

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED
MAR 11 2020
S.C. SUPREME COURT

JOHN A. DUCKETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001347

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2016-GS-23-05727
2016-GS-23-05728

STATE OF SOUTH CAROLINA,
PLAINTIFF,

vs.

JOHN ANTHONY DUCKETT,
DEFENDANT.

TRANSCRIPT OF RECORD

October 9 and 10, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE; and a Jury

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

HOWARD LAWRENCE STEINBERG, ESQ.
Attorney for the Plaintiff

DOROTHY A. MANIGAULT, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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MAR 11 2020

S.C. SUPREME COURT

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<u>EXHIBITS</u>			
<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
<u>State's Exhibits</u>			
S-1	Plastic Baggie Labeled JB-6 Containing Cocaine Base	62	115
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C-1	Jury Note	169	N/A
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State's Exhibits 1, 2, 3 and 4 were returned to Deputy Jonathan Bastoni. All other exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

Monday, October 9, 2017

(WHEREUPON, proceedings commenced at 11:15 a.m.)

THE COURT: Is the State ready to proceed?

MR. STEINBERG: Yes, sir, Your Honor.

THE COURT: Defense ready to proceed? Ready to proceed?

MS. MANIGAULT: Yes, Your Honor.

THE COURT: All right, Solicitor. Call your case.

MR. STEINBERG: Your Honor, the State calls The State vs. John Anthony Duckett, 2016-5728, which is distribution of cocaine base, crack cocaine, third offense, and 2016-5727, distribution of heroin, third offense, also State vs. John Duckett.

THE COURT: No members of the jury are present in this room, are they?

MR. STEINBERG: No, sir, Your Honor.

THE COURT: All right. Might be grounds for a mistrial. Have you ever had that happen?

MR. STEINBERG: On a third offense?

THE COURT: Calling it out in front of a jury.

MR. STEINBERG: Excuse me, Your Honor?

THE COURT: Calling it out in front of a jury.

MR. STEINBERG: Oh, I'm not saying it in front of a

1 jury.

2 THE COURT: I know. But it's happened.

3 All right. Any matters of a pretrial motion that
4 need to come before the Court?

5 MS. MANIGAULT: Yes, Your Honor. I'm Dorothy
6 Manigault representing John Duckett.

7 The first motion is the motion to relieve counsel
8 that Mr. Duckett wants to argue himself. I will inform
9 the Court that on September 5, 2017, when this case --
10 these cases were on the trial docket, Mr. Duckett made a
11 motion to relieve me as counsel. The motion was heard by
12 Chief Administrative Judge Verdin, Leticia Verdin, and at
13 the end of that motion, the defendant told the judge he
14 decided to keep me as his attorney.

15 THE COURT: All right.

16 MS. MANIGAULT: So the first motion is a motion to
17 relieve counsel that he wishes to argue himself.

18 THE COURT: We need to do that in chambers -- I mean
19 in camera.

20 All right. Are you prepared to go forward? Tell me
21 what your other motions are at this time.

22 MS. MANIGAULT: The other motions are a motion to
23 dismiss the indictment. Mr. Duckett says that his due
24 process has been violated.

25 The gist of that motion, Your Honor, is that on the

1 front ---

2 THE COURT: Just give me the list. I want to go
3 ahead and do the in camera. And then ---

4 MS. MANIGAULT: All right. And the third motion is a
5 motion to suppress the drugs.

6 THE COURT: So you've got a suppression motion to
7 suppress the drugs based on what?

8 MS. MANIGAULT: Yes, Your Honor. Based on a break in
9 the chain of custody, according to my client.

10 THE COURT: All right. I'm going to ask anybody
11 involved with the case just to -- can we do this in
12 camera?

13 MR. STEINBERG: Yes, sir. I do have two witnesses
14 here. I don't see any problem with it being done in
15 camera.

16 THE COURT: Sorry?

17 MR. STEINBERG: I have two of my witnesses here --
18 well, actually, three of my witnesses here. I don't see a
19 problem with this being done in camera.

20 THE COURT: All right. Well, I don't know who all
21 these people are, but are they all ---

22 MR. STEINBERG: Your Honor, I have three witnesses
23 here, we have two gentlemen here in their 403's, another
24 assistance solicitor and a new bailiff, so that's --
25 everybody's involved either part of this case or just

1 observing. There are no jurors.

2 THE COURT: All right. Mr. Duckett, tell me why you
3 want to relieve your counsel.

4 DEFENDANT DUCKETT: Sir, I want to relieve counsel
5 due to the fact that I had some legal issues that I asked
6 the counsel, and the counsel never, you know, forwarded or
7 checked into it. I had several questions that I raised
8 such as ---

9 THE COURT: Well, tell me about it.

10 DEFENDANT DUCKETT: Well, first, I wanted to know if
11 the officer was SLED certified to conduct a controlled
12 buy.

13 And secondly, with the chain of custody, I asked her
14 to file a motion to suppress that due to the fact that the
15 drugs was checked out and were not -- five days they
16 wasn't signed back in, and it still doesn't show where the
17 drugs were signed back in.

18 And the motion to dismiss the indictment is my due
19 process.

20 THE COURT: Well, just tell me why you want to fire
21 her.

22 DEFENDANT DUCKETT: Oh, because I don't feel like she
23 represented me to the best of her ability, and most of the
24 legal matters that I brought up was not answered. And the
25 only thing I could be assertive -- or assured was that I

1 was going to get time, you know, no matter what. ---

2 THE COURT: Uh-huh.

3 DEFENDANT DUCKETT: --- if found guilty.

4 THE COURT: How long has she been representing you?

5 DEFENDANT DUCKETT: Since she was assigned after the
6 arrest of 6/11/15 and she became my public defender.

7 THE COURT: For two years?

8 DEFENDANT DUCKETT: Yes, sir.

9 THE COURT: And the day of trial you want to relieve
10 her ---

11 DEFENDANT DUCKETT: Well, I had asked her before ---

12 THE COURT: --- is that right?

13 DEFENDANT DUCKETT: Yes, sir. But I had asked before
14 this process even came up. Even before the first trial
15 was continued, I asked her to file the motion, and it
16 never was filed.

17 THE COURT: But she just said a judge heard it.

18 DEFENDANT DUCKETT: And I was like okay to, you know,
19 proceed with her.

20 THE COURT: Well, let me ask you this. Do you have
21 another attorney?

22 DEFENDANT DUCKETT: No, sir.

23 THE COURT: Well, you're going to trial today.
24 You're either going with her or by yourself then. Do you
25 understand that?

1 DEFENDANT DUCKETT: Yes, sir.

2 THE COURT: All right. Have a seat just a minute.

3 Ms. Manigault ---

4 MS. MANIGAULT: Yes, sir.

5 THE COURT: --- how long have you been representing
6 this individual?

7 MS. MANIGAULT: Your Honor, I have been representing
8 him since 2015. We got appointed on June 11, 2015.

9 THE COURT: All right. What did you do following
10 that appointment? What did you do ---

11 MS. MANIGAULT: Following that appointment.

12 THE COURT: --- following that appointment? Did you
13 file a Rule 5 motion?

14 MS. MANIGAULT: Yes, sir. I did. This is an
15 appointment through the Public Defender's Office.

16 The discovery Rule 5 Brady was filed on behalf of the
17 defendant. He had several cases pending, and so we filed
18 discovery on all of them. Discovery was provided to the
19 defendant. And at various points I would go to see him,
20 he says he didn't have all, so we would go back to the
21 public defender's to make sure that he had discovery on
22 every case that was in that office.

23 So he has received copies of discovery. We have gone
24 over discovery. He has ---

25 THE COURT: How many times have you met with him over

1 the last two years?

2 MS. MANIGAULT: I have met with him, Your Honor,
3 12 times.

4 THE COURT: All of which in preparation for this
5 trial?

6 MS. MANIGAULT: Yes, sir.

7 THE COURT: I mean, ultimately in preparation for
8 trial.

9 MS. MANIGAULT: Yes, sir. All of the meetings were
10 at the jail, at the Greenville County Detention Center.

11 THE COURT: Have you made any inquiry of the State
12 whether or not they'd be amenable to a plea? Any plea
13 discussions with the solicitor?

14 MS. MANIGAULT: Your Honor, we have had extensive
15 plea discussions with the Solicitor's Office. On
16 September 25, 2015, the Solicitor's Office presented an
17 offer to my client. The offer was 15 years. He did not
18 want it. He refused it. On July 14, 2016, the
19 Solicitor's Office offered him ten years. He didn't want
20 it and he refused it.

21 THE COURT: This statute carries what?

22 MS. MANIGAULT: Ten to 30.

23 THE COURT: All right. So they offered him the
24 minimum.

25 MS. MANIGAULT: Yes, sir.

1 And then the last offer that the solicitor made
2 regarding this case in June -- April and June, April 2017
3 and June 2017 to my client, Mr. Steinberg was willing to
4 offer him a five-year sentence, active sentence.

5 THE COURT: What did he do? On the third charge, did
6 he offer to reduce it?

7 MS. MANIGAULT: He was reducing. Reducing.

8 THE COURT: He reduced it.

9 MS. MANIGAULT: Yes, sir. He was reducing the
10 charge, and the offer was five years on April 2017 and
11 June 2017, and my client refused it and said he was going
12 to trial.

13 THE COURT: All right. And what have you done in
14 preparation for trial?

15 MS. MANIGAULT: Your Honor, in preparation for trial,
16 I continued to meet with my client, discussed the
17 discovery with him, go over the issues, the motions that
18 we're making today, especially the motion to suppress, the
19 break in chain.

20 I have reviewed the chain of custody for the drugs.
21 I did not see any problem with it, but he sees a problem,
22 so that's the reason for the motion today.

23 To dismiss the indictment, he came up with that this
24 morning about the two different dates, so we're making
25 that motion.

1 THE COURT: We'll talk about that.

2 How long have you been in practice?

3 MS. MANIGAULT: I think I graduated at least
4 40 years, Your Honor.

5 THE COURT: In Greenville County?

6 MS. MANIGAULT: No. The first five years after I
7 finished law school, I was a prosecutor for the Fifth
8 Circuit Richland County in Camden under Jim Anders.

9 THE COURT: I see.

10 MS. MANIGAULT: That's a long time.

11 THE COURT: Are you contract now?

12 MS. MANIGAULT: Yes, sir. I'm a part-time public
13 defender. I'm in private practice, but part time.

14 THE COURT: All right. Mr. Duckett?

15 DEFENDANT DUCKETT: Yes, sir.

16 THE COURT: It sounds like you've got a lawyer who's
17 done everything she should have done. You say she doesn't
18 have your best interest at heart, but she's been working
19 for you for two years. You know, that sounds sort of
20 hollow to me. It sounds to me -- you're not going to get
21 a continuance. Do you understand that?

22 DEFENDANT DUCKETT: Yes, sir.

23 THE COURT: I'm going to deny your motion. I think
24 it's in your best interest -- whether you believe it or
25 not, I think it's in your best interest to go to trial

1 with Ms. Manigault. Do you understand?

2 DEFENDANT DUCKETT: Yes, sir.

3 THE COURT: I mean, I've seen a lot of -- I've seen a
4 lot of lawyers that I would grant the motion, but a lady
5 with this much experience, and her work has primarily been
6 criminal law, she knows the rules and regulations. Have
7 you studied how to try a case?

8 DEFENDANT DUCKETT: No, sir.

9 THE COURT: Have you ever been in a trial?

10 DEFENDANT DUCKETT: No, sir.

11 THE COURT: Do you know how many jurors are coming?

12 DEFENDANT DUCKETT: No, sir.

13 THE COURT: And you want to represent yourself?

14 DEFENDANT DUCKETT: No, sir.

15 THE COURT: I didn't think so.

16 All right. Your motion is denied to relieve counsel.
17 Now, how about these other motions?

18 MS. MANIGAULT: Your Honor, the motion to dismiss the
19 indictment ---

20 THE COURT: Yes, ma'am.

21 MS. MANIGAULT: --- if Your Honor has a copy of the
22 indictment.

23 THE COURT: I have it in my hand.

24 MS. MANIGAULT: Okay. Both indictments. On the
25 front of the indictments at the side of the page to the

1 right, it says, "Filed July 7, 2016, clerk of court,
2 Greenville County." On the inside of the indictment, it
3 has, "At a Court of General Sessions convened on
4 July 26, 2016, the grand jurors of Greenville County
5 present upon their oath," and goes on to talk about the
6 case. Mr. Duckett says that the indictment was filed
7 before it was true billed, and that's a violation of his
8 due process right.

9 THE COURT: Have you investigated that?

10 MS. MANIGAULT: Yes, sir.

11 THE COURT: Tell the Court.

12 MS. MANIGAULT: Your Honor, I explained to him that
13 the Solicitor's Office prefiles all their indictments. So
14 to make sure, I went to the clerk's office this morning,
15 talked with one of the clerks in there, and she pulled up
16 the computer screen and showed me where the Solicitor's
17 Office prefiled these two indictments on July 7, 2016.
18 She then went to the next page and showed me where the
19 grand jury did a true bill on July 26, 2016, and she said
20 that that is the process that they use. The Solicitor's
21 Office prefiles all their indictments, they stamp it as
22 received on the date they get it, and they hold it until
23 the grand jury is ready to meet and present it to the
24 grand jury.

25 THE COURT: So by prefiling, your client's in no

1 jeopardy ---

2 MS. MANIGAULT: That's correct.

3 THE COURT: --- at that point.

4 MS. MANIGAULT: No, sir. He's not.

5 THE COURT: And only after the grand jury acts is he
6 in jeopardy.

7 MS. MANIGAULT: Yes, sir.

8 THE COURT: All right. Mr. Steinberg, is that
9 process -- did she adequately describe the process of the
10 clerk of court's office handling indictments?

11 MR. STEINBERG: Yes, sir. About ten years or so ago,
12 our office, because of complaints from defense attorneys,
13 would prefile our case very early. Wouldn't necessarily
14 send it to a grand jury, but we prefile it. This number
15 on the front appears to be just an administrative stamp by
16 the clerk's office. It doesn't have any effect on
17 validity of the indictment. The clear issue would be
18 July 26, 2016. That's when this case was convened in
19 front of the grand jury. I think that would be the
20 critical date.

21 THE COURT: All right. Motion to dismiss the
22 indictment is denied.

23 Next motion.

24 MS. MANIGAULT: Your Honor, the next motion is a
25 motion to suppress the drugs due to the break in chain of

1 custody.

2 THE COURT: Do you know of a break in the chain?

3 MS. MANIGAULT: I have not seen one, Your Honor.

4 What my client is saying is the drugs were checked out on
5 perhaps July 2nd and wasn't returned till July 7th. So
6 that is his argument. There were five days when the drugs
7 were not in the P&E. I've explained to him that ---

8 THE COURT: From the 2nd to the what?

9 MS. MANIGAULT: July 2nd to July 7th. He's saying
10 there's five days that the drugs ---

11 THE COURT: The drugs were ---

12 MS. MANIGAULT: --- unaccounted for.

13 THE COURT: --- out of ---

14 MS. MANIGAULT: Property and Evidence.

15 THE COURT: --- Property and Evidence.

16 Is that the crux of the argument?

17 MS. MANIGAULT: That is the crux of the argument,
18 Your Honor.

19 THE COURT: All right. Solicitor?

20 MR. STEINBERG: Your Honor, from July 2nd it was
21 checked out -- the drugs, all four drugs were checked out.

22 THE COURT: Who were they checked out to?

23 MR. STEINBERG: They were checked out to the chemist
24 Sean Collins. Mr. Collins will be called to testify. He
25 kept it for five days in that same building and then

1 returned it during the time period. He simply kept the
2 drugs within the crime lab. There had been a bulk of them
3 at one time checked in and then bring them back at a later
4 date.

5 THE COURT: Is he here?

6 MR. STEINBERG: He will be here to testify. He's not
7 here in the courtroom now.

8 THE COURT: All right. I'll withhold ruling on that
9 issue until the chemist either links it up or doesn't.
10 And if it's not as the solicitor says ---

11 MS. MANIGAULT: Yes, sir.

12 THE COURT: --- then I might very well grant your
13 motion to suppress the drugs.

14 MS. MANIGAULT: Your Honor, may I just have a minute?

15 THE COURT: Sure.

16 (Pause in proceedings.)

17 MS. MANIGAULT: Thank you, Your Honor.

18 THE COURT: All right. Is the State ready to
19 proceed?

20 MR. STEINBERG: Yes, Your Honor.

21 THE COURT: Defense ready to proceed?

22 MS. MANIGAULT: Yes, Your Honor.

23 THE COURT: Bring the jury. Or bring a panel.

24 (Pause in proceedings.)

25 THE COURT: Any voir dire on the part of the State?

1 MR. STEINBERG: No, sir, Your Honor.

2 THE COURT: Or the defendant?

3 MS. MANIGAULT: None, Your Honor.

4 THE COURT: Witness list? I've got a State's witness
5 list.

6 MS. MANIGAULT: The defense doesn't have a witness
7 list, Your Honor.

8 THE COURT: Thank you.

9 (Pause in proceedings.)

10 THE COURT: Solicitor, you're going forward on 5727
11 and 28; is that correct?

12 MR. STEINBERG: 5727 and 5728. Yes, sir, Your Honor.

13 THE COURT: Thank you.

14 MR. STEINBERG: There are additional charges that are
15 still pending. They're not being brought up today.

16 (Pause in proceedings.)

17 THE COURT: Ms. Manigault, has your client been in
18 custody since his date of arrest, or has he made bond?

19 MS. MANIGAULT: No. He's been in custody, Your
20 Honor.

21 MR. STEINBERG: Your Honor, the defendant may have
22 been released and then picked up on a bench warrant. I
23 can verify that.

24 THE COURT: Just for information purposes.

25 MR. STEINBERG: Yes, sir.

1 MS. MANIGAULT: He's correct, Your Honor. He has,
2 like he says, various charges, but on this one he was
3 picked back up on December 1, 2016, and has been in jail
4 ever since.

5 (Pause in proceedings.)

6 THE COURT: Approach the bench, please.

7 (WHEREUPON, a bench conference was held off the record.)

8 (WHEREUPON, the jury panel entered the courtroom at
9 11:49 a.m.)

10 JURY QUALIFICATION

11 THE COURT: Good morning, ladies and gentlemen.
12 Welcome to the Court of General Sessions for Greenville
13 County. This is the criminal side of the court, so those
14 of you who are selected on a jury today will be hearing a
15 criminal case, and I'll tell you a little bit about it in
16 a few minutes. But first I've got some questions to ask
17 of you.

18 I know you've been through a general qualification
19 downstairs -- or upstairs. I'm not sure where it is. But
20 nevertheless, this question-and-answer period will be
21 specifically tailored for this case. In other words,
22 you've been generally qualified, now we're going to talk
23 to you a little bit about this case, find out if you know
24 anything about it, know any of the people in it, involved
25 in it, or just have any connection with it one way or the

1 other.

2 As I say, it's a criminal case, and I'm going to read
3 to you what the indictments are, the charges are, and
4 introduce the defendant to you in just a minute. But when
5 I ask these questions, and if you answer, I'd like for you
6 to stand and just answer the question simply. I'm not
7 going to try to delve into anything in terms of your
8 background or anything.

9 And I want you to identify yourself by your number.
10 Everybody knows their number. The reason I do this is
11 because I found over the years that jurors would rather be
12 known -- especially in criminal cases, would rather be
13 identified by number than by their name. For various
14 reasons, that's just sort of the way it's worked out.

15 My name is Tom Cooper. I am a semi-retired circuit
16 judge, but I've been assigned to Greenville this week, and
17 I'm always happy to come to Greenville. Greenville is a
18 great place to work. It's a great place to be downtown.
19 And as I say, I always enjoy coming to Greenville.

20 Now, because this is a criminal case, I'm going to --
21 I know you understand that we have sort of a Law and Order
22 situation in criminal cases. The law might be the people
23 that investigate the case, you might see that on Law and
24 Order, but then the case has to be tried in court, and
25 that's sort of the order half of the Law and Order.

1 Here in Greenville, your elected solicitor is
2 Mr. Walt Wilkins, so I need to ask if any member of the
3 jury panel is related by blood or connected by marriage or
4 employment or close, personal acquaintance of Mr. Walt
5 Wilkins. Anybody know Mr. Wilkins?

6 (No response.)

7 THE COURT: All right. I'm not going to ask you if
8 you voted for him, but Mr. Wilkins will not be trying the
9 case today.

10 On behalf of the 13th Circuit Solicitor's Office,
11 Mr. Howard Steinberg is representing the State, and I need
12 to know if any member of the jury panel is related by
13 blood, connected by marriage or employment or are a close,
14 personal acquaintance of Mr. Steinberg. Anybody know this
15 gentleman?

16 (No response.)

17 THE COURT: All right. Does anybody know or have any
18 relationship to anybody that works in that office? It's a
19 pretty large office, and as they say, a number of people
20 work there. Any member of the jury panel who has any
21 friend or relative or knows anybody that works in that
22 office?

23 (No response.)

24 THE COURT: All right. Now, because it's, as I say,
25 involved with law enforcement, I need to know if any

1 member of the jury panel or any member of your family
2 works in law enforcement. And that could mean anything
3 from the Greenville city police, Greenville county police,
4 Sheriff's Office, the DEA, SLED, the State Law Enforcement
5 Division, any FBI, national law enforcement agency or even
6 any military law enforcement agencies. Any member of the
7 jury panel who have either themselves or family members or
8 friends that work in any of those agencies?

9 Yes, sir. And gentleman who was up first, number?

10 JUROR NUMBER 204: 204.

11 THE COURT: Number 204.

12 And what's your relationship?

13 JUROR NUMBER 204: I've got family members that are
14 police officers out of state.

15 THE COURT: Out of state?

16 JUROR NUMBER 204: Yes.

17 THE COURT: All right. Mr. 204, would that fact, in
18 any way, interfere with your ability to give both the
19 State and the defendant a fair and impartial trial?

20 JUROR NUMBER 204: I don't think so.

21 THE COURT: All right. Thank you very much.

22 This gentleman here, number?

23 JUROR NUMBER 103: 103.

24 THE COURT: 103.

25 JUROR NUMBER 103: And my brother's -- my

1 brother-in-law's brother is in the sheriff's department.

2 THE COURT: In Greenville county?

3 JUROR NUMBER 103: Yes, sir.

4 THE COURT: All right. I'm going to ask what's his
5 name.

6 JUROR NUMBER 103: Nathan Smith.

7 THE COURT: Nathan Smith.

8 Solicitor, does Mr. Nathan Smith have anything to do
9 with this case?

10 MR. STEINBERG: No, sir, Your Honor.

11 THE COURT: All right. Thank you very much.

12 Mr. 103, would that fact, in any way, interfere with
13 your ability to give both the State and the defendant a
14 fair and impartial trial?

15 JUROR NUMBER 103: No, sir.

16 THE COURT: Thank you very much.

17 Yes, ma'am.

18 JUROR NUMBER 200: I'm 200.

19 THE COURT: 200.

20 JUROR NUMBER 200: I have a good friend in the
21 sheriff's department here.

22 THE COURT: Here?

23 JUROR NUMBER 200: Yes.

24 THE COURT: Can you tell me who that is?

25 JUROR NUMBER 200: Tom McConnell.

Jury Qualification

25

1 THE COURT: Tom McConnell.

2 Solicitor?

3 MR. STEINBERG: No, sir, Your Honor.

4 THE COURT: Not involved in the case.

5 Ms. 200, would that fact, in any way, interfere with
6 your ability to give both the State and the defendant a
7 fair and impartial trial?

8 JUROR NUMBER 200: No.

9 THE COURT: Thank you very much.

10 Gentleman with the black shirt.

11 JUROR NUMBER 151: Juror Number 51.

12 THE COURT: 51?

13 JUROR NUMBER 151: 151.

14 THE COURT: 151. Yes, sir.

15 JUROR NUMBER 151: My son-in-law is a game warden.

16 THE COURT: Who is?

17 JUROR NUMBER 151: A game warden, my son-in-law.

18 THE COURT: Your son-in-law.

19 JUROR NUMBER 151: Yeah.. A game warden.

20 THE COURT: All right. The fact that he is involved
21 in law enforcement, sir, would that fact, in any way,
22 interfere with your ability to give both the State and the
23 defendant a fair and impartial trial?

24 JUROR NUMBER 151: No, sir.

25 THE COURT: Thank you very much.

1 Lady with the blue dress.

2 JUROR NUMBER 121: 121. I have a cousin, he was
3 working for Greenville County Sheriff's Department. I
4 don't know if he's still working for them or not. Zachary
5 Hen [phonetic].

6 MR. STEINBERG: Deputy Hen is not involved.

7 THE COURT: Is not involved in this case.

8 Ms. 121, would that fact, in any way, interfere with
9 your ability to give both the State and the defendant a
10 fair and impartial trial?

11 JUROR NUMBER 121: No.

12 THE COURT: Thank you very much.

13 Lady with the black dress.

14 JUROR NUMBER 4: Number 4.

15 THE COURT: Number 4.

16 JUROR NUMBER 4: I have a brother that's a retired
17 police officer in Nebraska, and I have a nephew that was
18 an M.P. in the U.S. Air Force.

19 THE COURT: All right. Would the fact you have those
20 family relatives, would that fact, in any way, interfere
21 with your ability to give both the State and the defendant
22 a fair and impartial trial?

23 JUROR NUMBER 4: No, sir.

24 THE COURT: Thank you very much.

25 Yes, ma'am.

1 JUROR NUMBER 89: 89.

2 THE COURT: All right.

3 JUROR NUMBER 89: I have a friend who is a SLED
4 officer.

5 THE COURT: A SLED officer?

6 JUROR NUMBER 89: Uh-huh.

7 THE COURT: Is he in the -- is SLED, in any way,
8 involved in this case?

9 MR. STEINBERG: No, sir, Your Honor.

10 THE COURT: All right. Ms. 89, would that fact, in
11 any way, interfere with your ability to give both the
12 State and the defendant a fair and impartial trial?

13 JUROR NUMBER 89: No, sir.

14 THE COURT: Thank you very much.

15 All right. Ladies and gentlemen, I'm going to carry
16 that one step further. Any member of the jury who
17 regularly or at least on occasion donates to or volunteers
18 for groups which have as their primary function the
19 support of law enforcement? For example, Mothers Against
20 Drunk Driving, or Students Against Drunk Driving, or some
21 communities have a community watch. There are programs
22 within the Sheriff's Office sometimes in some counties
23 where they have young people work with them as explorers
24 or something like that. Or any of the agencies, as I say,
25 that have as their primary function the support of law

1 enforcement. And that can include donations to groups
2 such as the State Troopers Association -- that's what I
3 was trying to think of -- Sheriff's Association or the
4 Troopers Association or even groups such as Sister Care.
5 Any of these groups that you might either volunteer for or
6 make donations to, whether it's on a regular basis or even
7 on an occasional basis. Any member of the jury panel?

8 Yes, sir.

9 JUROR NUMBER 204: 204.

10 THE COURT: 204. Yes, sir.

11 JUROR NUMBER 204: My wife donates to Mothers Against
12 Drunk Driving.

13 THE COURT: All right. Thank you very much, sir.

14 Yes, ma'am?

15 JUROR NUMBER 200: 200.

16 I don't know if this qualifies, but I used to
17 volunteer with the Juvenile Detention Center doing
18 workshops.

19 THE COURT: All right. Thank you very much, Ms. 200.

20 Anybody else?

21 (No response.)

22 THE COURT: I'm surprised that nobody in this room at
23 least would admit that they donate to the Troopers
24 Association. If you do, you know, you get a little
25 sticker to put on the back of your car or on your

1 windshield, and from what I understand, don't get many
2 tickets if you've got one of those things on your car. I
3 mean, that's just what I've heard. That's not coming from
4 me as a matter of fact, but it might -- next time you get
5 that little notice in the mail, you might think about it.

6 All right. Let's proceed. All right. Ladies and
7 gentlemen, what I hold in my hand are, obviously, two
8 pieces of paper, and that's what they are. They are what
9 are known as indictments. They are the method by which a
10 case is brought into criminal court. They're not evidence
11 of anything. They simply state the crime for which the
12 defendant has been -- that he's been charged with. It's a
13 procedural matter to bring the matter to court with a
14 formal indictment. I'm going to read that to you in just
15 a minute.

16 So anyway, when I do tell you about it, you're not to
17 presume anything or assume anything about the facts of
18 this case. The facts of this case will be presented
19 during a trial, and a jury will be asked to decide based
20 on the facts that they hear, not what I tell you is in
21 this indictment.

22 But first, I'm going to introduce to you Mr. John
23 Anthony Duckett, who is the defendant in this case.

24 Mr. Duckett, will you stand, face the jury, please.

25 Any member of the jury panel related by blood,

1 connected by marriage or employment or a close, personal
2 acquaintance of Mr. John Anthony Duckett? Anybody know
3 Mr. Duckett?

4 (No response.)

5 THE COURT: All right, sir. Thank you very much.

6 Mr. Duckett is represented in this matter today by
7 Ms. Dorothy Manigault, an attorney who practices here in
8 Greenville county. Any member of the jury panel related
9 by blood, connected by marriage or employment or a close,
10 personal acquaintance of Ms. Dorothy Manigault? If so,
11 please stand. Anybody know Ms. Manigault, been
12 represented by her in the past or presently?

13 (No response.)

14 THE COURT: All right. Thank you very much,
15 Ms. Manigault.

16 Mr. Duckett is charged -- all I'm doing is telling
17 you what's in the --- that on the 15th day of June 2015,
18 he did deliver, dispense or conspire to deliver or
19 dispense to an undercover operative a quantity of heroin.
20 In other words, the indictment is for distribution of
21 heroin.

