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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Thomas A. Russo, Circuit Court Judge

TAIWAN J. HARDY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001319

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 TAIWAN JEVON HARDY,)
)
 DEFENDANT.)
 _____)

2014-GS-42-05877

TRANSCRIPT OF RECORD

JULY 22 - 23, 2015
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROGER L. COUCH

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

HUNTER BLOUIN, ASSISTANT SOLICITOR
EDWARD HUNTER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

WILLIAM BEAN, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 **THE COURT:** We're on the record in the case of the
2 State of South Carolina versus Taiwan J. Hardy, case number
3 2014-GS-42-5877. I have been presented with an indictment,
4 which was true billed by the Grand Jury in the case for the
5 distribution of cocaine base.

6 Defendant is present represented by his attorney, Mr.
7 Bean. Mr. Bean, has your client been arraigned on this
8 charge?

9 **MR. BEAN:** I believe so, Your Honor.

10 **THE COURT:** Well, does he, at this time, waive
11 arraignment?

12 **MR. BEAN:** We do, Your Honor.

13 **THE COURT:** And I assume he is pleading not guilty to
14 the charge. Am I correct?

15 **MR. BEAN:** That is correct.

16 **THE COURT:** Is he requesting trial by jury?

17 **MR. BEAN:** He is.

18 **THE COURT:** Now, Mr. Bean, do you have a list of
19 potential witnesses and/or voir dire questions that you'd
20 like to submit?

21 **MR. BEAN:** Your Honor, the only witness that I may call
22 is my client.

23 **THE COURT:** I see.

24 **MR. BEAN:** And the only request for voir dire that I
25 would have would be the ones that Your Honor normally

1 charges. I don't have any specifics ---

2 **THE COURT:** All right.

3 **MR. BEAN:** --- other than that.

4 **THE COURT:** All right. That's fine. All right. Now,
5 are there any motions by the State before we select a jury
6 in the case?

7 **MR. BLOUIN:** Your Honor, the State would just like to
8 put on the record, with confirmation, of course, from the
9 Defense and the Defendant that this is a trial -- that
10 notice of a life sentence pursuant to 17-25-45(A) has been
11 served on both the Defendant and the Defense attorney, that
12 occurred back in March, and that we would just mark this as
13 a Court exhibit.

14 **THE COURT:** All right. It'll be marked as a Court's
15 exhibit not to go to the jury. Any objections, Mr. Bean?

16 **MR. BEAN:** No, Your Honor.

17 **THE COURT:** All right. Please mark it. Mr. Bean, do
18 you acknowledge having received that notice, you and your
19 client?

20 **MR. BEAN:** We do, Your Honor.

21 **THE COURT:** All right. Thank you.

22 **MR. BLOUIN:** And, Your Honor, just for the record as
23 well, the State would ask for acknowledgment that an offer
24 was extended in this case, ---

25 **THE COURT:** Just one second. Let's let her mark that,

1 and then we'll move on.

2 **MR. BLOUIN:** Yes, sir.

3 (Whereupon Court's exhibit 1 was marked)

4 **THE COURT:** Now, Mr. Blouin.

5 **MR. BLOUIN:** The State would just like to acknowledge
6 for the record that there were two plea offers made in this
7 case. The first one was for a negotiated eighteen year
8 sentence. The second was for a range of fifteen to thirty
9 year sentence and that that has been -- both offers have
10 been rejected by the Defendant.

11 **THE COURT:** All right. Mr. Bean, did you, in fact,
12 receive those offers from the State?

13 **MR. BEAN:** I did, Your Honor.

14 **THE COURT:** And did you transmit those to your client?

15 **MR. BEAN:** Yes, I did.

16 **THE COURT:** Has he -- apparently he has rejected the
17 offers and continues to do so?

18 **MR. BEAN:** He does.

19 **THE COURT:** Mr. Hardy, I'm going to ask you to please
20 stand. Please swear Mr. Hardy for me.

21 **MADAME CLERK:** Yes, sir. Please raise your right hand.
22 Do you solemnly swear or affirm the testimony you're about
23 to give will be the truth, the whole truth and nothing but
24 the truth so help you God?

25 **MR. HARDY:** Yes, ma'am.

1 **MADAME CLERK:** Thank you.

2 **THE COURT:** Mr. Hardy, do you acknowledge having
3 received those offers for a plea in this case?

4 **MR. HARDY:** Yes, sir.

5 **THE COURT:** Have you had sufficient time to discuss
6 those offers with your lawyer?

7 **MR. HARDY:** Yes, sir.

8 **THE COURT:** He indicates that you have decided not to
9 accept those offers. Is that true?

10 **MR. HARDY:** Yes, sir.

11 **THE COURT:** And does that remain true at this time?

12 **MR. HARDY:** Yes, sir.

13 **THE COURT:** All right. Thank you, sir. You can be
14 seated. Anything further from the State?

15 **MR. BLOUIN:** Not from the State, Your Honor.

16 **THE COURT:** Anything from the Defense before we go into
17 jury selection?

18 **MR. BEAN:** No, Your Honor.

19 **THE COURT:** All right. Mr. Ruth, you may bring the
20 jury around.

21 **THE BAILIFF:** Yes, sir.

22 **MR. BEAN:** Your Honor, my client has family here that
23 he wanted to come in, but they weren't sure they could come
24 in. And ---

25 **THE COURT:** How many people are we talking about?

1 **MR. BEAN:** Three or four, not a big crowd.

2 **THE COURT:** All right. They can sit on the back row of
3 the courtroom just as long as they don't -- there's space
4 between them and the jury.

5 **MR. BEAN:** Yes, sir. May I go and tell them ---

6 **THE COURT:** Yes. Have them sit on the back row.

7 **MR. BEAN:** Yes, sir.

8 (Pause)

9 **THE BAILIFF:** Your Honor, ---

10 **THE COURT:** I've allowed those people to sit on the
11 back row.

12 **THE BAILIFF:** Okay. All right, sir.

13 **THE COURT:** Thank you.

14 (Pause)

15 (Whereupon the jury panel entered the courtroom at 9:54
16 am)

17 **THE COURT:** Mr. Ruth, do we have everybody?

18 **THE BAILIFF:** Yes, sir.

19 **THE COURT:** Thank you, sir. Good morning, ladies and
20 gentlemen. We're about to begin the trial of the case of
21 the State of South Carolina versus Taiwan J. Hardy. In this
22 case I have been presented with an indictment in case number
23 14-GS-42-5877. The indictment is for the charge of
24 distribution of cocaine base.

25 I'm going to go over the indictment with you again. My

1 sole purpose in doing so is to inform you of the charge to
2 be tried, the allegations that have been made so that
3 perhaps you can more fully answer the questions I'm about to
4 ask you that pertain specifically to this case.

5 The indictment reads in part that Taiwan J. Hardy did
6 in Spartanburg County on or about March 10 of 2014
7 manufacture, distribute, dispense, deliver, purchase or
8 otherwise aid, abet, attempt or conspire to manufacture,
9 distribute, dispense, deliver, or purchase or possess with
10 the intent to manufacture, distribute, dispense, deliver or
11 purchase a quantity of cocaine base, a schedule II
12 controlled substance under the provisions of code section
13 44-53-375 of the code of laws of South Carolina 1976 as
14 amended against the peace and dignity of the State and
15 contrary to the statute in such case made and provided.

16 Now, again, an indictment is simply the document that
17 informs us of the charges. It's not evidence in the case
18 and cannot be used by a jury in any fashion in determining
19 the guilt or the innocence of a defendant named in the
20 indictment. Again, I've read it to you for purposes of your
21 information.

22 At this time I'm going to ask that the attorneys who
23 will be involved in this trial introduce themselves to you.
24 And in the case of the Defense, I'll ask that the Defendant
25 be introduced to you. So first of all, for the State.

1 **MR. BLOUIN:** My name is Hunter Blouin. I'm an
2 assistant solicitor with the Seventh Circuit.

3 **MR. HUNTER:** And my name is Eddie Hunter. I'm also an
4 assistant solicitor with the Seventh Circuit here in
5 Spartanburg and Cherokee Counties.

6 **THE COURT:** Thank you. For the Defense.

7 **MR. BEAN:** Good morning. My name is Bill Bean. And I
8 represent the Defendant in this case, Mr. Taiwan Hardy.

9 **THE COURT:** Mr. Hardy, if you'll stand and face the
10 jury panel so they can put a face with the name. Thank you,
11 sir.

12 (Whereupon the Defendant faced the jury panel)

13 **THE COURT:** Now, ladies and gentlemen, it is important
14 that the information that you provide during my questioning
15 is truthful information since decisions are made concerning
16 jury selection based on that information. So it's important
17 that that information be accurate. So at this time I'll ask
18 that the clerk place you under oath concerning your
19 responses to the Court in this case. Madame Clerk.

20 **MADAME CLERK:** Yes, sir. Please stand and raise your
21 right hands. Do you solemnly swear or affirm the answers
22 you're about to give will be the truth, the whole truth and
23 nothing but the truth so help you God?

24 **JURY PANEL:** I do.

25 **MADAME CLERK:** Thank you. You may be seated.

1 **THE COURT:** If there was any member of the jury panel
2 who either failed or refused to take the oath just
3 administered by the clerk, I'd ask that you please stand.

4 (No response)

5 **THE COURT:** The record will reflect that all potential
6 jurors have now been sworn concerning their responses in
7 this case. We'll follow the same procedure that we followed
8 in the past. I'll be asking questions. I'll ask that you
9 stand. If you have a response, I'll call on you
10 individually. I'll need your name and number before we
11 discuss your response.

12 The first question I have, is there any member of this
13 jury panel who has ever been related by marriage or are you
14 related by blood to the Defendant, Taiwan Hardy? If that's
15 true, please stand.

16 (No response)

17 **THE COURT:** Is there any member of the jury panel who
18 has ever had a close personal or a social relationship or
19 any business relationship with the Defendant, Taiwan Hardy?
20 If that's true, please stand.

21 (No response)

22 **THE COURT:** As to the attorneys that are involved in
23 this case, has any member of the jury panel ever been
24 represented by any of the attorneys involved in this case or
25 have they ever appeared on the other side of a legal matter

1 from you? If that's true, please stand.

2 (No response)

3 **THE COURT:** Is there any member of the jury panel who
4 has ever been related by marriage, or are you related by
5 blood or have you ever had a close social, personal or
6 business relationship with any of the attorneys that are
7 involved in the case? If that's true, please stand. Name
8 and number, sir.

9 **MR. BANKS:** Kelly Banks, juror number 11. I've known
10 Mr. Bean for some time.

11 **THE COURT:** Okay. So he's an acquaintance of yours?

12 **MR. BANKS:** That's correct.

13 **THE COURT:** Now if you were on the jury and he were to
14 serve as the attorney, would that affect your impartiality
15 ---

16 **MR. BANKS:** No, sir.

17 **THE COURT:** --- in this matter? Thank you very much.
18 Anyone else?

19 (No response)

20 **THE COURT:** I'm going to list a series of people who
21 have been identified to me as possible witnesses in the
22 case. I want you to listen carefully to their names. I
23 will ask you about these individuals as a group.

24 First of all, Investigator Travis McJunkin. He's with
25 the Spartanburg County Sheriff's Office. Next is Mr. Robert

1 Rosenberg. He's also with the Spartanburg County Sheriff's
2 Office. Next is Ms. Melissa Hendricks. She is with the
3 Spartanburg County Sheriff's Office. Next is Mr. Mike
4 Jones. He is with the Spartanburg County Sheriff's Office.
5 Next is Brandy Cannon, an individual. And next is Jeana
6 Blackston, an individual.

7 Now as to the people that I've just named as possible
8 witnesses in this case, is there any member of the jury
9 panel who has ever been related by marriage or are you
10 related by blood or have you ever had a close social,
11 personal or business relationship with any of the
12 individuals that I have named as possible witnesses in the
13 case? If that's true, please stand.

14 (No response)

15 **THE COURT:** Is there any member of the jury panel or a
16 member of your immediate family who has ever been arrested
17 for, charged with or convicted with any crime involving
18 illegal drugs? If that is true, please stand. Name and
19 number, sir.

20 **MR. EDWARDS:** Travis Edwards, 45.

21 **THE COURT:** Your situation?

22 **MR. EDWARDS:** My mother was charged with drug related
23 charges.

24 **THE COURT:** Is that case over with now?

25 **MR. EDWARDS:** Yes, sir.

1 **THE COURT:** Now, would that case affect your
2 impartiality if you were serving on the jury?

3 **MR. EDWARDS:** Yes, sir.

4 **THE COURT:** Okay. I'm going to excuse you from the
5 case. You can be seated. You no longer have to answer my
6 questions. Name and number, sir.

7 **MR. LITTLEJOHN:** Franklin Littlejohn, 92.

8 **THE COURT:** Yes, sir.

9 **MR. LITTLEJOHN:** My son.

10 **THE COURT:** Has been charged with a drug offense?

11 **MR. LITTLEJOHN:** Yes.

12 **THE COURT:** Is that case ongoing or is it over?

13 **MR. LITTLEJOHN:** It's over.

14 **THE COURT:** All right. Would that fact affect your
15 ability to be fair and impartial in this trial?

16 **MR. LITTLEJOHN:** No, sir.

17 **THE COURT:** Thank you, sir. Name and number, please,
18 ma'am.

19 **MS. HANLEY:** Maggie Hanley, 65.

20 **THE COURT:** Yes, ma'am.

21 **MS. HANLEY:** My father was charged with simple
22 possession of marijuana.

23 **THE COURT:** All right. And is that case over with now?

24 **MS. HANLEY:** Yes, sir.

25 **THE COURT:** All right. Would that affect your

1 impartiality if you were to serve on the jury?

2 **MS. HANLEY:** No, sir.

3 **THE COURT:** Thank you, ma'am. Name and number, please,
4 ma'am.

5 **MS. GEORGE:** Yes, Your Honor. Laura George.

6 **THE COURT:** Yes, ma'am.

7 **MS. GEORGE:** Juror 55.

8 **THE COURT:** Um-hum (affirmative).

9 **MS. GEORGE:** And this is embarrassing. I, myself, was
10 -- caught simple possession of marijuana.

11 **THE COURT:** All right. That case over with?

12 **MS. GEORGE:** Yes, sir, over ten years ago.

13 **THE COURT:** Okay. Now, would that -- let me ask you,
14 would that case affect your ability to be fair and impartial
15 in this ---

16 **MS. GEORGE:** Absolutely not.

17 **THE COURT:** All right. Thank you. Anyone else?

18 (No response)

19 **THE COURT:** Has any member of the jury panel or a
20 member of your immediate family ever been addicted to
21 narcotics? If that is true, please stand. Name and number,
22 ma'am.

23 **MS. HALFORD:** Delores Halford, number 64.

24 **THE COURT:** Yes, ma'am.

25 **MS. HALFORD:** I've had a sister and a daughter that was

1 addicted.

2 **THE COURT:** All right. Would that fact affect your
3 impartiality if you were serving on this jury?

4 **MS. HALFORD:** No.

5 **THE COURT:** Thank you, ma'am. You can be seated. Name
6 and number, please, ma'am.

7 **MS. BAUSS:** Celia Bauss, number 12. One of my
8 daughters.

9 **THE COURT:** All right. Would that affect your
10 impartiality in this matter?

11 **MS. BAUSS:** No, sir.

12 **THE COURT:** Thank you, ma'am. Name and number, please,
13 ma'am.

14 **MS. SEAY:** Jill Seay, 145.

15 **THE COURT:** Yes, ma'am.

16 **MS. SEAY:** My ex-husband.

17 **THE COURT:** Would that affect your impartiality if you
18 were on this jury?

19 **MS. SEAY:** No, sir.

20 **THE COURT:** Thank you, ma'am. Name and number, please.

21 **MS. STEPHENSON:** Mollie Stephenson, 153.

22 **THE COURT:** Yes, ma'am.

23 **MS. STEPHENSON:** My mother and my father.

24 **THE COURT:** Would that affect your impartiality in this
25 case if you were serving on the jury?

1 MS. STEPHENSON: No, sir.

2 THE COURT: Thank you. Sir, name and number.

3 MR. DILLARD: Johnny Dillard, 40.

4 THE COURT: Yes, sir. Your situation?

5 MR. DILLARD: My brother was addicted.

6 THE COURT: I see. Would that affect your impartiality
7 if you were chosen?

8 MR. DILLARD: No, sir.

9 THE COURT: Thank you, sir. Name and number, sir.

10 MR. KAMMERER: Bernard Kammerer, 85.

11 THE COURT: Yes, sir.

12 MR. KAMMERER: My father had a cocaine addiction.

13 THE COURT: Would that affect your impartiality if you
14 were on the jury?

15 MR. KAMMERER: No.

16 THE COURT: Thank you. Ma'am, name and number.

17 MS. HARRIS: Amy Harris, 66.

18 THE COURT: Yes, ma'am.

19 MS. HARRIS: Brother.

20 THE COURT: Would that affect your impartiality in the
21 matter?

22 MS. HARRIS: No.

23 THE COURT: Thank you, ma'am. Name and number, please,
24 ma'am.

25 MS. GEORGE: Laura George, 55.

1 **THE COURT:** Yes, ma'am.

2 **MS. GEORGE:** My mother.

3 **THE COURT:** Would that affect your impartiality in this
4 case?

5 **MS. GEORGE:** No, sir.

6 **THE COURT:** Thank you. Anyone else?

7 (No response)

8 **THE COURT:** Has any member of the jury panel had any
9 kind of experience with a police officer, state trooper,
10 federal agent or other law enforcement agency or officer
11 that might affect your ability to be fair and impartial in
12 the trial of this case? If that's true, please stand.

13 (No response)

14 **THE COURT:** Has any member of the jury panel ever been
15 involved in any political activity or been a member of any
16 organization that seeks the legalization of currently
17 illegal drugs? Such groups would be known as, for example,
18 a group that is known as NORML. If you have ever been a
19 member of such a group or have been involved in such
20 activities, please stand.

21 (No response)

22 **THE COURT:** Is there any member of the jury panel who
23 has the belief that the State of South Carolina lacks the
24 authority or the jurisdiction to make certain drugs illegal?
25 If that's true, please stand.

1 (No response)

2 **THE COURT:** Has any member of the jury panel gathered
3 any information such that it would have caused you to either
4 form or express an opinion about the issues that would be
5 involved in this trial? If that's true, please stand.

6 (No response)

7 **THE COURT:** Is there any member of the jury panel who
8 is aware of a bias or prejudice that you might have either
9 for or against the State or the Defendant such that it would
10 make you unable to be impartial in this matter? If that's
11 true, please stand.

12 (No response)

13 **THE COURT:** Is there any member of the jury panel who
14 is a member or a contributor to groups which has as its
15 primary concern the promotion of law enforcement and/or
16 victim's rights? The groups would include, but not be
17 limited to, Mothers Against Drunk Driving, Students Against
18 Drunk Driving, Citizens Against Violent Crime, the South
19 Carolina Trooper's Association, the South Carolina Sheriff's
20 Association or other similarly oriented organizations. If
21 you're a member of or a contributor to such a group, please
22 stand.

23 (No response)

24 **THE COURT:** Does any member of the jury panel know of
25 any reason whatsoever why he or she should not serve as a

1 juror in this case with particular emphasis being placed
2 upon your ability to be both fair and impartial to both the
3 State and the Defense? If you know of such a reason, please
4 stand.

5 (No response)

6 **THE COURT:** Any additional questions from the State?

7 **MR. BLOUIN:** May we approach quickly, Your Honor?

8 **THE COURT:** You may.

9 (Whereupon a bench conference was held off the record
10 in the presence of the jury panel, but out of their hearing)

11 **THE COURT:** Juror 92, if you'll stand, please. You
12 indicated that your son had been prosecuted, I believe, for
13 illegal drug prosecution.

14 **MR. LITTLEJOHN:** Yes.

15 **THE COURT:** Was that in Spartanburg County?

16 **MR. LITTLEJOHN:** Yes.

17 **THE COURT:** Okay. Thank you, sir. Would it affect
18 your impartiality, again?

19 **MR. LITTLEJOHN:** No, sir.

20 **THE COURT:** Thank you, sir. You can be seated. Any
21 other questions from the State?

22 **MR. HUNTER:** May we approach one more time?

23 **THE COURT:** Yes, sir.

24 (Whereupon a bench conference was held off the record
25 in the presence of the jury panel, but out of their hearing)

1 **THE COURT:** Juror 92, one more question for you, if
2 you'll stand. As far as you know, are either of the two
3 solicitors that are involved in this case, are they involved
4 in your son -- were they involved in your son's prosecution?

5 **MR. LITTLEJOHN:** I can't remember.

6 **THE COURT:** You don't know?

7 **MR. LITTLEJOHN:** I don't remember.

8 **THE COURT:** So it wouldn't affect your impartiality, I
9 guess, if you don't know?

10 **MR. LITTLEJOHN:** No, sir.

11 **THE COURT:** Okay. Thank you, sir. Have a seat. Any
12 other questions from the State?

13 **MR. BLOUIN:** None from the State, Your Honor.

14 **THE COURT:** Any other from the Defense?

15 **MR. BEAN:** No, Your Honor. Thank you.

16 **THE COURT:** All right. I'll declare the remaining
17 members of the jury panel to be qualified to serve in this
18 case. I'm going to ask that the clerk prepare a list of
19 potential jurors for us at this time.

20 In this case, strikes will be five for the State, five
21 for the Defense. We'll pick one alternate with the State
22 having one strike, Defense having two.

23 (Pause)

24 **THE COURT:** Again, I will ask you when your name is
25 called to come forward to the bailiff in front, face the

1 back doors in the courtroom. Bring with you any personal
2 belongings. Madame Clerk, you can begin the jury selection
3 process.

4 **MADAME CLERK:** Yes, sir. Juror 106, Vickie McKelvey.

5 (Whereupon Vickie McKelvey, a white female, came
6 forward)

7 **MADAME CLERK:** What say the State?

8 **MR. BLOUIN:** Please present the juror.

9 **MADAME CLERK:** What say the Defense?

10 **MR. BEAN:** Please excuse the juror.

11 **MADAME CLERK:** Juror 19, Avery Brock.

12 (Whereupon Avery Brock, a white male, came forward)

13 **MADAME CLERK:** What say the State?

14 **MR. BLOUIN:** Please present the juror.

15 **MADAME CLERK:** What say the Defense?

16 **MR. BEAN:** Please excuse the juror.

17 **MADAME CLERK:** Juror 143, Clifford Seager.

18 (Whereupon Clifford Seager, a white male, came forward)

19 **MADAME CLERK:** What say the State?

20 **MR. BLOUIN:** Please excuse this juror.

21 **MADAME CLERK:** Juror 81, William Johnson.

22 (Whereupon William Johnson, a white male, came forward)

23 **MADAME CLERK:** What say the State?

24 **MR. BLOUIN:** Please present this juror.

25 **MADAME CLERK:** What say the Defense?

1 **MR. BEAN:** Please swear the juror.

2 **MADAME CLERK:** Juror 87, Phol Lan.

3 (Whereupon Phol Lan, an Asian male, came forward)

4 **MADAME CLERK:** What say the State?

5 **MR. BLOUIN:** Please present the juror.

6 **MADAME CLERK:** What say the Defense?

7 **MR. BEAN:** Please swear the juror.

8 **MADAME CLERK:** Juror 133, Scott Quinn.

9 (Whereupon Scott Quinn, a white male, came forward)

10 **MADAME CLERK:** What say the State?

11 **MR. BLOUIN:** Please present this juror.

12 **MADAME CLERK:** What say the Defense?

13 **MR. BEAN:** Please excuse this juror.

14 **MADAME CLERK:** Juror 68, Matthew Hayes.

15 (Whereupon Matthew Hayes, a white male, came forward)

16 **MADAME CLERK:** What say the State?

17 **MR. BLOUIN:** Please present this juror.

18 **MADAME CLERK:** What say the Defense?

19 **MR. BEAN:** Please swear the juror.

20 **MADAME CLERK:** Juror 48, Timothy Fair.

21 (Whereupon Timothy Fair, a black male, came forward)

22 **MADAME CLERK:** What say the State?

23 **MR. BLOUIN:** Please present the juror.

24 **MADAME CLERK:** What say the Defense?

25 **MR. BEAN:** Please swear the juror.

1 **MADAME CLERK:** Juror 150, Clayton Smith.

2 (Whereupon Clayton Smith, a white male, came forward)

3 **MADAME CLERK:** What say the State?

4 **MR. BLOUIN:** Please present the juror.

5 **MADAME CLERK:** What say the Defense?

6 **MR. BEAN:** Please swear the juror.

7 **MADAME CLERK:** Juror number 4, Jonathan Alexander.

8 (Whereupon Jonathan Alexander, a white male, came
9 forward)

10 **MADAME CLERK:** What say the State?

11 **MR. BLOUIN:** Please present the juror.

12 **MADAME CLERK:** What say the Defense?

13 **MR. BEAN:** Please excuse the juror.

14 **MADAME CLERK:** Juror 64, Delores Halford.

15 (Whereupon Delores Halford, a white female, came
16 forward)

17 **MADAME CLERK:** What say the State?

18 **MR. BLOUIN:** Please present the juror.

19 **MADAME CLERK:** What say the Defense?

20 **MR. BEAN:** Please excuse the juror.

21 **THE COURT:** I have five strikes for the Defense.

22 **MADAME CLERK:** Juror 117, Kar Ng.

23 (Whereupon Kar Ng, an Asian female, came forward)

24 **MADAME CLERK:** What say the State?

25 **MR. BLOUIN:** Please excuse this juror.

1 **MADAME CLERK:** Juror 152, Elizabeth Steifle.

2 (Whereupon Elizabeth Steifle, a white female, came
3 forward)

4 **MADAME CLERK:** What say the State?

5 **MR. BLOUIN:** Please present the juror.

6 **MADAME CLERK:** What say the Defense?

7 **MR. BEAN:** Please seat the juror.

8 **MADAME CLERK:** Juror 116, Darren Ng.

9 (Whereupon Darren Ng, an Asian male, came forward)

10 **MADAME CLERK:** What say the State?

11 **MR. BLOUIN:** Please present this juror.

12 **MADAME CLERK:** What say the Defense?

13 **MR. BEAN:** Please swear the juror.

14 **MADAME CLERK:** Juror 52, Victoria Gaffney.

15 (Whereupon Victoria Gaffney, a black female, came
16 forward)

17 **MADAME CLERK:** What say the State?

18 **MR. BLOUIN:** Please excuse the juror.

19 **MADAME CLERK:** Juror 122, Wofford O'Sullivan.

20 (Whereupon Wofford O'Sullivan, a white male, came
21 forward)

22 **MADAME CLERK:** What say the State?

23 **MR. BLOUIN:** Please present the juror.

24 **MADAME CLERK:** What say the Defense?

25 **MR. BEAN:** Please swear the juror.

1 **MADAME CLERK:** Juror number 8, Adam Babcock.

2 (Whereupon Adam Babcock, a white male, came forward)

3 **MADAME CLERK:** What say the State?

4 **MR. BLOUIN:** Please present the juror.

5 **MADAME CLERK:** What say the Defense?

6 **MR. BEAN:** Please swear the juror.

7 **MADAME CLERK:** Juror number 5, Vincent Allsbrook.

8 (Whereupon Vincent Allsbrook, a white male, came
9 forward)

10 **MADAME CLERK:** What say the State?

11 **MR. BLOUIN:** Please present the juror.

12 **MADAME CLERK:** What say the Defense?

13 **MR. BEAN:** Please swear the juror.

14 **MADAME CLERK:** Juror 164, James Turner, II.

15 (Whereupon James Turner, II, a white male, came
16 forward)

17 **MADAME CLERK:** What say the State?

18 **MR. BLOUIN:** Please present the juror.

19 **MADAME CLERK:** What say the Defense?

20 **MR. BEAN:** Please swear the juror.

21 **MADAME CLERK:** Juror 57, Wendell Glenn.

22 (Whereupon Wendell Glenn, a black male, came forward)

23 **MADAME CLERK:** What say the State?

24 **MR. BLOUIN:** Please present the juror.

25 **MADAME CLERK:** What say the Defense?

1 **MR. BEAN:** Please swear the juror.

2 **MADAME CLERK:** And for the alternate, juror 172, Joshua
3 Winfree.

4 (Whereupon Joshua Winfree, a white male, came forward)

5 **MADAME CLERK:** What say the State?

6 **MR. BLOUIN:** Please excuse this juror.

7 **MADAME CLERK:** Juror 113, Michael Nanna.

8 (Whereupon Michael Nanna, a white male, came forward)

9 **MADAME CLERK:** What say the State?

10 **MR. BLOUIN:** Please present the juror.

11 **MADAME CLERK:** What say the Defense?

12 **MR. BEAN:** Please excuse the juror.

13 **MADAME CLERK:** Juror 176, James Shealey.

14 (Whereupon James Shealey, a white male, came forward)

15 **MADAME CLERK:** What say the State?

16 **MR. BLOUIN:** Please present this juror.

17 **MADAME CLERK:** What say the Defense?

18 **MR. BEAN:** Please excuse the juror.

19 **MADAME CLERK:** Juror number 2, Mark Aguillard.

20 (Whereupon Mark Aguillard, a white male, came forward)

21 **MADAME CLERK:** What say the State?

22 **MR. BLOUIN:** Please present this juror.

23 **MADAME CLERK:** What say the Defense?

24 **MR. BEAN:** Please swear the juror.

25 **MADAME CLERK:** Jury selection has been completed.

1 **THE COURT:** Thank you, Madame Clerk. Any objections to
2 the jury selection process from the State?

3 **MR. BLOUIN:** None from the State, Your Honor.

4 **THE COURT:** Any from the Defense?

5 **MR. BEAN:** No, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen, those of
7 you who were not selected in the case, I'm going to release
8 you to go back around to the jury assembly room. I want to
9 thank you very much for your cooperation with me this
10 morning. I'm not sure what the situation is with Judge
11 Cole, but I'm sure they'll let you know when you get around
12 there. So at this time thank you very much. You're free to
13 go. Please leave quietly as you're going.

14 (Whereupon the remaining jurors exited the courtroom)

15 **THE COURT:** Ladies and gentlemen, you have been
16 selected, or I should say lady and gentlemen, you have been
17 selected as jurors in this case. I had one case many years
18 ago in another county where I had an all female jury. This
19 is the first time we almost got all males.

20 But anyway, you've been selected as jurors in this
21 case. There are some preliminary issues I have to deal with
22 with the lawyers that do not require your presence in
23 getting the case ready to actually start the trial of the
24 case. So for that reason I'm going to release you at this
25 time.

1 You get a real long lunch break today. You'll be asked
2 to come back and be in the jury room at 1:30 this afternoon.
3 We should be in a position to start the case at that time.

4 In the meantime let me go over some things with you so
5 that I'm sure we've got a good understanding on these. I
6 see a couple of faces from my first jury. So you've heard
7 my speeches on these things before, but I'll go ahead and
8 give them to the newcomers.

9 As you leave the courthouse, we've gone to a lot of
10 trouble to pick a jury that has an open mind concerning this
11 case. And I hope you realize that even if you have just a
12 normal conversation with someone about the issues that are
13 involved in this case or perhaps the personalities that are
14 involved in this case, something of that nature, if you had
15 that conversation it might begin to color your ultimate
16 decision in this case based on what that person says to you.
17 And that has nothing to do with the evidence in this case.

18 So what I'm going to ask you to do is don't discuss
19 this case or anything about this case with anyone, including
20 your fellow jurors until such time as I ask you to begin
21 your deliberations. I want you to keep an open mind as to
22 all the issues that might be involved in this case until
23 you've heard the arguments by the lawyers, and the testimony
24 from the witnesses and my charge concerning the law. Then
25 and only then will you have all of the tools you need to

1 begin your discussions about the issues involved in this
2 case.

3 So if a family member asks you about what's going on,
4 it's okay to say I've been picked on a jury in a trial of a
5 case. And then you want to start talking about the weather,
6 sports or whatever else you want to talk about. Don't talk
7 anymore about this case. That's all they need to know at
8 this point in time, you're involved in a case and you can't
9 talk about it.

10 Now, also when you come back to the courtroom you'll be
11 taking an oath, the standard oath that jurors take. And it
12 says that you're going to decide the case based solely upon
13 the law and the evidence presented in the case. The only
14 place in this green earth that you're going to hear any of
15 the law and any of the evidence in this matter will be in
16 this courtroom during the trial. So for that reason it
17 would be a violation of your oath for you to try to gather
18 information about this case from any source outside of this
19 courtroom.

20 I know you can get on the internet, and I know you can
21 Google search and Yahoo anything you want to, but again that
22 would be a violation of your oath if you try to gather
23 information on your own. So I'm going to urge you don't do
24 that.

25 I don't think this case is going to be reported in the

1 media, but I learned a long time ago I don't control what
2 the media does. So if you happen to be out and you hear a
3 radio report, or a TV report, or you happen to pick up the
4 newspaper and there's an article about this case, don't read
5 it, don't watch it, don't listen to it. Move on because,
6 again, that would be gathering information outside the
7 courtroom. It would be improper for you to do that.

8 Now, the last thing I'm going to caution you about,
9 should someone try to contact you about your service on this
10 jury for any reason whatsoever, do not talk to them. Again,
11 I'm going to ask you not to talk to anyone to begin with,
12 but if someone tried to contact you about it, please report
13 that to the Court when you return.

14 I can assure you the proper investigation would begin
15 if someone is trying to influence a jury in this court. So
16 you let me know if that goes on, and I'll certainly take
17 care of that if that were to happen.

18 So in a nutshell, don't talk about the case with anyone
19 about anything. Don't try to gather any information on your
20 own. Don't listen to, watch or read media reports about the
21 case. And if anyone tries to contact you about the case,
22 report that upon your return.

23 Now, as I said, when you come back you'll be taking
24 that oath. Before you do that I'll be asking you if you've
25 been able to comply with my instructions. Please be in a

1 position to tell me that you have followed my instructions
2 in this case. All right.

3 So you're free to go at this time. Be back at the jury
4 room, Mr. Ruth will tell you where to go, it'll be at 1:30
5 we're going to start. Thank you very much. You're free to
6 go at this time.

7 (Whereupon the jury exited the courtroom at 10:30 am)

8 **THE COURT:** All right. In chambers I had a discussion
9 with the attorneys this morning. I became aware that there
10 are some telephone calls that were made by the Defendant
11 while he was incarcerated under a system, I think, that this
12 jail has that allows for that.

13 But those transcripts, or excuse me, recordings of
14 those conversations have been provided to the Defense, but
15 only recently. So I'll give Mr. Bean an opportunity to
16 review those recordings.

17 I understand that the State has some motions that
18 you've made us aware of that you're going to make concerning
19 those matters. We'll take that up at 1:30 when we return
20 after Mr. Bean's had an opportunity to review those
21 recordings. So, Mr. Bean, we'll give you an opportunity to
22 listen to those with your client so you'll be in a position
23 to discuss them with us at that time.

24 **MR. BEAN:** Thank you, Your Honor.

25 **THE COURT:** Any other matters that we need to take up

1 before we break at this time?

2 **MR. BLOUIN:** Nothing from the State, Your Honor.

3 **THE COURT:** Anything from the Defense?

4 **MR. BEAN:** No, Your Honor.

5 **THE COURT:** All right. We'll be in recess then til
6 1:30. Look forward to seeing you then. Thank you very
7 much.

8 (Whereupon court was in recess at 10:32 am)

9 (Whereupon court reconvened at 1:34 pm)

10 **THE COURT:** Thank you very much. All right. Any other
11 matters the State would like to take up before the jury's
12 sworn?

13 **MR. BLOUIN:** Your Honor, just the motion that we had
14 talked about previously in chambers regarding closing the
15 courtroom during certain witnesses.

16 **THE COURT:** Yes, sir.

17 **MR. BLOUIN:** Your Honor, we would just make a motion
18 for the record that during the testimony of the confidential
19 informant that the courtroom be closed to the public and
20 spectators based on her safety and concerns of witness
21 intimidation based on materials that I believe you have
22 listened to as well as the Defense counsel.

23 **THE COURT:** All right. Defense position.

24 **MR. BEAN:** Your Honor, I don't think anything that I
25 heard on the tapes rises to the level of threats or anything

1 of that nature. In fact, I believe my client's family are
2 the only folks here. So I'm not sure that the issue's
3 really not moot anyway.

4 **THE COURT:** Well, I do hear some language to the effect
5 that they would lay something on her ass, I think, was the
6 word I heard and that they were asking people to turn out
7 into the courtroom today and show her some things. I'm not
8 quoting it exactly. I have a -- where's the yellow sheet we
9 had that I saw and I listened to them.

