

VOLUME II 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UNPUBLISHED OPINION NO. 2016-UP-121 (S.C. Ct.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

1 MR. BROOKS: No other questions, Judge.

2 THE COURT: Mr. Meadors.

3 MR. MEADORS: Thank you. May it please the
4 Court.

5 CROSS-EXAMINATION

6 BY MR. MEADORS:

7 Q Good morning, Mr. Gibbs. So you were staying there
8 the night before when the officers came on the 23rd?

9 A No, sir.

10 Q You hadn't spent the night there?

11 A No, sir.

12 Q And do you remember Investigator Dubose coming in the
13 house; correct?

14 A Yeah, that morning.

15 Q All right. And you remember that he read you your
16 Miranda rights when you came in that morning you and
17 Kimberly?

18 A No, sir. Kimberly was in another room. I was the
19 only one in the living room with him and the rest of the
20 other officers.

21 Q You remember him pulling out his card ---

22 A No, sir. No, sir. I remember him ---

23 Q Let me finish the question please, sir. Do you
24 remember him pulling out his card and reading the Miranda
25 rights on that card to you?

1 A I can't recall.

2 Q Okay. So he could have done that?

3 A Yeah, he could have.

4 Q And you familiar with your Miranda rights?

5 A Yes, sir.

6 Q You understand Miranda rights?

7 A Yes, sir.

8 Q No offense just cause your brush with the law before?

9 A Yes, sir.

10 Q No disrespect, but, I mean, you've had your Miranda
11 rights read to you a bunch, so you understand what they
12 mean. And you understand if you wanted to invoke your
13 Miranda or not talk, you know you could say I want a
14 lawyer and I don't want to talk to you. I mean, you smart
15 enough to know that?

16 A Yes, sir.

17 Q And you didn't do that in the house?

18 A Sir?

19 Q I mean, you didn't say I don't want to talk to you.
20 You didn't say give me a lawyer?

21 A I didn't have to because they had a warrant for my
22 arrest, so they arrest me and sent me to the jail.

23 Q Okay. So I was going to say you didn't invoke your
24 Miranda rights. Did you tell him and -- did you tell him
25 I don't live here?

1 A Yes, sir.

2 Q So you did tell him that in the house?

3 A Yes, sir.

4 Q And you will admit to His Honor that Investigator
5 Dubose and other officers threatened you, held out any
6 hope of reward or promise at ■■■ Madison; correct?

7 A State that again?

8 Q Investigator Dubose or any of those other officers
9 there, they didn't threaten you or try to trick you to
10 make any statements at ■■■ Madison, right?

11 A No, only thing I ask for is when he came he ask -- I
12 ask him did he have a search warrant because of the fact
13 that dogs and other officers was entering the house and
14 going into other rooms and that's when I ask him did he
15 have a search warrant. He stated that, well -- I think
16 was Tripp Maze or Captain Daley told him to go out to the
17 car, which when he returned he only had a picture of me
18 not nothing, you know, other than -- nothing showing the
19 reason why the officers and dog was in the other room. He
20 only said that he had a warrant for my arrest. And he
21 locked me up, took everything out my pocket and sent me to
22 the jail.

23 Q You can't recall whether he read your Miranda, but
24 you did admit that you told him I don't live here?

25 A Yeah, he ask me.

1 Q But you were asking about a search warrant. Kimberly
2 consented to the search?

3 A I don't know. I wasn't there at the time when she
4 did.

5 Q So based on your testimony, you wouldn't have any
6 grounds to object to doing a search if you weren't living
7 there, right?

8 A Yeah, because he said he had a warrant for my arrest
9 at this residence.

10 Q Okay. Well, you had made four undercover buys there
11 previously; hadn't you?

12 A No, sir.

13 Q Now, let's move on from there. When the two officers
14 took you from Madison to the jail, they didn't read you
15 your Miranda rights, did they?

16 A No, sir.

17 Q Matter of fact, they didn't ask you anything, did
18 they?

19 A No, sir.

20 Q They were just sitting there transporting you;
21 correct?

22 A Yes, sir.

23 Q And you were back behind them; correct?

24 A In the car, yes, sir.

25 Q If they had said anything, you could have heard them?

1 A Yes, sir.

2 Q I mean, there wasn't any question about that?

3 A Yes, sir.

4 Q And at this point that's when you said the statement,
5 no disrespect selling drugs a lifestyle for me; isn't it?

6 A No, sir.

7 Q But they never question you. They didn't try to get
8 you to talk. They didn't threaten you or coerce you or
9 anything, did they?

10 A No, the driver maybe said some type of statement, but
11 I can't recall what it was.

12 Q All right. Now, we get to the jail?

13 A Yes.

14 Q And Investigator Dubose and you know Investigator
15 Dubose here; correct?

16 A Yes, sir.

17 Q Now, when he's serving you your warrants on you, do
18 you remember when he pulled out his card again and read
19 you his Miranda rights?

20 A He never -- I never seen any card. He only spoke
21 what he knew on top of his head.

22 Q So he said the Miranda rights there?

23 A Yeah.

24 Q It's like his hat. The man can't help it. He
25 serving a warrant. You remember Miranda rights?

1 A I know my Miranda rights.

2 Q And you knew when he it read to you down there at the
3 jail what they were. You're familiar with them. And you
4 didn't say I don't want to talk to you. He didn't ---

5 THE COURT: Is that a affirmative or a negative.

6 A Sir? Can you ask the question ---

7 Q Go back in my mind. You're saying he didn't have his
8 card, but you remember Miranda rights, your rights. You
9 know your rights. And you remember them coming, right?
10 You remember him saying what your Miranda rights were.
11 You had a right to remain silent, right to a lawyer, and
12 waiving the rights. I think you just said, yeah, I
13 remember he said those?

14 A Yes, sir.

15 Q Just didn't have the card?

16 A Yes, sir.

17 Q And again you understood those?

18 A Yes, sir.

19 Q I mean, I told you before on the record you smart
20 fellow you understood your Miranda rights?

21 A Yes, sir.

22 Q You did not invoke them. You didn't say, Wayne, I
23 don't want to talk to you, give me a lawyer, right?

24 A Yeah.

25 Q All right. And he didn't threaten you or coerce you?

1 That fellow there didn't threaten you or coerce you?

2 A No, sir.

3 Q Okay. And didn't promise or holdout any hope of
4 reward, right?

5 A Yes, sir.

6 Q You saying he did not; correct?

7 A No. No, sir.

8 Q So at this point, he confronted you with the
9 statement about selling drugs is a lifestyle?

10 A Yes, sir.

11 Q And you said I got to support my family?

12 A I never told him anything like that.

13 Q But he did confront you with the statement though?

14 A He ask me that did I said anything to the officer and
15 I told him as well I didn't say anything to the officer.

16 Q Okay. But he did ask you what you had said to them?

17 A Yes.

18 Q You're just denying that you said I got to support my
19 family? You're saying you didn't say anything to him?

20 A Yes. Yes, exactly.

21 Q I'm not trying to trick you. You're saying to him I
22 didn't say that?

23 A I didn't say nothing.

24 Q I got you. And then finally when he ask you about or
25 told you what had been found in your residence, your

1 house, you told him that Kimberly must have been with some
2 other person and because you don't live there and those
3 drugs must have been hers. I mean, you did say that,
4 didn't you?

5 A No, sir.

6 Q You said something like that?

7 A Something like that?

8 Q Yeah. I mean, he didn't just make that up. You said
9 something the drugs weren't yours, did you?

10 A He ask me questions concerning the drugs inside the
11 house.

12 Q Right.

13 A I told him that I wasn't staying at the resident.
14 That she had other individuals staying there. So I don't
15 have no knowledge of it, so I can't speak upon.

16 Q Well, that's pretty much what he said, Mr. Gibbs. I
17 mean, that's pretty much. You said she had other people
18 staying there and you had no knowledge of it, so it must
19 been hers. I mean, that's kind a -- he wrote that down
20 pretty good. So you admit to saying that?

21 A Yes, sir.

22 Q Okay.

23 MR. MEADORS: That's all I have.

24 THE COURT: Any redirect?

25 MR. BROOKS: No, sir.

1 THE COURT: Thank you, sir. You may step down.
2 (WHEREUPON, the witness leaves the witness
3 stand.)

4 THE COURT: Okay.

5 MR. BROOKS: Judge, that's all we have in terms
6 of the Jackson vs. Denno.

7 THE COURT: Right.

8 MR. BROOKS: It's our position that those
9 alleged statements should be excluded from purposes of
10 this trial.

11 THE COURT: The purpose of this trial I got
12 testimony that he was Mirandized. I got his testimony.
13 He knew what Miranda warnings were and understood those.
14 On the first statement, drug dealing is the life for me.
15 I got testimony that he was Mirandized at the house. The
16 officers who transported him said they did not elicit any
17 testimony after that, that he made the statement. And
18 then the next day the testimony is that he was Mirandized
19 again. And he then made a statement that I must do this
20 to support my family. I find that the statements will
21 come into evidence. As to whether the jury decides to
22 believe him, is a matter entirely for them to decide. And
23 the State will have to prove that beyond a reasonable
24 doubt. If at this time, I find that the statements are
25 proper for being placed into evidence. Thank you.

1 MR. BROOKS: Thank you.

2 MR. MEADORS: May we approach, Your Honor?

3 THE COURT: You may.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: All right. Mr. Brooks, I think you
8 have something else you want to put on the record.

9 MR. BROOKS: Yes, sir. Judge, just to protect
10 my client's interest, he has a multitude of drug charges.
11 There was a lot of discovery that actually came my way. A
12 lot of this discovery actually didn't come to me directly
13 from the Solicitor's office. It actually came from his
14 prior counsel David Sullivan who's the public defender on
15 the case.

16 THE COURT: Right, who's not here anymore.

17 MR. BROOKS: Who's not here and he had it.
18 Obviously, when he left the public defender's office and
19 then went on to -- I don't know where he is now. And then
20 they -- the public defender's office sent this out to the
21 private bar. We had that. Of course, we did not know
22 exactly which case they were going to call to trial. The
23 first time until about two days before because of the
24 numbers of drug charges that he had. Solicitor's office
25 then told us that we're trying the actual case from the

1 arrest. And the search that came from those arrests and
2 that at that time I inform my client ---

3 THE COURT: We're not trying the control buys or
4 anything like that. This is strictly what happened at the
5 house and what was at the house?

6 MR. MEADORS: Yes, sir.

7 MR. BROOKS: And that's when I notified my
8 client these things that he had pertinent to this
9 particular case saw those. Obviously, that's what we
10 tried back in February. And I been informed by the
11 Solicitor's office and I see it in their witness list that
12 they're actually bringing the exact same witnesses for
13 that particular case. I just want to put that on the
14 record basically a discovery issue.

15 THE COURT: Is there any -- you're not alleging
16 there was any outstanding discovery that they had withheld
17 from you?

18 MR. BROOKS: No, sir, unless there's something
19 else because I don't know anything about, but at this
20 point in time, no, sir.

21 THE COURT: Okay.

22 MR. MEADORS: Judge, may it please the Court. I
23 don't want the Court to think two days beforehand this
24 just came up. He was on the trial docket.

25 THE COURT: You talking about last trial?

1 MR. MEADORS: Yes.

2 THE COURT: I'm not worried about that issue.
3 You all published this three weeks ago. I got a copy of
4 the trial list.

5 MR. BROOKS: No, no, no, I was just saying he
6 was on the trial list because he had a lot of charges.
7 This was back in February and then they basically said
8 we're going to try this one at that time.

9 THE COURT: One I presented ---

10 MR. MEADORS: We gave him appropriate notice
11 then, but this is the exact same case he has all the
12 discovery here. We gave it through the last trial and
13 it's the same discovery, same witnesses, the pictures.
14 There a lease we ended up putting in last time. We're
15 going to offer that again, but it is the exact same
16 information. For the record, I believe he has all the
17 discovery.

18 THE COURT: If you all could get here a little
19 early and pre-mark those, so we have them ready. It may
20 help the trial go.

21 MR. MEADORS: Might need to do that this
22 afternoon.

23 THE COURT: Do it this afternoon.

24 MR. MEADORS: Mr. Tyler, will be here about nine
25 to do that, Your Honor -- Mr. Brown.

1 MR. BROOKS: So other than that, we reconvene at
2 nine...

3 THE COURT: Thirty. We'll start at 9:30. So
4 you all be here at nine or something like that premarked.

5 MR. BROOKS: Thank you, sir.

6 THE COURT: Court adjourned until 9:30 in the
7 morning.

8 END OF REQUESTED TRANSCRIPT

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 72, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 6th day of June,
2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 8th day
of January 2014.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)

COURT OF GENERAL SESSIONS

THIRD JUDICIAL CIRCUIT

CASE NO. 2011-GS-43-1125

STATE OF SOUTH CAROLINA,
)

Plaintiff,
)

-vs-
)

TRANSCRIPT OF RECORD

(DAYS 2&3 OF 3)
)

LEREOY CLIFTON GIBBS, III,
)

Defendant.
)

June 4-5, 2013

Sumter, South Carolina

B E F O R E:

THE HONORABLE WILLIAM JEFFREY YOUNG, Judge

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

JOHN P. MEADORS, Esquire
TYLER BRYANT BROWN, Esquire
Attorneys for the Plaintiff

CHARLES BROOKS, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

1	<u>I N D E X</u>	
2	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
3	Pre-Trial Motions.....	7
4	Jury Sworn.....	12
5	Opening Statements	
6	Mr. Brown.....	21
7	Mr. Brooks.....	25
8	Investigator Wayne Dubose	
9	Direct Examination by Mr. Meadors.....	28
10	Cross Examination by Mr. Brooks.....	74
11	Redirect Examination by Mr. Meadors.....	79
12	Lieutenant Dale Horton	
13	Direct Examination by Mr. Brown.....	82
14	Cross Examination by Mr. Brooks.....	87
15	Redirect Examination by Mr. Brown.....	91
16	Recross Examination by Mr. Brooks.....	92
17	Investigator James Atkinson	
18	Direct Examination by Mr. Brown.....	93
19	Cindy Pierson	
20	Direct Examination by Mr. Brown.....	101
21	Mitchell Hansen	
22	Direct Examination by Mr. Brown.....	107
23	Cross Examination by Mr. Brooks.....	122
24		
25	(CONTINUED ON NEXT PAGE)	

1	<u>I N D E X</u>	
2	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
3	Kimberly Gibbs	
4	Direct Examination by Mr. Meadors.....	124
5	Cross Examination by Mr. Brooks.....	154
6	Redirect Examination by Mr. Meadors.....	159
7	State Rests.....	159
8	Motions.....	160
9	Defendant Questioned Regarding Testifying.....	162
10	Leroy Clifton Gibbs, III	
11	Direct Examination by Mr. Brooks.....	168
12	Cross Examination by Mr. Meadors.....	170
13	Defense Rests.....	188
14	Motions.....	189
15	Investigator Wayne Dubose	
16	Direct Examination by Mr. Meadors.....	190
17	Cross Examination by Mr. Brooks.....	199
18	State Rests.....	200
19	Motions.....	200
20	Closing Arguments	
21	Mr. Brown.....	203
22	Mr. Brooks.....	209
23	Mr. Meadors.....	214
24		
25	(CONTINUED ON NEXT PAGE)	

1	<u>I N D E X</u>	
2	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
3	Charge on the Law by the Court.....	228
4	Jury Note.....	240
5	Verdict of the Jury.....	245
6	Polling of the Jury.....	246
7	Motions.....	249
8	Sentencing.....	251
9	Sentence by the Court.....	259
10	Court Reporter Certification.....	261
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	Consent to Search	39	136
4	S-2	Lease		132
5	S-3	Color Photograph		30
6	S-4	Color Photograph		33
7	S-5	Color Photograph		61
8	S-6	Color Photograph		61
9	S-7	Color Photograph		56
10	S-8	Color Photograph		34
11	S-9	Color Photograph		34
12	S-10	Color Photograph		34
13	S-11	Color Photograph		58
14	S-12	Color Photograph		58
15	S-13	Color Photograph		60
16	S-14	Color Photograph		59
17	S-15	Color Photograph		41
18	S-16	Color Photograph		43
19	S-17	Color Photograph		43
20	S-18	Color Photograph		43
21	S-19	Color Photograph		43
22	S-20	Color Photograph		47
23	S-21	Color Photograph		48
24	S-22	Color Photograph		62
25	(CONTINUED ON NEXT PAGE)			

	<u>E X H I B I T S</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-23	Color Photograph		49
4	S-24	Color Photograph		54
5	S-25	Color Photograph		54
6	S-26	Drug Analysis Report		109
7	S-27	Sealed Bag - Drugs		51
8	S-28	Sealed Bag - Drugs		51
9	S-29	Sealed Bag - Drugs		52
10	S-30	Sealed Bag - Drugs		55
11	S-31	Box containing 2 Guns and Clip		58
12	S-32	Paper Bag containing Pyrex Bowl	77	96
13	C-1	Jury Note	241	
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 JUNE 4, 2013 (Day 2 of 3)

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 proceedings began at 9:36 a.m.)

5 THE COURT: All right, Mr. Brooks.

6 MR. BROOKS: Judge, the first thing is I think my client
7 wants to be addressed. He is asking for this matter to be
8 continued, for me to be relieved as counsel, and he again to
9 be appointed new counsel in this case. I think he probably
10 wants to be heard on that.

11 THE COURT: All right. Mr. Gibbs, you may stand. Yes,
12 sir?

13 THE DEFENDANT: Yes. I would like to ask the Court to be
14 added as co-counsel to assist counsel ---

15 THE COURT: You can't do that. You're not an attorney.
16 I can't let you be co-counsel.

17 THE DEFENDANT: Or I can -- or -- well, I feel that in
18 this matter that my client is not going to represent me ---

19 THE COURT: Your client? You mean your lawyer?

20 THE DEFENDANT: My attorney is not going to represent me
21 to the fullest ---

22 THE COURT: Okay.

23 THE DEFENDANT: --- because of the fact that ---

24 THE COURT: Well, I mean I think he tried to get off last
25 week.

1 THE DEFENDANT: Yes, ma'am. Yes, sir.

2 THE COURT: Judge James didn't let him. So are you
3 asking that he be relieved now?

4 THE DEFENDANT: Yes.

5 THE COURT: So you don't want him on this case?

6 THE DEFENDANT: No, sir.

7 THE COURT: And you want me to appoint you a new lawyer?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If you -- if you want nothing to do with Mr.
10 Brooks, then I can relieve Mr. Brooks, but the case will go on
11 and you'll represent yourself.

12 THE DEFENDANT: Okay.

13 THE COURT: So you want to represent yourself?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Brooks, I'm not going to allow him to do
16 that. We're at this stage. I'm going to leave you on. You
17 all have been through this long enough. I'm -- I'm going to
18 deny the request and Mr. Brooks will stay on the case. All
19 right, thank you.

20 MR. BROOKS: Judge, the other matter was he had ended up
21 filing his own motion to dismiss for lack of evidence.

22 THE COURT: All right.

23 MR. BROOKS: I think the Court has a copy of that.

24 THE COURT: The Court -- the Court reviewed that and --
25 and what I'll say is no evidence has been presented yet in

1 this case. You're correct at this point in time there is no
2 evidence because we haven't started the trial yet. If you
3 want to renew your motion at the end of the State's case, then
4 we can pick that up at that point in time, but since no
5 evidence has been presented because the trial has not started,
6 your -- your motion would be premature.

7 So I'm going to deny your motion to relieve Mr. Brooks
8 and we will proceed with the trial at this time. Now, you'll
9 be allowed to testify if you want to, and you can discuss with
10 Mr. Brooks as to what witnesses that you'll call, but he's --
11 you can't be co-counsel because you're not a licensed attorney
12 in this state so I can't allow you to do that. But we're
13 going to proceed. Anything further?

14 MR. BROOKS: No, sir.

15 MR. MEADORS: May we approach?

16 THE COURT: Yes, sir.

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

18 THE COURT: All right, Mr. Brown, you've got an item that
19 we need to put on the record?

20 MR. BROWN: Briefly, Your Honor. The indictment has been
21 handed up on this case and, as Your Honor is aware, this is
22 the second time this case has gone to trial. In the first
23 trial, we did address that the count of trafficking cocaine,
24 there was a scrivener's error on that. We do believe that the
25 defense has been put on sufficient notice that this is

1 actually crack cocaine. I believe it actually even cites the
2 statute. It shows at the top heading that this was crack
3 cocaine. He's been given sufficient notice. We just want to
4 note that there is that scrivener's error out there, but we
5 will be charging this as trafficking in crack cocaine.

6 THE COURT: That's only in the title.

7 MR. BROWN: Right.

8 THE COURT: The correct code section is in the body of
9 the indictment?

10 MR. BROWN: I believe so. I think that's what we put on
11 it. Actually, I don't have a copy of it in front of me, but I
12 believe that's what it says.

13 THE COURT: Is that what your understanding is, Mr.
14 Brooks?

15 MR. BROOKS: That ---

16 THE COURT: That scrivener error?

17 MR. BROOKS: We dealt with it the last time at the first
18 trial.

19 THE COURT: All right. I find that's of no consequence
20 because the charge that he will be -- we will be trying is
21 trafficking cocaine base, manufacturing cocaine base, and ---

22 MR. BROWN: Possession with intent.

23 THE COURT: --- possession with intent to distribute
24 cocaine.

25 MR. BROWN: That's correct, Your Honor. I just wanted to

1 put that on the record.

2 THE COURT: Is that your understanding, Mr. Brooks?

3 MR. BROOKS: Yes

4 THE COURT: And that's ---

5 MR. BROOKS: Ad that's my understanding of what we're
6 going to trial on.

7 THE COURT: You -- you're ready to go to trial on those
8 charges?

9 MR. BROOKS: On -- on the specific date ---

10 THE COURT: Right.

11 MR. BROOKS: --- of when he was arrested at the home.

12 THE COURT: That is correct.

13 MR. BROOKS: And nothing else.

14 THE COURT: Nothing else. These are strictly what
15 happened it looks like on December 23rd.

16 MR. BROOKS: Correct.

17 THE COURT: Is that correct?

18 MR. BROWN: Is it 23rd? Yeah, that's correct, Your Honor.
19 I apologize.

20 THE COURT: That's December 23rd of 2008. Okay, that's
21 what we will proceed to trial on today.

22 MR. BROWN: That's correct. Thank you.

23 THE COURT: Anything further?

24 MR. BROOKS: Judge, I think that's it.

25 THE COURT: Okay. As soon as Mr. Meadors gets back --

1 Mr. Meadors gets back, we'll bring the jury in, swear the
2 jury, and then I'll ---

3 MR. BROWN: The State will be ready.

4 THE COURT: We'll be ready.

5 MR. BROWN: Thank you, Your Honor.

6 (Whereupon, Mr. Meadors enters the courtroom.)

7 THE COURT: All right, let's bring our jury in.

8 (Whereupon, the jury enters the courtroom at 9:48 a.m.)

9 THE CLERK: Your Honor, we have all the jurors and the
10 alternate present in the courtroom.

11 THE COURT: Thank you, ladies and gentlemen, for being
12 here so promptly this morning. We had a few things we had to
13 talk about in here, but we were all ready to go at nine
14 thirty. We've been in here since nine thirty. I hope you've
15 had a good night's rest and are ready to hear some information
16 today. Mr. Bradley, would you please swear these jurors?

17 THE CLERK: Yes, sir, Your Honor. Ladies and gentlemen
18 of the jury, please stand and raise your right hand to be
19 sworn. For the State of South Carolina and County of Sumter
20 in the Court of General Sessions, Docket Number 2011-GS-43-
21 1125, the State of South Carolina versus Leroy C. Gibbs, III.
22 You shall well and truly try and a true deliverance make
23 between the State of South Carolina and the defendant, Leroy
24 C. Gibbs, III, whom you shall have in charge and a true
25 verdict give according to the evidence, so help you God.

1 Please respond by saying I will.

2 THE JURY: I will.

3 THE CLERK: Thank you. You may be seated.

4 THE COURT: Thank you, Mr. Bradley.

5 THE CLERK: Yes, sir.

6 THE COURT: And, Ladies and gentlemen, before we begin
7 this trial, which might very likely be the last trial held in
8 this building, I want to tell you that this trial will
9 probably be different from what you might expect. You know,
10 most people never have the chance to attend an actual court
11 session as y'all are today and may think from watching TV,
12 movies, or reading books that trials are always full of high
13 drama, intense action, and riveting circumstances.

14 Now, while all of these things may be true at times, this
15 trial is not for entertainment purposes. This is a real
16 trial, which is a fundamental part of our democracy. It's a
17 search for the truth in an effort to make sure that justice is
18 done, and searching for the truth and ensuring that justice is
19 done is often slow, deliberate, and repetitive, the opposite
20 of what you may have seen on television, in movies, or read in
21 books.

22 Now, ladies and gentlemen, this courtroom is a place of
23 honor that is dedicated to the protection and the preservation
24 of our citizens' rights through what has been called and I
25 truly believe to be the greatest justice system ever created

1 by man.

2 The attorneys who are appearing before you are advocates
3 for the parties that they represent, but, first and foremost,
4 they are officers of this court who are sworn to uphold the
5 integrity and the fairness of our judicial system and to help
6 you in your search for the truth. Now, ladies and gentlemen,
7 you should expect them to be professional, competent, and
8 ethical in their representation of their clients' interest and
9 remember, ladies and gentlemen, you also just took an oath to
10 listen to the evidence in this case and reach a fair and just
11 verdict, and you're expected to be professional, reasonable,
12 and ethical as well and, again, thank you for accepting the
13 important responsibility of jury service and for your
14 contribution to our justice system.

15 Now, ladies and gentlemen, what I'm going to tell you now
16 is intended to serve as an introduction to the trial of this
17 case. These remarks I make are not a charge on the law in
18 this case, and I'll charge you the law that is applicable to
19 this case at the end of the trial. This is merely an
20 explanation of the procedures that we will follow so you may
21 better understand what's happening.

22 Let me tell you up front, ladies and gentlemen, you will
23 not be allowed to take notes during this trial. Therefore,
24 it's very important that you listen closely to all the
25 evidence throughout this trial.

1 Now, ladies and gentlemen, the defendant is charged by
2 the indictments in this case of trafficking cocaine base,
3 manufacturing cocaine base, and possession with intent to
4 distribute cocaine. The specific elements of each of these
5 charges will be explained to you later, but again, let me
6 remind you that the indictment -- as I told you yesterday, the
7 indictment charging the defendant is merely the document by
8 which this case is brought into court and is in no sense any
9 evidence of the allegations contained therein.

10 The defendant has pled not guilty to the charges in the
11 indictment. So the State, therefore, has the burden of
12 proving all of the elements of all of the charges in the
13 indictment beyond a reasonable doubt, but it will be your duty
14 as jurors to decide whether the State has met that burden.
15 Ladies and gentlemen, your purpose as jurors is to determine
16 the facts in this case. You are to determine the facts from
17 the testimony that you'll hear from this witness stand and any
18 other evidence that is presented here in court. It will be up
19 to you to determine the inferences which you feel may be
20 properly drawn from the evidence that is presented. And,
21 ladies and gentlemen, it's especially important that you
22 perform your duty diligently and conscientiously because
23 ordinarily there is no way to correct an erroneous
24 determination of facts by a jury.

25 On the other hand, but with equal emphasis, the same law

1 that makes you the judges of the facts makes me the judge of
2 the law. The law as given to you by me is the only law that
3 you may consider. You must accept the law as I give it to you
4 and follow it even though you may disagree, and I'll make a
5 deal with you. I cannot tell you what the facts are and you
6 cannot disagree with me about what the law is or what you
7 think the law should be. Your job is to take the law as I
8 give it to you and apply it to the facts as you find them from
9 the testimony of the witnesses and any other exhibits that are
10 made part of the record. After hearing this, you will
11 deliberate and render a true and just verdict under the solemn
12 oath that you just took a few minutes ago as jurors.

13 Ladies and gentlemen, until I advise you to begin your
14 deliberations at the conclusion of the case, you must not
15 discuss the case with others, including your fellow jurors.
16 You may not use a computer, cellular phone, or other
17 electronic device with communications capabilities while here
18 in attendance at trial or during your deliberations. Now,
19 these devices may be used during lunch breaks or when you go
20 home for the evening, but even then it cannot be used to
21 disclose any information about the case when you're not in
22 court.

23 Information about the case would include, but certainly
24 would not be limited to, any information about a party, a
25 witness, an attorney, or a court officer, any news accounts

1 about the case, any information collected through juror
2 research on any topic raised or any testimony offered by any
3 witness or information collected through juror research on any
4 topic that you might think would be helpful in deciding the
5 case. In other words, all of the information that you will
6 need to render a verdict should come within the four walls of
7 this courtroom.

8 Now, ladies and gentlemen, I've said after the case is
9 submitted to you, you must discuss it only in the jury room
10 with your fellow jurors. The attorneys and the parties in
11 this case are advised and instructed that they are not to talk
12 to you at all. So if you see anyone involved in this case and
13 they don't even say hello, well, they're not being unfriendly.
14 They're just following my instructions.

15 Now, ladies and gentlemen, it is important that you keep
16 an open mind and not decide any issue in this case until all
17 of the evidence has been presented, the attorneys have made
18 their closing arguments, and I have instructed you on the law
19 that is applicable to this case, and it's your solemn
20 responsibility to determine the guilt or the innocence of the
21 defendant and your verdict must be based solely on the
22 evidence that is presented in this trial and the law as I
23 instruct it to you at the close of this trial.

24 Now, ladies and gentlemen, in just a moment the solicitor
25 will make what is called an opening statement where he will

1 explain what he believes the issues are in this case. The
2 attorney for the defendant may also make an opening statement,
3 although he is not required to do so. What the attorneys tell
4 you during their opening statements is not evidence in this
5 case; it is only their contention as to what they believe the
6 issues are.

7 Now, ladies and gentlemen, from time to time during this
8 trial you may hear one of the lawyers say something like, Your
9 Honor, I believe we have a question of law or a matter of law
10 to discuss with you or, Your Honor, may we approach the bench,
11 or sometimes I might find it necessary to excuse you from the
12 courtroom for a short while while the attorneys and I discuss
13 a matter of law, and the reason for this is, as I said, you
14 are the judges of the facts and sometimes when I'm discussing
15 matters of law with the attorneys, it may be necessary for me
16 to make some comment on the facts in connection with making a
17 ruling as to whether or not a particular law applies. Now, as
18 I've said, I'm not supposed to tell you what the facts are so
19 I'll excuse you from the courtroom while these discussions
20 take place so that you will in no way be influenced by
21 anything that I might say or do in connection with the facts.

22 Also during the trial, you may hear one of the attorneys
23 make an objection to certain evidence about to be presented.
24 Whether I sustain, which means to grant the objection, or
25 overrule, which means to deny the objection, should not be

1 construed that I favor one side or the other. I do not. Nor
2 should you infer that the objecting party is trying to hide
3 something from you. In this court, as in all situations in
4 life, there are specific rules that must be followed. The
5 attorneys, as officers of this court, are merely trying to
6 follow the Rules of Evidence in this court and are making
7 their objection and I am only ruling based upon what I believe
8 the law of the State of South Carolina to be concerning the
9 evidence being presented.

10 Now, ladies and gentlemen, in determining what the true
11 facts are, you must decide whether or not the testimony of a
12 witness is believable. It will be my responsibility as the
13 trial judge to rule as a matter of law whether certain
14 testimony is admissible. Once the testimony is admitted,
15 whether or not you decide to believe it is strictly for you to
16 determine. In deciding whether to believe a witness, you have
17 a right to consider the interest of any witness, the bias of
18 any witness, the prejudice of any witness, the opportunity for
19 the witness to have observed the matters or things about which
20 the witness testifies, and the way the witness acts on this
21 witness stand.

22 Ladies and gentlemen, you have a right to consider
23 anything that is in the record that will help you evaluate the
24 testimony of the witness. That means, as jurors, it is your
25 duty to pay close attention to the witnesses, to observe the

1 witnesses, to listen to the witnesses, and to pay close
2 attention to the attorneys and to the Court. Ladies and
3 gentlemen, please don't let your thoughts wander, but give
4 strict attention to the testimony in this case so at the end
5 of all the testimony, after the argument of counsel, and the
6 charge on the law by me, you will then be in a position to
7 determine what the true facts are and to apply the law to
8 those facts and thus render a true and just verdict.

9 Mr. Foreman, in addition, it will be your duty to preside
10 in the jury room and be the jury's spokesperson here in court.
11 It will also be your duty to write down the verdict at the
12 appropriate time, but I will give you further instructions on
13 that.

14 Now, in order to preserve everyone's rights, I'll give
15 the parties an opportunity to object to anything that I
16 stated. Does the State have any objection to anything that I
17 said?

18 MR. MEADORS: Nothing that Your Honor said, but we would
19 like to approach when you get through.

20 THE COURT: All right. Mr. Brooks?

21 MR. BROOKS: No, sir.

22 THE COURT: Okay.

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

24 THE COURT: Is the State ready to proceed?

25 MR. MEADORS: The State is ready, Your Honor.

1 THE COURT: Defense?

2 MR. BROOKS: Yes, sir.

3 THE COURT: All right.

4 MR. BROWN: May it please the Court.

5 THE COURT: Yes, sir.

6 OPENING STATEMENTS

7 MR. BROWN: Good morning, ladies and gentlemen, my name
8 is Tyler Brown. I'm assistant solicitor here in Sumter, South
9 Carolina. Yesterday, you met Mr. John Meadors. He and I are
10 co-counsel in this case and we're here today to talk to you
11 about what we submit evidence will show is a lifestyle.

12 We're here to talk to you about a lifestyle involving
13 possessing drugs, a lifestyle of manufacturing drugs. We're
14 here to talk to you about a lifestyle of distributing drugs.
15 We're here to talk to you about the defendant's lifestyle,
16 Leroy Clifton Gibbs.

17 Mr. Gibbs has been indicted for three charges and those
18 charges have been brought before you today: one for
19 trafficking in crack cocaine, one for manufacturing crack
20 cocaine, and one for possession with intent to distribute
21 powder cocaine. As it stands today, that document indicting
22 him is only a charging document so that we can bring this case
23 in here today to you to present evidence to attempt to show
24 the guilt of the defendant.

25 It is our job as the attorneys for the State to prove

1 guilt beyond a reasonable doubt, that same doubt you hear talk
2 about on TV every single day. Beyond a reasonable doubt as a
3 burden is a burden that we welcome.

4 Now, I know a lot of attorneys have analogies, stories,
5 and anecdotal reasons of what reasonable doubt it, but I'm
6 just going to tell you very simply what the law is. The law
7 on beyond a reasonable doubt means that we must leave you as
8 the jury firmly convinced of the defendant's guilt by the end
9 of this trial. At the end of this trial, we have to leave it
10 so that you say I believe he committed those actions and,
11 ladies and gentlemen, evidence will show through this trial --
12 we submit that evidence will show through this trial that he
13 is guilty of those offenses.

14 He is charged to start with in trafficking of crack
15 cocaine. Trafficking is what a lot of people when they watch
16 TV they think that means 18-wheelers going up and down the
17 interstate loaded to the gills with drugs, something out of
18 Smokey and the Bandit or whatever particular movie you might
19 pick, but that's simply not it. Trafficking is a term of law
20 that we use in the legal world here in South Carolina which
21 means that he possessed over a certain quantity of that drug.
22 In South Carolina, if you possess over ten grams, you can be
23 found guilty of trafficking crack cocaine.

24 We submit that evidence will show through this case that
25 he -- that Mr. Gibbs either had actual or constructive

1 possession of crack cocaine that was found in the house at [REDACTED]
2 Mattison Avenue, not two and a half miles away from where you
3 sit here today, and that he had that possession. Now, when we
4 talk about actual and constructive possession, actual
5 possession means that you have it on your person at the time.
6 Like my pen is in my pocket right now, I actually possess
7 that. My remote control sits beside my bed when I go to sleep
8 at night; I'm constructively possessing that because I exhibit
9 dominion and control of that.

10 And those are the things you want to sit here and think
11 about. Did he actually or constructively possess the crack
12 cocaine in a quantity over ten grams? If you believe that he
13 did that, we submit to you that by the end of this case, you
14 will have the ability to deliberate on that and decide that
15 matter.

16 The second charge he's charged with is manufacturing
17 crack cocaine. You're going to hear evidence in this trial
18 that -- that when officers arrived at the house, we submit to
19 you the evidence will show that he had all the ingredients,
20 all the mechanisms, and that he actually had -- there was
21 evidence found that he had been using the house at [REDACTED]
22 Mattison to actually make, manufacture, cook crack cocaine,
23 cocaine base, whichever one you want to call it. They are the
24 same thing.

25 Finally, he is charged with possession with intent to

1 distribute powder cocaine. There is a distinct difference
2 between powder and crack cocaine. Clearly, the difference is
3 that powder cocaine is the pure form. Cocaine base, crack
4 cocaine has actually been cooked, mixed, and broken down to
5 its base form.

6 But as pertains to possession with intent to distribute
7 powder cocaine, the things you'll be wanting to listen to for
8 this trial is particular inferences that the State will
9 present to you that will lead you to the conclusion that he
10 did attempt to distribute. Things you want to listen for, the
11 law says if it's over one gram, there can be a reasonable
12 rebuttable presumption that the defendant did intend to
13 distribute. If you find that there are baggies in the house,
14 that there are ways to divide, a razor, things of that nature,
15 if you find that there are scales, if you find money that is
16 in line with distributing, all of these things are things that
17 you'll be able to consider as you hear the facts, and as long
18 as you find that you believe that he committed those acts, if
19 the State leaves you firmly convinced, then we will have met
20 our burden.

21 It will be your jobs for the next day or so to listen to
22 all the facts in this case, to consider all the facts, and to
23 determine at the end of this after His Honor has charged you
24 on the law as to whether or not you believe the defendant did
25 this. Are you firmly convinced?

1 The State believes that evidence in this case will show
2 through the testimony of officers and other witnesses that on
3 the day of December 23rd, 2008, officers went to the home of
4 Leroy Clifton Gibbs, the defendant here on trial today, and
5 they executed an arrest warrant on him. After they left, a
6 Consent to Search was done.

7 As they searched the home, they found large quantities of
8 crack cocaine. When they searched the kitchen, they found --
9 we believe evidence will show that they found evidence that
10 the microwave had been used to cook crack cocaine, that all
11 the ingredients were right there, that the scales were there,
12 that the razors were there, and then as Mr. Gibbs was being
13 driven away to come to the courthouse -- or from his house to
14 the jail, he stated to law enforcement that selling drugs is a
15 lifestyle to him.

16 We believe the evidence will show all these things and
17 you will see the lifestyle that Leroy Clifton Gibbs leads. At
18 the end of this case, we'll come back to you in our closing
19 argument and ask you to find him guilty on these charges.
20 Thank you.

21 THE COURT: Thank you, Mr. Brown. Mr. Brooks?

22 MR. BROOKS: Thank you, Judge. Ladies and gentlemen, my
23 name is Charles Brooks and I represent Clifton Gibbs, who is
24 seated at the table, and Mr. Brown has quite an imagination,
25 but I'd like to tell you what this case is really about and

1 basically explain to you what your role here in this
2 courthouse is all about.

3 My client, Clifton, is presumed innocent. He has a
4 constitutional right everybody has in this country. He is
5 presumed innocent. He doesn't have to prove anything. The
6 State of South Carolina at this table, they have got to show
7 you in your judgment beyond a reasonable doubt that he did
8 these things that Mr. Brown was talking about earlier.

9 Now, that's very important. What is reasonable doubt?
10 Well, I like to equate reasonable doubt to those of us who get
11 up in the morning and go to work, put on our clothes, iron
12 them, and when we get on our way to work, if you're halfway to
13 the job and you think did you cut off the iron, now we have
14 doubt as to whether or not we cut off the iron. I equate that
15 to reasonable doubt.

16 Another thing that I equate to reasonable doubt is most
17 of us may be athletic, may be in sports, maybe not. We have a
18 general idea of how certain sports work. Like take, for
19 instance, the game of baseball. My client hits the ball into
20 the infield and the State, all the people in the infield and
21 the outfield, their job is to get the ball to the base before
22 the runner gets there. But any time they get the ball at the
23 same time, the tie goes to the runner. In this case, you must
24 resolve all doubt in favor of Clifton.

25 The game of football, the State has to get the ball all

1 the way into the end zone. It's not good enough for them to
2 get the ball across the thirty yard line or the fifty yard
3 line, or even if they get a field goal. They have got to get
4 the ball in the end zone.

5 We -- Clifton, he's presumed innocent. He doesn't have
6 to prove anything to you. Now, that's very, very, very
7 important, and that puts the burden on them.

8 More often than not, the State of South Carolina when
9 they come in and they say, hey, jury, use your common sense,
10 and we say, yes, use your common sense. Look at this with an
11 open mind. Look at all of the evidence and listen to
12 everybody on the stand, and remember they have to prove their
13 case beyond a reasonable doubt. Clifton has to prove nothing.

14 This is not an opinion poll on who you think is going to
15 win the NBA finals or what do you think the president should
16 do or who you think should run in 2016. Those are opinion
17 questions. This is a very, very serious question that you
18 have been endowed as the jury with the power to determine
19 whether or not the State has proven their case beyond a
20 reasonable doubt. We say they have not. We say they will
21 not.

22 And I think that after you listen to everything and
23 listen to the law as the judge will instruct you, possession,
24 actual or constructive, and you keep an open mind and we think
25 after you've heard it, we feel strongly that your conclusion

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 will be, well, I might have an opinion one way or the other,
2 but after I look at it and I look at it in the eyes of the
3 power that I have as the jury, I have doubts. I have
4 reasonable doubt and remember, any and all reasonable doubt
5 has to be resolved in the favor of Clifton. The tie goes to
6 the runner. Thank you.

7 THE COURT: Thank you, Mr. Brooks. The State may call
8 its first witness.

9 MR. MEADORS: If it please Your Honor, the State of South
10 Carolina would call Investigator Wayne Dubose.

11 THE CLERK: Please place your left hand on the Bible. If
12 you would, raise your right hand. State your name, please.

13 THE WITNESS: Investigator Wayne Dubose.

14 THE CLERK: Do you solemnly swear or affirm your
15 testimony to the Court shall be the truth, the whole truth,
16 and nothing but the truth, so help you God?

17 THE WITNESS: Yes, sir.

18 THE CLERK: Thank you. Have a seat up here, please.
19 Watch your step there. Please state your full name and spell
20 your last name for the record.

21 THE WITNESS: Investigator Wayne Dubose, D-U-B-O-S-E.

22 INVESTIGATOR WAYNE DUBOSE, being
23 first duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. MEADORS:

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Good morning, Investigator. Would you please tell the
2 ladies and gentlemen of this jury a little about Investigator
3 Wayne Dubose, where you -- where you were born, your
4 background, your education, your training, and specifically
5 your training in law enforcement, please?

6 A: I was born here in Sumter. I'm forty-one years old. I
7 attended Furman High School. I graduated from there. I was
8 employed with the Fire Department at one time. I left there
9 and came into law enforcement in '96. I went to the Criminal
10 Justice Academy where I was certified as a police officer.
11 Through there, I progressed -- progressed up through patrol on
12 up to investigation.

13 Q: And what -- what -- what's your job now? What ---

14 A: I'm a criminal investigator with the Sheriff's Office.

15 Q: So you've been in law enforcement how many years?

16 A: Sixteen years.

17 Q: And I know you've testified before. Just be sure and
18 speak into the microphone so the court reporter and these
19 ladies and gentlemen can hear you. On December 23rd of 2008,
20 were you working?

21 A: Yes, sir, I was.

22 Q: And did you have an occasion to serve some arrest
23 warrants at ■ Mattison Avenue?

24 A: Yes, sir, I did.

25 Q: And were those arrest warrants for the defendant, Leroy

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Clifton Gibbs, III?

2 A: Yes, sir.

3 Q: Please tell the ladies and gentlemen, who went with you
4 to [REDACTED] Mattison Avenue?

5 A: I went to the resident. Investigator Mays with the
6 Sheriff's Office, Captain Daley, Investigator Boland, a couple
7 agents from SLED, Sergeant Moore, and Sergeant Horton with the
8 Sheriff's Office went to assist us. They were going to
9 transport him when we arrested him at the house.

10 Q: Look at State's 3 please and please let me know if you
11 recognize it and does it relate to your testimony?

12 (Whereupon, a color photograph is presented to the
13 witness.)

14 A: This is [REDACTED] Mattison Avenue.

15 MR. MEADORS: Your Honor, State's 3. We'd offer State's
16 3.

17 THE COURT: Any objection, Mr. Brooks?

18 MR. BROOKS: No objection.

19 THE COURT: Without objection, State's Exhibit Number 3
20 is admitted into evidence and may be published to the jury.

21 MR. MEADORS: Thank you, Your Honor.

22 Q: Tell these folks where -- where is this? Where is
23 Mattison Avenue in relation to here in this courthouse?

24 A: Mattison Avenue, if you -- if you go up Liberty Street,
25 if you were to turn on Alice Drive, Mattison Avenue is going

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 to run there to the left. It actually is between Alice Drive
2 and Second Hill Pond in that subdivision back in there.

3 Q: What time of day is it on December 23rd when you get
4 there?

5 A: We got there at lunch time, at twelve o'clock.

6 Q: All right. What do you do? What do you do,
7 Investigator, when you get to [REDACTED] Mattison Avenue?

8 A: Myself and other officers, we pulled up at the residence.
9 We were all dressed and marked as law enforcement, and we had
10 gray vests or our uniforms. We went to the residence. Myself
11 and some other officers went to the front door; some other
12 officers went to the rear of the residence. Typically, just
13 in case someone would run from the residence we ---

14 Q: Slow down a little bit. Typically, for what reason?

15 A: In case someone would maybe run out of the back of the
16 residence.

17 Q: So you had the residence surrounded basically?

18 A: That's right. We kind of set up a perimeter around it.
19 At that time, I knocked on the front door of the residence.
20 Once I knocked on the front door ---

21 Q: Did you actually knock?

22 (Whereupon, counsel knocks three times on the wooden rail
23 of the court reporter stand.)

24 A: I knocked. Yes, sir.

25 Q: Okay.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: I knocked on the front door and announced Sheriff's
2 Office, and at that time I heard some skirmishing around in
3 the residence for about a couple of minutes. No one answered
4 the door.

5 Q: So you knocked and you didn't say it like you did. Did
6 you yell Sheriff's Department?

7 A: Yes, sir. We make it clear who it was.

8 Q: All right and you said there was a couple of minutes.
9 Was there really a period of time where you -- you waited?

10 A: Yes, sir.

11 Q: All right. What happened after that?

12 A: We could hear somebody moving around in the residence and
13 someone looked out of the blind in the bedroom, and then after
14 that Ms. Kimberly Gibbs answered the door of the residence.

15 Q: And were you able to determine in your invest -- in your
16 investigation what relationship Ms. Gibbs -- Kimberly Gibbs
17 had to the defendant, Clifton Gibbs?

18 A: That is the defendant's wife.

19 Q: Okay. She's now at the door? You're at the door?

20 A: Yes, sir.

21 Q: What happens?

22 A: She opened the door. At that time, we tell her we was
23 looking for Mr. Leroy Gibbs. We had arrest warrants for him.
24 She advised that he was in the bedroom. At that time, I could
25 see Mr. Gibbs back behind her in the hallway area between the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 bedroom and the living room. He was standing there in his
2 boxers.

3 Q: I'm going to show you what's marked State's 4. Do you --
4 just do you recognize that and does it relate to your
5 testimony, please, sir?

6 (Whereupon, a color photograph is presented to the
7 witness.)

8 A: This would be the bedroom, the master bedroom.

9 MR. MEADORS: State's 4, Your Honor.

10 THE COURT: Any objection, Mr. Brooks?

11 MR. BROOKS: No, sir.

12 THE COURT: State's Exhibit 4 is admitted without
13 objection and may be published to the jury.

14 MR. MEADORS: Thank you, Your Honor.

15 Q: You said you saw Mr. Gibbs where?

16 A: He was in the hallway which actually would have been
17 coming out of that bedroom.

18 Q: Coming out of State's 4?

19 A: Yes, sir.

20 Q: What did you do next?

21 A: At that time, I went ahead and placed Mr. Gibbs under
22 arrest. We had the arrest warrants. He was placed into the
23 living room area of the residence on the couch. At that time,
24 he asked about getting a pair of -- we advised him he was
25 under arrest for the warrant and he asked about getting a pair

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 of pants. He said his pants was in the bedroom laying on the
2 floor.

3 So I proceeded to the bedroom to get the pants. They
4 were on the floor. I located the pants and I went ahead and
5 searched the pants to make sure there was no weapons in them
6 before I gave them to him. At that time, I located in one of
7 the pockets a large sum of money, approximately \$1,355.

8 MR. MEADORS: I beg the Court's indulgence. Your Honor,
9 I believe Mr. Brown and Mr. Brooks have looked at all them and
10 it's marked. I'm still going to bring them over if that's ---

11 THE COURT: All right.

12 (Whereupon, three color photographs are presented to the
13 witness.)

14 Q: If you'd look at what's marked State's 8, 9, and 10,
15 without telling me what they are, just tell me if that relates
16 to your testimony?

17 A: It will. This -- this ---

18 Q: Just does it relate to your testimony?

19 A: Yes, sir.

20 Q: Do you recognize it?

21 A: Yes, sir.

22 MR. MEADORS: Your Honor, we'd offer State's 8, 9, and
23 10.

24 THE COURT: Any objections, Mr. Brooks?

25 MR. BROOKS: No objection.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 THE COURT: State's 8, 9, and 10 are admitted into
2 evidence without objection and may be published to the jury.

3 MR. MEADORS: Thank you, Your Honor.

4 Q: What is State's 8?

5 A: This would be a photo of the living room area. It would
6 be half of the living room area.

7 Q: You said you had placed Mr. Gibbs under arrest and placed
8 him where in the home?

9 A: On the couch. It would be in the other photo.

10 Q: Which is State's 9?

11 A: Yes, sir. This would be the other side of the residence.
12 This would be the couch we placed him on.

13 Q: And this is all in the living room; is that correct?

14 A: Yes, sir.

15 Q: State's 10, would you tell the ladies and gentlemen of
16 this jury what that is, Investigator?

17 A: This is a photo from the living room into the dining room
18 area, like that would be a kitchen table.

19 Q: What did you do next? What happened next in the
20 residence at [REDACTED] Mattison?

21 A: While I was in there and we were placing Mr. Gibbs under
22 arrest, we noticed the odor of marijuana in the residence. At
23 that time, both ---

24 Q: Could you smell it?

25 A: We could smell it.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: With your own -- with your nose? I mean you smelled it?

2 A: That's correct.

3 Q: Okay. So what happened next?

4 A: At that time, since we smelt the marijuana, Mr. Gibbs had
5 been arrested on that warrant. At that time, we -- or
6 pertinently I advised Mr. Gibbs and Ms. Gibbs of their Miranda
7 rights.

8 Q: Okay. Could you do that now like you did on December
9 23rd? Do you have a regular way you do it? A habit?

10 A: Yes, sir. I usually carry a -- I carry a card in my
11 wallet or either in our vest.

12 Q: Okay.

13 A: I normally have a card with me.

14 Q: And could you for these ladies and gentlemen read the
15 rights as you did to Mr. Gibbs on December 23rd?

16 A: I could. I advised him that you have the right to remain
17 silent. Anything you say can and will be used against you in
18 court. You have a right to consult with an attorney and have
19 an attorney present during questioning. If you cannot afford
20 an attorney, one will be provided to you before questioning at
21 no cost. I asked them if they understood the rights and if
22 they wanted to talk to me.

23 Q: And had you had any -- this -- at this point in the
24 house, had you had any interaction with Mr. Gibbs beyond just
25 telling him he's under arrest and serving him with warrants?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: No, sir.

2 Q: I think you testified earlier that he asked if he could
3 get his pants on; correct?

4 A: That's correct.

5 Q: All right. From strictly your -- your opinion on his
6 ability to understand and condition, could you understand him
7 when he asked you can I get my pants?

8 A: Yes, sir.

9 Q: Okay and could you understand his response or did he
10 appear to understand your response when you were talking back
11 and forth with him? Did you have any trouble communicating
12 with him?

13 A: He understood me. I understood him no problem.

14 Q: Okay. Did he appear to be -- you said you smelled
15 marijuana. Did he appear to be under the influence of
16 anything?

17 A: He didn't appear to be under the influence to me, but we
18 did -- like I said, we could smell the odor of marijuana in
19 the residence.

20 Q: But you had no difficulty communicating with him?

21 A: No, sir.

22 Q: Could you understand his words when he said something?

23 A: Yes, sir.

24 Q: And he appeared to understand when you asked him to do
25 something?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Yes, sir.

2 Q: All right. Did he say I don't want to talk to you or I
3 want a lawyer?

4 A: Never.

5 Q: All right. Did he appear to you to understand the rights
6 as you read them to him?

7 A: Yes, sir.

8 Q: Now, at this point -- and what did he say to you?

9 A: At that time -- once we placed him under arrest and
10 advised him of his rights, at that time we asked for consent
11 or permission to bring a drug dog in the residence. We had a
12 drug dog on the scene and, at that time, he advised us or he
13 told me that he didn't live there. So, therefore, I turned my
14 attention to Ms. Gibbs and asked her if we could bring a dog
15 in the residence and she said, yeah, no problem. I went ahead
16 and had Moore and Horton, which were there to transport ---

17 Q: And you say Moore and Horton. These folks don't know who
18 Moore and Horton are. Who -- what -- what -- who are they?

19 A: Sergeant Moore and Sergeant Horton, they would have been
20 two officers. They were on the CAT team at the time.

21 Q: And what's -- what's the CAT team?

22 A: It's Community Action Team. They go into crime areas and
23 address problem situations. We had them to assist us there
24 and they were in a marked vehicle and we were going to use
25 them to transport Mr. Gibbs if we arrested him at the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 residence.

2 Q: And is that just general practice? I mean that you have
3 people there ready to transport someone -- someone if they're
4 arrested?

