

15 Mr. Meadors: We'll be happy with whatever
16 you do, Your Honor.

17 The Court: Mr. Brooks? All right. Mr.
18 Brooks.

19 Mr. Brooks: I'm kind of thinking giving
20 them more time isn't going to help us with this case.

21 The Court: All right. Bring in the jury,
22 please.

23 (Jury enters courtroom 6:58 p.m.)

24 Bailiff: Your Honor, we have all the jurors
25 back in the courtroom.

1 The Court: I've got one question for you
2 madam forelady and the other folks YA'LL can chimp in at
3 least with your heads. Do you think anymore time is going
4 to be of assistance in you reaching an unanimous verdicts?

5 Forelady: I don't think so.

6 The Court: Okay. I am going to declare a
7 mistrial in this case and, of course, Ladies and
8 Gentlemen, in layman's terms it's a hung jury. That is
9 what I am declaring this trial to be. The case will be put
10 on the docket at the next term of court according to the
11 schedule of the solicitor and probably be Mr. Brooks, of
12 course. You are released. Does anybody need a work
13 excuse? If you do those will be out in the hall for you.
14 One final thing there will be some folks who will take you
15 to your car if you would like. So, don't worry about that
16 if you would like. I'm going to instruct the lawyers and
17 any of the witnesses and, of course, the Defendant and any
18 of the folks who are sitting out there they are not to
19 have any discussions with you as you are departing. From
20 now on you can talk about this case all you want. This
21 might be the last thing in the world you want to talk
22 about so you don't have to. If you want to talk about it,
23 you can do it. If you don't you don't have to. If
24 somebody wants to talk to you about and you say look a
25 here I don't want to talk about it and they persist you

1 get their name and then you call the clerk's office and
2 tell Mr. Campbell that they persisted in talking with you
3 and then he will give me their name and then I'll bring
4 them up in front of me to get them to explain why, okay.
5 All the folks in here have heard that too. If they ask
6 you a question and you say leave me alone and they don't
7 figure out who it is and you let me know.

8 Okay. Does anybody have any questions
9 about anything under the sun? Okay. Thank you. I do
10 appreciate your time, your effort and especially your
11 patience. This is a difficult process and it's one that
12 we go through probably twenty or thirty weeks out of the
13 year and I am glad that you were at least able to be a
14 part of it. You may appreciate that a little bit more
15 maybe later on. Thank you.

16 (Jurors are excused from the Courtroom)

17 The Court: Mr. Brown, Mr. Meadors, Mr.
18 Brooks, YA'LL stand at ease for just a second. Of course,
19 Mr. Gibbs you are released at this point. Sometimes when
20 they take people into custody in the middle of a trial
21 they secure certain property, wallets and so forth, give
22 that back to him. Do you need like a receipt or
23 something. I'll leave that up to you Mr. Gibbs. Your
24 bond, I assume there was a surety bond?

25 Mr. Brooks: He told me a combined bond,

1 \$60,000.00.

2 The Court: Those bonds remain in place.

3 I'm going to add in place and this is something I
4 typically do so don't imply anything by it, I'm not saying
5 you are going to do anything. If we ever have a mistrial,
6 I always issue what is called a no-contact Order between a
7 defendant and any adverse witnesses. Of course, I doubt
8 you are going to contact Mr. DuBose, specifically in this
9 case, Kimberly Gibbs. Now, if you have contact with her,
10 you can have contact with her concerning your child. But
11 here are specifics. Do not harass, bother or molest her
12 in any way. Okay. Does that make sense?

13 Mr. Gibbs: Yes, sir.

14 The Court: I know that you've got a child
15 and you may visit that child on occasion or very
16 frequently. Do you all live together?

17 Mr. Gibbs: Off and on.

18 The Court: Off and on. Okay. Because I
19 really take all this seriously if something happens I
20 don't want it on my conscious. So, Mr. Meadors and Mr.
21 Brown if you can communicate with her over the weekend of
22 however you see fit, and let her know I want her input on
23 such a restriction.

24 Mr. Meadors: Until then are you ordering
25 her to stay away from him, Your Honor?

1 The Court: Is that going to - are you going
2 to be seeing her this weekend?

3 Mr. Gibbs: Yes, sir.

4 The Court: Are ya'll living together this
5 weekend?

6 Mr. Gibbs: I can't say, sir.

7 The Court: I'm going to instruct you stay
8 with your momma since you said you live with here anyway.
9 Okay. This weekend. I'll be here next week. You get with
10 Mr. Brooks, Mr. Brooks you get with Mr. Brown and Mr.
11 Meadors and I'll nail this down on Monday, okay?

12 Mr. Gibbs: Yes, sir.

13 The Court: In the meantime, you know, how
14 things go south. Okay. You're instructed to stay away
15 from her over the weekend.

16 Mr. Meadors: On the record, it is the
17 State's intent to call this case our next term of Court
18 April 8th assuming we have all our paperwork. This is to
19 put you on notice.

20 The Court: All right. This case, he said
21 is going to be called for trial again next term.

22 Mr. Gibbs: Yes, sir.

23 The Court: Talk to Mr. Brooks about it.
24 Mr. Brooks, Mr. Brown and Mr. Meadors, you certainly did a
25 good job and I appreciate it.

State of South Carolina v. Leroy Clifton Gibbs, III

431

(END OF TRIAL)

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CERTIFICATE

This is to certify that the Hearing transcript in the matter of State of South Carolina vs. Leroy Clifton Gibbs, III, consisting of Four Hundred Thirty One (431) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand this 23rd day of May, 2018.

Melissa R. Singletary
Certified Verbatim Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

Leroy Gibbs,)
)
 PLAINTIFF,)
)
 v.)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF MOTIONS
C/A No. 2011-GS-43-01125

Sumter County Courthouse
May 23, 2013

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor John Meadors
Attorney for State of South Carolina

Charles Brooks, Esquire
Attorney for Leroy Gibbs

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

INDEX

	<u>PAGE</u>
Certificate of Service	11

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

3

1 Mr. Meadors: May it please the Court. This is Leroy
2 Clifton Gibbs, III.

3 The Court: All right.

4 Mr. Meadors: This is indictment 2011-1125. Mr. Gibbs
5 is with his attorney, Mr. Brooks, Your Honor. As, Your
6 Honor, knows and well remembers, we brought Mr. Gibbs for
7 a trial before, Your Honor, and a jury in February of
8 this year. It was a mistrial. After that time, Mr.
9 Gibbs has been out on bond. He has approximately thirty
10 charges in the office. Mr. Brooks filed ...

11 The Court: How many?

12 Mr. Meadors: Thirty.

13 The Court: Thirty.

14 Mr. Meadors: Mr. Brooks filed a motion to be
15 relieved. I do have him as number one on my trial docket
16 for week after next, Judge, but we are here on Mr. Brooks
17 motion.

18 The Court: Do you represent him on all thirty?

19 Mr. Brooks: I don't think. I think Will Brunson
20 represents him on a couple of those.

21 Mr. Meadors: Mr. Brunson has got him on two or
22 three.

23 The Court: All right. Your motion, Mr. Brooks.

24 Mr. Brooks: May it please the Court. Judge, this is
25 a motion to be relieved. If you'll recall you presided

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

4

1 over the case back in February as Mr. Meadors has said.
2 It ended up in a hung jury. Eleven to one, I believe
3 that was the count, unofficial count. And, since that
4 time, Mr. Gibbs has decided to file a grievance against
5 me for my services with the Office of Disciplinary
6 Counsel. I feel that is nothing more I can do for him.
7 I got him, what is considered to be a great deal
8 considering all those charges. The solicitor's office
9 had recommended, they had agreed to reduce all these
10 charges down to a three year sentence. I tried his case.
11 I kept him from going to prison for twenty, thirty years.
12 We sat here on a Friday night ...

13 The Court: What was he on trial for?

14 Mr. Brooks: He was on trial for distribution and I
15 don't know if you recall, you presided over it.

16 The Court: I remember it was a ...

17 Mr. Meadors: Judge, it was a nine count indictment.
18 We went forward on the trafficking in cocaine,
19 manufacturing cocaine and possession with intent to
20 distribute. So, we went forward on three of the nine
21 counts.

22 The Court: And you all had offered three years on all
23 thirty charges?

24 Mr. Meadors: That's correct, Your Honor. And during
25 the trial I think there was some talk about five but

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

5

1 anyway ...

2 The Court: The basis for your motion is that he has
3 grieved you?

4 Mr. Brooks: He has grieved me. He want follow my
5 instructions. If you recall, Judge, I advised him not to
6 take the stand and he took the stand.

7 The Court: I remember that.

8 Mr. Brooks: Judge, there is nothing else I can do
9 for him. Perhaps he needs to represent himself. There
10 is nothing else I can do for him.

11 The Court: Mr. Gibbs, what is your position on this.
12 Of course, let me tell you this. On the charges you have
13 a right to remain silent so I caution you about talking
14 about any of the merits of the cases but do you have any
15 response to Mr. Brooks motion to be relieved?

16 Mr. Gibbs: No, sir.

17 The Court: Sir?

18 Mr. Gibbs: No, sir.

19 The Court: All right. Mr. Meadors.

20 Mr. Meadors: Judge, with all due respect to Mr.
21 Brooks and Mr. Gibbs, I think his motion was filed before
22 he was grieved, since then he has been grieved. There
23 was an issues about \$1100 I think Mr. Gibbs had in his
24 pocket.