10 I listened to the tapes that are the recording. And
11 there was language to the effect that they would punish her
12 ass, they'd be down, and they were going to roll, they were
13 going to pop something on her ass. She was to be exposed,
14 telling people to show up.

15 Anyway, there was language to that effect that there
16 would be people coming down to the hearing for various
17 purposes. And I understand that right now only his family
18 is in the courtroom. And since there does not appear to be
19 anyone else who might threaten her at this time, I'll
20 reserve my ruling.

21 Mr. Blouin, I'll give you an opportunity to renew your
22 motion should the situation change when you're ready to
23 present her testimony, and I'll consider it at that time.

24 **MR. HUNTER:** Thank you, Your Honor.

25 **MR. BLOUIN:** Thank you, Your Honor.

1 **THE COURT:** All right. Anything from the Defense
2 before we bring the jury in to be sworn?

3 **MR. BEAN:** No, sir.

4 **THE COURT:** All right. Let's bring the jury in then.
5 And I'll -- let's see. Just one second, sir. Just one
6 second. The CD that I had, did we give that back to him?
7 Do you want to mark that as a Court's exhibit for this --
8 for the motion?

9 **MR. BLOUIN:** Yes, Your Honor.

10 **THE COURT:** And it won't go before the jury. It'll
11 just be for the Court's purposes.

12 **MR. HUNTER:** Your Honor, just so you're aware, I don't
13 think we plan on using that in the case in chief, but may
14 possibly in rebuttal if Mr. Hardy ---

15 **THE COURT:** Oh, I understand. If it becomes necessary
16 for it to be marked as a State's exhibit, we'll address it
17 at that time.

18 **MR. HUNTER:** I just wanted to make ---

19 **THE COURT:** But that is the recording that I did listen
20 to and I believe was made available to Mr. Bean. So I'll
21 make it a part of the record.

22 (Whereupon Court's exhibit 2 was marked)

23 **THE COURT:** Mr. Blouin, I'm going to give you back your
24 notes that I was referring to as I listened to that.

25 **MR. BLOUIN:** Yes, sir. Thank you.

1 **THE COURT:** Let's bring the jury in.

2 (Whereupon the jury entered the courtroom at 1:39 pm)

3 **THE COURT:** All right. The record will reflect the
4 jury has returned to the courtroom. As you come and go from
5 the courtroom there are no assigned seats in the jury box
6 except yours, sir. You're the alternate. You should always
7 sit in that seat. But other than that, you can just sit
8 wherever you happen to -- in the order that you come in,
9 wherever you happen to be. So there aren't any assigned
10 seats.

11 Now, if there was any of you who had any difficulty in
12 complying with my instructions concerning your behavior
13 while you were away from the courthouse, if you did have any
14 problem with following those instructions, please stand.

15 (No response)

16 **THE COURT:** It appears that all jurors have been able
17 to comply with the Court's instructions thus far.

18 I told you upon your return you'd be taking an oath
19 concerning your responsibilities as jurors in this case.
20 Madame Clerk, at this time please swear the jury panel.

21 **MADAME CLERK:** Yes, sir. Please stand and raise your
22 right hand. You solemnly swear or affirm in the case about
23 to be tried to truly try the issues joined in this case and
24 render a true verdict according to the law and evidence so
25 help you God?

1 **THE JURY:** I do.

2 **MADAME CLERK:** Thank you. You may be seated.

3 **THE COURT:** And if there was any member of the jury
4 panel who either failed or refused to take the oath just
5 administered by the clerk, please stand.

6 (No response)

7 **THE COURT:** It appears that all jurors have been sworn
8 concerning your responsibilities in this case.

9 Before we begin the trial of the case there's some
10 things that I would like to go over with you so that I'm
11 sure we have an understanding on these matters. As I said,
12 there's a couple of folks here who were on my previous jury,
13 and you've heard this before, but I'm going to go over it
14 with those who have never been in this position before.

15 And I suspect that there are those of you who've never
16 been seated on a jury in the trial of a criminal case
17 before. This is your first experience. So I'm going to be
18 talking primarily to you as I go through this discussion.

19 If you've never been in this position before, I would
20 expect that most of what you might know about what juries do
21 and how they function in a court of law you would have
22 learned from television shows you've watched, or movies
23 you've seen, maybe books you've read. As I've indicated,
24 I'm not sure they teach much about the jury process and the
25 system in school these days, but most of what you'd know

1 about I think you would have picked up from the
2 entertainment world.

3 And I will point out to you that those sources of
4 information are intended to entertain you. In the case of
5 television you can have an event occur, the case can be
6 tried and ended and a verdict rendered in the space of an
7 hour and they still have time to stop five times to try to
8 sell you a Toyota, or a Datsun, or something, whatever
9 they're selling those days.

10 I would hope that would give you the impression or the
11 idea that what you see on TV is a dramatization. They take
12 what's called literary license with what goes on in
13 courtrooms in order to make those things fit the story line
14 that they're trying to tell you.

15 I want to point out today that you're involved in an
16 exercise that's intended for anything but your
17 entertainment. What you're involved in today is a
18 fundamental part of our governmental structure.

19 I pointed out to you earlier that our right to a trial
20 by jury is a long tradition that's held in this country.
21 And it came to this country from England. And it's embodied
22 in our Constitution and in our State Constitution.

23 The right to a trial by jury is a basic right in our
24 Bill of Rights. You know if you were to look around the
25 world today at most of the countries in the world you would

1 find that people charged with crimes were tried by a trial
2 -- by trials or by courts that are run by the government and
3 usually presided over by one person, a judge, that's
4 appointed by the government as well.

5 In our system we don't do it that way. We have
6 citizens who are taken from their ordinary walks of life,
7 brought into the courtroom and appointed to be on a jury.
8 And those are the people who make the important decisions in
9 the courtrooms of our country.

10 It's a right that many have fought and died for in our
11 country, the right to a trial by jury and the other parts of
12 our Bill of Rights. And I hope it's rights we never lose in
13 this country.

14 You see, this courtroom is a place of honor. It's
15 dedicated to the preservation of citizens' rights through
16 both the Constitution of this State and of the United
17 States. And what you're engaged in is a search for the
18 truth. It's an effort to see that justice is done between
19 the parties that are in this court today. The people or the
20 parties that are in this court is the State of South
21 Carolina who has brought a charge against one of its
22 citizens, the Defendant in this case.

23 I will tell you that seeking to do the truth, find the
24 truth, seeking to do justice is sometimes a slow process.
25 Sometimes it's repetitive. And if I were to ask you how you

1 would expect a truth -- a search for the truth to be, I
2 would expect you'd think it ought to be slow, and
3 deliberate, sometimes repetitive, exactly what you might
4 find in the trial of this case. So don't expect it to last
5 one hour and still have time for commercials. That's not
6 what we're here for.

7 Now, the attorneys who are here are here to represent
8 their client's interest. And I'm sure they'll do an
9 excellent job in presenting their client's cases before you
10 today and perhaps into tomorrow. I'm not sure how long the
11 case is going to go, we'll see, but I want to point out
12 something that many laymen probably aren't aware of.

13 Those lawyers are first and foremost officers of this
14 court. At some point in time they appeared before some
15 tribunal, some other court, some other judge and they took
16 an oath that is prescribed by law. And there's a section in
17 that oath where they agreed or they swear that they will
18 assist you during this trial in your search for the truth.
19 For that reason you can expect the attorneys will act in a
20 reasonable, a professional and an ethical manner in the
21 discharge of their duties as attorneys before this Court
22 during this trial.

23 I'm going to point out to you too that you've come in
24 front of this Court, you've now taken an oath. Your oath is
25 to decide this case based upon the law and the evidence

1 presented during the trial. You're now expected to act in a
2 reasonable, or professional, and an ethical manner as jurors
3 in this case. And I want to thank you very much for your
4 willingness to accept the great responsibility of
5 determining the guilt or the innocence of the Defendant in
6 this matter.

7 What I'm telling you now is not intended to be a charge
8 on the law because at the close of the trial, once the
9 evidence has been presented, I will charge you concerning
10 the law in this case. But I am going to go over the
11 procedures that we'll follow in this matter and the
12 responsibilities that we have in trying the case.

13 I've already talked to you briefly about the
14 indictment. I'm not going to read the indictment to you
15 again. Later on at the close of the trial we'll go back
16 over that indictment.

17 And you'll be given a copy of that indictment for your
18 consideration during your deliberations. So you'll see the
19 charge and understand what's necessary to be proven. The
20 indictment, however, is simply the charge that brings the
21 case before the Court, and it informs us of the charge to be
22 tried during this trial.

23 The Defendant has pled not guilty to that indictment.
24 And under our system of justice that places the burden of
25 proof solely upon the State. It is the State's

1 responsibility now to prove the allegations contained in the
2 indictment to you by proof beyond a reasonable doubt.

3 And I will go over those concepts with you again when I
4 charge you concerning the law, that is, the standard of
5 proof that the State is held to and the meaning of those
6 words. At the close of the trial it's going to be your
7 responsibility to determine whether or not the State has met
8 its burden of proof, that is, its burden to prove the
9 allegations in the indictment by proof beyond a reasonable
10 doubt.

11 Now, the law quite often refers to juries as the judges
12 of the facts. I'm considered to be the judge of the law in
13 this case, but you're the judges of the facts. And in every
14 case tried in front of a jury in this court, the jury is the
15 sole and exclusive judge of the facts. It will be your
16 responsibility to determine the facts from the evidence as
17 presented from this witness stand during the trial of this
18 case.

19 I will tell you it's especially important that you
20 perform that duty diligently and conscientiously. Under our
21 system of justice ordinarily there's no means by which an
22 erroneous decision on the facts made by a jury can ever be
23 corrected. So I want you to conscientiously listen to the
24 evidence, pay attention to what's being said in order to be
25 in a position to make a determination as to what the true

1 facts are in this case.

2 But now the same law that makes you the sole judges of
3 the facts in this case, as I said, makes me the sole judge
4 of the law in this case. The law, as I give it to you at
5 the close of the trial, will be the only law that you can
6 use in reaching a verdict in this matter.

7 So if you came into the courtroom today and you had a
8 notion as to what the law is or you've got an opinion as to
9 what the law ought to be, you should leave those notions or
10 opinions outside of the jury room before deliberations
11 begin. Under your oath as jurors it's your responsibility
12 to take the law exactly as I give it to you, apply that law
13 to the facts as you decide those facts to be. That should
14 put you in a position to render a just, a true and a fair
15 verdict at the close of the trial.

16 Now, I want to caution you that you should not take
17 from anything that I say or do as the presiding officer in
18 this case to somehow indicate to you that I have any opinion
19 as to how you determine the facts in this case. You are the
20 sole judges of the facts. So the law does not allow me an
21 opinion as to how you should determine the facts in this
22 case.

23 So if I have to rule on an objection made by the
24 attorneys or I have some other ruling concerning the
25 admissibility of evidence in the case, don't take from

1 anything that I say or do in the discharge of my duties as
2 the presiding officer to somehow indicate to you that I have
3 an opinion one way or the other as to how you decide the
4 facts in this case. Again, the law doesn't allow me such an
5 opinion. I have no opinion as to how you should determine
6 the facts in this case.

7 It is important that you keep your mind open until such
8 time as I ask you to begin your deliberations. And so I'm
9 going to caution you every time you leave the courtroom not
10 to discuss anything about this case until you've heard all
11 the evidence, arguments and the charge on the law. And then
12 and only then will I ask you to begin to discuss the issues
13 that are involved in this case among yourselves.

14 It is your solemn responsibility to determine the guilt
15 or the innocence of the Defendant in this case. And your
16 verdict must be based solely upon the evidence as presented
17 during the trial and on the law as I instruct you.

18 In a few minutes we're going to start the trial, very
19 few minutes we're going to start the trial. The attorneys
20 will be allowed to make an opening statement to you.
21 Attorneys are allowed to directly talk to or address the
22 jury only twice during the trial. Once at the beginning of
23 the trial they make an opening statement. They'll tell you
24 what they expect to prove or what the case is about.

25 Then, once all the evidence has been presented, they'll

1 be allowed to do a summation or a closing argument. Again,
2 they'll be allowed to talk directly to you at that time.
3 And at that time they'll sum up the evidence that you've
4 heard and perhaps they urge you to draw certain inferences
5 from the evidence that you've heard in the case.

6 But I want to mention to you and point out to you that
7 the statements made by lawyers at the beginning of the trial
8 and at the end of the trial, those statements are not
9 evidence. They can't be considered by you directly in
10 reaching the verdict in the case.

11 The only evidence in any case is the testimony of
12 witnesses who are sworn to tell the truth who testify from
13 the witness stand and what documents or other pieces of
14 evidence go into the record through the testimony of those
15 witnesses. That's the only evidence in the case. You can
16 certainly consider the arguments of the lawyers, but in and
17 of themselves, the statements made by lawyers are not
18 evidence in the case and should not be considered directly
19 by you in determining the verdict in the outcome of the
20 case.

21 From time to time during the trial there might be an
22 objection that's made to something. And if I believe the
23 discussion about that objection will lead to a discussion
24 about some matter that may not be admissible under the rules
25 that allow the admission of evidence in a courtroom, if I

1 think the discussion is going to go in that direction, I
2 have the right, and I will ask you to step outside of the
3 courtroom while we have those discussions.

4 Again, don't think I'm trying to influence your
5 decision concerning the facts. It's simply me doing my job.
6 My job is to see you decide this case based on evidence
7 that's been admitted into the record of the case using the
8 rules of evidence that have been established for hundreds of
9 years. They're longstanding rules. They're adjusted from
10 time to time. But I will apply those rules of evidence and
11 decide what comes in and what doesn't come into the record
12 of the case.

13 Once I've made the decision I'll ask you to come back
14 into the courtroom. I'll make my ruling, and we'll proceed.
15 But if I ask you to leave the courtroom during the trial,
16 it's for that reason.

17 Don't think I'm trying to influence your decision on
18 the facts. I'm simply acting as what the courts call the
19 gatekeeper, the one who lets things in or doesn't let things
20 into evidence. And it's only me doing my job when I do that
21 exercise.

22 Now I'm going to tell you in determining what the facts
23 are in any case, it's going to be necessary for you to
24 decide the truth of the evidence that you've heard, the
25 credibility or the believability of that evidence. I'm

1 going to ask you to use your good common sense in making
2 that decision.

3 Every single day of your life you make commonsensical
4 decisions as to what you choose to believe and what you
5 choose not to believe. You do it not even thinking about it
6 most days. And today's no different than any other day.
7 I'm going to tell you to use your good common sense, make a
8 determination as to the credibility and the believability of
9 the testimony that you hear from the witness stand.

10 You have the right to believe all of, or part of, or
11 none of what a witness may testify to. You have the right
12 to believe one witness against all the others, all the
13 others against the one. You're the sole judges of the
14 facts. So you're the sole judges of the credibility and
15 believability of the testimony that you hear.

16 So as you listen to the testimony, try not to let your
17 thoughts wander. Try to pay close attention to what's going
18 on. Using your common sense you have the right to consider
19 such factors as whether or not a witness may have a stake in
20 the outcome of the case, whether or not a witness may have a
21 bias or prejudice one way or the other. You can decide
22 whether the witness actually had the ability to know what
23 the witness is testifying about.

24 And I tell people this all the time, I've been in
25 courtrooms now for almost forty years. And every courtroom

1 I have ever been in, and I've been in a lot of them, the
2 witness stand is always right in front of the jury box. And
3 the reason for that is, the jury has the right to observe
4 the witnesses as they testify, the way they speak, how they
5 deliver their testimony.

6 Take any of those factors I just mentioned into
7 consideration, use your good common sense and make a
8 determination as to the believability or the credibility of
9 what you hear from the witness stand. Be in a position to
10 discuss that with your fellow jurors at the close of the
11 trial during your deliberations. You have the right to
12 consider anything that is in the record of this case that
13 might help you evaluate the testimony of any witness who
14 testifies during the trial.

15 Now, I do not appoint a foreperson of the jury until I
16 charge you on the law at the close of the trial. And I do
17 that to emphasize one point. At the close of the trial I
18 will tell you that you cannot reach a verdict unless it's
19 unanimous. All of you have to agree on the verdict before
20 it's the verdict of the jury.

21 So the jury doesn't speak until everyone agrees. That
22 means no one juror is more important than any other juror.
23 You all are necessary in order for a verdict to be reached
24 by the jury. I don't want you to think that because I've
25 appointed somebody as a foreperson that that person is more

1 important, or smarter, and some of you just don't need to
2 listen and you're going to do whatever they tell you to do.

3 So I want you to all think, though, that you might be
4 the foreperson, that you might be the person I call upon to
5 lead the discussions of the jury. I want you to pay
6 attention close enough that you'll be in a position to do
7 that should I call on you.

8 In the meantime, if you have a problem with anything
9 that's going on with the jury, you think something's not
10 being done right or you have a concern, you tell the
11 bailiffs, they'll let me know, and I'll deal with any of
12 those problems. So you don't need a foreperson in order to
13 report any problems that you might have. And I'll appoint
14 that person when I charge you on the law at the close of the
15 case.

16 I want to be sure I haven't violated anyone's rights in
17 what I've mentioned to you thus far. Does the State have an
18 objection to my opening comments?

19 **MR. BLOUIN:** No objection from the State, Your Honor.

20 **THE COURT:** Is there any objection from the Defense?

21 **MR. BEAN:** No objection, Your Honor.

22 **THE COURT:** All right. Now, ladies and gentlemen, I
23 will tell you, as I mentioned earlier, the State has the
24 burden of proof and the only burden of proof in this case.
25 For that reason the State gets to go first in the opening

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1 comments followed by the Defense.

2 In the presentation of evidence, the State, because it
3 has the burden of proof, it gets to go first in calling
4 witnesses followed by any witnesses the Defense wishes to
5 call. Once all the evidence is in, we'll do closing
6 arguments. Once those are finished, I'll charge you on the
7 law. And once the law charge is finished, I'll turn the
8 case over to you for your deliberations and verdict.

9 So that's the steps we'll go through, opening
10 statements, presentation of evidence, closing statements,
11 charge on the law and then deliberations. All right. At
12 this time we're going to begin with the opening statements.
13 Mr. Blouin.

14 **MR. BLOUIN:** Ladies and gentlemen of the jury, once
15 again, my name is Hunter Blouin. My co-counsel, Eddie
16 Hunter, we represent the State of South Carolina for the
17 Seventh Circuit Solicitor's Office.

18 And we are here for a distribution of cocaine base.
19 Now, to clear up what cocaine base is, cocaine base is
20 crack. So this is a distribution of crack.

21 Now, during this trial the State, myself, has the
22 burden of proof beyond a reasonable doubt to prove three
23 things, to show three things to you. One, that the
24 Defendant, Taiwan Hardy, two, distributed, three, crack
25 cocaine.

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1 Now, the evidence that you will be provided with during
2 the course of this trial will show you, the jury, how this
3 happened. This event happened on March the 10th, 2014. A
4 confidential informant, acting on behalf of the Spartanburg
5 County Sheriff's Office, went to a hotel here in Spartanburg
6 County and did purchase crack cocaine from this Defendant
7 right here.

8 Now, I tell you this because I need you to pay very
9 close attention to the evidence that is presented. As the
10 Judge told you, you need to use your common sense because
11 the drug world is a lot different than everyday society.
12 It's not pretty. It's not normal. And, therefore, you may
13 see or hear things that you are not or that the general
14 public is not used to seeing.

15 So I ask you to take that into account when reviewing
16 the evidence and please use your common sense. And after
17 the evidence is presented, convict this man, Taiwan Hardy,
18 guilty of distribution of crack cocaine. Thank you.

19 **THE COURT:** Mr. Bean for the Defense.

20 **MR. BEAN:** Thank you, Your Honor. Folks, I'm Bill
21 Bean. And I represent Taiwan Hardy, who is seated over here
22 next to me at counsel table.. I normally make very brief
23 opening statements. I'll try to do the same for you right
24 now.

25 His Honor did go over some things that I'll be wanting

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1 to talk more about when we get to the close of the case, but
2 I want to impress upon you one thing that I think is most
3 important, and I think you will all understand that it is.
4 And what that is is that Mr. Hardy's day in court is today,
5 right now.

6 What you folks decide after all the evidence is in and
7 all of the testimony has been given as to whether or not
8 he's guilty as charged is his chance in this case. If you
9 get it wrong, there isn't anything to be done about it.

10 So I would simply ask that you consider everything you
11 see in the courtroom, everything you hear from the witness
12 stand, what the witnesses might have to say, sometimes what
13 the witnesses don't say, what the witnesses have to gain or
14 lose by what they say or what they have done. And after
15 you've heard all that, think very seriously about the case
16 and come back with your verdict.

17 If you do that, then nobody can question you about
18 anything you did. You would have done your job. Thank you
19 very much.

20 **THE COURT:** All right. Mr. Blouin, is there anything
21 you need to address with the Court before you call your
22 first witness?

23 **MR. BLOUIN:** Yes, Your Honor. We'd just ask for a
24 short recess in order to get our witness in order.

25 **THE COURT:** All right. Ladies and gentlemen of the

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1 jury, I'm going to ask you to step back to the jury room for
2 just a moment. As always, when you leave the courtroom, I'm
3 going to ask you not to discuss anything about this case,
4 even among yourselves, until I ask you to begin your
5 deliberations. You may retire to the jury room.

6 (Whereupon the jury exited the courtroom at 2:02 pm)

7 (Pause)

8 (Whereupon State's exhibits 1 - 8 were marked for
9 identification)

10 **THE COURT:** You ready to proceed, Mr. Hunter?

11 **MR. HUNTER:** Yes, Your Honor.

12 **THE COURT:** Mr. Blouin?

13 **MR. BLOUIN:** Yes, Your Honor.

14 **THE COURT:** All right. Bring the jury in.

15 (Whereupon the jury entered the courtroom at 2:13 pm)

16 **THE COURT:** All right. The record will reflect that
17 the jury has returned to the courtroom. The State may call
18 its first witness.

19 **MR. BLOUIN:** The State calls Brandy Cannon.

20 **THE COURT:** All right. Please place her under oath.

21 **MADAME CLERK:** Yes, sir. If you'll raise your right
22 hand and put your left hand on the Bible.

23 **Brandy Cannon**, being duly
24 sworn testified as follows;

25 **MADAME CLERK:** Thank you. You may be seated.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 **THE COURT:** Your witness, counsel.

2 **MR. BLOUIN:** Thank you.

3 **Direct Examination by Mr. Blouin:**

4 Q. Ma'am, would you please state your name for the record.

5 A. Brandy Cannon.

6 Q. Ms. Cannon, how long have you lived in Spartanburg
7 County?

8 A. About thirty-seven years.

9 Q. All right. And during the events that occurred that
10 we're here for who were you cooperating with?

11 A. Travis McJunkin.

12 Q. And who does Mr. McJunkin work for?

13 A. The sheriff's department.

14 Q. Okay. And why were you cooperating?

15 A. As a favor for him.

16 Q. Okay.

17 **MR. BEAN:** Your Honor, I'm sorry, I can't hear.

18 **THE COURT:** You're going to have to speak up, ma'am.

19 A. As a favor for Mr. McJunkin.

20 Q. All right. Okay. And you were -- Ms. Cannon, we're
21 going to go over a little bit of your past of how you got to
22 know Mr. McJunkin.

23 A. Yes, sir.

24 Q. Now, you have been convicted of crimes in the past,
25 have ---

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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- 1 A. Yes, sir, ---
- 2 Q. --- you not?
- 3 A. --- I have.
- 4 Q. And you've been convicted of five fraudulent checks in
- 5 2000?
- 6 A. Yes, sir.
- 7 Q. And driving under the influence and driving under
- 8 suspension in 2008?
- 9 A. Yes, sir.
- 10 Q. And a forgery in 2009?
- 11 A. Yes, sir.
- 12 Q. A shoplifting in 2011?
- 13 A. Yes, sir.
- 14 Q. And a possession of crack in 2012?
- 15 A. Sounds about right.
- 16 Q. Okay. Are you an addict?
- 17 A. Yes, sir, I am.
- 18 Q. And how long have you been an addict?
- 19 A. Probably fourteen years, fifteen years, maybe.
- 20 Q. Do you like being an addict?
- 21 A. No. I don't think no one likes it.
- 22 Q. And is it a constant struggle for you ---
- 23 A. Every day.
- 24 Q. Okay. But as of today, as of this moment, are you
- 25 clean right now?

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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- 1 A. Yes, sir.
- 2 Q. Have you -- what was your drug of choice?
- 3 A. Crack cocaine.
- 4 Q. Have you used crack cocaine today?
- 5 A. No, sir.
- 6 Q. Why -- you've cooperated in the past with law
7 enforcement, have you not?
- 8 A. Yes, sir, I have.
- 9 Q. Okay. And why did you cooperate back then in the past?
- 10 A. Some of it I had charges, you know.
- 11 Q. Okay. And explain that a little bit further. You
12 would work ---
- 13 A. I worked off my charges.
- 14 Q. You would work off your charges? Okay.
- 15 A. Yes, sir.
- 16 Q. Now, this instance that we're here today, did you have
17 any charges that you were working off?
- 18 A. No, sir, I did not.
- 19 Q. Okay. And what did you -- what then, if anything, did
20 you receive for doing what you did?
- 21 A. Oh, I received fifty dollars, but that wasn't why I did
22 it.
- 23 Q. Okay. And you did it because?
- 24 A. As a favor for Travis McJunkin. I've known him for
25 years. And ...

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1 Q. Okay. Now, how many times do you believe you've
2 cooperated with law enforcement? Estimate.

3 A. Maybe three hundred, give or take.

4 Q. Okay.

5 **MR. BEAN:** Your Honor, again, I'm sorry. I didn't hear

6 ---

7 A. Maybe three hundred, give or take.

8 **THE COURT:** Three hundred was the answer, give or take.

9 **MR. BEAN:** Okay. Thank you.

10 Q. And, Ms. Cannon, if you could, just try to speak ---

11 A. I'm sorry.

12 Q. --- up just a ---

13 A. I apologize.

14 Q. --- little bit. That's all right. That's all right.

15 And who have you worked with most of the time?

16 A. Travis McJunkin.

17 Q. Okay.

18 A. For the last six years.

19 Q. And Travis McJunkin is in the courtroom today?

20 A. Yes, sir.

21 Q. Okay.

22 **MR. BLOUIN:** Beg the Court's indulgence one moment.

23 **THE COURT:** Yes, sir.

24 (Pause)

25 **MR. BLOUIN:** Your Honor, we need to address one thing

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1 going forward before we can go forward from here.

2 **THE COURT:** Is that outside of the jury's presence?

3 **MR. BLOUIN:** Yes, Your Honor.

4 **THE COURT:** All right. Ladies and gentlemen of the
5 jury, this is one of the occasions I'll ask you to step back
6 to the jury room. As always, don't discuss anything about
7 this case until I ask you to do so. You may retire to the
8 jury room. Thank you.

9 (Whereupon the jury exited the courtroom at 2:18 pm)

10 **THE COURT:** Yes, Mr. Blouin.

11 **MR. BLOUIN:** Your Honor, I believe we are getting into
12 the part where she's going to explain how her -- how her
13 relationship with Mr. Hardy -- and we thought maybe the best
14 thing to do would be to proffer because Mr. Bean had brought
15 that up previously in chambers.

16 **THE COURT:** All right. I'll allow you to make a
17 proffer.

18 **MR. BLOUIN:** Thank you.

19 **Proffered Testimony - Direct by Mr. Blouin:**

20 Q. Ms. Cannon, can you explain how you know Mr. Hardy?

21 A. I mean, we used to do drugs together. We used to do
22 drugs together.

23 Q. Okay. And how long have you known Mr. Hardy?

24 A. I'd say probably ten, eleven years.

25 Q. All right. And you've done drugs with him that entire

BRANDY CANNON - PROFFERED TESTIMONY

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1 time?

2 A. Not the entire time, no.

3 Q. Okay.

4 A. But, I mean, that's how I met him. That's what you
5 asked me. That's how I met him.

6 Q. Okay. And is he in the courtroom?

7 A. Yes, he is.

8 Q. Okay. And is this the man that you bought crack from
9 at 820 Hospitality Drive, room 127 on March 10th?

10 A. Yes, it is.

11 Q. In what county is that located?

12 A. Spartanburg County.

13 **MR. BLOUIN:** Your Honor, that's as far as the State's
14 going to go into the relationship between her and Mr. Hardy.

15 **THE COURT:** Any questions, Mr. Bean?

16 **Proffered Testimony - Cross by Mr. Bean:**

17 Q. Ms. Cannon, when you say you've known Taiwan for ten
18 years, is that the last ten years?

19 A. Yes, sir.

20 Q. Okay. Were you aware that part of that time he was in
21 prison?

22 A. Yes, sir.

23 Q. So you're counting that in the ten years that you've
24 known ---

25 A. Yes, sir.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 Q. Okay. Thank you.

2 MR. BEAN: Nothing further, Your Honor.

3 THE COURT: All right. Mr. Bean, any objections to
4 that line of questioning?

5 MR. BEAN: No, Your Honor.

6 THE COURT: Thank you. Let's bring the jury in.

7 (Whereupon the jury entered the courtroom at 2:22 pm)

8 THE COURT: All right. The Court was not required to
9 make a ruling during the break. But you may proceed with
10 your questioning, Mr. Blouin.

11 MR. BLOUIN: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 **Direct Examination by Mr. Blouin Continued:**

14 Q. Ms. Cannon, how long have you known Mr. Hardy?

15 A. Maybe ten or eleven years.

16 Q. And how did you meet him? How do you know him?

17 A. We used to do drugs together.

18 Q. Okay. And is he in the courtroom today?

19 A. Yes, he is.

20 Q. Could you please point him out in the courtroom?

21 A. (The witness pointed to the Defendant).

22 MR. BLOUIN: May the record reflect that he's pointing
23 to the Defendant or Ms. Cannon's pointing to the Defendant?

24 THE COURT: The record shall so reflect. You may
25 proceed.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 **MR. BLOUIN:** Thank you.

2 Q. Is this the man that you bought crack cocaine from at
3 820 Hospitality Drive, room 127 on March 10th, 2014?

4 A. Yes, sir, it is.

5 Q. And what county is that ---

6 A. Spartanburg County.

7 Q. All right. Now, Ms. Cannon, let's go over how this all
8 came to place, all right?

9 A. Okay.

10 Q. Did you go to make this buy at the request of law
11 enforcement?

12 A. Yes, I did.

13 Q. All right. Where did you meet law enforcement?

14 A. At the church above the street from my house.

15 Q. Okay. And how was this buy set up?

16 A. I mean, I made a phone call. The phone call was -- I
17 don't -- I think it was recorded. Then they searched me,
18 they searched my car. They give me money that's recorded
19 from the sheriff's office. And then I went to the
20 Traveler's Inn, room 127.

21 Q. Okay. So you and your vehicle were searched?

22 A. Yes, I was. And I was followed there.

23 Q. Was there anything found on you during that search?

24 A. No, sir.

25 Q. Okay. And you were provided funds?

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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- 1 A. Yes, sir, I was.
- 2 Q. And what was the purpose of those funds?
- 3 A. To purchase twenty dollars worth of crack.
- 4 Q. Okay. And then you were equipped with audio and video
- 5 equipment?
- 6 A. Yes, sir, I was.
- 7 Q. All right. And where did you go after all of this
- 8 occurred?
- 9 A. I went to the Traveler's Inn, room 127.
- 10 Q. Okay. And that's at 820 Hospitality Drive?
- 11 A. Yes, sir.
- 12 Q. All right.
- 13 **MR. BLOUIN:** May I approach the witness, Your Honor?
- 14 **THE COURT:** You may.
- 15 Q. Ms. Cannon, I'm going to show you what's been premarked
- 16 as State's exhibit number 1.
- 17 A. Oh, yeah.
- 18 Q. Can you tell me what that is?
- 19 A. That's the videotape.
- 20 Q. The videotape of?
- 21 A. The buy.
- 22 Q. Okay. And this -- how do you know that this is the
- 23 videotape of the buy?
- 24 A. Because my initials are on it.
- 25 Q. So you've reviewed this?

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 A. Yes, sir, I have, twice.

2 Q. And this is an accurate depiction of the buy?

3 A. Yes, sir, it is.

4 MR. BLOUIN: Your Honor, at this point we would move to
5 put State's exhibit 1 into evidence.

6 THE COURT: Any objection, Mr. Bean?

7 MR. BEAN: No objection, Your Honor.

8 THE COURT: All right. Without objection, it'll be
9 admitted. Do you wish to publish it?

10 MR. BLOUIN: Yes, Your Honor.

11 THE COURT: You may do so.

12 (Whereupon State's exhibit 1 was admitted into evidence
13 and published for the jury)

14 (DVD paused)

15 Q. Now, Ms. Cannon, let's talk about the first part of
16 that video, okay?

17 A. Okay.

18 Q. What were you doing in the first part of that video?
19 What was going on?

20 A. You talking about on my way there?

21 Q. Before you were on your way there.

22 A. Oh, that's where -- Travis and the other officer, they
23 searched me, they searched my car and they give me -- they
24 prepped the thing.

25 Q. Okay. And what was the audio camera on?

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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- 1 A. Keychain.
- 2 Q. Could you ---
- 3 A. A keychain.
- 4 Q. --- speak up for me. A keychain. So that's why ---
- 5 A. That's why --
- 6 Q. --- on the video ---
- 7 A. --- it made the noise because it was on the key.
- 8 Right.
- 9 Q. Okay. And we get to this kind of halfway point in the
- 10 video, where did you drive again?
- 11 A. To the Traveler's Inn.
- 12 Q. Did you make any stops on the way?
- 13 A. No, sir. And I was followed there and back.
- 14 Q. Okay. And you went into what room?
- 15 A. Room 127.
- 16 Q. All right. And per the video, how many people do you
- 17 see in room 127?
- 18 A. Just one.
- 19 Q. And who was that person?
- 20 A. Taiwan Hardy.
- 21 Q. All right.
- 22 (DVD resumed)
- 23 (DVD paused)
- 24 Q. Now, Ms. Cannon, ---
- 25 A. Yes, sir.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 Q. --- let's go over the middle of that video. So you
2 were in the room with Mr. Hardy?

3 A. Yes, sir.

4 Q. And what happened in that room?

5 A. I went in, I spoke to him, I gave him the twenty
6 dollars that Travis had given me, and he gave me twenty
7 dollars worth of crack.

8 Q. Okay. And was the -- how was the crack packaged?

9 A. He had one bag.

10 Q. And he gave you the crack?

11 A. Yeah.

12 Q. And where did you put the crack?

13 A. In my bra.

14 Q. Okay. And then you immediately left?

15 A. Yes.

16 Q. All right.

17 (DVD resumed)

18 (DVD paused)

19 Q. Ms. Cannon, ---

20 A. Yes, sir.

21 Q. --- why was that -- why did the deal in the room -- why
22 was it so short?

23 A. Because that's just the way Flex is.

24 Q. Now, you just mentioned -- who is Flex?

25 A. Taiwan Hardy. I'm sorry.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 Q. That's okay. And that's how you know him?

2 A. Yes.

3 Q. Okay. Now, what does -- what did the crack that you
4 purchased look like?

5 A. It was water whip.

6 Q. Okay. Let's -- what does water whip mean?

7 A. It's made with water. If you set it out in the -- if
8 the air hits it -- it has to stay in a bag because if the
9 air hits it, it'll dry it out and it'll shrivel up really,
10 really quick and you lose your weight on it that way.

11 Q. Okay. So what color was it?

12 A. White.

13 Q. Okay. And it was in what shape?

14 A. Oh, God. I mean, ---

15 Q. Was it ---

16 A. The way it was cut off of the rock.

17 Q. Okay. And you said it was water whip?

18 A. Yes, it is.

19 Q. I'm going to replay a portion, a small portion of this
20 video, Ms. Cannon. And I would like you to tell me --
21 listen carefully to the conversation.

22 (DVD resumed)

23 Q. I would like you to tell me what is being said, what
24 you're discussing with Mr. Hardy.

25 A. I can't ...

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 (DVD paused)

2 Q. Now, there you were asking questions about losing a lot
3 and to not boil it all the way down.

4 A. Oh, yeah. That's ---

5 Q. Could you please explain those comments.

6 A. Okay. Well, now like because it is water whip --
7 people that smoke crack, they don't -- they don't want water
8 whip dope. I mean, it's a preference, I would say. And we
9 were talking about how to recook it in a spoon. And he was
10 telling me not -- not to let it completely come to a boil,
11 just, you know, cook it down to where there's just a little
12 of the soda left in the bottom of it and then take the fire
13 off of it.