5 A: Yeah, that's typical.

6 Q: So the only thing that Mr. Gibbs said to you in the house
7 after you advised him of his rights is that I don't live here?

8 A: That's right. He told me -- once I asked for consent to
9 search the house, he told me he didn't live there.

10 Q: After the officers take Mr. Gibbs away, you said Ms.
11 Gibbs had consented to search?

12 A: She actually gave verbal consent to search the residence.
13 We went ahead and got a -- a written consent to the Sheriff's
14 Office and I -- and I asked her to sign it in writing giving
15 us written consent to search the residence, and she did.

16 Q: I'm showing you what's marked as State's 1 for -- I'm
17 sorry -- for ID only at this point. Do you recognize that?

18 A: This would be her Consent to Search and this would be the
19 one that Ms. Gibbs signed.

20 Q: Okay and is your signature on there?

21 A: It is.

22 Q: And is Ms. Gibbs' signature on there?

23 A: It is.

24 Q: And when you asked Ms. Gibbs if she could search -- if
25 you could search, was there any hesitation in her response or

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 did she -- how did she do it?

2 A: I asked her if we could search the residence and I told
3 her we smelt marijuana in there and asked could we search, and
4 she said yeah, go ahead, and that's when I went and got the
5 written consent for her to -- we could read the consent to her
6 and let her know that she didn't have to give consent. It was
7 all voluntary. I read that consent to her and she went ahead
8 and signed it.

9 Q: And did you search?

10 A: Yes, sir.

11 Q: And tell the ladies and gentlemen of the jury, how do you
12 go about -- I mean how did you go about the search in this
13 case?

14 A: What we do, whether it be a search warrant, consent to
15 search, whatever, we have an officer go through and photograph
16 the residence before what it looked like, and then as we're
17 finding evidence or finding anything of interest that we're
18 going to be taking, we photograph those items.

19 Q: And then do you go back and make a report of the
20 procedure and document it so it will aid you when you're
21 testifying like right now?

22 A: I do.

23 Q: So after Ms. Gibbs gave consent, verbal and written, to
24 search the residence, tell us -- tell the folks specifically
25 what -- what you or other law enforcement under your command

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 did?

2 A: At that time, Mr. Gibbs was already taken away from the
3 residence. I took Ms. Gibbs into the kitchen area or the
4 dining room area and we set at the kitchen table so I would
5 have somewhere to document the items as -- as they were
6 located. At that time, officers went -- split up in the
7 residence and they ---

8 Q: Split up into what?

9 A: Split up in the residence.

10 Q: Okay.

11 A: And they started searching. As they would find whatever
12 they found in the residence, they would notify me. Someone
13 would -- I believe Investigator Mays photographed -- took
14 photographs, and I would go collect the item and take it back
15 and write it down on the consent form and it would be later
16 placed into evidence.

17 MR. MEADORS: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 Q: Was the kitchen searched at [REDACTED] Mattison Avenue? The
20 kitchen?

21 A: Yes, sir.

22 (Whereupon, a color photograph is presented to the
23 witness.)

24 Q: I'm going to show you what's marked State's 15. Do you
25 recognize that?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: That is the kitchen area of [REDACTED] Mattison.

2 MR. MEADORS: Your Honor, State's 15.

3 THE COURT: Any objection, Mr. Brooks?

4 MR. BROOKS: No objection.

5 THE COURT: Without objection, State's Exhibit 15 is
6 admitted and may be published to the jury.

7 MR. MEADORS: Thank you, Your Honor.

8 Q: Now, Investigator, if you go and look at or search
9 something, what's your procedure? Do you search it, take a
10 picture or take a picture first and then search? How do you
11 do it?

12 A: Like I said, usually what we try to do is have one person
13 designated to take photographs and they'll try to get overall
14 shots of the house before we start searching, and then as we
15 start searching, if we find a certain item, then they'll go
16 photograph that item and then we may take additional photos.
17 Say if it's bagged up in bags, a lot of times we'll take them
18 out and photograph them that way.

19 Q: You'll take them out and you'll what? I missed that last
20 part.

21 A: Photograph them.

22 Q: Photograph them, all right. Now, is this the kitchen
23 cabinet up under -- above the microwave in State's 15?

24 A: Yes, sir.

25 Q: Did you open that cabinet?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: One of the other officers did.

2 Q: Did you go see -- did somebody call to your attention
3 that there might be something in that cabinet?

4 A: That's correct. They did.

5 (Whereupon, four color photographs are presented to the
6 witness.)

7 Q: All right and looking at State's 16, State's 17, State's
8 18, State's 19, do you recognize those?

9 A: Yes, sir. These are the inside of the cabinet and the
10 items that were found inside.

11 Q: And that's inside the cabinet that's depicted on State's
12 15; correct?

13 A: Yes, sir.

14 MR. MEADORS: Your Honor, State's 15, 16, 17, 18, and 19,
15 we'd offer into evidence.

16 THE COURT: All right. Mr. Brooks, any objection?

17 MR. BROOKS: No objection.

18 THE COURT: These will be -- 16, 17, 18, and 19 are
19 admitted without objection and may be published to the jury.

20 MR. MEADORS: Thank you, Your Honor.

21 Q: What is State's 16, Investigator Dubose?

22 A: This is items inside. It's a baggie with ---

23 Q: Can you hold that up so they can see as you're talking?

24 A: There's a plastic bag and inside that plastic bag is a
25 quantity of white powder substance. You have baking soda.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 You have a measuring jar, Pyrex dishes, and there you have a
2 fork. You have some additional baggies back there. You have
3 a razor blade. Those items were found in there.

4 Q: There appear to be other items in there. Baking soda?

5 A: Yes, sir.

6 Q: Based on your training and -- how many years have you had
7 in narcotics?

8 A: Six years.

9 Q: In the -- in the drug field, what is baking soda --
10 baking soda used for?

11 A: Baking soda is a -- is an ingredient used where they mix
12 the cocaine with the -- the baking soda and I believe they add
13 water and then they actually put it in the microwave and cook
14 it.

15 Q: Cook it into what?

16 A: In the microwave.

17 Q: I understand that, but you cook it into ---

18 A: Cook it into crack cocaine.

19 Q: Crack cocaine?

20 A: That's correct.

21 Q: All right. Now, there appear to be some -- are there
22 razor blades in there?

23 A: Yes, sir.

24 Q: Can you based on your experience and training and
25 knowledge tell the ladies and gentlemen of the jury what, if

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 anything, razor blades are used for in the -- in the
2 production ---

3 A: Razor blades are used to cut the -- the crack up into
4 smaller pieces where it would be sold individually.

5 Q: Now, States 17, Investigator. Once you open the cabinet
6 and take a picture of that, do you further then look at some
7 of the items to see what they are?

8 A: Yes, sir.

9 Q: All right. And State's 17, what is that? If you could,
10 hold that up so the ladies and gentlemen can see it.

11 A: In that bag, it's just one bag with the items. You can't
12 see what the items are. This photo is the items taken out of
13 the bag. You have three bags of a white powder substance
14 there.

15 Q: So you photograph the cabinet, open the cabinet,
16 photograph it, take it out, and then photograph it inside;
17 correct?

18 A: Yes, sir.

19 Q: Now, State's 18, can you tell the ladies and gentlemen of
20 the jury what that is?

21 A: That would have been other razor blades we located in
22 that cabinet. There's a total of four razor blades there.
23 This little sheet here with the blue mark on it, that is what
24 we call a cocaine -- cocaine test swipe, and it's just
25 something used in the field for officers if they find a

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 substance. If they don't know if it's baking soda or baby
2 powder or what it might be, you can use that swipe, and if it
3 turns blue, that tells you that it field tests positive for
4 cocaine.

5 Q: And the field in your business would be the house where
6 you were when you're out in the field. In this case, when
7 you're in the residence you're searching for; correct?

8 A: That's correct. I'm not a chemist so I can't tell you
9 what it is, but that is just a tool we use to say that, hey,
10 this item tests positive.

11 Q: And that tests positive for?

12 A: It did.

13 Q: For?

14 A: For cocaine.

15 Q: And is there a chemist coming in later today or tomorrow
16 to testify about the results of these? Correct?

17 A: Yes, sir.

18 Q: And let me -- you said -- that was State's 18. Let me go
19 back on State's 17. Is State's 18 the bottom shelf of State's
20 17?

21 A: Yes, sir.

22 Q: So it's not the same shelf where the baking soda is.
23 It's below the other shelf; correct?

24 A: Right. I believe there might have been two or three
25 shelves inside of that cabinet.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: And then State's 19, is that just another picture of the
2 bottom shelf?

3 A: That's correct.

4 MR. MEADORS: I beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 Q: Referring back to State's 16, there appears to be a clear
7 glass object here with a fork coming out of it?

8 A: Yes, sir.

9 Q: Do you see what I'm talking about? What is that?

10 A: It's a measuring dish or a Pyrex dish.

11 Q: And is it right next to the baking soda?

12 A: Yes, sir, it is.

13 Q: Now, did you do anything with that measuring bowl or
14 container?

15 A: We pulled the jar or the dish out of the cabinet and it
16 was also swiped. You can also see in the -- in the bottom of
17 it the blue wipe.

18 Q: Okay, let me stop you. This is State's 20?

19 (Whereupon, a color photo is presented to the witness.)

20 A: Yes, sir.

21 Q: What is that?

22 A: That is the Pyrex dish or actually two Pyrex bowls with a
23 fork.

24 Q: And did they come out of State's 16?

25 A: Yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: Your Honor, State's 20.

2 THE COURT: Any objection, Mr. Brooks?

3 MR. BROOKS: No objection.

4 THE COURT: Without objection, State's Exhibit 20 is
5 admitted into evidence and may be published to the jury.

6 MR. MEADORS: Thank you, Your Honor.

7 Q: So why did you pull -- you said Pyrex dish. Why did you
8 pull the measuring bowl, as I would call it, out of the
9 cabinet and look at it further?

10 A: We pulled it out to look and we saw the items that were
11 there consistent with someone that may have been manufacturing
12 crack cocaine. We pulled it out to look at it and it did have
13 some -- some residue down in the -- the dishes.

14 Q: So the measuring bowl and the fork are consistent with?

15 A: With manufacturing crack cocaine.

16 Q: And you field tested it?

17 A: Yes, sir. We swiped the dish.

18 Q: And what was the result of that?

19 A: It also tested -- field tested positive.

20 Q: For?

21 A: For crack cocaine.

22 Q: Okay.

23 A: Or cocaine.

24 Q: Cocaine?

25 A: Cocaine.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 (Whereupon, a color photograph is presented to the
2 witness.)

3 Q: State's 21, what -- do you recognize this?

4 A: That was a cup with a -- just a empty plastic bag in it
5 that was located on the bottom shelf also.

6 MR. MEADORS: Your Honor, State's 21.

7 THE COURT: Any objection, Mr. Brooks?

8 MR. BROOKS: No objection.

9 THE COURT: State's Exhibit 21 is admitted without
10 objection and may be published to the jury.

11 Q: Okay and you located this where? State's 21?

12 A: I believe that would have been on the second shelf of the
13 cabinet.

14 Q: And it's a bowl; right?

15 A: In the kitchen cabinet.

16 Q: The bowl?

17 A: Yes, sir.

18 Q: All right. What, if anything, did you do to this bowl to
19 see if it might be potential evidence to -- to show a jury
20 like we have?

21 A: It was just -- I believe that one was just photographed.

22 Q: And field tested for anything?

23 A: No, sir. I don't -- I don't believe so.

24 Q: So out of the kitchen, what potential evidence had you
25 gathered?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Well, we've got the -- the baggies, three baggies with
2 white powder substance. We've got Pyrex dishes, the fork, the
3 razor blades, which field tested positive for cocaine, in the
4 kitchen area.

5 Q: Now, I noticed you had testified earlier I believe about
6 a microwave and I know it's a regular old microwave, but is
7 that something that's in your experience used in the
8 manufacturing of -- the making of crack?

9 A: Microwaves are commonly used. You can use others.

10 Q: Did you look in the microwave?

11 A: We did.

12 (Whereupon, a color photograph is presented to the
13 witness.)

14 Q: All right. State's 23, what is that?

15 A: That is the turntable, the glass plate inside the
16 microwave, and then I swiped the -- that plate.

17 Q: One second, I'm sorry.

18 MR. MEADORS: Your Honor, State's 23.

19 THE COURT: Any objection, Mr. Brooks?

20 MR. BROOKS: No objection.

21 THE COURT: Without objection, State's Exhibit 23 is
22 admitted.

23 MR. MEADORS: Thank you, sir.

24 Q: Tell the ladies and gentlemen of this jury, Investigator
25 Wayne Dubose, what did you do with the bottom plate in the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 microwave?

2 A: I got another cocaine test swipe and swiped the -- the
3 tray inside, and it also field tested positive for cocaine.

4 Q: What do you -- what did you do with these items?

5 A: All these items were placed into evidence. They were
6 placed into -- all the drug items were placed into a BEST kit
7 and submitted into evidence.

8 MR. MEADORS: I beg the Court's indulgence. I'm sorry.

9 Q: The items that you found in the kitchen cabinet ---

10 A: Yes, sir.

11 (Whereupon, the witness is presented with a bag.)

12 Q: Can you pull those out?

13 (Whereupon, the witness complies.)

14 A: These are the items that was found in the kitchen
15 cabinet.

16 MR. MEADORS: For identification at this point, State's
17 27, Your Honor.

18 Q: These are the drugs you got from the kitchen cabinet?

19 A: Yes, sir.

20 MR. MEADORS: Well, we'll go ahead and offer them into
21 evidence, Judge, State's 27.

22 THE COURT: Any objection, Mr. Brooks?

23 MR. BROOKS: No objection.

24 THE COURT: Without objection, these are -- which is
25 this?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: Your Honor, this is State's 27.

2 THE COURT: Twenty-seven is admitted.

3 Q: And these are the drugs that are in the pictures depicted
4 from the kitchen?

5 A: They are. Yeah, the photos in the kitchen shows the bags
6 and all and let me explain to you what was there. The baggies
7 that they were in ---

8 Q: That was my next question.

9 A: Those baggies, the chemist would actually remove the
10 item. Those Ziploc bags that you see them in there, the
11 chemist actually removes them from the original bag, tests the
12 stuff, and places it back in his own bag with it marked.
13 These are the baggies that everything came out of. They're
14 just common sandwich bags.

15 MR. MEADORS: Your Honor, State's 28.

16 THE COURT: Any objection, Mr. Brooks?

17 MR. BROOKS: No objection.

18 THE COURT: Without objection, State's Exhibit 28 is
19 admitted.

20 Q: And are these drugs kept protected or in a -- in a
21 secured facility until SLED can come -- they can be sent to
22 SLED and tested?

23 A: They are. When I took the drug evidence that day, I
24 placed them into a BEST kit. I placed all the items -- all
25 the drug items into a ---

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: And, Investigator, what's a BEST kit?

2 A: It's a Best Evidence Sampler Kit, which is a kit that we
3 used to send them to SLED, but at the time we had our own
4 chemist and we do now, and then our own chemist analyzes the
5 drugs here in Sumter so we don't have to send them to SLED.
6 What I would have taken the cocaine and the crack cocaine,
7 they had to have been -- at the time, they had to be placed
8 into a BEST kit. This would be the kit and along with the
9 other baggies that were placed inside. The control number on
10 this was S-C-0-0-0-9-2-9. I would have placed all the drug
11 evidence, the crack cocaine and cocaine in here, signed it,
12 and sealed it, and I placed it into the drug evidence locker
13 and that locker has an alarm on it. Then the evidence
14 technician would have got it out, turned it over to the
15 chemist, and it would have been analyzed.

16 Q: And your chemist at that time was -- who was that?

17 A: The chemist at that time was Mitch Hansen.

18 MR. MEADORS: Your Honor, the BEST kits that contain the
19 drugs which are now identified as State's 29 we'd offer into
20 evidence.

21 THE COURT: Any objection, Mr. Brooks?

22 MR. BROOKS: No objection.

23 THE COURT: Without objection, State's Exhibit 29 is
24 admitted.

25 Q: Did you locate any other potential evidence of drug

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 activity in the residence at [REDACTED] Mattison Avenue?

2 A: We did. Just as we were fixing to leave out the
3 residence, we were sitting at the kitchen table ---

4 Q: And you say we. 'Who's sitting at the kitchen table?

5 A: Myself and Ms. Gibbs. We were sitting at the kitchen
6 table. I was documenting evidence and she was seeing what we
7 were bringing out, and we looked in her purse that was sitting
8 on the kitchen table. It was somewhat closed. It was not
9 zipped, but it was fairly closed. We opened up the -- I asked
10 to look in her purse, opened up the purse, and in the top of
11 the purse there was a bag of baby wipes and they were -- they
12 were open. You could tell they had been used, but we could
13 see as soon as you opened the purse up that there was a bag of
14 -- or there was marijuana and we took that out and found there
15 was marijuana and also what was believed to be crack cocaine
16 and cocaine in those bags.

17 Q: Did you ask Ms. Gibbs if you could look in there?

18 A: I did and then when I opened it up, that's what we saw.

19 Q: And did she say you could look in there?

20 A: Yes, sir.

21 (Whereupon, two color photographs are presented to the
22 witness.)

23 Q: State's 24 and State's 25, do these depict the purse that
24 you just discussed? You can just say yes or no.

25 A: That does, yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: State's 24 and State's 25, Your Honor, we
2 now offer into evidence.

3 THE COURT: Any objection, Mr. Brooks?

4 MR. BROOKS: No objection.

5 THE COURT: State's 24 and 25 are admitted into evidence

6 ---

7 MR. MEADORS: And ---

8 THE COURT: --- without objection.

9 Q: Is 25 kind of a farther shot back than State's 24, if I
10 said that right? Is this closer than State's 24?

11 A: Yes, sir.

12 Q: And can you show the jury what you just testified to?

13 A: This would have been the purse. We just opened it up and
14 this yellow bag is the bag of baby wipes. Then if you'll see
15 down here at the bottom, you can see it looks like two small
16 bags of marijuana, and the flash has got it where you really
17 can't tell, but there's a bag of white powder in there also.

18 Q: Okay and did you retrieve this -- what did this appear to
19 you to be?

20 A: As soon as I seen the -- the bag -- the green leafy
21 stuff, I knew that to be marijuana, and I believed the other
22 one to be crack cocaine and cocaine, and I immediately asked
23 Ms. Gibbs what is this and she was shocked. She said I don't
24 know.

25 Q: So it was -- was it on the top of the purse or buried at

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 the bottom?

2 A: It was on the very top. As soon as you opened it up,
3 that's how it set.

4 Q: Okay and did you retrieve these items from here?

5 A: I did.

6 Q: Okay and do you have that with you today?

7 A: I do.

8 MR. MEADORS: Your Honor, the State would now offer
9 State's 30.

10 THE COURT: Any objection, Mr. Brooks?

11 MR. BROOKS: No objection.

12 THE COURT: State's Exhibit 30 is admitted without
13 objection.

14 Q: And -- and based on your training, experience, and just
15 your good old eyes, what did this appear to be when you looked
16 at it?

17 A: It appeared to be marijuana and it appeared to be crack
18 cocaine. Also, if you hand me that bag, also in this bag here
19 is a ---

20 Q: And again refer to it for the record. When you say this
21 is -- we're looking at State's 30?

22 A: Thirty. That little blunt, that was the blunt that was
23 located. I believe that was -- I didn't bring that in, but
24 that small blunt was located in the ashtray in the -- in the
25 bedroom.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Is that perhaps what you had smelled?

2 A: Yes, sir, I believe it was.

3 (Whereupon, a color photograph is presented to the
4 witness.)

5 Q: Do you recognize State's 7?

6 A: That would be a small marijuana blunt in the ashtray and
7 that was located in the bedroom where the pants were -- where
8 I retrieved the pants from.

9 Q: Okay.

10 MR. MEADORS: State's 7, Your Honor.

11 THE COURT: Any objection, Mr. Brooks?

12 MR. BROOKS: No objection.

13 THE COURT: Without objection, State's Exhibit 7 is
14 admitted.

15 Q: And the other item came from State's 30; correct?

16 A: That's correct.

17 Q: The other -- the blunt and what you believe to be crack?

18 A: That's correct.

19 Q: When I say State's 30, that's the picture of the purse;
20 correct?

21 A: Thirty?

22 Q: Excuse me. Thirty which came from the purse?

23 A: That's correct.

24 Q: Were you finished with your search?

25 A: Yes, sir. At that time, we finished with the search.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Did you also locate any cash in Ms. Kimberly Gibbs'
2 purse?

3 A: Locate any what?

4 Q: Cash in Ms. Gibbs' ---

5 A: I believe we located like \$40 in her purse.

6 Q: Now, did you locate any firearms?

7 A: Yes. We located two firearms in the residence.

8 Q: Tell me about those? Can you tell me where you located
9 them?

10 A: One, we located a .38 caliber revolver we located in the
11 hallway closet by the bedroom and it was kind of adjacent to
12 the living room. We located it in the closet along with a .45
13 caliber ammunition clip and some bullets, and then directly
14 below that or in the little hallway area, there is a return
15 vent for the air conditioner, I don't know, probably two foot
16 by four foot. It's a vent. That's a common place that we
17 find drugs in houses. That's a common place that people hide
18 their drugs and guns. An officer picked up that grate and we
19 found a .45 caliber handgun down in that return.

20 MR. MEADORS: And I beg the Court's indulgence for one
21 second.

22 (Whereupon, a box is presented to the witness.)

23 Q: This is State's 31. Would you just tell me is this --
24 please tell the Court -- the judge and the jury, is that what
25 you just testified about?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: It is.

2 (Whereupon, the box containing two firearms and an
3 ammunition clip is marked as State's Exhibit Number 31.)

4 MR. MEADORS: Your Honor, State's 31.

5 THE COURT: Any objection, Mr. Brooks?

6 MR. BROOKS: No objection.

7 THE COURT: Without objection, State's Exhibit 31 is
8 admitted.

9 Q: Now, are these firearms -- are they -- as I think
10 required by Your Honor, there's no way these could fire; is
11 there?

12 A: No, sir. They have ---

13 Q: Why is that?

14 A: --- locks on them. They have locks through the -- the
15 barrels of them. There's no way to load them and fire them.

16 (Whereupon, a color photograph is presented to the
17 witness.)

18 Q: First, do you recognize State's 12?

19 A: That is a photo of the revolver and that was located in
20 the hall closet.

21 MR. MEADORS: State's 12, Your Honor. I don't believe
22 I've offered it officially for the record.

23 THE COURT: Any objection, Mr. Brooks?

24 MR. BROOKS: No objection.

25 THE COURT: State's Exhibit 12 is admitted without

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 objection, the photos of the firearms.

2 (Whereupon, a color photograph is presented to the
3 witness.)

4 Q: If you look at State's 11, do you recognize this?

5 A: That would be the closet where the -- the revolver was
6 located.

7 MR. MEADORS: Your Honor, State's 11.

8 THE COURT: Any objection?

9 MR. BROOKS: No objection.

10 THE COURT: Without objection, State's Exhibit 11 is
11 admitted.

12 A: That's just the hallway closet, not in the bedroom.

13 Q: The hallway closet? And you located State's 12 in this
14 closet?

15 A: One of the other officers located it and they told me and
16 I actually came and took it into evidence.

17 Q: And what is State's 12?

18 A: Sir?

19 Q: What is this? State's 12?

20 A: It is a .38 caliber revolver. It's a Taurus.

21 Q: A Taurus?

22 A: Yes, sir.

23 Q: Now, I believe you testified before this you located the
24 other firearm, which is a what?

25 A: It was a .45 caliber handgun.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 (Whereupon, a color photograph is presented to the
2 witness.)

3 Q: Do you recognize State's 14?

4 A: That's a photo of the -- the gun that was located by the
5 return or in the return.

6 MR. MEADORS: State's 14, Your Honor.

7 THE COURT: Any objection to State's Exhibit 14, Mr.
8 Brooks?

9 MR. BROOKS: No objection.

10 THE COURT: Without objection, State's Exhibit 14 is
11 admitted.

12 Q: State's 14, after you had consent to search, something is
13 over this hole; right?

14 A: There is -- there is a -- a grate, a cover.

15 Q: So that was removed?

16 A: Yes, sir.

17 Q: And this was found as depicted in the picture?

18 A: Yes, sir.

19 Q: And again, what is this?

20 A: It's a .45 caliber handgun, automatic.

21 Q: Now, you testified earlier I believe about a clip you
22 found; correct?

23 A: Yes, sir.

24 Q: And where did you find the clip?

25 A: That clip was in the hallway closet also where the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 revolver was located.

2 (Whereupon, a color photograph is presented to the
3 witness.)

4 Q: Is that depicted in State's 13?

5 A: It is.

6 MR. MEADORS: Your Honor, the State would now offer
7 State's Exhibit Number 13 into evidence.

8 THE COURT: Any objection, Mr. Brooks?

9 MR. BROOKS: No objection.

10 THE COURT: Without objection, 13 is in evidence.

11 Q: So State's 13 -- depicted in State's 13 is what?

12 A: That is a small blue box with an ammunition clip, and
13 there was also a box of bullets for I believe a 9mm, bullets
14 that was located. We did not locate a 9mm.

15 Q: And you took those bullets into evidence; correct?

16 A: That's correct.

17 Q: And again, this tray -- it's your testimony that that
18 clip was found in State's 11?

19 A: Yes, sir.

20 Q: And that's the hall closet?

21 A: Yes, sir.

22 (Whereupon, a color photograph is presented to the
23 witness.)

24 Q: Now, State's 6. I'm just trying to go through here. So
25 do you also recognize that as the bedroom in the residence?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Or, excuse me, a room in the residence?

2 A: That was another room in the residence.

3 (Whereupon, a color photograph is presented to the
4 witness.)

5 Q: And State's 5, is that also another room in the
6 residence?

7 A: It is, yes, sir.

8 Q: Is this a three bedroom house?

9 A: Yes, sir.

10 MR. MEADORS: Your Honor, State's 5 and 6 we'd offer into
11 evidence.

12 THE COURT: Any objection, Mr. Brooks?

13 MR. BROOKS: No objection.

14 THE COURT: State's Exhibit 5 and 6 are admitted into
15 evidence.

16 Q: Where's this box? I just thought of it. Where's this
17 box this gun came in?

18 A: I don't know. If it's not in here, we may not have taken
19 the box. We may have just taken the gun out of it.

20 Q: But that is the same gun?

21 A: That is the same gun.

22 Q: That came out of the hall closet?

23 A: Yes, sir. We documented the serial numbers.

24 Q: So you document the serial number you took down and
25 that's the same serial number there?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Yes. The automatic is U-S-5-0-1-6-9-0 and that matches
2 the serial number on that gun. The serial number on the
3 Taurus is 7-8-1-7-8-5 and it also matches the serial number.

4 Q: Thank you.

5 MR. MEADORS: Thank you for Your Honor's patience.

6 (Whereupon, a color photograph is presented to the
7 witness.)

8 Q: Investigator, I'm going to ask you if you'd look at
9 State's 22 and tell me if you recognize that?

10 A: Yes, sir.

11 Q: And does it relate to the search of [REDACTED] Mattison Avenue?

12 A: Yes, sir.

13 MR. MEADORS: State's 22, Your Honor.

14 THE COURT: Do you have any objections, Mr. Brooks?

15 MR. BROOKS: No objection.

16 THE COURT: Without objection, State's Exhibit 22 is
17 admitted and may be published to the jury.

18 Q: Tell the ladies and gentlemen of the jury what is
19 depicted in State's 22, Investigator?

20 A: Three boxes of sandwich bags that were located in the
21 kitchen cabinet and those have -- those bags are similar to
22 the bags that were located that held the cocaine and the crack
23 cocaine, and they are also typical for people who possess
24 drugs or whatever to store the drugs in.

25 Q: What -- where were these located? Was this in the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 kitchen cabinet ---

2 A: They were located ---

3 Q: --- or was it in some ---

4 A: I believe they were located in the kitchen cabinet or one

5 of the cabinets in the kitchen.

6 Q: Now, at some point after Mr. Gibbs had left with the

7 officers, did those officers return back to [REDACTED] Mattison

8 Avenue before you left?

9 A: Yes, sir, they did.

10 Q: And without saying what they said, did you document what

11 they told you the defendant had said on the way to the jail?

12 A: Yes, sir.

13 Q: Without saying what it is, did you document it?

14 A: I did.

15 Q: Okay and did they tell you that as soon as they came back

16 to [REDACTED] Mattison Avenue?

17 A: They did.

18 Q: Now, you also found or somebody found some mail there;

19 correct?

20 A: Yes, sir.

21 Q: It appeared to be undelivered mail?

22 A: There was.

23 Q: All right. Had the -- was it -- did you eventually learn

24 that Ms. Kimberly Gibbs was a rural postal carrier for the

25 post office and she'd missed a delivery or two?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: That's correct.

2 Q: And that -- those items were -- did you call in the
3 postal service about those?

4 A: That's correct. We found the undelivered mail and we
5 contacted the postal service, and the postal inspector came to
6 the residence and he took possession of all the mail -- all
7 the undelivered mail that was in the residence.

8 Q: And let me go back to State's 1 for ID at this point. As
9 you're searching the residence, did you document on State's 1
10 what you got?

11 A: Yes, sir, on the bottom of the Consent to Search
12 document. There's actually two pages to this, the top copy
13 and a carbon copy. We document what we take from the
14 residence and we keep a copy and then we -- I gave Ms. Gibbs
15 the other copy of it of what we took from the house.

16 Q: But it's the same thing. You're not saying there's
17 another page to it; there's just a carbon copy, two pages of
18 the same thing?

19 A: That's correct.

20 Q: But you documented on here what you took from the house?

21 A: That's correct.

22 Q: And gave it to her?

23 A: That's correct.

24 Q: As a result of the items that you found at [REDACTED] Mattison,
25 did you have an occasion to see Mr. Gibbs the next day?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: I did.

2 Q: All right and where was that?

3 A: It was at the Sumter Lee Regional Detention Center where
4 I went to serve the warrant on him for the stuff that we found
5 that day also.

6 Q: And tell the ladies and gentlemen your procedure
7 specifically on Christmas Eve 2008. Did you have an occasion
8 as you were serving warrants for these new -- this evidence
9 you found; correct? Did you read Mr. Leroy Clifton Gibbs --
10 Clifton -- Leroy Gibbs his Miranda rights?

11 A: I did.

12 Q: And how did you do it?

13 A: I went out to the jail. I had the warrants and as I
14 always do before I serve warrants, I read the person their
15 rights again.

16 Q: And is that like you do it? Is that what you do? You --
17 literally, is that your habit? You just go get your card out?

18 A: I just took it out and put it in my pocket today, but I
19 usually keep one in my wallet or my briefcase or my folder,
20 whatever I carry with me. I usually have it in my wallet or
21 some type of sheath with me.

22 Q: But you always use the card to go -- to go by?

23 A: Yes, sir.

24 Q: Would you read the rights to the ladies and gentlemen of
25 this jury like you did to Mr. Gibbs on December 24th?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: You have the right to remain silent. Anything you say
2 can and will be used against you in court. You have a right
3 to consult with an attorney and have an attorney present
4 during questioning. If you cannot afford an attorney, one
5 will be provided before questioning at no cost. And I ask if
6 they understand the rights and if they want to talk to me.

7 Q: And did he understand?

8 A: Yes, sir, he understood.

9 Q: And in the process of reading the warrants to him, what
10 we're here about today, this case, did you have interaction
11 with him as far as here's what you're charged with and -- and
12 my point being as you were talking to him, did -- did Mr.
13 Gibbs appear to be under the influence of any alcohol, drugs,
14 or any other intoxicant on December 24th? He was in jail;
15 right?

16 A: That's correct. He was not.

17 Q: And did he appear to understand these rights as you read
18 them to him?

19 A: Yes, sir, he did.

20 Q: And as -- as you were talking to him that day, I mean
21 serving the warrants and talking to him, did you -- could you
22 understand the words he said to you?

23 A: Yes, sir.

24 Q: I mean were you able to understand him?

25 A: Yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: All right and then whatever y'all talked about in the
2 serving the warrant process, were -- were responses timely?
3 If you asked him something, would it be a timely response?

4 A: Yes, sir.

5 Q: And would it be subject appropriate? I mean what -- he
6 seemed to understand what's going on?

7 A: Yes, sir.

8 Q: All right and did you at any point the day before at his
9 house -- I don't know if I asked you that before, but if not,
10 then and now specifically on December 24th hold out any hope of
11 reward or promise of any kind to Mr. Gibbs in exchange for a
12 statement he might give you?

13 A: No, sir, I didn't.

14 Q: Either on the 23rd or the 24th?

15 A: No.

16 Q: Did you threaten? Coerce? Were you mean to him to try
17 to get him to give you a statement?

18 A: No, sir.

19 Q: After you served the warrant on him -- these charges on
20 him, did you confront him with the statement that he had told
21 the police officers on the day you had documented the day
22 before about what he had told them?

23 A: I did ask him about that.

24 MR. MEADORS: And, Your Honor, they -- the officer will
25 be testifying so at this point just I'm not trying to get the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 truth of the matter asserted, but his response to it. I'd ask
2 at this point that his interaction with the defendant when he
3 said did you make this statement, what his response was.

4 THE COURT: Any objection, Mr. Brooks?

5 MR. BROOKS: I would object until they bring that
6 particular officer to testify. I understand what he's saying,
7 but I want to put my objection on the record to that.

8 MR. MEADORS: I don't know if there's any other way to do
9 it except sit him down, but I'm not offering it now for the
10 truth. I'm offering for his response. These officers are
11 going to come in next witness and give this what he said, but
12 ---

13 THE COURT: I overrule your objection.

14 Q: Did you confront him with what the officer said he had --
15 he, the defendant Mr. Gibbs, had told them on the way to the
16 jail the day before?

17 A: I asked him about what the officers told me that he said
18 in the vehicle while they were transporting him to the jail.

19 Q: And that statement was?

20 A: The statement that ---

21 Q: That he told the officer.

22 A: --- he made in the car?

23 Q: Yes, sir.

24 A: Sergeant Horton and Sergeant Moore ---

25 Q: Can you just say the statement?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Selling drugs was a lifestyle for him.

2 Q: Selling drugs was a lifestyle for him. Did you confront
3 him with that statement when you were there at the jail,
4 Sumter Lee Regional Detention Center, the next day on December
5 24th?

6 A: I did. I asked him about that statement.

7 Q: All right and what was his response?

8 A: His response to that is he had to support his family.

9 Q: And in addition to that, did you also -- did you tell him
10 what the new charges were? I mean isn't that what you do?
11 Did you say here's what was found at your residence and here's
12 what the warrants you've got?

13 A: I read him all the warrants we obtained the day before,
14 the trafficking, the manufacturing, and the possession of the
15 cocaine. I read him all those warrants and then he told me at
16 that time ---

17 Q: Specifically, what did he tell you word for word?

18 A: Then he was Mirandized. He advised that none of the
19 items was his because he did not live at the residence. He
20 said it must have been his wife's -- or no. He said that his
21 wife must have had someone else there because it wasn't his
22 and it had to be hers.

23 Q: They weren't his. He didn't live there. His wife must
24 have had somebody else there because it was not his and it had
25 to be hers?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: That's correct.

2 Q: And that's all the conversation at the jail; right?

3 A: Yes, sir.

4 Q: Is [REDACTED] Mattison Avenue in Sumter County?

5 A: Yes, sir, it is.

6 Q: And the individual that you served the warrants on on
7 December 24th of '08 and who gave you the -- well, the
8 individual who on December 23rd told you I don't live here and
9 the individual on December 24th who said I made that statement
10 because I have to support my family and the statement that
11 Kimberly must have had somebody else there and that it must be
12 hers, is that person in this courtroom?

13 A: That's the defendant, Mr. Gibbs.

14 Q: Sitting next to Mr. Brooks?

15 A: Yes, sir.

16 MR. MEADORS: And we'd ask the record so reflect.

17 THE COURT: The record so reflects that the witness has
18 pointed out the defendant.

19 MR. MEADORS: And can I beg Your Honor's patience for one
20 second?

21 THE COURT: You may.

22 Q: There weren't any scales in this case; were there?

23 A: No, sir. I don't recall any scales.

24 Q: You had razors?

25 A: We had razors, Pyrex dishes, a fork, baking soda, and

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 then the microwave.

2 Q: Okay.

3 MR. MEADORS: Your Honor, I think that's all we have at
4 this time. Thank you, sir.

5 THE COURT: All right, thank you. Now seems to be an
6 appropriate time to take a break. So, ladies and gentlemen,
7 I'm going to send you back to the jury room for about fifteen
8 minutes. Get you a coffee or a Coca-Cola or something like
9 that. If you need to smoke, one of the bailiffs will escort
10 you outside where you can smoke. Ladies and gentlemen, please
11 do not discuss anything about the case while you're back
12 there. Thank you.

13 (Whereupon, the jury exits the courtroom at 11:11 a.m.)

14 THE COURT: All right. We'll be in recess for fifteen
15 minutes. Mr. -- Officer Dubose, I remind you you're on the
16 stand so you can't discuss anything with your attorneys at
17 this point. You may get off the stand to go to the rest room.

18 THE WITNESS: Okay.

19 THE COURT: Court's in recess.

20 MR. MEADORS: Thank you, Your Honor.

21 (Whereupon, there is a break in the proceedings from
22 11:12 a.m. until 11:28 a.m.)

23 THE COURT: Anything we need to bring up before we bring
24 our jury back in?

25 MR. MEADORS: Not from the State, Your Honor.

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 THE COURT: All right.

2 MR. BROOKS: Nothing.

3 THE COURT: All right. Let's bring our jury back in.

4 (Whereupon, the jury enters the courtroom at 11:29 a.m.)

5 THE CLERK: Your Honor, we have all the jurors present in
6 the courtroom.

7 THE COURT: Thank you, Mr. Bradley. All right, Mr.
8 Brooks, you may cross examine the witness.

9 CROSS EXAMINATION

10 BY MR. BROOKS:

11 Q: Investigator Dubose?

12 A: Yes, sir.

13 Q: How are you doing?

14 A: Pretty good.

15 Q: Now, I heard you when Mr. Meadors was asking you
16 questions. You've been in law enforcement for about sixteen
17 years?

18 A: Sixteen, that's right.

19 Q: And you've been an investigator for how long?

20 A: Three years. No, six years, about six and a half years.

21 Q: Okay and this case you acknowledge is about -- it's been
22 about four and half years since you went to this residence; is
23 that correct? December of 2008 and we're in June 2013,
24 roughly four and a half years? And I'm sure in that time span
25 you have had numerous other cases that you've been

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 investigating on; is that correct?

2 A: Yes, sir.

3 Q: And you've talked to numerous witnesses during that time
4 span and you've filled out numerous reports; isn't that
5 correct?

6 A: Yes, sir.

7 Q: Okay. So a great deal of what you are probably recalling
8 in this particular incident, you're relying on your notes; is
9 that correct?

10 A: Yes, sir.

11 Q: Your notes and reports and things that you have submitted
12 to the Solicitor's Office; isn't that correct?

13 A: Yes, sir.

14 Q: Okay and what you have testified to earlier is you said
15 that my client said he didn't live there and that these items,
16 whatever was found, had to belong to Kimberly or that she had
17 other people staying there; isn't that correct?

18 A: Yes, sir.

19 Q: Okay and that that's what he had indicated initially when
20 you questioned him; is that correct?

21 A: Yes, sir.

22 Q: Okay and that was after -- as you said, after you pulled
23 out of your vest your card with those Miranda warnings as Mr.
24 Meadors has questioned -- asked you about earlier; is that
25 correct?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: Yes, sir.

2 Q: Okay. Now, in your sixteen year span of being in law
3 enforcement, you always -- you also did patrol; is that
4 correct?

5 A: Yes, sir.

6 Q: Okay and when you were on patrol you had your own patrol
7 car?

8 A: Yes, sir.

9 Q: And in that patrol car, it has a radio; isn't that
10 correct?

11 A: Yes, sir.

12 Q: And on that radio is all types of things coming across
13 the radio, basically all -- at all times while you're driving
14 that car. Some of it may pertain to you personally as
15 something for you to do or they may be talking about something
16 else, but you are hearing that all the time; isn't that
17 correct?

18 A: As far as like dispatchers and other officers?

19 Q: Exactly.

20 A: Yes, sir.

21 Q: That's going on all the time; isn't that correct?

22 A: Yes, sir.

23 Q: There's always some chatter on the radio?

24 A: We always use 10 codes on the radio.

25 Q: Right and that's -- that's going on?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: Yes, sir.

2 Q: So it's -- it's -- it's more often than not, there's
3 chatter going on as opposed to know chatter going on; isn't
4 that correct?

5 A: That kind of depends. Sometimes the radio is quiet,
6 sometimes it's not.

7 Q: Okay, but more often than not, it's not quiet; isn't that
8 correct? When you were on patrol?

9 A: It depends. Sometimes you would go and it would be
10 quiet. You don't never say quiet because when you say quiet,
11 bad things happen.

12 Q: Okay.

13 A: But sometimes you have radio traffic, sometimes you
14 don't.

15 Q: Okay, but more often -- but is it fair to say that more
16 often when you were -- you were on patrol you did have radio
17 traffic?

18 A: Yes, sir.

19 Q: Okay. Now, also in this case, Kimberly Gibbs was also
20 charged with these offenses; isn't that correct?

21 A: Yes, sir.

22 Q: From the search at this particular location?

23 A: Yes, sir.

24 Q: Okay and she's not sitting at this table over here today;
25 is she?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: No, sir.

2 Q: Okay and when you showed up at the residence, my client
3 was cooperative when y'all detained him; is that right?

4 A: Yes, sir.

5 Q: The only thing he did was he asked for his pants?

6 A: That's right.

7 Q: Because he was in his boxers?

8 A: That's right.

9 Q: Okay and it was about end of the morning, early
10 afternoon, about middle of the day when you guys showed up at
11 the residence; is that correct?

12 A: I documented on my report it was twelve o'clock. It was
13 lunchtime when we got there.

14 Q: Okay. No better way to describe the middle of the day
15 other than noontime; is that right?

16 A: Yes, sir.

17 Q: You also indicated that you guys found undelivered mail
18 at the residence; right?

19 A: Yes, sir.

20 Q: And Ms. -- Ms. Kimberly Gibbs was a postal carrier; is
21 that right?

22 A: That's right.

23 Q: And this was mail that belonged to various residents in
24 the community, and she was charged with delivering that were
25 -- that was at her residence?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: That's correct.

2 Q: Okay, all right and you guys obviously felt compelled to
3 call the post office about this; is that correct?

4 A: We called them to take possession of the mail.

5 Q: And the -- they sent the inspector out to get that; is
6 that correct?

7 A: They did.

8 Q: Okay.

9 MR. BROOKS: No other questions, Your Honor.

10 THE COURT: Any redirect?

11 MR. MEADORS: Can we approach?

12 THE COURT: You may.

13 (Whereupon, a bench conference is held off the record.)

14 REDIRECT EXAMINATION

15 BY MR. MEADORS:

16 Q: I'm going to show you what's marked 32. Just tell me if
17 you recognize it and does it -- does it relate to your
18 previous evidence -- previous testimony without saying what it
19 is?

20 (Whereupon, a paper bag is presented to the witness.)

21 A: I can't tell what it is yet. It's wrapped up pretty
22 tight. Can I go ahead and open it to see what's inside?

23 (Whereupon, the witness opens the bag.)

24 A: Yes, sir, it does.

25 Q: Okay.

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 MR. MEADORS: Your Honor, we'd offer State's 27 [sic.]
2 for identification at this point.

3 THE COURT: For identification only at this time.

4 Q: Just a couple of brief questions. Mr. Brooks asked you
5 about the time span. Do you document what happened at or near
6 the time it happened?

7 A: Yes, sir.

8 Q: And is that referred to as the incident report?

9 A: Yes, sir. We do an incident report and we also do a --
10 just kind of summarize on a case summary.

11 Q: Okay and is that provided to me and we provide it to the
12 defense; correct?

13 A: Yes, sir.

14 Q: All right and -- and -- and you prepared that in this
15 case?

16 A: Yes, sir, I did.

17 Q: And document what happens when it happens; correct?

18 A: Yes, sir.

19 Q: All right and that does aid you when you come back to
20 testify; correct?

21 A: It does. It refreshes your memory.

22 Q: But that was prepared at or near the time when that stuff
23 happened; right?

24 A: Yes. That probably would have been done at least the day
25 or the next day.

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 Q: Now -- and it was twelve o'clock; right?

2 A: Yes, sir.

3 Q: When you did the search warrant.

4 MR. MEADORS: That's all. Thank you.

5 THE COURT: Any recross ---

6 MR. BROOKS: No.

7 THE COURT: --- to his redirect?

8 MR. BROOKS: No, sir.

9 THE COURT: All right. Thank you. You may step down.

10 (Whereupon, the witness leaves the stand at 11:41 a.m.)

11 MR. BROWN: Your Honor, we're bringing the officer in,
12 but it's going to be Lieutenant Dale Horton.

13 THE COURT: All right.

14 (Whereupon, there is a pause in the proceedings until the
15 witness enters the courtroom.)

16 THE COURT: Let me see the attorneys up here for just a
17 moment.

18 MR. BROWN: Yes, Your Honor.

19 (Whereupon, a bench conference is held off the record.)

20 THE COURT: Come forward, please, and be sworn.

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

23 THE WITNESS: Dale Horton.

24 THE CLERK: Do you solemnly swear or affirm your
25 testimony to the Court shall be the truth, the whole truth,

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

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

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Have a seat up here, please.

4 Watch your step. State your full name. Spell your last name
5 for the record.

6 THE WITNESS: Dale Horton, H-O-R-T-O-N.

7 LIEUTENANT DALE HORTON, being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q: For the ladies and gentlemen of the jury, will you please
12 tell us what your rank is?

13 A: I'm a lieutenant for Sumter County Sheriff's Office.

14 Q: Just by way of background, can you please just let the
15 jury know who you are, where you're from, where you grew up?

16 A: I've been with the Sheriff's Office for sixteen years.
17 I'm the supervisor of the traffic team, I-95 team. I've been
18 in Sumter pretty much since 1989.

19 Q: Where did you go to high school?

20 A: Sumter.

21 Q: So you're a native from this area pretty much?

22 A: My dad retired here.

23 Q: Okay and so what do your duties include with the Sumter
24 County Sheriff's Department?

25 A: Like I said, I was -- I'm the I-95 supervisor, the

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 interdiction supervisor. I'm the patrol administration
2 lieutenant. I'm also the SRO supervisor, school resource
3 officer. And I'm also the civilian administration supervisor.
4 Q: In 2008, were you employed or did you work in the
5 capacity of the CAT team?
6 A: Yes. I was on the Community Action Team at that time.
7 Q: Okay and did you get brought along sometimes when -- when
8 warrants were being served?
9 A: Yes. That's a support role.
10 Q: I'm going to take you to the day of December 23rd, 2008.
11 Do you remember that day?
12 A: Yes, sir.
13 Q: And that's the day we're here today about?
14 A: Yes.
15 Q: Were you a part of the team that went to Leroy Clifton
16 Gibbs' house that day?
17 A: Yes. I was part of the -- we secured the -- the
18 residence, the yard area, to make sure when we go to serve a
19 warrant that the yard is secure.
20 Q: Okay. You set up a perimeter?
21 A: Perimeter.
22 Q: Were you there when -- when Mr. Gibbs was placed under
23 arrest that day?
24 A: I was. I was there. I was -- like I said, I was the
25 outside unit. He was placed under arrest, and myself and

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 Lieutenant Chris Moore transported him to the jail.

2 Q: Okay. Now, he was in y'all's patrol car? Y'all
3 transported him?

4 A: Right. It was Chris Moore's patrol car. He was the
5 driver and I was the passenger.

6 Q: Okay and -- and where was Mr. Gibbs in proximity to
7 y'all?

8 A: He was in the back seat.

9 Q: When y'all received him, was it to your understanding
10 that he was already under arrest?

11 A: Yes. He was under arrest and we were transporting him.
12 We had the tickets to go book him into the jail.

13 Q: Okay and so where did y'all start this transport? Was it
14 at his house?

15 A: From his residence.

16 Q: On Mattison?

17 A: Yes.

18 Q: Is that in Sumter, South Carolina?

19 A: Yes.

20 Q: And where were y'all taking him?

21 A: To the jail over off of Winkles Road.

22 Q: Approximately how far of a drive is that, Officer?

23 A: With traffic, probably about fifteen minutes at the most.

24 Q: Okay. Is that about how long it took that day?

25 A: Yes.

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 Q: And take me into that car. I kind of want to get a feel
2 for what was going on. Were y'all having conversations with
3 Mr. Gibbs?

4 A: We weren't personally engaging in conversation with him,
5 but Mr. Gibbs was steadily talking and telling -- there was
6 just a lot of rambling going -- going on and then that's
7 whenever he -- he mentioned to us that selling drugs was a
8 lifestyle to him.

9 Q: Okay. Now, what was your reaction when that happened?

10 A: Whenever he made that comment saying that -- when he said
11 selling drugs was -- selling drugs is a lifestyle to me, as
12 soon as he said that, I looked over at -- at Chris Moore, not
13 really saying anything to Chris, but we looked at each other
14 saying I can't believe he just said that.

15 Q: Okay.

16 A: Because I was almost like in shock that he said that.

17 Q: Before he said that, were y'all asking him any questions
18 about what happened?

19 A: No. We didn't ask him any questions. It was just a
20 transport.

21 Q: All right. Tell me about what other noise was going on
22 in the car. Did y'all have your radio playing?

23 A: There was no -- as in music radio? That was not on.

24 Q: What about dispatch?

25 A: Well, because it was a -- a warrant sweep that we were on

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 a special channel, so the dispatch and all the regular traffic
2 that you would hear on a patrol radio was not going on.

3 Q: Okay. Following Mr. Gibbs' statement that selling drugs
4 is a lifestyle for me, did y'all ask him anything further?

5 A: No.

6 Q: Okay. Was anything else said by Mr. Gibbs on the car
7 ride there to your recollection?

8 A: Not -- not really that I can remember offhand. Like I
9 said, that -- that statement stuck out to me because we
10 normally don't hear something like that and someone doesn't
11 admit something like that.

12 Q: Okay. Did y'all complete the transport to Summer Lee
13 Regional?

14 A: We did. We booked him in and then ---

15 Q: What did you do after that?

16 A: We went back to on scene to help them gather evidence and
17 also to inform Investigator Dubose on what he said to us.

18 Q: And that was my next question. Did you go speak with
19 Investigator Dubose about this?

20 A: I went with Chris ---

21 Q: Mm-hmm.

22 A: --- Moore to -- and we both said it, but Chris is the one
23 that told him verbally what he said to us, and Investigator
24 Dubose ---

25 Q: Did you validate that also?

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 A: Right. He asked me and I said yes, and Investigator
2 Dubose documented it at that time.

3 Q: Okay. The man that you transported from [REDACTED] Mattison to
4 the jail and the man who made the statement selling drugs is a
5 lifestyle to me, is he here in this courtroom today?

6 A: Yes.

7 Q: Can you please point him out?

8 (Whereupon, the witness indicates the defendant.)

9 MR. BROWN: And I would ask the record reflect he's
10 identified the defendant.

11 THE COURT: The record will so reflect.

12 MR. BROWN: All right. The Court's indulgence?

13 (Whereupon, there is a pause in the proceedings.)

14 MR. BROWN: Please answer any questions that Mr. Brooks
15 has for you.

16 THE COURT: Mr. Brooks.

17 CROSS EXAMINATION

18 BY MR. BROOKS:

19 Q: Officer Horton?

20 A: Yes, sir.

21 Q: How are you doing today?

22 A: Pretty good, sir.

23 Q: How -- how long you been on the force?

24 A: Sixteen years.

25 Q: Okay and how long you been on patrol?

26

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 A: Almost all of that.

2 Q: Almost -- almost all of that?

3 A: Right.

4 Q: So I'm sure in that sixteen-year time span you've been on
5 patrol, you have put quite a few people in the back seat of
6 your car?

7 A: Yes.

8 Q: Okay and generally, patrol cars they have like a
9 plexiglass or -- between the front seat and the back seat?-

10 A: Yes.

11 Q: And this car had that?

12 A: Yes.

13 Q: Okay, all right. So there's always -- there's something
14 there and obviously that's there for security purposes; isn't
15 that correct?

16 A: Yes.

17 Q: Okay. Now -- and you acknowledge this matter is about
18 four and a half years ago?

19 A: Yes.

20 Q: Okay. You didn't make any notes to reflect that; do --
21 do -- did you? Do you have any notes to reflect ---

22 A: No.

23 Q: --- you're transporting my client from this particular
24 residence to the jail?

25 A: No, sir.

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 Q: Okay. You've strictly gone on what you recall; is that
2 correct?

3 A: Yes, sir.

4 Q: And you have indicated to the ladies -- these ladies and
5 gentlemen of the jury that according to you my client was
6 doing a lot of rambling?

7 A: Yes, sir.

8 Q: A lot of rambling in that fifteen minute period of time
9 from this house to the jail?

10 A: Yes, sir.

11 Q: Which you acknowledge is about fifteen minutes?

12 A: Yes, sir.

13 Q: Okay. Now, in that rambling, you don't remember anything
14 else that was said during that rambling; isn't that correct?

15 A: Yes, that's correct, sir.

16 Q: He could have said, man, I don't live there. That stuff
17 belonged to Kimberly Gibbs. She had somebody else there. You
18 don't recall that; do you?

19 A: No, sir.

20 Q: Okay. He could have said -- that could have been part of
21 the rambling, but you simply don't recall?

22 A: I don't recall any -- hearing anything like that.

23 Q: The only thing you remember was the statement of selling
24 drugs is a lifestyle. Is it lifestyle to me? For me?

25 A: To me.

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 Q: To me. Selling drugs is a lifestyle to me. That's the
2 only thing you recall?

3 A: Like -- yes, sir. Like I said, whenever someone admits
4 something like that, that sticks out to you.

5 Q: Okay. Selling drugs is the lifestyle to me.

6 A: Yes, sir.

7 Q: We got seven words?

8 A: Yes, sir.

9 Q: And in that fifteen minute period of time he was
10 rambling, he was obviously saying a way lot more words than
11 just seven?