22 Now, Solicitor, where did this take place? Can you
23 identify the location?

24 MR. STEINBERG: Yes, sir. It happened at a Bi-Lo on
25 South Pleasantburg Drive in Greenville.

1 THE COURT: Okay. That's the first indictment.

2 And the second indictment, very similar in that John
3 Anthony Duckett did dispense, deliver or conspire to
4 distribute or deliver to an undercover operative a
5 quantity of crack cocaine, or what's known as cocaine
6 base. And that took place at the same location on
7 June 15th. Is that correct, Solicitor?

8 MR. STEINBERG: Yes, sir.

9 THE COURT: All right.

10 MR. STEINBERG: Your Honor, if I may, I think the
11 date is wrong. The date's June 11th.

12 THE COURT: I'm sorry. It says June 11th. I read it
13 wrong.

14 All right. Knowing that, ladies and gentlemen, and
15 that's all I know about this case, too, any member of the
16 jury panel know anything about this case, heard anything
17 about this case, read anything about this case in any way?

18 (No response.)

19 THE COURT: All right. Let me ask this. Any member
20 of the jury panel or any member of your family or a close,
21 personal acquaintance ever been charged with a case, a
22 crime similar to this?

23 Yes, ma'am. Your number, please.

24 JUROR NUMBER 149: 149.

25 THE COURT: 149.

1 JUROR NUMBER 149: Yes, sir.

2 THE COURT: And can you tell me just briefly? I
3 don't want to know a lot of details.

4 JUROR NUMBER 149: My brother.

5 THE COURT: Was charged?

6 JUROR NUMBER 149: Yes, sir.

7 THE COURT: Okay. Ms. 149, would that fact, in any
8 way, interfere with your ability to give both the State
9 and the defendant a fair and impartial trial?

10 JUROR NUMBER 149: No, sir.

11 THE COURT: All right. Thank you very much, Ms. 149.
12 Yes, ma'am. Your number?

13 JUROR NUMBER 158: 158.

14 THE COURT: 158. Yes, ma'am.

15 JUROR NUMBER 158: So ten years ago my son was picked
16 up with methadone. So I don't know if that's -- I
17 mean ---

18 THE COURT: Well, the question -- I don't want to
19 know any more about it, but the question is, how did that
20 affect you? In other words, do you think you could sit
21 and fairly hear a case involving drugs and be unbiased and
22 make a fair and ---

23 JUROR NUMBER 158: I'm not sure, honestly.

24 THE COURT: Okay. So you have some feelings about
25 it, correct?

1 JUROR NUMBER 158: (Nods head affirmatively.)

2 THE COURT: Thank you very much Ms. 149 -- I mean
3 158. There's nothing wrong with what you just told me.
4 It happens.

5 Yes, sir.

6 JUROR NUMBER 131: 131.

7 THE COURT: All right. Can you tell me just briefly?

8 JUROR NUMBER 131: Yeah. My nephew is a recovering
9 heroin addict.

10 THE COURT: Okay. Mr. 131, would that fact, in any
11 way, interfere with your ability to give both the State
12 and the defendant a fair and impartial trial?

13 JUROR NUMBER 131: Absolutely.

14 THE COURT: It would?

15 JUROR NUMBER 131: Yes.

16 THE COURT: All right. Thank you very much, sir.
17 Anybody else?

18 (No response.)

19 THE COURT: I guess I could ask if any member of your
20 family, and this sort of brought it to my mind, a victim
21 of the drug culture other than what -- yes, ma'am. And
22 your number, please.

23 JUROR NUMBER 173: 173.

24 THE COURT: Yes, ma'am.

25 JUROR NUMBER 173: Myself a recovering cocaine

1 addict.

2 THE COURT: You're what?

3 JUROR NUMBER 173: A recovering cocaine addict.

4 THE COURT: You are?

5 JUROR NUMBER 173: Yes.

6 THE COURT: All right. Ms. 173, would that fact, in
7 any way, interfere with your ability to give both the
8 State and the defendant a fair and impartial trial?

9 JUROR NUMBER 173: Probably.

10 THE COURT: Thank you very much, Ms. 173.

11 I guess that leads me around to a question, does any
12 member of the jury panel have any -- other than those who
13 have just spoken up, any reason why they feel they could
14 not be fair and impartial? Any reason why they felt they
15 could not be fair and impartial and sit on this jury and
16 determine the facts, listen to the attorneys, listen to me
17 in terms of the law and make a decision based on what
18 you've heard in this courtroom? Anybody else?

19 (No response.)

20 THE COURT: All right. Ladies and gentlemen, I'm
21 going to call out a list of potential witnesses in this
22 case. I'm not sure they're all going to appear. I'm
23 going to call it out as soon as I find it. All right.
24 Proposed witnesses, and most of these are -- is this a
25 city case or a county case?

1 MR. STEINBERG: It's a county case, Your Honor.

2 THE COURT: All right. Most of these are deputy
3 sheriffs. Deputy Jonathan Bastoni; Deputy Christopher
4 Pletcher. Question is the same as to all. Anybody know
5 these people, have any connection to them: Deputy Chad
6 Maltby; Deputy John Williams; Sergeant Brad Grice; Sean
7 Collins, a chemist; Officer Charles Moore; Kara Bennick?

8 MR. STEINBERG: Your Honor, Officer Charles Moore is
9 a jail employee. He is not a county deputy.

10 THE COURT: All right. Well, anybody know Mr. Moore?
11 Yes, ma'am.

12 JUROR NUMBER 124: 124.

13 THE COURT: Okay.

14 JUROR NUMBER 124: The name Chad Maltby sounds
15 familiar to me. I think it's possible he may be a patient
16 at my practice where I work, but I'm not sure.

17 THE COURT: Okay. And what type of work do you do?

18 JUROR NUMBER 124: I'm a medical assistant.

19 THE COURT: All right. And do you think that
20 gentleman might have been a patient?

21 JUROR NUMBER 124: Yeah. It just sounds familiar.

22 THE COURT: Okay. Do you have any other relationship
23 with him?

24 JUROR NUMBER 124: No.

25 THE COURT: No family -- I mean no family or social

1 relationship, business relationship, anything like that?

2 JUROR NUMBER 124: No.

3 THE COURT: All right. Thank you very much, Ms. 124.

4 JUROR NUMBER 124: All right. Thank you.

5 THE COURT: Anybody else?

6 (No response.)

7 THE COURT: Anything further on behalf of the State?

8 MR. STEINBERG: No, sir, Your Honor.

9 THE COURT: From the defense?

10 MS. MANIGAULT: Nothing, Your Honor.

11 THE COURT: All right. Madam Clerk, give us a jury,
12 please.

13 JURY SELECTION

14 THE CLERK: Juror Number 84, please stand.

15 (WHEREUPON, Juror Number 84, a black male, stood.)

16 THE CLERK: What says the State?

17 MR. STEINBERG: Please accept this juror.

18 THE CLERK: What says the defendant?

19 THE COURT: He's already selected.

20 THE CLERK: We're not going to select 12?

21 THE COURT: Yeah. But this gentleman's on.

22 THE CLERK: I'm sorry.

23 MR. STEINBERG: Your Honor, may we approach.

24 (WHEREUPON, a bench conference was held off the record.)

25 MS. MANIGAULT: Please swear Mr. Jones.

1 THE CLERK: Mr. Jones, please take your things to the
2 jury box.

3 THE COURT: Ladies and gentlemen, let me just explain
4 this final process. The clerk is going to call -- these
5 names have been drawn randomly through the computer. The
6 clerk is going to call a name -- rather a number and then
7 ask each of the counsel if they have any objection to that
8 juror. People think sometimes that lawyers select the
9 jury. They don't select the jury. Based on the answers
10 that you've given in this question-and-answer period, they
11 have a right to say, for some reason, and it's their own
12 reason, they have the opportunity to strike four names.
13 So if we start with 20 names and each side strikes four,
14 we end up with 12 jurors, and the clerk is going to
15 proceed with that process now.

16 THE CLERK: Juror Number 117.

17 (WHEREUPON, Juror Number 117, a Hispanic male, stood.)

18 THE CLERK: What says the State?

19 MR. STEINBERG: Please present this juror.

20 THE CLERK: What says the defendant?

21 MS. MANIGAULT: Please swear the juror.

22 THE CLERK: Sir, please bring your things and come to
23 the jury box.

24 Juror Number 47.

25 (WHEREUPON, Juror Number 47, a white female, stood.)

1 THE CLERK: What says the State?

2 MR. STEINBERG: Please present this juror.

3 THE CLERK: What says the defendant?

4 MS. MANIGAULT: Please swear the juror.

5 THE CLERK: Please bring your things to the box.

6 Juror Number 103.

7 (WHEREUPON, Juror Number 103, a white male, stood.)

8 THE CLERK: What says the State?

9 MR. STEINBERG: Please present this juror.

10 THE CLERK: What says the defendant?

11 MS. MANIGAULT: Please excuse Mr. 103.

12 THE CLERK: Sir, you may take a seat.

13 Juror Number 3.

14 (WHEREUPON, Juror Number 3, a white female, stood.)

15 THE CLERK: What says the State?

16 MR. STEINBERG: Please present this juror.

17 THE CLERK: What says the defendant?

18 MS. MANIGAULT: Please excuse Juror Number 3.

19 THE CLERK: You may be seated.

20 Juror Number 204.

21 (WHEREUPON, Juror Number 204, a white male, stood.)

22 THE CLERK: What says the State?

23 MR. STEINBERG: Please present this juror.

24 THE CLERK: What says the defendant?

25 MS. MANIGAULT: Please excuse Number 204.

Jury Selection

39

1 THE CLERK: Sir, take a seat.

2 Juror Number 89.

3 (WHEREUPON, Juror Number 89, a white female, stood.)

4 THE CLERK: What says the State?

5 MR. STEINBERG: Please present this juror.

6 THE CLERK: What says the defendant?

7 MS. MANIGAULT: Please swear the juror.

8 THE CLERK: Ma'am, please bring your things to the
9 jury box.

10 Juror Number 171.

11 (WHEREUPON, Juror Number 171, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. STEINBERG: Please present the juror.

14 THE CLERK: What says the defendant?

15 MS. MANIGAULT: Please swear Number 171.

16 THE CLERK: Ma'am, please bring your things to the
17 jury box.

18 Juror Number 44.

19 (WHEREUPON, Juror Number 44, a white female, stood.)

20 THE CLERK: What says the State?

21 MR. STEINBERG: Please excuse this juror.

22 THE CLERK: Ma'am, you may take a seat.

23 Juror Number 1.

24 (WHEREUPON, Juror Number 1, a white female, stood.)

25 THE CLERK: What says the State?

1 MR. STEINBERG: Please present this juror.

2 THE CLERK: What says the defendant?

3 MS. MANIGAULT: Please excuse this juror.

4 THE CLERK: Ma'am, you may take a seat.

5 Juror Number 127.

6 (WHEREUPON, Juror Number 127, a black female, stood.)

7 THE CLERK: What says the State?

8 MR. STEINBERG: Please present this juror.

9 THE CLERK: What says the defendant?

10 MS. MANIGAULT: Please swear the juror.

11 THE CLERK: Ma'am, you may take your things to the
12 jury box.

13 Juror Number 137.

14 (WHEREUPON, Juror Number 137, a white male, stood.)

15 THE CLERK: What says the State?

16 MR. STEINBERG: Please present this juror.

17 THE CLERK: What says the defendant?

18 MS. MANIGAULT: Please swear the juror.

19 THE CLERK: Sir, please bring your things to the jury
20 box.

21 Juror Number 207.

22 (WHEREUPON, Juror Number 207, a black male, stood.)

23 THE CLERK: What says the State?

24 MR. STEINBERG: Please present this juror.

25 THE CLERK: What says the defendant?

1 MS. MANIGAULT: Please swear the juror.

2 THE CLERK: Sir, please bring your things to the jury
3 box.

4 Juror Number 174.

5 (WHEREUPON, Juror Number 174, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. STEINBERG: Please present this juror.

8 THE CLERK: What says the defendant?

9 MS. MANIGAULT: Please swear the juror.

10 THE CLERK: Ma'am, please bring your things to the
11 jury box.

12 Juror Number 200.

13 (WHEREUPON, Juror Number 200, a white female, stood.)

14 THE CLERK: What says the State?

15 MR. STEINBERG: Please present this juror.

16 THE CLERK: What says the defendant?

17 MS. MANIGAULT: Please excuse the juror.

18 THE CLERK: Ma'am, you may take a seat.

19 Juror Number 42.

20 (WHEREUPON, Juror Number 42, a black female, stood.)

21 THE CLERK: What says the State?

22 MR. STEINBERG: Please present this juror.

23 THE CLERK: What says the defendant?

24 MS. MANIGAULT: Please swear the juror.

25 THE CLERK: Ma'am, please bring your things to the

1 jury box.

2 Do you challenge for cause?

3 MS. MANIGAULT: No.

4 THE CLERK: Juror Number 124.

5 (WHEREUPON, Juror Number 124, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. STEINBERG: Please present this juror.

8 THE CLERK: What says the defendant?

9 MS. MANIGAULT: Please swear the juror.

10 THE CLERK: Ma'am, please bring your things to the
11 jury box.

12 Juror Number 92.

13 (WHEREUPON, Juror Number 92, a white female, stood.)

14 THE CLERK: What says the State?

15 MR. STEINBERG: Please present this juror.

16 THE CLERK: What says the defendant?

17 MS. MANIGAULT: Please swear the juror.

18 THE CLERK: Ma'am, please take your things to the
19 jury box.

20 THE COURT: One alternate, Counsel. Satisfactory?

21 MS. MANIGAULT: Yes, sir. One alternate.

22 MR. STEINBERG: Yes.

23 THE CLERK: Juror 151.

24 (WHEREUPON, Juror Number 151, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. STEINBERG: Please present this juror.

2 THE CLERK: What says the defendant?

3 MS. MANIGAULT: Please swear the juror.

4 THE CLERK: Sir, if you will, please bring your
5 things to the jury box.

6 THE COURT: Any objection to the jury selection
7 process?

8 MR. STEINBERG: Not from the State, Your Honor.

9 MS. MANIGAULT: Not from the defense, Your Honor.

10 THE COURT: All right. Thank you very much.

11 All right. Ladies and gentlemen on the panel who
12 were not selected for this case, I'm going to ask you to
13 return to the jury assembly room in just a minute. I do
14 want to thank you for your time that you're giving up this
15 week. I don't know what the next case is, if there are
16 any. I think you're going to be asked -- you'll probably,
17 since I think we've drawn all the juries for today, you're
18 probably going to be asked to call in a specific number
19 after 6:00 this afternoon to find out if we need you
20 tomorrow. But if we don't -- or if I don't, I bid you
21 farewell at this point. I may see you later in the week.

22 But I do want to thank you for coming. You're an
23 important part of this process, the judicial process in
24 this county, in this state, in this nation. I tell jurors
25 all the time, particularly in qualification, that if you

1 can imagine the fact that in every county in the state of
2 South Carolina, in every county in the United States,
3 citizens are coming just as you are today, and I include
4 our jury, to sit and hear these cases.

5 This is a unique system in the world. It's the only
6 place in the world where citizens come and decide these
7 important questions, whether they're -- some are
8 important, some are not, some not as important, but it's
9 the system doesn't go without you. I tell jurors all the
10 time, the system can do without me, it can do without
11 these lawyers, but it can't do without you. Your role is
12 so important to the judicial system of this country. Your
13 role was written into the Constitution of the United
14 States 250 years ago, and this system has survived.
15 People have fought and died to preserve this system. It's
16 an important role, function that you serve in this world
17 of the judicial system not only, as I say, in Greenville
18 county, but in this country.

19 So on behalf of myself and these attorneys, I want to
20 thank you very much for coming.

21 You're now dismissed. Good luck to all of you.

22 (WHEREUPON, the remaining jury panel exits the courtroom
23 at 12:26 p.m.)

24 THE COURT: Approach the bench, Counsel.

25 (WHEREUPON, a bench conference was held off the record.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, I'm just consulting with the attorneys about the
3 process and the time. I sort of have to manage the time.
4 You've been here all morning, so I'm going to let you go
5 now. Let's take our lunch break at this time. I'm going
6 to ask you to be back in the jury room at 2:00, at which
7 time we'll commence the trial. I don't think the case is
8 going to last past tomorrow. That's what the attorneys
9 tell me in terms of their witnesses and the evidence
10 that's going to be presented during the course of the
11 trial. And I'll explain a little bit more about that when
12 you return.

13 Now, when you return to your jury room, I know you
14 probably don't know each other very well, but I'm going to
15 ask you to select one of your members. It cannot be the
16 gentleman that was selected last. Select one of your
17 members to act as the foreperson of the jury. I will tell
18 you, the foreperson doesn't get paid any more than anybody
19 else, but I do need somebody in that role to take the seat
20 where the bailiff will tell. It will be this first seat
21 on the front row here and will maintain that seat
22 throughout the trial.

23 The other seats don't have any names on them or
24 anything else. I want you to sit where you're most
25 comfortable. Most of the testimony will come from this

1 witness stand right here, and perhaps any exhibits that
2 are going to be offered, they'll be presented probably
3 from that table there. So if you have a hearing problem,
4 for example, you may want to sit closer to the front or
5 just suit yourself. Like I say, there are no assigned
6 seats.

7 So if you will do that, if you'll select one of your
8 members to be the foreperson of the jury, I need for you
9 to do that.

10 I need for you not to talk about the case when you
11 return to the jury room or with anyone else over the lunch
12 hour. And I would explain this at the end of the day,
13 too, but it's so easy if you encounter a family member or
14 a friend who says, "What are you doing today?" you say,
15 "Well, I've been called. I'm sitting on the jury." And a
16 natural question to ask you is, "What kind of case is it?"
17 And then you explain what the case is, and they say, "Oh,
18 I'd tell you what I'd do." Just to avoid that kind of a
19 conversation with your friends or family, it's always
20 best, I think, just to tell people, "Judge told me I can't
21 talk about it. That mean judge told me I can't talk about
22 the case."

23 So I'm going to ask you not to discuss it with anyone
24 else. You're going to be asked to make a decision based
25 on the evidence you hear right here. It's going to be

1 real-time. And the idea, obviously, is not to be
2 influenced by what somebody else might say with regard to
3 the case.

4 Third thing I'm going to ask you to do is to have a
5 pleasant lunch. We'll see you at 2:00.

6 Now, the bailiff is going to tell you where you
7 return. You don't go back to the jury assembly room where
8 you were this morning. He's going to show you where your
9 jury room is. That's going to be your new home for two
10 days.

11 So have a pleasant lunch. We'll see you in a little
12 while.

13 (WHEREUPON, the jury exits the courtroom at 12:31 p.m.)

14 THE COURT: All right. We'll stand at ease till
15 2:00.

16 (WHEREUPON, a recess is taken at 12:32 p.m.)

17 (WHEREUPON, proceedings reconvened at 2:04 p.m.)

18 THE COURT: All right. Solicitor, is the State ready
19 to proceed?

20 MR. STEINBERG: Yes, sir, your Honor.

21 THE COURT: Defense ready to proceed?

22 MS. MANIGAULT: Yes, sir.

23 THE COURT: For your information, Juror Number 127 is
24 foreperson of this jury.

25 Bring the jury, please.

1 (WHEREUPON, the jury entered the courtroom at 2:06 p.m.)

2 THE COURT: Ladies and gentlemen, hope you had a
3 pleasant lunch.

4 Ms. 127, appreciate you being willing to sit and act
5 as foreperson of this jury.

6 Madam Clerk, will you swear the jury, please.

7 (WHEREUPON, the jury is duly sworn.)

8 INTRODUCTORY REMARKS BY THE COURT

9 THE COURT: All right. Thank you very much, ladies
10 and gentlemen.

11 Before we begin this trial, I want to tell you that
12 this trial may be different from what you expect. Many
13 people do not have a chance to attend actual court
14 sessions as you're now doing and may think, from watching
15 television or movies or reading books, that trials are
16 always full of a lot of drama and action and things of
17 that sort. While all these things may be true at times,
18 this trial is not for entertainment. It's a fundamental
19 part of our democracy, an effort to make sure that justice
20 is done between the parties before the Court.

21 Making sure that justice is done is often a slow and
22 deliberate and repetitive process, the opposite of what
23 you may have seen or read in books or seen on television.
24 This courtroom is a place of honor dedicated to the
25 protection and preservation of citizens' rights through

Introductory Remarks by the Court

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1 what many have called the greatest justice system ever
2 devised.

3 The attorneys appearing before you are advocates for
4 the parties they represent, but first and foremost, they
5 are officers of this court, sworn to uphold the integrity
6 and fairness of our judicial system and to help you in
7 your search for justice. You should expect them to be
8 professional, competent and ethical in the representation
9 of their clients.

10 Remember that you have just taken an oath to try this
11 case and reach a fair and just verdict, and you're also
12 expected to be professional, reasonable and ethical.

13 Now, what I say to you now is meant to serve merely
14 as an introduction to the trial. These comments are not a
15 charge on the law of the case. I'll explain that to you
16 in much depth sometime much later during the trial.

17 Now, you can take notes during this trial if you wish
18 to do so. If you'll just let the bailiff know, they'll
19 provide you with paper and pencil or something to take
20 notes on.

21 You've been selected, as you saw the process, as fair
22 and impartial jurors whose purpose it is to find and
23 determine what the facts are in this case. You are the
24 sole judges of the facts. If, at any time, I make any
25 comment regarding the facts, you must disregard that.

1 The indictment, as I told you earlier, is a charge by
2 which a case is brought into court. It's not in any sense
3 evidence of any of the allegations that it contains.

4 The defendant has pled not guilty to this indictment,
5 and the State has, therefore, what's called the burden of
6 proof in proving each of the elements of the indictment
7 beyond a reasonable doubt, and it will be your duty,
8 ladies and gentlemen, to decide whether the State has met
9 that burden.

10 And it's especially important that you perform your
11 duty conscientiously and diligently because ordinarily,
12 there's no way to correct an erroneous determination of
13 the facts by a jury. When you comply with your oath to
14 impartially determine the facts of this case, you will
15 have fulfilled your duty as jurors, and no one will have
16 the right to criticize your verdict.

17 And on the other hand and with equal emphasis, the
18 same law that makes you the judges of the facts makes me
19 the judge of the law. You must accept and follow the law
20 even though you may disagree with it. I cannot tell you
21 what the facts are. You should not disagree with me about
22 what the law is or what the law should be. Your job is to
23 take the law as I explain it to you and apply it to the
24 facts as you find them from the testimony of the witnesses
25 and any other evidence. And after doing that, you will

1 render your verdict under the solemn oath you just took as
2 jurors.

3 Now, the procedure that we will follow is basically,
4 the State will present its evidence first in the form of
5 witnesses' testimony and exhibits that they may wish to
6 enter into the record. The defendant will then have the
7 opportunity to present his defense, bearing in mind,
8 however there is absolutely no burden on the defendant to
9 present any evidence at all. Following that, the
10 attorneys will be allowed to sum up their case and I will
11 instruct you on the law of the State of South Carolina as
12 it applies to this case. And after that, the case will be
13 turned over to you for a decision.

14 Now, let me remind or explain to you two legal
15 principles that will be involved in this case. First is
16 the legal yardstick you will use in judging or measuring
17 the evidence in this case. That legal yardstick is known
18 as the burden of proof, and in a criminal case, the burden
19 of proof is on the State to prove guilt beyond a
20 reasonable doubt. Should the State fail to meet that
21 burden of proof, it will be your duty to find the
22 defendant not guilty. There is absolutely no burden
23 whatsoever on the defendant to prove or disprove anything.
24 There's no burden on the defendant to testify or present
25 any evidence because the burden is and remains on the

1 State to provide guilt beyond a reasonable doubt.

2 And second, I ask you to recall my earlier comment to
3 the entire jury panel concerning the presumption of
4 innocence. This is a cardinal and fundamental rule of law
5 that a defendant will always be presumed innocent of the
6 crime or crimes for which he is indicted. The presumption
7 of innocence is not just a simple legal theory or a simple
8 legal phrase. It is a substantial right to which any
9 accused, including this defendant, is entitled.

10 Until I advise you to begin your deliberations, I'm
11 going to ask you not to discuss this case as I already
12 have when you went to lunch. But now I'm going to ask you
13 not to discuss this case among yourselves while you're in
14 the jury room until all the evidence has been presented,
15 the final argument of counsel and my instructions to you
16 on the law of the State as it applies to this case.

17 Now, in just a moment the attorney for the State will
18 make what's called an opening statement. The attorney
19 will explain to you what the issues are in this case, or
20 at least what he thinks the issues are and what the proof
21 will show. The attorney for the defendant will also make
22 an opening statement.

23 What the attorneys tell you during their opening
24 statements is not evidence in this case. It's only their
25 contention as to what the issues are. The evidence in

1 this case will be presented to you by the testimony of
2 sworn witnesses from this witness stand and any exhibits
3 that may be introduced during the course of the trial.

4 In determining what the true facts are in a case, you
5 must decide whether the testimony of any witness is
6 believable or not believable. In deciding whether to
7 believe a witness, you have the right to consider whether
8 the witness has an interest in the outcome of the case,
9 whether the witness is prejudiced towards either the State
10 or the defendant, and the opportunity for the witness to
11 have seen the matters and things about which the witness
12 may testify, and the way the witness acts on the witness
13 stand.

14 Now, ladies and gentlemen, you and I do not ask
15 questions of the witnesses. We do not offer any exhibits.
16 This is not CSI. Your duty is to listen openly and
17 honestly to the evidence. Keep an open mind. Do not form
18 any conclusions or judgments until you receive and
19 consider all the evidence in the case and the arguments of
20 counsel and my final instructions to you on the law.

21 If you cannot hear a particular witness or myself or
22 one of the attorneys, please let us know so that we can
23 speak up more clearly, and if your view of an exhibit is
24 obstructed for any reason, please let us know about that
25 also. We can correct it.

1 If you need to bring something to my attention during
2 the course of the trial, please notify one of the
3 bailiffs. If you need to contact me, it may be necessary
4 for the bailiff to require that you put such a question or
5 concern in writing so we can have a record of it, and I'll
6 respond to you as quickly as I can do so.

7 All right. Ladies and gentlemen, I want to thank you
8 for your kind attention. I trust you'll give the
9 attorneys the same kind and undivided attention that you
10 have given me and will now begin with the opening
11 statements.

12 Solicitor, you may proceed.

13 OPENING STATEMENTS

14 MR. STEINBERG: Thank you, Your Honor. May it please
15 the Court. Ms. Manigault.

16 Madam Foreman, ladies and gentlemen of the jury, this
17 is a relatively simple, straightforward case. This
18 involves a sale by this defendant of heroin and crack,
19 relatively small amounts of heroin and crack cocaine to
20 another individual. This defendant, Mr. Duckett, chose
21 the location, he chose the time where this occurred. He
22 shows up. The purchaser of the drugs identifies him,
23 knows what he looks like. They go off down an aisle at a
24 Bi-lo, local supermarket. They see each other and they
25 engage in small talk, they engage in the transaction.

1 \$190 of drugs are sold to this individual. They then go
2 their separate ways. Mr. Duckett then walks out
3 separately from the purchaser of the drugs. He is
4 arrested.

5 You might imagine, I think the judge may have already
6 said something about this, this involves an undercover
7 officer. He sold these drugs not to another general
8 citizen. He sold this to an undercover officer. We have
9 audio, not a video, but audio monitoring of this entire
10 transaction.

11 This defendant walks out. He walks out into the arms
12 of other assisting officers to arrest him. He is
13 searched, as is required, and he has additional small
14 amounts of heroin and crack cocaine still on him, on his
15 person.

16 The law in this case is simple enough. It is
17 distribution of crack and distribution of heroin.
18 "Distribution" means to convey, to give, or to sell, or to
19 transmit from -- any way from one person to another. It
20 could be for free, it could be for money, it could be for
21 any reason. It just means Person 1 is giving it to
22 Person 2 no matter how it's done.

23 That's the entirety of the law. I'll ask that you
24 listen to the testimony. I'll ask you to consider the
25 audio recording that you will hear, consider what the

1 suspect had on him when he was arrested, then I'll ask you
2 to return a guilty verdict.

3 Thank you for your time in this matter.

4 THE COURT: Ms. Manigault.

5 MS. MANIGAULT: Thank you, Your Honor.

6 Mr. Steinberg.

7 Ladies and gentlemen, I'm Dorothy Manigault. The
8 judge introduced me to you earlier today. I represent
9 John Duckett.

10 The judge has given you the principles of the law
11 that protects Mr. Duckett in this proceeding. He has
12 entered a plea of not guilty. He is entitled to a trial.
13 The State is required to present to you -- it's the burden
14 of the State to present to you evidence that is
15 convincing. If the evidence that is presented is not
16 convincing, then Your Honor will tell you at the end in
17 the charge that you must weigh that in favor of the
18 defendant if you're not convinced beyond a reasonable
19 doubt of the evidence that is presented.

20 Again, Mr. Duckett comes to court cloaked with a robe
21 of innocence. I refer to it as a trench coat tied, it's
22 buttoned up, and it's up to the Solicitor's Office to
23 unbutton the coat and take the coat -- trench coat off and
24 prove to your satisfaction beyond a reasonable doubt that
25 Mr. Duckett did, in fact, do what the State has described

1 that he did.

2 So, again, like Your Honor, like Mr. Steinberg, we
3 ask that you listen to the evidence very clearly, listen
4 to the testimony of the witnesses, and it is your decision
5 to decide which witness you believe, don't believe to come
6 to a verdict.