14 Q. So ---

15 A. But I didn't ---

16 Q. --- you're talking about the crack?

17 A. Yes, sir.

18 Q. And was this the crack that you had just purchased?

19 A. Yes, sir, it was.

20 Q. Okay. Now, after you left Mr. Hardy's room you then --
21 where did you go in the car? Explain the end of that video.

22 A. I got in my car, I drove straight back to the church
23 where Travis and the other officer that was with him
24 followed me from the Traveler's Inn back to the church at my
25 house.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 Q. Okay. And did they debrief you when you got there?

2 A. Yes, sir. They always ask me what happened, and I tell
3 them. Well, I give them the rock first.

4 Q. Okay. And did you make any stops between that hotel
5 room and where you met the officers?

6 A. No, sir. I was followed there and back.

7 Q. And were you searched after ---

8 A. I was searched and my car was searched before I went to
9 the Traveler's Inn and bought the crack. And after I left
10 the Traveler's Inn I was followed back to the church. And
11 then when I got back to the church and I handed the crack
12 over to Travis McJunkin, I was searched again and my car was
13 searched again.

14 Q. Okay. And did they find anything on the same search?

15 A. No, sir.

16 Q. Did they find the twenty dollars that you were given?

17 A. No, because I gave it to Taiwan Hardy.

18 Q. Did they find anymore crack from you?

19 A. No. I gave it to Travis.

20 Q. All right. Now, after this deal what -- did you
21 receive anything in compensation of doing this buy?

22 A. Yes. Travis gave me fifty dollars cash.

23 Q. And when did that occur?

24 A. Right -- right then.

25 Q. Okay. So there is, you know, there is nothing owed to

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 you regarding this transaction right now?

2 A. No.

3 Q. Or in the future?

4 A. No, sir.

5 Q. You were paid for what you did when you did it?

6 A. Yes, sir.

7 Q. Now, ---

8 **MR. BLOUIN:** May I approach the witness, Your Honor?

9 **THE COURT:** You may.

10 Q. I'm going to show you some pictures that have been
11 premarked State's exhibit 2 through 7. Do you recognize
12 these?

13 A. Yes, I do.

14 Q. And what are these?

15 A. They're pictures of Flex, Taiwan Hardy, on the day that
16 I went and bought the ---

17 Q. And this is ---

18 A. --- crack from him.

19 Q. These are fair and accurate descriptions of the ---

20 A. Room and him.

21 Q. --- the video you were making?

22 A. Yes, it was.

23 Q. All right.

24 **MR. BLOUIN:** Your Honor, at this time I would move to
25 make State's exhibits 2 through 7 -- move those into

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 evidence.

2 **THE COURT:** Any objections?

3 **MR. BEAN:** No objection.

4 **THE COURT:** Without objections they'll be admitted as
5 they've been marked as part of the record. And you may
6 publish them.

7 **MR. BLOUIN:** Thank you, Your Honor.

8 (Whereupon State's exhibits 2 - 7 were admitted into
9 evidence)

10 Q. Now, Ms. Cannon, I'm going to ask you a few questions
11 about these pictures. And I'm going to use just a green
12 laser pointer.

13 A. Okay.

14 Q. Can you please tell me who this individual is right
15 here?

16 A. It's Taiwan Hardy.

17 Q. Okay. And it's a little bit difficult to see on the
18 overhead, ---

19 A. Um-hum (affirmative).

20 Q. --- but what is Mr. Hardy holding in his hands right
21 there?

22 A. A bag of crack.

23 Q. Okay. Let me show you State's exhibit 3. Once again,
24 who is this individual?

25 A. Taiwan Hardy.

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 Q. And could you please tell me what is in his hands right
2 there?

3 A. It's a plastic bag with crack cocaine in it.

4 Q. Okay. And that's the crack cocaine right there?

5 A. The white substance in the plastic bag, yes, it is.

6 Q. Okay. This is State's exhibit 4. Once again, who's
7 that individual?

8 A. Taiwan Hardy.

9 Q. And could you tell me what is in his hands. It looks
10 like he's juggling it or fumbling it right there.

11 A. A bag of crack.

12 Q. Okay. State's exhibit number 5, once again, who is
13 that?

14 A. Taiwan Hardy.

15 Q. And what is that in his hands right there?

16 A. It's a plastic bag. And the white substance in the
17 plastic bag is crack cocaine.

18 Q. Okay. State's exhibit 6, once again, ---

19 A. Taiwan Hardy.

20 Q. And in his hands right there?

21 A. Plastic bag with white substance is crack cocaine.

22 Q. So that right there is the crack cocaine?

23 A. Yes, sir, it is.

24 Q. All right. And finally State's exhibit 7, who is that
25 in the video?

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 A. Taiwan Hardy.

2 Q. All right. I'm going to zoom in. What is that in
3 between his fingers?

4 A. Crack cocaine.

5 Q. And ---

6 A. It's a plastic bag with crack in it. And that's a
7 razor blade.

8 Q. And what is that? And what's -- is there any
9 significance to razor blades?

10 A. That's what you use to cut it with.

11 **MR. BLOUIN:** May I approach the witness, Your Honor?

12 **THE COURT:** You may.

13 Q. Ms. Cannon, I'm going to show you what's been marked as
14 State's exhibit number 8.

15 A. Okay.

16 Q. Now, obviously, this -- was this -- obviously there's a
17 lot more packaging than you remember.

18 A. Yeah.

19 Q. Can you -- do you know what that is right there?

20 A. It's crack.

21 Q. Okay.

22 A. But it's dried out.

23 Q. Okay. Explain that real quick.

24 A. Okay. Like I was saying, water whip dope, if you, you
25 know, if air hits it or if it stays -- it's dried out. It

BRANDY CANNON - DIRECT EXAMINATION BY MR. BLOUIN

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1 was in a rock form. And the powder that's left here is the
2 cocaine and what baking soda was in it after the water has
3 dried out of it.

4 Q. And this is the crack cocaine that you purchased?

5 A. Yes, it is.

6 Q. On March 10th, 2014?

7 A. Yes, sir.

8 Q. From Mr. Taiwan Hardy?

9 A. Taiwan Hardy at the Traveler's Inn in room 127.

10 Q. All right. Thank you. What did you do with the crack
11 cocaine once you received it, once you got back to the
12 meeting spot?

13 A. I gave it to Travis.

14 Q. You gave it to Travis McJunkin?

15 A. Yes, sir, I did.

16 Q. Directly?

17 A. Yes, sir, I did.

18 Q. And that's the crack that you gave Travis?

19 A. Yes, it is.

20 Q. Ms. Cannon, please answer any questions the Defense may
21 have for you.

22 A. Yes, sir.

23 **THE COURT:** All right, Mr. Bean, your witness.

24 **MR. BEAN:** Thank you, Your Honor.

25 **THE COURT:** Yes, sir.

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 Cross Examination by Mr. Bean:

2 Q. Ms. Cannon, I need to learn a few things beyond what
3 you've told me. So please indulge me here. Would you say
4 that you are a drug addict?

5 A. Yes, sir, I am.

6 Q. How long have you been a drug addict?

7 A. Thirteen years or so, maybe a little longer.

8 Q. Okay. And what is your drug of choice or do you have
9 one?

10 A. Crack cocaine.

11 Q. Okay. Have you ever used any other drugs?

12 A. No, sir.

13 Q. That's the only one?

14 A. Yes, sir.

15 Q. You've never smoked marijuana?

16 A. Not as -- not as a drug of choice, no.

17 Q. Well, I'm not talking about drug of choice, I'm just
18 asking now about what other drugs you might have used.

19 A. Oh, I haven't smoked pot since I was a teenager.

20 Q. Okay. So -- but you have smoked pot?

21 A. Yes, I have.

22 Q. What about other drugs?

23 A. No.

24 Q. Have you -- have you ever been involved in the drug
25 trade?

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 A. What do you mean drug trade?

2 Q. Have you ever sold or ---

3 A. Yes, I have.

4 Q. --- purchased other drugs?

5 A. Yes, I have.

6 Q. Okay. Tell us about that. How did that work? What
7 did you do?

8 A. I mean, what are you asking me specifically?

9 Q. Well, I'm asking you about your experience with drugs
10 beyond just personal use. Have you bought drugs that were
11 not for your personal use?

12 A. No.

13 Q. Have you come into possession of drugs and sold them in
14 order to get money?

15 A. No.

16 Q. Okay. And so your three hundred more or less, I
17 believe, you described times that you have worked with the
18 police over ---

19 A. Um-hum (affirmative).

20 Q. --- the last fourteen years were just out of the
21 goodness of your heart?

22 A. Some of it was working off charges.

23 Q. Oh, okay. What kind of charges would you have been
24 working off?

25 A. DUS, just different charges.

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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- 1 Q. Well, tell me the ones you remember.
- 2 A. DUS, DUI, possession of crack cocaine.
- 3 Q. Anything else? Possession of any other drugs?
- 4 A. Nope.
- 5 Q. You've never been charged with anything like that?
- 6 A. Possession of crack cocaine.
- 7 Q. Anything other than that?
- 8 A. No, sir.
- 9 Q. Okay.
- 10 **MR. BEAN:** May I approach the witness, Your Honor?
- 11 **THE COURT:** You may.
- 12 **MR. BEAN:** Thank you.
- 13 Q. Ms. Cannon, ---
- 14 A. Um-hum (affirmative).
- 15 Q. --- I'm going to hand you a document which is not
- 16 marked. Go ahead, you can take it.
- 17 A. Oh, okay.
- 18 Q. And I want you to take a look at that and ask you if
- 19 you -- do you recognize that?
- 20 A. Yes, sir, I do.
- 21 Q. What is that?
- 22 A. It's the CI information sheet.
- 23 Q. Okay. And if you flip that over to, I believe it's the
- 24 third page. Do you see some signatures there?
- 25 A. Um-hum (affirmative).

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 Q. Do you recognize any of those signatures?

2 A. Yes, they're mine. That was from back in 2000.

3 Q. Okay.

4 A. I'm sorry.

5 Q. No, that's all right. So this is an agreement that you
6 signed back in 2000?

7 A. No.

8 Q. Well, I thought you told me you just ---

9 A. I was in drug court for that.

10 Q. Okay. Is this your signature here?

11 A. Yes, it is.

12 Q. Okay. Well, if you wouldn't mind, just read the part
13 here that starts with I have the following, please.

14 A. I have the following criminal charges pending against
15 me; distribution of Lortab, distribution of Oxycontin and
16 obtaining something under pretenses.

17 Q. So we're talking about distribution of Lortab ---

18 A. Um-hum (affirmative).

19 Q. --- and distribution -- what was the other one?

20 A. Oxycontin.

21 Q. Okay. Aren't those drugs?

22 A. Yes, they are.

23 Q. Okay. But you didn't think to mention those when I
24 asked you ---

25 A. I didn't ---

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 Q. --- about it?

2 A. --- remember it. It's been over -- it was back in

3 2000.

4 **MR. BEAN:** I'd like to offer this, Your Honor.

5 **THE COURT:** Any objection?

6 **MR. BLOUIN:** No objection, Your Honor.

7 **THE COURT:** Without objection it'll be admitted,

8 Defense exhibit.

9 (Whereupon Defendant's exhibit 1 was marked and
10 admitted into evidence)

11 **MR. BEAN:** Thank you.

12 Q. So, Ms. Cannon, when you first started informing, let's
13 just say, ---

14 A. Um-hum (affirmative).

15 Q. --- we'll call it informing, if that's okay with you.

16 A. Yes, sir.

17 Q. You had an agreement that you signed here with the
18 sheriff's office, is that right?

19 A. I guess if that's what you say it is.

20 Q. Well, I'm asking you. Is it right or not?

21 A. I mean, I signed it, but ...

22 Q. Okay. So you had an agreement, right? Didn't you?

23 A. I signed it.

24 Q. Okay. And you signed that agreement because you were
25 working off drug charges, weren't you?

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 A. No, sir, I did not work those drug charges off. I was
2 put into drug court. It had nothing to do with the
3 sheriff's department. I went through drug court, and I
4 graduated drug court.

5 Q. Okay. Okay. Well, then I'm obviously mistaken. So
6 even though you signed all that, that wasn't the purpose of
7 your ---

8 A. No, it was not.

9 Q. Okay. And over the past fourteen plus years, since
10 that was in 2000, I believe, you have provided drugs from
11 what you've described as drug buys to law enforcement ---

12 A. I have.

13 Q. --- over three hundred times?

14 A. I mean, that's a give or take. I mean, I can't
15 remember everything.

16 Q. Okay. Well, let's just use three hundred as a round
17 figure then.

18 A. That's what I done, sir.

19 Q. I'm not trying to pin you down on a number, but it's a
20 whole lot over a whole lot of years, right?

21 A. Sure is.

22 Q. Okay. What do you -- what do you get out of that?

23 A. What do you mean what do I get out of it? Some of it
24 was working off charges, some of it I was paid for, some of
25 it I've done as personal favors ---

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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- 1 Q. Okay.
- 2 A. --- for the sheriff's department.
- 3 Q. What do you get paid?
- 4 A. What do you mean what do I get paid?
- 5 Q. What do they pay you?
- 6 A. Cash.
- 7 Q. Well, I know it's cash. How much do they pay you?
- 8 A. It depends.
- 9 Q. What does it depend on?
- 10 A. The case.
- 11 Q. What do you mean by the case?
- 12 A. Well, I mean, I don't know how well you want me to
- 13 explain that. It depends on the case, what we're doing and
- 14 ...
- 15 Q. In fact, Ms. Cannon, you've made anywhere from ten
- 16 dollars on some of these buys to ---
- 17 A. No, never ten dollars.
- 18 Q. Oh, it's always more than ten dollars?
- 19 A. Yes.
- 20 Q. Oh. And it's gone up as high as four hundred dollars,
- 21 hasn't it?
- 22 A. No, sir, never.
- 23 Q. Never? Okay. Okay. What's the highest it's ever gone
- 24 to?
- 25 A. I think I was given two hundred dollars at one time.

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 Q. Okay.

2 A. That's the most I remember. I mean, it's been years.

3 Q. Well, it's been over a lot of years, hasn't it?

4 A. Yes, it has.

5 Q. Okay. So if I say you were paid over four hundred

6 dollars before, you're telling me that's not true or you ---

7 A. You're saying ---

8 Q. --- don't remember?

9 A. --- at one time?

10 Q. I'm asking you any time?

11 A. Oh, of course it's been over four hundred dollars over

12 thirteen years, of course.

13 Q. I'm talking about one incident.

14 A. No.

15 Q. Have you been paid as much as four hundred dollars for

16 one incident?

17 A. Not to -- not that I remember, no.

18 Q. So it could be, but you don't remember, is that what

19 you're saying?

20 A. Right.

21 Q. Okay. Now, when this particular incident occurred, ---

22 A. Um-hum (affirmative).

23 Q. --- I believe you said that the deputy, or maybe more

24 than one, they searched you ---

25 A. Um-hum (affirmative).

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 Q. --- and your car?

2 A. Yes, sir.

3 Q. Okay. Describe how that -- I just want to understand
4 how that worked, what exactly was done.

5 A. They searched my car. They go through my car, from one
6 end of it to the other end of it.

7 Q. Okay.

8 A. And then they pat me down, pull my pockets out and make
9 sure I have no drugs or contraband on me.

10 Q. Okay. And who did that in this case?

11 A. Travis McJunkin and the other officer that was with
12 him.

13 Q. Who was that?

14 A. I don't remember who his name -- I don't remember who
15 it was, but there's always another officer present. It's
16 never just one of them alone.

17 Q. Was it male or female?

18 A. Male.

19 Q. Okay. And so they pat you down to make sure you don't
20 have any drugs?

21 A. Yes, sir.

22 Q. And then they give you some money to go buy the drugs?

23 A. Yes, sir.

24 Q. Or whatever it is you're buying?

25 A. Yes, sir.

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 Q. Now, I noticed in the car in the video we just saw ---

2 A. Um-hum (affirmative).

3 Q. --- there was some marks on your ankles and feet.

4 A. I have Psoriasis.

5 Q. I see. So that's not -- that's not from drug use?

6 A. No, sir, it's not. I have them on me now, some is on
7 my elbows and my hands.

8 Q. I see. Do you have children?

9 A. Yes, I do. I have three.

10 Q. How old are they?

11 A. Twenty-one, nineteen and seventeen.

12 Q. Any of them live with you?

13 A. They all three live with me.

14 Q. Okay. Now, I want to refer here to the State's exhibit
15 number 8, which I think you've previously identified in this
16 big old bag with the number on it.

17 A. Um-hum (affirmative).

18 Q. There's a little bag with some, I guess, white powder
19 or something ---

20 A. Yes, sir.

21 Q. --- inside of it there. Now, what exactly is this that
22 you're identifying?

23 A. Let me see.

24 Q. Sure.

25 A. That is the rock that I gave to Travis that he put in

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 that bag. And he sealed it up that day.

2 Q. Okay. How big was the rock?

3 A. It probably weighed point two five (.25), maybe point
4 three (.3) because, like I said, it was water whip.

5 Q. Well, I'm not very good with math. So just for me, how
6 large would that be?

7 A. About the end of your pinky, maybe not that big, a
8 little give or take. I'm not -- I'm not good with math
9 either.

10 Q. The size of a marble?

11 A. No, not that big.

12 Q. Not even that big?

13 A. Not even that big.

14 Q. Size of a BB?

15 A. A little bigger. Like I said, the end of your pinky,
16 give or take a little.

17 Q. Okay. So somewhere between a BB and a marble?

18 A. I guess, if that's what you want to call it, sir.

19 Q. No, I'm just -- I'm trying to understand what we're
20 talking about here.

21 A. Right. Well, I'm trying as best I can.

22 Q. Okay. Now, you had -- well, you said you made a phone
23 call?

24 A. Um-hum (affirmative).

25 Q. And I believe we saw on the video or we heard something

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 about a phone call. Did you have your cell phone?

2 A. I did.

3 Q. Was it your phone?

4 A. Yes, it was.

5 Q. Do you remember the number you called?

6 A. 398-0573, I think. As a matter of fact, I still have
7 it in my phone.

8 Q. Okay. And I didn't quite understand about the camera.
9 Where was the camera?

10 A. The camera is a keychain. It goes onto your car key.

11 Q. Okay.

12 A. So it ---

13 Q. So you just went in with your keys in your hand ---

14 A. Pretty much.

15 Q. --- kind of?

16 A. Pretty much.

17 Q. Is that what you did?

18 A. Pretty much.

19 Q. Okay. And according to you we saw Mr. Hardy holding a
20 bag of crack?

21 A. Right.

22 Q. Okay. But we didn't see Mr. Hardy or you exchange any
23 money?

24 A. Well, you know, all I can tell you is without him

25 noticing what I was doing that day, I done the best I could

BRANDY CANNON - CROSS EXAMINATION BY MR. BEAN

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1 with what I had.

2 Q. I have no doubt of that.

3 A. Um-hum (affirmative).

4 Q. Well, you said you're a drug addict. Did you seek
5 treatment for that?

6 A. Have I ever? No, I haven't.

7 Q. Do you still use drugs?

8 A. No, I don't.

9 Q. When's the last time you used drugs?

10 A. It's been a while. I just had a grandbaby.

11 Q. How much of -- congratulations.

12 A. Thank you.

13 Q. Boy or girl?

14 A. Little girl.

15 Q. How much of a while?

16 A. A while. I mean, ...

17 Q. Well, I kind of want to know. Did you use -- crack is
18 still your drug of choice?

19 A. Yeah, if I'm going to do drugs, yeah.

20 Q. Okay. Have you used any crack this week?

21 A. This week, no.

22 Q. Last week?

23 A. Not last week.

24 Q. In the month of July? This is the 22nd, I believe.

25 A. No.

BRANDY CANNON - REDIRECT EXAMINATION BY MR. BLOUIN

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1 Q. How about June?

2 A. I was -- I was in jail.

3 Q. What were you in jail for?

4 A. Probation violation.

5 Q. What were you on probation for?

6 A. Possession of crack cocaine.

7 Q. Okay.

8 MR. BEAN: Can I have just a moment, Your Honor?

9 THE COURT: Yes, sir.

10 (Pause)

11 MR. BEAN: No further questions, Your Honor.

12 THE COURT: Mr. Blouin.

13 **Redirect Examination by Mr. Blouin:**

14 Q. Ms. Cannon, ---

15 A. Yes, sir.

16 Q. --- I want to correct one thing that I believe you told
17 Mr. Bean just now.

18 A. Okay.

19 Q. You remember having a conversation with me yesterday.

20 A. Okay.

21 Q. Do you remember having a conversation with me
22 yesterday?

23 A. Yes, I do.

24 Q. And do you remember telling me the last time that you
25 had smoked crack?

BRANDY CANNON - REDIRECT EXAMINATION BY MR. BLOUIN

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1 A. Yeah, but he didn't ask me -- he said last week or this
2 week. He didn't say -- so ...

3 Q. Please tell the jury the last time you smoked crack.

4 A. Friday when I was told that I had to testify against
5 Taiwan Hardy.

6 Q. Okay. So ---

7 A. I relapsed after being ninety-eight days clean.

8 Q. So it has been a little while since then?

9 A. Yes. I smoked crack Friday night up until Saturday
10 morning. I freaked out. I mean, it's the truth.

11 Q. Okay. Now, Mr. Bean made a big deal about these
12 supposed Lortab charges.

13 A. Right.

14 Q. And you said those were in drug court.

15 A. Yes, sir. I -- I was one of the first original six
16 people that when drug court hit -- drug court hit
17 Spartanburg County, there was six of us chosen. I was one
18 of the six. And I'm the only one out of the original six
19 that graduated.

20 Q. And you still struggle with your sobriety?

21 A. Yes, I do.

22 Q. But the most recent time you were how many days clean?

23 A. Ninety-eight.

24 Q. Okay.

25 A. And that's a long time for anybody that does drugs

BRANDY CANNON - REDIRECT EXAMINATION BY MR. BLOUIN

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1 because you have to take it one day at a time.

2 Q. And you are sober right here, right now?

3 A. Yes, I am.

4 Q. Okay. Now, did you ever deny that you cooperated with
5 the police department to work ---

6 A. Never.

7 Q. --- to work off charges?

8 A. Never.

9 Q. Okay. Did you work off charges as to the situation
10 with Mr. Hardy?

11 A. No, sir, I did not.

12 Q. In actuality you did it why?

13 A. I did not do that for money either. I would just like
14 to say that. I did not do that to gain money. I done that
15 because Mr. McJunkin asked me for a favor. And, I mean, ...

16 Q. But you were compensated at the end?

17 A. Yes, I was. I was given fifty dollars, but that wasn't
18 my reason for doing it.

19 Q. Okay.

20 A. That wasn't the alterior [sic] motive, is what I mean.

21 Q. Now, how long have you known Mr. McJunkin?

22 A. A little over six years.

23 Q. All right. And has, during all of your buys that, I
24 think, Mr. Bean said three hundred, give or take, ---

25 A. Yes, sir.

BRANDY CANNON - REDIRECT EXAMINATION BY MR. BLOUIN

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1 Q. --- has Mr. McJunkin during a search ever found drugs
2 on you?

3 A. No, sir.

4 Q. Before a buy?

5 A. No, sir.

6 Q. After a buy?

7 A. The only time he's ever -- you mean -- I mean, giving
8 him -- I give him what I buy, but, no, sir, he's never found
9 any illegal drugs or contraband on me.

10 Q. So saying that, you know, what would happen if he found
11 illegal drugs on you?

12 A. I would have been arrested on the spot, and I would
13 have not been able to work with the sheriff's department
14 anymore, ever, period again.

15 Q. So you have had a good working relationship with Mr.
16 McJunkin ---

17 A. Not only with Mr. McJunkin, but with the sheriff's
18 department, period.

19 Q. And if you had tried to cheat them, would they have cut
20 you off?

21 A. Oh, yeah, definitely so.

22 Q. Do you ever receive payment for multiple buys at one
23 time?

24 A. No.

25 Q. So you were always paid -- you knew what ---

BRANDY CANNON - REDIRECT EXAMINATION BY MR. BLOUIN

92

1 A. Each buy.

2 Q. Okay.

3 A. Yes, sir.

4 Q. And there were different -- did y'all discuss the
5 payment before you did the buy?

6 A. No, sir, because, I mean, it wasn't an issue. That
7 wasn't what -- that wasn't what I was doing it for. It
8 wasn't an issue.

9 Q. Okay. But most of the time you were compensated in
10 some way?

11 A. Oh, yeah. Yeah..

12 Q. And the amount of money changed at different times?

13 A. It depended on if it's a trafficking buy, if it's just,
14 you know, a twenty dollar buy, it, you know, just depends on
15 what I was doing.

16 Q. So they paid you more depending on how important they
17 feel the case was?

18 A. Right.

19 Q. Okay.

20 **MR. BLOUIN:** I beg the Court's indulgence.

21 **THE COURT:** Yes, sir.

22 (Pause)

23 **MR. BLOUIN:** That's all, Your Honor.

24 Q. Please answer any further questions the Defense may
25 have..

BRANDY CANNON - REDIRECT EXAMINATION BY MR. BLOUIN

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1 **THE COURT:** Mr. Bean, recross.

2 **MR. BEAN:** No recross, Your Honor. Thank you.

3 **THE COURT:** You may step down. Thank you very much.

4 A. Thank you.

5 **THE COURT:** You wish to excuse the witness?

6 **MR. BLOUIN:** Yes, Your Honor.

7 **THE COURT:** Any objections?

8 **MR. BEAN:** None, Your Honor.

9 **THE COURT:** You're free to leave the courtroom, ma'am.
10 Thank you very much.

11 A. Thank you.

12 **MR. BLOUIN:** Your Honor, may we take ...

13 **THE COURT:** We're going to take a short break.

14 **MR. BLOUIN:** Okay.

15 **THE COURT:** All right. Ladies and gentlemen of the
16 jury, we're going to -- I'm going to allow you to step back
17 to the jury room and allow the court personnel here to have
18 a short break as well. As always when you leave the
19 courtroom, I'm going to instruct you not to discuss anything
20 about this case until I ask you to do so. You may retire to
21 the jury room. Thank you.

22 (Whereupon the jury exited the courtroom at 3:21 pm)

23 **THE COURT:** Court's in recess for about ten minutes.

24 (Whereupon court was in recess at 3:22 pm)

25 (Whereupon court reconvened at 3:37 pm)

TRAVIS McJUNKIN - DIRECT EXAMINATION BY MR. BLOUIN

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1 **THE COURT:** Thank you very much. You can be seated.

2 State ready to proceed?

3 MR. BLOUIN: Yes, Your Honor.

4 THE COURT: Defense ready?

5 **MR. BEAN:** Ready, Your Honor.

6 **THE COURT:** Bring the jury in.

7 (Whereupon the jury entered the courtroom at 3:38 pm)

8 **THE COURT:** All right. The record will reflect the
9 jury's returned to the courtroom. State is in the process
10 of calling its witnesses. You may call your next witness.

11 **MR. BLOUIN:** The State would call Investigator
12 McJunkin.

13 **THE COURT:** Come forward, sir, to my left and be sworn,
14 please.

15 **MADAME CLERK:** Raise your right hand and put your left
16 hand on the Bible.

17 Travis McJunkin, being
18 duly sworn testified as follows;

19 **MADAME CLERK:** Thank you. You may be seated.

20 **THE COURT:** Once you're seated, state your name,
21 please.

22 **MR. McJUNKIN:** My name is Travis McJunkin.

23 **THE COURT:** Thank you. Counselor, your witness.

24 **MR. BLOUIN:** Thank you, Your Honor.

25 THE COURT: Yes, sir.

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1 **Direct Examination by Mr. Blouin:**

2 Q. Investigator McJunkin, where are you employed?

3 A. I'm currently employed with the Spartanburg County
4 Sheriff's Office.5 Q.. And right now what are your duties at the Spartanburg
6 County Sheriff's Office?7 A. Currently as of right now I'm assigned as the task
8 force officer assigned to the Drug Enforcement
9 Administration, Federal Government Drug Task Force. There's
10 a group of us. We're stationed in Greenville, South
11 Carolina. I report there daily as part of my
12 responsibilities and obligations to the DEA, but I still am
13 employed with the Spartanburg County Sheriff's Office.

14 Q. What were your duties back in March of 2014?

15 A. At that time I was just officially titled as an
16 investigator assigned to the narcotics division.

17 Q. Okay. And how long have you been in narcotics?

18 A. Since January of 2009.

19 Q. And what are your basic duties as an investigator in
20 narcotics?21 A. Well, we cover many things. Narcotics is a general
22 term. It also covers vice, illegal gambling, prostitution.
23 My responsibilities can be as broad as performing undercover
24 buys myself where I might be the purchaser, also managing
25 informants doing what we call informant purchases.

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1 I also might do what they call proactive patrol at
2 times, knocking on people's doors. I'm also accountable for
3 planning raids, executing search warrants, preparing
4 affidavits. It can be analyzing information that we get
5 from many various sources, a lot of it's electronic now. It
6 could be any vast number of things, really. It's just a
7 very broad job. It's -- narcotics is just a term, but it
8 really encompasses a lot as far as what we do on a day-to-
9 day basis.

10 Q. Okay. Now, can you tell us since this incident is a CI
11 buy, ---

12 A. Yes, sir.

13 Q. --- could you just explain to the jury briefly kind of
14 what all is entailed in a CI buy from your side?

15 A. Depending on the nature of the investigation, generally
16 we have an investigation going that involves either an
17 individual or an organization. From that point, if we have
18 an informant who has access to the organization or
19 individual, we'll make contact with them. May do a little
20 research, a little background check on what it is that we're
21 looking at.

22 In particular cases where we do informant buys, we like
23 to create what we call a sterile environment when we meet
24 with the informant. That includes searching the motor
25 vehicle, searching the persons of the -- the person or the

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1 body of the CI in which we're meeting. Sometimes that
2 involves placing recorded telephone calls. They have
3 equipment that allows us to record telephone calls to
4 memorialize those.

5 And essentially once we establish that there's a
6 sterile environment or a clean environment, we'll equip the
7 informant with recorded funds, recorded money, recorded
8 cash. Everybody's seen twenty dollar bills in their money,
9 there's serial numbers. We document those as part of our
10 investigation.

11 Also, we have different -- many different audio visual
12 recording devices. Some are audio only. Some are video
13 only. We'll equip the individual, the informant with that.

14 And then from that point, most instances, if we're able
15 to, we'll follow them directly to the purchase location.
16 Sometimes that's not always possible for us to be exactly
17 there with them simply because most drug organizations and
18 many places that drugs are sold, they're intimate circles.
19 They all know one another. People such as myself, a common
20 lay person not familiar with these organizations would be
21 easily recognizable.

22 To be quite honest, our motor vehicles typically stand
23 out just because they're not what these individuals, these
24 organizations see on a day-to-day basis. So we either
25 follow them to the purchase location as close as we can, and

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1 then we'll monitor. Sometimes there's communication between
2 us and the informant during the buy, sometimes not.

3 Once they leave that location we meet them back at a
4 predetermined location that's already been agreed upon. And
5 then from that point they'll turn over the evidence to me.
6 Sometimes if the deal doesn't happen, which that does happen
7 as well, they'll return the money, they'll be searched,
8 we'll get our equipment. There's some basic paperwork that
9 I have to complete, that they have to complete that we'll go
10 through. And without going into too much detail, that's a
11 good generic summary of it.

12 Q. Okay. Now, you mentioned it is important for a
13 confidential informant to have a connection to a subject
14 that is under investigation.

15 A. Yes, sir.

16 Q. Now, can anybody be a confidential informant?

17 A. No, sir. The use of informants is going to be vital to
18 nearly any type of investigation that you could think of,
19 especially in the criminal element. It applies broadly, you
20 know, not only to narcotics, to the sheriff's office.
21 Counter intelligence, I think anyone who watches the news,
22 you can see that informants are vital to the counter
23 intelligence and even, I guess, fighting terrorism now.

24 But, yes, I don't have access to this information and
25 the things that they can do because I'm not a part of these

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1 intimate circles. And because of that, I would be so easily
2 recognized. And let's be honest, Spartanburg's a very small
3 place. As big as you think it is sometimes, this is a small
4 world. A lot of times we have to utilize informants because
5 they do have access to these organizations or these persons
6 involved in these criminal activities. And that's why their
7 information tends to be so valuable.

8 Q. And what kind of consideration do informants get for
9 cooperating with you?

10 A. It usually depends. In some instances they're trying
11 to get consideration for their charges, reduction in the
12 sentence. Sometimes it can be totally dismissed. Sometimes
13 it's financial.

14 Occasionally, not often, we have those who call in who
15 just want to make something right. We call them good
16 citizens sometimes. Sometimes we don't know somebody's true
17 motivation behind reaching out to us to work off charges.
18 But a lot of times -- and we do pay informants who are not
19 working off charges.

20 Some informants enjoy making money. There are those
21 out there who just continuously, you know, inform and
22 cooperate to make money. That's how they make money.

23 Q. All right. Let's talk about the meeting or the
24 incident that occurred on March 10th.

25 A. Yes, sir.

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1 Q. Can you explain where y'all met?

2 A. It would have been a church. I'm not sure of the
3 address -- exact address, excuse me. It's kind of in the
4 Whitney area between Highway 9 and 221, closer to mill
5 houses. There's a church in there that, you know, not just
6 anybody, I mean, a little more hidden that we can meet.

7 Q. Okay. And explain the arrangement that y'all made with
8 the confidential informant.

9 A. In this particular ---

10 Q. Yes.

11 A. That she would go buy crack cocaine from a gentleman
12 that I recognize as Flex, also Taiwan Hardy.

13 Q. Okay. And what was the compensation?

14 A. In this incident, fifty dollars.

15 Q. All right. And did she come to you about this or did
16 you reach out to her?

17 A. I believe I reached out to her in this particular
18 incident, yes, sir.

19 Q. Okay. Now, how much crack cocaine was she to purchase?

20 A. Twenty dollars roughly depending on the dealer. I
21 mean, it's just like anything else. You got these freelance
22 drug dealers. Some would cut you a better bargain than
23 others.

24 Typically it's anywhere to say -- safe to say anywhere
25 from point one (.1) of a gram or point two (.2) grams. Some

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1 people call it point for point. For every ten dollars that
2 you spend you get a tenth of a gram of crack cocaine. But
3 generally safe to say, I think a safe estimate is anywhere
4 from point one (.1) up to point two (.2) grams of crack
5 cocaine for twenty dollars.

6 Q. All right. And is that consistent with the crack that
7 you received as part of this investigation? Is that
8 consistent with the -- the amount you got consistent with
9 the price you paid?

10 A. Yes, sir.

11 Q. Okay. Now, a lot has been made about the search of the
12 confidential informant before she went and bought the crack
13 cocaine.

14 A. Yes, sir.

15 Q. Kind of explain that process.

16 A. When we start generally with a motor vehicle, in most
17 cases, I usually, if it's my case, the one I'm heading up, I
18 search the informant myself. And in this case, that's
19 exactly what I did.

20 She is a female. We search the best that we can as me
21 being the male. We don't strip search informants. Any case
22 if we wanted to, we were standing beside a public church, it
23 wouldn't have been feasible. She is searched as thoroughly
24 as I can within, I guess, it's what you can expect a
25 searching of a female being a man.

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1 And then also the motor vehicle would have been
2 searched thoroughly as well. And I believe in this
3 incident, I'm the one who actually searched the motor
4 vehicle as well.

5 Q. Okay. And you equipped her with audio visual
6 equipment?

7 A. Yes, sir, I did.

8 Q. And describe that audio visual equipment.

9 A. It's essentially, the cat's out of the bag now, it's
10 essentially a keyless remote, it looks similar to a keyless
11 remote that you use for your car. The informants have no
12 idea how to cut it on. They don't know how to cut it off.
13 I do that.

14 I make sure it's ready before I give it to them. I cut
15 it on. And you can hear me. I say a couple of things in
16 preparation to memorialize what we're doing that day. At
17 that point I give it to them. I either put it on the
18 keychain or whatever -- whatever the equipment is at the
19 time. This incident I would have put it on the keychain. I
20 would have completely prepared it.

21 Q. Okay. Now, did you follow the confidential informant
22 all the way to the location?

23 A. We followed her up to the point we seen her turn into
24 the parking lot.

25 Q. Okay.

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1 A. However, it's a high traffic area, it's a high -- it's
2 a well known drug active area. There again, as I've already
3 mentioned, it's not exactly, you know, a good sign for me or
4 my guys or whoever's with me just to pull up in the parking
5 lot because there's a lot of foot traffic, a lot of people
6 looking out windows.

7 Q. How did you -- did you or the confidential informant
8 set up the deal?

9 A. I believe, I mean, she had already set it up prior to
10 us meeting.

11 Q. So you didn't record that phone call?

12 A. No, sir, because it was already done when I spoke to
13 her on the telephone prior to us meeting. She had already
14 made arrangements for the purchase to have occurred.