12 A: Yes, sir.

13 Q: But the only thing you happen to recall was these seven
14 words?

15 A: Yes, sir.

16 Q: And you do acknowledge that he could have said some other
17 things, such as I don't live there, that stuff didn't belong
18 to me; right?

19 A: Like I said, I don't remember him saying anything like
20 that.

21 Q: Okay, but he could -- but you do acknowledge he could
22 have said it, you just don't recall?

23 A: I don't recall him saying anything like that.

24 Q: And you don't have any notes to reflect your transporting
25 him from the residence to the jail?

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 A: No.

2 Q: Okay and that's not normally something you would do;
3 isn't that correct?

4 A: No.

5 Q: Okay, all right.

6 MR. BROOKS: No other questions.

7 THE COURT: Any redirect?

8 MR. BROWN: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BROWN:

11 Q: Upon dropping off Mr. Gibbs to Sumter Lee Regional
12 Detention Center upon getting him booked, you immediately went
13 back and documented this; didn't you?

14 A: Sir?

15 Q: You immediately went back and reported to your supervisor
16 what was said; isn't that correct?

17 A: And the investigator that was in charge of the scene, we
18 immediately told him and he documented that at that time.

19 Q: Now, you say that you don't remember anything else that
20 he said. Do you remember the gist of what he was saying?

21 A: He was basically apologetic.

22 MR. BROOKS: Objection, Your Honor.

23 A: He was talking about his family.

24 MR. BROOKS: Objection.

25 THE COURT: Sustained.

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 Q: As pertains to not recalling him -- hearing him say
2 anything that it would be somebody else's drugs, I want to
3 just make sure I understand exactly what you mean by that.
4 You were -- you mean that you specifically don't remember
5 anything like that being said or that it could have been said?

6 A: I don't remember him saying anything like that. Like --
7 like I said, whenever someone admits to selling drugs, that's
8 what sticks out to you, and that's what I reported back to the
9 investigator in charge.

10 MR. BROWN: Thank you. No further questions.

11 THE COURT: Any redirect?

12 MR. BROOKS: Sure.

13 THE COURT: Any recross based upon that?

14 RE CROSS EXAMINATION

15 BY MR. BROOKS:

16 Q: Officer Horton?

17 A: Yes, sir.

18 Q: He didn't admit to selling to drugs; he just said those
19 seven words, selling drugs is a lifestyle to me?

20 A: That's correct.

21 Q: Okay.

22 MR. BROOKS: No other questions.

23 THE COURT: All right. Thank you. You may step down.

24 Any objections to this witness being released?

25 MR. BROOKS: No, sir.

INVESTIGATOR JAMES ATKINSON - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: No, Your Honor.

2 THE COURT: Thank you.

3 (Whereupon, the witness leaves the stand at 11:53 a.m.)

4 MR. BROWN: Your Honor, at this time we would -- at this
5 time, the State would call Jim Atkinson of the Sumter County
6 Sheriff's Department.

7 THE COURT: Come forward, please.

8 THE CLERK: Place your left hand on the Bible and raise
9 your right hand. State your name, please.

10 THE WITNESS: James Atkinson.

11 THE CLERK: Do you solemnly swear or affirm your
12 testimony to the Court shall be the truth, the whole truth,
13 and nothing but the truth, so help you God?

14 THE WITNESS: I do, sir.

15 THE CLERK: Thank you. Have a seat up here, please.
16 Watch your step, please. State your full name and spell your
17 last name for the record.

18 THE WITNESS: James Atkinson, A-T-K-I-N-S-O-N.

19 INVESTIGATOR JAMES ATKINSON, being
20 first duly sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q: Investigator -- or Officer Atkinson, it is investigator;
24 correct?

25 A: Yes, sir.

INVESTIGATOR JAMES ATKINSON - DIRECT EXAMINATION BY MR. BROWN

1 Q: All right. Tell us a little bit about yourself. Tell us
2 where you're from and what you do for a living?

3 A: I'm originally from Ohio and twenty years of military
4 battalion at Shaw Air Force Base. I retired as a first
5 sergeant and I've been with the Sheriff's Office for over
6 twenty-five years.

7 Q: What are your duties now at the Sheriff's Department?

8 A: I work the crime scene unit. My main job is evidence
9 custodian.

10 Q: Okay and is that why you're here today?

11 A: Yes, sir.

12 Q: At the request of the Solicitor's Office, did you bring
13 over amounts of evidence that have been -- up to this point
14 been put in in this case?

15 A: Yes, sir. It is the BEST kit and 929 and it was a bowl.

16 Q: Now, tell me about -- before we get too far into this,
17 tell me about what your procedure is and kind of how evidence
18 works with Sumter County Sheriff's Department?

19 A: We get evidence in certain ways. We can get it from
20 crime scene. We can go to autopsies and get evidence. I can
21 get it from an individual officer. We can get it out of an
22 evidence locker. When we get it, we log it into the computer
23 and we'll sign the sheet saying we got it.

24 Q: And once the sheet is signed that you received it, what
25 do y'all do with the evidence at that point?

INVESTIGATOR JAMES ATKINSON - DIRECT EXAMINATION BY MR. BROWN

1 A: It's usually stored in the vault or given directly to the
2 -- the -- it was Mitch Hansen back then.

3 Q: Okay. Now, once it's signed into the vault, tell me kind
4 of what it takes to get that evidence out of the vault. Do
5 you have to sign it out?

6 A: I can sign it out myself because I'm in charge of the
7 vault.

8 Q: Right.

9 A: And I have the card and we lock it. There's three keys
10 to the vault.

11 Q: I guess the question is tell me how y'all actually track
12 this evidence so y'all know what's going on with it?

13 A: It's usually on an evidence form.

14 Q: Okay and you have that with you today?

15 A: Yes, sir.

16 Q: The evidence that was brought in here today -- and I'm
17 going to be speaking specifically -- I'll start out with what
18 I believe is State's 28. I'll start with that one.

19 MR. BROWN: Permission to approach, Your Honor? I'm
20 sorry.

21 THE COURT: Yes, sir.

22 Q: Is this one of the pieces of evidence that you had signed
23 into your evidence log

24 A: Yes. This would all have been from the same BEST kit.

25 Q: Okay. They were all in the same BEST kit. So all four

INVESTIGATOR JAMES ATKINSON - DIRECT EXAMINATION BY MR. BROWN

1 of these items right here?

2 A: Yes, sir.

3 Q: Now, I'm particularly talking about 27, 28, State's 29,
4 and State's 30. All of these were logged together in a BEST
5 kit that was submitted to you?

6 A: Yes, sir.

7 Q: And were you the person who it was originally signed in
8 to?

9 A: No. Cindy Pierson originally got it.

10 Q: And did you take over for Cindy Pierson?

11 A: Yes, sir.

12 Q: Since it has been put into the vault, minus the time that
13 Mitch Hansen had it, has it been under your dominion and
14 control?

15 A: It's been locked up in the vault.

16 Q: And y'all have been able to report that this has been the
17 same evidence that was originally submitted throughout that
18 time period?

19 A: Yes, sir. It's sat in there for several years.

20 Q: All right and I'm going to move on also to State's 32
21 which you brought -- also brought here today.

22 MR. BROWN: Permission to approach, Your Honor?

23 THE COURT: You may.

24 Q: This was just now submitted and I will note that it is
25 now open and that you were here when that was opened today?

INVESTIGATOR JAMES ATKINSON - DIRECT EXAMINATION BY MR. BROWN

1 A: Yes, sir.

2 Q: Prior to it being opened today, was it -- is this how it
3 was maintained since it's been put in on this date of
4 incident?

5 A: Yes, sir. It's been on the December of '08 shelf ever
6 since.

7 Q: Okay and it's been in y'all -- on y'all's shelves ever
8 since?

9 A: Yes.

10 Q: Any notes that it's been disturbed or messed with in any
11 way, shape or form since then?

12 A: No. You can see it was taped up before and it stayed
13 taped.

14 Q: Okay.

15 A: That's evidence tape. As soon as you mess with it, it's
16 destroyed.

17 Q: Okay and so as pertains to this, that's been under
18 y'all's dominion and control up until when we brought it here
19 to this court?

20 A: Yes, sir.

21 Q: And finally, as pertains to -- I'm going to try finding
22 them real quickly -- the firearms ---

23 MR. BROWN: Permission to approach?

24 THE COURT: You may.

25 Q: I'm showing you what is marked as State's 31.

INVESTIGATOR JAMES ATKINSON - DIRECT EXAMINATION BY MR. BROWN

1 A: Yes, sir.

2 Q: And I -- and once again, I see where this has been opened
3 here, but is this also -- minus the time that it's been put in
4 by Ms. Pierson, these have also been with the Sheriff's
5 Department up until today?

6 A: Yes, sir. They've been in the gun room. We have a
7 special room set aside for guns.

8 Q: And that's over at the Sheriff's Department?

9 A: Yes, sir.

10 Q: That's also under your dominion and ---

11 A: Yes, sir.

12 Q: --- control? You also brought that here today?

13 A: Yes, sir, I did.

14 Q: Okay.

15 MR. BROWN: The Court's indulgence?

16 THE COURT: Okay.

17 MR. BROWN: All right. Your Honor, at this time, I would
18 move State's Number 32 in.

19 THE COURT: Any objection?

20 MR. BROOKS: Judge, may we approach?

21 THE COURT: Okay.

22 (Whereupon, a bench conference is held off the record.)

23 THE COURT: This is 32?

24 MR. BROWN: State's 32, Your Honor.

25 THE COURT: State's Exhibit 32 is admitted.

1 MR. BROWN: No further questions. Please answer any from
2 Mr. Brooks.

3 MR. BROOKS: No questions.

4 THE COURT: All right. Thank you. You may step down.

5 THE WITNESS: Thank you, sir.

6 (Whereupon, the witness leaves the stand at 12:00 p.m.)

7 MR. MEADORS: Your Honor, may we approach for scheduling?

8 THE COURT: You may.

9 (Whereupon, a bench conference is held off the record.)

10 THE COURT: All right, ladies and gentlemen, after
11 talking with the attorneys, now seems to be an appropriate
12 time to take a lunch. So I am going to dismiss you for your
13 lunch with instructions that you be back here at two o'clock
14 and, of course, don't speak to anybody about the case.

15 Also, don't go eat a large meal at lunch. I'll tell you
16 a story about a jury I had one time and it happened to be a
17 warmer time in here and I noticed one of the jurors was kind
18 of nodding off a little bit. So I stopped the trial and I had
19 all the jurors stand up. Well, one juror didn't stand up. He
20 was sound asleep. So don't go out and eat a giant meal for
21 lunch, as it tends to make people drowsy in the afternoon, but
22 have a nice lunch and we'll see you back here at two o'clock.
23 Thank you, ladies and gentlemen. Please do not discuss the
24 case with anyone.

25 (Whereupon, the jury exits the courtroom at 12:01 p.m.)

1 THE COURT: Anything before we recess?

2 MR. MEADORS: Judge, I do. I have something I'd like to
3 put on the record. These bailiffs are doing an outstanding
4 job, Your Honor. I wanted to put that on the record, too, but
5 twice this morning, one particular when Mr. Brown was asking a
6 question on redirect to the officer that testified, I heard
7 like a laugh or a sound coming from back here, Judge, and I'm
8 -- I don't know who it was, but then I heard it a minute ago
9 about something. Instruct all of us, Judge, there are to be
10 no sounds or laughing or anything because that's disrespectful
11 to everybody, and I just heard it twice and I apologize, but
12 it's just I -- as an officer of the court, I know Your Honor
13 wouldn't -- doesn't like that either.

14 THE COURT: All right. I did not hear anything, but I
15 will as a precautionary. Any outburst of emotions or of
16 happiness or sadness will not be tolerated in this court. If
17 you can't restrain yourself, I'll have to ask you to leave.
18 All right, thank you.

19 MR. MEADORS: Thank you.

20 THE COURT: Court's in recess until two o'clock.

21 (Whereupon, there is a break in the proceedings from
22 12:03 p.m. until 2:04 p.m.)

23 MR. MEADORS: May we approach?

24 (Whereupon, a bench conference is held off the record.)

25 THE COURT: All right. Let's bring our jury out.

1 (Whereupon, the jury enters the courtroom at 2:08 p.m.)

2 THE CLERK: Your Honor, we have all the jurors present in
3 the courtroom.

4 THE COURT: Thank you, Mr. Bradley. All right, ladies
5 and gentlemen, I hope you had a nice lunch. I hope you didn't
6 get soaked out there. You know, that deluge came for about
7 ten minutes. Depending upon where you were, you might have
8 been okay. All right. We'll continue with our testimony. Is
9 the State ready to call its next witness?

10 MR. BROWN: The State is ready to proceed, Your Honor.

11 THE COURT: All right. You may call your next witness.

12 MR. BROWN: We would call Cindy Pierson.

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

15 THE WITNESS: Cindy Pierson.

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

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Have a seat up here, please.
21 Please state your full name and spell your last name for the
22 record.

23 THE WITNESS: Cindy Collins Pierson, P-I-E-R-S-O-N.

24 CINDY PIERSON, being first duly
25 sworn, testifies as follows:

CINDY PIERSON - DIRECT EXAMINATION BY MR. BROWN

DIRECT EXAMINATION

1
2 BY MR. BROWN:

3 Q: Good afternoon, Ms. Pierson.

4 A: Good afternoon.

5 Q: You used to work for the Sumter County Sheriff's Office?

6 A: Yes, sir.

7 Q: Tell us about that. How long did you work for them?

8 A: Approximately thirteen years.

9 Q: If you don't mind me asking, when did you start and when
10 did you leave the Sheriff's Department?

11 A: I started in 1998 and I left August 9th of 2010.

12 Q: Okay. So, if you don't mind me asking, why did you leave
13 the Sheriff's Department? What do you do now for a living?

14 A: I went into dog grooming.

15 Q: Okay. Is that why you left the Sheriff's Department to
16 start that business?

17 A: It is.

18 Q: Okay and where is your business located?

19 A: I work for Bernie Yates [phonetic] at Palmetto Paws.

20 Q: Okay, great. Now, back in 2010 you were -- you were with
21 the Sheriff's Department. What did you do for them?

22 A: I was evidence technician and I would have done some
23 crime scene as well.

24 Q: Were you the primary evidence custodian at that time for
25 Sumter County Sheriff's Office?

CINDY PIERSON - DIRECT EXAMINATION BY MR. BROWN

1 A: Yes, sir.

2 Q: And would that have covered the time period of this case
3 we're talking about, which came out of December 23rd, 2008?

4 A: Yes, sir.

5 Q: All right. As a preliminary question, did you go out to
6 the crime scene that day?

7 A: I do not believe I went to this crime scene. This
8 evidence was brought back to me.

9 Q: Okay. So your information would just be on what was
10 brought to the Sheriff's Department that day?

11 A: Correct.

12 Q: Okay.

13 MR. BROWN: Your Honor, permission to approach?

14 THE COURT: Yes, sir.

15 Q: And I'm going to show you what is State's Exhibits Number
16 27, State's 28, State's 29, and State's 30. If you can,
17 please look at that and just tell me whether or not that was
18 -- I believe it was all originally brought into a BEST kit,
19 but if -- if you can, just let us know whether or not you were
20 the one who signed that in originally?

21 A: Yes, sir.

22 Q: Okay and would you have signed that in on or around the
23 date that this evidence was brought into the Sheriff's
24 Department?

25 A: Yes, sir.

CINDY PIERSON - DIRECT EXAMINATION BY MR. BROWN

1 Q: Once evidence is signed in, particularly with drugs, what
2 do they do with it then?

3 A: Once evidence is signed in, it then goes -- I give it a
4 bin number so I know where it's placed within the evidence
5 room, sign it in to the computer, and then it's sent to the
6 analyst to be analyzed.

7 Q: I'll take that from you. Now, do you have your basic
8 tracking sheet or what do y'all call it in y'all's office?

9 A: This is what we call an evidence form.

10 Q: Okay. Do you have the evidence form that relates to
11 these particular items of evidence? I think it was all in one
12 big BEST kit, if you recall.

13 A: Yes, I do.

14 Q: Okay and are you listed as the person who signed these
15 in?

16 A: Yes, sir.

17 Q: And other than Mitch Hansen and then later Jim Atkinson,
18 is there any indication this was ever taken out of the
19 evidence control in your time there in the Sheriff's
20 Department?

21 A: No, sir.

22 Q: Okay. I'm going to next show you what has been
23 previously marked and entered as State's Number 32.

24 MR. BROWN: Permission to approach, Your Honor?

25 THE COURT: You may.

CINDY PIERSON - DIRECT EXAMINATION BY MR. BROWN

1 Q: Do you have the ability to identify what this is from
2 your form right there?

3 A: Yes, sir, I do.

4 Q: All right and what is State's Number 32 based on your
5 form?

6 A: It would be a Pyrex measuring cup containing a white
7 residue.

8 Q: And is it indicated on that form that this item came from
9 -- came from this particular crime scene on this particular
10 date?

11 A: Yes, it does.

12 Q: And do you have any indications that from the time that
13 it was checked in at your office up until the time that you
14 left the Sheriff's Department in 2010 that it was ever removed
15 from y'all's custody and control?

16 A: No, sir.

17 Q: All right and, finally, I'm going to show you -- if I can
18 get over there to it real quickly -- what is State's Number 31
19 and these are, just to let you know, the two guns that were
20 recovered. Do you have indications on your sheet that you
21 checked these in?

22 A: Yes, sir, I do.

23 Q: And do you have indications they were placed under your
24 control and custody at the Sheriff's Department?

25 A: Yes, they were.

CINDY PIERSON - DIRECT EXAMINATION BY MR. BROWN

1 Q: Do you have any indications as to whether or not these
2 items were ever removed from the Sheriff's Department before
3 you left the office in 2010?

4 A: They were removed by Travis Strickland with ATF.

5 Q: Okay, but is there ever any other -- I mean do -- do you
6 have markings to let you know that these are the same guns
7 that left and then came back in?

8 A: Yes.

9 Q: And you checked them back in?

10 A: Correct.

11 Q: All right.

12 MR. BROWN: And, Your Honor, I believe all these are in
13 evidence, but I just want to make sure, 27 through 32. I
14 would move all of them into evidence at this time.

15 THE COURT: I thought they were in already.

16 MR. BROWN: They may be, Your Honor. I apologize.

17 THE COURT: Any objections, Mr. Brooks, if they're not?

18 MR. BROOKS: No objection.

19 THE COURT: In without objection.

20 MR. BROWN: All right.

21 THE COURT: Now, they're certainly in.

22 MR. BROWN: All right. Thank you, Your Honor. Thank
23 you. If Mr. Brooks has any questions for you, please answer
24 them.

25 THE COURT: Mr. Brooks?

26

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROOKS: No questions.

2 THE COURT: No questions. Thank you, ma'am.

3 MR. BROWN: I would ask that she be excused, Your Honor.

4 THE COURT: Certainly. Go back and get those dogs
5 looking good.

6 (Whereupon, the witness leaves the stand at 2:15 p.m.)

7 MR. BROWN: May it please the Court. At this time, the
8 State would call Mitch Hansen.

9 THE COURT: All right.

10 THE CLERK: Place your left hand on the Bible and raise
11 your right hand. State your name, please.

12 THE WITNESS: Mitchell Hansen.

13 THE CLERK: Do you solemnly swear or affirm your
14 testimony to the Court shall be the truth, the whole truth,
15 and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Have a seat up here, please.
18 Watch your step. State your full name and spell your last
19 name for the record.

20 THE WITNESS: Mitchell Hansen, H-A-N-S-E-N.

21 MITCHELL HANSEN, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 Q: Mr. Hansen, how are you this afternoon?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 A: I'm fine. How are you doing?

2 Q: I'm doing fine. Now, who do you work with now?

3 A: Florence County Sheriff's Office.

4 Q: And what is your role at the Florence County Sheriff's
5 Department?

6 A: I run the forensic drug lab in Florence County.

7 Q: So I can make sure I call you by the proper name, is it
8 investigator or detective or what do you go by officially?

9 A: Lieutenant slash chemist.

10 Q: All right. Now, by way of background just to let the
11 jury know who is in front of them, why don't you tell us a
12 little bit about yourself? Tell us where you were born, where
13 you were raised, where you went to school, things of that
14 nature. Let us know who you are.

15 A: I was born in Mississippi. My parents moved to South
16 Carolina when I was about five years old. I was raised in
17 Florence. Later on in life after I was married, we moved to
18 North Carolina where I worked in private industry for about
19 five or six years. I then came to Sumter to start the drug
20 lab up in Sumter and then to Florence to start the drug lab up
21 there.

22 Q: Now, as it pertains to Sumter and the drug lab, did you
23 have to get any special training or education before you
24 started doing something like that? Tell me about your
25 educational background I guess.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 A: I have an associates of science, associates in arts.

2 Q: Where from?

3 A: Associates of science and associates in arts from
4 Florence Darlington Tech. I have a bachelors in chemistry
5 from Francis Marion University. I have forensic drug training
6 from SLED and basic ---

7 Q: That's South Carolina Law Enforcement Division?

8 A: Yes.

9 Q: Okay. Thank you. I'm sorry.

10 A: And basic law enforcement training from the academy.

11 Q: Have you been certified in a court of law for South
12 Carolina ever in your history as a -- as a trained expert in
13 analyzing drugs?

14 A: Yes.

15 Q: What specific field were you certified in?

16 A: Drug -- drug ID, drug identification.

17 MR. BROWN: Your Honor, at this time I would offer Mitch
18 Hansen as an expert in drug identification.

19 THE COURT: Any objection?

20 MR. BROOKS: No objection.

21 THE COURT: All right. Ladies and gentlemen of the jury,
22 the State has asked and the defense has not objected to Mr.
23 Hansen being certified as an expert in drug identification.
24 Now, what that basically means, normally a witness who
25 testifies can only testify as to what they saw, heard, tasted,

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 smelled, or felt. However, when somebody has a certain amount
2 of education and experience, we allow them to give an opinion
3 that may not be what they saw, heard, tasted, smelled or felt.

4 Now, whether or not you want to accept that opinion is
5 totally up to you. As the jury, you're the finders of fact,
6 and just because he's an expert doesn't mean his testimony has
7 greater weight than anyone else. It just should be taken as
8 evidence and you decide what weight to put on it in your
9 evaluations of the evidence. All right. Thank you. You may
10 proceed.

11 MR. BROWN: Thank you, Your Honor.

12 Q: Now, Lieutenant Hansen, when you -- from what time period
13 were you working at Sumter County Sheriff's Office?

14 A: Roughly 2006 to 2011 I believe.

15 Q: So you were their drug analyst in the year of 2008 going
16 into 2009?

17 A: Yes.

18 Q: And tell me what all drugs were you analyzing at that
19 time?

20 A: We analyzed any controlled substance that come in from
21 Schedule I through Schedule V.

22 Q: Now, would this be just when evidence was put in a BEST
23 kit, you would -- you would just go and test it yourself? You
24 knew how to do all this stuff?

25 A: Yes, if it was submitted for testing.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 Q: And I'm going to bring up to you and show you what is ---

2 MR. BROWN: If I have permission to approach, Your Honor?

3 THE COURT: Certainly.

4 Q: --- State's 27, 28, 29, and 30. Can you please look
5 through these items and tell us whether or not there's
6 indications that those items were submitted as it pertains to
7 the case that we have here today?

8 A: Yes. These were -- were submitted for testing.

9 Q: And did you test those items?

10 A: Yes, I did.

11 Q: I'm going to approach and I'm going to take those back
12 from you now, and did you prepare a report about the testing
13 that you performed on State's 27 through 30?

14 A: Yes, I did.

15 Q: Did you -- and do you have it here with you today?

16 A: Yes, I do.

17 MR. BROWN: And, Your Honor, I have one already
18 previously marked as State's Exhibit Number 26.

19 THE COURT: All right.

20 MR. BROWN: At this time I would just offer this for ID
21 or I would offer this in as evidence.

22 THE COURT: All right. Any objection, Mr. Brooks?

23 MR. BROOKS: No objection.

24 THE COURT: Without objection, State's Exhibit 26 is
25 admitted.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: Thank you and permission to approach?

2 THE COURT: You may.

3 Q: Is this an accurate copy of the report that you prepared
4 on that day?

5 A: Yes, it is.

6 Q: And that lines up with the Sheriff's Office lab number
7 that was on this case?

8 A: Yes, it does.

9 Q: And that lines up with the case number that was on this
10 particular case?

11 A: Yes, it does.

12 Q: And the incident date?

13 A: Yes, it does.

14 Q: And who was the subject listed on this case?

15 A: Leroy C. Gibbs.

16 Q: Now, if I may ask, how many items were submitted to you
17 to be analyzed as pertains to this particular case?

18 A: Seven.

19 Q: And did you analyze each one of those items?

20 A: Yes, I did.

21 Q: And I'm just going to start at the top and we're just
22 going to go one through seven. So if we could start with item
23 number one, what was it identified as the item of evidence as
24 to what you were going to test?

25 A: Item number one was an evidence bag marked number one

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 containing a powder substance.

2 Q: Okay and did you test this item that day?

3 A: Yes, I did.

4 Q: And what were the results of that test?

5 A: The results come back it was positive for benzocaine.

6 Q: Okay and what is benzocaine?

7 A: Benzocaine is a numbing agent. It's also used as a
8 cutting agent for different types of drugs.

9 Q: In your experience in testing narcotics, have you come in
10 contact with benzocaine a good bit?

11 A: Yes.

12 Q: And you used the term cutting agent. Will you please
13 tell the ladies and gentlemen of the jury what exactly a
14 cutting agent is and why -- and what its relationship to drugs
15 are?

16 A: A cutting agent is something someone would use to add to
17 drugs to -- to actually increase the volume of the -- of the
18 -- of their substances. Benzocaine is used a lot because it's
19 -- it's a numbing agent so, therefore, it numbs. It numbs.
20 Basically, it numbs the skin so if they actually do a taste
21 test or something to like cocaine, it will actually numb their
22 tongue and they'll think that it's -- it's real.

23 Q: Now, is this usually something that's done by mixing it
24 with the cocaine or is it sold just separately just as
25 benzocaine?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 A: It's normally done by mixing it with cocaine.
- 2 Q: And it creates a larger quantity?
- 3 A: A large -- a larger quantity.
- 4 Q: Okay. What about item number two? Did you make -- do a
- 5 test on that?
- 6 A: Yes, I did.
- 7 Q: And what was item number two identified as before you
- 8 began testing it?
- 9 A: Item number two was an evidence bag marked number two
- 10 containing three plastic bags containing powder substance.
- 11 Q: And did you test these three plastic bags?
- 12 A: Yes, I did.
- 13 Q: And what did they test for?
- 14 A: They tested positive for cocaine.
- 15 Q: And did you have a quantity or weight of what those three
- 16 plastic bags weighed out as?
- 17 A: It was a combined weight of 3.55 grams. I'm sorry, 3.35
- 18 grams.
- 19 Q: Okay and this was tested positive for cocaine?
- 20 A: Yes.
- 21 Q: Did you test an item number three?
- 22 A: Item number three was an evidence bag marked number three
- 23 containing a Ziploc bag containing a powder substance.
- 24 Q: And did you test item number three?
- 25 A: Yes, I did.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: What did it test for?
- 2 A: It tested -- there was no controlled substance found, but
3 it tested for benzocaine and caffeine.
- 4 Q: Benzocaine and caffeine. Now, you mentioned benzocaine
5 when you talked about item number one as a cutting agent?
- 6 A: Yes.
- 7 Q: Explain to me, if you can based on your experience and
8 training, the caffeine part of that?
- 9 A: Caffeine can produce sort of a rush just like drinking a
10 soft drink real fast or something like that. Caffeine is also
11 used as -- you know, in some drugs as a cutting agent, too.
- 12 Q: What kind of drugs is it used as a cutting agent for?
- 13 A: Mainly your stimulants, your uppers, like cocaine.
- 14 Q: Would cocaine be a stimulant?
- 15 A: Yes.
- 16 Q: Okay and so is this, in your experience and training as a
17 -- as a drug analyst, a common substance that you would find
18 as a cutting agent for cocaine?
- 19 A: Yes.
- 20 Q: And benzocaine is as well?
- 21 A: Yes.
- 22 Q: And that is what item number three tested for?
- 23 A: Yes.
- 24 Q: What was the quantity of that one?
- 25 A: The quantity was 5.21 grams.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: Thank you. Did you receive an item number four?
- 2 A: Yes, I did.
- 3 Q: Tell me about what item number four was?
- 4 A: Item number four was an evidence bag marked number four
- 5 containing a plastic bag containing powder substance.
- 6 Q: Did you test this? Did you test this plastic bag to see
- 7 if it tested as a controlled substance?
- 8 A: Yes, I did.
- 9 Q: And did it test positive as a controlled substance?
- 10 A: Yes, it did.
- 11 Q: What substance?
- 12 A: It tested positive for crack cocaine.
- 13 Q: Okay. Is that also known as cocaine base?
- 14 A: Yes.
- 15 Q: Is that kind of the professional name for it?
- 16 A: Cocaine base, crack. Crack is the -- I guess the street
- 17 name.
- 18 Q: Interchangeable terms for it?
- 19 A: Yes.
- 20 Q: And this did test positive for cocaine base?
- 21 A: Yes, it did.
- 22 Q: What quantity?
- 23 A: 4.38 -- I'm sorry, 4.83 grams.
- 24 Q: All right. Thank you. Did you receive an item number
- 25 five to test?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 A: Yes, I did.
- 2 Q: And did you -- and what was item number five identified
3 to you as or what did you identify it as before you tested it?
- 4 A: Number -- item number five was identified just having
5 benzocaine and caffeine.
- 6 Q: Well -- and I want you to read first the items of
7 evidence. What did it come in as?
- 8 A: Oh, I'm sorry.
- 9 Q: Sure.
- 10 A: Item number five came in as an evidence bag marked number
11 five containing a plastic bag containing a powder substance.
- 12 Q: And you've indicated that it did not test as controlled
13 substance?
- 14 A: No, it did not.
- 15 Q: What did it test as again?
- 16 A: Benzocaine and caffeine.
- 17 Q: Okay. So this is once again the same as what we had in
18 item number three?
- 19 A: Yes.
- 20 Q: Okay and what quantity? What quantity of benzocaine
21 slash caffeine did you have on that?
- 22 A: 0.48 grams.
- 23 Q: 0.48?
- 24 A: Yes.
- 25 Q: Did you receive an item number six to test?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 A: Yes, I did.

2 Q: And what was it identified before you began testing as
3 what you were looking at?

4 A: An evidence bag marked number six containing a rock
5 substance.

6 Q: And did you test item number six?

7 A: Yes, I did.

8 Q: And did it positive for a controlled substance?

9 A: Yes. It tested positive for cocaine base.

10 Q: Crack?

11 A: Crack.

12 Q: And what quantity of crack cocaine did it test positive
13 for?

14 A: 6.72 grams.

15 Q: Okay and, finally, did you receive an item number seven
16 in this case?

17 A: Yes, I did.

18 Q: And what was it identified as before you began testing
19 it?

20 A: It was an evidence bag marked number seven containing a
21 plastic bag containing a rock substance.

22 Q: And did you test this?

23 A: Yes, I did.

24 Q: Did it test positive for a controlled substance?

25 A: Yes, it did.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: And what controlled substance did it test positive for?
- 2 A: Cocaine base.
- 3 Q: How much?
- 4 A: 2.48 grams.
- 5 Q: 2.48? So going back from items one to seven, what you
- 6 have indicated as items one, three, and five were all a no-
- 7 controlled substance. They were benzocaine or benzocaine
- 8 caffeine mixes; is that correct?
- 9 A: Correct.
- 10 Q: And the quantities you gave me on that was 6.56 for item
- 11 number one, 5.21 for item number three, and .48 for item
- 12 number five. Those were all in grams; correct?
- 13 A: Correct.
- 14 Q: All right. Would you refute if I told you that that
- 15 added up to 12.25 grams?
- 16 A: No, I would not.
- 17 Q: Okay and looking at item number two, was that the only
- 18 one that tested positive for cocaine?
- 19 A: Item number two?
- 20 Q: Mm-hmm.
- 21 A: Was the only one that tested positive for cocaine.
- 22 Q: And to be specific, cocaine powder?
- 23 A: Cocaine powder.
- 24 Q: And that one weighed out at 3.35 grams?
- 25 A: 3.35 grams.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 Q: And finally, items number four, six, and seven, is it my
2 understanding that all three of those came out as cocaine
3 base? Crack cocaine?

4 A: Correct.

5 Q: And those came out with weights of 4.83 grams, 6.72
6 grams, and 2.48 grams; is that correct?

7 A: Correct.

8 Q: And would you refute my -- my math if I said that weighed
9 -- added up to 14.03 grams of crack cocaine?

10 A: No. That -- that looks about right.

11 Q: Okay. You tested all these items?

12 A: Yes, I did.

13 Q: You submitted this report to the Solicitor's Office?

14 A: Yes, I did.

15 Q: And you turned those -- that evidence back in to the --
16 to the evidence custodian here at the Sumter County Sheriff's
17 Department?

18 A: Yes, I did.

19 Q: Okay.

20 MR. BROWN: The Court's indulgence?

21 THE COURT: Yes, sir.

22 Q: I need to ask you a couple more questions about your
23 experience and training as a drug analyst. What are the
24 common components used to make crack cocaine?

25 A: Baking soda and cocaine, just regular cocaine or cocaine

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 salt.

2 Q: Okay. What's the difference between cocaine and cocaine
3 salt? I don't know.

4 A: Cocaine or cocaine salt or HCL, it's in a -- it's what
5 form it's in. It's in a salt form.

6 Q: Okay.

7 A: When it's -- when -- when you convert cocaine from salt
8 form or regular cocaine in the base form, it's more along
9 lines for smoking. It increases the physical properties
10 allowing someone to actually smoke it versus I guess inhaling
11 it.

12 Q: So it involves baking soda, some various form of cocaine,
13 and how do they mix that together?

14 A: For the most part, they mix it together using some water
15 and heat.

16 Q: How do they cook it? How about cooking it? How do they
17 cook it?

18 A: Sometimes they use microwaves, heating -- just heating
19 rounds. It depends on what they have.

20 Q: So if -- so baking soda would be a common agent of crack
21 cocaine?

22 A: Yes.

23 Q: And powder cocaine would be a common agent of crack
24 cocaine?

25 A: Correct.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 Q: And a microwave being used for that would be frequently
2 seen in terms of making crack cocaine?

3 A: Yes.

4 MR. BROWN: Thank you. No further questions.

5 THE COURT: Mr. Brooks?

6 CROSS EXAMINATION

7 BY MR. BROOKS:

8 Q: Lieutenant Hansen?

9 A: Yes.

10 Q: Is that your report?

11 A: Yes.

12 Q: Can I see that? On this report, it has subject Leroy
13 Gibbs; is that correct?

14 A: Yes.

15 Q: You didn't have anything to do with putting the
16 information as far as the subject is concerned; is that
17 correct?

18 A: Correct.

19 Q: This is what was just given to you from the Sumter County
20 Sheriff's Office; is that right?

21 A: That's right.

22 Q: That would not have any impact on your analysis. You
23 would analyze whatever you got; is that correct?

24 A: That's correct.

25 Q: The subject could be Kimberly Gibbs. You would still go

MITCHELL HANSEN - CROSS EXAMINATION BY MR. BROOKS

1 through the steps that you talked about as a part of your
2 training in testing things to determine whether or not they
3 are drugs or not; is that correct?

4 A: That's correct.

5 Q: So you don't -- you don't have anything to know about
6 whose drugs it belongs to; do you?

7 A: No, I don't.

8 Q: Okay.

9 MR. BROOKS: No other questions.

10 THE COURT: Thank you. Any redirect?

11 MR. BROWN: No, Your Honor.

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

13 MR. BROWN: And, Your Honor, he -- he's welcome to stay
14 if he wishes or if he wishes to be excused, we would ask that.

15 THE COURT: Any objections to him being excused?

16 MR. BROOKS: No objection.

17 THE COURT: He can do whichever he chooses.

18 (Whereupon, the witness leaves the stand at 2:33 p.m.)

19 THE COURT: The State may call its next witness.

20 MR. MEADORS: If it please the Court, the State of South
21 Carolina calls Kimberly Gibbs.

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

24 THE WITNESS: Kimberly Gibbs.

25 THE CLERK: Do you solemnly swear or affirm your

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

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

3 THE WITNESS: Yes.

4 THE CLERK: Thank you. Have a seat up here, please.
5 Watch your step coming up. Please state your full name and
6 spell your last name for the record.

7 THE WITNESS: Kimberly Gibbs, G-I-B-B-S.

8 KIMBERLY GIBBS, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. MEADORS:

12 Q: Good afternoon, Ms. Gibbs.

13 A: Good afternoon.

14 Q: If you would, please -- please, ma'am, speak up just in
15 here so this court reporter can hear you and these ladies and
16 gentlemen of this jury; okay?

17 A: Okay.

18 Q: Ms. Gibbs, tell -- tell these folks about you. Start off
19 with where were you born?

20 A: I was born in Manning, South Carolina.

21 Q: And where were you raised?

22 A: Sumter, South Carolina.

23 Q: Where did you go to school?

24 A: Sumter High School.

25 Q: Where did you go to elementary school?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Wilder Elementary.
- 2 Q: If you'd slow down just a little bit. It was Wilder?
- 3 A: Wilder.
- 4 Q: And after Wilder you went to Sumter?
- 5 A: Well, Bates Middle School.
- 6 Q: Okay. You went to Bates and then where did you go after
- 7 Bates?
- 8 A: Sumter High School.
- 9 Q: And what year did you graduate?
- 10 A: 2005.
- 11 Q: And after 2005, what did you do, Ms. Gibbs?
- 12 A: I joined the military.
- 13 Q: Okay and specifically where did you do your basic
- 14 training?
- 15 A: Chicago.
- 16 Q: Okay and what did -- how long did that last?
- 17 A: Basic training?
- 18 Q: Yes, ma'am.
- 19 A: Eight weeks.
- 20 Q: Where did you go after that?
- 21 A: I went to Texas.
- 22 Q: To Texas?
- 23 A: Yes.
- 24 Q: Okay. What type of training did you receive in Texas,
- 25 Ms. Gibbs?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Construction electrician.
- 2 Q: Construction electrician?
- 3 A: Yes.
- 4 Q: Specifically, what were you trained to do?
- 5 A: Climb poles, overhead wiring.
- 6 Q: Climb poles, overhead wiring?
- 7 A: Yes.
- 8 Q: So in addition to climbing poles, would you use the
- 9 bucket to go up, too?
- 10 A: Yes.
- 11 Q: And how long were you in Texas doing that?
- 12 A: Six months.
- 13 Q: And you were in the Army?
- 14 A: Navy.
- 15 Q: Navy. If I said -- I apologize. So this was Navy.
- 16 While you were still in the Navy, where did you go after
- 17 Texas?
- 18 A: San Diego.
- 19 Q: Okay and what were you doing for the Navy in San Diego?
- 20 A: It was the same job.
- 21 Q: And how long were you in San Diego?
- 22 A: I worked there a year and a half.
- 23 Q: Okay and you were climbing poles or going in the bucket;
- 24 correct?
- 25 A: Yes.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: I mean that's a bucket truck where you go up and work on
2 wires; correct?
- 3 A: Right.
- 4 Q: All right. Now, at some point -- or -- or let the ladies
5 and gentlemen of the jury know when did you meet the
6 defendant, Cliff Gibbs?
- 7 A: Probably around 2004.
- 8 Q: Okay. Please tell them how you met him?
- 9 A: Through a relative.
- 10 Q: All right. Through your sister?
- 11 A: Yes.
- 12 Q: Okay and she had known him for a number of years?
- 13 A: Yes.
- 14 Q: And as a result of that, you started a relationship with
15 him?
- 16 A: Yes.
- 17 Q: Started talking?
- 18 A: Yes.
- 19 Q: And ultimately, you get married?
- 20 A: Yes.
- 21 Q: And -- and when -- when was that when you got married?
22 What year, Ms. Gibbs?
- 23 A: 2006.
- 24 Q: 2006, and in 2006, were you in San Diego?
- 25 A: I was in the middle going between San Diego and Texas.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Okay. I apologize. So between Texas and San Diego, it
2 was during that time period you married Mr. Gibbs?

3 A: Yes.

4 Q: And in San Diego, where did you live?

5 A: You mean the city?

6 Q: Yes, ma'am. I mean just I'm not saying the exact street,
7 but did you live kind of near the base? Were you on the base?
8 Where did you live in San Diego?

9 A: I lived off base.

10 Q: Off base? All right and Mr. Gibbs was living with you
11 then?

12 A: Yes.

13 Q: So in San Diego, you were there. He came out there
14 because that's where your job was; correct?

15 A: Yes.

16 Q: And he was living with you there?

17 A: Yes.

18 Q: Did y'all have a child?

19 A: Yes.

20 Q: Okay and when was that child born?

21 A: 2007.

22 Q: 2007?

23 A: Yes.

24 Q: Okay. At some point, you come back to Sumter?

25 A: Yes.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Okay and when was that, Ms. Gibbs?
- 2 A: It was June 2007.
- 3 Q: Okay. So in June 2007, you left San Diego and came back
- 4 here home?
- 5 A: Yes.
- 6 Q: And did Mr. Gibbs come back with you from San Diego to
- 7 Sumter?
- 8 A: Yes.
- 9 Q: Okay. Please tell these folks, these ladies and
- 10 gentlemen of this jury, when you came back to Sumter I think
- 11 you said 2007, where did you live?
- 12 A: With my mother.
- 13 Q: Okay and how long did you stay with your mama?
- 14 A: It was a couple of months.
- 15 Q: All right and then after that, you and Mr. Gibbs stayed
- 16 with his father?
- 17 A: Yes.
- 18 Q: Okay and at this point, you had your child, too?
- 19 A: Yes.
- 20 Q: And at some point after that, did you move to [REDACTED]
- 21 Mattison Avenue?
- 22 A: Yes.
- 23 Q: And when you say you moved there, did you move there?
- 24 A: Yes.
- 25 Q: Mr. Gibbs moved there?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Yes, he did.
- 2 Q: And your child lived there?
- 3 A: Right.
- 4 Q: All right. Tell the folks, when you got back to Sumter,
- 5 you had been in the Navy, did you go into another job after
- 6 that you got out of the Navy?
- 7 A: Yes.
- 8 Q: Okay. That's what I'm trying to -- what did you do work-
- 9 wise when you came back to Sumter?
- 10 A: I was a postal worker.
- 11 Q: A postal worker?
- 12 A: Yes.
- 13 Q: When did you start approximately?
- 14 A: Approximately -- I want to say November of 2008.
- 15 Q: Okay.
- 16 A: I mean '07.
- 17 Q: '07?
- 18 A: Yes.
- 19 Q: And why did you go into that work?
- 20 A: Why did I choose it?
- 21 Q: Yes, ma'am.
- 22 A: Money.
- 23 Q: Okay and benefits I presume?
- 24 A: Yes.
- 25 Q: And were you assigned a route near where you live? Is

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 that how they do it?

2 A: No. It's not according to where you live. It's whatever
3 route is available.

4 Q: Okay. So in November of 2007 you said?

5 A: Yes.

6 Q: You started working where? Like I come here in the
7 morning to the courthouse to my job. Where would you go in
8 the morning when you report to work?

9 A: I would go to the post office at North Main.

10 Q: The post office at North Main? And once you got there,
11 at some point did you get a regular route?

12 A: No. Well, it was regular, but, you know, it wasn't
13 actually my route. It was -- I was a back-up.

14 Q: Okay. So you didn't do it all the time?

15 A: Right.

16 Q: But you had a route that was primarily yours?

17 A: Yes.

18 Q: And somebody else's maybe?

19 A: Yes.

20 Q: Okay, all right. So how would you -- you'd report to the
21 post office. Is that where you'd see how many letters you
22 got?

23 A: Yes.

24 Q: Okay and that's what you'd deliver that day when it was
25 your day?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Yes.
- 2 Q: Okay. Now, tell these folks about any other training you
3 may have -- have had since then or background. After this
4 incident I'll get into in a minute, you weren't working at the
5 post office anymore; correct?
- 6 A: Correct.
- 7 Q: What did you do after that?
- 8 A: Well, I went to school.
- 9 Q: What -- what school?
- 10 A: I went to Colorado Tech.
- 11 Q: Okay and what degree did you get there?
- 12 A: Associates in accounting.
- 13 Q: Associates in accounting?
- 14 A: Yes.
- 15 Q: And when did you get that?
- 16 A: In December 2010.
- 17 Q: Okay. So you had your associate accounting. You've
18 already got your training and education in the Navy. What did
19 you do with that degree?
- 20 A: Well, I went back to school.
- 21 Q: Okay.
- 22 A: To get my bachelors.
- 23 Q: In what?
- 24 A: Accounting.
- 25 Q: All right and when did you get that?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: I just recently got that.
- 2 Q: Okay. Was that in April of this year?
- 3 A: Yes.
- 4 Q: Okay. So you've now got your bachelors in accounting?
- 5 A: Yes.
- 6 Q: What was the next job you had after the post office?
- 7 A: McDonald's.
- 8 Q: Okay and which one?
- 9 A: Highway 15.
- 10 Q: All right and what different positions have you held
- 11 there, Ms. Kimberly Gibbs?
- 12 A: I went from crew to hourly manager and now I'm currently
- 13 salaried.
- 14 Q: Crew to hourly manager to salaried manager?
- 15 A: Yes.
- 16 Q: And when did you get that promotion to salaried manager?
- 17 A: About a month and a half ago.
- 18 MR. MEADORS: May I approach?
- 19 THE COURT: You may.
- 20 Q: Ms. Gibbs, I'm going to show you what's marked State's 2.
- 21 You had testified previously that -- or did you enter a lease
- 22 at [REDACTED] Mattison Avenue?
- 23 A: Yes.
- 24 Q: And the date was on or about April the 9th of 2008; is
- 25 that correct?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Yes.
- 2 Q: Okay and when was this lease supposed to end?
- 3 A: The next year.
- 4 Q: So this was a year's lease?
- 5 A: Yes.
- 6 Q: Does it have on here specified who the occupants --
- 7 strike that. I apologize. Did it request on this lease -- or
- 8 give me that. I'm sorry. Looking on the last page of the
- 9 lease, is that your signature?
- 10 A: Yes.
- 11 Q: You wrote that?
- 12 A: Yes.
- 13 MR. MEADORS: State's 2, Your Honor.
- 14 THE COURT: Any objection?
- 15 MR. BROOKS: No objection.
- 16 THE COURT: Without objection, State's Exhibit Number 2
- 17 is entered into evidence.
- 18 MR. MEADORS: Permission to continue with approach?
- 19 THE COURT: Certainly.
- 20 Q: I believe you testified earlier -- on number seven of
- 21 State's 2, do you list as the only persons who are named in
- 22 the agreement to stay there are Kimberly and Leroy Gibbs and
- 23 son?
- 24 A: Yes.
- 25 Q: Ms. Gibbs, let's go to December 23rd of 2008. You were

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 employed at the post office; correct?
- 2 A: Correct.
- 3 Q: Now, on that day were you supposed to work?
- 4 A: No.
- 5 Q: Or were you working?
- 6 A: No.
- 7 Q: If you had been working, would you have been there?
- 8 A: Yes.
- 9 Q: Would you have been at the job if you were working?
- 10 A: Yes.
- 11 Q: Okay. You wouldn't have been at home?
- 12 A: Right.
- 13 Q: All right and can you tell -- tell the ladies and
- 14 gentlemen of this jury prior to the police officers there, was
- 15 Mr. Gibbs there with you?
- 16 A: Yes.
- 17 Q: And was your -- it's your son?
- 18 A: Yes.
- 19 Q: And is -- okay and was it just the three of you?
- 20 A: Yes.
- 21 Q: How many bedrooms are in [REDACTED]?
- 22 A: Three.
- 23 Q: Was one of them your bedroom and Mr. Gibbs' bedroom?
- 24 A: Yes.
- 25 Q: Did your daughter have a bedroom?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Yeah, my son did.
- 2 Q: I didn't mean to say that. I apologize. Did your son
3 have a -- I apologize to everybody. And what was the other
4 bedroom used for?
- 5 A: It was a computer room.
- 6 (Whereupon, counsel knocks on the wood railing four
7 times.)
- 8 Q: Do you remember that around noon on December 23rd, 2008?
- 9 A: It was about the morning time.
- 10 Q: Okay, but you remember a knock at the door?
- 11 A: Yes.
- 12 Q: All right and were the police there?
- 13 A: Yes.
- 14 Q: All right. Tell the ladies and gentlemen of the jury
15 what happened when you came to the door. Did you open the
16 door?
- 17 A: Yes.
- 18 Q: Tell them what happened next?
- 19 A: Well, they came in and Mr. Gibbs -- he must have been
20 behind me and they grabbed him and arrested him and take him.
21 And then they put me and my son in a room.
- 22 Q: Okay and slow down a minute if you will. When you came
23 to the door, were you by yourself?
- 24 A: Yes.
- 25 Q: Okay and where was -- where had you been?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: In the bedroom.

2 Q: Okay and when you came to the door to answer the door,
3 where was Mr. Gibbs?

4 A: He was coming behind me I'm assuming.

5 Q: Okay. Had he been in the bedroom with you?

6 A: Yes.

7 Q: Okay and you say you're assuming so you're not sure what
8 he was doing when you were coming to the door?

9 A: Right.

10 Q: Because he was behind you?

11 A: Right.

12 Q: Do you remember this investigator coming? Investigator
13 Wayne Dubose?

14 A: Yes.

15 Q: For these purposes, is it fair to say they had warrants
16 for Mr. Gibbs? Correct?

17 A: Correct.

18 Q: Okay and they served those warrants on Mr. Gibbs?

19 A: Correct.

20 Q: And took him into custody?

21 A: Right.

22 Q: Okay and I'm going to show you what's marked State's 1
23 and ask you if you recognize your signature on it?

24 MR. MEADORS: Can I -- can I approach again? I'm sorry.

25 THE COURT: You may.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Is that your signature down there, Ms. Gibbs?
- 2 A: Yes.
- 3 Q: Okay and printed above it does it say Kimberly Gibbs up
- 4 there?
- 5 A: Yes.
- 6 Q: And this is a Consent to Search you gave? Did you give
- 7 the officers of the Sheriff's Department consent to search the
- 8 house?
- 9 A: It wasn't on that paper. It was a verbal consent for the
- 10 dogs.
- 11 Q: You gave them verbal consent to start with?
- 12 A: Right.
- 13 Q: And then you gave them a written Consent to Search later?
- 14 A: Yeah, that was later.
- 15 Q: Okay. So at first when they said can we search with the
- 16 dogs, you said yes?
- 17 A: Yes.
- 18 Q: You didn't mind them searching; did you?
- 19 A: No.
- 20 Q: And then later you gave them consent to search the
- 21 residence; correct?
- 22 A: Correct.
- 23 Q: And did they actually come back and show you what was
- 24 taken there?
- 25 A: Yes. That's when I signed that paper.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: So they showed you what was taken from the house and you
2 signed it?

3 A: Yes.

4 MR. MEADORS: Your Honor, at this point I think State's 1
5 we'd offer.

6 THE COURT: Any objection, Mr. Brooks?

7 MR. BROOKS: No objection.

8 THE COURT: Without objection, State's Exhibit Number 1
9 is admitted and may be published to the jury.

10 MR. MEADORS: Thank you.

11 Q: You -- you were present when they -- I say they -- law
12 enforcement found what they believed to be drugs in the house;
13 correct?

14 A: Correct.

15 Q: And that's when you signed off on this sheet showing that
16 this is what they took from your house; right?

17 A: Correct.

18 Q: And did they also ask to search your purse? Do you
19 remember when they said can we search ---

20 A: Yeah. That was later.

21 Q: Okay and tell me when that was later? I'm just -- maybe
22 I'm confused.

23 A: That was right before they left.

24 Q: Okay, all right. So the dog came and searched?

25 A: Right.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: And then they did a search; right?
- 2 A: Right.
- 3 Q: And then after that, did they ask you if they could
- 4 search your purse?
- 5 A: Yes.
- 6 Q: Okay and you said what?
- 7 A: Go ahead.
- 8 Q: You said go ahead and you didn't have a problem with them
- 9 searching your purse; did you?
- 10 A: Right.
- 11 Q: And -- and were you worried about anything being in your
- 12 purse?
- 13 A: No.
- 14 Q: Had you put anything in your purse?
- 15 A: No.
- 16 Q: So when Investigator Dubose told you that there was
- 17 something in the purse, what did you say?
- 18 A: It wasn't mine.
- 19 Q: It wasn't yours?
- 20 A: No.
- 21 Q: In State's 25, is that your purse, Ms. Kimberly Gibbs?
- 22 A: Yes.
- 23 Q: And there's what's been testified appears to be a form of
- 24 cocaine or crack cocaine. Did you put that in your purse?
- 25 A: No.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: All right. Did you tell the officer Leroy must have done
2 that?