7 Thank you very much.

8 THE COURT: Call your first witness.

9 MR. STEINBERG: Thank you, Your Honor. The State
10 would call Deputy Jonathan Bastoni.
11 WHEREUPON,

12 JONATHAN BASTONI

13 After having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STEINBERG:

16 Q Deputy Bastoni, can you please tell us, where are you
17 from originally?

18 A I was born in Massachusetts.

19 Q And where did you go to college?

20 A I went to college at Bob Jones University in
21 Greenville.

22 Q What's your highest level of education?

23 A I have a master's.

24 Q And how long have you been in law enforcement?

25 A I've been with the Sheriff's Office for ten years.

1 Q And what was your role, what unit were you in on
2 June 11, 2015?

3 A In 2015 I was with the Directed Patrol Unit. It's a
4 street-level vice and narcotics unit.

5 Q When you say "street level," what does that mean?

6 A Buying and selling, short-term investigations.
7 Generally, our investigations were those that covered less
8 than a month or so.

9 Q Okay. And I refer to you as deputy, but it's my
10 understanding you were promoted today?

11 A I was promoted today. Master deputy.

12 Q Master deputy. Congratulations.

13 What was your role in this particular case?

14 A I served as the case officer, which means that I kind
15 of organized pretty much everything that went on from the
16 initial stages to actual generating and obtaining the
17 search warrant from a judge and then completing the
18 necessary paperwork.

19 Q Are you responsible for the other officers that were
20 involved in this case?

21 A I did assign other officers positions as where they
22 were going to be, yes.

23 Q Okay. And did you monitor the safety and security of
24 Deputy Grice in this case?

25 A Yes. Absolutely.

1 Q During the course of this investigation, did you
2 determine where Mr. Duckett lived and who he lived with?

3 A Yes.

4 Q Only adult names.

5 A Yes. We had determined that he lived at ■ Miracle
6 Drive with an Ashley Whitner.

7 Q Do you know what kind of vehicle Ms. Whitner drove?

8 A We had seen a gold in color Tahoe at that location,
9 and it was registered to Ms. Whitner.

10 Q And bring you to the events on June 11, 2015, did
11 everything in this case happen within Greenville county?

12 A It did.

13 Q What was your role during this particular case? What
14 was your role while this incident occurred?

15 A Again, as the case officer, I'm kind of overseeing
16 everything that goes down. So I had to put together the
17 plan, the ops plan, and then monitor both the radio
18 channels you the UC wire, the undercover wire, which is
19 the audio recording from the undercover deputy. I also
20 had to manage the second team, which was the team to
21 execute the search warrant on that, on the residence at
22 ■ Miracle.

23 Q And during the -- you were at ■ Miracle Drive during
24 the arrest process?

25 A I was actually across the street from

1 1315 Pleasantburg, which is the Bi-Lo that was referred to
2 earlier, and then as soon as the arrest was made, I
3 immediately went to ■ Miracle.

4 Q And when you were at Miracle Drive, did you
5 encounter Mr. Duckett, the gentleman in the white shirt
6 over here?

7 A I did. After he was placed under arrest at
8 1315 South Pleasantburg, he was transported to ■ Miracle
9 Drive for the execution of the search warrant.

10 Q And was he arrested at that time?

11 A Yes.

12 Q And pursuant to your department policy and, I guess,
13 the law, did you search him prior to putting him in jail?

14 A A quick pat down was done for weapons at 1315 South
15 Pleasantburg, and then when he was brought to me at
16 ■ Miracle, I did a full search.

17 Q What is the difference between a pat down and a
18 search?

19 A A pat down is of the outer clothing. You're looking
20 specifically for any weapons or bulges, things that would
21 indicate a weapon in a pocket or in the waistband of
22 clothes, underneath a jacket. Anything like that.

23 Q Is a search -- the search that you did, is that more
24 thorough than a pat down?

25 A It is. I'm -- in a thorough search, you're going to

1 go through the pockets, through any items, also going
2 through wallets and things like that. Anything that could
3 possibly contain evidence in this case as well as inner
4 clothing. If somebody has a pair of shorts underneath a
5 pair of pants, you're going to go through those pockets as
6 well.

7 Q And during the search of Mr. Duckett prior to putting
8 him in the jail, did you locate any contraband on his
9 person?

10 A I did.

11 Q And what type of contraband did you locate, and where
12 did you find it on his person?

13 A I noticed that Mr. Duckett was moving around quite a
14 bit, and when I started the search, I located in his back
15 pockets a small white, rock-like substance and also a
16 small blue bag containing a brownish powder substance.

17 Q And who do you give those drugs to, and why do you
18 give to that person?

19 A I gave them to Deputy Pletcher. Deputy Pletcher was
20 acting as the scribe.

21 So when you serve a search warrant, you have an
22 actual, physical copy of the warrant that is brought with
23 you that you issue out, and that warrant has a return
24 page. The return page is all of the items that are seized
25 in a search warrant. And so someone has to actually write

1 those items on there, and then a copy of that is left with
2 the homeowner, or the defendant, in this case, and that is
3 a list of all of the property that we took from them. The
4 second copy of that is returned back to the issuing judge
5 so that a record of all of the items that are taken in a
6 search warrant are given to the State.

7 Q Who took the evidence to the Property and Evidence
8 room?

9 A Deputy Pletcher did.

10 Q Did you ask that it be tested?

11 A I did.

12 Q And prior to court today, did you bring the evidence
13 to the courtroom?

14 A I did.

15 Q And do you have some of the evidence with you right
16 now?

17 A I do.

18 Q Take a look at the evidence that you brought to the
19 courtroom.

20 A Item 6 and 7.

21 Q Let's talk about Item Numbers 6 and 7. I'll have
22 those marked for identification at this point.

23 (WHEREUPON, State's Exhibit Numbers 1, 2, 3 and 4 were
24 marked for identification.)

25 ///

1 BY MR. STEINBERG:

2 Q I'm going to hand you Items JB-6 and JB-7. Were
3 these the items that were found on the defendant's
4 person?

5 A They were.

6 Q I'm going to ask you to look at these very closely,
7 particularly JB-6. What is this item, and how was it
8 packaged?

9 A It is a white in color, we call that a rock-like
10 substance, and it was loose.

11 Q Okay. And look at JB-7, which is marked as State's
12 Exhibit Number 2. What is that?

13 A That's a powder substance in a small Ziploc baggie,
14 and it was packaged as it is in here, in a blue Ziploc
15 bag.

16 Q Does it appear to be approximately the same weight
17 and size as what you handed Deputy Pletcher?

18 A It does.

19 Q I am going to hand you JB-9 and JB-10, State's
20 Exhibit Number 4 and State's Exhibit Number 3. Did you
21 bring this from the Property and Evidence Room to the
22 courthouse today?

23 A I did.

24 Q I'm going to hand you 13 pages of documents. I'd
25 like you to tell us what they are.

1 (WHEREUPON, State's Exhibit Number 5 was marked for
2 identification.)

3 BY MR. STEINBERG:

4 Q I'm going to hand you a 13-page document, State's
5 Exhibit Number 5. Generally, what are these documents?

6 A This is a chain of custody from our Property and
7 Evidence department. It consists of two parts: one is
8 the actual chain that says who checked out items or placed
9 items in, and the second is just a list of items included
10 in this case.

11 MR. STEINBERG: Okay. Before we go any further, I'm
12 going to show this to opposing counsel.

13 (Pause in proceedings.)

14 MS. MANIGAULT: Your Honor, may we approach for a
15 moment, please.

16 THE COURT: Sure. Absolutely.

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

18 BY MR. STEINBERG:

19 Q Deputy Bastoni, did you pick this evidence up for
20 court today?

21 A I did.

22 Q And does it appear to be substantially the same
23 condition as when it was put into evidence by officers?

24 A It does.

25 Q And whose signature is that taking it out on

1 October 9th of 2017?

2 A That is mine.

3 Q I'm also going to mark for identification two
4 additional documents. It's only for identification.

5 (WHEREUPON, State's Exhibit Numbers 6 and 7 were marked
6 for identification.)

7 BY MR. STEINBERG:

8 Q I'm going to hand you State's Exhibits 6 and 7. What
9 is this document -- these documents?

10 A They are both Property and Evidence sheets. They're
11 the sheets that we use when we actually put evidence into
12 our Property and Evidence department.

13 Q And are these from this case?

14 A They are.

15 (Pause in proceedings.)

16 MR. STEINBERG: Your Honor, I'm handing these items
17 to opposing counsel.

18 THE COURT: All right.

19 MR. STEINBERG: And these are just simply marked for
20 identification at this point.

21 I have no further questions at this time for Deputy
22 Bastoni. Please answer any of Ms. Manigault's questions.

23 THE COURT: Cross-examination?

24 MS. MANIGAULT: Thank you, Your Honor.

25 ///

CROSS EXAMINATION

BY MS. MANIGAULT:

Q Master Deputy, you testified that at the scene at Bi-Lo that you did a pat down.

A I did not do that pat down.

Q You did not.

A Deputy Williams did that pat down. I wasn't on scene there.

Q All right. Who was the deputy that allegedly found drugs on Mr. Duckett?

A I did. That was at ■ Miracle Drive.

Q Thank you. And when you found -- when you searched him thoroughly and completely, whatever you found you took from him and gave to Deputy Fletcher?

A Fletcher with a P, yes.

Q Fletcher with a P. Okay.

And it is your testimony that Deputy Fletcher turned the property in to P&E, Property and Evidence room?

A Yes, ma'am. He completed the Property and Evidence sheets and transported it to the Property and Evidence room.

Q Was there any testing of anything at the scene or at ■ Miracle Drive?

A It was field tested, and all of it field tested positive for both heroin and cocaine.

1 Q And that was done by who?

2 A That was done by Deputy Pletcher as well.

3 Q And besides handing the property over to Deputy
4 Pletcher and bringing it to court today, did you have any
5 other involvement in the chain of custody?

6 A No.

7 MS. MANIGAULT: Thank you.

8 MR. STEINBERG: No further questions for this
9 officer.

10 THE COURT: All right. You may come down.

11 This witness be excused?

12 MR. STEINBERG: Your Honor, this is my primary
13 officer. I'd like him to stay with the State.

14 THE COURT: All right.

15 MR. STEINBERG: Your Honor, the next witness will be
16 Brad Grice with the Sheriff's Office.

17 THE CLERK: Please place your left hand on the Bible
18 and raise your right hand.

19 WHEREUPON,

20 BRAD GRICE

21 After first having been duly sworn, testified as follows:

22 THE CLERK: Please state your name for the record.

23 THE WITNESS: Brad Grice.

24 ///

25 ///

DIRECT EXAMINATION

BY MR. STEINBERG:

Q Deputy Grice -- or Sergeant Grice, can you please tell us where you're from originally?

A Right here, Greenville, South Carolina.

Q And how long have you been in law enforcement?

A Just over 15 years, I believe.

Q And what's your highest level of education?

A I have a bachelor's degree.

Q What was your role in June of 2015?

A During this case, I was acting as the undercover officer for Deputy Bastoni.

Q Were you also in what's described as the Directed Patrol Unit at that time?

A I was.

Q Had you made prior undercover buys in Greenville county?

A I have. Several.

Q Please tell the jury just generally where this Bi-Lo is at.

A This Bi-Lo is right at the intersection of Mauldin Road and South Pleasantburg, also known as 291.

Q Just very briefly, prior to June 11th, had you ever seen Mr. Duckett? Did you know what he looked like?

A Yes.

1 Q And you had a chance to talk to him?

2 A I have.

3 Q Long enough to understand what his voice sounded
4 like?

5 A Yes.

6 Q Did you have his telephone number?

7 A I did.

8 Q And on June 11th of 2015, did you contact
9 Mr. Duckett?

10 A I did.

11 Q And what was the purpose of the contact, and what did
12 you do at that point?

13 A Through a text message, I contacted Mr. Duckett and
14 asked to buy \$100 worth of heroin.

15 Q And how much was the ultimate deal supposed to be
16 for?

17 A Through other texts, it was ultimately decided I
18 could buy \$150 worth of heroin and \$40 worth of crack
19 cocaine.

20 Q Did you ever speak with him on the telephone?

21 A I believe I did.

22 Q Okay. And do you know what kind of vehicle he drove?

23 A A gold Tahoe.

24 Q Had you seen that gold Tahoe before this?

25 A Yes, sir. I have.

1 Q Now, this meeting, who determined where it was going
2 to take place?

3 A He determined this location.

4 Q Would you have chosen a Bi-Lo as a location for the
5 drug deal to occur?

6 A I would not, but ---

7 Q Please tell us why you would not have chosen a Bi-Lo.

8 A Too many people, too many things to go wrong, from my
9 point of view. Just in case something did happen, I
10 wouldn't want any innocent person to get hurt.

11 Q When you went to the Bi-Lo, did you have officers
12 that were assisting you?

13 A In a way. They had -- they maintained surveillance
14 on me for my protection as well as I was wired to audio
15 surveillance.

16 Q Okay. In June of 2015, did your unit have capability
17 -- or video monitoring from a person, not from a car?

18 A No. We did not, no.

19 Q Do you know if you have that now? Just curious.

20 A Yes and no. Most of the time it doesn't work, but we
21 do have that, yes.

22 Q When you were inside the Bi-Lo, did you have any
23 additional officers inside Bi-Lo assisting you, inside the
24 physical four corners of the building?

25 A No, no. It was just me.

1 Q Did you bring the cash for this transaction?

2 A I did.

3 Q How much cash did you bring?

4 A \$190.

5 Q Where were you originally supposed to meet

6 Mr. Duckett inside the Bi-Lo?

7 A Mr. Duckett advised me to come to the Bi-Lo. Once I
8 got there, he wasn't in his vehicle. I called him, and he
9 said, "Come to the restroom."

10 Q Once you were inside, did he change the location?

11 A He did. As soon as I walked inside but before I got
12 to the restroom, he -- I met him in a grocery aisle.

13 Q Is it common for drug deals to change locations?

14 A Very, very common.

15 Q I may have asked you. You said you were familiar
16 with the gold Tahoe. Did you see that gold Tahoe in the
17 parking lot of Bi-Lo the same day?

18 A I did, which is why I called him because I realized
19 he wasn't in it.

20 Q Do you remember what the defendant was wearing when
21 -- or did you put that in your police report, what the
22 defendant was ---

23 A I did not. What I did put, I gave a detailed
24 description. Being over two years, I -- I don't remember
25 what he was wearing.

1 Q Please read over your reports, if necessary, and see
2 what he was wearing.

3 A In my report, it doesn't have that. I put that I
4 gave a detailed description to Master Deputy Maltby after
5 the deal had taken place. And ---

6 Q In addition to Deputy Maltby, were there other
7 officers that were monitoring this?

8 A Yes. There was deputies with Master Deputy Maltby.

9 Q Okay. And this description, would that be heard on
10 the audiotape?

11 A It should be.

12 Q Okay. Where in the Bi-Lo did you physically lay eyes
13 on this defendant?

14 A I was in an aisle. I don't have that, but by memory,
15 I believe it was right where they sell Mexican food, the
16 different off-brands of chips and salsa and stuff like
17 that.

18 Q And did you have a conversation with Mr. Duckett at
19 that time?

20 A We did. We spoke briefly, shook hands. Asked if I
21 was a cop. I said "no."

22 Q And did he ask you about the money or was there a
23 discussion of drugs?

24 A No. It was just asked me that and spoke briefly. I
25 don't remember exactly what we talked about. I think

1 parties and going to a party or something of that nature.

2 Q After he asked you about -- is it unusual for people
3 to ask you whether you are an undercover officer or police
4 during these undercover buys? Is that unusual?

5 A No. It happens all the time.

6 Q Okay. And during drug buys, do people frequently
7 talk about a specific drug or the amount that they are
8 selling?

9 A Not usually, no.

10 Q What language do they use? What generalities are
11 used?

12 A It changes from it seems week to week, but it's
13 always some kind of nickname of a drug or how much money
14 as in a C note would be \$100. Or it changes. I can't
15 keep up with it.

16 Q Okay. And in this case, did you produce your \$190?

17 A I did.

18 Q And did you give it to Mr. Duckett?

19 A I did after I saw what I was buying.

20 Q And how did you see it? Where did he take it from or
21 what did he do with it?

22 A On the aisle there was some soda cans. He removed or
23 moved those soda can over and laid down exactly -- what
24 appeared to be exactly what we agreed upon. And I saw
25 that, gave him the money. We parted ways.

1 Q Have you had any other discussions or other cases
2 where people did not put the drugs in your hand, they
3 simply lay it down or something similar?

4 A Yes. Similar. I mean, it changes, it seems like,
5 every time.

6 Q Okay. So he didn't actually put it down in your
7 hands, correct?

8 A Correct.

9 Q How close was he to you when he laid the drugs down?

10 A Feet. Less than five, ten feet. Maybe even less
11 than that.

12 Q And did you hand him the cash?

13 A I did.

14 Q Did you have any other transaction for any other
15 reason you'd hand him \$190?

16 A No.

17 Q Did you obtain the item?

18 A I did.

19 Q And what were those two items?

20 A There was a clear plastic baggie filled with a white
21 substance, and it was also two little white rocks.

22 Q I'm going to show you State's Exhibits 3 and 4. Do
23 these look -- State's Exhibit 3 and 4 are JB-9 and JB-10
24 respectively. Do these look to be about the same quantity
25 and amounts as you obtained from Mr. Duckett?

1 A Yes.

2 Q After the drug deal went down, where did Mr. Duckett
3 go?

4 A I left. He left and got in his vehicle. I
5 immediately called and let them know the description and
6 what was going on.

7 Q And where did you go?

8 A I got in my car and still acting in an undercover
9 capacity, because at the time, I didn't know what was
10 going to happen, and eventually met with, I believe it
11 was, Master Deputy Fletcher.

12 Q When you met with Deputy Fletcher, did you give him
13 the items we just discussed?

14 A I did.

15 Q They were the same quantity, same amount, same
16 packaging as discussed?

17 A Yes.

18 Q Please point to the individual that sold you these
19 two drugs.

20 A Mr. Duckett, the gentleman in the white shirt.

21 (WHEREUPON, State's Exhibit Number 8 was marked for
22 identification.)

23 BY MR. STEINBERG:

24 Q Thank you. I'm going to show you State's Exhibit
25 Number 8. Did you have an opportunity to listen to a drug

1 buy in this case?

2 A Yes.

3 Q And does this accurately reflect the conversation
4 between you and the defendant that occurred at the Bi-Lo
5 on this date?

6 A It does.

7 MS. MANIGAULT: Your Honor, we've been given a copy.
8 There's no objection.

9 THE COURT: All right. Without objection.

10 MR. STEINBERG: I'm going to introduce this without
11 objection.

12 (WHEREUPON, State's Exhibit Number 8 was admitted into
13 evidence.)

14 MR. STEINBERG: For the benefit of the Court, I'm
15 going to start playing this at the 14:33 mark. Before I
16 do that . . .

17 BY MR. STEINBERG:

18 Q The entirety of this surveillance is going to be
19 available -- obviously available to the defense attorney.
20 What happens earlier on? Before you meet the defendant,
21 what generally happens? What's on the surveillance
22 report?

23 A As far as where do they go?

24 Q Well, basically, when did you put the wire on you?

25 A Before I -- before we left our office.

1 Q Did you have discussion with the other officers about
2 where to go and what to do?

3 A Yes.

4 Q Okay. I'm going to play this briefly. I'd like to
5 stop at certain times to ask you questions.

6 A Okay.

7 Q This is the 14:30 mark.

8 (WHEREUPON, State's Exhibit Number 8, an audio recording,
9 was played in open court.)

10 BY MR. STEINBERG:

11 Q What were you doing at that point when you say, "Come
12 in. I see you"?

13 A Reading a text message.

14 Q Text message from who?

15 A Mr. Duckett.

16 Q Was that from the same phone number that you have
17 spoke to him in the past?

18 A It was.

19 Q And starting again at the 17:03 mark.

20 (WHEREUPON, State's Exhibit Number 8, an audio recording,
21 was played in open court.)

22 BY MR. STEINBERG:

23 Q I'm stopping at the 17:22 mark.

24 What was that conversation? Who was it with?

25 A That was Mr. Duckett. That was a phone call that

1 time telling me to come to the bathroom.

2 Q Were you already inside the Bi-Lo at the time?

3 A No, I wasn't.

4 Q Were you in the Bi-Lo parking lot?

5 A Yes.

6 (WHEREUPON, State's Exhibit Number 8, an audio recording,
7 was played in open court.)

8 BY MR. STEINBERG:

9 Q I'm going to stop there at the 19:27 point. Who are
10 you speaking with at this time?

11 A Mr. Duckett.

12 Q And was that the same voice as you heard a few
13 minutes before this on the telephone?

14 A Yes.

15 Q Is that this same voice you're familiar with in prior
16 dealings with him?

17 A Yes.

18 Q And at this point, where are you standing with this
19 defendant?

20 A Inside the Bi-Lo on the Mexican aisle.

21 Q And what did he just ask you? What was the question
22 he asked you as you approached him?

23 A I don't know. I couldn't hear it.

24 Q I'll play it back.

25 A I'm a little hard of hearing except for my singing.

1 Q We'll discuss that later.

2 I'm going to place this at the 18:56 mark. Listen
3 closely to what the defendant is asking. I'd like you to
4 talk about what your response was to this as well.

5 (WHEREUPON, State's Exhibit Number 8, an audio recording,
6 was played in open court.)

7 BY MR. STEINBERG:

8 Q Could you hear that that time?

9 A No.

10 Q Come down here, please.

11 THE WITNESS: That good?

12 THE COURT: Sure.

13 (WHEREUPON, State's Exhibit Number 8, an audio recording,
14 was played in open court.)

15 BY MR. STEINBERG:

16 Q I'll put this on pause at the 19:57 point.

17 Did he ask you if you were a police officer?

18 A I believe, yes.

19 Q And when you said, "I like to party," what was that
20 discussion about and what was his response to that?

21 A When he said -- say it again.

22 Q He asked you a question. You said, "I like to
23 party." And what was his response to that, if you could
24 hear?

25 A I told him I like to party, and ---

1 Q Did he make any conversations about his ability?

2 A I'm not sure.

3 Q Okay. How good is your hearing? Are you able to
4 hear up to normal standards, you think?

5 A No.

6 Q Okay. I'll play it for the jury. We'll skip over
7 that.

8 (WHEREUPON, State's Exhibit Number 8, an audio recording,
9 was played in open court.)

10 BY MR. STEINBERG:

11 Q I'm stopping it at the 21:57 mark.

12 When you said, "Yeah, that's him," what did you
13 observe when that occurred?

14 A That he walked out.

15 Q And did you see officers with him at that time?

16 A They were on the way, yes.

17 Q And was the person that they spoke with, that they
18 stopped and arrested, was that the person you had made the
19 drug deal with?

20 A Yes.

21 Q And was that Mr. Duckett?

22 A It was.

23 MR. STEINBERG: Thank you, Sergeant Grice. Please
24 answer any of opposing counsel's questions.

25 THE COURT: Cross-examination?

1 MS. MANIGAULT: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. MANIGAULT:

4 Q Sergeant Grice, how long did you say you were with
5 the Sheriff's Office?

6 A Approximately 15 years.

7 Q And during June 2015, what were your duties? Were
8 they mainly undercover officer?

9 A Among other things, but I did that quite a bit during
10 that time.

11 Q What else did you do?

12 A I was a supervisor also. We did street-level
13 narcotics, also to include prostitution.

14 Q All right. So when you say "street-level narcotics,"
15 you were just out observing for activities or ---

16 A We -- we ran informants as well as acted undercover,
17 and the majority of the time when we did undercover
18 operations, I was a part of that.

19 Q All right. Did you mention that you had seen the
20 gold Tahoe before?

21 A Yes, ma'am.

22 Q And did you see John Duckett driving it?

23 A Yes, ma'am.

24 Q I believe you testified that there were text messages
25 on June 11th back and forth between you and John Duckett?

1 A Yes, ma'am.

2 Q And your testimony is the final transaction was
3 supposed to include \$100 heroin, \$40 crack?

4 A No, ma'am. It was \$150 of heroin and \$40 of crack.

5 Q So you showed up with \$190?

6 A Yes, ma'am.

7 Q How was the meeting place determined? Was it by text
8 or was it by telephone, talking to him or ---

9 A It was by a text.

10 Q By text.

11 All right. Is there such a thing as SLED
12 certification for undercover buys of drugs?

13 A Not that I'm aware of.

14 Q So you have not had that certification and are not
15 aware of that?

16 A No, ma'am.

17 Q Okay. And on your team, on the undercover team, are
18 you aware of any other officers that have worked
19 undercover that have been SLED certified to do that?

20 A Never heard of that.

21 Q Never heard of that. Okay.

22 And how long before you got to the Bi-Lo were you
23 wired for audio? Do you recall?

24 A Less than 20 minutes, I believe.

25 Q Okay. So the extra noise that we hear on the CD is

1 the noise from activity or people in the Bi-Lo grocery
2 store. If we hear chattering or ---

3 A You may have heard it. I didn't hear chatter.

4 Q Okay.

5 A I'm sorry.

6 Q If it was not a clear voice of yours or John Duckett,
7 then it's coming from the Bi-Lo store?

8 A Possibly.

9 Q Possibly. All right.

10 Did you see Mr. Duckett place drugs on the shelf?

11 A Yes, ma'am.

12 Q And at what point did you give him money for drugs?

13 A I believe it was right after that. We were still
14 standing in the same general area.

15 Q So when you got there, the drugs were not already on
16 the shelf, but you saw him place it there?

17 A Yes, ma'am.

18 Q I believe you testified you were about five to ten
19 feet away? Stop me when I get to five or ten feet.

20 A Which one, five or ten?

21 Q Either one.

22 A Keep coming. You're about five right now.

23 Q Five right here?

24 A Close.

25 Q Okay. And you're saying you handed off money at

1 approximately five feet or less?

2 A Or less. Yes, ma'am.

3 Q And the items that you took off of the shelf -- I'm
4 sorry. The items that you took off of the shelf ---

5 A Yes, ma'am.

6 Q --- what did you do with those items? Who did you
7 give them to?

8 A I believe I gave them to Deputy Pletcher.

9 Q All right. And did you have any involvement with the
10 items that you identified, I think, in State's Exhibit for
11 identification 3 and 4? Were those the items that you
12 took off of the shelf and gave to Mr. Pletcher?

13 A I'm not sure what they're labeled, but it was two
14 crack rocks and some heroin.

15 Q Okay. So when you handed over the items, did you
16 have to sign anything or document that you handed them
17 over to who, what person you handed it over to?

18 A I didn't sign anything. It was -- we were still in
19 the act, so to speak. We were still working this case.
20 And Deputy Pletcher was handling that part, and I
21 immediately handed it to him.

22 Q You handed it to him at the Bi-Lo or was it somewhere
23 else?

24 A I believe it was at the Bi-Lo or in the very close
25 vicinity. I can't remember if I went all the way to -- I

1 think it was Miracle, so it was somewhere between Miracle
2 and the Bi-Lo. I don't recall which exact spot.

3 MS. MANIGAULT: Okay. All right. Thank you.

4 MR. STEINBERG: Very briefly.

5 REDIRECT EXAMINATION

6 BY MR. STEINBERG:

7 Q In your experience which goes on since around early
8 2000's, have you ever heard of a SLED-certified undercover
9 officer?

10 A No.

11 Q And the voices, there was a question as to other
12 voices that might be on that audiotape. The two
13 individuals that are making that drug buy, is that your
14 voice and Mr. Duckett's voice?

15 A It is.

16 Q No one else's voices is on that audiotape?

17 A No.

18 MR. STEINBERG: Thank you. I have no further
19 questions.

20 THE COURT: Any redirect?

21 MS. MANIGAULT: None, Your Honor.

22 THE COURT: Recross. I'm sorry.

23 You may come down. Thank you very much.

24 Witness be excused?

25 MR. STEINBERG: Your Honor, the witness may be

1 excused. I'm going to ask that he stay here just in case
2 he does need to be recalled.

3 THE COURT: All right. No objection?

4 MS. MANIGAULT: None, Your Honor.

5 THE COURT: All right.

6 MR. STEINBERG: The State's next witness will be
7 Deputy John Williams.

8 THE CLERK: Please place your left hand on the Bible
9 and raise your right hand.

10 WHEREUPON,

11 JOHN WILLIAMS

12 After having been duly sworn, testified as follows:

13 THE CLERK: Please take a seat, and state your name
14 for the record.

15 THE WITNESS: John Williams.

16 DIRECT EXAMINATION

17 BY MR. STEINBERG:

18 Q Deputy Williams, where are you from originally?

19 A Worcester, Massachusetts.

20 Q And what's your highest level of education?

21 A Almost completed my bachelor's.

22 Q And do you have any military experience?

23 A I do.

24 Q Which branch?

25 A Eight years Marine Corps.

1 Q How long do you have with the Sheriff's Office?

2 A Over five years.

3 Q And how long have you had in law enforcement total?

4 A Almost 12 years.

5 Q And what unit were you in in June of 2015?

6 A Directed Patrol Unit.

7 Q And were you involved in this case with Deputy
8 Bastoni and Sergeant Grice?

9 A I was.

10 Q Were you present in the Bi-Lo supermarket parking
11 lot?

12 A I was.

13 Q And what was your role?

14 A Maintain close cover for Sergeant Grice, and
15 assisting in apprehending any subjects.

16 Q What does "close cover" mean?

17 A I was in near proximity in an undercover vehicle.
18 Was in a gold Escalade, and was parked in the fire escape
19 area at the front of the store just in case Sergeant Grice
20 needed any help or when he gave the description of the
21 subject.

22 Q And were you able to listen to the discussions and
23 the directions from Sergeant Grice?

24 A I was able to listen to Master Deputy Maltby who was
25 listening to the actual wire that Sergeant Grice was

1 using, and he was relaying that information over our
2 radios.

