

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED
JAN 13 2020
S.C. SUPREME COURT

PHILIP MONROE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001176

APPENDIX

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF GENERAL SESSIONS
CASE NO'S. 2012-GS-27-00189 & 2012-GS-27-00190

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

FEBRUARY 11, 12, & 13, 2013

TRANSCRIPT OF TRIAL

RIDGELAND, SOUTH CAROLINA

PHILLIP MONROE

DEFENDANT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE

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

ON BEHALF OF THE STATE:

HON. CARRA HENDERSON
AND HON. ERIN VAUX

ON BEHALF OF DEFENDANT:

HON. ROBERT HUGHES

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

ORIGINAL

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is under separate cover.

1 DAY ONE, MONDAY, FEBRUARY 11, 2013

2 BEGINNING 3:34 P.M.

3 BY THE COURT:

4 THE COURT: Thank you. Please be seated. State
5 ready to proceed?

6 MS. HENDERSON: Yes, your Honor.

7 THE COURT: All right. Is the defendant ready to
8 proceed?

9 MR. HUGHES: Yes, sir.

10 THE COURT: Solicitor, I realize that we hadn't begun
11 jury selection, but it's time to call your case now, so
12 you need to turn around and face the Court.

13 MS. HENDERSON: Thank you, your Honor. State calls
14 State versus Phillip Monroe.

15 THE COURT: And you've handed me the indictments.

16 MS. HENDERSON: Yes, your Honor, Indictment Numbers
17 2012-189 and 2012-190.

18 THE COURT: Very well. Thank you very much. Ladies
19 and gentlemen, the State has called for trial the case of
20 the State of South Carolina versus Phillip Monroe. Mr.
21 Monroe is charged in these two indictments. Counsel
22 approach real quick. I want to make sure, in light of
23 what you've told me in chambers, that the --

24 OFF-THE-RECORD BENCH CONFERENCE;

25 PRESENT: THE COURT, MS. HENDERSON,

1 MR. HUGHES:

2 THE COURT: All right, ladies and gentlemen, the
3 State has called for trial, as I told you, the case of
4 the State versus Phillip Monroe. Mr. Monroe is charged
5 by these two pieces of paper, which I hold in my hand,
6 which we call indictments. The indictments are not
7 evidence in this case. The indictment is the formal
8 written documents by which the case is brought into the
9 court, and the indictment contains allegations.

10 The defendant is charged in one indictment with the
11 offense of trafficking in cocaine, then grams or more,
12 but less than 28 grams. And in the second indictment,
13 the defendant is charged with the offense of possession
14 with intent to distribute a Schedule IV drug.

15 Now, to these indictments, the defendant has pled not
16 guilty. That places the burden on the State of South
17 Carolina to prove each and every element of the offenses
18 beyond a reasonable doubt. And it will be your duty,
19 ladies and gentlemen, if you're selected as a juror in
20 the trial of this case, to determine whether or not the
21 State has met that burden.

22 If you are selected as a juror, ladies and gentlemen,
23 you must decide the case based on evidence introduced
24 during the trial of the case, when both sides are
25 present, with the right of cross-examination.

1 Now, I'm going to have the lawyers that are going to
2 be trying the case to stand and introduce themselves to
3 you, as well as anyone else that's seated at their
4 respective table. In the case of the defendant, Mr.
5 Hughes, I would ask you to introduce him when you
6 introduce yourself. Beginning with Counsel for the State
7 of South Carolina.

8 MS. HENDERSON: Thank you, your Honor. My name is
9 Carra Henderson. I'm a prosecutor for the State of South
10 Carolina and for Jasper County. With me at the table is
11 Mrs. Erin Vaux. She is also a prosecutor for the State.
12 Investigator Cris McIntosh, with the Ridgeland Police
13 Department. And on my right, Officer Rett Long of the
14 Ridgeland Police Department.

15 THE COURT: Counsel for the defendant.

16 MR. HUGHES: Thank you, your Honor. Good afternoon.
17 My name is Bob Hughes. I am a public defender that's
18 assigned most of the cases in Jasper County. I work for
19 the 14th Circuit Public Defender's Office.

20 This is Mr. Phillip Monroe. He is currently living
21 in Mitchellville. He calls his hometown, however,
22 Savannah. Thank you.

23 THE COURT: Turn around, Mr. Monroe, so they can see
24 you in the back, back there. This is the defendant,
25 Phillip Monroe. Thank you very much. You may be seated.

1 VOIR DIRE, BY THE COURT:

2 THE COURT: All right, ladies and gentlemen, you've
3 now met the attorneys for both the State and the
4 defendant, and you've met the defendant. I remind you
5 that earlier this afternoon I placed each of you under
6 oath. The oath that you took applies to the questions
7 now. I will ask you these questions to determine your
8 impartiality to serve as a juror in the trial of this
9 case, which is entitled the State of South Carolina
10 versus Phillip Monroe.

11 First of all, you've met counsel for the State, both
12 Ms. Vaux and Ms. Henderson. They are with the 14th
13 Judicial Circuit Solicitor's Office. Carra Henderson,
14 Erin Vaux. I ask whether or not any member of my jury
15 panel related by blood, connected by marriage, or a close
16 personal friend of either one of the two lawyers involved
17 in the trial of this case with the 14th Judicial Circuit
18 Solicitor's Office. If so, please stand at this time.

19 Let the record reflect no one is standing.

20 Any member of my jury panel ever been represented in
21 the past by either Carra Henderson or Erin Vaux either
22 now or in the past, both of which now work for the 14th
23 Judicial Circuit Solicitor's Office. If so, please stand
24 at this time.

25 Let the record reflect no one is standing.

1 Any member of my jury panel ever been represented by
2 or related to by blood or marriage or a close personal
3 friend of any employee of the 14th Judicial Circuit
4 Solicitor's Office. If so, please stand at this time.

5 Let the record reflect no one is standing.

6 Now, you've also met the defendant in this case,
7 Phillip Monroe. Mr. Monroe currently lives in
8 Mitchellville, and he is originally from Savannah,
9 Georgia. You met him earlier. Any member of my jury
10 panel related by blood, connected by marriage, or a close
11 personal friend of Phillip Monroe now of Mitchellville?
12 If so, please stand at this time.

13 Let the record reflect no one is standing.

14 You've also met Mr. Monroe's attorney, Mr. Bob
15 Hughes, who is with the Jasper County Public Defender's
16 Office. Any member of my jury panel related by blood,
17 connected by marriage, or a close personal friend of Mr.
18 Bob Hughes? If so, please stand at this time.

19 Let the record reflect no one is standing.

20 Any member of my jury panel ever been represented in
21 the past or currently represented by Mr. Bob Hughes of
22 the Jasper County Public Defender's Office? If so,
23 please stand at this time.

24 Let the record reflect no one is standing.

25 Any member of my jury panel related by blood,

1 connected by marriage, or a close, personal friend of any
2 employee of the Jasper County Public Defender's Office?
3 If so, please stand at this time.

4 Let the record reflect no one is standing.

5 Any member of my jury panel ever been represented in
6 the past or currently represented by any member of the
7 Jasper County Public Defender's Office? If so, please
8 stand at this time.

9 Let the record reflect no one is standing.

10 BAILIFF: Your Honor.

11 THE COURT: Oh, I'm sorry. Yes, sir. If you'll come
12 forward, please, sir.

13 BAILIFF: Number 41.

14 THE COURT: Hold on one second. All right. One
15 representative from each side.

16 OFF-THE-RECORD BENCH CONFERENCE;

17 PRESENT: THE COURT, MS. HENDERSON,

18 MR. HUGHES.

19 THE COURT: This is Juror Number 41, Horace L. Eady.

20 MR. EADY: Hi, your Honor, once again.

21 THE COURT: I know who you are, Mr. Eady, but you
22 need to talk to Wanda right here. Don't worry. They'll
23 hear you. You talking to me, but you're talking to me
24 through the court reporter.

25 MR. EADY: All right.

1 THE COURT: Not them. They'll listen.

2 MR. EADY: Okay.

3 THE COURT: Why did you come forward?

4 MR. EADY: I was represented by a public defender
5 with the 14th Circuit.

6 THE COURT: Okay. And who was that? Mr. Plexico?

7 MR. EADY: The guy over there with the glasses.

8 THE COURT: Yes, sir. That would be Mr. Stephen
9 Plexico.

10 MR. EADY: Yes.

11 THE COURT: Has the representation been concluded?

12 MR. EADY: Yes.

13 THE COURT: The fact that you were represented in the
14 past by Mr. Plexico, would that in any way keep you from
15 giving the State of South Carolina or the defendant in
16 this case a fair and impartial trial?

17 MR. EADY: No. I just wanted to let you --

18 THE COURT: You did exactly what I asked you to do,
19 Mr. Eady. Thank you very much. You may return to your
20 seat.

21 JUROR NUMBER 41 RETURNS TO HIS SEAT.

22 THE COURT: Wanda, Carra has disclosed, while we were
23 at the Bench, involving the juror that came up that she
24 feels like she should tell Mr. Hughes, out of an
25 abundance of caution, even though he did not stand, that

1 she considers Juror Number 85 to be somewhat of a friend
2 of hers. And she has voluntarily made that information
3 known to Mr. Hughes before he selects the jury in this
4 case. Is that fair enough.

5 MS. HENDERSON: Um-hmm.

6 MR. HUGHES: Thank you.

7 BACK ON THE RECORD.

8 THE COURT: Let the record reflect no one else has
9 come forward in response to my last question.

10 All right. I told you that what's in the indictments
11 are allegations. They're not evidence. And that's true.
12 But in order to determine your impartiality to serve as a
13 juror in the trial of this case, I need to tell you a
14 little bit about the allegations. And that's all they
15 are at this point.

16 In the indictment for trafficking in cocaine, 10
17 grams, more, but less than 28 grams, it is alleged this
18 occurred in Jasper County on or about April 10, 2012.

19 In the indictment for possession of a Schedule IV
20 drug, it is alleged that that occurred in Jasper County,
21 and that is possession with intent to distribute a
22 Schedule IV drug. And it is alleged that it occurred in
23 Jasper County on or about April 10, 2012.

24 I tell you that to ask you this. Is any member of my
25 jury panel read about, heard about, or know anything

1 whatsoever about the allegations contained in the
2 indictments in this case. If so, please stand at this
3 time.

4 Let the record reflect no one is standing.

5 I am advised that the potential witnesses in the
6 trial of this case will be as follows. If they are
7 present in the courtroom when I call their names, please
8 stand and face my jury panel, so they can see your face,
9 as well as hear the name called out by the Court.

10 Officer Rett Long, Ridgeland Police Department.

11 Thank you. Please be seated.

12 Sergeant Kevin Smith, Ridgeland Police Department.

13 Courtney Baniel. B/a/n/i/e/l. Ridgeland, South
14 Carolina.

15 Master Sergeant Brian Baird. B/a/i/r/d. Beaufort
16 County Sheriff's Office.

17 Investigator Cris McIntosh, Ridgeland Police
18 Department. Thank you. Please be seated.

19 Investigator Daniel Litchfield, Ridgeland Police
20 Department.

21 Jennifer Mills, Beaufort County Sheriff's Office.

22 Phillip Monroe. Mr. Monroe, please stand once again.
23 Originally from Savannah. Now living in Mitchellville.
24 Turn so they can see you. There we go. Thank you.
25 Please be seated.

1 Any additional witnesses from the State?

2 MS. HENDERSON: None from the State, your Honor.

3 THE COURT: Any additional witnesses from the
4 defendant?

5 MR. HUGHES: None, your Honor.

6 THE COURT: Any member of my jury panel related by
7 blood, connected by marriage, or a close personal friend
8 of any of the potential witnesses in the trial of this
9 case whose names I have just called? If so, please stand
10 at this time.

11 Let the record reflect no one is standing.

12 Any member of my jury panel formed any opinion
13 whatsoever about the facts of this case? If so, please
14 stand at this time.

15 Let the record reflect no one is standing.

16 Any member of my jury panel formerly a member of the
17 Jasper County Grand Jury, which found the indictments in
18 this case? If so, please stand at this time.

19 Let the record reflect no one is standing.

20 Any member of my jury panel know of any bias or
21 prejudice they may have about the facts which are alleged
22 in this case? If so, please stand at this time.

23 Let the record reflect no one is standing.

24 Any member of my jury panel a member of or
25 contributed to any group which has as its primary concern

1 the promotion of law enforcement of victim's rights?
2 These groups would include, but certainly not be limited
3 to MADD, SADD, CAVE, or CADRE? If so, please stand at
4 this time.

5 Let the record reflect no one is standing.

6 Any member of my jury panel employed by a law
7 enforcement agency? If so, please stand at this time.

8 Let the record reflect no one is standing.

9 Any member of my jury panel ever been the victim of a
10 violent crime? If so, please stand at this time.

11 Let the record reflect no one is standing.

12 Any member of my jury panel know of any reason
13 whatsoever why he or she should not serve as a juror in
14 this case with particular emphasis being placed on your
15 ability as a juror to be fair and impartial to both the
16 State of South Carolina and the defendant? If so, please
17 stand at this time.

18 Let the record reflect no one is standing.

19 Any additional voir dire from the State? Any
20 additional voir dire from the State?

21 MS. HENDERSON: No, your Honor.

22 THE COURT: Any additional voir dire from the
23 defendant?

24 MR. HUGHES: No, your Honor.

25 THE COURT: Counsel approach.

1 OFF-THE-RECORD BENCH CONFERENCE;

2 PRESENT: THE COURT, MS. HENDERSON,

3 MR. HUGHES.

4 BACK ON THE RECORD.

5 THE COURT: Counsel, you both agree to five and five.

6 MR. HUGHES: Five and five.

7 THE COURT: One, and one on the alternates. Madam
8 Clerk.

9 MADAM CLERK: Yes, sir.

10 THE COURT: They agree to strikes of five and five.

11 MADAM CLERK: Okay. Are you ready?

12 THE COURT: Hold on.

13 OFF-THE-RECORD BENCH CONFERENCE.

14 PRESENT: THE COURT, MADAM CLERK.

15 BACK ON THE RECORD.

16 THE COURT: Counsel, I understand you both agree to
17 strike three and three, or five and five, and one and one
18 on the alternates. Is that correct, from the State?

19 MS. HENDERSON: Yes, your Honor.

20 THE COURT: Correct from the defendant?

21 MR. HUGHES: Yes, sir.

22 THE COURT: All right. We'll be drawing three
23 alternates, five and five on the jury, one and one on the
24 alternates. We'll be designating the alternates in the
25 order in which they're selected. I further understand

1 that you agree to take the alternates in the order in
2 which they're selected, without a re-draw. Is that
3 correct, from the State?

4 MS. HENDERSON: Yes, your Honor.

5 THE COURT: Is that correct, from the defendant?

6 MR. HUGHES: Yes, sir.

7 THE COURT: Very well. Who do you need? Jo?

8 MADAM CLERK: Um-hmm.

9 THE COURT: Josephine.

10 MADAM CLERK: You ready?

11 THE COURT: Hmm?

12 MADAM CLERK: You ready?

13 THE COURT: I'm ready when you are, Madam Clerk.

14 Give us a jury.

15 Now, ladies and gentlemen, what's happening right
16 now, so you'll know, we've asked questions about your
17 impartiality, and getting ready -- the clerk is using the
18 computer in front of her, because we don't draw with the
19 human hand any juror anymore. And the clerk is using the
20 computer to draw a random list of those jurors I've found
21 qualified to serve as a potential juror in the trial of
22 the case.

23 The attorneys won't see that list. She'll hand it to
24 me. She'll have one. She'll give one to the court
25 reporter and to my law clerk. She will then call the

1 names in the order in which they are selected by the
2 computer at random. She will ask you to come down the
3 middle aisle, and turn and face the way I'm seated right
4 now, toward the back of the courtroom. Each side will
5 then have the opportunity to either accept or not the
6 potential juror. I ask for your cooperation during the
7 jury selection process.

8 She's printing out the list right now, ladies and
9 gentlemen. It's been drawn by the computer.

10 Wanda, you got a copy?

11 COURT REPORTER: I do. Thank you, sir.

12 THE COURT: Margaret, are you ready?

13 MADAM CLERK: Yes, sir.

14 THE COURT: State ready to proceed?

15 MS. HENDERSON: Yes, your Honor.

16 THE COURT: Defendant ready to proceed?

17 MR. HUGHES: Yes, your Honor.

18 THE COURT: Madam Clerk, would you give us a jury,
19 please.

20 JUROR SELECTION, MADAM CLERK:

21 MADAM CLERK: Juror Number 40, Daniel Douglas. Mr.
22 Douglas, will you come forward, please.

23 THE COURT: Mr. Douglas, if you'll come right on down
24 here and turn around and face the back of the courtroom
25 for me.

1 JUROR COMPLIES.

2 MADAM CLERK: How says the State?

3 MS. HENDERSON: Please present this juror.

4 MADAM CLERK: How says the Defense?

5 MR. HUGHES: Please seat the juror.

6 MADAM CLERK: Have a seat in the jury box, sir.

7 Juror Number 53, Willie Garrett. How says the State?

8 MS. HENDERSON: Beg the Court's indulgence for one
9 second, your Honor.

10 Please present this juror, your Honor.

11 MADAM CLERK: How says the Defense?

12 MR. HUGHES: Please seat the juror.

13 MADAM CLERK: Have a seat in the jury box, sir.

14 Juror Number 75, Richard Lee Johnson. How says the
15 State?

16 MS. HENDERSON: Please present this juror.

17 MADAM CLERK: How says the Defense?

18 MR. HUGHES: Please seat the juror.

19 MADAM CLERK: Have a seat in the jury box, sir.

20 Juror Number 22, Ophelia Chisolm. How says the State?

21 MS. HENDERSON: Please present this juror.

22 MADAM CLERK: How says the Defense?

23 MR. HUGHES: Please seat the juror.

24 MADAM CLERK: Have a seat in the jury box, ma'am.

25 Juror Number 129, Michael Seago. How says the State?

1 MS. HENDERSON: Please present this juror.

2 MADAM CLERK: How says the Defense?

3 MR. HUGHES: Please excuse the juror from the trial
4 of this case.

5 MADAM CLERK: Thank you, sir. Have a seat back in
6 the audience.

7 Juror Number 63, Alfreda Harris. How says the State?

8 MS. HENDERSON: Please present this juror.

9 MADAM CLERK: How says the Defense?

10 MR. HUGHES: Please seat the juror.

11 MADAM CLERK: Have a seat in the jury box, ma'am.

12 Juror Number 120, Tabitha Russ. How says the State?

13 MS. HENDERSON: Please present this juror.

14 MADAM CLERK: How says the Defense?

15 MR. HUGHES: Please seat the juror.

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

17 Juror Number 171, Thomas Woods. How says the State?

18 MS. HENDERSON: Please present this juror.

19 MADAM CLERK: How says the Defense?

20 MR. HUGHES: Please excuse this juror from the trial
21 of this case.

22 MADAM CLERK: Thank you, sir. Have a seat back in
23 the audience.

24 Juror Number 147, Tracy Talley.

25 MR. HUGHES: I'm sorry. What number was that, now?

1 MADAM CLERK: 170 -- I'm sorry.

2 THE COURT: 147.

3 MADAM CLERK: 147. 147.

4 THE COURT: Come on up, Ms. Talley, if you would,
5 please. Turn around for me. Thank you very much.

6 MADAM CLERK: How says the State?

7 MS. HENDERSON: Please present this juror.

8 MADAM CLERK: How says the Defense?

9 MR. HUGHES: Please seat the juror.

10 MADAM CLERK: Have a seat in the jury box, ma'am.

11 Juror Number 69, Patrice Horton. How says the State?

12 MS. HENDERSON: Please present this juror.

13 MADAM CLERK: How says the Defense?

14 MR. HUGHES: I apologize. What's the --

15 MADAM CLERK: 69.

16 THE COURT: 69.

17 MR. HUGHES: Please seat the juror.

18 MADAM CLERK: Have a seat in the jury box, ma'am.

19 Juror Number 124, Perry Sauls.

20 THE COURT: Percy.

21 MADAM CLERK: Percy. Percy Sauls. Juror Number 124.

22 Yes, sir, Mr. Sauls. What says the State?

23 MS. HENDERSON: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MR. HUGHES: Please seat the juror.

1 MADAM CLERK: Have a seat in the jury box, sir.
2 Juror Number 4, Steven Alston. What says the State?
3 MS. HENDERSON: Please present this juror.
4 MADAM CLERK: What says the Defense?
5 MR. HUGHES: Please seat the juror.
6 MADAM CLERK: Have a seat in the jury box, sir.
7 Juror Number 130, David Sease. What says the State?
8 MS. HENDERSON: Please present this juror.
9 MADAM CLERK: What says the Defense?
10 MR. HUGHES: Please seat the juror.
11 MADAM CLERK: Have a seat in the jury box, sir.
12 Juror Number 94, Norma Miller. What says the State?
13 MS. HENDERSON: Please present this juror.
14 MADAM CLERK: What says the Defense?
15 MR. HUGHES: Please seat the juror.
16 MADAM CLERK: Have a seat in the jury box, ma'am.
17 THE COURT: Alternate Number 1, Counsel. Strikes are
18 one and one.
19 MADAM CLERK: Juror Number 72, Albeon Jackson.
20 Albeon. What says the State?
21 MS. HENDERSON: Please present this juror.
22 MADAM CLERK: What says the Defense?
23 MR. HUGHES: Please seat the juror.
24 MADAM CLERK: Have a seat in Alternate Chair Number
25 1, sir.

1 THE COURT: Alternate Number 2, one and one.

2 MADAM CLERK: Juror Number 173, Lee Youmans. What
3 says the State?

4 MS. HENDERSON: Please present this juror.

5 MADAM CLERK: What says the Defense?

6 MR. HUGHES: Please seat the juror.

7 MADAM CLERK: Have a seat in Alternate Number 2
8 Chair.

9 THE COURT: Alternate Number 3, one and one.

10 MADAM CLERK: Juror Number 38, Brittany Dixon. What
11 says the State?

12 MS. HENDERSON: Please excuse this juror.

13 MADAM CLERK: Thank you, ma'am. Have a seat back in
14 the audience.

15 Juror Number 112, Carmen Pinckney. Does the State
16 have cause for strike?

17 MS. HENDERSON: No.

18 MADAM CLERK: What says the Defense?

19 MR. HUGHES: Please seat the juror.

20 MADAM CLERK: Have a seat in Alternate Chair Number
21 3.

22 BY THE COURT:

23 THE COURT: Are there any matters of law pertaining
24 to the selection of the jury that need to be decided
25 before the jury is sworn, from the State of South

1 Carolina?

2 MS. HENDERSON: Nothing from the State, your Honor.

3 THE COURT: From the defendant?

4 MR. HUGHES: No, your Honor.

5 THE COURT: Very well. Counsel approach.

6 OFF-THE-RECORD BENCH CONFERENCE;

7 PRESENT: THE COURT, MS. HENDERSON,

8 MR. HUGHES.

9 BACK ON THE RECORD.

10 THE COURT: Ladies and gentlemen of my jury panel,
11 we're not going to begin the trial until in the morning.
12 However, I want you to know exactly what to do and how to
13 do it.

14 First thing I want you to do is I need for you to go
15 to your jury room. Now, my alternates right here are
16 just as important as the twelve of you on the jury. If
17 for some reason, a member of the jury becomes ill, or if,
18 for some reason, he cannot continue to serve, the
19 alternate will take their place. You will be with the
20 jury throughout the entire trial of this case as an
21 alternate.

22 Now, you haven't heard any evidence in this case. So
23 it would be improper for you to discuss the case. You
24 must base this decision solely upon evidence that
25 introduced in the courtroom when both sides are present

1 with the right of cross-examination.

2 Now, I'm going to send you to your jury room. It
3 won't be long. I got to take up a quick matter of law
4 out here. Once I handle that, I'll bring you back, and
5 I'm going to excuse you for the balance of the day,
6 because I told you I'd be mindful of your time. And I'm
7 going to get you home in a reasonable hour.

8 We do not allow beepers, cell phones or any other
9 electronic device with communication capability. It's
10 improper for you to do any research on your computer or
11 on your Smartphone or to go to Facebook, MySpace,
12 LinkedIn, YouTube, to try to do any investigation of any
13 witness, any lawyer, or any issue that might come up in
14 this trial.

15 That must decide this case, not on some independent
16 -- even if you thought it would help you, even if you
17 think they've failed to present that evidence, you must
18 base your decision solely upon evidence introduced in
19 this courtroom when both sides are present with the right
20 of cross-examination.

21 Now, I'm going to be right back with you in just a
22 moment. So please, you can talk about anything you want
23 to talk about in the jury room, because in the morning,
24 when you come back, I don't want you to come to the
25 courtroom. I don't want you to come to the jury box

1 where we can see you. I want you to report to the jury
2 room. And believe me, this nice lady right here, who I
3 brag about to everybody everywhere I go, will take
4 excellent care of you, as she has done me for the past
5 God knows how many years. So, if you run into a problem,
6 you let my beloved Josephine know. She'll handle it.
7 Just don't talk about the case. And I'll be right back
8 with you just as quick as I can.

9 Please retire to your jury room at this time.

10 JURORS LEAVE COURTROOM 4:30 P.M.

11 THE COURT: All right. I see that smile on your
12 faces out there, ladies and gentlemen. Now, I told you
13 I'd go over the procedure. Margaret, what's your number
14 here? Do they have it here?

15 MADAM CLERK: They have it, your Honor.

16 THE COURT: All right, But what is it?

17 MADAM CLERK: 726-7972.

18 THE COURT: 726-7972?

19 MADAM CLERK: Yes, sir.

20 THE COURT: Each of you should have a piece of paper
21 or a card with that telephone number on it. If you do
22 not have that card or paper with that number on it, raise
23 your hand for me at this time.

24 It appears that everybody has it.

25 All right, I'm going to ask you to call that number

1 after 6:00 o'clock tonight. There will be taped message
2 on that number telling you when I might need you to
3 return. It may tell you to call back tomorrow night. It
4 may tell you thank you very much for your service; it is
5 concluded; you don't even have to come back. It may tell
6 you to report to the area of the courtroom you're seated
7 in now at a certain time.

8 If I ask you to report to the courtroom, please be on
9 time. If one of you is late, all the rest of us have to
10 wait until everybody's present. So please be on time.

11 If anybody has a problem with transportation, you let
12 one of my bailiffs or one of my security officers with
13 the sheriff's department know. I'll provide
14 transportation to get you here on time, so that court can
15 run on time and I can get you home on time.

16 Do not call the number before 6:00 o'clock. Wait
17 until after 6:00 o'clock. If the line is busy, just keep
18 dialing. You'll get through. It's one message for all
19 jurors.

20 Any questions for anyone about the call-back
21 procedure? Everybody understand what to do?

22 Thank you for your patience. You are now excused for
23 the balance of today. Call the number after 6:00
24 o'clock.

25 JURORS NOT SELECTED FOR THE TRIAL

1 OF THIS CASE LEAVE COURTROOM 4:32 P.M.

2 THE COURT: Solicitor, I understand you have -- wait
3 just a minute. Are there any jurors in the courtroom?
4 If so, please stand.

5 Let the record reflect there are no jurors in the
6 courtroom, and the jury that has been selected but not
7 sworn, is in the jury room.

8 Solicitor, I understand you have a matter you wish to
9 take up outside the presence of the jury.

10 MS. HENDERSON: Yes, your Honor. I have now
11 discussed this matter with Mr. Hughes, and he is
12 consenting to an amendment of the PWID Controlled
13 Substance Indictment. That indictment contains the
14 drugs, both Clonazepam, which is a Schedule IV drug, and
15 hydrocodone, which is a Schedule III drug. The statute
16 is for a Schedule IV drug only. As such we are asking
17 that the hydrocodone be stricken from the indictment.

18 THE COURT: So you want to amend it by striking
19 through it, and you're going to put your initials on it,
20 and Mr. Hughes is consenting to is. You want to strike
21 through *hydrocodone*, and proceed only on the Schedule IV
22 drug?

23 MS. HENDERSON: Yes, your Honor. We'll remove the
24 hydrocodone. And all my witnesses have been instructed
25 to not mention hydrocodone in their testimony.

1 THE COURT: Very well. Mr. Hughes, is that correct?

2 MR. HUGHES: Yes, sir.

3 THE COURT: Without objection.

4 MR. HUGHES: No object.

5 THE COURT: All right, Solicitor, I'm handing it to
6 the clerk. She's going to hand it to you. Strike
7 through it and put your initials on it. So ordered,
8 without objection.

9 Get your client to initial it, also, Mr. Hughes.
10 It's without objection.

11 All right, let the reflect, Wanda, that I've granted
12 the motion to amend without objection, and that the
13 Solicitor, Defense Counsel, and the defendant have
14 stricken through the words *and hydrocodone*, on Indictment
15 2012-GS-27-00189. So the indictment is now correct as
16 amended.

17 Anything else outside the presence of the jury? I'm
18 going to take the other matter up after I let them go.
19 Before I let this jury go from the State, outside the
20 presence of the jury?

21 MS. HENDERSON: No, your Honor.

22 THE COURT: Other than what we've already talked
23 about. From you, Mr. Hughes?

24 MR. HUGHES: Other than the sequestration, I believe
25 that's all we have today.

1 THE COURT: I'll handle that once I let the jury go.
2 All right. Bring me the jury, please.

3 JURORS ENTER COURTROOM 4:39 P.M.

4 THE COURT: Thank you. All right, ladies and
5 gentlemen of my jury panel, as I told you, we're going to
6 start in the morning, and because of some situations that
7 I'm dealing with, we're not going to start until 10:30 in
8 the morning. But I want you here before 10:30. Now,
9 here's what I'm going to do. Josephine's going to meet
10 you downstairs at this door right here, Josephine?

11 BAILIFF: Yeah, down.

12 THE COURT: On the -- well, I call that the side.
13 Same door I come in, or the door in the back?

14 BAILIFF: Door in the back.

15 THE COURT: All right. There's a back door back
16 here. Do you all know what I'm talking to when I point
17 like this to the back door?

18 BAILIFF: The one you all came in on.

19 THE COURT: The one you came in on today, okay.
20 There's a metal detector that you walk through there.
21 Josephine's going to meet you there at 10:15 in the
22 morning.

23 I want you to come early. She's going to escort you
24 up here to your jury room. We're going to have something
25 for you to drink, if you get here a little early, and a

1 snack. We're going to take good care of you.

2 Over the overnight recess, I ask that you do not
3 discuss this case with anyone. Not even a member of your
4 own family. I don't know whether they'll be anything on
5 radio and television and the newspaper about this case.
6 Please do not read such, watch such, or listen to such.
7 You must decide this case solely and only upon evidence
8 introduced in the trial of this case when both sides are
9 present with the right of cross-examination.

10 Now, I know people can be curious. I understand
11 that. Somebody comes up to you and says tell me if
12 you're on the jury; tell me what the case is about.
13 Simply say the Judge ask me not to talk about the case.

14 If a person persists in trying to talk to you about
15 the case, you get their name and you give it to me, and
16 I'll handle that problem for you, ladies and gentlemen.
17 I can assure you that person won't bother you anymore.

18 I hope everybody has a good evening. I want you to
19 be here by 10:15 in the morning, so we can start at
20 10:30. That's why I'm asking you to come 15 minutes
21 early. If you'll come to the metal detector door in the
22 back, Josephine will meet you in the morning. She will
23 escort you up to your jury room, so we can get started on
24 time in the morning.

25 I want to thank you for your patience this afternoon.

1 I know you've been here for two-and-a-half hours now.
2 It's 20 till 5:00, and I want to get you home before
3 dark. So please remember my instructions to you. I'll
4 look forward to seeing everybody in the morning, where
5 we'll start at 10:30 a.m. in the morning.

6 Hope everybody has a good evening, and I'll see you
7 tomorrow. You may leave the courtroom at this time. You
8 can go through the back if you like. We'll open the jury
9 door and open the other door for you. Everyone else
10 remain seated while the jury's leaving.

11 JURORS LEAVE COURTROOM 4:41 P.M.

12 THE COURT: All right, Mr. Hughes, you told me you
13 had a motion for sequestration. I understand, Solicitor,
14 that you do not oppose that motion.

15 MS. HENDERSON: That's correct, your Honor, and I
16 instructed my --

17 THE COURT: Who's your case manager, Solicitor?

18 MS. HENDERSON: Investigator Cris McIntosh.

19 THE COURT: We need him. Don't just point. The
20 court reporter needs to take down -- that's like asking
21 somebody can you identify them, and they say plaid shirt.
22 Believe me, the appellate court has no idea who's in a
23 plaid shirt. So you need to give us a name, if you
24 would.

25 Mr. McIntosh, you'll be allowed to remain. I don't

1 have a victim; do I not?

2 MS. HENDERSON: No, your Honor.

3 THE COURT: All right. Your case manager can remain,
4 and of course, the defendant can remain. Your other
5 witnesses will need to be given a room in the courthouse,
6 since you do not oppose sequestration. You need to
7 instruct them, Solicitor, that they cannot discuss their
8 testimony with anybody that's testified or anybody that
9 hadn't testified or anyone else; and that they can't
10 discuss their testimony until released by the Court,
11 particularly is that true if you intend to call any of
12 your potential witnesses that you call in your case in
13 chief in reply, because of sequestration would apply
14 throughout.

15 Now, Mr. Hughes, I realize you hadn't listed but your
16 client as a witness, and your client gets to remain. But
17 I want to remind you, now, you're bound by what you've
18 given me. So this applies to the State. It would
19 normally apply to you equally if you had any witnesses.
20 You understand?

21 MR. HUGHES: Yes, sir.

22 THE COURT: Very well. All right, now, I understand
23 there is another matter, and this involves an argument
24 concerning the admissibility of some evidence, even
25 though I hadn't heard it yet, that you all want me to try

1 to determine its admissibility pretrial. Is that
2 correct, Solicitor? Is that correct?

3 MS. HENDERSON: Yes, your Honor.

4 THE COURT: Happy to hear from you, Solicitor.

5 MS. HENDERSON: Yes, your Honor. Thank you.

6 THE COURT: Um-hmm.

7 MS. HENDERSON: Your Honor, the State is asking that
8 the statements regarding -- I'm sorry -- the defendant's
9 statements about his pending drug charge be allowed to
10 come in.

11 THE COURT: Now, those statements were made to the
12 law enforcement, Solicitor?

13 MS. HENDERSON: Your Honor, they were made to a co-
14 defendant, as well as law enforcement.

15 THE COURT: Well, that's differentiate what you're
16 talking about, because in your memorandum, you refer to
17 it as being made to members of law enforcement. And
18 obviously, because everybody that you put up on the
19 Jackson/Denno hearing earlier today in this case
20 testified the defendant was in custody at the time any
21 statements were made. And I'm referring to all four of
22 the statements, since there was an April 10, and April
23 12, an April 16, and an April 30, 2012 statement. So
24 you're asking that the -- first of all, the law
25 enforcement witness be allowed to testify to what the

1 defendant said concerning a prior arrest. Is that
2 correct?

3 MS. HENDERSON: Yes, your honor, under res gestae.

4 THE COURT: All right. You're also asking what, now?

5 MS. HENDERSON: That the co-defendant be allowed to
6 testify to the statement made to him by the defendant.

7 THE COURT: It is your understanding that you're
8 going to call the co-defendant in this case, who's listed
9 on your witness list. I believe that would be Mr.
10 Baniel. Is that correct?

11 MS. HENDERSON: Yes, your Honor.

12 THE COURT: And he is charged with what, as a co-
13 defendant?

14 MS. HENDERSON: The same crimes.

15 THE COURT: Same charges as Mr. Monroe.

16 MS. HENDERSON: Yes, your Honor.

17 THE COURT: And Mr. Baniel was the person who was a
18 passenger in the vehicle at the time of this alleged
19 incident?

20 MS. HENDERSON: Yes, your Honor. He was the only
21 other person in the car in the front seats.

22 THE COURT: And statements were made to him, or a
23 statement was made to him, by the defendant prior to the
24 defendant's arrest on this traffic violation while in the
25 car.

1 MS. HENDERSON: That's correct, your Honor. As soon
2 as the blue lights hit, Mr. Monroe threw the bag of drugs
3 into Mr. Baniel's lap.

4 THE COURT: All right. In your memo, you same that
5 Baniel stated that as soon as the defendant saw the blue
6 lights, he tossed a Crown Royal blue bag in Baniel's lap
7 and told him he had to take these charges because he, the
8 defendant, Mr. Monroe, already had drug charges pending.
9 Is that the substance of the testimony that you wish to
10 elicit from the co-defendant while he is on the witness
11 stand in the State's case?

12 MS. HENDERSON: The statement regarding the prior
13 drugs, that's not the whole statement. But regarding the
14 prior drugs --

15 THE COURT: Well, that's what we're talking about
16 now, is the admissibility for res gestae.

17 MS. HENDERSON: Yes, your Honor. Yes, your Honor.

18 THE COURT: I wouldn't expect you to quote all of his
19 testimony. Is that the essence of it?

20 MS. HENDERSON: Yes, your Honor.

21 THE COURT: Very well. I think I understand. Mr.
22 Hughes, I'll be happy to hear from you.

23 MR. HUGHES: Your Honor, since the incident that
24 she's talking about occurred nowhere near the same
25 time --

1 THE COURT: Whoa. Whoa. Let's be clearer than that.

2 MR. HUGHES: Okay. I'm sorry. Since the supposed
3 incident where the supposed charges arise that was
4 supposed to have been talked about, occurred at another
5 location, another time, involving different people, I
6 don't see how this is --

7 THE COURT: Should not following.

8 MR. HUGHES: Your Honor, --

9 THE COURT: We're dealing with April 10, 2012, at
10 10:45 at night. Officers with the Ridgeland Police
11 Department are initiating a traffic stop on a Honda
12 Accord for crossing a double yellow line, driving into
13 the oncoming lane, after making a right-hand turn,
14 allegedly.

15 There's a driver and a passenger. Okay? Later on,
16 while being interviewed, okay, regarding this incident,
17 -- I realize it was -- I think we're talking about four
18 days, but maybe we're talking about six days.

19 MR. HUGHES: I think we're talking -- I'm sorry.

20 THE COURT: Well, the stop was April 10. The
21 interview was April 16, unless I'm wrong. Is that right,
22 Solicitor?

23 MS. HENDERSON: Yes, your Honor. He did not make
24 that statement to law enforcement until the April 30th.

25 THE COURT: Yes, but I'm talking about first as to

1 the co-defendant.

2 MS. HENDERSON: Yes, your Honor.

3 THE COURT: It was made at the time of the stop,
4 which would be April 10th.

5 MS. HENDERSON: Yes, your Honor. Yes, your Honor.

6 THE COURT: So, law enforcement didn't get the
7 information concerning this alleged other charge until
8 April 30th. Is that right?

9 MS. HENDERSON: No, your Honor. I apologize. I
10 misspoke. I forgot. When he was -- the day of the
11 incident, when he was in the squad room with Officer
12 Long, he was telling Mr. Baniel, you've got to take this
13 charge, you've got to take this charge, I've already got
14 charges. So it was said in front of law enforcement.

15 THE COURT: And who was that said to in law
16 enforcement?

17 MS. HENDERSON: It was said to Mr. Baniel in law
18 enforcement presence. They're all in one room. Mr.
19 Monroe was saying it to Mr. Baniel.

20 THE COURT: So, law enforcement would testify what
21 they overheard Mr. Monroe telling Mr. Baniel the day of
22 the incident, April 10, 2012?

23 MS. HENDERSON: Yes, sir.

24 THE COURT: Um-hmm. All right. Mr. Hughes, I think
25 I understand that now. Please be seated, Ms. Henderson.

1 Go ahead, Mr. Hughes, you've got the floor.

2 MR. HUGHES: Your Honor, the probative value of being
3 able to say he has other charges is the reason he threw
4 the drugs in the other person's lap is so minor, compared
5 to the prejudicial aspect of telling a jury that a man
6 charged with drugs has another drug charge pending. Not
7 a conviction, but a pending charge, your Honor. A charge
8 that has not been adjudicated in any way, shape, or form,
9 at least against my client.

10 Under *Lyle*, prior bad act of this nature, there is no
11 -- there is not enough of a connection, I believe, other
12 than the fact that both incidents occurred of illegal
13 drugs. I, your Honor, do not see how *res gestae* enters
14 into this picture at all. This is not a continuation of
15 anything. This is simply two incidents, and the State is
16 trying to get one of them in through a back-door method.

17 THE COURT: So, basically, your argument to me, Mr.
18 Hughes, is you think the prejudicial effect outweighs any
19 probative value insofar as the statements made on April
20 10th or April 30th to law enforcement is concerned
21 concerning the prior arrest.

22 MR. HUGHES: April 10th to --

23 THE COURT: According to the Solicitor, they over --
24 they. I don't know who *they* is. Nobody ever identifies
25 it for the record. But a law enforcement officer

1 overheard the defendant tell Baniel on April 10th that he
2 had to take the charges because he had other charges
3 pending.

4 MR. HUGHES: I would say that is extremely
5 prejudicial, your Honor.

6 THE COURT: Very well. Anything else?

7 MR. HUGHES: No, your Honor, that's basically it.
8 The State has not, I don't think, demonstrated any
9 probative value of that statement other than it bolsters
10 their witness's reason for having the drugs.

11 THE COURT: Solicitor, I understand your argument
12 about res gestae, but I think I'm required to balance the
13 rights of the defendant and the prejudice. Here, you're
14 talking about -- even though we hadn't delineated, I'm
15 aware of it because you and Mr. Hughes made me aware of
16 it in chambers pretrial. We're talking about arrest for
17 drugs. And defendant's being tried for drugs. The
18 danger of prejudice from eliciting that from law
19 enforcement is extremely high. I decline your invitation
20 to admit that testimony as a part of res gestae, because
21 I think the danger of prejudice to the defendant, who may
22 not take the witness stand and who has a constitutional
23 right to remain silent, is outweighed by any probative
24 value that may be gained from this.

25 However, having said that, I do not feel the same

1 way, since there was no custodial interrogation by the
2 co-defendant. I believe any statement made by the
3 defendant that's against his interest, to the co-
4 defendant, okay, which was before anybody was charged in
5 connection with these matters, although, Mr. Hughes has
6 every right to cross-examine him, can be elicited to the
7 jury concerning what the defendant said to him in the
8 car. And at this point, and this is only a preliminary
9 ruling, because something could change during the trial,
10 and as you both know, you're required to make a
11 contemporaneous objection during the trial, but you've
12 asked me to look at it at this point, and that's my
13 feeling based on what I know now without hearing any
14 testimony.