15 Q. And would it have been odd if she'd have called back
16 and basically made the arrangements again?

17 A. Yes. I mean, it depends on your school of thought, but
18 we don't want to cause any red flags.

19 Q. Okay. Now, let's talk about your relationship with the
20 confidential informant in this case.

21 A. Yes, sir.

22 Q. How long did you know her?

23 A. I met her as a narcotics investigator late 2009,
24 however, I've been in law enforcement since 2003. I have
25 had instances prior to that, just incidents with her or her

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1 family.

2 Q. Okay. And how long have you worked with her?

3 A. Since late 2009.

4 Q. And how would you rate y'all's working relationship?

5 A. I'd say it's pretty good. I mean, when you do that
6 much with somebody and they, you know, are able to provide
7 you the information that you're looking for and have that
8 much of interaction with somebody, I mean, she was able to
9 produce some great cases over the years.

10 Q. Okay. Did you ever find drugs on her in the multiple
11 cases that you worked with her?

12 A. No, sir, I haven't.

13 Q. All right. And what would you do if you were to find
14 drugs on an informant if you searched them before a buy?

15 A. We would recover the drugs and they would be charged.

16 Q. Okay. Would they still work with the sheriff's office?

17 A. Most instances, no, sir.

18 Q. Okay. So they would be -- just strike them out, red
19 flag them?

20 A. We actually call what -- we use a term as undesirable.
21 And then they'll be marked as undesirable. And then that
22 just kind of usually, you know, eliminates that
23 relationship.

24 Q. Okay. And was the confidential informant in this case
25 ever marked as undesirable?

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1 A. As far as her -- as far as I know, not since the time
2 I've been her "handler". As far as I can, you know, testify
3 to, I've never known her to be marked as undesirable and
4 never had heard of such from people with more experience and
5 who's been around in the narcotics investigations than I
6 have.

7 Q. And how many buys, estimate, you believe she made for
8 you?

9 A. For me the number safer to say is probably at least a
10 hundred, but in my defense, she's not the only one out there
11 that I work with to -- without me actually, physically
12 sitting counting down, there is no telling simply because of
13 her and so many others that I work with. I would -- for me,
14 the safest number for me as well is a hundred.

15 Q. And just to make sure we're clear, was she working off
16 any charges when she did this buy?

17 A. No, sir.

18 **MR. BLOUIN:** I beg the Court's indulgence.

19 **THE COURT:** Yes, sir.

20 (Pause)

21 Q. Now, Investigator McJunkin, have you reviewed the video
22 recording of the buy?

23 A. Yes, sir, I have.

24 Q. And does that fairly and accurately represent the time
25 period she was gone from when you let her go to when she

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1 came back?

2 A. Yes, sir.

3 Q. And does the informant have any way, shape or form of
4 changing that video?

5 A. No, sir.

6 Q. And did she make any stops between going to that
7 apartment and coming back?

8 A. No, sir.

9 **MR. BLOUIN:** May I approach the witness, Your Honor?

10 **THE COURT:** You may.

11 Q. Investigator McJunkin, I'm going to show you what's
12 been premarked as State's exhibit 8. Do you recognize what
13 that is?

14 A. Yes, sir. This would have been the substance that I
15 would have submitted for testing that the informant would
16 have purchased for me that date on March the 10th.

17 Q. Okay. How did you come into possession of that
18 substance?

19 A. From the informant after the purchase had been made.

20 Q. So she gave it to you when you got back?

21 A. Yes, sir, upon our return.

22 Q. And she handed it directly to you?

23 A. Yes, sir.

24 Q. Okay. And then you put it in this BEST bag here?

25 A. Actually, there's a smaller bag. Can I see it, please?

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1 Q. Oh, sure. Absolutely.

2 A. As you can see, there's a smaller bag right there. And
3 I put it in a smaller bag because the BEST bag that we use
4 is much larger. It's a small piece, and, you know, you kind
5 of almost expect it to disintegrate. So to keep it
6 contained for purposes of testing, and make it a lot easier
7 on everybody involved in the process, I would have placed it
8 in this zip bag here with the red line across the top for
9 packaging for evidence purposes.

10 Q. How did she give it to you?

11 A. She handed it to me. I can't remember if it was
12 already in her hand upon my arrival or it was very common
13 for her to keep it in her brassiere.

14 Q. Okay. Did -- you've worked in narcotics for a long
15 time. Can you explain what water whip crack is?

16 A. It's a technique of -- crack is cocaine based. There's
17 kind of -- there's recipes for cooking crack, guys. Water
18 whip or whipping it up is one form of it. It usually
19 involves a lot of water and a lot of whipping. When I say
20 whip, you've almost got to think like taking a whisk,
21 whipping a cake.

22 And what that does, it's a technique used to create
23 more profit, stretch your product out, which is originally
24 cocaine after it's mixed with cocaine base and water is
25 added. And it fluffs it up. It makes it larger. You're

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1 adding air to the product. So it makes it larger.

2 And, of course, if you've got larger stuff with -- say
3 you had a nice round number of ten and you're able to whip
4 it up into twenty, well, you're getting to maximize your
5 profit. It creates a bigger rock. Now, to the customer's
6 eye, unless they're already familiar with what you're doing,
7 it looks like a bigger rock when it's really just the same
8 thing or it could be even less and you're trying to maximize
9 profit.

10 Q. Now, explain why there's not a rock in this bag?

11 A. Well, out of the ingredients in cocaine base, crack and
12 water whip crack especially, one of the ones that you will
13 need is water. After so long, water evaporates. And what
14 you're left with is going to be cocaine and baking soda,
15 sodium bicarbonate, if you want to be scientific about it,
16 and that's what you're left with. It's -- and that's
17 essentially without water.

18 Q. So just to make sure, what did you do with this once
19 you sealed it in the BEST bag?

20 A. Well, actually prior to sealing it, if I may back up a
21 little bit, what I would have done, I would have field
22 tested it for the presence of cocaine or cocaine base, which
23 we have a solution that we use that indicates the presence
24 of it so that we know we haven't been ripped off or flexed.
25 And -- as they call it.

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1 And then once we determine that that is, in fact, real
2 cocaine or crack cocaine, I would have weighed it, an
3 approximate weight. We don't have any scientific scales.
4 Generally what you see in the convenience stores is what we
5 have as well, with the approximate weight. I would have
6 sealed it in the bag, finished completing my paperwork and
7 submitted it for further testing to the chemist that worked
8 for the sheriff's office.

9 Q. So you field tested this?

10 A. Yes, sir, I did.

11 Q. And how did that field test come out?

12 A. It gave a positive, I guess, a positive test for the
13 presence of cocaine.

14 Q. And when you take these drugs or this substance to the
15 sheriff's office, ---

16 A. Um-hum (affirmative).

17 Q. --- how do you submit them?

18 A. It depends on the time in which I transport it there
19 because it would have remained in my care, for my custody
20 and my control. If I submitted it after hours when the
21 evidence custodians leave, they have like a -- it looks like
22 a big mailbox, old fashioned letter mailbox that you put in.
23 It's got a slide.

24 We either enter it in that way that only the evidence
25 custodians have access to or if they're still there, I would

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1 have just given it directly to the evidence custodians.

2 They don't like it if I put it in the mailbox when they're
3 at work.

4 Q. Do you remember how you submitted this?

5 A. To be quite honest, I couldn't tell you.

6 Q. Would it be helpful to refresh your memory?

7 A. Sure.

8 **MR. BLOUIN:** May I approach the witness, Your Honor?

9 **THE COURT:** You may.

10 Q. Do you recognize what this is?

11 A. Yes, sir.

12 Q. And if you could look over that to refresh your memory
13 of what you did and just hand that back to me.

14 A. Okay. Yes, sir.

15 Q. Now, how did you submit the material in this case?

16 A. In this particular incident I would have submitted it
17 to the actual old fashioned mailbox, drop-box that I
18 described.

19 Q. And who has access to that mailbox?

20 A. As far as I know, only evidence custodians at the
21 Spartanburg County Sheriff's Office.

22 Q. All right.

23 **MR. BLOUIN:** Beg the Court's indulgence for one moment.

24 **THE COURT:** Yes, sir.

25 (Pause)

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1 Q. Generally when you worked with the CI in this case did
2 -- did this incident mirror other incidents that she's
3 worked in the past?

4 A. Yes, sir.

5 Q. Was there any major, different -- any major
6 differences?

7 A. No, sir. I mean, in my longstanding with -- not with
8 just -- with this particular informant, but any informants,
9 I mean, it's generally a process that begins and ends
10 essentially the same. There was nothing in this particular
11 incident that caused me to have concern or to be, I guess,
12 on alert for something out of the ordinary because those
13 incidents do happen, but not in this particular incident,
14 no, sir.

15 Q. Has the confidential informant in this case done
16 anything to hurt your trust in her ability to work for you?

17 A. No, sir.

18 Q. Please answer any questions the Defense attorney may
19 have.

20 A. Yes, sir.

21 **MR. BEAN:** A moment, please, Your Honor.

22 **THE COURT:** Yes, sir.

23 (Pause)

24 **MR. BEAN:** No questions for this witness, Your Honor.

25 **THE COURT:** All right. You may step down, sir. Thank

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1 you very much.

2 **MR. BLOUIN:** The State would now call Robert Rosenberg.

3 **THE COURT:** Sir, come forward to my left and be sworn,
4 please.

5 **MADAME CLERK:** If you'll raise your right hand, put
6 your left hand on the Bible.

7 **Robert Rosenberg,** being
8 duly sworn testified as follows;

9 **MADAME CLERK:** Thank you. You may be seated.

10 **THE COURT:** Once you're seated, sir, state your name
11 for me.

12 **MR. ROSENBERG:** I'm Officer Robert Rosenberg.

13 **THE COURT:** Thank you. Mr. Hunter, your witness.

14 **MR. HUNTER:** Your Honor, may I approach the witness ---

15 **THE COURT:** You may.

16 **MR. HUNTER:** --- to give him a copy of his report?

17 **THE COURT:** Yes, sir.

18 **Direct Examination by Mr. Hunter:**

19 Q. Officer Rosenberg, how are you employed?

20 A. I'm employed with the Spartanburg County Sheriff's
21 Office as the evidence custodian.

22 Q. And how long have you been an evidence custodian?

23 A. Approximately twelve years now.

24 Q. Okay. So were you an evidence custodian on March 10th,
25 2014?

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1 A. Yes, sir.

2 Q. Okay. What are your duties as an evidence custodian?

3 A. What we do is we take in evidence that the officers
4 bring in. We itemize it in the computer and then we store
5 it in a secure area.

6 Q. And you have certain policies and procedures you have
7 to follow?

8 A. Yes, sir.

9 Q. What are those policies and procedures when
10 specifically dealing with narcotic cases?

11 A. We receive those in a brown envelope, which has a
12 sealed bag inside of it containing the drug substance and
13 the back of a test analyst report, I mean, request.

14 Q. Okay. Did you receive such an item in this case?

15 A. Yes, sir.

16 Q. Okay. And who would you have -- where did you receive
17 that item from?

18 A. From the drop-box, which is set outside the door of our
19 office, which is set in an area that's not open to the
20 public access. It's in a secure area where only officers
21 can go to. They can come by and submit their evidence. And
22 this would have been in a -- it looks like a mailbox that's
23 secured and fortified with steel. And only the evidence
24 officers have keys to this.

25 Q. And looking at State's exhibit -- what number is that

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1 on the red sticker?

2 A. 8.

3 Q. Okay. On State's exhibit 8, did you receive that item
4 in that drop-box?

5 A. I received the inner envelope inside a brown envelope,
6 which had the chain inside of it, yes.

7 Q. What is the chain?

8 A. The chain states from when the officer took this or the
9 original person took this, gave it to the officer, then gave
10 it to the -- to me, technically, the next officer. And it
11 stays there until it goes to the chemist. I think they do a
12 chain also.

13 Q. So that bag, State's exhibit 8, was submitted with
14 other items, but that's in the same or substantially same
15 condition as when you received it?

16 A. Oh, yes.

17 Q. And what date did you receive that?

18 A. March 11th, 2014.

19 Q. Okay. So the day after this incident?

20 A. Yes, sir.

21 Q. And what did you do with that item?

22 A. I take it, and we have in our evidence room, we have a
23 secure, locked with alarms area, it's a drug room. We take
24 it, put it in the computer and stick it in that room and
25 lock it up.

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1 Q. In fact, is that drug room separate from the other
2 evidence?

3 A. Yes, sir.

4 Q. And what are the safeguards between those two rooms?

5 A. There's multiple safeguards. There's motion sensors,
6 there's alarms throughout the room. There are different
7 types of alarms, I'll say that.

8 Q. Okay. Have you ever received a piece of evidence,
9 excuse me, so that's in the same or substantially same
10 condition as when you recovered it March 11th?

11 A. Yes.

12 Q. Okay. Can you briefly describe tampering with, say,
13 the BEST bag -- how would that be tampered with?

14 A. The most it could be tampered with would be that
15 someone either (a) didn't seal it properly at the top or
16 someone's opened it somehow. But we've very -- we've never
17 had an issue. And as far as I know, this wasn't tampered
18 with in any way, shape, form or fashion.

19 Q. If it appeared to have been tampered with what would
20 you have done?

21 A. I'd immediately called the officer and had him come
22 look at it.

23 Q. And I think you just described, has that ever happened
24 to you?

25 A. I want to say no, not -- we've had where it's not --

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1 where someone's tampered with it, it's where they didn't
2 seal it completely.

3 Q. Okay. And just this piece of evidence, did it appear
4 to be tampered with?

5 A. No, it does not appear to be tampered with.

6 Q. Okay. And so your job is to store that evidence to
7 make sure that it is not tampered with before it gets to
8 court, is that correct?

9 A. Yes, sir.

10 Q. Okay. And then you place it in the drug room?

11 A. Yes.

12 Q. And who comes and gets it from the drug room?

13 A. The drug chemist does.

14 Q. Okay.

15 A. One thing I will say, and not that we alter anything,
16 we do write down the name and we put the sticker on the
17 outside of the bag after we enter it into the computer.
18 Does not affect anything inside of the evidence bag.

19 Q. Okay. Do you ever open the evidence bag?

20 A. No, I do not.

21 Q. Okay. And you didn't do that in this case, did you?

22 A. No, I did not.

23 Q. Okay. And so at this point it does not appear that
24 that evidence has been tampered with since being in your
25 possession?

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1 A. No, sir.

2 Q. Okay. Please answer any questions Mr. Bean may have
3 for you.

4 **THE COURT:** Mr. Bean, your witness.

5 **MR. BEAN:** Thank you, Your Honor.

6 **Cross Examination by Mr. Bean:**

7 Q. Mr. Rosenberg or Deputy Rosenberg, just a couple of
8 questions. I'm not sure I understand quite how this works.

9 **MR. BEAN:** Approach the witness, Your Honor?

10 **THE COURT:** You may.

11 Q. I know there's a process. So this document here, what
12 exactly is that?

13 A. It's a C-form. Actually, whoever made a copy of this
14 for you left the top of it off. Well, this is our copy
15 apparently. And it just says C-form up here. It's a chain.
16 And whoever initially took it will do a B-form.

17 And then the next officer, whoever takes it, which
18 could be me or it could be -- I don't know if they used an
19 informant on this case or what, I don't know anything about
20 the case, but this says, yeah, they did use an informant,
21 number 20 0 -- 20 7 6. And it's turned in apparently --
22 given to Officer Travis McJunkin.

23 There should be a C-form from him. And it would have
24 been in that envelope also. And this is the form I filled
25 out when I received it from the drop-box.

ROBERT ROSENBERG - CROSS EXAMINATION BY MR. BEAN

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1 Q. Okay. So do you have Mr. McJunkin's form?

2 A. I do not. It should -- I think they have a copy. The
3 analyst has the originals.

4 Q. Okay. So when you get it in your job as evidence
5 custodian, you sign a C-form?

6 A. A C-form.

7 Q. And that's a copy of the one you signed?

8 A. It's my form, yes, sir.

9 Q. Okay. And now where does it go when it leaves your
10 custody?

11 A. We take it, and we lock it in the drug room. And then
12 a chemist will come in and pick it up out of the drug room
13 while we're there. And they will take it to their lab and
14 test it.

15 Q. Do they fill out a form?

16 A. I believe so.

17 Q. Do you happen to know? I mean, ...

18 A. I do not get their forms back after these go to the
19 labs. They're stored -- all the forms are stored with the
20 chemist.

21 Q. Okay. So you don't know whether the chemist did a form
22 or what ---

23 A. I could not advise. I do not know myself.

24 Q. Thank you.

25 **MR. BEAN:** No further questions, Your Honor.

MELISSA HENDRICKS - DIRECT EXAMINATION BY MR. HUNTER

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1 **THE COURT:** Redirect.

2 **MR. HUNTER:** Nothing, Your Honor.

3 **THE COURT:** You may step down. You wish to excuse the
4 witness?

5 **MR. HUNTER:** Yes, Your Honor.

6 **THE COURT:** Any objections?

7 **MR. BEAN:** No objection.

8 **THE COURT:** You're free to go, sir. Thank you.

9 **MR. HUNTER:** The State would call Melissa Hendricks.

10 **THE COURT:** Come forward and be sworn, please.

11 **MADAME CLERK:** If you'd raise your right hand, put your
12 left hand on the Bible.

13 **Melissa Hendricks, being**
14 duly sworn testified as follows;

15 **MADAME CLERK:** Thank you. You may be seated.

16 **THE COURT:** Once seated, state your name, please.

17 **MS. HENDRICKS:** Melissa Bennett Hendricks.

18 **THE COURT:** Thank you. Mr. Hunter, your witness.

19 **Direct Examination by Mr. Hunter:**

20 Q. Ms. Hendricks, how are you currently employed?

21 A. I'm employed by the Spartanburg County Sheriff's Office
22 as a forensic chemist.

23 Q. And how long have you been in that job specifically?

24 A. In the job up here in Spartanburg, for two and a half
25 years.

MELISSA HENDRICKS - DIRECT EXAMINATION BY MR. HUNTER

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1 Q. Okay. And how long have you been a forensic chemist?

2 A. Almost twenty-two years.

3 Q. Can you briefly go over your law enforcement
4 experience?

5 A. Law enforcement and chemistry or ---

6 Q. Correct.

7 A. Okay. I have a Bachelor of Science degree from the
8 University of South Carolina in chemistry, two years of
9 graduate study in medicinal chemistry including
10 pharmaceuticals and pharmacology.

11 I worked at the State laboratory, South Carolina Law
12 Enforcement Division State Laboratory for eleven years, two
13 years as a forensic drug chemist, nine years as a forensic
14 toxicologist. I have training on all the instrumentation
15 that we use in the lab at five of the various companies who
16 make the instrumentation. I'm also HazMat certified, WMD
17 HazMat certified, Clan Lab certified, and I'm a graduate of
18 the South Carolina Criminal Justice Academy.

19 Q. All right. So you're a super chemist?

20 A. I don't know about that.

21 Q. How many times have you come to testify in court?

22 A. Over my twenty-two years I've estimated over two
23 hundred times.

24 Q. Okay. At the Spartanburg County Sheriff's Office as a
25 forensic chemist what are your job duties?

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1 A. I receive pills, powders, plant material, any kind of
2 preparation that might be an illicit pharmaceutical, over-
3 the-counter drug or poison. We take that evidence in, we do
4 a preliminary or spot test on that substance. Then we run
5 confirmatory tests on that substance and write findings or
6 write a report with our findings on what we find on that
7 substance.

8 Q. Okay. And what instrumentation do you use?

9 A. Typically we use balance microscope and a gas
10 chromatograph mass spectrometer that's one piece of
11 equipment called an MSD.

12 Q. Okay. And just kind of in layman terms, how does that
13 work?

14 A. The first part is a gas chromatograph. It has a thirty
15 meter column in them that's not very much thicker than a
16 very thick hair. It's heated anywhere from sixty to two
17 hundred and eighty degrees Celsius. That's not Fahrenheit,
18 that's Celsius.

19 We extract the powder or plant material that we're
20 looking at in a chemical. That chemical goes on the column.
21 Larger molecules come out later, smaller molecules come out
22 faster. So the bigger the molecule the longer it takes it
23 to go through the column.

24 Once it goes through the column it's hit with an
25 abundance of electricity and makes that molecule break apart

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1 into its component parts. That gives us a fingerprint
2 identification on the mass spectrometer for that compound.
3 Just like every person has an individual fingerprint that
4 looks like nobody else's, every compound has an individual
5 fingerprint that looks like nothing else. And that tells us
6 what the compound is.

7 Q. Okay. What type of yearly training do you go through
8 as a forensic chemist?

9 A. We go through about forty hours of continuing education
10 credit every year. One of the places that we go is an
11 international association for clandestine laboratory
12 chemists. And we meet with chemists that do this same thing
13 that we do all over the world. We meet once a year and
14 exchange ideas and training on new drugs.

15 Q. Okay. And you're certified in multiple fields?

16 A. Yes, sir.

17 Q. Okay. And I know you briefly said them again, but can
18 you just go over what certifications you hold or held on
19 March 10th, 2014?

20 A. Well, I am a drug chemist. And I was at one time a
21 certified toxicologist.

22 Q. Okay. There was one other instrument that you use, and
23 you weren't in here during Mr. McJunkin's testimony, but he
24 talked about scales that they use on the scene. Do you use
25 scales in your reports and your investigation in the field?

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1 A. We do. We use analytical scales that -- analytical
2 being that they go -- they're a little more sensitive than
3 what the guys in the field have. We have to calibrate them
4 on a regular basis. And it goes to four to five depending
5 on which scale decimal places -- places after the decimal
6 point. So they're a little more accurate than some of the
7 things they use out in the field.

8 Q. How are they calibrated?

9 A. We have standardized weights that we buy that are -- we
10 have to keep standardized by the company that makes them
11 that we use to test anywhere from a milligram up to two
12 kilograms, depending on the balance, at least once a month.

13 MR. HUNTER: Your Honor, at this time the State would
14 offer Melissa Hendricks as an expert in forensic chemistry.

15 THE COURT: Any objections to her designation?

16 MR. BEAN: No, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury, just let
18 me explain to you a little bit about what we're doing right
19 now. Generally the rules of evidence do not allow lay
20 witnesses to offer opinions concerning matters. In other
21 words, witnesses are required to testify concerning facts
22 within their knowledge and not give opinions about those
23 facts.

24 Now, there's an exception to that general rule for any
25 witness that is qualified as an expert within some

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1 profession, or field or calling. And as for witnesses who
2 are designated to be an expert within a field, they are
3 allowed to state their opinions within that field of
4 expertise and give you the reasons why they hold those
5 opinions.

6 This witness is being offered as an expert within the
7 law of forensic chemistry. There is no objection. I will
8 designate her as such. That will allow her to give opinions
9 within that field and state the reasons why she holds those
10 opinions.

11 Later on when I charge you on the law I'll discuss this
12 with you further, but at this time suffice it to say that
13 this witness has now been designated as an expert. And you
14 may proceed, Mr. Hunter.

15 **MR. HUNTER:** May I approach the witness?

16 **THE COURT:** You may.

17 Q. I'll just go ahead and show you State's exhibit 8. Do
18 you recognize that item?

19 A. I do.

20 Q. And how do you recognize that item?

21 A. For one thing, we always write the laboratory case file
22 number, my initials and the date that I opened it on the
23 BEST bag that is inside here. And then when we seal it back
24 up, my initials and date and the lab number are on the
25 inside of the bag so they cannot be removed. And then I

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1 heat-sealed over them.

2 Q. Okay. So when you received the BEST bag -- can you
3 explain what a BEST bag is?

4 A. A BEST bag was started by the State Law Enforcement
5 Division. It means best evidence sample testing. That's so
6 as far as the chemist goes, when we're looking at whatever
7 evidence is inside that bag, it is left up to us to decide
8 which pieces of evidence would give the best charge.

9 So if they bring -- an officer brings in everything
10 from a crime scene, we pick out the things that are most
11 pertinent to the case and test those and then not test the
12 other ones that are not pertinent to the case. And that's
13 the bag that's inside here.

14 Q. Okay. So when you received -- where do you receive
15 that bag?

16 A. We receive these from the evidence room. They're a
17 tamper evident bag sealed at the top. And they're signed
18 over to us from the evidence room.

19 Q. And when you received that bag in question did it
20 appear to be tampered with?

21 A. No, it had not.

22 Q. If it had been tampered with what would you have done?

23 A. We would not have tested the chemicals inside.

24 Q. Okay. And so the larger heat-sealed bag around it was
25 not on it. Who puts that ---

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1 A. I do. Once we cut open the BEST bag, it can't be heat-
2 sealed back. So we have to place the evidence in a Kapak
3 sealable bag.

4 Q. Okay. Once you receive the bag from evidence and go to
5 the lab what's your process?

6 A. We give the evidence a laboratory case file number
7 logging it into our laboratory information management system
8 assigning it a number. Then when we open this case, we only
9 open one case at a time. The first thing we do is a spot
10 test, a color change test. It gives us a presumptive of
11 what the substance might be. And then we take a sample for
12 our GC mass spec.

13 Q. And did you perform a spot test on the substance in
14 that bag?

15 A. I did.

16 Q. And what was the result of that?

17 A. The spot test concluded that it was the base form of
18 cocaine commonly called crack.

19 Q. Okay. And then after that spot test was performed and
20 you had confirmed through the spot test, excuse me, not
21 confirmed, but the spot test shows cocaine base, what do you
22 do next?

23 A. Then we do an extraction, in this case, using the
24 chemical called Hexane, and then place it on the gas
25 chromatograph mass spectrometer that I explained earlier,

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1 and then get a fingerprint identification from there.

2 Q. Okay. And is that commonly called a confirmatory test?

3 A. It's actually two confirmatory tests, yes, sir.

4 Q. And did you perform that on the substance in State's
5 exhibit 8?

6 A. I did.

7 Q. Okay. And in your expert opinion what is the
8 substance?

9 A. The substance was cocaine base, commonly referred to as
10 crack.

11 Q. Okay. How do you weigh the substance?

12 A. We weigh the substance on our analytical balances. We
13 tare ounce either the bag or a piece of weight paper so that
14 it's zero and then put the substance on there after we've
15 taken a sample for the GC mass spec.

16 Q. Okay. So you've taken a spot test sample?

17 A. A spot test sample and a confirmatory sample and then
18 we weigh it.

19 Q. Okay. So there's actually two samples that aren't even
20 being weighed on the final weight once all the tests come
21 back confirmed?

22 A. That is correct.

23 Q. Okay. And you do that with which scales?

24 A. On our analytical balances in the lab.

25 Q. And in your expert opinion what was the weight of the

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1 substance?

2 A. Zero point zero eight (0.08) grams.

3 Q. Okay. What type of forms come with the substance when
4 you pick them up from the evidence room?

5 A. Well, it'd be our request form. It's a form they fill
6 out to request analysis from us and the chain of custody
7 forms from the officers and the evidence room.

8 Q. Okay. That'd be a form B and C?

9 A. Yes, sir.

10 Q. Okay. And do you have those with you?

11 A. I do.

12 Q. Okay. And those are signed by the officer and the
13 evidence technician as well as the informant if it was an
14 informant case?

15 A. Yes, sir, they are.

16 Q. Okay. And do you fill out a form A?

17 A. I do.

18 Q. What is the form A?

19 A. It's a form A affidavit that explains the date that I
20 got the evidence from the evidence room, my qualifications
21 as an expert witness, the tests that I did on this
22 particular substance, the date that I did those tests and my
23 signature.

24 Q. Okay. And did you fill out that information?

25 A. I did.

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1 Q. What date did you receive this substance?

2 A. I received this substance on March 12th, 2014.

3 Q. What date did you test the substance?

4 A. I tested the substance on March 13th, 2014.

5 Q. Okay. And again, would you have tested this substance
6 if any of this paperwork or the BEST bag appeared to have
7 been tampered with?

8 A. No. We do not test the substance if it had been
9 tampered with.

10 Q. And again, what was your expert opinion on what the
11 substance is and how much it weighed?

12 A. It was -- I found the substance to be cocaine base,
13 also known as crack, zero point zero eight (0.08) grams.

14 Q. Okay.

15 **MR. HUNTER:** Your Honor, at this time the State would
16 offer State's exhibit 8 into evidence.

17 **THE COURT:** Any objection?

18 **MR. BEAN:** No objection.

19 **THE COURT:** Without objections it'll be admitted as
20 it's been marked.

21 (Whereupon State's exhibit 8 was admitted into
22 evidence)

23 **MR. HUNTER:** Your Honor, no further questions at this
24 time.

25 **THE COURT:** All right. Mr. Bean, you may cross examine

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1 the witness.

2 MR. BEAN: Thank you, Your Honor.

3 **Cross Examination by Mr. Bean:**

4 Q. Ms. Hendricks?

5 A. Yes, sir.

6 Q. I don't have but a couple of questions because that's
7 the most confusing stuff. I flunked high school chemistry,
8 and I'll just tell you honestly, but certainly you know what
9 you're doing. But I wasn't sure I heard you just now. When
10 did you say that you did the test on this?

11 A. March 13th.

12 Q. Okay. Of 2014?

13 A. Yes, sir.

14 Q. And what was the weight when you weighed it?

15 A. Zero point zero eight (0.08).

16 Q. Can you give me an example of what that would be in
17 terms of weight, maybe something that's common, because I'm
18 not sure that I understand what zero point zero eight (0.08)
19 -- is that grams?

20 A. Zero point zero eight (0.08) grams, yes, sir, or eighty
21 milligrams. It's a small amount. You can see it. It's
22 kind of crushed now. But as a rock, about the size of a
23 small pea, ---

24 Q. Small pea?

25 A. --- maybe a little smaller.

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1 Q. Okay. So -- and when you -- I think you said you take
2 some of it off to test before you weigh it?

3 A. Yes, sir.

4 Q. Why do you do that?

5 A. Well, first of all, we want to make sure it is a
6 substance that would deem to be weighed. We usually weigh
7 everything, but we want to take our sample and we want
8 what's left in the bag to be presented in court to be the
9 weight at the end. So if you were to take the substance
10 right now and weigh it, it should still weigh zero point
11 zero eight (0.08) grams.

12 Q. Okay. So what you take off of there to test then is
13 used up in the testing process, ---

14 A. Yes, sir.

15 Q. --- is that what you're saying?

16 A. It's what we refer to as consumed in analysis. It's
17 destroyed in the analysis.

18 Q. There's another one of those complicated terms. I
19 apologize. Okay. So zero point zero eight (0.08) and we're
20 talking about the size of a small pea?

21 A. Yes, sir.

22 **MR. BEAN:** May I have a moment, Your Honor?

23 **THE COURT:** Yes, sir.

24 (Pause)

25 **MR. BEAN:** No further questions, Your Honor.

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1 **THE COURT:** Redirect?

2 **MR. HUNTER:** Briefly, Your Honor.

3 **THE COURT:** Yes, sir.

4 **Redirect Examination by Mr. Hunter:**

5 Q. Ms. Hendricks, you stated in rock form, however,
6 obviously before you is a powder. How would something go
7 from a rock form to a powder?

8 A. Usually crack is very brittle. So when we try to cut
9 it, it'll break apart and it will crush. And I think when I
10 actually received this I wrote in my notes that it was a
11 smushed off-white rock substance that was a little damp. So
12 I allowed it to dry. And when they've been smushed and then
13 they dry, it tends to be a grainy powder.

14 Q. Okay. And when you said about small as a pea, is it
15 about -- is that small?

16 A. A little tiny pea, yes.

17 Q. Okay. Thank you.

18 **THE COURT:** Mr. Bean, any further questions?

19 **MR. BEAN:** Nothing further, Your Honor.

20 **THE COURT:** You may step down. You wish to excuse the
21 witness?

22 **MR. HUNTER:** Yes, Your Honor.

23 **THE COURT:** Any objections, Mr. Bean?

24 **MR. BEAN:** No objections.

25 **THE COURT:** Ma'am, you're free to go. Thank you for

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1 coming today.

2 A. Thank you, sir.

3 **THE COURT:** Yes, ma'am. The State may call its next
4 witness.

5 **MR. BLOUIN:** The State rests, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen of the
7 jury, that completes the presentation of the State's case.
8 There's some matters I have to take up with the lawyers at
9 this time. And as you know, you'll have to step back to the
10 jury room. And I'll ask you not to discuss the case at all
11 until I've instructed you to do so. You may retire to the
12 jury room.

13 (Whereupon the jury exited the courtroom at 4:25 pm)

14 **THE COURT:** Any motions?

15 **MR. BLOUIN:** None from the State, Your Honor.

16 **MR. BEAN:** Your Honor, for the record, we'd move to
17 dismiss on the grounds the State hasn't proved its case
18 beyond a doubt, for the record, essentially.

19 **THE COURT:** I understand the motion, however, I do find
20 that the State has presented sufficient evidence to justify
21 the case moving forward. I'll deny any motion for directed
22 verdict at this time.

23 I need to talk to your client about his right to
24 testify at this time, Mr. Bean.

25 **MR. BEAN:** Yes, sir.

1 **THE COURT:** So I'm going to ask Mr. Hardy to stand
2 again. We need to place him back under oath at this time.

3 **MADAME CLERK:** Yes, sir. Please raise your right hand.
4 Do you solemnly swear or affirm the testimony you're about
5 to give will be the truth, the whole truth and nothing but
6 the truth so help you God?

7 **MR. HARDY:** Yes, ma'am.

8 **MADAME CLERK:** Thank you.

9 **THE COURT:** Mr. Hardy, you can have a seat, please.
10 Before I begin my discussion I'll ask the State are there
11 convictions on Mr. Hardy's record which the State intends to
12 attempt to use to challenge his credibility?

13 **MR. BLOUIN:** Your Honor, he was convicted in 1995 of
14 giving false information to police officers.

15 **THE COURT:** Okay. All right. Now, Mr. Hardy, let me
16 go over some matters with you at this point in time. I'm
17 going to explain to you certain rights that you have under
18 the United States Constitution primarily. When I finish my
19 explanation if you don't understand what I've told you or if
20 you have a question about what I've gone over, I'll be happy
21 to go back over this with you or give you additional
22 information.

23 We've reached the stage of this trial where you have
24 the right now to present your defense. You have the right
25 in doing so to testify, if you choose to do that, but you

1 also have the right not to testify.

2 The right not to claim -- the right not to testify is
3 embodied in the Fifth Amendment to the United States
4 Constitution. It reads in part that no person can be
5 compelled in a criminal case to be a witness against
6 himself. So that means while you have the right to testify,
7 no one can make you testify. Or in other words, you have
8 the right to remain silent.

9 Now, if you decide to testify I will tell you that your
10 testimony will be subject to the same rules that govern any
11 other witness' testimony. You would be examined by your
12 lawyer, then cross examined by the State's lawyer.

13 During that cross examination the State has indicated
14 that they have -- there is a conviction that they feel
15 involves dishonesty or false statements or for crimes that
16 were punishable by more than one year. And if this Court
17 makes a determination that the probative value of that
18 information outweighs its prejudicial effect to you, then in
19 that case the solicitor would be able to use that conviction
20 to attack your credibility.

21 Now, if you decide to testify, that decision must be
22 made freely and voluntarily by you and intelligently made by
23 you with knowledge of the protections given to you by the
24 Fifth Amendment and the consequences that could result
25 should you decide to testify.

1 I will tell you that if you decide not to testify that
2 I will instruct the jury that they cannot give the fact that
3 you did not testify any consideration whatsoever in reaching
4 a verdict. In fact, I would instruct them that they could
5 not even discuss the fact that you did not testify among
6 themselves during their deliberations and, therefore, the
7 decision not to testify should not be of any prejudice to
8 your case.

9 You have the right now to discuss this decision, if you
10 wish to do so, with your attorney, family, friends or
11 anybody else you would like to discuss the decision with,
12 but I will tell you in the final analysis it is up to you
13 and you alone as to whether or not you wish to testify in
14 this case. You have the right to make that decision on your
15 own, again, after consultation with anybody you'd like to
16 discuss it with.

17 Now, Mr. Hardy, do you understand the right I've
18 explained to you?

19 **MR. HARDY:** Yes, sir.

20 **THE COURT:** Do you have any questions about what I've
21 said?

22 **MR. HARDY:** No, sir.

23 **THE COURT:** Do you wish for me to go over anything else
24 in regards to this matter?

25 **MR. HARDY:** No, sir.

1 **THE COURT:** Now, have you had an opportunity to discuss
2 this matter with your lawyer?

3 **MR. HARDY:** I would like to discuss it with my lawyer.