3 MR. BROOKS: Objection, Your Honor, speculation. Does
4 she know firsthand?

5 MR. MEADORS: No, sir. I didn't ask her if she knew.

6 Q: Did you tell ---

7 THE COURT: She said -- he asked did she tell the
8 officer.

9 MR. BROOKS: Okay.

10 THE COURT: Overruled.

11 Q: Did you tell the officer at the time Leroy must have put
12 it there?

13 A: The officer told me.

14 Q: But you didn't put it there?

15 A: No.

16 Q: Your baby at the time was how old?

17 A: He was four.

18 Q: Okay.

19 A: I believe he was four.

20 Q: Okay. Obviously, he didn't put -- couldn't have put it
21 there. He couldn't. I'm going to show you a few pictures
22 with the Court's permission and then I'll try to speak up so
23 you won't have to move. Just to go through the house, if you
24 don't mind. State's Number 9, Ms. Gibbs, that's a -- can you
25 tell the ladies and gentlemen of the jury what part of your

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 house that is?
- 2 A: That's the living room.
- 3 Q: And State's Number 10?
- 4 A: That's the kitchen and dining area.
- 5 Q: And do you recognize State's 11?
- 6 A: That's the hall closet.
- 7 MR. MEADORS: I beg -- beg the Court's indulgence.
- 8 Q: If I asked you before, I just forgot. How many bedrooms
- 9 in this house?
- 10 A: Three.
- 11 Q: Looking at State's 5, whose bedroom is that?
- 12 A: That's my son's bedroom.
- 13 Q: That's your son's bedroom. State's 6?
- 14 A: That's the computer room.
- 15 Q: Computer room. Whose computer is that in there?
- 16 A: Mine.
- 17 Q: Is that where you did your homework or work for whatever
- 18 work or studying you were doing?
- 19 A: Yes.
- 20 Q: And State's Number 4, whose room is that?
- 21 A: That's the master bedroom.
- 22 Q: The master bedroom at [REDACTED] Mattison and who stayed there?
- 23 A: Me and the defendant.
- 24 Q: You and Mr. Gibbs stayed there?
- 25 A: Right.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: And that was y'all's room. Let me ask you this much. Is
2 that right?
- 3 A: Right.
- 4 Q: There's a -- there's a hat on top of the bed there. Was
5 that Mr. Gibbs' hat?
- 6 A: Yes, that was his hat.
- 7 Q: And is that where he puts his hat when he goes to sleep?
- 8 A: Yes.
- 9 Q: Just a few more pictures, Ms. Gibbs. State's 15?
- 10 A: That's the kitchen.
- 11 Q: Kitchen on [REDACTED] Mattison. What was inside this cabinet?
- 12 A: Canned goods.
- 13 Q: Was there anything else in there that you knew of
14 pertaining to illegal drugs?
- 15 A: No.
- 16 Q: State's 16 is the inside of that cabinet. Do you
17 recognize those?
- 18 A: No.
- 19 Q: Did you know those drugs were in State's 15 and State's
20 16 in that cabinet?
- 21 A: No.
- 22 Q: You knew that's where the officers found them; right?
23 And you signed on the search form?
- 24 A: Right.
- 25 Q: State's 17, was that your baking powder?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: No.
- 2 Q: You didn't use that baking powder; did you?
- 3 A: No.
- 4 Q: State's 18, there appear to be some razors and other --
- 5 were those your razors?
- 6 A: No.
- 7 Q: These weren't your razors you used for your legs I mean?
- 8 A: No, no.
- 9 Q: So these weren't your razors?
- 10 A: No.
- 11 Q: Do you know what they were used for?
- 12 A: No.
- 13 Q: Now, I'm going to show you State's 14. What about this
- 14 gun that was found underneath the heating vent? Did you know
- 15 that was there?
- 16 A: No.
- 17 Q: What about State's 13? Are you familiar with this? It
- 18 appears like it's a blue -- some type of blue tray. Are you
- 19 familiar with that?
- 20 A: I have seen the box over there. I don't know what was in
- 21 it.
- 22 Q: Why don't you know what was in it?
- 23 A: I never opened it.
- 24 Q: Were you told not to look in certain places?
- 25 A: Basically, what was his was his. I didn't look in it.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: This right here would have been his and you were told not
2 to look in it?

3 A: Right.

4 Q: You didn't look in it; did you?

5 A: No, I didn't look in it.

6 Q: And State's 12, the firearm. Are you familiar with that?

7 A: It looks familiar, but ---

8 Q: Was it yours?

9 A: No.

10 Q: There's been some testimony about an odor of marijuana in
11 the house and a picture of a -- a blunt in the ashtray. Was
12 that yours?

13 A: No.

14 Q: Did you smoke marijuana?

15 A: No.

16 Q: Did you smoke marijuana?

17 A: No.

18 Q: And in your pocketbook, there's testimony that in
19 addition to the controlled substance of crack, there was also
20 a piece of marijuana in there. Was that yours?

21 A: In my pocketbook?

22 Q: Yes, ma'am.

23 A: No.

24 Q: It wasn't; was it?

25 A: No.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: I beg the Court's patience. I have one
2 other picture.

3 Q: I'm going to show you what's been entered as a picture,
4 State's 32.

5 MR. MEADORS: Approaching again with your permission,
6 Judge?

7 THE COURT: Yes, sir.

8 Q: Were these your sandwich bags?

9 A: I don't remember seeing them.

10 Q: Did you make sandwiches and put them in bags?

11 A: No.

12 Q: So you don't -- you didn't use these; did you?

13 A: No.

14 Q: Were these your drugs?

15 A: No.

16 Q: The drugs in your purse?

17 A: No.

18 Q: The drugs in the kitchen?

19 A: No.

20 Q: The baking soda and the little razors to cut up, was that
21 yours?

22 A: No.

23 Q: Had -- have you -- had you seen the defendant cook crack
24 cocaine at [REDACTED] Mattison Avenue, Ms. Gibbs?

25 A: I can't say I have.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Were you aware he was doing it?
- 2 A: I was at work so I couldn't tell you his activities.
- 3 Q: Were you aware there were drugs there?
- 4 A: No.
- 5 Q: Who all stayed at your house?
- 6 A: Me and the defendant and my son.
- 7 Q: You, the defendant, and your son?
- 8 A: Right.
- 9 Q: Did anybody else stay there?
- 10 A: No.
- 11 Q: Did another man come stay with you?
- 12 A: No.
- 13 Q: I don't mean that disrespectful, you know I don't, but
- 14 was there another man coming there living with you?
- 15 A: No.
- 16 Q: That wouldn't happen; right?
- 17 A: No.
- 18 Q: So the only folks that had access to that house were you,
- 19 Mr. Gibbs, and your son; correct?
- 20 A: Correct.
- 21 Q: Correct?
- 22 A: Correct.
- 23 Q: Did you cook the cocaine into crack?
- 24 A: No.
- 25 Q: Have you ever cooked cocaine into crack?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: No.
- 2 Q: Mr. Gibbs did at your house though?
- 3 A: He could. I don't know.
- 4 Q: When's the last time -- you know I'm just doing my job.
- 5 You're here under subpoena; aren't you?
- 6 A: Yes.
- 7 Q: You're under subpoena and you understand I'm just doing
- 8 my job?
- 9 A: Right.
- 10 Q: When's the last time that you talked to Mr. Gibbs?
- 11 A: I talked to him Sunday.
- 12 Q: Did you talk to him last night?
- 13 A: Yes, I did. Yes.
- 14 Q: Did he call you?
- 15 A: Yes.
- 16 Q: Did he ask you not to testify today?
- 17 A: No.
- 18 Q: He didn't ask you not to testify to start with?
- 19 A: No. He told me to do what I have to do.
- 20 Q: And prior to that, did he say don't testify, I don't want
- 21 you to?
- 22 A: Not -- no, not really.
- 23 Q: It's not easy to be here; is it?
- 24 A: No.
- 25 Q: You don't want to be here; do you?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: No.
- 2 Q: But you know you got to be here; don't you?
- 3 A: Yes.
- 4 Q: Is that your child in State's 5?
- 5 A: Yes.
- 6 Q: And when you weren't there -- when you weren't working --
- 7 well, during this time period back in specifically 2008, you
- 8 were at the post office. Where was Mr. Gibbs working?
- 9 A: Nowhere.
- 10 Q: And where was your child when you were working?
- 11 A: With the defendant.
- 12 Q: At the house?
- 13 A: Yes.
- 14 Q: Tell -- tell these folks about this mail. Were you
- 15 intending to deliver that mail?
- 16 A: Yes.
- 17 Q: Explain it?
- 18 A: What do you want me to tell you?
- 19 Q: I want you to tell the truth. Just why didn't you take
- 20 it and you were going to do it -- just explain it. I don't
- 21 know. Explain why you didn't deliver it and were you planning
- 22 on it?
- 23 A: It was going to get delivered.
- 24 Q: You had your regular customers?
- 25 A: Yes.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Okay. Was it ever getting late in the day and you didn't
2 have time to finish your thing -- your route?
- 3 A: Right.
- 4 Q: And were you planning on taking these?
- 5 A: What do you mean taking them?
- 6 Q: Were you planning on delivering them? I'm ---
- 7 A: Yes.
- 8 Q: That's what I meant. Were you planning on taking them to
9 the -- to the -- to the customers?
- 10 A: Yes.
- 11 Q: And you lost your job because of that; didn't you?
- 12 A: Yes.
- 13 Q: A good paying job; correct?
- 14 A: Correct.
- 15 Q: You had never been in trouble before this; had you?
- 16 A: Right.
- 17 Q: And after that, you went back to school?
- 18 A: Right.
- 19 Q: Continued school; correct?
- 20 A: Right.
- 21 Q: Were you engaged in the manufacturing of and possession
22 of large quantities -- these quantities of drugs? I mean was
23 that your job?
- 24 A: No.
- 25 Q: Making drugs?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: No.

2 Q: But you knew the defendant was in possession of them even
3 if you're saying you may not have been there when they were
4 manufactured? You knew he was in possession of them; didn't
5 you?

6 MR. BROOKS: Objection, Your Honor, leading.

7 Q: Did you know he was in possession of them?

8 A: Which was on him?

9 Q: In the house there. They weren't yours; were they?

10 A: No, they weren't mine.

11 Q: And they weren't anybody else's who didn't live there;
12 were they?

13 A: Right.

14 Q: Right. Now, your attorney ---

15 MR. MEADORS: I beg the Court's indulgence.

16 Q: I forgot where we were. Your attorney is Mr. John
17 Britton?

18 A: Correct.

19 Q: You've talked to Mr. Britton? Obviously, you've talked
20 to your lawyer?

21 A: Yes.

22 Q: Your lawyer and I -- and I have talked as far as you
23 know; correct?

24 A: Yes.

25 Q: All right and you are hoping that -- obviously, you've

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 got these same charges the defendant does; correct?

2 A: Yes.

3 Q: And you're hoping that your testimony will be taken into
4 consideration; correct?

5 A: Correct.

6 Q: And that we asked you to tell the truth?

7 A: Right.

8 Q: Did you know the drugs were in your house?

9 A: No.

10 Q: Were you aware the defendant had made crack cocaine in
11 that house before?

12 A: I wasn't aware of it, no.

13 Q: Had you seen it?

14 A: No.

15 Q: Been around when it was being made?

16 A: No.

17 Q: You know it was made there though; don't you?

18 A: I can only assume.

19 MR. BROOKS: Objection, Your Honor, speculation.

20 THE COURT: Rephrase your question.

21 Q: Now, were y'all asleep when the officers arrived?

22 A: Yes.

23 Q: Okay and as part of your job at the post office when you
24 had to be drug tested; correct?

25 A: Correct.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: So you weren't using drugs?

2 A: Correct.

3 Q: I mean that's -- you'd have lost your job that way;
4 right?

5 A: Right.

6 MR. MEADORS: Judge, I'm almost through. One second.

7 Q: This was your house at [REDACTED] Mattison; right?

8 A: Yes.

9 Q: It was the defendant's house?

10 A: Yes.

11 Q: And your child's house?

12 A: Yes.

13 Q: You all lived there?

14 A: Yes.

15 Q: I mean that was your home?

16 A: Yes.

17 MR. MEADORS: Thank you, Ms. Gibbs. That's all.

18 THE COURT: All right. Why don't we take a short recess
19 before we have cross examination? All right, ladies and
20 gentlemen -- stay right there. Ladies and gentlemen, we'll
21 take a fifteen minute recess. If you want a Coca-Cola or
22 something like that, all right. Please do not discuss
23 anything about the case while you're back there.

24 (Whereupon, the jury exits the courtroom at 3:07 p.m.)

25 THE COURT: All right, ma'am, you're still on the stand.

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 You may step off to go to the rest room or get something to
2 drink, but you cannot discuss anything with anyone at this
3 point in time. All right? All right, court will be in recess
4 for the next fifteen minutes.

5 (Whereupon, there is a break in the proceedings from 3:07
6 p.m. until 3:27 p.m.)

7 THE COURT: Ma'am, if you would, resume the stand. For
8 the sake of planning, you have one more witness after this one
9 or is she going to be your last witness?

10 MR. MEADORS: Maybe not. There may not be another one.

11 THE COURT: Okay. If they're ready, you can bring them
12 in.

13 (Whereupon, the jury enters the courtroom at 3:28 p.m.)

14 THE CLERK: Your Honor, all the jurors are back in the
15 courtroom.

16 THE COURT: All right. All right, Mr. Brooks, cross
17 examination.

18 MR. BROOKS: Thank you, Judge.

19 CROSS EXAMINATION

20 BY MR. BROOKS:

21 Q: Ms. Gibbs, you worked at the post office; is that right?

22 A: Correct.

23 Q: And you had mail at your house that you were supposed to
24 deliver on that day; is that correct?

25 A: Correct.

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

- 1 Q: And you didn't do that?
- 2 A: Correct.
- 3 Q: But you had your superiors believe that you did; is that
- 4 correct?
- 5 A: Correct.
- 6 Q: And you recognize that's not being -- that would perhaps
- 7 be categorized as not being truthful?
- 8 A: Correct.
- 9 Q: Okay and you acknowledge that?
- 10 A: Correct.
- 11 Q: Now, you also acknowledged that you were charged with
- 12 some very serious drug charges; isn't that correct?
- 13 A: Correct.
- 14 Q: Okay and as Mr. Meadors asked you, you're here looking
- 15 for some consideration?
- 16 A: Correct.
- 17 Q: You acknowledge that, too?
- 18 A: Correct.
- 19 Q: You -- and you understand what they mean by consideration
- 20 is that you get some type of reward ---
- 21 A: Right.
- 22 Q: --- for being up on the stand and testifying against
- 23 Clifton?
- 24 A: Right.
- 25 Q: You acknowledge that?

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

- 1 A: Yes.
- 2 Q: That you hope to gain something?
- 3 A: Right.
- 4 Q: Okay and you -- you've had discussions with the
- 5 Solicitor's Office about that; isn't that correct?
- 6 A: Correct.
- 7 Q: Okay. In preparation for your testimony?
- 8 A: Correct.
- 9 Q: Against your husband?
- 10 A: Correct.
- 11 Q: Okay. Now, at this moment in time, you and your husband
- 12 are not living together; isn't that correct?
- 13 A: Correct.
- 14 Q: Okay and that would be classified as being separated?
- 15 A: Correct.
- 16 Q: And as such, you don't know what's going on in his house
- 17 and he doesn't know what's going on in yours; isn't that
- 18 correct?
- 19 A: Correct.
- 20 Q: Okay. Now, you have indicated that on December the 23rd,
- 21 2008, law enforcement came to the house, knocked on the door,
- 22 you let them in, they -- they asked to search; correct?
- 23 A: Correct.
- 24 Q: And you gave them permission to search?
- 25 A: Yes, with the dogs.

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

- 1 Q: What was that?
- 2 A: Yes, with the dogs.
- 3 Q: Yes, with the dogs? And then when they found all this
- 4 stuff, you said it ain't yours; right?
- 5 A: Correct.
- 6 Q: Okay. Now, earlier Mr. Meadors had presented a lease
- 7 that you acknowledged that that's the lease between you --
- 8 that was in existence between yourself and the landlord; isn't
- 9 that correct?
- 10 A: Correct.
- 11 Q: Mr. Gibbs never signed that lease; isn't that correct?
- 12 A: Correct.
- 13 Q: It's only your signature on there?
- 14 A: Correct.
- 15 Q: Okay and again, this would have been at Mattison Avenue?
- 16 A: Correct.
- 17 Q: Okay. Now, you do acknowledge that sometimes he stayed
- 18 at his mom's house?
- 19 A: Yes.
- 20 Q: Okay. A lot of times he stayed at his mom's house?
- 21 A: Yes.
- 22 Q: But more often than not, without any question you were at
- 23 [REDACTED] Mattison Avenue?
- 24 A: Yes.
- 25 Q: Okay. So let's go back through this. What we know for

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 sure is more often than not you were there, sometimes Mr.

2 Gibbs was there; right?

3 A: Yes.

4 Q: You signed the lease; he did not?

5 A: Correct.

6 Q: You're testifying in hopes of consideration on what you
7 acknowledge to be some serious drug charges; correct?

8 A: Correct.

9 Q: And you discussed this with the Solicitor's Office?

10 A: Correct.

11 Q: Looking for some type of gain or reward; is that correct?

12 A: Correct.

13 Q: And you do acknowledge being untruthful with the post
14 office in the past?

15 A: Correct.

16 Q: Your superiors?

17 A: Correct.

18 Q: Okay.

19 MR. BROOKS: I beg the Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 Q: You do recall when they -- they being the officers --
22 detained your husband, he said he doesn't live here; isn't
23 that correct?

24 A: That's what he said.

25 Q: That's what he said. Now, you do acknowledge he told

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 them that?

2 A: Yes.

3 Q: Okay. In your presence?

4 A: Yes.

5 Q: Okay.

6 MR. BROOKS: No other questions.

7 THE COURT: Any redirect?

8 MR. MEADORS: May I approach?

9 THE COURT: You may.

10 REDIRECT EXAMINATION

11 BY MR. MEADORS:

12 Q: But he did live there; didn't he?

13 A: Yes.

14 MR. MEADORS: Thank you.

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

16 (Whereupon, the witness leaves the stand at 3:35 p.m.)

17 MR. MEADORS: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. BROWN: Your Honor, at this time the State of South
20 Carolina rests.

21 THE COURT: All right, thank you. Let me see the
22 attorneys for just a minute.

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

24 THE COURT: All right, ladies and gentlemen, we've got
25 some matters of law I'll need to take up with the attorneys so

1 I'm going to send you back to the jury room for just a few
2 minutes. Thank you. Please do not discuss anything about the
3 case while you're back there.

4 (Whereupon, the jury exits the courtroom at 3:37 p.m.)

5 THE COURT: All right, Mr. Brooks, do you have a motion
6 that you'd like to make at this time?

7 MR. BROOKS: Your Honor, based -- we have a motion that
8 this case should be dismissed on directed verdict. We feel
9 that there is a problem and the State has not been able to
10 prove that the drugs in question belonged to Mr. Gibbs under
11 the possession and constructive possession. We feel that
12 there is not enough evidence to show that these are his.
13 Obviously, the State's witnesses have testified that he has
14 said he didn't live there. There's nothing in -- nothing
15 documenting his living there. We would submit to the Court
16 that they don't have evidence living there -- him living
17 there, let alone to be able to come about and connect him to
18 the actual drugs that's presented on this case for possession,
19 actual or constructive.

20 THE COURT: All right, thank you. Mr. Brown?

21 MR. BROWN: May it please the Court, Your Honor. As
22 pertains to that issue, we have numerous amounts of evidence
23 that -- all of which the jury will be able to have a factual
24 basis to make a determination that he did live there. There
25 was testimony from Ms. Gibbs. His name was on the lease.

1 There was a statement provided by Mr. Gibbs, if the jury
2 chooses to believe it, by -- that was made both to Officer
3 Horton and then another statement later made to Investigator
4 Dubose that selling drugs is a lifestyle for him, and then
5 also that he sold drugs for his family, which a reasonable
6 inference could be made that that links him to the drugs in
7 that house. He was found there on the morning of the arrest.

8 Your Honor, I would submit this is a constructive, not an
9 actual possession case. I believe we established
10 jurisdiction. We established the quantities necessary. I do
11 believe that we established a question of fact for the jury to
12 determine in this matter and we should send this to the jury.

13 THE COURT: All right, Mr. Brooks, any reply?

14 MR. BROOKS: Judge, mere presence alone is not enough to
15 -- to establish possession. We would ---

16 THE COURT: I understand. Well, at this stage of the
17 game, the Court is more concerned about is there any evidence,
18 not the weight of the evidence. So I think if you took the
19 evidence in light of the non-moving party, which would be the
20 State, there's at least enough to take it to the jury and have
21 them consider it. They can consider the veracity of the
22 witnesses who testified. They can consider all of those
23 factors. So there's enough to at least take it to the jury
24 and make it an issue of fact. So I will allow that and deny
25 your motion for a directed verdict at this time.

1 If you would, have your client come up and be sworn. I
2 need to ask him some questions regarding his right to testify.

3 THE CLERK: Place your left hand on the Bible and raise
4 your right hand. State your name, please.

5 THE DEFENDANT: Leroy Gibbs.

6 THE CLERK: Do you solemnly swear or affirm your
7 testimony to the Court shall be the truth, the whole truth,
8 and nothing but the truth, so help you God?

9 THE DEFENDANT: Yes, sir.

10 THE CLERK: Thank you.

11 THE COURT: You are Leroy Clifton Gibbs?

12 THE DEFENDANT: Yes, yes, sir.

13 THE COURT: Please speak into the microphone.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, Mr. Gibbs, at this time I am
16 going to explain to you certain of your rights. If you do not
17 understand anything that I say, please let me know. If you
18 want me to explain in more detail, let me know. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, we've reached the stage of
22 the trial where you may present your defense. You have the
23 right to claim the protections given to you by the Fifth
24 Amendment of the Constitution of the United States, and this
25 amendment says in part that no person shall be compelled in

1 any criminal case to be a witness against himself.

2 Now, this means that you cannot be required to testify in
3 this case. You have the right to testify on your own behalf.
4 However, no one can make you testify. This is a personal
5 right and no one can waive this except for you.

6 Now, if you decide to testify, you will be subjected to
7 the same rules that govern other witnesses and you may be
8 examined and cross examined on any relevant issue in this
9 case. In addition, if you have any convictions involving
10 dishonesty or false statement or for crimes punishable by more
11 than a year's imprisonment and this Court determines that the
12 probative value of admitting this evidence outweighs the
13 prejudicial effect on you, the Solicitor will be able to
14 introduce your record to attack your credibility.

15 Is there any record that the State would use against Mr.
16 Gibbs if he testified?

17 MR. BROWN: Your Honor, we -- the only -- the main one we
18 would raise, there was an accessory after the fact to a
19 felony, that felony being armed robbery that came out of -- it
20 looks like it was a conviction in '96. I believe that's a
21 crime of dishonesty. We understand it's outside of the ten
22 year time frame, but we would ask the Court for permission to
23 enter that -- to enter that as evidence.

24 THE COURT: Mr. Brooks?

25 MR. BROOKS: Judge, obviously, I don't know what my

1 client is going to decide, but it would be our position that
2 that does -- that should not be allowed to be used for
3 impeachment purposes. We think it would be prejudicial and
4 extremely prejudicial and it would outweigh its probative
5 value in this case.

6 THE COURT: For the sake of -- and I'm not ruling on
7 that, but assume that if you do take the stand, that would
8 come in. You can consider that. I don't know how I would
9 rule on that at this point in time, but, you know, that is
10 something -- that's the only thing that y'all have that y'all
11 would possibly use to attack his credibility on his record?

12 MR. BROWN: Yes, Your Honor.

13 THE COURT: All right. Now, if you decide to testify,
14 the decision on your part must be freely, voluntarily, and
15 intelligently made with knowledge of the protections given to
16 you by the Fifth Amendment and the consequences of your
17 decision to testify. If you decide not to testify, I will
18 instruct the jurors that they cannot give the fact that you
19 did not testify any consideration whatsoever and that there is
20 to be absolutely no prejudice to you because you did not
21 testify.

22 It is left entirely up to you whether or not you want to
23 testify. You may talk with your attorney, your family, your
24 friends, or anyone else, but the final decision will be left
25 entirely up to you. Now, do you understand what I've explained

1 to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you have any questions about what I've
4 explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. Have you discussed with your lawyer
7 whether or not you should testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Would you like some more time to speak with
10 him and your ---

11 THE DEFENDANT: Yes, sir.

12 THE COURT: --- some of your family members?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'm going to -- let's take a ten
15 minute recess. I'm going to give him time to speak with his
16 attorney.

17 (Whereupon, there is a break in the proceedings from 3:45
18 p.m. until 3:59 p.m.)

19 THE COURT: All right, Mr. Brooks, are you -- I gave you
20 some time. Are y'all about ready? Is he about ready to
21 decide what he wants to do? I'll ask Mr. Gibbs. Mr. Gibbs,
22 have you had an opportunity to speak with your family and your
23 attorney about whether or not you want to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you want to testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, very well. Thank you. Bring the
3 jury back in.

4 MR. BROOKS: Judge, before we do that, can I put
5 something on the record about that?

6 THE COURT: Yes, sir. Yeah. Please go ahead.

7 MR. BROOKS: Judge, I just wanted to put on the record
8 I've advised my client against testifying and the reason is,
9 Judge, is because if we end up getting into whether or not he
10 was a resident there, it's my position, particularly in light
11 of the motion *in limine* that I presented prior to us taking
12 testimony, that that would open the door for the State to
13 start talking about all these other drug buys that they made
14 at this residence involving my client.

15 At the present time, the jury doesn't know that he has
16 drug charges pending from buys or alleged buys, and if he
17 takes the stand on the drug evidence to talk about whether
18 he's a resident or not to basically say he's not a resident,
19 then that would allow Mr. Meadors and Mr. Brown to talk about,
20 yeah, he is a resident there. We showed up as the police on
21 this day, this day, and this day, and this is what happened,
22 and that's what scares me in regards to my client, but right
23 now, nobody knows that he has any other drug charges pending
24 except for, obviously, the people in the courtroom. None of
25 the jury knows that and that's why we put that motion on the

1 Court before we started and that's, you know, our position.
2 I'm just adamant about it. I think that is suicide for my
3 client, but I wanted to put that on the record.

4 THE COURT: All right. Thank you. All right, let's
5 bring our jury back in.

6 (Whereupon, the jury enters the courtroom at 4:01 p.m.)

7 THE CLERK: Your Honor, all the jurors are present in the
8 courtroom.

9 THE COURT: Thank you, Mr. Bradley. All right, Mr.
10 Brooks?

11 MR. BROOKS: We would call Mr. Gibbs to the stand, Judge.

12 THE COURT: Mr. Gibbs, come forward and be sworn.

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

15 THE DEFENDANT: Leroy Gibbs.

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

19 THE DEFENDANT: Yes, sir.

20 THE CLERK: Thank you. Have a seat up here, please.
21 Watch your step going up. Please state your full name and
22 spell your last name for the record.

23 THE DEFENDANT: Leroy Gibbs, G-I-B-B-S.

24 LEROY CLIFTON GIBBS, being first duly
25 sworn, testifies as follows:

LEROY C. GIBBS, III - DIRECT EXAMINATION BY MR. BROOKSDIRECT EXAMINATION

- 1
2 BY MR. BROOKS:
3 Q: Mr. Gibbs, you see these packets here?
4 A: Yes, sir.
5 Q: That's got -- got drugs in it. Are these your drugs?
6 A: No, sir.
7 Q: I can't hear you.
8 A: No, sir.
9 Q: That box down there the State has shown that has a gun --
10 guns in it, are those your guns?
11 A: No, sir.
12 Q: Okay. You've seen these pictures where they found a
13 blunt in an ashtray; correct?
14 A: Yes, sir.
15 Q: Was that yours?
16 A: No, sir.
17 Q: The drugs that was in Kimberly Gibbs' purse, was that
18 yours?
19 A: No, sir.
20 Q: Did you put it there?
21 A: No, sir.
22 Q: You've seen the pictures of where they talked about the
23 drugs in the microwave and in the kitchen at this residence.
24 Did you put that there?
25 A: No, sir.

LEROY C. GIBBS, III - DIRECT EXAMINATION BY MR. BROOKS

1 Q: Was that your drugs?

2 A: No, sir.

3 Q: Are these your razors?

4 A: No, sir.

5 Q: Do you remember being taken to the jail by Officer
6 Horton?

7 A: Yes, sir.

8 Q: Did you ever blurt out selling drugs is a lifestyle to
9 me?

10 A: No, sir.

11 Q: Do you remember when Officer ---

12 MR. MEADORS: Your Honor, at this point I'm going to
13 object to leading.

14 THE COURT: Sustained.

15 Q: Did you make a statement while you were being transported
16 to the jail?

17 A: No, sir.

18 Q: Do you remember Officer Dubose coming to see you the next
19 day?

20 A: Yes, sir.

21 Q: Did you give him any type of statement?

22 A: The only statement I made to Mr. Dubose was that I had no
23 knowledge of any drugs that was found at the residence.

24 MR. BROOKS: No other questions, Judge.

25 THE COURT: Does the State wish to cross examine him?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 MR. MEADORS: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. MEADORS:

5 Q: When Kimberly was living in San Diego, you were living
6 there with her; weren't you?

7 A: Yes, sir.

8 Q: And you went out to San Diego and stayed with her because
9 that's where she was?

10 A: Yes, sir.

11 Q: And y'all were married; right?

12 A: Yes, sir.

13 Q: And she's your wife?

14 A: Yes, sir.

15 Q: And you live with your wife?

16 A: At the time, yes.

17 Q: In San Diego?

18 A: Yes, sir.

19 Q: And Kimberly Gibbs had nothing to do with these drugs;
20 did she?

21 A: No, sir.

22 Q: And say it again louder. Kimberly Gibbs had nothing to
23 do with these drugs; did she?

24 A: No, sir.

25 Q: And you know that. I mean you know she had nothing to do

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 with these drugs?

2 A: Yes, sir.

3 Q: I mean no disrespect to this, but you were not working at
4 the time and getting employment -- income from employment;
5 were you?

6 A: Not at that time. I was taking care of my son.

7 Q: At [REDACTED] Mattison Avenue?

8 A: Yes, sir.

9 Q: And that's where you would take care of him every day
10 because that's where he'd be when Kimberly went to work;
11 right?

12 A: Yeah, if her parents didn't -- didn't taken care of him,
13 I would.

14 Q: But when you'd take care of him, you'd be at [REDACTED] Mattison
15 Avenue taking care of him?

16 A: Or at [REDACTED] South Peguese, Number [REDACTED], which is my
17 residence where I was staying with my mother.

18 Q: And the amount of money in your pocket didn't come from a
19 job. Did that come from selling drugs?

20 A: No. It came from an accident that we both was in. It
21 came from that.

22 Q: But you can't even remember where that accident happened
23 or where it was; right?

24 A: I know where it happened. I just can't remember what
25 year when it was.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: Okay. Well, at a previous hearing under oath, you
2 couldn't even remember where the accident happened because you
3 had -- I believe your answer was that you had had so many, you
4 couldn't even remember where the accident was; right?

5 A: Yeah. I had like two or three accidents that took place
6 where I can't exactly remember which accident it was that the
7 money I had on me at that time was from which accident, but I
8 submitted it to -- the receipt that I had from the insurance
9 company to -- to the courts at the civil suit concerning my
10 money so I could get it back.

11 Q: I done been in different accidents. I don't recall which
12 one was at the time. I got 1,300. Do you remember saying
13 that?

14 A: Yes, sir.

15 Q: And -- and you don't have any evidence of that receipt
16 from a settlement or anything?

17 A: It should be in the Clerk of Court somewhere because I
18 submitted it through a civil suit to obtain my money back.

19 Q: And nobody else stayed at [REDACTED] Mattison except you,
20 Kimberly, and your son; correct? I mean Kimberly is your
21 wife; right?

22 A: Yes, she's my wife.

23 Q: You didn't share your wife with anybody else?

24 A: I can't -- what do you mean by sharing? She had ---

25 Q: What do you think I mean? I mean ---

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 A: Me -- me and Kimberly had, you know, altercations, and
2 eighty-five percent of the time, I would be staying at my
3 mom's, and there was plenty of times that, you know, she would
4 have friends and, you know, people that she deal with at that
5 -- at the residence.

6 Q: Like -- like what do you mean by that?

7 A: She'll have friends over at [REDACTED] Mattison.

8 Q: What kind of friends?

9 A: Associates, people she dealt with.

10 Q: Like who?

11 A: Her boyfriends or people that she'll social -- socialize
12 with.

13 Q: Who are her boyfriends, Mr. Gibbs?

14 A: Who were they?

15 Q: Who are they? Who are they? Yeah, who are you talking
16 about? Who are Kimberly Gibbs' boyfriends?

17 A: I can't recall their names.

18 Q: So you let other men come over into your house?

19 A: It -- it was basically her house because she paid the
20 bills there. She just added my name back in April to the
21 lease because at that time we was married.

22 Q: You were on the lease, you and your son, when she entered
23 the lease?

24 A: Well, she -- she did the signing. I never signed
25 anything. I never seen -- I never even seen the lease. I

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 never signed the lease. I never seen the lease.

2 Q: You're doing everything you can to distance yourself from

3 [REDACTED] Mattison; aren't you?

4 A: Because I -- I can.

5 Q: Who does that say that she put down at the time she

6 entered the lease as living in [REDACTED] Mattison?

7 A: At -- at April I guess when this lease was -- was made,
8 she added my name to the lease because at then we was married.

9 Q: That's when the lease was entered and it puts on there
10 who were the occupants and ---

11 A: Like I said ---

12 Q: --- it said you and your son.

13 A: Yeah.

14 Q: That's the same lady that you went out and lived with in
15 California; right?

16 A: Yes.

17 Q: And -- and in December you were living there of '08;
18 weren't you?

19 A: No, sir.

20 Q: You were not?

21 A: Not every day, no. There's been parts of time that I
22 come over when she, you know, called and asked can I come.
23 That time December the 23rd when I went there that morning, she
24 called me the night before and said that she was off for
25 Christmas and asked me could I come over and spend time with

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 her and my son.

2 Q: You just testified earlier when I asked you, so in
3 December of 2008 were you not living there, and you said, no,
4 sir, just a minute ago. Do you remember that?

5 A: Yes, sir.

6 MR. MEADORS: Your Honor, I have a matter of law.

7 THE COURT: All right.

8 (Whereupon, a bench conference is held off the record.)

9 MR. MEADORS: I beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. BROOKS: Your Honor, while he's doing that, I note my
12 objection for the record.

13 THE COURT: Yes, sir. You're protected.

14 Q: And I assume the answer is the same you said for December
15 would be true of October and November that you weren't living
16 there most of the time; correct?

17 A: Yes, sir.

18 Q: Was that a yes?

19 A: Yes, sir.

20 Q: Specifically, please, sir, on or about October 28th of
21 2008 at [REDACTED] Mattison Avenue, did you or did you not distribute
22 a quantity of crack cocaine to an individual at approximately
23 1:29 on October 29th of 2008 ---

24 A: No, sir.

25 Q: --- at this address?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 A: No, sir.

2 Q: And specifically on November 24th of 2008 at approximately
3 12:28 p.m., did you or did you not distribute a quantity of
4 crack cocaine to an individual from this same residence at [REDACTED]
5 Mattison that you were living?

6 A: No, sir.

7 Q: And on December 1st, 2008, when you were saying you
8 weren't staying there eighty-five percent of the time; right?

9 A: Yes, sir.

10 Q: Did you distribute a quantity of crack cocaine at
11 approximately 4:43 p.m. to an individual at your residence in
12 exchange for money?

13 A: No, sir.

14 Q: You testified it's not Kimberly's drugs; correct?
15 Without question, she didn't know about them?

16 A: From my understanding.

17 Q: Well, previously you said no at a hearing prior under --
18 under oath at a hearing prior, you said she -- they weren't
19 here drugs. They weren't her drugs; right?

20 A: From my understanding, they wasn't.

21 Q: And she's your wife. I mean I'm not trying to trick you.
22 She's your wife?

23 A: Yeah, she's my wife.

24 Q: Okay.

25 A: We're separated, but she still is my wife.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: Okay and you are now -- you weren't separated back then
2 though. Back in 2008, you weren't separated?

3 A: We was just having ---

4 Q: You just ---

5 A: We was going through problems. We're still married
6 today, but we're still living separate lives.

7 Q: Your problems ---

8 A: She live in her house and I stay with my mom.

9 Q: Your problems were the drug dealing with your child
10 there. That's the problems; wasn't it?

11 A: What drugs?

12 Q: You come back from California with her. She comes back
13 and then you're going to live -- you're living together in
14 Mattison Avenue just like you were in San Diego, Mr. Gibbs?

15 A: When we got -- when we came back from San Diego, we
16 wasn't staying at [REDACTED] Mattison. We moved into [REDACTED] Mattison
17 back in April of 2008.

18 Q: Do you know what you just said? You just said we -- we
19 moved back into Mattison. We moved back into Mattison. You
20 just said that.

21 A: Back in April.

22 Q: We is you and her?

23 A: Yes, sir.

24 Q: That was where you were living. Admit it.

25 A: In April it was, but not in December.

LERROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: She didn't know about it, according to your testimony,
2 and now at some point some boyfriends or somebody is coming
3 over to the house and visiting her. Is that who you're trying
4 to blame these drugs on?

5 A: Well, the only thing I stated was other individuals that
6 she was dealing with was at the residence.

7 Q: And you don't even know who they are?

8 A: It wasn't my, you know, duty to know about, you know, who
9 she was dealing with because I had my -- my friends as well.

10 Q: So you're okay letting other people, no matter who they
11 are or you don't know who they are, come into your house ---

12 A: We ---

13 Q: Will you please let me ---

14 A: She ----

15 Q: Please let me finish and I'll let you finish. You're
16 okay with other people coming into your house that you don't
17 know, other men coming into your house, and it's okay with
18 you?

19 A: It's not my house. It's her house.

20 Q: You called her Sunday night and said don't testify;
21 didn't you?

22 A: No, sir. I was over at her house Satur -- Sunday.

23 Q: You called her last night and said don't testify; didn't
24 you?

25 A: No. I called her and she stated that y'all asked her to

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 testify.

2 Q: And you told her don't; didn't you?

3 A: No, sir.

4 Q: And then you got mad and said do what you got to do;

5 didn't you?

6 A: No, sir.

7 Q: And you didn't want her to testify?

8 A: It was her duty to testify.

9 Q: She never made you sandwiches; did she?

10 A: State that again?

11 Q: She never made you sandwiches; did she?

12 A: She made sandwiches.

13 Q: Sandwiches?

14 A: Yeah. She made sandwiches. I made her sandwiches.

15 Q: What was this baking soda for in the kitchen?

16 A: What was the baking soda for?

17 Q: Do you know?

18 A: That's her cooking. She used baking soda to cook.

19 Q: You're telling me you never looked inside that cupboard?

20 A: Say that again?

21 Q: Have you ever looked inside that cupboard?

22 A: In that cupboard?

23 Q: Cupboard, yes, sir.

24 A: What do you mean by cupboard?

25 MR. MEADORS: Can I approach?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 THE COURT: You may.

2 Q: State's 15, that cupboard above the microwave.

3 A: Have I ever looked in it? Yes, sir, yes.

4 Q: And this was crack -- there's cocaine -- any crack
5 cocaine found in there?

6 A: I don't have no knowledge of that. I was arrested. I
7 was -- I was arrested and sent to the jail. I didn't know
8 about any drugs until the next day.

9 Q: All right. Let me ask you about that real quick. When
10 Investigator Dubose came in your house ---

11 A: Yes.

12 Q: --- you remember -- you know Dubose?

13 A: Yes.

14 Q: And when he came into your house, you remember he read
15 you your rights?

16 A: Yes, sir.

17 Q: He didn't give you a hard time. I mean he didn't give
18 you a hard time. I mean he didn't harass you. He read you
19 your rights; right?

20 A: Yeah, yes, sir.

21 Q: Okay and I'm not trying to trick you, but he didn't give
22 you a hard time. He didn't mess with you. He didn't try to
23 hold out any hope. He read you your Miranda rights; right?

24 A: Yes, sir.

25 Q: And that's when you told him at the house I don't live

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 here; right?

2 A: He asked to search the house and I told him I don't stay
3 there.

4 Q: Okay. You told him you don't stay there?

5 A: Yes.

6 Q: And that was his testimony; wasn't it?

7 A: Yes, sir.

8 Q: And then, you heard the testimony, this consent to search
9 the house; right?

10 A: Yes.

11 Q: You were then transported by these officers to the
12 detention center; right?

13 A: Yes, sir.

14 Q: It's not in dispute; right?

15 A: No.

16 Q: They treated you nice; didn't they?

17 A: They only sent me to -- they only took me from [REDACTED]
18 Mattison and took me to Winkles Road.

19 Q: No question. We can agree on that?

20 A: Yes, sir.

21 Q: They took you to the Sumter Lee Detention Center; right?

22 A: Yes.

23 Q: They didn't give you a hard time?

24 A: I didn't give them a hard time either.

25 Q: I didn't say you did. That was my next question.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Neither one of y'all gave you a hard time?

2 A: Yes, sir.

3 Q: Y'all -- neither one of y'all had a dog -- they didn't
4 have anything against you. Matter of fact, you knew one of
5 them's brother. You went to school with him.

6 A: No. My brother went to school with them.

7 Q: Okay. Well, I'm -- I'm close. Your brother went to
8 school with one of the police officers in the front; right?

9 A: Yes.

10 Q: So it's all interaction. They weren't asking you
11 questions. Y'all weren't harassing with each other; right?

12 A: Yes.

13 Q: And that's when you said selling drugs is a lifestyle for
14 you?

15 A: That's not true. Why would I say drugs was a lifestyle
16 whereas that I had no knowledge of the drugs.

17 Q: Because that is your lifestyle?

18 A: I ---

19 Q: \$1,355 in your pants, baking soda in your cupboard?

20 A: Okay. My -- my money was -- was -- was recovered for a
21 document and none of the money that I received out of my
22 pocket was any documented money, but ---

23 Q: What do -- what do you mean by documented money?

24 A: That's what Dubose stated. I asked him why was he taking
25 my money. He said he was taking my money for documented

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 money.

2 Q: You're talking about these other instances of these
3 distributions -- alleged distributions?

4 A: I don't know. He -- he -- I asked him why was he
5 confiscating my money. He stated that he was confiscating my
6 money because of documented money to see if any money was --
7 any documented money found, which it wasn't.

8 Q: Documented from these three prior instances I asked you
9 about where money was given to you in exchange for crack
10 cocaine, that's what he was asking you about; right?

11 A: But I never sold them any drugs.

12 Q: But that's what he was saying, to see if this ---

13 A: I don't know.

14 Q: I mean for this point, you knew he was saying we're
15 seeing if the money -- this had happened weeks prior, was some
16 of the same money you had here. That's what he was looking
17 for.

18 A: I don't know.

19 Q: Well, you do know. I mean that's what he was looking
20 for, the documented funds they'd used on these to see if you
21 still had it in your pants, but you'd already spent this
22 money; hadn't you?

23 A: Spent it? I never sold ---

24 Q: And you actually ---

25 A: I never seen no money from anyone.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: And you actually asked him about another incident when he
2 was talking to you, too, about a fellow that you traded for
3 some drugs; didn't you?

4 A: No.

5 Q: You don't remember that?

6 A: No.

7 Q: What was the guy's name?

8 MR. MEADORS: I beg the Court's indulgence. I beg the
9 Court's indulgence.

10 THE COURT: Yes, sir.

11 Q: A purchase at the Blockbuster to Sweeney -- sold Sweeney,
12 but you said Sweeney also traded you ten Loricet pills. You
13 don't remember talking to him about that?

14 A: No.

15 Q: And when Investigator Dubose was serving you with the
16 warrants, do you remember him asking you -- and again down at
17 the jail, Mr. Gibbs. Investigator Dubose, he read you your
18 rights; didn't he? That's not in dispute for when he was
19 serving the warrants on you. That's what he does like a
20 robot. He read you your rights again; right?

21 A: I can't recall.

22 Q: Okay. So you can't dispute that he read your rights to
23 you?

24 A: No, sir.

25 Q: All right. Do you recall when he confronted you or said

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 verbally -- asked you about what you told the officers that
2 selling drugs was a lifestyle for me?

3 A: Yes, sir.

4 Q: Do you remember that?

5 A: Yes.

6 Q: And that's when you told him I got to support my family?

7 A: I never said anything to Dubose concerning anything
8 dealing with lifestyle or me selling any drugs.

9 Q: Or -- or saying about supporting his family?

10 A: Not about supporting my family because my wife was
11 getting enough money to support the family.

12 Q: And did you remember when -- when he told you about all
13 the items? He said, well, here's what we found. Here are the
14 warrants, because the warrants they were serving on you were
15 for what they found at [REDACTED] Mattison; correct? That's the
16 warrants he was serving on you at the jail the next day?

17 A: Yes, sir.

18 Q: Okay and -- and do you remember telling him -- you deny
19 you said you had to support your family; correct? You deny
20 that?

21 A: Sir?

22 Q: You say that didn't happen when you said in response to
23 why did you tell the officers this is my lifestyle because I
24 had to support my family? You deny you told him that?

25 A: Yes, sir.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: Okay and -- but you don't deny this, do you, that he --
2 you -- that you said that his wife -- your wife must have had
3 someone else there because it was not his and had to be hers?
4 Do you remember telling him that?

5 A: Yes, sir. I recall saying that statement.

6 Q: But that -- you remember that; right?

7 A: That next day or the third day.

8 Q: Okay, but -- but -- but that's not true. You told him
9 that day when he was serving it to you -- when he was giving
10 you the warrants that she must have had someone else there
11 because it wasn't yours, it had to be hers, but you've now
12 told us and said previously at another hearing it wasn't hers.
13 There wasn't any question about it; right?

14 A: I have no knowledge that it was hers or not.

15 Q: Well, you said before under oath that you did, that it
16 wasn't hers and she didn't know anything about it.

17 A: I said I had no knowledge of it.

18 Q: No, previously you said she knew nothing of it.

19 A: Well, I don't have no knowledge of it and so I can't say
20 if it was hers or not. I was ---

21 Q: But you have before.

22 A: I was -- I was arrested and sent to the jail. I was
23 never there when these drugs or guns or what items that was
24 found in this residence. I was at the jailhouse and the next
25 day, that's when these warrants arrived, which I had no

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 knowledge of any drugs or any guns that was in this residence.

2 Q: Do you deny that at a previous hearing when the questions
3 was: And you know she didn't have nothing to do with these
4 drugs, did you? Answer: No, sir.

5 A: If I had no knowledge of it, then no, sir. I don't have
6 no knowledge of it.

7 MR. MEADORS: And -- and, Your Honor, may I approach?

8 THE COURT: You may.

9 Q: Do you mind if I approach you, Mr. Gibbs?

10 A: No, sir.

11 Q: And following up to that "no, sir", a question. I mean,
12 you know, you just -- you just automatically said it.

13 Kimberly didn't mess with drugs. Kimberly didn't cook drugs.
14 Kimberly didn't even know how to do that, did she, and you
15 said, not to my knowledge. Then question: She didn't? So
16 these weren't Kimberly's drugs, were they? And you started to
17 say I, and the question: I mean they're -- you're not trying
18 to say that, are you? You're not trying to say that, are you?
19 And you said, no, I'm not.

20 A: Okay.

21 Q: So you're not saying those are her drugs?

22 A: Yes. I'm not saying that it's hers or not, that I don't
23 have no knowledge of it. I'm just saying, yes, sir.

24 Q: Selling drugs from a house with children is not
25 appropriate; is it?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 A: No, sir.

2 Q: It's not a way to make a living and support a family; is
3 it?

4 A: No, sir.

5 Q: It's illegal; isn't it?

6 A: Yes, sir.

7 Q: It's wrong? It's wrong; isn't it?

8 A: Yes, sir.

9 Q: And Kimberly didn't know how to cook crack?

10 A: Me neither.

11 Q: I didn't ask you that. Kimberly didn't know how to; did
12 she?

13 A: Not to my knowledge.

14 MR. MEADORS: I beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. MEADORS: That's all I have, Mr. Gibbs. Thank you.

17 THE COURT: Any redirect, Mr. Brooks?

18 MR. BROOKS: No, sir.

19 THE COURT: You may step down.

20 (Whereupon, the witness leaves the stand at 4:30 p.m.)

21 MR. BROOKS: That's the defense case.

22 THE COURT: All right. Thank you.

23 MR. MEADORS: I'd ask for a short recess.

24 THE COURT: Yes. Ladies and gentlemen, I'm going to send
25 you back to the jury room for about ten minutes and then we'll

1 -- while we take up some matters here, and then I'll bring you
2 back. Thank you.

3 (Whereupon, the jury exits the courtroom at 4:31 p.m.)

4 MR. BROOKS: Judge, I -- I'll put on my objection and
5 motion for a mistrial on the record in light of we don't feel
6 that that was opening the door to allow the State to go into
7 prior incidents -- incidents and allegations about drugs that
8 are totally separate from the incident that is on trial. We
9 feel that the State should not have been allowed to do that
10 and ask -- we're asking the Court to grant a mistrial in this
11 matter.

12 THE COURT: All right. Thank you.

13 MR. MEADORS: Your Honor, respectfully, we think he
14 opened the door when he said he wasn't staying there eighty-
15 five percent of the time in November and then he went back
16 saying October and November. Really, the only time he said he
17 was staying there later on was in April when he came, but
18 after that he was kind of eighty-five percent. So I think,
19 respectfully, because Your Honor ruled he opened the door to
20 these specific instances where he was there at different times
21 throughout the day.

22 THE COURT: I -- I don't think there's any question in my
23 mind that he opened the door and allowed those questions.
24 Will there be any reply testimony?

25 MR. MEADORS: Yes, sir. If Your Honor will just give us

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 a few minutes, it will just be one officer and we can -- we'll
2 have it ready in your time limit.

3 THE COURT: Okay.

4 MR. MEADORS: Thank you.

5 THE COURT: It'll be ten minutes.

6 MR. MEADORS: Okay. Thank you, sir.

7 THE COURT: Court will be in recess for ten minutes.

8 (Whereupon, there is a break in the proceedings from 4:32
9 p.m. until 4:43 p.m.)

10 MR. MEADORS: The State is ready, Your Honor.

11 THE COURT: All right. Bring the defendant out.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: All right. Let's bring our jury out.

14 (Whereupon, the jury enters the courtroom at 4:44 p.m.)

15 THE CLERK: Your Honor, we have all the jurors back in
16 the courtroom.

17 THE COURT: Thank you, Mr. Bradley. Does the State have
18 any rebuttal testimony?

19 MR. MEADORS: May it please the Court. Investigator
20 Wayne Dubose.

21 THE COURT: All right. He's still under oath. He's
22 still under oath.

23 INVESTIGATOR WAYNE DUBOSE, being
24 first duly sworn, testifies as follows:

25 DIRECT EXAMINATION

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 BY MR. MEADORS:

2 Q: Investigator Dubose?

3 A: Yes, sir.

4 Q: On October 29th of 2008, did you have an occasion to take
5 -- did you have an occasion to take part in an undercover
6 purchase from [REDACTED] Mattison Avenue?

7 A: Yes, sir.

8 Q: Could you please tell the ladies and gentlemen of this
9 jury how that led up ---

10 MR. BROOKS: Your Honor, I'll note my objection for the
11 record.

12 THE COURT: Your -- your objection is well noted.

13 Q: Could you please tell the ladies and gentlemen of this
14 jury about an undercover purchase on October 29, 2008, at [REDACTED]
15 Mattison Avenue as it relates to one Leroy C. Gibbs, III?

16 A: Yes, sir. On October 29th, 2008, myself and Investigator
17 Boland, who is employed with the Sheriff's Office, we met with
18 a confidential informant at a secure location. The informant
19 was searched by me. I searched the informant and took any
20 money that informant may have had. Investigator Boland
21 searched the vehicle. Nothing was found. At that time, the
22 informant was given \$60 in documented funds.

23 At that time, at about 1:24, around that time the
24 informant called Mr. Gibbs. The informant knew Mr. Gibbs
25 personally and referred to him as Cliff. He called him about

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 1:24. He leaves en route to the location.

2 At 1:28 p.m., he arrives at [REDACTED] Mattison Avenue. He goes
3 in and meets Mr. Gibbs and purchases a quantity of crack
4 cocaine at 1:29, and again at 1:29, he leaves the residence.
5 We follow the informant from the residence back to another
6 meeting location. The crack cocaine was turned over to
7 myself. I searched the CI. The CI's vehicle was searched by
8 Investigator Boland, again with negative results. The crack
9 cocaine was turned over to myself and it was placed into
10 evidence and for analysis.

11 Q: Now, you say that this CI and the vehicle were searched
12 prior to the attempted purchase and after the attempted
13 purchase, and you say with negative results. What does all
14 that mean and why are you doing that?

15 A: Before we make a purchase, we meet with the informant at
16 a location that they don't know where it's at so they don't
17 have an opportunity to go plant anything, if you will. We
18 meet with them. At that time, the informant is searched. We
19 make sure we take all the money from them and make sure they
20 don't have any drugs on them. The vehicles are searched the
21 same way.

22 The informant is then sent to a location. On this
23 occasion, we followed the informant, stayed right behind the
24 informant. There was no stops from the meeting location to
25 [REDACTED] Mattison Avenue. So there was no way to stop somewhere

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 and pick something up. The informant goes there and makes the
2 purchase and they -- we tell them to go back to a specific
3 spot. Again, the drugs are turned over and we search them
4 again to make sure they don't have anything, and then we
5 search the vehicle again.

6 Q: After you retrieved the drugs in this case ---

7 A: Yes, sir.

8 Q: --- from the informant? And are you monitoring or are
9 you and your other officers in the area watching the informant
10 as he goes to the -- in this case, Mattison Avenue?

11 A: Yes, we were. We followed the informant right behind
12 him. On this occasion -- well, on all three occasions that we
13 purchased, we parked probably just over a hundred yards or so
14 from the residence, just down the street from Mattison Avenue.
15 We parked right at a corner house where we could see the
16 informant pull up in the yard. We could see him go in. The
17 informant also had some equipment on him that we could
18 actually hear and monitor through our radios.

19 Q: And after you had received -- in this case the October
20 29th buy what was presented as crack cocaine, did the informant
21 identify the defendant?

22 A: The informant identified the defendant before we went
23 there.

24 Q: So he knew him by name and sight?

25 A: He also identified him afterwards and then he gave us a

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 witness statement.

2 Q: On October 24th, 2008, did you have an occasion to take
3 part in an attempted undercover purchase from one Leroy C.

4 Gibbs, III, at [REDACTED] Mattison Avenue here in Sumter County?

5 A: November 24th?

6 Q: Yes, sir.

7 A: Yes, sir, on November 24th, the same informant. We met
8 with the informant at a secure location about twelve o'clock
9 that afternoon. Again, I searched the informant. Again,
10 Investigator Boland searched the vehicle with negative
11 results. The CI was given \$100 in documented funds by me.
12 The informant called Mr. Gibbs on his cell phone at 968-6023.
13 The informant then left the location and was en route to [REDACTED]
14 Mattison Avenue to meet with Mr. Gibbs at 12:15.