15 So, to the extent you plan on putting up a law
16 enforcement officer to testify what the defendant said
17 about other charges, Mr. Hughes' objection is sustained.
18 To the extent you're going to put up a co-defendant, Mr.
19 Hughes will object contemporaneously. And absent some
20 information that I don't have now, which I may gain from
21 listening to the evidence in the trial of this case, my
22 initial feeling, preliminarily, of course, any motion in
23 limine is a preliminary ruling, is that the co-defendant
24 would be permitted to testify. You understand that?

25 MS. HENDERSON: Yes, your Honor.

1 THE COURT: Very well. All right. I think that
2 takes care of your res gestae motion now. I will
3 certainly tell Mr. Knight, when I return to Colleton
4 County, that you have become a res gestae disciple, much
5 like Mr. Knight is.

6 Are there any other matters concerning this case?
7 Now, I want you both to understand something. When you
8 both told me there were no matters pertaining to the
9 selection of the jury that need to be decided before the
10 jury's sworn, that decision is irrevocable, even though I
11 haven't sworn the jury yet. You understand, Solicitor?

12 MS. HENDERSON: Yes, your Honor.

13 THE COURT: You understand that, Mr. Hughes?

14 MR. HUGHES: Yes, sir.

15 THE COURT: All right. Are there any other matters
16 that need to be brought before the Court concerning this
17 case? Because I've told you, and I'm going to get her
18 home at a reasonable hour, because she's got a medical
19 appointment. Solicitor, anything from you?

20 MS. HENDERSON: No, your Honor.

21 THE COURT: Mr. Hughes, anything from you?

22 MR. HUGHES: Yeah, I'm afraid so, your Honor. I'll
23 make this brief as probable. In chambers, we discussed
24 the co-defendant's being found guilty of possession of
25 the marijuana that was located inside the Crown Royal bag

1 that was the subject of this entire hearing. The State,
2 I think, objected to that. I'm not sure.

3 THE COURT: I'm not sure either. Of course, this is
4 a voir dire question. What if they call him, and what if
5 you cross-examine him, and what if you ask were you
6 convicted of simple possession of marijuana? Or better
7 yet, what if the State calls him and asks him, which I
8 don't know yet? Go ahead, Mr. Hughes.

9 MR. HUGHES: Well, I'm not exactly sure if I need to
10 make -- I --

11 THE COURT: You're going to get the chance to make an
12 objection. I'm not quite certain now. Now, both of you
13 know that I have -- I don't know anybody's going to find
14 me anything that simple possession carries more than one
15 year, and I don't think anybody's going to find me that
16 it involves credibility or moral turpitude to the point
17 that it could affect the credibility of a witness.
18 However, that does not mean a prior bad act, regardless
19 of what it is, can't be brought to the attention of the
20 jury under limited circumstances. But since I don't know
21 what's going to happen here, and I certainly don't want
22 to restrict your right to cross-examine what may be a key
23 witness, I don't know, in the trial of this case, I think
24 we need to take that up contemporaneous with the
25 witness's testimony, rather than pretrial. You

1 understand that, Mr. Hughes?

2 MR. HUGHES: Yes, sir.

3 THE COURT: But I'll certainly give you the
4 opportunity. Solicitor, before you call that witness, if
5 you're going there, you put him on notice, you all
6 approach the Bench, and give me an opportunity to be the
7 gatekeeper. You understand? No blurting out anything,
8 otherwise you will have bought a mistrial, and if it's
9 bought on that basis, it could be bought on the basis of
10 prosecutorial misconduct, which I'm sure you would not
11 want to do, particularly after you've disclosed to Mr.
12 Hughes your third cousin's aunt's friend during jury
13 selection. I don't believe Mr. Hughes has ever in his
14 life had more information about the venire than you
15 provided to him, Solicitor. And I congratulate you for
16 that, because it shows the integrity of your heart to
17 make sure that you were not withholding any information
18 concerning any relationship with any potential juror.

19 Anything else from you?

20 MS. HENDERSON: No, your Honor.

21 THE COURT: Anything else from you about this trial?

22 MR. HUGHES: Just one point of clarification. The
23 law enforcement is not allowed to say what my client is
24 supposed to have said to Mr. Baniel while in custody.

25 THE COURT: That is correct. I have sustained your

1 objection. Now, --

2 MR. HUGHES: Is Mr. Baniel allowed to say what --

3 THE COURT: I hadn't ruled on that yet. I told you
4 my feelings were that's a different matter from law
5 enforcement.

6 MR. HUGHES: Okay. I was asking after he was in
7 custody. Not before he was in custody, but after he was
8 in custody.

9 THE COURT: I don't recall that I was told in the
10 Jackson/Denno, which is all I know about this, Mr.
11 Hughes, that there was any statement made after custody
12 to by -- oh, there's a ear witness, but that was law
13 enforcement. Is that what you're referring to?

14 MR. HUGHES: Yes.

15 THE COURT: You believe they intend to elicit
16 testimony after custody from your client to the co-
17 defendant.

18 MR. HUGHES: Correct.

19 THE COURT: Yes, I have a different view of that,
20 also, Mr. Hughes, when they're in custody. I don't
21 believe you can do indirectly what you can't do directly
22 insofar as law enforcement is concerned. My statements
23 earlier were addressed to in the car prior to any
24 custodial interrogation, because I understand, the very
25 same statement that you're seeking to prevent was made by

1 the co-defendant to your client prior to any custodial
2 interrogation at the time of the stop, and that would
3 have been back on April 10, 2012, at around 10:45 at
4 night. That was the reason I made that statement. I was
5 not addressing what happened after custodial
6 interrogation began. You understand?

7 MR. HUGHES: Yes, sir.

8 THE COURT: All right. So now, law enforcement isn't
9 going to elicit that, and she knows that. She's not
10 going to try to from any law enforcement officer. And
11 right now, she's not going to elicit it from Mr. Baniel
12 post custody. The only thing that I've told you at this
13 point, and you're going to have to object
14 contemporaneously with the pre-custody from the co-
15 defendant, not from law enforcement. You understand my
16 feeling?

17 MR. HUGHES: Yes, sir.

18 THE COURT: Do you also, Solicitor?

19 MS. HENDERSON: Yes, your Honor. Can I seek some
20 clarification on one thing real quick, though?

21 THE COURT: Yes, ma'am.

22 MS. HENDERSON: In the statements made to the co-
23 defendant by Mr. Monroe throughout the night, *You have to*
24 *take these charges*, I am viewing these as -- *You have to*
25 *take these charges, because I already have pending drug*

1 charges. That, I understand, may not come in. But he's
2 allowed to say, he said: *You got to take these charges;*
3 *you got to take these charges.*

4 I just want to make sure that we're not making it one
5 statement together that cannot come in altogether.

6 THE COURT: The objection is only on the grounds of
7 the prior misconduct, which resulted in an arrest at this
8 point.

9 MR. HUGHES: Okay.

10 THE COURT: Unless there's some other objection. I
11 can't rule on -- you all are now talking to each other
12 through me, and you need to be talking to Mr. Hughes,
13 because I can't anticipate what he's going to object to
14 in the trial of this case. But if it comes up, it'll be
15 my job to rule on it, but I don't -- you're asking me now
16 for advance rulings without hearing it, so I don't know
17 what's going to come up. I assume there's no objection
18 on that ground, because I hadn't heard one. The only
19 thing I've heard about is the prior arrest.

20 MS. HENDERSON: Thank you, your Honor.

21 END DAY ONE, MONDAY, FEBRUARY 11,

22 2013, 4:55 P.M.

23 BEGIN DAY TWO, TUESDAY, FEBRUARY

24 12, 2013, 1100 A.M.

25 BY THE COURT:

1 THE COURT: All right. Counsel, I've met with you
2 about -- and it's my intention -- I assume we've got
3 everybody.

4 MADAM CLERK: Yes, sir.

5 THE COURT: It's my intention to get started. I'm
6 running 25 minutes behind, and that's my fault this
7 morning because of matters that came up. But Mr. Hughes
8 had a matter he wanted to discuss. Ms. Henderson had a
9 matter she wanted to discuss. You now know my feeling
10 about how to handle the situation you raised. And Mr.
11 Hughes, you know my ruling now concerning the issues
12 we've had come up as to how I expect it to be limited
13 from an evidentiary standpoint. Is that correct, Mr.
14 Hughes?

15 MR. HUGHES: Yes, sir.

16 THE COURT: Ms. Henderson?

17 MS. HENDERSON: Yes, sir.

18 THE COURT: You're going to instruct your witness
19 about my ruling about my ruling before that witness
20 testifies.

21 MS. HENDERSON: I was in the process of that, your
22 Honor, when you took the stand, so I came back in here,
23 but I have asked his attorney, Mr. Tom Johnson, I told
24 him the ruling, and asked him to make sure he was clear
25 on your ruling.

1 THE COURT: Very well. All right, with that, I think
2 we're ready to proceed now. Would you all -- and I
3 understand -- let me see my list real quick. I want to
4 make sure that I've got the right one. Camden?

5 LAW CLERK HODGE: Yes.

6 THE COURT: I don't have one on here. So you tell me
7 which one you're referring to. This one?

8 LAW CLERK HODGE: Yes.

9 THE COURT: All right. All right. Would you
10 bring --

11 MS. HENDERSON: I'm missing my case officer. And
12 someone is looking for him. I don't know if he stepped
13 to the restroom. Can I have 30 seconds to go see, poke
14 my head out?

15 THE COURT: All right. Thirty seconds.

16 You found him?

17 MS. HENDERSON: Yes, sir, he's coming.

18 THE COURT: All right. Come on in. Have a seat.
19 All right. I issued an order of sequestration yesterday.
20 Obviously, the case officer can remain in here, and the
21 defendant. Your other witnesses should be advised of my
22 order and you should have them in the solicitor's office,
23 because I granted Mr. Hughes' request for sequestration.
24 You understand, Solicitor?

25 MS. HENDERSON: Yes, your honor, all witnesses are in

1 the two rooms opened up by the clerk of court, and
2 they've finished discussing not to discuss --

3 THE COURT: Take a look in the courtroom. Make sure
4 there are no witnesses in the courtroom before I begin,
5 since I've granted that motion.

6 MS. HENDERSON: Not that I'm aware of, your Honor. I
7 don't --

8 THE COURT: It's your job to make sure they're not,
9 now.

10 MS. HENDERSON: They're not. None of my witnesses
11 are here, your Honor.

12 THE COURT: All right, Mr. Hughes, now, you've only
13 given me just the defendant. You understand that.

14 MR. HUGHES: Yes, sir.

15 THE COURT: So the die is cast on that. Bring us the
16 jury, please.

17 JURORS ENTER COURTROOM 11:02 A.M.

18 THE COURT: There we go. Thank you. Good morning,
19 ladies and gentlemen of the jury. Thank you for your
20 patience. I had a couple matters of law that I had to
21 take up this morning, which is why we're behind schedule
22 a little bit, and that's going to happen every now and
23 then. But I can assure you that I'll keep the train on
24 the track, and we'll keep it moving. Thank you for your
25 patience this morning. Thank you for being on time.

1 We're going to get back on schedule.

2 Madam Clerk, would you please swear the jury.

3 JURORS SWORN, MADAM CLERK:

4 MADAM CLERK: Would you stand and raise your right
5 hand, please. You shall well and truly try and true
6 deliberance make between the State of South Carolina and
7 the prisoner at the bar, and a true verdict render,
8 according to the evidence, so help you God.

9 JURORS RESPOND.

10 BY THE COURT:

11 THE COURT: Thank you. Please be seated. Ms.
12 Alphreda Harris, would you raise your hand for me. Ms.
13 Harris, I'm going to appoint you to be foreperson of the
14 jury. That will be your seat. My alternates, my three
15 alternates, over to your left, that'll be their seats.

16 Let me tell you about your duties, Ms. Harris. When
17 the jury starts to deliberate, and I'll tell you when at
18 the conclusion of the trial, you're going to preside in
19 the jury room, just like the chairperson of a committee
20 would preside at a committee meeting. It's your job to
21 see that each and every member of my jury has a full and
22 a fair opportunity to voice their opinions in the jury
23 room once deliberations begin.

24 It will also be your job as foreperson to write the
25 jury's verdict, but I will give you a verdict form and

1 explain to you in my charging on the law at the
2 conclusion of the case how to write the jury's verdict.
3 I won't tell you what the verdict's going to be, but I
4 will give you a form to help you in writing the verdict,
5 and you will sign the verdict form as the foreperson for
6 the entire jury, although, the verdict must be unanimous.
7 It must be the verdict of each and every one of you on
8 the jury.

9 Finally, it will be your job as foreperson, Ms.
10 Harris, should the need arise during the trial of this
11 case, to be the jury spokesperson. The foreperson speaks
12 for the entire jury should that need arise during the
13 trial.

14 Now, the rest of you can sit anywhere you want to.
15 Ms. Harris will sit in the foreperson's chair where she's
16 located right now. I do recommend this. When you going
17 in the jury box, file all the way down. Don't sit down
18 in a seat and make people crawl over you. If you want to
19 sit by somebody, just line up that way, and you can, but
20 go all the way to the end, so nobody's got to crawl over.

21 My alternates, your exactly where I want you to be.
22 You're just as important as a member of the jury. If,
23 for some reason, a member of the jury becomes ill, or for
24 some valid legal reason cannot continue to serve, you're
25 going to take their place on the jury. You're going to

1 be with the jury throughout the trial of this case.

2 All right. Now, let's get a couple housekeeping
3 matters, so we can get started, out of the way, ladies
4 and gentlemen.

5 As I told you yesterday, I'm going to ask that you,
6 now that you've been selected to serve on the jury in
7 this case, and until you're jury service is concluded,
8 please do not discuss this case amongst yourselves. I'll
9 tell you when it's time. You're going to have plenty of
10 time to talk about it at the end. But don't talk about
11 it with others, including your fellow jurors, until
12 you're authorized by the Court to do so.

13 And why are we so serious about that? I'm asked that
14 a lot. And the reason is, it might be the very last
15 thing in this trial that makes a difference to you. So,
16 don't engage in any premature deliberations amongst
17 yourselves, and please don't discuss this case with
18 anyone else. Please don't read or listen to any news
19 reports about the case. Please don't use a computer or a
20 cell phone or any other electronic device while in
21 attendance here or during deliberations. It is very
22 important, as I told you yesterday, to decide this case
23 solely upon evidence introduced during the trial of this
24 case when both sides are present, with the right of
25 cross-examination. So don't use your Smartphone or a

1 computer to try to get information about a party or a
2 witness or a court officer or news account of the case,
3 or information collected through any type of research on
4 your own, even if you think that information would help
5 you, don't do it. Why? Because both sides of this case
6 have an absolute right to know exactly what you're basing
7 your decision on. So you must base it on evidence
8 introduced during the trial of the case, when both sides
9 are present, with the right of cross-examination. So,
10 any information collected through any type of juror
11 research on any topic is prohibited. So, please don't
12 communicate with anyone about the case on your cell
13 phone, through email, Blackberry, iPhone, text messaging,
14 or on Twitter or through any blog or website, including
15 any Internet chat room or any social networking website,
16 which includes Facebook, My Space, LinkedIn, and YouTube.
17 I do not want to have a problem from someone thinking
18 that they're conscientious and thinking that they should
19 do that to be a conscientious juror, because it is
20 strictly prohibited, and I ask your cooperation in
21 regards to that.

22 And before we begin this trial, I'm going to tell you
23 that this trial probably will be different from what many
24 of you probably expect. You know, most people don't have
25 the chance to attend an actual court session, as each of

1 you are doing right now. And most people think, from
2 watching television or going to a movie, such programs as
3 *Cold Case* and *CSI*, that trials are always full of high
4 drama and intense action and riveting and entertaining
5 circumstances. While all of those things may be true at
6 times, an actual trial, ladies and gentlemen, as each of
7 you are getting ready to participate in, is not for
8 entertainment, like a television show or movie or a book.
9 An actual trial, ladies and gentlemen, is a search for
10 the truth in an effort to make sure that justice is done
11 between the parties before the Court. Searching for the
12 truth and trying to make sure that justice is done is
13 often slow, it is often deliberate, it is often
14 repetitive. The exact opposite of what many of you may
15 have seen on television or read in a book or seen in a
16 movie.

17 This courtroom, ladies and gentlemen, is a place of
18 honor. It is dedicated to the protection and to the
19 preservation of citizens' rights, through what many
20 people have called the greatest justice system in the
21 entire world. They attorneys that are going to be
22 appearing before you in this trial are advocates for the
23 parties they represent. The State of South Carolina and
24 the defendant. But first and foremost, the attorneys are
25 officers of this Court. And as officers of this Court,

1 just like you just took an oath from the clerk, each one
2 of my attorneys and myself have taken an oath. And in
3 that oath, each of us swore to uphold the integrity, we
4 swore that we would uphold the fairness of our judicial
5 system. So, the attorneys are here to help you, ladies
6 and gentlemen, even though they're advocates for the
7 parties they represent, in a search for the truth. As
8 officers of the Court, under the oath which each of the
9 attorneys have taken, you should expect the attorneys to
10 be professional, you should expect the attorneys to be
11 competent, you should expect the attorneys to be ethical
12 in the representation of their client's interest.

13 I remind each of you that you took an oath just a
14 moment ago from the clerk. And in that oath, you said
15 and you swore that you would try this case and that you
16 would reach a fair and that you would reach a just
17 verdict in this case. So, ladies and gentlemen, just
18 like the attorneys and myself, you, as a juror, are also
19 expected to be professional; you're expected to be
20 reasonable; and you're expected, as a juror, to be
21 ethical in the discharge of your duty as a juror.

22 Before we begin the trial, I want to thank each and
23 every one of you for accepting this very important
24 responsibility of jury service. I want to thank you for
25 your contribution today to our justice system. Without

1 you, ladies and gentlemen of the jury, justice cannot be
2 accomplished in the courtroom. And I thank you for that
3 service.

4 Now, ladies and gentlemen, and Madam Foreperson, the
5 case we're about to try is the case of the State of South
6 Carolina versus Phillip Monroe. Mr. Monroe, as I told
7 you yesterday, is charged by these two pieces of paper
8 that I hold in my hand. We call these pieces of paper
9 indictments.

10 He is charged in one indictment with trafficking in
11 cocaine, 10 grams or more, but less than 28 grams. He's
12 charged in the other indictment with possession with
13 intent to distribute a Schedule IV drug.

14 Now, I will explain the elements of those charges to
15 you in my charge to you on the law, which comes at the
16 conclusion of the trial. So, don't worry about knowing
17 the elements of each offense. I will explain that to you
18 in my charge on the law. You should understand that the
19 indictments are simply the charges by which a case is
20 brought into this Court, and that it is not, in any
21 sense, evidence of any of the allegations contained in
22 the indictment.

23 Now, the defendant in this case has pled not guilty
24 to each of these indictments. That places the burden on
25 the State of South Carolina of proving each of the

1 essential elements of the indictment beyond a reasonable
2 doubt. And it will be your duty, ladies and gentlemen,
3 to decide whether or not the State has met that burden.
4 It is your solemn responsible to determine the guilt or
5 the innocence of the defendant. And your verdict must be
6 based, as I have told you, solely and only on the
7 evidence as it is presented to you in this trial and on
8 the law as I instruct it to be during and at the close of
9 this trial.

10 Now, in just a minute, the assistant Solicitor will
11 make what is called an opening statement, in which she
12 will explain to you the issues in this case, or at least
13 what she contends, as an advocate for the State of South
14 Carolina, to be the issues in this case. Following that,
15 the attorney for the defendant will make an opening
16 statement.

17 Now, I want to tell you that what the attorneys tell
18 you in opening statement, what the attorneys suggest to
19 you by questions they ask, what the attorneys argue to
20 you at the conclusion of the case in their closing
21 argument is not evidence. The attorneys are advocates
22 for the parties they represent. They've worked hard to
23 prepare the case for their respective clients, and I want
24 you to listen to them. But what they tell you is not
25 evidence in this case. And in the opening statement, it

1 is only their contention, as an advocate, as to what the
2 issues are or what the evidence will show.

3 Now, I've told you, you must base your decision as a
4 juror on the evidence. The evidence in this case will be
5 presented to you by testimony from this witness stand.
6 Witnesses will take this witness stand, take an oath, and
7 testify before you. You'll notice the witness stand is
8 located on the side of the courtroom in closest proximity
9 to you. That's so you can listen to the witnesses. You
10 can observe the witnesses. You can pay close attention
11 to the witnesses.

12 Evidence may also take the form of an exhibit, which
13 might be a photograph or a model. And you will hear me
14 say, because the lawyers know they can't show you any
15 such exhibit without coming through me. Part of my job
16 will be to rule on the admissibility of the evidence.
17 But if something is admitted into evidence, you'll see me
18 have it marked, like a photograph, with the court
19 reporter, because we use numbers for the record that
20 we're keeping here. And it may then be shown to you once
21 you hear me say it's admitted into evidence.

22 Evidence may also take the form of what we call a
23 stipulation, an agreement, an understanding between the
24 parties that it is not necessary to prove a fact; that
25 they agree that a fact is true.

1 So, evidence may be testimony, it may be an exhibit,
2 it may be a stipulation.

3 Now, in the consideration of this evidence, you
4 should remember that under the *Constitution* of the State
5 of South Carolina, you and you twelve jurors alone are
6 the sole judges of the facts in this case. You're the
7 only people in this courtroom who are going to be able to
8 weigh or consider the evidence. No one else but you are
9 going to be allowed to judge what you determine from the
10 evidence to be the facts in this case, based on evidence
11 presented during the trial of this case.

12 And the same law that makes you the sole and the
13 exclusive judges of the facts make me, the judge, the
14 sole and exclusive judge of the law. I cannot invade
15 your province, ladies and gentlemen, and tell you what
16 the facts are or make any comment to you about the
17 evidence or what it suggests. And you should not invade
18 my province and differ with me about what the law is.
19 Everything that I say to you, even right now, during the
20 course of this trial, is being taken down by Wanda Rowe,
21 my court reporter, who's seated right below me. And if I
22 make a mistake as to the law to the detriment of either
23 side, they can appeal the case to an appellate court, and
24 if they agree that I've made an mistake on the law, the
25 appellate court will reverse the case and send it back

1 for a new trial. So, don't any of you on this jury worry
2 about whether or not I've told you the law correctly.
3 That is somebody else's worry. That is not your concern.
4 Your job is to take the law as I give it to you and apply
5 it to the facts as you find them to be, based on evidence
6 introduced during the trial of the case, which means
7 testimony from the witness stand, any exhibits that may
8 be introduced into evidence, or any stipulation that may
9 occur during the trial of the case. And in doing that,
10 at the conclusion of the trial, you will render your
11 verdict, a true, a just verdict, under that solemn oath,
12 which each of you just took from the clerk of court.

13 Now, from time to time during the trial of the case,
14 you may hear one of the lawyers say something like, your
15 Honor, I believe we have a question of law. Or you might
16 hear me, as I've already done, tell the lawyers to
17 approach the Bench. Or I might say to you, please to go
18 your jury room; I have to discuss a matter of law with
19 the attorneys, as I did this morning.

20 Now, the reason for this is not because we're trying
21 to hide anything from you. The reason for this is just
22 what I've told you. You're the sole judges of the facts
23 in this case, and sometimes, when I'm discussing a matter
24 of law with the attorneys, by necessity, I have to make a
25 comment to them about the facts in order to rule on

1 whether or not a particular piece of law applies to this
2 case. Now, I can't make any comment to you about that
3 facts in the case. So, the custom in this state is to
4 either try to take it up in a sidebar conference, without
5 making you get up and go to your jury room, or, if it's
6 going to take longer, ask you to step to your jury room
7 while I discuss a matter of law with the attorneys. Do
8 not believe that when any such discussions like that take
9 place the purpose of it is so that you won't be
10 influenced by anything that I might say or do in ruling
11 on whether or not a particular piece of law applies to
12 this case.

13 And let me tell you again that you, ladies and
14 gentlemen of the jury, and you alone, are the sole judges
15 of the facts in this matter, based on evidence introduced
16 during the trial of the case. And if you should gather
17 from anything that I might say or anything that I might
18 do in ruling on an objection during the trial, anything
19 during the course of this trial, if you should gather or
20 believe that I have any opinion as to the facts in this
21 case, please erase that from your mind, because I've
22 said, you're the sole judges of the facts, and I'm not
23 allowed to intimate any opinion to you about the facts in
24 this case. That's solely your province.

25 Now, I'm asked frequently, how do I determine, Judge

1 Buckner, what are the true facts from the evidence.

2 Well, in determining what the true facts are, ladies and
3 gentlemen, you will, as a juror, of necessity, have to
4 now pass upon the credibility or the believability of the
5 witnesses who are going to take this witness stand during
6 this trial. It will be my responsibility to rule as a
7 matter of law whether or not certain testimony is
8 admissible at all or not. But once I've allowed the
9 testimony to be admitted into evidence, whether or not
10 you believe that testimony is solely a matter for you,
11 the jury, to determine. And in passing upon the
12 credibility or the believability of the witnesses, you
13 have the right, as a jury, to take into consideration the
14 interests of any witness, the bias, if any, of any
15 witness; the prejudice, if any, of any witness; the
16 opportunity for the witness to have observed the matters
17 and things about which he or she might testify. You may
18 even take into consideration what we call the demeanor of
19 the witness, the appearance of the witness while the
20 witness is on the witness stand. Anything that is in
21 evidence, you, as the jury, have the right to consider in
22 passing upon the believability of the witnesses who will
23 testify during the trial of the case.

24 That means, Madam Foreperson, and that means, ladies
25 and gentlemen of the jury, that it is your duty under

1 your sworn obligation as a juror to pay close attention
2 to the witnesses. It is your duty under your sworn oath
3 to listen to the witnesses. Don't let your thoughts
4 wander. Give strict attention to the testimony in this
5 case, so that at the conclusion of this case, after all
6 the testimony, after the final arguments of the attorneys
7 and my charge on the law, you will have placed have
8 placed yourself as a juror in a position to determine by
9 listening what the true facts are, and to apply the law
10 as I give it to you at the conclusion of the trial to
11 those facts, and thus, render a just verdict.

12 And you must not consider anything that you may have
13 read or heard about this case outside of the courtroom,
14 whether before or during this trial.

15 And until I submit the case to you and instruct you
16 to begin your deliberations, you must not discuss this
17 case with anyone. And not even a member of your own
18 family. And after it is submitted to you, you must
19 discuss it only in your jury room with your fellow
20 jurors. It is important that you keep an open mind and
21 not decide the case until the entire matter has been
22 submitted to you, under my instructions at the conclusion
23 of the case.

24 Now, Madam Foreperson, as I told you, it'll be your
25 added duty to preside in the jury room, be the jury

1 spokesperson, if the need arises out here in the
2 courtroom. It will also be your duty to write the jury's
3 verdict, but I will give you further instructions in my
4 charge to you on the law as to how to write the verdict
5 and show you the verdict form. And I'll do that at the
6 conclusion of the case.

7 Now, a couple of housekeeping matters and we're ready
8 to go. If, at any time, a member of my jury cannot hear,
9 raise your hand. I want you to be able to hear at all
10 times. There are microphones throughout the courtroom
11 everywhere. My lawyers have a tendency -- you notice
12 they've got microphones on the counsel table, but they
13 will turn their back to the court reporter. And Wanda,
14 you'll notice she's sitting so she can turn toward a
15 witness, she can turn toward me, and right now, she can
16 turn toward the lawyers. But inevitably, they'll want to
17 walk around a little bit. They'll go back to their
18 table, and they'll go through their files, and they'll
19 talk to somebody at the table, and they'll turn their
20 back on the court reporter. And they'll ask a question
21 like this: (Reporter's Note: Judge mumbling.) And the
22 court reporter will look at me and go (Reporter's Note:
23 Judge indicating). And then, I'll ask them to turn
24 around and use the microphone. So if you can't hear, you
25 raise your hand. I'll see to it that you can hear and

1 understand anything that's said in this courtroom.

2 If an exhibit is introduced into evidence, and you
3 don't see the exhibit, raise your hand. I'll be watching
4 all 15 of you during the trial of this case. I want you
5 to be able to hear and to see at all times throughout the
6 trial of this case.

7 Now, Madam Foreperson, we do not allow jurors,
8 normally, to ask questions in the courtroom. If, at any
9 time, a member of the jury has a question, here is the
10 procedure we have to follow. If you're not already in
11 your jury room, you will retire to your jury room. You
12 will write the question on a piece of paper. You will
13 give it to my bailiff. She'll bring it out to me. I
14 will then have to rule as a matter of law whether or not
15 the question can or cannot be answered, just as I would
16 any question asked by either one of the attorneys during
17 the trial of the case.

18 I've tried it both ways. I ask that you do not take
19 written notes. Now, you're going to see, I got a pen in
20 my hand and I've got a notebook on my Bench, but I don't
21 want you to take written notes. Why? Because I've found
22 that if the written note taker on the jury makes a
23 mistake in the written notes, the written notes can be
24 harmful, rather than helpful in your jury room. The time
25 tested system is for each of you to listen and listen

1 carefully.

2 Now, I can play back -- we're making an audio, not a
3 video, but an audio recording of every witnesses'
4 testimony. So, if you want to hear it again, I can play
5 it for you again. So don't worry about having to
6 necessarily remember every detail. But I want you to
7 listen and listen carefully. That will be your job, and
8 that is the time tested system for serving on the jury.
9 So please do not take written notes.

10 Now, I do not intend that anything that I have just
11 said to you should be construed as a charge on the law,
12 because it's not that. I will charge you the law that
13 applies to this case. I hadn't heard the evidence in
14 this case. Just like you, I have no idea what the
15 evidence is going to show. And I have to wait until I've
16 heard the evidence to know what law applies to it.

17 I will charge you the law that applies to this case
18 at the conclusion of the trial. This has merely been an
19 attempt on my part to briefly explain to you some of the
20 procedure. We have an order for everything we do in the
21 courtroom. The State has the burden of proof. The State
22 GS first. The State will give their opening statement
23 first. The State will present their evidence first. We
24 follow a certain procedure in the courtroom. We want you
25 to understand that. We'll be following the *Rules of*

1 Evidence in what you hear. They're designed to make sure
2 that the information you receive is the most trustworthy
3 and the most reliable information available.

4 I will charge you the law, though, at the conclusion
5 of the case. This has been an attempt to explain our
6 procedure to you so you'll have a better understanding as
7 to what may be happening from time to time.

8 Nevertheless, in order to protect everyone's rights, I'll
9 give the parties an opportunity to accept anything I've
10 said if they have any exceptions.

11 Any objections or exceptions the Court's comments
12 from the State?

13 MS. HENDERSON: None from the State, your Honor.

14 THE COURT: From the defendant?

15 MR. HUGHES: None from the Defense, your Honor.

16 THE COURT: Madam Foreperson, ladies and gentlemen of
17 the jury, we'll now begin the trial the case. Ms.
18 Henderson.

19 MS. HENDERSON: Thank you, your Honor. May it please
20 the Court.

21 THE COURT: You may proceed.

22 MS. HENDERSON: Mr. Hughes.

23 OPENING STATEMENT, MS. HENDERSON:

24 MS. HENDERSON: Good morning. Ladies and gentlemen,
25 Phillip Monroe is a drug dealer. Phillip Monroe is a

1 drug dealer that was going to let a hard-working father
2 of three go down for his crime. See, on April 10, 2012,
3 Phillip Monroe was a driver of a vehicle that was pulled
4 over by members of the Ridgeland Police Department for a
5 traffic violation.

6 Before that car stops, Courtney Baniel, who is a
7 passenger in that vehicle, Phillip Monroe has a Crown
8 Royal bag full of drugs and throws it on Courtney's lap.
9 Says: *Take these charges.*

10 When Courtney refuses, he threatens the wife,
11 Courtney's wife and children if he doesn't take the
12 charges.

13 When that car finally stops, Courtney Baniel gets out
14 of the car like this, and lets the bag fall to the
15 ground. That bag contained approximately 27 grams of
16 powder cocaine and a quantity of prescription pills.

17 Both Phillip Monroe and Courtney Baniel were arrested
18 for trafficking in cocaine and possession with the intent
19 to distribute a controlled substance.

20 Now, at first, Phillip Monroe says, *They aren't mine.*
21 *All Courtney's.*

22 Couple days later he says, *Okay, they were ours; we*
23 *bought them together.*

24 Couple weeks later he says, *They were mine. Courtney*
25 *knew nothing about them.*

1 Ladies and gentlemen, you're going to hear from the
2 officers that pulled over Mr. Monroe and Mr. Baniel.
3 You're going to hear from the investigators that
4 interviewed them. And you're going to hear from Courtney
5 Baniel himself. And after you've heard all the testimony
6 and seen all the evidence, you're going to remember what
7 I told you in the beginning. And that's that Phillip
8 Monroe is a drug dealer. And Phillip Monroe is a drug
9 dealer that was going to make an innocent man go down for
10 his crime. And I'm going to ask you to return a verdict
11 of guilty on Phillip Monroe for trafficking in cocaine
12 and possession with the intent to distribute marijuana --
13 I'm sorry -- a controlled substance.

14 Thank you.

15 THE COURT: Mr. Hughes.

16 MR. HUGHES: May it please the Court.

17 THE COURT: Proceed.

18 OPENING STATEMENT, MR. HUGHES:

19 MR. HUGHES: Good morning. We were introduced
20 yesterday. My name is Bob Hughes. I'm a public defender
21 in Jasper County. I work for the 14th Circuit Public
22 Defender's Office. I'm going to make you a promise right
23 here and now. Everyone of you has seen court dramas on
24 television. Judge alluded to this earlier. But this is
25 not going to be like anything you ever saw on television.

1 And I'm going to tell you a little secret right now.
2 Sometimes this could be boring. I've seen jurors nodding
3 off. I know that sounds odd because this is a trial, but
4 it can get boring. And I've got a request of you.
5 Please fight it. Pay attention to everything that is
6 said from that stand. Pay attention to all the evidence.
7 Watch everybody as they testify. The solicitor makes it
8 sound cut-and-dried. It's not. This is a he-said/he-
9 said type case, and it's your job to listen to all of the
10 evidence.

11 Now, to try to make it not as boring as possible.
12 The Solicitor and I agree to a few things. Sometimes in
13 trials like this you have to go through the entire chain
14 of the custody of the evidence. The Solicitor and I
15 agreed onm the chain. So, you're not going to be as
16 bored as you could be.

17 Right now, it's very comfortable in here, a lot more
18 than it is outside. But if you get too warm, let the
19 Judge know. Can't hear, let the Judge know. If you
20 can't see something, let the Judge know. If you get too
21 cold, let the Judge know.

22 Your entire job for the length of this trial is to
23 pay as close attention to everything. Because some day,
24 you or somebody you know maybe seated next to me, and you
25 would want them to have a jury that's conscientious; that

1 was listening; that was paying attention; and that was
2 giving their entire 100 percent to doing the job of
3 discovering the truth.

4 I'll talk to you at the end. Thank you.

5 THE COURT: Call your first witness.

6 MS. HENDERSON: Thank you, your Honor. The State
7 calls Officer Rett Long.

8 Your Honor, may I move this.

9 WITNESS SWORN.

10 THE COURT: Have a seat, pull a chair up. Adjust the
11 microphone. It's going to amplify your voice. State
12 your full name and spell your last name for my court
13 reporter.

14 OFFICER RICHARD LONG: Richard Long, L/o/n/g.

15 THE COURT: Your witness, Counsel. Direct
16 examination.

17 MS. HENDERSON: Thank you, your Honor.

18 OFFICER RICHARD LONG

19 DIRECT EXAMINATION, MS. HENDERSON:

20 Q Officer Long, what department are you with?

21 A Ridgeland Police Department.

22 Q And how long have you been with them?

23 A Since 2010.

24 Q And where were you before that?

25 A I worked for Hampton County Sheriff's Office.

1 Q Okay. And what year did you graduate from the
2 criminal justice academy?

3 A 2008..

4 Q Did you do anything prior to that?

5 A Prior to that I was a firefighter and EMT in Jasper
6 County, Hampton County, and I went to college in
7 Beaufort.

8 Q Now, what is your official title at Ridgeland Police
9 Department?

10 A I'm the patrol K-9 officer.

11 Q Okay. And what are some of your duties with that
12 title?

13 A I handle the patrol dog for tracking narcotics work.
14 And on the side of that, im still assigned to the Uniform
15 Patrol Division.

16 Q Okay. And were you working on the night of April 10,
17 2012?

18 A Yes, ma'am, I was.

19 Q And what were you doing that night?

20 A I was performing patrol duties in the town of
21 Ridgeland.

22 Q Was anybody in the car with you?

23 A Corporal Smith.

24 Q Okay. At some point that night, did you come in
25 contact with the defendant, Phillip Monroe?

1 A Yes, ma'am, I did.

2 Q Can you please tell the jury what happened.

3 A Myself and Corporal Smith were traveling east on
4 Adams Street. I observed a tan Honda turn off of South
5 Logan onto Adams Street. When it turned onto Adams
6 Street, it made a turn. And as they turned, they turned
7 into the opposite lane of traffic. That's when we
8 performed a traffic stop on the vehicle.

9 Q That location that you just said, Logan and Adams
10 Street, is that within the town limits of Ridgeland?

11 A Yes, ma'am, it is in the town of Ridgeland.

12 Q Okay. And did you notice who the occupants of the
13 car were when you initiated a traffic stop on them?

14 A No, ma'am, I did not.

15 Q Okay. And what happened once you initiated that
16 traffic stop?

17 A As we pulled the car over, we observed that both the
18 driver and passenger of the car seemed excited or in that
19 state. And they was trying to open the door as the
20 vehicle was pulling over. As soon as we saw that, we
21 excited our vehicle extremely fast to try to stop them
22 from fleeing from the car is what we thought.

23 Q Okay. And where did you go when you exited your
24 vehicle?

25 A I immediately went to the driver's door.

1 Q Okay. And were you able to identify the driver at
2 that time?

3 A Yes, ma'am, I was.

4 Q And who was it?

5 A Phillip Monroe.

6 Q And is Phillip Monroe, the driver of that vehicle, in
7 this courtroom?

8 A Yes, ma'am, he is.

9 Q And where is he?

10 A Mr. Monroe is sitting at the defense table, next to
11 his attorney, Bob Hughes.

12 Q Thank you.

13 MS. HENDERSON: Let the record reflect he pointed to
14 the defendant, your Honor.

15 THE COURT: Proceed.

16 MS. HENDERSON: Thank you.

17 BY MS. HENDERSON:

18 Q What happened after you detained Mr. Monroe?

19 A After I detained Mr. Monroe, Corporal Smith informed
20 me that he found a Crown Royal bag on the ground, and it
21 was a purple Crown Royal bag. And he said that had fell
22 out of the car or was in the area of the car during the
23 traffic stop.

24 Q Okay. Once the bag was located, what did you do?

25 A Both subjects were detained, and I, along with

1 Corporal Smith, opened up the bag to see what was located
2 and what was in it.

3 Q I'm going to hand you what's been previously marked
4 for purposes of identification only as State's Exhibit 1.

5 MS. HENDERSON: Your Honor, permission to approach.

6 THE COURT: You may approach.

7 Q Do you recognize that?

8 A Yes, ma'am, I do.

9 Q And how are you able to recognize it?

10 A It is signed on the one bag. The bag's from the
11 police department.

12 Q And what is it?

13 A This is a purple Crown Royal bag.

14 Q And do you know where that Crown Royal bag is from?

15 A It is from the traffic stop on the 10th.

16 Q And has it been altered or changed in any manner?

17 A No, ma'am, it hasn't.

18 MS. HENDERSON: Your Honor, permission to move
19 State's Exhibit 1 into evidence.

20 THE COURT: Any objection as to State's 1?

21 MR. HUGHES: No, your honor.

22 THE COURT: Ladies and gentlemen of the jury, State's
23 Exhibit Number 1 will be admitted into evidence in the
24 trial of this case, without objection. State's 1 is in
25 evidence. Has it been pre-marked?

1 MS. HENDERSON: Yes, your Honor.

2 THE COURT: You may publish to the jury.

3 MS. HENDERSON: Thank you, your Honor.

4 ITEM REFERRED TO AS PURPLE CROWN

5 ROYAL BAG MARKED STATE'S EXHIBIT

6 NUMBER 1, ADMITTED AS EVIDENCE.

7 Q Once you had both the occupants detained, what did
8 you do with the Crown Royal bag?

9 A I opened it to see what was in it.

10 Q And what did you locate inside?

11 A Inside of the bag, we found several types of
12 narcotics, pills, and then a large, white, powdery
13 substance. And it was in a clear, plastic bag.

14 Q Okay. And what did you do once you discovered that
15 the bag contained narcotics?

16 A I field tested the powder substance, and when I field
17 tested it, I used a narcolight. And I used it to
18 determine whether or not it was cocaine mix.

19 Q How did you use it to determine that?

20 A You take a very small amount of the actual narcotic.
21 You place it in it, and you rub it together. If it turns
22 blue, which it did, that shows that it's a cocaine base.

23 Q It's a cocaine base?

24 A Yes, ma'am.

25 Q After you tested -- I'm sorry -- field tested the

1 cocaine, what did you do with the drugs?

2 A I immediately placed it back in the Crown Royal bag
3 and sealed it in the evidence bag on the side of the
4 road, and secured it in my patrol car..

5 Q And what did you do with the occupants of the vehicle
6 after this?

7 A We separated them at that point in time, and I
8 transported Mr. Monroe back to the police department to
9 interview him. And Detective Morris, from the sheriff's
10 office, transported the co-defendant.

11 Q Now, and once you got back to the office, you said
12 you went to interview Mr. Monroe. Was he read his
13 rights?

14 A Yes, ma'am.

15 Q Okay. And he agreed to waive his rights and speak to
16 you?

17 A Yes, ma'am. He agreed and signed a form we use.

18 Q Okay. And what, if any, statements did he make that
19 night?

20 A The statements he made that night that the drugs were
21 not his. Stated the drugs were not his. And he talked
22 in circles after that.

23 Q Okay. And what did you do with the drugs once you
24 were back at the office?

25 A We separated the drugs and put them into a larger

1 evidence bag, and secured them in our evidence locker.

2 Q Were the drugs separated into individual bags?

3 A Yes, ma'am, they were.

4 MS. HENDERSON: Beg the Court's indulgence for one
5 second, your Honor.

6 Officer Long, I have no further questions for you at
7 this time. Please answer any questions Mr. Hughes may
8 have for you.