4 **THE COURT:** All right. And then I will take a short
5 recess and allow you to do that. I'm looking at the clock,
6 and we're at about 4:30 in the afternoon. Even if he
7 decides not to testify, and there was no other evidence, I
8 don't think we'll go forward with closing arguments at this
9 point in time this late in the afternoon. Yes, sir, Mr.
10 Blouin.

11 **MR. BLOUIN:** Your Honor, if I may add one thing, while
12 that one conviction is the only one we believe fits under
13 that set of rules, ---

14 **THE COURT:** Um-hum (affirmative).

15 **MR. BLOUIN:** --- we would like to reserve the right to
16 approach this again on other convictions if we feel that a
17 doorway had been opened.

18 **THE COURT:** So do you believe that there are other
19 convictions on his record that may come into play should
20 certain testimony surface?

21 **MR. BLOUIN:** Yes, Your Honor.

22 **THE COURT:** Oh, I understand. Now, Mr. Bean, have you
23 been apprized of his record?

24 **MR. BEAN:** I have, Your Honor.

25 **THE COURT:** Okay. So you're aware of it?

1 **MR. BEAN:** I am.

2 **THE COURT:** All right. What I'm going to do is I'm
3 going to call the jury back in, I'm going to dismiss them
4 for the evening. We'll come back and complete the case in
5 the morning. That'll give your client an opportunity to
6 fully discuss his decision with you. And then we can get
7 his decision in the morning as well.

8 **MR. BEAN:** Your Honor, if I may inquire.

9 **THE COURT:** Yes, sir.

10 **MR. BEAN:** You mentioned, of course he can discuss it
11 with me, but you mentioned, I believe, something about he
12 could discuss it with his family. And they're here, but ---

13 **THE COURT:** Yes.

14 **MR. BEAN:** --- how would we -- what would the mechanics
15 of that ---

16 **THE COURT:** Well, I don't deal with how the jail lets
17 family talk to ---

18 **MR. BEAN:** I don't know either.

19 **THE COURT:** --- prisoners. So I don't really get into
20 that. I know that overnight they have telephones. He could
21 call someone. He can discuss it with people in those
22 fashions.

23 **MR. HUNTER:** Your Honor, I believe his telephone
24 privileges, based on those phone calls we gave to you, have
25 been revoked.

1 **THE COURT:** Oh, I did not know that. Okay. I didn't
2 realize that.

3 **MR. BEAN:** That's correct, Your Honor. And he was
4 moved to a more secure ---

5 **THE COURT:** Well, we've got thirty minutes here. We
6 could put him in the jail room, can't we, and let people
7 talk to him one at a time? Could we do that?

8 **THE OFFICER:** If that's your wish Judge, we can.

9 **THE COURT:** Okay. We'll do that.

10 **MR. BEAN:** Very well. Thank you.

11 **THE COURT:** No more than one person -- and they have a
12 right to frisk those people before they go in the jail room.

13 **MR. BEAN:** Yes, sir.

14 **THE COURT:** So make them aware they'll be subject to
15 being searched should they decide to do that.

16 **MR. HUNTER:** All right.

17 **THE OFFICER:** I think what I'll do is I'll use the
18 conference room back here for that.

19 **THE COURT:** All right. That'll be fine with me. Okay.
20 All right. So we'll make them available to him in the next
21 thirty minutes or so.

22 **MR. BEAN:** Thank you, Your Honor.

23 **THE COURT:** All right. Let's bring the jury back in at
24 this time.

25 (Whereupon the jury entered the courtroom at 4:33 pm)

1 **THE COURT:** All right. The record will reflect the
2 jury has returned to the courtroom. Looks like the matters
3 we're going to need to deal with are going to take a few
4 minutes. And I'm noting right now it's about twenty-five
5 until five. And so I'm going to let you go home for the
6 evening, and we'll start back in the morning.

7 As you leave the courthouse I'm going to give you the
8 same instructions I gave you when you left at lunch. That
9 is, don't discuss the case with anyone. Don't allow anyone
10 to discuss it with you. Don't attempt to gather any
11 information on your own. And don't listen to, watch or read
12 media reports. And should anyone try to contact you about
13 this case, please report that as soon as possible to the
14 clerk's office.

15 We're going to resume at 9:00 in the morning. So if
16 you would, report back to the jury room at that time. We'll
17 resume shortly thereafter. We shouldn't have much of a
18 hold-up in the morning. We'll get rolling pretty quickly in
19 the morning.

20 Hope you have a great evening. And I'll be checking
21 about my instructions again when you return in the morning.
22 All right. You're free to go at this time. Thank you very
23 much.

24 (Whereupon the jury exited the courtroom at 4:35 pm)

25 **THE COURT:** All right. We're in recess until 9:00 in

1 the morning. Thank you very much.

2 (Whereupon court was in recess at 4:35 pm)

3 Thursday, July 23, 2015:

4 (Whereupon court reconvened at 9:17 am)

5 **THE COURT:** We're back on the record in the case of the
6 State versus Taiwan Hardy. When we broke yesterday
7 afternoon Mr. Hardy and I had gone over his Fifth Amendment
8 rights to testify or to remain silent. Mr. Hardy, if you
9 would, please stand. Please place Mr. Hardy under oath
10 again today.

11 **MADAME CLERK:** Yes, sir. Please raise your right hand.
12 Do you solemnly swear or affirm the testimony you're about
13 to give will be the truth, the whole truth and nothing but
14 the truth so help you God?

15 **MR. HARDY:** Yes, ma'am.

16 **MADAME CLERK:** Thank you.

17 **THE COURT:** Mr. Hardy, did you have an opportunity to
18 discuss your decision with your lawyer yesterday afternoon?

19 **MR. HARDY:** Yes, sir.

20 **THE COURT:** And have you had an opportunity to discuss
21 your decision with anyone else you wanted to discuss it
22 with?

23 **MR. HARDY:** Yes, sir.

24 **THE COURT:** All right. Have you made a decision as to
25 whether or not you intend to testify?

1 **MR. HARDY:** I choose to remain silent.

2 **THE COURT:** You choose to remain silent?

3 **MR. HARDY:** (Affirmative nod).

4 **THE COURT:** Okay. Very good. Thank you very much.
5 Sir, you can be seated. Any other matters that the State
6 would like to take up before we proceed?

7 **MR. BLOUIN:** Nothing from the State, Your Honor.

8 **THE COURT:** Anything from the Defense?

9 **MR. BEAN:** Nothing from the Defense, Your Honor. The
10 Defense rests.

11 **THE COURT:** Okay. All right. I'll let you do that
12 formally in front of the jury when I bring them back in.

13 Now, I think -- did the Defense introduce an exhibit?
14 I believe you did.

15 **MR. BLOUIN:** They did, Your Honor.

16 **THE COURT:** Okay.

17 **MR. BLOUIN:** So we would ---

18 **THE COURT:** So that means you'll be going first, Mr.
19 Bean, unless you're going to require that the State open on
20 the law.

21 **MR. BEAN:** Your Honor, I would ask that the State open
22 on the law, but it's my understanding that if I introduce
23 evidence on cross examination of a State's witness, that
24 doesn't constitute the admission of evidence on my part,
25 which would cause me ---

1 **THE COURT:** Oh, really?

2 **MR. BEAN:** --- not to go first.

3 **THE COURT:** I've never heard of that. Maybe I missed
4 something.

5 **MR. BEAN:** That was my understanding, Your Honor. And
6 I certainly don't ---

7 **THE COURT:** Okay. Well, let me check on that. Mr.
8 Blouin, can you help me with that?

9 **MR. BLOUIN:** Your Honor, I have -- I have never heard
10 of it as well. I've always assumed that once the Defense
11 enters in evidence that ---

12 **THE COURT:** You want to check on that for me?

13 **MR. BLOUIN:** --- the State ---

14 **THE COURT:** We're looking for it.

15 **MR. BLOUIN:** --- gets the last argument.

16 **THE COURT:** We'll see what we've got.

17 (Pause)

18 **MR. BLOUIN:** State v. Battle, 304 191.

19 **LAW CLERK:** Can you repeat that case cite again?

20 **MR. BLOUIN:** 304 191.

21 (Pause)

22 **THE COURT:** Mr. Bean, let's talk about this.

23 **MR. BEAN:** Yes, sir.

24 **THE COURT:** The State has given us a case, Battle is
25 the name of the case, in which a defendant in cross

1 examination introduced a document into evidence. And then
2 when it became time to decide who would go first and last in
3 closing arguments, the defendant attempted to withdraw the
4 document so he could preserve his right to argue last.

5 What happened in that case was the judge decided he
6 didn't have the discretion to withdraw evidence once it was
7 in. So he refused to withdraw it, considered the question.
8 But the court clearly said in that case that the
9 introduction of a document on cross examination waives final
10 argument.

11 Now the case -- the other case that I found is State
12 versus Mouzon is the one I'm looking -- the one that I'm
13 looking at. And State versus Mouzon was a -- it has a quote
14 that says in a criminal prosecution where a defendant
15 introduces no testimony, he is entitled to the final closing
16 argument to the jury.

17 But the next sentence says because -- and what happened
18 in that case was the defendant requested that the jury view
19 the scene, but didn't introduce any evidence. The question,
20 whether or not that was a waiver of his right to close
21 finally.

22 And so the next sentence says because the jury view was
23 not evidence and because Mouzon presented no other
24 testimony, he's entitled to the last closing argument. So
25 they talked in terms of the introduction of evidence being a

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1 waiver in the Mouzon case. And they treated it that way in
2 the Battle case. Is there some other authority you want to
3 give me?

4 **MR. BEAN:** I don't have any authority, Your Honor. I
5 have had this occur on previous occasions with other judges
6 ---

7 **THE COURT:** Uh-huh (affirmative).

8 **MR. BEAN:** --- in other cases, and it's never come up.
9 I have done it a few times just similar to this and have
10 always gotten the last argument. Nobody's ever raised the
11 issue. So I've never researched it. And, obviously, I
12 don't have the ability to do that now as Your Honor does and
13 as the solicitor does.

14 And I was sitting here thinking about it while y'all
15 were looking at things, and one of the things that came to
16 mind was, well, wonder if we could withdraw the evidence.
17 But I certainly agree with what you said, once it's in, it's
18 in. I don't think ---

19 **THE COURT:** Well, no, the Battle case stands for the
20 proposition that the judge does have the authority to, in
21 his discretion, to allow the withdrawal of the evidence.

22 **MR. BEAN:** Well, I -- I'm sorry ---

23 **THE COURT:** So that's not what's -- that's not the
24 issue in front of me right now because you haven't made a
25 motion to withdraw the evidence at this point.

1 **MR. BEAN:** I'm fixing to. I misunderstood that, Your
2 Honor. I thought you had said that the case had concluded
3 ---

4 **THE COURT:** Isn't that what Battle said?

5 **MR. BEAN:** --- that you could not do that.

6 **THE COURT:** My law clerk is of the opinion -- I haven't
7 read Battle word for word. He's read it much more
8 thoroughly than I have. He says, though, that once you've
9 introduced it, you've waived, even if you withdraw it.
10 So ---

11 **MR. BEAN:** I see.

12 **THE COURT:** --- I don't know whether -- I haven't read
13 Battle word for word, but he has. So -- now the timing on
14 these is that Mouzon was a 1997 Supreme Court case. How
15 about Battle? It's '91. It's a '91 Supreme Court case.
16 Battle is not cited, I don't believe, in the Mouzon case.

17 Of course, Mouzon had to do with whether or not the
18 jury view was an introduction of evidence sufficient to
19 waive. So again, they were talking in terms of had you put
20 some evidence in, you would have waived. But since a jury
21 view is not evidence, you didn't waive. So they, again,
22 talk in terms of putting in evidence is a waiver. So I
23 think that's where we are.

24 So now the issue becomes are you going to require the
25 State to open and close or simply close?

1 **MR. BEAN:** Your Honor, I would ask that they open and
2 close.

3 **THE COURT:** All right. So that means the State will
4 have to go forward with the first argument on the law and
5 then later come back and argue the facts. All right. Do
6 you want a little time before we do that?

7 **MR. BEAN:** I might need a few moments, Your Honor.

8 **THE COURT:** Okay. I'll stay on the bench. Let me know
9 when you're ready. I know the State may not have been
10 prepared to have to do that. So I'll give you a few moments
11 to be ready.

12 (Pause)

13 **THE COURT:** Can I ask the attorneys to approach for
14 just a moment.

15 (Whereupon a bench conference was held off the record)

16 **THE COURT:** Court will be in recess for about ten
17 minutes.

18 (Whereupon court was in recess at 9:44 am)

19 (Whereupon court reconvened at 10:00 am)

20 **THE COURT:** We're back on the record in the Hardy case.
21 I had a conference in chambers concerning the question of
22 the order of argument in the case, come to an agreement
23 between counsel. I'll put the -- what I understand the
24 agreement to be on the record.

25 My understanding is that Mr. Bean has agreed to

1 withdraw the exhibit that he has introduced. I'm trying to
2 see, is it down there with you? Okay. He will withdraw
3 that exhibit that he had introduced. And the State has
4 agreed to allow Mr. Bean, therefore, to argue second in the
5 case. Is that a correct statement of the agreement, Mr.
6 Blouin?

7 **MR. BLOUIN:** Yes, Your Honor.

8 **THE COURT:** And, Mr. Bean, is that a correct statement
9 of the agreement?

10 **MR. BEAN:** Yes, Your Honor.

11 **THE COURT:** And, Mr. Hardy, if you'll stand, please.
12 And I'll remind you that you're still under oath today. Has
13 your attorney discussed this with you?

14 **MR. HARDY:** Yes, sir.

15 **THE COURT:** And has he fully explained this matter to
16 you?

17 **MR. HARDY:** Yes, sir.

18 **THE COURT:** Do you have any questions about what we're
19 doing at this point in time?

20 **MR. HARDY:** No, sir.

21 **THE COURT:** And do you agree with your attorney's
22 strategy in this instance?

23 **MR. HARDY:** Yes, sir.

24 **THE COURT:** Okay. Thank you very much, sir. You can
25 be seated.

1 **MR. BEAN:** Your Honor.

2 **THE COURT:** Um-hum (affirmative).

3 **MR. BEAN:** Should I retrieve the document?

4 **THE COURT:** Well, I'm going to have it marked as a
5 Court's exhibit. So it's in the record, but it will not go
6 to the jury that way. So if there's any question as to what
7 it was or how it -- what it had in it, it'll be preserved
8 for the record.

9 **MR. BEAN:** Yes, sir.

10 **THE COURT:** So I'm going to have it changed to a
11 Court's exhibit or marked as a Court's exhibit. It will not
12 be presented to the jury.

13 (Whereupon Defendant's exhibit 1 was marked as Court's
14 exhibit 3)

15 **THE COURT:** All right. We've had a lot of things on
16 the sidelights. Now, Mr. Blouin, are you ready to go
17 forward with your closing argument?

18 **MR. BLOUIN:** Yes, Your Honor.

19 **THE COURT:** And, Mr. Bean, are you ready to go forward
20 with the closing arguments?

21 **MR. BEAN:** Yes, Your Honor.

22 **THE COURT:** Let's bring the jury in.

23 **THE BAILIFF:** Yes, Your Honor.

24 **THE COURT:** Thank you, ma'am.

25 **MR. BLOUIN:** Your Honor, he still needs to rest in

1 front of the jury.

2 **THE COURT:** I'm going to ask him if he has any
3 witnesses.

4 (Whereupon the jury entered the courtroom at 10:03 am)

5 **THE COURT:** All right. The record will reflect the
6 jury has returned to the courtroom. I hope everyone had a
7 good evening.

8 And as I indicated to you yesterday, I'm asking now if
9 any of you had any difficulty in complying with the
10 instructions that I gave you when you left the courthouse.
11 Did anyone have any difficulty following those instructions?
12 If you did, please stand.

13 (No response)

14 **THE COURT:** It appears that all jurors have been able
15 to follow the Court's instructions for another evening.

16 First of all, I want to apologize to you because you've
17 been sitting back there, but we had some matters that we had
18 to deal with. We've been here since 9:00, but we had some
19 things that we had to deal with before we could bring you
20 into the courtroom. So, again, sorry you were back there
21 that long. And we'll try to move along at this time.

22 When we left yesterday the State had completed the
23 presentation of its evidence. And at this time the Defense
24 has the right to call witnesses if the Defense chooses to do
25 so. Mr. Bean.

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1 **MR. BEAN:** Your Honor, the Defense rests.

2 **THE COURT:** All right. Ladies and gentlemen, that
3 completes the presentation of evidence in the case. And I
4 told you once we'd reached this stage of the proceedings the
5 attorneys will again be granted the right to directly
6 address you. And in this case the State will be going
7 first. Mr. Blouin, you may proceed for the State.

8 **MR. BLOUIN:** Thank you, Your Honor.

9 **THE COURT:** Yes, sir.

10 **MR. BLOUIN:** Lady and gentlemen of the jury, I'm here
11 to talk to you one more time to try and give you kind of
12 what happened yesterday and try to put in context everything
13 you've heard because over the course of the day you heard a
14 lot of information. And so my job at this point is going to
15 try to put this all together for you.

16 Now, when I stood up in front of you the first time I
17 told you that there's three things that the State had to
18 prove. Those three things were that Taiwan Hardy
19 distributed crack cocaine.

20 Now, let's look at those three different issues. The
21 first one was Taiwan Hardy. Well, we had Ms. Brandy sit
22 here and point out Mr. Hardy as the person that she bought
23 crack from as well as multiple pictures from the buy. And
24 you'll be able to look at all these pictures and see all
25 these pictures of Mr. Hardy in that room. So that's really

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1 not an issue. We know Mr. Hardy was there.

2 The third thing I told you I had to prove was that it
3 was crack cocaine. We had a chemist come in and testify
4 that what's in this baggy, once again, this will go back
5 with you, was, in fact, crack cocaine.

6 Also, we had testimony that showed that it went from
7 Brandy Cannon, handed directly to Investigator McJunkin,
8 handed directly to Mr. Robert Rosenberg. And his purpose
9 was to keep it, you know, sealed in an evidence room where
10 no tampering took place until it finally went to the
11 chemist. So this is the substance, crack cocaine, that came
12 from this incident. So there's really no issue in that.

13 The second issue is what I want to talk about, the one
14 that's left, whether Mr. Taiwan Hardy distributed this crack
15 cocaine. Now, the Defense attorney is going to probably
16 tell you that there was a video of the event and that on
17 that video there does not show a clear transaction of money
18 to crack cocaine.

19 Now, this is where I asked you at the beginning to use
20 your common sense. You have a woman who is working for the
21 police who is unknown to be working for the police than
22 someone who is selling her crack cocaine. She was given a
23 video recorder that was like a key fob on a chain. She's
24 going into a place where she believes she is going to get
25 crack cocaine and trying the best she can to get a video

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1 while holding her keys as she testified to in a certain way.

2 Now, Judge Couch told you at the beginning this is not
3 CSI. You know, I don't have high definition television of
4 everything that happened, but that doesn't mean that it
5 didn't happen. And so that's why I'm going to explain kind
6 of the rest of the evidence and put it, you know, into some
7 context.

8 Use your common sense. Let's look at Brandy. She
9 testified that over her career she's done three hundred plus
10 buys for the police as, you know, as an informant. She
11 testified that she'd worked for six years with Investigator
12 McJunkin and done over a hundred buys.

13 Now, when Investigator McJunkin was asked about that,
14 he testified that during those hundred buys that she had
15 never -- they had never found drugs on her, you know, when
16 they presearched her, that she'd never done anything, you
17 know, shady or disingenuous during their working
18 relationship.

19 And, three, if he -- he never found drugs on her. If
20 he had found drugs on her, she would have been arrested and
21 marked, you know, red flagged, marked undesirable, I think,
22 was the term and that to his knowledge, you know, while he
23 worked with Brandy she had never been undesirable and to his
24 knowledge during her three hundred plus buys she'd never
25 been marked undesirable.

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1 Now, the real question is why use Brandy? You know, as
2 I also mentioned in my opening, the drug world is different
3 than normal society. And Brandy is part of that world. You
4 know, she's an addict. She admits that her drug of choice
5 is crack cocaine.

6 She admitted that she has tried to say stober [sic] and
7 she relapses and it's hard for her to be in that world. But
8 as Investigator McJunkin stated, being in that world gives
9 her access. You know, she testified she knew Mr. Hardy for
10 over ten years, that she knew him because they did drugs
11 together. That gave her access that was unavailable to
12 other individuals. And when performing these investigations
13 narcotics officers, as Investigator McJunkin said, need
14 people who have access.

15 Now, let's go over the deal. They met at a church. No
16 one seems to dispute that. Ms. Cannon was searched, her car
17 and her person pre and post buy. Doesn't seem to be any
18 dispute about that either. No drugs were found.

19 She then was given that equipment and given twenty
20 dollars. And she went to that apartment. She didn't make
21 any stops. She didn't, you know, stop and get gas or stop
22 and talk to friends. She went straight there and was
23 followed into the parking lot by Investigator McJunkin.

24 She then gets out of her car, goes into an apartment
25 complex or a motel room, 127, I believe it was. And there's

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1 only one person you see on that video. That man right
2 there, Taiwan Hardy. And this video is going to go back
3 with you. Feel free to watch it. I know the volume wasn't
4 great in here. Listen.

5 She goes in there and, I believe, at about, you know,
6 the one or the seven minute, thirty second mark to the eight
7 minute mark, I know it's kind of difficult to hear, you can
8 hear her talking about boiling it off. She testified what
9 that meant. She was given a wet -- a water whip rock. And
10 she's got to put it in a spoon and dry some of it out to
11 make it usable, to make it smokable.

12 Now, why is this believable? Because Brandy's a crack
13 addict. She smokes crack. That's how she's got to get it
14 ready.

15 She then gets back into the car and drives straight
16 back to the meeting location. Once again, no stops. And
17 Investigator McJunkin followed her right out of the parking
18 lot. As soon as they get to that location she is checked
19 out. What do they find on her? Well, the drugs that they
20 hand her, a rock that she said was about that big, no other
21 monies on her. You know, the twenty dollars is gone.

22 Well, at the end of that, once she's debriefed, she's
23 paid fifty dollars for making that buy. She was paid. Deal
24 done.

25 Now, I want you to think about what did Brandy have to

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1 gain by coming in here and testifying? She had already been
2 paid for the service she provided. She's not owed anything,
3 you know, at the end of this. She's not working off any
4 charges. You know, nothing -- nothing's going to happen,
5 you know, as far as income or benefit to Brandy from coming
6 in here and testifying yesterday.

7 The only thing that happened by Brandy coming in here
8 is that -- we used the word confidential informant. She's
9 no longer confidential. The only thing that happened by her
10 coming in here is now Taiwan Hardy knows who she is. The
11 deal was done. Brandy said she came in here because it was
12 the right thing to do. You know, she's not perfect.

13 Now, let's get back to the chemist. And I want you to
14 think about this. The chemist who testified last, Ms.
15 Hendricks, she wasn't in the courtroom. She's never met
16 Brandy. She doesn't know Brandy. Never talked to Brandy.
17 Doesn't know what Brandy looks like.

18 She came in right at the end. She testified that they
19 did their tests and it tested positive for crack cocaine.
20 And I believe she was asked how big of a rock was it because
21 as the testimony showed it dried out and crumbled. It
22 doesn't look like a rock anymore. But when the chemist got
23 it it was still a rock. And she described it as the size of
24 a small pea.

25 Well, Mr. Hunter then followed up that answer with, so

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1 would you say it was about the size of the tip of your
2 pinky? In which she said, yeah, about that size, the size
3 of a small pea.

4 So common sense says that Brandy is telling you about
5 the rock she handed over. It's the same size of the rock
6 that she got -- gave to the chemist. On top of that the
7 chemist commented that it was a soft, kind of wet rock, a
8 water whip rock that she had to actually dry it out before
9 she could test it to make sure that the water had evaporated
10 out of it. So once again, we have a water whip rock here
11 and someone all the way at the end of the chain who's never
12 met her all of a sudden is in possession of this water whip
13 rock.

14 Now, I want you to pay close attention, and I know
15 technology and everything is not as good as it should be or
16 as good as it could be here in this courtroom. And it was
17 hard to see some of the pictures from where you're sitting
18 here, but I want you to take special note of these pictures.

19 I want you to look and see what Brandy was talking
20 about when she said that there was crack in his hands. Look
21 at them and see if you believe that she is telling the truth
22 that there is crack in his hands, that there is a razor
23 blade in one of the pictures on a table that is used to cut
24 up crack cocaine. You will have this. You will be able to
25 look at it, ponder over it.

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1 Also, watch the video, you know. The one thing about
2 the video and the reason that we kind of had some difficulty
3 is the video, because it's on a key fob, it was shot upside
4 down. So pay close -- that's why we had to flip the screen
5 and made it a little bit more difficult to see. But listen
6 to it. You're going to be in a smaller room, smaller
7 setting. You're going to be able to hear a little bit
8 better.

9 And the audio quality isn't great, but listen for what
10 you can hear. Listen for things like boil it off and, yeah,
11 but don't boil it too much, things that Brandy said is
12 directly attributed to the crack cocaine business.

13 Last, I'd like to point out that Brandy is not on trial
14 here. She is an addict and has clearly lived a somewhat
15 rough life. You know, you don't have to like her or the
16 lifestyle that she seems to choose to live, you know, to
17 believe that this deal, given everything, Investigator
18 McJunkin's testimony, Mr. Rosenberg's testimony, the
19 chemist's testimony, to believe the deal happened as it had.

20 Once again, she had a track record of working with the
21 police of doing a good job or she wouldn't have been working
22 for the police. Taiwan Hardy is the one on trial. That man
23 right there.

24 Like I said, I'm asking you to look at all the
25 evidence, look at the video, look at the pictures. And once

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1 you take that all together I want you to find that Taiwan
2 Hardy distributed crack cocaine on March the 10th, 2014 in
3 Spartanburg County and find him guilty. Thank you.

4 **THE COURT:** Mr. Bean for the Defense.

5 **MR. BEAN:** Thank you, Your Honor.

6 **THE COURT:** Yes, sir.

7 **MR. BEAN:** I hope you all will excuse me for using
8 notes. When you get to be my age, sometimes you can't
9 remember everything. And you want to make a point and it
10 slips your mind. So I've written a lot of things down. And
11 I want to talk to you about some of those things that I
12 think are important in this case.

13 If you recall, when His Honor made his opening remarks
14 to the jury one of the things that he talked about was
15 reasonable doubt. And in every case, criminal case, and
16 that's what this is, the State has to prove the Defendant
17 guilty beyond a reasonable doubt.

18 Now, that's probably a phrase that all of you have
19 heard. You've probably heard it on TV, I'm sure. I know I
20 have a number of times. What a reasonable doubt is is a
21 doubt that would cause a person, a reasonable person to
22 hesitate, to think in their mind, but wait a minute, what if
23 whatever. So let's talk about the case and about what we
24 know and about what we heard when the State's witnesses were
25 testifying.

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1 Now, Officer McJunkin, you may recall, told everybody
2 that he had searched Brandy Cannon, the admitted drug
3 addict, before they sent her up to the motel room where
4 Taiwan was living. But they didn't conduct a strip search
5 or a real thorough search because under the policies men
6 can't pat down women beyond just a basic pat-down.

7 And the chemist, as you just heard, said that this
8 supposed, not supposed, this crack rock was the size of a
9 small pea, bigger than a BB, but a lot smaller than a
10 marble, something easily concealed, perhaps, in a lady's bra
11 as, in fact, Brandy Cannon said it was when she returned
12 from the motel room.

13 So you may also recall that Officer McJunkin gave her a
14 twenty dollar bill and they had marked that in some way,
15 written down the serial number so they could identify the
16 bill when they made their case. Now, there's -- I'll get to
17 that a little bit more in a minute, but let's talk some more
18 about Brandy.

19 I never saw Brandy before yesterday, not that I know of
20 anyway. Never seen her in the case, but she is admittedly a
21 drug addict. You heard her sit right up here and say she
22 was. She had been for more than fourteen years. She
23 admitted that crack cocaine was her drug of choice.

24 I asked her if she'd smoked marijuana and she said no.
25 Then she said yes. I asked her if she'd used other drugs.

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1 And she said no, but then she admitted, oh, yes, she had.

2 She had some issues, I think, with Oxycontin and Lortab. I

3 asked her if she had used any drugs in the last week. And

4 she said no. And I said, how about the week before? No.

5 How about this month? No. How about last month? No.

6 And then for some reason when the solicitor got up and

7 asked her a question about the same thing she said, oh,

8 yeah, well, I smoked some crack on Friday, last week because

9 I was just nervous or my nerves were tore up. I don't

10 remember exactly what she said, but she did say, yes, I

11 smoked some crack last week.

12 And I would submit to you that if she were sitting here

13 now and had to take a drug test, there's no way in the world

14 she could pass it. She's a crack addict. She'll do

15 whatever she needs to do. She'll say whatever she needs to

16 say in order to feed that crack habit and get what she

17 wants, what she needs, which is crack cocaine.

18 Now, she'd have you believe that she'd gone out and

19 done this and she's done it lots and lots of times because

20 she's just a good citizen. She's just a good citizen trying

21 to -- trying to help the world be a better place.

22 The only problem with that is that she gets paid. But

23 she only gets paid if she comes back and brings some drugs.

24 If you come back empty handed, you don't get paid. So, of

25 course, she's got to come back with some crack cocaine or

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1 she has to produce crack cocaine that she says she got from
2 someone else, in this case, from my client, Taiwan Hardy.
3 Oh, I went up to the motel room and I got that and, you
4 know, there you go. And she had this camera that was on the
5 keychain. So there was a video and all that.

6 Now, of course, when she comes back and supposedly --
7 and gets -- I think she said she took the little crack thing
8 out of her -- out of her bra, if I remember correctly. But
9 anyway, they can't look at that video right then. So let's
10 just think about what was said. She comes back and she
11 comes to Officer McJunkin and he says, well, did you get
12 anything? And she says, yeah, and out comes this little
13 rock of crack cocaine. Okay, good. Did you give him the
14 money? Yeah. They searched her, didn't find anything. She
15 must have given it to Taiwan.

16 If you go back and watch this video, look around real
17 careful to see if you see any money. I don't believe you'll
18 see any money. I don't think any money changed hands. I
19 don't think the video's going to show you that any money
20 changed hands.

21 So she comes back. Yep, I got a crack rock up there.
22 Here it is. She knows there's a video. They can't look at
23 the video right now. And according to her, this picture
24 shows Taiwan Hardy sitting there with a great big oh bag of
25 crack cocaine.

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1 Now, I don't know what crack cocaine looks like. We've
2 got a little bit here in this evidence bag. Big bag of
3 crack cocaine. Wouldn't she have said, and you wouldn't
4 believe that guy's up there with a big oh bag of crack
5 cocaine? Sure she would have if he was.

6 And if he was, don't you think that the officers would
7 have said, let's go get him. We'll make a great big bust.
8 No reason for Brandy not to tell them that. She'd have
9 gotten a whole lot more than fifty dollars. Wouldn't she?
10 Sure she would have. That would have been on TV. It would
11 have been in the Herald Journal. Yeah. But she didn't tell
12 them about that because it didn't happen.

13 And the money, there's no exchange of money. You won't
14 see it. And you can watch it. I've watched that video.
15 You watch it and make your own decision, but you won't see
16 any money on there. There's no money changing hands. And
17 the reason there's no money changing hands is because she
18 didn't give Taiwan any money because she didn't get any
19 drugs from Taiwan.

20 Now, if there was a bag of cocaine and if Taiwan was
21 supposedly a drug dealer, surely to goodness the police
22 would have done something about it right then. Wouldn't
23 they? But they didn't. They didn't do anything.

24 So there wasn't any cocaine up there. She didn't get
25 the cocaine from Taiwan. She could very easily have had

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1 that little rock the whole time and nobody, including the
2 officer who patted her down, would have known anything about
3 it or been able to find it. It could have been right there.
4 She could have had it in there all day before she got there
5 and she just produced it right at the end and says here you
6 go.

7 Now, when we talk about reasonable doubt, again,
8 something that causes you to hesitate and think, but wait a
9 minute, what if? I think that's what we have here. And
10 under the law, as His Honor will, I'm sure, charge you in
11 just a few minutes, if you have a reasonable doubt and
12 that's in your mind and you think, well, wait a minute, then
13 that means that the State has not met their burden of proof
14 and proven guilt beyond a reasonable doubt, and you must
15 find Taiwan not guilty. Thank y'all.

16 **THE COURT:** All right. Ladies and gentlemen, that
17 completes the closing arguments by the counsel. And I told
18 you when we reached this stage of the proceeding it would be
19 my responsibility to charge you concerning the law to be
20 applied in this case.

21 When we started the case I went over with you the
22 indictment in the matter. And, again, I will call your
23 attention to the indictment. The indictment is the charge
24 that brings the case before the Court. The indictment in
25 this case is for the distribution of cocaine base, more

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1 commonly it's referred to as crack cocaine.

2 The indictment says that, and I'll just go over it with
3 you at this time, that Taiwan J. Hardy did in Spartanburg
4 County on or about March 10 of 2014 manufacture, distribute,
5 dispense, deliver, purchase or otherwise aid, abet, attempt
6 or conspire to manufacture, distribute, dispense, deliver,
7 or purchase or possess with the intent to manufacture,
8 distribute, dispense, deliver or purchase a quantity of
9 crack cocaine base, a schedule II controlled substance under
10 the provisions of code section 44 53 375 of the code of laws
11 of South Carolina, 1976 as amended against the peace and
12 dignity of the State and contrary to the statute in such
13 case made and provided.

14 Now, I'm going to remind you the fact that a defendant
15 has been charged, arrested and indicted in a case is not
16 evidence in this case and cannot be considered by you as
17 evidence of guilt in this case. Nor does it create any
18 presumption of guilt, the fact that that document has been
19 issued.

20 This document, again, is just the formal instrument
21 that informs the Court of the charges to be tried. It
22 informs the Defendant of the charges that are -- been lodged
23 against him. It's the document that brings the case into
24 the court.

25 And the Defendant has pled not guilty to that.

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1 indictment. And I explained earlier that that plea places
2 the burden of proof upon the State to prove the Defendant
3 guilty beyond a reasonable doubt.

4 You see, a person who's charged with a crime in this
5 State is never required to prove himself innocent. And I
6 charge you that it's an important rule of law that a
7 defendant in a criminal case, no matter how serious the
8 crime might be, is always presumed under the law to be
9 innocent of the charges for which the indictment has been
10 issued until and unless guilt has been shown to you, the
11 jury, by proof beyond a reasonable doubt.

12 Now, the presumption of innocence does not end when you
13 begin your deliberations. The presumption of innocence
14 accompanies the Defendant throughout the trial and into your
15 deliberations.

16 Some people describe it somewhat like a robe that
17 somebody would wear into the courtroom. It's around his
18 shoulders at the beginning of the trial. It remains about
19 his shoulders into your deliberations. It remains about his
20 shoulders until such time as that presumption of innocence
21 has been stripped from him by evidence that satisfies you of
22 the Defendant's guilt beyond a reasonable doubt.

23 So the presumption of innocence is not just a legal
24 theory, and it's not just a legal phrase. It's a
25 substantial right that every defendant is entitled to unless

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1 you, the jury, are satisfied from the evidence of the
2 Defendant's guilt beyond a reasonable doubt.

3 Now, I've used that phrase proof beyond a reasonable
4 doubt several times. It's an important concept in our
5 criminal law. I want to point out to you that in criminal
6 cases that is the standard of proof.

7 In civil cases where there's monetary damages being
8 sought there's a different standard of proof. I don't want
9 you to be confused by that. In civil cases where someone's
10 seeking money damages, the standard of proof is by the
11 greater weight of the evidence, sometimes called the
12 preponderance of the evidence.

13 And that means that the scales of justice, if you can
14 visualize that in your mind, would tilt ever so slightly in
15 favor of a plaintiff or ever so slightly in favor of a
16 defendant. And whichever way those scales tilt in a civil
17 case, that side's entitled to the judgment. So standard of
18 proof in a criminal case is more powerful than that standard
19 of proof. Now, the proof is proof beyond a reasonable
20 doubt.

21 Now, you might ask yourself, well, just what is a
22 reasonable doubt? And I will tell you the cases that have
23 considered that define a reasonable doubt as that kind of
24 doubt that would cause a reasonable person to hesitate to
25 act. And the State has the burden of proving its case

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1 beyond a reasonable doubt.

2 Now, proof beyond a reasonable doubt is that kind of
3 proof that would leave you firmly convinced of the
4 Defendant's guilt. And I will tell you that there's very
5 few things that go on in human life that can be proven
6 beyond any doubt whatsoever. And that's not the standard to
7 which the State is held in these cases. In other words,
8 it's proof beyond a reasonable doubt, not proof beyond any
9 doubt whatsoever.