3 Q Okay. Do you have a description of the person that
4 had sold the drugs to Sergeant Grice?

5 A I did.

6 Q And was it a sufficiently detailed description that
7 you were able to locate this individual?

8 A I was.

9 Q You saw him leaving the Bi-Lo?

10 A I did.

11 Q And who was this individual?

12 A Mr. Duckett (indicating).

13 Q And are you pointing to the individual at the
14 defendant table in the white shirt?

15 A Yes, sir.

16 Q And was he carrying anything in his hands?

17 A Not that I remember.

18 Q No groceries?

19 A No, sir.

20 Q Did you approach him?

21 A I did.

22 Q Were you in uniform?

23 A I was in plainclothes, but I was wearing a Sheriff's
24 Office emblazoned Ray vest, and I had my badge, identified
25 myself as a law enforcement officer.

1 Q And did you approach him?

2 A I did.

3 Q And did you arrest him?

4 A I placed him in handcuffs and conducted a quick pat
5 down for any weapons.

6 Q What's the difference between a pat down and a
7 search?

8 A Pat down is when I'm going over the outer layer of
9 clothing, primarily waistband, pocket, jacket areas,
10 making sure there's no noticeable bulges that might be a
11 weapon, gun, knives, anything like that. A search is much
12 more thorough, more detailed: inside the pockets, inside
13 the waistband, that sort of thing.

14 Q Did you locate any weapons on him?

15 A I did not.

16 Q Do you know whether he was fully searched and by who?

17 A He was fully searched back at the house on Miracle
18 Drive by Master Deputy Bastoni.

19 Q And who drove the suspect back to his own house?

20 A I was in the gold Escalade with him. Master Deputy
21 Walters was driving the vehicle.

22 Q And you turned over this defendant to Deputy Bastoni?

23 A I did.

24 Q And what was your role during the execution of a
25 search warrant at Miracle Hill Drive -- Miracle Drive?

1 A I assisted Master Deputy Pletcher in scribing the
2 search warrant.

3 Q If this is necessary, please explain what a scribe
4 is.

5 A As Master Deputy Bastoni explained, everything that
6 is found in the residence or on people's persons that we
7 might be taking as far as contraband, I'm detailing it.
8 On the return page of the search warrant, I'm making a
9 copy of that return page detailing the location where the
10 item was found and who it was found by.

11 MR. STEINBERG: Thank you. Please answer any of
12 opposing counsel's questions.

13 THE WITNESS: Yes, sir.

14 CROSS EXAMINATION

15 BY MS. MANIGAULT:

16 Q Deputy Williams, you were mainly in surveillance
17 mode?

18 A Yes, ma'am.

19 Q And did you ever go inside the Bi-Lo?

20 A I did not.

21 Q Did you see the transaction that was described by
22 Sergeant Grice?

23 A No, ma'am.

24 Q Were you able to listen to the tape while the
25 transaction was going on?

1 A No, ma'am.

2 Q You're telling the court that John Duckett was
3 arrested in the Bi-Lo parking lot ---

4 A Yes.

5 Q --- when he came out of the store?

6 A Yes, ma'am.

7 Q And he was arrested by you and another officer?

8 A Yes.

9 Q You're saying that you rode in the Tahoe. Who was
10 driving the Tahoe?

11 A I was in a gold Escalade ---

12 Q Escalade.

13 A --- Cadillac Escalade, and Master Deputy Walters was
14 driving the vehicle at the time.

15 Q And what happened to the gold Tahoe that was stated
16 that Mr. Duckett came up in?

17 A It was still parked at the Bi-Lo parking lot. I'm
18 not sure if it was towed or not.

19 Q Okay. And did you ever have any dealings with any
20 confiscated drugs or any other material that was taken?

21 A I did not.

22 MS. MANIGAULT: All right. Thank you.

23 MR. STEINBERG: No further questions for this
24 witness.

25 THE COURT: All right. You may come down.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Witness be excused?

3 MR. STEINBERG: Yes, sir. This witness may be
4 excused.

5 MS. MANIGAULT: No objection.

6 THE COURT: Without objection.

7 All right. Let's take a short break at this time.
8 Solicitor, just hold your witness for a few minutes.

9 MR. STEINBERG: Yes, sir.

10 THE COURT: Ladies and gentlemen, let's take a short
11 break. I'm going to ask you to go to the jury room. Do
12 not discuss the case among yourselves while you're in the
13 jury room. We'll call you in about ten minutes.

14 (WHEREUPON, the jury exits the courtroom at 3:14 p.m.)

15 THE COURT: All right. Stand at ease for about ten
16 minutes.

17 (WHEREUPON, a recess is taken at 3:15 p.m.)

18 (WHEREUPON, State's Exhibit Numbers 9 and 10 were marked
19 for identification.)

20 (WHEREUPON, proceedings reconvened at 3:28 p.m.)

21 THE COURT: Is the State ready for the jury?

22 MR. STEINBERG: Yes, sir, Your Honor.

23 THE COURT: Defense ready for the jury? Ready for
24 the jury, Ms. Manigault?

25 MS. MANIGAULT: Yes, sir.

1 THE COURT: Bring the jury.

2 (WHEREUPON, the jury entered the courtroom at 3:29 p.m.)

3 THE COURT: Everybody all right?

4 All right. Solicitor, call your next witness.

5 MR. STEINBERG: Thank you, Your Honor. The State
6 calls Deputy Chris Pletcher.

7 THE CLERK: Please place your left hand on the Bible
8 and raise your right hand.

9 WHEREUPON,

10 CHRIS PLETCHER

11 After having been duly sworn, testified as follows:

12 THE CLERK: And please state your name for the
13 record.

14 THE WITNESS: Chris Pletcher.

15 DIRECT EXAMINATION

16 BY MR. STEINBERG:

17 Q You're a master deputy with the Sheriff's Office?

18 A Yes, sir.

19 Q And what unit are you in right now?

20 A Special Operations, SWAT.

21 Q And what unit were you in in June of 2011 -- pardon
22 me -- 2015?

23 A The Directed Patrol Unit.

24 Q Where are you from originally?

25 A Spartanburg.

1 Q And what's your highest level of education?

2 A Bachelor's.

3 Q What was your role in this case?

4 A My role was originally I was at ■ Miracle Drive. And
5 Master Deputy Bastoni had obtained a search warrant, and
6 myself and another deputy were just making sure nobody
7 left the house before they were able to bring Mr. Duckett
8 back to execute the search warrant.

9 Q What other adults lived at this house besides
10 Mr. Duckett?

11 A There was a female, and her name's slipping my
12 memory.

13 Q What was your particular role at ■ Miracle Drive?

14 A So once Mr. Duckett was taken into custody, they
15 brought him over to the residence. We executed the search
16 warrant, and my job was to scribe the search warrant. So
17 anything that was found at the residence, if a deputy
18 found something, they'd bring it to me. I would document
19 it on the search warrant, fill out the Property and
20 Evidence form, and then take all that stuff to the Law
21 Enforcement Center.

22 Q Have you reviewed the search warrant and all of your
23 police reports in preparation for this trial?

24 A Yes.

25 Q Who handled the actual illegal contraband, the drugs

1 itself? Who brought it to the evidence room?

2 A I did.

3 Q Okay. I want to show you State's Exhibit Numbers 6
4 and 7. It's just for identification only. What kind of
5 documents are these two documents?

6 A These are Property and Evidence reports.

7 Q And where it says here on this first item JB-9 and
8 JB-10, who is JB?

9 A Jonathan Bastoni. That's Master Deputy Bastoni.

10 Q And who wrote this report out?

11 A That's my handwriting.

12 Q And that's your handwriting at the bottom?

13 A Yes, sir.

14 Q And also on Item JB-6 and JB-7 corresponding with
15 what's over here, whose handwriting is that?

16 A That's mine.

17 Q And what are these items? What is JB-6?

18 A JB-6 is a white rock-like substance weighing in at
19 .1 grams.

20 Q And what is JB-7?

21 A JB-7 is a small blue Ziploc bag containing a white
22 powder substance weighing .1 gram.

23 Q On the second page, State's Exhibit Number 7, what is
24 JB-9?

25 A JB-9 is a quantity of two white rock-like substance,

1 .2 grams.

2 Q And what is JB-10?

3 A JB-10 is blue Ziploc bag containing a white powder,
4 .5 grams.

5 Q I'm going to show you JB-6, JB-7, JB-9 and JB-10.
6 Are these the items that you brought to the Property and
7 Evidence room?

8 A (Reviews exhibits) Yes.

9 Q These appear to be the same size, same quantity as
10 you brought to the evidence room?

11 A Yes, sir.

12 Q And did Deputy Bastoni give you both a small amount
13 of crack and small amount of heroin found on this
14 defendant?

15 A Yes, sir.

16 Q And did Sergeant Grice, did he give you the drugs
17 that were obtained during this drug buy themselves?

18 A He did.

19 Q Are these the items?

20 A Yes, sir.

21 Q I'm going to ask some questions about the Property
22 and Evidence room and the techniques and the ways you have
23 to introduce it. Are there cameras in the Property and
24 Evidence room in the corridor there?

25 A Yes, sir. There are.

1 Q Is the general public that is not law enforcement,
2 are they allowed down to Property and Evidence without an
3 escort?

4 A Not without an escort.

5 Q And inside the Property and Evidence room, are you,
6 an officer, allowed behind the door without an escort?

7 A No, sir. I'm not.

8 Q In fact, who is allowed behind there?

9 A Only the clerks that work there.

10 Q Are the doors locked? Are they steel doors? Are
11 they brick walls?

12 A They are locked, yes.

13 Q Okay. And did you bring the drugs and package them?

14 A Yes.

15 Q How were the drugs packaged so that they can't be
16 tampered with?

17 A So with narcotics, they have to be weighed, placed in
18 a plastic bag, and then you have to sign your initials,
19 the case number, the date, and heat seal that. That way,
20 if it's tampered with, you'll be able to tell.

21 Q I am going to show you State's Exhibit Number 5.
22 Please tell me what these documents consist of.

23 A This is a chain of custody.

24 Q Okay. And did you comply with the protocol for the
25 chain of custody?

1 A Yes, sir. I did.

2 Q And I'm going to show you State's Exhibit Numbers 6
3 and 7. Who did you give the drugs to after they were heat
4 sealed?

5 A Cindy Witherspoon.

6 Q And who is Cindy Witherspoon, and what is her role?

7 A She works at the -- she's a clerk at the Property and
8 Evidence, and she's one of the people that takes in the
9 evidence and stores it.

10 Q So the jury understands when they have a chance to
11 look at these drugs, the smaller bag, the one that's
12 approximately four or five inches inside the larger bag,
13 is that what you heat sealed?

14 A Yes.

15 Q Did you touch this bag, the outside bag?

16 A No, sir.

17 Q Is that the same for the other items?

18 A That's correct, sir.

19 Q Okay. And the items that you sealed, the drugs were
20 inside and heat sealed?

21 A Yes.

22 Q And did you put any markings on them to show that ---

23 A Yes. You can see inside the bag there's a case
24 number, a date and initials.

25 Q Okay. And are those your initials?

1 A Yes.

2 Q And looking at this, do the bags appear to be
3 tampered with in any ways outside of the chemist markings?

4 A (Reviews exhibits) They do not look to be tampered
5 with.

6 Q Did you follow all departmental policy regarding
7 handling of evidence?

8 A Yes.

9 MR. STEINBERG: That's all the questions I have at
10 this time for Deputy Pletcher.

11 THE COURT: Ms. Manigault?

12 MS. MANIGAULT: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MS. MANIGAULT:

15 Q Master Deputy, when you turned the items in to P&E,
16 that was on June 11, 2015?

17 A Yes, ma'am.

18 Q And did you have any other contact with the evidence
19 that you had turned in after that date?

20 A No, ma'am.

21 Q Okay. So you didn't have anything to do with the
22 chemist testing or picking it up for the chemist or
23 anything like that?

24 A No, ma'am.

25 Q And your main point of placement on June 11, 2015,

1 was at ■ Miracle Hill Drive?

2 A Yes.

3 Q Did you testify that you received evidence from
4 Bastoni and Sergeant Grice?

5 A Yes. Grice brought me the drugs at ■ Miracle Drive,
6 and then I put everything in Property and Evidence.

7 MS. MANIGAULT: All right. Thank you.

8 REDIRECT EXAMINATION

9 BY MR. STEINBERG:

10 Q Just to clarify. I think I may have made a mistake.
11 It's not Miracle Hill Drive. It's Miracle Drive?

12 A Yes, sir.

13 MR. STEINBERG: Thank you, sir. I have no further
14 questions.

15 THE COURT: You may come down, sir.

16 THE WITNESS: Thank you.

17 THE COURT: May this witness be excused?

18 MR. STEINBERG: Yes, sir.

19 MS. MANIGAULT: No objection.

20 THE COURT: Without objection.

21 MR. STEINBERG: Your Honor, the next witness will be
22 Sean Collins.

23 THE COURT: Approach the bench, Counsel.

24 (WHEREUPON, a bench conference was held off the record.)

25 THE COURT: Ladies and gentlemen of the jury, I have

1 a matter I need to take up with the attorneys and I need
2 to take it up on the record about a matter of evidence at
3 this point. I'm going to ask you to go to the jury room
4 just for a few minutes while I get this straightened out.
5 I'll call you just as soon as we're finished. We're not
6 going to take a long break. I just need to get this
7 straightened out.

8 (WHEREUPON, the jury exits the courtroom at 3:39 p.m.)

9 THE COURT: All right. Ms. Manigault, your objection
10 to the introduction of the drugs was based on a chain of
11 custody matter which involved this witness, who has just
12 been called, between the dates of July the 2nd and July
13 the 7th of 2015; is that correct?

14 MS. MANIGAULT: Yes, sir.

15 THE COURT: And that's where your motion to suppress
16 the drug evidence, that's the basis of it; is that
17 correct?

18 MS. MANIGAULT: Yes, sir.

19 THE COURT: All right. I'm going to require the
20 State to proffer that evidence at this point so the Court
21 can make a decision whether or not to grant your motion.

22 MR. STEINBERG: Thank you. Your Honor, the State
23 would call Sean Collins.

24 THE CLERK: Please place your left hand on the Bible
25 and raise your right hand.

1 WHEREUPON,

2 SEAN COLLINS

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you. Please take a seat. And
5 please state your name for the record.

6 THE WITNESS: Sean Franklin Collins.

7 DIRECT EXAMINATION

8 BY MR. STEINBERG:

9 Q Mr. Collins, just to speed things up as the jury is
10 not here, were you the chemist in this case?

11 A Yes, sir. I was.

12 Q And as chemist, are you a chemist with the Department
13 of Public Safety here in Greenville county?

14 A Yes, sir.

15 Q When and how do you obtain evidence from the evidence
16 room?

17 A As we need cases to work, we will go down the hall to
18 the Law Enforcement -- at the Law Enforcement Center
19 basement, this is where the laboratory and the evidence
20 room is located. We just go down the hall, request cases,
21 and they retrieve them from the back, bring them to us and
22 sign them out.

23 Q Okay. I'm going to show you State's Exhibit Number 5
24 specifically as it relates to JB -- Item JB-6, one white
25 rock substance. On July 2, 2015, did you sign the

1 evidence out -- that particular item out from Melanie
2 Watson?

3 A I don't know who I signed it out from. I did sign it
4 out.

5 Q Okay. Who is Melanie Watson?

6 A Melanie Watson is one of the clerks there.

7 Q Okay. Would she be involved in any of the handling
8 of the evidence other than securing it? Does she assist
9 in testing at all?

10 A No. Just storage. Just security.

11 THE COURT: What date was that again?

12 MR. STEINBERG: That was July 2nd of 2015.

13 BY MR. STEINBERG:

14 Q And who is Kara Bennick?

15 A She's the supervisor of the evidence section.

16 Q Is Ms. Bennick here in the courtroom today?

17 A Yes, sir. She is.

18 Q And you signed the evidence in after analysis on
19 July 7th of 2015.

20 A Yes, sir.

21 Q What does "vault sheriff envelope" mean? Is that
22 something that you ---

23 A It's a storage location that they assign.

24 Q Okay. And did you bring the items back there?

25 A I carried them to an evidence clerk, and they would

1 put the items where they wanted them stored long term.

2 Q Okay. And these items, do these appear to be -- the
3 ones I'm showing you are State's Exhibits 4, 3, 1 and 2.
4 Do these appear to be in the same condition as when you
5 handled them?

6 A Yes, sir. They do.

7 Q And outside of the slicing open to testing it, are
8 there any other cuts on them?

9 A No, sir.

10 Q And outside -- was the general policy followed of how
11 evidence is supposed to be heat sealed and marked followed
12 in this case?

13 A Yes, sir.

14 Q And if something had not been properly marked or
15 properly handled, what would you do with that in that
16 case?

17 A We would notify the evidence clerk, and they would
18 contact the officers to deal with it.

19 Q Okay. Was that done in this case? Was there a
20 problem with the evidence in this case?

21 A I don't recall there being a problem.

22 Q Okay.

23 A I don't have any notes about that.

24 Q If there were any problems from July 2nd to July 7th,
25 would you have done anything in this case to notify

1 Ms. Bennick?

2 A Yes. If there was a problem, it would have been
3 signed back in for them to take care of.

4 MR. STEINBERG: Okay. That's all the questions I
5 have at this time for the chain of custody from July 2nd
6 to July 7th.

7 THE COURT: Cross-examination?

8 MS. MANIGAULT: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. MANIGAULT:

11 Q Mr. Collins, when you retrieved the drugs from P&E,
12 do you sign them out?

13 A Yes, ma'am.

14 Q And when you return them to P&E, do you sign them
15 back in?

16 A They're handed over, and whoever receives them does
17 the logging in the computer.

18 Q Okay.

19 A I only sign the receipt.

20 Q All right. You signed them out on July 2, 2015, and
21 it appears it wasn't logged back in or returned until
22 July 7, 2015. Did you keep the drug for testing with you
23 that entire time?

24 A It would be stored in the laboratory in my locker
25 when it wasn't in my possession.

1 Q And who has access to your locker?

2 A Only I do.

3 Q And is that locker, does that locker have a key?

4 A No, ma'am. It's a combination lock.

5 Q Combination lock. All right. And you're the only
6 one with the combination there?

7 A Yes, ma'am.

8 Q All right. And have you ever had any problems with
9 anybody tampering with your locker ---

10 A No, ma'am.

11 Q --- in testing?

12 And is it a common -- can it be a common practice to
13 keep the drugs out for that period of time, five days ---

14 A Yes, ma'am.

15 Q --- out of P&E?

16 A Yes, ma'am. It's not common -- or not uncommon at
17 all.

18 Q Okay. And why would that be? Why would you ---

19 A Depending on the number of cases you sign out at one
20 time, is it run over the weekend? How much is going on
21 with the other chemist tying up the instruments used?

22 Q All right. So when you turned the drugs back over on
23 July 7th, that was the end of your contact with the drugs;
24 is that correct?

25 A That's correct.

1 MS. MANIGAULT: Beg the Court's indulgence.

2 BY MS. MANIGAULT:

3 Q Do you have any recollection of how many cases you
4 checked out on July 2nd to be tested?

5 A No, ma'am. I'm afraid I don't.

6 Q And I think the solicitor asked you about State's
7 Exhibit for identification of 4, 3, 1 and 2. Did you
8 check all of those out on June 11, 2015?

9 A Let me double check the numbers. June 2, 2015? I'm
10 sorry. July 2, 2015.

11 Q I'm sorry. Yes. I'm sorry. July 2nd.

12 A Sorry about that. Yes, ma'am.

13 Q But you checked out more than one packet for testing?

14 A Yes, ma'am.

15 Q All right. And so for sure we know you had at least
16 four baggies for testing?

17 A Yes, ma'am. Most likely more.

18 Q Most likely more.

19 And are the drugs for each case that you're testing
20 stored in a separate locker or are they all put in the
21 same -- your same locker?

22 A It would be the same locker, but nothing is stored
23 without being sealed.

24 Q Without you sealing it?

25 A Without being in its own sealed package.

1 Q Okay. In its own sealed package. All right.

2 Mr. Collins, is it common for when you hand the drugs
3 back in to just hand them over to the clerk of P&E and
4 they do the logging in on the computer?

5 A Yes, ma'am.

6 Q Is that a common practice?

7 A That's the practice.

8 Q And it's a common practice that when you take them
9 out, you sign them out?

10 A Yes, ma'am.

11 MS. MANIGAULT: All right. Thank you.

12 MR. STEINBERG: Nothing further from the State, Your
13 Honor.

14 THE COURT: All right. Motion to suppress the drugs
15 based on the argument about the lack of the chain of
16 custody is denied.

17 You can have a seat, Officer, and we'll call you back
18 in just a minute.

19 All right. Bring the jury.

20 (WHEREUPON, the jury entered the courtroom at 3:49 p.m.)

21 THE COURT: All right. Solicitor, call your next
22 witness.

23 MR. STEINBERG: Thank you, Your Honor. The State
24 would call Sean Collins.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand, please.

2 WHEREUPON,

3 SEAN COLLINS

4 After having been duly sworn, testified as follows:

5 THE CLERK: Please be seated.

6 DIRECT EXAMINATION

7 BY MR. STEINBERG:

8 Q Mr. Collins, can you please tell the jury what your
9 title is and what your job entails?

10 A My title is principal criminalist. My job
11 responsibilities are, in addition to being a director of
12 the Greenville crime laboratory drug analysis section, I'm
13 also one of the drug analysts.

14 Q And what's your highest level of education?

15 A I have a bachelor of science degree in chemistry from
16 Clemson University.

17 Q Have you taken any courses in drug analysis?

18 A Yes, sir. I've received over 700 hours of
19 specialized training in the area of drug identification
20 and in the equipment we use in the laboratory for
21 analysis.

22 Q Is this past your college degree in chemistry, you've
23 had additional courses in drug identification?

24 A Yes, sir. About 700 hours in addition.

25 Q Are your lab results tested by peer-review or tested

1 by or observed by another trained criminalist?

2 A Yes, sir. Every case we work is peer-reviewed by
3 another examiner qualified to do the testing themselves.

4 Q And do you also peer-review other people's work?

5 A Yes, sir. I do.

6 Q Have you ever been qualified in state or federal
7 court as a drug identification expert?

8 A Yes, sir. I've testified 165 times as an expert
9 witness in drug identification.

10 MR. STEINBERG: Your Honor, at this time, I would
11 move to qualify Mr. Collins as an expert in chemistry and
12 drug analysis.

13 THE COURT: Any objection or voir dire?

14 MS. MANIGAULT: No objection, Your Honor. No voir
15 dire.

16 THE COURT: You may proceed.

17 MR. STEINBERG: Thank you, Your Honor.

18 BY MR. STEINBERG:

19 Q In regards to the items in front of you, Items JB-1,
20 JB-9, JB-10, JB-6 and JB-7 listed as State's Exhibits 1,
21 2, 3 and 4, what type of testing do you do on these items
22 to see what they are?

23 A A chemical and instrumental analysis to get the
24 indication of -- or determine what the substance is.

25 Q Okay. A chemical and instrumental analysis?

1 A Yes, sir.

2 Q Are those two tests the general type test used in
3 your field to determine identity of illegal narcotics?

4 A Yes, sir.

5 Q Did you examine the items before you we just
6 discussed, and did you also weigh them?

7 A Yes, sir. I did.

8 Q Are your scales calibrated often?

9 A I always calibrate the scales every day we use them,
10 or at least verify the calibration.

11 Q Okay. I'm going to hand you State's Exhibit
12 Number 5. Have you seen these documents before?

13 A Yes, sir. I have.

14 Q And who signed the items out, JB-6 -- Item JB-6 out
15 at 8:58 in the morning on July 2nd of 2015?

16 A It says Melanie Watson there.

17 Q And who is she?

18 A She's one of the clerks in the evidence room.

19 Q And who actually took possession of them at the time?

20 A I did.

21 Q And whose signature is that?

22 A That's my signature.

23 Q I'm going to go to State's Exhibit Number 7. Same
24 question. On July 2nd, who eventually took custody of
25 these items?

1 A I did.

2 Q Is that your signature there?

3 A Yes, sir.

4 Q And go to State's Exhibit Number JB-9. Same
5 question. July 2nd, who signed these out and whose
6 signature is that?

7 A Melanie Watson, and that is my signature receiving
8 them.

9 Q And what is Melanie Watson's role in this case?

10 A She is one of the clerks, and that particular day
11 retrieved the evidence for me.

12 Q Okay. Would she have opened up any of the bags?

13 A No. No, sir.

14 Q And also, Item JB-10, same question. July 2, 2015,
15 whose signature is that?

16 A It's my signature receiving them.

17 Q Okay. On all these items that we just discussed,
18 were they signed back in on July 7, 2015, and if so, do
19 you remember returning the items?

20 A They were signed in from my notes, but I don't
21 remember specifically returning them.

22 Q Would you have kept those items?

23 A No, sir.

24 Q It says here the words "vault sheriff envelope."
25 What does that mean on these four items?

1 A That's a storage location within the Property and
2 Evidence room. It helps them locate packets.

3 Q And who is Kara Bennick?

4 A She's the supervisor of the Property and Evidence
5 room.

6 Q Okay. And do you remember -- well, would you have
7 given this back to either Kara Bennick or to one of her
8 employees?

9 A Yes, sir.

10 Q And did you have the opportunity to examine these
11 items, and what were your conclusions specifically for the
12 items we discussed, JB-6 and JB-7? First of all, what was
13 JB-6?

14 A JB-7. Item JB-6 I found to be cocaine base with a
15 weight of 0.11 grams, and JB-7 I found to be heroin with a
16 weight of 0.05 grams.

17 Q And when you say "cocaine base," what is a common
18 name for cocaine base?

19 A Crack cocaine.

20 Q And what does "cocaine base" mean? What's the
21 difference between crack cocaine and regular cocaine?

22 A Try not to get too technical. Cocaine is typically
23 seen in a powder form. It's water soluble. It's snorted.
24 it dissolves in the membranes of the nose.

25 Cocaine base or crack cocaine has been converted to a

1 form that is not soluble and has to be smoked to ingest
2 it, and typically looks like a rock.

3 Q I'm going to ask the same questions with items JB-9
4 and JB-10. Did you first exam those, determine what they
5 were, and give -- and determine a weight?

6 A Yes, sir. I did.

7 Q Please, for JB-9.

8 A I found JB-9 to be cocaine base with a weight of
9 0.20 grams.

10 Q And JB-10?

11 A And JB-10 I found to be heroin with a weight of
12 0.34 grams.

13 Q Outside of the markings that you had to do in
14 preparation for trial, does this appear to be tampered in
15 any way?

16 A No, sir.

17 Q If it had been tampered with in any way, would you
18 have brought this to Ms. Bennick's attention?

19 A Yes, sir.

20 Q And would you have kept notes about what the problems
21 were with the chain of custody?

22 A Yes, sir.

23 Q Were there any notes or any problems with this case?

24 A No, sir.

25 MR. STEINBERG: Beg the Court's indulgence.

1 Your Honor, I would move to introduce State's
2 Exhibits 1, 2, 3 and 4 into evidence.

3 THE COURT: Any objection?

4 MS. MANIGAULT: Your Honor, just the Court note my
5 previous objection that you already ruled on. Thank you.

6 THE COURT: All right. Admitted over defendant's
7 objection.

8 (WHEREUPON, State's Exhibit Numbers 1, 2, 3 and 4 were
9 admitted into evidence.)

10 MR. STEINBERG: Thank you, Your Honor.

11 Thank you, Mr. Collins. Please answer any of
12 opposing counsel's questions.

13 CROSS EXAMINATION

14 BY MS. MANIGAULT:

15 Q Mr. Collins, when you receive evidence from the
16 Property and Evidence room or P&E room, and particularly
17 in this case on July 2, 2015, how were the items packaged?

18 A The items were heat sealed in the inner plastic bags
19 inside these packages.

20 Q Okay. And when you take them to the lab, do you put
21 them in further packages if they stay in the lab any
22 period of time? Any kind of different packaging?

23 A We'd only repackage an item once it's been opened and
24 tested.

25 Q So would State's Exhibit including JB-1, 9, 10, 6 and

1 7, they were packaged and then repackaged after you
2 completed your testing?

3 A Yes, ma'am.

4 Q And I just have one question. How many times have
5 you been certified as an expert witness in Greenville
6 County courts?

7 A Of the 165 times I've said before, there were just a
8 handful in federal court outside the county, so it's
9 probably at least 150 something. I'm not certain.

10 Q And you signed the property out of the P&E room on
11 July 2, 2015, and you testified that they were returned on
12 July 7, 2015. Is there any reason that you would have
13 kept them out for five days?

14 A Typical the amount of time we have a case depends on
15 how many we received at one time, how much instrument time
16 is needed, how many cases are waiting to be run at the
17 same time.

18 Q Okay. And when you keep them in the lab that period
19 of time, how are they stored?

20 A Once we've done our hands-on analysis, removed a
21 sample for testing, we seal them in these outer plastic
22 bags and the cases are stored in our lockers, which only
23 the individual chemist has access to their locker.

24 Q And how is your locker secured?

25 A By combination lock.

1 Q And does anyone else in your lab have the combination
2 for your locker?

3 A No, ma'am.

4 Q All right. So once you put evidence in your locker
5 and lock it, then you're the person who has to take it
6 back out?

7 A Yes, ma'am.

8 Q And take it back to the Property and Evidence room?

9 A Yes, ma'am.

10 Q After you completed your testing, did you have any
11 other contact with the items that you had tested?

12 A No, ma'am. Not till today.

13 MS. MANIGAULT: Thank you.

14 MR. STEINBERG: The State has no further questions.

15 THE COURT: All right, sir. You may come down.

16 May this witness be excused?

17 MR. STEINBERG: Yes, sir, Your Honor.

18 MS. MANIGAULT: No objection.

19 THE COURT: Without objection.

20 MR. STEINBERG: Your Honor, in light of the Court's
21 ruling, I am going to proffer Ms. Kara Bennick if opposing
22 counsel has any questions. I'll call Ms. Bennick if you
23 have any questions.

24 MS. MANIGAULT: Yeah.

25 MR. STEINBERG: Okay. Your Honor, the State would

1 call Kara Bennick.

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

4 WHEREUPON,

5 KARA BENNICK

6 After having been duly sworn, testified as follows:

7 THE CLERK: Thank you. Please take a seat.

8 DIRECT EXAMINATION

9 BY MR. STEINBERG:

10 Q Ms. Bennick, can you please tell the Court what your
11 title is and what your job consists of?

12 A I'm a supervisor of the Property and Evidence section
13 at Greenville County.

14 Q And how many people do you have under your control in
15 the evidence room?

16 A There's five full-time employees, four of them are
17 under my . . .

18 Q And tell us briefly about the security and the
19 procedure you have in the evidence room concerning what
20 I'll call hard drugs, heroin and crack cocaine.

21 A The evidence room is in the basement of the Law
22 Enforcement Center. It is secured by lock, it is secured
23 by swipe cards, and it is secured by camera security. All
24 drugs are behind double locks at all times. Once they
25 come across that counter, they are put then into a

1 double-locking system.

2 Q I'm going to show you State's Exhibits -- State's
3 Exhibit Number 5. Who is Cindy Witherspoon who signed it
4 on June 11th?

5 A She's an employee.

6 Q And who is Melanie Watson?

7 A She's also a clerk in the evidence room.

8 Q And who signed the evidence back in on the items we
9 just discussed, State's Exhibits 1, 2, 3 and 4 on
10 July 7th?

11 A I did.

12 Q And when it says "vault sheriff envelope," what does
13 that mean?

14 A That is the secured location where they go to
15 permanent storage.

16 Q Okay. And I asked you a question about all four.
17 Let me show you all four documents. Are they all the same
18 for the same individuals?

19 A (Reviews exhibits) They are.

20 Q Would Ms. Witherspoon or Ms. Watson, or would
21 yourself be involved in handling the evidence outside of
22 securing it while it's already inside plastic bags?

23 A No, sir. There's a policy that says everything that
24 -- any drug evidence that comes in has to be sealed.

25 Q And prior to this trial, did you and I have a

1 discussion, and did you review the evidence in this case?

2 A I did.

3 Q And do you see any problems with the evidentiary
4 chain of custody or with the evidence handling in this
5 case?

6 A No, sir. I did not.

7 MR. STEINBERG: Thank you. Please answer any of
8 opposing counsel's questions.

9 THE COURT: Ms. Manigault, cross-examination?

10 MS. MANIGAULT: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MS. MANIGAULT:

13 Q Ms. Bennick, how do you receive the evidence into
14 your custody?

15 A In this particular case, it physically came across
16 the counter during business hours to us.

17 Q Okay. And when it comes across the counter, in this
18 case, how was it packaged? Do you recall?

19 A It would have been packaged in the plastic baggies
20 that are inside this outer bag.

21 Q So the officer that's handing the evidence to you has
22 already had it in a plastic baggie?

23 A Yes, ma'am. There's a workstation right outside the
24 evidence room ---

25 Q Okay.

1 A --- and they package their stuff there. They also
2 have one over at their office that they can package stuff.

3 Q And do you put a further packaging on it at that
4 time?

5 A We will place it in an envelope marking it with the
6 case number and the barcodes.

7 Q And the envelope, is it like a yellow manila
8 envelope? Brown?

9 A Yes, ma'am.

10 Q Okay. And the Property and Evidence sheet says that
11 it was -- dealing with this case, that the evidence was
12 checked out on July 2, 2015, at 8:58 a.m.

13 A Yes, ma'am.

14 Q By Melanie Watson.

15 A Yes, ma'am.

16 Q Okay. And is it normal procedure for whoever is
17 checking it out to sign for it?

18 A Yes. If you're checking something out, you do have
19 to sign for custody of it.

20 Q All right. Now, when an item is returned, is the
21 signature required at that point?

22 A It is not required.

23 Q And do you have any idea why that would be?

24 A Because we'll take possession of the items directly
25 from the person who checked them out, and we will check

1 them right back in while in their presence.

2 Q All right. And the person who checked them out is
3 the person that has to return them to you; is that
4 correct?

5 A Yes, ma'am.

6 Q All right. And is it irregular for the chemist to
7 keep evidence five days or more?

8 A Not at all.

9 Q Okay. And why would that be?

10 A The volume of cases that they check out and the
11 amount of prep work that goes into those cases, they often
12 have them out for several days at a time.

13 Q And when you received the items back on July 7, 2015,
14 from Mr. Collins, everything appeared to be in order to
15 you receiving it?

16 A Yes, ma'am.

17 MS. MANIGAULT: Thank you.

18 MR. STEINBERG: No further questions for this
19 witness, Your Honor.

20 THE COURT: You may come down.

21 MR. STEINBERG: We'd ask that she be excused.

22 MS. MANIGAULT: No objection.

23 THE COURT: You're free to go, ma'am. Thank you.

24 MR. STEINBERG: Your Honor, this will likely be the
25 State's last witness. The State will call Officer Charles

1 Moore to the stand.

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

4 WHEREUPON,

5 CHARLES MOORE

6 After having been duly sworn, testified as follows:

7 THE CLERK: Please take a seat, and state your name
8 for the record.

9 THE WITNESS: Charles Moore.

10 DIRECT EXAMINATION

11 BY MR. STEINBERG:

12 Q Officer Moore, can you please tell the Court where
13 you're from originally.

14 A I'm from Greenville, South Carolina.

15 Q And do you have any military experience?

16 A I have six years experience in the Army.

17 Q In particular, what did you do in the Army?

18 A I was a telecommunication specialist. My MOS was 25
19 Quebec multichannel transmission system operator
20 maintainer.

21 Q And with that in mind, what is your current job?

22 A I am custodian of records of jail calls at Greenville
23 County Detention Center.

24 Q And how long have you been at the detention center?

25 A I've been going to the detention center six years.

1 Q And you said your title is custodian of records for
2 jail calls. What does that entail?

3 A That entails maintaining the current record through
4 Securus Technologies, and I also do maintenance on the
5 phones -- on the phones within the facility.

6 Q In addition to keeping the records, do you also
7 listen to jail phone calls?

8 A I do.

9 Q Do you also train other employees of the county in
10 how to listen to jail phone calls and technique?

11 A Yes, sir.

12 Q And do you hand out the passwords? Are you in charge
13 of that?

14 A Yes, sir. I assign accounts within the county as
15 well.

16 Q Tell us how the jail phone call system works,
17 generally.

18 A Whenever an inmate is admitted into the facility, at
19 booking he is assigned a PAC number and a PIN number, and
20 he goes to an enrollment phone, enrolls his voice to get a
21 match to the phone system. And when making a call, he
22 must enter the ten-digit PIN number assigned by Securus,
23 and each call is recorded. There's also a prompt at the
24 beginning of each call informing them that they're being
25 recorded.

1 Q In addition to the inmate being recorded, is the
2 called party, the recipient, are they also informed that
3 the call is being recorded?

4 A Yes, sir.

5 Q Does that apply to both jail phone calls and
6 visitation?

7 A Only in-person visitation. Video visitation is not
8 recorded.

9 Q Okay. But for any of the recorded audio, that would
10 be recorded and they would hear both sides are being
11 recorded and monitored?

12 A Yes, sir.

13 Q What company manages the -- or keeps the servers
14 primarily for the jail phone calls?

15 A Securus Technologies.

16 Q And where are they located? Which state?

17 A Dallas, Texas.

18 Q Can inmates call out on the jail phone call system?

19 A No, sir. I'm sorry. Yes, sir.

20 Q Yes, sir. The next question is, can other people
21 call into the jail and speak to inmates?

22 A No, sir.

23 Q Okay. What are the reasons the jail records
24 telephone calls?

25 A To prevent any type of crimes committed in the jail,

1 rule infractions, and prevent possible theft, also do
2 investigations involving any kind of actions the inmates
3 might be involved in within the facility.

4 Q In your experience, even though people are informed
5 that they're being recorded, do they still make
6 incriminating comments?

7 A All the time.

8 Q In preparation for this trial, did you make a CD or
9 DVD with the phone calls made in this case?

10 A Yes, sir.

11 Q I'm going to hand you State's Exhibit -- what's been
12 marked as State's Exhibit 9 for identification. Is that a
13 document that you have prepared?

14 A Yes, sir.

15 Q And on the bottom, it says -- what are those dates?

16 A September 3, 2017, to October 4, 2017.

17 Q And when you play this tape -- these audio clips, how
18 do we know that it is this defendant? How are you able to
19 delineate his phone calls from other people's phone calls?

20 A The system can detect if another inmate's on another
21 person's account. I can use separate software to
22 determine that. Also, I will listen to a phone call to
23 determine if another inmate's on another inmate's account.
24 I cross-reference the call that I'm investigating with
25 another call the inmate has made previously, as well as

1 the times that that particular inmate has called that
2 phone number.

3 Q Okay. And, I guess, when you make this -- how do you
4 actually determine I'm going to record all of John
5 Duckett's phone calls? Does he have a code or a password
6 that you're able to determine?

7 A He has a six-digit PAC number that's assigned to him
8 at booking, and I use that to look up any calls he has
9 made on his account.

10 MR. STEINBERG: Okay.

11 MS. MANIGAULT: Your Honor, may we approach?

12 (WHEREUPON, a bench conference was held off the record.)

13 MR. STEINBERG: At this point, the State would
14 introduce State's Exhibits 9 and 10.

15 THE COURT: Any objection?

16 MS. MANIGAULT: None, Your Honor. We've been
17 provided a copy.

18 THE COURT: All right.

19 (WHEREUPON, State's Exhibit Numbers 9 and 10 were admitted
20 into evidence.)

21 MR. STEINBERG: And I'd like to play State's Exhibit
22 Number 10 at this time. We're going to play
23 September 3, 2016, at 17:24.

24 (WHEREUPON, State's Exhibit Number 10, an audio recording,
25 was played in open court.)

1 MR. STEINBERG: Please play September 4, 2017, at the
2 10:56 mark.

3 (WHEREUPON, State's Exhibit Number 10, an audio recording,
4 was played in open court.)

5 MR. STEINBERG: Next I'm going to play September 4th
6 of 2017 at 14:03 hours.

7 (WHEREUPON, State's Exhibit Number 10, an audio recording,
8 was played in open court.)

9 MR. STEINBERG: And finally, I'd ask you to play
10 September 4, 2017, at 14:30.

11 (WHEREUPON, State's Exhibit Number 10, an audio recording,
12 was played in open court.)

13 MR. STEINBERG: Thank you.

14 Thank you, Mr. Moore. Please answer any questions
15 that opposing counsel has.

16 THE COURT: Cross-examination?

17 MS. MANIGAULT: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. MANIGAULT:

20 Q Mr. Moore, you testified that when a person is
21 arrested and booked into the detention center, they are
22 given a number, a PAC number, and you use that number to
23 identify whether they're on a call or not?

24 A Yes, ma'am.

25 Q All right. Have you had incidents where an inmate is

1 using another inmate's number, PAC number?

2 A Yes, ma'am.

3 Q All right. When the call is made, what is identified
4 on the call by an automatic voice? What does that voice
5 say when the inmate is calling out?

6 A It will inform -- before the call starts, it will say
7 this call is subject to monitoring and recording.

8 Q All right. And is that told to the inmate when they
9 are booked in also, or do you know?

10 A It is. Whenever that they enroll their voice,
11 they're informed of that, and we also have signs
12 throughout the facility stating that.

13 Q Okay. The signs in the facility says what?

14 A All calls are subject to monitoring and recording.

15 Q So they have no right of privacy expectation?

16 A Not regarding the calls. The only calls that are not
17 recorded, I get requests from attorneys from the Public
18 Defender's Office making requests for their specific
19 number to not be recorded. And those numbers are set to
20 not record, so they are not on the system.

21 MS. MANIGAULT: All right. Thank you.

22 MR. STEINBERG: The State has no further questions.

23 We would ask this witness be excused.

24 THE COURT: All right. Any objection?

25 MS. MANIGAULT: No objection.

1 THE COURT: Free to go. Thank you very much.

2 MR. STEINBERG: Beg the Court's indulgence.

3 Your Honor, the State has no further witnesses. At
4 this point, the State would rest.

5 THE COURT: All right. Thank you very much.

6 All right. Ladies and gentlemen, that will conclude
7 the evidence on behalf of the State. As I told you
8 earlier, the defense now has the opportunity to present a
9 defense at this time. However, being 4:15, I think the
10 wisest use of our time, because there are a couple of
11 legal matters I need to discuss with the attorneys before
12 that takes place, I think there's no sense in sending you
13 to the jury room and have you wait while I talk to them.
14 I think the best and most efficient use of our time would
15 be to excuse you now for the evening and ask you to be
16 back in the jury room at 9:30 or back in the -- the
17 bailiff told me I told you wrong earlier. You are
18 supposed to -- really do have to go to the jury assembly
19 room. So if you'll be back in the jury assembly room at
20 9:30, we'll continue with the trial.

21 I'll ask you, again, not to discuss this case with
22 anyone else over the evening hours including family or
23 friends.

24 Let me bring up something else. Sometimes I know
25 jurors get very interested in a case and think they can

1 better their understanding of the case by doing some sort
2 of Internet research or some sort of working with social
3 media trying to find out more about the case or more about
4 the defendant. That would be highly irregular. I'm going
5 to ask you not to do it. I'll ask you in the morning if
6 you have done so. I don't think there's going to be any
7 press coverage of this. I'm certain there's not going to
8 be any press coverage. I don't see any court reporters
9 here, so I'm not worried about that, but I do get
10 concerned sometimes about people thinking that it might
11 help them if they go on the Internet and try to find out
12 something about the case.

13 I will tell you, and it's a true story that I had
14 that happened in Lexington a couple of years ago, and it
15 resulted in some severe consequences to the juror that
16 looked up, went searching on the Internet trying to find
17 out things and then came in and told the whole jury what
18 they found out about this case or that, and it got to be a
19 serious matter. I had to declare a mistrial in the case,
20 and I had to be somewhat severe with her. And that's not
21 a threatening remark. It's just a fact of life that
22 there's so much information out there.

23 I doubt there's any information out there about this
24 case, but I just would ask you not to try to find
25 anything. Just go home, be with your family, have a nice

1 meal and get a good night's sleep, and be prepared to come
2 back in the morning.

3 I'll see you at 9:30 in the morning. We'll be ready
4 to go. Thank you very much.

5 (WHEREUPON, the jury exits the courtroom at 4:22 p.m.)

6 THE COURT: Any motions?

7 MS. MANIGAULT: Your Honor, defense would move for a
8 directed verdict in that the State has not proved all the
9 elements of the charges of distribution of crack or
10 heroin.

11 THE COURT: All right. What's the State's position?

12 MR. STEINBERG: Your Honor, the State's proven all
13 the elements. He distributed crack or heroin from one
14 person to another. That's all it is. It doesn't have to
15 be any particular weight, it doesn't have to be in any
16 particular form. It was conveyed from one person to
17 another in an almost classic drug deal.

18 THE COURT: All right. I feel the evidence goes
19 beyond that of mere conjecture or suspicion, and there's
20 evidence, either direct or circumstantial or some
21 combination of both, which reasonably tend to prove the
22 guilt of the defendant or from which that guilt might be
23 logically and reasonably deduced if that evidence is taken
24 in the light most favorable to the State. So I must
25 respectfully deny the motion for a directed verdict.

1 Ms. Manigault, I'll ask you to have your client
2 stand. I want to advise him of his Fifth Amendment
3 rights, and I'm going to inquire as to his desire to
4 testify or not testify. Have you explained that to him?

5 MS. MANIGAULT: Yes, sir.

6 THE COURT: All right. Mr. Duckett?

7 DEFENDANT DUCKETT: Yes, sir.

8 THE COURT: At this time, I'm going to explain some
9 of your rights to you. If you do not understand anything
10 I say, please let me know. If you want me to explain
11 anything in more detail, please let me know. Do you
12 understand?

13 DEFENDANT DUCKETT: Yes, sir.

14 THE COURT: We've now reached the stage of this trial
15 where you may present your defense. You have a right to
16 claim the protections given to you by the Fifth Amendment
17 to the Constitution of the United States. This amendment
18 states in part: No person shall be compelled, in any
19 criminal case, to be a witness against himself. This
20 means you cannot be required to testify in this case. You
21 have the right to testify on your own behalf, however, no
22 one can make you testify. This is a personal right, and
23 no one can waive that right except you.

24 If you decide to testify, you will be subject to the
25 same rules that govern other witnesses, and you may be

1 examined and cross-examined on any relevant issue in this
2 case. In addition, if you have any convictions involving
3 dishonesty or false statement or for crimes punishable by
4 imprisonment for more than one year and this court
5 determines that the probative value of admitting this
6 evidence outweighs its prejudicial effect to you, the
7 solicitor will be able to introduce your record to attack
8 your credibility.

9 If you decide to testify, this decision on your part
10 must be freely, voluntarily and intelligently made with
11 the knowledge of the protections given to you by the Fifth
12 Amendment and the consequences of your decision to
13 testify.

14 If you decide not to testify, I will instruct the
15 jury that they cannot give that fact that you did not
16 testify any consideration whatsoever and that there is
17 absolutely no -- is to be no prejudice to you because you
18 did not testify.

19 It's left entirely up to you whether or not you
20 testify. You may talk with your attorney, your family and
21 friends or anyone else, but the final decision will be
22 left entirely up to you.

23 Do you understand what I have explained to you?

24 DEFENDANT DUCKETT: Yes, sir.

25 THE COURT: Do you have any questions about what I

1 have explained to you?

2 DEFENDANT DUCKETT: No, sir.

3 THE COURT: Have you discussed with your lawyer
4 whether or not you should testify?

5 DEFENDANT DUCKETT: Yes, sir.

6 THE COURT: Solicitor, are there any impeachable
7 convictions that could be used if the defendant testifies?

8 MR. STEINBERG: Yes, sir. I'm looking at my notes
9 here. I can double check on the criminal history. I have
10 he has a 2005 distribution of crack, which he received a
11 four-year sentence. I also have a 2007 possession ---

12 THE COURT: Wait a minute. 2005 distribution of
13 crack.

14 MR. STEINBERG: Of crack cocaine.

15 THE COURT: That's a conviction.

16 MR. STEINBERG: That is a conviction for which he
17 received a four-year sentence.

18 THE COURT: Okay.

19 MR. STEINBERG: I also have here a possession of
20 cocaine third, and maybe also a heroin case, I think it
21 was a trial, for which he received a four-year sentence.
22 That was in 2007. Both of those charges -- all those
23 charges would bring him within the ten-year limit.

24 THE COURT: All right. Ms. Manigault, do you agree
25 those are impeachable offenses?

1 MS. MANIGAULT: Yes, sir, Your Honor.

2 THE COURT: All right.

3 MS. MANIGAULT: And I've gone over the rap sheet with
4 my client with all of these impeachable offenses.

5 THE COURT: All right. Mr. Duckett, you say you've
6 discussed with your lawyer whether you should testify or
7 not testify. Do you wish to talk to your lawyer any more
8 about this issue?

9 DEFENDANT DUCKETT: No, sir.

10 THE COURT: Do you want to tell me now whether you
11 wish to testify or not testify?

12 DEFENDANT DUCKETT: I do not wish to testify.

13 THE COURT: All right. Thank you very much.

14 We'll proceed in the morning at 9:30. Thank you very
15 much.

16 (WHEREUPON, proceedings were adjourned at 4:27 p.m., to be
17 reconvened Tuesday, October 10, 2017.)

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1 Tuesday, October 10, 2017

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3 (WHEREUPON, proceedings commenced at 9:40 a.m.)

4 THE COURT: Is the State ready to proceed?

5 MR. STEINBERG: Yes, Your Honor.

6 THE COURT: Is the defense ready to proceed?

7 MS. MANIGAULT: Yes, Your Honor.

8 THE COURT: Any matters that need to come before the
9 Court prior to final argument?

10 MS. MANIGAULT: Yes, Your Honor. I have a -- form it
11 as a motion. My client wishes to do the closing argument
12 himself.

13 THE COURT: All right. On what basis?

14 Yes, sir. I'll be glad to hear from you.

15 DEFENDANT DUCKETT: Yes. Just a few issues to go
16 over -- I mean a few things I want to say during closing
17 arguments as far as about the distribution, the subject
18 matter jurisdiction and the chain of custody process, and
19 I just wanted to mention that to the jury and explain to
20 them why I felt, you know ---

21 THE COURT: Let me just -- go over that again,
22 please. What's the first thing you said?

23 DEFENDANT DUCKETT: The subject matter jurisdiction.

24 THE COURT: You can't argue that at this point.
25 There's no question about subject matter jurisdiction.

1 The jury can't -- that's not an issue for the jury.

2 DEFENDANT DUCKETT: Then I want to mention about the
3 distribution.

4 THE COURT: What about the distribution?

5 DEFENDANT DUCKETT: I mean, there's a few things that
6 wasn't presented as far as evidence.

7 THE COURT: For example?

8 DEFENDANT DUCKETT: Like if, in fact, the
9 distribution did take place and the arrest was made, on
10 the moments thereafter, why wasn't the government funds
11 used to execute the buy recovered or presented as
12 evidence? It never was. The funds was never presented as
13 evidence. And he say he conducted a ---

14 THE COURT: Well, your attorney can argue that if she
15 thinks that's significant.

16 DEFENDANT DUCKETT: And inside the chain of custody,
17 Cindy Witherspoon nor Melanie Watson testified, which
18 would have been required to complete the complete chain to
19 establish that she took possession of the evidence and
20 what she did with it. Without her testimony, the chain is
21 clearly broken.

22 THE COURT: Well, now, you're arguing facts now. You
23 know, you can't testify now. You said you did not want to
24 testify.

25 DEFENDANT DUCKETT: I just want to, you know, speak

1 on this during my closing arguments.

2 THE COURT: Well, there's just no provision when you
3 have an attorney. All the attorney can do, whether it be
4 the State's attorney or the defense attorney, is argue
5 their interpretation of the facts that have been
6 presented. In other words, you're bringing up facts that
7 have not been presented. Of course, she can argue that
8 the State failed to present sufficient evidence to convict
9 you, but you can't inject new evidence into the case based
10 on your interpretation of the facts.

11 DEFENDANT DUCKETT: I wasn't going to inject. I was
12 just going to speak on it and summarize it in my closing
13 arguments. I was just going to mention . . .

14 THE COURT: Well, there's no provision -- you know,
15 either you have an attorney or you don't have an attorney.
16 I gave you the opportunity at the beginning of this case
17 to represent yourself. Your lawyer has represented you
18 throughout the trial, and to change horses here at the
19 last minute would be very unusual and unprecedented, and
20 there's just no rule of court that would allow you to do
21 that. She has to speak for you. And I assume you've
22 talked to her about what you want her to argue, and I'm
23 just -- I'm not going to allow it. I'm sorry.

24 Ready for the jury?

25 MS. MANIGAULT: Yes, sir.

1 MR. STEINBERG: Yes, Your Honor.

2 THE COURT: The State will argue first, defense will
3 close.

4 MS. MANIGAULT: Yes, sir.

5 THE COURT: No evidence.

6 MS. MANIGAULT: Yes, sir.

7 THE COURT: All right. Bring the jury, please.

8 MS. MANIGAULT: Your Honor, I will put on the record
9 that the defense has no evidence to present.

10 THE COURT: Oh, I'm sorry. You're absolutely right.
11 For the record, your client has indicated he did not wish
12 to testify. Does the defense have any other evidence to
13 present to this jury?

14 MS. MANIGAULT: There is no other evidence to present
15 to the jury, Your Honor, but I would renew my motion for
16 the dismissal of the indictment in that the State did not
17 present sufficient evidence to prove the distribution of
18 heroin or crack cocaine.

19 THE COURT: All right. I respectfully deny that
20 motion.

21 MS. MANIGAULT: Thank you, Your Honor.

22 THE COURT: Does the defense rest?

23 MS. MANIGAULT: Defense rests.

24 THE COURT: I'll tell the jury that. Do you wish to
25 tell the jury, or do you want me to tell the jury?

1 MS. MANIGAULT: You can tell the jury, Your Honor.

2 THE COURT: Thank you.

3 Now bring the jury.

4 (WHEREUPON, the jury entered the courtroom at 9:47 a.m.)

5 THE COURT: Good morning, ladies and gentlemen. As I
6 advised you yesterday, the State completed their case.
7 The defense has advised me that they choose to present no
8 evidence. As I told you at the beginning, the defendant
9 has a right not -- he has no burden to prove anything, and
10 he has the perfect right to remain silent and take the
11 position that the State has not proven their case. So the
12 evidence has been presented. You've received all the
13 evidence.

14 The final part of the trial consists of the final
15 argument of both counsel, and then I will instruct you on
16 the law in the State of South Carolina as it applies to
17 this case.

18 Solicitor, you may proceed.

19 CLOSING ARGUMENTS

20 MR. STEINBERG: Thank you. May it please the Court.
21 Ms. Manigault.

22 Madam Forewoman and ladies and gentlemen of the jury,
23 I told you from the beginning this was a relatively simple
24 and straightforward case. It is against the law to
25 distribute crack and heroin. Everyone knows that. It's

1 no big secret. It's relatively simple. While there's
2 some white-collar laws where you talk for an hour to try
3 to explain the law to you, not required in this case.
4 It's very simple. You can't sell, give, transfer crack
5 cocaine or heroin to another individual.

6 In this case, the evidence is before you. Two items
7 were handed to the defendant -- by the defendant to the
8 undercover officer. Not directly hand to hand, but he
9 placed it on a shelf three to five feet or five to ten
10 feet away from each other, and money was transferred.
11 That's how drugs were dealt with. That's the world of
12 drug dealing. There's no magic law that says it has to be
13 dealt with hand to hand. For example, if I were to take
14 methamphetamine and sell it to an undercover officer or to
15 anyone and I put it in my bar on a Monday and I leave it
16 and somebody picks it up the next Monday, we haven't even
17 seen each other, it's still distribution. There's no
18 magic hand-to-hand requirement.

19 Let's talk some more about the law. The judge is the
20 judge of the law. He determines the law. He determines
21 what is constitutional. He determines what is admissible.
22 He determines what is appropriate and proper and
23 determines the procedure. You, however, have a bigger job
24 than the judge. You get to determine something he can't.
25 He gets to determine some legal issues, you get to

1 determine who do you believe, what happened.

2 There's one issue here, only one issue: Did John
3 Duckett distribute, in any manner, crack cocaine and
4 heroin to another individual, in this case, an officer?
5 The big decision is did he do it, and you get to make that
6 decision.

7 Let's discuss the facts. Sergeant Brad Grice
8 testified. He said I know John Duckett by face, by voice
9 and even by car. They negotiated a deal for selling crack
10 cocaine and heroin: \$150 of heroin, \$40 for crack, a
11 total of \$90 [sic].

12 The suspect does drive up to an agreed-upon location
13 of his choice at a Bi-Lo. He gets out. He's already
14 inside. The officers drive up. They see his unoccupied
15 car. The officer goes in, and the officer has a
16 conversation with the suspect on the phone. That's
17 available. That's actually on the audio recording.

18 The audio recording is bad quality. We'll talk about
19 that in a minute.

20 First, they were to meet in the bathroom. That's on
21 the audio recording. Mr. Duckett then mixes it up a
22 little bit. He changes it to another aisle within the
23 Bi-Lo. I think it's referred to as the Mexican food or
24 the Mexican soda aisle by the officer.

25 They meet up, the suspect places the drugs down,

1 Item JB-9, .2 grams of crack cocaine, and Item JB-10,
2 .34 grams of heroin. The officer sees him put it down and
3 then hands him \$190. Even these very small amounts of
4 drugs carry big prices. \$190 for relatively small amounts
5 of drugs.

6 Sergeant Grice confirmed it was the right amount of
7 drugs, they do some small talk, also on the audio
8 recording. The suspect leaves. Sergeant Grice gives
9 officers a description, also on the recording. He then
10 also leaves.

11 Deputy John Williams testified I was the arresting
12 officer. I was the one that actually took him into
13 custody.

14 He said they did not have any -- that Mr. Duckett did
15 not have any groceries on him even though he went to the
16 grocery store. They arrest him. Sergeant Grice confirms
17 on the audio, "Yes, that's him. You got him."

18 Mr. Duckett is searched shortly thereafter and found
19 to have Items JB-6 and JB-7, .11 grams of crack cocaine
20 and .05 grams of heroin on his person. The person that
21 sold the drugs also had additional drugs of the same sort
22 on his person moments later.

23 Let me talk to you briefly about the audio quality.
24 It's not great audio quality. First, let me apologize for
25 Sergeant Grice's off-key karaoke. It was pretty

1 miserable. I understand that. That's just him working
2 undercover. I don't expect perfection. He's working
3 undercover. He's going to do what he thinks he needs to
4 do.

5 We wire up the officer. We cannot all wire up a
6 defendant, obviously. We cannot even prewire a location.
7 You can under certain circumstances. A drug deal done
8 next to an officer's car, we can prewire that. But here
9 the location chose by the defendant has altered so we
10 can't prewire that area.

11 The audio is no good if you listen to it just one
12 time. But the audio's in evidence. This audio will be
13 available to you. I think we're going to keep the disk
14 out here to play it for you. We're going to play the same
15 portion we played last time.

16 It's for you to listen to. It's for you to say, "I
17 can understand it." It's for you to say, "I need to hear
18 it again." It might be a third time. We don't care.
19 It's your evidence. It's not my evidence anymore. It's
20 now in your hands.

21 What I hear on the jail phone calls -- you're going
22 to use your recollection, and your ear's better than mine.
23 What I hear is at the 16:35 minute, the defendant himself
24 says, "Come in. I see you. Come to the bathroom." At
25 the 19 minute mark, they greet each other in person. They

1 meet in what's referred to as the Mexican aisle. The
2 officer says, "I have \$190."

3 Mr. Duckett then says, "Are you sure you're not the
4 police." You might have to listen to that twice. It's
5 kind of mumbled. That is what I believe you'll hear.

6 They have some more talk. And I'm quoting here, the
7 officer says, "I'm good. I like to party."

8 Mr. Duckett then says, "I got more if you need it."

9 That, ladies and gentlemen, is a drug deal. Sergeant
10 Grice informs you that drug deals rarely use the words, "I
11 have .1 gram of crack cocaine." They don't use that
12 language. They use a more generalized term, because, as
13 you can hear in this case, he is worried about being
14 arrested. He worries that Sergeant Grice is an undercover
15 officer. He is worried that his illegal acts of selling
16 crack and heroin will come to light.

17 Let's talk briefly about defenses. I don't think
18 there's really much of a defense in this case. This case,
19 I think, is pretty straightforward. The defendant might
20 argue issues such as, well, why didn't officers do this?
21 Why did they do that? We call that in my field a CSI
22 defense for the CSI TV show. Why didn't you send this to
23 the FBI? Why didn't you send that to SLED? That's a good
24 argument in some cases. That's not a good argument when
25 you're actually caught in the act. But he was in this

1 case. I doubt if he would send stuff like this to --
2 well, you can't send some of this to SLED for DNA or
3 fingerprinting, but that's not this kind of case even if
4 it was susceptible to being fingerprinted or DNA tested.

5 The question is not do you second-guess the officer.
6 The officer knows what he can do and what he can't do. He
7 knows what's expected in certain type of cases. It is up
8 for you to decide did this defendant commit this crime,
9 not would I have done something different if I was the
10 officers. It's did this defendant commit this crime.

11 Let's talk about the audio. The audio does not show
12 who made -- there isn't any visual quality to it.
13 Sergeant Grice identified him. The officer gave a
14 description to the officers. The officers arrested the
15 person of that description. That is all on the audio.
16 The same type of drug found on him was found inside the
17 store. The likelihood that it is someone else is, of
18 course, fairly absurd at this point.

19 He also asked questions about the Bi-Lo. I wish this
20 hadn't happened at a Bi-Lo, also, but the officers don't
21 get to choose. John Duckett chose the location. It's not
22 a good location for the public at large, and it's not a
23 good location for officers who would rather have a better
24 line of sight to see their officers. But again, the Bi-Lo
25 was not chosen by us. It was chosen by the defendant.

1 Let's talk about the jail phone calls. This case --
2 I actually thought about maybe putting the case -- the
3 jail phone calls in, it's so simple. But upon listening
4 to them, I decided I thought you should also have this
5 amount of evidence. The defendant makes a couple of
6 statements. We'll introduce admissible portions, nothing
7 that's improper, the only issue what is relevant to this
8 case.

9 I'm going to read you some things. I just want to,
10 again, say your ears are probably better than mine. You
11 get to listen to them. That will probably go back with
12 you. The jail phone calls will likely go back with you,
13 and then you can play those as many times as you see
14 necessary. That is State's Exhibit Number 10.

15 He makes a statement. The first recording says, "She
16 played the tape. It sounds like me." He pauses. He then
17 says, "It is me." Mr. Duckett then said, "He said
18 everything is good." I guess he's talking about Sergeant
19 Grice, because that's who said, "Is everything good?" on
20 the recording.

21 Then he goes so far as to say, "I am going to say it
22 is pizza." He was wired up in Bi-Lo. He's coming up with
23 an idea. He's coming up with a plan to get out of this.

24 The next call, "I'm going to establish a motive
25 talking about pizza or something. I'm going to come up

1 with a motive about pizza or something." If you have not
2 committed a crime, you don't need to come up with a
3 motive. You can rely on the truth. But the truth will
4 not help the defendant in this case. The truth,
5 obviously, helps the State in this case.

6 The next call, "I am going to establish a motive
7 about pizza" -- well, the next tape, quote, they play the
8 tape. I am talking on the tape a little bit. They were
9 wired up. And then finally he says, quote, the incident
10 at Bi-Lo, the tape is 30 minutes long. I was on it for 17
11 to 18 seconds. I was eating pizza or rotisserie chicken
12 when he spoke to me, end quote.

13 He admits that it's him on the recording. There
14 shouldn't be any doubt about who did what. I guess the
15 only defense is going to be maybe I can have the jury
16 believe the State is mistaken. Maybe have the jury
17 believe that I was just there for some innocuous reason
18 like buying rotisserie chicken or maybe pizza. That's not
19 what happened. We know what happened. We have the
20 evidence in front of us.

21 I'm going to summarize and sit down. The suspect,
22 who is Mr. Duckett, is known to Sergeant Grice by face, by
23 voice, by car. They make a deal. Moments after the deal
24 where two items are sold, he is arrested. It is
25 identified as him. He is then brought to his own house on

1 Miracle Drive. He is searched prior to being sent to
2 jail, and he has additional drugs on his person at the
3 time, the same type of drugs.

4 That is the trial we have today. It is your duty to
5 fairly and honestly evaluate the evidence, give the
6 defendant a fair trial, give the State a fair trial.

7 We're going to ask you to return a verdict. I think
8 this evidence in this case clearly shows that a verdict of
9 guilty is a proper decision. This is not a pizza deal,
10 this is not a rotisserie chicken deal. It is a crack and
11 heroin distribution deal. Mr. Duckett is simply guilty in
12 this case, and I would ask you to find that same decision.

13 Thank you very much for your time.

14 Ms. Manigault.

15 THE COURT: Ms. Manigault.

16 MS. MANIGAULT: Thank you. May it please the Court.

17 Ladies and gentlemen, we have come to the end of the
18 trial, and Your Honor will charge you the law in this
19 case. And you will take the law as he charges you, and
20 not what I say or not what Howard Steinberg says
21 representing the State.

22 Your Honor gave you a couple of principles when we
23 began the trial, and one of the principles is dealing with
24 the presumption of innocence. Everybody comes to court
25 under the presumption of innocence.

1 The second principle the judge mentioned to you and
2 will explain in more detail to you is the reasonable
3 doubt. If there is any reasonable doubt in your mind
4 whether the State has presented adequate evidence, then
5 that is weighed in favor of the defendant.

6 A reasonable doubt, Your Honor will tell you, is for
7 some reason that you would hesitate to act or make a
8 decision. As you deliberate, the decision must be
9 unanimous. All 12 of you must agree, and Your Honor will
10 tell you that on any decision that is made. So although
11 the evidence portion of the trial is ended, you still have
12 the charge and deliberation in the jury room.

13 The defendant entered a plea of not guilty to the
14 charges, and Your Honor explained that to you when we
15 started the trial. Your Honor will further tell you that
16 an arrest warrant or an indictment is not evidence. It is
17 merely a means by which the charges come before the Court
18 giving the Court jurisdiction over the matter and to
19 present to the jury the charges. So that is not evidence.
20 Those items are not evidence.

21 The State presented testimony from the officers and
22 from the Property and Evidence and from the chemist. I
23 will say to you that, yes, the State or the officers have
24 a right to investigate their cases the way they desire to
25 investigate. We don't tell them how to investigate. But

1 I will offer to you this, that the alleged transaction is
2 supposed to have taken place in the Bi-Lo grocery store.
3 Most grocery stores have surveillance cameras. That's how
4 they catch their shoplifters. There was no surveillance
5 video offered and/or collected to be presented in this
6 trial from Bi-Lo.

7 The officer testified that he talked to and text
8 messaged to Mr. Duckett coming in the store, before that,
9 and maybe in the store. I'm not sure. Whatever testimony
10 you recall that they testified, then you take that. I
11 would not intentionally mislead you.

12 So there were no text messages presented by the State
13 from Mr. Duckett or from the officer that said he made the
14 undercover buy. What would the text messages show? It
15 would have verified, perhaps, what the officer testified
16 to.

17 So there was no surveillance -- video surveillance
18 from Bi-Lo, no copies of text messages from John Duckett
19 or the officer that testified, and the officer testified
20 -- one officer testified that Mr. Duckett was arrested
21 coming out of Bi-Lo. The officer that said he made the
22 buy said that he gave Mr. Duckett \$190. There was no
23 testimony or evidence presented that the \$190 was on
24 Mr. Duckett or ever retrieved from Mr. Duckett. All
25 right. Again, we cannot tell them how to investigate

1 their case, but I submit to you that a full investigation
2 of the case has not been done. So you are only charged
3 with weighing the evidence that you have before you.
4 Should they have done it? Well, our position is that they
5 should have done it.

6 The presumption of innocence and the reasonable doubt
7 are two strong legal principles. Your Honor told you when
8 we started the case that our system, our legal system is
9 perhaps one of the best in the world to allow citizens to
10 decide after they hear the evidence presented.

11 Your Honor will further tell you that a defendant,
12 Mr. Duckett, has no responsibility to present anything to
13 the Court or to the jury. That full burden rests with the
14 State of South Carolina represented by Mr. Steinberg, that
15 full burden. And so if you would hesitate to act or if
16 there is any doubt in your mind, then you must give the
17 defendant the benefit of the doubt.

18 I submit to you that the State has failed to present
19 sufficient evidence to convict John Duckett, and I submit
20 to you that you bring back a verdict of not guilty.

21 Thank you.

22 CHARGE ON THE LAW

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, you've heard all the testimony in the case, you've
25 heard the arguments of both the State and the defendant.

1 You will now take with you to the jury room this evidence
2 that's been introduced in this case, and it becomes my
3 burden to explain the law of South Carolina as it applies
4 to this case. Some of this may be somewhat repetitious,
5 but it's important that I reinforce in your mind the role
6 of each of us, you and me.

7 Under our Constitution and code of laws, only the
8 jury can make findings of fact in this case. I'm not
9 permitted to indicate to you how I might feel about the
10 facts. If I have said or done anything in this case that
11 would indicate to you that I have an opinion concerning
12 the facts in this case, you should disregard that. You
13 must independently weigh the evidence presented in this
14 trial and render a verdict based solely on that evidence.

15 But as I said earlier, the same constitution and laws
16 which designate and make you the finders of facts in this
17 case also make me the instructor of the law. If you have
18 some idea as to what the law is or what the law ought to
19 be and it does not agree with what I now tell you the law
20 is, you're obligated, under the oath which you have taken,
21 to abandon this preconception on your part and accept and
22 apply the law precisely as I now state it to you.

23 The defendant in this case has been charged with
24 distribution of heroin and distribution of cocaine base or
25 crack cocaine. I remind you, again, the fact that the

1 defendant was arrested, charged and indicted in this case
2 is not evidence in this case and cannot be considered by
3 you as evidence of guilt in this case, nor does it create
4 any presumption or inference of guilt. These documents,
5 these two indictments simply are the formal written
6 instruments which contain the charge against the
7 defendant. They are the formal documents by which the
8 case was brought into court.

9 Now, the defendant has pled not guilty to these
10 indictments, and that plea puts the burden on the State to
11 prove the defendant guilty. A person charged with
12 committing a criminal offense in South Carolina is never
13 required to prove himself innocent. I charge you that
14 this is an important rule of law that the defendant in a
15 criminal trial, no matter how serious the charge may be,
16 will always be presumed innocent of the crime for which
17 the indictments were issued unless guilt has been proven
18 by evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 This presumption of innocence does not end when you
21 begin your deliberations, but it accompanies the defendant
22 throughout the trial until you reach a verdict of guilt
23 based on evidence satisfying you of that guilt beyond a
24 reasonable doubt.

25 The presumption of innocence, again, is not a mere

1 legal theory. It's not a legal phrase. It is a
2 substantial right to which every defendant is entitled
3 unless you the jury are satisfied from the evidence of the
4 defendant's guilt beyond a reasonable doubt.

5 Well, what is a reasonable doubt in the law? A
6 reasonable doubt is a kind of doubt that would cause a
7 reasonable person to hesitate to act or to hesitate to do
8 something. That's an example of what a reasonable doubt
9 might be. And the State has the burden of proving the
10 defendant guilty beyond that reasonable doubt.

11 Some of you may have served as jurors in civil cases
12 where you were told it's only necessary to prove the fact
13 is more likely true than not true such as by the greater
14 weight or preponderance of the evidence. But in a
15 criminal case, the State's proof must be more powerful
16 than that. It must be beyond a reasonable doubt in your
17 mind.

18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced of the defendant's guilt. Now, there
20 are very few things in this world that we know with
21 absolute certainty, and in criminal cases, the law does
22 not require proof that overcomes every possible doubt.
23 If, based on your consideration of the evidence, you are
24 firmly convinced that the defendant is guilty of the crime
25 charged, you must find the defendant guilty. If, on the

1 other hand, you think there's a real possibility that the
2 defendant is not guilty, then you must give the defendant
3 the benefit of the doubt and find him not guilty.

4 Now, in a criminal trial, there are generally two
5 types of evidence which are presented during a trial, what
6 are called direct evidence and circumstantial evidence.
7 Direct evidence proves the existence of a fact and does
8 not require any deduction. Circumstantial evidence is
9 proof of a series or a chain of facts and circumstances
10 indicating the existence of some fact. It's evidence
11 which immediately establishes facts from which the main
12 fact may be inferred.

13 Circumstantial evidence is based on inference and not
14 on personal knowledge or observation, but the law makes
15 absolutely no distinction between the weight or value to
16 be given to either direct or circumstantial evidence, nor
17 is a greater degree of certainty required of
18 circumstantial evidence than of direct evidence.

19 Now, necessarily you must weigh all of the evidence
20 in this case, and after weighing all the evidence, if
21 you're not convinced of the guilt of the defendant beyond
22 a reasonable doubt, I said, you must find the defendant
23 not guilty.

24 Now, necessarily you must determine the credibility
25 of the witnesses who have testified in this case.

1 Credibility simply means believability. It becomes your
2 duty as jurors to analyze and evaluate the evidence and
3 determine which evidence convinces you of its truth.

4 In determining the believability of witnesses who
5 have testified in this case, you may believe one witness
6 over several witnesses or several over one. You may
7 believe the part of the testimony of a witness and reject
8 the remaining part of the testimony of that same witness.
9 You may believe a witness in its entirety or reject a
10 witness's testimony in its entirety. You may consider
11 whether any witness has exhibited to you any interest,
12 bias, prejudice or any other motive in this case. You may
13 also consider the appearance and manner of the witness
14 while on the witness stand.

15 Now, in order to establish criminal liability,
16 criminal intent is always required. For example, the
17 mental state required to be proven by the State for a
18 particular crime might be some purpose or some specific
19 intent, knowledge of certain facts or recklessness.

20 Criminal intent must be proven by the State beyond a
21 reasonable doubt also. Criminal intent is always a matter
22 that must be determined by the jury from circumstances
23 surrounding the crime or the situation. There's no way to
24 prove intent to a mathematical certainty. There's no way
25 medical science can dissect a person's brain and determine

1 what the person had in mind. So the law says criminal
2 intent may be inferred from circumstances shown to have
3 existed at the time and place of the crime. This is how
4 you make the determination of whether or not the element
5 requiring intent was present. Criminal intent is a mental
6 state, a conscious wrongdoing. It's up to you to
7 determine what the defendant intended to do based on the
8 circumstances shown to have existed.

9 Now, the indictments in this case allege two separate
10 offenses against the defendant. They are distribution of
11 heroin and distribution of crack cocaine. Each of these
12 indictments charges a separate and distinct event. You
13 must decide each indictment separately on the evidence and
14 the law applicable to it uninfluenced by your decision as
15 to the other indictment. The defendant may be convicted
16 or acquitted on either or both of the defendant's offenses
17 charged, and you will be asked to write a separate verdict
18 of guilty or not guilty on each indictment.

19 The defendant is charged with distribution of heroin.
20 The State must prove beyond a reasonable doubt the
21 defendant distributed heroin.

22 "To distribute" means to deliver or to actually
23 constructively or attempt to transfer a drug other than by
24 administering or dispensing. "Deliver" means to actually
25 constructively or attempt to transfer a drug. A transfer

1 can involve an exchange for money, a barter or a gift, but
2 there does not have to be anything given in exchange for
3 the drugs for a transfer to constitute distribution.

4 He is also charged with distribution of crack
5 cocaine. Again, the State must prove beyond a reasonable
6 doubt the defendant distributed crack cocaine or cocaine
7 base.

8 "To distribute," again, means to deliver or to
9 actually constructively or attempt to transfer a drug
10 other than by administering or dispensing. "To deliver"
11 means to actually constructively or attempt to transfer a
12 drug, and the transfer can involve an exchange for money,
13 a barter or a gift, but there does not have to be anything
14 given in exchange for the drugs for a transfer to
15 constitute distribution.

16 Now, finally, ladies and gentlemen, I instruct you
17 and emphasize the fact that the defendant did not testify
18 in this case is not a factor to be considered by you in
19 any way in your deliberations and in your consideration on
20 the question of guilt or innocence of the defendant. It
21 must not be considered by you in any manner whatsoever. A
22 defendant has the constitutional right to remain silent,
23 and the assertion of this right must not be considered by
24 you in your deliberations. I repeat, under your oath, you
25 are to draw no conclusion whatsoever from the fact that

1 the defendant in this case did not testify. The fact that
2 this defendant did not testify should not even be
3 discussed in the jury room. The burden of proof, as I
4 have stated to you, is on the State. The defendant is not
5 required to prove his innocence. The burden of proof
6 remains on the State to prove guilt beyond a reasonable
7 doubt.

8 Ladies and gentlemen, I'm required to declare the law
9 as I've just done through these instructions to help and
10 guide you to a just and lawful verdict. Whether some of
11 these apply will depend on what you find to be the facts.
12 The fact that I've instructed on various subjects in this
13 case must not be taken by you as indicating any opinion of
14 this court as to what you should find to be the facts or
15 as to which party is entitled to your verdict.

16 The verdict must represent the considered judgment of
17 each juror. In order to return a verdict, it's necessary
18 that each juror agree. Your verdict must be unanimous.
19 In other words, all 12 of you must agree on a verdict.
20 Your verdict cannot be based on sympathy or passion or
21 prejudice or emotion or any other consideration that's not
22 in evidence in this case. Remember at all times that you
23 are not partisans favoring one party over the other. You
24 are judges, judges of the facts. Your sole interest is to
25 seek the truth from the evidence in this case.

1 Now, ladies and gentlemen, those of you who have
2 taken notes, obviously, may take them into the jury room
3 with you. Let me just caution you and say the notes are
4 for your benefit only. They're not to be used to try to
5 convince somebody that you heard something and that they
6 didn't, for example. They're solely for your own
7 recollection purposes. As I say, they're not to be used
8 in any other manner.

9 The audiotapes that are in front of you -- we're
10 going to send something, a computer or something back so
11 the jury can play them? Is that ---

12 MR. STEINBERG: The jail clips will go back with them
13 with a computer. The audio recording will stay here.
14 They can come in and listen to the audio recording.

15 THE COURT: And the drugs will go back.

16 MR. STEINBERG: That's up to the Court's decision.
17 Yes, sir.

18 THE COURT: Nobody has any scissors, do they? All
19 right. We'll send the drugs in the sealed packets back.

20 All right. Ladies and gentlemen, I'm going to ask
21 you to retire to the jury room. Now, do not begin your
22 deliberations. Just relax for a minute. Do not begin
23 your deliberations until you have received all of the
24 evidence that's in this case and, I guess, somebody is
25 going to set up something so you can electronically listen

1 to the jail tapes if you wish to do so.

2 All right. Just return to your jury room for just a
3 few minutes and we'll get the evidence in there.

4 And, Madam Forelady, all right. Just go ahead. Let
5 me ask the lawyers something.

6 (WHEREUPON, the jury exits the courtroom at 10:22 a.m.)

7 THE COURT: Any objection or exceptions to the charge
8 from the State?

9 MR. STEINBERG: No, sir, Your Honor.

10 THE COURT: From the defendant?

11 MS. MANIGAULT: None from the defense, Your Honor.

12 THE COURT: All right. Is that all the evidence?

13 Did you put those documents ---

14 MR. STEINBERG: No, sir. Those were for
15 identification only.

16 THE COURT: Okay.

17 MR. STEINBERG: I don't think I can send those back.

18 What does not go back to the jury, per our
19 discussion, is going to be the entirety of the jail phone
20 calls, State's Exhibit Number 9. That was not played.
21 The clip was played. That can go back.

22 My concern with State's Exhibit Number 8, the audio
23 buy, we discussed this in chambers, the Court record will
24 show there are some things that are improper on the audio
25 buy. That is not going to go back. If the jurors want us

1 to replay this audio, we can replay it in this courtroom,
2 the same portion that I played during the trial proper.

3 THE COURT: All right. Now I have a question for
4 both of you. Any objection to sending the indictments
5 back with the verdict form on them, or would you prefer to
6 have a separate jury form -- verdict form?

7 MR. STEINBERG: I don't have an objection.

8 MS. MANIGAULT: I have no objection, Your Honor.

9 THE COURT: All right. It's just simply on the face
10 of the indictment.

11 Bring the forelady.

12 Just have a seat. I'm going to tell her.

13 MS. MANIGAULT: I was going to get the reporter to
14 verify what's in.

15 (WHEREUPON, the jury foreperson enters the courtroom at
16 10:24 a.m.)

17 THE COURT: She can stay right there. That's all
18 right. Just stay right there.

19 Madam Forelady, I neglected to mention this. These
20 are the indictments. They're going back to the jury room
21 with you. On the front of each one, it's got a box down
22 here for your verdict. If you will, write the verdict of
23 the jury, guilty or not guilty, here, sign your name and
24 date it on each of these separate indictments. I forgot
25 to mention that to you. And these will go back to the

1 jury room with you, all right?

2 JURY FOREPERSON: Yes, sir.

3 THE COURT: All right. Thank you very much.

4 (WHEREUPON, the jury foreperson exits the courtroom at
5 10:25 a.m.)

6 THE COURT: All right. Let's get the evidence to the
7 jury. Well, hold on. Just have a seat. Bring the
8 alternate in.

9 Any objection to dismissing the alternate at this
10 time?

11 MR. STEINBERG: No, sir, Your Honor.

12 MS. MANIGAULT: No, Your Honor.

13 THE COURT: I know some solicitors like to see them
14 get started before they release the alternate.

15 (WHEREUPON, State's Exhibit Numbers 1, 2, 3, 4 and 10
16 were sent back to the jury, and the jury begins
17 deliberating at 10:26 a.m.)

18 THE COURT: All right. Bring the alternate.

19 (WHEREUPON, the alternate juror enters the courtroom at
20 10:27 a.m.)

21 THE COURT: Mr. Slattery, how are you doing?

22 JUROR NUMBER 21: Good, sir.

23 THE COURT: Obviously, you were chosen as an
24 alternate. And the jury's made it thus far, so I'm going
25 to dismiss you at this time.

1 I will tell you that alternates, it's amazing how
2 many times we need an alternate. A car breaks down,
3 grandma gets sick, the baby's got something, and so it's
4 an important role that you serve. As I said, the jury
5 maintained themselves in good health, so I'm going to let
6 them go ahead and deliberate.

7 I do want to thank you for your service. I've said
8 to the full jury panel that the system doesn't work
9 without people who are willing to come and sit, listen to
10 these things and make a decision. I know jurors sometimes
11 feel like they -- alternates sometimes feel like they'd
12 like to go in the deliberation room, but, obviously, that
13 cannot happen.

14 If you wish to just stick around to see what happens,
15 you're certainly welcome to do that. If you choose to
16 leave, I'm going to ask you to go back by the jury
17 assembly room. I would hope they would release you, but
18 I'm not in charge of that department. So thank you very
19 much for your service, and good luck to you.

20 JUROR NUMBER 21: Okay. Thank you, sir.

21 THE COURT: All right. Stand at ease till we hear
22 from the jury.

23 (WHEREUPON, a recess is taken at 10:29 a.m.)

24 (WHEREUPON, proceedings reconvened at 10:41 a.m.)

25 MR. STEINBERG: Thank you, Judge. In reading over

1 this question, it says, "Your Honor, we would like the
2 Court to furnish an audio device so we may listen to the
3 evidence provided," signed by the forewoman. This is
4 Court's Exhibit Number 1.

5 We can send back the computer with the player or the
6 jail phone calls. We cannot send -- we shouldn't send
7 back the audio tape. I'd ask you to tell the jury they
8 can come back in here to listen ---

9 THE COURT: Let me have that note.

10 MR. STEINBERG: They can come back in here and listen
11 to the undercover audio.

12 THE COURT: What about the -- is there something back
13 there they can listen to the jail call now?

14 MR. STEINBERG: No, sir.

15 THE COURT: Okay. Maybe that's all they want.

16 THE BAILIFF: Do you want me to find out which one
17 they want?

18 THE COURT: No.

19 MS. MANIGAULT: I told you to send the computer in.

20 MR. STEINBERG: Well, if they're asking for the audio
21 or the undercover buy -- it's not clear what they're
22 asking for. If they're asking for the undercover
23 audio ---

24 MS. MANIGAULT: No. It says the evidence that has
25 been provided. So what's provided is one tape.

1 MR. STEINBERG: Well, what's provided -- no.

2 Everything's been provided.

3 THE COURT: Y'all, hush, please.

4 Is it a computer?

5 MR. STEINBERG: Yes, sir.

6 (Pause in proceedings.)

7 THE COURT: All right. Look at this. Come on up.

8 MR. STEINBERG: Yes, sir. I think it's appropriate.

9 THE COURT: Yeah. If they want the computer, tell
10 them we'll send it back right away.

11 THE BAILIFF: They wanted it.

12 THE COURT: All right. Well, let's send it back.

13 MR. STEINBERG: Yes, sir.

14 THE BAILIFF: They want to hear both tapes.

15 THE COURT: Well, they can hear one of them in here
16 and one of them back there.

17 THE BAILIFF: Do you want to hear this one out here
18 first before we take ---

19 MR. STEINBERG: Actually, if we do the jail phone
20 calls, I'll talk to the court reporter about what can be
21 played back. I think that will be most expeditious.

22 THE COURT: Send the computer back ---

23 MR. STEINBERG: Yes, sir.

24 THE COURT: --- please.

25 And who's going to operate it?

1 THE BAILIFF: I'm going to set it up for them, and
2 then they'll have to operate it.

3 THE COURT: This lady, can she go back? Any
4 objection to her going back and getting it set up,
5 Ms. Manigault?

6 MR. STEINBERG: She's an assistant solicitor.

7 MS. MANIGAULT: She's an assistant solicitor. I
8 object.

9 THE COURT: Why don't you go back there?

10 MS. MANIGAULT: They object.

11 (WHEREUPON, a recess is taken at 10:46 a.m.)

12 (WHEREUPON, Court's Exhibit Number 1 was marked for
13 identification.)

14 (WHEREUPON, proceedings reconvened at 11:25 a.m.)

15 THE COURT: All right. The bailiff informs the Court
16 the jury has reached a verdict. Is the State ready to
17 proceed with the verdict?

18 MR. STEINBERG: Yes, sir, Your Honor.

19 THE COURT: Defense ready to proceed with the
20 verdict?

21 MS. MANIGAULT: Yes, Your Honor.

22 THE COURT: All right. Bring the jury, please.

23 (WHEREUPON, the jury entered the courtroom at 11:26 a.m.)

24 THE COURT: Madam Forelady, the bailiff informs the
25 Court the jury has reached a verdict. Have you reached a

1 verdict?

2 JURY FORELADY: Yes, Your Honor.

3 THE COURT: Would you hand it to the bailiff, please.

4 Madam Clerk, publish the verdict, please.

5 VERDICT

6 THE CLERK: In the case of 2016-GS-23-5728, The State
7 vs. John Anthony Duckett, the jury finds the defendant
8 guilty.

9 In the case of 2015-GS-23-5727 [sic], the jury finds
10 the defendant guilty.

11 Ladies and gentlemen of the jury, if this is the
12 verdict that you came up with in the jury room, please
13 raise your right hand.

14 (WHEREUPON, all jurors raised their right hands.)

15 THE CLERK: Thank you.

16 THE COURT: Any desire to poll the jury?

17 MS. MANIGAULT: None, Your Honor.

18 THE COURT: All right. Thank you very much.

19 All right. Ladies and gentlemen, that will conclude
20 your service in this case.

21 Now, the remaining portion of the trial will consist
22 of the sentencing of the defendant. Unfortunately, in
23 South Carolina, we're not quite like TV shows that the
24 judges are given the opportunity to sentence a defendant
25 at a later date. We have so many cases going on that we

1 have to do it immediately after a jury verdict. So
2 there's a little bit of paperwork that needs to be done at
3 which time I will sentence the defendant. You're welcome
4 to stay for that, and by the same token, you're free to
5 go.

6 If you choose to leave, I do want to thank you for
7 your service. I'm going to probably have to ask you to go
8 back down to the jury assembly room to see if there are
9 any further assignments that the court clerk down there
10 needs for you to be available for. But as I told the jury
11 panel earlier, you're an important part of this system.
12 This system does not operate without jurors who are
13 willing to come and listen to cases and decide cases.
14 It's a unique system, it's a time-tested system in this
15 country, and we value your services. I can tell you that.

16 If you'll return -- you can return to the jury room
17 for just a minute, and then those of you who wish to stay
18 for the sentencing, it will only be five minutes or so
19 until we get some paperwork done so I can do that. And
20 the bailiff will let you come back in and sit through the
21 sentencing procedure. That procedure takes ten,
22 15 minutes, at the most. So be glad to have you. Some
23 jurors feel that they'd like to see the outcome of their
24 service for closure purposes. And I will tell you more
25 about that. Those of you who come back, I will tell you

1 more about that sentencing, what he's looking at and the
2 reasons why he may have to serve a sentence. And I'll
3 explain that further, those of you who wish to stay.

4 But anyway, thank you very much.

5 Any questions? If not, you're excused. Thank you
6 very much, ladies and gentlemen.

7 (WHEREUPON, the jury exits the courtroom at 11:31 a.m.)

8 THE COURT: Any motion?

9 MS. MANIGAULT: Yes, Your Honor. Defense would make
10 a motion for a new trial in this case believing that the
11 State did not present sufficient evidence to convict John
12 Duckett in the matter, and renew all my previous motions.

13 THE COURT: All right. I understand. I believe the
14 State presented enough evidence for the jury to find as
15 they did, and I respectfully deny your motion.

16 MS. MANIGAULT: Thank you, Your Honor.

17 THE COURT: Now, who's got all the paperwork?

18 (Pause in proceedings.)

19 THE COURT: All right. Madam Clerk, just explain.
20 Where is the indictment?

21 THE CLERK: So I'm going to read the correct
22 indictment numbers for the guilty verdicts. There is
23 2016-GS-23-5728, The State vs. John Anthony Duckett. The
24 verdict is guilty. 2016-GS-23-5727, The State vs. John
25 Anthony Duckett, and a guilty verdict.

1 (Pause in proceedings.)

2 THE COURT: Ms. Manigault, are you ready?

3 MS. MANIGAULT: Yes, sir.

4 THE COURT: Bring your client.

5 MR. STEINBERG: Your Honor, it's my understanding
6 that the suspect wishes to plead guilty to some additional
7 charges at this time. We'll get that paperwork started
8 right now as well.

9 Okay. We'll do that afterwards.

10 THE COURT: All right.

11 MR. STEINBERG: Your Honor, is there anything you
12 need preliminary before we start on the State's narrative?

13 THE COURT: No. I'm ready to go.

14 MR. STEINBERG: Thank you, Your Honor. You heard the
15 case. He does have a record. Record consists of a 1990
16 unlawful carrying of a weapon and a grand larceny; in
17 1992, assault and battery and disorderly conduct; a 1993
18 possession of cocaine, possession of heroin, and assault
19 and battery of a high and aggravated nature as well as an
20 unrelated assault and battery. He also had malicious ---

21 THE COURT: What was the disposition of those -- that
22 case?

23 MR. STEINBERG: As far as disposition, I'll find the
24 sentencing. Everything I'm going to read to you has been
25 a conviction. I'll find you the actual sentencing.

1 THE COURT: All right. I think the jury needs to --
2 I'm sure they are curious about his history.

3 MR. STEINBERG: Yes, sir. The grand larceny that we
4 discussed earlier from 1990 was a Youthful Offender Act
5 sentence of up to five years; the assault and battery was
6 a 30-day conviction; the possession of unlawful drugs, I
7 think I determined it was cocaine, it just said it was a
8 probationary sentence; the assault and battery of a high
9 and aggravated nature was ten years suspended upon
10 probation; the other assault and battery is a 30-day
11 charge; malicious damage, a 30-day charge; he received a
12 one-year sentence for unlawful carrying of a pistol in
13 1993; he has a DUS second from 1994 which he received
14 60 days; he has a resisting arrest, also from 1994, which
15 was a time-served sentence.

16 He then received his most serious crime up to that
17 date. He had a strong-arm robbery for which he received a
18 seven-year sentence. That was in 1994. It also has here
19 armed robbery. I'm not sure if it's a misprint from the
20 same strong-arm robbery. The record is not all that
21 clear.

22 He does have a 1999 distribution of crack cocaine for
23 which he received three years, and the same charge, the
24 same sentence but within proximity of a school, also in
25 1999. He has a year 2000 -- that's the same charge

1 reprinted again. He has a giving false information for
2 2002 and a driving under suspension, 2002. He has a
3 four-year sentence for a distribution of crack cocaine
4 from the year 2004. He has a simple possession of
5 marijuana charge, no disposition there, 2004.

6 In 2005, I actually have copies of his convictions,
7 he has a distribution of cocaine which he received a
8 four-year sentence. It may have been suspended upon
9 probation. He then had a 2005 -- that's the same charge
10 printed again. He had a criminal domestic violence
11 charge, and in 2007 he has a -- for which he received --
12 I'm sorry. The CDV is listed as both convicted and not
13 guilty at the same time.

14 In 2007 he has a possession of a controlled
15 substance, third offense or above, for which he received a
16 four-year sentence. He has a trial in absence for simple
17 possession of marijuana in 2007. In 2007 he has the
18 failure to appear. 2009, he has a four-year sentence that
19 may have been a probation violation by looking at it.

20 His criminal history through NCIC is really not
21 complete. I printed up the charges from here in
22 Greenville, and he pled guilty in 2005 to a possession
23 with the intent to distribute for which he received the
24 four-year sentence. That may have been one we just read.
25 He also pled guilty to a distribution of heroin for four

1 years on that same date. He also went to trial. I think
2 I was actually the -- I think I was the trial attorney in
3 that case. In 2007 he has a possession of heroin, and the
4 sentence for that was four years.

5 And that appears to be his record. One or two of the
6 cases I gave you may have been repeated from both NCIC and
7 from the Department of Corrections history, but he has
8 certainly at least three charges.

9 THE COURT: All right. It's my understanding you
10 just told me that he has other charges pending now?

11 MR. STEINBERG: Yes, sir. He has an additional
12 distribution of, I believe, crack cocaine or heroin just
13 like this from the week before. It was at a QT location.
14 He also has another case from the week before this that
15 involved a confidential informant. Those are on the
16 docket. He also has a possession of cocaine with
17 Greenville City from, I think, 2015. Those cases are all
18 pending at this time.

19 THE COURT: All right. Anything else on behalf of
20 the State?

21 MR. STEINBERG: No, sir, Your Honor.

22 THE COURT: Okay. Ladies and gentlemen of the jury,
23 you hear now the extensive record of the defendant,
24 Mr. Duckett. He's been, obviously, from the record,
25 involved with drugs for many years. He's been to the

1 Department of Corrections two or three times, all for
2 possession or distribution of heroin and crack cocaine.

3 Now, the fact that this is a third offense enhances
4 the potential penalty that I can impose on him. The
5 penalty under our law for a third offense conviction is a
6 sentence from ten to 30 years in the Department of
7 Corrections. So you can see that, as time goes on and
8 more of these charges are brought, it enhances the
9 penalties under our law. I thought you need to know that,
10 you need to understand that.

11 Ms. Manigault?

12 MS. MANIGAULT: Thank you, Your Honor.

13 Your Honor, my client is 44 years old. He is a
14 lifelong resident of Greenville county. He went to the
15 10th grade at Eastside High School here in Greenville, but
16 he did get his GED.

17 He is a severe addict. He has told me that the prior
18 convictions where he sold the heroin and/or crack, it was
19 for him to get monies or get drugs for himself.

20 THE COURT: It's a spiral.

21 MS. MANIGAULT: Yes, sir.

22 He worked as a cook at the Sticky Fingers and
23 Smokehouse restaurants here in Greenville county. He is
24 divorced with two children. Both are adults. And, of
25 course, the Court has heard his record. So he is asking

1 the Court for mercy in the sentencing of this case in the
2 light of his, as the Court describes, spiraling drug
3 addiction for years and years.

4 THE COURT: Mr. Duckett, do you have anything you
5 want to say?

6 DEFENDANT DUCKETT: No, sir.

7 MR. STEINBERG: Your Honor, we would ask that the
8 defendant be kept in Greenville for 30 days to see if
9 maybe we can resolve the pending charges than having him
10 transported back from the Department of Corrections. I
11 think that would save the State some money.

12 THE COURT: Any objection?

13 MS. MANIGAULT: No objection, Your Honor.

14 THE COURT: You'll just have to prepare me a short
15 order to that effect.

16 MR. STEINBERG: Yes, sir.

17 THE COURT: How long has he been in jail?

18 MR. STEINBERG: Your Honor, he was in jail, he was
19 then released, and then he was picked back up on a bench
20 warrant when he failed to show up for court. I had it
21 calculated as 312 days total. I think Department of
22 Corrections can double check that. They have access to
23 more databases than I do, but I have 312 days total.

24 THE COURT: Ms. Manigault, do you have any difference
25 of opinion?

1 MS. MANIGAULT: No, Your Honor. He has been in
2 detention since December 1, 2016, on the bench warrant,
3 and he may have a few days from prior.

4 MR. STEINBERG: Your Honor, without going into the
5 details, the State did its very best to -- frankly, we're
6 not trying to try an easy case in front of you, Your
7 Honor. We did try to resolve this, but we had a guilty
8 plea. I didn't want you to think we were trying cases
9 like this for any reason other than they have to be tried.

10 THE COURT: Well, that's the defendant's right.

11 MR. STEINBERG: Yes, sir.

12 THE COURT: Solicitor, does the law enforcement
13 consider this individual a major player in the drug
14 business in Greenville county or is this, as Ms. Manigault
15 indicates, a situation where the defendant is merely -- it
16 sounds a little bit ---

17 MR. STEINBERG: Well, Judge, I can't answer that. I
18 do have Investigator Bastoni here. He can testify.

19 I can tell you that we chose -- we don't just choose
20 a name out of the phone book. We went to someone who was
21 already a dealer. But he is a small-level dealer. The
22 problem, he's a small-level repeat dealer, but he is a
23 low-level dealer. He is not the person bringing the drugs
24 into Greenville.

25 But as you can see and looking at the notes here, a

1 lot of these were my cases. Going back to as early as
2 2001, some of these cases may have been mine.

3 SENTENCING

4 THE COURT: All right. Mr. Duckett, sentence of the
5 Court is -- on both charges, sentence of the Court is you
6 be committed to the State Department of Corrections for a
7 period of ten years. You're given credit for 312 days of
8 pretrial detention, and both sentences are to run
9 concurrent.

10 Good luck to you, sir.

11 MR. STEINBERG: Thank you, Judge.

12 DEFENDANT DUCKETT: Your Honor, I would like, for the
13 record, to file an appeal. Could you please file an
14 appeal for me in this case.

15 THE COURT: All right. You tell your attorney that.
16 She'll file the necessary papers.

17 DEFENDANT DUCKETT: Thank you, sir.

18 (WHEREUPON, proceedings concluded at 11:49 a.m.)

19 * * * * *

20

21

22

23

24

25

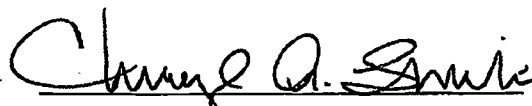
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 9th and 10th day of October, 2017.

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

January 22, 2018



Cheryl A. Smith, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

) COURT OF GENERAL SESSIONS
) 2015-GS-23-00637
)
)
)

ORIGINAL

THE STATE OF SOUTH CAROLINA)
PLAINTIFF)

vs.)

) TRANSCRIPT OF RECORD
)

JOHN ANTHONY DUCKETT)
DEFENDANT)

October 12, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, Judge.

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

HOWARD STEINBURG, ESQ.
Attorney for the State

DOROTHY MANIGAULT, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

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There were no exhibits.

» > O < «

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JOHN DUCKETT-EXAMINATION BY THE COURT

1 MR. STEINBERG: Your Honor, in the case of
2 2015-GS-23-0637, The State vs. John Anthony Duckett,
3 indicted for possession of cocaine base, crack
4 cocaine, pleading to the same, it's a third offense,
5 excuse me. And this is a true bill. Then in the
6 case of 2016-GS-23-5726, Mr. Duckett is indicted for
7 distribution of heroin. He is pleading to the same
8 as a third offense and this is also true billed.

9 Mr. Duckett, if you would please raise your
10 right hand.

11 JOHN DUCKETT, after being duly sworn, testified
12 as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q All right, Mr. Duckett, you're here today to
16 plead to possession of cocaine, third offense. That
17 carries up to 10 years. And distribution of heroin, third
18 offense. That carries a minimum of 10 years up to 30
19 years and that is classified as a serious offense. Is
20 that your understanding?

21 A Yes, ma'am.

22 Q Have you discussed these charges with your
23 lawyer?

24 A Yes, ma'am.

25 Q Are you happy with what your lawyer has done for

JOHN DUCKETT-EXAMINATION BY THE COURT

1 you?

2 A Yes, ma'am.

3 Q Do you have any complaints to make against law
4 enforcement, the solicitor's office or your attorney as a
5 result of these charges whatsoever?

6 A No, ma'am.

7 Q Are you under the influence of drugs or alcohol
8 here today?

9 A No, ma'am.

10 Q Has anybody forced you to plead guilty?

11 A No, ma'am.

12 Q Has anybody promised you anything to get you to
13 plead guilty?

14 A No, ma'am.

15 Q When you plead guilty you give up certain
16 Constitutional rights. One is your right to remain silent
17 about these charges, do you know that?

18 A Yes, ma'am.

19 Q You also give up your right to a jury trial. At
20 that trial your attorney could call witnesses for you,
21 cross-examine witnesses against you and The State would
22 have to prove your guilt beyond a reasonable doubt. But
23 when you plead guilty you give up your right to a jury
24 trial, do you know that?

25 A Yes, ma'am.

JOHN DUCKETT-EXAMINATION BY THE COURT

1 Q How do you plead to these charges, guilty or not
2 guilty?

3 A Guilty.

4 Q You've got 10 days from today's date to appeal
5 this plea, if you so choose, but you must do so in writing
6 with this court.

7 Yes, sir.

8 SENTENCING

9 MR. STEINBERG: Thank you, Your Honor, I should
10 have told you this from the beginning. This
11 Defendant was on the trial docket on Monday, he
12 actually went to trial, he was convicted of
13 distribution of heroin and distribution of crack,
14 third offense. He received a 10 year sentence by
15 Judge Cooper. He asked to resolve this. He wanted a
16 day or two, I guess, to think about it and he was
17 asked to resolve it today. We're going to dismiss
18 one distribution of heroin that's been dismissed,
19 he's been convicted of one.

20 And he's pleading guilty to the first incident
21 which is December 20th, 2014. The Defendant was in a
22 car that was stopped for a traffic violation. He had
23 a bench warrant and when told of that he put his
24 hands in his pockets, turned away from the officer.
25 And then when told to remove his hands, he did but he

1 threw a small baggy out and when field tested, it was
2 crack cocaine.

3 He is pleading guilty, also, to a distribution
4 on or about -- well early June of 2015. This
5 Defendant sold a small amount of heroin to a
6 undercover officer. This was audio taped, this
7 happened at a QT grocery store. Then later that same
8 week he was also arrested for distribution that
9 happened at another location. I'm not going into his
10 long record. He does have a long record including
11 drug charges but our plea agreement is that he
12 receive a concurrent 10 year sentence to his existing
13 sentence.

14 THE COURT: All right.

15 Mr. Duckett, how do you plead to these charges,
16 guilty or not guilty?

17 MR. DUCKETT: Guilty.

18 THE COURT: All right, I certainly will accept
19 your plea.

20 How long has he been in jail?

21 MR. STEINBERG: He has a total of 312 days,
22 including bench warrant time.

23 THE COURT: I'll accept his plea and accept the
24 recommendation in this case as long as your in
25 agreement with it.

1 MS. MANIGAULT: Thank you, Your Honor.

2 THE COURT: All right, 10 years, concurrent with
3 your sentence from.

4 You said --

5 MR. STEINBERG: Tuesday --

6 THE COURT: Was it today or Tuesday?

7 MR. STEINBURG: Tuesday was the day of the
8 sentence, Your Honor.

9 THE COURT: Is today Thursday?

10 MR. STEINBERG: Yes, Your Honor.

11 THE COURT: Okay. So, that would have been
12 on --

13 MR. STEINBERG: Ten.

14 MS. MANIGAULT: 10/10, Your Honor.

15 THE COURT: 10/10, thank y'all. It's been a
16 long week.

17 Ten years, concurrent with your 10 year sentence
18 from earlier in the week, credit for 312 days. Good
19 luck to you.

20 MS. MANIGAULT: Thank you, Your Honor.

21 MR. STEINBERG: Thank you, Your Honor.

22 (WHEREUPON, the proceedings were concluded.)
23
24
25

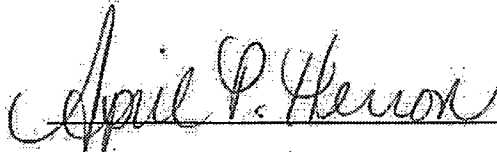
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 12th day of October, 2017.

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

April 8, 2019



APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of)

GREENVILLE)

IN THE COURT OF COMMON PLEAS)

John Anthony Duckett 270743)

Full name and prison number (if any) of Applicant)

2018-CP-23- 045916)

v.)

ENTERED COMPUTER
APPLICATION FOR

State of South Carolina)

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 Waterce Correctional Institution
2. Name and location of Court which imposed sentence General Sessions
Greenville S.C.
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2015GS2300637

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 12, 2017
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) My Attorney Didnt advise me to Appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel
- (b) Due Process
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Sixth Amendment
- (b) ~~Fourteenth~~ Fourteenth Amendment
- (c) _____
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. _____

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) My Attorney Fail to investigate,
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Dorothy Manigault
 (b) your trial, if any? _____
 (c) your sentencing? Dorothy Manigault
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. _____

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Dorothy Manigault

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

I'm asking the Honorable Court to grant ~~relief~~ relief
based upon my Attorney Fail to investigate and I'm
asking the Courts to reconsider my Sentencing.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville Sumter)

VERIFICATION

I, John Anthony Duckett, 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.

John Anthony Duckett
for Anthony Duckett

SWORN to and subscribed before me this 8th
 day of August 2018.
Arnold D. H. Feld (L.S.)
 Notary Public

My Commission Expires: 3/15/2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, John Anthony Duckett, 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.

John Anthony Duckett
John Anthony Duckett Applicant

SWORN or affirmed to and subscribed before me this
8th day of August, 2018.

Pamela D Hatfield

Notary Public

My Commission Expires: 3/15/2021

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

John Anthony Duckett, #270743,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-23-04596

**RETURN AND MOTION
FOR MORE DEFINITE
STATEMENT**

The State of South Carolina (Respondent), making its Return to the Application for Post-Conviction Relief filed on September 5, 2018, would respectfully show this Court:

I. Procedural History

John Anthony Duckett (Applicant) is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of the Greenville County Clerk of Court. During its April 2016 term, the Greenville County Grand Jury indicted Applicant for possession of cocaine (2015-GS-23-00637). During its July 2016 term, the Greenville County Grand Jury indicted Applicant for two counts of distribution of heroin (2016-GS-23-05726; -05727) and distribution of cocaine (2016-GS-23-05728).

Applicant was represented by Dorothy A. Manigault, Esquire, and Howard L. Steinberg, Esquire, prosecuted the cases. On October 9-10, 2017, Applicant appeared before the Honorable G. Thomas Cooper, Jr., and a jury, and was convicted after a jury trial on the charges of distribution of cocaine (2016-GS-23-05728) and distribution of heroin (2016-GS-23-05727). Judge Cooper sentenced Applicant to ten years for distribution of heroin and ten years for distribution of cocaine, with credit for time served and both sentences running concurrently.

On October 12, 2017, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty to possession of cocaine (2015-GS-23-00637) and distribution of heroin (2016-GS-23-05726). Judge Verdin sentenced Applicant, consistent with Assistant Solicitor Steinberg's recommendation, to ten years for possession of cocaine and ten years for distribution of heroin, with credit for time served, and with both sentences running concurrently with the two sentences imposed by Judge Cooper after Applicant's trial earlier that week. On October 13, 2017, Assistant Solicitor Steinberg dismissed a remaining charge of distribution of heroin pursuant to the plea deal with Applicant.

Ms. Manigault filed a Notice of Appeal on October 19, 2017, for Applicant's two trial convictions: distribution of heroin (2016-GS-23-5727) and distribution of cocaine (2016-GS-23-5728). On August 1, 2018, Appellate Defender Lanelle Cantey Durant filed an Anders Brief and Petition to be Relieved as Counsel with the South Carolina Court of Appeals, although the Court has not yet issued any responsive order in that appeal, which is Appellate Case No. 2017-002189. However, Applicant did not appeal his guilty plea and sentence to possession of cocaine (2015-GS-23-00637), which is the subject of this present Application, nor has Applicant appealed his guilty plea and sentence to distribution of heroin, to which he pleaded guilty on October 12, 2017.

II. Factual History

The facts of the guilty plea for which Applicant has filed this Application were summarized by Assistant Solicitor Steinberg at Applicant's plea hearing. On December 20, 2014, Applicant was in a car that was stopped for committing a traffic violation. The officer who stopped the car informed Applicant that he had an outstanding bench warrant that had been issued against him. Applicant put his hands into his pockets and turned away from the officer. The officer instructed

Applicant to remove his hands from his pockets, and, upon removing his hands, Applicant threw away a small bag. Field testing showed that the bag contained crack cocaine.

III. Application for Post-Conviction Relief

In his Application for Post-Conviction Relief, which indicates that Applicant is seeking post-conviction relief solely on his guilty plea to possession of cocaine (2015-GS-23-00637), Applicant alleges that he is being held in custody unlawfully based on:¹

1. Ineffective assistance of counsel
 - a. Sixth Amendment
 - b. Failure to investigate
2. Due process
 - a. Fourth Amendment

Applicant prays for relief in the form of resentencing.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the transcript from Applicant's plea hearing, Applicant's records from the South Carolina Department of Corrections, and Applicant's Post-Conviction Relief Application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Claims of Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the

¹ Although he does not present it as a claim for which he is praying for relief in his Application, Applicant does allege in the Application that counsel did not "advise [him] to appeal." Due to the ambiguity of the presentation of this allegation, Respondent will move later in this Return for a more definite statement as to the allegation.

trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Id. at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such

strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits that Applicant likely can satisfy neither requirement of the Strickland or Hill tests on his various claims of ineffective assistance of counsel and that Applicant’s testimony at the plea hearing undermines his claims. However, the claims probably raise questions of fact that the record may not conclusively refute. When an application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.” Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Accordingly, Respondent requests an evidentiary hearing to fully resolve these issues.

V. Motion for a More Definite Statement

Applicants allegations are vague and lack specificity. 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 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). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

It is unclear whether Applicant intends for his allegation that counsel did not “advise [him]

to appeal” to be presented as a ground for relief, and it is unclear whether Applicant is alleging that counsel did not advise him of his right to appeal or is alleging that counsel advised him that any appeal was not likely to be successful. Furthermore, Applicant’s allegations of the violation of his Fourth and Sixth Amendment rights and that counsel failed to investigate are not supported with any facts, making it impossible for Respondent to provide any substantive or targeted response. Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement and to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief or clarifying the issues raised herein, Respondent reserves the right to move to dismiss the specific claim or the Application.

VI. Discovery Issues

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless

granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. General Denial of Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII. Conclusion

WHEREFORE, Respondent requests that this Court require Applicant to amend his Application in order to provide a more definite statement and supporting facts as requested herein, and then to convene an evidentiary hearing on the claim of ineffective assistance of counsel.

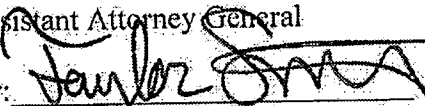
Respectfully submitted,

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Attorney General

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April 26, 2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JOHN ANTHONY DUCKETT, 270743

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

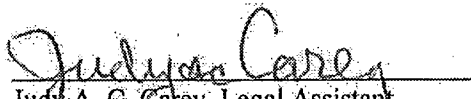
2018-CP-23-4596

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street, Suite 11
Greenville SC 29601

DATED this 26th day of April, 2019.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2018-CP-23-04596
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
JOHN A. DUCKETT,	)	
Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
	)	

June 3, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE

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

R. MILLS ARIAIL, JR.
Attorney for the Applicant

TAYLOR Z. SMITH
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 2:53 p.m.)

MR. SMITH: This is the case of John Anthony Duckett vs. State, 2018-CP-23-04596. Mr. Duckett is presently incarcerated in SCDC pursuant to orders of the Greenville County Clerk of Court. During its April 2016 term, the grand jury indicted applicant for possession of cocaine. During its July 2016 term, the grand jury indicted applicant for two counts of distribution of heroin and one count of distribution of cocaine.

In October of 2017, applicant appeared before Judge Cooper and a jury and was convicted after a jury trial for distribution of cocaine and distribution of heroin. Judge Cooper sentenced applicant to ten years for distribution of heroin and ten for distribution of cocaine, both sentences running concurrently.

Later in that week, the applicant appeared before Judge Verdin and pleaded guilty to possession of cocaine and distribution of heroin. Judge Verdin sentenced applicant along with the solicitor's recommendation to ten years for possession of coke and ten years for distribution of heroin, and both of those sentences ran currently from the sentences imposed by Judge Cooper earlier in the week after trial. And then the Solicitor's

1 Office dismissed the remaining charge of distribution of
2 heroin in accordance with the plea agreement.

3 On some of his charges, the applicant does have a
4 pending appeal in the South Carolina Court of Appeals, but
5 he is -- today his PCR application concerns just one of
6 the charges or maybe two, but the one stemming out of his
7 plea hearing. But I've just been informed that perhaps he
8 wants to withdraw his application today, so I'll turn it
9 over to Mr. Ariail for some more on that.

10 THE COURT: All right. Mr. Ariail, I'll be glad to
11 hear from you.

12 MR. ARIAIL: Thank you, Your Honor. I've had
13 in-depth discussions with my client in regards to this.
14 Mr. Duckett and I have discussed he got ten years under
15 distribution of heroin, third. I once again explained to
16 him and told him that if he runs the risk of going back
17 and trying that, there's a potential he could get
18 30 years. Understanding that and knowing that there is a
19 risk with that and potential additional time, he has told
20 me he wants to dismiss this, wants to withdraw it. He's
21 doing that freely and voluntarily, and also understands
22 that this is his one time to do a PCR and that he can't
23 come back and file a PCR. He understand he might have
24 other rights in regards to habeas and other things that
25 I've explained to him. That's not what we're dealing with

1 here today. But he can -- he has to agree that he's going
2 to withdraw this and dismiss it, and this ends this from
3 here forth. He agrees with that and is doing this freely
4 and voluntarily.

5 THE COURT: All right. Thank you. Let me talk to
6 him.

7 Sir, if you'll please stand. You're Mr. Duckett?

8 APPLICANT DUCKETT: Yes, sir.

9 WHEREUPON,

10 JOHN ANTHONY DUCKETT

11 After having been duly sworn, testified as follows:

12 THE COURT: Mr. Duckett, just speak loudly so my
13 court reporter can pick up your testimony.

14 First of all, I'm Judge Gibbons. You understand why
15 you're here today?

16 APPLICANT DUCKETT: Yes, sir.

17 THE COURT: Do you have any questions about why
18 you're here?

19 APPLICANT DUCKETT: No, sir.

20 THE COURT: Have you been over everything with your
21 lawyer?

22 APPLICANT DUCKETT: Yes, sir.

23 THE COURT: Did you hear what he just told me?

24 APPLICANT DUCKETT: Yes, sir.

25 THE COURT: Is what he told me accurate?

1 APPLICANT DUCKETT: Yes, sir.

2 THE COURT: Do you want to withdraw this application?

3 APPLICANT DUCKETT: Yes, sir.

4 THE COURT: Now, has anybody forced you to do that?

5 APPLICANT DUCKETT: No, sir.

6 THE COURT: Is anybody coercing you to do it?

7 APPLICANT DUCKETT: No, sir.

8 THE COURT: Did you make up your own mind to do it?

9 Of course, after talking with your lawyer and going over
10 everything as well as your strategy, did you make up your
11 mind to do that?

12 APPLICANT DUCKETT: Yes, sir.

13 THE COURT: All right. Then do you understand if you
14 withdraw this PCR application, then that's it, that's a
15 final thing, that you can never pursue this PCR
16 application again? It's over with; do you understand
17 that?

18 APPLICANT DUCKETT: Yes, sir.

19 THE COURT: This is your, quote, one bite of the
20 apple, quote, on this PCR issue; do you understand that?

21 APPLICANT DUCKETT: Yes, sir.

22 THE COURT: All right. Now, of course, the remedy
23 which I could give you as the PCR judge would be a new
24 trial. I can't give you a new sentence. And, of course,
25 at a new trial, if you're convicted, perhaps you could get

1 more, perhaps you can get less; do you understand that?

2 APPLICANT DUCKETT: Yes, sir.

3 THE COURT: All right. So what you're telling me is,
4 Judge Gibbons, I don't want to have this PCR anymore. I
5 want this PCR over with; is that right?

6 APPLICANT DUCKETT: Yes, sir.

7 THE COURT: Okay. I just want to make sure we
8 understand each other.

9 APPLICANT DUCKETT: Yes, sir.

10 THE COURT: All right.

11 (Pause in proceedings.)

12 MR. ARIAIL: Your Honor, I think he's reconsidered
13 and would like to be able to have it heard today.

14 THE COURT: Okay.

15 MR. ARIAIL: I can put him on the stand right now.

16 THE COURT: Yeah. Go ahead and call your witness.

17 MR. ARIAIL: Come on up to the stand.

18 THE CLERK: Mr. Duckett, please place your left hand
19 on the Bible and raise your right hand.

20 WHEREUPON,

21 JOHN ANTHONY DUCKETT

22 After having been duly sworn, testified as follows:

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

24 Please state your full name for the record.

25 THE WITNESS: John Anthony Duckett.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q Mr. Duckett, how are you doing today?

A I'm fine, sir.

Q Good. I want to go through a little bit about this now. Ms. Manigault represented you on the charges that we're here today; is that correct?

A Yes, sir.

Q Okay. Now, these charges you pled in front of Judge Verdin on; is that correct?

A Yes, sir. I was aware that I was just pleading to one charge, though.

Q Okay. But you pled to -- tell me what you -- it was a possession of cocaine and distribution of heroin, correct?

A Yes, sir.

Q So she represented you on both of those; is that right?

A Yes, sir.

Q Okay. And she was appointed as your counsel; is that correct?

A Yes, sir.

Q Okay. And how long after, I guess, you were arrested on these was she appointed as your counsel; do you remember?

1 A From the beginning, I think she was my appointed
2 public defender.

3 Q Okay. Things we've gone over and what I -- let me
4 make sure I'm understanding this. The grounds you really
5 focused on, you didn't really understand what you were
6 pleading to and the, I guess, degree of the distribution
7 of heroin, third; is that correct?

8 A Yes.

9 Q Okay. Now, do you have any complaints on her in
10 regards to her investigation of the matter or not
11 explaining the elements of the crime to you or anything
12 like that?

13 A Yes, sir.

14 Q Okay. What do you think she didn't do in regards to
15 investigating or doing things that you told her to do?

16 A As far as explaining the process of as you can see in
17 the record, my original warrant was a first offense,
18 possession of one gram or less of crack cocaine, ice or
19 cocaine base.

20 Q Okay.

21 A And the warrant through the plea after the trial or
22 two days after the trial, when I went back and looked at
23 it, the warrant -- I mean the indictment or the sentencing
24 sheet said third offense.

25 Q Okay.

1 A And I was not aware of that being a third offense. I
2 just thought it was still the original first offense.

3 Q And actually, I'm taking a look at it, too. The
4 distribution of -- it looks like the heroin charge, if I'm
5 not mistaken, was the warrant did say third or above ---

6 A Yes.

7 Q --- offense. You understood that.

8 The cocaine was third -- was actually a first offense
9 on the warrant; do you understand that?

10 A Yes.

11 Q Okay. Now, the plea sheet, from what I'm
12 understanding, had third offense on it for the cocaine and
13 also for the heroin; is that right?

14 A Yes. But I was aware that I think I was pleading to
15 just the possession, that the distribution would be
16 dismissed.

17 Q Okay. Let me go through and make sure I'm
18 understanding. So at the point you pled, you thought the
19 distribution of heroin was going to get dismissed?

20 A Yes, sir.

21 Q It was not because you pled guilty to it, correct?

22 A Correct.

23 Q And you didn't know it was a third offense, and you
24 thought it was a lower offense; is that correct?

25 A Yes, sir.

1 Q Okay. So let's go back through all this. So she
2 represented you on both of these?

3 A Yes, sir.

4 Q Did she go over the elements and the, I guess, levels
5 of the offenses that you were facing?

6 A Somewhat, but not to the extent. The only thing I
7 was aware of is that I could receive a bunch of time,
8 that, I mean, the only thing I could be guaranteed was to
9 end up getting a bunch of time and . . .

10 Q Did she tell you -- is a normal approach, and tell me
11 -- explained the elements of what they got to prove. For
12 instance, you've got to have -- you know, been
13 distributing the heroin and been in that and they've got
14 to prove certain things that match up with it. Did she
15 tell you what they've got to prove in regards to that?

16 A For a little bit. Not in the full -- at that
17 particular time even up to now, I'm still a little naive
18 to the law. I don't know particularly case law or certain
19 things, but I was just aware that I was pleading to the
20 possession to run concurrent with the sentences after
21 Mr. Steinberg had ordered the 30 days in order for me to
22 stay in the county for those to be concurred [phonetic].

23 Q Okay. Did you ever go over with her how -- because
24 on one of these warrants, it's listed third offense. Did
25 you ever have a discussion with her, Ms. Manigault, why is

1 this a third offense versus a second or a first offense?

2 A No, sir. I fault myself for that because I didn't
3 pay attention to ---

4 Q Did you ever go over with her that -- Ms. Manigault,
5 did she explain to you the enhancements for why it can be
6 greater than a first offense or a second offense?

7 A Not the enhancements.

8 Q Okay. Did y'all go over your previous record to
9 understand that why the charge is for third offense?

10 A Yes -- no. Not really. Not to my knowledge. No,
11 sir.

12 Q Just tell me what you remember her discussing with
13 you on that.

14 A Well, I knew about the trial, and after the trial,
15 according to the plea, I was making out with signing the
16 plea to the possession to receive the ten years to run
17 concurrent so I wouldn't have to come back up here to
18 Greenville county or deal with the detainer situation, to
19 the best of my knowledge.

20 Q Okay. And, I mean, I think the key to your PCR and
21 what you're telling me is the focal point is that you
22 didn't understand how your charges were enhanced from a
23 first offense to a third offense in regards to both of the
24 charges; is that correct?

25 A Yes, sir.

1 Q And the other one is you didn't agree to plead to a
2 distribution of heroin but you did so.

3 A Yes, sir.

4 Q And you thought it had been dismissed; is that
5 correct?

6 A Yes, sir.

7 Q Okay. And you don't remember having discussions with
8 her about those items?

9 A No, sir.

10 Q You don't think she adequately informed you of those?

11 A No, sir.

12 Q Okay. And I guess the question is, why did you plead
13 to those if you didn't feel like you were fully informed
14 by her of those items?

15 A Again, I was aware that I was pleading to the
16 possession.

17 Q Okay.

18 A And I wasn't looking into it to be a third offense
19 because it never was. The original warrant, again, was
20 first offense, and I was trusting in her professionalism
21 to do this. And, I mean, to the best of my knowledge,
22 that's all I can recall, you know, about it.

23 Q Okay. Now, I've gone through -- I mean, your PCR
24 application, it's pretty -- it's bare-bones in regards to
25 there's some things you're pleading Sixth Amendment, some

1 other items, failure to investigate, those things. We
2 talked about that. I think the main thing me and you have
3 discussed a lot is the enhancements for those level of
4 offenses. Are there other things that you want to bring
5 out that you believe she didn't do that you'd like the
6 Court to hear today?

7 A No, sir. That's about it.

8 MR. ARIAIL: That's it right there? Okay. Well, I'm
9 going to let the Attorney General ask you some questions
10 right now, okay?

11 THE COURT: All right. Thank you.

12 Mr. A.G.?

13 MR. SMITH: Just a moment, Your Honor, please.

14 (Pause in proceedings.)

15 MR. SMITH: Your Honor, may I approach?

16 THE COURT: Yeah.

17 CROSS EXAMINATION

18 BY MR. SMITH:

19 Q Mr. Duckett, I'm going to give you a copy of the
20 transcript from your plea hearing. Would you please
21 confirm on there that it's the date given on the front is
22 October 12, 2017.

23 A Yes, sir.

24 Q And if you'll please flip to page 3.

25 A (Witness complies.)

1 Q And we're looking down at about Line 15. Will you
2 please read Lines 15 through 20.

3 A "BY THE COURT, QUESTION: All right. Mr. Duckett,
4 you're here today to plead to possession of cocaine, third
5 offense, that carries up to ten years, and distribution of
6 heroin, third offense, that carries a minimum of ten years
7 up to 30 years. And that is classified as a serious
8 offense; is that your understanding?"

9 Q And what did you tell the judge?

10 A "Yes, ma'am."

11 Q Okay. And then she asked you, "Have you discussed
12 this with Ms. Manigault?" And then on Line 24, what do
13 you say?

14 A "Yes, ma'am."

15 Q Okay. And then Judge Verdin said, "Are you happy
16 with what she's done for you?" And what did you say?

17 A "Yes, ma'am."

18 Q Okay. And that's on page 4 at line ---

19 A 2.

20 Q --- 2. Okay.

21 Just a moment, please.

22 THE COURT: All right.

23 BY MR. SMITH:

24 Q And, Mr. Duckett, on page 5 of the transcript,
25 Mr. Steinberg, the solicitor, goes into a discussion of

1 the facts that the State believes it could have proved at
2 a trial if you had gone to trial. And he discusses in
3 there that you're pleading to -- you look on Line 20 of
4 page 5, and he says, "He's pleading guilty to the first
5 incident." Let me see. Okay. On page 6 at about Line 3,
6 I'm going to quote here and then I'm going to ask you am I
7 accurately quoting this, okay? "He is pleading guilty
8 also to a distribution on or about -- well, early June of
9 2015." So he says you're pleading to distribution there,
10 correct?

11 A Yes, sir.

12 Q All right. And then going down to about Line 15 on
13 page 6, Judge Verdin says, "Mr. Duckett, how do you plead,
14 guilty or not guilty?" And what do you say?

15 A Guilty.

16 MR. SMITH: Okay. Your Honor, I think I have no
17 further questions.

18 THE COURT: All right. Thank you.

19 Any redirect?

20 MR. ARIAIL: No, Your Honor.

21 THE COURT: All right. Thank you, sir. You can step
22 down.

23 Applicant can call its next witness.

24 MR. ARIAIL: Oh, Your Honor. Sorry. That is our
25 case.

1 THE COURT: All right. Ma'am, applicant rests.

2 Ms. Manigault?

3 THE CLERK: Ms. Manigault.

4 WHEREUPON,

5 DOROTHY ANN MANIGAULT

6 After having been duly sworn, testified as follows:

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

8 Please state your full name for the record.

9 THE WITNESS: Dorothy Ann Manigault.

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q Ms. Manigault, how long have you been practicing law?

13 A 45 years.

14 Q And where do you work now?

15 A Private practice, and I take 608 appointments through
16 the Public Defender's Office for Greenville County.

17 Q Were you appointed for Mr. Duckett or were you
18 retained?

19 A I was appointed.

20 Q Okay. After being appointed, did you meet and have
21 discussions with Mr. Duckett about his case?

22 A Yes, I did.

23 Q How many meetings did you have?

24 A We had several meetings. He was appointed December
25 of 2014. We had several meetings in 2015, 2016, up to

1 trial point at the detention center.

2 Q Okay. Do you remember how many meetings you had?

3 A About 14.

4 Q Okay.

5 A Or more. That doesn't count meeting him at the
6 courthouse conference areas.

7 Q Okay. Did you have any phone calls or did you
8 exchange any letters with Mr. Duckett other than these 14
9 or so meetings?

10 A The general phone calls would go to the Public
11 Defender's Office. I'm generally in my private office.
12 And the messages would be passed on to me. I would either
13 respond by letter or go down to the detention center to
14 talk with him about his concern.

15 Q Okay. Now, Mr. Duckett had a trial. I believe it
16 was earlier in the same week as his plea hearing, but it
17 could have been the week before. Did you represent him at
18 that trial?

19 A Yes. The trial was October the 9th and 10th of 2017,
20 Judge Thomas Cooper.

21 Q Okay. In these meetings that you had with
22 Mr. Duckett, did you explain the elements of the offenses
23 with which he was charged?

24 A Yes, yes.

25 Q Okay. Did he give any indication to you that he

1 didn't understand?

2 A No. He understood. He never denied guilt. He just
3 wanted what he wanted. He wanted me to negotiate for drug
4 court through the Solicitor's Office. And we did that for
5 a while, and the solicitor refused to grant him entrance
6 into the drug court program.

7 Q Okay. When you met with him, did you go over
8 potential sentences he could be facing?

9 A Yes, I did. I received the plea offer from the
10 Solicitor's Office. The original plea offer was received
11 -- was dated 9/25/2015, and a copy was provided to
12 Mr. Duckett. The original plea offer was 15 years on five
13 drug charges, all of them third offenses. He was provided
14 a copy of this plea offer, which he refused the 15 years.

15 Q Okay. Who made the decision to go to trial on the
16 two, the first two offenses?

17 A Mr. Duckett refused the 15. He asked me to continue
18 to ask for drug court. I did. The solicitor went down to
19 -- on July 14, 2016, he went down to a ten years offer.
20 Mr. Duckett refused that ten years. The final offer from
21 the solicitor on the cases was March 23, 2017.
22 Mr. Steinberg offered him five years mandatory minimum.
23 He would reduce the charges from the third offense, and he
24 would recommend five years. Mr. Duckett refused that plea
25 offer.

1 Q Okay. And then he went to trial after that.

2 A Yes. He was placed on the trial docket for the first
3 -- for the two cases that the Solicitor's Office selected
4 which case they would try first.

5 Q Did you recommend him to take that plea offer of five
6 years?

7 A I suggested strongly that he would take the five-year
8 plea offer. We went over his criminal history, his rap
9 sheet several times. In fact, we went over it and we
10 numbered his convictions together, and they were about
11 15-plus convictions. At least six of them were previous
12 drug convictions.

13 Q Okay. Do you remember at Mr. Duckett's trial, tell
14 us a little bit about his -- your motion to be relieved
15 that you made pretrial.

16 A The motion to be relieved was filed by Mr. Duckett.
17 The first motion to be relieved was heard by Judge Verdin
18 on September the 5th, 2017. And then when we got to the
19 courthouse to have the hearing on that motion, Mr. Duckett
20 changed his mind and told the judge he would keep me as
21 his attorney. The second motion for me to be relieved was
22 also heard, and that was denied.

23 Q Okay. What was the basis of those two motions?

24 A He did not get what he thought he should have as far
25 as a recommendation of a plea offer from the Solicitor's

1 Office. He was just adamant that he did not want to go
2 back to the Department of Corrections. He wanted to stay
3 on the street. He wanted the drug court program, which
4 would have been a probationary program for him if
5 accepted.

6 Q Okay. I'm going to present you a transcript. Would
7 you please verify that this is the trial transcript.

8 A Yes.

9 Q All right. And then if you will flip to page 13.
10 I'm looking at about Line 16, and correct me if I'm wrong.

11 A Uh-huh.

12 Q And I'm looking at about Line 16, and correct me if
13 I'm wrong, but this is -- you've made the motion to be
14 relieved and you've explained to the Court why you're
15 making that motion. And Judge Cooper has questioned you
16 about what you've done in preparation for trial, and then
17 he gives his decision. If you will please read from about
18 Line 16 through 20.

19 A Line 16, "THE COURT: It sounds like you've got a
20 lawyer who's done everything she should have done. You
21 say she doesn't have your best interest at heart, but
22 she's been working for you for two years. You know, that
23 sounds sort of hollow to me. It sounds to me you've not
24 -- you're not going to get a continuance. Do you
25 understand that?"

1 Q Okay. And that was the basis for Judge Cooper's
2 denial of that motion.

3 A Yes.

4 Q Okay. After that trial, how did Mr. Duckett get from
5 that trial to a plea hearing?

6 A When he was leaving the courtroom, at the end he
7 informed the judge that he wanted to appeal. The judge
8 told him to tell his attorney. He informed the solicitor
9 in proximity, we're standing up before the bench, and he
10 speaks out to the solicitor that he wants to handle his
11 other pending charges. So we talked to the solicitor
12 after he was taken back in custody, and we arranged to
13 meet a couple days later to see whether Mr. Duckett
14 actually wanted to handle his pending -- the other
15 charges.

16 Q Okay. And he told you he wanted to plead guilty?

17 A Yes.

18 Q Okay. Did you explain to him that he would be
19 pleading guilty to possession and distribution and that
20 both would be third offenses?

21 A Yes.

22 Q Did he give you any indication that he did not
23 understand that?

24 A No.

25 Q After the plea hearing, did he tell you that he

24 Q And as part of that, you indicated there was, I
25 guess, numerous drug charges that he'd been convicted of?

1 A Yes.

2 Q Did you explain to him during this meeting how that
3 would enhance the offenses that he had in front of him?

4 A Yes.

5 Q Do you think he understood that and knew what he was
6 -- I guess understood all about the enhancements after you
7 all finished your meeting?

8 A Yes.

9 Q Is there no question in your mind he knew that when
10 he was pleading, he was doing it to those third offenses?

11 A There's no question in my mind. We went over -- like
12 I said, we went over the rap sheet, we went -- he was
13 convicted of two drug offenses in 1993, two in 1999, one
14 in 2005, one in 2007. So we went over all of his
15 convictions, and he knew that he was facing third offense
16 on every charge that he had. In the negotiations during
17 the plea negotiations, the solicitor would drop back from
18 the third so that we could get the minimum of five on the
19 final offer that he made.

20 Q Okay.

21 A So he had three offers: 15 years, ten years and then
22 five years.

23 Q Okay. So that was 15 years suspended to five is what
24 it was?

25 A No. The first offer the solicitor made was 15

1 because we were still dealing with the third offense on
2 all charges.

3 Q Okay.

4 A So the sentence would have been ten to 30.

5 Q Okay.

6 A So he didn't want that. So the solicitor dropped to
7 ten, which is the minimum, still on the third offense. He
8 didn't want that, so the solicitor dropped back so we
9 could get a second from five to -- with a minimum would be
10 five. He offered him the minimum of five. He refused
11 that.

12 Q Okay. So you have a minimum of five under a second
13 offense, I guess.

14 A Yes.

15 Q Okay. For both the possession of cocaine and the
16 distribution of heroin.

17 A Yes.

18 Q Okay.

19 A And that -- that five would have included the four
20 charges: the two on trial and the two that he eventually
21 plead to.

22 Q Okay.

23 A He would have gotten five on those four.

24 Q Okay. And he decided to turn that down.

25 A Correct.

1 Q Okay. And went and got the current sentence that he
2 got after turning that down.

3 A Yes.

4 Q Okay. So went back to when he turned it down, they
5 let him plead straight up to the third offense for both of
6 the charges at that time.

7 A Yes.

8 MR. ARIAIL: Okay. I have no further questions, Your
9 Honor.

10 THE COURT: All right. Thank you, ma'am. You may
11 step down.

12 Anything further from the State?

13 MR. SMITH: No, Your Honor.

14 THE COURT: Anything further from the applicant?

15 MR. ARIAIL: No, Your Honor.

16 RULING BY THE COURT

17 THE COURT: All right. Thank you.

18 Based upon the testimony and evidence presented, I
19 find that the applicant has failed to present his case. I
20 therefore deny the same and dismiss this petition. That's
21 the order of the Court.

22 Mr. A.G., if you'll prepare an order.

23 (WHEREUPON, proceedings concluded at 3:25 p.m.)
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 3rd day of June, 2019.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 October 8, 2019
19

20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

John A. Duckett, #270743,

Case No.: 2018-CP-23-4596

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED-CLERK OF COURT
 PAUL D. BROWN, III
 CLERK OF COURT

2019 JUL 29 PM 3:36

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on September 5, 2018, by John Anthony Duckett (Applicant). The State (Respondent) filed a Return and Motion for More Definite Statement on May 5, 2019. An evidentiary hearing into the matter was convened before the Honorable Brian M. Gibbons on June 3, 2019, at the Greenville County Courthouse. Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf, and Dorothy A. Manigault (Counsel), Esquire, testified on behalf of Respondent. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL AND FACTUAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of the Greenville County Clerk of Court. During its April of 2016 term, the Greenville County Grand Jury indicted Applicant for possession of cocaine (2015-GS-23-00637). During its July of 2016 term, the Greenville County Grand Jury indicted Applicant for distribution of cocaine (2016-GS-23-05728) and two counts of distribution of heroin (2016-GS-23-05726 and

2016-GS-23-05727). Applicant was also indicted by the Greenville County Grand Jury for distribution of heroin (2016-GS-23-05729). Applicant was represented by Counsel, and Assistant Solicitor Howard L. Steinberg of the Thirteenth Circuit Solicitor's Office prosecuted the cases.¹

On October 12, 2017, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty to possession of cocaine, third offense (2015-GS-23-00637), and distribution of heroin, third offense (2016-GS-23-05726). Judge Verdin sentenced Applicant, in accordance with Mr. Steinberg's recommendation, to ten years for possession of cocaine, third offense, and ten years for distribution of heroin, third offense, with credit for time served, and with both sentences running concurrent with the two sentences imposed by the Honorable G. Thomas Cooper, Jr., after Applicant's trial earlier that same week. On October 13, 2017, Mr. Steinberg dismissed a remaining charge of distribution of heroin (2016-GS-23-05729) pursuant to the plea agreement with Applicant. Applicant did not appeal his guilty pleas and sentences.

CURRENT PROCEEDING

An evidentiary hearing was held on June 3, 2019. At the start of the hearing, Applicant indicated through counsel that he wished to withdraw his Application. Applicant was sworn, and then the Court explained that this would be his "one bite at the apple", that any subsequent PCR action he filed would likely be dismissed due to successiveness, and that Applicant could be exposed to a greater sentence if he were to be successful in his PCR action. Applicant affirmed

¹ On October 9-10, 2017, Applicant appeared before the Honorable G. Thomas Cooper, Jr., and a jury, and was convicted after a jury trial on the charges of distribution of cocaine, third offense (2016-GS-23-05728), and distribution of heroin, third offense (2016-GS-23-05727). Judge Cooper sentenced Applicant to ten years for distribution of heroin, third offense, and ten years for distribution of cocaine, third offense, with credit for time served, and with both sentences running concurrently. Counsel filed a Notice of Appeal on October 19, 2017, for Applicant's two trial convictions: distribution of heroin, third offense (2016-GS-23-5727), and distribution of cocaine, third offense (2016-GS-23-5728). On August 1, 2018, Appellate Defender Lanelle Cantey Durant filed an Anders Brief and Petition to be Relieved as Counsel with the South Carolina Court of Appeals. The Court dismissed the appeal and affirmed in State v. Duckett, 2019-UP-244 (July 3, 2019). The Remittitur has not yet been issued.

that he understood and then decided that he wanted to move forward with the case rather than withdrawing.

In his Application for Post-Conviction Relief, , which was filed by Applicant before he was represented by Mr. Mills, Applicant raised the allegation of ineffective assistance of counsel based on counsel's failure to investigate and also alleged that his rights under the Fourth and Sixth Amendments had been violated. Respondent requested at the start of the evidentiary hearing on June 3, 2019, that Applicant specify for the record the grounds upon which Applicant would move forward at the hearing in light of the lack of supporting details in the Application for Post-Conviction Relief. Applicant specified that he was moving forward only upon the allegations that Counsel was constitutionally ineffective for (1) failing to explain to him the charges that he was facing and (2) failing to explain to him the range of time to which he would be exposed for each charge upon pleading guilty, which have also been identified above, and waived those other allegations made in the Application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action,



and when alleging that trial counsel was constitutionally ineffective, he 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, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). 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 Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).



The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

A handwritten signature in black ink, consisting of a large, stylized capital 'B' followed by a series of loops and a long horizontal stroke extending to the right.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. The allegations are addressed fully below:

Counsel failed to explain the charges that Applicant was facing. Counsel failed to explain to Applicant the range of time to which he was exposed for each charge.

The basis of these allegations is that Applicant claimed at the evidentiary hearing that he did not understand that he was pleading guilty to third offenses for possession of cocaine and distribution of heroin. Applicant claimed that, because he did not understand that he was pleading guilty to third offenses rather than a first offense on each of these charges, he did not understand that he would be exposed to greater time than he would have been without the enhancements.

Applicant testified that Counsel did not explain the charges that he was facing. He testified that he did not know that he was pleading to subsequent offenses. He testified that Counsel did not go over sentencing enhancements with him prior to his plea hearing. He testified that Counsel did go over the charges and the elements with him "somewhat." He testified that Counsel discussed some case law with him. He testified that, at his plea hearing, he believed that he was only pleading guilty to one charge, possession, and that he would be sentenced only to ten years. He testified that he did not agree to plead guilty to distribution of heroin, third offense.

Counsel testified that she has been practicing law for forty-five years, and works with the Greenville County Public Defender's Office. She testified that she met with Applicant at least fourteen times during his case, not including their meetings during court appearances. Counsel also represented Applicant during his trial before Judge Cooper, which had only recently concluded in two guilty verdicts days before Applicant's plea hearing before Judge Verdin. Counsel testified that she would have taken the case to trial if Applicant had not pleaded guilty, and that she would have been prepared to do so. Counsel testified that she discussed the elements



of the charged offenses with Applicant and that he understood the substance of their conversations. She testified that she had explained to Applicant that his past criminal record would result in sentencing enhancements. She testified that she went over all aspects of his charges and potential sentencing ranges, and that Applicant understood that he was facing third offenses on all charges. She testified that she reviewed the discovery and evidence with Applicant. She testified that Applicant wanted to be sentenced in drug court, but that Mr. Steinberg refused to that request. She testified that the solicitor originally offered a fifteen-year plea agreement, but that Applicant rejected that offer. She testified that the solicitor then offered a five-year sentencing recommendation right before Applicant's trial before Judge Cooper, and that Applicant rejected that offer.

This Court finds that Counsel did adequately explain to Applicant the elements of the offenses with which Applicant was charged and the potential sentences to which he could be exposed for the charges. Applicant's own testimony indicates that he and Counsel met in preparation during his case. Applicant's assertions that he did not understand the charges to which he was pleading guilty at his plea hearing before Judge Verdin are contradicted from the transcript of that hearing, which shows that the charges were verbally presented to him at the plea hearing and that he affirmed at the time that he understand the charges, the potential sentences that he could face for each in light of applicable sentencing enhancements, and the consequences of pleading guilty. Notably, Judge Verdin told Applicant at the plea hearing that both charges were third offenses, and Applicant affirmed that that was his understanding. The plea hearing transcript also shows that Applicant affirmed to Judge Verdin, while under oath, that he had discussed the matter with Counsel and was happy with her representation of him. Furthermore, Applicant's



allegations are contradicted by the more credible testimony provided by Counsel at the evidentiary hearing. On all of his allegations, Applicant's testimony is less credible than Counsel's.

Applicant has failed to meet his burden in establishing the constitutional ineffectiveness of counsel as to these allegations since he has not shown either deficiency or prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the 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.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's 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 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

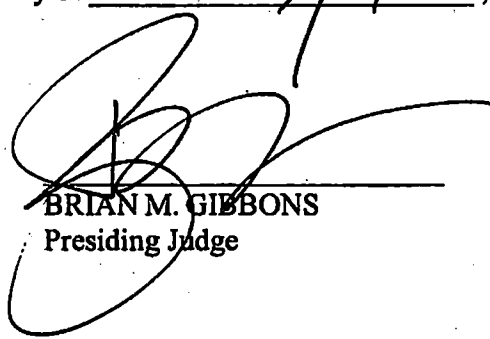


IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of 7/19, 2019.

2, South Carolina


BRIAN M. GIBBONS
Presiding Judge

Copy mailed to
Attorney <u>General / Anai</u>
on <u>7 / 29 / 2019</u>

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on

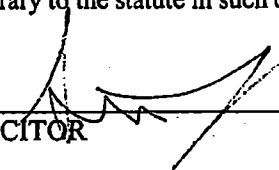
APR 19 2016

the Grand Jurors of Greenville

County present upon their oath:

That JOHN ANTHONY DUCKETT did in Greenville County, on or about the 20th day of December 2014, willfully and unlawfully have in his possession and under his control a quantity of Cocaine Base (Crack Cocaine), a controlled substance. This is in violation of §44-53-375 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.


SOLICITOR

BAR # 79870

WITNESSES

R E Harvell

Greenville Police Department

12/21/2014

ARREST WARRANT NUMBER
2014A2320603105

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-23-
SLO

000637

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2015

THE STATE

vs.

JOHN ANTHONY DUCKETT

navigan

Indictment for

3009

POSSESSION OF COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375

ENTERED
ACCT

RECEIVED

FEB 16 2015

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF HEROIN

At a Court of General Sessions, convened on

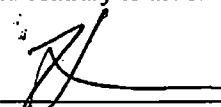
the Grand Jurors of Greenville

County present upon their oath:

JUL 26 2016

That JOHN ANTHONY DUCKETT did in Greenville County, on or about the 10th day of June 2015, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Heroin, a controlled substance, such distribution not having been authorized by law. This is 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.


SOLICITOR

BAR # 14082

WITNESSES

J P Bastoni

Greenville County Sheriffs Office

6/11/2015

ARREST WARRANT NUMBER

2015A2330204946

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
HLS

005726

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

2016
TERM 2015

THE STATE

vs.

JOHN ANTHONY DUCKETT

Indictment for

0185

DISTRIBUTION OF HEROIN

VIOLATION § 44-53-0370

ENTERED
ACCT

FILED

JUL 07 2016

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF HEROIN

At a Court of General Sessions, convened on

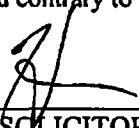
JUL 26 2016

the Grand Jurors of Greenville

County present upon their oath:

That JOHN ANTHONY DUCKETT did in Greenville County, on or about the 11th day of June 2015 distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Heroin, a controlled substance, such distribution not having been authorized by law. This is 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.


SOLICITOR

BAR # 14082

WITNESSES

J P Bastoni

Greenville County Sheriffs Office

6/11/2015

ARREST WARRANT NUMBER

2015A2330204976

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 10/10/2017

DOCKET NO. 2016-GS-23-
HLS

005727

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2015

THE STATE

vs.

JOHN ANTHONY DUCKETT

Indictment for

0185

DISTRIBUTION OF HEROIN

VIOLATION § 44-53-0370

**ENTERED
ACCT.**

FILED

JUL 07 2016

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

At a Court of General Sessions, convened on JUL 26 2015 the Grand Jurors of Greenville

County present upon their oath:

That JOHN ANTHONY DUCKETT did in Greenville County, on or about the 11th day of June 2015, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such distribution not having been authorized by law.

This is in violation of §44-53-375 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.


SOLICITOR

BAR # 14082

WITNESSES

J P Bastoni

Greenville County Sheriffs Office

6/11/2015

ARREST WARRANT NUMBER
2015A2330204977

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Subscribed
Foreperson of Petit Jury

Date: 10/10/2017

DOCKET NO. 2016-GS-23-
HLS

005728

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

2016
TERM 2015

THE STATE

vs.

JOHN ANTHONY DUCKETT

Indictment for

3039

**DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)**

VIOLATION § 44-53-0375

**ENTERED
ACCT**

FILED

JUL 07 2015

**Clerk of Court
Greenville County**