9 THE COURT: Cross-examination.

10 MR. HUGHES: Thank you, your Honor.

11 OFFICER RICHARD LONG

12 CROSS-EXAMINATION, MR. HUGHES:

13 Q Officer Long, how were you were dressed that night?

14 A In my uniform.

15 Q Please describe that.

16 A I wear a green BDU uniform, with an outer vest.

17 Q Sorry. What do you mean a *BDU uniform*?

18 A It's a -- the uniform is, if you had to use
19 similarities, it looks a Vietnam-style era Marine
20 uniform, I would guess.

21 Q What equipment did you have?

22 A I had my issued equipment. I have a -- I carry a
23 firearm, a taser, a baton, and handcuffs.

24 Q Okay. Do you also wear a camera?

25 A Yes, I do.

1 Q Describe that, please.

2 A We have a in-car, mounted camera. And then I wear
3 what -- at that time, it was a Taser Axon camera. It's
4 been updated now to a Taser Flex, but I wear a Taser Body
5 Armor Camera.

6 Q Okay. You're going to have to explain exactly what
7 that is and what it does, please.

8 A The camera mounts either to the side of your head, by
9 a headband, or it mounts to your collar, depending on
10 which application you use. I wear the one that mounts
11 onto my collar. When it mounts to your collar, you have
12 a control box on it, which records all the video
13 evidence. It's turned on at the beginning of a traffic
14 stop, and normally, it runs continuously. There is times
15 where it does loose connection because it's not
16 completely fail safe, and the movements of your body.
17 But it immediately will turn right back on.

18 Q Okay. Did you record that night?

19 A Yes, I did.

20 Q Now, is this your personal stuff, or is this standard
21 issue with RPD?

22 A There's a select few of us that wear them at the
23 police department. The patrol division normally wears
24 them.

25 Q But it's available to everybody at RPD.

1 A No, it is not.

2 Q And why do you have that?

3 A We wear it because it actually helps the officers if
4 there's ever a case to where somebody says that we've
5 mistreated somebody, it's easier to clear the officer's.
6 It's evidence.

7 Q Plus, it's good to show people exactly what happened.

8 A That's correct.

9 Q This bag, previously marked State 1, did you find
10 some marijuana in there?

11 A Yes, sir, I did.

12 Q Okay. Now, did you handcuff Courtney Baniel, or did
13 Officer Smith?

14 A Officer Smith, Corporal Smith.

15 Q I'm sorry. Corporal Smith. After they were placed
16 in handcuffs, right after the stop, where did you put the
17 defendants?

18 A Mr. Monroe went to my front passenger seat, and Mr.
19 Baniel went into Detective Morris' car. I don't know
20 where at in his car.

21 Q Okay. They weren't placed behind the car first?
22 Behind --

23 A They were sat down beside my vehicle, separated.

24 Q Okay. Isn't it true that Courtney Baniel picked his
25 lock on the handcuffs?

1 A No, he never picked his lock.

2 Q They weren't loose and had to be re-tightened?

3 A They may have been double locked, but we never --
4 nobody never picked their locks.

5 Q Did you write a report on this?

6 A Yes, I did.

7 Q In the report, you stated that you smelled raw
8 marijuana.

9 A Yes, I did.

10 Q Did you have your dog with you?

11 A Yes.

12 Q Was there any marijuana in the car, other than what
13 was in the bag?

14 A No, there was no more in the car.

15 Q Let's walk through that night. You see a car pull
16 off of South Logan Lane. Which way was it headed on
17 Logan Lane?

18 A It was headed back toward Main Street. So it would
19 have been headed north on South Logan.

20 Q And it pulls into Adams Street. Going which way?
21 Left or right?

22 A Right.

23 Q Okay. So going toward Kentucky Fried Chicken.

24 A Yes.

25 Q The back side of Kentucky Fried Chicken.

1 A That's correct.

2 Q Now, the intersection of Logan Lane and Adams Street
3 is not a ninety degree angle, right?

4 A It is a ninety.

5 Q I thought that Logan Street did sort of an angle like
6 this, and Adams was like that.

7 A It could be like that, but it's a ninety degree turn,
8 basically.

9 Q Now, how far over the line did that car go?

10 A Probably a foot and a half.

11 Q So, someone making a turn at an angle would have had
12 to come to a complete stop, and coming north on Logan,
13 would have to make a complete stop to turn in to not go
14 over the line.

15 A They would have to reduce their speed significantly
16 to make a safe turn, yes, they would.

17 Q As opposed to, say, they were turning left onto Logan
18 Street, which headed toward the BP station where the
19 angle is more in their favor.

20 A You still have to reduce your speed to make a safe
21 turn.

22 Q Right. What was the speed the car was going?

23 A I don't know. I never measured their speed.

24 Q Okay. You get the people out of the car, put them in
25 handcuffs, put them behind the car. And do what? What

1 are you doing then?

2 A I'm looking through the bag to see what was in it.

3 Q Okay. And that was the bag that Corporal Smith found
4 that Courtney Baniel had thrown down?

5 A It had came out of the car. We don't know who threw
6 it down or where it came from, whatever.

7 Q But in your report, you said that Courtney Baniel had
8 thrown it to the ground.

9 A I may have at that time.

10 Q Now, do you call in Dispatch or do you call in to
11 somebody?

12 A Yes.

13 Q And run the I.D.s of the people?

14 A Yes.

15 Q Didn't you originally charge Phillip Monroe with
16 driving under suspension?

17 A Yes, I did.

18 Q And that was because?

19 A He was suspended out of Georgia, not South Carolina.

20 MS. HENDERSON: Begging the Court's indulgence for a
21 second. May I approach the witness, your Honor?

22 THE COURT: You may.

23 Q What is that?

24 A This is a uncertified copy of a driver's record.

25 Q Okay. What does it say as far -- whose driver's

1 record?

2 A It says it's Mr. Monroe's.

3 Q And what does it say about his driving status?

4 A It says, *No suspension, no disqualification.*

5 Q Okay. Thank you. I'll take that back, if I can,
6 please.

7 A That is an uncertified copy, not from DMV. It
8 doesn't have the appropriate stamps on it.

9 Q But if I had gotten this from the Solicitor's office,
10 you would say it was probably an accurate copy?

11 A I would say it was an accurate copy as they can get.

12 Q Do you know what happened to the driving under
13 suspension charge?

14 A I not proessed it.

15 Q Okay. Because?

16 A In South Carolina, he is not suspended. His Georgia
17 license is suspended, and I had not received a copy of
18 the information forwarded from Georgia DMV.

19 Q But he has a valid South Carolina driver's license.

20 A No, he does not. He has an I.D. only.

21 Q Now, you charged him and Courtney Baniel with
22 trafficking cocaine, possession with intent to distribute
23 narcotics, and possession of marijuana.

24 A Yes.

25 MR. HUGHES: No further questions, your Honor.

1 THE COURT: Re-direct.

2 MS. HENDERSON: Nothing from the State, your Honor.

3 THE COURT: As to this witness, subject to my order
4 in this trial. Counsel approach. Okay.

5 Mr. Bennett, would you approach the Bench, please.

6 OFF-THE-RECORD BENCH CONFERENCE.

7 PRESENT: THE COURT, MS. HENDERSON,

8 MR. HUGHES, STEPHEN C. BENNETT.

9 THE COURT: If you'll step down from the witness
10 stand, Officer, and if you will go back to the room that
11 you were previously located in, subject to re-call in the
12 trial of this case and subject to my order, which you've
13 been informed about by the solicitor.

14 OFFICER LONG: Yes, your Honor.

15 THE COURT: Thank you. Call your next witness.

16 MS. HENDERSON: Thank you, your Honor. The State
17 would call Sergeant Kevin Smith.

18 THE COURT: Come on up and be sworn by the clerk,
19 please.

20 WITNESS SWORN.

21 MADAM CLERK: Thank you.

22 THE COURT: Have a seat. Make yourself comfortable.
23 Pull that chair up and adjust that microphone to your
24 height. It's going to amplify your voice. State your
25 full name and spell your last for my court reporter,

1 please.

2 SERGEANT KEVIN SCOTT SMITH: Kevin Scott Smith,
3 S/m/i/t/h.

4 THE COURT: Your witness, Counsel.

5 SERGEANT KEVIN SCOTT SMITH

6 DIRECT EXAMINATION, MS. HENDERSON:

7 Q I'm sorry. I thought you were Sergeant Smith. I
8 didn't mean to get your title wrong. What agency are you
9 with?

10 A I work for the Ridgeland Police Department.

11 Q Okay. And would you please tell this jury a little
12 bit about your background.

13 A Yes, ma'am. I graduated from the University of South
14 Carolina in 2004, which I have a bachelor of science in
15 criminal justice and criminology. Once I was in the
16 process of my final semester, I also started taking the
17 reserve officer program with the City of Ridgeland Police
18 Department. Once that was completed, I started as a
19 reserve officer in 2005, which I was a reserve officer
20 for about three years, until I went full time in 2008.
21 Graduated Criminal Justice Academy 2009. Have been full
22 time since.

23 Q At the Ridgeland Police Department?

24 A Yes, ma'am.

25 Q And what are some of your duties at the Ridgeland

1 Police Department?

2 A I'm currently a sergeant in the patrol team. I'm a
3 supervisor, and I also perform patrol duties, which is
4 checking on the town of Ridgeland, responding to calls,
5 making traffic stops and enforcing traffic laws. Things
6 like that.

7 Q I'm sorry. Do you supervise other officers?

8 A Yes, ma'am, I do.

9 Q Okay. And when you working on April 10, 2012?

10 A Yes, ma'am.

11 Q And do you remember what you were doing that night?

12 A That night, I was performing patrol duties with
13 Officer Long.

14 Q And were you a supervisor at that time?

15 A Yes, ma'am, I was a corporal.

16 Q Okay. And at some point that night, did you come in
17 contact with the defendant, Phillip Monroe?

18 A Yes, ma'am, I did.

19 Q Okay. And do you see him in this courtroom?

20 A Yes, ma'am, I do.

21 Q And where is he?

22 A He's currently sitting at the defendant's seat.

23 MS. HENDERSON: Let the record reflect he pointed out
24 the defendant, your Honor.

25 THE COURT: Proceed.

1 MS. HENDERSON: Thank you, your Honor.

2 BY MS. HENDERSON:

3 Q Can you please tell the jury what happened that
4 night.

5 A As Officer Long and I were -- we were traveling east
6 on Adams Street. As we approached the intersection of
7 South Logan and Adams Street, we observed a Honda that
8 was turning off onto Adams onto -- I'm sorry -- let me
9 take that back. It was turning off of Logan onto Adams
10 Street, making a right-hand turn. As he turned, he
11 crossed the center divider line, the yellow line in the
12 highway. And then, as he proceeded east on Adams Street,
13 he, again, crossed the line. So, at that point, Officer
14 Long and I initiated a traffic stop on the vehicle.

15 As the vehicle was stopping, he turned into a
16 residence that was on East Adams Street. As the vehicle
17 was coming to a stop, both the driver, which is in the
18 courtroom, and also, a co-defendant, exited the vehicle.
19 And at that point, I made contact with the occupants of
20 the vehicle.

21 Q Okay, you said you made contact with the occupants.
22 Which occupant did you go to?

23 A I went to the passenger of the vehicle. As they were
24 coming to a stop, I saw that the passenger door opened
25 and the passenger got out of the vehicle and began to

1 walk away from the car with hands up. So I went to
2 detain him, until we could figure out what was going on
3 exactly.

4 Q Okay. Now, when you say he got out of the car with
5 his hands up, can you please demonstrate for the jury how
6 you saw him exit that vehicle.

7 A Yes, ma'am. As he got out of the car, he threw his
8 hands up like this and started to back away. He backed
9 into the door, which prevented him from going further.
10 And I was able to get a hold of him at that point.

11 Q What happened next?

12 A Once I made contact with him, I looked on the ground,
13 and I saw a purple Crown Royal bag that was bulging,
14 lying on the ground. Once I saw the bag and saw the
15 condition it was in, I went ahead and detained him. I
16 placed him in handcuffs, and I told Officer Long to go
17 ahead and detain the driver, as well, till we could
18 figure out exactly what was going on and determine if
19 there were any weapons involved or things of that nature.

20 Q And once they were both detained, what did you do?

21 A We removed the subjects from the vehicle. We put
22 them towards the Tahoe, which Officer Long drives. And
23 then, I recovered the purple Crown Royal bag.

24 Q And did you look in that bag?

25 A Yes, ma'am, I did.

1 Q And what did you locate inside that bag?

2 A Inside the bag, there were several pills, along with
3 a white, powder substance. We tested it at the scene
4 with a field test narcotic swipe, which tested positive
5 for cocaine.

6 Q Okay. And was there also a small amount of marijuana
7 in the bag?

8 A Yes, ma'am, there was.

9 Q Okay. And once you realized what the bag contained,
10 what did you do?

11 A I handed the bag over to Officer Long. We took the
12 contents of the bag out and looked at the drugs, which we
13 field tested, as well. And both parties were separated.
14 We had the co-defendant sitting at the back of the Tahoe,
15 and we had the defendant in the courtroom sitting at the
16 front of the Tahoe.

17 Q Okay. And what did you do next?

18 A We ended up calling for a tow truck to come to the
19 vehicle. We requested a deputy, which was Detective
20 Morris come to help transport, since we were both in one
21 vehicle. And took both parties into custody.
22 Transported them back to the office. Once we got back to
23 the office, we then weight the drugs, and also, separated
24 them and turned them in to evidence.

25 Q I'm going to hand you what's been previously marked

1 as State's Exhibits 1 and 2.

2 THE COURT: Can't hear you, Solicitor.

3 MS. HENDERSON: Thank you, your Honor. I apologize.

4 Q I'm going to hand you what's been previously marked
5 for identification purposes only as State's Exhibits 1
6 and 2.

7 MR. HUGHES: 2 and 3.

8 MS. HENDERSON: I'm sorry, 2 and 3. Thank you, Mr.
9 Hughes. Permission to approach the witness, your Honor.

10 THE COURT: You may.

11 Q Do you recognize those?

12 A Yes, ma'am, I do.

13 Q And how are you able to recognize them?

14 A They're still in the evidence bags I sealed.

15 Q And how do you know you sealed them?

16 A They have my name on them.

17 Q Okay. And do they appear to have been altered?

18 A No, ma'am.

19 Q Thank you. And once you placed them in individual
20 bags, what did you do with them?

21 A They were then put into a larger bag, where they were
22 all contained together and turned in to evidence.

23 MS. HENDERSON: Beg the Court's indulgence for one
24 second, your Honor.

25 Sergeant Smith, I have no further questions for you.

1 Please answer any Mr. Hughes might have.

2 A Yes, ma'am.

3 THE COURT: Cross-examination.

4 MR. HUGHES: Thank you, your Honor.

5 SERGEANT KEVIN SCOTT SMITH

6 CROSS-EXAMINATION, MR. HUGHES:

7 Q Okay. First thing I want to do is make sure I get
8 your title right, because I've known you as Corporal
9 Smith for a long time. You're now a sergeant?

10 A Yes, sir, that's correct.

11 Q Okay. Congratulations.

12 A Thank you.

13 Q How were you dressed that night?

14 A I was in a patrol uniform, which is a brown shirt,
15 with the patches and metal badge on it. And also, our
16 green pants that we wear, and a duty belt.

17 Q And what equipment did you have?

18 A That night, I had on my normal issued equipment,
19 which would be a Glock Model .38, I believe it is. .45
20 Gap. Also, handcuffs, extra magazines that contain extra
21 bullets, a baton, a flashlight, boots. Things of that
22 nature.

23 Q Did you have the magic camera with you?

24 A No, sir, I did not.

25 Q Why not?

1 A Once I became a supervisor, it was no longer required
2 for me to wear the Taser Axon I believe is what you're
3 referring to.

4 Q Right. But that's available to RPD officers.

5 A Yes, sir, it is.

6 Q And that purpose of that is so that people can see
7 exactly what happened. You don't have to take someone's
8 word for it. You can see the event. If an officer gets
9 accused of something, you can exonerate him, or something
10 like that, correct?

11 A Correct.

12 Q Where did you take the defendants?

13 A They were returned back to the police department.

14 Q That's the building over here?

15 A Yes, sir. Town Square. Or One Town Square.

16 Q Now, you were the passenger of the vehicle the Tahoe.

17 A Yes, sir, that's correct.

18 Q And the car you see -- were you all coming east on
19 Adams or west on Adams Street?

20 A We were traveling east on Adams Street.

21 Q Okay. So you were coming from the BP area, headed
22 toward Kentucky Fried Chicken.

23 A Yes, sir, that would be correct.

24 Q And where were you when you saw the car turn off of
25 Logan?

1 A We were just prior to the intersection of Adams and
2 Logan Street.

3 Q On the B.P. side.

4 A Correct, we were on the B.P. side.

5 Q And you see a car turn too quickly, go across the
6 line, swerve back across the line, and you all pulled it
7 over.

8 A Yes, sir.

9 Q They hit the gas and ran?

10 A No, sir.

11 Q You all cut on the blue lights. What happens?

12 A Once we activated the blue lights, the vehicle then
13 turned into a parking -- or I'm sorry -- a driveway to a
14 house. At that point, like I said, I saw the passenger,
15 which is the co-defendant in this case, he exited the
16 vehicle, put his hands up, and begin to back away from
17 the vehicle. That's very atypical behavior for a normal
18 traffic stop.

19 Q And to be on the safe side, you got out, hey, come
20 on.

21 A Right.

22 Q Took him into custody. Searched him to make sure he
23 wasn't armed and all that.

24 A Well, once I found the Crown Royal bag on the ground
25 beside where he was standing, that's when we went ahead

1 and put him in custody.

2 Q Now, did you write a report on this incident?

3 A I did a supplement report.

4 Q Okay. As the supervisor, you viewed Officer Long's
5 report.

6 A Yes.

7 Q And when Officer Long said that Courtney threw the
8 bag to the ground, that would be basically correct?

9 A I don't recall exactly what his report says.

10 Q Okay. But as a supervisor and being on the scene,
11 you would have made corrections to any mistakes he had
12 made.

13 A If any mistakes were observed, I would have, I'm
14 sure, pointed out to him.

15 Q Okay. Now, you arrest Courtney Baniel. You placed
16 him in custody.

17 A Yes, sir.

18 Q You handcuffed him?

19 A Yes, sir, I did.

20 Q Now, didn't you have cause to go back and double lock
21 the handcuffs?

22 A I did double lock the handcuffs.

23 MR. HUGHES: No further questions, your Honor.

24 THE COURT: Re-direct.

25 MS. HENDERSON: None from the State, your Honor.

1 THE COURT: As to the witness?

2 MS. HENDERSON: Your Honor, I'd just ask that he
3 return back to the room.

4 THE COURT: Very well. Sergeant, if you'll return to
5 the room you were previously in, subject to re-call and
6 subject to my order, which the solicitor has given to you
7 concerning this case.

8 A Yes.

9 THE COURT: Thank you. Call your next witness.

10 MS. HENDERSON: Your Honor, may Mr. Hughes and I
11 approach?

12 THE COURT: Counsel approach.

13 OFF-THE-RECORD BENCH CONFERENCE.

14 PRESENT: THE COURT, MS. HENDERSON,

15 MR. HUGHES.

16 THE COURT: Move along.

17 MS. HENDERSON: Thank you, your Honor.

18 THE COURT: Call your witness.

19 MS. HENDERSON: The State calls Courtney Baniel.

20 THE COURT: Come on up, please, sir, and be sworn by
21 the clerk right on up here.

22 WITNESS SWORN.

23 THE COURT: Watch your step. You got to step up.
24 Have a seat right there in that chair. Make yourself
25 comfortable. Pull the chair up. I want you to get close

1 to that microphone. So pull your chair up, adjust that
2 microphone to your height. It's going to amplify your
3 voice. You pull it down if you need to. There you go.
4 I want you to -- pull it closer. There you go. And
5 state your full name, and spell your last name for my
6 court reporter, please.

7 CO-DEFENDANT COURTNEY BANIEL: Courtney Baniel,
8 B/a/n/i/e/l.

9 THE COURT: Very well. Direct examination,
10 Solicitor.

11 MS. HENDERSON: Thank you, your Honor.

12 CO-DEFENDANT COURTNEY BANIEL

13 DIRECT EXAMINATION, MS. HENDERSON:

14 Q Courtney, how old are you?

15 A Twenty-three.

16 Q And where were you born and raised?

17 A Right here in Jasper County.

18 Q Okay. Do you have a job?

19 A Yes, ma'am.

20 Q What do you do?

21 A Landscaping.

22 Q And who do you do that with?

23 A My dad.

24 Q Okay. How long have you been landscaping with your
25 dad?

1 A Four years.

2 Q And are you married?

3 A No.

4 Q Do you have a significant other?

5 A I have a girlfriend.

6 Q You got a girlfriend. Do you refer to her as your
7 wife?

8 A Yeah, you could say that.

9 Q Okay. And what's her name?

10 A Laquisha.

11 Q Okay. Is that what everybody calls her?

12 A Everybody calls her Sally.

13 Q Everybody calls her Sally? Okay. And do you all
14 have some children together?

15 A (Witness nodded head.)

16 Q How many?

17 A Two.

18 THE COURT: Don't shake your head. Say yes or no for
19 the court reporter. Ask the question again, Solicitor.
20 Give a verbal answer. Say yes or no. Don't shake or nod
21 your head.

22 Q Do you and Sally have kids together?

23 A Yes, ma'am.

24 Q How many?

25 A Three.

1 Q Are they all your biological children?

2 A No, ma'am. Two of them is when she have -- she have
3 an older daughter.

4 Q And the oldest daughter is not yours.

5 A Right.

6 Q Okay. But does she call you Dad?

7 A Yes, ma'am.

8 Q So you say you have three children.

9 A Right.

10 Q Okay. And Courtney, are you a little nervous right
11 now?

12 A Yes, ma'am.

13 Q Okay. Okay. Just make sure you -- I know you're
14 very soft-spoken, so just make sure that you speak loud
15 enough so everyone can hear you. Courtney, do you know
16 Phillip Monroe?

17 A Yes, ma'am.

18 Q How do you know Phillip?

19 A Through my girlfriend.

20 Q And be a little more specific.

21 A Phillip is my girlfriend uncle-in-law.

22 Q Okay. So your girlfriend is the niece of his --

23 A Wife.

24 Q Wife. Okay. How long have you known Phillip?

25 A About five months.

1 Q Before, you know.

2 Q Before the incident?

3 A Yes, ma'am.

4 Q Okay. And Courtney, do you see the person that you
5 know as Phillip Monroe in this courtroom?

6 A Yes, ma'am.

7 Q Where is he?

8 A Behind you, in the white, striped shirt.

9 Q Okay. At this table? The defense table?

10 A Yes, ma'am.

11 MS. HENDERSON: Let the record reflect he identified
12 the defendant, your Honor.

13 THE COURT: Proceed.

14 MS. HENDERSON: Thank you, your Honor.

15 BY MS. HENDERSON:

16 Q Courtney, let's talk about April 10, 2012. What time
17 did you get off work on April 10th?

18 A About 2:30.

19 Q Speak up a little bit for me, okay?

20 A About 2:30.

21 Q Okay. And when did you come in contact with Phillip
22 that day?

23 A I'd say between 3:00 and 3:30.

24 Q Okay. And how did you come in contact with him?

25 A He came to my house and picked me up from my house.

1 Q Why?

2 A He wanted me to ride with him to Ridgeland.

3 Q Why?

4 A Said he had no license.

5 Q Do you have a license?

6 A Yes, ma'am.

7 Q So he wanted you to ride because you're a licensed
8 driver?

9 A Yes, ma'am.

10 Q Okay. And did you get in the car with him?

11 A Yes, ma'am.

12 Q Where did you go after that?

13 A We left my house, and he dropped me off at Logan
14 Lane.

15 Q I'm sorry.

16 A We left my house, and he dropped me off at Logan
17 Lane.

18 Q Before you left the house, -- I'm sorry. Let me back
19 up real quick. Before you left the house, did he say
20 where he was going or why he wanted you -- you know why
21 he wanted you to ride with him, but did he say what you
22 all were going or what he had planned?

23 A No, not really. He just said he was going to his
24 wife.

25 Q Okay.

1 A He was needing me to ride with him through town.

2 Q Okay. Now, back to where you were with your
3 testimony was you went to Logan Lane.

4 A Yes, ma'am.

5 Q Okay. What happened when you went to Logan Lane?

6 A He dropped me off, and I was standing out there
7 talking to one of my cousins that stayed by me in my
8 neighborhood.

9 Q Okay. Where did he go? Was he at Logan Lane with
10 you?

11 A No, he left. He dropped me off.

12 Q Okay. Did he come back?

13 A Yes, ma'am.

14 Q Okay. About how long was he gone?

15 A I'd say about close to two hours or a hour and 30
16 minutes.

17 Q Okay. And when he came back, did you get back in the
18 car with him?

19 A Yes, ma'am.

20 Q Where did you all go after that?

21 A Bay Tree.

22 Q And what part of Bay Tree did you go to?

23 A The first part, older folks part.

24 Q Okay. You kind of divide Bay Tree up in young and
25 old people?

1 A Well, the smaller part is where the older people
2 stay.

3 Q Okay. And that's the part you all went to?

4 A Yes, ma'am.

5 Q What did you do at the older person part of Bay Tree?

6 A Nothing. We talked to my grandma, and laughed and
7 joked with another in the house.

8 Q Okay. And what's her name?

9 A Foxy.

10 Q Ms. Foxy?

11 A Ms. Foxy.

12 Q Okay. So you and the defendant, Phillip Monroe, are
13 at Bay Tree Apartments talking to your grandmother and
14 Ms. Foxy?

15 A Yes, ma'am.

16 Q And is that all you all do, is you all just sat
17 around and talked?

18 A Yes, ma'am.

19 Q Was it daylight when you went to Bay Tree, or had it
20 turned dark?

21 A It was kind of dark. It wasn't pitch black, but it
22 was kind of dark.

23 Q Dusk?

24 A Yeah.

25 Q And how long do you think you stayed there talking to

1 your grandma and Ms. Foxy?

2 A It'd been a while. It was -- it was late when we
3 left.

4 Q Okay. Your wife wasn't worried about you or
5 anything?

6 A No. I had talked to her and told her where I was,
7 so.

8 Q Okay. What happened -- what happened next?

9 A We left Bay Tree, and we get stopped by the cops.

10 Q Now, when you say you got stopped by the cops, tell
11 the jury what happened when the blue lights turned on.

12 A When the blue lights turned on, that's when Phillip
13 told me -- he threw the stuff in my lap and said, *Take*
14 *these charges from me.*

15 Q Okay. And what did you say to him?

16 A On his question? I mean, on his answer?

17 Q Um-hmm.

18 A *Hell no.*

19 Q And did he say anything else to you?

20 A Right after I said that, he was, *Boy, don't play with*
21 *me; I'll kill Sally and your kids.* And that's when the
22 officer was walking up and I opened the door with my
23 hands up.

24 Q Okay. And when you opened the door with your hands
25 up, where was the bag?

1 A It dropped down out my lap.

2 Q So it was sitting on your lap where Phillip had
3 thrown it?

4 A Right. I never grabbed the bag or anything.

5 Q Okay. Courtney, where did Phillip grab that bag
6 from? Do you know?

7 A Off the signal light.

8 Q The blinker?

9 A Yes.

10 Q Okay. Now, you'd been riding around in this car all
11 day. Had you not seen that Crown Royal bag?

12 A I really didn't paid no attention, because you know
13 how people have stuff hanging from their mirrors and
14 hanging off the ceiling. I really paid -- paid the bag
15 no attention.

16 Q Okay. So you don't remember if you saw it or not.

17 A No, ma'am.

18 Q Okay. So, when you got out of the car, you did not
19 throw the bag back down, right? Is that what you said?

20 A No, ma'am. It had dropped down my lap. I put my
21 hands up.

22 Q Did you ever touch the bag?

23 A No, ma'am.

24 Q And why did you get out of the car with your hands
25 raised?

1 A I just thought that's what you supposed to do.

2 Q Why did you think that's what you were supposed to
3 do?

4 A I seen it on T.V. like that.

5 Q Okay. You heard the cops say put your hands up, so
6 that's what you thought you were supposed to do? Okay.

7 A Yes, ma'am.

8 Q What happened after they found the Crown Royal bag?

9 A He dumped it out on the trunk of the car, and that's
10 when I realized what was going on.

11 Q That's when you realized what was in the bag?

12 A Yes, ma'am.

13 Q Okay. And it's your testimony today that's the first
14 time you'd seen what was in that bag? Is that what
15 you're telling this Court?

16 A When he dumped it on the car, yes, ma'am.

17 Q Okay. And what happened after that?

18 A The officers took us to the -- the public jailhouse.

19 Q Courtney, at any point that night, did you tell the
20 officers that the drugs weren't yours?

21 A No, ma'am.

22 Q Why?

23 A I was still thinking about what he told me. I was
24 nervous. I ain't -- I didn't know what to say.

25 Q When you say what he told you, what part were you

1 nervous about?

2 A The what he would have did to me, my family, for
3 telling them it was his drugs and not mine.

4 Q So you never said anything that night to anyone.

5 A No, ma'am.

6 Q Okay. Did you tell your story to the police at some
7 point, though?

8 A Yes, ma'am.

9 Q Do you remember how many days after you'd been
10 arrested that you had a chance to talk to the
11 investigators?

12 A Maybe two or three days later.

13 Q And is what you just told this jury here what you
14 told those officers that day?

15 A Yes, ma'am.

16 Q And I'm going to ask you one more time, Courtney.
17 Were those drugs your drugs in that bag?

18 A No, ma'am.

19 Q Did you have any knowledge that those drugs were in
20 that car?

21 A No, ma'am.

22 MS. HENDERSON: Nothing further right now, your
23 Honor. Please answer any questions Mr. Hughes might
24 have.

25 THE COURT: Cross-examination.

1 MR. HUGHES: Thank you, your Honor.

2 CO-DEFENDANT COURTNEY BANIEL

3 CROSS-EXAMINATION, MR. HUGHES:

4 Q Mr. Daniels.

5 A Yes, sir.

6 Q You're a licensed driver?

7 A Yes.

8 Q You say a person without a valid license asked you to
9 ride with him.

10 A Yes, sir.

11 Q Why didn't you drive?

12 A He didn't wanted me to.

13 Q Well, why did he need you? I mean, if he didn't have
14 a license, why did he need you?

15 A Well, he told me that he would drive. He needed a
16 licensed driver in the car with him.

17 Q So it's your testimony that he needed a license
18 driver, but he didn't need a license driver to drive.

19 A Excuse me? You can ask me that again?

20 Q He needed a licensed driver, you say.

21 A Yes, sir.

22 Q But he didn't need that licensed driver to drive?

23 A He didn't wanted me to drive.

24 Q Okay. You say you went to Logan Lane.

25 A Yes, sir.

- 1 Q What did you do at Logan Lane?
- 2 A Sat around laughing and joking.
- 3 Q Okay. Did you smoke any drugs?
- 4 A No, sir.
- 5 Q How long were you at Logan Lane?
- 6 A Maybe about an hour and a half to two hours.
- 7 Q And then you went to Bay Tree.
- 8 A Yes, sir.
- 9 Q And from Bay Tree, where did you go?
- 10 A I was on my way home, until I got stopped by the
- 11 police.
- 12 Q And where do you live?
- 13 A Cherry Hill.
- 14 Q Now, tell me exactly where Cherry Hill is.
- 15 A By Cooler Store, on 462.
- 16 Q Okay. And you're going from Bay Tree to Cooler's
- 17 Store on 462?
- 18 A Going home. That's the way I go home.
- 19 Q Now, you were charged with trafficking in cocaine,
- 20 right?
- 21 A Yes, sir.
- 22 Q You're looking at a lot of time; aren't you?
- 23 A Yes, sir.
- 24 Q Charged with possession with intent to distribute
- 25 narcotics; weren't you?

1 A Yes, sir.

2 Q You were also charged with possession of marijuana;
3 weren't you?

4 A Yes, sir.

5 Q The marijuana that was in this bag, State's Exhibit
6 Number 1.

7 A Yes, sir.

8 Q What happened to that charge?

9 MS. HENDERSON: Objection, your Honor.

10 THE COURT: Sustained. Counsel approach.

11 OFF-THE-RECORD BENCH CONFERENCE.

12 PRESENT: THE COURT, MS. HENDERSON,

13 MR. HUGHES.

14 THE COURT: Step back. Move along. The objection is
15 sustained, pursuant to *Rules of Evidence 609 and 403*.

16 MS. HENDERSON: Thank you, your Honor.

17 THE COURT: Please proceed consistent with my ruling
18 explained to counsel at the Bench.

19 MR. HUGHES: Thank you, your Honor.

20 BY MR. HUGHES:

21 Q Now, when you were arrested, you spent some time in
22 -- when you were arrested on the cocaine and the pills'
23 charge, you spent time in jail, right?

24 A Yes, sir.

25 Q How long were you in jail?

1 A I think 21 days.

2 Q And you bonded out, right?

3 A Yes, sir.

4 Q Did you like it at the Jasper County Detention
5 Center?

6 A No, sir.

7 Q Do you think prison would be worse than the Jasper
8 County Detention Center?

9 A I don't know.

10 Q But you're looking at a lot of time on possession of
11 those pills with intent to distribute; aren't you?

12 A Yes, sir.

13 Q And you're looking at a lot of time over the
14 trafficking in that cocaine; aren't you?

15 A Yes, sir.

16 Q You don't want to go to prison; do you?

17 A No, sir.

18 Q And you have told this jury everything truthfully.

19 A Yes, sir.

20 Q You would not lie to just keep from going to prison;
21 would you?

22 A No, sir.

23 Q And according to you, let me make sure I got this
24 right, Phillip Monroe picked you up because you had a
25 license, correct?

- 1 A Correct.
- 2 Q But Phillip Monroe didn't let you drive, correct?
- 3 A Yes, sir.
- 4 Q And Phillip Monroe took you to Logan Lane and then to
5 Bay Tree, correct?
- 6 A Yes, sir.
- 7 Q And you were going from Bay Tree to Cooler's Store
8 out at Old House.
- 9 A Yes, sir.
- 10 Q Going straight there.
- 11 A That's where I live.
- 12 Q Now, where is Bay Tree Apartments? Isn't it right
13 down here at Low Bottom?
- 14 A No, sir.
- 15 Q Where are they?
- 16 A In the town of Ridgeland, past the post office.
- 17 Q Okay. That's what I mean. Down here, about two
18 blocks from here, three blocks from here, right?
- 19 A Right. Yes, sir.
- 20 Q Okay. And you'd never seen those drugs. You did not
21 know there were any drugs in that car.
- 22 A Right.
- 23 Q You didn't smell any marijuana?
- 24 COURT REPORTER: Is that, No, sir?
- 25 A No, sir.

1 Q Now, after law enforcement handcuffed you and put you
2 behind the car, didn't you get one of the cuffs loose?

3 A No, sir.

4 Q They didn't have to double lock your handcuff?

5 A No, sir.

6 Q And you've told this jury everything truthfully.

7 A Yes, sir.

8 Q Now, the night of the arrest, you didn't tell law
9 enforcement this, right?

10 A No, sir.

11 Q Because you say Phillip threatened you and your
12 family.

13 A Correct.

14 Q Now, didn't he just tell you be 21 and be a man?

15 A What are you asking me?

16 Q Didn't Phillip Monroe just tell you to be 21.

17 A No, sir, that was the only thing he told me.

18 Q What does it mean when he says be 21? Accept your
19 responsibilities as an adult? Is that what be 21 means?

20 A No. He was asking me to take a charge for him that
21 wasn't mine.

22 Q You're the one in possession of the drugs. The drugs
23 were in your possession when the law enforcement
24 approached that car, right?

25 A It was on the ground.

1 Q Where you threw them.

2 A No, sir.

3 Q Now, you say you got out of the car with your hands
4 up.

5 A Yes.

6 Q Because that's what you'd seen on television. You
7 say Phillip had tossed the bag in your lap; that you had
8 no idea what was in it; you had not smelled any
9 marijuana, correct?

10 A Yes, sir.

11 Q So you had no idea what was in that bag, but you get
12 out of the car with your hands up, correct?

13 A Correct.

14 Q Did you try to push those drugs underneath the car
15 while you were standing there?

16 A No, sir.

17 Q Are you sure?

18 A I'm sure.

19 Q Now, did you try to run that night?

20 A No, sir.

21 Q Well, why were you backing up when law enforcement
22 approached you?

23 A I'm not sure I was backing up. I just got out of the
24 car and was holding my hands up.

25 Q But you didn't know anything about any drugs.

1 A Not until he tell me, Take these charges.

2 Q You were going from Bay Tree to Cherry Hill. Cherry
3 Point, right?

4 A Cherry Hill.

5 Q Make sure I get it right. Correct?

6 A Yes, sir.

7 Q You weren't going to Adams Street to go cook some
8 crack.

9 A No, sir.

10 Q You were going straight home to Cherry Hill.

11 A Yes, sir.

12 MR. HUGHES: No further questions, your Honor.

13 THE COURT: Re-direct.

14 MS. HENDERSON: Beg the Court's indulgence for one
15 minute, your Honor.

16 Your Honor, I have nothing further at this time.

17 THE COURT: As to the witness, Solicitor?

18 MS. HENDERSON: Your Honor, the State now asks that
19 he --

20 THE COURT: Return?

21 MS. HENDERSON: Yes, your Honor.

22 THE COURT: All right. Mr. Baniel, you may step down
23 from the witness stand, and you're to go back to the room
24 where you were previously located, subject to being re-
25 called in the trial of this case. You may step down.

1 Watch your step coming out of there, now. You have to
2 step off that ledge.

3 Counsel approach.

4 OFF-THE-RECORD BENCH CONFERENCE.

5 PRESENT: THE COURT, MS. HENDERSON,
6 MR. HUGHES.

7 THE COURT: Madam Foreperson, ladies and gentlemen of
8 the jury, I'm going to stop at this point. The reason
9 I'm talking to the clerk is I'm arranging your
10 transportation for your lunch. You're going to be taken
11 to lunch.

12 Please don't discuss the case during lunch. We're
13 going to break now until -- there are a couple things
14 that we have to do during lunch break, work matters. And
15 we're also going to try to all get lunch while you're
16 having lunch so we can start back on time at 2:00
17 o'clock. That's an approximation right now, depending on
18 things that have to get accomplished during the lunch
19 hour.

20 During the lunch hour, please don't discuss this case
21 among yourselves or with anybody else. I'll be back with
22 you as quick as I possibly can. I'm going to ask you to
23 retire to your jury room. I'm arranging for a van to
24 come. It will pick you up. They're going to take you to
25 lunch. Thank you very much. You may retire to your jury

1 room at this time.

2 JURORS LEAVE COURTROOM 12:35 P.M.

3 BY THE COURT:

4 THE COURT: All right. First of all, I want to make
5 a record. During the cross-examine of Mr. Baniel, Mr.
6 Hughes asked the question what was the disposition of the
7 marijuana charge after ask -- and I allowed him to ask
8 was he charged with trafficking in cocaine as a result of
9 the incident of April 10, 2012. I allowed him to ask was
10 he charged with possession with intent to distribute
11 Schedule IV, and I allowed him to ask was he charged with
12 the marijuana that was in State's Exhibit Number 1.

13 Then, Mr. Hughes asked what was the disposition of
14 the charge. Rule 609 governs impeachment by evidence of
15 conviction of a crime. The charge, according to the
16 Solicitor, was simple possession of marijuana. It does
17 not carry one year and does not involve dishonesty or
18 false statement. For that reason, I sustained the
19 objection under 609, which also requires you to apply a
20 403 analysis. It is the Court's belief that the
21 disposition of that charge, that the prejudice of that
22 outweighs any probative value, and that is the reason for
23 my ruling, which I wanted to put on the record.

24 Now, I'm advised by the clerk that the jury's going
25 to Jasper Porch for lunch. I instruct my jurors and my

1 witnesses, go somewhere else if you're going to lunch,
2 because I don't want you in contact with my jury.

3 They're going to be transported there by van. We're
4 going to try to start back at 2:00 o'clock.

5 I'm stopping early for two reasons. Number 1,
6 because my assistant solicitor tells me that I have to
7 stop early. She has provided a video to counsel for the
8 defendant. And because he needs her video equipment to
9 review the videos, I am instructing Mr. Hughes that
10 during lunch, he has to review the video, so we don't
11 stop this show any longer than is necessary. I hope we
12 can complete the viewing of the video. And you're going
13 to provide him the equipment, right, Ms. Henderson?

14 MS. HENDERSON: Yes, your Honor.

15 THE COURT: All right. Mr. Hughes, you now have the
16 equipment that you said you'd like to review it during
17 lunch. You take a look at it. We'll start back as close
18 to 2:00 o'clock as we can. Go to your room, Solicitor.
19 Instruct your witnesses they are subject to re-call.
20 They can't discuss their testimony with anybody,
21 including your case manager. And that they're still
22 subject to being re-called. Make sure they get a break
23 for lunch. We're not going to start back before 2:00
24 o'clock, because the van's going to take a little while
25 to get here. So it's probably going to be 10 to 15 to 20

1 minutes before the van pulls up. They're going to Jasper
2 Porch. I instruct both of you all you're not to go
3 there. I don't want any contact with my jury.

4 Thank you. We're in recess until 2:00 o'clock.

5 MR. HUGHES: Your Honor, one thing.

6 THE COURT: Wup. Just a moment. Be seated. Yes,
7 sir.

8 MR. HUGHES: This is just a minor housekeeping
9 matter. I don't want the jury to think me or Carra are
10 being -- Ms. Henderson are being rude. Would you please
11 tell them we're not ignoring them on purpose, but there's
12 a reason. Because if they see us in the hall, we don't
13 talk to them, --

14 THE COURT: I will.

15 MR. HUGHES: Thank you.

16 MS. HENDERSON: Thank you.

17 THE COURT: I understand that completely. You're in
18 a Catch 22. And I'll tell you the benefit of my
19 experience. And you listen carefully, now, Ms.
20 Henderson, and you, too, Mr. Hughes, about jurors.

21 When I was Ms. Henderson's age, which my son's say
22 was 75 years ago, but regardless, I decided -- I was
23 trying what I thought at the time was a real big
24 condemnation case in Charleston. I was assistant
25 attorney general. And very often, in condemnation cases,

1 we put the situs of the property, we were acquiring
2 property for what all of you as the Mark Clark Expressway
3 back then. And we put the situs of the property into
4 evidence. Meaning, that we would put the jury on a bus,
5 and we would drive the jury to the property, and they
6 would walk the property. And very often, I would have my
7 engineer, because I was representing the State then,
8 stake the property, so they could see it, and they'd see
9 stakes, all of which was agreed upon ahead of time.