10 And I will tell you that if after considering all of
11 the evidence if you are firmly convinced of the Defendant's
12 guilt beyond a reasonable doubt, you must find the Defendant
13 guilty. However, if after consideration of all the evidence
14 if you think there's a real possibility that the Defendant
15 is not guilty, then you must give the Defendant the benefit
16 of that doubt and find the Defendant not guilty.

17 I remind you that during the trial we've had certain
18 duties to perform. And our duties are separate and distinct
19 duties. I've had to preside over the trial. And I've had
20 to rule on some -- a few things.

21 It wasn't a case where there was a lot of controversy
22 over the introduction of evidence. But again, I'll caution
23 you, don't take anything that I say in the discharge of my
24 duties either during the trial or even during this charge on
25 the law to somehow indicate to you that I've got an opinion

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1 one way or the other as to how you determine the facts in
2 this case.

3 I've explained, you are the sole judges of the facts in
4 this case. Please don't take from anything that I say or do
5 to indicate that I've got an opinion one way or the other as
6 to how you determine those facts because I'll tell you
7 again, the law doesn't allow me an opinion on the subject,
8 and I have no opinion as to how you should determine the
9 facts in this case.

10 You are to consider the testimony which has been
11 presented from the witness stand from witnesses who've been
12 sworn to tell the truth who've testified before you, and any
13 exhibits which have been made a part of the record in the
14 case, and any agreements or stipulations by counsel.

15 I have the additional duty of charging you on the law
16 in this case. And I told you earlier, just as I cannot
17 disagree with you concerning the facts, you cannot disagree
18 with me concerning the law that you're to apply. I am the
19 judge of the law in this case. So it's your obligation to
20 take the law exactly as I give it to you and apply that law
21 to the facts as you determine those facts to be. The law,
22 again, if you had an idea as to what the law is or what it
23 ought to be, you should leave those ideas outside of the
24 jury room before you begin your deliberations in this case.

25 Now, when you consider the evidence in any case you

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1 have the right as a jury to consider two types of evidence.

2 And let me explain to you what I mean by two types of

3 evidence. The law generally divides evidence into either

4 what we call direct evidence or circumstantial evidence.

5 And a jury has the right to consider both types of evidence

6 in reaching a verdict in a case.

7 Now, direct evidence is testimony by a witness who

8 claims to have direct knowledge of the facts about which the

9 witness testifies. That's someone who claims to have

10 actually been present or participated in the events, who

11 actually saw, felt, heard, smelled the facts about which

12 that person testifies. In other words, their testimony goes

13 directly to the fact that's sought to be proved. They're

14 testifying directly on that point.

15 The other type of evidence that a jury has the right to

16 consider is what we call circumstantial evidence. Now,

17 circumstantial evidence is proof of a chain of facts or

18 circumstances that indicate the existence of another fact.

19 I like to use a very simple example as to what we mean

20 by proof of fact by circumstantial evidence. Let's say last

21 night when you went to bed you looked outside the window in

22 your bedroom and you noticed the stars were shining outside,

23 pretty night, and you went to sleep and you slept all night,

24 slept well, didn't wake up at all. You got up the next

25 morning walked to the same window in your bedroom and looked

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1 outside and while the sun might be shining you noticed there
2 was water dripping off all the trees outside. There's
3 puddles in the road or the driveway in front of your house.
4 The grass outside of your house has wet -- is very wet.

5 Now, during the night you slept. You didn't see it
6 rain. You didn't hear it rain, so you couldn't say directly
7 as to whether it did or it didn't. But from the chain of
8 facts you know to be true, water dripping out of the trees,
9 puddles where they weren't there the night before, wet grass
10 in front of your house, from those factors you could easily
11 conclude that at some time during the night it, in fact,
12 rained. So that's what we mean by proof of a chain of facts
13 that indicate the existence of some other fact.

14 Now, the law doesn't make any distinction between the
15 weight or value that you, the jury, can give to either
16 direct or circumstantial evidence. And there's not a
17 greater degree of certainty required of circumstantial
18 evidence than of direct. You should weigh all of the
19 evidence in this case, both direct and circumstantial.

20 And if after weighing that evidence if you are not
21 firmly convinced of the Defendant's guilt beyond a
22 reasonable doubt, you must find the Defendant not guilty.
23 However, on the other hand, if you are firmly convinced of
24 the Defendant's guilt beyond a reasonable doubt, you must
25 find the Defendant guilty.

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1 Now, one of your jobs is to determine the believability
2 and credibility of the testimony you heard in this case. I
3 told you that at the beginning of the trial because as the
4 finders of fact part of your job is to determine the
5 credibility of the testimony that you heard during this
6 case. It's your duty as jurors to analyze and evaluate the
7 evidence, make a determination as to which evidence
8 convinces you of its truth.

9 In determining believability of witnesses who've
10 testified in this case you may believe one witness over
11 several or several over one. You have the right to believe
12 all of, part of or none of what a witness might tell you.
13 You can believe the testimony of a witness, again, in its
14 entirety or reject any part of that testimony.

15 You can consider whether or not a witness had an
16 interest, bias, prejudice or any other motives in testifying
17 in the case. And you have the right to consider the
18 appearance and the manner of a witness in testifying while
19 on the stand.

20 And if -- you've heard that some witnesses in this case
21 may have had a prior criminal record. The fact that someone
22 has a criminal conviction does not disqualify one from
23 testifying in this case. And you may consider the record of
24 a witness who testified solely for the purpose of
25 determining the credibility questions that I'm talking

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1 about. You give it the weight you think it deserves to have
2 and consider it in such manner as you think it should be
3 considered, but it does not disqualify a witness from
4 testifying, the fact that they have a prior criminal record.

5 Also we had witnesses who testified in this case or at
6 least one who was qualified as an expert witness. And I
7 told you I'd talk to you a little more about that when we
8 got to this stage of the proceeding.

9 And I told you then that the rules of evidence do not
10 permit witnesses to testify about their opinions on
11 subjects. An exception to that rule exists for witnesses
12 who are designated as experts. And I explained then that's
13 because someone has particular training in either a
14 profession, a field, a science, things of that nature would
15 qualify someone as an expert within that field or science.
16 And they are allowed to state their opinions within those
17 fields.

18 I'll tell you that you should consider the testimony of
19 an expert like any other witness in this case. You give it
20 the weight you think it deserves. Should you determine that
21 an expert's opinion is not based on sufficient education or
22 experience or you conclude that the reasons given for the
23 opinions were not sound, or were not supported or were
24 outweighed by other evidence in the case, you have the
25 right to disregard an opinion by an expert in its entirety.

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1 I'll tell you that an expert's testimony should be
2 given no greater weight simply because the Court designated
3 that person as an expert. In other words, it's your job to
4 analyze the evidence and determine whether or not it
5 deserves a finding of credibility or not. You're not
6 required to accept an expert's opinion even though it might
7 not be contradicted by other evidence.

8 One other factor I'm going to charge you on is -- and I
9 will instruct you and emphasize to you that the fact that
10 the Defendant did not testify in this case is not a factor
11 that can be considered by you in your deliberations. It
12 must not be considered by you in any manner whatsoever.

13 You see, a defendant has a Constitutional right to
14 remain silent. And the fact that a defendant has asserted
15 that right is not a factor to be considered by you in any
16 manner whatsoever.

17 I'll repeat, under your oath you're to draw no
18 conclusions whatsoever from the fact that the Defendant did
19 not testify in this case. And I will instruct you that the
20 fact that the Defendant did not testify in this case should
21 not even be discussed by you in the jury room.

22 As I told you at the beginning of the trial, and I've
23 told you in this charge, the State has the only burden of
24 proof in this case. The Defendant is not required to prove
25 his innocence in this matter. And that burden of proof

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1 remains upon the State to prove the Defendant guilty beyond
2 a reasonable doubt.

3 Now, an issue in this case could be the identification
4 of the Defendant as the person who committed the crime that
5 was charged. And part of the State's burden is to prove the
6 identify of the Defendant as the person who committed the
7 crime in this case.

8 You should be satisfied from the evidence beyond a
9 reasonable doubt of the accuracy of the identification of
10 the Defendant before you can convict the Defendant of the
11 crime. Identification testimony is an expression, or a
12 belief, or an impression by a witness. You must determine
13 the accuracy of the identification of the Defendant.

14 You must consider the believability of identification
15 witnesses like any other witnesses in this case. You may
16 consider whether the witness had an adequate opportunity to
17 observe the offender at the time of the offense. This can
18 be effected by the length of time that the person saw it,
19 how far or close they were from each other, and the chance
20 that the witness had to see the person, perhaps, or had
21 known them in the past. Once again, part of the burden of
22 proof in this case on the State is to prove the identify of
23 the Defendant as the person who committed the crime.

24 Now, the crime that's charged in this case is
25 distribution of cocaine base. And that's what the

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1 indictment says. And again, I'm going to let you have that
2 indictment back in the jury room.

3 The State must prove -- in order to prove that crime
4 the State must prove beyond a reasonable doubt that the
5 Defendant distributed cocaine base or what's referred to as
6 crack cocaine. Distribution means to deliver or to
7 actually, constructively or attempt to transfer a drug other
8 than by administering or dispensing it under the law.

9 Delivery means to actually, or constructively or
10 attempt to transfer the drug. A transfer can involve an
11 exchange for money, a barter or even a gift. There does not
12 have to be anything given in exchange for the drugs for a
13 transfer to constitute distribution under the law.

14 Now, Mr. Wendell Glenn, if you'll raise your hand,
15 please. You're going to be the foreperson of the jury.
16 That means you're going to be the person who will be
17 conducting the discussions of the jury. As the jury does
18 its deliberation, should the jury have a question, it'll be
19 up to you to write that question on a piece of paper, knock
20 on the door and hand it to the bailiff outside of the
21 courtroom. And they'll bring the question to me for my
22 consideration.

23 Now, I'll tell you, I can't answer every question you
24 might have in your deliberations. I've already told you, I
25 can't get involved in your decisions concerning the facts.

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1 You're the sole judges of the facts. I cannot comment on
2 the facts to you.

3 I can answer other questions about the procedure we're
4 following, the law that I've instructed, things of that,
5 but, Mr. Glenn, do not edit any question the jury has.
6 Submit it to me, I'll decide whether I can answer it or what
7 the appropriate response ought to be. So your job is to
8 record it, get them to agree on the question and submit it
9 to the bailiff.

10 Also, it'll be your job once a verdict's been reached
11 in this case to record that verdict on a piece of paper that
12 I'm going to go over with you in just a minute to be sure
13 you understand that piece of paper. It's not complicated.
14 You'll just need to record it, sign it, knock on the door
15 and hand it to the bailiff. Again, we'll bring you back
16 into the courtroom to receive the verdict once it's reached.

17 Now, I told you earlier, your verdict must be
18 unanimous. Each and every one of you must agree upon the
19 verdict before it becomes the verdict of the jury. Again,
20 that means that Mr. Glenn's no more important than any other
21 juror. All of you have to agree before a verdict is
22 reached. So it'll require a unanimous consent or agreement
23 by you before the jury has recorded a verdict and it can be
24 put on the verdict form.

25 Now, I've gone over a good bit with you. And we're

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1 going to send the exhibits back into the courtroom [sic]
2 with you. And I've got to be sure that only the ones that
3 were admitted do go back with you. So I've got just a
4 couple of housekeeping matters that I need to take care of.

5 So I'm going to ask you one more time to step into the
6 jury room, don't start any discussions yet. I'll call you
7 back in just a few minutes. It won't be long. And I'll
8 give you your final instructions and then tell you to begin
9 your deliberations. You may retire to the jury room.

10 (Whereupon the jury exited the courtroom at 10:45 am)

11 **THE COURT:** Exceptions to the charge from the State?

12 **MR. BLOUIN:** Nothing from the State, Your Honor.

13 **THE COURT:** Exceptions or additions from the Defense?

14 **MR. BEAN:** No, Your Honor.

15 **THE COURT:** All right. I'm going to ask you to come
16 forward, if you would, and gather the exhibits together on
17 the bar over here so that we agree on what goes back to the
18 jury. I have the verdict form that I'm going to use. I'll
19 ask you to come review that before I submit it to them as
20 well.

21 I don't know how we're going to play that. Do you have
22 the clean ---

23 **MR. HUNTER:** We have a clean computer.

24 **MR. BLOUIN:** Your Honor, ---

25 **THE COURT:** Okay.

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1 **MR. BLOUIN:** --- and I didn't know whether we should go
2 ahead and just put it up and they can watch it if they want
3 to, they don't have to, but there won't be any setup time.

4 **THE COURT:** I think it'd be a good idea to go ahead and
5 put it in the machine ---

6 **MR. BLOUIN:** Okay.

7 **THE COURT:** --- so that they don't ...

8 (Pause)

9 **THE COURT:** All right. Come look at the verdict form
10 for me.

11 (Pause)

12 **THE COURT:** All right. Any objection to the verdict
13 form from the State?

14 **MR. HUNTER:** No, Your Honor.

15 **THE COURT:** From the Defense?

16 **MR. BEAN:** No, Your Honor.

17 **THE COURT:** Have we segregated the exhibits?

18 **MR. BEAN:** Yes, Your Honor.

19 **THE COURT:** Okay. Mr. Hunter, Mr. Blouin, you agree
20 that we've segregated the exhibits?

21 **MR. BLOUIN:** Yes, Your Honor.

22 **THE COURT:** All right. Thank you. If you gentlemen
23 would have a seat. Once you get that ready, let me know.

24 All right. Let's bring the jury in.

25 (Whereupon the jury entered the courtroom at 10:51 am)

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1 **THE COURT:** All right. The record will reflect that
2 the jury has returned to the courtroom. All right. Sir,
3 the documents I've given you, there's two of them. One is
4 the indictment in this case as I've told you you could take
5 back with you, the charge in this case.

6 The other is the verdict form. Let's look at the
7 verdict form for just a second. At the top it'll have the
8 State and County that we're located in, the court that we're
9 involved with, the General Sessions court, it'll show the
10 parties involved, the State and, of course, the Defendant.

11 There's one question on that and that has to do with
12 the one indictment that you have in your hand, that is for
13 the charge of distribution of crack cocaine, that the
14 possibilities are either not guilty or guilty. I'll tell
15 you, don't take from the fact that I put those choices in
16 any particular order on that form to somehow indicate that
17 I've got a preference as to what verdict you reach.

18 I tell people, I've been doing this almost twelve years
19 now, and every one I've ever done is in the same order. I
20 always put not guilty on top, guilty on the bottom. So
21 that's no preference by me, it's just the way it is on my
22 computer, and I'm not going to change it.

23 So you'll just put an X or a check by the appropriate
24 verdict blank, that's by the appropriate verdict. Once it's
25 a unanimous verdict you'll sign the document, Mr. Glenn.

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1 And then you'll knock on the door, tell the bailiff the
2 verdict's been reached, and we'll bring you back into the
3 courtroom to receive the verdict.

4 Now, we have placed the video on a clean computer. I'm
5 going to ask at this time that the attorneys step back into
6 the jury room, plug that up so it's available for you to
7 look at the video if you wish to do that. So I'm going to
8 take a short break now. I'll ask the attorneys for both
9 sides to set that video up so you can watch it if you'd like
10 to do that.

11 (Pause)

12 **THE COURT:** All right. Gentlemen, has it been set up
13 so that the jury can use that, Mr. Blouin?

14 **MR. BLOUIN:** Yes, Your Honor.

15 **THE COURT:** Mr. Bean, you agree?

16 **MR. BEAN:** I do, Your Honor.

17 **THE COURT:** All right. Any objections to the video
18 being made available to the jury from the State?

19 **MR. BLOUIN:** No, Your Honor.

20 **THE COURT:** Any from the Defense?

21 **MR. BEAN:** No, Your Honor.

22 **THE COURT:** All right. Now, ladies and gentlemen,
23 that's available to you. You certainly can review all the
24 evidence and that piece of evidence as well as you're
25 involved in your deliberations.

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1 I note that it's just about five minutes til 11:00. I
2 don't know how long your deliberations are going to take. I
3 will inform you that if they go through the lunch hour, we
4 will order lunch for you if you would like us to do that.

5 It takes about an hour to an hour and fifteen minutes
6 for us to get a lunch delivered here at the courthouse, is
7 about the average. So I'll just tell you that for planning
8 purposes.

9 Mr. Glenn, if the jury decides that you do want us to
10 order lunch for you, knock on the door, tell the bailiff,
11 we'll send a clerk into your room to get the order from you.
12 When the clerk is in your jury room, I will tell you to stop
13 deliberations, do not discuss the case at all while that
14 person is present.

15 When that person leaves after having taken your order,
16 you can resume deliberations once they've left the room. In
17 other words, deliberations should not be conducted when
18 someone is in the room who is not on the jury. So stop your
19 deliberations until they've left.

20 If we do deliver a meal to you, the same would apply.
21 When they're delivering the meals, stop your deliberations.
22 Once they've left the room, it'll be up to you as to when
23 you resume your deliberations at that time. Do you
24 understand how that would be handled if you decide to do
25 that?

CHARGE OF THE COURT

183

1 **MR. FOREMAN:** Yes, sir.

2 **THE COURT:** Okay. Very good. So I'm at this time
3 going to instruct you to retire to the jury room, begin your
4 deliberations until such time as a verdict might be reached.

5 Now, I'm going to tell the alternate, sir, I'm going to
6 ask you to remain seated at this time. Thank you, sir. All
7 right. The jury may retire.

8 (Whereupon the jury exited the courtroom at 10:58 am to
9 begin deliberations)

10 **THE COURT:** I believe your name is Mark, is it
11 Aguillard?

12 **MR. AGUILLARD:** Yes, sir.

13 **THE COURT:** Mr. Aguillard, you've been the alternate in
14 this case. And it was your job to be present in case
15 someone had an emergency or an illness, you would have
16 filled in for them so we could continue and wouldn't have to
17 throw out our work.

18 The law says that once the jury has retired and started
19 their deliberations your job has ended. So you no longer
20 have any responsibility in this case.

21 I've told you not to discuss it with anyone up to this
22 point in time. I'll tell you now that you have the right to
23 do that. You also have the right not to do that. You see,
24 a citizen owes no one an explanation for what they do on a
25 jury. And you're not required to discuss it with anyone

1 unless you choose to do that. Now, should anyone harrass
2 you or bother you about whatever you've done on this jury,
3 let us know and we'll take the appropriate action.

4 Now, the next piece of good news I have for you is that
5 we're not empaneling any more juries this week. So the
6 jury's been released. The bailiffs will check you out.

7 Next week you'll get a voucher from the clerk's office
8 for your pay. Don't plan to buy Christmas on that. That's
9 not going to be enough to do that. It's all the law allows,
10 but it's certainly not enough to retire on or anything of
11 that nature. But you'll get that check and you'll be able
12 to cash that at the Treasurer's Office.

13 If you are working and need an excuse for your work,
14 you can get that from the clerk's office before you leave
15 the courthouse today.

16 So at this time I'm releasing you from this case and
17 from any further duty on the jury. You're free to go. I
18 hope you have a good weekend.

19 **MR. AGUILLARD:** Likewise.

20 **THE COURT:** Thank you, sir.

21 **MR. AGUILLARD:** Thank you.

22 **THE COURT:** Any objections to my final instructions
23 from the State?

24 **MR. BLOUIN:** None from the State, Your Honor.

25 **THE COURT:** Any from the Defense?

VERDICT OF THE JURY

185

1 **MR. BEAN:** No, Your Honor.

2 **THE COURT:** All right. We'll be in recess then until a
3 verdict is reached. Thank you very much.

4 (Whereupon court was in recess at 11:00 am)

5 (Whereupon court reconvened at 11:24 am)

6 **THE COURT:** We're back on the record in the case of
7 State versus Hardy. I've been informed by the bailiffs that
8 a verdict has been reached. Is the State ready to receive
9 the verdict?

10 **MR. BLOUIN:** Yes, Your Honor.

11 **THE COURT:** Defense ready to receive the verdict?

12 **MR. BEAN:** Yes, Your Honor.

13 **THE COURT:** Bring the jury in.

14 (Whereupon the jury entered the courtroom at 11:26 am)

15 **THE COURT:** All right. The record will reflect that
16 the jury has returned to the courtroom. Mr. Glenn, I've
17 been informed by the bailiff that a verdict's been reached.
18 Is that true?

19 **MR. FOREMAN:** Yes, sir.

20 **THE COURT:** Pass the form to the bailiff, sir. Thank
21 you. Madame Clerk, you may publish the verdict.

22 **MADAME CLERK:** Yes, sir. In the State of South
23 Carolina versus Taiwan J. Hardy, we, the jury, unanimously
24 find the Defendant, Taiwan J. Hardy, concerning the offense
25 of distribution of cocaine base in case number 2014-GS-42-

VERDICT OF THE JURY

186

1 5877, guilty, signed by the foreperson, dated July the 23rd,
2 2015. Ladies and gentlemen of the jury, is this your
3 verdict and still your verdict? If so, please raise your
4 right hands.

5 (Whereupon all jurors raised their right hand)

6 **MADAME CLERK:** So say you all.

7 **THE COURT:** Thank you very much. Anything further from
8 the State before I release the jury?

9 **MR. BLOUIN:** Nothing from the State.

10 **THE COURT:** Anything from the Defense?

11 **MR. BEAN:** No, Your Honor. Thank you.

12 **THE COURT:** All right. Ladies and gentlemen of the
13 jury, this completes your service in this case. I want to
14 thank you very much for your attention to your duties in
15 this matter.

16 I also will inform you that we are not starting any
17 other jury trials this week. We'll be doing non-jury
18 matters tomorrow. I'm handling bond motions and things of
19 that nature. So we're releasing you from any further
20 service on the jury at this time.

21 The bailiffs will check you out. If you need an excuse
22 for work, they'll see that you get that from the clerk's
23 office.

24 You'll get a voucher from the clerk's office next week
25 for your pay. Don't plan to retire on that check. It's not

1 going to be enough for that purpose, but it's all the law
2 allows us to pay you. And it's certainly not enough for the
3 time that you've spent here this week.

4 Now, I will tell you throughout the trial I've told you
5 not to discuss this matter with anyone. You now have the
6 right to do so. You also have the right not to discuss it.
7 A citizen owes no one an explanation for their service on a
8 jury panel. You're not required to discuss this matter
9 unless you choose to do so.

10 So if someone were to harass you or bother you
11 concerning your service on this jury, report it to the
12 clerk's office immediately, we'll take appropriate action
13 should that occur. You are at this time released.

14 Now, sir, you're going to have to meet with the clerk
15 for just a moment. You have to sign one more paper for us
16 as the foreperson. And the bailiffs will check you out.

17 If you wish to be present for sentencing, you have the
18 right to be present. You also have the right not to be
19 present. If you do wish to be present for sentencing, when
20 they take you back to the jury room, if you'll let the
21 bailiffs know, they can make arrangements for you to come
22 back into the courtroom for that purpose. We'll be
23 sentencing shortly.

24 Thank you very much for your service this week. You've
25 been a great help. You're not aware of it, but we started

SENTENCE OF THE COURT

188

1 the week with almost two hundred cases on the docket. We've
2 disposed of most of those this week. Judge Hayes has been
3 handling guilty pleas across the hall.

4 There's been a lot of activity here that you're not
5 aware of. So I wanted to make you aware that there is a
6 good bit going on that you're not involved in when court's
7 going forward.

8 So thank you very much for your attention to your
9 duties in this case. The bailiffs will check you out in the
10 jury room. And, Mr. Glenn, you'll need to see the clerk for
11 just a minute. And I don't think the indictment came back
12 out. You got it? Very good. That's good. You need to
13 step down and see her.

14 (Whereupon the jury exited the courtroom at 11:29 am)

15 **THE COURT:** Thank you, sir.

16 (Pause)

17 **THE COURT:** All right. We're on the record in the case
18 of the State of South Carolina versus Taiwan J. Hardy. Mr.
19 Hardy having been found guilty by a jury of your peers, the
20 Court will now consider sentencing in the matter.

21 We began the trial with evidence that the State was
22 seeking a sentence of life imprisonment without the
23 possibility of parole. Is that still the State's position
24 in the matter?

25 **MR. BLOUIN:** It is, Your Honor.

SENTENCE OF THE COURT

189

1 **THE COURT:** All right. Then I'll hear from you, Mr.
2 Blouin and then I'll give the Defense an opportunity to
3 speak once I've heard from him.

4 **MR. BLOUIN:** Thank you, Your Honor. Just to give an
5 idea of his prior record, and his prior record was included
6 in Court's exhibit number 1, I believe, on our notice to
7 seek a life sentence.

8 **THE COURT:** Yes, sir.

9 **MR. BLOUIN:** From 1995, giving false information to
10 police, possession of marijuana, '96, conspiracy to possess
11 with intent to distribute crack cocaine, that's a federal
12 charge, 2003, failure to stop, trafficking in cocaine, and
13 unlawful carrying of a pistol, in 2008, trespassing,
14 unlawful phone conversations and assault and battery, in
15 2013, shoplifting and two distributions of crack cocaine,
16 second offense.

17 Your Honor, he also has current pending charges in our
18 office that have not been resolved, I believe, attempted
19 murder and kidnapping. And the State will take care of
20 those, obviously, depending on today.

21 **THE COURT:** All right. So State is still seeking the
22 imposition of the sentence of life imprisonment without the
23 possibility of parole?

24 **MR. BLOUIN:** It is, Your Honor.

25 **THE COURT:** All right. I'll hear from the Defense, Mr.

SENTENCE OF THE COURT

190

1 Bean.

2 MR. BEAN: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. BEAN: My client's record, obviously, is not the
6 best. It is what it is. It is my understanding that
7 because the State has filed appropriate paperwork for the
8 sentence of life without parole that Your Honor has no
9 discretion in that regard. And if I am correct in that,
10 then there's really not anything else for me to say.

11 THE COURT: Well, I'm not aware that I do have any
12 discretion. Obviously, you have the right to challenge the
13 information they've given me that gives them the right to
14 seek that. And so if there's any issue in that regard, now
15 would be the time to raise it.

16 MR. BEAN: Yes, sir. Your Honor, I have reviewed the
17 State's information, which was provided to me at the time
18 they initially filed that. To the best of my knowledge, the
19 information is correct.

20 Just for the record, I think that that sentence is not
21 only more than it should be, I think it's draconian, quite
22 frankly, but it is what it is. And again, it's my
23 understanding that Your Honor doesn't have discretion there.
24 If you did, I would be asking for a sentence more
25 commensurate with the charge and the normal sentence that

SENTENCE OF THE COURT

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1 accompanies it, but I understand that we don't have that
2 option. So that's all I have to say.

3 **THE COURT:** All right. Anything you'd like to say, Mr.
4 Hardy? You have to answer me.

5 **MR. HARDY:** I'd like for my lawyer to file my notice of
6 -- notice of appeal ---

7 **THE COURT:** Okay.

8 **MR. HARDY:** --- as soon as possible. I'd like that on
9 the record.

10 **MR. BEAN:** I will do that, Your Honor.

11 **THE COURT:** I understand. All right. The sentence of
12 the Court is that you be confined in the State Department of
13 Corrections for and during the term of your natural life
14 without the possibility of parole. Good luck to you, Mr.
15 Hardy. Court is adjourned in this case. Thank you very
16 much.

17 **MR. BEAN:** Thank you, Your Honor.

18 (Hearing Ended at 11:37 am)

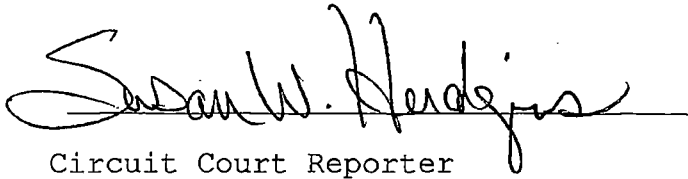
19 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 22nd - 23rd day of July 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 22, 2015



Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of SpartanburgTaiwan Jewon Hardy 321387
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017-CP-42-2217

APPLICATION FOR
POST-CONVICTION RELIEF

M. HOPE BLACKLEY

2017 JUN 26 AM 10:52

CLERK OF COURT
SPARTANBURG, SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Corrections Institute
4460 Broad River Rd. Columbia SC 29210
2. Name and location of Court which imposed sentence Spartanburg County Court
of General Sessions. Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-42-65877 3rd offense distribution of crack
 - (b) _____


 SPARTANBURG
SOUTH CAROLINA

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 23 2015 Life sentence
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct Appeal SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov 9 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2316-UP-960
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

CLERK
SPARTANUS
2017 JUN 26 AM 10:52
M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of trial counsel and appellate counsel
 (b) Due Process Violation
 (c) Subject Matter jurisdiction

11. State concisely and in the same order the facts which support each of the grounds set out in (10): I reserve the right to amend

(a) Counsel failed to do investigation
 (b) Due Process - fail to supervise informant
 (c) Court lacked jurisdiction to sentence

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal in SC Court of Appeals

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C. Court of Appeals, Columbia, SC

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Nov, 9 2016
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No. 2016 UF-460
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

Revised 3/2003

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) These are All FCR issues
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

CLERK
 SPARTANBURG, SC
 2011 JUN 26 AM 10:52
 M. HOPE BLACKLEY

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. William S. Bean P.O. Box 31 Spartanburg, SC 29304
 ii. Nauda H. Carter South Carolina Commission on Indigent Defense
Division of Appellate Defense P.O. Box 11599, Columbia SC 29211-1
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial and sentencing
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

New trial and sentencing

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

CLERK
SPARTANBURG
2017 JUN 26 AM 10:52
M. HOPE BLACKLEY

I, Taiwan Devon Hardy, 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.

Taiwan Hardy

SWORN to and subscribed before me this 20
day of June, 2017.

[Signature]
Notary Public

(L.S.)

My Commission Expires: 9/16/2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tawwan Sevon Hardy, 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.

Tawwan Hardy
Applicant

SWORN or affirmed to and subscribed before me this

20 day of June, 2017.

[Signature]
Notary Public

My Commission Expires:

9/16/2020

CLERK
 SPARTANBURG DISTRICT
 2017 JUN 26 AM 13:53
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of SpartanburgTaiwan Devon Hardy 321387

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017-CP-42-2217

APPLICATION FOR
POST-CONVICTION RELIEF

M. HOPE BLACKLEY

2017 JUN 26 AM 10:52

CLERK OF
SPARTANBURG COUNTY**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Corrections Institute
4460 Broad River Rd. Columbia SC 29210
2. Name and location of Court which imposed sentence Spartanburg County Court
of General Sessions, Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-42-25877 3rd offense distributions of crack
 - (b) _____

A handwritten signature, possibly "SCA...", is written over a circular official stamp. The stamp contains the text "CLERK OF COURT" and "SPARTANBURG COUNTY".

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 23 2015 Life sentence
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct Appeal SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov 9 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2016-UP-460
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

CLERK
SPRINGFIELD, MO
JUN 26 2017
AM 10:52

M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel and appellate counsel
- (b) Due Process Violation
- (c) Subject Matter jurisdiction
11. State concisely and in the same order the facts which support each of the grounds set out in (10): I reserve the right to amend
- (a) Counsel failed to do investigation
- (b) Due Process - fail to supervise informant
- (c) Court lacked jurisdiction to sentence
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal in SC Court of Appeals
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals, Columbia, SC
- ii. _____
- iii. _____
- iv. _____

RECEIVED
SPRINGFIELD, MA
2011 JUN 26 AM 10:52
M. HOPE BLACKEY

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Nov, 9 2016
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No. 2016 UF-460
- ii. _____
- iii. _____
- iv. _____

U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 2017 JUN 26 AM 10:52
 M. HOPE BLACKLEY

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

Revised 3/2003

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) These are All F.C.R. issues
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

2017 JUN 26 AM 10:52
 M. HOPE BLACKLEY
 SPARTANBURG, SC

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. William S. Bear P.O. Box 81 Spartanburg, SC 29304
 ii. Nanda H. Carter South Carolina Commission on Indigent Defense
Division of Appellate Intense P.O. Box 11589, Columbia SC 29211-1
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial and sentencing
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

NEW trial and sentencing

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

CLERK
SPARTANBURG JAIL
2017 JUN 26 AM 10:52
M. HOPE BLACKLEY

I, Tarwan Devon Hardy, 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.

Tarwan Hardy

SWORN to and subscribed before me this 20
day of June, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9/16/2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tawwan Jason Hardy, 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.

Tawwan J Hardy
Applicant

SWORN or affirmed to and subscribed before me this

20 day of June, 2012.

[Signature]
Notary Public

My Commission Expires: 9/16/2020

CLERK OF COURT
 SPARTANBURG COUNTY
 2017 JUN 26 AM 12:58
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	
County of Spartanburg	)	IN THE COURT OF COMMON PLEAS
	)	2017-CP-42-2217
Taiwan Jevon Hardy, 321387	)	
	)	AMENDMENT TO APPLICATION FOR
v.	)	POST CONVICTION RELIEF
	)	
State of South Carolina	)	

Now into Court comes the Applicant, by and through the undersigned counsel, who hereby supplements his post conviction relief application filed on June 26, 2017 with the following grounds:

10.

- (a) Ineffective assistance of counsel.
- (b)
- (c) Discovery violation.

11.

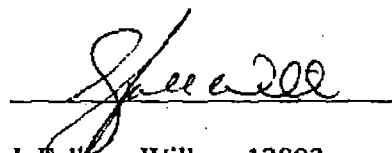
(a) Failure to properly prepare and investigate the case. (Including the failure to investigate and obtain evidence, surveillance video, cell phone records, cell phone video recordings, etc., that would establish a defense in the case. Failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of "confidential informants" or other witnesses. Failure to follow instructions or requests of the applicant. Failure to properly present an adequate defense based on the facts and circumstances of the case. Failure to properly conduct discovery in the case. Failure to properly subpoena and call witnesses and present evidence in the case. Failure to raise proper objections during the trial to present and preserve evidentiary issues. Making improper stipulations or giving consent on issues during the trial which were adverse to the defense of the case. Failure to move for appropriate suppression hearings and properly object to the testimony of witnesses and evidence in a timely manner. Failure to properly and effectively cross-examine the State's witnesses. Failure to raise and properly argue and preserve record and issues for appeal. Failure to make a proffer of evidence when warranted by the circumstances of the case and properly present and preserve issues for appeal. Failure to make and preserve the record in cases of conferences at the bench and in chambers. Failure of counsel to communicate all plea offers to the Applicant and to adequately discuss same. Failure to properly discuss the case and advise the Applicant on the applicable law and procedure and facts known or believed to exist. (Including the failure to meet with the applicant adequately and the failure to, in a timely manner, fully review and discuss the discovery material, evidence, law, and procedure so that the applicant would fully understand the charges, consequences and choices, including plea options). Failure to fully and timely explain the advantages of a guilty plea and the plea offers and the risks of trial. Failure to fully advise as to the right to testify and the associated risks.

Failure of the State to produce discoverable material that would have aided in the defense of the case.

(b)

(c) Failure of the state, including law enforcement, to provide discoverable information that would have materially aided in the preparation and presentation of the defense as required under Rule 5, Brady, and other authority.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Applicant

November 8, 2017.

2017 NOV -9 AM 10:57
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Taiwan J. Hardy, #321387

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-2217

**RETURN, PARTIAL MOTION
TO DISMISS, AND MOTION FOR
A MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on June 26, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In December 2014, the Spartanburg County Grand Jury indicted Applicant for distribution of cocaine, third or subsequent offense (2014-GS-42-5877). William S. Bean IV, Esquire, represented Applicant. Assistant Solicitors Hunter C. Blouin and J. Edward Hunter represented the State.

Applicant was served with a notice to seek life imprisonment without parole. On July 22-23, 2015, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without the possibility of parole.¹

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed the appeal

¹ Applicant subsequently filed a document titled "Motion to Reconsider Sentence and Convictions." The Spartanburg County Clerk of Court forwarded this document to counsel and Judge Couch on August 13, 2015. On September 25,

after consideration and review pursuant to Anders² on November 9, 2016.³ State v. Hardy, Op. No. 2016-UP-460 (S.C. Ct. App. filed November 9, 2016). The remittitur was returned to the circuit court on December 2, 2016.

The facts underlying the conviction and sentence are as follows: on March 10, 2014, a confidential informant purchased crack cocaine from Applicant. (Trial Tr. p. 52, ll. 3-7). The informant was equipped with video and audio recording equipment to record the transaction. (Trial Tr. p. 63, ll. 4-6. Applicant argued the video did not conclusively show the transaction and the informant may have already been in possession of the cocaine. (Trial Tr. p. 162, l. 16 – p. 164, l. 6.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial and appellant (sic) counsel," in that:
 - a. "Counsel failed to do investigation;"
2. "Due Process Violation," in that:
 - a. "Due Process – Fail to supervise informant"
3. "Subject Matter Jurisdiction," in that:
 - a. "Court lack jurisdiction to sentence."