25 The Court: That is definitely not a issue anymore

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

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1 because ... the fact that somebody has money in their
2 pocket doesn't make them non indigent.

3 Mr. Meadors: Right.

4 The Court: He's not arguing that.

5 Mr. Brooks: I don't care about that.

6 Mr. Meadors: That was in the motion. I just wanted
7 to cover that. Judge, I ...

8 The Court: Well, what do we do in a situation where,
9 just hypothetically, the Defendant is coming up for trial
10 and he doesn't want you to try it. And he knows well if
11 I grieve my lawyer, I'm going to get a new lawyer.

12 Mr. Meadors: That's actually what I was about ...

13 The Court: And then the next time they get a lawyer,
14 they grieve that lawyer too and then they are never
15 tried. If you carry that out ...

16 Mr. Brooks: I understand, Judge.

17 The Court: Mr. Meadors, what is your take on all
18 this as a officer of the court wanting to make sure that
19 this defendant has effective assistance of counsel and
20 that he has not a perfect trial but a fair trial.

21 Mr. Meadors: Yes, sir. That's actually, I was
22 gathering how to say it. I don't know what would keep
23 him from, his next attorney grieving him. No matter who
24 it is. These are old. We've tried to bring them to
25 trial in front of, Your Honor. He had excellent

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

7

1 representation and it ended in a hung jury. I mean, you
2 know, he got him a result that wasn't a conviction in a
3 fairly strong case, in my opinion. I need to resolve
4 this on behalf of the state. We are ready to go forward.
5 I think he's had fine representation. It's a unique
6 position for me actually quite frankly, this scenario.
7 I'd like, Your Honor, to keep Mr. Brooks on. He did a
8 good job. I mean, he's not entitled to the lawyer of his
9 own choosing here. He's gotten an attorney appointed to
10 him that did an excellent job and now he's going to
11 grieve him. He can keep grieving and grieving and we
12 could never try this case. Judge, we'd ask Mr. Brooks be
13 ordered to stay on and in the alternative Mr. Gibbs to
14 represent himself. I want to call this ...

15 The Court: I'm going to come back to you, be still.

16 Mr. Meadors: I'd like to call this a week from
17 Monday for trial with or without a lawyer.

18 Mr. Brooks: Please, Judge. I appreciate all the
19 compliments from Mr. Meadors but please on this guy ...

20 The Court: Well, please isn't grounds for relief.

21 Mr. Brooks: I understand, Judge. And, Judge, you
22 know I've represented a murder case in Bishopville
23 shortly after that. At least my client would respect me
24 and at least come around and start listening to me. He
25 doesn't want me to represent him.

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

8

1 The Court: Well, he just said he doesn't have any
2 position on it.

3 Mr. Brooks: Well, maybe the court may inquire, but
4 obviously a person that keeps you from going to jail
5 twenty, thirty years and as a reward you turn around and
6 grieve him. He doesn't want me, Judge, and I don't want
7 him.

8 The Court: Well, do you have anything you want to
9 say Mr. Gibbs?

10 Mr. Gibbs: No, sir.

11 The Court: Well, I'm not going to relieve you Mr.
12 Brooks even though I'm tugging at my heart strings.
13 Here's the situation. Your relationship with Mr. Gibbs,
14 if it is as you say, is not going to be any different
15 with another lawyer. If he perhaps gets the same offer
16 or some other elevated offer, whatever the offer might
17 be. If Mr. Gibbs --- my recollection of the trial was
18 you did an excellent job and I remember he took the stand
19 and you had to do it under that relatively new case that
20 confirmed that if they want to get on the stand you have
21 to put them up there even if you disagree with them. And
22 then he didn't open the door to some cross examination,
23 he absolutely knocked it down when he testified. I can't
24 remember what it was but it was just, the door just blew
25 wide open which opened him up to some pretty damaging

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

9

1 cross examination. The jury, of course, didn't convict
2 him. I don't know what bone he has to pick with you
3 unless it's a personal bone. I don't know. Maybe he just
4 doesn't like you, but in any event I'm going to deny your
5 motion. Mr. Gibbs, I'm just telling you, you know, you
6 didn't take a position on this today. You've got this
7 charge pending. I don't know which one the solicitor is
8 going to call but you need to act accordingly with your
9 lawyer. I don't know about the grievance, I don't want
10 to know about the merits of it, but you have a
11 relationship with an attorney and client with your lawyer
12 and you need to conduct yourself in a way that gives him
13 the opportunity to provide you with the best defense. If
14 you don't like him, you better put it aside or you're not
15 going to do anything but hurt yourself.

16 It may make you feel good to be rude to him. It may
17 make you feel good to be mouthy to him, but he's your
18 lawyer, do you understand?

19 Mr. Gibbs: Yes, sir.

20 Mr. Brooks: Judge, I was going to ask the Solicitor
21 if they know which case they are going to call.

22 The Court: I think it's reasonable for you to let
23 him know which set of charges.

24 Mr. Meadors: I'll let him know that today.

25 The Court: Okay.

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

10

1 Mr. Meadors: Yes, sir.

2 Mr. Brooks: It won't be the same one?

3 Mr. Meadors: I'll let you know today. It may well
4 be. It might be easier on everybody to just do that.

5 The Court: Who is presiding that week. I know I'm
6 not here.

7 Mr. Meadors: Judge Young and Judge Cothran. So, I
8 don't know ...

9 The Court: Okay. Good luck to you.

10 (End of Motion)

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THIRD JUDICIAL CIRCUIT

(803) 436-2150

STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	COURT OF GENERAL SESSIONS
	)	2011-GS-43-1125
	)	
	)	
State of South Carolina	)	)
vs.	)	TRANSCRIPT OF RECORD
	)	
Leroy Clifton Gibbs, III	)	)
<u>DEFENDANT</u>	)	June 3, 2013
		Sumter, South Carolina

B E F O R E:

WILLIAM JEFFREY YOUNG, JUDGE; and a jury.

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

JOHN MEADORS, Assistant Solicitor

TYLER BROWN, ASSISTANT SOLICITOR
Attorneys for the State

CHARLES T. BROOKS, III, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Wayne Dubose				
4	Mr. Meadors	29			
5	Mr. Brooks		40		
6					
7	Dale Horton				
8	Mr. Brown	49			
9	Mr. Brooks		53		
10					
11	Clifton Gibbs				
12	Mr. Brooks	56			
13	Mr. Meadors		59		
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15	Certificate of Reporter 72				
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1 THE COURT: All right. Solicitor, what's the
2 first case you got for us.

3 MR. MEADORS: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. MEADORS: Your Honor, the State of South
6 Carolina now does call The State vs. Leroy Clifton Gibbs,
7 III. Mr. Gibbs is in the courtroom with his attorney Mr.
8 Charles Brooks, Your Honor. This is Sumter County true
9 billed indictment 2011-GS-43-1125 trafficking in cocaine
10 base, Your Honor, manufacturing cocaine base and
11 possession with intent to distribute cocaine.

12 THE COURT: May I have the indictment,
13 Solicitor.

14 All right. Ladies and gentlemen, this is the
15 case of The State of South Carolina vs. Leroy Clifton
16 Gibbs, III, under indictment 2011-GS-43-1125. Now, ladies
17 and gentlemen, the defendant is charged with three counts
18 and we're going to try it this term and I will read the
19 three counts. Count 1 that Leroy Clifton Gibbs, III, did
20 in Sumter on or about December 23rd 2008, knowingly sell,
21 deliver, purchase or bring into the State or did aid,
22 abet, attempt or conspire to sell, deliver, purchase or
23 bring into the State or was in actual or constructive
24 possession or attempted to become an actual or
25 constructive possession of a quantity of cocaine base in

1 an amount more than ten grams but less than 28 grams. The
2 same being a controlled substance with all in the meaning
3 of section of 44-53-370 sequential of the South Carolina
4 Code of Laws 1976 as amended and such possession not
5 having been authorized in being in violation of section
6 44-53-370(E) (2) (A) of the South Carolina Code of Laws 1976
7 as amended for the crime of trafficking.

8 The next count is manufacturing cocaine base and
9 the indictment reads that in Sumter, South Carolina on or
10 about December 23rd 2008, the defendant, Leroy Clifton
11 Gibbs, III, did manufacture or aid, abet, attempt or
12 conspire to manufacture a quantity of cocaine base a
13 control substance under provision of section 44-53-110
14 sequential code of laws South Carolina 1976 as amended
15 such having not been authorized by law. All in violation
16 of section 44-53-375 of the code of laws of South Carolina
17 1976 as amended.

18 The next count is possession with intent to
19 distribute cocaine, that Leroy Clifton Gibbs, III, did in
20 Sumter County on or about December 23rd 2008, with
21 unlawfully possess with intent to distribute a quantity of
22 cocaine, a controlled substance under provision act number
23 445 act of 1971 General Assembly of South Carolina as
24 amended section 44-53-370 sequential South Carolina Code
25 of Laws 1976 as amended and such possession not having

1 been authorized by law.

2 Now, ladies and gentlemen, let me remind you
3 that the fact that the defendant was arrested, charged and
4 indicted in no way indicates he is guilty of the charges
5 contained in here. The defendant has pled not guilty and
6 therefore the State has the burden of proving his guilt
7 beyond a reasonable doubt. The indictment again as I said
8 is no indication that he's guilty. It's just a paper that
9 actually bring this case into court and the burden is now
10 and will always be on the State to prove his guilt beyond
11 a reasonable doubt.

12 Now, ladies and gentlemen, let me remind you
13 that you are under oath and I got some questions that I
14 need to ask you. Now, the reason that you're under oath
15 during this crucial stage of the trial, it's just like a
16 building. It must have a firm foundation to be strong and
17 protective of those who live in it, so it must be built
18 strong as the basis of a fair and impartial trial for those
19 who participate, the Solicitor's office or the people and
20 the defendant who is on trial. Your answers to these
21 questions are the foundation by which these attorneys will
22 build a jury. And they're relying on your truthfulness in
23 answering these questions to help me strike a jury that is
24 unbiased and who will diligently listen to the facts and
25 deliver a just verdict. Again, thank you, ladies and

1 gentlemen, for your complete truthfulness as I ask you
2 these questions.

3 Ladies and gentlemen, the first question is has
4 anyone ever been related by blood or marriage or had a
5 close personal or business relationship with the
6 defendant; Leroy Clifton Gibbs, who is sitting at this
7 table over here with his attorney, if so please stand?

8 If you stand please, sir. Thank you, sir. You
9 may be seated.

10 The following is a list of possibly witnesses in
11 this case James Atkinson of Sumter County Sheriff's
12 Department, Cindy Pearson of -- she's formally with Sumter
13 County Sheriff's Office, who is the evidence technician.
14 Mitch Hanson formally of the Sumter County Sheriff's
15 Office, who is a drug analyst. Investigator Wayne Dubose
16 of the Sumter County Sheriff's Office, Sergeant of
17 Investigation Tripp Maze of the Sumter County Sheriff's
18 Office, Senior Investigator William Welch of the Sumter
19 County Sheriff's Office, Lieutenant Chris Moore of the
20 Sumter County Sheriff's Office, Lieutenant Dale Horton of
21 the Sumter County Sheriff's Office and Kimberly Gibbs. Is
22 there any member of the jury panel who is related by blood
23 or marriage to any of the people that I have just listed
24 or have you had a close, personal or business relationship
25 with any of these people, if so please stand?

1 Yes, ma'am, state your name and juror number.

2 PROSPECTIVE JUROR: Melissa Corrigan juror
3 number 36.

4 THE COURT: Okay. And who do you know?

5 PROSPECTIVE JUROR: Chris Moore is one of my
6 clients.

7 THE COURT: Okay. And would the fact that Chris
8 Moore is one of your clients make it so that you can't be
9 fair and impartial to the State or the defense in this
10 case?

11 PROSPECTIVE JUROR: I believe so.

12 THE COURT: So you can be?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: You can listen to the evidence and
15 base your decision on that?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you, ma'am.

18 All right. Anyone else?

19 Now, the attorneys on the case are Mr. John
20 Meadors for the Solicitor. Mr. Meadors, if you please
21 introduce yourself and the other attorneys who will be
22 working with you.

23 MR. MEADORS: May it please, Your Honor.

24 THE COURT: Yes, sir.

25 MR. MEADORS: My name is John Meadors. Tyler

1 Brown will also be assisting me this week. Of course,
2 this is Solicitor Finley.

3 THE COURT: Thank you.

4 Mr. Brooks, could you please introduce yourself.

5 MR. BROOKS: Attorney Charles Brooks practicing
6 here in Sumter, just me representing my client Mr. Gibbs.

7 THE COURT: Thank you.

8 Has any member of the jury panel ever been
9 represented by either of these attorneys or their law
10 firms or the Solicitor's office, if so please stand at
11 this time?

12 Yes, ma'am, Ms. Dawson.

13 PROSPECTIVE JUROR: Yes, Your Honor. I not been
14 represent, but, of course, worked with Mr. Brooks.

15 THE COURT: Would the fact that you worked with
16 Mr. Brooks before make it so that you can't be fair and
17 impartial to the State or the defense in this case?

18 PROSPECTIVE JUROR: I can be fair, Your Honor.

19 THE COURT: Thank you, ma'am.

20 Somebody is raising their hand. Would you
21 please stand?

22 PROSPECTIVE JUROR: I think Mr. Brooks
23 represented me on my house closing.

24 THE COURT: Would the fact that -- what's your
25 name please?

1 PROSPECTIVE JUROR: Brian Gerlt juror number 62.

2 THE COURT: Would the fact that Mr. Brooks
3 represented you on your house closing make it so that you
4 can't be fair and impartial to the State or the defendant
5 in this case?

6 PROSPECTIVE JUROR: I can do my job.

7 THE COURT: Thank you, sir.

8 Yes, sir.

9 PROSPECTIVE JUROR: Edward Sanders.

10 THE COURT: Yes, sir, Mr. Sanders.

11 PROSPECTIVE JUROR: Solicitor was a former
12 attorney.

13 THE COURT: Okay. The fact that -- you talking
14 about the Solicitor not the one Mr. Meadors, right?

15 PROSPECTIVE JUROR: The Solicitor.

16 THE COURT: The fact that the Solicitor was your
17 former attorney make it so that you can't be fair and
18 impartial to the State or the defense in this case?

19 PROSPECTIVE JUROR: I can be fair.

20 THE COURT: Thank you, sir, that's all we ask.

21 Yes, sir, your name and juror number?

22 PROSPECTIVE JUROR: Mr. Brooks did my house
23 closing.

24 THE COURT: Okay, what's your name and number?

25 PROSPECTIVE JUROR: Derek Hampton.

1 THE COURT: All right. Mr. Hampton, would the
2 fact that Mr. Brooks did your house closing make it so
3 that you can't be fair and impartial to the State or the
4 defendant?

5 PROSPECTIVE JUROR: No problem.

6 THE COURT: Thank you, sir.

7 Anyone else? Has any member of the jury panel
8 form or express an opinion about any issue or do you know
9 anything about the case, if so please stand?

10 (WHEREUPON, no one stood.)

11 THE COURT: Talk with anyone about this case, if
12 so please stand?

13 (WHEREUPON, nobody stood.)

14 THE COURT: All right. Have any of you or any
15 members of your family ever been the victim of or charged
16 with a violent crime? If you like to speak privately down
17 here, I'll allow you to do so.

18 Yes, sir, your name and number.

19 PROSPECTIVE JUROR: Juror 20 Robert Burke.

20 THE COURT: All right, Mr. Burke.

21 PROSPECTIVE JUROR: Michael Baxter was my step
22 son and you sentence him back. He just now got out on
23 parole.

24 THE COURT: Would the fact that ---

25 PROSPECTIVE JUROR: No, not at all.

1 THE COURT: Okay, very good. Thank you. He had
2 no problems being fair and impartial.

3 Yes, sir.

4 PROSPECTIVE JUROR: My name is Patrina Calhoun
5 number 21 and my brother was convicted of murder and
6 Charles Brooks represented him.

7 THE COURT: Okay.

8 MR. BROOKS: What's your brother's name?

9 PROSPECTIVE JUROR: Raheem.

10 THE COURT: I tried that case as well. Would
11 the fact that your brother was tried in this court by
12 Mr. Brooks and by me make it so that you can't be fair and
13 impartial in this case?

14 PROSPECTIVE JUROR: I can be.

15 THE COURT: You can be?

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Okay. Thank you, ma'am.

18 THE CLERK: Number nine Margaret Bowers.

19 THE COURT: Good morning, Ms. Bowers.

20 PROSPECTIVE JUROR: We were victims of a
21 drive-by shooting six or seven years.

22 THE COURT: Would the fact that that happen to
23 you make it so that you can't listen to the evidence in
24 this case and be fair and impartial?

25 PROSPECTIVE JUROR: No, it will not.

1 THE COURT: Okay. Thank you very much.

2 PROSPECTIVE JUROR: You're welcome.

3 THE COURT: Anyone else?

4 THE CLERK: Number 24 David Capers.

5 THE COURT: Yes, Mr. Capers.

6 PROSPECTIVE JUROR: My sister killed her
7 husband.

8 THE COURT: Okay. And when was that?

9 PROSPECTIVE JUROR: It was in the '80's.

10 THE COURT: Would the fact that that happened in
11 your family make it so that you can't be fair and
12 impartial to the State or the defendant?

13 PROSPECTIVE JUROR: No, it will have no affect.

14 THE COURT: Okay, thank you, sir.

15 THE CLERK: Juror number 33 Jill Connor.

16 THE COURT: Ms. Connor, how are you doing?

17 PROSPECTIVE JUROR: Good. How are you?

18 THE COURT: Good.

19 PROSPECTIVE JUROR: I was a victim of strong arm
20 robbery.

21 THE COURT: How long ago was that?

22 PROSPECTIVE JUROR: Been probably seven to ten
23 years.

24 THE COURT: Okay. Would the fact that you were
25 the victim of a strong arm robbery make it so that you

1 can't listen to the evidence and make a decision based on
2 this evidence?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay. Thank you very much, ma'am.

5 Thank you. Is there any member of the jury
6 panel who is aware of any bias or prejudice towards either
7 the State or the defendant in this case, if so please
8 stand? Thank you. No one is standing.

9 Is there any member of the jury panel who is a
10 member of the grand jury which indicted this case, if so
11 please stand? Thank you. No is one standing.

12 And is there any member of the jury panel who is
13 a member of or contributor to any group which has as its
14 primary concern the promotion of law enforcement or
15 victims' rights? These groups will include but certainly
16 not be limited to mother's against drunk drivers or
17 students' against drivers or citizens against violent
18 crime, if so please stand? Thank you. No one standing.

19 Does any member of the jury panel know of any
20 reason whatsoever why or she should not serve as a juror
21 in this case with particular emphasis being placed on your
22 ability to be fair and impartial to both the State and the
23 defendant, if so please stand? Thank you, no one
24 standing.

25 Does the State have any additional questions it

1 would like for me to ask?

2 MR. MEADORS: No, sir.

3 THE COURT: Does the defense have any additional
4 questions they would like for me to ask?

5 MR. BROOKS: Judge, we respectfully ask that the
6 Court inquire the jury if they have any moral opposition
7 to drugs since this is a case of drugs.

8 THE COURT: You all come up here for a second.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury panel, but out of the hearing of
11 the jury panel.)

12 THE COURT: That's all the questions we have.
13 Ladies and gentlemen, what will happen now is the computer
14 will spit out your names. And when your name is called,
15 come forward through the bar and come to the front and
16 face General Thomas Sumter. The State will have an
17 opportunity to strike you as well as the defendant. And
18 once we have 12 jurors plus one, that's when we will stop.
19 Please don't take it personally if you're struck from the
20 jury. These attorneys have some ideas as to the jury
21 they're looking for and that's what they will be making
22 their decision on.

23 MR. BROOKS: Is it five and ten?

24 THE COURT: Yes.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: Okay.

2 THE CLERK: Please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 THE CLERK: Ladies and gentlemen, when your name
5 is called, please come through the double gate on your
6 left or the single gait on your right, which is most
7 convenient, come up to the front of the rail, turn around
8 face Thomas Sumter in the back of the courtroom please and
9 bring with you any personal belongings that you may have.
10 Juror number 48 Renee Dubose.

11 (WHEREUPON, a white female, comes forward.)

12 THE CLERK: What say the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What say the defendant?

15 MR. BROOKS: Please excuse this juror.

16 THE CLERK: Have a seat back with the panel.

17 You been excuse from this trial please, ma'am.

18 Juror number 158 Kristina Strickland.

19 (WHEREUPON, a white female, comes forward.)

20 THE CLERK: What say the State?

21 MR. MEADORS: Please present the juror.

22 THE CLERK: What say the defendant?

23 MR. BROOKS: Please seat the juror.

24 THE CLERK: Have a seat in the jury box please,

25 ma'am.

1 Juror number 36 Melissa Corrigan.
2 (WHEREUPON, a white female, comes forward.)
3 THE CLERK: What say the State?
4 MR. MEADORS: Please present the juror.
5 THE CLERK: What say the defendant?
6 MR. BROOKS: Please excuse this juror from the
7 trial of this case.
8 THE CLERK: Have a seat back with the panel.
9 You been excuse from this trial please, ma'am.
10 Juror number 17 Debra Brunson.
11 (WHEREUPON, a white female, comes forward.)
12 THE CLERK: What say the State?
13 MR. MEADORS: Please present the juror.
14 THE CLERK: What say the defendant?
15 MR. BROOKS: Seat the juror for this case.
16 THE CLERK: Have a seat in the jury box please,
17 ma'am.
18 Juror number 16 Wilbur Brown.
19 (WHEREUPON, a white male, comes forward.)
20 THE CLERK: What say the State?
21 MR. MEADORS: Please excuse the juror.
22 THE CLERK: Have a seat back with the panel.
23 You been excused from this trial, sir.
24 Juror number 62 Brian Gerlt.
25 (WHEREUPON, a white male, comes forward.)

1 THE CLERK: What say the State?
2 MR. MEADORS: Please present the juror.
3 THE CLERK: What say the defendant?
4 MR. BROOKS: Please seat the juror on the trial
5 of this case.
6 THE CLERK: Have a seat in the jury box please,
7 sir.
8 Juror number 101 Henry Lamb.
9 (WHEREUPON, a white male, comes forward.)
10 THE CLERK: What say the State?
11 MR. MEADORS: Please present the juror.
12 THE CLERK: What say the defendant?
13 MR. BROOKS: Seat the juror.
14 THE CLERK: Have a seat in the jury box please,
15 sir.
16 Juror number 149 Paul Shaw, II.
17 (WHEREUPON, a white male, comes forward.)
18 THE CLERK: What say the State?
19 MR. MEADORS: Please present the juror.
20 THE CLERK: What say the defendant?
21 MR. BROOKS: Please seat the juror.
22 THE CLERK: Have a seat in the jury box please,
23 sir.
24 Juror number 83 Geneva Hopkins.
25 (WHEREUPON, black female, comes forward.)

1 THE CLERK: What say the State?
2 MR. MEADORS: Please present the juror.
3 THE CLERK: What say the defendant?
4 MR. BROOKS: Seat the juror.
5 THE CLERK: Have a seat in the jury box please,
6 ma'am.
7 Juror number 142 David Roberts, Jr.
8 (WHEREUPON, a black male, comes forward.)
9 THE CLERK: What say the State?
10 MR. MEADORS: Please present the juror.
11 THE CLERK: What say the defendant?
12 MR. BROOKS: Please seat the juror.
13 THE CLERK: Please have a seat in the jury box
14 please, sir.
15 Juror number 180 Sandy Williams.
16 (WHEREUPON, a black female, comes forward.)
17 THE CLERK: What say the State?
18 MR. MEADORS: Please present juror.
19 THE CLERK: What say the defendant?
20 MR. BROOKS: Please seat the juror.
21 THE CLERK: Have a seat in the jury box please,
22 ma'am.
23 Juror number 24 David Capers.
24 (WHEREUPON, a black male, comes forward.)
25 THE CLERK: What say the State?

1 MR. MEADORS: Please present the juror.
2 THE CLERK: What say the defendant?
3 MR. BROOKS: Seat the juror.
4 THE CLERK: Have a seat in the jury box please,
5 sir.
6 Juror number 187 Jessica Zaragoza.
7 (WHEREUPON, a Hispanic female, comes forward.)
8 THE CLERK: What say the State?
9 MR. MEADORS: Please present the juror.
10 THE CLERK: What say the defendant?
11 MR. BROOKS: Please seat the juror.
12 THE CLERK: Have a seat in the jury box please,
13 ma'am.
14 Juror number 124 Fulton Moye, III.
15 (WHEREUPON, a white male, comes forward.)
16 THE CLERK: What say the State?
17 MR. MEADORS: Please present the juror.
18 THE CLERK: What say the defendant?
19 MR. BROOKS: Seat the juror.
20 THE CLERK: Have a seat in the jury box please,
21 sir.
22 Juror number 41 Deborah Dawson.
23 (WHEREUPON, a black female, comes forward.)
24 THE CLERK: What say the State?
25 MR. MEADORS: Please excuse the juror.

1 THE CLERK: Have a seat back with the panel.
2 You been excused from this panel please, ma'am.
3 Juror number 58 Regina Fullard.
4 (WHEREUPON, a black female, comes forward.)
5 THE CLERK: What say the State?
6 MR. MEADORS: Please excuse the juror.
7 THE CLERK: Have a seat back with the panel.
8 You been excuse from this trial please, ma'am.
9 Juror number five Pearlie Baxter.
10 (WHEREUPON, a black female, comes forward.)
11 THE CLERK: What say the State?
12 MR. MEADORS: Please present the juror.
13 THE CLERK: What say the defendant?
14 MR. BROOKS: Please seat this juror.
15 THE CLERK: Have a seat in the jury box please,
16 ma'am.
17 Juror number 31 Tony Coleman.
18 (WHEREUPON, a black male, comes forward.)
19 THE CLERK: What say the State?
20 MR. MEADORS: Please present the juror.
21 THE CLERK: What say to the defendant?
22 MR. BROOKS: Please excuse the juror in this
23 case.
24 THE CLERK: Have a seat back with the panel.
25 You been excused from this trial, sir.

1 Juror number 174 Pamela Wheeler.
2 (WHEREUPON, a white female, comes forward.)
3 THE CLERK: What say the State?
4 MR. MEADORS: Please present the juror.
5 THE CLERK: What say to the defendant?
6 MR. BROOKS: Beg the Court's indulgence.
7 (WHEREUPON, a pause in the proceedings.)
8 MR. BROOKS: Strike the juror.
9 THE CLERK: Have a seat back with the panel.
10 You been excuse from this panel please, ma'am.
11 Juror number 111 James McDougal.
12 (WHEREUPON, a black male, comes forward.)
13 THE CLERK: What say the State?
14 MR. MEADORS: Please excuse the juror.
15 THE CLERK: Please have a seat back with the
16 panel. You been excuse, sir.
17 Juror number 33 Jill Connor.
18 (WHEREUPON, a white female, comes forward.)
19 THE CLERK: What say the State?
20 MR. MEADORS: Please present the juror.
21 THE COURT: Any reason for cause from the
22 defendant?
23 MR. BROOKS: Please seat the juror.
24 THE CLERK: Have a seat in the jury box please,
25 ma'am.

1 THE COURT: Please call out all the names of the
2 jurors.

3 THE CLERK: All right, sir.

4 Ladies and gentlemen, when I call your name
5 please raise your right hand Kristina Strickland, Debra
6 Brunson, Brian Gerlt, Henry Lamb, Paul Shaw, II, Geneva
7 Hopkins, David Roberts, Jr., Sandy Williams, David Capers,
8 Jessica Zaragoza, Fulton Moye, III, Pearlie Baxter and
9 Jill Connor. Thank you.

10 THE COURT: All right. Ladies and gentlemen,
11 you all have been selected as the jurors for this trial.
12 I'm going to send you back to the jury room for just a few
13 minutes. And while you're back there, if you can discuss
14 amongst yourselves who you want to be your foreman or
15 forelady of the jury. What that would mean is that that
16 person will be the spokesman here in court and will be
17 your leader in the jury room. So while you're back there,
18 if would select your own foreperson. All right. Thank
19 you. I'm going to excuse you for just a few minutes.

20 (WHEREUPON, the jury retired to the jury room.)

21 THE COURT: Are there any objections from the
22 State or the defendant to the jury, to the jury that been
23 selected or the matter which they have been selected?

24 MR. MEADORS: Nothing from the State.

25 MR. BROOKS: Nothing from us, Judge.

1 THE COURT: Well, ladies and gentlemen, that
2 means that there are jurors and you want be needed today.
3 It may be possible that you will be needed further in the
4 week, but what I will do is I'm going to release for the
5 day with instruction that you call back.

6 And they got numbers, don't they?

7 THE CLERK: Yes, sir, Your Honor.

8 THE COURT: That you call back after 11 o'clock
9 tomorrow morning. And they will give you further
10 instructions as to when you need to reassemble for jury
11 duty. So, ladies and gentlemen, thank you for being here.
12 You may not get selected as a jury, but you were in the
13 courthouse during the last week and the first time the
14 jury ever be seated somewhere else in a hundred years.
15 Thank you, ladies and gentlemen.

16 (WHEREUPON, the remain jury panel is excused.)

17 THE COURT: Okay. I think I will bring the jury
18 out and dismiss them until 9:30 tomorrow morning. Then we
19 will be back here at two for any posttrial motions which
20 -- how long do you think -- why don't we go ahead and do
21 the posttrial motions this afternoon. It's only 11:50.
22 We probably be done by one o'clock.

23 MR. BROOKS: I think it's going to be some
24 testimony, Your Honor, posttrial motions like Jackson vs.
25 Denno hearings.

1 THE COURT: How many ---

2 MR. MEADORS: I'll do whatever you want me to
3 do.

4 THE COURT: Let's go ahead. Let me go ahead and
5 get these jurors back out.

6 (WHEREUPON, the jury came into open court.)

7 THE COURT: Mr. Robinson, I believe they
8 selected you to be the foreperson on the jury; is that
9 correct?

10 FOREPERSON: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen,
12 when you come in, you can sit wherever you want to with
13 the exception of Mr. Roberts and the alternate have
14 reserved seats. Now, ladies and gentlemen, thank you for
15 being part of this jury. This trial will not start until
16 tomorrow morning. We have some other things that we need
17 to take up this afternoon. So, ladies and gentlemen, I'm
18 going to release you for the day with the instructions
19 that you not talk to anybody about the case. Don't go
20 looking in any newspapers or anything that would give
21 information about this case other than what you're going
22 to receive from this witness stand and from the exhibits
23 that are presented here in court. And you know the
24 easiest way to do that is just don't tell anybody I'm on a
25 jury and because then they'll want to know what kind of

1 case is it and they go I heard about it. So just say you
2 had your business for the morning and don't say anything.
3 So, ladies and gentlemen, have a nice afternoon, have a
4 nice evening, be well rested and be ready to start trying
5 this case tomorrow morning at 9:30. Thank you, ladies and
6 gentlemen. At that time, you will be sworn as jurors.

7 (WHEREUPON, the jury is excused for the day.)

8 THE COURT: Let's take a 15 minute recess and
9 then we'll start our posttrial motions -- pretrial
10 motions. Okay. All right.

11 MR. BROOKS: I did inform my client of having
12 tried cases with you before which are general policy is
13 about once cases are called as far as defendant being
14 held. My client is requesting that he be allowed to
15 remain free on bond. He has come to court in the past
16 trial. He has shown up for roll call and thing of that
17 sort, but I did tell him that he wanted to go ahead and
18 address the Court on that issue.

19 THE COURT: Thank you.

20 What's the State's position on that?

21 MR. MEADORS: Your Honor, in every case I've
22 always tried in my 26-year career for a violent offense
23 and this is clearly a violent charge, I've always
24 respectfully requested and we think is appropriate when
25 the case is called for Your Honor to consider locking the

1 defendant up and we so request now.

2 THE COURT: That is generally my policy on that.
3 I've had -- I started after I did not do it a couple times
4 when somebody decided they didn't want to be there for
5 their trial. And I'm sure that may not be the case this
6 time, but I'm not going to take any chances. So the
7 defendant will now be incarcerated, case has been called.
8 Thank you.

9 MR. MEADORS: Thank you.

10 THE COURT: We will take a 15 minute recess and
11 start back.

12 (WHEREUPON, a break was taken.)

13 THE COURT: All right. Mr. Brooks, this is your
14 motion.

15 MR. BROOKS: Judge, the motions I have is file a
16 sequestrator. In particular, the fact witnesses that the
17 State have, Ms. Gibbs, and it's a couple other officers
18 who took my client to the detention center who's obviously
19 going to testify about their statements that my client
20 made.

21 THE COURT: Who is the chief investigator in the
22 case you, Mr. Dubose?

23 MR. DUBOSE: Yes, sir.

24 THE COURT: He will be allowed to be in here at
25 all times, other witnesses will be sequestered until they

1 have testified.

2 MR. MEADORS: We understand.

3 MR. BROOKS: The other motion I have is in
4 regards to basically Jackson vs. Denno. There's a couple
5 statements that have been raised.

6 THE COURT: Which ones in particular are you
7 taking about?

8 MR. BROOKS: Statements?

9 THE COURT: Yes, sir.

10 MR. BROOKS: First statement was when my client
11 was arrested, the officers that took him down to the
12 detention center, he allegedly says drug dealing is a
13 lifestyle for me. And, of course, they come back and tell
14 Officer Dubose that. Then there's a second statement on
15 the next day when Officer Dubose goes to the jail and is
16 questioning my client. And the alleged statement when
17 Officer Dubose says, Hey, what about didn't you tell some
18 officers X, Y, Z. He says -- allegedly says drug
19 dealing -- no, I got to do this to support my family
20 something to that effect. Those are basically the
21 particular statements that we're obviously going to
22 challenge.

23 THE COURT: All right. Is the State ready to
24 proceed?

25 MR. MEADORS: Yes, sir.

1 THE COURT: Call your first witness.

2 MR. MEADORS: Investigator Wayne Dubose.

3 THE CLERK: Place your left hand on the Bible,
4 raise your right hand. State your name please?

5 THE WITNESS: Investigator Wayne Dubose.

6 THE CLERK: Place your left hand on the Bible
7 raise your right hand. State your name please.

8 THE WITNESS: Investigator Wayne Dubose.

9 THE COURT: Solemnly swear or affirm your
10 testimony to the Court should be the truth, the whole
11 truth and nothing but the truth so help you God?

12 THE WITNESS: Yes, sir.

13 THE CLERK: Thank you. Spell your last name for
14 the record.

15 THE WITNESS: Investigator Wayne Dubose
16 D-U-B-O-S-E.

17 WHEREUPON,

18 Wayne Dubose,
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION IN-CAMERA

21 BY MR. MEADORS:

22 Q Good morning, Investigator.

23 A Yes, sir.

24 Q I'm going to ask you to talk about the opportunity
25 you had to speak with the Defendant Gibbs on specifically

1 December 23rd of '08. You understand that?

2 A Yes, sir.

3 Q And prior to that, Investigator, can you give Your
4 Honor a brief background of how you all came to be or why
5 you were at [REDACTED] Madison Avenue here in Sumter?

6 A Yes, sir. Your Honor, prior to going to this house
7 on this date, officers with the Sheriff's Office had made
8 purchases, control purchases from the defendant with a
9 informant. We made purchases from the defendant at [REDACTED]
10 Madison Avenue on October 29th. We made another purchase
11 from that residence on November 24th. We made another
12 purchase from the defendant on December the 1st at that
13 residence. We made two additional purchases from the
14 defendant on December 18th, that occurred at number [REDACTED]
15 Vernon Drive. And we made another purchase on
16 December 17th 2008 at the Young's Market at Manning Avenue
17 in Patricia.

18 Q So you had those warrants. And on December 23rd of
19 2008, were you going to serve those warrants on the
20 defendant at [REDACTED] Madison Avenue?

21 A That's correct.

22 Q And who else was with you?

23 A Myself, Investigator Maze, Sergeant Horton, Sergeant
24 Moore, Captain Daley, we had a couple agents from SLED and
25 Corporal Welch.

1 Q Did you yourself go to the door of [REDACTED] Madison?

2 A Yes, sir.

3 Q And did you knock on the door?

4 A I did.

5 Q All right. What happened?

6 A We knocked on the door at the residence, served those
7 warrants. And we didn't get an immediate answer. We
8 heard rummaging around in the residence. After about two
9 minutes, someone finally opened the door.

10 Q And you say two minutes. Was there a length of time
11 that you put in your report approximately two minutes
12 before somebody came to the door?

13 A That's correct.

14 Q Who came to the door?

15 A Kimberly Gibbs which is the defendant's wife.

16 Q What happened after that?

17 A She open the door. We were in a -- dressed as police
18 officers. We advised her at that time that we had arrest
19 warrants for Mr. Gibbs and asked if he was there and she
20 said he was. He was in the bedroom. At that time, I seen
21 Mr. Gibbs right there in the hallway. We went in and
22 encountered Mr. Gibbs. At that time, we went ahead and
23 arrested him on those warrants. And at that time, while
24 we were in the hallway, we could smell an odor of
25 marijuana in the residence, seated Mr. Gibbs in the living

1 room which is just adjacent to that room. And at that
2 time, he asked about getting a pair of pants cause he was
3 in a pair of boxers when we encountered him. He said his
4 pants were in the bedroom floor. I went into the bedroom
5 retrieved those pants from off the floor, went in and
6 searched the pants before I gave them to him to make sure
7 there were no guns or anything like that in there. I
8 located in the pants pocket about \$1,355 dollars in cash,
9 immediately took that money out and gave him the pants at
10 that time.

11 Q And had you at this point or somewhere here had an
12 occasion to read Miranda to the defendant?

13 A At that time, I advised both of them. We smelt the
14 marijuana in the house and we were also there with the
15 warrants for Mr. Gibbs. We advised both of them of their
16 Miranda Rights.

17 Q And please tell the judge how you advised Mr. Gibbs
18 his Miranda Rights on December 23rd 2008 on Madison
19 Avenue?

20 A I have a card. This is not the exact card. It has
21 been some years ago, but it is the same card of Miranda
22 Rights.

23 Q Has the same words on it as the other card?

24 A Yes, sir. I usually keep one in my wallet also in my
25 vest that I wear, but I advised them from my card.

1 Q Okay. Do it like you did then please for his Your
2 Honor?

3 A You had a right to remain silent, anything you say
4 can and will be used against you in the court of law. You
5 have the right to talk to an attorney and have him or her
6 present while you are being questioned. If you cannot
7 afford to hire an attorney, one will be appointed to
8 represent you before any questioning if you wish. You
9 decide at any time to exercise these rights ---

10 Q Slow down a little bit.

11 A --- to exercise these rights and I'll answer any
12 questions or make any statements. And then I ask they
13 understand them. And if they did understand, would they
14 mind talking to us.

15 Q And you were -- for these purposes here, you were
16 familiar with Mr. Gibbs prior to this obviously?

17 A Yes, sir.

18 Q So you were familiar with that or you knew that he
19 was familiar with the criminal justice system?

20 A Yes, sir.

21 Q And you had some conversation with him apparently
22 about his pants, wanting his pants. Did you have any
23 trouble understanding him during that process?

24 A No, sir.

25 Q You said you smelled an odor of alcohol excuse me --

1 an odor of marijuana I apologize, but did Mr. Gibbs appear
2 to be under the influence of anything?

3 A No, sir, neither one of them did.

4 Q All right. When you read him Miranda Rights, did he
5 appear to understand them?

6 A He appeared to understand them.

7 Q And at this point, we're in the house; correct?

8 A Yes, sir.

9 Q And did he tell you, Investigator Dubose, I didn't
10 want to talk to you?

11 A He never said he didn't want -- he didn't want to
12 talk to me, did want to talk to me he never stated.

13 Q Did he ever say I want a lawyer?

14 A No.

15 Q Okay. And did you threaten, coerce or hold out any
16 hope or promise of reward while you were in the house on
17 Madison Avenue and then initially after you came in to the
18 defendant in exchange for a statement?

19 A No, sir.

20 Q And what was it he told you in the house?

21 A Sir?

22 Q What did he tell you in the house?

23 A What did -- what now?

24 Q What did he say to you in the house?

25 A Well, when we -- after he was arrested, placed on the

1 couch, I ask Mrs. Gibbs and him at that time would they
2 mind us searching the house, would they give us consent to
3 search the house. We didn't have a search warrant. We
4 could smell the marijuana in there. Mrs. Gibbs told me at
5 that time sure we could. I asked her about bringing a dog
6 in. She said we could. Mr. Gibbs made a remark at that
7 time that he didn't live there. So at that time, I asked
8 Moore and Horton to go and transport him to the jail on
9 those warrants. And we went ahead and started dealing
10 with Mrs. Gibbs at that house where she signed a written
11 consent let us search the house.

12 Q So for these purposes the statement besides asking
13 for his pants and the defendant said to you in the house I
14 don't live here?

15 A That's right.

16 Q And then you said who transported him from the house
17 to the detention center?

18 A It will have been Sergeant Moore and Sergeant Horton.

19 Q And did you hear back from either one of them and if
20 you did please tell His Honor who?

21 A They did ---

22 Q Let me finish please, sir. I'm sorry. After they
23 came back to the house?

24 A They did. They came back to the house at that time
25 when they both came up to me and told me that Mr. Gibbs

1 had made a statement in the car while they were
2 transporting him to the jail. And the statement that they
3 said that Mr. Gibbs made is that selling drugs is just a
4 lifestyle for him.

5 Q And did you document that at the time?

6 A I did I documented it in the report.

7 Q Now ---

8 MR. MEADORS: And, Your Honor, I don't know if
9 it's initially here, but while we're here on the record, I
10 have State's Exhibit 1 for identification at this point.

11 (WHEREUPON, State's Exhibit No. 1 was marked for
12 identification only.)

13 BY MR. MEADORS:

14 Q Did Mrs. Gibbs end up giving you consent to search
15 the house?

16 A She did.

17 Q And she sign that?

18 A She did.

19 Q And at this point, Mr. Gibbs had denied just said I
20 don't live there; correct?

21 A That's right. He didn't live there so we transported
22 him out of there and had Mrs. Gibbs go through the
23 paperwork.

24 Q Did you have an occasion to see Mr. Gibbs the next
25 day?

1 A I did.

2 Q Please tell the judge about that?

3 A The following day I went down to the jail with
4 additional warrants from what we had found at the
5 residence that day. Again, I encountered Mr. Gibbs in one
6 of the pods. Mirandized him again.

7 Q The Sumter Lee Regional Detention Center?

8 A That's correct. Mirandized him again.

9 Q Do it like you did then?

10 A I did. I went through with my card.

11 Q And do it again please, sir. And I want to ask you
12 and what's your practice and tell this judge this day do
13 you read your suspect in this case Mr. Gibbs the Miranda
14 prior to going over the arrest warrants with him?

15 A I made it a point any time I serve warrants on
16 someone to Mirandize him before in case when Mirandize
17 them and I start reading the probable cause to them. If
18 they make a statement, then they've already been advised
19 of their rights, that's just something I commonly do.

20 Q And that's what you did in this case?

21 A That's what I did that day. Again, I advise him you
22 had a right to remain silent. Anything you say can and
23 will be used against you in a court of law, have a right
24 to talk to an attorney, have him or her present with you
25 while you're being questioned. If you cannot afford to

1 hire an attorney, one will be appointed to represent you
2 for any question if you wish. You can decide at any time
3 to exercise these rights not answer any questions or make
4 any statements. And I ask if you understood the rights
5 and if you mind talking to me.

6 Q And did he understand his rights?

7 A He never said he did understand them. He never said
8 he didn't understand them. I -- appeared to me at the
9 time and at the house that he understood his rights.

10 Q Now, at this point this would be Christmas Eve of
11 2008, correct December 24th?

12 A That's correct.

13 Q You read him his rights. Did he appear to be under
14 the influence Mr. Gibbs of any alcohol, drugs or any other
15 intoxicants?

16 A No, sir.

17 Q Did he say Investigator Dubose I don't want to talk
18 to you?

19 A He never told me that.

20 Q Did you hold out any hope of reward or promise in
21 exchange for any statements he may give?

22 A No, sir, I just read him his warrants.

23 Q You basically read him his rights and his waiver of
24 rights and then serve him his warrants; correct?

25 A That's right.

1 Q And did you -- did he make any statements to you at
2 the detention center in reference to the comments he had
3 made to the two officers who transported him the day
4 before?

5 A He did. He made a comment after I read him his
6 warrants about stuff that was found in the house. He made
7 a remark to me that the stuff wasn't his. It had to be
8 his wife's. And then I specifically asked him about the
9 comment that he made to Moore and Horton in a car about
10 selling drugs being a lifestyle for him. At that time, he
11 told me that he had to support his family and that was the
12 extent of the conversation.

13 Q And specifically as to what -- it may be 15 on your
14 report there, Officer. After you had Mirandized him and
15 advised him of the items, you advised him of what was
16 found in the house; correct?

17 A That's correct.

18 Q Did he deny any of those were his?

19 A He denied that any of the items in the house was his.

20 Q And that he didn't live there?

21 A That's correct.

22 Q And specifically what did he say his wife --
23 specifically what did he say that his wife -- about his
24 wife?

25 A Leroy said his wife must have had someone else there

1 because it was not his and it had to be hers.

2 Q She must have had somebody else there because it was
3 not his and it had to be hers?

4 A That's correct.

5 Q And you documented that?

6 A I did.

7 Q And that he had to feed his family that was his
8 response to explaining selling drugs as a lifestyle?

9 A He had to support his family.

10 Q Apologize. And he never said I want to talk to you
11 or give me a lawyer?

12 A No.

13 Q Is the individual that made the statement to you at
14 the house at [REDACTED] on Madison on December 23rd, that he
15 didn't live there and the individual that made the
16 statements to you on December 24th of 2008, that those
17 were not his drugs and they had to be his wife's. And she
18 had to live with somebody else and that he had to support
19 his family is an explanation for the statement the day
20 before about selling drugs is a lifestyle, is that person
21 in this courtroom?

22 A Yes, sir, he's the defendant sitting beside
23 Mr. Brooks.

24 MR. MEADORS: We like the record so reflect.

25 THE COURT: Record will so.

1 Mr. Brooks.

2 CROSS-EXAMINATION

3 BY MR. BROOKS:

4 Q Did your report in the case indicate the time that
5 you guys showed up at the residence; is that correct?

6 A Excuse me.

7 Q Your report indicates what time you guys showed up at
8 the residence?

9 A Yes, sir, I believe it does.

10 Q Okay. It was early in the morning; isn't that
11 correct?

12 A No, sir, it was at lunchtime at 12 o'clock.

13 Q At lunch time. You all showed up around lunchtime.
14 As you entered into residence Mr. Gibbs -- Mrs. Gibbs
15 approach -- she the one that opens the door?

16 A After a couple minutes, yes, sir, she's the one who
17 open the door, answer the door.

18 Q Okay. He indicated to you that he did not live
19 there; is that correct?

20 A That's correct.

21 Q Okay. And that was all the statements that he made
22 other than let me put on my pants?

23 A Correct.

24 Q Okay. Now, you don't -- you were not present as he
25 was being transported to the detention; is that correct?

1 A No, sir, I was not.

2 Q Okay. When you showed back up at the detention
3 center the following day, what all did you question him
4 about prior to getting to that question about this alleged
5 statement?

6 A I read all his warrants to him from all the warrants
7 that we had from the prior day. I went through the
8 warrants and read them to him. And then after that, I
9 asked him about the comment that he made in the vehicle
10 that the officers told me about.

11 Q Did you read the Miranda warnings to him again prior
12 to that?

13 A Yes, sir, before I served the warrants on him.

14 Q Did he sign a statement acknowledging?

15 A No, sir, he did not give anything in writing.

16 Q Okay. Did you ask him to do that?

17 A I don't recall if I asked him to give a statement in
18 writing, but he would not -- he didn't sign anything.

19 Q Okay. And that conversation at the jail was just
20 between you and him; is that correct?

21 A Yes, sir.

22 Q So there's no other witnesses, no signed
23 documentation and you don't recall requesting him to sign
24 documentation about whether or not he had received Miranda
25 warnings again that following day at the detention center?

1 A No, sir, I know I Mirandized him that day at the
2 jail. I don't recall if I asked him to give a written
3 statement or do it in writing. I don't recall that. But
4 he did not give anything in writing.

5 Q Okay. As far as the second Miranda warning which
6 would have been at the detention center, do you
7 customarily read defendants their Miranda warnings again
8 if you're questioning them at the jail?

9 A If I'm going to question them without warrants, I
10 always Mirandize them whether it be from a card or whether
11 it be from a form, they're always Mirandized. I always
12 Mirandize them before I serve warrants simply as I stated
13 in case after I read the warrant if they make a statement,
14 they already been advised of their rights.

15 Q When you saw him at the detention center, had he gone
16 up for bond in front of the magistrate before or after the
17 conversation with you, do you know?

18 A He had not been at bond because the warrants hadn't
19 been served on him yet.

20 Q Okay. And you say you're sure that you gave him a
21 second Miranda warning?

22 A Yes, sir.

23 Q Nobody else around acknowledged that except for you;
24 is that right?

25 A No, sir, I served the warrants that day and it was

1 just me and Mr. Gibbs.

2 Q Okay.

3 MR. BROOKS: No other questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. MEADORS:

7 Q Did you all also find a .45 caliber handgun and a .38
8 caliber?

9 A Yes, sir, in the residence.

10 MR. MEADORS: That's all.

11 THE COURT: Any recross-examination?

12 MR. BROOKS: Not on that issue.

13 THE COURT: All right. Thank you. You may step
14 down.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 MR. BROOKS: Before they call the next witness,
18 Judge, this is just basically to kind of maybe shorten
19 things up. One of my other motions is basically a motion
20 in limine like the last time when we tried this matter.
21 The State was prohibited from mentioning the fact that
22 they come out there to arrest him and what they arrested
23 him for. The last time when they got into it they talked
24 about when we came to serve warrants.

25 THE COURT: Yeah, I agree with you. You don't

1 have any objection to that, do you?

2 MR. MEADORS: Mr. Brooks, what came to my memory
3 was that they were there to serve arrest warrants but not
4 for what they're for just -- because it's got to be an
5 explanation ---

6 THE COURT: They got to have a reason to go out
7 there.

8 MR. MEADORS: Right.

9 THE COURT: What are you going to do drop by
10 your door and just say hello.

11 MR. BROOKS: Obviously, Judge, what I'm
12 concerned about is prejudicing my client.

13 THE COURT: Right, but they won't say -- they
14 will say nothing about why they were there. As far as
15 they know, it could be for not paying child support.
16 There will be no mention as to the fact that they were
17 arresting him on drug charges.

18 MR. BROOKS: Unless, we open the door.

19 THE COURT: Unless, you open the door. If you
20 say he was just minding his own business and they had no
21 reason to be there, guess what? That's opening the door.

22 MR. BROOKS: And basically one of the things
23 that, Judge, I'm concerned about is the -- I don't live
24 here issues. If -- I wanted to get clarification we -- if
25 we assert that, is the Court now to going to consider that

1 as opening the door for purposes of Officer Dubose to come
2 up and then say, oh, he says he doesn't live there.

3 THE COURT: I don't know that that opens the
4 door to all of the charges. I mean, they're going there
5 because they had that as a valid address. I don't think
6 the fact that what they were going there to do, I don't
7 think that opens the door for that.

8 MR. BROOKS: This is what I'm asking, Judge, and
9 I think I'm trying ---

10 THE COURT: Well, how about let me just stick to
11 one issue at a time. We're doing the Jackson v. Denno
12 unless you're conceding that.

13 MR. BROOKS: The reason I was asking that,
14 Judge, is he had asked Officer Dubose -- he got into, you
15 know, some background why did you go out there. We made
16 these buys et cetra et cetra.

17 THE COURT: And this is for this purpose of this
18 hearing.

19 MR. MEADORS: I was trying to give Your Honor a
20 background.

21 THE COURT: At trial, he's not going to be able
22 to go into all that.

23 MR. BROOKS: I understand, Judge, but I guess
24 what I'm trying to do is I'm trying to anticipate my
25 colleague here, you know, based on certain things

1 happening. Of course, Your Honor, was not the first
2 judge, you know, when we had this trial before. I'm
3 worried for my client's sake that if my -- I guess, what
4 I'm saying, Judge, if my client gets up and says and I
5 don't live here. I don't live here is that going to be
6 equivalent of opening the door for Officer Dubose to come
7 up and say, well, in November so and so we sent a C.I. and
8 he was here then. And then in December so and so we sent
9 a C.I. and ---

10 THE COURT: That may very well. And if he says
11 I never been to his house before and they got evidence of
12 a control buy for that house with him, he's saying
13 something that they have ready proof, that isn't the case.
14 He's not going to be able to use that as a shield and as a
15 sword. He got to take his pick on it. He can't say I
16 don't live here and then say, well, they can't ask me any
17 questions about it. I mean, it's pretty evident if they
18 believe, but initially, they'll just say I suppose that
19 they were going to the house to serve some warrants.
20 Innocuous, we don't say whether they're for him or for
21 anybody else. But, you know, if he gets into, well, I
22 don't live here. They had no reason to come here, that's
23 coming from his testimony. He's going to have to take the
24 stand and assert that. And then he's on the stand and
25 they can ask him anything they want to about it.

1 MR. BROOKS: And I see where Your Honor's going.

2 THE COURT: I don't want to give any advisory
3 opinions. I'm trying to work with you, but I can't until
4 it presents itself in the proper terms, I can't make a
5 ruling on it.

6 MR. BROOKS: I understand, Judge. You have
7 answered my questions.

8 MR. MEADORS: Judge, he just went on a couple
9 issues so but before I forget and just think the testimony
10 will be presented if you say it's okay would be that he is
11 -- was there to serve warrants on Mr. Gibbs without saying
12 what it was.

13 THE COURT: That's right.

14 MR. MEADORS: And, Judge, what he's talking
15 about is if Mr. Gibbs takes the stand and I would in and
16 of itself the fact ---

17 THE COURT: You know, that's a couple days from
18 now.

19 MR. MEADORS: I wasn't trying to go into those
20 if he just said I didn't live there. I don't know if that
21 opens the door. I'm not sure how much more that he can
22 say that wouldn't, but that in and of itself, I'm not
23 saying I'm not trying to do those just on that.

24 THE COURT: Again, I don't want to make a ruling
25 on that until it's properly before me.

1 MR. BROOKS: I understand, Judge.

2 MR. MEADORS: I'm going to step out and get my
3 book. Mr. Tyler is ready.

4 THE COURT: Okay, yes, sir.

5 MR. BROWN: May it please the Court, we'll call
6 Dale Horton.

7 THE CLERK: Place your left hand on the Bible
8 and raise your right hand. State your name please.

9 THE WITNESS: Dale Horton.

10 THE CLERK: Solemnly swear or affirm the
11 testimony to the Court should be the truth, the whole
12 truth and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you, sir, have a seat. Please
15 state your full name, spell your last name for the record.

16 THE WITNESS: Dale Horton H-O-R-T-O-N.

17 WHEREUPON,

18 Dale Horton,

19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION IN-CAMERA

21 BY ATTORNEY:

22 Q That's Lieutenant; correct?

23 A That is correct.

24 Q Now, Lieutenant Horton, you were present on
25 December 23rd 2008, on the arrest warrant being served at

1 Leroy Gibbs residence?

2 A That's correct.

3 Q And what was your official capacity there?

4 A Initially was the yard perimeter and then if there
5 was any arrest, then also transport.

6 Q At some juncture while you were there at the house
7 over on [REDACTED] Madison, did you get the assignment of
8 transporting Mr. Leroy Gibbs?

9 A That is correct.

10 Q Who was assigned transporting with you?

11 A That would be Lieutenant Chris Moore.

12 Q Okay. And did you all transport him?

13 A We did.

14 Q Take me to that car tell me who was sitting where and
15 what was going on?

16 A Chris Moore was the driver. I was passenger and
17 Mr. Gibbs was in the backseat under arrest.

18 Q Approximately, how far a drive is it from the house
19 on Madison Avenue over to Sumter County Lee Regional
20 Detention Center?

21 A Maybe 15 minutes maybe, probably less than that.

22 Q And as you all made this drive, were you all carrying
23 on any conversation with Mr. Gibbs?

24 A It wasn't so much we were carrying on a conversation,
25 but he was doing a lot of talking just steadily talking.

1 Q Were you all talking to him back or was he just
2 talking himself?

3 A He was basically talking to himself. We didn't
4 engage him. We didn't ask him any questions, he just kept
5 on talking.

6 Q Okay. And prior to you all putting him in the car,
7 did you all Mirandize him or anything?

8 A I didn't. The investigators on scene they did.

9 Q They place him under arrest?

10 A Yeah, they placed him under arrest. All we did was
11 transport.

12 Q Okay. And so during that ride out, was anything in
13 particular said that caught your attention?

14 A Like I said, when we were driving there and he was
15 doing a lot of talking, lot of talking. And then he said
16 selling drugs is a lifestyle and that right there I
17 immediately looked over at Chris. And like I didn't say
18 anything, just in like amazement did he just say that.

19 Q Now, right before he made that statement, did you ask
20 him any questions?

21 A No, it was no questions asked.

22 Q Did you ask him for any statements?

23 A No statements.

24 Q Did you make any promises or give him any false hopes
25 if he did make a statement?

1 A No.

2 Q Did you ask any follow-up questions to that
3 statement?

4 A No.

5 Q And did you continue to transport him or did Officer
6 Moore continue to transport him to Sumter Lee Regional
7 Detention Center after that?

8 A We did. We went through the booking process and then
9 we came back to the scene because they were still waiting
10 for other investigators to come.

11 Q When you got to that scene, was Investigator Dubose
12 still there?

13 A Yes, everybody originally was still there.

14 Q All right. Did you or Officer Moore or both of you
15 do anything to let Investigators know about what happened
16 that day?

17 A We immediately told Investigator Dubose that -- what
18 his statement was and he documented it.

19 Q Okay. And so that's been documented now with the
20 Sumter County Sheriff's Department?

21 A Uh-huh.

22 Q And is the individual who stated that selling drugs
23 is a lifestyle for me is he here in the courtroom here
24 today?

25 A He is.

1 Q Is that the individual seated right there at defense
2 table?

3 A It is.

4 Q Leroy Gibbs?

5 A It is.

6 MR. BROWN: Thank you. No further questions.

7 THE COURT: Mr. Brooks.

8 CROSS-EXAMINATION

9 BY MR. BROOKS:

10 Q Officer Horton.

11 A Yes, sir.

12 Q How you doing today?

13 A Outstanding, sir.

14 Q So you had my client in your car and you transport
15 him to the jail. You didn't say anything at all to him?

16 A Not a thing.

17 Q And you're telling us that without any provocation or
18 without any prodding discussion between you or Officer
19 Moore, he just says selling drugs is a lifestyle for me?

20 A That's correct. Like I said, when someone says
21 something like that, immediately like I can't believe he
22 just said that.

23 Q Okay. Now, you acknowledge, you didn't give him any
24 type of Miranda warning?

25 A No.

1 Q Okay.

2 A Didn't ask him any questions.

3 Q Okay. You didn't ask him any questions. You didn't
4 talk to him. You didn't give him any Miranda warnings any
5 way, shape or form. You just transport him to jail. You
6 were driving ---

7 A I was passenger.

8 Q You were passenger. Moore was driving?

9 A That's correct.

10 Q Took him to the detention center and he's just --
11 you're saying he's just shattering?

12 A Yes, sir.

13 Q And do you recall what else he said?

14 A He was apologetic. I mean, just kept on he had to
15 support his family stuff like that. But like I said, when
16 someone says selling drug is lifestyle, that sticks out to
17 you, that's what I remember. I mean, because I just can't
18 believe he said that.

19 Q Is it by chance that maybe he said a statement of I
20 don't live here?

21 A No, I don't remember anything like.

22 Q Because that wouldn't stand out to you?

23 A No, sir.

24 Q But you're saying the only thing that stood out to
25 you was the quote unquote selling drugs is lifestyle for

1 me?

2 A Yes.

3 MR. BROOKS: No other questions.

4 THE COURT: Any redirect?

5 MR. BROWN: None, Your Honor.

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

8 (WHEREUPON, the witness leaves the witness
9 stand.)

10 MR. MEADORS: Your Honor, that's all we have.

11 THE COURT: Mr. Brooks.

12 MR. BROOKS: Beg Court's indulgence.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: All right. Mr. Gibbs, come forward
15 be sworn for this hearing only. This is not a waiver of
16 Fifth Amendment in trial.

17 THE CLERK: Place your left hand on the Bible
18 and raise your right hand. State your name please.

19 THE WITNESS: Leroy Clifton Gibbs, III.

20 THE CLERK: You solemnly swear or affirm the
21 testimony to the Court shall be the truth, the whole truth
22 and nothing but the truth so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please state your full name, spell
25 your last name for the record.

1 THE WITNESS: Leroy Gibbs G-I-B-B-S.

2 MR. BROOKS: Ready, Judge?

3 THE COURT: I'm ready.

4 WHEREUPON,

5 Leroy Clifton Gibbs,

6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BROOKS:

9 Q Mr. Gibbs, do you recall being arrested on that day?

10 A Yes, sir.

11 Q Do you recall the conversation that you had with law
12 enforcement?

13 A Yes, sir.

14 Q What -- did you tell them selling drug is a lifestyle
15 for you?

16 A No, sir.

17 Q Okay. Do you recall what anything you may have told
18 law enforcement on that day?

19 A On the way to the jail or when they appeared?

20 Q Well, let's start on the way to the jail first.

21 A When I went to the jail, I had nothing to say to any
22 officer because they only was transporting me to the jail
23 for a warrant.

24 Q Okay. At the house as they were putting you in
25 custody, do you recall saying anything to them?

1 A No, sir.

2 Q Did you say anything about let me get my pants?

3 A That just when they arrived.

4 MR. MEADORS: I'm sorry could you ---

5 THE COURT: That's when they arrived.

6 BY MR. BROOKS:

7 Q Okay. Did you ask for your pants?

8 A Yes, ask for my pants.

9 Q Did you say anything else?

10 A That they had a search warrant.

11 Q I understand that, but did you say anything else to
12 them. We're talking about statements that you may or may
13 not have made. Did you say anything else to them while
14 you were at the residence?

15 A No, sir.

16 Q All right. As the two officers were transporting you
17 to the detention center, did you say anything?

18 A No, sir.

19 Q Did you say anything to them?

20 A No, sir.

21 Q Did you just say anything out loud?

22 A No, sir.

23 Q Now, the next day do you recall Officer Dubose coming
24 out and talking to you?

25 A Yes, sir.

1 Q Okay. Did you -- do you recall what statement you
2 made to him if any?

3 A Only thing I said to Mr. Dubose was -- was concerning
4 the warrants what I'm being charged with.

5 Q Were you asking him?

6 A Yeah.

7 Q Okay. You asked him what am I being charged with?

8 A Yes.

9 Q And what did he tell you?

10 A He said that he'll have the warrants, you know what
11 I'm saying, in the next couple -- next hours or day or
12 two.

13 Q Okay. Did you say -- and did he -- did you say
14 anything after that?

15 A No, sir.

16 Q Did he ask you anything about some alleged statement
17 the day before?

18 A No, sir.

19 Q Okay. Do you recall whether or not he told you the
20 Miranda warnings. Do you understand what Miranda warnings
21 are?

22 A Just my rights.

23 Q Right. Do you recall him telling you about your
24 rights at the jail?

25 A No, sir.