10 Well, the judge said, Do my lawyers want to go when
11 the jury views the property. And there's a very
12 interesting case on that that says if the judge doesn't
13 go, the judge can't rule on a motion for a new trial,
14 because he hadn't viewed all the evidence. So the judge
15 probably has to go.

16 I said, because I was young, yes. And my opposing
17 counsel, because I wanted to go, said he wanted to go,
18 too.

19 Well, soon as we got to the property and the jury got
20 off the bus, what do you think the first thing that
21 happened, Bob? Jurors walk over to you just like you
22 were talking about in the hall, and they say, Mr.
23 Buckner, how about show me where the lines are on this
24 property. And what can you do? You're caught. It's
25 like being in handcuffs. You can't talk to them.

1 So, my recommendation is stay away from the jury. Be
2 courteous. Speak. There's nothing wrong with you
3 nodding and saying good morning or good afternoon and
4 walk away. I'll handle the rest, and I'll give them an
5 instruction, Mr. Hughes. We're in recess till 2:00
6 o'clock.

7 OFF THE RECORD 12:40 P.M.

8 BACK ON THE RECORD 2:30 P.M.

9 BY THE COURT:

10 THE COURT: Thank you. Please be seated.

11 All right, Madam Foreperson, ladies and gentlemen of
12 the jury, we'll now continue with the testimony in the
13 trial of this case. Solicitor, call your next witness.

14 MS. HENDERSON: Thank you, your Honor. The State
15 calls Lieutenant Daniel Litchfield.

16 WITNESS SWORN.

17 THE COURT: Pull it up. Make yourself comfortable.
18 Adjust that microphone. State your full name, and spell
19 your last name for the court reporter.

20 LIEUTENANT DANIEL LITCHFIELD: Daniel Litchfield.
21 Last name L/i/t/c/h/f/i/e/l/d.

22 THE COURT: Your witness, Counsel. Direct
23 examination.

24 MS. HENDERSON: Thank you, your Honor.

25 LIEUTENANT DANIEL LITCHFIELD

1 DIRECT EXAMINATION, MS. HENDERSON:

2 Q Lieutenant Litchfield, with what agency are you
3 employed?

4 A The Ridgeland Police Department.

5 Q And how long were you employed with them?

6 A Since '05, seven-and-a-half years.

7 Q Okay. And can you tell this jury a little bit about
8 your law enforcement background.

9 A Yes, ma'am. I started out at Hampton City Police
10 Department in 1997. In '05, I came to work for Ridgeland
11 Police Department. After a year on patrol, I became
12 investigator. Been there ever since as an investigator,
13 since '06.

14 Q And what are some of your jobs or duties as an
15 investigator?

16 A Investigation of crimes, to include the prosecution
17 of said criminals, if I can determine.

18 Q If the road guys make a case at night, do you all get
19 contacted, or how do you become involved in a case that
20 happens at night when you're off duty?

21 A Typically, if it's serious enough that may require
22 evidence or an interview of some sort, they also will
23 call me that night, let me know what they have.

24 Q Okay. But otherwise, how do you become involved?

25 A Usually, the next morning, I come in and check

1 reports, see if there's anything I need to look into if
2 they don't call me the night before.

3 Q Okay. And did you become involved in the case
4 against Phillip Monroe?

5 A Yes, ma'am.

6 Q And how did you become involved in this case?

7 A The night of the actual traffic stop, the officers
8 called me and let me know what they had.

9 Q Okay. And did you do anything else in this case?

10 A Yes. The next morning, when I came in, I started
11 looking over the actual case to include the evidence, to
12 determine whether or not I needed to interview Mr.
13 Monroe.

14 Q And did you interview him?

15 A Yes, ma'am.

16 Q Okay. How many times did you interview Mr. Monroe?

17 A Twice.

18 Q Okay. Do you remember the dates of those interviews?

19 A I think it was April 12 and April 16.

20 Q Okay. So, two days after it, and then a few more
21 days.

22 A Yes, ma'am.

23 Q Okay. And the first interview, the one that was
24 April 12, was he *Mirandized*?

25 A Yes, ma'am.

1 Q And did he waive his *Miranda* warnings?

2 A Yes, ma'am, he did.

3 Q And he agreed to talk to you?

4 A Yes, ma'am.

5 Q Okay. What did he say, if anything, about the drugs
6 in this case to you on that date?

7 A On the 12th, he tried to deny, you know, any
8 involvement with the drugs.

9 Q Okay. Did he say whose they were?

10 A Yes, he tried to put it on the co-defendant, Courtney
11 Baniel.

12 Q Okay. And that's pretty much the entire interview on
13 April 12?

14 A Yes, ma'am.

15 Q Okay. And then you interviewed him again on April
16 16?

17 A Yes, ma'am.

18 Q Was that your decision?

19 A No, ma'am. He actually contacted investigations
20 through phone calls, and his wife asking us to talk with
21 him.

22 Q Okay. And so, you speak with him again on April 16.

23 A Yes, ma'am.

24 Q Okay. Did you read him his *Miranda* warnings again?

25 A Yes, ma'am.

1 Q And did he waive those *Miranda* warnings?

2 A Yes, ma'am, he did.

3 Q Okay. And what did he say to you at this interview?

4 A He was a little forthcoming with the fact that the
5 drugs were his and Courtney Baniel's.

6 Q Okay. Did he make any -- well, let's back up. Do
7 you remember exactly what he said?

8 A Yes, he said it was mine and his. We got together.

9 Q Okay. Did he make any mention of the specific drugs
10 in that bag?

11 A Yes. He discussed the cocaine, the powder cocaine.
12 Then he also discussed the pills.

13 Q What did he say about the powder cocaine?

14 A He stated that he was going to take the powder
15 cocaine and turn it into crack cocaine.

16 Q Okay. And what did he say about the pills?

17 A He stated that he received the pills for somebody
18 else from someone.

19 Q Okay. Investigator -- sorry, your Honor.

20 Investigator Litchfield, I'm handing you what has been
21 previously marked for purposes of identification as State
22 Exhibits 4 and 5. Do you recognize these?

23 A Yes, ma'am, I do.

24 Q How are you able to recognize them?

25 A They have my initials on them.

1 Q Which means that? Which means what?

2 A These are actually video of segments taken from the
3 full interviews.

4 Q Okay. So you have watched those and you know what's
5 on those discs.

6 A Yes, ma'am.

7 Q Okay. And the segments that are on those discs, have
8 they been altered in any way?

9 A The segments, no.

10 Q Okay. And that's an accurate reflection of the
11 conversation you had with the defendant, Phillip Monroe,
12 on April 16.

13 A Yes, ma'am.

14 MS. HENDERSON: Your Honor, permission to move
15 State's Exhibit 4 and 5 into evidence.

16 THE COURT: As to State's 4 and 5, Mr. Hughes?

17 MR. HUGHES: No objections, your Honor.

18 THE COURT: Ladies and gentlemen of the jury, State's
19 Exhibits 4 and 5 will be admitted into evidence in the
20 trial of this case, without objection. State's 4 and 5.
21 You may publish to the jury, Solicitor.

22 MS. HENDERSON: Thank you, your Honor.

23 VIDEO CD REFERRED TO AS APRIL 12

24 INTERVIEW MARKED STATE'S EXHIBIT

25 NUMBER 4, ENTERED AS EVIDENCE.

1 VIDEO CD REFERRED TO AS APRIL 16
2 INTERVIEW MARKED STATE'S EXHIBIT
3 NUMBER 5, ENTERED AS EVIDENCE.

4 BY MS. HENDERSON:

5 Q Investigator Litchfield, while Erin's cuing those up,
6 when I'm asking you was he *Mirandized*, what does that
7 mean?

8 A Before we interview anyone, especially somebody
9 that's arrested, you know, for a crime, we have to read
10 them *Miranda*, which gives them the opportunity to have a
11 lawyer present. It's a standard form that we use so that
12 we do it the same way every time. Explains that what
13 they can be awarded as part of the interview process.
14 They have the opportunity to talk to us about it, and
15 they're informed that anything they say can and will be
16 used against them in a court of law.

17 Also, they have the right to an attorney, and if they
18 can't afford one, one will be appointed for them. It
19 gives them their right to understand what's going on if
20 they do talk to us.

21 Q Okay. And are they also told in those warnings that
22 they have the right to stop the questioning at any time?

23 A Yes, ma'am.

24 Q Okay. So those are the warnings that you read to him
25 prior to speaking to him that he waived and agreed to

1 speak to you?

2 A Yes, ma'am.

3 Q Okay.

4 REPORTER'S NOTE: VIDEO CD, STATE'S
5 EXHIBIT NUMBER 4, OF APRIL 10
6 INTERVIEW PLAYING.

7 THE COURT: Just stop it for one second, please. Let
8 the jury know, so the record's complete, which exhibit
9 we're looking at.

10 MS. HENDERSON: I'm sorry. Thank you. This is
11 State's Exhibit 4.

12 THE COURT: Very well. Without objection. Proceed.

13 REPORTER'S NOTE: VIDEO CD, STATE'S
14 EXHIBIT 4, OF APRIL 10 INTERVIEW PLAYING.

15 BY MS. HENDERSON:

16 Q And is that an accurate reflection of the
17 conversation you had?

18 A Yes, ma'am.

19 Q And that's what you remember his statements being?

20 A Yes, ma'am.

21 Q Okay. And I know that the jury just heard it, but
22 it's a little fuzzy. What was the question that you
23 asked him that prompted the answer?

24 A I asked him, that Crown Royal bag, whose was it.

25 Q Okay. Now, were you present for any other interviews

1 of the defendant -- I'm sorry. Play State's Exhibit 5.
2 I apologize, your Honor.

3 While we're cuing this up, just so the jury's clear,
4 what was his answer in response to that question?

5 A He stated that it was ours; the pills were not all
6 his; not all mine; we had it together.

7 REPORTER'S NOTE: VIDEO CD, STATE'S
8 EXHIBIT NUMBER 5, OF APRIL 16 INTERVIEW
9 PLAYING.

10 MS. HENDERSON: Begging the Court's indulgence for
11 one second, your Honor.

12 I apologize, your Honor.

13 Your Honor, due to my interrupting the video, do you
14 mind if we publish it again in its entirety?

15 THE COURT: Any objection, Mr. Hughes?

16 MR. HUGHES: None, your Honor.

17 THE COURT: You may re-play it without objection.

18 MS. HENDERSON: Thank you, your Honor.

19 THE COURT: This is State's 5.

20 REPORTER'S NOTE: VIDEO CD, STATE'S
21 EXHIBIT NUMBER 5, OF APRIL 16 INTERVIEW
22 PLAYING.

23 BY MS. HENDERSON:

24 Q Lieutenant Litchfield, who is that in that video?

25 A Myself interviewing Phillip Monroe.

1 Q And is Phillip Monroe in this courtroom?

2 A Yes, ma'am.

3 Q And where is he?

4 A Sitting beside Bob Hughes.

5 Q And what is he wearing?

6 A White and grey striped shirt.

7 MS. HENDERSON: Your Honor, let the record reflect
8 he's identified the defendant as Phillip Monroe.

9 THE COURT: Proceed.

10 MS. HENDERSON: Thank you, your Honor.

11 BY MS. HENDERSON:

12 Q Mr. Litchfield, did you observe any other interviews
13 of the defendant?

14 A Yes, ma'am.

15 Q And when was that?

16 A I believe on April 30th, following a polygraph.

17 MR. HUGHES: Your Honor, I believe we have a matter
18 of law that needs to be taken up.

19 THE COURT: Counsel approach.

20 OFF-THE-RECORD BENCH CONFERENCE.

21 PRESENT: THE COURT, MS. HENDERSON,

22 MR. HUGHES.

23 THE COURT: Motion by defense is respectfully denied.

24 I'll make a record at the appropriate time. Please
25 proceed.

1 MR. HUGHES: Thank you, your Honor.

2 MS. HENDERSON: Thank you.

3 BY MS. HENDERSON:

4 Q Investigator Litchfield, were you present when Brian
5 Baird interviewed Phillip Monroe?

6 A Yes, ma'am.

7 Q And did he make a statement to Master Sergeant Brian
8 Baird regarding this case?

9 A Yes, ma'am.

10 Q And what did he say?

11 A He actually told Brian Baird that the drugs were his
12 that he threw in Courtney Baniel's lap; and that Courtney
13 had nothing to do with this.

14 MS. HENDERSON: Thank you. No further questions,
15 your Honor. Please answer any questions Mr. Hughes has.

16 THE COURT: Cross-examination.

17 MR. HUGHES: Thank you, your Honor.

18 LIEUTENANT DANIEL LITCHFIELD

19 CROSS-EXAMINATION, MR. HUGHES:

20 Q Lieutenant Litchfield, I apologize if I refer to
21 calling you by your first name. We've known each other
22 for a number of years.

23 A Not a problem, sir.

24 Q First of all, you've worked in Ridgeland since 2005.

25 A Yes, sir.

1 Q Where are Bay Tree Apartments?

2 A It's off of First Avenue, sir.

3 Q Right over here?

4 A Yes.

5 Q And you drive around Ridgeland a lot.

6 A Yes, sir.

7 Q Now, if you were driving from Bay Tree Apartments to
8 Old House, what route would you take to be the fastest
9 route?

10 A The fastest?

11 MS. HENDERSON: Objection, your Honor. This is
12 speculative. And irrelevant.

13 THE COURT: Overruled. It's cross-examination. I'll
14 allow it.

15 BY MR. HUGHES:

16 A Typically, I would go down Main Street and the way to
17 the -- underneath the interstate's overpass, and go from
18 there.

19 Q Straight down Main Street.

20 A Yes.

21 Q Okay. Now, when you interviewed Phillip Monroe, did
22 he tell you that he was going to a house on Adam Street
23 to cook the cocaine into crack cocaine?

24 A I don't believe so.

25 Q Did he tell you where to find the paraphernalia?

1 A Yes.

2 Q And where was that?

3 A That was on Skinner's house on Adams Street.

4 Q On Adams Street.

5 A Yes.

6 Q Now, is that located to the east or to the west of
7 Logan Lane?

8 A I believe it's east.

9 Q So, between Logan Lane and Kentucky Fried Chicken.
10 Do you know personably where the stop and arrest took
11 place?

12 A Yes.

13 Q Where?

14 A It happened on Adams Street in between KFC and Logan.
15 I believe the first yard on the right going toward KFC.

16 Q Just past the church.

17 A Yes, sir.

18 Q Okay. You work for the Ridgeland Police Department.

19 A Yes, sir.

20 Q Now, you're an investigator.

21 A Yes, sir.

22 Q Which is higher than a standard patrolman.

23 A I'd say more lateral.

24 Q And you do a lot of interviews and a lot of work
25 around suspects.

1 A Yes, sir.

2 Q The video we just saw, did you have a big video
3 camera when you took it?

4 A Small one.

5 Q But you have a video camera.

6 A Yes.

7 Q The patrolmen have a little thing they wear on their
8 ear that's a camera.

9 A Yes.

10 Q Do you have access to that?

11 A I have access to. I've never been issued one, but
12 they're in the squad room.

13 Q Okay. The chief would let you use one.

14 A Oh, yeah. Yes, sir.

15 Q Okay. Do you have video, either from your camera or
16 from the little thing that they wear on their ear, of
17 Courtney Baniel -- I'm sorry -- of Phillip Monroe making
18 the statement on April 30th?

19 A No.

20 Q But you had the accessibility to make one.

21 A As far as the Axon video capabilities, I've never
22 been to that class, never been issued one, never used
23 one. But as far as the little handheld recorder, we keep
24 that in the office, and typically use it for interviews
25 and stuff at the office.

1 Q Do you have a cell phone?

2 A Yes.

3 Q Is it a Smartphone?

4 A Smarter than me most time.

5 Q Does it have video capabilities?

6 A Yes.

7 Q Did you take a video of the so-called confession with
8 that?

9 A No, sir.

10 Q Did you have it with you?

11 A Yes, sir. I don't get cell service in the Beaufort
12 office, but I had it with me.

13 Q Okay. But you had the ability to make a recording,
14 but you did not do so.

15 A No, sir. Now, if you'd like me to elaborate, I will.

16 Q Sure. Go ahead.

17 A Typically, when we use another agency's equipment or
18 facilities, we try to use their, also, their rules as far
19 as that goes. It was on a closed circuit T.V., if you're
20 referring to the polygraph. And at that time, I --

21 THE COURT: Just a moment, Bob. One second. Yes,
22 ma'am.

23 MS. HENDERSON: Sidebar, your Honor.

24 THE COURT: Counsel approach.

25 OFF-THE-RECORD BENCH CONFERENCE.

1 PRESENT: THE COURT, MS. HENDERSON,
2 MR. HUGHES.

3 THE COURT: Mr. Litchfield.

4 A Yes, sir.

5 THE COURT: Would you step around with me here with
6 me, please.

7 REPORTER'S NOTE: THE WITNESS, LIEUTENANT
8 LITCHFIELD JOINED THE BENCH CONFERENCE.

9 THE COURT: Proceed. Cross-examination.

10 BY MR. HUGHES:

11 Q And this interview took place in Beaufort County.

12 A Yes, sir.

13 Q And Beaufort County does not have the ability to take
14 videos or do recordings?

15 A I'm not aware of their equipment or, you know,
16 procedures for that.

17 Q Okay. Let's change the subject. What does it mean
18 when an inmate or a suspect or someone has money put on
19 the books?

20 A Typically, their book is like a canteen account for
21 them to purchase things in the jail.

22 Q Did you ever put money on the books of Phillip
23 Monroe?

24 A Yes, sir.

25 Q Was it around the 16th of April last year?

1 A Somewhere around that time.

2 MR. HUGHES: No further questions, your Honor.

3 THE COURT: Re-direct.

4 LIEUTENANT DANIEL LITCHFIELD

5 RE-DIRECT-EXAMINATION, MS. HENDERSON:

6 Q Investigator Litchfield, did the money that was put
7 on his card have anything to do with this case?

8 A No, not at all.

9 Q Did it have anything to do with the statements that
10 he made to you?

11 A No, ma'am, not at all.

12 Q Anything to do with any future statements?

13 A No, ma'am.

14 MS. HENDERSON: No further questions, your Honor.

15 THE COURT: Re-cross.

16 MR. HUGHES: No further questions.

17 THE COURT: As to this witness, Solicitor?

18 MS. HENDERSON: Your Honor, as with the rest, would
19 like him to stay.

20 THE COURT: All right. Mr. Litchfield, if you would,
21 if you would return to the room that where you were
22 previously. You're subject to re-call in this case in my
23 order, which has been explained to you by the solicitor.
24 Thank you. You may step down.

25 A Yes, your Honor. Thank you.

1 THE COURT: Call your next witness.

2 MS. HENDERSON: The State calls Master Sergeant Brian
3 Baird.

4 MR. HUGHES: Your Honor, may we approach?

5 OFF-THE-RECORD BENCH CONFERENCE.

6 PRESENT: THE COURT, MS. HENDERSON,

7 MR. HUGHES.

8 THE COURT: Stand right there for me, if you would,
9 Master Sergeant. They need to speak to you before you're
10 sworn by the clerk.

11 MS. HENDERSON: Again, your Honor, State calls Master
12 Sergeant Brian Baird.

13 THE COURT: Very well. Would you come around and be
14 sworn by the clerk, please.

15 MASTER SERGEANT BRIAN MARK BAIRD: Yes, sir.

16 WITNESS SWORN.

17 THE COURT: Make yourself comfortable. Pull up the
18 chair. Adjust the microphone. State your full name and
19 spell your last for the record, please.

20 MASTER SERGEANT BRIAN MARK BAIRD: Brian Mark Baird,
21 B/a/i/r/d.

22 THE COURT: Direct examination, Counsel.

23 MS. HENDERSON: Thank you, your Honor.

24 MASTER SERGEANT BRIAN MARK BAIRD

25 DIRECT EXAMINATION, MS. HENDERSON:

1 Q Master Sergeant Baird, with what agency are you
2 employed?

3 A Beaufort County Sheriff's Office.

4 Q And can you please tell this jury a little bit about
5 your law enforcement background.

6 A I started off my career in the United States Marine
7 Corps as a military policeman. I switched slightly to go
8 into the Marine Corps Criminal Investigation Division. I
9 stayed there for about eight years. And then I was
10 selected to travel with the Naval Criminal Investigative
11 Service. What most people now know as NCIS. I finished
12 my Marine Corp career being assigned full time over NCIS.
13 I retired from there, and came to work for the Beaufort
14 County Sheriff's Office.

15 Q And how long have you been with Beaufort County?

16 A Since December of 2001.

17 Q And are you sometimes asked to assist other agencies?

18 A Yes, ma'am, I am. Because of my experience,
19 sometimes I'll be asked to assist other law enforcement
20 agencies in the area, interviewing and other functions.

21 Q And were you asked to assist in this case?

22 A Yes, ma'am, I was.

23 Q Okay. And did you oblige?

24 A Yes, ma'am, I did.

25 Q Okay. So, do you remember the date that you met with

1 Phillip Monroe?

2 A I believe it was April 30, 2012.

3 Q Well, then, I guess I should back up. And my
4 apologies. When I say they asked you to assist, did they
5 ask you to interview Phillip Monroe?

6 A Yes, they did.

7 Q Okay. And prior to any conversation with him, was he
8 given his *Miranda* warnings?

9 A Yes, I advised him of his *Miranda* rights.

10 Q Okay. And I know the jury just heard what
11 Investigator Litchfield *Mirandized*, but will you please
12 tell them what you *Mirandize* him.

13 A Yes. We have a standard form we use. And what we do
14 is, we read the form to them, and we ask them to read
15 along with us. And generally, it states that these are a
16 statement of your rights. And it says you have the right
17 to remain silent; anything you say can and will be used
18 against you in a court of law; you have the right to
19 speak to an attorney for advice before I speak with you,
20 and have him or her present during this interview; and
21 that you are free to terminate the interview, meaning
22 stop at any time.

23 Q And these were the rights that were read to him
24 before he spoke to you?

25 A Yes, as he read along with me on.

1 Q Okay. And did he waive those rights and agree to
2 speak to you?

3 A Yes, he did.

4 Q Okay.

5 A And signed for them as such.

6 Q Thank you. And did he make any statements regarding
7 this case to you?

8 A Yes, he did.

9 Q And what was that statement?

10 A While I was speaking to him, I made the statement to
11 the effect that the drugs that were in the car were
12 actually his, because at the time there was a traffic
13 stop, that the drugs that were taken off the other
14 person's lap were actually his drugs.

15 Q Okay. Did he mention whether or not the co-defendant
16 or the other person knew about the drugs?

17 A He said he wasn't involved with them, is what he told
18 me.

19 Q And is the person that you interviewed that made that
20 statement to you in this courtroom?

21 A Yes. He's seated next to defense counsel, Mr.
22 Hughes.

23 Q And do you know his name?

24 A Phillip Monroe.

25 MS. HENDERSON: No further questions from the State,

1 your Honor. Please answer any questions Mr. Hughes has.

2 A Thank you.

3 THE COURT: Cross-examination.

4 MR. HUGHES: Thank you, your Honor.

5 MASTER SERGEANT BRIAN MARK BAIRD

6 CROSS-EXAMINATION, MR. HUGHES:

7 Q Mr. Sergeant.

8 A Sir.

9 Q Preparing for this case, I received a lot of videos
10 from the solicitor's office. Could you tell me why I do
11 not have a video of that statement.

12 A My interview with Mr. Monroe?

13 Q Yes. Do you not have the ability to videotape?

14 A No. The interviewing we used, I recently switched
15 offices, and I did not have the ability to video record
16 -- record in the room that that interview was done at the
17 time.

18 Q Does Beaufort County not allow other law enforcement
19 agencies to videotape when they use your facilities?

20 A If they would have brought video equipment, we
21 probably would have allowed it. I don't think we would
22 have denied it.

23 Q But there is no video or audio of this so-called
24 confession.

25 A That's correct, sir. We did not have the ability to

1 do that at the time.

2 MR. HUGHES: No further questions, your Honor.

3 THE COURT: Re-direct.

4 MS. HENDERSON: Not from the State, your Honor.

5 THE COURT: As to the witness?

6 MS. HENDERSON: Same as the others, your Honor,
7 subject to re-call, please.

8 THE COURT: Master Sergeant, if you would, please, if
9 you'd return to the room where you were previously
10 located. You're subject to re-call in the trial of this
11 case, subject to my order that was explained to you by
12 the solicitor concerning testimony.

13 A Yes, sir.

14 THE COURT: Thank you. You may step down. Call your
15 next witness.

16 A Thank you.

17 MS. HENDERSON: Thank you, your Honor. The State
18 calls Investigator Cris McIntosh.

19 WITNESS SWORN.

20 THE COURT: Have a seat. Pull that chair up. Adjust
21 the microphone. State your full name and spell your
22 last.

23 INVESTIGATOR CHRISTOPHER ALLEN MCINTOSH: Christopher
24 Allen McIntosh. M/c/I/n/t/o/s/h.

25 THE COURT: Ready, Wanda?

1 COURT REPORTER: Yes.

2 THE COURT: Your witness, Counsel. Direct
3 examination.

4 MS. HENDERSON: Thank you, your Honor.

5 INVESTIGATOR CHRISTOPHER ALLEN MCINTOSH

6 DIRECT EXAMINATION, MS. HENDERSON:

7 Q Investigator McIntosh, what agency are you employed
8 with?

9 A Ridgeland Police Department.

10 Q And can you please tell this jury the background
11 about your law enforcement experience.

12 A Yes, ma'am. After high school, I served four years
13 in the U.S. Navy. After four years active duty, went two
14 years active reserves. I started with the Hardeeville
15 Police Department in late 2001. I graduated from the
16 Criminal Justice Academy in 2002. I came to the
17 Ridgeland Police Department in 2007, and became an
18 investigator in 2010.

19 Q Okay. And what are some of your duties as an
20 investigator?

21 A We investigate and -- and assisted, attempted the
22 apprehension, and prosecution of criminal defendants.

23 Q Are you brought in by road officers on incidences
24 that happened at night?

25 A Yes, ma'am, sometimes.

1 Q And were you brought in on this case?

2 A Not the night of the incident, no, ma'am.

3 Q Okay. When were you brought in?

4 A The following morning.

5 Q Okay. And did you have any contact with the drugs in
6 this case?

7 A Yes, ma'am.

8 Q And what was that?

9 A The following morning, after reviewing the case along
10 with Lieutenant Litchfield, I retrieved the -- the drugs
11 from the evidence locker; I sealed them into a Best bag,
12 which is a narcotics bag that we use to transport to the
13 forensics lab in Beaufort.

14 Q And what did you do after you put them in the Best
15 bag?

16 A Transported them to the forensics lab in Beaufort.

17 Q Okay. And after they're analyzed, what happens?

18 A We receive the results via email, and then the actual
19 -- the actual drugs, the evidence is returned to us. And
20 that's then sealed in the evidence locker, pending trial.

21 Q And you go and pick them up?

22 A Yes, ma'am.

23 Q Is that what you did in this case?

24 A Yes, ma'am.

25 Q You took them to the Beaufort County lab?

1 A Yes, ma'am.

2 Q And picked them back up?

3 A Yes, ma'am.

4 Q I'm handing you what's been previously marked as
5 State's Exhibits 1 -- sorry -- 2 and 3.

6 Your Honor, permission to approach the witness?

7 THE COURT: You may approach.

8 Q Do you recognize those?

9 A Yes, ma'am.

10 Q And how are you able to recognize them?

11 A My signature is across the sealing tape.

12 Q Okay. And do they appear to be altered in any way?

13 A No, ma'am.

14 Q Thank you. Permission to approach, your Honor.

15 Investigator McIntosh, were you also present for
16 interviews with Phillip Monroe?

17 A Yes, ma'am.

18 Q And did you hear any statements that he made
19 regarding ownership of these drugs?

20 A Yes, ma'am.

21 Q And as to the April 12th interview, the first
22 interview, do you remember what statements he made
23 regarding ownership?

24 A The April 12th interview, he denied any ownership or
25 knowledge.

1 Q What about the April 16th interview?

2 A The April 16th interview, he stated that they
3 belonged to both him and Courtney Baniel.

4 Q Okay. And did he mention the pills?

5 A Yes, ma'am, the April 16th interview. He -- he
6 stated he got the pills from a girl named Tina on Augusta
7 Avenue who gets them prescribed to her.

8 Q Okay. And were you present at the April 30th
9 interview?

10 A Yes, ma'am.

11 Q And did he make a statement regarding this case then?

12 A Yes, ma'am.

13 Q Did you hear it?

14 A Yes, ma'am.

15 Q And what did you [sic] say?

16 A He stated that the drugs that night on the traffic
17 stop belonged to him. He threw them in Courtney Baniel's
18 lap. And that Courtney Baniel was not involved.

19 Q Okay. And while I have you on the stand, Mr. Hughes
20 had made some fuss about Courtney's handcuffs being
21 double locked or whatever. Can you please explain what
22 tumble locked means.

23 A Yes, ma'am. Double locked is a -- all -- all
24 handcuffs have a double-lock pin. It's a small pin.
25 Sometimes on the face and sometimes on the back side.

1 There's a small point on the handcuff key that most
2 people probably have seen on television and stuff. The
3 point goes in to push that pin in. This prevents the
4 handcuffs from -- from binding. Because when you're
5 sitting in a back seat with them on you, they tend to
6 bind up, which could injure a suspect. We double lock
7 them to prevent that so that -- it's standard procedure.
8 And it's actually required in our department. Any time
9 you put someone in handcuffs, you are to double lock
10 them.

11 Q So, it's not a sign that someone was trying to
12 escape.

13 A Absolutely not. No, no.

14 Q Okay. And lastly, is the person that you were
15 present was interviewed and that you know as Phillip
16 Monroe that claimed ownership of these drugs in this
17 room?

18 A Yes, ma'am.

19 Q And where is he?

20 A Sitting at his defense counsel by Bob Hughes, wearing
21 a white striped shirt.

22 MS. HENDERSON: Thank you. Your Honor, I have no
23 further questions. Please answer any questions that Mr.
24 Hughes may have.

25 THE COURT: Cross-examination.

1 MR. HUGHES: Thank you.

2 INVESTIGATOR CHRISTOPHER ALLEN MCINTOSH

3 CROSS-EXAMINATION, MR. HUGHES:

4 Q Now, I looked at the interviews from the 12th and the
5 16th. I don't see you in there. Where were you?

6 A The camera doesn't have a panoramic option. It's
7 just a small Sony Camcorder. We sit it close enough to
8 where we can pick up the audio. Our interview room,
9 which is also our municipal courtroom, the counter goes
10 in a circle. So, therefore, it's -- it's mandatory that
11 we have the defendant in it. At least one interview.
12 Litchfield takes that seat. I will be seated next to
13 Lieutenant Litchfield.

14 Q Okay. How close were you to the camera?

15 A From here to the other end of this small counter
16 right here. If that.

17 Q So you know how to use a camera and all that?

18 A Yes, sir.

19 Q How long were those interviews?

20 A The April 12th and the April 16th, if I had to guess,
21 I'd say between 20 and 30 minutes, give or take. The
22 April 30th, probably a good couple hours.

23 Q Now, do you have a Smartphone?

24 A Yes.

25 Q Does it have the ability to do audio and video

1 recording?

2 A Yes, sir.

3 Q Do you have an audio and video recording of the April
4 30th confession?

5 A No, sir.

6 MR. HUGHES: No further questions, your Honor.

7 THE COURT: Re-direct.

8 MS. HENDERSON: Nothing from the State, your Honor.

9 THE COURT: As to the witness?

10 MS. HENDERSON: Subject to re-call, your Honor.

11 THE COURT: Very well. Mr. McIntosh, if you would,
12 return to the room where you were previously. You're
13 subject to re-call in the trial of this case, subject to
14 my order. Thank you.

15 A Yes, sir. Yes, sir.

16 MS. HENDERSON: Your Honor, he is the case officer,
17 so.

18 THE COURT: Oh. I apologize. Have a seat. Call
19 your next witness.

20 MS. HENDERSON: Thank you, your Honor. The State
21 calls Jennifer Mills.

22 THE COURT: Come and be sworn by the clerk, please.

23 WITNESS SWORN.

24 THE COURT: Watch your step. You got to step up
25 there. Have a seat. Make yourself comfortable. Adjust

1 the chair. Adjust the microphone to your height. State
2 your full name, and spell your last name for my court
3 reporter.

4 JENNIFER MILLS: My name is Jennifer Mills.
5 J/e/n/n/i/f/e/r M/i/l/l/s.

6 THE COURT: Your witness, Counsel.

7 JENNIFER MILLS

8 DIRECT EXAMINATION, MS. HENDERSON:

9 Q Ms. Mills, are you recovering from being sick?

10 A I am.

11 Q And you lost your voice.

12 A I did.

13 Q Okay. You just now kind of got it back?

14 A Today.

15 Q Okay. I know this might be tough, but we just need
16 to make sure that your answers are as clear and as loud
17 as they can be.

18 THE COURT: Proceed.

19 Q Ms. Mills, who are you employed with?

20 A I'm employed with the Beaufort County Sheriff's
21 Office Forensics Services Lab.

22 Q And what is your job there?

23 A My job is to chemically analyze materials that are
24 submitted to the lab by officers that they believe a
25 controlled drug may be present, and then be prepared to

1 testify in court as to what I found.

2 Q And Ms. Mills, --

3 THE COURT: Just a moment. Yes, sir.

4 MR. HUGHES: Your Honor, on behalf of brevity, and to
5 save Ms. Mills' voice, I will be more than happy to
6 stipulate that she's an expert at drug identification.

7 THE COURT: Counsel approach.

8 OFF-THE-RECORD BENCH CONFERENCE.

9 PRESENT: THE COURT, MS. HENDERSON,

10 MR. HUGHES.

11 MR. HUGHES: Your Honor, to save Ms. Mill's voice, I
12 am more than happy to stipulate that she is an expert
13 witness as far as drug identification.

14 THE COURT: Ladies and gentlemen of the jury, you're
15 about to hear testimony of a witness who claims to have
16 special knowledge, skill, training, or education in the
17 field of drug analysis. Normally, the law does not
18 permit witnesses to get on the witness stand and testify
19 as to their opinion or conclusion. An exception to that
20 rule is for those witnesses whom we call expert
21 witnesses. Witnesses who have qualified by the Court are
22 permitted to give an opinion as to expert as to matters
23 in which they claim to be so skilled.

24 In determining the weight to be given any expert
25 opinion, you should consider the qualifications and

1 credibility or believability of the expert, reasons given
2 for his or her opinion. You are not bound by such expert
3 opinion. You give it the weight, if any, to which you
4 deem it should be entitled.

5 This witness is qualified in the field of drug
6 analysis, without objection. You may proceed, Solicitor.

7 THE COURT: Thank you, your Honor.

8 BY MS. HENDERSON:

9 Q Ms. Mills, can you please tell the jury the standard
10 procedure you use when you obtain drugs to be analyzed.

11 A when a request is made for an analysis, the drugs are
12 brought to the laboratory. At that time, we check to see
13 that the packages are sealed, in a sealed condition. We
14 store them until time of analysis.

15 Q And then what?

16 A At time of analysis, I remove the drug material, or
17 suspected drug material, and I will determine the weight
18 of the substance without the packaging. I'll also do
19 chemical analysis that includes a color test, a
20 preliminary color test. Also, I take a portion of the
21 material and run it on the gas chromatograph mass
22 spectrograph, and collect this information and provide a
23 report.

24 Q And Ms. Mills, if you could please explain to those
25 of us that don't have knowledge of this, what is the

1 color test and the gas chromatograph spectrum test.

2 A A cobalt test is a cobalt thiocyanate test. Many of
3 you have seen it on T.V. when they shake the material and
4 it turns blue. We prepare those reagents ourselves. And
5 that gives us an indication of what might be present in
6 that substance.

7 And then we go to the next step. We take a portion
8 of the powder, and we dissolve it in a liquid. And we
9 put it on an instrument. It actually has two parts. One
10 is a gas chromatograph, which has the ability to separate
11 all the different compounds that are in the material.
12 The second part is the mass detector. And it has the
13 ability to identify each chemical. And it matches to a
14 library that we've prepared. So we bring a color test, a
15 weight, and the gas chromatogram retention time, and the
16 mass spec. Put that information together to determine
17 what substance was found.

18 Q And Ms. Mills, is that the procedure that you did in
19 this case with these narcotics?

20 A Yes, it is.

21 MS. HENDERSON: May I approach the witness?

22 THE COURT: You may.

23 Q Ms. Mills, I'm handing you what's been marked for
24 purposes of identification as State's Exhibits 2, 3, and
25 6. As to State Exhibit 2, do you recognize this?

1 A I do.

2 Q And how are you able to recognize it?

3 A The package that is State's Exhibit Number 2 has a
4 seal at the bottom of the package that has my initials,
5 J.E.M.; my laboratory case number for this file results,
6 2012L0278. And also, in Item Number 1, that I placed on
7 this package when my analysis was completed.

8 Q And Ms. Mills, what analysis -- what did your
9 analysis determine about Item Number 2?

10 A Item Number 2?

11 Q State's Exhibit 2. I'm sorry.

12 A State's Exhibit Number 2, an evidence bag contains a
13 plastic bottle containing 56 round, white tablets, which
14 were found to contain Clonazepam.

15 Q And which schedule drug is that?

16 A Schedule IV.

17 Q Thank you.

18 MS. HENDERSON: Your Honor, the State asks to move
19 State's Exhibit 2 into evidence.

20 THE COURT: Any objection as to State's 2?

21 MR. HUGHES: No, your Honor.

22 THE COURT: Ladies and gentlemen of the jury, State's
23 Exhibit Number 2 will be admitted into evidence in the
24 trial of this case, without objection. State's 2 in
25 evidence. You may publish to the jury.

1 MR. HUGHES: Thank you, your Honor. Your Honor, may
2 I --

3 THE COURT: You may approach.

4 MS. HENDERSON: May I publish at the end?

5 THE COURT: At the end.

6 MS. HENDERSON: Thank you, your Honor.

7 THE COURT: You may do as you desire. Proceed.

8 MS. HENDERSON: Thank you, your Honor.

9 ITEM REFERRED TO AS EVIDENCE BAG
10 CONTAINING A PLASTIC BOTTLE,
11 CONTAINING 56 ROUND, WHITE TABLETS,
12 FOUND TO CONTAIN CLONAZEPAM MARKED
13 STATE'S EXHIBIT NUMBER 2, AND
14 ADMITTED AS EVIDENCE.

15 BY MS. HENDERSON: Q Ms. Mills, as to State's
16 Exhibit 3, do you recognize this?

17 A I do.

18 Q How are you able to recognize it?

19 A Again, State's Exhibit Number 3, the package has my
20 initials; my case number; and an item number, Number 4,
21 that I placed on it when I sealed it. And the bag inside
22 State's Exhibit Number 3, also has my initials, case
23 number, and item number on them.

24 Q And what were the results of your analysis on State's
25 Exhibit 3?

1 A The evidence bag containing a plastic bag contained a
2 white powder substance which contains cocaine, weighing
3 27.97 grams, without the package.

4 MS. HENDERSON: Your Honor, the State moves State's
5 Exhibit 3 into evidence at this time.

6 THE COURT: As to State's Exhibit 3, Mr. Hughes?

7 MR. HUGHES: No objection, your Honor.

8 THE COURT: Ladies and gentlemen, State's Exhibit
9 Number 3 admitted into evidence, without objection.

10 State's 3 in evidence. Proceed.

11 ITEM REFERRED TO AS EVIDENCE

12 BAG CONTAINING WHITE POWDER

13 SUBSTANCE CONTAINING COCAINE,

14 WEIGHING 27.97 GRAMS MARKED

15 STATE'S EXHIBIT NUMBER 3, ADMITTED

16 AS EVIDENCE.

17 BY MS. HENDERSON:

18 Q And Ms. Mills, in relation to State's Exhibit 6, do
19 you recognize that?

20 A I do.

21 Q And what is it?

22 A This is a recording of my results for Laboratory Case
23 Number 2012L0278, in reference to State's Exhibits 2 and
24 3.

25 Q Thank you. Your Honor, State would ask to move

1 State's Exhibit 6 into evidence.

2 THE COURT: As to State's 6, Mr. Hughes?

3 MR. HUGHES: No objection, your Honor.

4 THE COURT: Ladies and gentlemen of the jury, State's
5 Exhibit Number 6 Will be admitted into evidence in the
6 trial of this case, without objection. State's 6. You
7 may publish now to the jury.

8 MS. HENDERSON: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 ITEM REFERRED TO AS RECORDING
12 OF RESULTS FOR LABORATORY CASE
13 NUMBER 2012L0278 MARKED STATE'S
14 EXHIBIT NUMBER 6 AND ENTERED AS
15 EVIDENCE.

16 THE COURT: Counsel?

17 MS. HENDERSON: Your Honor, beg the Court's
18 indulgence for one second, please.

19 THE COURT: All right. But Counsel, those exhibits
20 go to my court reporter, not on counsel table.

21 MS. HENDERSON: Yes, your Honor.

22 THE COURT: Ladies and gentlemen of the jury, while
23 there's a momentary break, understand the exhibits will
24 be with you in your jury room once you commence your
25 deliberations.

1 MS. HENDERSON: Your Honor, I have no further
2 questions for Ms. Mills.

3 THE COURT: Cross-examination.

4 MR. HUGHES: Thank you, your Honor.

5 JENNIFER MILLS

6 CROSS-EXAMINATION, MR. HUGHES:

7 Q Ms. Mills, I'm going to be very, very brief to save
8 your voice and mine. Was there anything in those drugs,
9 either the pills or the cocaine, to say who they belonged
10 to?

11 A No, sir.

12 MR. HUGHES: No further questions, your Honor.

13 THE COURT: Re-direct.

14 MS. HENDERSON: Nothing from the State, your Honor.

15 THE COURT: As to the witness?

16 MS. HENDERSON: She can be released, your Honor.

17 THE COURT: Be excused?

18 MS. HENDERSON: Yes, your Honor.

19 THE COURT: Any objection, Mr. Hughes?

20 MR. HUGHES: None at all, your Honor.

21 THE COURT: Ms. Mills, you may step down from the
22 trial of this case, and you're excused from the trial,
23 and you may leave the courtroom at this time.

24 A Thank you, sir.

25 BY THE COURT:

1 THE COURT: Madam Foreperson, ladies and gentlemen of
2 the jury, I'm going to take my one and only mid-afternoon
3 break at this point. Give you a chance to stretch your
4 legs, use the restroom.