2015, Judge Couch dismissed the motion as not timely filed.

² Anders v. California, 386 U.S. 738 (1967).

³ The Court of Appeals opinion also states the Court considered Applicant's *pro se* brief.

On or about November 8, 2017, Applicant, through counsel, filed an amendment to his application in which he alleges:

1. "Ineffective assistance of counsel," in that:
 - a. "Failure to properly prepare and investigate the case."
 - i. "Including the failure to investigate and obtain evidence, surveillance video, cell phone records, cell phone video recordings, etc., that would establish a defense in the case."
 - b. "Failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of "confidential informants" or other witnesses."
 - c. "Failure to follow instructions or requests of the applicant."
 - d. "Failure to properly present an adequate defense based on the facts and circumstances of the case."
 - e. "Failure to properly conduct discovery in the case."
 - f. "Failure to properly subpoena and call witnesses and present evidence in the case."
 - g. "Failure to raise proper objections during the trial to present and preserve evidentiary issues."
 - h. "Making improper stipulations or giving consent on issues during the trial which were adverse to the defense of the case."
 - i. "Failure to move for appropriate suppression hearings and properly object to the testimony of witnesses and evidence in a timely manner."
 - j. "Failure to properly and effectively cross-examine the State's witnesses."
 - k. "Failure to raise and properly argue and preserve record and issues for appeal."
 - i. "Failure to make a proffer of evidence when warranted by the circumstances of the case and properly present and preserve issues for appeal."
 - ii. "Failure to make and preserve record in cases of conferences at the bench and in chambers."
 - l. "Failure of counsel to communicate all plea offers to the Applicant and to adequately discuss same."
 - i. "Failure to fully and timely explain the advantages of a guilty plea and the plea offers and the risks of trial."
 - m. "Failure to properly discuss the case and advise the Applicant on the applicable law and procedure and facts known or believed to exist."
 - i. "Including failure to meet with the applicant adequately and the failure to, in a timely manner, fully review and discuss

the discovery material, evidence, law, and procedure so that the applicant would fully understand the charges, consequences and choices, including plea options.”

- n. “Failure to fully advise as to the right to testify and the associated risks.”

2. “Discovery Violation,” in that:

- a. “Failure of the state, including law enforcement, to provide discoverable information that would have materially aided in the preparation and presentation of the defense as required under Rule 5, Brady, and other authority.”

III.

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 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, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The 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 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 L.Ed.2d 987 (1983)). “For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy...” Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was

prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Because Applicant has made claims against Appellate Counsel, but failed to specify those claims, Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of the allegation of "ineffective assistance of appellate counsel" enumerated in his original application for post-conviction relief. The Uniform Post-Conviction Procedure Act requires applicants to "**specifically** set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application to specify his claims well in advance of the hearing to be scheduled in this matter.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant also alleges a denial of due process of law in that there was a failure to supervise an informant. Applicant's allegation claims infringement of his rights under certain amendments to

the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). 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). Applicant's allegation is so vague that it impossible for the State to respond. Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the allegation is based.

VI.

Respondent also requests that the claim of failure to supervise an informant be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Failure to supervise an informant is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence, but rather seeks to challenge the evidence from trial. Applicant's contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VII.

Applicant also alleges prosecutorial misconduct, specifically that the State failed to provide discoverable information to the defense. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at the plea hearing or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the alleged discovery violation on appeal. The failure to do so has waived this allegation as grounds for relief. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

To the extent Applicant is claiming prosecutorial misconduct has been discovered post-trial, and could not have been discovered, in the exercise of due diligence, prior to trial, in evaluating post-trial Brady⁴ claims, the applicant must show (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability

⁴ Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). “A ‘reasonable probability’ of a different result is accordingly shown when the government’s evidentiary suppression ‘undermines confidence in the outcome of the trial.’” Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385.

Applicant has failed to make the requisite *prima facie* showing to warrant an evidentiary hearing that the State withheld any evidence that would have produced a different outcome at his trial. Therefore, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the facts upon which the application is based.

VIII.

Applicant further alleges lack of subject-matter jurisdiction. Respondent submits this allegation is meritless and should be summarily dismissed. An Applicant may still challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Respondent submits Applicant has failed to present any evidence to refute the record that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to preside. Therefore, Respondent

requests this allegation be summarily dismissed.

IX.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR 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), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR 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), SCRPC.

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, witnesses, and materials used to produce potential expert witness testimony be provided 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.

X.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

XI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

XII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial and appellate counsel.

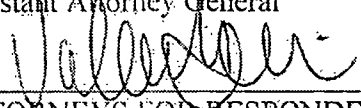
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 29, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Taiwan J. Hardy, #321387

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-2217

**CONSENT ORDER
GRANTING DISCOVERY**

M. HOPE BLANCHLEY

2018 JAN -8 PM 12:48

This matter comes before the Court by way of Respondent's motion to "invoke the processes of discovery available under the South Carolina Rules of Civil Procedure." S.C. Code Ann. § 17-27-150(a).

Applicant filed an amendment to his PCR application, through counsel, on or about November 8, 2017. In his amendment, Applicant's allegations include, but are not limited to:

1. Ineffective assistance of counsel:
 - a. failure to investigate and obtain evidence; surveillance video, cell phone records, cell phone video recordings, etc., that would establish a defense.
 - b. failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of "confidential informants" or other witnesses.
 - c. failure to properly subpoena and call witnesses and present evidence in the case.
2. Discovery violation:
 - a. Failure of the State, including law enforcement, to provide discoverable information that would have materially aided in the preparation and presentation of the defense as required under Rule 5, Brady, and other authority.

Because Applicant alleges trial counsel failed to investigate, obtain, and use evidence and court transcripts as well as subpoena and call witnesses at trial, Respondent has requested the

RKK

production of such evidence for inspection and copying as well as a list of witnesses Applicant intends to call at the evidentiary hearing.

To ensure Respondent can properly prepare and defend Applicant's allegations, this Court grants the request to invoke discovery. This includes the issuance of subpoenas for the production of "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Rule 26, SCRC. Respondent is also entitled to a list of the potential witnesses Applicant intends to call at the evidentiary hearing and same shall be provided to Respondent as soon as possible, but no later than thirty (30) days before the evidentiary hearing.

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M. HOPE BLACKLEY

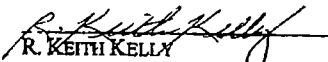
Page 2 of 3

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IT IS THEREFORE ORDERED:

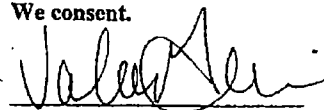
1. Respondent is permitted to serve a subpoena and/or submit a request for the production of information, evidence, documents, and tangible things Applicant intends to use to substantiate his claims at the evidentiary hearing.
2. Applicant must serve a list of the potential witnesses he intends to call during the evidentiary hearing no later than thirty (30) days before the evidentiary hearing.

IT IS SO ORDERED!


 R. KEITH KELLY
 Chief Administrative Judge
 Seventh Judicial Circuit

3 January ²⁰¹⁸
 2017.

We consent.


 Valerie Garcia Giovanoli, Esq.
 Assistant Attorney General
 Attorney for Respondent


 J. Falkner Wilkes, Esq.
 Attorney for Applicant

2018 JAN -8 PM 12:48
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Taiwan J. Hardy, #321387

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-2217

**MOTION
FOR DISCOVERY**

2018 JAN -8 PM 12:48
M. HOPE BLACKLEY

Respondent hereby moves this Honorable Court for an order allowing Respondent to "invoke the processes of discovery available under the South Carolina Rules of Civil Procedure."

S.C. Code Ann. § 17-27-150(a).

Discovery in PCR

The Uniform Post Conviction Procedure Act comprehends and takes the place of the statutory writ of habeas corpus found in S.C. Code Ann. Sec. 17-17-10 (1985), *et seq.*, under which this action has been filed. *See* S.C. Code Ann. Sec. 17-27-20(b). The Uniform Post-Conviction Procedure Act does not allow for discovery in a non-capital post-conviction relief case without good cause and order of the circuit court authorizing discovery. S.C. Code Ann. § 17-27-150(A) states:

A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

(Emphasis added). Therefore, utilizing discovery in a noncapital PCR is not a right, but a tool a party must show good cause to invoke. S.C. Code Ann. § 17-27-150(A) (1976); see also Hiott v. State, 375 S.C. 354, 357, 652 S.E.2d 436, 437 (Ct. App. 2007) (“Section 17-27-150 indicates the legislature’s express intent to afford PCR applicants limited use of the discovery process as stated in the South Carolina Rules of Civil Procedure.”), rev’d on other grounds, 381 S.C. 622, 674 S.E.2d 491 (2009).

The South Carolina Rules of Civil Procedure allow the “[p]arties [to] obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” Rule 26, SCRPC.

Discovery in this case – good cause

Applicant filed an amendment, through counsel, on or about November 8, 2017. In his amendment, Applicant’s allegations include, but are not limited to:

1. Ineffective assistance of counsel:
 - a. failure to investigate and obtain evidence; surveillance video, cell phone records, cell phone video recordings, etc., that would establish a defense.
 - b. failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of “confidential informants” or other witnesses.
 - c. failure to properly subpoena and call witnesses and present evidence in the case.
2. Discovery violation:
 - a. Failure of the State, including law enforcement, to provide discoverable information that would have materially aided in the preparation and presentation of the defense as required under Rule 5, Brady, and other authority.

Because Applicant alleges trial counsel failed to investigate, obtain, and use evidence and court transcripts as well as subpoena and call witnesses at trial, Respondent requests the production of such evidence for inspection and copying as well as a list of witnesses Applicant intends to call at the evidentiary hearing. Applicant's allegations are vague and provide little substance upon which Respondent can defend. Furthermore, Applicant alleges the State concealed discoverable information in violation of Rule 5 and Brady, however does not specify what that information is. Without this information, evidence, and witness list, Respondent cannot properly prepare to defend such allegations. Respondent, upon this showing of good cause, is entitled to know what materials and witnesses Applicant intends to use to substantiate his claims for a new trial in order to prevent surprise or undue delay the day of the evidentiary hearing.

[Conclusion & signature to follow]

2010 JAN -8 PM 12:48
M. HOPE BLACKLEY

Conclusion

Page 3 of 4

Respondent therefore moves the Court for an order granting Respondent the right to invoke discovery in this matter. Respondent does not believe a hearing is necessary. Respondent has conferred with opposing counsel, who has agreed to a consent order granting the invocation of discovery. If this Honorable Court deems a hearing is necessary, Respondent requests to convene a hearing during a term of PCR court in the Seventh Judicial Circuit.

WHEREFORE, the State requests that this Court order discovery.

Respectfully submitted,

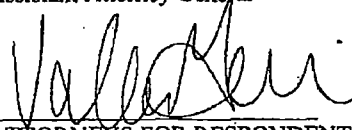
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December 29, 2017.

M.HOPE BLACKLEY

2018 JAN -8 PM 12:48

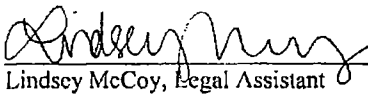
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2017-CP-42-2217
TAIWAN JEVON HARDY, #321387	)	
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion for Discovery** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601

DATED this 29th day of December, 2017.


 Lindsey McCoy, Legal Assistant

2018 JAN -8 PM 12:48
 H. HOPE BLACKBURN

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 TAIWAN JEVON HARDY,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 THE STATE OF SOUTH CAROLINA,) RECORD
8 RESPONDENT.) 2017-CP-42-2217

9
10 March 7th, 2019
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE THOMAS A. RUSSO, Judge.

15
16 A P P E A R A N C E S:

17 J. FALKNER WILKES
18 ESQ.
Attorney for the Applicant

19 JOHNNY E. JAMES, JR.
20 ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

21

22

23

24

25

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
<u>Applicant's Exhibits</u>			
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P R O C E E D I N G S

MR. JAMES: If it may please the Court?

THE COURT: Yes, sir.

MR. JAMES: Your Honor, this is the matter of Taiwan Hardy versus State of South Carolina. Docket Number 2017-CP-42-02217. Mr. Hardy is present here in the courtroom today, and is represented by Mr. Jeff Wilkes.

Mr. Hardy was indicted in the December 2014 term of the Spartanburg County Grand Jury for distribution of cocaine third or subsequent offense. He's represented on that charge by William S. Bean, IV, Esquire, and Assistant Solicitors Hunter Blouin and Edward Hunter represented the State.

He was served notice with -- he was served an LWOP notice. Proceeded to trial before the Honorable Roger L. Couch and a jury, and they found him guilty as indicted. Pursuant to that Notice of Life Without Parole, he was sentenced to life without the possibility of parole.

He filed timely Notice of Appeal. Wanda Carter of the Office of Appellate Defense perfected the appeal. She filed an Anders brief, and the South Carolina Court of Appeals accepted that Anders brief, and dismissed the appeal on November 9, 2016. A Remittitur was issued to the Circuit on December 2nd, 2016.

1 Your Honor, there have been a number of amendments to
2 this Application, but the State's understanding is that we
3 are proceeding based on the allegations as set forth in
4 Applicant's Memorandum for PCR hearing January 14, 2019.
5 Those issues are failure to properly advise client in
6 relation to a plea offer, failure to object and require a
7 404(b) analysis on the record to preserve the issue for
8 appeal, as to highly prejudicial error or highly prejudicial
9 bad act evidence or bad character and propensity testimony,
10 and failure to present an effective defense by withdrawal of
11 key evidence essential to the issue of credibility, and
12 impeachment of confidential informant.

13 And, with that stated, I will give the floor over to---

14 THE COURT: Mr. Wilkes.

15 MR. JAMES: ---Mr. Wilkes.

16 MR. WILKES: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. WILKES: Your Honor, my memorandum may be in the
19 file, but I have a copy if you'd like it.

20 THE COURT: It -- I, I was just looking for that.

21 MR. WILKES: May I give you -- may I just give you one?

22 THE COURT: That would be wonderful if you've got that
23 cause I don't think I see it.

24 All right. Mr. Wilkes, you ready to proceed?

25 MR. WILKES: I am, Your Honor.

1 we'll call Mr. Hardy.

2 THE COURT: Mr. Hardy, sir, if you would come around to
3 the witness stand. And, sir, when -- once, once you get up
4 here, if you could place your left-hand on the Bible. Raise
5 your right-hand.

6 TAIWAN HARDY, being first duly
7 sworn, testified as follows:

8 THE COURT: Thank you, and, Mr. Hardy, if you would,
9 have a seat, and then state your name for the record please.

10 THE WITNESS: Taiwan Jevon Hardy.

11 THE COURT: All right. Mr. Wilkes.

12 MR. WILKES: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. WILKES:

15 Q Mr. Hardy, Mr. Bean represent you in your charge --

16 A Yes, sir.

17 Q -- in this case?

18 A Yes, sir.

19 Q And do you recall when you engaged Mr. Bean?

20 A When I first met Mr. Bean or for this case?

21 Q For this case.

22 Tell me in proximity to your arrest.

23 A I first encountered Mr. Bean on this at a probation
24 hearing.

25 Q Okay. Did he represent you at a -- in another matter

Taiwan Hardy - Direct examination
By Mr. Wilkes

1 at that probation hearing?

2 A Yes, sir.

3 Q Okay. So, start there and explain to me the first
4 contact with Mr. Bean in regard to this charge.

5 A Okay. I was, I was doing -- when I -- first I went for
6 the first hearing, probation hearing.

7 Q Uh-huh. (Affirmative).

8 A Then we had a full evidentiary hearing.

9 Q Uh-huh. (Affirmative).

10 A So, during a full evidentiary hearing, Mr. Bean come to
11 me with a plea offer.

12 Q Wait a minute.

13 Tell, tell me how -- he had to represent -- did he
14 represent you on this charge at that time?

15 Had you retained him on this charge?

16 A Yes, I had assault and battery. I mean -- hold on.
17 Hold up. Assault, attempted murder, distribution of crack
18 third offense, kidnapping, and a weapons charge, and a
19 violation of probation. He represented me on everything.

20 Q Okay. And this charge as well?

21 A Yes, sir.

22 Q Okay. And -- all right. Go back to you being at an
23 evidentiary probation hearing.

24 A Exactly.

25 Q All right. Tell, tell me your first discussion about

1 this case.

2 A Okay. So, we was sitting -- we -- once we was, in
3 the -- inside the courtroom waiting to go in front of Judge
4 Cole on an evidentiary hearing, right?

5 Q Okay.

6 A So, we trying to figure out how we gonna handle the
7 evidentiary hearing, but then he come to me and say that
8 it's an offer that's on the table from the solicitor's
9 office.

10 Q On what charge?

11 A On take -- on the distribution of crack. Run that in
12 with, with, with my suspended sentence where I was going for
13 the probation for, and they'll dismiss all the other
14 charges.

15 Q Okay. Now, had you talked to Mr. Bean prior to that
16 time about the facts of this case?

17 A No, sir.

18 Q Okay. Had you seen any discovery in this case?

19 A No, sir.

20 Q Okay. So, continue from there.

21 You're, you're in the evidentiary hearing. You've been
22 told that there's an offer on this case.

23 A Uh-huh. (Affirmative).

24 Q And it connects to the potential probation revocation?

25 A Yes, sir.

Taiwan Hardy - Direct examination
By Mr. Wilkes

1 Q okay. Tell me exactly again what that was.

2 A well, I was sentenced to 20 years --

3 Q okay.

4 A -- suspended --

5 Q okay.

6 A -- to times -- 18 months time served --

7 Q okay.

8 A -- and five years of probation.

9 okay. I got locked up I think August, August the 10th.

10 Somewhere in August.

11 Q okay. of?

12 A of 2014.

13 Q '14.

14 okay.

15 A So, I ain't had -- I hadn't retained counsel at that
16 time. I went to -- got a bond. The bond was a hundred and
17 twenty something thousand dollars. But, at the same time,
18 while, while I'm, while I'm going through these charges, my
19 probation officer, she wants to revoke my probation in full,
20 and give me full revocation.

21 Q Uh-huh. (Affirmative).

22 okay.

23 A So, that's when my people hired Mr. Bean for all my
24 charges.

25 Q okay. All right. So, Mr. Bean brings to you the

1 offer?

2 A Yes, sir.

3 Q And the offer again?

4 Tell me.

5 A Was 18 years. Everything running -- eighteen years,
6 everything running -- the -- with the crack charge running
7 with, with my, with my -- the revocation hearing, with my
8 revocation, and the assault---

9 Q Everything else dismissed?

10 A Everything else dismissed.

11 Q Okay. So, the 18 would of been combined with the
12 probation revocation, and, in that situation, wouldn't have
13 done you any more harm?

14 A Yes, sir.

15 Q Okay. Now, where were you when you discussed that
16 offer with Mr. Bean?

17 A Sitting in -- sitting in the gallery.

18 Q Okay. And were you -- you were detained or out on
19 bond?

20 A I was detained.

21 Q Okay. And what did you discuss about that offer?

22 A Who me?

23 What did I, I ask?

24 The first thing I asked about the offer, right, is I'm
25 sitting here with a revocation hearing, right?

Taiwan Hardy - Direct examination
By Mr. Wilkes

- 1 Q Uh-huh. (Affirmative).
- 2 A And I got kidnapping charges.
- 3 Q Uh-huh. (Affirmative).
- 4 A Then I got a third offense drug charge.
- 5 Q Right.
- 6 A So, I want to see the discovery --
- 7 Q Okay.
- 8 A -- because, you know, I'm like why would I take a plea
- 9 if I ain't seen what they got against me.
- 10 Q Okay. Did Mr. Bean obtain the discovery or some of the
- 11 discovery for you that day to evaluate for you to be able to
- 12 make a decision on that?
- 13 A No.
- 14 Q Who -- do you remember who brought the offer to the
- 15 courtroom?
- 16 A Who---
- 17 Q Do you remember if the prosecutor---
- 18 A Yeah, Hunter Blouin.
- 19 Q Okay.
- 20 A He was in the back of the courtroom.
- 21 Q Okay. So, the solicitor was in there on your pending
- 22 charges, and the probation was in agreement?
- 23 They were all in agreement?
- 24 A (Witness nods affirmatively.)
- 25 Q Okay. Now, tell me what time of day it was.

1 I mean was it early in the Court day, late in the Court
2 day?

3 A It had to be right after -- let me see. Either it's --
4 either around lunchtime or after lunch.

5 Q Okay. So, what, what happened as far as discovery to
6 consider the plea offer at that time?

7 A What you mean?

8 Q Did you get any -- did you have any discussion about
9 what the charges were that the solicitor was dealing with as
10 far as discovery?

11 Did you learn enough to make a decision on a plea
12 offer?

13 A No, sir.

14 Q Did you express that you wanted to see some discovery
15 before you decided?

16 A Yes, sir.

17 Q All right. Are you aware if Mr. Bean asked to have the
18 matter held until the end of the day to at least get
19 discovery from the solicitor?

20 A No, I'm not aware of that.

21 Q Okay. But the solicitor was there in the courtroom?

22 A Yes, sir.

23 Q Okay. To the best of your recollection, was there any
24 kind of motion to delay the probation---

25 A No, sir.

Taiwan Hardy - Direct examination
By Mr. Wilkes

1 Q ---matter to consider that offer after getting
2 discovery?

3 A No, sir.

4 Q When the offer was brought to you, was it explained
5 that you were going to be subject to the life without parole
6 penalty based on one or more of these charges?

7 A Not at that time.

8 Q All right. If you'd been given discovery at that time,
9 and you'd of looked at the discovery that you now know
10 exists, and were told that LWOP could apply to you because
11 of this case or any of the others, would that have changed
12 your position on considering a guilty plea?

13 A Yes, sir, if I'd of been properly informed by Mr. Bean,
14 I would of took the plea.

15 Q Okay. What happened that day?

16 A Okay. After I, after I refused to plea?

17 Q Uh-huh. (Affirmative).

18 A So, then me and Mr. Bean, we, we started working on my
19 defense?

20 Q Of what?

21 A Of the, of the revocation hearing.

22 Q Okay. And what ended up happening at the revocation
23 hearing?

24 A Judge Cole sentenced me to 30 months.

25 Q Okay. Now, tell me what was the next thing that

1 happened as far as your communications about this charge or
2 any of the other charges that were pending, the criminal
3 charges that were pending, which included this charge?

4 A I went down -- I went to prison.

5 Q Okay. SCDC?

6 A Yes, sir.

7 Q Okay.

8 A And I came back like three times.

9 Q For what?

10 A Just coming back for the pending charges.

11 Q Okay. Were you gonna -- was it for trial?

12 A I, I really can't say because I never seen nobody or
13 never talked to nobody when I was coming back.

14 Q So, you were brought back three times?

15 A At least three times.

16 Q Okay. And you don't know if that was supposedly for a
17 plea or a trial or --?

18 A (Witness nods negatively.)

19 Q Okay. Did, did you see Mr. Bean on any of those
20 occasions?

21 A I seen Mr. Bean the last time I came.

22 Q Okay. And what were your discussions about these
23 pending charges?

24 A The first thing we did is we went over the discovery.

25 Q Okay.

- 1 A Then we watched the video.
- 2 Q Okay.
- 3 A And then he, he, he brought an offer to me.
- 4 Q What was the offer?
- 5 A Eighteen.
- 6 Q 18 years?
- 7 A Uh-huh. (Affirmative).
- 8 Q And where was that at?
- 9 where did that occur?
- 10 A That occurred in the county, in the county jail.
- 11 Q How long were you in the county jail?
- 12 A Probably a couple days. A few days.
- 13 Q Now, when you went over the discovery with Mr. Bean --
- 14 A Uh-huh. (Affirmative).
- 15 Q -- to consider this offer, what was the analysis of the
- 16 case?
- 17 A Well, the analysis of the case, right, was whether
- 18 there was an actual transaction that took place.
- 19 Q Okay. And you saw the video?
- 20 A No, we hadn't got to the video yet. We just talking.
- 21 Q Okay. This is before looking at the discovery?
- 22 A Huh?
- 23 Q Is this from -- is this on the same day that you
- 24 said---
- 25 A No.

1 Q ---you looked at the discovery?

2 A This is the day we looking at the discovery, going over
3 the discovery, because they don't bring -- they didn't bring
4 the video till 72-hours before trial.

5 Q Okay.

6 A That's always---

7 Q Okay. Did you see photographs?

8 A Yes, I seen the photographs.

9 Q Okay. From the video?

10 A Yes.

11 Q Okay. Now, at that time, what was Mr. Bean's opinion
12 of the case or advice to you?

13 A Well, Mr. Bean was really trying to get me to, to, to,
14 to take the 18.

15 Q Okay.

16 A But I'm asking him, you know, from, from the law
17 standpoint, like what am I, what am I being charged with.

18 Is the charge nonviolent or violent?

19 I'm trying to find out the statute on the case because,
20 if it's nonviolent, then that makes that I, I, I -- you
21 know, my -- I could deal with the plea a little bit better
22 cause I didn't never know whether the -- whether I was
23 pleading guilty to -- whether I would of been pleading
24 guilty to a nonviolent charge or a violent charge. I didn't
25 know that it was a nonviolent charge until after Court was

1 over.

2 Q Okay. Now, tell me how many other times did you
3 recall -- do you recall meeting with Mr. Bean about this
4 charge?

5 That would be one or two I guess. The probation
6 hearing was the first time that you didn't -- I take it you
7 didn't talk a lot about the evidence?

8 A That's two, and then, then the third time when he come
9 back with the 15 to 30 offer.

10 Q Now, was that on the same couple of days that you
11 were---

12 A Yes, this was -- this going into trial, week before
13 trial.

14 Q Okay. Is this the time that you just discussed in the
15 week before the trial?

16 A Uh-huh. (Affirmative).

17 Q Okay. So, within a couple of days of the third time,
18 he came back to see you?

19 A Uh-huh. (Affirmative).

20 Q So that would be the fourth time before trial?

21 A Uh-huh. (Affirmative).

22 Q And what offer did he convey at that time?

23 A Fifteen to 30.

24 Q Okay. And what was your belief or your impression,
25 after your discussions with Mr. Bean, as to the possibility

1 or probability of conviction?

2 A well, I, I -- when he came with the 15 to 30 plea,
3 right, I was wanting to take the 15. Just 15. So, I told
4 Mr. Bean to go back and see if can we, can we, can we get
5 the plea for the 15, right?

6 Q Uh-huh. (Affirmative).

7 A But then after we started watching the video, once,
8 once, once, once I denied the 15 to 30 offer, and, and, and
9 the prosecutor would not budge, we watching the video. So,
10 me and Mr. Bean, we siting there watching the video. And so
11 I, I'm, I -- I don't see nothing. So, I asked Mr. Bean do
12 you see any transaction on tape.

13 Q Uh-huh. (Affirmative).

14 A And he tells me no.

15 Q Uh-huh. (Affirmative).

16 A So, I'm like I see the same thing. No, there is no
17 transaction.

18 Q And, by transaction, you mean handing the drugs to the
19 CI?

20 A Yes, sir.

21 Q Okay. And so, in turning down the plea offers, you had
22 some belief that there was weakness in the State's case?

23 A well, I really didn't because, you know, this, this
24 really -- I ain't never been in a trial like situation to --
25 well, you know, I was under the impression that she ain't

Taiwan Hardy - Direct examination
By Mr. Wilkes

1 give me no money. I didn't have nothing -- no drugs, and
2 I'm asking my lawyer for advice like what's, what's going
3 on. Why am I even being charged.

4 Q Right.

5 Okay. So, what did you do in response to that offer?

6 A Fifteen to 30?

7 Q Uh-huh. (Affirmative).

8 A I declined.

9 Q And what happened after that?

10 A We, we watching the video, and we proceeded to go to
11 trial, and then he came and gave me a letter to sign.

12 Q Right.

13 And that letter would be -- I can see that with my
14 queue.

15 Would this be that letter?

16 A Yes, sir.

17 MR. WILKES: Okay. May we mark this as Applicant's 1?

18 (WHEREUPON, the letter was marked as Applicant's
19 Exhibit No. 1, and received into evidence at this time.)

20 Q Was this the day before trial or, or close to -- I'm
21 sorry.

22 (Pause.)

23 A I think that was on a Friday.

24 Q How close to trial?

25 Friday before the next week of trial?

- 1 A Yes, sir.
- 2 Q Okay. And, in that letter, you were told that you have
3 until 3:00PM today?
- 4 A Uh-huh. (Affirmative).
- 5 Q So, in the same day you have to decide?
- 6 A Yes, sir.
- 7 Q And what did he explain to you at that time?
- 8 A Told me I was gonna die in prison.
- 9 Q If you didn't accept --
- 10 A The offer.
- 11 Q -- the offer?
- 12 Said that -- now, you said -- you say he said that you
13 would. The letter says if you're convicted.
- 14 A Uh-huh. (Affirmative).
- 15 Q Right?
- 16 A Uh-huh. (Affirmative).
- 17 Q All right. Did he tell you that you were going to be
18 convicted?
- 19 A No, sir.
- 20 Q Did he tell you that there was a likelihood of
21 conviction?
- 22 A No, sir.
- 23 Q I want to show you a black and white photograph.
- 24 If -- is this one of the photographs that, that you
25 were able to look at during your discussion with Mr. Bean?

1 A Yes, sir.

2 Q Who's in that photograph?

3 A That's me.

4 Q Okay. And what's that in your hand?

5 A It's a bag of crack I believe.

6 Q Okay. So, this is from the video that the CI took, and
7 you're in it with a bag of crack, and there's audio to it as
8 well, and, of course, you knew that cause you knew there was
9 a, a video?

10 You just weren't shown it until the last minute when
11 you committed to go to trial, right?

12 A Yes, sir.

13 Q So, but you saw photographs enough to know that that's
14 clearly you with a bag of drugs in your hand and, and you
15 knew that?

16 A Yes, sir.

17 Q And Mr. Bean didn't tell you that you're gonna get
18 convicted?

19 A No, sir.

20 Q That you're most likely gonna be convicted?

21 A There was a 50/50 chance as far as I remember.

22 Q Okay. So -- okay. If you'd of been told that the
23 jury's gonna hear the video, and see the whole video, with
24 you clearly in it holding a bag of drugs, and it's got the
25 audio, the jury's gonna hear that, and it's gonna be real

1 hard for the jury not to convict you, even though the camera
2 may of turned for a second, and you can't see you handing
3 the drugs, but is -- if you'd of been told that you were
4 likely gonna get convicted, that it will be very hard,
5 almost impossible to imagine why a jury wouldn't convict
6 you, would that have changed your decision as to accepting
7 any of the plea offers?

8 A No, no doubt. I would of pled guilty.

9 Q Was there -- other than the fact that the camera had
10 turned just for a second, and there was no obvious handing
11 the drugs to the CI, other than that, were you aware of any
12 other challenges in the case, any other defenses?

13 A None.

14 Q Okay. So, you -- your mind -- in your mind, you
15 believed that you had a good chance of winning a case where
16 you're on the video this clear?

17 A Based on my attorney advice, yes, sir.

18 Q Okay. And in, in the letter that you signed, it
19 advises you that, if you're convicted, you'd be subject to
20 be LWOP, correct?

21 A Yes, I, I was -- I was under impression, right, cause
22 when you read LWOP, that you -- that they could seek the
23 life sentence, I didn't know I was locked in, once the trial
24 started, until I read that letter.

25 Q But that's still before your chance to enter a plea

1 expired, right?

2 A Huh?

3 Q You could of still entered the plea?

4 A Yes.

5 Q Okay. Now, that letter doesn't indicate the strength
6 of the case. It just says you, if you're convicted, you're
7 gonna get mandatory life without parole.

8 A Correct.

9 Q Okay. If that letter had said and I've told you or I
10 am telling you now that the likelihood of you being
11 convicted, given the evidence, is exceedingly high,
12 extremely high, or very high, would that have changed your
13 mind as far as entering a guilty plea?

14 A Yes, sir.

15 Q Would you have entered a guilty plea if you believed
16 that the strength of the evidence was overwhelming?

17 A I would of entered a guilty plea the day of trial had
18 my lawyer not told me that once, once we see the video, all
19 bets are off.

20 Q Even, even without the video --

21 A Uh-huh. (Affirmative).

22 Q -- if you know that video exists because you did know
23 the video exists early on?

24 A Yes, sir.

25 Q And they showed you photographs from the video.

1 Is that correct?

2 A Yes, sir.

3 Q Okay. If you had seen those photographs on the day
4 that you were entering some or having your evidentiary
5 hearing for the parole, if you had seen all the discovery,
6 looked at those photographs, know that there's a video and
7 audio, and been told that the chances of your conviction,
8 given that evidence, is exceedingly high, would you have
9 pled guilty to the deal combined with the probation
10 revocation?

11 A Yes, sir.

12 MR. WILKES: No further questions.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MR. JAMES:

16 Q Mr. Hardy, did I hear you correctly state that your
17 attorney told you, if you turned down this plea, you would
18 die in prison?

19 A Yes, that's what he told me.

20 Q In language as plain and simple as that?

21 A Plain and simple.

22 MR. JAMES: All right. No further questions.

23 THE COURT: All right. Thank you.

24 Mr. Hardy, you may step down, sir.

25 Mr. Wilkes, anything further, sir?

1 MR. WILKES: The rest of my issues are -- come directly
2 out of the record, which would be issued to failure to
3 object to highly prejudicial evidence of prior drug use.
4 That comes from the record which I've put in the memo. I
5 don't -- probably don't -- if the Court accepts the memo
6 into the file, then I don't think I need to just read it
7 into the transcript.

8 THE COURT: Okay.

9 MR. WILKES: And number three as well. The failure to
10 prepare properly and present an adequate defense, that
11 involves the withdrawal of the key piece of impeachment
12 evidence. That's in the record also. But, of course, Mr.
13 Bean's gonna testify. So, I'll just ask him and complete
14 that. That doesn't involve my client's testimony.

15 THE COURT: All right.

16 MR. WILKES: If, if I may do that on their cross
17 instead of putting it up now.

18 MR. JAMES: I was going to state, procedurally, you
19 should probably put him up now since the burden is on you to
20 show he was ineffective.

21 THE COURT: well, yeah, you don't want to not call him,
22 and then the State chooses not to.

23 MR. WILKES: we'll call -- well, I think I have a --
24 well, no, maybe not.

25 MR. JAMES: I've already made one DV motion today.

1 THE COURT: That's right.

2 MR. JAMES: I wasn't successful.

3 THE COURT: That's right.

4 MR. WILKES: We'll call Mr. Bean then.

5 THE COURT: All right. Mr. Bean, if you'd come around
6 please.

7 (Witness complies.)

8 WILLIAM BEAN, being first duly
9 sworn, testified as follows:

10 THE COURT: Thank you, sir.

11 And just so the record's clear, is this -- this was --
12 this is moved into evidence?

13 MR. WILKES: It was, Your Honor.

14 MR. JAMES: Without objection, Your Honor.

15 THE COURT: Okay.

16 All right. So, that's Applicant's Exhibit 1 is in
17 evidence without objection.

18 (WHEREUPON, State's Exhibit No. 1 was received into
19 evidence at this time.)

20 THE COURT: If you'd state your full name for the
21 record.

22 THE WITNESS: William Bean.

23 THE COURT: All right. Mr. Wilkes.

24 MR. WILKES: Thank you, Your Honor.

25 DIRECT EXAMINATION

William Bean - Direct examination
By Mr. Wilkes

1 BY MR. WILKES:

2 Q Mr. Bean, tell me your recollection of the solicitor
3 brining an offer during the revocation.

4 what do you recall?

5 A I do not recall that conversation at all. When I
6 prepared for this today, I was focusing on the trial itself,
7 the preparation and all. I really don't recall anything
8 about the probation hearing or the revocation hearing.

9 Q Okay. Is that a possibility that the solicitor brought
10 an offer during that?

11 A Yes, it could be. I just don't remember it.

12 Q Okay. And what's your first recollection of discussing
13 the facts of the case with, with Mr. Hardy?

14 A I don't remember the exact date when we first talked
15 about it. I know we discussed it on a number of occasions.
16 We, of course, went over the discovery, looked at the video
17 that the informant had, had made as part of the transaction,
18 looked at some still photographs that were given to us by
19 the solicitor before we actually saw the video. And we
20 discussed the options, and, and that plea offer, which, at
21 some point, was placed on the table.