15 The informant arrives at the address at 12:27. The
16 purchase is made at 12:28 and that purchase was of crack
17 cocaine. The informant leaves the residence at 12:42. We
18 meet the informant back at a secure location at 12 -- 12:53.
19 Again, I searched the informant. Investigator Boland searched
20 the informant's vehicle. That crack cocaine was also placed
21 into evidence and analyzed.

22 Q: And when you say documented funds, are these funds that
23 you've written down the serial numbers? Did you use
24 documented funds in this case?

25 A: We actually take the funds and make a photocopy. That

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 way, when we do go back to make an arrest, if the person has a
2 quantity of money on them, we'll be able to look at that money
3 and compare serial numbers. Sometimes we find documented
4 funds; sometimes we don't.

5 Q: And would common sense dictate the closer an arrest is to
6 an undercover buy, the more likely you are to find documented
7 funds? If it's weeks later ---

8 A: Yes, sir. If it's within days, yeah, it's possible. If
9 it's over a week or so, odds are that the money has already
10 changed hands.

11 Q: And again, you said this was the same informant who
12 identified Mr. Gibbs as the one who gave him the crack
13 cocaine?

14 A: Yes, sir.

15 Q: In exchange for the money? And -- and finally, on
16 December 1st of 2008, again at [REDACTED] Mattison Avenue in Sumter
17 County, did you take part in an undercover purchase from Leroy
18 C. Gibbs, III?

19 A: Yes, sir.

20 Q: Please tell the ladies and gentlemen of the jury about
21 this?

22 A: On this date at approximately 4:18 p.m., myself and
23 Investigator Boland met with the same confidential informant
24 at a location. I searched the informant. Investigator Boland
25 searched the informant's vehicle with negative results. I

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 gave the informant \$100 -- \$140 in documented funds at 4:24.

2 At 4:27, the informant called Mr. Gibbs at 968-6023. He did

3 not get an answer. The informant called back at 4:39 p.m.

4 Mr. Gibbs answered and he asked about getting \$140 worth of

5 crack. Mr. Gibbs told him to come to the residence.

6 The informant leaves to go to the residence at 4:42 p.m.,

7 arrives -- or arrives at the residence at 4:42. The purchase

8 was made at 4:43. The informant leaves the residence at 4:43.

9 We meet the informant again at a secure location at 4:55. I

10 searched the CI and Investigator Boland searches the

11 informant's vehicle. Again, the crack cocaine was turned over

12 to myself and analyzed -- or it was placed into evidence to be

13 analyzed.

14 Q: And was again Mr. Gibbs identified as the individual who

15 ---

16 A: Yes, sir.

17 Q: --- made the purchase -- or I'm sorry, sold at that time?

18 A: Mr. Gibbs, Leroy Gibbs.

19 Q: All three of these purchases were at different times of

20 day so Mr. Gibbs was at this residence each one of these

21 times?

22 A: On the first two purchases at around lunchtime at twelve

23 o'clock. On this purchase, it was at -- after four o'clock in

24 the afternoon.

25 Q: And was a -- any particular car there during these

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 purchases?

2 A: There was a ---

3 Q: It may be on your ---

4 A: There was a -- on this occasion, there was a white Dodge

5 Neon that was in the yard, which was also in the yard the day

6 that we made the arrest.

7 Q: On December 23rd?

8 A: Correct.

9 Q: And ---

10 A: And there was a -- on November 24th, 2008, the -- the

11 white Neon was also in the yard and it was also in the yard on

12 the day when we made the arrest.

13 Q: On the 23rd?

14 A: That's correct and ---

15 Q: Oh, I'm sorry. You're going back on these. I apologize.

16 Go ahead.

17 A: And again on October 29th, 2008, that white Dodge Neon was

18 also in the yard.

19 Q: And now on the day of the arrest on December 23rd, was the

20 Dodge Neon also in the yard?

21 A: Yes, sir.

22 Q: Now, you've testified that these are -- is this --

23 State's 3, is this the same residence all these purchases were

24 made from?

25 A: Yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: [REDACTED] Mattison? And is the individual in the courtroom
2 that was identified as the person making those purchases? Is
3 that individual here?

4 A: Yes, sir. The informant identified Mr. Gibbs.

5 Q: Sitting at the table with Mr. Brooks?

6 A: Yes, sir.

7 Q: And these are the warrants you were serving on him;
8 right? Just -- just yes or --

9 A: Yes, sir. These are the warrants that we were serving on
10 him that day.

11 MR. MEADORS: I beg the Court's indulgence.

12 Q: Did -- did you specify the amount of documented funds on
13 the first buy that you gave him?

14 A: The first one? The first one is \$60, the second one was
15 \$100, and the third one was 140.

16 Q: And his previous testimony, were you trying to see if
17 some of those documented funds were the 1,350 when you ---

18 A: That was -- well, I was going to take the money to
19 compare to see if the funds were in there, but we were also
20 going to seize the money regardless because there was drugs
21 found in the residence and it could have been associated with
22 the drug activity. So we were going to attempt to seize that
23 money regardless.

24 Q: But were there any of these documented funds from these
25 previous buys in that 1,350?

26

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: No, sir, there weren't. That was over two weeks before
2 that so there was none found.

3 MR. MEADORS: That's all. Thank you, Judge.

4 THE COURT: Thank you. Mr. Brooks, cross examination?

5 CROSS EXAMINATION

6 BY MR. BROOKS:

7 Q: Was there audio equipment used in these purchases?

8 A: There was audio equipment used.

9 Q: No video?

10 A: There was video on these purchases.

11 Q: And you testified that you were present on all these
12 occasions?

13 A: Yes, sir. I was present myself and Investigator Boland
14 was present on all three of them purchases.

15 Q: You didn't actually see Mr. Gibbs on these dates; did
16 you?

17 A: On the buy on December the 1st, Mr. Gibbs was in the yard.
18 When we arrived, we saw Mr. Gibbs in the yard and then they
19 went inside where the purchase was made. So actually seeing
20 it hand to hand from where we were, no, sir, we did not see a
21 hand to hand.

22 MR. BROOKS: I beg the Court's indulgence, Your Honor.

23 THE COURT: Yes, sir.

24 MR. BROOKS: No other questions, Your Honor.

25 THE COURT: All right. Any redirect?

26

1 MR. MEADORS: No, sir. Thank you.

2 THE COURT: All right. Thank you. You may step down.

3 THE WITNESS: Yes, sir.

4 (Whereupon, the witness leaves the stand at 4:59 p.m.)

5 MR. MEADORS: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. MEADORS: No, sir. Thank you.

8 THE COURT: Thank you. Are you resting?

9 MR. MEADORS: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen, that will
11 complete the testimony that we will have at this time. I'm
12 going to send you home for the evening with instructions that
13 you get a good night's sleep and that you not talk with
14 anybody about this case, and if you could be back here
15 tomorrow morning at 9:30, then we will continue with this.
16 All right. Thank you, ladies and gentlemen. Have a nice
17 evening and I hope you stay dry.

18 (Whereupon, the jury exits the courtroom at 5:00 p.m.)

19 THE COURT: All right, Mr. Brooks, any motions?

20 MR. BROOKS: Judge, we would renew our motion for a
21 mistrial. It's our position that this reply testimony or
22 rebuttal testimony was extremely prejudicial.

23 THE COURT: I agree with you on that.

24 MR. BROOKS: It is -- it is a plethora of hearsay. Not a
25 whole lot of proof to it and we would just ask the Court in

1 defense of my client that we renew our position. We don't
2 believe this opened the door and that obviously we feel that
3 this is hearsay and it's extremely prejudicial, and obviously
4 we'd ask the Court to declare a mistrial in this matter.

5 THE COURT: All right, Mr. Brooks. Thank you. Mr.
6 Brown?

7 MR. BROWN: Your Honor, while it is prejudicial, it is
8 probative. He opened the door when he said that he didn't
9 live there eight-five percent of the time. That was a
10 voluntary statement by him. He opened the door for us to go
11 into that testimony. We're not here to prove that for
12 distribution purposes, but to show that he was in fact
13 present, and we believe it's properly allowed in. We believe
14 Your Honor made the right decision allowing it and we
15 respectfully ask you to uphold that decision.

16 THE COURT: Thank you. Motion for a mistrial is hereby
17 denied. Anything -- any other motions? Have y'all had an
18 opportunity to look at the proposed charge? Y'all have been
19 busy in here.

20 MR. BROWN: Yeah. We'll look at it tonight, Your Honor.

21 THE COURT: No. We have some hard copies. Why don't
22 y'all come back to chambers after we finish here and then
23 we'll have those.

24 MR. BROWN: All right.

25 THE COURT: Y'all can be -- well, I'll see y'all in just

1 a minute.

2 MR. MEADORS: Thank you.

3 MR. BROWN: Thank you, Your Honor.

4 THE COURT: Court is adjourned until 9:30 tomorrow
5 morning.

6 (Whereupon, there is a break in the proceedings from 5:02
7 p.m. on Tuesday, June 4, 2013, until 9:38 a.m. on
8 Wednesday, June 5, 2013.)

9 JUNE 5, 2013 (DAY 3 OF 3)

10 THE COURT: Anything we need to bring up before we bring
11 our jury in to start our closing arguments?

12 MR. BROWN: Nothing from the State, Your Honor.

13 THE COURT: Mr. Brooks?

14 MR. BROOKS: Nothing, Judge.

15 THE COURT: And I'll let y'all have a copy of the charge.
16 The only difference between what it is -- what y'all had
17 yesterday to what it will be is the manufacturing will be
18 broken out specifically as another count in the indictment
19 just so there's no confusion. All right, let's bring our jury
20 in..

21 (Whereupon, the jury enters the courtroom at 9:40 a.m.)

22 THE CLERK: Your Honor, all the jurors are present in the
23 courtroom.

24 THE COURT: Thank you, Mr. Bradley. Good morning, ladies
25 and gentlemen. All of the evidence that you're going to hear

1 in this case has been heard by you. Now is the time where the
2 attorneys will give you their closing arguments, and after
3 that I will charge you with the law and then dismiss you to
4 begin your deliberations. So we will now have our closing
5 arguments. Is the State ready to proceed?

6 MR. BROWN: Yes, sir, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. BROOKS: Yes, sir.

9 THE COURT: All right.

10 MR. BROWN: May it please the Court.

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENTS

13 MR. BROWN: Good morning, ladies and gentlemen of the
14 jury. At the beginning of this trial yesterday morning, I
15 told you what we would be talking about during this case.
16 When this case was indicted for manufacturing crack cocaine,
17 of trafficking crack cocaine, and possession with intent to
18 distribute powder cocaine, I told you at the beginning of this
19 trial, what we would be talking about is a lifestyle. I told
20 you we would be talking about a lifestyle of possessing drugs,
21 a lifestyle of making drugs and manufacturing drugs,
22 manufacturing crack, and a lifestyle of trafficking in those
23 drugs. I told you at the beginning of this trial that what we
24 would be talking about is the lifestyle of the defendant,
25 Leroy Gibbs.

1 Now, my job in the closing portions of this trial is I'm
2 supposed to come up here and talk to you about the law. In a
3 couple minutes, you'll be hearing from Mr. Brooks, defense
4 counsel in this case, and you will be hearing from my
5 colleague, Mr. Meadors, to talk to you fully about the facts
6 of this case, about the lifestyle, but my job here is to talk
7 to you about what the law is and set up the framework, if you
8 will, on what we're going to -- and what we're talking about
9 so y'all can be thinking about these matters in the context of
10 the facts that have been presented to you.

11 As you are aware, Mr. Gibbs is charged with three
12 offenses here in South Carolina under the indictments that
13 have been presented to you. As I told you at the beginning,
14 all that is, is a piece of paper that gets you here today. It
15 is the State's job in this case to prove him guilty beyond a
16 reasonable doubt, and we as the State must present the
17 evidence to present that and actually get you to that charge.

18 Now, as you know, y'all didn't have a class before y'all
19 came here today. Y'all didn't get any training. There wasn't
20 a video. Our Clerk of Court didn't walk you through a seminar
21 on how to be a jury and that's because you're already well-
22 trained. You, ladies and gentlemen of the jury, have a
23 lifetime of experience of reading people, watching people,
24 thinking about that, and using good old common sense.

25 And that is what we're going to ask you to use throughout

1 this trial. We're going to ask you to use your common sense,
2 think about the facts, and think about what's been presented
3 on trial and decide. Do you think he's guilty beyond a
4 reasonable doubt? Are you firmly convinced? Do you believe
5 he did it?

6 As pertains to the trafficking in crack cocaine, you've
7 heard evidence in this trial. Let me back up. I'm sorry. As
8 pertains to trafficking crack cocaine, what you're looking for
9 in this trial is whether or not he possessed a quantity of
10 crack cocaine in excess of 10 grams. That is what you're
11 looking for and Mr. Meadors will talk to you about testimony
12 that was presented in this case, but the big question on this
13 is did he possess it.

14 In the law, there are two forms of possession. Both of
15 them are deeply important and both of them are possession.
16 There's actual possession, which I'll tell you right now we're
17 not pursuing. Actual possession means it's in your pocket,
18 it's in your hand. You're holding it right then, but then
19 there is this thing called constructive possession and, ladies
20 and gentlemen, that is what the State's argument is, is that
21 what we have here today is constructive possession.

22 To put that in reasonable terms, constructive possession
23 basically means that you still exhibit dominion and control.
24 In other words, you still have control over that item. As I
25 said earlier, the remote control sitting beside my bed at

1 home, I have constructive possession of it, it's mine. Just
2 to give you all an example, what it does is it stops the
3 defendant from walking away from some drugs right before --
4 right before the police get there and then saying, well, you
5 don't see them in my hands so it's not mine. This is
6 something you can use good common sense for and that's
7 something you're going to have to do is use that common sense.

8 Mr. Gibbs is also charged -- he's also having a case
9 against him for manufacturing. You've heard a lot of
10 testimony, but things that you would be looking for in
11 manufacturing would be did he possess it and did he exhibit
12 this? Can the State prove that he did what it took to make
13 crack cocaine? And that's when we're going to ask you to use
14 common sense.

15 You've heard the testimony about how the stuff is made.
16 You are going to be looking for those key elements. Was the
17 baking soda there? The microwave, what was going on with
18 that? Did he have the tools and the instruments to mix the
19 stuff together? The dishes, the forks, the razors, the
20 cutting agents that you heard talk about throughout this
21 trial? Did he have it? Do you believe he possessed it? Do
22 you believe he did it? You're going to be considering those
23 facts and that's what you're supposed to listen to and think
24 about.

25 Finally, he's charged with possession with intent to

1 distribute powder cocaine. Now, ladies and gentlemen, there
2 are a number of things you can look at underneath the law to
3 determine whether you believe he intended to distribute. The
4 first one is clearly in the statute that if it's anything over
5 a gram, you can consider that. That is not proof positive.
6 We're not asserting that it's proof positive that that means
7 he intended to distribute, but you can also look at other
8 things.

9 Does he have money that's really not very explainable as
10 to how he might have it other than possibly doing this? Is
11 that possible proof that he intended to do it? That's for you
12 to determine. That's for you to use your common sense to
13 determine if you believe he did it. Did he have baggies to
14 put it in? Were there some other items besides baggies?

15 Did he make any statements? Anything indicating that he
16 was a drug dealer and that he did sell? That it might be a
17 lifestyle? These sort of things you can consider. Did he say
18 maybe this was something to support his family? All of these
19 things are things that you as the jurors can consider in this
20 case.

21 Now, at the beginning of this case, I let you know that
22 we did not only acknowledge but welcomed the burden that the
23 State has in this case and that is that we must prove this
24 beyond a reasonable doubt. You've all heard the testimony
25 that's been involved, listened to this talk about beyond a

1 reasonable doubt and the law in South Carolina means that we
2 leave you firmly convinced.

3 As I said before, I'm a young prosecutor. I don't really
4 have any good analogy for you. I've never found one that
5 works for me and doesn't confuse me more than when I started,
6 but the law is so clear there's no reason for me to find one
7 because it means you're firmly convinced. You believe that
8 the defendant did it. If we don't meet that burden, then we
9 don't meet the burden. But if you believe he committed this
10 crime, then you as the ladies and gentlemen of the jury are
11 charged and you are sworn to convict him on that. That is
12 what your duty is and that is what you're sworn to do, and if
13 we meet that burden, that is what your role is.

14 Now, in a couple of minutes, you're going to hear closing
15 arguments from the defense and you're going to hear closing
16 arguments again from the State because he'll actually talk to
17 you more completely about the facts, and then after that,
18 you're going to hear from His Honor, Judge Young. He's going
19 to tell you what the official law is. What I'm giving you a
20 rundown of right now, he's going to give you exactly what it
21 is. It's the law that you are required to follow, and after
22 that point, you twelve people will become the twelve most
23 powerful people in this room. The twelve of you will go in
24 that jury room and have the sole -- the sole decision of
25 deciding whether or not you believe the defendant is guilty,

1 whether you believe beyond a reasonable doubt he committed
2 these crimes, whether you're firmly convinced, and whether you
3 believe he did it.

4 And at the end of the State's case and at the end of the
5 closing, I'll be joining my co-counsel and asking that you
6 convict him on all three charges. Thank you.

7 THE COURT: Thank you, Mr. Brown. Mr. Brooks?

8 MR. BROOKS: Good morning, ladies and gentlemen. I've
9 had the honor and privilege of representing Clifton in this
10 case and obviously I couldn't say what my colleague seems to
11 have to say on this case, but I'm going to have to say it.
12 I'll go through the witnesses individually and as a group and
13 explain to you what we think how this case looks and shapes up
14 to be.

15 Now, we had Officer Atkinson. We had Cindy Pierson. We
16 had Mitchell Hansen come up and testify. Those individuals
17 were just talking about the chain of custody. The evidence
18 came to them. They stored it, in and out, et cetera, et
19 cetera. They don't know anything about the gist of this case
20 and the details of this case and, of course, Mr. Hansen, he's
21 the only person that gets up and testifies he tested it.

22 That's all he does. He doesn't -- as he indicated in my
23 cross examination, no matter what the sheet says as far as
24 subject and if it has your name on it or anybody else's name
25 on it, he just tests it. He doesn't have anything else to do

1 with it. Okay? So those -- those are just what we call the
2 forensics, the scientific witnesses for the chain of custody
3 to the person that does the testing. There's not much that
4 they could share in this case.

5 Now, I was talking to Officer Dubose, the lead
6 investigator in this case, and if you remember, he indicated
7 my client told him when he first came to the prison that he
8 doesn't live there. He didn't spend that much time there.
9 Okay? He happened to be there on that particular day, but he
10 doesn't live there. That's what Officer Dubose had said,
11 unequivocally, on the stand.

12 He also answered my questions about the number of years
13 he had been on patrol and the fact that there's this glass
14 between the front seat and the back seat, there's chatter on
15 the radio. He answered that question as well, and he also
16 indicated that a lot of the questioning had gone on with Mrs.
17 Gibbs, but I'll come to her in just a minute. That's what he
18 said. That's what he said when he was on the stand. My
19 client said he didn't live there. Okay? That's what Officer
20 Dubose said.

21 Officer Horton, who transported my client from Mattison
22 Avenue to the jail, indicates that his car that's he riding in
23 here has the plexi-glass. He also indicated that he was not
24 paying much attention to what my client was saying. It was
25 just rambling, and if you recall, I asked him, he could have

1 been saying I don't live here, and he said I didn't recall
2 anything else he was saying, but he was rambling on for the
3 fifteen minute ride. He indicated it was a fifteen minute
4 ride, but the only thing he heard was at the very end drugs is
5 a lifestyle for me. Ironical that's the only thing he's going
6 to remember, but he doesn't remember anything else. He
7 doesn't recall anything else that my client allegedly said.

8 We submit to you that never was said. They had chatter
9 on the radio. Officer Horton, with good intentions, just
10 probably misinterpreted the rambling he was hearing. My
11 client may have been saying, hey man, why are you getting me
12 in this? I shouldn't be in this. The officer indicated to
13 the best of his knowledge that he did not recall what was
14 being said in the back.

15 The radio chatter that goes on on a police radio, the
16 dispatcher, and the fact that there is a glass partition,
17 plexi-glass if you want to call it that, between the front
18 seat and back seat that they acknowledge is for security, you
19 can't really place a whole lot of trust and faith in what
20 Officer Horton recalled four and a half years ago. And you
21 really can't place a whole lot of faith and trust in what
22 Officer Dubose recalls four and a half years ago, except he
23 did say my client indicated to him when he came to him, he
24 cooperated and he indicated he did not live there.

25 And the last witness called, which I think was the star

1 of the show, Kimberly Gibbs. This was the star witness for
2 the State. She indicated that sometimes -- a great deal of
3 times, my client lives with his mother. More often than not,
4 she stays there. She indicated that she had misled her
5 superiors at the post office and, in fact, she admits she
6 lied. She lied about delivering the mail and doing her job,
7 and it's not that all of a leap to go from she probably lied
8 about whose drugs these are or, more importantly, these ain't
9 my drugs.

10 If you also recall when she was on the stand that she
11 indicated that she was testifying in hopes of consideration.
12 What does that mean? If you recall, I asked do you hope to
13 gain something. Do you hope for some reward? You are facing
14 these same charges. She's not sitting over there at the
15 table. Ask yourself that. What do you think is going to
16 happen to her charges? I submit to you that this is the,
17 quote unquote, reason. Sacrifice your husband, who you told
18 sometimes lives there, sometimes don't, in exchange perhaps --
19 we don't know, but perhaps these charges for her will
20 disappear. So she has a great, great, great incentive to get
21 up here and say, oh yeah, these drugs don't belong to me.
22 They had to belong to him.

23 She's already acknowledged that she lied to the postal
24 service, who she was working for. She acknowledged that. She
25 said that sometimes he doesn't stay there. She says that on

1 the stand.

2 Now, you also heard some indications about some things
3 after my client testified, and he didn't have to testify. He
4 chose to testify. He didn't have to testify. He chose to
5 testify because he wanted to tell his side of the story.

6 Officer Dubose comes up afterwards and talks about these
7 wild accusations and there's been no proof of that. There was
8 no proof brought in here to support that. So what you have is
9 just whether or not on December 23rd, 2008, did these things --
10 these drugs that you're going to have, did these things belong
11 to Clifton or did they belong to Kimberly? And that's the
12 unwritten, unsaid, unspoken thing. These things belonged to
13 Kimberly and whoever else she may have been involved with.

14 Now, you heard me talk about this at the very beginning
15 that the State has the burden of proof. We don't have to
16 prove anything. They have to prove beyond a reasonable doubt.
17 They have to get the ball into the end zone, to use my
18 football analogy. They've got to show and prove and, ladies
19 and gentlemen, whenever I hear a prosecutor say use your
20 common sense, I always say that's a code word for help us out.
21 We've got a flaw in our case. We've got a hole in our case.
22 Help us out. Plug in the gap here.

23 That's not your job. Your job is to evaluate the
24 evidence that they present to you, and we submit to you in
25 your evaluation you prove they did not meet their burden and

1 that's the burden my client Clifton has by being a citizen in
2 this country. We submit the State of South Carolina through
3 all the people sitting at the table did not meet their burden
4 and that you only have one conclusion, not guilty. One
5 conclusion, not guilty. They can't prove that Clifton stayed
6 there. So, ladies and gentlemen, we ask and we strongly feel
7 that you will come back with one verdict, not guilty. Thank
8 you.

9 THE COURT: Thank you, Mr. Brooks. Mr. Meadors?

10 MR. MEADORS: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. MEADORS: Mr. Brown, Mr. Brooks, Mr. Foreman, ladies
13 and gentlemen, good morning. Good morning.

14 THE JURY: Good morning.

15 MR. MEADORS: I, too, want to thank you for being here.
16 Thank you for the attention you've given to Mr. Brooks and
17 myself and Mr. Brown. Thank you. This may be one of the last
18 cases in this courtroom, as His Honor said. I don't know.

19 And I don't get to say this all the time and I love
20 saying it. You are pure. I like that. You're pure. That's
21 what's beautiful about this system. Y'all are pure. You're
22 pure because you're jurors. You're like Lady Justice with
23 that scales that you see that has the blindfold on and you're
24 holding it and you listen to the evidence and you decide what
25 the truth is and what's credible. You're pure. That's why

1 it's a great system. That's why other countries hate our
2 system because it is pure because y'all come in and decide
3 what the truth is.

4 His Honor is the law. He is the law in this courtroom.
5 He is the law. He tells us what the law is, but you're also a
6 judge. You're the judge of the facts. You're like Lady
7 Justice. Now, you'll pull that little blindfold down and
8 you'll look up here now and see the demeanor of the witnesses
9 and I think you saw it in this case and you'll make decisions
10 on what folks say and their demeanor and how they act. You
11 use that deciding what's credible and believable, but that's
12 all every case is about, credibility and believability. Every
13 case is about that and it was in this case. And I think we've
14 proved beyond a reasonable doubt. I think we've gone beyond
15 that. It's not our burden, but I think the evidence has
16 proven that. But thank you for being here. Thank you for
17 listening.

18 Selling drugs is a lifestyle to me. Selling drugs is a
19 lifestyle to me. I didn't say it. The officers didn't say
20 it. He said it and that's what this trial is about. Well,
21 what's a lifestyle? It's a -- it's actually a manner of
22 living, a routine of everyday life. That's his lifestyle.

23 And the issue here today for you is, is that his
24 lifestyle. Was he in constructive possession of the drugs?
25 Kimberly -- and I'm going to talk to you about her in a

1 minute. She took the stand under a lot of pressure, I'll tell
2 you. She gets a call the night before from her husband, the
3 defendant who is on trial. You tell me she's not under
4 pressure. Those weren't her drugs. He even said on the stand
5 those weren't her drugs, but if somehow you believe she -- she
6 knew about them, they can both be guilty. That's not an
7 issue. That's a smoke screen over there. Both of them can be
8 in constructive possession of it. Don't let that throw you
9 off.

10 I submit to you there's no credible evidence at all that
11 those are her drugs. I submit to you when officers came to
12 the door, that's when he put the drugs right on top of her
13 purse. Who puts their drugs lying right on top of their
14 purse? And a marijuana cigarette and she says she doesn't
15 even smoke, but it's right on top. Who does that? And she
16 said, yeah, search. I don't care if you search.

17 That's what you'll decide, but if somehow you believe she
18 might have known about it, too, she can be guilty, too.
19 That's doesn't mean he's not guilty. But I submit to you
20 they're his. Don't let that -- that's not a reasonable doubt.
21 Don't let it.

22 Ladies and gentlemen, Mr. -- Mr. Brown -- and I'm going
23 to briefly go over it. You know it's a possession,
24 constructive. This isn't a mere presence case, as His Honor
25 may charge you on that. A mere presence case where I'm just

1 here where drugs are and just the fact I'm here means you
2 can't convict me. Well, this isn't a mere presence case.
3 What we have to show is, okay, a person is here, the drugs are
4 here. Has he got any ties to this place where the drugs are?
5 Does he have dominion and control over the place? Yes, ma'am.
6 Yes, sir. It's his house.

7 Oh, he's going to try to distance himself from it. Right
8 off the bat, I don't live here. I don't live here. It's like
9 a young child. I didn't do that. I don't -- why is he saying
10 that I don't live here? It's his wife and kid. He knows the
11 drugs are there. I mean that's actually -- I thought about it
12 this morning -- a pretty good act. I don't live here. We got
13 your wife and kid here and you're immediately trying to put up
14 a defense, ultimately so y'all will try to think that's a
15 reasonable doubt. We submit it's not.

16 Yes, sir, you do live here. Number one, you're here.
17 Number two, you're on the lease. Your child is here. Your
18 hat is on the bed. This is where you sleep. You are here.
19 This is your house. You do have dominion and control. This
20 is where you stay and take care of your baby, and we submit
21 through inference deal drugs during the day where you're
22 taking care of your child. This is your house. You do live
23 here. You're going to try to distance yourself from it, but
24 you can't. Constructive possession, dominion and control.

25 Now, y'all think about this. I don't care what he says

1 about common sense. Common sense just is involved in life.
2 They go to San Diego and they're living in San Diego. He
3 follows his wife, which is good. He lives with her in San
4 Diego with his child when she's working out there in the Navy,
5 climbing these poles and in the bucket working. He's living
6 there and he goes with her and they come back. He's living
7 here with her. But then he's going to say when they find
8 drugs, I don't live here. Well, he went to San Diego with his
9 wife and child, but now he comes back here and they find
10 drugs, I don't live here. Credibility and believability.

11 Now, once you get past that hurdle, which we submit is
12 not a hurdle, it's a little step there, then possession with
13 intent to distribute cocaine. The law says and His Honor will
14 tell you over a gram there is an inference. See, we have to
15 prove intent, possession with intent to distribute. You can't
16 open somebody's mind and look in their brain and see what
17 their intent is. That's impossible. So you look at their
18 actions or inactions, what they do, and the law says if
19 there's a certain amount, over a gram, possession with intent
20 to distribute cocaine in this case, and I believe the
21 testimony would be 3.35 grams actually of cocaine, the law
22 says it's permissible for you to infer intent to distribute.

23 Clearly, it's in the house the evidence shows. Clearly,
24 he has dominion and control of it. Clearly, those are his
25 drugs. Clearly, that's his job, \$1,355 in his pocket and all

1 he can say is, well, I got in an accident, but I'm not sure
2 where it was. Infer it, respectfully. It's over a gram. You
3 can infer intent to distribute. That's what the law says.
4 Infer it. It's so much that it's intended to distribute.
5 That's what the law says. It's a lifestyle.

6 Now, trafficking. The difference between that and PWID,
7 there is still the inference. It's over a gram. At this
8 point, the total in crack cocaine was 14.03 grams. Again,
9 respectfully, infer it for the difference between trafficking
10 and intent to distribute is strictly based on the amount.
11 It's strictly on the amount. In this case, 10 to 28 grams of
12 crack cocaine, trafficking.

13 I think as Mr. Brown said in his opening, it doesn't have
14 to be actually trafficking and actually going somewhere and
15 taking the drugs. It's just the amount wherever it's found.
16 Possession, possession with intent to distribute, trafficking.

17 And finally, the manufacturing. I think common sense
18 might come into that. What's manufacturing? Producing,
19 making something. Manufacturing jobs, manufacturing clothes?
20 No, sir. In this case, the lifestyle of manufacturing drugs,
21 and I'm not trying to be mean in saying that, but it is what
22 it is. Manufacturing, making, producing there in that house,
23 his business at [REDACTED] Mattison Avenue. That's what this case is
24 about, his business he ran from [REDACTED] Mattison, less than two
25 and a half miles from where you're sitting right now.

1 Routine for everyday life. Baking soda, razors, \$1,355.
2 I'm older than most of y'all, but all of y'all may not
3 remember the Beverly Hillbillies, but Jed Clampett had some
4 walking around money and I'm telling you the only people that
5 have walking around money are Jed Clampett and drug dealers
6 and this isn't the Beverly Hillbillies. \$1,355 cash, where
7 did it come from? And he on the stand that they wanted to
8 check for some marked money. Where did it come from? It came
9 from his business. His words, it came from his lifestyle.

10 Benzocaine. You've heard the officer testify that's used
11 to cut to make cocaine crack and then you try to produce some
12 more to sell it. Manufacturing, benzocaine, baking soda, all
13 in the house. He's working out of his home. It's not a
14 daycare business. I wish the child hadn't been there.

15 I mean he'll distance himself from the house. I submit
16 to you he'll distance himself and try to put it on Kimberly,
17 although if you think she did it, that doesn't mean he's not
18 guilty. She's still got to face her day. She still has to
19 face her day, but he puts it in there I submit to you based on
20 her actions and the way she told the officers check it, and
21 he's going to try to blame his wife, try to call her the night
22 before to put pressure on her. Maybe that's what he wants us
23 to believe, ladies and gentlemen.

24 Did she not deliver some mail? She said I was going to
25 deliver it. It was a few days she didn't do it. You know, my

1 granddaddy was a mail man and I don't like that, but we
2 brought it out. Does that mean that she's a drug dealer?
3 That she's the one who is running this? No. She's out
4 working. She was in the Navy and then worked at the post
5 office. She said I was going to bring this mail back. I just
6 didn't. I was going to do it. But you see her demeanor up
7 here and watch her. Did you see her? Was she under pressure?

8 And then what's important about her testimony? Well,
9 who's got access to this house? Who lives here? I do, the
10 child does, and he does. Anybody else living in your house?
11 No, sir. You let other men come in your house? You let other
12 men come in your house? You're married and got your child.
13 No, sir. Are those your drugs? No, sir. Are they your
14 child's? Is he cooking? No, sir.

15 See, sometimes all circumstantial evidence is just as
16 strong and the judge will tell you it's just as strong as
17 direct evidence. It's just as powerful. Proof of a fact
18 indicating a fact and a fact indicating the existence of
19 another fact. Direct evidence is what you see, you feel, you
20 hear, and you touch with one of your senses and you come in
21 here and testify to it. Circumstantial evidence is proof of a
22 fact and another fact that indicates the existence of a fact.

23 Nobody else was in that house and he gets up here on his
24 credibility and believability and what it all boils down to
25 and I'll say this, but I'm mixing it all up, well, Mr. Gibbs,

1 who else was in that house? Well, she had some boyfriends and
2 friends that would just come over. You let them into your
3 house? Well, they'll just be over there. Who are they?
4 They're ghosts. There aren't other people. He couldn't name
5 anybody. He, again, distanced himself from the drugs -- from
6 his drugs. Kimberly's? He kept saying it was Kimberly's,
7 right here to the end, all the way to the end distanced
8 himself. It's time to take responsibility today. Time to
9 take responsibility today.

10 I've talked to you about PWID, the inference, the razors,
11 the baggies. He's got money. I don't think it's a bad thing
12 he doesn't have a job, but he does have a job. It's not a
13 legal job. The benzocaine, the baking soda, the
14 manufacturing. I don't know how much more we could offer on
15 manufacturing. There's a measuring bowl that's got residue on
16 it, cocaine residue. There's a picture of the bottom of a
17 microwave that's got residue. There's razors. There's baking
18 soda that's used. I mean there's crack. There's cocaine and
19 crack. Everything is there. That's what manufacturing is.
20 It's right there. Manufacturing, that's what it is. There's
21 no other way to prove it.

22 Go back there and touch it. Look at it. Feel it. Pass
23 it around. This is what he used to make cocaine into crack
24 and then distribute it on the streets less than two and a half
25 miles from right here. Go back and look at this.

1 Kimberly said she didn't make him sandwiches. We've got
2 these sandwich bags. You know, you might say is that a small
3 thing. Well, you know, if that's all you had, it might be.
4 You know, if that's all you had was just some baggies, okay,
5 but you got baggies, she doesn't make sandwiches. What were
6 those baggies used for? Intent to distribute. He puts the
7 crack in there to sell. That's good evidence. Take that with
8 the baking soda. Take that with the benzocaine. Take that
9 with the razors. Take it with the microwave. A little old
10 microwave, but you know what? That's also circumstantial
11 evidence. You start putting it all together, you can't make
12 it up. That's what they're cooking it in. That's what he
13 cooked it in. 11.55 -- 11.55 grams of crack in the kitchen
14 and the purse.

15 I want to talk about the -- I don't want to talk longer.
16 I'm about through. Credibility and believability, I want to
17 end it here on that because in every trial like I told you --
18 and let me tell you a bit about beyond a reasonable doubt.
19 Just because there's not a confession, because there rarely
20 is, that's not a reasonable doubt. If everything -- if it
21 required everything, the confession, then we could never -- if
22 that was the burden, beyond all doubt, the judge -- as the
23 judge said about next door, we don't need to go next door. We
24 could close this courthouse down because we wouldn't need a
25 courthouse, but that's not the law and the judge will tell you

1 that.

2 Some fine attorneys try to use reasonable doubt because
3 they ain't got anything else, especially on a strong case.
4 Well, they didn't prove the case. We're talking about common
5 sense. Use some common sense. When you don't have strong --
6 oh, it's just a reasonable doubt case trying to get y'all
7 confused. There's no doubt in this case, no reasonable doubt,
8 and the judge will tell you we, the State, do not have to
9 prove something beyond all doubt. That's not the law. Don't
10 get back there and say, well, he didn't say it. He didn't do
11 this. That's not a reasonable doubt. You look at all the
12 facts and if you do, are you firmly convinced that those were
13 his drugs and there was possession with intent to distribute
14 and trafficking and manufacturing? That's enough, I'm
15 convinced. That's the law.

16 Credibility and believability, and Mr. Brooks, who is a
17 fine lawyer and person, talked about -- spent a good bit of
18 time talking about the officer who transported him, Officer
19 Horton, because that is significant, and you saw his demeanor
20 and what I don't -- I guess he's trying to imply these
21 officers are trying to frame Mr. Gibbs. I don't know. They
22 didn't put the drugs there.

23 But it -- but it hit me if they were trying to frame him,
24 don't you think that he would have said, you know, those are
25 my drugs. Those are my drugs and just go -- if you're going

1 to do it, just -- just frame him. Just say it. Say, you
2 know, yeah, those are my drugs. I'm cooking it. If you're
3 going to do something wrong, do it right I guess is one way to
4 say it. If you're going to frame him, I guess that's what he
5 said, but that's what makes it credible and what makes it
6 pure.

7 They're going along and he says they're talking and Mr.
8 -- Mr. Gibbs states on the stand, well, my brother knew one of
9 the folks up there, and then he says selling drugs is a
10 lifestyle for me. This guy's lifestyle reeks of that. And he
11 looked and he said did he say that, and what does he do? Mr.
12 Brooks tried to say how could you remember that four years
13 ago. Well, he goes back to Wayne Dubose right -- right after
14 he takes him to jail and he says this is what he said. Pretty
15 significant? Yes.

16 In his line of business as a police officer, is he going
17 to remember something like that? Yeah. So he goes and tells
18 him and what does Wayne Dubose do? He documents it. Remember
19 I asked him that at the time or near the time he did it and he
20 documented it. That's what he said. Not that those are my
21 drugs, I did all that. No. This is clearly what he said.

22 And you know what else is credible? When I asked Mr.
23 Gibbs do you remember when Mr. Dubose came and asked you that,
24 yeah, I remember when he asked me that. He said that, ladies
25 and gentlemen. He says he denied it to Mr. Dubose, but he

1 remembers Dubose asking him. I mean can you make that up?
2 And he says then what about this and his initial response was
3 I got to take care of my family. Not that way. I got kids.
4 You support kids. You don't support them with illegal
5 activity. That's wrong. That's not good for the kids or
6 anybody.

7 And then what did he say? Credibility, believability.
8 He's talking to him and these things -- they're not trying to
9 say, oh yeah, these are my drugs. He says, well, she must be
10 sleeping -- it must be somebody else and they must be hers.
11 So he's there. Again, this is natural, me, me protecting me,
12 me. Well, it must be my wife's. But he didn't know whose.
13 Well, yeah, he said there were other people. I did tell him
14 that. There must have been other people staying there. There
15 weren't other people staying there. Self-preservation, self-
16 protection so he can continue his lifestyle. And I don't mean
17 that mean. That's the facts here. That's the defendant.
18 That's the defendant speaking. That's not me. So he can
19 continue his lifestyle.

20 Ladies and gentlemen, I forgot one other thing with the
21 lifestyle of selling drugs and in those instances where he
22 said I don't live in the house, trying to convince us of that,
23 oh, I'm not even there eighty-five percent of the time. I'm
24 not there. Well, you were there on October. You were there
25 on November. You were there on December. And that goes to

1 refute and show, yes, you were there. You can't distance
2 yourself. You opened the door to that. You sure were there
3 two times or whatever before then, weren't you, when
4 Investigator Dubose came by? Yes, sir. You can't distance
5 yourself.

6 Possession with intent to distribute, intent. Ladies and
7 gentlemen, the lifestyle, that's my lifestyle.

8 (Whereupon, counsel displays State's Exhibit Number 31,
9 the box containing two guns.)

10 MR. MEADORS: Well, I don't know about these. I don't
11 know about these. And what did Kimberly say? I'm sorry, I
12 just remembered this. Where is that picture? Were y'all
13 looking there when these pictures of bullets and this and the
14 little blue tray? I said where was that? Well, that was in a
15 closet. What do you know about it? Well, there's certain
16 places I wasn't supposed to look. Those were his things.
17 That's one of them. That's one of them.

18 And finally, go look at the lease. He's on there with
19 his son. Dominion and control. The consent she signed, read
20 it and look at it at what they recovered. She didn't have to.
21 Consent to Search, look at it.

22 Thank you for being here. Thank you for your attention.
23 We respectfully -- respectfully -- respectfully ask you to
24 consider all the evidence and when you do to come back with a
25 verdict that speaks the truth because that's what Lady Justice

1 is supposed to do. That's what she's supposed to do. That's
2 what you're supposed to do and you will. You took that oath
3 Mr. Bradley gave you to tell the truth, and the truth in this
4 case -- the truth in this case is that the defendant, Clifton
5 Gibbs, possessed with intent to distribute cocaine,
6 manufactured cocaine, and trafficked cocaine, and that was his
7 lifestyle and he told you he had dominion and control over it.

8 And folks, and I asked him this. I said this is illegal,
9 isn't it? It's wrong, isn't it? It is. It leads -- it leads
10 to destructions of lives. His lifestyle leads to destructions
11 of lives. Putting that product on the street leads to
12 destructions of lives. That's the lifestyle and, ladies and
13 gentlemen, we respectfully submit that lifestyle should stop
14 here today now in this courtroom. Thank you.

15 THE COURT: Thank you. Please secure the courtroom.
16 Thank you.

17 CHARGE ON THE LAW BY THE COURT

18 THE COURT: All right, ladies and gentlemen, all of the
19 testimony and the evidence to be presented to you in this case
20 has now been presented. The attorneys have given you their
21 closing arguments. Now, it's the time of the trial when I
22 will charge you with the law that is to be applied in this
23 case.

24 Ladies and gentlemen, I remind you that during this trial
25 you and I have certain duties to perform. As the trial judge,

1 it is my responsibility to preside over the trial of this case
2 and I also have the duty to rule on the admissibility of the
3 evidence that's been offered during this trial. You are to
4 consider only the competent evidence before you. If there was
5 any testimony ordered stricken from the record in this case
6 during this trial, you must disregard that testimony. You're
7 to consider only the testimony which has been presented from
8 this witness stand and any exhibits which have been made a
9 part of the record in this case any -- and any stipulations of
10 counsel.

11 I have the additional duty to charge you the law that is
12 applicable to this case. As the presiding judge, I am the
13 sole judge of the law and it is your duty as jurors to accept
14 and apply the law exactly as I state it to you. If you have
15 an idea as to what the law is or what the law ought to be and
16 it does not agree with what I tell you now that the law is,
17 you must abandon that idea because you're sworn to uphold and
18 accept the law and apply the law exactly as I state it to you.

19 In every case tried in this court before a jury, you the
20 jury become the sole and exclusive judges of the facts, and as
21 the trial judge, I cannot intimate, state, comment, or make
22 any statement to a trial jury about the facts of the case
23 because you are the jury. You are the sole judges of the
24 facts and you are not to infer upon what I have said during
25 the progress of the trial and ruling upon the admissibility of

1 evidence or otherwise or anything that I say now during the
2 course of these instructions that I have any opinion about the
3 facts in this case. The law simply does not allow me to have
4 an opinion about the facts in this case. This is a matter
5 solely for you the jury to determine, and as jurors it is your
6 duty to determine the effect, the value, the weight of the
7 evidence as presented during this trial.

8 Now, ladies and gentlemen, the indictment in this case
9 alleges three offenses against the defendant, Leroy Clifton
10 Gibbs, III. Indictment 2011-GS-43-1125, trafficking cocaine
11 base more than 10 grams but less than 28 grams, manufacturing
12 cocaine base, and possession with intent to distribute
13 cocaine.

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

22 Now, ladies and gentlemen, the defendant has pled not
23 guilty to these charges in the indictment and that plea puts
24 the burden on the State to prove the defendant guilty. A
25 person charged with committing a criminal offense in South

1 Carolina is never required to prove his innocence. I charge
2 you that this is an important rule of law that the defendant
3 in a criminal trial, no matter how serious the charge is, will
4 always be presumed to be innocent of the crime for which the
5 indictment was issued unless guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.

7 This presumption of innocence does not end when you begin
8 your deliberations, but it accompanies the defendant
9 throughout this trial until you reach a verdict of guilt based
10 on evidence satisfying you of that guilt beyond a reasonable
11 doubt. The presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the defendant
13 which remains with the defendant until it has been stripped
14 from the defendant by evidence satisfying you of the
15 defendant's guilt beyond a reasonable doubt.

16 The presumption of innocence is not a mere legal theory.
17 It is not just a legal phrase that we use, but it's a
18 substantial right to which every defendant is entitled to
19 unless you the jury are satisfied by the evidence of the
20 defendant's guilt beyond a reasonable doubt.

21 Now, ladies and gentlemen, that brings up a question.
22 What is reasonable doubt in the law? A reasonable doubt is
23 the kind of doubt that would cause a reasonable person to
24 hesitate to act. The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt.

1 Some of you may have served as jurors in civil cases
2 where you're told that it is only necessary to prove a fact
3 more likely true than not true, such as by the greater weight
4 or the preponderance of the evidence. In criminal cases,
5 however, the State's proof must be more powerful than that.
6 It must be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt. Ladies and
9 gentlemen, there are very few things in this world that we
10 know with absolute certainty, and in criminal cases the law
11 does not require proof that overcomes every possible doubt.

12 If based upon your consideration of the evidence you are
13 firmly convinced that the defendant is guilty of the crimes
14 charged, you must find the defendant guilty. If, on the other
15 hand, you think there's a real possibility that the defendant
16 is not guilty, you must give the defendant the benefit of the
17 doubt and find him not guilty.

18 Now, ladies and gentlemen, there are two types of
19 evidence which are generally presented during a trial.
20 There's direct evidence and there's circumstantial evidence.

21 Direct evidence is the testimony of a person who claims
22 to have actual knowledge of a fact, such as an eyewitness. It
23 is evidence that immediately establishes the main fact to be
24 proven.

25 Circumstantial evidence is proof of a chain of facts and

1 circumstances indicating the existence of a fact. It is
2 evidence that immediately establishes collateral facts from
3 which the main fact may be inferred, and circumstantial
4 evidence is based on inference and not on personal knowledge
5 or observation.

6 The law makes no absolutely no distinction between the
7 weight or value to be given to either direct or circumstantial
8 evidence, nor is a greater degree of certainty required for
9 circumstantial evidence than of direct evidence. Ladies and
10 gentlemen, you should weigh all the evidence in this case and
11 after weighing all the evidence if you are not convinced of
12 the guilt of the defendant beyond a reasonable doubt, then you
13 must find the defendant not guilty.

14 Now, ladies and gentlemen, necessarily you must determine
15 the credibility of witnesses who have testified in this case.
16 Credibility simply means believability, and it becomes your
17 duty as jurors to analyze and to evaluate the evidence and
18 determine which evidence convinces you of its truth.

19 In determining the believability of witnesses who have
20 testified in this case, you may believe one witness over
21 several witnesses or several witnesses over one witness. You
22 may believe a part of the testimony of a witness and reject
23 the remaining parts of the testimony of that same witness.
24 You may believe the testimony of a witness in its entirety or
25 reject the testimony of a witness in its entirety. You may

1 consider whether any witness has exhibited to you any
2 interest, bias, prejudice or other motive in this case. You
3 may also consider the appearance and the manner of a witness
4 while on this witness stand.

5 Ladies and gentlemen, the rules of evidence ordinarily do
6 not permit a witness to testify to opinions or conclusions.
7 There's an exception to this -- to the rule that exists to the
8 witnesses we call expert witnesses. A witness who by
9 education and experience has become expert in some art,
10 science, profession or calling may state an opinion as to
11 relevant and material matters in which the witness claims to
12 be an expert, and they can also state the reasons for the
13 opinion.

14 You should consider any expert opinion -- opinion
15 received in evidence in this case like any other evidence.
16 Give it the weight that you think it deserves, and if you
17 decide that the opinion of an expert is not based on
18 sufficient education and experience, or if you conclude that
19 the reasons given in support of the opinion are not sound, or
20 that the opinion is outweighed by other evidence, you may
21 disregard the opinion entirely, and an expert witness'
22 testimony is to be given no greater weight than that of any
23 other witness simply because the witness is an expert.
24 Further, you are not required to accept an expert's opinion
25 even though it is not contradicted.

1 Now, ladies and gentlemen, the defendant is charged with
2 trafficking cocaine base. The State must prove beyond a
3 reasonable doubt that the defendant knowingly sold, delivered,
4 purchased, brought into this State, provided financial
5 assistance, or otherwise aided, abetted, attempted, or
6 conspired to sell, deliver, purchase, or bring into this
7 State, or was knowingly in actual or constructive possession,
8 or knowingly attempted to become in actual or constructive
9 possession of cocaine base. In order to meet their burden
10 with regard to the charge of trafficking, the State must also
11 prove beyond a reasonable doubt that the amount of the cocaine
12 base or any mixture containing cocaine base was 10 grams or
13 more, but less than 28 grams.

14 The defendant is charged with manufacturing cocaine base.
15 The State must prove beyond a reasonable doubt that the
16 defendant knowingly manufactured or cultivated or otherwise
17 aided, abetted, attempted, or conspired to manufacture or
18 cultivate cocaine base. And manufacture means to produce,
19 prepare, convert, process, plant, cultivate, grow, or harvest
20 a drug naturally or chemically. Manufacturing includes any
21 packing, packaging or repackaging of the drug, or labelling or
22 relabeling of the drugs' container.

23 The defendant is also charged with possession with intent
24 to distribute cocaine. The State must prove beyond a
25 reasonable doubt that the defendant possessed cocaine with the

1 intent to distribute. The State must also prove beyond a
2 reasonable doubt that the defendant intended to distribute the
3 cocaine. Distribute means to deliver other -- to deliver
4 other than by administering or dispensing a drug. Intent may
5 be shown by acts and conduct of the defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent. And in determining whether the defendant had
8 the intent to distribute the cocaine, you may consider
9 circumstances surrounding the defendant's alleged possession.
10 You may consider the amount of the substance alleged to have
11 been possessed, the manner in which the alleged -- allegedly
12 possessed, the place where it was allegedly possessed, and
13 other factors which you consider to be important.

14 You must find that the defendant did not intend to have
15 the cocaine solely for his own use. Possession of more than
16 10 grams of cocaine creates an inference that the defendant --
17 10 grains of cocaine creates an inference that the defendant
18 possessed the cocaine with the intent to distribute. This
19 inference does not relieve the State from proving beyond a
20 reasonable doubt that the defendant had the intent to
21 distribute. It is simply an evidentiary fact to be taken in
22 consideration by you along with the other evidence in this
23 case and to be given the weight you decide it should have.

24 Now, ladies and gentlemen, to prove possession the State
25 must prove beyond a reasonable doubt that the defendant had

1 both power and the intent to control the disposition or use of
2 the drugs. Possession may either -- may either be actual or
3 constructive. Actual possession means that the drugs were in
4 the actual physical custody of the defendant. Constructive
5 possession means that the defendant had dominion and control
6 or the right to exercise dominion or control over either the
7 drugs themselves or the property on which the drugs were
8 found.

9 Mere presence at the scene where the drugs were found is
10 not enough to prove possession, and the defendant's knowledge
11 and possession may be inferred when a substance is found on
12 property under the defendant's control. However, this
13 inference is simply an evidentiary fact to be taken into
14 consideration by you along with the other evidence in this
15 case and may be given the weight that you decide that it
16 should have.

17 Now, ladies and gentlemen, two or more persons may have
18 joint possession of the drugs. In order to establish criminal
19 liability, criminal intent is required. For example, a mental
20 state is required to be proven by the State of a particular
21 crime might be purpose, intent, knowledge, recklessness, or
22 criminal negligence. Criminal intent must be proven by the
23 State beyond a reasonable doubt.

24 Criminal intent is always a matter that must be
25 determined by you the jury from the circumstances surrounding

1 the situation. There is no way to prove intent to a
2 mathematical certainty and there is no way medical science can
3 dissect a person's brain and determine what the person had in
4 mind. So the law says that criminal intent may be inferred
5 from the circumstances shown to have existed. This is how you
6 make a determination of whether or not the element required --
7 requiring intent was present.

8 It is not necessary to establish intent by direct and
9 positive evidence, but intent may be established by inference
10 in the same way as any other facts by taking into
11 consideration the acts of parties and all the facts and
12 circumstances of the case. And criminal intent is a mental
13 state, a conscious wrong -- a conscious wrongdoing. It is up
14 to you the jury to determine what the defendant intended to do
15 based on the circumstances shown to have existed. And
16 criminal intent can arise from the actions or a failure to
17 act. It may arise from negligence, recklessness, or an
18 indifference to duty or to consequences that is considered by
19 the law to be the equivalent of criminal intent.

20 Ladies and gentlemen, there are two possible verdicts
21 which you may find in this case on each of the three charges
22 of the indictment under 2011-GS-1125, trafficking cocaine base
23 over 10 grams but under 28 grams, manufacturing cocaine base,
24 and possession with intent to distribute. On each one of
25 those, it would be not guilty or guilty and, ladies and

1 gentlemen, there is no significance whatsoever in the order in
2 which I state the possible verdict. It's simply that one must
3 be stated first.

4 Each charge is a separate and distinct offense. You must
5 decide each count of the indictment separately on the evidence
6 and the law applicable to it, uninfluenced by your decision as
7 to any other count in the indictment. The defendant may be
8 convicted or acquitted on any or all of the offenses charged.
9 You will be asked to write on your verdict form on each one
10 guilty or not guilty to trafficking cocaine base, as to
11 manufacturing, and as to possession with intent to distribute.

12 Ladies and gentlemen, your verdict must be unanimous. In
13 other words, all twelve of you must agree on the verdict, and
14 your decision must not be based on sympathy, compassion,
15 prejudice, emotion, or any other consideration not in evidence
16 in this case.

17 Mr. Foreperson, when the jury agrees on the verdict, you
18 will write the verdict on this verdict form, sign your name,
19 and then knock on the jury room door and inform the bailiff
20 that y'all have reached a verdict, guilty or not guilty, and
21 at that time we will see you back into this courtroom for
22 publication of your verdict.

23 Ladies and gentlemen, I'm going to ask that you go to
24 your jury room, but please do not begin your deliberations
25 until you have been instructed to do so. There are some

1 matters which we still have to take up here in court. So
2 thank you very much, ladies and gentlemen.

3 (Whereupon, the jury exits the courtroom at 10:40 a.m.
4 with the exception of the alternate juror.)

5 THE COURT: Are there any objections to the charge that
6 was given from the State?

7 MR. BROWN: No additions or exceptions, Your Honor.

8 THE COURT: Any exceptions for the defense?

9 MR. BROOKS: None from us, Judge.

10 THE COURT: All right. Thank you. Here's the verdict
11 form. If you could, gather all the evidence. Y'all want to
12 make sure everything gets in. I'm going to go ahead and
13 release the alternate. Court will be at ease pending the call
14 of the jury.

15 (Whereupon, the verdict form and evidence are checked and
16 then delivered to the jury room.)

17 (Whereupon, the jury deliberations begin at 10:43 a.m.)

18 (Whereupon, there is a break in the proceedings from
19 10:43 a.m. until 11:08 a.m.)

20 THE COURT: We've got a couple questions. All right.

21 The jury has come back with three questions from Mr. Roberts,
22 the foreman.

23 Number one: Was the audio and video of the sale of drugs
24 valid evidence?

25 MR. MEADORS: Repeat that again, sir? I'm sorry.

1 THE COURT: Was the audio and video of the sale of drugs
2 valid evidence? I think they're talking about Mr. Dubose's
3 sale.

4 MR. MEADORS: I ---

5 THE COURT: I think the answer to that is not in
6 evidence.

7 MR. MEADORS: Well, I think Mr. Brooks asked him about a
8 video, not -- we didn't even mention it, and that was his
9 response to his question and he said, yes, there was.

10 MR. BROOKS: I think, Judge, the appropriate answer is
11 just what you said. It's not in evidence.

12 THE COURT: It's not in evidence.

13 MR. MEADORS: But I'm saying I guess the answer to the
14 question is it valid evidence, well, it is. I mean he said
15 it's on video. He didn't follow up on that like, you know,
16 where is it, anything.

17 THE COURT: I guess it would be, but it's not in
18 evidence.

19 MR. BROOKS: It's not in evidence.

20 THE COURT: It's not in evidence. Audio and video might
21 be valid evidence, but it's not in evidence for them to view,
22 or this is not for your consideration. I mean it's not.

23 MR. BROOKS: It's not. It was only -- obviously ---

24 THE COURT: No, it is to the extent that it bolsters his
25 testimony that it was audio and videotaped, but that -- that's

1 all he talked about.

2 MR. BROOKS: Yeah. It would have only gone to impeach my
3 client.

4 THE COURT: Or to bolster his testimony.

5 MR. BROOKS: Right, but -- but it's -- but I mean ---

6 THE COURT: I mean Officer Dubose's testimony.

7 MR. BROOKS: I think the appropriate answer to it is just
8 what you said, it's not in evidence. It's not in evidence for
9 their consideration.

10 THE COURT: I think that's the only ---

11 MR. MEADORS: Or either you have all the evidence that
12 you can consider or whatever.

13 THE COURT: Well, let me -- let me go ahead and number
14 two is: Any forensics on any items in question? Fingerprints,
15 specifically on the drug bags, drugs, et cetera. Who drove
16 the Neon? And then number three: Who drove the Neon? So I
17 think the ---

18 MR. MEADORS: Judge, I think -- I think you can answer
19 all of them, you have all the evidence.

20 THE COURT: That's what -- I think one -- one answer is,
21 all the evidence has been presented to you in this case. You
22 must, you know, determine your ---

23 MR. MEADORS: I think that's the fair response.

24 MR. BROOKS: I think -- I think that that answers all
25 three questions.

1 THE COURT: Mm-hmm.

2 MR. BROOKS: Are you going to send a note back to them?

3 THE COURT: I'm going to -- I'll write it on here.

4 MR. BROOKS: Okay.

5 THE COURT: And I'll let you look at it before I send it.

6 MR. BROOKS: Okay. So you're not going to bring them

7 back out?

8 THE COURT: No.

9 MR. BROOKS: Okay.

10 THE COURT: All right. The answer is going to be all of

11 the evidence has been presented. You must make your decision

12 on the evidence as provided. I think that's the whole ---

13 MR. MEADORS: I think that's perfect. Thank you, sir.

14 THE COURT: And W. Jeffrey Young, 5 June 2013 at 11:12

15 a.m.

16 MR. BROOKS: Still at ease, Judge?

17 THE COURT: What?

18 MR. BROOKS: Still at ease?

19 THE COURT: Still at ease.

20 MR. MEADORS: Judge, can I -- can I look at the first

21 one?

22 THE COURT: You can certainly look at it.

23 MR. MEADORS: Not your response. I just want to look at

24 the questions.

25 THE COURT: Yeah.

1 MR. MEADORS: You know -- you know, as I'm thinking about
2 this, you can read number one as saying was it valid evidence
3 the testimony that there was an audio and video. If you find
4 it credible, yes. You see what I'm saying? I mean I think
5 you could read it that way.

6 MR. BROOKS: You could read it all kinds of ways.

7 THE COURT: You could read it a lot of different ways,
8 like should it have come in in the first place is one way.

9 MR. MEADORS: Right.

10 THE COURT: I think the best thing to do is just to say
11 you have all the evidence. You never get all the evidence,
12 you know. You never get it all, you know.

13 MR. MEADORS: I don't worry about it.

14 (Whereupon, the jury note is marked as Court's Exhibit
15 Number 1.)

16 (Whereupon, the response is delivered to the jury room
17 and there is a break in the proceedings from 11:13 a.m.
18 until 11:31 a.m.)

19 THE COURT: All right. The jury has reached a verdict
20 and we're going to bring them back in here for publication of
21 that verdict. Let me remind everybody in the courtroom that
22 there will be no emotional outbreak either way -- either way
23 that the verdict comes back. If you don't think you can do
24 that, I'd advise anyone to leave now because I will hold them
25 in contempt if there is emotional outbreak, cheering or

1 crying. All right, let's bring our jury in.

2 (Whereupon, the jury enters the courtroom at 11:33 a.m.)

3 THE CLERK: We've got all the jurors present in the
4 courtroom, Your Honor.

5 THE COURT: Thank you, Mr. Bradley. Mr. Foreman, I
6 understand the jury has reached a verdict. Is that correct?

7 THE FOREMAN: Yes, sir.

8 THE COURT: Is it unanimous?

9 THE FOREMAN: Yes, it is.

10 THE COURT: Thank you. Would you please pass it to Mr.
11 Bradley?

12 (Whereupon, the verdict is passed to the clerk and then
13 to the Court.)

14 THE COURT: All right. Please publish the verdict.

15 VERDICT OF THE JURY

16 THE CLERK: For the State of South Carolina, County of
17 Sumter, in the Court of General Sessions, Docket Number 2011-
18 GS-43-1125, State of South Carolina versus Leroy Clifton
19 Gibbs, III, defendant.

20 Question number one. As to the charge of trafficking
21 cocaine base more than 10 grams but less than 28 grams, we the
22 jury unanimously find the defendant guilty.

23 As to the charge of manufacturing cocaine base, we the
24 jury unanimously find the defendant guilty.

25 As to the charge of possession with intent to distribute

1 cocaine, we the jury find -- unanimously find the defendant
2 guilty.

3 Signed David Roberts, Foreperson, dated June the 5th,
4 2013. Ladies and gentlemen, is this your verdict? So sayeth
5 y'all by raising your right hand, please.

6 (Whereupon, all jurors raise right hands.)

7 THE CLERK: Thank you very much.

8 THE COURT: Thank you. Does the defense request polling
9 of the jury?

10 MR. BROOKS: Yes, sir.

11 THE COURT: Please poll the jury.

12 THE CLERK: Ladies and gentlemen, when I call your name,
13 please stand and answer two questions for me. Christina
14 Strickland. Is this your verdict and still your verdict?

15 THE JUROR: Yes, sir.

16 THE CLERK: Thank you. You may be seated. Deborah
17 Brunson. Is this your verdict and still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Thank you. Brian Gurlstrom. Is this your
20 verdict and still your verdict?

21 THE JUROR: Yes, sir.

22 THE CLERK: Thank you. Kendrick Lamb. Is this your
23 verdict and still your verdict?

24 THE JUROR: Yes, sir.

25 THE CLERK: Thank you. Paul Shaw, II. Is this your

1 verdict and still your verdict?

2 THE JUROR: Yes, sir.

3 THE CLERK: Thank you. Geneva Hopkins. Is this your
4 verdict and still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Thank you. David Robert, Jr. Is this your
7 verdict and still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Thank you. Sandy Williams. Is this your
10 verdict and still your verdict?

11 THE JUROR: Yes, sir.

12 THE CLERK: Thank you. David Capers. Is this your
13 verdict and still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Thank you. Jessica Margolis. Is this your
16 verdict and still your verdict?

17 THE JUROR: Yes, sir.

18 THE CLERK: Thank you. Fulton Moyd, III. Is this your
19 verdict and still your verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you. Pearlle Baxley. Is this your
22 verdict and still your verdict?

23 THE JUROR: Yes, sir.

24 THE CLERK: Thank you. Your Honor, the jury has been
25 polled and the verdict stands.

1 THE COURT: All right. You all may be seated. Ladies
2 and gentlemen, let me take this opportunity to thank you for
3 your time and for coming here and listening to the evidence
4 and reaching a verdict, and I would have said this no matter
5 what your verdict was, whether it had gone the other way or
6 not, but I appreciate you taking the time out of your lives to
7 come here and resolve this situation. That's what makes this
8 a great system is the fact that y'all come out of your lives.
9 You come with your common sense, however, and therefore you
10 bring it in here and resolve this in protecting our fellow
11 citizen's rights and in this case you found him guilty.

12 Now, ladies and gentlemen, this takes care of your
13 service as jurors. You can't serve for the next year and you
14 don't have to serve if you don't want to for the next three
15 years, but the new courthouse will be so nice that y'all will
16 probably want to go over there. At least the air conditioner
17 will always be working well.

18 Ladies and gentlemen, the amount of money that you will
19 be paid -- is it \$25 a day? Mr. Bradley? Mr. Bradley? Mr.
20 Bradley? Mr. Bradley? Mr. Brooks? How much do they get paid
21 per day? Oh, less than I thought. \$15 a day that you'll get
22 for doing your service. Chicken feed compared to the service
23 that you've done for Sumter County and the State of South
24 Carolina. At least that's what our system is all about. We
25 all pitch in and do something for that.

1 Ladies and gentlemen, they're always coming up with
2 things to try to say what makes America great. Well, it's
3 people like y'all who come in here and are willing to insert
4 themselves into the lives of someone else that make this a
5 great country, and I'd just like to take the opportunity to
6 shake your hands as you leave.

7 Now, we will probably be having another jury trial later
8 on this afternoon, but I'm going to release y'all for the
9 week. So y'all are done for the week. So again, thank you
10 very much and I hope to see you at some point in time over at
11 the new courthouse. Thank you, ladies and gentlemen. If any
12 of you need a work excuse, please let one of the bailiffs know
13 and they'll give you that. All right, thank you.

14 (Whereupon, the jury is released and exits the courtroom
15 at 11:40 a.m.)

16 THE COURT: All right. Any post-trial motions?

17 MR. BROOKS: Yes, sir. Judge, we -- at the close of the
18 State's case and the close of the evidence, we had asked for a
19 mistrial. We already explicitly stated those reasons. We
20 would basically renew that motion, in addition to a motion to
21 set aside the verdict in this case. We just feel that there
22 is not enough evidence to constructively put my client with
23 these drugs and we still stand by that. We respectfully ask
24 the Court to grant those two motions.

25 THE COURT: All right, thank you. Mr. Brown?

1 MR. BROWN: May it please the Court, Your Honor. As it
2 pertains to the mistrial, we've already addressed this matter
3 and we still stand by the position we've argued. The door was
4 opened by Mr. Gibbs getting up on the stand and saying that he
5 did not stay at that residence eighty-five percent of the
6 time. He opened the door for us to go into the issues upon
7 which I'm assuming a mistrial is being requested. And we do
8 agree with your ruling. We would ask you to uphold that
9 ruling as it pertains to the mistrial.

10 As to the setting aside of the verdict, Your Honor,
11 you've heard the testimony. You've heard that there was
12 evidence presented that he made statements acknowledging that
13 he sold drugs. You've heard testimony that -- that put him in
14 the house as living there. He was on the lease. I think
15 there is plenty of evidence available for the jury to make the
16 determination, which they did, that he did constructively
17 possess these substances and that he did intend to distribute
18 them and that he did traffic them and he did manufacture them.

19 Your Honor, I would ask that you uphold the jury's
20 verdict and us move to sentencing.

21 THE COURT: All right. I find that the jury is -- my
22 ruling on that stands. I will not grant a mistrial and I will
23 not overturn the jury's verdict. I think they analyzed the
24 evidence. They asked questions. They went through the
25 process.

1 It's my intention to sentence the defendant at twelve
2 noon. So if you want a little time to think about what you
3 want to say, Mr. Brooks, or have any of his family members
4 speak on his behalf, I'll listen to you at that time. All
5 right, court is in recess until twelve noon.

6 MR. MEADORS: We'll get the paperwork. Thank you.

7 MR. BROWN: Thank you, Your Honor.

8 (Whereupon, there is a break in the proceedings from
9 11:43 a.m. until 12:00 p.m.)

10 MR. BROWN: Judge, my apologies. I'm just having to look
11 up one or two CDR codes.

12 THE COURT: All right. I mean if you'll just work on the
13 paperwork, if you want to go ahead and start?

14 MR. MEADORS: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. MEADORS: I just have his prior record is all I'm
17 going to publish.

18 THE COURT: Yeah. That's what I meant.

19 MR. MEADORS: If it please the Court. Judge, we're about
20 a show a criminal history showing Mr. Gibbs has pled guilty to
21 two counts of distribution of crack, court date November 30th
22 of 1993. He received a seven-year sentence. Simple
23 possession of marijuana in November of '94. Failure to stop
24 for a blue light in 1996. He received three years suspended
25 to two years, and it appears also at the same court -- court

1 date, February 28th of '96, accessory after the fact of armed
2 robbery. He received a fifteen-year suspended to thirteen
3 years and five years' probation.

4 THE COURT: What was his sentence on that?

5 MR. MEADORS: Fifteen. On accessory after it was fifteen
6 suspended to thirteen and five years' probation and then, of
7 course, that was concurrent it appears with failure to stop
8 for a blue light. The rest of it is pending -- pending
9 charges.

10 THE COURT: Okay. Is that correct, Mr. Brooks?

11 MR. BROOKS: Yes, sir.

12 THE COURT: All right, Mr. Brooks?

13 MR. BROOKS: May it please the Court. Judge, as I looked
14 at these offenses that my client has been found guilty of and
15 it is possible for the Court to find mercy and leniency to
16 perhaps give him or sentence my client to the three years that
17 we had negotiated with the Solicitor's Office. I -- having
18 been in front of Your Honor and knowing Your Honor for as long
19 as I have, I got an idea what the Court may be thinking, but I
20 -- I do want to say that.

21 THE COURT: And I believe we looked at that as three to
22 ten years?

23 MR. BROWN: Yes, Your Honor. The trafficking is three to
24 ten. The other two are zero to fifteen offenses and, Your
25 Honor, if I may approach, I'll hand the ---

1 THE COURT: All right.

2 MR. BROWN: --- sentencing sheets. Permission to
3 approach?

4 THE COURT: You may. Thank you.

5 MR. BROWN: Thank you, Your Honor.

6 THE COURT: Mr. Brooks?

7 MR. BROOKS: And, Judge, bear in mind, you know, my
8 client does have a small child that's out there that he has
9 with Ms. Gibbs. Judge, obviously, any one of these sentences,
10 please bear in mind it's my understanding he'd have to serve
11 about eighty-five percent of -- at least I know for sure on
12 the trafficking. Judge, we -- we would ask Your Honor to be
13 as merciful and lenient, considering that my client -- he did
14 exercise his right as a citizen to go to trial, which ---

15 THE COURT: I'm not going to penalize him for that.

16 MR. BROOKS: I understand, Judge. He exercised his right
17 to go to trial and obviously, we still oppose the jury's
18 verdict, but obviously, we respect it. He does have his
19 mother and cousin standing here and they did indicate that
20 they wanted to address the Court ---

21 THE COURT: All right.

22 MR. BROOKS: --- prior to sentencing and I would ask Your
23 Honor to take -- to go ahead and listen to them.

24 THE COURT: All right. Ma'am, would you please state
25 your name?

1 MS. WILLIAMS: Excuse me. Diane Williams.

2 THE COURT: All right and what is your relationship to
3 the defendant?

4 MS. WILLIAMS: Mother.

5 THE COURT: Okay. What would you like to tell me?

6 MR. WILLIAMS: Well, Your Honor, I thought this was over
7 with back in February when he had a mistrial, but evidently
8 not. But I'm just asking you to have mercy on him and give
9 him the -- the least you can give him because, like Mr. Brooks
10 say, he does have this -- have a son out there and there's not
11 too much I can say, but I do love him and have mercy on him.

12 THE COURT: Okay, thank you. Yes, sir? State your name
13 for the record.

14 MR. GIBBS: Christian Gibbs.

15 THE COURT: All right. Yes, sir?

16 MR. GIBBS: Yes, the same thing, you know. You already
17 -- they found him guilty so you have to sentence him, but
18 while you're thinking about to sentence him, at the same time
19 he's a man that has a six-year-old child -- a six-year-old son
20 that graduated kindergarten today, you know, and -- and -- and
21 he's the same man that when his best friend was in the
22 hospital, he stayed in the hospital every day for two weeks,
23 cut up his food and fed him, and bring him back to life when
24 he couldn't -- and the guy didn't eat for two weeks and he
25 helped bring him back to life.

1 So he's not this evil -- this -- this bad person. You
2 know what I'm saying? He's also a father, a cousin, a mother.
3 You know what I'm saying? You know, he's -- he's all that,
4 too.

5 THE COURT: He was dealing drugs while he was a father
6 and a cousin and had a mother, too.

7 MR. GIBBS: Well, that's what the Court -- that's what
8 the -- that's what the Court said. That's -- you know what
9 I'm saying? I understand what you're saying, but that's what
10 the Court say. The Court say that he's -- that he's -- that
11 he's done that, but at the same time, he has a son. Even if
12 -- even -- even if -- even if you say that, he has a son that
13 needs a father -- you know, that needs a father, you know, and
14 a -- and a mother that loves her son and a cousin, you know.
15 So just -- just consider mercy when you sentence him.

16 THE COURT: Would your client like to say something?

17 MR. BROOKS: Do you want to say something?

18 THE DEFENDANT: Yes, sir.

19 MR. BROOKS: Okay. Come up -- go up to the mic, either
20 one.

21 THE DEFENDANT: Yes, Your Honor. I know I was found
22 guilty of all these charges, but dealing with the evidence,
23 it's nothing that -- you know, that can -- that they have that
24 can say -- actually say that I sold any drugs to anyone.
25 There was no confidential informant. There wasn't no camera

1 saying these things. There was nothing, you know, only that
2 what they found inside the house, which I just appeared that
3 morning. But I was -- I was actually charged because of the
4 fact that I was there and my name was on the lease, which I
5 didn't never sign. She signed it back in April and these
6 drugs was found back in -- in December.

7 And the reason why they said about the money situation,
8 we -- I just got the money from the state from an accident.
9 We was going to go to Christmas shopping because the next day
10 was Christmas Eve. That's the reason why I had the money on
11 me. We just went to the bank that morning before I came
12 there.

13 So I mean all these allegations -- you know, I mean
14 there's nothing to prove that. If I sold anything then, why
15 wasn't there no camera? I mean something to indicate that I
16 sold any drugs. The only thing is they found drugs inside the
17 house whereas that I don't even stay there. Other individuals
18 been even at this -- at this point, even though me and
19 Kimberly was married, we was living separate lives. Even
20 today, we're living separate lives, but we're still married
21 and have a son together. She deal with other individuals and
22 I also deal with other individuals, but we are married.

23 So I can't see how, you know, I can be found guilty
24 whereas that drugs was found in her purse and even inside her
25 house that I don't even have no -- you know, I ain't got no

1 say-so of anything that was found in there. He said that I
2 sold drugs. Okay, then I mean if I did, then show and prove
3 it. There is no -- nothing showing that I sold any drugs to
4 anyone. It's just assumption and allegation. That's it.

5 THE COURT: Anything else?

6 THE DEFENDANT: No, sir.

7 THE COURT: Anything further from the State?

8 MR. MEADORS: Your Honor, while obviously the jury found
9 him guilty ---

10 THE COURT: Mr. Brooks?

11 MR. BROOKS: Sir?

12 MR. MEADORS: --- to constructive possession and I want
13 to thank them and I also just publicly want to thank the
14 Sumter County Sheriff's Department for the job they did.

15 THE COURT: Mr. Brooks?

16 MR. BROOKS: Judge, here again, I would ask you to be as
17 merciful and lenient as you can considering the amount of
18 exposure this young man has. While he and I ---

19 THE COURT: He's thirty-seven years old. He's not a
20 young man. He's not a kid who got involved in something that
21 he didn't know anything about. This jury took thirty-five
22 minutes to convict him on these charges. There wasn't any
23 doubt. I think the State proved beyond all doubt and
24 apparently the jury did, too. He's unrepentant.

25 Mr. Brooks, you did a wonderful job and if he had taken

1 your advice, he might have walked out of here, but he didn't
2 take your advice. You stood on the record and told him not to
3 testify. I think once he testified, there was no question in
4 the jury's mind.

5 MR. BROOKS: I -- I understand, Judge, and I appreciate
6 your assessment, but I would just ask you to be as merciful
7 and lenient as you can for -- for Mr. Gibbs.

8 THE COURT: Thank you. Anything?

9 MR. MEADORS: No, sir. Thank you.

10 THE COURT: Did he serve any time?

11 MR. BROOKS: Did you serve any time when you got arrested
12 on this?

13 THE DEFENDANT: Yes.

14 MR. BROOKS: How much time?

15 MR. BROWN: Your Honor, may it please the Court. I have
16 it he was arrested on December -- December 23rd, but I'm not
17 positive -- it looks like he bonded out around that same date.
18 It does look like he did get picked up at some point because
19 I'm seeing a second bond that got set. I'm not positive.

20 THE COURT: I'm just going -- I'm just going to give him
21 credit for time served.

22 MR. BROWN: Thank you, Your Honor.

23 THE COURT: Normally, I like to write down the number,
24 but this is a -- he's been out on bond for a little while.

25 MR. BROWN: Yes, sir, Your Honor.

1 (Whereupon, there is a pause in the proceedings.)

2 SENTENCE BY THE COURT

3 THE COURT: All right. I listened to the evidence. I
4 think Mr. Gibbs is an unrepentant drug dealer. I think if he
5 were to get out in a few years, he'd go right back to dealing
6 drugs. Mr. Brooks, again, you did all that you could to save
7 him, but you couldn't save him from himself. He had a way of
8 life. Drug dealing was his way of life. He is getting ready
9 to have a new way of life.

10 The sentence of this Court is under Indictment 2011-GS-
11 43-1125 on the charge of trafficking in cocaine base, 10 grams
12 to 28 grams -- and I'm also considering his extensive criminal
13 history. The sentence of this Court is that he be committed
14 to the State Department of Corrections for a period of ten
15 years.

16 On the charge of possession with intent to distribute
17 cocaine, first offense, the sentence is that he be committed
18 to the State Department of Corrections for a period of fifteen
19 years.

20 On the charge of manufacturing cocaine base, first
21 offense, the sentence is that he be committed to the State
22 Department of Corrections for a period of fifteen years.

23 These sentences, because they all happened from one date
24 of December 23rd, 2008, I will run them concurrent. That is
25 the sentence of the Court.

1 MR. MEADORS: Thank you, Your Honor.

2 MR. BROOKS: Thank you, Judge.

3 MR. BROWN: Thank you, Your Honor.

4 (Whereupon, the proceedings end at 12:18 p.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Sumter County, South Carolina, on the 4th
12 and 5th days of June, 2013.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.
15

16 Krystal J. Smith

17 Court Reporter
18

19 Florence, South Carolina

20 September 25, 2013
21
22
23
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25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEROY CLIFTON GIBBS,

APPELLANT

APPELLATE CASE NO. 2013-0001297

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<u>Boyd v. U.S.</u> , 142 U.S. 450 (1892).....	19
<u>Faretta v. California</u> , 422 U.S. 806 (1975).....	3, 5, 7, 8
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	10
<u>State v. Barnes</u> , 407 S.C. 27, 753 S.E.2d 545 (2014)	7
<u>State v. Craig</u> , 267 S.C. 262, 227 S.E.2d 306 (1976)	21
<u>State v. Crim</u> , 327 S.C. 254, 489 S.E.2d 478 (1997)	21
<u>State v. Edwards</u> , 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007).....	21
<u>State v. Fuller</u> , 337 S.C. 236, 523 S.E.2d 168 (1999).....	8
<u>State v. Gore</u> , 283 S.C. 118, 322 S.E.2d 12 (1984)	22
<u>State v. Patterson</u> , 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).....	21
<u>State v. Prince</u> , 279 S.C. 30, 301 S.E.2d 471 (1983)	21
<u>State v. Reed</u> , 332 S.C. 35, 503 S.E.2d 747 (1998)	7
<u>State v. Starnes</u> , 388 S.C. 590, 698 S.E.2d 604 (2010).....	7
<u>State v. White</u> , 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006).....	21
<u>State v. Winkler</u> , 388 S.C. 574, 698 S.E.2d 596 (2010)	7

Rules

Rule 403, SCRE.....	19

STATEMENT OF ISSUES ON APPEAL

1.

Did the court err by denying Appellant's pretrial request to waive his right to counsel and represent himself without conducting the proper inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975) in violation of Appellant's federal and state constitutional rights?

2.

Did the court err by admitting evidence that Appellant allegedly distributed crack cocaine on three prior occasions at the residence where Appellant was arrested and where the state alleged Appellant lived, since Appellant's testimony that he did not live at the residence did not "open the door" to such evidence being admitted and since evidence of the alleged prior distributions was unduly prejudicial and denied Appellant a fair trial?

3.

Did the court err by denying Appellant's motion for a mistrial after the court admitted evidence that Appellant allegedly distributed crack cocaine on three prior occasions at the residence where Appellant was arrested and where the state alleged Appellant lived, since the evidence was unduly prejudicial and denied Appellant a fair trial?

STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant at the July 21, 2011 term of General Sessions for trafficking cocaine base, manufacturing cocaine base, and possession with intent to distribute cocaine. R. 300 – R. 302. His case was called to trial on June 3, 2013 before the Honorable William Jeffrey Young, and a jury. Assistant Solicitors John Meadors and Tyler Brown appeared on behalf of the prosecution and Charles T. Brooks, III represented Appellant. R. 11.

At the conclusion of the trial on June 5, 2013, the jury found Appellant guilty. R. 295 - 1. 15 – 296, 1. 6. Judge Young sentenced Appellant to ten years imprisonment for trafficking cocaine base, fifteen years concurrent for manufacturing cocaine base, and fifteen years concurrent for possession with intent to distribute cocaine. R. 299, ll. 3-25.

This appeal follows.

ARGUMENT

1.

The court erred by denying Appellant's pretrial request to waive his right to counsel and represent himself without conducting the proper inquiry pursuant to *Faretta v. California*, 422 U.S. 806 (1975) in violation of Appellant's federal and state constitutional rights.

Relevant Facts

Appellant moved pretrial, and before the jury was sworn, to relieve his court appointed counsel and represent himself. See R. 86, l. 17 – 87, l. 3. After a very brief discussion in which the court failed to follow the requirements as set out in Faretta, the court denied Appellant's motion to relieve his counsel and refused to allow Appellant to represent himself. The following colloquy took place on the record:

Mr. Brooks: Judge, the first thing is I think my client wants to be addressed. He is asking for this matter to be continued, for me to be relieved as counsel, and he again to be appointed new counsel in this case. I think he probably wants to be heard on that.

The Court: All right. Mr. Gibbs, you may stand. Yes, sir?

The Defendant: Yes. I would like to ask the Court to be added as co-counsel to assist counsel - -

The Court: You can't do that. You're not an attorney. I can't let you be co-counsel.

The Defendant: Or I can - - or - - well, I feel that in this matter that my client is not going to represent me - -

The Court: Your client? You mean your lawyer?

The Defendant: My attorney is not going to represent me to the fullest - -

The Court: Okay.

The Defendant: - - because of the fact that - -

The Court: Well, I mean I think he [Attorney Brooks] tried to get off last week.¹

The Defendant: Yes, ma'am. Yes, sir.

The Court: Judge James didn't let him. So are you asking that he be relieved now?

The Defendant: Yes.

The Court: So you don't want him on this case?

The Defendant: No, sir.

The Court: And you want me to appoint you a new lawyer?

The Defendant: Yes, sir.

The Court: If you - - if you want nothing to do with Mr. Brooks, then I can relieve Mr. Brooks, but the case will go on and you'll represent yourself.

The Defendant: Okay.

The Court: So you want to represent yourself?

The Defendant: Yes, sir.

The Court: Mr. Brooks, I'm not going to allow him to do that. We're at this stage. I'm going to leave you on. You all have been through this long enough. I'm - - I'm going to deny the request and Mr. Brooks will stay on the case. All right, thank you.

R. 84, l. 6 - 85, l. 19.

¹ The fact that trial counsel previously moved to be relieved as counsel is irrelevant to this appeal as the issue is whether the trial court engaged in the proper colloquy with Appellant regarding his constitutional right to waive his right to counsel and represent himself.

Despite the fact that Appellant unequivocally stated he did not want trial counsel to represent him and wished to represent himself, the case proceeded to trial with Charles Brooks representing Appellant.

Discussion

“A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions.” State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)). “So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by Faretta.” Id. (citing State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010)).

“Under Faretta, the trial judge has the responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel.” Id. (citing State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998)). “Recognizing that it may be to the defendant’s detriment to be allowed to proceed pro se, his knowing, intelligent and voluntary decision ‘must be honored out of that respect for the individual which is the lifeblood of the law.’” Id. (citing Faretta, 422 U.S. at 834).

Here, the trial court did not follow the requirements as set forth in Faretta since it failed to determine whether Appellant made a “knowing and intelligent waiver of his right to counsel.” See Reed, 332 S.C. at 41, 503 S.E.2d at 750. Furthermore, the court also failed to inform Appellant of the dangers and disadvantages of self-representation. Instead, the court summarily rejected Appellant’s request to relieve his counsel without

conducting any Faretta colloquy and arbitrarily denied Appellant's motion to represent himself. This was error.

In State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999), the defendant moved pretrial to relieve his counsel and proceed *pro se*. Our Supreme Court reversed Fuller's conviction for murder after finding "the trial court failed to conduct an adequate hearing to fully assess the purpose behind the defendant's request or to determine what effect granting the request would have had on the proceedings."

Since the trial court failed to make the proper inquiries under Faretta and did not honor Appellant's desire to waive his right to counsel, this case should be reversed and remanded for a new trial.

2.

The court erred by admitting evidence that Appellant allegedly distributed crack cocaine on three prior occasions at the residence where Appellant was arrested and where the state alleged Appellant lived, since Appellant's testimony that he did not live at the residence did not "open the door" to such evidence being admitted and since evidence of the alleged prior distributions was unduly prejudicial and denied Appellant a fair trial.

Relevant Facts

On December 23, 2008, law enforcement officers with the Sumter County Sheriff's Office and various SLED agents responded to a residence in Sumter to serve Appellant with arrest warrants. R. 96, l. 19 – 97, l. 9. Investigator Wayne Dubose of the Sumter County Sheriff's Office testified that he approached the front door of the residence, knocked, and announced "sheriff's office." After a "couple of minutes," Kimberly Gibbs, Appellant's wife, answered the door. Dubose informed Mrs. Gibbs that they were looking for Appellant and had arrest warrants for him. Dubose testified, "I could see [Appellant] back behind her in the hallway area between the bedroom and the living room. He was standing there in his boxers." R. 99, l. 1 – 100, l. 2. Dubose immediately placed Appellant under arrest and moved him into the living room area where he was seated on the couch. R. 100, ll. 20-23.

Dubose testified that Appellant "asked about getting a pair of pants" and indicated that his pants were on the floor of the bedroom. Dubose said he went into the bedroom, found the pants, and "went ahead and searched the pants to make sure there was no weapons in them before [he] gave them to him." Dubose claimed he found \$1,355 in the

pocket of Appellant's pants. R. 100, l. 23 – 101, l. 7. He also claimed that he “noticed the odor of marijuana in the residence.” R. 102, l. 21-25.

According to Dubose, he then read Appellant his Miranda² rights and “asked for consent or permission to bring a drug dog in the residence.” Appellant allegedly told Dubose that “he didn't live there.” Dubose then asked Mrs. Gibbs “if we could bring a dog in the residence and she said, yeah, no problem.” R. 105, ll. 9-15. Mrs. Gibbs also signed a written consent to search form giving the officers permission to search the entire residence. R. 106, ll. 10-23; R. 107, l. 2-8. Dubose explained that since Appellant denied living at the residence, they went ahead and transported him to the local detention center before conducting the search. R. 105, l. 15 – 106, l. 11.

Law enforcement then searched the residence. R. 107, ll. 9-10. Inside a kitchen cabinet above the microwave officers allegedly found a plastic bag with a “quantity of white power substance,” baking soda, a measuring bowl, Pyrex dishes, four razor blades, a fork, and additional baggies. R. 109, l. 22 – 111, l. 3; R. 112, l. 22. The measuring bowl had a residue inside that field tested positive for cocaine. R. 115, ll. 7-25. The officers also discovered a residue on the “turntable” or “glass plate inside the microwave” that field tested positive for cocaine. R. 117, l. 10 – 118, l. 3. Additionally, in the master bedroom where Dubose “retrieved the pants from” was a “small marijuana blunt in the ashtray.” R. 124, ll. 5-8.

As law enforcement was “fixing to leave out the residence,” Dubose testified that he decided to search Mrs. Gibbs' purse which was on the kitchen table where both Dubose and Mrs. Gibbs were sitting. At the top of the purse was a bag of baby wipes.

² Miranda v. Arizona, 384 U.S. 436 (1966)

Dubose claimed that inside the bag of baby wipes he found bags of marijuana and "what was believed to be crack cocaine and cocaine." R. 121, l. 2 – 122, l. 17. Dubose said that he immediately asked Mrs. Gibbs about the drugs and "she was shocked." She denied the drugs belonged to her. R. 122, ll. 18-24.

Dubose explained that on December 24, 2008, which was the next day, he went to the detention center to serve Appellant with new warrants based on the evidence discovered in the residence. R. 133, l. 24 – 134, l. 5. After advising Appellant of his Miranda rights, Dubose said that he confronted Appellant with a statement that he had allegedly made the day before when he was being transported to jail. Appellant had allegedly said, "Selling drugs is a lifestyle for [me]." When Dubose asked him about it, Appellant allegedly responded that "he had to support his family." Dubose claimed Appellant also said that "none of the items was his because he did not live at the residence. He said it must have been his wife's - - or no. He said that his wife must have had someone else there because it wasn't his and it had to be hers." R. 136, l. 19 – 139, l. 3.

Lieutenant Dale Horton of the Sumter County Sheriff's Office testified that he helped transport Appellant to the detention center on December 23, 2008 after he was arrested. Horton explained that he rode in the front passenger seat, Lieutenant Chris Moore drove the patrol car, and Appellant was in the back seat. R. 150, l. 10 – 151, l. 8. According to Horton, during the approximately fifteen minute drive, Appellant "was steadily talking" and "rambling" even though neither he nor Moore were asking Appellant any questions. Horton claimed that Appellant allegedly said "selling drugs was a lifestyle to him." Horton said that both he and Moore "looked at each other saying

I can't believe he just said that." R. 152, ll. 1-20. They later reported the statement to Investigator Dubose. R. 152, l. 12 – 154, l. 2.

Mitchell Hansen, who worked as a drug analyst at the Sumter County Sheriff's Office from 2006 until 2011, was qualified as an expert in drug identification. He testified that there were three separate items of evidence submitted in this case that he identified as benzocaine or benzocaine and caffeine mixes. He explained that benzocaine and caffeine are both "cutting agents" that individuals add to drugs to increase the volume of the substance. The total weight of the benzocaine and caffeine submitted was 12.25 grams. Hansen also testified that only one item submitted testified positive for cocaine. The total weight of cocaine was 3.35 grams. Hansen further testified that three separate items of evidence submitted tested positive for crack cocaine. The total weight of crack cocaine from these three items was 14.03 grams. R. 165, l. 21 – 173, l. 9.

Additionally, Hansen testified that crack cocaine is made from mixing cocaine and baking soda using water and heat. He explained that sometimes manufacturers will use a microwave to "cook" crack cocaine or "heating rounds" "depend[ing] on what they have." R. 173, l. 22 – 175, l. 3.

Kimberly Gibbs, Appellant's wife, was the next to testify. She explained that she met Appellant through her sister in 2004 and that the two got married in 2006. R. 180, ll. 4-23. When they got married, she was in the Navy and was living and working in Texas. Appellant lived with her in Texas and then shortly thereafter moved with her to San Diego. R. 180, l. 24 – 181, l. 17. Mrs. Gibbs testified that the couple moved back to Sumter in June 2007 after having a child earlier that year. R. 181, l. 18 – 182, l. 8. When they moved back, they lived with her mother at first and then Appellant's father until they

finally moved into the residence where Appellant was arrested in April 2008. R. 182, l. 9 – 183, l. 3. Mrs. Gibbs explained that she signed the lease, but the occupants listed on the lease were her, Appellant, and their son. R. 186, l. 20 – 187, l. 24. She claimed that she and Appellant shared the master bedroom, that a second bedroom belonged to their son, and that a third bedroom was used as a computer room. R. 188, l. 21 – 189, l. 5.

Mrs. Gibbs admitted to giving verbal and written consent for law enforcement to search her home the day that Appellant was arrested. R. 190, l. 22 – 191, l. 22. She was present when the police found what they believed to be drugs in the house. She also acknowledged that she gave the officers permission to search her purse and that they found more drugs inside her purse. However, Mrs. Gibbs denied that the drugs were hers or that she put them in her purse. She claimed the officer told her that Appellant must have put the drugs in her purse. R. 192, l. 11 – 194, l. 15. Mrs. Gibbs also denied having any knowledge that Appellant kept drugs in the house or that she had ever seen Appellant cook crack cocaine in the house. She testified that she “was at work so [she] couldn’t tell you [Appellant’s] activities.” R. 196, l. 13 – 200, l. 4; R. 200, l. 23 – 201, l. 3. Mrs. Gibbs testified that the only people who had access to the house were her, Appellant, and their son. She denied that she had another man living with her. R. 200, ll. 5-22.

After Mrs. Gibbs testified, the state rested. The judge engaged in a routine colloquy with Appellant regarding his right to testify and then gave Appellant an opportunity to speak further with defense counsel about his decision. R. 213, l. 15 – 216, l. 16. After speaking with defense counsel, Appellant informed the court he would testify. R. 216, l. 19 – 217, l. 1. Before bringing the jury in, defense counsel put the following on the record:

Judge, I just wanted to put on the record I've advised my client against testifying and the reason is, Judge, is because if we end up getting into whether or not he was a resident there, it's my position, particularly in light of the motion *in limine* that I presented prior to us taking testimony, that that would open the door for the state to start talking about all these other drug buys that they made at this residence involving my client.³

At the present time, the jury doesn't know that he has drug charges from buys or alleged buys, and if he takes the stand on the drug evidence to talk about whether he's a resident or not to basically say he's not a resident, then that would allow Mr. Meadors and Mr. Brown to talk about, yeah, he is a resident there. We showed up as the police on this day, this day, and this day, and this is what happened, and that's what scares me in regards to my client, but right now, nobody knows that he has any other drug charges pending except for, obviously the people in the courtroom. None of the jury knows that and that's why we put that motion on the Court before we started and that's, you know, our position. I'm just adamant about it. I think that is suicide for my client, but I wanted to put that on the record.

R. 217, l. 7 – 218, l. 3.

Appellant then testified that the drugs found in the residence and in Kimberly Gibbs' purse did not belong to him. He denied putting drugs in her purse or in the kitchen or in the microwave. Appellant also denied "blurt[ing] out selling drugs is a lifestyle to me" while being taken to jail by Lieutenant Horton. He testified that the only thing he said to Investigator Dubose when Dubose came to see him at the detention

³ Pretrial, defense counsel expressed his concern about the possibility of opening the door to the state introducing evidence of Appellant's other pending charges related to allegations that Appellant sold crack cocaine to a confidential informant on several occasions at the residence where Appellant was ultimately arrested. The court stated if Appellant took the stand and asserted that he did not live at the residence then that would open the door and the state "can ask him anything they want to about it." The court, however, was cautious about giving an advisory opinion and stated that he could not make a ruling before the issue was properly before him. See R. 54, l. 17 – 58, l. 7.

center the next day “was that I had no knowledge of any drugs that was found at the residence.” R. 219, l. 3 – 220, l. 23.

On cross-examination, Appellant testified that in December 2008, he was unemployed and cared for his son during the day. He watched his son either at the residence where he was arrested because that is where his son lived or at his own residence where he was living with his mother. R. 222, ll. 3-17. Appellant explained that he no longer lived at the residence with his wife because the couple had “altercations.” He testified that “eighty-five percent of the time” he “would be staying at [his] mom’s.” Appellant said the residence “was basically her house because she paid the bills there. She just added my name back in April to the lease because at that time we was married.” Appellant further testified that “there was plenty of time that, you know, she would have friends and, you know, people that she dealt with at that - - at the residence.” R. 224, l. 1 – 225, l. 1.

After Appellant denied living at the residence with his wife in December 2008, the solicitor informed the court that it had a matter of law and a bench conference was held off the record. Before the testimony resumed, defense counsel said, “You Honor, while he’s doing that, I note my objection for the record.” The court responded, “Yes, sir. You’re protected.” R. 226, ll. 2-13.

The following colloquy then took place between the solicitor and Appellant:

Q: And I assume the answer is the same you said for December would be true of October and November that you weren’t living there most of the time; correct?

A: Yes, sir.

Q: Was that a yes?

A: Yes, sir.

Q: Specifically, please, sir, on or about October 28th of 2008 at [the residence where Appellant was arrested], did you or did you not distribute a quantity of crack cocaine to an individual at approximately 1:29 on October 29th of 2008 - -

A: No, sir,

Q: - - at this address?"

A: No, sir.

Q: And specifically on November 24th of 2008 at approximately 12:28 pm, did you or did you not distribute a quantity of crack cocaine to an individual from this same residence at [redacted address] that you were living?

A: No, sir.

Q: And on December 1st, 2008, when you were saying you weren't staying there eighty-five percent of the time; right?

A: Yes, sir.

Q: Did you distribute a quantity of crack cocaine at approximately 4:43 pm to an individual at your residence in exchange for money?

A: No, sir.

R. 226, l. 14 - 227, l. 13.

Appellant again stated that he had no knowledge of the drugs found inside the residence. He testified, "I was arrested and sent to the jail. I didn't know about any drugs until the next day." R. 231, ll. 2-8. Appellant also repeatedly stated that he had "no knowledge" regarding whether the drugs belonged to his wife or not. R. 238, ll. 21-23; R. 238, ll. 21-23.

After Appellant's testimony, defense counsel put his objection on the record. He stated, "I'll put my objection and motion for a mistrial on the record in light of we don't feel that that was opening the door to allow the state to go into prior incidents - - incidents and allegations about drugs that are totally separate from the incident that is on trial. We feel that the state should not have been allowed to do that and ask - - we're asking the court to grant a mistrial in this matter." R. 240, ll. 4-11. The court responded, "I don't think there's any question in my mind that he opened the door and allowed those questions." R. 240, ll. 22-24. The court thus denied the motion for a mistrial.

The state then called Investigator Dubose to testify in reply. R. 241, ll. 17-20. Defense counsel again noted his objection for the record. R. 242, ll. 10-11. Dubose testified in detail about an alleged undercover purchase that took place on October 29, 2008 at the residence where Appellant was arrested. He explained that a confidential informant was given sixty dollars of "documented funds." According to Dubose, the informant called Appellant at 1:24 pm, arranged to purchase crack cocaine, and then drove to the residence where Appellant was arrested and allegedly purchased a quantity of crack cocaine from Appellant in exchange for the sixty dollars. R. 242, l. 13 - 245, l. 1. Dubose also testified about a second alleged undercover purchase that took place on November 24, 2008 at approximately 12:28 pm in which the same confidential informant was given one hundred dollars in documented funds, arranged to purchase crack cocaine from Appellant, drove to the residence where Appellant was arrested, and allegedly purchased a quantity of crack cocaine from Appellant in exchange for the one hundred dollars. R. 245, l. 2 - 246, l. 14.

Lastly, Dubose testified about a third alleged undercover purchase. This incident took place on December 1, 2008 at approximately 4:43 pm. Dubose explained that he gave the confidential informant one hundred forty dollars and the informant called Appellant to arrange to purchase crack cocaine. The informant then allegedly drove to the residence where Appellant was arrested and purchased a quantity of crack cocaine from Appellant in exchange for the one hundred forty dollars. R. 246, l. 15 – 247, l. 18. Dubose claimed that each of the alleged undercover purchases took place at a different time during the day and that Appellant was at the residence each time. R. 247, ll. 14-24.

After Investigator Dubose's testimony in reply, defense counsel renewed his motion for a mistrial arguing, "It's our position that this reply testimony or rebuttal testimony was extremely prejudicial." The court responded, "I agree with you on that." Defense counsel further argued, "It is a plethora of hearsay. Not a whole lot of proof to it and we would just ask the court in defense of my client that we renew our position. We don't believe this opened the door and that obviously we feel that this is hearsay and it's extremely prejudicial, and obviously we'd ask the court to declare a mistrial in this matter." R. 251, l. 20 – 252, l. 4. The state admitted that the testimony was prejudicial, but argued that it was probative and that Appellant "opened the door when he said that he didn't live there eighty-five percent of the time." R. 252, ll. 7-15. The court ultimately denied Appellant's motion for a mistrial. R. 252, ll. 16-17.

After the guilty verdicts were announced, defense counsel again renewed the motion for a mistrial, which was subsequently denied by the judge. R. 297, l. 17 – 298, l. 25.

Discussion

The state's questioning of Appellant about distributions that allegedly took place in the months prior to Appellant's arrest at the residence where the state alleged Appellant lived and the later testimony of Investigator Dubose that a confidential informant allegedly purchased crack cocaine from Appellant at this residence was extremely prejudicial and denied Appellant a fair trial especially since Appellant was on trial for various drug offenses. Additionally, Appellant did not open the door to his pending distribution charges being admitted by denying he lived at the residence.

Rule 403, SCRE states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." The evidence that Appellant allegedly distributed crack cocaine at this residence on three prior occasions was not probative to prove Appellant lived at the residence. If anything, the evidence was probative to prove Appellant was at the residence on these various occasions. However, Appellant had already testified that he was often at the home during the day watching his son while his wife was at work. See R. 222, ll. 3-17. Because the testimony was not probative to prove Appellant lived at the residence, Appellant did not open the door to the evidence being admitted by denying that he lived at the home.

Furthermore, any probative value was substantially outweighed by the danger of unfair prejudice. See Boyd v. U.S., 142 U.S. 450, 458 (1892) (proof of earlier robberies "only tended to prejudice the defendants with the jurors, to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no value").

Thus, the trial court erred in allowing the state to question Appellant about the alleged distributions and permitting Investigator Dubose to testify about the alleged undercover purchases in rebuttal. Based on this error, Appellant's convictions should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.

3.

The court erred in denying Appellant's motion for a mistrial after the court admitted evidence that Appellant allegedly distributed crack cocaine on three prior occasions at the residence where Appellant was arrested and where the state alleged Appellant lived, since the evidence was unduly prejudicial and denied Appellant a fair trial.

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. White, 371 S.C. 439, 443, 639 S.E.2d 160, 162 (Ct. App. 2006) (citing State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997) and State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999)). In determining whether to grant a mistrial, our Supreme Court has noted that "[t]he less than lucid test is . . . whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) "perhaps other matters." State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976). Therefore, although the decision to grant or deny a mistrial is within the trial court's discretion, such discretion is not unfettered. See State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

After considering these factors, it is evident that the court should have granted Appellant's motion for a mistrial. Both the trial judge and the state conceded at trial that the

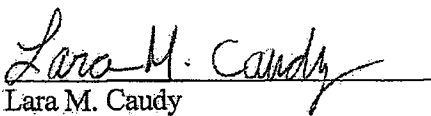
testimony was extremely prejudicial. See R. 251, ll. 21-23; see also R. 252, ll. 7-8. It was offered in an attempt to prove Appellant lived at the residence, but it was merely probative that Appellant was at the residence on those specific occasions. Additionally, Appellant was being tried for various drug offenses, specifically trafficking crack cocaine, manufacturing crack cocaine, and possessing with intent to distribute cocaine, and the evidence erroneously admitted was that Appellant allegedly distributed crack cocaine to a confidential informant at the residence on three occasions. See State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984) (When "the previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced."). Furthermore, before admitting the evidence, Appellant had already testified that during this time period he took care of his son at the residence during the day while his wife was at work. Therefore, the jury had already heard evidence that Appellant was often at the residence during the day.

Therefore, the court abused its discretion in denying Appellant's motion for a mistrial. Consequently, Appellant's convictions should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.

CONCLUSION

By reason of the foregoing arguments, Appellant's convictions should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

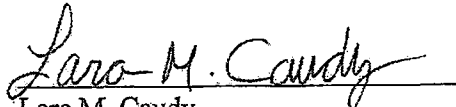
ATTORNEY FOR APPELLANT

This 12th day of March, 2015

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 12, 2015


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

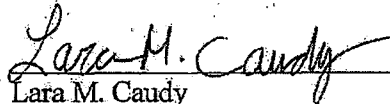
V.

LEROY CLIFTON GIBBS,

APPELLANT

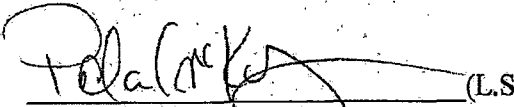
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary W. Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of March, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of March, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2013-0001297

RECEIVED
MAR 6 2 2015
SC Court of Appeals

THE STATE,

Respondent,

v.

LEROY CLIFTON GIBBS, III

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT.....	8
I. Failure to provide warnings regarding the pitfalls of self-representation in the absence of a timely and unequivocal request for self-representation is not reversible error. The trial court's denials of Appellant's requests regarding counsel's services are subject to review for abuse of discretion. The trial court did not abuse its discretion in denying Appellant's untimely and equivocal request to proceed pro se.	8
II. Appellant opened the door to evidence that he had distributed crack cocaine on three prior occasions over the course of several weeks at various times of day from Home. Therefore, admission of the evidence was not error. In the absence of error in admitting the evidence, the trial court properly denied Appellant's motion for mistrial. (Appellant's Issues II and III).	14
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<u>Bassette v. Thompson</u> , 915 F.2d 932 (4th Cir. 1990)	13
<u>Faretta v. California</u> , 422 U.S. 806 (1975)	8, 13, 14
<u>McKee v. Harris</u> , 649 F.2d 927 (2nd Cir. 1981)	14
<u>Raulerson v. Wainwright</u> , 469 U.S. 966–71, 105 S.Ct. 366, (1984)	14
<u>Robards v. Rees</u> , 789 F.2d 379 (6th Cir. 1986)	9
<u>State v. Barnes</u> , 407 S.C. 27, 753 S.E.2d 545 (2014)	8
<u>State v. Bultron</u> , 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995)	16
<u>State v. Crane</u> , 296 S.C. 336, 372 S.E.2d 587 (1988)	17
<u>State v. Crim</u> , 327 S.C. 254, 489 S.E.2d 478 (1997)	18
<u>State v. Culbreath</u> , 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008)	16
<u>State v. Ellis</u> , 263 S.C. 12, 207 S.E.2d 408 (1974)	15
<u>State v. Fuller</u> , 337 S.C. 236, 523 S.E.2d 168 (1999)	9
<u>State v. Gore</u> , 299 S.C. 368, 384 S.E.2d 750 (1989)	19
<u>State v. Howard</u> , 296 S.C. 481, 374 S.E.2d 284 (1988)	18
<u>State v. Lyle</u> , 125 S.C. 406, 118 S.E. 803 (1923)	16
<u>State v. McEachern</u> , 399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012)	16
<u>State v. Prince</u> , 279 S.C. 30, 301 S.E.2d 471 (1983)	17
<u>State v. Sims</u> , 304 S.C. 409, 405 S.E.2d 377 (1991)	13
<u>State v. Stanley</u> , 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005)	17
<u>State v. Tabory</u> , 260 S.C. 355, 196 S.E.2d 111 (1973)	17
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001)	14, 18, 19
<u>State v. Winkler</u> , 388 S.C. 574, 698 S.E.2d 596 (2010)	14

<u>U.S. v. Bernard</u> , 708 F.3d 583 (4th Cir. 2013)	8
<u>U.S. v. Dunlap</u> , 577 F.2d 867 (4th Cir. 1978).....	9
<u>U.S. v. Lawrence</u> , 605 F.2d 1321 (4th Cir. 1979).....	9, 10
<u>United States v. Bennett</u> , 539 F.2d 45 (10th Cir. 1976).....	12
<u>United States v. Bush</u> , 04 F.3d 263 (4th Cir. 2005).....	12
<u>United States v. Frazier-El</u> , 204 F.3d 553 (4th Cir.2000)	8, 12
<u>United States v. Lang</u> , 527 F.2d 1264 (4th Cir. 1975).....	11
Rules	
Rule 403, SCRE.....	15, 16
Rule 404(b), SCRE	17

STATEMENT OF ISSUES ON APPEAL**I.**

Failure to provide warnings regarding the pitfalls of self-representation in the absence of a timely and unequivocal request for self-representation is not reversible error. The trial court's denials of Appellant's requests regarding counsel's services are subject to review for abuse of discretion. The trial court did not abuse its discretion in denying Appellant's untimely and equivocal request to proceed *pro se*.

II.

Appellant opened the door to evidence that he had distributed crack cocaine on three prior occasions over the course of several weeks at various times of day from Home. Therefore, admission of the evidence was not error. In the absence of error in admitting the evidence, the trial court properly denied Appellant's motion for mistrial. (Appellant's Issues II and III)

STATEMENT OF THE CASE

Appellant was charged with trafficking in crack cocaine (10-28 grams), manufacturing crack cocaine, and possession with intent to distribute powder cocaine. (R. pp. 300-02) Appellant proceeded to a jury trial June 3-5, 2013. Appellant was found guilty on all counts. The Honorable W. Jeffrey Young sentenced him to an aggregate term of 15 years. (R. p. 299) This appeal follows.

STATEMENT OF FACTS

Around midday on December 23, 2008, police arrived at Home¹ with warrants for Appellant's arrest. (R. p. 98, lines 6-25) Appellant's wife, Kimberly, answered the door. (R. p. 99, lines 12-23; pp. 189-90) Appellant appeared from the direction of the bedroom in boxer shorts. (R. p. 100, line 23 – p. 101, line 2) Appellant was placed under arrest, and he requested a pair of pants from the bedroom. (R. p. 100, line 21 – p. 101, line 4) Cash in the amount of \$1,355.00 was found in Appellant's pants pocket. (R. p. 101, lines 6-7) Officers also detected an odor of marijuana in the home. (R. p. 102, lines 21-25) Both Appellant and Kimberly were advised of Miranda rights. (R. p. 103, lines 4-22) Investigator Wayne Dubose asked Appellant for permission to bring a drug dog into the residence. (R. p. 105, lines 9-12) Appellant said he did not live there, but Kimberly consented to a search of the residence. (R. p. 105, lines 12-15; p. 106, lines 8-15; p. 107, lines 2-8; p. 191)

During the search of the home, officers found:

- Materials used for manufacturing and packaging crack cocaine in a kitchen cabinet: a plastic bag containing white powder field testing positive for cocaine, baking soda, a measuring jar, pyrex dishes with residue field testing positive for cocaine, a fork, baggies, and four razor blades. (R. p. 110, line 24 – p. 117, line 4; p. 173, line 22 – p. 175, line 3)
- Three boxes of sandwich bags in a kitchen cabinet. (R. 131, lines 20-24)
- A microwave with the glass turntable inside field testing positive for cocaine residue. (R. p. 117, line 5 – p. 118, line 3)

¹ Rather than list the address, for purposes of this brief, the residence where the warrants were served and the narcotics subject of this trial were found is referred to as "Home." Appellant's wife, Kimberly Gibbs, signed the lease for Home and listed Appellant and their young son as residents. (R. p. 182, line 20 – p. 183, line 3; p. 186, line 20 – p. 187, line 24; p. 210, lines 6-16; p. 225, lines 5-13.)

- Marijuana (including a small blunt), cocaine, and crack cocaine in Kimberly's purse. (R. p. 121, line 5 – p. 122, line 17; p. 123, lines 20-23; p. 124, lines 15-23) \$40 was also found in the purse. (R. p. 125, line 5)
- A Taurus .38 caliber revolver, a .45 caliber ammunition clip, and some 9mm bullets in the hallway closet near the bedroom. (R. p. 125, lines 10-13; p. 127, lines 15-22; p. 129, lines 12-14)
- A .45 caliber handgun hidden in an air conditioner return vent. (R. p. 125, lines 13-19; p. 127, line 23 – p. 128, line 5)
- A marijuana blunt in the ashtray in the bedroom where Appellant's pants were retrieved. (R. p. 124, lines 6-8)

Substances found in the home totaled 12.25 grams of cutting agents (benzocaine and caffeine), 3.35 grams of powder cocaine, and 14.04 grams of crack cocaine. (R. pp. 166-173)

Appellant was transported to jail while the search was being conducted. During the drive, Appellant was "steadily talking" and "rambling." (R. p. 152, lines 4-6) Appellant mentioned "that selling drugs was a lifestyle to him." (R. p. 152, lines 7-20) Kimberly remained in the home during the search. She granted officers permission to search her purse. (R. p. 193, lines 3-10) When narcotics were found in her purse, Kimberly was shocked and said she did not know what the items were. (R. p. 122, lines 20-24; p. 193, line 11 – p. 194, line 21)

Dubose met with Appellant at the detention center to serve warrants on December 24, 2008. (R. p. 134, lines 3-5) Dubose read Miranda rights from a card. (R. p. 134, line 6 – p. 136, line 18) Dubose asked about Appellant's prior statement that selling drugs was a lifestyle for him. (R. p. 137, line 17 – p. 138, line 6) Appellant responded that he had to

support his family. (R. p. 138, lines 7-8) According to Dubose, Appellant "advised that none of the items was [sic] his because he did not live at the residence. ... [Appellant] said that his wife must have had someone else there because it wasn't his and it had to be hers." (R. p. 138, lines 18-22)

Kimberly was also charged as a result of the search of Home. (R. p. 144, lines 19-23) At trial, Kimberly testified she met Appellant in 2004 through a relative. (R. p. 180, lines 4-13) At the time Kimberly was a construction electrician in the Navy. (R. pp. 178-79) They wed in 2006, and a child was born in 2007. (R. p. 180, line 14 – p. 181, line 23) The couple moved back to Sumter in 2007, initially living separately with their respective parents. (R. p. 181, line 24 – p. 182, line 19) Kimberly and Appellant then moved to Home. (R. p. 182, line 20 – p. 183, line 3) Kimberly was employed at the time as a postal worker, and Appellant was unemployed. (R. pp. 182-83; p. 202, lines 6-9; p. 205, line 23 – p. 206, line 5) Kimberly maintained that only she and Appellant lived at Home with their child, and the couple shared the master bedroom. (R. p. 195, line 20 – p. 196, line 8; p. 200 lines 5-22; p. 206, lines 7-16; p. 212, lines 12-13) In addition to her denial that the items found in her purse belonged to her, Kimberly denied knowledge of the items found in the kitchen cabinet, stating she believed only canned goods to be in the cabinet. (R. p. 196, line 11 – p. 197, line 12; p. 198, line 18 – p. 199, line 22) Kimberly also denied knowledge of the weapons in the home and the blunt found in the bedroom ashtray. (R. p. 197, line 13 – p. 198, line 17) When asked if she had ever seen Appellant cook crack cocaine at Home, Kimberly again denied knowledge, stating, "I was at work so I couldn't tell you his activities." (R. p. 199, line 23 – p. 200, line 4; p. 200, line 23 – p. 201, line 3; p. 204, lines 7-13; p. 205, lines 8-18)

Appellant also testified at trial. The primary thrust of Appellant's defense consisted of a denial that he lived at Home, thereby denying constructive possession of the narcotics found there. Appellant stated that while he and Kimberly moved into Home in April 2008, by late 2008 he was no longer staying there as his primary residence. (R. p. 228, lines 12-25) Appellant stated due to altercations, "eighty-five percent of the time, [he] would be staying at [his] mom's, and there was plenty of times that...she would have friends and...people that she deal with [boyfriends] at that - at the residence." (R. p. 224, lines 1-17; p. 229, lines 1-19) After Appellant denied Home was his residence, the solicitor examined Appellant on several purchases of crack cocaine made by confidential informants: one on October 28, 2008, at 1:29 pm; one on November 24, 2008, at 12:28 pm; and another on December 1, 2008, at 4:43 pm. (R. p. 226, line 14 - p. 227, line 13) Appellant denied the transactions. (R. p. 226, line 14 - p. 227, line 13; p. 234, line 11, line 23 & line 25) Appellant was also asked about another incident, without objection, where it was alleged that he had traded drugs for 10 Loricet pills, and Appellant likewise denied that exchange. (R. p. 184, lines 1-14)

Appellant also denied ownership or knowledge of any of the drugs and related paraphernalia seized from Home. (R. p. 219, line 1 - p. 220, line 4; p. 230, line 19 - p. 231, line 8) While denying that the drugs belonged to him, Appellant also denied Kimberly had anything to do with the drugs in the residence. (R. p. 221, line 19 - 222, line 1) Appellant conceded that, when Dubose confronted him about the drugs and associated items found in Home, he commented that "[Kimberly] must have had someone there because it was not [Appellant's] and had to be hers." (R. p. 237, lines 1-5) Appellant denied making the statement "selling drugs is a lifestyle for me," or stating that he was supporting his family through drug sales. (R. 220, lines 5-17; p. 235, line 25 - p.

236, line 11) With regard to the alleged comment that drugs were a lifestyle for him, Appellant commented, "Why would I say drugs was a lifestyle for me whereas I had no knowledge of the drugs." (R. p. 233, lines 13-16) Appellant maintained that the only statement he made to officers was a denial of knowledge of any drugs in the residence. (R. p. 220, lines 21-23) Appellant also explained that the large sum of money in his pants came from a car accident. (R. p. 222, line 20 – p. 223, line 18)

Following Appellant's testimony, Dubose was called in reply. Dubose provided details of the three undercover buys of crack cocaine from Appellant at Home on October 28, 2008, November 24, 2008, and December 1, 2008. (R. pp. 242-50)

ARGUMENTS

I.

Failure to provide warnings regarding the pitfalls of self-representation in the absence of a timely and unequivocal request for self-representation is not reversible error. The trial court's denials of Appellant's requests regarding counsel's services are subject to review for abuse of discretion. The trial court did not abuse its discretion in denying Appellant's untimely and equivocal request to proceed *pro se*.

Appellant asserts that the trial court erred in denying his request to proceed *pro se* without conducting an inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975). Appellant's request was untimely and equivocal, thereby failing to trigger Faretta. The trial court's denial of the motion is subject to review under an abuse of discretion standard, and the State submits that no abuse of discretion occurred in this matter.

In Faretta, the United States Supreme Court recognized a defendant's right in a state criminal trial to proceed without counsel when he voluntarily and intelligently elects to do so. "A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions." State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). The rule is not without exceptions, however. A defendant "may waive the right to counsel and proceed at trial *pro se* only if the waiver is (1) clear and unequivocal, (2) knowing, intelligent, and voluntary, and (3) timely." U.S. v. Bernard, 708 F.3d 583, 588 (4th Cir. 2013) (citing United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir.2000) (collecting cases)); Faretta, *supra*. After trial proceedings have commenced, the rights to proceed *pro se* or to substitute counsel are curtailed in the interests of administration of justice.

Appellant's request to represent himself, if it can truly be considered as such, was not raised in a timely fashion. The right to represent oneself "[is] not absolute and [can]

be limited or waived if not raised before trial.” U.S. v. Dunlap, 577 F.2d 867, 868 (4th Cir. 1978). With regard to timeliness of a request for self-representation, “courts recognized, among other things, the need to minimize disruptions, to avoid inconvenience and delay, to maintain continuity, and to avoid confusing the jury.” Id. Further, if such a request made after the jury is selected but before the jury is sworn was to be granted, “the trial judge would have been obliged to postpone the commencement of trial for an extended period in order to allow [the defendant] a sufficient amount of time to prepare his defense.” Robards v. Rees, 789 F.2d 379, 384 (6th Cir. 1986). Due to these concerns, while a timely and unequivocal request may generally be granted, in the case of an untimely request, the trial court’s ruling regarding whether a defendant may relieve counsel and proceed *pro se* is reviewed for abuse of discretion. Id.; Dunlap, supra.; State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). Judge Young did not abuse his discretion in denying Appellant’s request in this case.

The case of U.S. v. Lawrence, 605 F.2d 1321 (4th Cir. 1979) is factually similar to the case at hand. In Lawrence, following several motions made in the year leading up to trial, the defendant’s trial began on a Monday. The court “published the indictment to the venire and made some prefatory remarks, the attorneys proceeded with the voir dire of the jurors...resulting in a panel of twelve jurors and two alternates.” Id. at 1322. There was an overnight recess. On Tuesday, following the resolution of another motion made by the defendant, defendant requested that his attorney move to be relieved. As in Appellant’s case, Lawrence’s request to relieve counsel was made before the jury was sworn but after the jury had been selected and some motions heard. The Lawrence court noted:

A court should, of course, vigilantly protect a defendant's constitutional rights, but it was never intended that any of these rights be used as a ploy to frustrate the orderly procedures of a court in the administration of justice.

Id. at 1325. In Lawrence, the abuse of discretion standard of review was applied:

...we think it reasonable, and entirely compatible with the defendant's constitutional rights, to require that the right of self-representation be asserted at some time 'before meaningful trial proceedings have commenced,' and thereafter its exercise rests within the sound discretion of the trial court.

Id. at 1325. Lawrence found that the selection of the jury and the motions heard constituted meaningful trial proceedings. Therefore, Lawrence's request to represent himself was untimely, and the court found no abuse of discretion in the court's denial of that motion.

Appellant's case is strikingly similar. In the present case, Brooks represented Appellant on the same charges for some time, resulting in a hung jury and mistrial in February 2013. (R. p. 3.) On May 23, 2013, approximately 10 days before the trial was to begin, Brooks asked to be relieved as counsel, citing Appellant's complaint to the Office of Disciplinary Counsel and disagreement regarding an offered plea and other aspects of the representation. (R. pp.4-5) Appellant took no position on Brooks' request at that time. (R. p. 5) Noting concerns that Appellant's grievance was a delay tactic, Judge James denied Brooks' motion to be relieved as counsel. (R. pp. 6-9) On June 3, 2013, the jury was selected, pre-trial motions were made, and a hearing was held on the admissibility of Appellant's statement which included testimony from officers and Appellant. (R. p. 11) It was not until June 4 that Appellant made his request to be appointed co-counsel with Brooks, the denial of which prompted subsequent assertions that he would like another attorney appointed or would like to proceed *pro se*. While the

jury had not been sworn when the request was made, as in Lawrence, meaningful trial proceedings had commenced, and the request was thus untimely and subject to review for abuse of discretion. Further, in the present case, where Appellant had taken no position on the request to relieve counsel during the May 23 hearing, his requests to proceed as co-counsel or otherwise relieve counsel strongly suggest he lacked a genuine inclination to do so; his requests were a stalling tactic. Judge Young did not abuse his discretion where Appellant's request was untimely made.

Appellant's request for self-representation was also equivocal. When Brooks moved to be relieved as counsel 10 days before trial, Appellant took no position on the request. (R. pp. 5-8) Appellant was twice asked to take a position on the motion to be relieved with open-ended questions, but Appellant took no position at that time. (R. pp. 5, 8) Appellant first raised his motion on the second day of trial as a request to be appointed co-counsel along with Brooks. (R. p. 84, lines 13-14) The court correctly denied this request, and Appellant does not challenge the ruling on appeal. United States v. Lang, 527 F.2d 1264 (4th Cir. 1975) (not error to deny defendant's motion to appear as co-counsel). Appellant never suggested that he should relieve counsel and proceed alone until pressed by the trial judge. Appellant first responded to questions indicating that he would like another attorney appointed in Brooks' place. (R. p. 85, lines 2-8) The exchange continued:

THE COURT: If you – if you want nothing to do with Mr. Brooks, then I can relieve Mr. Brooks, but the case will go on and you'll represent yourself.

THE DEFENDANT: Okay.

THE COURT: So you want to represent yourself?

THE DEFENDANT: Yes, sir.

(R. p. 85, lines 9-14) Due to Appellant's apparent vacillation, the court was justified in insisting Appellant proceed with appointed counsel. United States v. Bennett, 539 F.2d 45 (10th Cir. 1976) (defendant forfeited right to self-representation by vacillating positions); see also U.S. v. Frazier-El, 204 F.3d 553, 560 (Considering record as a whole and vacillation between request for substitute counsel and self-representation, court correctly insisted defendant proceed with counsel). "The requirement that a request for self-representation be clear and unequivocal also prevents a defendant from taking advantage of and manipulating the mutual exclusivity of the rights to counsel and self-representation." Frazier-El, 204 at 559. "In ambiguous situations created by a defendant's vacillation or manipulation, we must ascribe a 'constitutional primacy' to the right to counsel because this right serves both the individual and collective good, as opposed to only the individual interests served by protecting the right of self-representation." Id. Where Appellant's request for self-representation came only upon the heels of the denial of his request to appear as co-counsel and in response to leading questions by the court, the request was equivocal.

Judge Young did not abuse his discretion in denying Appellant's request to relieve counsel and proceed *pro se*.

The requirement that the assertion be clear and unequivocal 'is necessary to protect against an inadvertent waiver of the right to counsel by a defendant's occasional musings,' and it also 'prevents a defendant from taking advantage of and manipulating the mutual exclusivity of the rights to counsel and self-representation.'

United States v. Bush, 404 F.3d 263, 271 (4th Cir. 2005) (quoting Frazier-El, 204 F.3d at 558-59). Several factors may be considered in evaluating whether a trial judge has abused his discretion in denying a motion to relieve counsel:

...timeliness of the motion, adequacy of the trial judge's inquiry into the defendant's complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense.

State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991). As discussed at length above, Appellant's request was not timely made. To allow Appellant to proceed *pro se* at that juncture would cause unneeded delay and confusion. Appellant gave no new reason for his desire to proceed as co-counsel, stating only that he believed his "client [sic] is not going to represent me...to the fullest." (R. p. 84) Judge Young was aware that another judge had denied a motion to relieve counsel after a thorough motion hearing. (R. p. 84, line 24 – p. 85, line 3) Brooks had already represented Appellant in a trial on these exact same charges which resulted in a hung jury. When Appellant addressed the court regarding Brooks on June 4, the court had already had the opportunity to observe Appellant and Brooks during jury selection and other pre-trial motions. There is no evidence that Appellant and Brooks had a "total lack of communication." It appears that Brooks was putting forth an able defense. For all these reasons, Judge Young did not abuse his discretion in denying Appellant's untimely and equivocal request to proceed *pro se*.

Appellant attempts to cast the court's failure to apprise him of the risks involved in self-representation as reversible error. "Faretta does not deal with the situation of a defendant attempting to proceed *pro se* after trial has begun." Bassette v. Thompson, 915 F.2d 932, 941 (4th Cir. 1990). The "Faretta warnings" are a vehicle through which a trial judge may determine whether the defendant's waiver of his right to an attorney is made knowingly and intelligently, with a full understanding of the risks and pitfalls of his decision. Such inquiry may be required for a proper Faretta request. However, because

Appellant's motion, even if considered an unequivocal request to represent himself, was not made in a timely fashion, the court was not duty-bound to conduct a hearing. The right to represent oneself does not attach unless and until it is asserted – and it must be asserted in a timely and unequivocal fashion. See State v. Winkler, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (request for self-representation must be clearly asserted); see also Raulerson v. Wainwright, 469 U.S. 966, 970–71, 105 S.Ct. 366, 369 (1984) (Marshall, J., dissenting from denial of cert.) (“If a request [for self-representation] is ambiguous, the trial judge need not respond, because there has been no clear indication of a desire to waive a right to counsel.”) The court's responsibility to make further inquiry is triggered by a proper request. In the absence of such a request, the failure to warn as outlined in Faretta is not reversible error. See McKee v. Harris, 649 F.2d 927 (2nd Cir. 1981) (While formal inquiry should have been made into reasons for dissatisfaction where defendant presented seemingly substantial reasons for complaint, failure to do so was harmless error).

II.

Appellant opened the door to evidence that he had distributed crack cocaine on three prior occasions over the course of several weeks at various times of day from Home. Therefore, admission of the evidence was not error. In the absence of error in admitting the evidence, the trial court properly denied Appellant's motion for mistrial. (Appellant's Issues II and III)

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001).

Prior to trial, Appellant attempted to secure a ruling from the court *in limine* regarding prior sales made to a confidential informant (“CI buys”). The trial court agreed that the prosecution would not mention what the offenses named in the arrest warrants which prompted their visit to Home on December 23, 2008. The prosecution would say

only that there were arrest warrants to be served. In so ruling, the court effectively issued a tentative ruling that evidence regarding the three CI buys would be excluded on the basis of Rule 403, SCRE.

Counsel raised an additional concern: "...if my client gets up and says and I don't live here. I don't live here is that going to be equivalent of opening the door for Officer Dubose to come up and say, well, in November so and so we sent a CI and he was there then. And then in December so and so we sent a CI and ---." (R. p. 57, lines 4-9) The trial court opined "that may very well... he can't say I don't live here and then say, well, they can't ask me any questions about it." (R. p. 57, lines 10 & 15-17) The trial court withheld any ruling on the matter pre-trial. (R. p. 115, lines 2-5)

Appellant did ultimately take the stand to deny possession or narcotics in Home. This led to logical questions regarding whether Appellant lived there. It stands to reason that if Appellant lived in the home, he must know of the items. Appellant denied residence in the home in order to contest his constructive possession of the items. In doing so, Appellant opened the door to evidence tending to show that he did in fact live at Home. Appellant painted himself as an occasional visitor to the home late in 2008, coming over only at Kimberly's behest or as a sometime caregiver for his son when Kimberly's parents were unavailable. (R. p. 222, lines 6-17; p. 225, line 17 – p. 226, line 1 & lines 14-19) Even when watching his son, Appellant stated that he would often watch the child at his mother's residence, not Home. (R. p. 222, lines 6-17) Appellant claimed that "eighty-five percent of the time, [he] would be staying at [his] mom's," and Kimberly would have boyfriends and other friends at Home. (R. p. 224, lines 1-21) Appellant minimized his contact with Home and injected the claim that others stayed at

the home in order to cast doubt on his constructive possession of the narcotics and associated items found there.

Indeed, evidence of prior bad acts is only admissible in limited circumstances. State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (Evidence of prior bad acts admissible to show (1) motive, (2) intent, (3) the absence of mistake or accident, (4) commons scheme or plan, or (5) identity of the person charged with the commission of the crime on trial). Admission of evidence under Lyle is still subject to the balancing test reflected in Rule 403, SCRE. State v. Culbreath, 377 S.C. 326, 333, 659 S.E.2d 268, 272 (Ct. App. 2008). “Notwithstanding, a defendant may open the door to what would be otherwise improper evidence through his own introduction of evidence or witness examination.” Id. As noted by the trial court upon granting Appellant’s pre-trial request not to reveal that the arrest warrants being executed were for CI buys, “[Appellant] can’t say I don’t live here and then say, well, they can’t ask me any questions about it.” (R. p. 57, lines 15-17) “When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.” State v. McEachern, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012).

In his testimony, Appellant placed in issue not only whether he resided in the home but also whether another person could have been the owner, distributor, and manufacturer of narcotics found inside. Appellant placed in issue whether he was merely present in the home where narcotics were found as he denied any knowledge of the narcotics. As summarized in State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 n. 3 (Ct. App. 1995):

Proof of constructive possession requires a showing that the accused had knowledge of and dominion or control over either the drugs or the premises upon which the drugs were found. State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974). Mere presence in the area where drugs are found does not constitute constructive possession. State v. Tabor, 260 S.C. 355, 196 S.E.2d 111 (1973). Constructive possession may be proven by circumstantial evidence. State v. Crane, 296 S.C. 336, 372 S.E.2d 587 (1988).

Under Lyle and its progeny, as well as Rule 404(b), SCRE, evidence of other crimes or bad acts is generally not admissible to prove a defendant committed the specific crime charged unless the evidence tends to establish motive, intent, the absence of mistake, identity, or a common scheme or plan. Appellant opened the door to this evidence where he denied residence at Home and denied knowledge of drugs there. Evidence of three prior instances where Appellant sold crack cocaine from Home proved by circumstantial evidence that (a) Appellant did in fact reside at Home since he had been there on the three random occasions in which an informant had purchased narcotics, (b) Appellant had knowledge of and control of narcotics at Home because he had sold the same narcotics there on three prior occasions, and (c) the narcotics seized as a result of the search on December 23, 2008, were part of Appellant's ongoing scheme to manufacture and distribute narcotics at Home.

"A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005) (citations omitted). "The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's

interest in a fair trial designated to end in just judgment.” State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). “It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial.” Id.

Here, the trial court did not abuse its discretion in denying Appellant’s request for a mistrial based on testimony about the CI buys. As discussed above, there was no error upon which to consider such a request where the trial court properly permitted questioning of Appellant regarding the prior CI buys and testimony regarding the CI buys. Without the requisite error, there is no need to consider a motion for mistrial.

Here, the evidence was not unfairly prejudicial. “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” Wilson, supra, at 8, 545 S.E.2d 830. In Wilson, the defendant was charged with possession with intent to distribute crack cocaine. Law enforcement officers entered the hotel room Wilson shared with his girlfriend and discovered .78 grams crack cocaine, baggies, a beer can modified as a smoking device, and \$761 cash. Wilson claimed that the lights were out when he returned to the room at 4:30 am, and he was unaware of the crack cocaine and associated items in the room. Wilson’s girlfriend testified that she saw Wilson give a woman a bag containing a white rock substance in exchange for \$20 two days before. The court found, “In light of the State’s reliance on

circumstantial evidence to prove intent, the evidence of a prior drug transaction only two days earlier at the same location was especially probative. Further, its probative value was not substantially outweighed by the danger of suggesting a decision on an emotional or other improper basis." *Id.*²

In State v. Gore, 299 S.C. 368, 369, 384 S.E.2d 750 (1989),

Appellant was charged with constructive possession of drugs and drug paraphernalia found in the trailer where his mother, brother, and sister resided. At trial, appellant denied residing at the trailer at the time in question. Upon cross-examination by the solicitor, he denied ever selling drugs out of the trailer. Over appellant's objection, the trial judge allowed reply testimony by a confidential informant who stated he had purchased cocaine from appellant at the trailer on two prior occasions.

The court held that evidence of the purchases made one month earlier tended "to establish his intent regarding the cocaine in his possession at the time in question." *Id.* at 370, 384 S.E.2d 751.

This case closely resembles the scenarios in Wilson and Gore. The evidence of prior drug transactions in the present case is particularly probative in light of the State's reliance on circumstantial evidence to prove Appellant's constructive possession of the items found in Home, particularly so where Appellant denied residence, denied knowledge of the narcotics and related items, and suggested that other individuals may be responsible for the narcotics. Evidence that he in fact distributed crack cocaine on prior occasions from the home where crack cocaine, materials to make crack cocaine, and plastic bags commonly used to distribute cocaine were found is probative of Appellant's intent to manufacture narcotics, to distribute narcotics found at the home, his knowledge

² While the amount of crack cocaine in Wilson did not give rise to an inference of distribution and the amount found in the present case did, the State is still entitled to present evidence of intent to distribute as proof of the amount alone does not relieve the state of its burden of proving intent to distribute beyond a reasonable doubt.

of their presence, and his business plan or scheme. As in Wilson and Gore, the probative value of this evidence was not outweighed by the danger of suggesting a decision on an emotional or other improper basis.

For all these reasons the evidence of three prior drug transactions was properly admitted by the trial court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARY W. LEDDON
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: 
Mary W. Leddon
Bar # 76192

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(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 3, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2013-0001297

THE STATE,

Respondent,

v.

LEROY CLIFTON GIBBS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARY W. LEDDON
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY:


Mary W. Leddon
Bar # 76192

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ATTORNEYS FOR RESPONDENT

March 3, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable W. Jeffrey Young Circuit Court Judge

Appellate Case No. 2013-0001297

THE STATE,

Respondent,

v.

LEROY GIBBS,

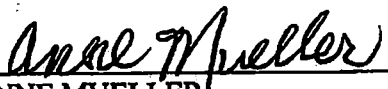
Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara R. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 3rd day of March, 2015.


ANNE MUELLER
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Leroy Clifton Gibbs, III, Appellant.

Appellate Case No. 2013-001297

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2016-UP-121
Submitted January 1, 2016 – Filed March 2, 2016

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mary Williams Leddon, both of
Columbia; and Solicitor Ernest Adolphus Finney, III, of
Sumter, for Respondent.

PER CURIAM: Leroy Clifton Gibbs, III, appeals his convictions for trafficking cocaine base more than 10 grams but less than 28 grams, manufacturing cocaine base, and possession with the intent to distribute cocaine, arguing the trial court

erred when it (1) arbitrarily denied his motion to represent himself at trial; (2) admitted evidence Gibbs allegedly distributed crack cocaine on three prior occasions at the residence where he was arrested; and (3) denied his motion for a mistrial. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court arbitrarily denied Gibbs's motion to represent himself at trial: *State v. Samuel*, 414 S.C. 206, 211, 777 S.E.2d 398, 401 (Ct. App. 2015) ("The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge. Only in a case of abuse of discretion will this [c]ourt interfere." (quoting *State v. Sims*, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991))); *State v. Starnes*, 388 S.C. 590, 600, 698 S.E.2d 604, 610 (2010) ("The right to self-representation, however, is not absolute."); *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999) ("A defendant's right to waive the assistance of counsel is not unlimited. The request to proceed *pro se* must be clearly asserted by the defendant prior to trial."); *Samuel*, 414 S.C. at 212, 777 S.E.2d at 401 ("The right of self-representation does not exist to be used as a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process."); *id.* ("A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel." (quoting *United States v. Frazier-El*, 204 F.3d 553, 560 (4th Cir. 2000))).

2. As to whether the trial court erred when it admitted evidence Gibbs allegedly distributed crack cocaine on three prior occasions at the residence where he was arrested: *State v. Stokes*, 381 S.C. 390, 398, 673 S.E.2d 434, 438 (2009) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (citing *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006))); *State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012) ("When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially."); *State v. Culbreath*, 377 S.C. 326, 333, 659 S.E.2d 268, 272 (Ct. App. 2008) ("[A] defendant may open the door to what would be otherwise improper evidence through his own introduction of evidence or witness examination."); *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) ("South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged except to establish (1)

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan, or (5) the identity of the perpetrator." (citing *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923)); *State v. King*, 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002) ("To admit prior bad acts regarding drugs under the *Lyle* exception, there must be a logical relevance between the acts in question and the purpose for the introduction."); *State v. Cheeseboro*, 346 S.C. 526, 548, 552 S.E.2d 300, 311 (2001) ("Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy."); *King*, 349 S.C. at 153, 561 S.E.2d at 645 ("[E]vidence of drug use or distribution must be clear and convincing." (citing *State v. Dickerson*, 341 S.C. 391, 399, 535 S.E.2d 119, 123 (2000))); *Stokes*, 381 S.C. at 404 n.14, 673 S.E.2d at 441 n.14 ("Clear and convincing' evidence is an intermediate degree of proof 'which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.'" (quoting *Anonymous v. State Bd. of Med. Examiners*, 329 S.C. 371, 374 n.2, 496 S.E.2d 17, 18 n.2 (1998))); *State v. Spears*, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013) ("Once bad act evidence is found admissible under Rule 404(b), the trial court *must* then conduct the prejudice analysis required by Rule 403, SCRE." (quoting *State v. Wallace*, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009))); *King*, 349 S.C. at 156, 561 S.E.2d at 647 ("Though an on-the-record Rule 403 analysis is required, this [c]ourt will not reverse the conviction if the trial [court's] comments concerning the matter indicate [it] was cognizant of the evidentiary rule when admitting the evidence of [the defendant's] prior bad acts.").

3. As to whether the trial court erred in denying Gibbs's motion for a mistrial: *Culbreath*, 377 S.C. at 331, 659 S.E.2d at 271 ("Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law."); *id* ("In order to receive a mistrial, a defendant must show error and resulting prejudice."); *id*. ("It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial.").

AFFIRMED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

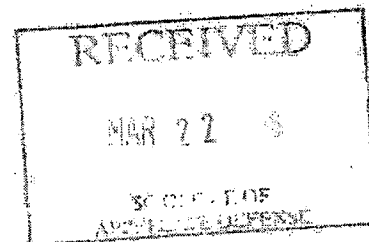
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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
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March 21, 2016

The Honorable James C. Campbell
Sumter County Judicial Center
215 North Harvin Street
Sumter SC 29150-4974

REMITTITUR

Re: The State v. Leroy C. Gibbs, III
Lower Court Case No. 2011GS4301125
Appellate Case No. 2013-001297



Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

J. A. Kitchings
CLERK

Enclosure

cc:  Lara Mary Caudy, Esquire
Alan McCrory Wilson, Esquire
Mary Williams Leddon, Esquire
Ernest Adolphus Finney, III, Esquire

FORM 5

REC

STATE OF SOUTH CAROLINA

2016 JUL 2

COUNTY OF SUMTER

JAMES C.)

CLERK)

LEON CLIFTON GIBBS III # 20584

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

CERTIFIED TRUE COPY
OF ORIGINAL FILEB. D. Dwyer
DEPUTY CLERK OF COURT

SUMTER COUNTY

SOUTH CAROLINA APPLICATION FOR

2016-CP-43-1275

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention TRENTON CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence SUMTER COUNTY SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-65-43-1125
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JUNE 5, 2013 (15 YEARS)
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 2, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) PROSECUTORIAL MISCONDUCT
- (c) JUDICIAL PREJUDICE
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) FAILURE TO OBJECT TO THE EVIDENCE PRESENTED AT MY TRIAL
- (b) IMPROPER REMARKS DURING CLOSING ARGUMENTS
- (c) IMPROPER REMARKS DURING SENTENCING
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. DIRECT APPEAL
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS P.O. Box 11629, COLUMBIA, S.C. 29211
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. CONVICTION AFFIRMED
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. MARCH 2, 2016
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NONE
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NONE
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) INEFFECTIVE ASSISTANCE COUNSEL
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. CHARLES T. BROOK, III, 309 BROAD STREET, SUMTER, S.C. 29150
 - ii. LARA M. CAUDY 1330 LADY STREET, SUITE 401, COLUMBIA, SC 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. JURY TRIAL
 - ii. DIRECT APPEAL
 - iii. _____

19. State clearly the relief you seek in filing this application:

REVERSAL OF CONVICTION AND SENTENCE

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of SUMMER

VERIFICATION

LERoy CLIFTON GIBBS, III

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Leroy Clifton Gibbs, III

Leroy Clifton Gibbs, III

LERoy CLIFTON GIBBS, III

SWORN to and subscribed before me this
day of JUNE, 2016.

[Signature] (L.S.)
Notary Public

My Commission Expires: October 7, 2024

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Leroy Clifton Gibbs, III, #208448,

2016-CP-43-1275

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on July 1, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the July 2011 term of the Grand Jury for Sumter County for one count of Trafficking Cocaine Base (10-28g), three counts of Possession with Intent to Distribute Cocaine Base within ½ Mile of a School or Park, one count of Manufacturing Cocaine Base, one count of Possession with Intent to Distribute Cocaine, two counts of Possession of a Firearm or Knife during Commission of a Violent Crime, and one count of Possession of Marijuana (2011-GS-43-1125). Applicant was represented at trial by Charles T. Brooks, III, Esquire. On June 5, 2013, Applicant was convicted of Trafficking Cocaine Base (10-28g), Manufacturing Cocaine Base, and Possession with Intent to Distribute Cocaine. Applicant was sentenced on June 5, 2013 by the Honorable W. Jeffrey Young to fifteen years' imprisonment for Possession with Intent to Distribute Cocaine, fifteen years for Manufacturing Cocaine Base, and ten years for Trafficking Cocaine Base (10-28g), to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Lara Caudy, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction in an opinion filed March 2, 2016. State v. Gibbs, Op. No. 2016-UP-121 (S.C. Ct. App. 2016). The Remittitur was returned on March 21, 2016.

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to object to the evidence presented at my trial."
2. Prosecutorial Misconduct
 - a. "Improper remarks during closing arguments."
3. Judicial Prejudice
 - a. "Improper remarks during sentencing."

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground

for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits that Applicant is unable to prove prosecutorial misconduct, notwithstanding the fact that the issue is procedurally barred.

V.

Respondent submits the allegation of "Judicial Prejudice – improper remarks at sentencing" must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"Improper remarks at sentencing" is not a claim cognizable under the act. Notwithstanding, Applicant has failed to set forth sufficient evidence of impropriety during his sentencing. For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss this allegation for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

IX.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

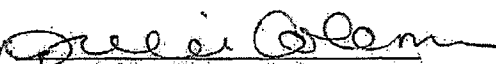
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

February 14, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

LEROY GIBBS, III, #208448)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

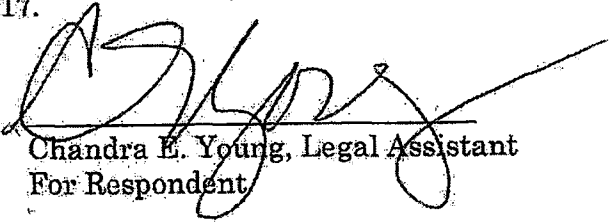
IN THE COURT OF COMMON PLEAS

2016-CP-43-1275

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 14th day of February, 2017.

Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2018 JUL -3 AM 10:46 THIRD JUDICIAL CIRCUIT
 C/A NO: 2016-CP-43-1275

Leroy Gibbs, #208448,

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Applicant,

v.

State of South Carolina,

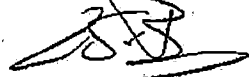
Respondent.

**AMENDMENT TO PRIOR PCR
 APPLICATION**

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Trial counsel failed to present favorable witnesses at trial.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 1419 Pendleton Street
 Columbia, SC 29201
 Phone: (803) 608-5543

June 29, 2018

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

2018 JUL -3 AM 10:44

THIRD JUDICIAL CIRCUIT

Leroy Gibbs, #208448,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

C/A NO: 2016-CP-43-1275

Applicant,

v.

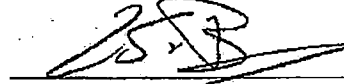
State of South Carolina,

Respondent.**PROOF OF SERVICE**

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1419 Pendleton Street
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
June 29, 2018

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2016-CP-43-01275
	)	
Leroy Clifton Gibbs III,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 26, 2018
Sumter, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge

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

Lance S. Boozer, Esquire
Attorney for the Plaintiff

Julie Coleman, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
1		
2		
3		
4	Leroy C. Gibbs III	
5	Direct by Mr. Boozer.....	6
6	Cross by Ms. Coleman.....	18
7	Diane Williams	
8	Direct by Mr. Boozer.....	20
9	Latroy Gibbs	
10	Direct by Mr. Boozer.....	23
11	Cross by Ms. Coleman.....	26
12	Charles Brooks III	
13	Direct by Mr. Boozer.....	27
14	Cross by Ms. Coleman.....	42
15	State Rests.....	48
16	Applicant Rests.....	48
17	Court Reporter Certification.....	49
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Motion for Relief of Counsel		13

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
 or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1 JULY 26, 2018

2 (WHEREUPON, the proceedings began at 11:30 a.m.)

3 MS. COLEMAN: May it please the Court. This is Leroy
4 Clifton Gibbs III versus the State of South Carolina, Docket
5 Number 2016-CP-43-1275. The applicant is presently confined
6 in the South Carolina Department of Corrections pursuant to
7 orders of commitment of the Clerk of Court for Sumter County.

8 Applicant was indicted by the July 2011 term of the
9 grand jury for Sumter County for trafficking cocaine base, 10
10 to 28 grams, three counts of possession with intent to
11 distribute cocaine base within a half-mile of a school or
12 park, manufacturing cocaine base, possession with intent to
13 distribute cocaine, two counts of possession of a firearm or
14 a knife during the commission of a violent crime, and
15 possession of marijuana. This is Docket Number 2011-GS-43-
16 1125.

17 Applicant was represented at trial by Charles T. Brooks
18 III, Esquire. Applicant proceeded to a first jury trial in
19 the spring of 2013, which ended in a mistrial, and was later
20 retried and he had a second trial on June the 3rd through the
21 5th of 2013 before the Hon. W. Jeffrey Young.

22 Applicant was convicted of trafficking cocaine base, 10
23 to 28 grams, manufacturing cocaine base, and possession with
24 intent to distribute cocaine. Judge Young sentenced
25 applicant to 15 years imprisonment for possession with intent

1 to distribute cocaine, 15 years for manufacturing cocaine
2 base, and 10 years for trafficking cocaine base, all to be
3 served concurrently.

4 Applicant filed a timely notice of appeal. An appeal
5 was perfected by Laura Cotty [ph], Esquire, of the Office of
6 Appellate Defense. The South Carolina Court of Appeals
7 affirmed esquire -- excuse me -- applicant's conviction in an
8 opinion filed March 2nd, 2016. The remittitur was issued
9 March 21st, 2016.

10 Applicant then filed a timely application for post-
11 conviction relief on July 1st, 2016, alleging he was being
12 held in custody unlawfully based on the following
13 allegations: ineffective assistance of counsel, failure to
14 object to the evidence presented at my trial, prosecutorial
15 misconduct, and judicial prejudice.

16 The State filed its return on February 14th, 2017.
17 Applicant filed an amended application on June 29th, 2018,
18 which should be part of your judge's packet up there. Your
19 judge's packet also includes the transcript from the first
20 trial, which ended in a mistrial, as well as the current
21 trial which led to the conviction, which we're here for
22 today.

23 Applicant is present today, and he is represented by Mr.
24 Lance Boozer.

25 THE COURT: Mr. Boozer?

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 MR. BOOZER: Thank you, Your Honor. If it pleases the
2 Court, we'll go ahead and call Mr. Gibbs to the stand.

3 THE BAILIFF: Place your left hand on the Bible and
4 raise your right hand, sir. State your full name.

5 THE APPLICANT: Leroy Gibbs.

6 THE BAILIFF: Do you solemnly swear or affirm to this
7 Court to tell the whole truth and nothing but the truth, so
8 help you God?

9 THE APPLICANT: Yes, sir.

10 THE BAILIFF: Walk around, sir. State your full name
11 and spell your last name for the record, please, sir.

12 THE APPLICANT: Leroy Gibbs, G-i-b-b-s.

13 LEROY GIBBS, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BOOZER:

17 Q: Mr. Gibbs, how are you doing today?

18 A: All right.

19 Q: If you would, just lean forward and speak a little bit
20 louder. How are you doing?

21 A: I'm doing all right.

22 Q: Good. Mr. Gibbs, do you know what we're doing here
23 today in court?

24 A: Yes, sir.

25 Q: Okay. What is that?

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 A: Show grounds of a PCR that my attorney was ineffective.

2 Q: Okay. Now, Mr. -- Mr. Gibbs, what are you currently
3 incarcerated for?

4 A: Trafficking cocaine, possession with the intent of
5 cocaine, and manufacturing cocaine base.

6 Q: And you were convicted at a -- at a trial?

7 A: Yes.

8 Q: All right. And right now, as it stands, what's your
9 max-out date?

10 A: Sometime -- I think right now it's 2021.

11 Q: 2021? And will you be parole eligible at any point?

12 A: Yes. I'm parole eligible.

13 Q: When is that?

14 A: I'm parole eligible now.

15 Q: Okay. So you've got a parole hearing coming up at some
16 point?

17 A: I just went up and they denied it.

18 Q: Okay. Now, do you understand -- and you and I have
19 certainly had this discussion. You understand that if you're
20 successful here today, the only thing that this Court can do
21 is to grant you a new trial and you go back and you face
22 another trial all over again?

23 A: Yes, sir.

24 Q: Okay. And do you understand that there's a possibility
25 if you went back to trial that you could get either -- and if

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 you were found guilty, you could get the same sentence or
2 more time or more time than what you have left to serve on
3 your sentence?

4 A: Yes, sir.

5 Q: Okay. And do you understand that in the event you do
6 win this PCR application, the State would likely file an
7 appeal and that is going to take some time? There's a
8 situation where that could occur whereby you may have either
9 paroled out and maxed out your sentence by the time you go
10 back for a new trial. Do you understand that?

11 A: Yes, sir.

12 Q: And knowing all that, do you still wish to proceed with
13 your PCR?

14 A: Yes, sir.

15 Q: Okay. Now, when were you arrested on the charges we're
16 talking about?

17 A: December the 23rd of 2008.

18 Q: All right. So that's been quite a long time ago; right?

19 A: Yes, sir.

20 Q: Did you -- who was your lawyer when you got arrested or
21 after you got arrested?

22 A: David Sullivan.

23 Q: All right. What happened with Mr. Sullivan?

24 A: The only information I got was that he went to another
25 firm or another county or some sort.

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 Q: Okay. So after Mr. Sullivan, who then became your
2 lawyer?

3 A: Mr. Charles Brooks.

4 Q: Did you hire him or was he appointed?

5 A: He was appointed.

6 Q: Now, while Mr. Brooks was your lawyer, did you have some
7 plea offers that were being offered to you?

8 A: Yes, sir.

9 Q: What were those?

10 A: The first one was in December of 2012, and it was 12
11 years.

12 Q: All right. Did you have -- and did you decline that
13 one?

14 A: Yes, sir.

15 Q: All right. Did you have another plea offer?

16 A: Yes. I had another plea offer February of 2013, which
17 was seven years.

18 Q: All right. Did you decline that one?

19 A: Yes, sir.

20 Q: And did you have any other plea offers?

21 A: I had a plea offer two days before trial, my first
22 trial, which was three years.

23 Q: Okay. Did you decline that one?

24 A: Yes, sir.

25 Q: And why were you declining those? Did you want a trial?

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 A: Sir?

2 Q: Did --

3 A: Yes, I wanted to go to trial.

4 Q: Okay. You've always wanted a trial?

5 A: Yes.

6 Q: All right. Now, so you ultimately ended up having two
7 trials; is that right?

8 A: Yes, sir.

9 Q: Your first trial was February of 2013 before Judge
10 James?

11 A: Yes, sir.

12 Q: And in that trial, what happened? Did y'all end up with
13 a hung jury?

14 A: Yes, sir.

15 Q: And what was your defense, if you recall, at that trial?

16 A: My defense was that I didn't live at this actual
17 residence.

18 Q: Okay. And do you recall that your attorney actually
19 called three witnesses at that first trial on your behalf?

20 MR. BOOZER: And, Your Honor, I'm referring to page 304,
21 just by reference.

22 BY MR. BOOZER:

23 Q: Did your lawyer call three witnesses for you?

24 A: Yes, sir.

25 Q: Who was that?

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

- 1 A: It was my brother, my friend, and my mother.
- 2 Q: Okay. So that would be your mother, Diane Williams?
- 3 A: Yes, sir.
- 4 Q: Your brother, Latroy Gibbs?
- 5 A: Yes, sir.
- 6 Q: And your friend, Darnell Green?
- 7 A: Yes, sir.
- 8 Q: All right. And why -- did you ask your lawyer to call,
- 9 those witnesses?
- 10 A: Yes, sir.
- 11 Q: And were they able to say that you were not living at
- 12 that house that it was alleged that all this was going on?
- 13 A: To some sort. They stated that they were the one that
- 14 dropped me off that morning, which -- which they testified,
- 15 and my mother testified that I was staying with her at that
- 16 time.
- 17 Q: Okay. And you were not convicted at that trial?
- 18 A: No, sir.
- 19 Q: Now, after the hung jury, you had your second trial a
- 20 little bit later that year in June?
- 21 A: Yes, sir.
- 22 Q: All right. And did Mr. Brooks again represent you at
- 23 that trial?
- 24 A: After the first trial, yes, he did, but he put in a
- 25 motion to be relieved from the case.

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 Q: Okay. Why did -- to your understanding, why did he put
2 in a motion to be relieved?

3 A: Because he felt that I wasn't indigent.

4 Q: He felt you weren't indigent?

5 A: Yes.

6 Q: Why do you believe that was?

7 A: Because the day of the trial, I had, like, \$1,200 in my
8 pocket at that time before -- when I was -- was put into
9 custody following the --

10 Q: Before the first trial or the second trial?

11 A: The first trial.

12 Q: Did he tell you that that's why he wanted to be relieved
13 or why did he say he wanted to be relieved?

14 A: On -- on the -- I have the actual -- the actual motion
15 that he put in.

16 MR. BOOZER: Your Honor, may I approach the witness?

17 THE COURT: Yes, sir.

18 BY MR. BOOZER:

19 Q: Mr. Gibbs, you have handed me from your pleading
20 materials a copy of what's labeled a motion for relief of
21 counsel appointed to defendant, and it appears to be filed
22 with the Clerk of Court on February 27th, 2013. Is that a
23 true and accurate copy of Mr. Brooks' motion to be relieved
24 as counsel?

25 A: Yes, sir.

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 MR. BOOZER: Your Honor, I would move to make this
2 Applicant's Exhibit 1.

3 MS. COLEMAN: No objection.

4 THE COURT: All right.

5 (WHEREUPON, Applicant's Exhibit Number 1, motion to be
6 relieved as counsel, was admitted into evidence.)

7 BY MR. BOOZER:

8 Q: Mr. Gibbs, now, looking at this motion for relief of
9 counsel, this is something you didn't -- did you ask your
10 lawyer to file this or did he file it on his own?

11 A: He filed it on his own.

12 Q: Okay. And it says, in part, that upon the arrest of the
13 defendant for these matters, the defendant posted bail bond
14 in the amount of \$160,000. At the conclusion of the hearing
15 in this matter in February 2013, the defendant was taken into
16 custody pending the outcome of these matters and a decision
17 by the jury. At the time of defendant's being taken into
18 custody, the defendant had in his possession approximately
19 \$1,100.

20 Attorney Brooks requests relief from this case as the
21 amount of funds available to the defendant clearly indicate
22 that he is not, in fact, indigent and not in need of the
23 State to provide him with representation on these charges, as
24 he is capable of retaining private counsel for this matter,
25 as appropriate.

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 Is that your understanding of the reason he was asking
2 to be relieved?

3 A: Yes, sir.

4 Q: Okay. Did y'all actually have a hearing on that?

5 A: Yes, sir.

6 Q: What happened at the hearing?

7 A: At the hearing, we -- it was decided by the same judge
8 of this -- of the first trial, which was I think Mr. James,
9 if I'm not mistaken, and he stated that -- that he was the
10 judge of the -- of the hearing and that from his, you know,
11 knowledge and what he seen that, you know, he did a good job
12 and that he -- you know what I'm saying -- would leave him as
13 counsel.

14 Q: So ultimately, Mr. Brooks' request to be relieved was
15 denied?

16 A: Yes.

17 Q: Okay. After he filed that motion, did that change
18 anything about y'all's relationship?

19 A: Yes.

20 Q: Okay. Explain. How did it change?

21 A: He stated, you know, during the hearing that he don't
22 want to represent me and that I didn't want him as my
23 attorney because of the fact that in the first trial he
24 stated on record that the State didn't give him all of the
25 discovery and that they only advised him two days before

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 trial that we was going to be held.

2 Q: And the motion to relieve, that was filed after your
3 first trial?

4 A: Yes.

5 Q: Or before?

6 A: Yeah. After.

7 Q: It was after?

8 A: After the first trial.

9 Q: All right. Now, for the second trial, did you ask or
10 did you believe -- let me ask you this way. Did you ask Mr.
11 Brooks to have your three witnesses, Ms. Williams, Mr. Green,
12 and your brother, Mr. Gibbs, there at that trial?

13 A: Yes, sir.

14 Q: Were they there at the trial?

15 A: Yes, sir.

16 Q: All right. Did they testify at the second trial?

17 A: No, sir.

18 Q: Do you know why they did not testify?

19 A: I asked him. He stated that he didn't prepare his case.

20 Q: Okay. When did you ask him that?

21 A: Right before trial.

22 Q: All right. Did you testify at the first trial and the
23 second trial?

24 A: Yes, sir.

25 Q: And was he against you testifying?

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 A: Yes, sir.

2 Q: But you -- you chose to exercise your right to testify?

3 A: Yes, sir.

4 Q: All right. Did you want him to call those witnesses to
5 testify at your second trial?

6 A: Yes, sir.

7 Q: And they were willing and able?

8 A: Yes, sir.

9 Q: And you ultimately were convicted?

10 A: Yes, sir.

11 Q: All right. Just briefly, I want to touch on a couple of
12 the grounds that you have brought up. That you believe your
13 lawyer failed to object to evidence presented at the trial,
14 as well as improper closing remarks. What specifically do
15 you believe he should have objected to at trial?

16 A: The evidence itself.

17 Q: Okay.

18 A: The probable cause of being there, the turn -- the
19 grounds of them being at the house to arrest me was because
20 of a confidential informant that they said that they had, and
21 an audio and video to show that I sold drugs to this
22 confidential informant, and that the confidential informant
23 had documented funds that was given by, you know, the State
24 that he bought drugs from me.

25 Q: All right. Now, how about as far as closing remarks?

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 What do you feel was either improper about it or what should
2 your lawyer have objected to?

3 A: In their closing remarks, they allowed the State to
4 present its evidence during the trial, which prejudiced me.

5 Q: Okay. Let me go back. At the time, where were you --
6 and you testified to this at trial both times, I believe.

7 Where -- where did you testify you were actually living at
8 the time?

9 A: At [REDACTED] S. Pike East, Lot [REDACTED].

10 Q: Okay.

11 Q: Which is my mother's house.

12 Q: That's your mother's house?

13 A: Yes.

14 Q: And where did all this stuff allegedly occur?

15 A: At [REDACTED] Madison Street.

16 Q: Okay. And is that your ex-wife's house or your wife's
17 house, but y'all were separated at the time?

18 A: Yes, sir.

19 Q: Okay. Mr. Gibbs, obviously, you've waited quite a while
20 for this day in court. I want to make sure that we've gotten
21 everything on the record that you wanted to discuss about
22 your PCR application. I think we've done that, but I want to
23 make sure.

24 Knowing that I will be calling some other witnesses on
25 your behalf, is there anything that we have not raised that

LEROY C. GIBBS III - DIRECT BY MR. BOOZER

1 you wish to address to the Court as far as your PCR
2 application?

3 A: Yes. If I could, on grounds -- on other grounds.

4 Q: Well, no. Only what we've alleged.

5 A: Alleged?

6 Q: Correct.

7 A: That's it.

8 Q: Okay.

9 MR. BOOZER: Please answer any questions Ms. Coleman may
10 have for you.

11 CROSS-EXAMINATION

12 BY MS. COLEMAN:

13 Q: Good morning, Mr. Gibbs.

14 A: Good morning.

15 Q: At your trial, do you remember discussing with your
16 attorney your right to testify or to remain silent at trial?

17 A: Yes, ma'am.

18 Q: And do you remember the judge telling you at the trial
19 that you have the right to testify or the right to remain
20 silent?

21 A: Yes, ma'am.

22 Q: Why did you choose to testify at trial?

23 A: Because I felt that -- that I was being alleged and
24 accused of selling drugs out of this residence, which I
25 testified that I didn't.

LEROY C. GIBBS III - CROSS BY MS. COLEMAN

1 Q: So you just wanted to tell your side of the story?

2 A: Yes, ma'am.

3 Q: Okay. Did your attorney agree with that decision?

4 A: No.

5 Q: Or did he give you an opinion about it one way or the
6 other?

7 A: No.

8 Q: Okay. He didn't give you an opinion?

9 A: No. The only thing he stated was that he felt that in
10 his interest that I shouldn't testify.

11 Q: Okay. But you decided you wanted to?

12 A: Yes.

13 MS. COLEMAN: Thank you. Nothing further.

14 MR. BOOZER: No redirect, Your Honor.

15 THE COURT: Thank you, sir. You can step down.

16 MR. BOOZER: We'd call Diane Williams to the stand.

17 THE BAILIFF: Place your right hand -- left hand on the
18 Bible and raise your right hand. State your full name,
19 please, ma'am.

20 THE WITNESS: Diane Williams.

21 THE BAILIFF: Do you solemnly swear and affirm to this
22 Court to tell the whole truth and nothing but the truth, so
23 help you God?

24 THE WITNESS: Yes.

25 THE BAILIFF: Step around, please, ma'am. State your

DIANE WILLIAMS - DIRECT BY MR. BOOZER

1 full name and spell your last name, please, ma'am.

2 THE WITNESS: Diane Williams, W-i-l-l-i-a-m-s.

3 DIANE WILLIAMS, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BOOZER:

7 Q: Good morning, Ms. Williams. How are you?

8 A: Fine.

9 Q: Do you need any water?

10 A: I'm straight.

11 Q: Okay. Ms. Williams, are you related to Leroy Gibbs?

12 A: Pardon me?

13 Q: Are you related to Leroy Gibbs?

14 A: Yes. Mother.

15 Q: You're his mother?

16 A: Yes.

17 Q: Okay. And you understand here today that you're under
18 oath and you've got to tell the truth. Do you understand
19 that?

20 A: Yes.

21 Q: All right. Now, Ms. Williams, you and I have previously
22 spoken?

23 A: Yes.

24 Q: Now, going back to February of 2013, you understand that
25 your son had two trials?

DIANE WILLIAMS - DIRECT BY MR. BOOZER

1 A: Yes.

2 Q: That being February of 2013, do you recall testifying at
3 that trial?

4 A: Yes.

5 MR. BOOZER: Your Honor, may I approach the witness?

6 THE COURT: Yes, sir.

7 BY MR. BOOZER:

8 Q: Ms. Williams, I'm going to hand you a copy of the
9 transcript from February of 2013 and, if you would, look at
10 it beginning on page 304. Your testimony begins at line 9.

11 A: Okay.

12 Q: And if you would, just read for me to yourself through
13 line 18 on page 305.

14 (WHEREUPON, there was a pause in the proceedings.)

15 Q: Have you had an opportunity to review that testimony?

16 A: Review it?

17 Q: Just have you had an opportunity to read it?

18 A: Yes.

19 Q: Okay. And is that what you testified to that day in
20 court?

21 A: Yes.

22 Q: Why were you there to testify? Were you under subpoena
23 or did someone ask you to come and testify?

24 A: No. My son asked me to.

25 Q: Okay. And you had testified on page 304 that you lived

DIANE WILLIAMS - DIRECT BY MR. BOOZER

1 at [REDACTED] S. Pike East, Lot [REDACTED]? Is that right?

2 A: Yes.

3 Q: Okay. And then back in 2008, you had testified that he
4 was living with you back and forth from his old house?

5 A: Yes.

6 Q: All right. Now, at the second trial, were you present
7 for that one?

8 A: Yes.

9 Q: And did you testify at that trial?

10 A: No.

11 Q: Why did you not testify at that trial?

12 A: I guess Attorney Brooks said he didn't need us.

13 Q: All right. Did you think you were going to testify?

14 A: Yes.

15 Q: Did -- did Mr. Brooks tell you why he didn't think he
16 needed you?

17 A: He didn't explain it.

18 Q: All right. Now, the testimony that is on page -- from
19 304 to 305 that you've read, would you have testified to that
20 again at the second trial?

21 A: Yes.

22 Q: And would you also agree today, without having to go
23 back through all this, is this testimony still the same
24 today?

25 A: Yes.

DIANE WILLIAMS - DIRECT BY MR. BOOZER

1 Q: , Okay.

2 MR. BOOZER: Ms. Williams, that's all the questions I
3 have for you. Please answer any the State may have.

4 MS. COLEMAN: I don't have any questions. Thank you.

5 THE COURT: Thank you, ma'am. You can step down.

6 MR. BOOZER: Your Honor, we'd go ahead and call Latroy
7 Gibbs to the stand.

8 THE BAILIFF: Place your left hand on the Bible and
9 raise your right hand. State your full name, sir.

10 THE WITNESS: Latroy Gibbs.

11 THE BAILIFF: Do you solemnly swear and affirm to this
12 Court to tell the whole truth and nothing but the truth, so
13 help you God?

14 THE WITNESS: Yes, sir.

15 THE BAILIFF: Step around, sir. State your full name
16 and spell your last name for the record, please, sir.

17 THE WITNESS: Latroy Gibbs, G-i-b-b-s.

18 LATROY GIBBS, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BOOZER:

22 Q: Mr. Gibbs, how are you doing today?

23 A: I'm doing all right.

24 Q: All right. And, Mr. Gibbs, are you related to Leroy
25 Gibbs?

LATROY GIBBS - DIRECT BY MR. BOOZER

1 A: Yes, sir. That's my brother.

2 Q: That's your brother? Now, do you understand that you're

3 under oath and you have to tell the truth here today?

4 A: Yes, sir.

5 Q: Okay. And you intend to do that?

6 A: Yes, sir.

7 Q: All right. Mr. Gibbs, now, you and I have spoken

8 before?

9 A: Yes, sir.

10 Q: Mr. Gibbs, are you aware that your brother had two

11 trials?

12 A: Correct.

13 Q: Were you at both of those trials?

14 A: Yes, sir.

15 Q: Now, the first trial in February of 2013, do you recall

16 testifying at that trial?

17 A: Yes, sir.

18 MR. BOOZER: If I may approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. BOOZER:

21 Q: Mr. Gibbs, I'm going to hand you a copy of the

22 transcript from that first trial and, if you would, just take

23 a look at it beginning on page 308, beginning at line 24, and

24 read to yourself from that point over to three -- to page 310

25 ending at line 3.

LATROY GIBBS - DIRECT BY MR. BOOZER

1 (WHEREUPON, there was a pause in the proceedings.)

2 Q: Have you had a chance to read that?

3 A: Yes, sir.

4 Q: Okay. And is that what you testified to that day?

5 A: Yes, sir.

6 Q: All right. And does that testimony still remain true to
7 this day?

8 A: Yes, sir.

9 Q: All right. And in it, you had indicated that your
10 brother was living at [REDACTED] S. Pike?

11 A: Yes, sir.

12 Q: Now, at the second trial, did you testify?

13 A: No, sir.

14 Q: Why did you not testify at the second trial?

15 A: Well, I didn't testify because I talked to my brother's
16 lawyer and he said that he needed -- he needed some-- some
17 funds to represent him. So he said he wasn't going to
18 represent him if he didn't have the money to represent him.
19 So he said he didn't need us.

20 Q: When did you have this conversation?

21 A: During the trial. Before the trial.

22 Q: All right. Did you think you were going to testify that
23 day?

24 A: Yes, sir.

25 Q: Had you have testified that day, would you have

LATROY GIBBS - DIRECT BY MR. BOOZER

1 testified to the same testimony you entered back in February
2 of 2013?

3 A: Correct.

4 Q: Okay. And today, you had indicated that that testimony
5 still remains the same?

6 A: Correct.

7 Q: All right. And did you want to testify at the trial?

8 A: Yes, sir.

9 MR. BOOZER: Thank you, Mr. Gibbs. That's all the
10 questions I have.

11 CROSS-EXAMINATION

12 BY MS. COLEMAN:

13 Q: Mr. Gibbs, his attorney, Charles Brooks, did represent
14 him at the trial, didn't he?

15 A: Correct.

16 Q: Okay. Did you pay him any more funds or did that have
17 anything to do --

18 A: No. But he said he wasn't going to represent him to the
19 fullest like he did in the trial -- in the first trial
20 because he wanted some financial -- you know, he wanted some
21 money for representing him.

22 Q: And that's why you didn't testify at the second trial?

23 A: Yes, ma'am. That's what he told me.

24 MS. COLEMAN: Thank you. Nothing further.

25 THE WITNESS: All right.

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 MR. BOOZER: No further questions, Your Honor.

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

3 MR. BOOZER: We'd call Charles Brooks, Your Honor.

4 THE BAILIFF: Place your left hand on the Bible. Raise
5 your right. State your full name.

6 THE WITNESS: Charles T. Brooks III.

7 THE BAILIFF: Do you solemnly swear and affirm to this
8 Court to --

9 THE WITNESS: Tell the truth and nothing but the truth.

10 THE BAILIFF: -- tell the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE BAILIFF: Step around, sir.

14 THE WITNESS: Okay. Good morning, Judge.

15 THE BAILIFF: State your full name and spell your last
16 name for the record, please, sir.

17 THE WITNESS: Charles T. Brooks III, B-r-o-o-k-s.

18 CHARLES T. BROOKS III, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BOOZER:

22 Q: Mr. Brooks, how are you doing today?

23 A: I'm doing good.

24 Q: Okay. Mr. Brooks, did you have -- did you represent Mr.
25 Gibbs?

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 A: I did.

2 Q: All right. How long did you represent Mr. Gibbs for?

3 A: You know, I represented him for both trials. I can't
4 remember how long I had him before the first trial, but it
5 was a significant period of time. It wasn't a -- it was not
6 a situation of me just getting appointed on the case and
7 then, you know, a week or two or a month or two and then
8 trying the case.

9 We had significant time from the time I represented him
10 until the first trial, but he was originally appointed to
11 David Sullivan. And after David Sullivan had left the Public
12 Defender's Office, the Public Defender's Office had sent out
13 appointments to members of the private bar, and that's how I
14 got Mr. Gibbs' case.

15 Q: Okay. What was your relationship like with Mr. Gibbs?

16 A: He didn't listen to anything I said to him, if that
17 tells you anything. He didn't want to follow any of my
18 advice. So I would say it was contentious throughout the
19 entire time of representing him from the very beginning, from
20 the process of getting plea offers.

21 Now, some of the plea offers that he got I felt that
22 they were too high, considering the case and the tone of the
23 case, but generally, as I've found out in my years of
24 practicing, you know, when you get closer to trial and the
25 Solicitor's Office really has to kind of show more of their

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 cards, so to speak, in trying a case, usually the plea offers
2 get a little better. In this case, it did.

3 Q: Did --

4 A: As he said, they offered him three years, and I do think
5 that even after the trial of the first case, Mr. Tyler Brown,
6 who was the prosecutor -- I think he agreed to offer that
7 again in lieu of trying it a second time. Both times, you
8 know, Mr. Gibbs was adamant he didn't want to take a plea.

9 Now, obviously, when it got down to three years, my
10 recommendation was take it. When you factor in what you're
11 exposed to, three years, he'd have been -- he'd probably have
12 done 18 months. He'd have long been out and that would have
13 -- what you also have to recognize is that not only did Mr.
14 Gibbs have the charges that he had as it relates to the home
15 where his wife that he was separated from lived, he also had
16 other charges from buys, alleged buys with CIs, that were
17 also pending against him.

18 So he had a multitude of drug cases. So those plea
19 offers were to take care of those other cases that he never
20 went to trial on, as well as this one.

21 Q: So he was looking at a three-year offer that he would've
22 done, give or take, 18 months, and he declined that?

23 A: That's correct.

24 Q: And his exposure was much, much greater than that?

25 A: Absolutely.

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 Q: And your advice was to take the plea offer in this case;
2 is that correct?

3 A: When it got down to three years, my advice was you need
4 to take this deal and jump on it because, like I said, not
5 only that includes the incident and the facts that come out
6 of that incident that was in both trials, but it also dealt
7 with other alleged buys that he was actually charged with.
8 So even if you read the first trial, you see where Officer
9 Dubose in reply gets into those buys, alleged buys, what he
10 was arrested for or what they had an arrest warrant for him
11 for, if that makes any sense.

12 Q: What I was getting at with that three-year offer, he's
13 adamant the entire time that he wants a trial on this case?

14 A: Oh, he wanted it dismissed or he wanted a trial.

15 Q: Okay. Now, what was the defense at the -- at the first
16 trial?

17 A: Well, the defense -- the defense both times was that the
18 drugs were not his and he didn't live there.

19 Q: Okay.

20 A: He didn't live there and this residence belonged to his
21 wife. Okay? She had worked at the post office. All the
22 documents were in her name. It was her residence, and Leroy
23 and his mother testified that he had a -- sort of a --
24 sometimes I lay my head here, sometimes I lay my head there,
25 sometimes I'm at my mama's house, sometimes I'm at my wife's

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 house. That's pretty much all the facts that came out about
2 where Leroy would be. That -- that part that we got.

3 Q: So that was -- one big component of the defense in this
4 case is that Leroy wasn't living with the mail lady, the mail
5 woman, his wife?

6 A: His wife. Right.

7 Q: He was living with his mom at Pike Street?

8 A: Right.

9 Q: Okay.

10 A: Well, no, no, let me say this. The defense was it
11 wasn't his dope.

12 Q: That, coupled with the --

13 A: Coupled with I don't live here. That's -- and what his
14 explanation was, I don't live here full time so, therefore,
15 it's not my dope.

16 Q: Gotcha. So in the first trial, you ended up calling
17 three witnesses in addition to Mr. Gibbs wanting to testify?

18 A: That's correct.

19 Q: You called Ms. Williams, Mr. Green, and his brother, Mr.
20 Gibbs?

21 A: That's correct.

22 Q: All right. What was the purpose -- the purpose in
23 calling Ms. Williams and Mr. Gibbs, his brother, was that to
24 show that he was not living at this address, but rather he
25 was living at Pike?

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 A: That's correct. And let me say this. They all -- the
2 whole theory was -- obviously, he was estranged from his
3 wife. So now sometimes he would go there. Okay? And
4 obviously, being married to the woman, his estranged wife,
5 sometimes he would stay there, sometimes he's at his mom's
6 house, and that's pretty much what the facts bore out.

7 Q: Okay.

8 A: Now, I may be anticipating your next question. The
9 difference between the first trial and the second trial was
10 his wife, who was the co-defendant in these charges as it
11 relates to the house.

12 The police had an arrest warrant for Leroy based on
13 these other drug buys that had occurred in the past. They
14 were looking for him. They had reason to believe he was at
15 that house. When he -- when they came there, they came there
16 looking for him. The wife opens the door. They come in.
17 Leroy might have gotten out of bed in his underwear. I mean
18 it's, like, early in the morning.

19 And while the police are there, they find drugs, but
20 they were actually in the other part of the house. So -- and
21 it wasn't Leroy's house. He's not on the lease. He had an
22 estranged relationship with his wife. His mom testified that
23 sometimes he stays here, sometimes he -- you know, sometimes
24 he's at my house. That's what his mama would say. That's
25 what his brother would say.

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 But in the first trial, his wife, who was the co-
2 defendant -- and if you read that transcript, she testifies
3 much more -- her testimony was much more powerful for the
4 State.

5 Q: In the first trial?

6 A: In the first trial.

7 Q: Okay.

8 A: So she was saying it was his dope. I've seen him cook
9 it up. I mean she remarks in the first trial I've seen him
10 cook up the dope.

11 Q: How about the second trial?

12 A: The second trial -- and this was a surprise to me
13 because, first, Leroy and I had a contentious relationship
14 because I kept -- I said, hey, they're putting this deal on
15 the table for you again. You had a hung jury the first time.
16 I said the Lord will look out for you. The Lord is sending
17 you a message. You might want to take it this time because
18 you've got all these charges. No, no, I want to go to trial,
19 I want to go to trial, I want to go to trial. So okay.

20 Well, the wife gets up on the second trial and she says
21 things that's consistent with Leroy in the sense that
22 sometimes he's here, sometimes he's not. Sometimes other
23 people come over here. She doesn't talk about him cooking up
24 the cocaine. The second jury never -- they didn't hear any
25 of that from her. I mean I was stunned because she was

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 saying things that were very favorable for Leroy.

2 Q: And one of those things that she was saying that was
3 favorable to Leroy was he wasn't here all the time, he stayed
4 with his mom or whatever?

5 A: Exactly.

6 Q: Okay.

7 A: And -- and then -- and as she was saying -- her
8 testimony -- I can remember Tyler Brown, who was the
9 prosecutor. He was stunned because he was, like, she
10 testified for you, Brooks.

11 And this is where I begged Leroy. I said, Leroy, do not
12 take the stand, and I tried to explain to him why he doesn't
13 need to take the stand. Because if you read the first trial,
14 you see after he takes the stand, the prosecutor is now able
15 to get into why we were here looking for you, Leroy. We get
16 to talk about we had an arrest warrant for dope for you,
17 Leroy, these buys. They get to get into all of that.

18 Q: But were they -- were they able to get into all of that
19 in the first trial also because he testified?

20 A: They got into that in the first trial after he
21 testified.

22 Q: And so they do it again in the second trial?

23 A: They would do it again if he testifies.

24 Q: Right.

25 A: But now, we've got a different dynamic because the wife,

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 who is the State's critical -- she's the critical witness.

2 All they can testify to or present to the jury was we came
3 here looking for Leroy. We can't say how. The jury didn't
4 hear why they were looking for Leroy at the very beginning.
5 They could only say we were looking.

6 We were here looking for Leroy, and he testified to the
7 facts. The wife comes to the door. Leroy comes -- you know,
8 Leroy comes behind her. We detain Leroy. We find this dope.
9 Now, he -- he was in the bedroom. We find the dope in
10 another part of the room. The evidence comes out that he
11 doesn't -- she says he kind of goes back and forth. The wife
12 does.

13 So she actually sings the same -- the same line that his
14 mom was talking about. So now, I don't need the mama now
15 because the wife, who is supposed to be Tyler Brown's
16 witness, is singing the song that Leroy wants played. So
17 now, the State is actually stuck now because the only way
18 they can get into the other reason -- the other charges that
19 are against Leroy and why they are there to arrest him is if
20 he takes the stand or if I put up any witnesses.

21 And you see that in the first trial they were able to
22 get into all that. Now, as a result, we got a hung jury at
23 the end of the first trial.

24 Now, in the second trial, I'm confident we can win the
25 trial. The State's lone star witness to connect Leroy with

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 the dope has now changed her tune and is now saying he
2 doesn't stay here all the time. He comes and goes, and other
3 -- she says other people come and go, and they don't have
4 anything to present to the jury on direct that connects him
5 to the dope.

6 And that's where I begged him and begged him and begged
7 him. Leroy, she has now given you a gift, for whatever
8 reason. Do not testify because if you do, the -- the -- the
9 problems that will come from your testimony will outweigh
10 anything that can come about with you saying I live here
11 versus living there. And that's all these charges come back,
12 why we're there, the police, all of that.

13 And he would not listen. He is the only person I've
14 ever had in a trial that I said do not testify and then
15 testified. And there's a reason for that. Because when you
16 do that, as you know, you open the door to all these things
17 the police can talk about and the State can talk about.

18 Q: And y'all knew what was going to happen anyway because
19 you knew it, but you had already been through it?

20 A: That's why I kept -- I kept pleading. And even Judge
21 Young, who is not to be confused with any defendant's judge
22 by any stretch of the imagination, he even asked are you sure
23 you want to testify, you know, because it became apparent
24 that the State's case was now a problem as it related to
25 that.

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 Now, that didn't -- that didn't mean that, you know, he
2 was just going to be in the clear because he had all these
3 other pending charges, but as it relates to this particular
4 incident that they felt probably was their strongest case
5 because that's the one where we come out to the house and we
6 find all this dope with him. Any time you get in situations
7 with buys and CIs, you know and I know is that those things
8 can be inconsistent because the CI may be here today, gone
9 tomorrow. There's a whole lot of unpredictability with them.

10 So they chose this case and this is why they did it, but
11 because of, you know, some pretrial motions, the judge had
12 said that, you know, you can't really talk about why you were
13 there, that you are there to arrest him for drugs. They
14 couldn't get into that until after he opens the door, but if
15 he had never testified, none of that would've come in.

16 Now, of course, we took a chance at the first trial
17 because the wife was, like, he cooks the drugs. It's his
18 dope. I mean she -- she tried to put the nail in his coffin
19 in the first trial. So, of course, Leroy testified. His
20 family testifies. We were trying to offset that.

21 But at the second trial, which I had no way of knowing
22 that she was going to do a turn, about face in favor of
23 Leroy, so at that point I said, man, you -- you don't need to
24 testify. She's actually testified for you.

25 Q: How about were Ms. Williams and his brother present at

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 the second trial?

2 A: They were there.

3 Q: Did you have any discussions with them about testifying
4 again just as they had done in the first trial?

5 A: I told -- they heard me tell him the exact same thing I
6 just told you.

7 Q: Did you have any separate discussion without them
8 overhearing anything, hey, we're not going to call you or do
9 y'all still want to testify or did you talk to them about
10 testifying?

11 A: I don't think I asked them anything. I just said, look,
12 -- I gave them a brief explanation, but, of course, my
13 emphasis is obviously on Leroy because it's his case and,
14 obviously, he decided to go on and get up on the stand
15 against my advice.

16 Q: Did you talk to Leroy about having his mom and brother
17 testify at the second trial?

18 A: I don't think I talked to him specifically about them
19 per se. I talked to him about we don't need to put up any
20 witnesses because now we don't -- the State doesn't have
21 anything. Your wife, who was their star witness, says you
22 don't live there. She says other people come in here. They
23 say they found the dope in a totally different room with you.

24 There is no -- there is little to no connection with you
25 and the dope. The jury doesn't know that you've got all

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 these other drug charges pending. They don't know that the
2 police were there to arrest you because of a drug warrant.
3 They just know the police were there looking for you. So
4 when you do the math and add up those things and say what
5 connects him to the dope, there was very little in the second
6 trial prior to him taking the stand, and that's what I tried
7 to emphasize to him.

8 Q: Did you anticipate -- before the wife got up there and
9 sort of became a little bit more favorable to you guys at the
10 second trial, did you anticipate trying the case exactly the
11 same way you did the first time?

12 A: Basically, that's why they were there.

13 Q: Okay.

14 A: Because I thought we were going to end up having a
15 replay of the entire -- the State's case from the first
16 trial, but when the wife testified so favorably for him,
17 obviously -- and as you know with trials, things come and go,
18 things happen. You have to adjust on the fly, but that's
19 what happened in his trial. I don't know what it was.
20 Maybe, you know, she felt a sense of love for him. I don't
21 know, but I know she testified much different and much more
22 favorably for him between the first trial and the second
23 trial. I mean it was like -- it was -- I mean it was like,
24 hey, man, he's getting another -- he's getting a second
25 blessing.

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 MR. BOOZER: I beg the Court's indulgence, Your Honor.

2 BY MR. BOOZER:

3 Q: But let's say -- assuming what you're saying -- stating
4 about the wife's testimony changing for the second trial,
5 your strategy then becomes we're not going to put up any
6 witnesses because this looks so good for us?

7 A: Oh, absolutely.

8 Q: But --

9 A: And -- and now, the State can't get into the much more
10 damaging testimony in regards to why we're here for Leroy.
11 He's got other pending drug charges. The jury would never
12 hear that.

13 Q: But now, against your wishes, he decides to testify and
14 all that comes out?

15 A: Absolutely.

16 Q: Okay. But then at that point, why wouldn't you then
17 sort of reset and call the witnesses you had intended to to
18 sort of bolster, hey, this is the wife's story, now look at
19 these guys. They're saying the same story you're saying?

20 A: At that point, you know, Leroy had testified. The
21 mother's testimony was just going to be that he kind of comes
22 and goes, which I thought would have been just kind of
23 overkill considering the wife had said that. Why get into
24 all that because the wife had said it for him?

25 Q: Let me go back to -- you know I'm going to ask you about

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 it -- Exhibit 1, which is this motion to be relieved.

2 A: Oh, sure.

3 MR. BOOZER: Your Honor, may I approach? Thank you.

4 BY MR. BOOZER:

5 Q: Mr. Brooks, my client provided me with that copy. If
6 you would, take a look at it. Is that a copy of the motion
7 in which you asked to be relieved before the Court?

8 A: That's correct.

9 Q: What -- tell me about the circumstances behind that and
10 how all that came about?

11 A: Leroy described that he -- where he made a high bond. I
12 think it was -- I think he said, like, a hundred and
13 something thousand dollars. And he had, you know, a bunch of
14 cash on him when he was detained in the middle of the trial
15 as, you know, they put you in detention waiting for that.

16 And obviously, it was a very contentious -- he actually
17 -- you know, he had filed a grievance on me. I don't know if
18 you're aware of that.

19 So I was, like, you know, he doesn't need me. He
20 doesn't need a court-appointed lawyer or at the very least I
21 think I had a duty to let the -- we need to go back and
22 revisit what his financial situation was, and I think -- I
23 think Judge James did that shortly thereafter and it was --
24 not only did we have this issue, but he actually grieved me
25 to.

CHARLES BROOKS III - DIRECT BY MR. BOOZER

1 Q: Did -- did that change y'all's relationship at all?

2 A: Oh, no, that ain't changed our relationship. It was
3 contentious before and it was contentious afterward.

4 MR. BOOZER: I beg the Court's indulgence, Your Honor.

5 Thank you, Mr. Brooks. That's all I've got.

6 MS. COLEMAN: Thank you.

7 CROSS-EXAMINATION

8 BY MS. COLEMAN:

9 Q: Mr. Brooks, this -- the motion to be relieved that you
10 filed that was denied, did this at all affect your
11 representation of Mr. Gibbs?

12 A: No.

13 Q: And --

14 A: As a matter of fact, he -- he was probably going to be
15 acquitted the second time and I kept telling him that, in
16 light of how beautifully his wife had performed for him, for
17 whatever reason. And I could tell from when I talked to Mr.
18 Brown, who was sitting over there with a sour face after
19 hearing her testify. But Mr. Gibbs saw it differently.

20 Q: Yes. Now, your decision not to call these three
21 witnesses and to advise them not to testify, was this a
22 strategic decision?

23 A: Yes, ma'am.

24 Q: And how many years have you practiced law?

25 A: '96 -- 20 -- 22 years now.

CHARLES BROOKS III - CROSS BY MS. COLEMAN

1 Q: Is that primarily criminal law?

2 A: I do, you know, Family Court. I did -- I did a lot more
3 criminal back then. I still do criminal, personal injury,
4 Worker's Comp, probate, real estate, but I did a lot more
5 criminal back then. I still do a fair amount of criminal,
6 but I probably did a lot more criminal and, of course,
7 obviously, I used to be a public defender some years in the
8 past.

9 Q: So was this strategic decision based on your experience
10 as a criminal defense attorney?

11 A: Absolutely.

12 Q: And based on that experience as well and based on the
13 evidence and the facts of this case, did you see any reason
14 before the trial to move to suppress the evidence?

15 A: Well, it was not a suppression, but it was -- it was --
16 it was restricting the evidence, and I think we were able to
17 do that in some pretrial motions or it was at least
18 discussed. And what I mean by that, as I said earlier when
19 Mr. Boozer was questioning me, Leroy had a multitude of drug
20 charges, not just the incident of the police coming to the
21 residence and picking him up and then, you know, finding the
22 dope there. Because he didn't get charged with that until
23 after they had detained him for the other stuff that they
24 came looking for him for.

25 So he had a multitude of drug charges coming from --

CHARLES BROOKS III - CROSS BY MS. COLEMAN

1 coming from alleged buys with CIs. Okay? So obviously, if
2 they're trying the case where it's dealing with his wife's
3 home and finding the dope there, they were restricted from
4 talking about prior drug involvement, drug arrests, drug
5 investigation, and the drug charges that he had pending.
6 They could not even talk about it. They couldn't say we're
7 here to pick him up for drugs. They could -- they could only
8 say we're here looking for Leroy. Okay? They didn't mention
9 anything about drugs in the very beginning in their direct.

10 So -- and a lot of times when you're trying cases,
11 you've got to be focused on what comes in evidence and what's
12 not in evidence because, remember, the jury -- they're only
13 hearing certain things. Now, the prosecutors, I, Leroy, and
14 everybody, we knew he had a whole bunch of drug charges,
15 allegations about buys or whatever, but the jury didn't hear
16 any of that.

17 The only thing they knew is the police had come there
18 looking for Leroy. They didn't know why. They come in, the
19 house belonged to the wife, and they detain him. They take
20 him away and they find dope, and the dope was in a different
21 part of the room than where he was found, which was in the
22 bedroom.

23 That's all they could say on direct, other than anything
24 that the wife got into, as you can see, so that meant that
25 she was a critical star witness in the first trial. She was

CHARLES BROOKS III - CROSS BY MS. COLEMAN

1 a co-defendant because it was her house. They charged them
2 both.

3 So in the first trial, if you read the transcript, she's
4 talking about, man, he cook up the dope here and he do this
5 here with the dope. I mean she pretty much just nailed him
6 to the wall in her testimony. Okay?

7 So obviously, Leroy's position was, well, I don't stay
8 there all the time. I kind of come here sometimes. You
9 know, we're separated and I go to stay with my mom. And his
10 mom, brother, you know, they testified. That was the
11 testimony they were giving.

12 But then in the second trial when she is like -- does an
13 about-face, it was a surprise to me. I know it was a
14 surprise to the prosecutor. And I was, like, hey, sometimes
15 things change in trial. I said, hey, you don't need to
16 testify because I knew if he testified, then they would be
17 able to get into why we're here, he's got drug charges, drug
18 buys, all this stuff, which would have significantly been
19 adverse to him.

20 And that's what I tried to explain to him. She said you
21 don't live here, Leroy. She said you kind of migrate back
22 and forth. They've got the burden of proof. You don't have
23 to prove anything. All they've got is, yeah, you was there
24 in the house, but you're in a different bedroom when they
25 found this dope. That's all the jury hears.

CHARLES BROOKS III - CROSS BY MS. COLEMAN

1 Now, your wife has got up and she said, well, he don't
2 live here all the time and other people come in. That was
3 the main thing that I tried to impress upon him that that's
4 the only thing the jury had gotten. But if you take the
5 stand, all these other -- you -- you open the door for the
6 State to basically hang yourself, and I told it to him in so
7 many words. Don't do it. That's why you don't do it. He
8 disregarded that and wanted to take the stand.

9 Q: And one last question. Outside of -- like, in a
10 pretrial hearing, outside the presence of the jury, was there
11 any reason or did you have any grounds to challenge the
12 probable cause for the arrest warrant that they were there
13 for in the first place?

14 A: No. Because see, the problem was they had a valid
15 arrest warrant because of these other buys, but we didn't
16 want to get into why they were there. Police can be looking
17 for you for anything. Okay? You don't need to broadcast for
18 them why you're here to get me, which is drugs.

19 So that was part of what the pretrial was. It's sort
20 of, like, the judge say, yeah, you know, the dope and all
21 that that they found is here, but they can only talk about
22 the dope they found here. They can't even say that they were
23 here looking for to arrest him for drugs because that was,
24 you know, a totally separate incident. They can't get into
25 that in their case in chief. The only way they can get into

CHARLES BROOKS III - CROSS BY MS. COLEMAN

1 that is if we open the door.

2 So obviously, you've got to walk a thin line. You've
3 got to tread lightly. So like I said before, the difference
4 in the first trial is, you know, the wife really didn't give
5 us a choice. Her testimony was very hurtful for Leroy. He's
6 here. He's cooking up the dope. He does this with the dope.
7 He sells the dope here. All that.

8 The second trial, I mean she was, like, Leroy -- he's
9 really not here. There are other people that come in here.
10 She doesn't say anything about him selling dope before. She
11 doesn't say anything about him cooking dope. Nothing about
12 him and dope. She doesn't say anything, and the police
13 doesn't have anything in their case in chief with the State
14 to connect him to the dope other than they happen to be there
15 looking for him. After they take him down, they find dope in
16 another part of the house. That was it.

17 So you see where I was coming from. I was basically
18 saying, look, they don't have any evidence. You can get
19 acquitted.

20 MS. COLEMAN: Thank you. Nothing further.

21 MR. BOOZER: Nothing further, Your Honor.

22 THE COURT: Thank you. You can step down, sir.

23 THE WITNESS: Can I be excused?

24 THE COURT: Do you have any objection to --

25 MR. BOOZER: None at all.

1 THE COURT: Yes, sir.

2 THE WITNESS: Thank you. All right.

3 MS. COLEMAN: No further witnesses for the State.

4 THE COURT: Anything further from the applicant?

5 MR. BOOZER: Nothing further, Your Honor.

6 THE COURT: Okay. I'm going to look carefully through
7 the materials and the transcripts provided, and I'll take
8 this under advisement.

9 MR. BOOZER: Thank you, Your Honor.

10 MS. COLEMAN: Thank you.

11 THE COURT: Thank you.

12 (WHEREUPON, the proceedings ended at 12:35 p.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

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1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 48, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 26th day of July, 2018.

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

17 s/Krystal J. Smith

18 Court Reporter

20 Florence, South Carolina

21	March 29, 2019

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 2013 FEB 27 AM 11:24 FOR THE THIRD JUDICIAL CIRCUIT
Case No.: 2011-GS-43-1125

The State of South Carolina)
JAMES C. GIBBS III)
Clerk of Court)
SUMTER COUNTY S.C.)

-vs-

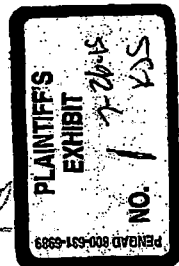
**MOTION FOR RELIEF OF COUNSEL
APPOINTED TO DEFENDANT**

Leroy Clifton Gibbs, III
Defendant.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Gibbs III

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA



Now comes the attorney for the Defendant, Leroy Clifton Gibbs, III, in this matter to move before this Honorable Court for an Order Relieving Attorney as Counsel for the Defendant in this matter.

The Defendant, Leroy Clifton Gibbs, III, has been charged with multiple counts, to wit: Drugs/Trafficking in Cocaine (offense 2nd), Drugs/Distribute, sell, purchase, manuf. Drug other than Crack Cocaine or PWID near school-3 counts, Drugs/Trafficking in ice, crank or crack (offense 2nd), Drugs/Manufacture, distribution, etc., methamphetamine or cocaine base (offense 2nd), Drugs/Possession of 28g or less of marijuana or 10g or less of hash (offense 2nd), Weapons/Sale or delivery of pistol to, and possession by, certain persons unlawful, stolen pistol 2 counts. Attorney, Charles T. Brooks III, was formally appointed by the Court on May 14, 2012; the matter was heard before this Honorable Court beginning on February 20, 2013 in a trial that lasted several days. The Defendant was not convicted in these matters with the State having leave to re-try this matter at a future date.

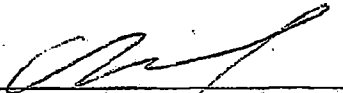
Upon the arrest of the Defendant for these matters, the Defendant posted bail/bond in the amount of One Hundred Sixty Thousand (\$160,000.00) Dollars. At the conclusion of the hearing in this matter in February 2013, the

Defendant was taken into custody pending the outcome of these matters and a decision by the Jury. At the time of the Defendant's being taken into custody the Defendant had in his possession approximately One Thousand One Hundred (\$1,100.00) Dollars.

Attorney Brooks requests Relief from this case as the amount of funds available to the Defendant clearly indicate that he is not in fact indigent and not in need of the State to provide him with representation on these charges as he is capable of retaining private counsel for this matter as appropriate.

Based upon the above, the undersigned requests to be relieved as counsel.

RESPECTFULLY SUBMITTED



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

Sumter, SC
2/25, 2013

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2018 NOV -8 PM 2:05

Leroy Clifton Gibbs, III, #208448,

JANELL L. ANDRELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2016-CP-43-1275

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 1, 2016. Respondent submitted its Return on February 14, 2017. Applicant filed an amended application on June 29, 2018. An evidentiary hearing was convened on July 26, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Dianne Williams and Latroy Gibbs. Respondent presented testimony from Charles T. Brooks, III, Esquire ("Trial Counsel"). This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, the transcript from Applicant's first and second trial, Applicant's appellate records, Applicant's records for the Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted by the July 2011 term of the Sumter County Grand Jury

for trafficking cocaine base (10-28g), three counts of possession with intent to distribute cocaine base within a half mile of a school or park, manufacturing cocaine base, possession with intent to distribute cocaine, two counts of possession of a firearm or knife during commission of a violent crime, and possession of marijuana (2011-GS-43-1125). Applicant was represented at trial by Charles T. Brooks, III, Esquire. On June 5, 2013, Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young and was convicted of trafficking cocaine base (10-28g), manufacturing cocaine base, and possession with intent to distribute cocaine. Judge Young sentenced Applicant on June 5, 2013 to fifteen years' imprisonment for possession with intent to distribute cocaine, fifteen years for manufacturing cocaine base, and ten years for trafficking cocaine base (10-28g), to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Lara Caudy, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction in an opinion filed March 2, 2016. State v. Gibbs, Op. No. 2016-UP-121 (S.C. Ct. App. 2016). The Remittitur was returned on March 21, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to object to the evidence presented at my trial."
2. Prosecutorial Misconduct
 - a. "Improper remarks during closing arguments."
3. Judicial Prejudice
 - a. "Improper remarks during sentencing."

Applicant filed an amended application on June 29, 2018, adding the following allegation:

- i. Trial counsel failed to present favorable witnesses at trial.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he was first represented on these charges by David Sullivan, but after he left the Public Defender's Office, Trial Counsel was appointed to represent him. He stated he was offered a plea deal for a twelve year sentence in December, 2012, but he rejected the offer. He testified he was given another offer in February, 2013 for seven years, but he rejected that, as well. Applicant stated he was given a final offer two days before his first trial for a three year sentence, but he rejected it. Applicant testified that his defense at trial is that he did not actually live at the residence where the drugs were found, so they were not his drugs. He testified that at his first trial, which ended in a mistrial, Trial Counsel called three witnesses—a friend, his brother, and his mother—to testify that Applicant lived with his mother, not at the residence. He stated Trial Counsel did not call these three witnesses at the second trial, but he should have, and if he had he would not have been convicted.

Applicant testified Trial Counsel filed a motion to be relieved from his case because he did not think Applicant was indigent and could have afforded to pay for retained counsel. A copy of the motion was admitted as Applicant's Exhibit #1. He testified that they had a hearing over the motion before Judge James, and the motion was denied. Applicant opined that the filing of this motion changed their relationship because Trial Counsel did not want to represent him.

Applicant testified that he asked Trial Counsel to have his three witnesses testify at the second trial, but they did not testify. He stated that when he asked Trial Counsel why they weren't ^{VC} going to testify, Trial Counsel told him he did not prepare his case. Applicant testified that Trial Counsel failed to object to evidence at the trial which prejudiced him. He

stated that he chose to testify at trial and tell his side of the story even though his attorney advised him not to take the stand.

Dianne Williams' testimony

Dianne Williams testified at the evidentiary hearing that she is Applicant's mother, and she testified on his behalf at his first trial. She stated that her son asked her to testify for him, but she did not testify at the second trial because Trial Counsel told her that he did not need them. She stated Trial Counsel did not explain why he did not need them. She stated that she would have said all of her testimony from the first trial again at the second trial if she had testified.

Latroy Gibbs' testimony

Latroy Gibbs testified at the evidentiary hearing that he is Applicant's brother and he testified on his behalf at his first trial. He stated that his testimony from the first trial is still true, and Applicant lived with their mother at the time of the crime. He testified that he would have testified again at the second trial, but he did not do so because Trial Counsel said he would not represent Applicant unless they paid him because he needed funds.

Trial Counsel's testimony

At the evidentiary hearing, Trial Counsel testified that he represented Applicant for both of his trials, for a significant period of time. He stated that Applicant did not listen to anything he said and he did not want to follow his advice, and their relationship was contentious from the very beginning. Trial Counsel testified the State made some plea offers; some were too high, but they got better offers as time went on. He stated that he advised Applicant to take the plea offer for three years based on his exposure at trial and because Applicant had other pending charges from drug buys, but Applicant was adamant that he did not want to plead guilty. Applicant either wanted the charges dismissed or he wanted a trial.

Trial Counsel testified that their defense at both trials was that Applicant did not live at the residence where the drugs were found, they were not his drugs; that Applicant stayed at the house some with his ex-wife, but he lived at his mother's house and other places. He stated that he called three witnesses at the first trial to show Applicant was living with his mother. However, he stated the difference between the first and second trial was the testimony of Applicant's ex-wife. The drugs in question were found at the ex-wife's house while executing an arrest warrant for Applicant, but they were found in another room from where Applicant was arrested. Trial Counsel testified the wife was a co-defendant in this case, and she testified for the State. He opined that her testimony was much stronger for the State at the first trial, but at the second trial, she said things that were consistent with Applicant's defense which helped him. He stated her testimony showed that Applicant did not stay at the house all the time.

At this point in the second trial, Trial Counsel was confident that they could win based on her testimony because she was a critical witness for the State and she testified in a way that was more favorable to Applicant. Trial Counsel testified that he begged Applicant not to take the stand at trial at this point because, he advised him, when he took the stand, it would open the door for the State to question him on his other pending drug charges. He stated that the State could not get into the other charges unless Applicant took the stand, but despite his advice not to testify, Applicant insisted on testifying at trial to tell his side of the story. Trial Counsel testified that he believed Applicant's testimony at trial is the reason he was convicted, not the fact that he did not have the testimony from the three witnesses from the first trial.

Trial Counsel testified he believed he did not need the three witnesses from the first trial to testify at the second trial because the ex-wife had already said what he needed her to at the second trial. He stated he had the witnesses there at the second trial because he thought they were

going to say the same things they did at the first trial, but he thought their testimony would be overkill because the wife had already said it. Trial Counsel testified that he made a strategic decision not to call these witnesses at the second trial because there was no reason to call them based on the wife's testimony for the State.

Trial Counsel testified that he filed his motion to be relieved after Applicant was able to make a high bond and had \$100,000 in cash on him when he was detained, so he believed Applicant was not indigent and could afford to retain an attorney rather than having one appointed. He stated Applicant filed a grievance on him during his representation, and they had a contentious relationship. However, Trial Counsel testified neither the motion nor the grievance affected his representation, and he still represented Applicant to the best of his ability.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Failure to object to evidence presented at trial

Applicant has failed to meet his burden of proving any deficiency or prejudice for failing to object to any evidence presented at trial. Trial Counsel credibly testified there was no legal basis for objecting to the drug evidence or the probable cause for the arrest warrant. There was no issue with a confidential informant here and no search warrant, and the drugs were properly obtained as they were seized in a search of the wife's home and purse after she gave law enforcement verbal and written consent. Applicant has failed to point to any specific evidence that Trial Counsel could have successfully excluded by making a valid objection. This Court

finds there is no deficiency or prejudice on this ground, and this allegation is denied and dismissed with prejudice.

Failure to present favorable witnesses at trial

This Court finds Trial Counsel was not ineffective for failing to present his witnesses from the first trial, which ended in a mistrial, at the second trial. Trial Counsel was clearly prepared to use these witnesses again at the second trial, however, he articulated a valid strategic reason for choosing not to call these witnesses based on the new testimony of the State's witnesses at trial.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Because Trial Counsel articulated a valid trial strategy for choosing not to call these witnesses, he cannot be deficient.

Furthermore, this Court finds there is no resulting prejudice from the failure to call these witnesses because all their testimony would have been cumulative to the evidence already presented at trial by Applicant's wife, the State's witness, so none of their testimony would have changed the outcome of the trial. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) (holding there was no prejudice from counsel's failure to call a witness at trial where the witness's testimony "simply would have been cumulative to evidence already introduced through other witnesses.")

This Court also agrees with Trial Counsel's assessment that it was not the absence of these witnesses' testimony which resulted in Applicant's conviction, but rather Applicant's own testimony at trial, which opened the door for the State to question him on his other pending drug charges. Trial Counsel credibly testified that he begged Applicant not to testify at trial based on how the trial was going, and this conversation is reflected in the trial transcript. Tr. 166, line 7 – 167, line 3. However, the resulting testimony from Applicant's decision to testify ultimately prejudiced his case. Accordingly, based on the evidence presented at trial and Applicant's testimony from his knowing and voluntary decision to exercise his constitutional right to testify at trial, this Court finds Applicant was not prejudiced from the failure to call these three witnesses. Accordingly, this allegation is denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Applicant alleged prosecutorial misconduct in his application for PCR. The applicant has the burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). However, Applicant here has not set forth any credible evidence of prosecutorial misconduct and has therefore failed to meet his burden of proof. Accordingly, this allegation is denied and dismissed with prejudice.

JUDICIAL MISCONDUCT

Applicant further alleges "judicial misconduct" by the trial court for improper remarks during sentencing. However, this allegation is improper for post-conviction relief, as it is a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 15th day of October, 2018.

Kristi Curtis

KRISTI CURTIS
Presiding Judge
Third Judicial Circuit

Sumter

, South Carolina

WITNESSES

W. Dubose Sumter County Sheriff Office

ARREST WARRANT NUMBER

M191922 M191931 M191923 M191932 M191924

M191933 M191925 M191934 M191920 M191929

M191921 M191930 M192337 M192339 M192338

M192340 M191926

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 7/21/2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-43-1125

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

July TERM 2011

THE STATE

vs.

LEROY CLIFTON GIBBS, III

KIMBERLY GIBBS

Indictment for

Trafficking Cocaine Base, Possession With Intent to Distribute Cocaine Base Within ½ Miles of a School or Park (2 counts), Manufacturing Cocaine Base, Possession With Intent to Distribute Cocaine, Possession With Intent to Distribute Cocaine Within ½ Mile of a School or Park, Possession of Firearm or Knife During Commission of a Violent Crime (2 counts), Possession of Marijuana, Breach of Trust

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Trafficking Cocaine Base, Possession With Intent to Distribute
Cocaine Base Within ½ Miles of a School or Park (2 counts),
Manufacturing Cocaine Base, Possession With Intent to
Distribute Cocaine, Possession With Intent to Distribute Cocaine
Within ½ Mile of a School or Park, Possession of Firearm or
Knife During Commission of a Violent Crime (2 counts),
Possession of Marijuana, Breach of Juvenile File

B. Caban
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on July 21, 2011 the Grand Jurors of

SUMTER County present upon their oath:

Base (Amended by consent)
✓ COUNT ONE - TRAFFICKING COCAINE (10-28 GRAMS)

That Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did in Sumter on or about December 23, 2008, knowingly sell, deliver, purchase or bring into this State, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking. *Base (H)*

COUNT TWO - POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE
WITHIN ½ MILE OF A SCHOOL OR PARK

That Kimberly K. Gibbs and Leroy Clifton Gibbs, III, did in Sumter County, on or about December 23, 2008, unlawfully possess with intent to distribute a quantity of cocaine base, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, middle or secondary school, college, or university, public playground or park, or a public vocational or trade school or technical education center, to wit: Aldersgate Methodist Preschool and Parker Street Park, in violation of Section 44-53-445(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT THREE - MANUFACTURING COCAINE BASE

That in Sumter County, South Carolina, on or about December 23, 2008, the Defendant, Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did manufacture or did aid, abet, attempt or conspire to manufacture a quantity of cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended. *base (Amended by consent)*

TRAFCC *(H)*

**COUNT FOUR – POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE
WITHIN ½ MILE OF A SCHOOL OR PARK**

That Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did in Sumter County on or about December 23, 2008, possess with intent to distribute a quantity of cocaine base, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-445(A) & (B)(2) et. seq., 1976 Code of Laws of South Carolina, as amended), such possession with intent to distribute having occurred within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, to-wit: Aldersgate Methodist Preschool and Parker Street Park.

✓ **COUNT FIVE – POSSESSION WITH INTENT TO DISTRIBUTE COCAINE**

That Leroy Clifton Gibbs, III and Kimberly K. Gibbs did in Sumter County, on or about December 23, 2008, unlawfully possess with intent to distribute a quantity of Cocaine, a controlled substance under provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended), such possession not having been authorized by law.

**COUNT SIX – POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN ½
MILE OF A SCHOOL OR PARK**

That in Sumter County, South Carolina, on or about December 23, 2008, the Defendant, Leroy Clifton Gibbs, III and Kimberly K. Gibbs, possess with intent to distribute a quantity of cocaine, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-445(A) & (B)(2) et. seq., 1976 Code of Laws of South Carolina, as amended), such possession with intent to distribute having occurred within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, to-wit: Aldersgate Methodist Preschool and Parker Street Park.

**COUNT SEVEN – POSSESSION OF FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME**

That Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did in Sumter County on or about December 23, 2008, was in possession of and did visibly display a firearm or knife during the commission of a violent crime, to-wit: a .45 caliber Springfield handgun, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

**COUNT EIGHT – POSSESSION OF FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME**

That Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did in Sumter County on or about December 23, 2008, was in possession of and did visibly display a firearm or knife during the

commission of a violent crime, to-wit: a .38 caliber Taurus handgun, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT NINE- POSSESSION OF MARIJUANA

That Leroy Clifton Gibbs, III did in Sumter County on or about December 23, 2009, knowingly and intentionally possess a quantity of marijuana, a controlled substance under the provision so Act No. 45, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370 et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law; this being more than a first offense.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

Ernest A. Finney III

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25 K
915

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF: Sumter
STATE: VS.
III Leroy Clifton Gibbs
AKA:
Race: 2 Sex: M Age: 37
DOB: SS#:
Address:
City, State, Zip: Sumter, SC 29150
DL#: SID#:
*CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

INDICTMENT/CASE#: 2011-GS-43-1125
A/W#: M191924
Date of Offense: 12/23/2008
S.C. Code §: 44-53-0375(B)(2)
CDR Code #: 3015

SENTENCE SHEET

CERTIFIED TRUE COPY
OF ORIGINAL FILE

☒ CONVICTED OF or ☐ PLEADS

DEPUTY CLERK OF COURT
SOUTH CAROLINA

In violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code #
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory § 17-25-45
w/minor 1st offense

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Meadors, John P. SC Bar#
Defendant
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:
*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 6.90
TOTAL		\$ 236.90

days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W.E. beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

James C. Campbell
Krystal Smith

2156
5 June 2013

3-10
251K

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Sumter
 STATE VS.
III Leroy Clifton Gibbs
 AKA:
 Race: 2 Sex: M Age: 37
 DOB: -1976 SS# [REDACTED]
 Address: Dant Street
 City, State, Zip: Sumter, SC 29150
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2011-GS-43-1125
 A/W#: M191920
 Date of Offense: 12/23/2008
 S.C. Code §: 44-53-0370(e)(2)(a)2
 CDR Code #: 0387

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 1st offense

in violation of § 44-53-0375(C)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0450
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 8316 SC Bar# [REDACTED] Defendant. Attorney for Defendant [Signature] SC Bar# [REDACTED]
 OF ORIGINAL FILE

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, Sumter County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act Subj to exceed years
 and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or payment
 of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for [REDACTED]

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered ☐ PTUP [REDACTED]

Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED]

Payment Terms: [REDACTED]

☐ Set by SCDPPPS [REDACTED]

Recipient: [REDACTED]

*Fine: [REDACTED] \$ [REDACTED]

§ 14-1-206 (Assessments 107.5%)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce Funding)	\$25	\$	25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	0.90
TOTAL		\$	236.90

[REDACTED] days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. [REDACTED]

May serve W/E beginning [REDACTED]

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ [REDACTED] beginning [REDACTED]

\$ [REDACTED] paid to Public Defender Fund

Other: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

☐ Appointed PD or appointed other counsel,

§ 47-12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk

Court Reporter: Krystal Smith

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2136

Sentence Date: 5 June 2013

0-15
2516

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Sumter
 STATE VS.
III. Leroy Clifton Gibbs
 AKA:
 Race: 2 Sex: M Age: 37
 DOB: -1976 SS#: [REDACTED]
 Address: Dant Street
 City, State, Zip: Sumter, SC 29150
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2011-GS-43-1125
 A/W#: (M1919291) H66
 Date of Offense: 12/23/2008
 S.C. Code §: 44-53-370(c)(2)
 CDR Code #: 0278

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ OF ORIGIN
 TO: Possession w/ intent to distribute cocaine - 1st
 in violation of § 44-53-370(d)(1) of the S.C. Code of Laws, bearing CDR Code # 0278
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (SCC § 17-25-43)
 w/minor 1st or Lewd SUMTER COUNTY, SOUTH CAROLINA
 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: [Signature] SC Bar# 98316

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ — plus 20% fee: \$ —
 Payment Terms: —
☐ Set by SCDPPPS —

Recipient: —
 *Fine: —
 § 14-1-206 (Assessments 107.5 %): \$ —
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ —
 § 56-5-2995 (DUI Assessment) \$12 \$ —
 § 56-1-286 (DUI Breath Test) \$25 \$ —
 Proviso 47.9 (Public Def/Prob) \$500 \$ —
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ 100.00
 § 50-21-114 (DUI Breath Test Fee) \$50 \$ —
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ —
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 6.90
 TOTAL \$ 236.90

PTUP: —
— days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. —
 May serve W/E beginning —
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ — beginning —
 \$ — paid to Public Defender Fund
 Other: —

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge:

Judge Code:

Sentence Date:

James C. Campbell
Krystal Smith

2156

5 June 2013