5 Please do not discuss the case. I'll be right back
6 with you in just a couple of moments. Please retire to
7 your jury room.

8 JURORS LEAVE COURTROOM 3:25 P.M.

9 THE COURT: Let the record reflect my bailiff has
10 come to me and told me a juror needs her cough medicine.
11 We got her some water. She's given the keys to my
12 bailiff, and the bailiff's going to her car and retrieve
13 the medicine and bring it to her.

14 I want to see my lawyers in chambers during the
15 break. We'll take ten minutes.

16 OFF THE RECORD 3:26 P.M.

17 BACK ON THE RECORD 3:45 P.M.

18 BY THE COURT:

19 THE COURT: Wanda, I'm going to put you to the test
20 now.

21 COURT REPORTER: All right.

22 THE COURT: Solicitor, it's my understanding that the
23 State's going to rest?

24 MS. HENDERSON: Your Honor, Ms. Vaux and I were just
25 conferring on whether or not we were going to re-call a

1 witness for the --

2 THE COURT: All right. I'll give you a moment, if
3 you need it.

4 MS. HENDERSON: Thank you. Your Honor, can we play
5 the video clip of the pills?

6 THE COURT: Can you play what?

7 MS. HENDERSON: The video. The video in evidence
8 regarding the statement about the pills.

9 THE COURT: Yes, Solicitor, you may. Which exhibit
10 number so the record is complete?

11 MS. VAUX: Your Honor, it would be State's Exhibit 5.

12 THE COURT: All right. Erin, would you cue it for
13 us.

14 MS. VAUX: Do you want it on the -- do you want it on
15 the big, or do you want us to just us listen to it?

16 THE COURT: If you do that, it'll be on my screen.

17 REPORTER'S NOTE: VIDEO CD REFERRED

18 TO AS STATE'S EXHIBIT NUMBER 5 PLAYING.

19 THE COURT: Hold on. Can't talk and listen.
20 Proceed.

21 REPORTER'S NOTE: VIDEO CD REFERRED

22 TO AS STATE'S EXHIBIT NUMBER 5 PLAYING.

23 THE COURT: All right, Solicitor.

24 MS. HENDERSON: Your Honor, I think we're going to
25 move forward with just what's in evidence, and I'll

1 obviously respond to any motions at that time. Or do you
2 want --

3 THE COURT: I'm just asking you, since the jury's
4 out, so I don't have to bring them back and send them
5 back, whether or not you're going to rest.

6 MS. HENDERSON: Your Honor, the State is going to
7 rest.

8 STATE RESTS, OUT OF PRESENCE OF JURORS.

9 THE COURT: All right. Now, let me explain for the
10 record what has gone on. The State called Daniel
11 Litchfield to the stand as a witness this afternoon. A
12 question was asked -- and Wanda, I'm going to ask you to
13 take a look at this, this evening, because we're going to
14 finish the trial tomorrow -- *when did you talk to him*
15 *next?* And his response was, *April 30th, after the*
16 *polygraph.* At which time, Mr. Hughes stood up, asked to
17 approach the Bench.

18 Mr. Hughes was informed that I would give the jury a
19 curative instruction in which I told the jury there was
20 no evidence of a polygraph in the case that we're trying,
21 nor did Mr. Litchfield ever state that the defendant took
22 a polygraph.

23 I offered to give any curative instruction that the
24 defense requested. Mr. Hughes refused and moved for a
25 mistrial. I denied the motion for a mistrial. This is

1 true because, Number 1, I don't believe that the question
2 by the solicitor elicited a response concerning a
3 polygraph. Number 2, when Mr. Hughes attempted to cross-
4 examine concerning the April 30th statement, which was
5 the subject of my *Jackson* -- or in part, the subject of
6 my *Jackson/Denno* hearing earlier in this trial, again,
7 the witness referred to a polygraph during cross-examine
8 without a solicitation by defense counsel. I, again,
9 informed Mr. Hughes that I would give a curative
10 instruction. He refused that and wanted a mistrial.

11 It is clear to me that the testimony of this witness,
12 both on direct and cross, that being Mr. Litchfield, that
13 there was not an elicitation by counsel to bring out the
14 fact that there was a polygraph. What I have been told
15 during the break is that the defendant was taken to
16 Beaufort Sheriff's Department for the purposes of a
17 polygraph examination in a completely unrelated case, for
18 which the defendant has never been charged, that being an
19 investigation into a murder. And for which he is not
20 going to be charged or has not been charged. I was aware
21 of this.

22 I was also aware of the fact that my attorney both
23 for the State instructed this witness, prior to their
24 testimony, they were not to mention the word *polygraph*;
25 they were not to mention the word *murder investigation*;

1 they were not to mention anything about other alleged
2 offenses that the defendant may have been arrested for or
3 charged with.

4 It has been my intention throughout the trial to
5 prohibit the fact that the defendant has been charged in
6 an-unrelated-that-we're-not-trying drug offense, simply
7 because I think it's prejudicial; that it would be a drug
8 offense or arrest; and because we're trying the defendant
9 for a drug offense. And I have consistently ruled that
10 that would not be permitted.

11 Now, we did allow the co-defendant to testify that,
12 when the stop occurred on April 10, 2012, and the State's
13 Exhibit Number 1, which is the Crown Royal bag, was
14 allegedly thrown into the lap of the co-defendant; that
15 the defendant made a statement to the co-defendant, *You*
16 *need to take this, cause I have other charges.*

17 I instructed the Solicitor to inform the witness that
18 he could not mention what those charges were, to try to
19 prevent any prejudice to the defendant. And I wanted to
20 make sure that the record is complete on that. I'm
21 asking my court reporter tonight to check testimony of
22 Mr. Litchfield to make sure what I've stated is correct
23 concerning the polygraph, and to also check, because an
24 issue has arisen concerning whether or not there was any
25 testimony of distribution of drugs. And my recollection

1 of the testimony was there was not any testimony
2 concerning the sell or distribution of drugs, which would
3 leave us with one indictment, being a possession charge,
4 rather than a distribution charge. However, I'm subject
5 to being corrected if my court reporter tells me, after
6 listening to Mr. Litchfield's testimony, that my memory
7 is not correct on that point. I've advised the attorneys
8 of that during our break.

9 Mr. Hughes, since the State intends to rest, when I
10 bring the jury back, are there any motions on behalf of
11 the defendant?

12 MR. HUGHES: Yes, your Honor. For one thing, I'd
13 like to clear up that Mr. Baniel never said anything
14 about other charges. He just said Mr. Monroe said take
15 this -- take the charge on this.

16 THE COURT: All right. And actually, what you're
17 referring to is his actual trial testimony, as opposed to
18 what I was told he might say.

19 MR. HUGHES: Correct.

20 THE COURT: So, in fact, that issue became a non-
21 issue, because he did not make that reference in the
22 presence of the jury.

23 MR. HUGHES: I just did not want the State to argue
24 the other way.

25 THE COURT: All right. Then, Wanda, what you'll be

1 looking for is that consistent with what Mr. Daniel said,
2 as well as what Mr. Litchfield said.

3 All right, Mr. Hughes, what else?

4 MR. HUGHES: Your Honor, as far as the possession
5 with intent to distribute, I am going to move for a
6 directed verdict in this matter. The State has not shown
7 any way, shape, or form any distribution. The only thing
8 they have, even potentially, is a statement by my client.
9 They have no other source of information as far as any
10 distribution. The amount does not constitute a
11 distributional amount under statute. Therefore, since
12 they charged him with possession with intent to
13 distribution, and they failed to prove all the elements,
14 I'll move for a directed verdict on that.

15 As far as the trafficking in cocaine, your Honor, I
16 believe they have failed to prove the possession of the
17 cocaine by my client, and would move for a directed
18 verdict on that, also.

19 THE COURT: All right. Thank you very much, Mr.
20 Hughes. As to your motion for a directed verdict as to
21 possession of cocaine, that he was in possession of the
22 cocaine for purpose of the trafficking charge, that
23 motion is respectfully denied.

24 Your other motion will be subject to my court
25 reporter reviewing the testimony and advising me if there

1 was anything.

2 Solicitor, I'm happy to hear from you in response to
3 that.

4 MS. HENDERSON: Thank you, your Honor. And I'd just
5 like to clarify, in addition to Lieutenant Litchfield's
6 testimony, when we played the tape back, it said what I
7 thought it said, which was what I wanted to make sure, is
8 that he says, *I got those pills for somebody*. And
9 Lieutenant Litchfield said, *You do pills*. And he says, *I*
10 *don't do pills; I got them for somebody*.

11 THE COURT: But I don't think that's evidence of
12 distribution. That could be an accommodation. And I
13 understand that that's what you're hearing. It's
14 difficult for me, and it'd be difficult for the appellate
15 court, to understand exactly what's on the audio portion
16 of that exhibit. I understand that you believe that's
17 the testimony to support possession with intent to
18 distribute?

19 MS. HENDERSON: Yes, your Honor. And I thought,
20 though I am subject to be corrected, that Lieutenant
21 Litchfield testified further, but like I said, I think --

22 THE COURT: I'm going to have my court -- I'm going
23 to hold my ruling on that until my court reporter reviews
24 the record.

25 MS. HENDERSON: Thank you, your Honor.

1 THE COURT: And advises me about Mr. Litchfield's
2 testimony.

3 MS. HENDERSON: Thank you, your Honor.

4 THE COURT: Thank you. All right, Mr. Hughes. With
5 that, Mr. Hughes, I'm going to have the State inform the
6 jury, when I bring them back, that they are resting.

7 Now, would you and your client please come forward,
8 Mr. Hughes.

9 Madam Clerk, would you please swear the defendant.

10 WITNESS SWORN.

11 MR. HUGHES: Step close to the mic. Make sure that
12 lady over there can hear you.

13 THE COURT: Madam Clerk, has he been sworn?

14 MADAM CLERK: Yes, sir, your Honor.

15 RIGHTS TO DEFENDANT, BY THE COURT:

16 THE COURT: All right. Would you state your full
17 name for the record.

18 DEFENDANT MONROE: Phillip Monroe.

19 THE COURT: Speak up a little bit for me, Mr. Monroe.

20 DEFENDANT MONROE: Phillip Monroe.

21 THE COURT: Very good. Thank you. Mr. Monroe, at
22 this time, I'm going to explain to you certain of your
23 rights. If you do not understand anything I say, please
24 let me know. If you want me to explain anything in
25 further detail, please let me know. Do you understand?

1 DEFENDANT MONROE: Yes, sir.

2 THE COURT: Very well. We've now reached the stage
3 of the trial where you may present your defense. You
4 have the right to testify in your own behalf. However,
5 no one, not this court or anyone, can make you testify.

6 In the event that you have any record for any
7 conviction involving dishonesty or for false statement or
8 for crime punishable by a imprisonment for more than one
9 year, and this court determines that the probative value
10 of admitting this evidence outweighs its prejudicial
11 effect to you, the solicitor would be able to introduce
12 your record for impeachment purposes to attack your
13 credibility or your believability.

14 If you elect not to take the witness stand, I will
15 charge the jury in my charge on the law that they are not
16 to give the fact that you did not testify any
17 consideration whatsoever. And there is absolutely to be
18 no prejudice to you because you did not testify. You
19 have the constitutional right to remain silent. It will
20 be left entirely up to you whether or not you testify in
21 the trial of this case. You may talk with your attorney,
22 but it is not your attorney's decision. It is yours.
23 The ultimate decision will be left entirely up to you as
24 without whether or not you wish to testify in the trial
25 of this case.

1 Have you understood what I've just told you?

2 DEFENDANT MONROE: Yes, sir.

3 THE COURT: Now, my understanding from the solicitor
4 is you do have a prior record that would be subject to
5 impeachment. Is that correct, Solicitor?

6 MS. HENDERSON: Yes, your honor, that would be the
7 State's position.

8 THE COURT: Mr. Hughes, you understand; you've
9 reviewed his record.

10 MR. HUGHES: Yes, sir.

11 THE COURT: And you believe there are convictions
12 that would be subject to attack on cross-examine for
13 impeachment purposes?

14 MR. HUGHES: Yes, sir.

15 THE COURT: Very well. Do you want a moment, Mr.
16 Monroe, to talk to your attorney, or are you ready to
17 tell me of your decision?

18 DEFENDANT MONROE: I withdraw from the stand.

19 THE COURT: Pardon?

20 DEFENDANT MONROE: I don't want to.

21 THE COURT: You do not wish to take the stand.

22 DEFENDANT MONROE: No, sir.

23 THE COURT: And is that your decision, Mr. Monroe?

24 DEFENDANT MONROE: Yes, sir.

25 THE COURT: Nobody's forcing you. You made that

1 decision of your own free will and accord.

2 DEFENDANT MONROE: Yes, sir.

3 THE COURT: Is that right?

4 DEFENDANT MONROE: Thank you very much. You may
5 return to your seat.

6 THE COURT: All right, Josephine, if you'd bring us a
7 jury, please.

8 JURORS ENTER COURTROOM 4:00 P.M.

9 THE COURT: All right, Madam Foreperson, ladies and
10 gentlemen of the jury, we'll now continue with the trial
11 of this case. Solicitor, you may call your next witness.

12 STATE RESTS, IN PRESENCE OF JURORS.

13 MS. HENDERSON: Your Honor, at this point, the State
14 rests.

15 THE COURT: Very well. Ladies and gentlemen, you've
16 heard the evidence from the State of South Carolina. We
17 will now hear from the defendant.

18 Mr. Hughes, you may call your first witness.

19 DEFENSE RESTS.

20 MR. HUGHES: Your Honor, the defense rests.

21 THE COURT: Very well. Ladies and gentlemen, you've
22 heard all the evidence in this case. Now, I'm informed
23 that the weather's changed again. It got a little nicer
24 for you during lunch, but it's starting to rain again.
25 And it's after 4:00 o'clock. And with argument and

1 charge, you wouldn't get the case until well after 5:00
2 o'clock. So I'm going to complete the trial of this case
3 in the morning, so you can get home before the rain hits.

4 During the overnight recess, please do not discuss
5 the case without anyone. We will finish this trial
6 promptly in the morning. I would like for you to be in
7 your jury room in the morning by 9:30. If you want to
8 come earlier than that, that's fine. Josephine will take
9 good care of you, as you've seen so far in the trial of
10 this case. At which time, I hope to start, if I don't
11 run into some matters. I have some work that we're going
12 to have to do tonight. But I intend to complete the
13 trial, because you have not heard the closing arguments
14 of the attorneys; you have not received my charge on the
15 law. All of which will take place tomorrow once we get
16 started.

17 I hope everybody has a pleasant evening. I look
18 forward to seeing you in the morning. Please report to
19 your jury room, not to the courtroom, by 9:30 in the
20 morning. You may leave the courtroom at this time.
21 Thank you very much.

22 MR. HUGHES: Your Honor, before the jury goes --

23 THE COURT: Just a moment, please. Take a seat for
24 me, please, ma'am.

25 MR. HUGHES: What we discussed at lunch concerning

1 Ms. Henderson and my personal aspects to the jury, could
2 you please explain to them why.

3 THE COURT: Yes, sir. Ladies and gentlemen, one of
4 the hardest things that the attorneys have to do is
5 during the trial of the case we have rules. They're not
6 allowed to talk to you. And those rules are strictly
7 enforced by me. Obviously, I practice law for many
8 years. And I've gone in that situation as an attorney.
9 They're not trying to be rude to you. They're allowed to
10 say Good morning. They're allowed to say good afternoon.
11 And that's as far as they can go during the trial of the
12 case.

13 Do not believe you think an attorneys any way
14 snubbing you. They know they have to deal with me if
15 they speak to you. And here's what happens. Very often
16 innocent conversation, a jury will say to an attorney,
17 how's your trial, but the problem is, if someone else
18 sees that, and they see a juror talking to an attorney,
19 the inference becomes that Rue talking about the case.
20 And that's why attorneys are prohibited from speaking
21 with you. So please do not in any way believe that an
22 attorney is trying to snub you or in any way be
23 disrespectful to you. The attorneys are following the
24 rules of this court when they don't speak to you during
25 the trial of the case.

1 Any objections to the Court's comments from the
2 State?

3 MS. HENDERSON: No, your Honor. Thank you.

4 THE COURT: From the defendant?

5 MR. HUGHES: No, your Honor. Thank you.

6 THE COURT: Very well. Madam Foreperson, ladies and
7 gentlemen, you're excused until 9:30 in the morning. You
8 may leave the courtroom at this time. Everyone else
9 remain seated while the jury's leaving.

10 JURORS LEAVE COURTROOM 4:02 P.M.

11 THE COURT: All right. Wanda, so you know what to
12 look for, and I want you to look at Mr. Litchfield's
13 testimony. I don't think there's really an issue now in
14 light of Mr. Hughes' comment for you to look at Mr.
15 Baniel's testimony. So, we're looking at Mr.
16 Litchfield's testimony on when he used the word
17 *polygraph*. I want to know exactly the framework in which
18 the question and the answer was given. That's number 1.

19 And number 1, because Ms. Henderson believes that the
20 tape shows certain references, and she thinks Mr.
21 Litchfield testified to some evidence of distribution of
22 a Schedule IV drug, I'm going to ask you to also review
23 the testimony of what Mr. Litchfield testified that the
24 defendant said concerning any sale or distribution of a
25 Schedule IV drug for purposes of my determining whether

1 or not to grant or not grant a motion of directed
2 verdict, made by Mr. Hughes, which I will make in the
3 morning, after I confer with the court reporter as to
4 what was said. And I'll certainly make whatever she
5 gives me available to both of my attorneys.

6 With that, is there anything further for this
7 evening? I assume I have your request to charge. Is
8 that correct?

9 MS. HENDERSON: Yes, your Honor. I have no
10 additional requests. I just --

11 THE COURT: Mr. Hughes, do you have any requests?

12 MR. HUGHES: Your Honor, I've heard your charges
13 enough, I have no problems with it.

14 THE COURT: All right. Now, does the court reporter
15 have all the exhibits?

16 MS. HENDERSON: Thank you, Wanda.

17 THE COURT: She tells me that State's Exhibits 1
18 through 6 are in evidence in this case. Is that your
19 understanding, Solicitor?

20 MS. HENDERSON: Yes, your Honor.

21 THE COURT: Yours, as well, Mr. Hughes?

22 MR. HUGHES: As far as I know, sir.

23 THE COURT: All right. In that case, then, as to
24 this case, I believe we are adjourned until 9:30 a.m. in
25 the morning.

1 Erin, would you approach?

2 MS. VAUX: Yes, sir.

3 REPORTER'S NOTE: THE COURT AND

4 MS. VAUX AT BENCH.

5 THE COURT: All right, ladies and gentlemen, I'm
6 informed by the Solicitor that I'm going to go to non-
7 jury matters after the conclusion after trial tomorrow.
8 We will finish the trial at approximately 9:30 in the
9 morning. I say approximately. It's my intention to do
10 so. But obviously, I've got some pending matters I have
11 to take care of before we conclude the trial.

12 Court's in recess at least until 9:30 a.m. tomorrow
13 morning.

14 END DAY TWO, TUESDAY, FEBRUARY 12,
15 2013, 4:04 P.M.

16 BEGIN DAY THREE, WEDNESDAY, FEBRUARY
17 13, 2013, 10:02 A.M.

18 BY THE COURT:

19 THE COURT: All right. Let the record reflect that
20 Mr. Monroe and Mr. Hughes are now present in the case
21 we're trying. Mr. Hughes, yesterday, made a motion, and
22 I've got the jury in the jury room. He made a motion on
23 Indictment Number 2012-GS-27-00189. The indictment was
24 true-billed as possession with intent to distribute.
25 It's been amended. In fact, the solicitor even told me

1 last night she still needed to amend it even more because
2 it still has both Schedule IV and Schedule II in the body
3 of the indictment. But the Solicitor chose to proceed
4 only on Schedule IV, Clonazepam, and that's
5 C/l/o/n/a/z/e/p/a/m, a Schedule IV drug.

6 Mr. Hughes made a motion for a directed verdict on
7 the issue of possession with intent to distribute.
8 During the overnight recess, I had Wanda Rowe, my court
9 reporter, re-play for me the testimony of Mr. Litchfield,
10 including State's Exhibits 4 and 5. I have reviewed
11 those with the court reporter in my chambers this morning
12 prior to commencing court. I grant the defendant's
13 motion and direct a verdict on the offense of possession
14 with intent to distribute. I will submit the lesser-
15 included offense of possession of a Schedule IV drug to
16 the jury.

17 I have denied Mr. Hughes' motion for a directed
18 verdict on the indictment charging the defendant with
19 trafficking in cocaine greater than 10 grams, less than
20 28, which is 2012-GS-27-00190. With that, and I've
21 informed the attorneys who listened to the tape of the
22 testimony with the Court in my chambers this morning
23 before I moved to re-sentencing, so they are aware
24 exactly of what the court reporter provided to me.

25 With that, I believe now we are ready to start.

1 Solicitor and Mr. Hughes, we haven't discussed timing
2 this morning or order of argument. I also want --

3 As to time, how long do you think you need, Mr.
4 Hughes?

5 MR. HUGHES: Your Honor, only on very rare occasions
6 have I ever gone over 25 minutes.

7 THE COURT: All right. I'll give you 25. You can do
8 it in 25?

9 MS. HENDERSON: Yes, your Honor.

10 THE COURT: You know, Ms. Henderson, I have a rule in
11 my Sunday school class, the Wesley Bible Class. You're
12 not, I know, familiar with my Sunday school class, but I
13 can tell you something about it. The age is ten years
14 older than I am, and I'm 63. And they read their lesson.
15 And when I say they read their lesson, they're always
16 more -- I'm a part-time teacher. They're always more
17 prepared than I am. And I work hard, usually late on
18 Saturday night to get ready to teach that class. And
19 I've found that if I go one minute past 20 minutes, I've
20 lost their interest, because they know more about it than
21 I do. So I caution you and Mr. Hughes that the juries
22 are not interested.

23 We had a lawyer recently, Judge Goodstein told me
24 about, that argued for an hour and a half, and four
25 people on the jury were snoring after 35 minutes.

1 I point that out because length does not necessarily
2 mean success.

3 All right. I'm assuming, Mr. Hughes, since you did
4 not put up any evidence in the trial of this case that
5 you're requesting that you be allowed to argue last. Is
6 that correct?

7 MR. HUGHES: Yes, sir.

8 THE COURT: All right. Solicitor, you'll argue
9 first. The defendant will argue last since he didn't put
10 up any evidence.

11 It is my intention to charge the following things:
12 Presumption of innocence, reasonable doubt, the duties of
13 the trial judge and jury, direct and circumstantial
14 evidence, credibility of witnesses, expert witnesses, the
15 failure of defendant to testify, criminal intent.

16 I have what I call a multiple charge charge, meaning
17 that they have to consider each indictment separately.
18 Each charge is a separate and distinct offense, and you
19 shouldn't be influenced by your decision on one by the
20 other.

21 I will charge trafficking in cocaine, more than 10
22 grams but less than 28 grams.

23 It's my understanding that you all agree to redact
24 the verbs that are in 44-53-37(C)(2)(a)(2), of sold,
25 manufactured, cultivated. Is that correct, Mr. Hughes?

1 MR. HUGHES: Yes, sir.

2 THE COURT: Is that correct, Solicitor?

3 MS. HENDERSON: Yes, your Honor.

4 THE COURT: All right. I will charge now possession
5 of Clonazepam, which is Code Section 44-53-378, but only
6 possession, and not possession with intent to distribute.

7 I will, obviously, charge both actual and a
8 definition of actual and constructive possession. I will
9 charge mere presence, and I will charge the hand of one
10 is the hand of all.

11 My law clerk is in the process of printing out a
12 verdict form, which I would like for both of you to
13 review. And if you'll come forward, please, and take a
14 look at it as soon as he gets it printed.

15 And first, Solicitor, are there any other requests to
16 charge from the State?

17 MS. HENDERSON: No, your Honor.

18 THE COURT: Any other requests to charge from the
19 defendant?

20 MR. HUGHES: No more requests to charge, your Honor.
21 I do have a housekeeping matter.

22 THE COURT: You do have what?

23 MR. HUGHES: One housekeeping matter.

24 THE COURT: Yes, sir.

25 MR. HUGHES: I have rested. I would like to make

1 sure that on the record that all my motions during the
2 trial and post the State's resting be renewed.

3 THE COURT: You want to make a motion that you made
4 at the close of the State's case at the close of all the
5 evidence for the record.

6 MR. HUGHES: Yes, sir.

7 THE COURT: On the same grounds.

8 MR. HUGHES: Yes, sir.

9 THE COURT: I granted one of your motions, now, this
10 morning, which was a direct verdict on PWID, Schedule IV.
11 I denied your motion on the trafficking in cocaine. And
12 they are noted for the record, and my rulings remain the
13 same. But they are noted as if made at close of all the
14 evidence, Mr. Hughes.

15 MR. HUGHES: And I'd also renew my motion for a
16 mistrial.

17 THE COURT: Well, I don't think you need to renew it.
18 Are you referring to the fact that where I offered you a
19 curative instruction, those grounds?

20 MR. HUGHES: Yes, sir.

21 THE COURT: Yes, sir, and I put that on the record
22 yesterday, Mr. Hughes. And once there, it'll be for the
23 appellate court to determine. I don't think you're
24 required to renew that, but I decline to change my
25 ruling. Your request for a mistrial is respectfully

1 denied.

2 MR. HUGHES: Thank you, your Honor.

3 THE COURT: Counsel approach.

4 OFF-THE-RECORD BENCH CONFERENCE.

5 PRESENT: THE COURT, MS. HENDERSON,

6 MR. HUGHES.

7 THE COURT: Is the State satisfied with the verdict
8 form?

9 MS. HENDERSON: Yes, your Honor.

10 THE COURT: Is the defendant satisfied with the
11 verdict form?

12 MR. HUGHES: Yes, your Honor.

13 THE COURT: All right, Counsel, I believe that's
14 everything now. I will tell the jury the reason we're
15 starting 30 minutes behind time is because I had
16 scheduled a re-sentencing of a 2008 case from Colleton
17 County, which I forgot I scheduled for 9:30 when I was
18 asked, or I would have told them to come back at 10:00
19 o'clock rather than 9:30 this morning. So I put the
20 delay entirely on myself, and not on you, because you
21 were not the architect of that.

22 Good morning, Dizzy. You okay? Don't turn around.
23 You know exactly who I'm talking to.

24 State ready to proceed?

25 MS. HENDERSON: Yes, your Honor.

1 THE COURT: Defendant ready to proceed?

2 MR. HUGHES: Yes, your Honor.

3 THE COURT: Bring us a jury, please. You'll get a
4 tap after 20 (indicating) to let you know to wrap it up
5 in five.

6 JURORS ENTER COURTROOM 10:12 A.M.

7 THE COURT: Good morning, Madam Foreperson. Good
8 morning, ladies and gentlemen. I hope everybody had a
9 pleasant evening. I'm aware it's about 30 minutes after
10 10:00. Let me tell you, this is Judge Buckner's fault.
11 Several weeks ago, I received an order from the Supreme
12 Court to re-sentence a person from a case I tried back in
13 2008, in Colleton County. And when the Supreme Court
14 asks you to re-sentence, I had that person brought to
15 Jasper, even though it was a Colleton County case, and it
16 was scheduled several weeks ago for 9:30.

17 I had forgotten yesterday when I asked you to be here
18 at 9:30 that I had that scheduled. My law clerk actually
19 reminded me on the way home last night. I've handed that
20 re-sentencing, and that's the reason we're starting
21 behind, because I had to do that before we could continue
22 this trial, so. I apologize for the delay. That's
23 entirely me trying to get work done. Had I realized I
24 had that scheduled, I'd had you come in a little later,
25 but I appreciate your being here on time and very much

1 appreciate your service. The delay was entirely on me.

2 Now, you've heard the evidence in this case, ladies
3 and gentlemen. We're now going to hear the final
4 arguments of the attorneys, followed by my charge to you
5 on the law.

6 There will first be an argument by counsel for the
7 State of South Carolina, followed by an argument by
8 counsel for the defendant. I ask that you give the
9 attorneys your careful consideration. No one in or out
10 of the courtroom during argument and charge.

11 Solicitor.

12 MS. HENDERSON: May it please the Court, your Honor.

13 THE COURT: Yes, ma'am.

14 MS. HENDERSON: Mr. Hughes.

15 CLOSING ARGUMENT ON BEHALF

16 OF THE STATE, MS. HENDERSON:

17 MS. HENDERSON: Good morning. Ladies and gentlemen,
18 let's talk about what happened on the night of April 10,
19 2012. Start with what Courtney Baniel told us. Now, we
20 know that he told us that Phillip came by and picked him
21 up because he wanted a licensed driver in the car with
22 him. We know they rode around Ridgeland, went to several
23 spots. He told you where they went, and that they were
24 on the way to take him home when they got pulled over.

25 Now, Mr. Hughes tried to make a big deal about the

1 route that they took, but there's more than one way to
2 get to Cooler's than going down Main Street.

3 He testified that, when the blue lights turned on,
4 Phillip grabbed the Crown Royal bag off the blinder and
5 threw it in his lap, and told him to take the charges.
6 When he said no, he said, *Don't play with me; take the*
7 *charges; I'm going to kill Sally and them kids.*

8 He told you he was scared. He told you he got out of
9 that car with his hands raised up in the air and let that
10 bag fall to the ground. And he did that because that's
11 what he's seen on T.V., put your hands up.

12 He never touched that bag. Why? Because those were
13 not his drugs. He didn't know what was in that bag until
14 the officer pulled the drugs out on the back of the car.

15 And the testimony that he gave you yesterday has
16 remained the same since he told law enforcement. Unlike
17 Phillip Monroe, who, at first, told you that the drugs
18 weren't his; they were all Courtney's. That's what he
19 told law enforcement.

20 Then he tells law enforcement, I'm going to be honest
21 with you; I'm going to be honest with you; they were
22 ours; we bought them together.

23 Finally, -- well, and not only did two officers
24 testify that he made that statement about I'll be honest
25 with you, the drugs were ours, you saw it on the video.

1 And you can watch that video again if you need to.

2 In addition, he told you where he got the pills from.
3 He told you he got those pills for someone, from a lady
4 named Tina.

5 Ladies and gentlemen, you're going to take those back
6 there with you. You can see for yourself the pills.
7 Name scratched off. You can take them back there with
8 you. You can see the cocaine. You're going to be able
9 to take this back there with you. He's charged with
10 trafficking, 10 to 28 grams of cocaine. You can take the
11 drug report back there with you. 27.97 grams of cocaine.

12 He told Investigator Litchfield he was going to cook
13 that cocaine into crack. And then, when being
14 interviewed by Brian Baird in Beaufort, he finally comes
15 completely clean and tells him those drugs were mine; I
16 threw them in Courtney's lap; Courtney knew nothing about
17 them. Which is the same thing Courtney has said all
18 along, and what he told you under oath yesterday.

19 Now, defense tried to make an issue out of the fact
20 that that interview wasn't recorded. Ladies and
21 gentlemen, there was no conspiracy not to record that
22 interview. The room wasn't equipped with recording
23 devices. Which you have not one, not two, but three law
24 enforcement officers with 50 years of experience between
25 the three of them, more than 50 years of experience

1 between the three of them, tell you under oath that he
2 made that statement; that he said to Investigator Baird,
3 *The drugs were mine; I threw them in Courtney's lap;*
4 *Courtney knew nothing about them.*

5 And as I told you, ladies and gentlemen, you can re-
6 hear any testimony you need to once you're back there.
7 You can see the evidence. Don't get confused by the
8 defense's attempt to distract you from the issues and
9 what really matters.

10 For example, the license. So what if his license
11 wasn't suspended. It was cured. But that's not why he
12 was pulled over and it's not why he went to jail that
13 night. It had nothing to do and had no effect on what
14 happened that night.

15 Same thing with the handcuffs and the double lock.
16 Defense tried to make an issue out of that. You heard
17 Investigator McIntosh explain, that's a standard
18 procedure. You're always supposed to double lock. It's
19 for the suspect's safety. No one testified that Courtney
20 tried to escape from his handcuffs. But regardless,
21 again, that had nothing to do with the fact that these
22 were Phillip Monroe's drugs. And he confessed to
23 ownership of those drugs not once, but twice, after
24 Courtney refused to. And why did he refuse to admit to
25 them? Because they weren't his.

1 Now, remember, I told you I would bring you back to
2 what I told you in the very beginning of this trial, and
3 that's that Phillip Monroe is a drug dealer. Phillip
4 Monroe is a drug dealer that wanted a hard-working father
5 of three to go to jail for his crime.

6 Ladies and gentlemen, it didn't work, and that's why
7 were here now. And I'm asking you to come back with a
8 guilty verdict on both of those charges, trafficking in
9 cocaine, ten to 28; and possession of a controlled
10 substance. Because, ladies and gentlemen, Phillip Monroe
11 is guilty beyond a reasonable doubt.

12 Thank you.

13 THE COURT: Mr. Hughes.

14 MR. HUGHES: May it please the Court.

15 THE COURT: Proceed.

16 MR. HUGHES: Ms. Henderson.

17 CLOSING ARGUMENT ON BEHALF

18 OF DEFENDANT, MR. HUGHES:

19 MR. HUGHES: Made a promise to you yesterday. I told
20 you it was not going to be like anything you ever saw on
21 television. I also told you that parts of it were
22 actually going to be boring. I was right. Now, I paid
23 attention not only what the witnesses were saying. Also,
24 paid attention to what you were doing. You all paid
25 attention, and I do appreciate that very, very much.

1 You took an oath yesterday to well and truly try the
2 defendant at the Bar. But nothing in that oath says you
3 have to give up your common sense. Ms. Henderson is
4 right. Courtney Baniel's statement has not changed from
5 the second day after the arrest. Now, why is that?
6 Because Courtney Baniel started lying, and didn't change
7 his lie to reflect the facts.

8 Phillip Monroe is arrested for, among other things,
9 driving under suspension. So that's the reason why
10 Courtney is in the car now, because he doesn't have a
11 license. Therefore, he needed a licensed driver. Not
12 the truth, but that's the reason why Courtney told it.
13 Because he knew that Phillip was in trouble because of
14 his license. Therefore, that's the reason I was in the
15 car is because Phillip needed a driver. Well, if Phillip
16 needed a driver, why wasn't Courtney driving?

17 Now, I had no idea there were drugs in the car.
18 Officer Long testified he walks up to the car and he
19 smells marijuana.

20 Second lie about Courtney. I didn't know what was in
21 that bag. He jumps out of the car with his hands up. He
22 knew what was in the bag.

23 We were going from Bay Tree to Cooler's Store. Now,
24 if you're going home, you're going directly home. Bay
25 Tree is over here. Cooler's Store, straight out 462, or

1 whatever that number is now. It used to be 278. Showing
2 my age. It doesn't involve driving north on Logan
3 Street, and then turning onto Adams Street.

4 Now, I don't know how many of you know Ridgeland, but
5 Logan Street runs north and south. It's on the east side
6 of town. It's the first road, if you're heading on Main
7 Street, going toward the interstate, it's the first road
8 you run into after you go through the red lights at Jacob
9 Smart Boulevard or 17.

10 Now, I asked Detective Litchfield, *What was on Adams*
11 *Street.* Adams Street is where the stuff to cook crack
12 cocaine was located. Phillip told Detective Litchfield
13 that after Detective Litchfield had paid him, put money
14 on his book.

15 This is 27.9 [sic] grams of cocaine. I have
16 absolutely no idea what the street value is, but if you
17 mix it with baking soda and do certain things to it, you
18 can make crack cocaine, which brings in a lot more money.

19 Now, why is Courtney Baniel in that car, if this
20 isn't his? Courtney Baniel wants this cocaine made into
21 crack cocaine, so he gets Phillip Monroe to take him to
22 where he can cook crack cocaine.

23 Phillip Monroe is not guilty of trafficking. He is
24 guilty of conspiracy to manufacture crack cocaine.
25 That's not what he's on trial for. That's something for

1 later. That's not your call. Trafficking is what you
2 are here for. Trafficking and possession of something
3 which I have absolutely no idea how to pronounce. I
4 don't even know the street name of it. Clonazepam. I
5 don't even know what this does. But the solicitor is
6 right. The State has ruled that is a Schedule IV
7 narcotic. And that was located -- where is the State's 1
8 -- in this. That was located in Courtney Baniel's
9 possession. Pills, we have no idea what they do.
10 Cocaine to be cooked into crack. And a drug result that
11 says what it is.

12 Now, the State has made a lot of comments about the
13 statements that my client has made. He starts off the
14 drugs weren't mine. Then the drugs were ours. He was
15 going to get a cut of the crack. That's conspiracy to
16 manufacture and possess. That's something that comes up
17 later, at another time and another place. That's not
18 what you're here for. You're here for the trafficking.

19 Now, the State thinks that I am going to say there is
20 a conspiracy between law enforcement about that final
21 statement. No. Law enforcement officers are hard-
22 working, underpaid individuals, but they hear what they
23 want to hear.

24 The movie that I used to love to watch was *My Cousin*
25 *Vinny*. In *My Cousin Vinny*, there is a scene. Young man

1 is accused of murder. He's being interviewed by law
2 enforcement. The law enforcement -- the officer says, *Is*
3 *that when you shot the clerk?* This is the first time the
4 man had even heard about this. He goes, *I shot the*
5 *clerk? I shot the clerk?*

6 Later, in court, the law enforcement officer is seen
7 on the stand, just like law enforcement did yesterday,
8 and then the defendant said, *I shot the clerk.* He then
9 repeated himself and said, *I shot the clerk.*

10 The reason why I'm not happy with the fact that we
11 don't have a video of that final, so-called confession is
12 because words change meaning by the way you say them. We
13 didn't hear the inflection. We didn't hear how he said
14 what he said. And we didn't hear the exact words he
15 said.

16 Law enforcement did not quote him exactly. They said
17 he said this, but he said it in such a manner that they
18 say the way he said it isn't the way a normal person
19 talks. We didn't hear what Phillip Monroe said on April
20 30th of last year, because, for some reason or another,
21 their cell phones weren't working or they didn't even
22 think that they needed it. Like I said, this is not a
23 conspiracy by law enforcement. I wanted to hear exactly
24 what was said. I wanted you to hear exactly what was
25 said, because you don't know what was said without

1 hearing it.

2 That's one thing which I'm very proud of in Ridgeland
3 in Jasper County. We have the video capabilities. We
4 have the chance for the jury to see exactly what happened
5 and exactly what was said. We have Phillip Monroe
6 stating, *No, the drugs weren't mine.* That was on the
7 first interview. Then we have him stating, *Ah, the drugs*
8 *were ours; we were going -- I going to go cook some crack*
9 *for Courtney.* Well, this is after Detective Litchfield
10 had paid him. And then we have the April 30th statement,
11 which we know what law enforcement heard, but we don't
12 know what was said.

13 Ladies and gentlemen, my client, Phillip Monroe, is
14 guilty of a lot of things. What he's not guilty of is
15 trafficking in crack cocaine. He is not guilty of
16 possessing these pills. Because these pills and this
17 cocaine that was going to be turned -- excuse me -- he's
18 not trafficking in cocaine, because this was going to be
19 turned into crack. These belong to Courtney, and they
20 were all in this bag, which was in Courtney's possession.

21 The charges Phillip is guilty of are not your all's
22 to do anything with. That's for a later place in time.
23 He is not guilty of trafficking in cocaine. He is not
24 guilty of possession of these pills.

25 Thank you for your time, for your energy, for your

1 presence, and for your use of your common sense.

2 CHARGE, BY THE COURT:

3 THE COURT: Madam Foreperson, ladies and gentlemen of
4 the jury, it is now my duty to charge you on the law of
5 this case. The State of South Carolina has charged
6 Phillip Monroe with trafficking in more than 10 grams but
7 less than 28 grams of cocaine. That's Indictment Number
8 2012-GS-27-190.

9 The State also has charged the defendant, Phillip
10 Monroe, with possession of a Schedule IV drug, and the
11 pronunciation is Clonazepam, C/l/o/n/a/z/e/p/a/m. That's
12 in Indictment 2012-GS-27-189.

13 I remind you, first of all, that the fact that the
14 defendant was indicted, the fact the defendant was
15 arrested, the fact the defendant was charged in this case
16 is not evidence in this case, nor does it create any
17 presumption or inference of guilt. The indictment is
18 simply the formal, written instrument, which contains the
19 charges made against the defendant; that the indictment
20 is the formal document by which the case is brought into
21 this court, Court of General Sessions for Jasper County.

22 Now, to the indictments, the defendant has pled not
23 guilty. And that plea by the defendant of not guilty
24 places the burden on the State of South Carolina to prove
25 the defendant guilty beyond a reasonable doubt.

1 A person charged with committing a criminal offense
2 in South Carolina is never required to prove himself
3 innocent. I charge you, ladies and gentlemen of the
4 jury, that it is an important rule of the law that a
5 defendant, in a criminal trial, no matter what the
6 seriousness may be, will always be presumed to be
7 innocent of the crime for which the indictment was
8 issued, unless guilt has been proven by evidence
9 satisfying you of that guilt beyond a reasonable doubt.

10 This presumption of innocence does not end when you
11 begin your deliberations, but it accompanies every
12 defendant throughout a trial, until you, the jury, reach
13 a verdict of guilt based on evidence introduced during
14 the trial of the case, satisfying you of that guilt
15 beyond a reasonable doubt.

16 The presumption of innocence is not a mere legal
17 theory. It is not just a legal phrase. It is a
18 substantial right to which ever defendant is entitled,
19 unless you, the jury, are satisfied from the evidence of
20 the defendant's guilt beyond a reasonable doubt.

21 What is a reasonable doubt in the law? A reasonable
22 doubt is the kind of doubt that would cause a reasonable
23 person to hesitate to act. The State has the burden of
24 proving the defendant guilty beyond a reasonable doubt.

25 Some of you may have served as jurors in a civil case

1 where you were told that it was only necessary to prove
2 that a fact is more likely true than not true. In a
3 civil case, we call that burden of proof by the greater
4 weight or the preponderance of the evidence. In a
5 criminal case, such as the case here, the State's proof
6 must be more than that. It must be beyond a reasonable
7 doubt. Proof beyond a reasonable doubt is proof that
8 leaves you, ladies and gentlemen of the jury, firmly
9 convinced of the defendant's guilt.

10 There are, however, very few things in this world
11 that we know with absolute certainty. And in criminal
12 cases, the law does not require proof that overcomes
13 every possible doubt. If, based on your consideration of
14 the evidence, you are firmly convinced that the defendant
15 is guilty of the crime or crimes charged, you must find
16 the defendant guilty.

17 On the other hand, if you think there's a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of the doubt and find the
20 defendant not guilty.

21 I remind you, ladies and gentlemen, that during this
22 trial, I told you at the outset, you and I have had
23 certain duties to perform. As the trial judge, it has
24 been my responsibility to preside over the trial of the
25 case, to rule on the admissibility of evidence offered

1 during the trial of the case; and also, I have a duty to
2 charge you the law at the conclusion of the case.

3 I remind you that you are to consider, ladies and
4 gentlemen of the jury, only the competent evidence before
5 you. If there was any testimony ordered stricken from
6 the record in this case during this trial, you must
7 disregard that testimony. You are to consider only the
8 testimony which has been presented from that witness
9 stand, any exhibits which have been introduced during the
10 trial of the case and made a part of the record; and if
11 there were any stipulations of counsel.

12 As a trial judge, as I told you, I have the
13 additional duty to charge you the law that applies to
14 this case. And as the presiding judge, I'm the sole
15 judge of the law in this case. And it is your duty, as I
16 told you at the outset of the trial, to accept and to
17 apply the law as I now state it to you. So, if any of
18 you on this jury already have some opinion or some idea
19 as to what you think the law is, or even what you feel
20 the law ought to be, and it does not agree with what I
21 now tell you the law is, you must put aside any of your
22 preconceived ideas or opinions, because each of you took
23 an oath to accept and to apply the law exactly as I now
24 state it to you.

25 In every case tried in this courtroom with a jury,

1 you, the members of the jury, become the sole and the
2 exclusive judges of the facts in the case based on
3 evidence introduced during the trial of the case. A
4 trial judge, such as myself, cannot intimate, state,
5 comment on, or make any statement to you, a trial jury,
6 about the facts in the case.

7 So, ladies and gentlemen, since you, the jury, are
8 the sole judges of the facts in this case, you are not to
9 infer from what I have said during the progress of this
10 trial in ruling upon the admissibility of evidence or
11 anything that I say now during the course of this
12 instruction to you that I have any opinion whatsoever
13 about the facts in this case. The law does not allow me
14 to have an opinion about the facts in this case. This is
15 a matter that is solely for you, the members of the jury,
16 based on evidence introduced during the trial of the
17 case. As jurors, it becomes your duty to determine the
18 effect, the value, the weight, and ultimately, the truth
19 of the evidence that's been presented during the trial of
20 this case.

21 Now, there are two types of evidence that are
22 generally presented in a trial. And like many things in
23 the law, we have names for those two general types of
24 evidence. We call the two types of evidence, which are
25 generally presented during the trial, direct evidence and

1 circumstantial evidence. Direct evidence is the
2 testimony of a person who claims to have actual knowledge
3 of a fact, such as an eyewitness to an event. Direct
4 evidence is evidence which immediately establishes the
5 main fact to be proved.

6 Circumstantial evidence, as contrasted with direct
7 evidence, is proof of a chain of facts and circumstances
8 indicating the existence of a fact. Circumstantial
9 evidence is evidence which immediately establishes a
10 collateral fact from which the main fact may or may not
11 be inferred. Circumstantial evidence, therefore, ladies
12 and gentlemen of the jury, is based on inference, and not
13 on personal knowledge or personal observation.

14 The law makes absolutely no distinction between the
15 weight or the value to be given to either direct evidence
16 or circumstantial evidence. Nor is any degree of
17 certainty or greater degree of certainty required of
18 circumstantial evidence than of direct evidence.

19 Ladies and gentlemen of the jury, you, as a juror,
20 when I instruct you to do so, should weigh, consider, and
21 evaluate all the evidence in this case, both direct and
22 circumstantial. After weighing all the evidence in this
23 case, both direct and circumstantial, if you are not
24 convinced of the guilt of the defendant beyond a
25 reasonable doubt, you must find the defendant not guilty.

1 On the other hand, after weighing, considering, and
2 evaluating all the evidence in this case, if you are
3 convinced of the guilt of the defendant beyond a
4 reasonable doubt, you must find the defendant guilty.

5 Necessarily, as I told you at the outset, you will
6 have to determine the credibility or believability of the
7 witnesses who have testified in this case. It becomes
8 your duty as jurors to analyze. It becomes your duty to
9 evaluate the evidence and determine which evidence
10 convinces you of its truth.

11 In determining the believability of the witnesses who
12 have testified in this trial, ladies and gentlemen of the
13 jury, you may believe one witness over several witnesses,
14 or several witnesses over one witness. You may believe a
15 part of the testimony of a witness, and reject the
16 remaining part of the testimony of that same witness.
17 You may believe the testimony of a witness in its
18 entirety, or you may reject the testimony of a witness in
19 its entirety.

20 You may consider whether any witness has exhibited to
21 you any interest, any bias, any prejudice, or other
22 motive in this case. You may also consider, as I told
23 you, the appearance and manner of the witness while the
24 witness was on the witness stand, which we call the
25 demeanor of the witness, in judging the credibility or

1 the believability of the witnesses who have testified
2 during the trial of the case.

3 And as I instructed you during the trial, ordinarily,
4 a witness cannot get on the witness stand and say my
5 opinion about this is so and so. The *Rules of Evidence*
6 ordinarily do not permit witnesses to testify to opinions
7 or conclusions. An exception to this rule exists for
8 those witnesses who we call expert witnesses, a witness
9 who, by education, training, or experience, claims to
10 have become an expert in some art, science, or
11 profession, may, if qualified by the court, give an
12 opinion as an expert as to the subject the witness claims
13 to be an expert in, and may also give the reasons for
14 their opinion.

15 You should consider any expert opinion given by a
16 witness just like any other evidence, give it the weight
17 you think it deserves. If you decide that an expert
18 opinion is not based on sufficient education and
19 experience, or if you decide that the reasons given in
20 support of the opinion are not sound, or that the opinion
21 is outweighed by other evidence, you may disregard the
22 opinion. An expert opinion's testimony is to be given no
23 greater weight than that of other witnesses simply
24 because the witness is an expert.

25 I charge you and instruct you and emphasize the fact

1 that the defendant did not testify is not a factor to be
2 considered by you in any way in your deliberations and in
3 your consideration of the guilt or innocence of the
4 defendant. I charge you that that fact must not be
5 considered by you in any manner whatsoever during your
6 deliberations. A defendant, every defendant, has the
7 constitutional right to remain silent. And the assertion
8 of this right must not be considered against a defendant
9 in your deliberations.

10 I repeat, under the oath, which each of you took, you
11 are to draw no conclusion whatsoever from the fact that
12 the defendant in this case did not testify. The fact
13 that the defendant did not testify should not even be
14 discussed by either of you in your jury room.

15 The burden of proof, as I have stated to you, is on
16 the State of South Carolina. The defendant is not
17 required to prove his innocence. The burden of proof
18 remains on the State to prove guilt in this case from
19 evidence satisfying you, the jury, of that guilt beyond a
20 reasonable doubt.

21 Now, in order to establish criminal liability or
22 criminal responsibility, criminal intent is required.
23 For example, -- and I'm talking about in general -- the
24 mental state required to be proven by the State for any
25 particular crime, and I'm going to give you examples of

1 criminal intent, it might be purpose, intent, knowledge,
2 recklessness, and even in some cases, criminal
3 negligence. Those are just examples of criminal intent.

4 Criminal intent must be proven by the State beyond a
5 reasonable doubt. Criminal intent is always a matter
6 that must be determined by the jury from the
7 circumstances surrounding the situation based on evidence
8 introduced during the trial of the case.

9 Now, there is no way for anyone to prove intent to a
10 mathematical certainty. There is no way that medical
11 science can dissect a person's brain and determine what
12 that person had in mind. So, the law says that criminal
13 intent may be inferred from the circumstances shown to
14 have existed, based on evidence introduced during the
15 trial of the case. This, ladies and gentlemen, by
16 inference, from the evidence, is how you make a
17 determination as a jury of whether or not any element in
18 any crime requiring intent was present.

19 It is not necessary to establish intent by direct or
20 positive evidence, but intent, criminal intent, may be
21 established by inference in the same way as any other
22 act, by taking into consideration the acts of the parties
23 and all the facts and circumstances of the case, based on
24 the evidence introduced during the trial of the case.

25 Criminal intent is a mental state. It's conscious

1 wrongdoing. It is up to you, the jury, from the
2 evidence, to determine what the defendant intended to do
3 based on evidence introduced during the trial of the
4 case.

5 I charge you, ladies and gentlemen, that mere
6 presence at a scene, a crime scene, is not sufficient to
7 prove someone guilty of a crime. A defendant's presence
8 where a crime is being committed or mere association with
9 a person who commits a crime, does not make a defendant
10 an accomplice or an aider or abettor of the person
11 committing the crime.

12 The burden is on the State to prove every element of
13 the crime charged. If you find, after reviewing all the
14 evidence, that the State has proved that the defendant
15 was only present at the scene of the crime, and they have
16 not proven beyond a reasonable doubt any other
17 participation in the crime, then you must find the
18 defendant not guilty. The law is that proof of at the
19 scene of the crime is not sufficient to find someone
20 guilty.

21 Now, if a crime is committed by two or more persons
22 who are acting together in committing a crime, the act of
23 one is the act of all. A person who joins with another
24 to commit an unlawful act is criminally responsible for
25 everything done by the other person, which happens as a

1 probable or a natural consequence of the acts done in
2 carrying out a common plan and purpose.

3 For example, two people can be guilty of killing
4 another person when only one of the two had a gun, there
5 was only one bullet, and only one of the two fired the
6 shot that caused the death. If two or more people are
7 together, acting together, assisting each other in
8 committing the offense, the act of one is the act of all.
9 Or, as it is sometimes said, the hand of one is the hand
10 of all.

11 Prior knowledge that a crime is going to be committed
12 without more is not sufficient to make a person guilty of
13 that crime. Mere knowledge that another person is going
14 to commit a crime, even if the defendant is present when
15 the crime is committed, is not sufficient to convict the
16 defendant as a principal. Guilt as a principal is shown
17 by actual or constructive presence at the scene as a
18 result of prior arrangement.

19 Therefore, a finding of a prior arrangement plan or a
20 common scene is necessary for a finding of guilt as a
21 principal. The State must prove beyond a reasonable
22 doubt by competent evidence the theory of the hand of one
23 is the hand of all.

24 A principal in the crime is one who is actually -- he
25 either actually commits the crime or is present, aiding,

1 abetting, or assisting in committing the crime. When a
2 person does an act in the presence of and with the
3 assistance of another, the act was done by both. Where
4 two or more acting with a common plan are present at the
5 commission of the crime, it does not matter who actually
6 commits the crime, all are guilty. The hand of one is
7 the hand of all.

8 Present at the commission of a crime means to be
9 sufficiently near to aid and abet and assist in the
10 commission of a crime. However, mere presence at the
11 scene of a crime is not sufficient to convict a person as
12 a principal on the theory of aiding and abetting. Intent
13 is also, obviously, a necessary element, for there must
14 have been a common desire or intent to commit the crime,
15 and the crime must have been committed pursuant thereto
16 with the person aiding and abetting by some overt act.

17 Intent means intending the result which actually
18 occurs, not accidentally or involuntarily. Intent may be
19 shown by acts and conducts of the defendant. The State
20 must prove these elements, of course, beyond a reasonable
21 doubt.

22 Now, ladies and gentlemen, there are two indictments
23 in this case. I'm holding them up for you right now in
24 my hand. And they charge different offenses against the
25 defendant, Phillip Monroe. The charges are, as I told

1 you at the outset of my charge, Number 1, that the
2 defendant, Phillip Monroe, is charged with possession of
3 Clonazepam, Schedule IV drug in one indictment. He's
4 also charged with trafficking in more than 10 grams, but
5 less than 28 grams of cocaine in the other indictment.

6 Each charge in these indictments is a separate and
7 distinct offense. You must decide each charge separately
8 as the jury on the evidence and the law that applies to
9 it, uninfluenced by your decision as to any other charge.

10 The verdict form that I will give you, Madam
11 Foreperson, ladies and gentlemen of the jury, will have
12 further instructions on this, but you will be asked to
13 write a separate verdict of guilty or not guilty for each
14 charge following the instructions that I'm giving you now
15 and on your verdict form.

16 I'll now define the offenses for you under the law.
17 Defendant is charged with trafficking in a more than 10
18 grams but less than 28 grams of cocaine. We call that
19 trafficking in cocaine. The State must prove for this
20 offense beyond a reasonable doubt that the defendant
21 knowingly delivered, purchased, brought into this State,
22 provided financial assistance, or otherwise aided,
23 abetted, attempted or conspired to purchase or bring into
24 this state, or was knowingly in actual or constructive
25 possession, knowingly attempted to become in actual or

1 constructive possession of cocaine.

2 Possession may be either actual or constructive.
3 Actual possession means that the cocaine was in the
4 actual physical custody of the defendant. Constructive
5 possession means that the defendant had dominion and
6 control or the right to exercise dominion or control over
7 either the cocaine itself or the property on which the
8 cocaine was found.

9 Mere presence at the scene where the drugs were found
10 is not enough to prove possession. Actual knowledge of
11 the presence of the cocaine is strong evidence of intent
12 to control its disposition or use.

13 The defendant's knowledge and possession may be
14 inferred when a substance is found on property under the
15 defendant's control. However, this inference is simply
16 an evidentiary fact to be taken into consideration by
17 you, along with all the other evidence in the case, and
18 to be given the weight you decide it should have.

19 I charge you, ladies and gentlemen, that two or more
20 persons may have joint possession of a drug. For the
21 offense of trafficking in cocaine greater than 10 grams,
22 less than 28 grams, the State must also prove, beyond a
23 reasonable doubt, that the amount of the cocaine, or any
24 mixture containing cocaine was 10 grams or more, but less
25 than 28 grams.

1 Defendant is also charged in a second indictment with
2 possession of Clonazepam, Schedule IV under the code of
3 law of South Carolina drug.

4 To prove possession for this, the State must prove
5 beyond a reasonable doubt that the defendant had both the
6 power and the intent to control the disposition or use of
7 the Clonazepam. Possession may either be either actual
8 or constructive. Actual means that the Clonazepam was in
9 the actual, physical custody of the defendant, based on
10 the evidence. Constructive possession means that the
11 defendant had dominion and control or the right to
12 exercise dominion or control over either the Clonazepam
13 itself or the property on which the Clonazepam was found.
14 Mere presence, however, at the scene where the drugs were
15 found is not enough to prove possession. Actual
16 knowledge of the presence of the Clonazepam is strong
17 evidence of the defendant's intent to control its
18 disposition or use. The defendant's knowledge and
19 possession may be inferred when a substance is found on
20 property under the defendant's control. However, this
21 inference is simply an evidentiary fact to be taken into
22 consideration by you, along with the other evidence in
23 this case, and is to be given the weight you decide it
24 should have.

25 Now, Madam Foreperson, I told you I would prepare a

1 verdict form for you. Pay absolutely no attention to the
2 order in which I wrote the forms of verdict. I obviously
3 had to write one before the other, so the order has no
4 significance whatsoever. I put the title of the case at
5 the top of your verdict form, Madam Foreperson.

6 It says: *State of South Carolina, County of Jasper,*
7 *Court of General Session*, which means criminal court.
8 And has the indictments numbers, 2012 at 189, and 2012 at
9 190.

10 It then has: *State of South Carolina versus Phillip*
11 *Monroe, Defendant.*

12 Has the words *Verdict* written in the caption form.

13 There are two questions on your verdict form, Madam
14 Foreperson and ladies and gentlemen of the jury.

15 Question 1:

16 *We, the jury, by unanimous consent, find*
17 *defendant, Phillip Monroe, in Indictment Number*
18 *2012-GS-27-00189, the first form of verdict*
19 *under Question 1, guilty of possession of*
20 *Clonazepam, a Schedule IV drug.*

21 If that be your form of verdict, Madam Foreperson,
22 you would check on the line beside that form of verdict,
23 guilty.

24 The second form of verdict under Question 1:

25 *Not guilty of possession of Clonazepam,*

1 a *Schedule IV* drug.

2 If that be your form of verdict, you would check on
3 the line beside that form of verdict for the jury, Madam
4 Foreperson.

5 You must find one form of verdict or the other. You
6 cannot find both under Question 1.

7 Under Question 2, on the verdict form:

8 *We, the jury, by unanimous consent, find*
9 *the defendant, Phillip Monroe, in Indictment*
10 *Number 2012-GS-27-190, the first form of verdict,*
11 *guilty of trafficking in more than 10 grams, but*
12 *less than 28 grams of cocaine.*

13 If that be your form of verdict, Madam Foreperson,
14 you would place a checkmark on the line beside that form
15 of verdict under Question 2 on your verdict form.

16 Second form of verdict under Question 2 is:

17 *Not guilty of trafficking in more than*
18 *10 grams, but less than 28 grams of cocaine.*

19 If that be your form of verdict, you would check
20 beside that form of verdict under Question 2 on your
21 verdict form.

22 You must find one form of verdict or the other under
23 Question 2. You cannot find both. It must be either/or.
24 And I have an *or* between each form of verdict on your
25 verdict form.

1 When you have filled out the appropriate spaces on
2 your verdict form, Madam Foreperson, you will sign your
3 name on the line where it says *Foreperson*. I have
4 already put in today's date. You would then knock on
5 your jury room door when you've reached a verdict and
6 completed your verdict form, and we will receive you back
7 in the courtroom in order for you to publish your
8 verdict.

9 Now, Madam Foreperson and ladies and gentlemen of the
10 jury, your verdict must be unanimous. That is, it must
11 be the verdict of each and every one of you. All twelve
12 of you must agree on a verdict.

13 Madam Foreperson, ladies and gentlemen of the jury, I
14 have now charged you on the law in order to help guide
15 you to a fair and just result in this case. As I've told
16 you throughout the trial, you're the judges of the facts,
17 based on evidence introduced during the trial of the case
18 and based on your determination of the facts, and now the
19 law, as I have explained it to you, you're soon going to
20 being your deliberations.

21 Each of you were selected on this jury as fair and
22 impartial jurors. You have no friends to reward. You
23 have no enemies to punish. You are sworn in your oath to
24 fairly and impartially try and determine the facts of
25 this case, based on the evidence introduced during the

1 trial of the case. And when you comply with your oath to
2 do so, no one can criticize your verdict.

3 You are to decide this case based solely on the
4 testimony from that witness stand, any exhibits which
5 have been introduced into evidence during the trial of
6 this case, and if there were any stipulations, and
7 nothing else. You must decide the issues in this
8 proceeding without any bias or prejudice towards either
9 party to this case. None of you on this jury can allow
10 yourself to be governed by prejudice for or against any
11 person, by public opinion, or by any other arbitrary
12 factor that is not in evidence in this case such as
13 emotion or you're feelings.

14 Both the defendant and the State of South Carolina
15 have the absolute right to expect that each of you on
16 this jury will carefully and impartially consider all of
17 the evidence in this case, and that you will follow the
18 law as I have instructed it to you to be in reaching your
19 verdict in this case.

20 Now, ladies and gentlemen, I'm going to ask you if
21 you would briefly -- I hope this will be brief. I don't
22 want you to begin your deliberations yet. But I'm going
23 to ask you to go to your jury room in order that I'll
24 have a chance to review to see if I need to give you any
25 additional charge.

1 Do not being your deliberations. When it is time for
2 you to being your deliberations, I will give Josephine
3 the verdict form and all of the exhibits which have been
4 introduced into evidence during the trial of the case,
5 and have her bring the verdict form in to you, along with
6 All exhibits, and tell you, you may then commence
7 deliberations.

8 I'm going to ask you to retire to the jury room at
9 this time. My alternate jurors remain in the courtroom
10 with me. Please retire to your jury room.

11 JURORS LEAVE COURTROOM 11:06 A.M.

12 THE COURT: All right, sir, ma'am, I want to thank
13 you for your service. I've got some good -- I told you I
14 was going to get you home early this week. Nobody became
15 ill or for some reason could not continue to serve. This
16 concludes your service in this case, and this also
17 concludes your service for the week. You are now, if
18 you'll listen to me, you are now exempt for jury service,
19 even if you're chosen for three years, by virtue of your
20 service. And we'll, of course, be mailing you, Margaret,
21 that exorbitant check, right, Margaret?

22 MADAM CLERK: Yes, sir.

23 THE COURT: That we pay our jurors. I understand
24 we're now up to?

25 MADAM CLERK: Ten dollars a day.

1 THE COURT: Ten dollars a day. We realize that's
2 inadequate, but we really do appreciate your service.

3 Now, do all of you have your belongings? You didn't
4 leave anything in the jury room.

5 JUROR: Keys.

6 THE COURT: Keys. Jo, go get the keys.

7 Now, if anybody needs a work excuse for serving on
8 the jury this week, where do they need to go, Margaret?

9 MADAM CLERK: Go down to the clerk's office, sir.

10 THE COURT: Downstairs to the clerk's office. We'll
11 by happy to provide you with a work excuse for your
12 service on the jury this week. I can't let you go back
13 in the jury room now. However, -- and here are your
14 keys, ma'am -- if you need that work excuse, go
15 downstairs. We're going to mail you your check at the
16 address that we served you with the summons. This
17 concludes your service. You may leave the courtroom
18 through the middle aisle. Everyone else remain seated
19 while the jury's leaving.

20 OFF-THE-RECORD DISCUSSION BETWEEN

21 THE COURT AND MADAM CLERK.

22 THE COURT: Ma'am, ma'am, sir, the clerk's reminding
23 me if you would like to have a seat and watch the end of
24 the trial or the verdict, we'd be happy for you to stay.
25 That's entirely up to you if whether you want to or not.

1 You can leave or remain as you desire. Just have a seat.

2 Any exceptions or additions to the Court's charge for
3 the State of South Carolina.

4 MS. HENDERSON: None from the State, your Honor.

5 THE COURT: Any exceptions or additions to the
6 Court's charge from the defendant?

7 MR. HUGHES: No, your Honor.

8 THE COURT: I'd ask that counsel come forward,
9 examine the exhibits, certify that you're satisfied the
10 court reporter has all the exhibits and that you have no
11 objection to my bailiff taking the exhibits and the
12 verdict form into the jury and telling the jury they may
13 now commence their deliberations.

14 REPORTER'S NOTE: REVIEWING EXHIBITS

15 WITH MS. HENDERSON AND MR. HUGHES.

16 THE COURT: Is the State so satisfied? No, those are
17 going to have to stay here because they can't play that
18 back there.

19 MS. HENDERSON: Okay. So you want to leave them?

20 THE COURT: Unless you all want to send it back for
21 some reason to remind them.

22 MR. HUGHES: No.

23 THE COURT: You can do that, but they're not going to
24 be able to play it. I should tell them that if they want
25 to view that, they're going to have to come back in the

1 courtroom, because they don't have the equipment back
2 there; do they, Margaret?

3 MADAM CLERK: No, sir.

4 THE COURT: So it's up to you all. What do you all
5 agree to? That would be 4 and 5. Is that right? You
6 want them back there or not, Mr. Hughes?

7 MR. HUGHES: Doesn't matter to me, Judge. Whichever
8 way.

9 THE COURT: How about the State?

10 MS. HENDERSON: I say we just send them back. Send
11 them everything.

12 THE COURT: All right. Send them back. You all want
13 me to bring the jury back and tell them they have to come
14 back if they want to view it, because they're not going
15 to know if you just send them the disc. I assume they
16 might. Somebody might know. They know we've got the
17 equipment out here, because they've watched it, but they
18 don't know they don't have the equipment back there.

19 MR. HUGHES: Or Jo could just tell them.

20 MS. HENDERSON: Or Jo can tell them.

21 THE COURT: Hum?

22 MR. HUGHES: I have no objection to Jo telling them.

23 THE COURT: All right. Let Jo tell them? All right.
24 Tell Jo as to 4 and 5. You all both agree we've got all
25 the exhibits. Is that right, Solicitor?

1 MS. HENDERSON: Yes, your Honor.

2 THE COURT: Is that right, Mr. Hughes?

3 MR. HUGHES: Yes, sir.

4 THE COURT: And you neither one have any objection to
5 Josephine taking the verdict form and all the exhibits in
6 and Josephine telling the jury as to State's 4 and 5, if
7 they want to view it, they have to come back in the
8 courtroom.

9 MS. HENDERSON: No objection.

10 MR. HUGHES: No objection.

11 THE COURT: All right, Josephine, go ahead on, give
12 it to them. All right. We'll be -- we're going to take
13 a break at this time. We're going to be at ease while we
14 await the jury's verdict. I understand, Solicitor, we've
15 got a number of non-jury matters. Is that right?

16 MS. VAUX: That's correct, your Honor.

17 THE COURT: All right. But we're going to take a
18 break at this time while we await the jury's verdict.
19 Defendant remains in custody. Thank you very much.

20 JURORS BEGIN DELIBERATIONS.

21 OFF THE RECORD 11:12 A.M.

22 VERDICT:

23 THE COURT: Counsel, I understand from the bailiff
24 that the jury's reached a verdict. Anything from the
25 State before we publish the verdict?

1 MS. HENDERSON: No, your Honor.

2 THE COURT: From the defendant?

3 MR. HUGHES: No, your Honor.

4 THE COURT: Would you bring us the jury, please, Jo.

5 JURORS ENTER COURTROOM 11:44 A.M.

6 THE COURT: Madam Clerk, do you want to do it, or do
7 you want me to?

8 MADAM CLERK: Madam Forelady, I understand you've
9 reached a verdict?

10 MADAM FOREPERSON HARRIS: Yes, we have.

11 THE COURT: Madam Clerk, you may publish the verdict.

12 MADAM CLERK: *The State of South Carolina,*
13 *County of Jasper, The State of South Carolina*
14 *versus Phillip Monroe, Indictment Number*
15 *2012-GS-27-189 and 2012-GS-27-00190, We,*
16 *the jury, by unanimous consent, find the*
17 *defendant, Phillip Monroe, in Indictment*
18 *Number 2012-GS-27-00189, guilty of possession*
19 *of Clonazepam.*

20 *Number 2: We, the jury, by unanimous*
21 *consent, find the defendant, Phillip Monroe,*
22 *in Indictment Number 2012-GS-27-00190, guilty*
23 *of trafficking in more than 10 grams, but less*
24 *than 28 grams of cocaine.*

25 Signed by the foreperson, February 13, 2013.

1 THE COURT: Ladies and gentlemen of the jury, if this
2 be your verdict as published by the clerk of court, would
3 you please raise your right hand?

4 Thank you. Let the record reflect twelve hands were
5 raised.

6 Mr. Hughes, anything from the defendants as far as
7 the jury's concerned?

8 MR. HUGHES: I request that the jury be polled, your
9 Honor.

10 THE COURT: Madam Clerk, would you please poll the
11 jury. Ladies and gentlemen, the clerk will ask you two
12 questions. She will call your name. I'm going to ask
13 you to stand when your name's called. She will ask,
14 number 1, was that your verdict. You will respond yes or
15 no. She will then ask is that still your verdict. You
16 will answer yes or no.

17 Madam Clerk, poll the jury.

18 JURORS POLLED, BY MADAM CLERK:

19 MADAM CLERK: Daniel Douglas. Is this your verdict?

20 JUROR DOUGLAS: Yes, ma'am.

21 MADAM CLERK: Is it still your verdict?

22 JUROR DOUGLAS: Yes, ma'am.

23 MADAM CLERK: Thank you. Willie Garret, is this your
24 verdict?

25 JUROR GARRET: Yes, ma'am.

1 MADAM CLERK: Is it still your verdict?

2 JUROR GARRET: Yes, ma'am.

3 MADAM CLERK: Richard Lee Johnson. Is this your
4 verdict?

5 JUROR JOHNSON: Yes, ma'am.

6 MADAM CLERK: Is it still your verdict?

7 JUROR JOHNSON: Yes, ma'am.

8 MADAM CLERK: Ophelia Chisolm. Was this your
9 verdict?

10 JUROR CHISOLM: Yes, it is.

11 MADAM CLERK: Is it still your verdict?

12 JUROR CHISOLM: Yes, it is.

13 MADAM CLERK: Thank you. Alfreda Harris.

14 MADAM FOREPERSON HARRIS: Yes, ma'am.

15 MADAM CLERK: Was this your verdict?

16 MADAM FOREPERSON HARRIS: Yes.

17 MADAM CLERK: Is it still your verdict?

18 MADAM FOREPERSON HARRIS: Yes.

19 MADAM CLERK: Thank you. Tabitha Russ. Is this your
20 verdict?

21 JUROR RUSS: Yes.

22 MADAM CLERK: Is it still your verdict?

23 JUROR RUSS: Yes, ma'am.

24 MADAM CLERK: Tracy Talley. Was this your verdict?

25 JUROR TALLEY: Yes.

1 MADAM CLERK: Is it still your verdict?

2 JUROR TALLEY: Yes.

3 MADAM CLERK: Thank you. Patrice Horton. Was this
4 your verdict?

5 JUROR HORTON: Yes.

6 MADAM CLERK: Is it still your verdict?

7 JUROR HORTON: Yes.

8 MADAM CLERK: Thank you. Percy Sauls. Was this your
9 verdict?

10 JUROR SAULS: Yes.

11 MADAM CLERK: Is it still your verdict?

12 JUROR SAULS: Yes.

13 MADAM CLERK: Thank you. Steven Austin. Was this
14 your verdict?

15 JUROR AUSTIN: Yes.

16 MADAM CLERK: Is it still your verdict?

17 JUROR AUSTIN: Yes.

18 MADAM CLERK: Thank you. Davis Sease. Was this your
19 verdict?

20 JUROR SEASE: Yes, ma'am.

21 MADAM CLERK: Is it still your verdict?

22 JUROR SEASE: Yes, ma'am.

23 MADAM CLERK: Thank you. Norma Miller. Was this
24 your verdict?

25 JUROR MILLER: Yes.

1 MADAM CLERK: Is it still your verdict?

2 JUROR MILLER: Yes.

3 MADAM CLERK: Thank you.

4 THE COURT: Counsel, the jury's been polled. The
5 verdict stands. Anything further from the jury from the
6 defendant before I excuse the jury?

7 MR. HUGHES: No, your Honor.

8 THE COURT: Madam Foreperson and ladies and gentlemen
9 of the jury, on behalf of Jasper County and this Court, I
10 want to thank you for your service. You know, all a
11 judge can ask of a jury is that you listen, and each of
12 you did that, because I watch you through the trial of
13 the case. And I want to thank you for that.

14 This now concludes your service on this jury. And
15 I'm happy to tell you, because I promised you I'd get you
16 home early this week, this concludes your service for the
17 week. And as you now know, you are exempt from jury
18 service. If the computer selects you for three years by
19 virtue of your service this week.

20 Now, if any of you need a work excuse for serving on
21 the jury, all you have to do is go down the stairs, and
22 the clerk's office will be happy to provide you with a
23 work excuse so your employer will know you've been
24 serving on the jury.

25 We'll be mailing you that exorbitant check that we

1 pay jurors at \$10.00 a day to the address that we sent
2 you your summons. So your check is in the mail, ladies
3 and gentlemen. I thank you for the service.

4 Now, let me tell you. Sentencing in this case is
5 getting ready to take place in just a few moments.
6 They're in the process of filling out a sentencing sheet,
7 and they'll come forward. I invite you, if you'd like to
8 stay for sentencing, you can. You can either stay in the
9 jury box, you can have a seat in the courtroom, if you
10 don't want to stay for sentencing, that's fine. You are
11 now excused for the balance of the week. So your jury
12 service is concluded for the week.

13 Now, many times, people will want to ask you
14 questions about the jury service, particularly the
15 lawyers. They try to learn how to improve what they did
16 or did not do. It's up to you whether you want to talk
17 to anybody. If you don't want to talk to anybody about
18 your service and you don't have to if you choose to do
19 so. terminate anytime. Sometimes they do. So sometimes
20 it helps the attorneys to learn from you by asking you
21 about things that happened during the trial, what
22 impressions you didn't. That's entirely up to you as to
23 whether you want to do it or not. If somebody persists
24 in talking to you and you don't want to talk to them, you
25 get the name and give it to me, and I'll handle that

1 problem for you, ladies and gentlemen.

2 Now, on behalf of Jasper County and this Court, I
3 want to thank you for your service. I appreciate it very
4 much. Always appreciate people that are willing to give
5 up their homes, give up their time, on the job. I truly
6 believe, ladies and gentlemen, when you put 12 people
7 from All walks of life in a room, that our forefathers
8 knew what they were doing when they gave us the right to
9 trial by jury. I believe the jury system works. And I
10 watch juries every day of my life and have done so for
11 about the past 35 years. So I really appreciate that
12 service.

13 With that, now, I'm going to return you to your
14 homes, your families, and your jobs, with the thanks of
15 the Court and the thanks of Jasper County. Without you,
16 ladies and gentlemen, justice cannot be accomplished in a
17 courtroom. And I thank you for that service.

18 Now, for those of you that would like to remain, you
19 can do so. You can remain right where you are and leave
20 through this door, or you can go and have a seat out n
21 the courtroom, because sentencing is getting ready to
22 occur in this case, if you'd like to stay.

23 If you do not wish to remain, you may leave at this
24 time. Please do as you desire.

25 Everyone else remain seated while the jury is

1 leaving.

2 Madam Foreperson, my clerk wants you to write the
3 same thing on the indictments that you signed on the
4 verdict form. He'll show you. Thank you, Camden.

5 We done, Jo, back there?

6 JURORS LEAVE COURTROOM.

7 BAILIFF: Yes, sir.

8 SENTENCING, BY THE COURT:

9 THE COURT: Are there any post-verdict motions from
10 the defendant?

11 MR. HUGHES: No, your Honor.

12 THE COURT: Very well. Come around for sentencing.
13 I need a sentence sheet, Solicitor.

14 MS. HENDERSON: Your Honor, we're working on it.
15 Sorry. I don't print them ahead of time, because it's
16 bad luck. I'm going to submit you his prior -- certified
17 priors for you to look at, your Honor.

18 THE COURT: Give a copy to Mr. Hughes.

19 MS. HENDERSON: I showed it to him pre-trial, asked
20 him if he wanted a copy when we met prior to this, and he
21 said he was fine with viewing mine, your Honor. He's
22 seen it.

23 THE COURT: Do you have a copy of it, Mr. Hughes?

24 MR. HUGHES: I have seen it, your Honor.

25 THE COURT: All right.

1 Mr. Hughes, it would be my intention, since they've
2 been handed to me as certified copies, to make this a
3 Court's exhibit for purposes of sentencing. Any
4 objection?

5 MR. HUGHES: No, your Honor.

6 MS. HENDERSON: Your Honor, do you wish to have an
7 address for the defendant on the sentencing sheet?

8 THE COURT: Yes. Bob, get an address for him. I'm
9 going to need his formal license number and a social
10 security number and last known address.

11 MR. HUGHES: 106 Orange Grove Road. That's
12 Ridgeland.

13 MS. HENDERSON: Your Honor, I have not marked as
14 *indicted, lesser-included*, or any of like that, or with
15 *negotiations*. All that section's been left blank.

16 THE COURT: Well, you need to -- I directed a verdict
17 on your charge, so, on the indictment charging
18 possession, --

19 MS. HENDERSON: That was my question.

20 THE COURT: -- you need to put lesser included.

21 MS. HENDERSON: I wasn't sure.

22 THE COURT: The other charge would be a check of as
23 indicted, the trafficking.

24 MS. HENDERSON: Right, but he's being sentenced under
25 a fourth.

1 THE COURT: Pardon?

2 MS. HENDERSON: He's being sentenced under a third or
3 subsequent event. Okay.

4 THE COURT: That's not reflected on the sentence
5 sheet. That'll be in the record. The sentence sheet
6 just needs to tell them whether it's as indicted or
7 whether or not it's a lesser-included offense.

8 All right. First of all, I was handed -- and Mr.
9 Hughes, I understand you have a copy. I was handed four
10 different, stapled, and there's a series of documents.
11 I'm going to make them one court's exhibit. They consist
12 of the defendant's prior record, certified copies of his
13 prior record from Georgia. Is that correct?

14 MS. HENDERSON: Yes, your Honor.

15 THE COURT: And there are one, two, three, four such
16 copies in this. I'm going to make that Court's Exhibit
17 Number 1, without objection. Is that right, Mr. Hughes?

18 MR. HUGHES: I'm trying to figure out which one the
19 fourth one is, your Honor.

20 THE COURT: All right. Margaret, hand that to him so
21 he can look at what I've been given. He told me he had a
22 copy.

23 MS. HENDERSON: This is just the parole certificate,
24 your Honor. I'm sorry. That wasn't a prior.

25 THE COURT: I was going to ask you about that.

1 MS. HENDERSON: I apologize, your Honor.

2 THE COURT: Mr. Hughes, are you now satisfied?

3 MR. HUGHES: Yes, your Honor.

4 THE COURT: I have three documents that are stapled
5 together, with a number of pages, all of which consisting
6 of the defendant's prior certified record in Georgia.

7 MR. HUGHES: Yes, sir.

8 THE COURT: All right. Wanda, put a stick on as
9 Court's Exhibit Number 1. Just for the record, 1 begins
10 with the affidavit of the clerk of court, Rebecca Crowe,
11 in Pembroke, Georgia. That's one set of documents. One
12 begins with a bill of indictment from Chatham County,
13 Georgia. And the third set of documents also begins with
14 a bill of indictment from Chatham County, Georgia. All
15 of which will be Court's Exhibit Number 1, without
16 objection.

17 Just a moment. Is that right, Bob?

18 MR. HUGHES: Your Honor, I think that during the
19 *Jackson v. Denno* hearing, something was entered as
20 court's exhibit or court's evidence.

21 THE COURT: All of these documents were?

22 MR. HUGHES: No, your Honor.

23 THE COURT: I'm just asking about these documents.

24 MR. HUGHES: I know. It's the number, your Honor,
25 that I'm concerned about, because I think the *Miranda*

1 sheet was entered in as Court's Exhibit Number 1. I have
2 no problem with that coming in as a court's exhibit. I
3 just --

4 THE COURT: Just for the purposes of this hearing,
5 Court's Exhibit Number 1 was -- it was Court's Exhibit
6 Number 2, so it'll be Court's 3.

7 DOCUMENT REFERRED TO AS CERTIFIED
8 COPY OF DEFENDANT'S PRIOR RECORD
9 FROM GEORGIA, MARKED COURT'S
10 EXHIBIT NUMBER 3.

11 REPORTER'S NOTE: Court's Exhibits Numbers
12 2 and 3 were entered in the pre-trial
13 hearing held Monday, February 11, 2013,
14 which transcript is under separate cover.

15 THE COURT: All right. Let the record reflect that
16 Mr. Hughes and the defendant are present, along with the
17 solicitor. The sentence sheet has been completed and
18 handed to me for each indictment by the solicitor.

19 On Indictment 2012 at 190, trafficking, it is checked
20 as indicted. And on Indictment 2012 at 189, it has
21 lesser-included offense.

22 Mr. Hughes, I assume that you've advised your client
23 that the trafficking is both violent and serious, and it
24 would constitute a strike; and that he could face the
25 possibility in the future of life imprisonment without

1 any possibility of parole. Is that correct?

2 MR. HUGHES: Yes, sir.

3 THE COURT: And you've also advised him that he would
4 have to assume, because it is violent, that he would have
5 to serve day for day as to any sentence that I might
6 impose. Is that correct?

7 MR. HUGHES: Yes, your Honor.

8 THE COURT: Very well. Solicitor, I'll be happy to
9 hear from you.

10 ARGUMENT ON SENTENCING, MS. HENDERSON:

11 MS. HENDERSON: Your Honor, as you've heard the facts
12 in this case, Mr. Monroe is a drug dealer, and he's got
13 several prior drug charges that were pending in my office
14 that I chose to try this one. Your Honor, his record is
15 substantial, and I'm happy to read in its entirety on the
16 record.

17 He has a 1997 fleeing or attempting to elude law
18 enforcement; giving false information; robbery; violation
19 of the *Georgia Controlled Substance Act*, which was a drug
20 sale.

21 2003, willful obstruction of law enforcement times
22 two. Driving under suspension.

23 2004 he violated his probation.

24 2005, willful obstruction of law enforcement.

25 Battery. Cruelty to children, first degree.

1 2006, possession of marijuana; PWID; Schedule I or
2 Schedule II probation, which he got ten years probation
3 for, your Honor.

4 2007, possession of cocaine; criminal damage to
5 property, second degree; possession of marijuana;
6 criminal trespass; battery; and willful obstruction of
7 law enforcement.

8 2008, PWID or distribution of marijuana and
9 possession of cocaine.

10 Your Honor, that is in addition to the multiple
11 charges that are pending against him right now.

12 Your Honor, it is the State's contention that he
13 deserves the full 30 years that the trafficking carries.
14 And that is what I would ask for.

15 THE COURT: Very well. Anything else from the State
16 before I hear from the defendant?

17 MS. HENDERSON: Nothing from the State, your Honor.

18 THE COURT: Very well. Mr. Hughes, I'm happy to hear
19 from you.

20 ARGUMENT ON SENTENCING, MR. HUGHES:

21 MR. HUGHES: Your Honor, not taking any pending
22 charges into consideration, because they have not been
23 adjudicated, --

24 THE COURT: I agree, Mr. Hughes. I'm not going to
25 take other pending charges, even though the Solicitor

1 wants to tell me about her work load, they have not been
2 adjudicated and are without convictions.

3 MR. HUGHES: The last thing we're looking at is 2008,
4 your Honor. Five years ago.

5 THE COURT: Mr. Hughes, your client has been an
6 extremely busy person in the state of Georgia. Would you
7 not agree?

8 MR. HUGHES: Unfortunately, your Honor, I would
9 agree.

10 THE COURT: Mr. Hughes, I appreciate your
11 completeness and honesty.

12 MR. HUGHES: However, your Honor, a new leaf is the
13 hardest thing in the world for someone with that record
14 to turn over. He has spent the last five years without a
15 conviction. The previous convictions have been minor.
16 They've been probationary. This is his first real look
17 at unbelievably long jail time.

18 Your Honor, he is married. His wife has been with
19 him the entire time of this trial. She has tried to help
20 him change his direction. We are asking for the minimum
21 sentence in this matter. We're asking for the simple
22 possession to run concurrent.

23 Twenty-five years is a long time, your Honor. Don't
24 punish him for going to trial. He knew the risk. He
25 wanted justice done. He has not done as others have

1 suggested he might. He has been very, very calm during
2 this hearing. He has not shown violent tendencies.

3 Judge, we're asking, reward him, even though it's
4 small, give him the 25.

5 THE COURT: Mr. Monroe, is there anything you'd like
6 to tell the Court prior to sentencing? You step up to
7 the microphone. I'll be happy to hear from you, if you
8 wish to tell me anything.

9 BY DEFENDANT MONROE:

10 DEFENDANT MONROE: Well, I have a record and I did
11 wrong, and I was punished for my record. I came down
12 here to Carolina for a different change. When I came
13 down here, the same thing that took me up was the same
14 thing that bring me down. And I had got --

15 THE COURT: What's the same thing?

16 DEFENDANT MONROE: Well, by me selling drugs.

17 THE COURT: It's a common denominator in court.

18 DEFENDANT MONROE: Well, drugs. Drugs. I was
19 addicted to selling drugs at the time. And when I came
20 down this way, I had end up getting hooked on drugs. If
21 you will look back at the -- the film that when I gave a
22 statement, you notice how I was on crack out my mind.
23 And I was cooking up drugs for other guys that's right
24 here in Jasper County so support my drug habit. And
25 that's what happen to me now, but I know I couldn't take

1 the traffic -- take the stand because my past
2 convictions, I know I'd a gotten slayed. So I didn't
3 take the stand and hoping that I could have a fair and
4 just trial.

5 But I just want you all to know that, man, I am not
6 the drug anymore. And for the last year and a half, I've
7 been down this way, I was using drugs. And I used to
8 cook drugs for a lot of different guys right here in
9 Jasper to support my drug habit. And that's what I was
10 doing with those drugs. That's why I had to be honest
11 with the detective and I tell the detectives.

12 THE COURT: So you were a cook and you weren't
13 selling. Is that what you're telling me?

14 DEFENDANT MONROE: Yes, sir.

15 THE COURT: So you prepared them for sale, but didn't
16 actually sell them yourself. That's what you're telling
17 me?

18 DEFENDANT MONROE: Yes, sir.

19 THE COURT: But you were using them.

20 DEFENDANT MONROE: Yes, sir. When I came down here
21 in Carolina, I was weighing like two hundred and
22 something. When I had came to jail, I was weighing 140.
23 I lost a lot of weight.

24 THE COURT: I understand. Mr. Hughes, anything else
25 from the defendant?

1 MR. HUGHES: No, your Honor.

2 THE COURT: Anything else from the State?

3 MS. HENDERSON: No, your Honor.

4 SENTENCE, BY THE COURT:

5 THE COURT: Mr. Monroe, I could not agree with the
6 jury's verdict more strongly. Clearly, there was
7 evidence beyond a reasonable doubt of your guilt.

8 First of all, I understand when you tell me that you
9 have been using drugs, our resources are not what they
10 should be in South Carolina, but I will certainly
11 recommend the addiction treatment unit for you while you
12 are incarcerated in the State Department of Corrections,
13 because I understand the first step toward dealing with a
14 problem with drugs is having the courage to stand up in
15 front of everybody and say I got a problem; I admit I got
16 a problem.

17 Now, all I can do is offer you some assistance with
18 that problem. It's up to you to take advantage of it.
19 You understand that?

20 DEFENDANT MONROE: Yes, sir.

21 THE COURT: All right. Solicitor, his record is
22 substantial. Mr. Hughes, I don't punish anybody for
23 going to trial, but your client's record speaks for
24 itself. On Indictment 2012-GS-27-190, State versus
25 Phillip Monroe, the indictment for trafficking in

1 cocaine, the sentence of this Court is the defendant is
2 committed to the State Department of Corrections for a
3 term of 27 years.

4 On Indictment 2012-GS-27-189, which is possession of
5 a Schedule IV drug, the sentence of the Court is
6 defendant is committed to the State Department of
7 Corrections for a term of six months. Those sentences
8 will run concurrent to each other.

9 The defendant is to be given credit for time served
10 pursuant to the *South Carolina Code Section 24-13-40*.
11 That is to be calculated and applied by the State
12 Department of Corrections.

13 I will recommend addiction treatment unit while you
14 are incarcerated. Good luck to you, sir.

15 MS. HENDERSON: Thank you, your Honor.

16 MR. HUGHES: Thank you, your Honor.

END TRIAL, WEDNESDAY, FEBRUARY

13, 2013, 12:14 P.M.

CERTIFICATE OF REPORTER

FEBRUARY 11, 12, AND 13, 2013 TRANSCRIPT OF TRIAL
STATE OF SOUTH CAROLINA

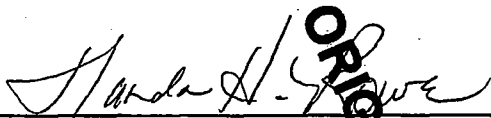
COUNTY OF JASPER

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing February 11, 12, and 13, 2013 Transcript of Trial is a true, accurate, and complete record of the proceedings had and evidence introduced and/or admitted at said proceeding in the case of State of South Carolina versus Phillip Monroe, Jasper County, Court of General Sessions, Case Numbers 2012-GS-27-00189 and 2012-GS-27-00190.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript and any copy of same is not certified to be, nor authorized for use, as true, accurate, & complete without my original signature and stamp affixed hereto.

Witness my signature June 3, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP MONROE,

APPELLANT

APPELLATE CASE NO. 2013-000425

FINAL BRIEF OF APPELLANT

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RECEIVED

JAN 24 2014

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in denying Appellant's motion for a mistrial where a law enforcement officer testified about a polygraph examination performed on Appellant immediately prior to Appellant giving a confession in this case since it was improper and unduly prejudicial?

STATEMENT OF THE CASE

A Jasper County Grand Jury indicted Appellant at the September 27, 2012 term of General Sessions for trafficking in cocaine, ten grams or more but less than twenty-eight grams, and possession with intent to distribute Clonazepam, a schedule IV drug. R. 191 – R. 194. His case was called to trial on February 11, 2013 before the Honorable Perry M. Buckner, and a jury. Assistant Solicitors J. Carra Henderson and Erin Vaux appeared on behalf of the prosecution and Robert Hughes represented Appellant. R. 55.

At the conclusion of the trial on February 13, 2013, the jury found Appellant guilty of trafficking in cocaine, ten grams or more but less than twenty-eight grams, and the lesser charge of possession of Clonazepam. R. 185, ll. 8-25. Judge Buckner sentenced Appellant to twenty-seven years imprisonment for the trafficking offense and six months concurrent for possession of Clonazepam. R. 189, l. 21 – 190, l. 14.

This appeal follows.

– 95, l. 16. Baniel denied the drugs belonged to him. R. 96, ll. 16-21. Baniel testified that he immediately got out of the car with his hands up after being stopped because he had “seen it on T.V. like that” and “just thought that’s what you supposed to do.” R. 94, l. 24 – 95, l. 7.

Appellant was interviewed by law enforcement a total of four times in regards to this case. According to the testimony of the officers who interrogated him, Appellant was read his Miranda rights and subsequently waived them on each occasion. On April 10, 2012, the night of his arrest, Appellant stated that the drugs did not belong to him. R. 66, ll. 5-22. On April 12, 2012, Appellant again stated the drugs were not his, but instead belonged to Baniel. On April 16, 2012, Appellant stated that the drugs belonged to both him and Baniel and that the two had purchased them together. R. 107, l. 14 – 109, l. 18; R. 130, l. 15 – 131, l. 7. And then finally, on April 30, 2012, Appellant allegedly told law enforcement that the drugs belonged to him, that he threw them in Baniel’s lap during the traffic stop, and that Baniel had nothing to do with it. R. 114, l. 12 – 115, l. 13; R. 123, l. 17 – 125, l. 24; R. 131, ll. 8-18.

The first three statements were audio and video recorded by the Ridgeland Police Department. R. 18, l. 18 – 19, l. 10¹; R. 107, l. 14 – 113, l. 25. The fourth statement, which was made at the Beaufort County Sheriff’s Office after Appellant took a polygraph test regarding an unrelated murder investigation, was not recorded in any fashion. R. 118, ll. 15-19; R. 40, l. 3 – R. 41, l. 5. Despite defense counsel’s pretrial challenge to the admissibility of Appellant’s statements, specifically the April 30, 2012 statement, counsel made no contemporaneous objection in front of the jury with respect to any of the statements. See R. 48, l. 12 – 49, l. 19; R. 115, ll. 4-13; R. 125, ll. 6-24.

Jennifer Mills, who was qualified as an expert in drug analysis without objection, testified that the white powdery substance found in the Crown Royal bag that was seized during the traffic stop was 27.97 grams of cocaine. The fifty-six round, white tablets also found in the Crown Royal bag were identified as Clonazepam, a Schedule IV drug. R. 135, l. 19 – 141, l. 16.

At the conclusion of the state's case, the court granted defense counsel's motion for a directed verdict with respect to the charge of possession with intent to distribute Clonazepam finding that the state failed to establish any intent to distribute the Schedule IV drug. The court, however, denied defense counsel's motion for a directed verdict with respect to the trafficking cocaine charge. Consequently, only the lesser included charge of possession of controlled substance and trafficking in cocaine, ten grams or more but less than twenty-eight grams, went to the jury. R. 148, l. 4 – 149, l. 24; R. 150, l. 19 – 151, l. 24.

Motion for a Mistrial

Lieutenant Daniel Litchfield of the Ridgeland Police Department, testified that he personally interviewed Appellant on two occasions: April 12, 2012 and April 16, 2012. R. 107, l. 14 – 109, l. 18. When asked by the prosecution during direct examination whether he observed any other interviews of Appellant, Litchfield answered, "I believe on April 30th, following a polygraph." Defense counsel immediately told the judge that a matter of law needed to be taken up and an off the record bench conference was held. Following the bench conference, the court noted, "Motion by defense is respectfully denied. I'll make a record at the appropriate time." Direct examination continued and Lieutenant Litchfield explained that he was present when Master Sergeant Brian Baird interviewed Appellant and

¹ The supplemental transcript refers to the pretrial hearing held on February 11, 2013

that Appellant told Baird that the drugs were his, that he threw them in Baniel's lap, and that Baniel had nothing to do with it. R. 114, l. 12 – 115, l. 13.

During a discussion on cross-examination about why the April 30, 2012 interview was not recorded, Lieutenant Litchfield again mentioned a polygraph. Litchfield stated, "Typically, when we use another agency's equipment or facilities, we try to use their, also, their rules as far as that goes. It was on a closed circuit T.V., if you're referring to the polygraph. And at that time, I - -" Litchfield was interrupted and again a bench conference was held off the record with the court, the solicitor, and defense counsel present. Lieutenant Litchfield was later asked to join the bench conference and was presumably instructed by the court not to mention the polygraph again. R. 118, l. 15 – 119, l. 120, l. 9.

During the next break in testimony, outside the presence of the jury, the court explained for the record what occurred during the two bench conferences. The court said that subsequent to Litchfield referring to a polygraph, the court offered to give a curative instruction where it would tell the jury that there was no evidence of a polygraph in the case being tried and that Mr. Litchfield never stated that Appellant took a polygraph. However, according to the court, defense counsel refused the curative instruction presumably as an insufficient remedy and moved for a mistrial which the court denied. After the testimony continued, Litchfield *again* commented on a polygraph during cross-examination. The court once more offered to give a curative instruction, but defense counsel refused and moved for a mistrial for a second time, which was subsequently denied. R. 144, l. 9 – 145, l. 10. The court then stated:

It is clear to me that the testimony of this witness,
both on direct and cross, that being Mr. Litchfield, that there

immediately prior to the start of trial.

was not an elicitation by counsel to bring out the fact that there was a polygraph. What I have been told during the break is that the defendant was taken to Beaufort Sheriff's Department for the purposes of a polygraph examination in a completely unrelated case, for which the defendant has never been charged, that being an investigation into a murder. And for which he is not going to be charged or has not been charged. I was aware of this.

I was also aware of the fact that my attorney both for the State **instructed this witness, prior to their testimony, they were not to mention the word *polygraph*; they were not to mention the word *murder investigation*; they were not to mention anything about other alleged offenses that the defendant may have been arrested for or charged with. . .**

R. 145, l. 11 – 146, l. 3.

At the conclusion of all the testimony, the defense renewed its motion for a mistrial.

The court stated that defense counsel was not required to renew the motion, that it was “for the appellate court to determine,” and that the motion was denied. R. 152, l. 15 – 153, l. 2.

Discussion

Despite being instructed before he testified not to mention the unrelated murder investigation or polygraph, Lieutenant Litchfield ignored the instruction and referenced a polygraph *twice*. This signaled to the jury that Appellant subsequently confessed that the drugs were his, that he threw them in Baniel's lap, and that Baniel had nothing to do with it because he failed a polygraph test. The trial court should have granted Appellant's motion for a mistrial because any reference to a polygraph was improper, inadmissible, and unduly prejudicial.

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).

“The general rule is that no mention of a polygraph test should be placed before the jury.” State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) (holding the trial court did not abuse its discretion in granting a new trial based on a reference by a state’s witness to a polygraph test that she had taken). “Mention of a polygraph test might arise in any one of many ways. The safer course would normally be to avoid *any* mention of a polygraph examination.” State v. McGuire, 272 S.C. 547, 551, 253 S.E.2d 103, 105 (1979) (emphasis added). Additionally, “[e]vidence regarding the results of a polygraph test or the defendant’s willingness or refusal to submit to one is inadmissible.” State v. Pressley, 290 S.C. 251, 252 349 S.E.2d 403, 404 (1986) (holding the trial judge improperly allowed repeated references to the defendant’s submission to a polygraph examination where the evidence showed the defendant confessed immediately after taking the polygraph, thus reversing and remanding for a new trial).

The evidence presented at trial indicated that Appellant made a full confession “following a polygraph.” This led the jury to infer that Appellant failed a polygraph test which is why he provided a full confession indicating the drugs belonged to him and that Baniel was not involved. See R. 114, l. 12 – 115, l. 13. Litchfield, a veteran officer who had

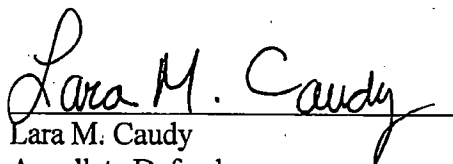
been in law enforcement for approximately sixteen years prior to his testimony, knew such reference was improper, especially after being instructed by the solicitor before his testimony not to mention a polygraph. R. 106, ll. 2-17; See R. 145, ll. 22-24. His testimony violated the general rule that no mention of a polygraph should be made in front of the jury and denied Appellant a fair trial.

Defense counsel was correct to refuse a curative instruction as such instruction would have only drawn attention to the fact that Appellant took a polygraph test and would not have cured the prejudice suffered by Appellant, specifically the likely inference made by the jury that Appellant failed the polygraph which is why he subsequently confessed. See Pressley, 290 S.C. at 252, 349 S.E.2d at 404. A curative instruction would have only further prejudiced Appellant. Thus, the trial court erred in denying Appellant's motion for a mistrial. This Court should reverse and remand for a new trial.

CONCLUSION

By reason of the foregoing argument, Appellant's convictions should be reversed and this case remanded to the Jasper County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

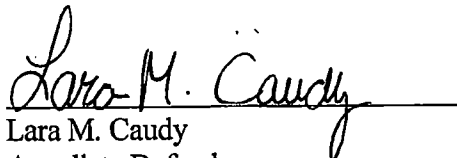
ATTORNEY FOR APPELLANT

This 24th day of January, 2014

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 24, 2014


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ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2013-000425

THE STATE, ...RESPONDENT

v.

PHILLIP MONROE APPELLANT.

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

May Appellant properly present on appeal an issue respecting the trial court's denial of his mistrial motion when Appellant failed to preserve the issue at trial by refusing the trial court's offer of curative instructions and failing to move to strike the testimony; nevertheless, the trial court did not abuse its discretion in denying the motion for mistrial when the reference to polygraph was not connected to Appellant, the results were not discussed and no negative inference was created.

STATEMENT OF THE CASE

Appellant was indicted at the September, 2012 term of the grand jury for Jasper County for trafficking in cocaine, ten grams or more but less than twenty-eight grams, and possession with intent to distribute Clonazepam, a Schedule IV drug. He was represented by Robert Hughes, Esquire. On February 11, 2013, Appellant proceeded to trial by jury pursuant to which Appellant was found guilty of trafficking in cocaine and the lesser included offense of possession of Clonazepam. He was sentenced by the Honorable Perry M. Buckner to twenty-seven years imprisonment. Appellant timely filed a notice of appeal and subsequently submitted a Brief. This Brief of Respondent follows.

RESPONDENT'S STATEMENT OF FACTS

On April 10, 2012, Officer Richard Long of the Ridgeland Police Department initiated a traffic stop of a tan Honda that was driving erratically. R. pp. 60-62; 77. Immediately after Officer Long pulled the Honda over, both the driver and passenger seemed to be in an excited state and tried to open doors as they pulled the vehicle to the side of the road. R. p. 62. Appellant was the driver of that vehicle. R. p. 63. The passenger got out of the vehicle, threw his hands up, and backed away. R. pp. 78; 83. Officer Long's partner, Corporal Smith, informed Long that he found a purple Crown Royal bag on the ground next to the vehicle that had either fallen out of the car or was next to the car during the traffic stop. R. p. 63. Both occupants were detained. R. pp. 65; 78. The Crown Royal bag contained several types of narcotics, pills, and a powdery white substance that later tested positive for cocaine. The pills were determined to be clonazepam. R. pp. 65; 79; 139; 141. After waiving his rights, Appellant made a statement that evening stating that the drugs found at the vehicle were not his. R. p. 66.

The co-defendant in the case, Courtney Baniel, testified that once they saw blue lights behind them, Appellant grabbed the Crown Royal bag and tossed it onto Baniel's lap and stated "Take these charges from me." R. pp. 93-94. When Baniel got out of the car, the Crown Royal bag fell off his lap and onto the ground. R. p. 93. Baniel refused to take responsibility for the drugs, prompting Appellant to state "Boy, don't play with me, I'll kill Sally and your kids." R. p. 93. Sally is Baniel's girlfriend. R. p. 87. This threat caused Baniel to remain silent the evening of the arrest as to who the drugs belonged to. R. p. 96. A few days later, Baniel told police that the drugs were actually Appellant's and that he did not originally reveal this information due to a threat by Appellant. R. pp. 95-96.

An investigator for the Ridgeland Police Department, Lieutenant Daniel Litchfield, interviewed Appellant on April 12th and April 16th. R. pp. 106-107. Immediately prior to the April 12th interview, Appellant waived his Miranda rights and agreed to speak with Lieutenant Litchfield. R. p. 108. In the interview Appellant maintained that the drugs belonged to Courtney Baniel and were not his. R. pp. 108; 130. Appellant contacted investigators and asked for another interview which was conducted on April 16th. R. p. 108. Appellant again waived his Miranda rights for the second interview. R. p. 109. In the second interview Appellant stated that the drugs belonged to both himself and Baniel. R. p. 109. Lieutenant Litchfield also was present for another interview on April 30th with Master Sergeant Brian Baird. R. pp. 114-115. At that interview, Appellant told Master Sergeant Baird that the drugs all belonged to him and that Courtney Baniel had nothing to do with the drugs. R. pp. 115; 124-125; 131.

During Lieutenant Litchfield's testimony, the following colloquies took place:

Q: Mr. Litchfield, did you observe any other interviews of the defendant?

A: Yes, ma'am

Q: And when was that?

A: I believe on April 30th, following a polygraph.

Mr. Hughes: Your honor I believe we have a matter of law that needs to be taken up.

The Court: Counsel approach.

OFF-THE-RECORD BENCH CONFERENCE

The Court: Motion by defense counsel is respectfully denied.

R. p. 114. On cross-examination of Litchfield, the following occurred:

Q: Okay, but you had the ability to make a recording, but you did not do so.

A: No, sir. Now, if you'd like me to elaborate, I will.

Q: Sure, go ahead.

A: Typically, when we use another agency's equipment or facilities, we try to use their, also, their rules as far as that goes. It was on a closed circuit T.V., if you're referring to the polygraph. And at that time, I—

The Court: Just a moment, Bob. One second. Yes, ma'am.

Ms. Henderson: Sidebar, your Honor.

The Court: Counsel approach.
 OFF-THE-RECORD BENCH CONFERENCE (with Litchfield joining the discussion).

R. p. 119. Lt. Litchfield continued with his explanation that he is not familiar with Beaufort County equipment and their ability to record with video. R. p. 120.

At the conclusion of the State's case, the Court explained for the record what occurred during the bench conferences. R. p. 144. In the first instance where the polygraph was mentioned, the trial judge offered to give the jury a curative instruction in which he would tell the jury there was no evidence of a polygraph in the case nor did Lieutenant Litchfield ever state that the defendant took a polygraph. R. p. 144. The trial judge additionally offered to give any curative instruction the defense requested. R. p. 144. Appellant refused the offers for curative instruction and moved for a mistrial, which was denied. R. p. 144. The trial judge explained that the mistrial was denied because he did not believe that the questions intended to elicit a response concerning a polygraph. R. p. 145.

After Lieutenant Litchfield mentioned the polygraph a second time during cross-examination and the judge again offered a curative instruction, which was refused by Appellant. R. p. 145. Appellant again moved for mistrial, which was denied. R. p. 145. The polygraph examination at issue pertained to an unrelated murder investigation, for which the Appellant was not charged nor will he face charges. R. pp. 145 - 146. The Solicitor instructed the witness before his testimony not to mention the polygraph or the murder investigation. R. p. 145. At the conclusion of all the evidence the defense renewed its motion for a mistrial, which was denied. R. pp. 152-153.

The defense counsel moved for a directed verdict. R. p. 148. The judge granted the motion respecting possession with intent to distribute but submitted the lesser included offense of possession of a Schedule IV drug to the jury. The judge denied the motion respecting the trafficking charge. R. p. 151. Appellant also renewed the motion for mistrial which was again denied. R. p. 151. The jury subsequently found the defendant guilty of possession of Clonazepam, a Schedule IV drug, and trafficking in more than 10 grams, but less than 28 grams of cocaine. R. p. 185.

ARGUMENT

Appellant may not properly present on appeal an issue respecting the trial court's denial of his mistrial motion when Appellant failed to preserve the issue at trial by refusing the trial court's offer of curative instructions and failing to move to strike the testimony; nevertheless, the trial court did not abuse its discretion in denying the motion for mistrial when the reference to polygraph was not connected to Appellant, the results were not discussed and no negative inference was created.

Appellant argues the Court's denial of a mistrial was erroneous as the mention of the word "polygraph" was improper and unduly prejudicial to Appellant. The State disagrees and submits Appellant's argument is without merit. First, the State submits that this issue was not preserved for appellate review and, therefore, is not properly before this Court. Second, and assuming arguendo the issue may be considered on appeal, the trial court did not abuse its discretion in denying the motion for mistrial when the brief use of the word "polygraph" was not connected to Appellant, the results were not discussed, and no negative inference was created.

As set forth in the Respondent's Statement of Facts herein, the record before this Court clearly reveals that Appellant twice refused the trial court's offers to provide generous curative instructions when the witness mentioned the word "polygraph." The refusal to take advantage of a curative instruction operates as a waiver of the party's right to complain of error. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 Ct.App. 1996); Cock-N-Bull Steak House, Inc. v. Generali Ins. Co, 321 S.C. 1, 11, 466 S.E.2d 727, 732 (1996) The facts of this case are similar to State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010). In Bantan, a witness mentioned drugs and a shotgun unrelated to

Bantan's robbery charge. Id. at 418. Bantan moved for a mistrial, which was denied by the trial court. Id. The court instead offered a curative instruction, which was refused by Bantan. Id. On appeal, this Court found that the issue was not preserved for appellate review. Id. This Court stated "By rejecting the trial court's offer to give a curative instruction, Bantan waived any challenge to the offending testimony on appeal." Id. Similarly, in the present case, Appellant twice refused the trial court's offer to provide curative instructions as outlined by the trial court or as Appellant might suggest. This refusal of the curative instructions operates as a waiver of Appellant's right to challenge the offending testimony on appeal and precludes consideration of the issue on appeal. Appellant is not entitled to relief on appeal when his own conduct contributed to the alleged error. Id. Appellant also failed to move to strike the testimony which also precludes appellate review. State v. Watts, 321 S.C. at 158, 467 S.E.2d at 272.

Even if this issue were preserved for review, the trial judge did not err in denying the motion for mistrial. "The granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (2007). "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." Id. A curative instruction to disregard testimony is generally deemed to have cured any error. Id. The test to determine whether sound grounds exist for declaring a mistrial after the jury is sworn 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). Manifest

necessity is not a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge. Arizona v. Washington, 434 U.S. 497, 505-506 (1978). The word “necessity” is not to be interpreted literally. Rather, there need only be a “high degree” of necessity in order to conclude that a mistrial is appropriate under the circumstances. Id. at 506. A trial judge’s decision to grant or deny a mistrial will not be reversed on appeal absent an abuse of discretion. State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). The term “abuse of discretion” has no opprobrious implication and may be found if the conclusions reached by the lower court are without reasonable factual support. State v. Corey D., 339 S.C. 107, 118, 529 S.E.2d 20 (2000).

Prior to the adoption of the South Carolina Rules of Evidence, our appellate courts repeatedly held that polygraph examination results are generally inadmissible because of questions concerning the reliability of polygraph results. In interest of Robert R., 340 S.C. 242, 246-48, 531 S.E.2d 301,304 (Ct. App. 2000), citing, State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999); State v. Wright, 322 S.C. 253, 471 S.E.2d 700 (1996); State v. Pressley, 290 S.C. 251, 349 S.E.2d 403 (1986). However, after the adoption of the South Carolina Rules of Evidence, “admissibility of this type of scientific evidence should be analyzed under Rules 702 and 403, SCRE and the Jones factors.” Id., citing State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999); see also State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001).

The record in this case supports the trial judge’s conclusion that there was not manifest necessity to terminate the proceeding. The trial judge stated that he did not believe the question by the Solicitor elicited a response concerning a polygraph. R. p.

145. Both statements made by Lieutenant Litchfield were vague and did not concern a polygraph in the case at hand, nor did Litchfield discuss the results of a polygraph or say why a polygraph was administered. It was clear Appellant was taken to a law enforcement agency in another county and that any polygraph was unrelated to the charges for which Appellant was on trial. The mere mention of polygraph was not directly tied to Appellant, the results were not discussed, and no reasonable inference was created that the results were adverse to Appellant. See Ellenburg v. State, 367 S.C. 66, 625 S.E.2d 224 (2006); Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001). In fact, the second time polygraph was mentioned was on cross-examination by Appellant and in response to Appellant's persistent inquiry about recording capabilities of Beaufort County facilities. Appellant cannot complain about that which he invited. Ellenburg v. State, 367 S.C. 66, 625 S.E.2d 224 (2006).

Contrary to Appellant's argument for the first time on appeal, there was no inference created that Appellant confessed to the crime after submitting to a polygraph examination. State v. Jackson, 364 S.C. 329, 613 S.E.2d 374 (2005). Instead, the evidence reflects that Appellant provided a series of statements, the first two of which were given prior to the unrelated polygraph. Appellant admitted his guilt in the second statement given on April 16th and before the polygraph. The only new information provided in the final statement given on the date of the polygraph was Appellant's concession that his co-defendant was not involved. There is no reasonable possibility the jury would have concluded that Appellant confessed to the crime because of the polygraph.

when I came down this time, I had ended up getting hooked on drugs.” R. p. 187.

Appellant went on to state, “And I used to cook drugs for a lot of different guys right here in Jasper to support my drug habit. And that’s what I was doing with those drugs. That’s why I had to be honest with the detective and tell the detectives.” R. p. 188. These facts, all taken together, provide overwhelming evidence of Appellant’s guilt.

The issue Appellant presents is without merit. The convictions must be affirmed.

CONCLUSION

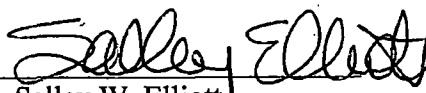
For all of the foregoing reasons, the State respectfully requests that the judgment, convictions, and sentences of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No: 1871

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina

January 31, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2013-000425

THE STATE, ...RESPONDENT

v.

PHILLIP MONROE APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated January 31, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

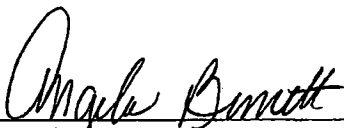
Lara M. Caudy, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served.
This 31st, day of January, 2014.

RECEIVED

JAN 31 2014

SC Court of Appeals


Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

January 31, 2014

Lara M. Caudy, Appellate Defender
S C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

Re: The State v. Phillip Monroe
Appellate Case No. 2013-000425

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

Salley W Elliott
Senior Assistant Deputy Attorney General
S C. Bar No. 1871

SWE/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 9 enclosed)
Victim Services

RECEIVED

JAN 31 2014

SC Court of Appeals

**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.

Phillip Monroe, Appellant.

Appellate Case No. 2013-000425

Appeal From Jasper County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2015-UP-044
Heard January 5, 2015 – Filed January 28, 2015

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia; and Solicitor Isaac McDuffie Stone,
III, of Bluffton, for Respondent.

PER CURIAM: In this appeal from two drug-related convictions, Phillip Monroe argues the trial court erred in denying his motion for a mistrial when a law enforcement officer twice mentioned during his testimony a polygraph

examination given to Monroe immediately before one of his confessions to the drug convictions but no results were introduced. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Johnson*, 334 S.C. 78, 90, 512 S.E.2d 795, 801 (1999) (holding "the mere inadvertent mention of the offer to take a polygraph" did not constitute reversible error); *Ellenburg v. State*, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006) (concluding in ineffective assistance of counsel claim "the mere mention of a polygraph during testimony is not prejudicial where . . . no results are introduced into evidence"); *Bruno v. State*, 347 S.C. 446, 451-52, 556 S.E.2d 393, 396 (2001) (finding no prejudice in ineffective assistance of counsel claim when a polygraph was mentioned without elicitation by the State and no results were entered into evidence); *State v. Wilson*, 389 S.C. 579, 585-86, 698 S.E.2d 862, 865-66 (Ct. App. 2010) (affirming the denial of a mistrial even assuming the trial court erred because the defendant did not prove prejudice).

AFFIRMED.

HUFF, SHORT, AND KONDUROS, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 10, 2015

The Honorable Margaret Bostick
PO Box 248
Ridgeland SC 29936-0248

REMITTITUR

Re: The State v. Phillip Monroe
Lower Court Case No. 2011GS2700189, 2012GS2700190
Appellate Case No. 2013-000425

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.

The following exhibits filed in this case are being returned to you:

State's Exhibit #4 - DVD
State's Exhibit #5 - DVD

Please sign and return the enclosed copy of this letter acknowledging receipt of these items.

Receipt Acknowledgment

Name: _____ Date: _____

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Salley W. Elliott, Esquire
Lara Mary Caudy, Esquire
Alan McCrory Wilson, Esquire

278 STATE OF SOUTH CAROLINA

COUNTY OF

JASPER

Phillip Monroe #354301

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

(Please Print)

Submitted By:

Phillip Monroe

Address:

BRCI/354301
4460 Broad River Rd.
Columbia, SC 29210

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-27-354

2015-11-11 PM 12:50

SC Bar #:

Pro Se

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete.

- ☒ JURY TRIAL demanded in complaint ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Out-of State Depositions (650) ☐ Other (699) ☐ Sexual Predator (510)			

Submitting Party Signature:

Phillip Monroe

Date:

8-11-2015

STATE OF SOUTH CAROLINA)

County of JASPER)

IN THE COURT OF COMMON PLEAS

Phillip Monroe #354301)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution,
Columbia, S.C. 29210
2. Name and location of Court which imposed sentence General Sessions
Court, Jasper County, Ridgeland S.C.
3. Name(s) of co-defendant(s) (if any) Courtney Banierl
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-GS-27-190

(b) 2012-GS-27-189

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 13, 2013 ; 27 years incarceration(b) February 13, 2013 ; 6 months incarceration

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes.(b) after a plea of not guilty No.(c) after a plea of nolo contendere No.

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. January 28, 2015

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2015-UP-044

ii. _____

iii. _____

9. If you answered Ano@ 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 (See Attachment).
- (b) Due Process Violation (See Attachment).
- (c) Prosecutorial Misconduct (See Attachment).
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial attorney and appellate attorney ineffective.
- (b) Applicant due process constitutional rights were violated.
- (c) The state attorneys committed prosecutorial misconduct.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

No.

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) Post-conviction relief is the only venue for this issue.
 (b) Post-conviction relief is the only venue for this issue.
 (c) Post-conviction relief is the only venue for this issue.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
 (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? No, pro se.

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Robert Hughes, P.O. Box 296, Ridgeland SC 29936
 ii. Lara M. Caudy, P.O. Box 11589, Columbia, SC 29211-1589
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment, plea, trial and sentencing.
 ii. Appeal and oral argument on appeal.
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Convictions and Sentences with Prejudice.

20. Are you now under sentence from any other court that you have not challenged?

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, Phillip Monroe # 354301, 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.

Phillip Monroe

SWORN to and subscribed before me this 11
day of AUGUST, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 6/14/2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Phillip Monroe, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Phillip Monroe
Applicant

SWORN or affirmed to and subscribed before me this

11 day of August, 2015.

[Signature]
Notary Public

My Commission Expires: 6/10/2018

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Phillip Monroe, #354301,

2015-CP-27-354

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 17, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the September 2012 term of the Charleston County Grand Jury for one (1) count of Possession with Intent to Distribute Clonazepam, a Schedule IV Drug (2012-GS-27-189). The Applicant was also indicted by the September 2012 term for one (1) count of Drugs/Trafficking Cocaine, More than 10 Grams, but Less than 28 grams (2012-GS-27-190). Robert Hughes, Esquire, represented him. On February 11, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for one (1) count of Drugs/Trafficking Cocaine, More than 10 grams but Less than 28 grams (2012-GS-27-190). The Applicant was also found guilty of one (1) count of the lesser included offense of Possession of Other Controlled Substances in Schedule I to V, First Offense (2012-GS-27-189). The Honorable Perry M. Buckner sentenced the Applicant to confinement for twenty-seven

(27) years for the count of Drugs/Trafficking Cocaine, More than 10 Grams but Less than 28 grams, and six (6) months for the count of Possession of Other Controlled Substances in Schedule I to V, First Offense. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Monroe, Op. No. 2015-UP-044 (filed on January 28, 2015). The Remittitur was issued on March 12, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Trial attorney and appellate attorney ineffective"
2. "Due Process Violation"
 - a. "Applicant (sic) due process constitutional rights were violated"
3. "Prosecutorial Misconduct"
 - a. "The state attorneys committed prosecutorial misconduct"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Applicant's first allegation is an allegation of ineffective assistance of trial counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well

within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247

(1983).

IV.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

The Respondent interprets Applicant's second claim as an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues 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). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S.

Ct. 2201 (1989).

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

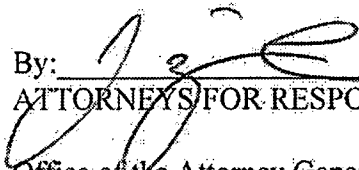
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 7, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

2015-CP-27-0354

PHILLIP MONROE, #354301)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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:

James K. Falk, Esquire
 Falk Law Firm, LLC
 Post Office Box 1058
 Charleston, South Carolina 29402

DATED this 7th day of June, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
Philip Monroe	)	
	)	2015-CP-27-0354
Applicant	)	
Vs.	)	
State of South Carolina	)	Applicant's Amended
Respondent,	)	Post-Conviction Relief Application
_____	)	

TO: Ruston Neely, Esq., Office of SC Attorney General, PO Box 11549, Columbia, SC 29211-1549.

Applicant amends his PCR application to include the following allegations of ineffective assistance of counsel.

1. Trial counsel did not consult with Applicant before counsel adopted a strategy to advise the jury during closing argument that the guilty of trafficking, but he is guilty of conspiracy to manufacture crack cocaine.
2. Trial counsel's closing argument exposed the jury to information regarding defendant's prior bad acts which otherwise would not have been admissible as Lyles evidence.
3. Trial counsel failed to object to "hands of one, hands of all" jury charge.
4. Trial counsel should have objected to the use of Respondent's Georgia conviction for enhancement purposes under the trafficking statute.

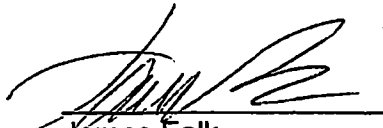
Respectfully Submitted,



James Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on September 24, 2017 a copy of the above was mailed to Ruston Neely, Esq. at the address listed above and a copy was sent via email


James Falk
Counsel for Applicant

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Jasper

3

4 Case No.: 2015CP2700354

5 Philip Monroe,

6 Applicant,

7 vs.

Transcript of Record

8 State of South Carolina,

9 Defendant(s).

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12

13

14

15 October 13, 2017

16 Beaufort, South Carolina

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20

21 BEFORE:

22 The Honorable Thomas A. Russo

23

24

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1

APPEARANCES

2

3

REPRESENTING THE STATE:

4

Ruston Wesley Neely, Esquire

5

PO Box 11549

6

Columbia, SC 29211

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rneely@scag.gov

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9

10

REPRESENTING APPLICANT:

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12

James Kristian Falk, Esquire

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PO Box 1058

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Charleston, SC 29402

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jfalklaw@gmail.com

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843-606-6007

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PROCEEDINGS

1
2 MR. NEELY: Thank you, Your Honor. This case is
3 the case of Philip Monroe versus State of South
4 Carolina. Case Number 2015 CP27 0354. Applicant was
5 indicted to September 2012 term by the Jasper County
6 Grand Jury for one count of possession with intent to
7 distribute Clonazepam, a Schedule IV drug, and one
8 count of trafficking in cocaine, more than 10 grams,
9 less than 28 grams.

10 Mr. Robert Hughes represented him. He proceeded
11 to trial on February 11, 2013, where he was found
12 guilty of both charges as indicted -- I'm sorry, guilty
13 of the trafficking charges indicted, and guilty of the
14 lesser included possession of controlled substance on
15 the Clonazepam charge.

16 The Honorable Perry Buckner sends applicant to
17 prison for 27 years for the trafficking charge and six
18 months concurrent for the possession of controlled
19 substance charge.

20 A Notice of Appeal was filed on applicant's behalf
21 and perfected pursuant to Anders V California, South
22 Carolina Court of Appeals confirms conviction sentence.
23 The matter was issued March 12, 2015.

24 THE COURT: All right. Now, Mr. Falk.

25 MR. FALK: Mr. Monroe is seeking post-conviction

CALLING OF THE CASE

1 relief based on ineffective assistance of counsel. A
2 lot of his claims come around to the fact that trial
3 counsel did not consult with the applicant before
4 adopting a trial strategy that would advise the jury
5 during the closing argument that he might be guilty of
6 trafficking, but he's -- he's not guilty of
7 trafficking, but he is guilty of conspiracy to
8 manufacture.

9 Wait a minute -- just anyways, let me get that.

10 That Mr. Monroe is not guilty of trafficking, he
11 is guilty of conspiracy to manufacture cocaine, but
12 that's not what he's on trial for. So that was what he
13 alleged in his amended PCR application.

14 THE COURT: All right.

15 MR. NEELY: Your Honor, I think -- I think three
16 of these can be ruled on as a matter of law. I don't
17 think trial counsel has a duty to consult and ask his
18 client before he proceeds with a particular trial
19 strategy, when trial strategy is left completely in the
20 hands of the attorney. I don't think there's a duty to
21 consult before proceeding with a trial strategy. I
22 don't believe that there is any legal ground to object
23 to a one hand of all legal theory of the State, where
24 you have two co-Defendants. And I don't believe
25 there's any ground to object to the Georgia drug

CALLING OF THE CASE

1 conviction being used to enhance a South Carolina drug
2 charge. I think that's -- those are all three can be
3 ruled on as a matter of law, in my opinion.

4 MR. FALK: Your Honor, my concern is -- well, if
5 you want to talk about the drug charge, I believe that
6 he had a Georgia arrest for 28 grams of crack, 1.7
7 grams of cocaine, and I think some marijuana.

8 From what I can tell from the records -- and what
9 I guess we are going to need is to get certified
10 records from Georgia, which I don't have for us today
11 is that -- because one of those charges was nolle
12 prossed.

13 THE COURT: Okay.

14 MR. FALK: And I believe it was the 28.7 grams of
15 crack cocaine charge was nolle prossed, and he pled to
16 them, and that's what his understanding of the plea.
17 And he pled to the 1.7 of cocaine, and if that were the
18 case, then if you look at the statute as far as prior
19 offenses, I think it's got to be another prior offense.
20 In order for it to be a third, it's got to be a third
21 of the quantity.

22 MR. NEELY: No, that's incorrect.

23 THE COURT: That's incorrect.

24 MR. FALK: Then that's my mistake.

25 THE COURT: That is not a correct statement of the

CALLING OF THE CASE

1 law. It just has to be a prior conviction. It can be
2 any drug. It doesn't have to be the same drug, it
3 doesn't have to be the same charge. It can be
4 possession with intent to distribute and enhance the
5 trafficking. It could be a possession with intent to
6 distribute marijuana, it can enhance the trafficking in
7 methamphetamine.

8 MR. NEELY: I think that's actually changed,
9 Your Honor.

10 THE COURT: Has that changed?

11 MR. NEELY: That's changed. Marijuana can only
12 enhance marijuana.

13 THE COURT: Marijuana has changed. But crack can
14 enhance anything else.

15 MR. NEELY: That's correct. In fact, Clonazepam
16 or any other controlled substance other than marijuana
17 can enhance any other controlled substance.

18 THE COURT: You are correct. Marijuana was
19 recalled out of that.

20 All right. Now, so as far as the motion as it
21 relates to the Georgia conviction for enhancement
22 purposes, I'm going to rule failure to stay on that.
23 And I'm assuming he had a trafficking -- he had the
24 1.6 grams of cocaine from Georgia.

25 MR. FALK: Yes.

CALLING OF THE CASE

1 THE COURT: There's no question he had that. Now,
2 that was used to enhance; is that correct?

3 MR. NEELY: The -- I believe the indictment was
4 presented at trial in the sentencing stage.

5 THE COURT: Right. That would be at the
6 sentencing stage. Of course, the jury would have no
7 idea of the prior.

8 MR. NEELY: Correct.

9 THE COURT: But anyway, that would be appropriate.
10 "Trial counsel failed to" -- (judge reading.)

11 I don't think as a matter of law I can rule on
12 that. I don't know what the evidence was that was
13 presented during the course of the trial. So that
14 would be an evidentiary thing.

15 And then the other one was what?

16 MR. NEELY: The consultation.

17 THE COURT: The trial strategy? I'm not aware
18 that --

19 MR. FALK: Well, then it should be -- he adopted
20 an ineffective trial strategy.

21 MR. NEELY: I think that's argued in Point Number
22 2, I believe.

23 THE COURT: Well, we will proceed with that, in
24 that vein, that it was an ineffective trial strategy.

25 MR. FALK: Thank you, Your Honor.

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1 THE COURT: I'll allow you also to argue about the
2 hand of one, because I think the record will speak to
3 that.

4 But as far as the enhancement of the Georgia
5 conviction, I think that is a matter of law. That's
6 appropriate. All right.

7 MR. NEELY: Thank you, Your Honor.

8 MR. FALK: Can I put my client on the stand?

9 THE COURT: All right. Mr. Monroe, will you come
10 around and be sworn, sir.

11 MR. NEELY: And, Your Honor, so I really didn't
12 know, it was my fault, Mr. Falk sent me an amendment
13 adding the appellate counsel objections after I had
14 sent the docket out, and so I didn't have Ms. Hudgins
15 on the docket for the amended appellate allegations.

16 MS. HUDGINS: I'm right here.

17 THE COURT: Oh, that's fine. I'm just glad she's
18 available, and we'll get it done.

19 Thereupon,

20 PHILIP MONROE

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q Mr. Monroe, could you state your name for the

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 record.

2 A It's Philip Monroe.

3 Q All right. And, Mr. Monroe, at some time during
4 your closing argument, the defense counsel said, "Philip
5 Monroe is not guilty of trafficking, he's guilty of
6 conspiracy to traffic crack cocaine, and that's not what
7 he's on trial for."

8 Were you concerned when your lawyer said
9 that?

10 A Yes, I was because when he said that, I was not
11 guilty for trafficking, but which I am guilty for aiding and
12 abetting in manufacturing. But that the same thing as
13 trafficking. So he's telling that I still was, you know,
14 guilty for trafficking. And if he would have said that, or
15 tell me that that was part of his strategy, then I would
16 have tell him, don't do that, because he throwing me under
17 the bus.

18 Q So how many times did you talk to Mr. Hughes prior
19 to this trial?

20 A I talked to him like that Friday. We went to
21 Court, we went to trial Monday, he came to see me Friday.
22 You know, I ain't never seen him since. You know, that was
23 the one time only I seen him.

24 Q Did he share all the discovery with you?

25 A I never saw it with him.

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 THE COURT: Well, I don't mean to back you up too
2 far, but do you have the -- where in the transcript
3 that is, the closing argument?

4 MR. FALK: Oh, I'm sorry. Yes. It's Page 194,
5 Line 23.

6 THE COURT: Page what?

7 MR. FALK: It's transcript Page 194. It's the
8 record on appeal.

9 THE COURT: I got the record on appeal.

10 MR. FALK: So that's 160.

11 THE COURT: 160. Okay.

12 MR. FALK: Line 23.

13 THE COURT: All right, sir. Go ahead. I'm sorry.

14 BY MR. FALK:

15 Q So were you on bond -- were you in custody, or did
16 you ever make bond on these charges?

17 A No, I was in custody.

18 Q Okay. And about how long were you in custody?

19 A I think like 11 months, 12 months, something like
20 that.

21 Q Okay. And during those 11 months, you say
22 Mr. Hughes only came to see you one time?

23 A Yeah, only -- only one time for that. He came to
24 see me about an alleged double homicide, something like
25 that.

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 Q Okay. Did an investigator from the office come
2 and talk to you about these charges?

3 A Yeah.

4 Q About how many times was that?

5 A Maybe three or four.

6 Q And when the investigator come talking about this
7 trafficking charge, what was -- did he share any of the
8 evidence with you, any of the Rule 5? Any of the statements
9 in the police reports?

10 A No, he did not.

11 Q Okay. Did you know that you were going to trial
12 this day? I mean, when did you know that you were going to
13 trial?

14 A The only time I knew I was going to trial is when
15 they brought me back from, I think, from Sumter. They
16 brought me from Sumter, and bring me down. I seen him that
17 Friday, and he was saying something about we going to trial
18 Monday, and he left.

19 Q And did he ever tell you prior to the trial that
20 he was planning on talking about other criminal conduct that
21 you might have been involved in, as far as this trial
22 strategy?

23 A No. He didn't talk about anything other than he
24 just -- he just asked me will I take 25 years, and I told
25 him, "What happened to the ten years?" You know. And he

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 was like, "Well, I have got 25 now." And I was like, "Well,
2 we must be going to go to trial." And he was like, "All
3 right, see you Monday."

4 Q What was the discussion about ten? Was there a
5 plea offer for ten?

6 A Yes. They bring me down from Sumter County,
7 because they was holding me at different facilities, right?
8 And I was at Sumter County, they bring me back, and they
9 brought me on, I think, to Jasper, and they asked me about a
10 ten-year deal, Tameaka Legette.

11 Okay. From my understanding, she told --
12 because they were trying to charge me for something that I
13 had no dealings with. Okay. So Tameaka Legette, she was
14 like, "We will bring you back down here Wednesday, and when
15 we bring you back, if you don't want this deal, it's no
16 longer on the record."

17 Well, I wrote to Bob and I told him, "Well,
18 see if you could try to get me eight years, you know, and if
19 you can't do that, then I'll just go ahead and take the ten
20 years."

21 But he never -- he never responded back to
22 me. I sent a letter also to my wife to give to him, and she
23 brought it down to him as well as the Solicitors, and I was
24 telling them, all right, I will take the ten years because
25 I'm way in Sumter. And I never got no response. When he

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 came back, he was, like I say, he was talking about 25.

2 MR. FALK: Your Honor, the claims about the plea
3 offer was his item Issue Number 7 on this memorandum
4 that was attached to this PCR.

5 THE COURT: All right, sir.

6 BY MR. FALK:

7 Q So when was the -- Ms. Leggette talked you about a
8 ten-year offer, but you had to go back to Court about it.

9 A No. Yeah, they told me -- okay, she came in and
10 asked me about a deal which was ten years. All right. At
11 that time, you know, I was like, man, I wasn't taking ten
12 years for something I didn't do.

13 So they brought me in anyway just to put it
14 on the record. They put it on the record, they was like,
15 well, we are going to bring him back Wednesday, and if he
16 don't take the ten years, then it's no longer on the record.

17 So when I left from out the courtroom, they
18 took me all the way back down to Sumter. So I had no really
19 contact with these people because I'm in Sumter. But I did,
20 you know, at Sumter, I passed something in jail. Every time
21 you write a letter, they always docket it. So I sent Bob
22 and the Solicitor letters, and I was trying to get it
23 docketed. But you could call Sumter, and they got it on the
24 record, you know, where I sent them a letter.

25 Q Okay. But just so I'm sure, you were never in

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 Court where you raised your hand and you told the Court that
2 you did not want a ten-year deal; is that correct?

3 A That's correct. Bob -- Bob had -- okay. Bob had
4 tell me, say, well, Tameaka Legette, she had tell me, they
5 bring me in coming from the holding cell. I did come in the
6 courtroom. And when they brought me inside the courtroom,
7 they had asked me about a ten-year -- a ten-year deal, to go
8 to prison. And I didn't take the offer. So they was like,
9 when we bring him back, the offer stands.

10 So when I called Bob to ask him about why
11 didn't y'all get me in Court, his exact words was, "Some
12 lady that works at the water place, she stole a lot of money
13 from the people, and they had a trial for her. That's why I
14 did not get you to come back in trial."

15 And then they brought me the next morning.
16 So it wasn't on me because I can't drive all the way from
17 Sumter down here to tell them I'll take the ten years, you
18 know. And I --

19 MR. NEELY: Your Honor, I'm going to object at
20 this point. I don't have anything about a plea offer.

21 THE COURT: I don't -- I mean, I'm only looking at
22 the packet that I was given. It's not mentioned in the
23 application, and it's not mentioned in the amended
24 application.

25 Now, it does reference in the handwritten

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 application, the original application, it references,
2 "See attachment," but there is no attachment.

3 MR. NEELY: Yes, sir. That's what I have as well.

4 THE WITNESS: You know, my attorney, they have my
5 evidence for the -- I mean my exhibits. They have
6 them.

7 MR. FALK: It did not come with the application,
8 so I never got it. This is a copy that he brought me,
9 but I got it from the -- I have another copy of it in
10 my record.

11 THE WITNESS: I also have my Georgia conviction.

12 THE COURT: Well, who is on -- it is just like
13 with the last case, you know, people have to be on
14 notice. Ms. Hudgins wasn't on notice that she was
15 going to be involved, so we continued it and gave her
16 that opportunity. The State has the right to be put on
17 notice as to what they are facing and what they're
18 going to have to address, and I don't know what is on
19 the attachment because I don't have it.

20 MR. NEELY: And I don't have it either.

21 THE COURT: And they don't have it.

22 MR. FALK: But if it was filed with the court -- I
23 mean, I guess I don't have proof that it was filed with
24 the court. I just have what was sent to me from --

25 MR. NEELY: And, Your Honor, obviously South

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 Carolina does not allow higher representation. So if
2 he's filing motions while being represented by
3 Mr. Falk, his motions are void.

4 THE COURT: Well, that's for sure.

5 BY MR. FALK:

6 Q No, I'm not -- this is -- the document says "post
7 conviction release." Issue -- did somebody prepare this for
8 you?

9 A That was my issues.

10 Q Yeah. Did somebody prepare this docket for you?

11 A I did.

12 Q And was this what was stapled to your -- does this
13 go along with your application that you filed?

14 A Yes. Those issues was -- I also sent you those
15 issues there.

16 Q I know, but didn't you file these with your --
17 your application says, "See attachment."

18 A Right. And I sent it to you.

19 Q And is this the attachment?

20 A With the other two papers.

21 Q Yeah.

22 THE COURT: I have two papers here, but I think
23 they are copies of the same thing, dude. They're
24 identical.

25 THE WITNESS: No, that's not what I --

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 THE COURT: It says, "The applicant's amended."

2 MR. FALK: And that's what I prepared to file.

3 THE COURT: Right.

4 THE WITNESS: I have a copy for you as well then
5 on -- so this is with the Clerk of Court.

6 MR. NEELY: Your Honor, for the allegations, it
7 says "See attachment, ineffectiveness of counsel, due
8 process violation, prosecutorial misconduct." It says,
9 "See attachment" for each one of those three.

10 THE COURT: I saw that, and so I kept looking. I
11 thought this was the attachment that we were referring
12 to.

13 MR. NEELY: Certainly. And I saw no other
14 attachment either, Your Honor. I don't have either
15 attachment.

16 THE COURT: Well, if there's other -- if there are
17 matters on there that, Mr. Falk, you feel are valid
18 and --

19 MR. FALK: Primarily I'm focused on the plea
20 issue.

21 THE COURT: Well, that needs to be fleshed out.
22 If the State needs more time to deal with that, we are
23 going to have to continue the matter.

24 MR. NEELY: I just dislike whenever, in the middle
25 of a witness, and I'm having new issues that I haven't

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 seen before.

2 THE COURT: Yeah. And I'm not saying that you
3 have to let that go forward. I mean, I'm not going
4 to -- I'm not going to put you to the task to defend
5 issues that you been not made aware of.

6 Now, I also -- I mean, if it's something that
7 Mr. Monroe is preparing and sending out, I mean, he's
8 got appointed counsel.

9 MR. FALK: Well, Your Honor, I'm just saying that
10 I see these a lot where, you know, they'll have lots of
11 grounds, and they will say, you know, "See note," or
12 something like that, because you only have three lines
13 on the application. And then that's what I'm assuming
14 this is.

15 MR. NEELY: Well, we have no indication that was
16 ever filed with the Clerk of Court.

17 MR. FALK: Then I guess that's what we have to
18 prove.

19 THE COURT: Well, I have what was filed, correct?

20 MR. NEELY: Certainly.

21 THE COURT: I mean, I have got everything that was
22 filed here. This is file stamped. We got the term
23 from the State, I've got the application, I've got your
24 amended -- applicant's amended post conviction release
25 application, which has those four items. I have the

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 sentencing sheet. I have the appellate's -- the final
2 brief of the appellate, and the record on appeal. That
3 is -- oh, I'm sorry. I have got also the final brief
4 of the respondent, the remittitur and the record on
5 appeal. That is all I have got.

6 MR. FALK: Your Honor, it would be the applicant's
7 position if this was filed with the Clerk of Court as
8 an attachment to his application, that it is properly
9 part of the application, it just did not get forwarded
10 to the Attorney General's office.

11 THE COURT: So where is this file? It'll be
12 here --

13 MR. FALK: Jasper County.

14 THE COURT: It will be in Jasper County.

15 So we'd have to contact Jasper County to see if
16 there is anything in their file that I don't have.

17 MR. NEELY: Your Honor, I've told Mr. Hughes that
18 the conversation, the applicant is pretty forth it
19 never happened. I'm willing just to go forward with
20 Mr. Hughes' testimony record and stand against the
21 applicant's.

22 THE COURT: You are consenting then to allow
23 Mr. Falk to flesh that out?

24 MR. NEELY: Sure.

25 THE COURT: Okay.

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 MR. NEELY: To speed things along.

2 MR. FALK: I was not trying to sandbag. I
3 really --

4 MR. NEELY: Oh, I know that.

5 THE COURT: I honestly believe this is an honest
6 mistake. So that's -- but that's fine. If the State
7 doesn't object to you going into it, we will go into
8 it.

9 MR. FALK: I'm trying to remember where I was.

10 THE COURT: Well, there was Mr. Monroe was told he
11 had a ten-year sentence, he could take it or leave it,
12 and then he asked, according to his testimony, he asked
13 Mr. Hughes to try to get the eight. If you can't get
14 the eight, I'll take the ten. That is where we were
15 at.

16 MR. FALK: And then I asked him whether or not he
17 actually ever was in court.

18 THE COURT: Correct.

19 MR. FALK: To actually raise his hand and turn it
20 down on the record. He said he was never in Court.

21 THE COURT: Correct. Right.

22 BY MR. FALK:

23 Q If you could have gotten ten years, you would have
24 taken the ten-year deal?

25 A Yes.

DIRECT EXAMINATION OF PHILIP MONROE BY MR. FALK

1 Q Even though you had told him before that this
2 wasn't something that you had done; is that correct?

3 A Right.

4 Q Why would you have taken ten years then?

5 A Because another officer at the facility told me
6 that it would be in my best interest to, because they were
7 trying to give me so much time.

8 Q So you were trying to make a decision that you
9 felt was in your best interest?

10 A Right.

11 MR. FALK: I have no further questions.

12 CROSS EXAMINATION

13 BY MR. NEELY:

14 Q Was that decision in your best interest because
15 you gave a video statement to law enforcement admitting that
16 the coke was yours?

17 A I never said the coke was mine. You know, they
18 came -- they came at me when I was in Sumter County, too.
19 Okay. And they was, you know, throwing questions around
20 there. And they had a camcorder over there, and they were
21 throwing questions around. You know how things get twisted
22 around and stuff like that.

23 Q So the video testimony that you gave that you were
24 going with your co-Defendant to cook the crack cocaine -- to
25 cook the cocaine into crack cocaine --

CROSS EXAMINATION OF PHILIP MONROE BY MR. NEELY

1 A Right, I said that.

2 Q -- you said that, right?

3 A Yes.

4 MR. NEELY: Okay. That's all the questions I
5 have, Your Honor.

6 THE COURT: Anything further?

7 MR. FALK: Nothing further.

8 THE COURT: All right. Thank you very much.
9 Mr. Monroe, you may step down.

10 Mr. Falk, you may call your next witness.

11 MR. FALK: I'll call Mr. Hughes to the stand.

12 THE COURT: All right. Mr. Hughes, if you'll
13 please come around this way, sir.

14 Thereupon,

15 ROBERT HUGHES

16 was called as a witness, having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q Now, Mr. Hughes, you represented Philip Monroe on
21 this case?

22 A I did.

23 Q And were you the only Public Defender from Hampton
24 County -- or Jasper County who was representing him?

25 A Yes, sir.

DIRECT EXAMINATION OF ROBERT HUGHES BY MR. FALK

1 Q Okay. How many times did you talk to him in the

2 --

3 A At least three or four times. I know that I
4 talked to him when they brought him back down from Sumter.
5 I tried to get the Detention Center to hold him so that I
6 could visit. So I kept him informed the best I could as to
7 what was going on.

8 Q All right. And in your closing argument, what was
9 your strategy with saying he's not guilty of trafficking,
10 but he is guilty of conspiracy to manufacture?

11 A The fact that he was not charged with conspiracy
12 to manufacture would have got -- would have forced the jury
13 to do a not guilty on the trafficking. He basically
14 admitted to law enforcement on videotape that he was doing
15 exactly that.

16 I was trying to, if nothing else, get a
17 mistrial or a not guilty on the trafficking, and hopefully
18 the State would reconsider the offer that they had made
19 previously.

20 Q And there was a prior offer?

21 A Yes, sir.

22 Q And what was that offer?

23 A Ten years.

24 Q And was Ms. Leggette prosecuting this case the
25 whole time for the State?

DIRECT EXAMINATION OF ROBERT HUGHES BY MR. FALK

(
1 A No, sir. I believe she turned it over to Kara
2 Henderson to try.

3 Q Okay. So what is your recollection of the offer?

4 A The offer was ten years, he flatly refused it. He
5 went on record and said that he did not want it.

6 Q When he went on record, where was he?

7 A In the Jasper County courthouse, in the courtroom.

8 Q And do you recall about what day that was? I
9 mean, relative to -- of course, I'm not going to assume the
10 day. Relative to the trial date, was it a month before? A
11 week?

12 A It would have been at least a month before. We do
13 not have trials more than at least once every month.
14 Usually there's a separation even more than that.

15 Q So that was -- he was on the trial docket for that
16 day?

17 A No, sir.

18 Q When he -- when you are saying he went in and
19 said --

20 A No, sir, he was not on the trial docket. They
21 brought him down. I believe it was either Ms. Leggette or
22 Ms. Henderson had an offer. I wanted to communicate it to
23 him and give him an opportunity to take the offer if he
24 could. So it probably would be a Monday or a Tuesday --
25 probably a Monday.

DIRECT EXAMINATION OF ROBERT HUGHES BY MR. FALK

1 Q Okay. And he was called before the Judge, raised
2 his hand, the whole shebang?

3 A The Solicitor insists upon it when they flatly
4 refuse an offer, just to basically cover all the bases.

5 Q Okay. And what was your recommendation about the
6 offer?

7 A I don't ever recommend they take it, I basically
8 say that if you are guilty, then this is a good offer or not
9 a good offer. But if you are not guilty, never ever take an
10 offer just to get better time.

11 Q Let me go back. As far as saying that he's
12 conspiring to manufacture, but not traffic, part of your
13 closing argument, you think that -- are you convinced that
14 the jury could have made that distinction between --

15 A I hammered it. My biggest problem with this is he
16 was on videotape saying the drugs -- he was there to cook
17 the coke, cook the crack, that he was an expert at crack
18 cooking.

19 Q And you did not have any concern that, before the
20 jury, his own lawyer saying look, the guy's in the drug
21 business, but he's just not -- he didn't do what he's
22 charged this time?

23 A Of course. But I also have a jury who has looked
24 at a videotape where he's saying that, and if a jury thinks
25 that he and his lawyer are lying to them, we are doomed. If

DIRECT EXAMINATION OF ROBERT HUGHES BY MR. FALK

1 we can convince the jury that, look, it's possible that this
2 was what he was doing, and that is the reasonable doubt that
3 I was going for.

4 Q Okay. Sorry to keep ping ponging back and forth
5 though.

6 Regarding when he came into court and raised
7 his hand, do you remember what judge you were before?

8 A Not a clue.

9 Q Okay.

10 MR. FALK: No further questions.

11 CROSS EXAMINATION

12 BY MR. NEELY:

13 Q During your meetings with Mr. Monroe, did you show
14 Mr. Monroe the discovery in his case?

15 A Not the video. I did not have a copy of that
16 given to me until probably right before the trial. He and I
17 went over his statements, and it was a simple case. So,
18 yes, he and I talked about it.

19 Q So you had the statements that he gave to law
20 enforcement whenever you were reviewing it with them?

21 A Yes.

22 Q And you recall how many times you met with him?

23 A No, I don't. It would have been at least two or
24 three.

25 MR. NEELY: Thank you. That is all the questions

CROSS EXAMINATION OF ROBERT HUGHES BY MR. NEELY

1 I have.

2 MR. FALK: One moment, sir.

3 May I approach the witness?

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. FALK:

7 Q This shows a hearing before Judge Buckner in
8 Jasper County on October 17th. Do you recall being at the
9 hearing that day?

10 A Yes.

11 Q Okay. Was there then another time he came back to
12 Court, after this one?

13 A I do not recall him coming back to Court before
14 the trial.

15 Q So, but it would appear that this offer expired --
16 I'm looking at what Judge Buckner is saying on Line 4 of
17 this transcript. And it says, "You understand the State is
18 telling the Court that the offer will expire a week from
19 today." That is on October 17th.

20 A Okay.

21 Q Page 4 of the --

22 A These pages aren't numbered, but --

23 Q Okay. Up in the top right?

24 A Okay. Page 4.

25 Q So on October 17th, that offer was still going to

REDIRECT EXAMINATION OF ROBERT HUGHES BY MR. FALK

1 be held open for another week?

2 A That is what it says, yes.

3 Q Was that your understanding?

4 A Yes. That would have been a case of me having to
5 contact the Solicitor's office and say we will take it. Or
6 him contacting the Solicitor's office and saying we will
7 take it.

8 Q So he didn't go before -- I mean, so this is the
9 court appearance that you were remembering?

10 A Right.

11 Q But he didn't actually reject the offer on the
12 record?

13 A No.

14 Q Okay. When did you contact him about whether or
15 not he wanted -- what his final decision was here?

16 A I don't remember. He was very adamant about not
17 wanting to take the offer when I talked to him before.

18 MR. FALK: Your Honor, I don't believe that you
19 have a copy of this transcript. I would assume that
20 it's ultimately -- I mean, the public record is the
21 public record, but just for identification purposes, it
22 is a transcript of a hearing on October 17th, 2012.

23 THE COURT: Okay.

24 MR. FALK: In Jasper County on State versus Philip
25 Monroe, Tameaka Legette, and Robert Hughes. Rhonda

REDIRECT EXAMINATION OF ROBERT HUGHES BY MR. FALK

1 Taylor is the court reporter. And I've been referring
2 to some of the last lines of this, on Page 4 of the
3 transcript.

4 THE COURT: Okay.

5 BY MR. FALK:

6 Q Were you aware -- did you do any investigation of
7 his criminal charge in Georgia?

8 A I just saw it on the rap sheet.

9 Q And what is your recollection of what it showed?

10 THE COURT: Why are we going into that? I think I
11 ruled on that.

12 MR. FALK: Okay, Your Honor.

13 THE COURT: Yeah, that is not necessary. As a
14 matter of law, the Court has already ruled on that.

15 MR. FALK: Thank you, Your Honor. I have no
16 further questions.

17 RECROSS EXAMINATION

18 BY MR. NEELY:

19 Q Just making sure I understand. The day that he
20 was in Court and was informed of his offer, he flatly
21 refused it?

22 A Yes.

23 MR. NEELY: Thank you. That's all the questions I
24 have.

25 FURTHER REDIRECT EXAMINATION

FURTHER REDIRECT EXAMINATION OF ROBERT HUGHES BY MR.
FALK

1 BY MR. FALK:

2 Q When did he refuse it?

3 A To me, back in holding. If he had wanted that
4 offer, we would have done that plea then and there, or we
5 would have done it as soon as possible.

6 Q So you don't have a recollection of a
7 communication with him after the 17th about the offer?

8 A If I had any communication with Mr. Monroe about
9 an acceptance of that offer, I would have had him in Court
10 as soon as possible simply because it -- I'm a Public
11 Defender, I have a number of clients, and if I have one who
12 wants to plead guilty, I get them in court.

13 MR. FALK: No further questions.

14 MR. NEELY: Nothing on recross.

15 THE COURT: Thank you, Mr. Hughes. You may step
16 down, sir.

17 Anything further from the applicant's witnesses?

18 MR. FALK: Your Honor, we will rest on the record
19 that was made.

20 THE COURT: Does the State have anything to
21 present?

22 MR. NEELY: No, sir, Your Honor.

23 THE COURT: All right. Mr. Falk, happy to hear
24 from you, sir.

25 CLOSING ARGUMENT BY THE APPLICANT

CLOSING ARGUMENT BY THE APPLICANT

1 MR. FALK: Your Honor, I think there's some
2 question in the testimony about whether or not my
3 client ever had an opportunity to accept the ten-year
4 offer, but I do think there's proof that there was a
5 ten-year offer. And whether or not he had an
6 opportunity to -- I mean, the Court clearly gave him a
7 week to think about it, and whether or not he had an
8 opportunity to accept that offer within the time, I
9 believe that it was trial counsel's responsibility to
10 communicate with his client before the expiration date
11 on the offer to make sure that he had an opportunity.
12 Because obviously sometimes it's difficult for clients
13 who are in custody to get ahold of their lawyers.

14 And I think had he had an opportunity to accept
15 the ten-year offer, that's obviously a lot better than
16 the 25 years that he got.

17 THE DEFENDANT: Twenty-seven.

18 MR. FALK: Twenty-seven. Sorry.

19 Your Honor, we feel that Mr. Hughes' trial
20 strategy was ineffective because it -- as I said, it is
21 our position it is extremely prejudicial for somebody's
22 own lawyer to come up before the jury, and say look, my
23 guy's in the drug business, he just didn't exactly do
24 what he was charged with today.

25 Thank you, Your Honor.

CLOSING ARGUMENT BY THE APPLICANT

1 THE COURT: All right. Mr. Neely.

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CLOSING ARGUMENT BY STATE

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MR. NEELY: Thank you, Your Honor.

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First off, I would like to make a motion to dismiss two of the applicant's allegations, the first of which is that his closing argument allowed bad acts into evidence that would not otherwise be admissible, and trial counsel failed to object to the hand of one, hand of all. There wasn't any evidence being presented on those two allegations, so the State would move to dismiss those allegations.

THE COURT: I'm assuming the prior bad act you meant was the manufacture, the cooking of the --

MR. FALK: Yes, Your Honor. So many was bad acts, maybe not prior bad acts, but I mean, it's --

MR. NEELY: Well, then there's no prior bad acts. I mean, there was a driving under suspension spoken of, that's the only prior bad act that was talked about in closing argument.

THE COURT: Right. And I mean, I understand your argument.

MR. NEELY: Thank you.

THE COURT: But I'm going to grant your motion as to the hand of one, hand of all.

CLOSING ARGUMENT BY THE APPLICANT

1 MR. NEELY: Thank you, Your Honor.

2 As for the plea offer, the only proof they showed
3 was that he knew about it. Counsel certainly stated
4 that he knew about it, and that there was a ten-year
5 offer. There was never a dispute, and there was also
6 counsel's position that he was firmly denying that he
7 wanted to take the ten-year offer, and that he would
8 have certainly gotten him into Court to plead guilty if
9 he had ever indicated that he wanted to take that
10 offer.

11 You know what, if somebody with the argument, that
12 this is not a great argument to make, however, I don't
13 know of any good arguments to make when you have your
14 client on a video testifying to law enforcement that he
15 was on his way to cook cocaine to crack cocaine.

16 I think that counsel made the best argument of a
17 very poor situation, and that's all there is to this
18 case. We have a man who testified, "I was going to
19 cook the crack cocaine." And, you know, hung up to dry
20 on it.

21 I think counsel's argument was creative, and under
22 the circumstances is was the best argument he could
23 make.

24 THE COURT: In looking at the issues that have
25 been presented, with regards to the plea offer,

CLOSING ARGUMENT BY THE APPLICANT

1 obviously there was a plea offer extended and it was
2 left open for a week, and that is all on the record.
3 There was no acceptance or denial of the offer on the
4 record.

5 But the only testimony before the Court in this
6 case is that Mr. Monroe indicated to Mr. Hughes that he
7 didn't want ten years. He even testified that -- I
8 mean, that didn't come just from Mr. Hughes, Mr. Monroe
9 testified that he didn't want the ten-year offer, see
10 if you can get me an eight-year offer.

11 Mr. Hughes' testimony, and I understand where he's
12 coming from, is that when you have a client that is
13 willing to accept an offer, you immediately get them
14 into Court for a couple of reasons. Number one is that
15 you got a heavy caseload, so you can get those the best
16 case that you can do and you get it into Court.

17 And then other reason is, is that you don't want
18 the State to renew on the offer or have law enforcement
19 step in and interfere with it. So you get that person
20 in court as soon as possible, and he indicated that if
21 he had any indication at all that Mr. Monroe
22 was amenable to a ten-year plea, he would have had him
23 in court. And that, you know, that's the testimony
24 that the Court has to consider.

25 The trial strategy, as far as the closing

CLOSING ARGUMENT BY THE APPLICANT

1 argument, I would agree it's not commonplace to have
2 that argument, but I have seen it. And I've seen it, I
3 wouldn't say regularly, but I've seen it on numerous
4 occasions, where you have a client that is charged with
5 an extremely serious offense, and there's plenty of
6 evidence to indicate either a -- a lesser charge that
7 they are not even charged with, or that in this case
8 you got a client who has admitted to a different
9 criminal activity than what he's charged with. And so
10 you take that and sometimes you argue that to show the
11 jury that, look, we are not trying to hide, we are
12 being straight up. We are believable.

13 And you require that the jury -- you put the onus
14 on the jury to do their job, that their job is to
15 determine whether or not the State has proven the
16 charge for which my client is facing.

17 And I have seen it work, I have seen it not work,
18 but I don't think that it's inappropriate strategy. I
19 don't think it's ineffective strategy. Obviously it is
20 ineffective if it doesn't work, it's effective if it
21 does work.

22 But to use that type of strategy, I don't think it
23 can just be labeled as ineffective strategy that should
24 never be used. So I don't see anything in the record
25 that would indicate that Mr. Hughes' representation

CLOSING ARGUMENT BY THE APPLICANT

1 fell below the standard of reasonableness, and I don't
2 see anything in the record that would indicate that
3 anything that was alleged would have had any different
4 effect.

5 The only thing that would have had a different
6 effect here would be the -- the not accepting the plea,
7 but I don't think the applicant has carried the burden
8 as to that. And so I'll respectfully deny the
9 application.

10 MR. NEELY: Thank you, Your Honor.

11 (Hearing concluded.)

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CLOSING ARGUMENT BY THE APPLICANT

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

DATED this 18th day of September, 2019.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

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mmanley@sccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Philip Monroe,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case no. 2015-CP-27-0354

ORDER OF DISMISSAL

2019 MAY -3 PM 11:21

This matter comes before the court by an amended post-conviction relief (PCR) application filed by James Falk on September 24, 2017. This Court convened an evidentiary hearing into the above-captioned matter on October 12, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Robert Hughes, Esquire, (Counsel) and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted by the September 2012 term of the Charleston County Grand Jury for one (1) count of Possession with Intent to Distribute Clonazepam, a Schedule IV Drug (2012-GS-27-189). Applicant was also indicted by the September 2012 term for one (1) count of Drugs/Trafficking Cocaine, More than 10 Grams, but Less than 28 grams (2012-GS-27-190). On February 11, 2013, Applicant proceeded to a jury trial pursuant to which he was found guilty as

indicted for one (1) count of Drugs/Trafficking Cocaine, More than 10 grams but Less than 28 grams (2012-GS-27-190). Applicant was also found guilty of one (1) count of the lesser included offense of Possession of Other Controlled Substances in Schedule I to V, First Offense (2012-GS-27-189). The Honorable Perry M. Buckner sentenced Applicant to confinement for twenty-seven (27) years for the count of Drugs/Trafficking Cocaine, More than 10 Grams but Less than 28 grams, and six (6) months for the count of Possession of Other Controlled Substances in Schedule I to V, First Offense. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Monroe, Op. No. 2015-UP-044 (filed on January 28, 2015). The Remittitur was issued on March 12, 2015.

II. ALLEGATIONS

Applicant alleged the following grounds in his amended application:

I. Ineffective Assistance of Counsel

1. Trial counsel did not consult with Applicant before counsel adopted a strategy to advise the jury during closing argument that the guilty of trafficking, but he is guilty of conspiracy to manufacture crack cocaine.
2. Trial counsel's closing argument exposed the jury to information regarding Defendant's prior bad acts which otherwise would not have been admissible as Lyles evidence.
3. Trial counsel failed to object to "hands of one, hands of all" jury charge.
4. Trial counsel should have objected to the use of Respondent's Georgia conviction for enhancement purposes under the trafficking statute.
5. Trial counsel failed to relay a plea offer or accept the plea offer on Applicant's behalf.

Applicant presented no evidence regarding the third allegation and it is, therefore, dismissed.

IV. SUMMARY OF TESTIMONY AT PCR HEARING

Applicant testified Counsel never saw him until the Friday before the trial. He also testified he never saw any discovery. Further, he testified he wanted a deal for eight years, but told Counsel if he couldn't get him down to eight that he would accept a sentence of ten years. He admitted that he gave a video-recorded statement to law enforcement that he was planning on cooking the cocaine into crack cocaine.

Counsel testified he met with Applicant at least three or four times and that he met with Applicant on at least two or three occasions. Moreover, Counsel testified that his goal was to get a mistrial or a not guilty on trafficking in the hopes that the State would re-consider the offer of ten years. To achieve this, Counsel testified his strategy was to say that Applicant was guilty of conspiracy, not guilty of trafficking. Counsel testified there was an offer of ten years, and Applicant rejected it on the record in a Jasper County courtroom a month or so before the trial took place. Furthermore, Counsel testified he went over with the Applicant the statements that he had made.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsel was deficient or that he was prejudiced by Counsel's alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d §13, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether Counsel provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant's testimony lacked credibility and Counsel's testimony was credible. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial given the difficult facts against which Counsel had to defend. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. Further, this Court finds the evidence against Applicant was overwhelming. This Court dismisses Applicant's application for the reasons set out below:

Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. at 669. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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." Id. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland,

466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Trial counsel did not consult with Applicant before Counsel adopted a strategy to advise the jury during closing argument that Applicant was not guilty of trafficking, but he was guilty of conspiracy to manufacture crack cocaine.

The strong weight of evidence to the Applicant's guilt, namely a video confession, required a creative strategy by Counsel. Therefore, Counsel's argument that Applicant was not guilty of the charged crime, but rather a different crime, was not deficient. Applicant was also unable to provide an argument that would have been more suitable, given the facts of the case. Further, this Court finds there was overwhelming evidence of guilt, such that any deficiency of Counsel did not prejudice Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient or that Applicant was prejudiced by Counsel's closing argument. Accordingly, this Court denies and dismisses this allegation.

2. Trial counsel's closing argument exposed the jury to information regarding defendant's prior bad acts which otherwise would not have been admissible as Lyles evidence.

Counsel's strategy of admitting to some guilt, but not to the indicted crime, was not deficient. Therefore, Counsel's inclusion of prior bad acts was not deficient, it was a matter of trial strategy. Further, this Court finds there was overwhelming evidence of guilt, such that any deficiency of Counsel did not prejudice Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient or that he was prejudiced by Counsel's alleged deficiency. Accordingly, this Court denies and dismisses this allegation.

3. Trial counsel failed to object to "hands of one, hands of all" jury charge.

This Court finds that there was no testimony presented as to trial counsel's failure to object to the hand of one, hand of all jury charge. Applicant has failed to prove deficiency on the part of trial counsel and any resulting prejudice suffered. Accordingly, this Court denies and dismisses this allegation.

4. Trial counsel should have objected to the use of Respondent's Georgia conviction for enhancement purposes under the trafficking statute.

The Georgia conviction was properly used to enhance Applicant's drug sentence. Therefore, Counsel was not deficient and Applicant was not prejudiced.

Accordingly, this Court finds Applicant failed to prove Counsel should have objected or that Applicant was prejudiced by Counsel's failure to object. Accordingly, this Court denies and dismisses this allegation.

5. Trial counsel failed to relay a plea offer or accept the plea offer on Applicant's behalf.

This Court finds Counsel's testimony persuasive and Applicant's testimony lacking in credibility. Counsel testified he conveyed a 10 year offer to Applicant, which Applicant was adamant he would not take. Therefore, Counsel was not deficient and Applicant was not prejudiced.

Accordingly, this Court finds Applicant failed to prove Counsel failed to convey or accept a plea offer or that Applicant was prejudiced. Accordingly, this Court denies and dismisses this allegation.

VI. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any

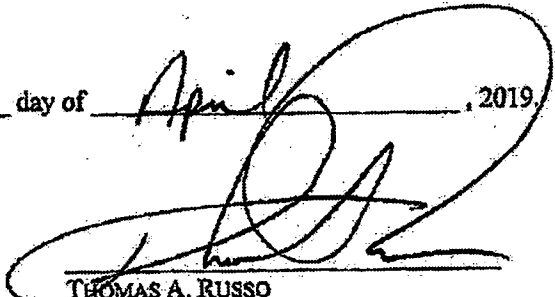
constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt 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, 409 S.E.2d 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26th day of April, 2019.


THOMAS A. RUSSO
Presiding Judge
14th Judicial Circuit

Florene, South Carolina

WITNESSES

K. Smith - RPD

ARREST WARRANT NUMBER

J386242

Arrest Date: April 11, 2012

ACTION OF GRAND JURY

☒ **TRUE BILL**

☐ **NO BILL**

FOREMAN *Shelma Hester*

DATE *09.27.12*

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Shelma Hester *2/13/13*

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS2700189

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

September Term 2012

THE STATE

VS.

Phillip Monroe

Indictment for

**Drugs / Manuf., poss. of Sch. IV drugs, except
flunitrazepam**

SC Code: 44-53-0370(a)
CDR Code: 0189

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

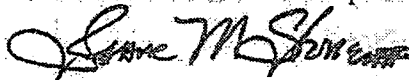
2012GS2700189

At a Court of General Sessions, convened on September 27, 2012, the Grand Jurors of Jasper County present upon their oath:

Drugs / Manuf., poss. of Sch. IV drugs, except flunitrazepam

That in Jasper County, South Carolina, on or about April 10, 2012, the Defendant, Phillip Monroe, unlawfully did possess with intent to distribute, dispense, or deliver a quantity of Clonazepam ^{ROZEN PM} and Hydrocodone, a Schedule IV and II controlled substance as defined by Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone, III, Solicitor
14th Judicial Circuit

WITNESSES

McIntosh, RPD

ARREST WARRANT NUMBER

1386243

Arrest Date: April 11, 2012

ACTION OF GRAND JURY

TRUE BILL ☒

NO BILL

FOREMAN *Thelma Abton*

DATE *09.27.12*

Foreperson of Grand Jury
Date:

VERDICT

Gibbitt

Alfreda Harris 2/13/13
Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS27-00190

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

September Term 2012

THE STATE

VS.

Phillip Monroe

Indictment for

Drugs / Trafficking in cocaine, 10 g or more, but
less than 28 grams

SC Code: 44-53-0370(e)(2)(a)2
CDR Code:0387

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF JASPER)

2012-GS27-00190

At a Court of General Sessions, convened on September 27, 2012, the Grand Jurors of Jasper County present upon their oath:

Drugs / Trafficking in cocaine, 10 g or more, but less than 28 grams

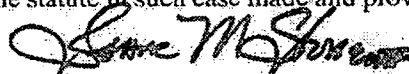
That in Jasper County, South Carolina, on or about April 10, 2012, the Defendant, Phillip Monroe, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 10 grams but less than 28 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

RECEIVED

SEP 26 2013

APPELLATE DEFENSE



Isaac M. Stone, III, Solicitor
14th Judicial Circuit

COUNTY OF Jasper
STATE VS.
AKA: Phillip Monroe

Race: Black Sex: M Age:
DOB: SS#:
Address:
City, State, Zip: Ridgeland, SC 29936
DL#: SID#:

INDICTMENT/CASE#: 2012GS27000189
A/W#: J386242
Date of Offense: 4/10/2012
S.C. Code §: 44-53-0370(a)
CDR Code #: 0189

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/Poss. of other controlled subs. in sched. 1 to 1st offense
in violation of § 44-53-0370(a) of the S.C. Code of Laws, bearing CDR Code # 0179
☒ 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] 710918
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 6 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: 44-53-0370 2012-GS27-00190
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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 %) \$ 0
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 0
§ 56-5-2995 (DUI Assessment) \$12 \$ 0
§ 56-1-286 (DUI Breath Test) \$25 \$ 0
Proviso 47.9 (Public Def/Prob) \$500 \$ 0
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150
§ 50-21-114(BUI Breath Test Fee) \$50 \$ 0
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 0
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ 8.40
TOTAL \$ 288.40

_____ 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.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 2/13/13

Clerk of Court/ Deputy Clerk Margaret Bostick
Court Reporter: WANDA
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 0122
Sentence Date: 2/13/13

COUNTY OF Jasper
STATE VS.
Phillip Monroe

AKA: _____

Race: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Edgeland, SC 29936

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs/Traff. in cocaine, 10g or more, less than 28g - 3rd or subseq. offense

in violation of § 44-53-0370(e)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0147

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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] 76918 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 27 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 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ 0

§ 14-1-206 (Assessments 107.5 %) \$ 0

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 0

§ 56-5-2995 (DUI Assessment) \$12 \$ 0

§ 56-1-286 (DUI Breath Test) \$25 \$ 0

Proviso 47.9 (Public Def/Prob) \$500 \$ 0

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ 0

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 0

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5 (280)

3% to County (if paid in installments) \$ 8.40

TOTAL \$ 288.40

Clerk of Court/ Deputy Clerk Margaret Bostick

Court Reporter: WAUDA ROWE

INDICTMENT/CASE#: 2012-GS-27-190

A/W#: J386243

Date of Offense: 4-10-2012

S.C. Code §: 44-53-0370(e)(2)(a)2

CDR Code #: 0387

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Drugs/Traff. in cocaine, 10g or more, less than 28g - 3rd or subseq. offense

in violation of § 44-53-0370(e)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0147

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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] 76918 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 27 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 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ 0

§ 14-1-206 (Assessments 107.5 %) \$ 0

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 0

§ 56-5-2995 (DUI Assessment) \$12 \$ 0

§ 56-1-286 (DUI Breath Test) \$25 \$ 0

Proviso 47.9 (Public Def/Prob) \$500 \$ 0

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ 0

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 0

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5 (280)

3% to County (if paid in installments) \$ 8.40

TOTAL \$ 288.40

Presiding Judge [Signature]

Judge Code: 0122

Sentence Date: 2/13/13