22 The solicitor had served a Notice of Life Without
23 Parole, and made an offer of 18 years on the drug charge
24 with the other underlying charge, not underlying, the other
25 charges all being nolle prosequied as part of a plea offer

1 if he chose to accept it.

2 Q Okay. And the 18 year offer would, I assume, be --
3 could be the one he refers to being the 18 year offer first
4 offered at the probation hearing?

5 A It could be, yes.

6 Q Okay.

7 A Again, I just don't remember that.

8 Q But they, they then later came back with another offer?

9 A Best I can remember. I'm, I'm not sure if they came
10 back with another offer of 15 years or not. Mr. Hardy was
11 intent on 10 years, and told me that he would take 10 but
12 not anymore. And the solicitor either offered or indicated
13 they might offer 15 if he would take it. Mr. Hardy and I
14 had that conversation. He wasn't willing to do that. I
15 believe he told me that he would be willing to do 12 if they
16 would come to 12 years.

17 And, anyway, the, the gist of it was he wanted 10. The
18 solicitor offered 18. They may of gone to 15. But, in any
19 case, Mr. Hardy was not, was, was not ever willing to accept
20 any of the offers that they had made.

21 Q Okay. Now, do you recall how many, or to your
22 recollection, how many times did you meet with Mr. Hardy
23 about this case?

24 A I can't remember. I know it was, it was multiple
25 times. But whether that was three, four, five, I, I don't

William Bean - Direct examination
By Mr. Wilkes

1 remember. It may -- I want to say four or five. But,
2 again, I'm not positive. I know it was several times.

3 Q Okay. And would those times -- those times would of
4 had to have been at the jail when he was transported back?

5 A Right. They were, they were at the jail, yes.

6 Q Okay. And while he was an SCDC inmate?

7 A Yes.

8 Q Okay. So, to, to come back, he would of had to been
9 brought back for either a plea or a trial I assume?

10 A I, I presume, yes.

11 Q Okay.

12 A I never asked that he brought back just for a
13 consultation. I don't think they do that anyway.

14 Q So, if the solicitor was bringing him back, would, to
15 your recollection, was that because he was showing up on a
16 trial docket?

17 A He would of been showing up on a roster of some kind.
18 I'm not sure which. It could well have been a trial docket.

19 Q Do you recall having prepared for trial more than once?

20 A I don't recall if I did. I, I know I did a lot of
21 preliminary work before he ever would of gotten on the trial
22 roster. But saying it's gonna be next week, and then he's
23 transported, and it didn't occur, I don't think we had any
24 of those occurrences.

25 Q All right. And do you, do you have any notes that

1 would reflect dates of meeting him at the jail that would be
2 helpful?

3 A I may have some. I'd have to look through this rather
4 large file. I know I met him at the jail several times --

5 Q Okay.

6 A -- and I, I pretty well recall our discussions about
7 the case.

8 Q Okay. Tell, tell me about going over the discovery and
9 what you apprized him of as far as the strength of the
10 State's case.

11 A Initially, as I recall, before we were given the video
12 by the prosecution, they gave me several still photographs
13 that were taken from that video, and I believe you've
14 introduced one of those a moment ago. It was Mr. Hardy
15 holding a, I guess a Ziploc bag, of, of cocaine. And we
16 knew, based on what they had provided to us in, you know, in
17 written form or in documentation, I guess that -- of course,
18 this had been a video taken by an informant.

19 At that point in time we weren't told the name of the
20 informant. That's the normal process. However, the, the,
21 the inference there was the informant had come in, and had
22 bought or had gotten the cocaine from Mr. Hardy.

23 I told him, in my opinion, based on what we had seen,
24 and I told him this multiple times, that, you know, my
25 opinion, he would be convicted by a jury if we went to

William Bean - Direct examination
By Mr. Wilkes

1 trial, and I encouraged him, particularly in light of the,
2 of the LWOP, that he, that he take the plea offer because,
3 otherwise, as I think I stated in the letter, he would be in
4 prison for the rest of his life.

5 Q Now, the letter doesn't -- I'll show you the letter.
6 May I have it back?

7 THE COURT: Yes, sir.

8 MR. WILKES: Thank you.

9 If you'll look at Applicant's 1.

10 Is that the letter that you're talking about?

11 A Yes.

12 Q And, in that letter, your reference to LWOP indicates
13 that, if he's convicted, or found guilty?

14 A Yes.

15 Q But the letter itself doesn't indicate any advice or
16 analysis that you're talking about as far as the strength of
17 the case, and the likelihood of conviction?

18 The letter does not?

19 A Correct.

20 Q So, you're saying that you gave him that advice
21 verbally during your meetings?

22 A I did, on more than one occasion.

23 Q All right. And did you, did you predict it -- well,
24 did you give him an, an opinion as the strength of the
25 State's case being virtually certain that he would get

1 convicted?

2 A I, I don't remember exactly how I phrased it. But,
3 basically, what I told him was that, if we went to trial,
4 based on everything that the State had, he would probably be
5 convicted. I don't know if I used those exact words or not.
6 But it wasn't, it wasn't any kind of a 50/50 proposition. I
7 felt like he would definitely be convicted, and I told him
8 that.

9 Q And if I can show you a photograph.

10 would that be one of the early photographs that you
11 received?

12 A Yes.

13 Q And do you know when you received that discovery
14 material?

15 A I don't remember exactly when we got it. I do remember
16 showing it to Mr. Hardy.

17 Q Okay. And that would of been prior to the video?

18 A Yes.

19 MR. WILKES: Can we mark this as Applicant's 2?

20 MR. JAMES: Without objection.

21 THE COURT: All right. Applicant's 2 is in evidence
22 without objection.

23 (WHEREUPON, the photograph was marked as Applicant's
24 Exhibit No. 2, and received into evidence at this time.)

25 MR. WILKES: Thank you.

William Bean - Direct examination
By Mr. Wilkes

1 So, you're say that you told him that you believed he
2 would be convicted?

3 A Yes.

4 And, and, as a matter of fact, now that I think about
5 it, having looked at the picture again, when I first showed
6 him the picture, I asked him who that was in the picture,
7 and he said I don't know. And I said well, it looks like
8 you, but, more importantly, a jury is going to believe that
9 it is you. I remember having that conversation with him
10 specifically with the, the picture I was given, which is a
11 color picture. I know that's a photocopy, but we had that
12 conversation.

13 Q All right. Now, as far as the drug analysis, you had
14 the drug analysis, forensics, all the forms for the drug,
15 chain of custody?

16 A Yes.

17 Q And there was no abnormalities or legal challenges
18 apparent in those?

19 A There was not.

20 Q When -- do you recall when the State served Mr. Hardy
21 with the LWOP Notice?

22 A I don't remember exactly when they did that.

23 Q When you received the LWOP Notice, can you recall
24 whether it was in close proximity to the trial?

25 A I don't remember when it was. I was made aware of it

1 verbally before it was actually delivered if you will, and I
2 made Ms. Hardy aware of it as soon as I heard about it.

3 Q And would this be the LWOP Notice?

4 A I believe so, yes.

5 MR. WILKES: Can we mark this as Applicant's 3 please?

6 (WHEREUPON, the Life Without Parole Notice was marked
7 as Applicant's Exhibit No. 3 for identification purposes
8 only at this time.)

9 Q And according to the clock-in date, the clock-in date
10 shows March 20, 2015.

11 Does that sound --?

12 A I, I presume that's correct.

13 Q Okay.

14 MR. JAMES: If I may approach and just take a quick
15 glance at the exhibit?

16 MR. WILKES: Oh, I'm sorry. It's in -- I think it's in
17 the record, but I just want to be on the safe side.

18 MR. JAMES: All right. Without objection.

19 MR. WILKES: I'm sorry.

20 THE WITNESS: That's all right.

21 (WHEREUPON, Applicant's Exhibit No. 3 was received into
22 evidence at this time.)

23 Q Now, during, during the trial, there was the witness
24 that was the confidential informant, Ms. Cannon. She
25 testified.

1 Correct?

2 A Yes.

3 Q And she's the one that, that took the video?

4 A Yes.

5 Q Now, during the testimony of Ms. Cannon, Ms. Cannon
6 made a concerted effort to get in the fact that she knew Mr.
7 Hardy because they use to do drugs together.

8 Do you recall that?

9 A I do.

10 Q Okay. And I think, if I'm not mistaken, it was
11 proffered originally, and you may of objected to it, but the
12 state still got it in. She still testified before the jury
13 that he used drugs with her and that's how she knew him.

14 Correct?

15 A Correct.

16 Q Which was a direct response to the solicitor asking how
17 did you meet him, how did you know him. Obviously knowing
18 what the answer was gonna be, but that's where it came out.
19 And, once it did, you did not renew that objection as far as
20 the prejudicial impact of that. Given the nature of this
21 case being a drug case, you did not object again to preserve
22 that issue for the record.

23 Do you recall that?

24 A Yes.

25 Q Okay. And is there any reason not to object to it

1 again?

2 A My, my thinking was that the fact that this was clearly
3 a drug case. They had a video with drugs, and testimony to
4 that effect. I felt like it would be beneficial to the
5 defense if the drug use by the informant was admitted
6 because, obviously, they had evidence that Mr. Hardy was
7 involved with drugs, and I felt like the credibility of the
8 informant would be affected in a negative way if she
9 indicated, which she did, that she had used drugs multiple
10 times I think -- I believe that was in there with Mr. Hardy.

11 Q But that impeachment value wouldn't be necessary
12 knowing that she's got an extensive drug record that you can
13 impeach her with, right?

14 A I'm sorry?

15 Repeat---

16 Q If, if you're going to cross-examine her and impeach
17 her with a substantial drug record, criminal history for
18 impeachment purposes, that, that should be --
19 overwhelmingly, overwhelmingly take care of that issue, and
20 make objecting to his drug use less valuable, wouldn't it?

21 MR. JAMES: Objection. Argumentative.

22 THE COURT: I'm -- overruled. He can answer that
23 question.

24 A It could, yes.

25 Q Okay. So, in the grand scheme -- and you, you knew

William Bean - Direct examination
By Mr. Wilkes

1 there -- she had a pretty extensive record?

2 A Yes.

3 Q So, knowing that, it would not have prejudiced or would
4 it have prejudiced the defense greatly to object to the fact
5 that she's trying to get in his drug use?

6 A It could have affected it or prejudiced the defense,
7 yes.

8 Q Now, speaking of, of her impeachment, the State had
9 provided you with the agreement. I think they called it the
10 confidential informant agreement. Something to that effect.

11 A That -- yes, I believe---

12 Q Okay.

13 A ---they did.

14 Q And you had that to impeach her with, and I think,
15 during the trial, you actually used it for the jury to
16 impeach her with. Introduced it into evidence as well as
17 Defendant's 1.

18 Does that sound right?

19 A I believe that's right.

20 Q Okay. But later in the case, at closing argument, you
21 withdrew the piece of evidence to save last argument.

22 Was that fair in that analysis?

23 A Yes.

24 Q Okay. So, why withdraw a critical piece of evidence
25 to -- that's impeaching the only witness in the case, the

1 direct evidence of guilt?

2 why withdraw that as effective as it appeared to be in
3 impeachment of Ms. Cannon?

4 why withdraw it?

5 A well, the jury had heard it.

6 Q They did.

7 A Yes.

8 Q But, at the same time, you also introduced it as an
9 exhibit, correct?

10 A Right.

11 Q And then there was no curative instruction or no
12 explanation to the jury that that piece of evidence was then
13 withdrawn, right?

14 A I, I believe that's correct.

15 Q And so, if they go into deliberations, they're now
16 missing the document that you introduced for the impeachment
17 of that witness. Even though they did hear it, it's now
18 gone, and could that not have impacted how they viewed your
19 impeachment of that witness?

20 A I, I suppose it could have. I, I didn't feel that it
21 would, and I felt that withdrawing it to basically preserve
22 the opportunity to have the last argument was in Mr. Hardy's
23 best interest in the case, which is why I did it.

24 Q Even, even so though, would it have not -- would it
25 have been better to at least give a curative instruction

William Bean - Direct examination
By Mr. Wilkes

1 that the actual document was withdrawn, but that, that
2 doesn't affect the actual testimony or the, the impeachment
3 that they heard?

4 would there be a better way to do it without the jury
5 going to the -- into deliberation and just suddenly no, no
6 explanation that document -- that piece of -- the only, I
7 think, exhibit offered by the defense is now gone?

8 A I, I suppose you could make that argument. I, I would,
9 I would say perhaps so, perhaps not.

10 Q But it could lead to confusion for the jury, could it
11 not?

12 A I guess it could.

13 MR. WILKES: If I can have just one second, Judge?

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. WILKES: That's all we have of Mr. Bean.

17 Thank you, Mr. Bean.

18 THE COURT: All right. Cross.

19 CROSS-EXAMINATION

20 BY MR. JAMES:

21 Q Did you discuss with your client whether or not the
22 plea offer extended by the solicitor's office involved
23 pleading to a violent or nonviolent charge?

24 A I honestly can't recall if I discussed that with him or
25 not. I, I know we did discuss the, the approximate time he

1 would serve based on the charge. But whether we discussed
2 violent or nonviolent, I honestly don't remember.

3 Q And you received the offer to plead in exchange for 18
4 years after receiving the LWOP Notice?

5 A I can't remember which came first.

6 Q Okay.

7 A I knew the LWOP was coming before I actually received
8 the document. I'd been told that by the Solicitor. So, I
9 was aware of it.

10 Q And did you communicate that awareness to your client?

11 A Yes.

12 Q Okay. PCR counsel did -- asked you if you could of
13 requested a curative instruction where you withdrew a piece
14 of evidence that was previously admitted into evidence and
15 published to the jury.

16 would you agree that such curative instruction could of
17 been potentially harmful to your client?

18 A Yes, that's why I, I chose not to do that.

19 Q In fact, the curative instruction could of told the
20 jury to disregard that piece of evidence that you had
21 managed to publish to them and then take back later?

22 A Yes, it could have.

23 Q All right. So, ultimately, you got the benefit of
24 publishing that piece of evidence to the jury, and keep last
25 word, correct?

William Bean - Redirect examination
By Mr. Wilkes

1 A Exactly.

2 MR. JAMES: All right. I have no further questions for
3 this witness, Your Honor.

4 THE COURT: Anything on redirect?

5 MR. WILKES: Just a couple.

6 REDIRECT EXAMINATION

7 BY MR. WILKES:

8 Q Mr. Bean, do you recall whether there was one offer or
9 more than one offer?

10 A You mean of the 18 years?

11 Q Just of, of -- any offers to Mr. Hardy in -- from
12 beginning to end, was there just one offer or could there
13 have been more than one offer?

14 A I can't recall directly if there was ever an offer of
15 15. As I think I said, Mr. Hardy was -- he, he was
16 consistently saying I'll take 10.

17 Q Uh-huh. (Affirmative)...

18 A The solicitor was at 18, and I tried to get the
19 solicitor to go to 15. I'm not sure if they did or not. I
20 told Mr. Hardy that, you know, maybe I could get them to 15
21 so that if he said yes, I would do that, then I could go
22 back and say look, if you'll do 15, he's willing to plead.
23 I don't remember that they ever specifically came off of 18.

24 Q But you have no recollection or are you saying it
25 didn't happen or could of happened that he was offered a

1 plea by the solicitor during the probation revocation?

2 A I, I don't remember that, the probation revocation.

3 I'm sorry. I just -- I didn't prepare for that because I---

4 Q All right.

5 A ---wasn't expecting it.

6 Q But it could of happened?

7 A It could have.

8 Q Okay.

9 A Oh sure.

10 Q Okay. Very good.

11 No further questions.

12 THE COURT: All right. Thank you very much, sir. You
13 may step down.

14 MR. JAMES: Your Honor, may this witness be released
15 from his subpoena?

16 THE COURT: Yeah, that's fine.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Thank you very much. I appreciate you
19 being here, Mr. Bean.

20 All right. Anything further from the Applicant?

21 MR. WILKES: No further evidence other than my
22 references that are in the memorandum which direct the
23 Court's attention to specific testimony for specific
24 evidence that it was actually admitted during the trial.

25 THE COURT: Okay.

1 MR. WILKES: That would be the Applicant's case.

2 THE COURT: All right. Anything from the State?

3 MR. JAMES: They'll be no presentation from the State,
4 Your Honor.

5 THE COURT: All right. Would you like to make a brief
6 close remark?

7 MR. WILKES: Again, I can -- I'm not going to reiterate
8 for the transcript, but would incorporate the memorandum
9 which sets forth the law that's applicable.

10 THE COURT: Yes, sir.

11 MR. WILKES: I've cited case law. I've attempted to
12 identify all the evidence --

13 THE COURT: Okay.

14 MR. WILKES: -- and to be thorough. Hopefully I was,
15 and I think that should speak for my---

16 THE COURT: All right, sir.

17 MR. WILKES: ---closing.

18 THE COURT: From the State.

19 MR. JAMES: It being 4:25, the State would be
20 exceedingly brief.

21 Mr. Bean told his client that he would die in prison if
22 he doesn't take that deal. It doesn't get any clearer than
23 that that he is advising his client that he should take the
24 deal. The case is strong against him. He's going to get
25 convicted. He indicated that he told his client that

1 multiple times.

2 As to the other two allegations, the failure to object,
3 Mr. Bean indicated his and articulated his strategic
4 reasoning that it was more valuable to get the additional
5 admission of drug use by the confidential informant to
6 attack her credibility to the greatest extent possible, that
7 it was damaging to his own client, and it's not our place to
8 second guess that on a PCR having it -- it having been
9 articulated.

10 And, third, as to the withdrawal of the key piece of
11 evidence, he got evidence in front of the jury, and managed
12 to get it set aside such that he still had last argument
13 without a curative instruction to the jury to tell them to
14 disregard it. That's a master stroke, Your Honor. That is
15 in no way, shape, or form ineffective.

16 For all of those reasons, Your Honor, I respectfully
17 request that the Applicant for Relief be denied.

18 THE COURT: All right. Well gentlemen, I am gonna take
19 this matter under advisement, and give myself and the law
20 clerk an opportunity to review the submissions that have
21 been made here. We'll, we'll do that as soon as possible,
22 and have you an answer within the next several days.

23 MR. WILKES: Thank you, Your Honor.

24 MR. JAMES: Thank you, Your Honor.

25 THE COURT: Thank you very much.

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* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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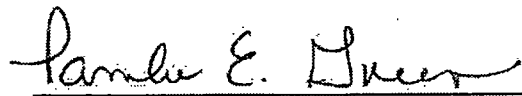
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 7th day of March, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 25th, 2019



PAMELA E. GREEN, Court Reporter

THE BEAN LAW FIRM**WILLIAM S. BEAN****ATTORNEY AT LAW**Telephone:
(864) 582-3341Post Office Box 81
Spartanburg, SC 29304-0081Fax:
(864) 542-1033**HAND-DELIVERED**

July 17, 2015

Mr. Taiwan Hardy

RE: State vs. Taiwan Hardy

Warrant Nos: 2014A4210202587
2014A4210202566
2014A4210202567
2014A4210202562
2014A4210202570MDP Meth
Kidnaping
A&B 1st Degree
Attempted Murder
Possession of Weapon During a
Violent Crime

M. HOPE BLACKLEY

2015 AUG -4 AM 10:23

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA

Dear Taiwan:

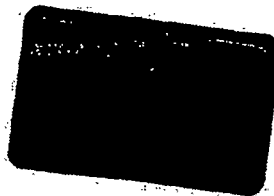
The case in which you are charged with manufacturing, sale, distribution of cocaine base, 3rd or subsequent offense, is set for trial next week. The solicitor has offered a negotiated plea of an 18 year sentence. As part of that plea offer, the other charges against you for MDP meth, kidnaping, A&B 1st degree and possession of a weapon during a violent crime, would be dismissed.

The solicitor has informed you of his intention to seek a sentence of life in prison, without parole, if you go to trial and are found guilty. If you are found guilty at trial, that is a mandatory sentence that must be imposed by the Court. That means that a guilty verdict means that you would go to prison and remain there until you die-with no possibility of parole.

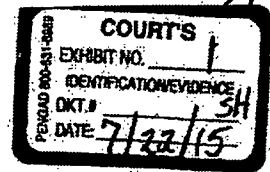
The solicitor has given you until 3:00 p.m. today to decide whether to accept the plea offer or elect to go to trial. If you reject the plea offer, then the solicitor is required to provide you with the name of the confidential informant. Once that has been provided to you, the plea offer of 18 years is revoked, and you will no longer have the opportunity to plead to 18 years. Any plea that you enter after that would result in a sentence of life without parole.

Very truly yours,

THE BEAN LAW FIRM, P.A.


William S. Bean
WSB:mpb


Copy received July 17, 2015



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF GENERAL SESSIONS
) FOR THE SEVENTH JUDICIAL CIRCUIT

State of South Carolina,

) NOTICE OF LIFE SENTENCE PURSUANT
) TO SECTION 17-25-45(A)

vs.

Taiwan Hardy,

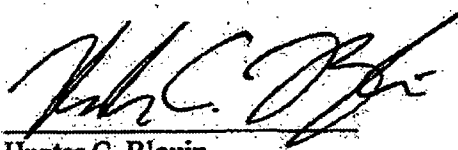
) Warrant(s): 2014A4210202587
) Charge(s): Distribution of Cocaine Base
) 3rd or Subsequent Offense

Defendant.

) Indictment(s): 2014-GS-42-5877
)
)

To: The Defendant and his attorney, William Bean, Esq.:

YOU WILL PLEASE TAKE NOTICE that pursuant to Section 17-25-45(A) & (H) of the South Carolina Code of Laws, 1976, as amended, the Solicitor will seek a sentence of life without parole for the defendant if he is convicted of the charges on the above listed warrants/indictments, based on his prior criminal record including but not limited to his prior conviction for Trafficking in Cocaine Base in 2006 under Indictment Number 2003-GS-42-3498, his 2013 conviction for Distribution of Cocaine Base 2nd under Indictment Number 2011-GS-42-5542, and his 2013 conviction for Distribution of Cocaine Base 2nd offense under Indictment 2011-GS-42-5541 as shown by his attached 2006, 2013, and 2013 indictments, sentencing sheets and NCIC report. (See attached ___ pages).


Hunter C. Blouin
Assistant Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29303
(864)-562-4350

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 29 PM 3:37
M. HOPE BLACKLEY

March 20, 2015
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

Taiwan J. Hardy,) Case No.: 2017-CP-42-02217
S.C.D.C. No. 321387,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Taiwan J. Hardy ("Applicant") on June 26, 2017. Respondent made its return on about December 29, 2017. The Court convened an evidentiary hearing into the matter on Thursday, March 7, 2019, at the Spartanburg County Judicial Center in Spartanburg, South Carolina. Applicant was present at the hearing and represented by J. Falkner Wilkes, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, William S. Bean, IV, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings, and Applicant's memorandum submitted to the court at the time of the evidentiary hearing. The Court finds as follows:

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I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the December 2014 term of the Spartanburg County Grand Jury for distribution of cocaine, third or subsequent offense (2017-CP-42-02217). William S. Bean, IV, Esq. represented Applicant. Hunter C. Blouin and J. Edward Hunter, Esqs., of the Seventh Circuit Solicitor's Office, prosecuted the case. On July 22, 2015, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on July 23, 2015. Pursuant to S.C. Code Ann. § 17-25-45, Judge Couch sentenced Applicant to imprisonment for a term of life without parole.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Wanda H. Carter, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

The trial judge erred in coercing appellant in effect to withdraw defense exhibit #1, which was a prior controlled drug purchase agreement signed by the confidential informant used in this case, in order to secure the last closing argument to the jury because this exhibit was corroborative evidence that established the unreliableness of this informant deemed critical to appellant's defense.

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The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Hardy, Op. No. 2016-UP-460 (S.C. Ct. App. 2016). The Remittitur was issued on December 2, 2016.

Present Application

At the evidentiary hearing, Applicant proceeded on three allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to properly advise client in relation to the plea offer.

- b. Failure to object and require a 404(b) analysis on the record to preserve the issue for appeal as to highly prejudicial prior bad act / evidence of bad character / propensity testimony.
- c. Failure to represent an effective defense by withdrawal of key evidence essential to the issue of credibility and impeachment of the confidential informant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCR; Butler v. State, 286 S.C. 441, 334 S.E.2d 442 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting

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for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). 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 (citing Strickland, 466 U.S. at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

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1. Misadvice as to Plea Offer

The Court finds no merit in Applicant's claim that Counsel was ineffective in adequately advising him regarding two plea offers by the State.

At the evidentiary hearing, Applicant testified that Counsel brought him an offer from the State where Applicant would plead guilty to distribution of crack in exchange for a sentence of 18 years, to run concurrent with his probation violation. Applicant recalled that at the time, he hadn't seen his discovery at the time, had not yet much talked about the case with Counsel, and was not yet aware the State was pursuing life without parole. Applicant declined the offer, explaining "why take a plea if I ain't seen discovery?" When Applicant finally saw Counsel again sometime later, he was able to review discovery with Counsel and return to the State's 18 year offer. Applicant noted that while he was able to review stills from the video of the drug buy, he was not permitted to see the video at that time; otherwise he fully reviewed his discovery with Counsel. Applicant recalled that Counsel advised him to take the plea offer, but Applicant was not aware if as part of the plea he would be pleading to a violent or non-violent classification. Applicant testified he wanted to plead guilty in exchange for 15 years, but that counter-offer was denied. Applicant recalled when he finally saw the video, he did not see transaction for which he was charged take place, and asserted that Counsel did not see it either, but Applicant admitted it was him in the video. Applicant recalled Counsel told him he would "die in prison" if he did not take the offer. Nonetheless, Applicant asserted that if he had been told he would be convicted, he would have pled guilty, and that he thought there was perhaps a "fifty-fifty" chance at trial.

Counsel testified he and Applicant met and discussed the case on multiple occasions, and confirmed they reviewed the discovery in the case. Counsel noted that he received the 18-year-

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offer *after* receiving the State's LWOP notice. Counsel and Applicant discussed the possibility of a 15-year deal, but Applicant was not willing to take it. Counsel recalled Applicant desired a 10-year sentence, and was maybe willing to accept a 12-year sentence, but that he was never willing to entertain the offers the State actually made. Counsel testified he told Applicant that he believed Applicant would be convicted by a jury if he proceeded to trial and that he should accept the State's offer and plead guilty. Counsel asserted he communicated that belief and advice on more than one occasion, and always told Applicant either would "probably" or "definitely" be convicted. Counsel recalled the first time he showed Applicant a still from the confidential informant's video; Applicant said he didn't know if it was him in the still, to which Counsel replied that it looked like Applicant and that a jury would conclude the same. Counsel could not recall precisely when he received the LWOP notice, but testified he notified Applicant immediately.

The Court finds Applicant has failed to meet his burden as to either prong of Strickland. Applicant cannot reasonably contend that his Counsel did not adequately appraise him of the likelihood of his conviction and LWOP sentence when, as Applicant admitted, Counsel told him that he would die in prison if he did not accept the State's offer. Counsel could not have put the matter before Applicant more clearly, bluntly, or simply. The Court finds credible Counsel's testimony that Applicant was unwilling to accept the State's plea offers despite his unequivocal advice. Though Applicant and Counsel largely corroborated one another, to the extent their testimony conflicted, the Court finds Counsel credible and Applicant concordantly not credible. The Court finds Counsel gave no advice upon which Applicant could have reasonably concluded he had a "fifty-fifty" chance of acquittal in a jury trial. The Court finds Applicant was only interested in deals for terms of incarceration the State did not offer. Accordingly, Applicant has

failed to prove either prong of Strickland, and his demand for relief by way of this allegation is **DENIED**.

2. Failure to Object

The Court finds no ineffectiveness in Counsel's decision not to object to the confidential informant's remark indicating Applicant's own prior drug use. At trial, the confidential informant Brandy Cannon testified that she had known Applicant for ten or eleven years, and that the two "used to do drugs together." (R. 59-60; R. 61, ll. 14-17). Counsel affirmatively declined to object. (R. 61, ll. 3-5).

At the evidentiary hearing, Counsel testified he did not object because he deemed it beneficial to Applicant to elicit the informant's own drug use, and that the testimony was bad for the CP's credibility.

The Court finds no ineffectiveness on the part of Counsel. Counsel articulated his value strategic judgment at the evidentiary hearing, valuing the damage to the confidential informant's credibility over the potential damage to his client. This Court will not second-guess that judgment. Additionally, even if it were to find some basis to find Counsel's decision constitutionally deficient, there is no reasonable probability that the absence of such a fleeting remark by Cannon would have changed the outcome of the trial—as emphasized by Applicant in his memorandum to this Court, the evidence against Applicant was overwhelming, there was no viable defense, and the probability for conviction was all but a certainty. For these reasons, Applicant's request for relief by way of this allegation is **DENIED**.

3. Withdrawal of Key Evidence

The Court finds no ineffectiveness in Counsel's decision to withdraw the lone defense exhibit introduced at trial. At trial, Counsel attacked Brandy Cannon's credibility by confronting

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her with the contents of her "CI information sheet." (R. 77, ll. 13-22). Counsel pointed out Cannon's signature on the information sheet and that she was subject to pending criminal charges for distribution of Lortab, distribution of OxyContin, and obtaining goods under false pretenses. (R. 78, ll. 1-22). Counsel thereafter introduced the information sheet into evidence as Defendant's Exhibit #1. (R. 79, ll. 4-11). Counsel proceeded to grill Cannon on her efforts to work off drug charges, which Cannon contested, and the number of drug buys in which Cannon had been involved since beginning her cooperation with the State in 2000. (R. 79-81). Cannon admitted she was paid cash for her services. (R. 81-82).

At the end of the State's case-in-chief, Counsel asserted to the trial court his "understanding that if [he] introduce[d] evidence on cross examination of a State's witness, that doesn't constitute the admission of evidence on [his] part." (R. 142, ll. 11-24). The trial court understandably, replied with surprise and confusion. (R. 143, ll. 1-8). After reviewing State v. Battle, 304 S.C. 191, 403 S.E.2d 331 (Ct. App. 1991) and State v. Mouzon, 326 S.C. 199, 485 S.E.2d 918 (1997), the trial court inquired if Counsel had any authority to support his position; Counsel admitted he did not, and that he had successfully introduced evidence and retained "last argument" in the past. (R. 143-45). Counsel thereafter moved to withdraw the CI information sheet from evidence; after a brief recess, Counsel and the State reached an agreement that the lone defense exhibit would be withdrawn and that Counsel would retain last argument. (R. 145-48). The trial court asked Applicant if he understood agreed with Counsel's strategic decision, and Applicant confirmed he did. (R. 148, ll. 11-23).

At the evidentiary hearing, Counsel testified he introduced Cannon's pending charge sheet, published it, and was later able to withdraw it in order to save last argument. Counsel opined that reclaiming last argument was helpful to Applicant. Counsel acknowledged he could

have requested a curative instruction to explain to the jury what happened to the exhibit, but on cross-examination also acknowledged a curative instruction could have been harmful to Applicant—the trial court could have told the jury to disregard the beneficial evidence they'd already seen.

The Court finds Applicant has failed to meet his burden of proving either prong of Strickland. Counsel arguably erred in his belief that he could introduce evidence and retain last argument, though he appears to have held the belief due to prior success in doing just that. But see, generally State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018) (exploring the historical ordering of closing arguments in South Carolina courts). But ultimately Counsel cured any potential deficiency in losing last argument by withdrawing the CI information sheet.

Applicant's contention that Counsel's saving play is itself deficient performance fails, as Counsel articulated a valid strategic reason or doing so—he valued last argument over keeping the exhibit in evidence. Applicant also cannot meet his burden of showing a reasonable probability the outcome at trial would have been different had he not withdrawn the exhibit. First, the substantive effect and purpose of the exhibit—impeachment of the confidential informant—was already achieved and the contents of the exhibit had already been published to the jury. Second, keeping the exhibit in evidence would have cost Counsel the valuable opportunity to argue last. The Court is further not compelled by Applicant's contention that Counsel should have sought a curative instruction, as any such instruction would have been to prohibit the jury from considering the evidence which was beneficial to Applicant, which would have hardly improved his chances. Finally, as noted in the prior sections and emphasized by Applicant in support of his first allegation, the evidence against Applicant was simple and

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complete, such that there is no realistic possibility of a different outcome. For all of these reasons, the demand for relief by way of this allegation is **DENIED**.

III. CONCLUSION

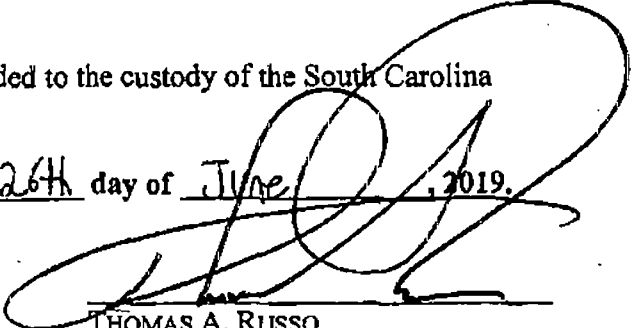
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 26th day of June, 2019.


THOMAS A. RUSSO
Presiding Judge
Seventh Judicial Circuit

Florence, South Carolina

WITNESSES

M. Cye

SPTBG CO SHERIFF'S OFFICE

2. REPORT ENDED

Computer

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

2014A4210202587

ACTION OF GRAND JURY

adsp

DEC 11 2014

Foreperson of Grand Jury

Date:

VERDICT

Curtly

Ry L D

07-23-2015

Foreperson of Petit Jury

Date:

DOCKET NO.

14-03-42-5877

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

PM 15 2014

TERM

THE STATE

VS.

TAIWAN J. HARDY

Indictment for

DISTRIBUTION OF COCAINE BASE

SC Code: 44-53-375

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M. HOPE BLACKLEY

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

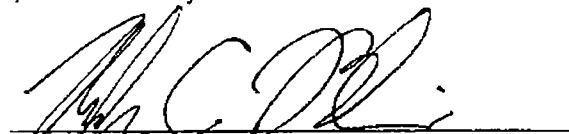
INDICTMENT

At a Court of General Sessions, convened on LE 11-2014 the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION COCAINE BASE

That Taiwan J. Hardy did in Spartanburg County on or about March 10, 2014, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Cocaine Base, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

R MCSWAIN

SPTG CO SHERIFF

- 1. SENTENCE ☒
- 2. REPORT FINGER ☒
- 3. CAR PULLED ☒
- 4. INDEXED ☒
- 5. CHECKED PLATES ☒
- 6. CHECKED LICENSE ☒
- 7. ASSESSMENT ☒

ARREST WARRANT NUMBER

TRAFFIC VIOLATIONS COPY

H445222

ACTION OF GRAND JURY

Bill
Bryant

Foreperson of Grand Jury
Date: 10-2-03

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

CS-42-3498

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 06 2003

TERM

THE STATE
vs.

TAIWAN HARDY

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375

Served 9-21-04 BW#13943 - Issued 7-14-04

MARC KITCHENS

SEP 07 9-11-03

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

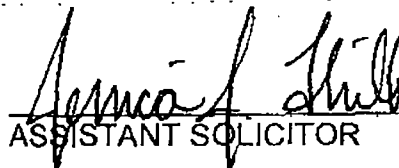
At a Court of General Sessions, convened on OCT 02 2003 the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That Taiwan Hardy did in Spartanburg County on or about April 3, 2003, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance, or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (28) twenty-eight grams of Crack Cocaine, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

SPTBG CITY PUBLIC SAFETY

[Signature]

ARREST WARRANT NUMBER

M126358

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 15 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-5541

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 14 2011

TERM

THE STATE

vs.

TAIWAN JEVON HARDY

Indictment for

DISTRIBUTION OF METHAMPHETAMINE OR
COCAINE BASE

SC Code: 44-53-375

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SPARTANBURG COUNTY

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M. HOPE BLACKLEY

[Handwritten mark]

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 15 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE OR COCAINE BASE

That Taiwan Jevon Hardy did in Spartanburg County on or about May 2, 2011; manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine or Cocaine Base, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

1. SENTENCE MADE

2. REPORT ENDED

SPTBG CITY PUBLIC SAFETY

4. INDEXED

5. CHECKED WARRANTS

5. (CHECKED) SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

M126350

ACTION OF GRAND JURY

Foreperson of Grand Jury: *Magus*

Date: SEP 15 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 11-GS-42-5542

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 14 2011

TERM

THE STATE

VS.

TAIWAN JEVON HARDY

Indictment for

DISTRIBUTION OF METHAMPHETAMINE OR COCAINE BASE

SC Code: 44-53-375

FILED
CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 15 2011 the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE OR COCAINE BASE

That Taiwan Jevon Hardy did in Spartanburg County on or about March 24, 2011, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine or Cocaine Base, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR