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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Writ of Certiorari to Charleston County
Maite D. Murphy, Post-Conviction Relief Judge
Deadra L. Jefferson, Trial Court Judge

Appellate Case No. 2018-000867

DALE GOULD,

Respondent,

v.

THE STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALE GOULD,

APPELLANT

APPELLATE CASE NO. 2014-0025547

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #1 (DVD of Undercover Buy)

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
 2 COUNTY OF CHARLESTON) CASE NO. 2014-GS-10-320
 3 STATE OF SOUTH)
 4 CAROLINA,) Transcript of Record
 5 Plaintiff,)
 6 vs.)
 7 DALE GOULD,) Date: November 19 - 20, 2014
 8 Defendant.)

9 * * * * *

10 B E F O R E:

11 The Honorable Deadra Jefferson

12 A P P E A R A N C E:

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 14 STEPHANIE LINDER, ESQUIRE
 15 Attorneys for the State of
 South Carolina

16 MELISSA GAY, ESQUIRE
 17 Attorney for the Defendant

18 * * * * *

19 Denise J. Lauder, RPR

20 Ninth Judicial Circuit

21
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1 The following proceedings were had
2 11/19/2014, Charleston County, South Carolina,
3 @10:11 a.m. in re State V. Gould:

4 THE COURT: Ladies and gentlemen, good
10:11:26AM 5 morning. We are going to select two criminal
10:11:28AM 6 juries this morning. These are the last cases
10:11:32AM 7 that we will try for the week, both civil and
10:11:34AM 8 criminal.

10:11:38AM 9 The first case that we're going to
10:11:40AM 10 select is for the State of South Carolina versus
10:11:42AM 11 Dale Gould, indictment 2014-GS-10-321.

10:11:48AM 12 Mr. Gould, if you would stand for your
10:11:50AM 13 formal arraignment.

10:11:50AM 14 And, Don, you may proceed when you're
10:11:50AM 15 ready.

10:11:54AM 16 THE CLERK: 2014-GS-10-320, State of
10:11:58AM 17 South Carolina versus Dale Gould, indictment for
10:11:58AM 18 distribution of cocaine.

10:12:04AM 19 Dale Gould, if you answer to that name,
10:12:08AM 20 please raise your right hand.

10:12:08AM 21 THE DEFENDANT: (Raised hand)

10:12:08AM 22 THE CLERK: You may put it down, sir.

10:12:10AM 23 You stand indicted by the name of Dale
10:12:10AM 24 Gould. At a court in general sessions convened on
10:12:10AM 25 January 13, 2014, the grand jurors of Charleston

10:12:16AM 1 County present upon their oath, that in Charleston
10:12:18AM 2 County, South Carolina on or about October 10,
10:12:22AM 3 2013, the Defendant, Dale Gould, did manufacture,
10:12:24AM 4 distribute, dispense, deliver, purchase, or did
10:12:30AM 5 obey, aid -- excuse me, abet, aid, attempt, or
10:12:30AM 6 conspire to manufacture, distribute --

10:12:30AM 7 THE BAILIFF: Your Honor, we have three
10:12:30AM 8 more jurors.

10:12:30AM 9 THE COURT: Bring them in.

10:12:54AM 10 Bear with us. We're going to try to
10:12:58AM 11 find some chairs. If not, I will have you sit over
10:12:58AM 12 here.

10:13:08AM 13 Thank you for being so very
10:13:10AM 14 accommodating.

10:13:12AM 15 We're going to proceed with the formal
10:13:12AM 16 arraignment of the Defendant, Mr. Gould.

10:13:16AM 17 THE CLERK: 2014-GS-10-320, State of
10:13:22AM 18 South Carolina versus Dale Gould, indictment for
10:13:24AM 19 distribution of cocaine.

10:13:26AM 20 Dale Gould, if you answer to that name,
10:13:26AM 21 please raise your right hand.

10:13:28AM 22 THE DEFENDANT: (Raised hand)

10:13:30AM 23 THE CLERK: You may put it down.

10:13:32AM 24 You stand indicted by the name of Dale
10:13:34AM 25 Gould. At a court of general sessions convened on

10:13:36AM 1 January 13, 2014, the grand jurors of Charleston
10:13:40AM 2 County present upon their oath, that in Charleston
10:13:42AM 3 County, South Carolina, on or about October 10,
10:13:44AM 4 2013, the Defendant, Dale Gould, did manufacture,
10:13:50AM 5 distribute, dispense, deliver, purchase, or did
10:13:52AM 6 aid, abet, attempt or conspire to manufacture,
10:13:58AM 7 distribute, dispense, deliver, purchase, or did
10:14:02AM 8 possess with the intent to manufacture, distribute,
10:14:06AM 9 dispense, deliver, or purchase a controlled
10:14:08AM 10 substance or a controlled substance analog, to wit:
10:14:10AM 11 Cocaine, in violation of Section 44-53-370 of the
10:14:14AM 12 South Carolina Code of Laws 1976, as amended.

10:14:20AM 13 How say you, sir; guilty or not guilty?

10:14:22AM 14 THE DEFENDANT: Not guilty.

10:14:22AM 15 THE CLERK: How would you be tried?

10:14:24AM 16 THE DEFENDANT: By God and country.

10:14:26AM 17 THE CLERK: Are you ready for trial?

10:14:28AM 18 THE DEFENDANT: I am.

10:14:30AM 19 THE CLERK: Thank you, sir. You may be
10:14:32AM 20 seated.

10:14:32AM 21 THE COURT: Ladies and gentlemen, I
10:14:32AM 22 would ask that you give the Court your attention.
10:14:36AM 23 I'm going to go through a process that is called
10:14:36AM 24 voir dire, which is simply a legal term meaning
10:14:40AM 25 that I'm going to ask you some questions so that

10:14:42AM 1 you can -- so that the attorneys can more
10:14:48AM 2 effectively exercise their peremptory challenges in
10:14:48AM 3 jury selection.

10:14:52AM 4 If a question applies to you, please
10:14:52AM 5 stand and in a loud and clear voice give us your
10:14:56AM 6 name and juror number, and an answer to the
10:14:58AM 7 question if applicable, and remain standing until
10:15:02AM 8 the Court has completed questioning you.

10:15:06AM 9 Before we begin that process, I'm going
10:15:08AM 10 to ask Counsel for the State to stand, introduce
10:15:10AM 11 themselves, and publish the names of any attorneys
10:15:14AM 12 that will be assisting him in the trial of this
10:15:18AM 13 case, as well as publish the names of the attorneys
10:15:20AM 14 in his office; and if Counsel for the defense will
10:15:22AM 15 do the same thing and have your client stand and
10:15:22AM 16 face the panel.

10:15:24AM 17 You may proceed, Mr. Sowards.

10:15:26AM 18 MR. SOWARDS: My name is Whit Sowards,
10:15:28AM 19 and with me is Stephanie Linder, and our
10:15:32AM 20 investigator Kenny Barfield. The following people
10:15:36AM 21 are employed with our office: Scarlett Wilson,
10:15:44AM 22 Bruce Durant, Whit Sowards, Stephanie Linder, Tyler
10:15:48AM 23 Whitaker, Nick Lewis, Jenna Newman, Richard
10:15:48AM 24 Warring, Alex Ziegler, Jennifer McCoy, Lindsay
10:15:58AM 25 Byrd, Nina Savass, Ted Corby, Daniel Cooper, David

10:15:58AM 1 Osborne, Kelly Young, Jennifer Shealy, Amy Harrell,
10:16:06AM 2 Chad Simpson, Jessica Baldwin, Culvert Kidd, Todd
10:16:08AM 3 Williams, Greg Voight, Mary Askins, Kelly Lablanc,
10:16:18AM 4 Debbie Herring-Lasch, Drew Evans, Charles Condon,
10:16:22AM 5 Lauren Mulkey, Burns Whitmore and Shannon Elder.

10:16:24AM 6 THE COURT: Ms. Gay, you may proceed.

10:16:26AM 7 MS. GAY: Thank you.

10:16:26AM 8 THE COURT: You're welcome.

10:16:26AM 9 MS. GAY: My name is Melissa Gay. I'm
10:16:28AM 10 in private practice in Charleston, Dorchester,
10:16:32AM 11 Berkeley Counties, sort of all over the state. I
10:16:36AM 12 represent Mr. Gould. My office is in Mount
10:16:36AM 13 Pleasant, I work alone. There may be a gentlemen
10:16:38AM 14 sitting with me. His name is Robert Brooks
10:16:42AM 15 Blanchard, he works in my office. He's not here
10:16:42AM 16 right now, but he may be here at some point
10:16:46AM 17 throughout the course of the trial. So we're here
10:16:48AM 18 to represent Mr. Gould. Thank you.

10:16:50AM 19 THE COURT: Again, ladies and
10:16:52AM 20 gentlemen, if a question applies to you, please
10:16:52AM 21 stand and in a loud and clear voice give us your
10:16:56AM 22 name, your juror number, an answer to the question
10:16:58AM 23 if applicable, and remain standing until the Court
10:17:02AM 24 has completed questioning you.

10:17:02AM 25 You may want to take this time to

10:17:04AM 1 familiarize yourself with your juror number in the
10:17:08AM 2 event that a question may apply to you.

10:17:10AM 3 Is there any member of the panel
10:17:12AM 4 related by blood or marriage to Dale Gould? If so,
10:17:14AM 5 please stand at this time.

10:17:16AM 6 THE JURY PANEL: (None)

10:17:18AM 7 THE COURT: Does any member of the
10:17:18AM 8 panel have a close social or personal relationship
10:17:22AM 9 with Dale Gould? If so, please stand at this time.

10:17:22AM 10 THE JURY PANEL: (None)

10:17:24AM 11 THE COURT: The following are a list of
10:17:26AM 12 potential witnesses in this case. I would ask that
10:17:28AM 13 you listen very carefully. Patrick Gill, Melanie
10:17:28AM 14 Staten Fredrick, Linda Wilson, Renee Carter Hilton,
10:17:40AM 15 and Susan Payne, all of the Charleston Police
10:17:40AM 16 Department, and Taylor Boyd.

10:17:42AM 17 Is there any member of the panel
10:17:44AM 18 related by blood or marriage to any of the people
10:17:46AM 19 that I have just listed, or does anyone have a
10:17:48AM 20 close personal or social relationship with any of
10:17:52AM 21 these individuals? If so, please stand at this
10:17:54AM 22 time.

10:17:54AM 23 THE JURY PANEL: (None)

10:17:58AM 24 THE COURT: Has any member of the panel
10:18:00AM 25 ever been represented by any of the attorneys

10:18:02AM 1 involved in this case or anyone in their offices?

10:18:04AM 2 If so, please stand at this time.

10:18:04AM 3 THE JURY PANEL: (None)

10:18:08AM 4 THE COURT: Does any member of the
10:18:10AM 5 panel have a close -- is there any member of the
10:18:12AM 6 panel related by blood or marriage to or have a
10:18:16AM 7 close personal, social, or business relationship
10:18:18AM 8 with any of the attorneys involved in this case or
10:18:20AM 9 anyone in their offices? If so, please stand at
10:18:20AM 10 this time.

10:18:24AM 11 POTENTIAL JUROR: (Standing)

10:18:26AM 12 THE COURT: Yes, sir.

10:18:26AM 13 POTENTIAL JUROR: Edward Fetner, 107.

10:18:28AM 14 THE COURT: And who do you have a
10:18:30AM 15 relationship with?

10:18:32AM 16 POTENTIAL JUROR: Lauren Mulkey.

10:18:32AM 17 THE COURT: And how would you
10:18:34AM 18 characterize that relationship?

10:18:34AM 19 POTENTIAL JUROR: Social.

10:18:38AM 20 THE COURT: Okay. And how often would
10:18:40AM 21 you say that you see her?

10:18:42AM 22 POTENTIAL JUROR: Every other month or
10:18:42AM 23 so.

10:18:44AM 24 THE COURT: And is that through an
10:18:44AM 25 organization or through church or --

10:18:46AM 1 POTENTIAL JUROR: We live in the same
10:18:48AM 2 neighborhood, belong to the association, work
10:18:52AM 3 together.

10:18:52AM 4 THE COURT: Okay. And next to you;
10:18:52AM 5 yes, sir.

10:18:58AM 6 POTENTIAL JUROR: Mitchell Gilbert,
10:18:58AM 7 129. I know Kenny Barfield.

10:19:00AM 8 THE COURT: And how would you
10:19:02AM 9 characterize that relationship?

10:19:02AM 10 POTENTIAL JUROR: He's a security --
10:19:04AM 11 done security at my synagogue for many years and
10:19:10AM 12 we've had many conversations, friendly.

10:19:12AM 13 THE COURT: Okay. I need you both to
10:19:12AM 14 remain standing for me please.

10:19:16AM 15 POTENTIAL JUROR: And, sir, in the
10:19:18AM 16 leather jacket.

10:19:18AM 17 POTENTIAL JUROR: Brian Hicks, 164.

10:19:22AM 18 THE COURT: Yes, sir.

10:19:22AM 19 POTENTIAL JUROR: I know Scarlett
10:19:24AM 20 Wilson.

10:19:24AM 21 THE COURT: In what capacity?

10:19:26AM 22 POTENTIAL JUROR: I deal with her
10:19:28AM 23 through work sometimes. I work for the newspaper
10:19:32AM 24 and I talk to her maybe once a month.

10:19:34AM 25 THE COURT: But you don't socialize

10:19:38AM 1 with her, correct?

10:19:38AM 2 POTENTIAL JUROR: No.

10:19:40AM 3 THE COURT: So it's more of a work
10:19:42AM 4 relationship?

10:19:44AM 5 POTENTIAL JUROR: Yeah. I write
10:19:46AM 6 opinion, been taking her side on several things
10:19:50AM 7 lately.

10:19:50AM 8 THE COURT: Okay. And, sir?

10:19:50AM 9 POTENTIAL JUROR: Allen Palmer, 275.

10:19:54AM 10 THE COURT: Yes, sir.

10:19:56AM 11 POTENTIAL JUROR: Nina Savass is a very
10:19:56AM 12 good friend of mine, in the prosecutor's office.

10:20:04AM 13 THE COURT: And when you say, very good
10:20:04AM 14 fiend, how often would you say you see her?

10:20:06AM 15 POTENTIAL JUROR: Two or three times a
10:20:08AM 16 week.

10:20:14AM 17 THE COURT: As a result of these
10:20:16AM 18 experiences, do you all feel that you can remain
10:20:18AM 19 fair and impartial and render a fair and impartial
10:20:20AM 20 decision in this case based solely on the evidence
10:20:22AM 21 as it will be presented and on the law as the Court
10:20:26AM 22 will instruct you? If your answer is yes, please
10:20:28AM 23 take your seat.

10:20:32AM 24 Let the record reflect that all
10:20:32AM 25 answered yes with the exception of number 275.

10:20:36AM 1 Sir, you will be excused for the trial
10:20:38AM 2 of this case only. You may take your seat.

10:20:44AM 3 Has any member of the panel formed or
10:20:48AM 4 expressed an opinion about any issue or matter
10:20:50AM 5 involved in this case? If so, please stand at this
10:20:52AM 6 time.

10:20:52AM 7 THE JURY PANEL: (None)

10:20:54AM 8 THE COURT: Is there any member of the
10:20:54AM 9 panel aware of any bias or prejudice toward the
10:20:58AM 10 State or the Defendant in this case? If so, please
10:21:00AM 11 stand at this time.

10:21:00AM 12 THE JURY PANEL: (None)

10:21:02AM 13 THE COURT: Is there any member of the
10:21:04AM 14 panel who is a member of the grand jury which
10:21:08AM 15 issued the indictment in this case? If so, please
10:21:10AM 16 stand at this time.

10:21:10AM 17 THE JURY PANEL: (None)

10:21:12AM 18 THE COURT: Is there any member of the
10:21:12AM 19 panel who is a member of, or a contributor to, any
10:21:14AM 20 group which has as its primary concern the
10:21:18AM 21 promotion of law enforcement or victim's rights?
10:21:20AM 22 These groups would include, but not limited to
10:21:20AM 23 Mothers Against Drunk Drivers, Students Against
10:21:20AM 24 Drunk Drives, Students Against Violent Crime,
10:21:32AM 25 People Against Rape, Citizens Advocating a Return

10:21:34AM 1 to Decency and Ethics, and Parents Empowered to
10:21:36AM 2 Save Teens. If so, please stand at this time.

10:21:36AM 3 THE JURY PANEL: (None)

10:21:38AM 4 THE COURT: Is there any member of the
10:21:40AM 5 panel who has a moral, philosophical, or religious
10:21:44AM 6 opposition to sitting in judgment of another human
10:21:48AM 7 being? If so, please stand at this time.

10:21:48AM 8 THE JURY PANEL: (None)

10:21:48AM 9 THE COURT: Is there any member of the
10:21:50AM 10 panel that has a moral, philosophical, or religious
10:21:52AM 11 opposition to the consumption of illicit substances?
10:21:56AM 12 If so, please stand at this time.

10:21:56AM 13 THE JURY PANEL: (None)

10:22:28AM 14 THE COURT: Is there any member of the
10:22:28AM 15 panel who holds a moral, philosophical, or
10:22:30AM 16 religious belief that drugs should be legalized?
10:22:34AM 17 If so, please stand at this time.

10:22:34AM 18 THE JURY PANEL: (None)

10:22:46AM 19 THE COURT: Is there any member of the
10:22:48AM 20 panel who is related by blood or marriage to
10:22:50AM 21 someone who is employed in law enforcement? If so,
10:22:52AM 22 please stand at this time.

10:22:58AM 23 Tell me your name and juror number and
10:23:02AM 24 which member of the family it is and what agency
10:23:04AM 25 they're employed by.

10:23:06AM 1 POTENTIAL JUROR: Carmen Adderley,
10:23:08AM 2 juror 2; my brother-in-law is chief of police.
10:23:12AM 3 THE COURT: Of what agency.
10:23:14AM 4 THE WITNESS: Fort Lauderdale
10:23:18AM 5 Department.
10:23:18AM 6 THE COURT: Please remain standing.
10:23:30AM 7 Yes, sir.
10:23:30AM 8 POTENTIAL JUROR: Number 14, Joseph
10:23:32AM 9 Beck; my cousin -- both of my cousins are married
10:23:36AM 10 to cops, and they serve in Dayton, Ohio.
10:23:46AM 11 THE COURT: And behind you. Yes, sir
10:23:48AM 12 POTENTIAL JUROR: Gregory Compton, 72;
10:23:50AM 13 my daughter -- my son-in-law's father, Nassau
10:23:58AM 14 County 37 years, retired as a detective,
10:24:04AM 15 lieutenant, 20 years undercover narcotics and
10:24:04AM 16 17 years homicide.
10:24:10AM 17 THE COURT: And, sir?
10:24:10AM 18 POTENTIAL JUROR: Brian Hassett, 160;
10:24:16AM 19 my father and uncle are both retired Buffalo police
10:24:20AM 20 officers.
10:24:20AM 21 THE COURT: Okay. And next to you?
10:24:24AM 22 POTENTIAL JUROR: Sharon Marsowicz,
10:24:26AM 23 juror 223; brother has been a prison guard for over
10:24:30AM 24 26 years in the state of New York.
10:24:32AM 25 THE COURT: He works in the prison

10:24:34AM 1 system?

10:24:34AM 2 POTENTIAL JUROR: Yes.

10:24:36AM 3 THE COURT: What institution?

10:24:36AM 4 POTENTIAL JUROR: Right now he's at a
10:24:40AM 5 shock prison in Dunkirk, New York.

10:24:44AM 6 THE COURT: Okay. Did I get everyone?

10:24:46AM 7 As a result of these experiences, do you all feel
10:24:50AM 8 you can remain fair and impartial and render a fair
10:24:54AM 9 and impartial decision in this case based solely on
10:24:56AM 10 the evidence as it would be presented and on the
10:24:58AM 11 law as the Court will instruct? If the answer is
10:25:00AM 12 yes, please take your seat.

10:25:04AM 13 POTENTIAL JUROR: You said if you can
10:25:04AM 14 be?

10:25:04AM 15 THE COURT: Yes, ma'am -- yes, sir, I'm
10:25:06AM 16 sorry. People call me sir all the time, and I
10:25:10AM 17 called you ma'am. I apologize. If you can be fair
10:25:12AM 18 and impartial, take your seat.

10:25:16AM 19 Let the record reflect that all
10:25:18AM 20 answered yes.

10:25:36AM 21 Is there any member of the panel that
10:25:40AM 22 lives in the area of King Street or John street in
10:25:42AM 23 downtown Charleston? If so, please stand at this
10:25:46AM 24 time.

10:25:46AM 25 THE JURY PANEL: (None)

10:26:00AM 1 THE COURT: Is there any member of the
10:26:00AM 2 panel who has any family members who are employed
10:26:04AM 3 in the industry of providing substance abuse
10:26:08AM 4 treatment? If, so please stand at this time.

10:26:18AM 5 Yes, sir.

10:26:18AM 6 POTENTIAL JUROR: Brian Hassett, juror
10:26:20AM 7 160; my wife is a methadone therapist in private
10:26:26AM 8 practice.

10:26:30AM 9 THE COURT: Yes, sir. Name and juror
10:26:32AM 10 number.

10:26:32AM 11 POTENTIAL JUROR: Gregory Compton, 72;
10:26:34AM 12 just for full disclosure, Your Honor, I'm a
10:26:36AM 13 physician. For four years I treated patients as a
10:26:40AM 14 hospitalist in Colleton County, where I was not an
10:26:44AM 15 addiction professional, but many, many people we
10:26:48AM 16 cared for had addictions and we referred them to
10:26:50AM 17 agencies.

10:26:50AM 18 THE COURT: Thank you, sir.

10:26:52AM 19 And, ma'am?

10:26:52AM 20 POTENTIAL JUROR: Jessica Broadway,
10:26:54AM 21 juror number 34; I'm a practicing psychiatrist.

10:27:02AM 22 THE COURT: And behind you, yes, ma'am.

10:27:02AM 23 POTENTIAL JUROR: Andrea Shirey, 319;
10:27:04AM 24 and my sister is a chaplain in Michigan that works
10:27:08AM 25 with teens with substance abuse.

10:27:14AM 1 THE COURT: As a result of these
10:27:18AM 2 experiences, do you all feel that you can remain
10:27:18AM 3 fair and impartial and render a fair and impartial
10:27:22AM 4 decision in this case based solely on the evidence
10:27:24AM 5 as it will be presented and on the law as the Court
10:27:28AM 6 will instruct? If your answer is yes, please take
10:27:30AM 7 your seat.

10:27:32AM 8 Let the record reflect that all
10:27:34AM 9 answered yes.

10:27:34AM 10 Does any member of the panel know of
10:27:38AM 11 any reason whatsoever why he or show should not
10:27:40AM 12 serve as a juror in this case, with particular
10:27:42AM 13 emphasis being placed on your ability to be fair
10:27:44AM 14 and impartial to both the State and the defense?
10:27:48AM 15 If so please stand at this time.

10:27:50AM 16 THE JURY PANEL: (None)

10:27:50AM 17 THE COURT: Any additional questions
10:27:50AM 18 from the State?

10:27:52AM 19 MR. SOWARDS: Nothing Your Honor.

10:27:54AM 20 THE COURT: Any additional questions
10:27:54AM 21 from the defense?

10:27:56AM 22 MS. GAY: No, ma'am.

10:27:56AM 23 THE COURT: Strikes are five and five.
10:27:58AM 24 Who is going to demonstrate for me
10:28:02AM 25 please?

10:28:02AM 1 Ladies and gentlemen, if your name is
10:28:04AM 2 called, please come forward as Mr. Julius is doing.
10:28:06AM 3 Stand exactly where he is standing and turn back
10:28:08AM 4 around facing the panel until we either seat or
10:28:12AM 5 excuse you as a juror. And, again, we appreciate
10:28:16AM 6 your patience as we go through this process, and I
10:28:20AM 7 will turn you over to the capable hands of
10:28:22AM 8 Mr. Michelle.

10:28:22AM 9 THE CLERK: The strikes are five and
10:29:02AM 10 five. Juror number 342, James Stockman.

10:29:12AM 11 What say you for the State?

10:29:18AM 12 MR. SOWARDS: Please excuse the juror.

10:29:22AM 13 THE CLERK: Please have a seat back in
10:29:22AM 14 the audience. You've been excused in the trial of
10:29:22AM 15 this case.

10:29:28AM 16 Juror number 247, Barbara Miller.

10:29:42AM 17 What say you for the State?

10:29:42AM 18 THE COURT: And if you come like where
10:29:44AM 19 Ms. Miller is coming from, if she returns, if you
10:29:48AM 20 all could just slide down so she can have a seat at
10:29:50AM 21 the end of the bench instead of having to --

10:29:50AM 22 MS. GAY: What's the number again?

10:29:54AM 23 THE CLERK: 247. What say you for the
10:29:58AM 24 State?

10:29:58AM 25 MR. SOWARDS: Please excuse this juror.

10:30:02AM 1 THE CLERK: Please have a seat back in
10:30:02AM 2 the audience. You've been excused in the trial of
10:30:02AM 3 this case.

10:30:10AM 4 Juror number 14, Joseph Beck.

10:30:22AM 5 What say you for the State?

10:30:22AM 6 MR. SOWARDS: Please seat the juror.

10:30:26AM 7 THE CLERK: What say you for the
10:30:32AM 8 defense?

10:30:32AM 9 MS. GAY: Please seat the juror for the
10:30:32AM 10 trial of this case.

10:30:36AM 11 THE CLERK: Please have a seat in the
10:30:36AM 12 jury box. You've been selected as a juror in the
10:30:36AM 13 trial of this case.

10:30:36AM 14 Juror 34, Jessica Broadway.

10:30:56AM 15 What say you for the State?

10:30:56AM 16 MR. SOWARDS: Please seat the juror.

10:30:58AM 17 THE CLERK: What say you for the
10:31:00AM 18 defense?

10:31:00AM 19 MS. GAY: Please seat the juror.

10:31:00AM 20 THE CLERK: Please have a seat in the
10:31:00AM 21 jury box. You've been selected as a juror in the
10:31:00AM 22 trial of this case.

10:31:04AM 23 Juror 336, David Spishak.

10:31:10AM 24 What say you for the State?

10:31:14AM 25 MR. SOWARDS: Please seat the juror.

10:31:18AM 1 THE CLERK: What say you for the
10:31:20AM 2 defense?
10:31:20AM 3 MS. GAY: One moment please.
10:31:34AM 4 Please seat the juror.
10:31:34AM 5 THE CLERK: Please have a seat in the
10:31:34AM 6 jury box. You've been selected as a juror in the
10:31:38AM 7 trial of this case.
10:31:38AM 8 THE CLERK: Juror 356, Steven
10:31:42AM 9 Thornhill.
10:31:54AM 10 What say you for the State.
10:31:54AM 11 MR. SOWARDS: Please seat the juror.
10:31:56AM 12 THE CLERK: What say you for the
10:31:58AM 13 defense?
10:31:58AM 14 MS. GAY: Please seat the juror.
10:32:00AM 15 THE CLERK: Please have a seat in the
10:32:00AM 16 jury box. You've been selected as a juror in the
10:32:00AM 17 trial of this case.
10:32:02AM 18 Juror 370, Laura Veal.
10:32:08AM 19 What say you for the State.
10:32:10AM 20 MR. SOWARDS: Please seat the juror.
10:32:18AM 21 THE CLERK: What say you for the
10:32:18AM 22 defense?
10:32:18AM 23 MS. GAY: One moment please. Please
10:32:30AM 24 excuse the juror.
10:32:30AM 25 THE CLERK: Please have a seat back in

10:32:30AM 1 the audience. You've been excused in the trial of
10:32:30AM 2 this case.

10:32:34AM 3 Juror 243, Juanita Middleton.

10:32:56AM 4 What say you for the State?

10:32:56AM 5 MR. SOWARDS: Please seat the juror.

10:32:58AM 6 THE CLERK: What say you for the
10:32:58AM 7 defense?

10:33:00AM 8 MS. GAY: Hold on a moment please.

10:33:28AM 9 Please seat the juror.

10:33:30AM 10 THE CLERK: Please have a seat in the
10:33:30AM 11 jury box. You've been selected as a juror in the
10:33:30AM 12 trial of this case.

10:33:38AM 13 Juror 347, Donna Summers.

10:33:38AM 14 What say you for the State.

10:33:40AM 15 MR. SOWARDS: Please seat the juror.

10:33:44AM 16 THE CLERK: What say you for the
10:33:46AM 17 defense?

10:33:46AM 18 MS. GAY: One moment please.

10:34:00AM 19 Please excuse the juror.

10:34:02AM 20 THE CLERK: Please have a seat back in
10:34:02AM 21 the audience. You've been excused in the trial of
10:34:04AM 22 this case.

10:34:06AM 23 Juror 15, Darryl Beech.

10:34:08AM 24 What say you for the State.

10:34:08AM 25 MR. SOWARDS: Please seat the juror.

10:34:18AM 1 THE CLERK: What say you for the
10:34:20AM 2 defense?
10:34:20AM 3 MS. GAY: One moment please.
10:34:30AM 4 Please seat the juror.
10:34:34AM 5 THE CLERK: Please have a seat in the
10:34:34AM 6 jury box. You've been selected as a juror in the
10:34:34AM 7 trial of this case.
10:34:36AM 8 THE CLERK: Juror 129, Mitchell
10:34:40AM 9 Gilbert. What say you for the State?
10:34:54AM 10 MS. GAY: Did you say 129?
10:34:56AM 11 THE CLERK: 129.
10:34:56AM 12 MR. SOWARDS: Please seat the juror.
10:35:00AM 13 THE CLERK: What say you for the
10:35:00AM 14 defense?
10:35:00AM 15 MS. GAY: One second. Please excuse
10:35:10AM 16 the juror.
10:35:10AM 17 THE CLERK: Please have a seat back in
10:35:10AM 18 the audience. You've been excused in the trial of
10:35:12AM 19 this case.
10:35:12AM 20 Defendant has exhausted three strikes.
10:35:14AM 21 Two remaining.
10:35:18AM 22 Juror 132, Peter Glekas.
10:35:24AM 23 What say you for the State?
10:35:24AM 24 MR. SOWARDS: Please seat the juror.
10:35:30AM 25 THE CLERK: What say you for the

10:35:30AM 1 defense?

10:35:30AM 2 MS. GAY: Please seat the juror.

10:35:32AM 3 THE CLERK: Please have a seat in the

10:35:32AM 4 jury box. You've been selected as a juror in the

10:35:32AM 5 trial of this case.

10:35:36AM 6 Juror 174, Marie Hoyle.

10:35:44AM 7 What say you for the State.

10:35:44AM 8 MR. SOWARDS: Please seat the juror.

10:35:56AM 9 THE CLERK: What say you for the

10:35:58AM 10 defense?

10:35:58AM 11 MS. GAY: Please seat the juror.

10:36:02AM 12 THE CLERK: Please have a seat in the

10:36:02AM 13 jury box. You've been selected as a juror in the

10:36:02AM 14 trial of this case.

10:36:02AM 15 Juror 388, Chastity Williams.

10:36:08AM 16 What say you for the State?

10:36:10AM 17 MR. SOWARDS: Please seat the juror.

10:36:22AM 18 THE CLERK: What say you for the

10:36:24AM 19 defense?

10:36:24AM 20 MS. GAY: Please seat the juror.

10:36:26AM 21 THE CLERK: Please have a seat in the

10:36:26AM 22 jury box. You've been selected as a juror in the

10:36:26AM 23 trial of this case.

10:36:30AM 24 Juror 245, Ben Mieh.

10:36:36AM 25 What say you for the State?

10:36:38AM 1 MR. SOWARDS: Please seat the juror.

10:36:46AM 2 THE CLERK: What say you for the

10:36:46AM 3 defense?

10:36:46AM 4 MS. GAY: Please excuse the juror.

10:36:58AM 5 THE CLERK: Please have a seat back in

10:36:58AM 6 the audience. You've been excused in the trial of

10:37:00AM 7 this case.

10:37:00AM 8 That's your fourth strike.

10:37:02AM 9 Juror 35, David Brown.

10:37:08AM 10 What say you for the State?

10:37:26AM 11 MR. SOWARDS: Please seat the juror.

10:37:30AM 12 THE CLERK: What say you for the

10:37:30AM 13 defense?

10:37:30AM 14 MS. GAY: One moment please. Please

10:37:38AM 15 seat the juror.

10:37:38AM 16 THE CLERK: Please have a seat in the

10:37:38AM 17 jury box. You've been selected as a juror in the

10:37:38AM 18 trial of this case.

10:37:42AM 19 Juror 162, Nancy Heide.

10:37:48AM 20 What say you for the State.

10:37:48AM 21 MR. SOWARDS: Please seat the juror.

10:37:58AM 22 THE CLERK: What say you for the

10:38:00AM 23 Defense?

10:38:00AM 24 MS. GAY: Please seat this juror.

10:38:02AM 25 THE CLERK: Please have a seat in the

10:38:02AM 1 jury box. You've been selected as a juror in the
10:38:04AM 2 trial of this case.
10:38:04AM 3 Juror 319, Andrea Shirey.
10:38:16AM 4 What say you for the State.
10:38:18AM 5 MR. SOWARDS: Please seat the juror.
10:38:26AM 6 THE CLERK: What say you for the
10:38:28AM 7 Defense?
10:38:28AM 8 MS. GAY: One moment please. Please
10:39:06AM 9 excuse this juror.
10:39:06AM 10 THE CLERK: Please have a seat back in
10:39:06AM 11 the audience. You've been excused in the trial of
10:39:08AM 12 this case.
10:39:10AM 13 Juror 208, Osarka Ladson.
10:39:20AM 14 What say you for the State.
10:39:20AM 15 MR. SOWARDS: Beg the Court's
10:39:26AM 16 indulgence.
10:39:26AM 17 THE COURT: Uh-huh.
10:39:34AM 18 MR. SOWARDS: Please seat the juror.
10:39:36AM 19 THE CLERK: Any challenge from the
10:39:38AM 20 defendant?
10:39:38AM 21 MS. GAY: No.
10:39:40AM 22 THE CLERK: Please have a seat in the
10:39:40AM 23 jury box. You've been selected as a juror in the
10:39:40AM 24 trial of this case.
10:39:42AM 25 One alternate, Your Honor?

10:39:44AM 1 THE COURT: Yes.

10:39:44AM 2 THE CLERK: We're selecting an

10:39:44AM 3 alternate now; strikes are one and two.

10:39:46AM 4 Juror 223, Sharon Marsowicz.

10:39:54AM 5 What say you for the State?

10:40:00AM 6 MR. SOWARDS: Please seat the juror.

10:40:02AM 7 THE CLERK: What say you for the

10:40:04AM 8 Defense?

10:40:04AM 9 MS. GAY: Please excuse this juror.

10:40:10AM 10 THE CLERK: Please have a seat back in

10:40:10AM 11 the audience. You've been excused in the trial of

10:40:10AM 12 this case.

10:40:14AM 13 Juror 49, Ann Calhoun.

10:40:22AM 14 What say you for the State?

10:40:22AM 15 MR. SOWARDS: Please seat the juror.

10:40:28AM 16 THE CLERK: What say you for the

10:40:30AM 17 Defense?

10:40:30AM 18 MS. GAY: One moment please. Please

10:40:46AM 19 seat the juror.

10:40:46AM 20 THE CLERK: Please have a seat in the

10:40:46AM 21 jury box. You've been selected as the alternate in

10:40:50AM 22 the trial of this case.

10:40:50AM 23 THE COURT: Any motions regarding the

10:40:52AM 24 selection of the jury from the State?

10:40:54AM 25 MR. SOWARDS: Nothing from the State,

10:40:56AM 1 Your Honor.

10:40:56AM 2 THE COURT: From the defense?

10:40:58AM 3 MS. GAY: Nothing from the defense.

10:41:00AM 4 THE COURT: Ladies and gentlemen,
10:41:16AM 5 you've been selected for the case of the State of
10:41:20AM 6 South Carolina versus Dale Gould. I'm going to
10:41:22AM 7 pick another jury for another case which will
10:41:24AM 8 probably take about 20 minutes. During this break
10:41:26AM 9 you can go downstairs, and I will allow the
10:41:28AM 10 bailiffs to take you down to get some air if you'd
10:41:32AM 11 like, although I think it's still about 30 degrees.
10:41:34AM 12 I'm not sure, it might have warmed up. I'm not
10:41:36AM 13 making any assurances. If you want to get some
10:41:40AM 14 air, walk around, they'll have to accompany you
10:41:42AM 15 downstairs for that purpose.

10:41:44AM 16 During this break, please do not
10:41:46AM 17 discuss the case among yourselves. Please don't
10:41:48AM 18 speculate about what you think it may or could be
10:41:52AM 19 about. This case will be fairly short. We
10:41:54AM 20 anticipate that we will finish testimony today. I
10:41:56AM 21 don't know if we'll finish closing argument and
10:42:00AM 22 instruction today, but we certainly will be able to
10:42:02AM 23 finish the presentation of testimony. I give that
10:42:04AM 24 to you for purposes of your planning.

10:42:06AM 25 Again, please do not talk about the

10:42:08AM 1 case or speculate about what you think it may or
10:42:10AM 2 could be about. I will turn you over to the hands
10:42:14AM 3 of the bailiffs, and if you want to get some air
10:42:16AM 4 just let them know. Thank you in advance for your
10:42:16AM 5 patience.

10:42:16AM 6 (Jury out, 10:42 a.m.)

11:11:58AM 7 (A recess transpired.)

11:11:58AM 8 THE COURT: All right. Ready to
11:12:00AM 9 proceed with Dale Gould? I need to take care of a
11:12:04AM 10 couple of preliminary things.

11:12:06AM 11 MR. SOWARDS: We're ready to proceed.

11:12:12AM 12 THE COURT: Where is your client, Ms.
11:12:14AM 13 Gay?

11:12:14AM 14 MS. GAY: He's coming up. I just
11:12:16AM 15 texted him to come back up.

11:12:26AM 16 THE COURT: I assume you all consent to
11:12:36AM 17 the motion to sequester witnesses?

11:12:38AM 18 MR. SOWARDS: Yes, Judge. We're fine
11:12:42AM 19 with the motion to sequester --

11:12:42AM 20 THE COURT: Wait one second.

11:12:44AM 21 MS. GAY: I was curious as to who the
11:12:46AM 22 case agent is.

11:12:48AM 23 MS. LINDER: Case agent is Gill.

11:12:50AM 24 MS. GAY: I'm Melissa Gay. Are you the
11:12:52AM 25 one I got the report from last night?

11:12:58AM 1 THE WITNESS: One of them probably.

11:13:06AM 2 THE COURT: Did he make any statements
11:13:08AM 3 to the police such that Jackson v. Denno would be
11:13:12AM 4 applicable?

11:13:14AM 5 MS. LINDER: Your Honor, I believe Ms.
11:13:16AM 6 Gay is referring to the buy video that's in this
11:13:18AM 7 case.

11:13:18AM 8 THE COURT: Is that what you're
11:13:20AM 9 referring to?

11:13:20AM 10 MS. GAY: Well, I was actually -- there
11:13:22AM 11 is a buy video. I realize they -- in the course of
11:13:26AM 12 the trial they will put that out. There are some
11:13:28AM 13 statements made from him that I think -- I don't
11:13:30AM 14 know if we can redact the video or what -- they're
11:13:34AM 15 of value -- they could be about prior bad acts,
11:13:38AM 16 they could be incriminating in a way that's overly
11:13:40AM 17 prejudicial in this case, but I don't know of any
11:13:42AM 18 statements that were made during the course of his
11:13:46AM 19 arrest.

11:13:46AM 20 THE COURT: So Jackson versus Denno
11:13:48AM 21 would not particularly --

11:13:48AM 22 MS. GAY: Correct.

11:13:48AM 23 THE COURT: -- in the traditional sense
11:13:52AM 24 -- it's moot for this motion?

11:13:52AM 25 MS. LINDER: Correct, Your Honor.

11:13:52AM 1 THE COURT: All right. Admissibility
11:13:56AM 2 of prior convictions. Does he have any prior
11:13:58AM 3 convictions that the State would be using to
11:14:00AM 4 impeach his credibility?

11:14:02AM 5 MS. LINDER: He has a couple of
11:14:04AM 6 fraudulent check convictions from 2009, but --

11:14:08AM 7 THE COURT: Have those been ten years
11:14:08AM 8 --

11:14:10AM 9 MS. LINDER: Yes. Five years old, five
11:14:12AM 10 counts of fraud checks in 2009. And there are --

11:14:18AM 11 THE COURT: Would you be seeking to use
11:14:20AM 12 those to impeach his credibility?

11:14:20AM 13 MS. LINDER: Yes, Judge.

11:14:22AM 14 THE COURT: Okay. I will go over that
11:14:24AM 15 at the appropriate time when I question him to ask
11:14:28AM 16 if he's going to testify or not.

11:14:28AM 17 Now, are there any bad acts that the
11:14:28AM 18 State would be seeking to introduce?

11:14:32AM 19 MS. LINDER: Your Honor, we are not
11:14:32AM 20 seeking to introduce any prior bad acts. Ms. Gay,
11:14:36AM 21 when she refers to the video -- we have gone
11:14:38AM 22 through it with a fine-tooth comb. We think there
11:14:42AM 23 are three spots out of a 45-minute video that could
11:14:46AM 24 potentially be viewed as talking about prior
11:14:48AM 25 dealings. We have written down those times.

11:14:52AM 1 THE COURT: Do you plan to use -- to
11:14:54AM 2 seek to introduce those.

11:14:56AM 3 MS. LINDER: No. We plan -- we have
11:14:56AM 4 those times written down and we plan to mute those
11:15:00AM 5 while the video is being played. It's impossible
11:15:04AM 6 for us to separate out the sound from the video.

11:15:06AM 7 THE COURT: Have you gone over those
11:15:08AM 8 positions that you're talking about with Ms. Gay?

11:15:12AM 9 MS. GAY: No.

11:15:12AM 10 THE COURT: Are those the ones that she
11:15:12AM 11 objected to?

11:15:12AM 12 MS. LINDER: No. We were not aware of
11:15:14AM 13 Ms. Gay's motions until court this morning. When
11:15:16AM 14 we have the time we're happy to talk to her, during
11:15:20AM 15 the rest room break or whatever.

11:15:20AM 16 THE COURT: Do you have any exhibits
11:15:22AM 17 you need to premark?

11:15:24AM 18 MS. LINDER: We do have a couple to
11:15:26AM 19 premark.

11:15:26AM 20 MS. GAY: I would like to see those.
11:15:30AM 21 Do you have the drugs here this morning?

11:15:32AM 22 MR. SOWARDS: Yes.

11:15:32AM 23 MS. GAY: I would like to see it again.

11:15:34AM 24 THE COURT: Well, you should have seen
11:15:36AM 25 it again before today.

11:15:38AM 1 MS. GAY: I've seen it before.

11:15:38AM 2 THE COURT: We're not going to use

11:15:40AM 3 court time to let you --

11:15:40AM 4 MS. GAY: No. No. Not -- I'm talking

11:15:42AM 5 about the actual drugs.

11:15:44AM 6 THE COURT: Oh, okay. That's

11:15:44AM 7 reasonable. Now, I assume that you can see that

11:15:48AM 8 while they're getting that premarked. I need you

11:15:50AM 9 all to go ahead and talk about the portions of the

11:15:52AM 10 video that you have isolated because those may well

11:15:56AM 11 be the ones that Ms. Gay finds objectionable.

11:15:58AM 12 MS. LINDER: Absolutely.

11:16:00AM 13 THE COURT: And then we'll resume in

11:16:02AM 14 about five minutes.

11:16:04AM 15 MS. LINDER: Okay.

11:16:04AM 16 THE COURT: Thank you.

11:34:32AM 17 (A recess transpired.)

11:34:32AM 18 THE COURT: Are there any exceptions to

11:42:48AM 19 the State's exhibits from the defense or are they

11:42:52AM 20 admitted without objection?

11:42:54AM 21 MS. GAY: They are not admitted without

11:42:56AM 22 objection, Your Honor. I would like there to be --

11:42:58AM 23 THE COURT: I didn't ask for argument.

11:43:02AM 24 At this point they'll be marked for ID only. And

11:43:02AM 25 it will be your responsibility to make any

11:43:04AM 1 contemporaneous objections.

11:43:08AM 2 Is there anything else before we

11:43:10AM 3 proceed with opening argument and opening

11:43:12AM 4 instruction from the state?

11:43:12AM 5 MR. SOWARDS: Nothing, Your Honor.

11:43:14AM 6 THE COURT: From the defense?

11:43:14AM 7 MS. GAY: No, Your Honor.

11:43:16AM 8 THE COURT: All right. Please bring in

11:43:18AM 9 the jury. And, again, Ms. Middleton is the

11:43:20AM 10 foreperson.

11:43:20AM 11 Do you have all your witnesses here?

11:43:20AM 12 I'm referring to the State.

11:43:32AM 13 MS. LINDER: Your Honor, we have our
11:43:32AM 14 first three; however, our first one will take about
11:43:36AM 15 an hour and a half, due to the length of the video.

11:43:36AM 16 THE COURT: You don't have a short
11:43:38AM 17 witness to call before that? I had anticipated
11:43:40AM 18 breaking for lunch at 12:30.

11:43:42AM 19 MS. LINDER: We do not.

11:43:44AM 20 THE COURT: The jury's had a very long
11:43:46AM 21 morning.

11:43:46AM 22 MS. LINDER: I understand that, Judge,
11:43:48AM 23 but our first witness --

11:43:52AM 24 THE COURT: It's up to you. I'm just
11:43:52AM 25 giving you fair warning that at 12:30, the Court

11:43:56AM 1 will be recessed for lunch.

11:43:58AM 2 MS. LINDER: And we understand that,
11:43:58AM 3 Your Honor.

11:43:58AM 4 THE COURT: Okay. Are you ready to
11:44:22AM 5 swear the jury?

11:44:24AM 6 THE CLERK: Yes, Your Honor.

11:44:24AM 7 THE COURT: If you have any requests
11:44:44AM 8 for instruction, you need to submit those to the
11:44:44AM 9 Court at the first break.

11:44:54AM 10 (Jury in 11:45 a.m.)

11:45:18AM 11 THE BAILIFF: Jurors are all present.

11:45:18AM 12 THE COURT: Do you have notebooks and
11:45:20AM 13 pens and pencils?

11:45:22AM 14 THE CLERK: I do.

11:45:24AM 15 THE COURT: Give those to the bailiff
11:45:26AM 16 for me, please.

11:45:28AM 17 Ladies and gentlemen, please stand and
11:45:36AM 18 raise your right hand so the clerk can administer
11:45:38AM 19 the oath to you.

11:45:40AM 20 THE JURY,
11:45:54AM 21 being first duly sworn, testified as follows:

11:45:54AM 22 THE CLERK: Please let the record
11:45:56AM 23 reflect that all jurors are seated.

11:46:02AM 24 THE COURT: You can pass out the
11:46:04AM 25 notepads.

COURT'S OPENING INSTRUCTIONS

11:46:04AM 1 Ladies and gentlemen, you will be given
11:46:06AM 2 an opportunity to take notes during the course of
11:46:08AM 3 this trial. I will give you some instructions
11:46:10AM 4 regarding that. Please write your juror number on
11:46:12AM 5 the white sticker that is on the front of each
11:46:16AM 6 notepad so you can readily identify which notepad
11:46:20AM 7 belongs to you.

11:46:22AM 8 Ladies and gentlemen, we are about to
11:46:24AM 9 try the case of the State of South Carolina versus
11:46:28AM 10 Dale Gould, 2014-GS-10-3210. What I'm about to say
11:46:34AM 11 is to serve as an introduction to the trial of this
11:46:36AM 12 case. These remarks are not a charge on the law.
11:46:38AM 13 I will instruct you on the law applicable to this
11:46:42AM 14 case at the end of the trial before you retire to
11:46:42AM 15 consider your verdict. This is merely an
11:46:46AM 16 explanation of the procedure that we will follow in
11:46:48AM 17 the trial of the case so that you may better
11:46:50AM 18 understand what is happening.

11:46:52AM 19 The Defendant is charged by an
11:46:54AM 20 indictment filed in this Court with the crime of
11:46:58AM 21 distribution of cocaine, the elements of which I
11:47:00AM 22 will explain to you at the conclusion of the case.
11:47:02AM 23 The indictment, ladies and gentlemen, is simply the
11:47:04AM 24 charge by which the case is brought into Court, and
11:47:06AM 25 it is not in any sense evidence of any of the

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11:47:10AM 1 allegations it may contain. The Defendant has pled
11:47:14AM 2 not guilty to the indictment. The State,
11:47:16AM 3 therefore, has the burden of proving each of the
11:47:18AM 4 elements of the indictment beyond a reasonable
11:47:20AM 5 doubt, and it will be your duty, ladies and
11:47:22AM 6 gentlemen, to decide whether the State has met that
11:47:24AM 7 burden or not.

11:47:26AM 8 Your purpose as jurors is to find and
11:47:28AM 9 determine the facts. You are the sole judges of
11:47:32AM 10 the facts in this case. If at any time I make any
11:47:34AM 11 comment regarding the facts, you must disregard it.
11:47:38AM 12 You are to determine the facts from the testimony
11:47:40AM 13 you hear and the other evidence introduced in
11:47:42AM 14 court. It is up to you to determine the inferences
11:47:46AM 15 which you feel may be properly drawn from the
11:47:48AM 16 evidence.

11:47:50AM 17 It is especially important that you
11:47:52AM 18 perform your duties of determining the facts
11:47:54AM 19 diligently and conscientiously because ordinarily
11:47:58AM 20 there is no way to correct an erroneous
11:48:02AM 21 determination of fact made by a trial jury. On the
11:48:04AM 22 other hand, and with equal emphasis, the same law
11:48:08AM 23 that makes you judges of the facts, makes me the
11:48:12AM 24 judge of the law.

11:48:12AM 25 The law as given by the Court is the

COURT'S OPENING INSTRUCTIONS

11:48:14AM 1 only law you may consider. You must accept and
11:48:16AM 2 follow it even though you may disagree with it.
11:48:20AM 3 The Court cannot tell you what the facts are and
11:48:22AM 4 you cannot disagree with the Court about what the
11:48:24AM 5 law is or what the law should be.

11:48:28AM 6 Your responsibility, ladies and
11:48:28AM 7 gentlemen, is to take the law as I instruct it and
11:48:30AM 8 apply it to the facts as you find them from the
11:48:32AM 9 testimony of the sworn witnesses and any other
11:48:36AM 10 evidence that may be introduced during the course
11:48:38AM 11 of this trial.

11:48:40AM 12 After doing that, you will render your
11:48:42AM 13 verdict, a true and just verdict under the solemn
11:48:44AM 14 oath that you have just taken as jurors. Until I
11:48:48AM 15 advise you to begin your deliberations, you must
11:48:50AM 16 not discuss this case with anyone. That includes
11:48:54AM 17 among yourselves, with friends, family members, or
11:48:58AM 18 anyone involved in the case. After the case is
11:49:00AM 19 submitted to you, you must discuss it only in the
11:49:04AM 20 jury room with your fellow jurors.

11:49:06AM 21 The attorneys and the parties in this
11:49:08AM 22 case have been advised they are not to speak with
11:49:10AM 23 you at all. So if you should run into them in the
11:49:14AM 24 hallway, bathroom, in the lobby, in the elevator,
11:49:18AM 25 even in the parking garage, or on the street, even

COURT'S OPENING INSTRUCTIONS

11:49:20AM 1 at a restaurant during lunch, please do not think
11:49:24AM 2 they are being unfriendly by not speaking with you.
11:49:26AM 3 They are simply following the Court's strict
11:49:30AM 4 instruction, because any innocent conversation
11:49:30AM 5 could be very equally misinterpreted.

11:49:34AM 6 During the trial, do not read, watch,
11:49:36AM 7 or listen to any media accounts about this case.
11:49:40AM 8 That includes anything that could be found in the
11:49:42AM 9 newspaper, seen on television, heard on the radio,
11:49:42AM 10 or seen or read on the Internet. You're also not
11:49:48AM 11 to do any independent research of any type -- of
11:49:52AM 12 any type on the Internet regarding any facts or
11:49:52AM 13 issues in this case.

11:49:56AM 14 You must not consider anything that you
11:49:58AM 15 may have read or heard about this case outside of
11:50:02AM 16 the courtroom, whether before or during the course
11:50:04AM 17 of the trial. It is essential that you maintain an
11:50:08AM 18 open mind and not decide any issue in the case
11:50:12AM 19 until all of the evidence has been presented, the
11:50:14AM 20 parties have made their closing arguments, and I've
11:50:16AM 21 instructed you on the law of this case.

11:50:20AM 22 It is your solemn responsibility to
11:50:22AM 23 determine the guilt or innocence of the Defendant
11:50:24AM 24 and your verdict must be based solely on the
11:50:26AM 25 evidence as it is presented to you in this trial

COURT'S OPENING INSTRUCTIONS

11:50:30AM 1 and on the law as I will instruct you during and at
11:50:32AM 2 the close of the trial.

11:50:34AM 3 In just a moment the Solicitor will
11:50:36AM 4 make what is called an opening statement, in which
11:50:40AM 5 they will outline what they believe the issues to
11:50:42AM 6 be in this case. In other words, they will argue
11:50:44AM 7 to you what they believe the evidence will show in
11:50:48AM 8 this case. The attorney for the defense may make
11:50:50AM 9 an opening statement as well, although she is not
11:50:54AM 10 required to do so.

11:50:54AM 11 Keep in mind, ladies and gentlemen,
11:50:56AM 12 that what the attorneys tell you is not evidence;
11:50:58AM 13 it is only their contention as to what they believe
11:51:02AM 14 the evidence will show in this case and what they
11:51:04AM 15 believe the issues are in this case.

11:51:08AM 16 The evidence in this case will be
11:51:10AM 17 presented to you by the testimony of the sworn
11:51:12AM 18 witnesses from the witness stand and by exhibits
11:51:14AM 19 that may be introduced into evidence. From time to
11:51:18AM 20 time during the trial you will hear attorneys say,
11:51:20AM 21 Your Honor, I object. Just as in sports, business,
11:51:24AM 22 or any other structured activity, there are certain
11:51:26AM 23 rules that the attorneys must obey in the
11:51:30AM 24 presentation of evidence.

11:51:30AM 25 These rules have a definite purpose.

COURT'S OPENING INSTRUCTIONS

11:51:32AM 1 They ensure that you receive the most trustworthy
11:51:34AM 2 and reliable evidence available. An objection is
11:51:38AM 3 the procedure that an attorney uses to call a
11:51:40AM 4 possible violation of these rules to my attention
11:51:44AM 5 as the Judge of the Court. For this reason, you
11:51:46AM 6 should never hold an attorney's objection against
11:51:48AM 7 them nor should you conclude by the Court
11:51:50AM 8 overruling or sustaining an objection that I favor
11:51:54AM 9 one side or the other.

11:51:56AM 10 Also, from time to time, you will hear
11:51:56AM 11 the attorneys say, Your Honor, we have a matter of
11:51:58AM 12 law to discuss. Or they may ask to approach the
11:52:02AM 13 bench, or I may ask them to approach the bench, or
11:52:04AM 14 it may even be necessary that we excuse you from
11:52:06AM 15 the courtroom for a short while while we discuss
11:52:10AM 16 matters of law.

11:52:10AM 17 The reason we do this is because as the
11:52:14AM 18 finders of the fact, you should not be influenced
11:52:16AM 19 by anything that the Court may say or do in
11:52:20AM 20 connection with the facts of this case, because, as
11:52:20AM 21 I have explained, the Court is not allowed to have
11:52:22AM 22 an opinion, but sometimes when I'm discussing
11:52:24AM 23 matters of law with the attorneys, it might be
11:52:26AM 24 necessary for me to comment about the facts in
11:52:30AM 25 connection with ruling on whether a statute

COURT'S OPENING INSTRUCTIONS

11:52:32AM 1 applies, evidentiary rule, or procedural rule
11:52:34AM 2 applies. For this reason we exclude you from the
11:52:38AM 3 courtroom so that in no way will you be influenced
11:52:40AM 4 by anything that the Court may say or do in
11:52:44AM 5 connection with the facts of this case.

11:52:44AM 6 In determining what the true facts are
11:52:48AM 7 in this case, you must decide whether or not the
11:52:50AM 8 testimony of a witness or witnesses is believable.
11:52:54AM 9 It is my responsibility to rule as a matter of law
11:52:56AM 10 as to whether certain testimony is admissible at
11:53:00AM 11 all or not, but once it is admitted, whether or not
11:53:02AM 12 you believe it is a matter solely for you to
11:53:04AM 13 determine as the fact finders in this case.

11:53:08AM 14 In deciding whether to believe a
11:53:10AM 15 witness you have the right to consider the interest
11:53:10AM 16 of any witness, the bias of any witness, the
11:53:14AM 17 prejudice of any witness, the opportunity for the
11:53:16AM 18 witness to have seen the matters and things about
11:53:20AM 19 which the witness may testify, and the way the
11:53:22AM 20 witness acts on the witness stand, something we
11:53:26AM 21 commonly refer to as demeanor.

11:53:28AM 22 You have the right to consider anything
11:53:30AM 23 that's in the record that will help you evaluate
11:53:32AM 24 the testimony of the witnesses. That means, ladies
11:53:36AM 25 and gentlemen, that it is your duty to play close

COURT'S OPENING INSTRUCTIONS

11:53:38AM 1 attention to the witnesses, to observe the
11:53:40AM 2 witnesses, to listen to them, and to pay close
11:53:42AM 3 attention to the attorneys and the Court.

11:53:44AM 4 Although I know it's very difficult,
11:53:46AM 5 please do not allow your thoughts to wander, but to
11:53:50AM 6 give strict attention to the testimony, so that at
11:53:52AM 7 the end of the testimony, after the attorneys have
11:53:54AM 8 made their closing arguments and the charge on the
11:53:56AM 9 law is given by the Court, you will then be in a
11:54:00AM 10 position to determine what the true facts are and
11:54:02AM 11 apply the law to those facts and thus render a true
11:54:06AM 12 and just verdict in this case.

11:54:08AM 13 During the course of this trial, you
11:54:10AM 14 will be given the opportunity to take notes.
11:54:12AM 15 Note-taking is a privilege that you may choose to
11:54:18AM 16 exercise or choose not to exercise. Please do not
11:54:18AM 17 feel you are required to take notes. Note-taking
11:54:20AM 18 is not helpful to everyone. If you should decide
11:54:22AM 19 to take notes, please don't try to record
11:54:26AM 20 everything that is said. I can assure you that it
11:54:28AM 21 is physically impossible.

11:54:30AM 22 The average person speaks about 200
11:54:32AM 23 words a minute, and even if you thought you were
11:54:34AM 24 taking down what they said verbatim, if you were to
11:54:36AM 25 go back and listen to it, you would find that most

COURT'S OPENING INSTRUCTIONS

11:54:38AM 1 of what you had written down was not accurate. The
11:54:42AM 2 only reason the Court Reporter can do it is because
11:54:44AM 3 she's trained in a very sophisticated, complicated
11:54:46AM 4 form of shorthand with the assistance of a
11:54:48AM 5 computer, and even with that -- because she's able
11:54:50AM 6 to take down things phonetically. But even with
11:54:54AM 7 that, when she does a transcript, you will see a
11:54:56AM 8 microphone, because she listens to the actual tape
11:55:00AM 9 of the testimony to make sure that what she has
11:55:02AM 10 taken down is accurate.

11:55:02AM 11 So please do not allow note-taking to
11:55:06AM 12 become a distraction to you. You may want to keep
11:55:08AM 13 an outline of the main points that are being made
11:55:10AM 14 so that when you retire to deliberate, you can
11:55:14AM 15 allow your notes to refresh your memory of the
11:55:16AM 16 general arguments and testimony that has been
11:55:18AM 17 presented during the course of the trial. I would
11:55:20AM 18 remind you that your notes are for your specific
11:55:22AM 19 and your individual purposes; they are not to be
11:55:24AM 20 shared with anyone else, they're only to be used to
11:55:28AM 21 refresh your own memory.

11:55:30AM 22 I would remind you that during breaks
11:55:30AM 23 and recesses, your notes will be left in your seats
11:55:34AM 24 and we will secure them, and -- so as to ensure
11:55:36AM 25 that there is no premature temptation to discuss

COURT'S OPENING INSTRUCTIONS

11:55:38AM 1 anything or prematurely deliberate regarding the
11:55:42AM 2 case. And I would remind you, ladies and
11:55:44AM 3 gentlemen, that note-taking should not be
11:55:48AM 4 considerable more reliable than someone else's
11:55:50AM 5 memory. A fellow juror's memory should be
11:55:52AM 6 considered just as reliable as notes that may have
11:55:56AM 7 been taken by a fellow juror.

11:55:58AM 8 It is your added duty, Madame Forelady,
11:56:02AM 9 to write out the verdict form and to write out any
11:56:06AM 10 questions the jury may have during deliberations,
11:56:08AM 11 but I will give you further instruction regarding
11:56:10AM 12 that at the conclusion of the case.

11:56:14AM 13 Ladies and gentlemen, the foreperson is
11:56:14AM 14 a random selection. I wish there was some
11:56:18AM 15 scientific method that we follow, but there isn't
11:56:18AM 16 one. It would probably make my life a little
11:56:20AM 17 easier if we had a scientific formula or method,
11:56:22AM 18 but it's completely random. What we try to do is
11:56:24AM 19 get a cross-section of the community for serving in
11:56:28AM 20 that capacity and someone who will encourage active
11:56:32AM 21 deliberation in this deliberative process when the
11:56:32AM 22 case is submitted to you, to make sure that
11:56:34AM 23 everyone is heard during that process.

11:56:38AM 24 I would emphasize, however, that the
11:56:40AM 25 foreperson is purely administrative. That person

OPENING STATEMENT BY MR. SOWARDS

11:56:42AM 1 does not have any greater voice or vote than you
11:56:46AM 2 do. Again, it's a purely random selection.

11:56:50AM 3 In order to preserve everyone's rights,
11:56:52AM 4 we give Counsel an opportunity to take exception to
11:56:56AM 5 anything the Court has said by way of opening
11:56:56AM 6 instruction.

11:56:58AM 7 Are there any exceptions from the
11:57:00AM 8 State?

11:57:00AM 9 MR. SOWARDS: Nothing from the State.

11:57:02AM 10 THE COURT: From the defense?

11:57:04AM 11 MS. GAY: No, ma'am. Thank you.

11:57:06AM 12 THE COURT: You're welcome.

11:57:06AM 13 Ladies and gentlemen, I would ask that
11:57:08AM 14 you give the attorneys your undivided attention.
11:57:10AM 15 And just for planning purposes, we will be breaking
11:57:12AM 16 about 12:30 for lunch.

11:57:14AM 17 You may proceed.

11:57:14AM 18 MR. SOWARDS: Morning, ladies and
11:57:28AM 19 gentlemen. I think it's still morning; close to
11:57:28AM 20 lunch now. My name is Whit Sowards; I'm an
11:57:32AM 21 Assistant Solicitor here with the Ninth Circuit
11:57:34AM 22 Solicitor's Office. With me today is my colleague,
11:57:42AM 23 Stephanie Linder, and also Patrick Gill, who is a
11:57:42AM 24 law enforcement officer with the City of Charleston
11:57:44AM 25 Police Department, and Kenny Barfield is an

OPENING STATEMENT BY MR. SOWARDS

11:57:46AM 1 investigator with our office.

11:57:50AM 2 Ladies and gentlemen, in this city, in
11:57:52AM 3 this county and in this state, the possession of
11:58:00AM 4 and distribution of drugs is illegal. I know
11:58:02AM 5 there's an ongoing debate all over the country, and
11:58:04AM 6 here in South Carolina too, about whether that
11:58:08AM 7 should be the case in the future, but the fact is
11:58:12AM 8 that possession, distribution and manufacturing of
11:58:14AM 9 drugs, in particular cocaine in this case, is
11:58:16AM 10 illegal in South Carolina. And, in fact, the
11:58:20AM 11 distribution of cocaine, which is the charge in
11:58:24AM 12 this case, is a very serious crime.

11:58:26AM 13 Now, the case before you is
11:58:28AM 14 straightforward. The facts are not at all
11:58:32AM 15 complicated. On October 10, 2013, a specialized
11:58:38AM 16 unit of the Charleston Police Department conducted
11:58:42AM 17 a controlled buy operation here in downtown at the
11:58:46AM 18 Joe Pasta Restaurant on King Street. That's here
11:58:48AM 19 in the County of Charleston as well.

11:58:52AM 20 Detective Gill was the controlling
11:58:56AM 21 officer on that buy. You will hear from another
11:58:58AM 22 detective who participated in that operation, as
11:59:02AM 23 well as a confidential informant. You will hear
11:59:06AM 24 that a meeting was arranged prior with the
11:59:10AM 25 Defendant, Mr. Gould, and they did, in fact, have

OPENING STATEMENT BY MS. GAY

11:59:14AM 1 that meeting. The detective and the confidential
11:59:20AM 2 informant left to go to the restaurant and when
11:59:22AM 3 they returned after the meeting with Mr. Gould,
11:59:26AM 4 they had in their possession a quantity of cocaine.

11:59:34AM 5 I think that after you hear all of the
11:59:38AM 6 evidence in this case, that you will agree with us
11:59:40AM 7 that Mr. Gould did, in fact, commit the crime of
11:59:44AM 8 which he is charged, distribution of cocaine. And
11:59:48AM 9 you will see a video of the entire operation and it
11:59:54AM 10 would be up to you to decide whether you think that
11:59:56AM 11 video depicts what the State says it depicts.

12:00:08PM 12 So we thank you for your service and
12:00:10PM 13 look forward to presenting this case to you today.

12:00:12PM 14 THE COURT: You may proceed.

12:00:14PM 15 MS. GAY: Thank you, Your Honor.

12:00:16PM 16 THE COURT: You're welcome.

12:00:20PM 17 MS. GAY: My name is Melissa Gay and as
12:00:26PM 18 I told you, I'm going to represent Mr. Gould today
12:00:28PM 19 and so is Mr. Blanchard, Vernon Blanchard; he works
12:00:32PM 20 with me in my office.

12:00:32PM 21 There's a couple of things, sort of
12:00:34PM 22 housekeeping things, I want to share with you as we
12:00:38PM 23 start this process. One of them is that, welcome,
12:00:40PM 24 for you being the jury that we've picked. You are
12:00:44PM 25 very important people. You are each individually

OPENING STATEMENT BY MS. GAY

12:00:46PM 1 very different, you each come into this process
12:00:50PM 2 with certain skills, a certain background.

12:00:52PM 3 As you saw in the process, some people
12:00:56PM 4 either the State chose not to seat, or we chose not
12:00:58PM 5 to seat, but both us chose to seat you all. So you
12:01:02PM 6 are the jury of my client's peers to be
12:01:06PM 7 specifically chosen today and that's very
12:01:06PM 8 important, because today is maybe -- whatever is
12:01:10PM 9 going on in your own lives, might not be all that
12:01:14PM 10 special, and maybe you've sat on a jury before and
12:01:16PM 11 maybe you haven't, but to Mr. Gould, today is the
12:01:20PM 12 most important day of his life. He has picked you
12:01:22PM 13 all specifically to be the fact finders of this
12:01:24PM 14 case which he has pled not guilty to.

12:01:28PM 15 Now, as the Judge told you, as the fact
12:01:30PM 16 finder, you're the person who at the end of the
12:01:32PM 17 trial, we're going to look to you to say, well,
12:01:34PM 18 what really did happen? Is he guilty of a crime?
12:01:38PM 19 Is he not guilty of a crime? He's pled not guilty;
12:01:42PM 20 the State believes that he is guilty. We're here
12:01:44PM 21 today, but it's up to you all to decide what you
12:01:46PM 22 believe the facts and evidence have been presented
12:01:50PM 23 in front of you.

12:01:50PM 24 One of the things that becomes really
12:01:52PM 25 important is that this isn't TV. Trust me, if it

OPENING STATEMENT BY MS. GAY

12:01:56PM 1 was TV, I would say a lot more interesting things.
12:02:00PM 2 I might have some different shoes, maybe a whole
12:02:04PM 3 different outfit, it would be all different, but
12:02:08PM 4 it's not TV. It's a real-life situation where this
12:02:10PM 5 man's life is on the line in terms of his freedom
12:02:12PM 6 and he has asked you to be the person to pick apart
12:02:16PM 7 and decide whether or not the State of South
12:02:18PM 8 Carolina has brought enough stuff -- facts to the
12:02:22PM 9 table -- we'll call it evidence, but facts to the
12:02:24PM 10 table to establish that he is guilty beyond a
12:02:28PM 11 reasonable doubt.

12:02:28PM 12 That's a legal term, like a term of art
12:02:32PM 13 in the legal community. The Judge will explain to
12:02:34PM 14 you further about what reasonable doubt is, but
12:02:36PM 15 it's a doubt that would cause a reasonable person
12:02:40PM 16 to hesitate to act. It's a doubt that -- something
12:02:40PM 17 you stop and go, huh, I don't think that fits.

12:02:44PM 18 And I believe that's a reasonable thing
12:02:46PM 19 for me to think that doesn't fit and, therefore,
12:02:50PM 20 our law says, if you have those kinds of doubt, and
12:02:54PM 21 if they can't prove to you beyond your reasonable
12:02:58PM 22 doubt -- it's not the absence of doubt, but, you
12:03:00PM 23 know, beyond a reasonable doubt, you are told by
12:03:02PM 24 the Judge to find him not guilty.

12:03:04PM 25 It's a very important thing. A lot of

OPENING STATEMENT BY MS. GAY

12:03:08PM 1 times people don't understand that. It is not my
12:03:10PM 2 job to explain that to you. That's going to be
12:03:12PM 3 Judge Jefferson's job; she's the finder of the law,
12:03:14PM 4 as she told you. She will tell you in the end what
12:03:18PM 5 this burden is, the standard of proof is for this
12:03:22PM 6 case, but we believe, me on behalf of Mr. Gould,
12:03:24PM 7 believe that the State cannot provide facts and
12:03:28PM 8 circumstances such today that will find a
12:03:32PM 9 reasonably-minded jury to convict him in this case,
12:03:36PM 10 and there's a reason.

12:03:36PM 11 You know, the Solicitor stood up and he
12:03:38PM 12 said, this is an easy case. No case is easy. No
12:03:42PM 13 case that comes to a trial and asks 12 members of
12:03:46PM 14 the community to take time, a day, two days,
12:03:50PM 15 whatever it takes, out of their life to decide a
12:03:52PM 16 factual dispute, is an easy situation. It's just
12:03:56PM 17 not.

12:03:56PM 18 So there's no easy case to be presented
12:03:58PM 19 to a jury to say, oh, we're going to present
12:04:00PM 20 everything up there and at the end you're going to
12:04:02PM 21 say that he's guilty. That's not true or I'm not
12:04:06PM 22 doing my job, and I intend to do my job today. I
12:04:10PM 23 intend to show you all the problems with this case,
12:04:12PM 24 all the facts that don't connect up to provide you
12:04:16PM 25 -- you with -- you know, the time to say that this

OPENING STATEMENT BY MS. GAY

12:04:16PM 1 man is guilty.

12:04:18PM 2 One of the things the Solicitor said
12:04:20PM 3 was, he said, some people went to Joe Pasta; and
12:04:24PM 4 that's true, they did. They went to Joe Pasta and
12:04:26PM 5 it's a restaurant in town. It's on King Street.
12:04:28PM 6 It's a very busy restaurant, lots of young people
12:04:32PM 7 go there. Lots of people go through and it's very
12:04:36PM 8 busy.

12:04:36PM 9 And so my client, the evidence will
12:04:38PM 10 show, was an employee there. And they did meet
12:04:42PM 11 with my client and there's going to be some things
12:04:44PM 12 on the video that my client -- the video is the
12:04:46PM 13 video, you're going to see it.

12:04:48PM 14 But what the Solicitor said was they
12:04:50PM 15 left with drugs. I don't dispute that at all; they
12:04:52PM 16 left with drugs. A person who is a young girl, a
12:04:56PM 17 young girl who, you know, had her own set of
12:05:00PM 18 circumstances and made a decision to cooperate with
12:05:04PM 19 the City of Charleston Police Department for her
12:05:04PM 20 own reasons, she was with an undercover female
12:05:10PM 21 police officer. And they went there together and
12:05:12PM 22 the undercover police officer was wearing a camera
12:05:16PM 23 and so, you know, we'll get to see a lot of it.

12:05:18PM 24 What we will never see is Mr. Gould, my
12:05:22PM 25 client, putting drugs into either of those people's

OPENING STATEMENT BY MS. GAY

12:05:24PM 1 hands. We will never see drugs leaving my client's
12:05:26PM 2 hand to be given to them. And so when the
12:05:30PM 3 Solicitor says, they left with drugs, they did, but
12:05:32PM 4 the drugs were on the ground.

12:05:34PM 5 So there's -- if I was a Solicitor and
12:05:36PM 6 I was saying, I'm going to take you on a tour, a
12:05:40PM 7 journey, and we're going to start at point A and
12:05:42PM 8 we're going to end at point Z, and we're going to
12:05:44PM 9 have all of these beautiful connections for you to
12:05:48PM 10 go, I see every place that you want me to go, and,
12:05:48PM 11 yes, you're absolutely right, there's absolutely no
12:05:52PM 12 reasonable doubt and I'm going find him guilty.
12:05:54PM 13 That is not the case in this case.

12:05:56PM 14 There's a huge glaring admission -- or
12:05:58PM 15 omission, a huge glaring omission. There is no
12:06:02PM 16 time that my client provides drugs to the
12:06:06PM 17 confidential informant or to the undercover. Now,
12:06:08PM 18 the Solicitor will say, that's not true and we
12:06:10PM 19 believe that, under the facts and circumstances,
12:06:14PM 20 you can assume or believe that it's possible that
12:06:16PM 21 they came from him. But that's not the case,
12:06:18PM 22 ladies and gentlemen of the jury. It's not the
12:06:20PM 23 case at all.

12:06:20PM 24 And at the end of time, I believe that
12:06:22PM 25 after you scrutinize all of the evidence that's

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:06:26PM 1 presented to you, you will find that my client, Mr.

12:06:28PM 2 Gould, is not guilty. Thank you.

12:06:32PM 3 THE COURT: The State may proceed.

12:06:32PM 4 MR. SOWARDS: Okay. Your Honor, the

12:06:42PM 5 State calls Melanie Frederick.

12:07:20PM 6 MELANIE FREDERICK,

12:07:20PM 7 being first duly sworn, testified as follows:

12:07:24PM 8 THE CLERK: Please be seated. Please

12:07:26PM 9 state your first and last name into the microphone

12:07:28PM 10 and spell your last name for the record.

12:07:28PM 11 THE WITNESS: My name is Melanie

12:07:32PM 12 Frederick. It's spelled F-R-E-D-E-R-I-C-K.

12:07:34PM 13 THE COURT: You may proceed.

12:07:34PM 14 DIRECT EXAMINATION

12:07:34PM 15 BY MR. SOWARDS:

12:07:38PM 16 Q. Afternoon. Who is your current

12:07:40PM 17 employer?

12:07:40PM 18 A. Charleston City Police Department.

12:07:44PM 19 Q. And how long have you been with the

12:07:46PM 20 Charleston City Police Department?

12:07:46PM 21 A. In February it will be six years.

12:07:50PM 22 Q. And what would you say your duties are

12:07:52PM 23 with the -- we'll call it CPD for short?

12:07:56PM 24 A. I'm a detective in our special

12:07:58PM 25 investigations unit, primarily focussing on

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:08:02PM 1 narcotics investigations.

12:08:02PM 2 Q. How long have you been focussing on the
12:08:04PM 3 narcotics investigations?

12:08:06PM 4 A. Two years now.

12:08:06PM 5 Q. Could you please just briefly describe
12:08:12PM 6 for the jury your education and background?

12:08:14PM 7 A. Sure. I received a Bachelor's Degree
12:08:18PM 8 in behavioral science, focussing on police science
12:08:24PM 9 administration. Since I've been a detective, I've
12:08:24PM 10 attended over 100 hours of various narcotics
12:08:28PM 11 investigations courses, to include confidential
12:08:28PM 12 informant managing, undercover operations,
12:08:30PM 13 counter-surveillance, surveillance operations, and
12:08:32PM 14 regular investigations.

12:08:34PM 15 Q. Now, as for your duties as a narcotics
12:08:40PM 16 officer, how would you describe those duties?

12:08:42PM 17 A. My primary job is to manage
12:08:46PM 18 confidential informants, to perform undercover
12:08:50PM 19 operations, to assist community members that have
12:08:52PM 20 complaints on narcotics investigations that are
12:08:56PM 21 going on in the community. Anything that we could
12:08:58PM 22 do to counteract the drug problem that's going on
12:09:02PM 23 in Charleston city.

12:09:04PM 24 Q. Now, does your office conduct
12:09:08PM 25 controlled buy operations?

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:09:10PM 1 A. Yes.

12:09:10PM 2 Q. And what is a controlled buy?

12:09:12PM 3 A. A controlled buy is when we have either
12:09:14PM 4 an undercover officer or confidential informant, or
12:09:18PM 5 both, go into a particular area or target a
12:09:22PM 6 specific person that's followed through with our
12:09:26PM 7 agency. We provide the money, we wire them up with
12:09:28PM 8 video and audio recording, and we manage the whole
12:09:32PM 9 operation from front to end.

12:09:34PM 10 Q. What types of controlled buy operations
12:09:38PM 11 does your office conduct?

12:09:38PM 12 A. We have buy/walk operations where
12:09:42PM 13 somebody -- an undercover confidential informant
12:09:44PM 14 will go in and buy something or get some kind of
12:09:48PM 15 illegal narcotic and then walk away from the
12:09:50PM 16 operation and we go in at a later time.

12:09:52PM 17 And we also have buy/bust operations,
12:09:54PM 18 which means that a confidential informant or
12:09:58PM 19 undercover goes in to buy a specific narcotic and
12:10:00PM 20 then, as soon as the operation happens, police come
12:10:04PM 21 in and detain the person responsible.

12:10:06PM 22 Q. Now, who decides whether or not to
12:10:08PM 23 conduct a buy/bust or a buy/walk?

12:10:12PM 24 A. Generally, my lieutenant, and if he's
12:10:14PM 25 not there, my sergeant.

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:10:16PM 1 Q. Now, you mentioned earlier a
12:10:18PM 2 confidential informant. What is a confidential
12:10:22PM 3 informant in your line of work?

12:10:24PM 4 A. A confidential informant could be just
12:10:26PM 5 a good citizen, somebody that's sick of seeing
12:10:30PM 6 narcotic activity in their area of the community.
12:10:34PM 7 We also have paid confidential informants, a
12:10:36PM 8 confidential informant that gets paid to go and buy
12:10:38PM 9 drugs from a specific target, and then we also have
12:10:42PM 10 confidential informants that are hoping to do
12:10:44PM 11 something for their charges. They've had charges
12:10:48PM 12 or been arrested for a previous offense.

12:10:50PM 13 Q. You mentioned previously undercover
12:10:54PM 14 officers and that they're involved sometimes in
12:10:56PM 15 these operations. Just generally, what is an
12:11:00PM 16 undercover officer in a narcotics investigation?

12:11:02PM 17 A. An undercover officer is a narcotics
12:11:04PM 18 detective that has experience in working with
12:11:06PM 19 narcotics, that goes in and acts as a person that
12:11:10PM 20 is wanting to buy narcotics from a specific target
12:11:14PM 21 or area.

12:11:14PM 22 Q. What typically -- or, sorry, who is
12:11:18PM 23 typically involved in a controlled buy operation?

12:11:20PM 24 A. Our entire unit, with the detectives
12:11:26PM 25 who are usually all present -- all of us who are

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:11:28PM 1 there for the day.

12:11:28PM 2 Is it just who is involved or --

12:11:30PM 3 Q. Just generally and just a typical
12:11:34PM 4 controlled buy?

12:11:34PM 5 A. So it would be -- my sergeant would be
12:11:36PM 6 supervising normally and then there would be at
12:11:40PM 7 least four or five other detectives and we also
12:11:42PM 8 have a marked unit with us at all times in case
12:11:46PM 9 something goes on that we need assistance.

12:11:48PM 10 Q. What happens preliminarily in these
12:11:52PM 11 controlled buy operations?

12:11:52PM 12 A. Before every purchase or every
12:11:56PM 13 operation that we do, we all meet up as a unit,
12:11:58PM 14 along with either the confidential informant or
12:12:00PM 15 undercover officer that's providing the operation,
12:12:04PM 16 and we all go over what the operation entails, who
12:12:06PM 17 the targets are, what the specific area is, what
12:12:10PM 18 we're going in to buy, and danger/duress signals,
12:12:14PM 19 what to do if something goes wrong in the operation
12:12:16PM 20 and there's a dangerous situation.

12:12:20PM 21 Q. And what typically happens -- assuming
12:12:22PM 22 it's all done according to plan, what happens at
12:12:28PM 23 the end of a controlled buy operation?

12:12:28PM 24 A. We meet back up. Whoever went in to
12:12:32PM 25 get the narcotics gives it to the controlling

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:12:34PM 1 agent, the case agent that's over the entire case,
12:12:38PM 2 and then we debrief: We go over what happened when
12:12:42PM 3 we get back to the office, we go over the video and
12:12:46PM 4 go over any specifics of the case we might have
12:12:48PM 5 missed.

12:12:48PM 6 Q. And during these operations, what, if
12:12:52PM 7 any, kind of recording devices does either the
12:12:56PM 8 undercover officer or the confidential informant
12:13:00PM 9 wear?

12:13:00PM 10 A. We typically have an audio and video
12:13:04PM 11 recording device as well as a wire of some sort,
12:13:06PM 12 which the other detectives and officers that are --
12:13:10PM 13 during the operation could hear what the UC or CI
12:13:14PM 14 is saying at all times and we can let them know in
12:13:16PM 15 an undercover capacity if something is going wrong
12:13:20PM 16 and they need to come in and assist us.

12:13:22PM 17 Q. Now, generally in these cases, the
12:13:24PM 18 purpose of a controlled buy is to purchase drugs?

12:13:28PM 19 A. Correct.

12:13:28PM 20 Q. Where does the money to purchase drugs
12:13:32PM 21 come from?

12:13:32PM 22 A. We have a general narcotics fund that
12:13:34PM 23 is with the Charleston City Police Department and
12:13:36PM 24 that's where all the money comes from for a buy.

12:13:40PM 25 Q. I would like to talk just briefly about

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:13:44PM 1 the investigation in this case. Did you have

12:13:48PM 2 occasion to be working on October 10, 2013?

12:13:52PM 3 A. Yes, sir, I did.

12:13:52PM 4 Q. And did you have the occasion to become
12:13:56PM 5 involved in the investigation of this case --

12:13:58PM 6 A. I did.

12:13:58PM 7 Q. -- State versus Dale Gould?

12:14:00PM 8 A. Yes, sir.

12:14:00PM 9 Q. And was that on this particular date,
12:14:04PM 10 October 10th?

12:14:04PM 11 A. It was.

12:14:04PM 12 Q. And what type of operation were you
12:14:08PM 13 involved in that day -- on that day?

12:14:10PM 14 A. It was going to be a buy/walk operation
12:14:12PM 15 involving myself as an undercover and a
12:14:16PM 16 confidential informant.

12:14:18PM 17 Q. And who was the target of that
12:14:20PM 18 operation?

12:14:20PM 19 A. Mr. Gould, Dale Gould.

12:14:22PM 20 Q. And you mentioned that it was you and a
12:14:26PM 21 confidential informant. Who else was involved in
12:14:28PM 22 that operation?

12:14:30PM 23 A. The -- whenever we do the operations
12:14:34PM 24 essentially involving an undercover officer, the
12:14:36PM 25 whole unit is there, including my lieutenant,

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:14:40PM 1 sergeant, and the other detectives I work with,
12:14:42PM 2 along with -- I believe we had more than one
12:14:46PM 3 uniformed patrol officer.

12:14:46PM 4 Q. Now, just from your perspective, what
12:14:50PM 5 was done on your end in preparation for this
12:14:52PM 6 particular operation?

12:14:54PM 7 A. As an undercover officer, I establish
12:14:58PM 8 undercover story of a person that I'm depicting and
12:15:00PM 9 then I also brief with the confidential informant
12:15:04PM 10 and ask them what they know and how -- how we are
12:15:10PM 11 going to perceive ourselves when we go into the
12:15:14PM 12 situation.

12:15:14PM 13 Q. Now, were you wearing a listening
12:15:18PM 14 device or recording device during this operation?

12:15:20PM 15 A. Both; I had a camera for visual and
12:15:22PM 16 audio and I had a wire.

12:15:24PM 17 Q. What about the confidential informant?

12:15:28PM 18 A. They had a wire.

12:15:28PM 19 Q. So you start the operation. Where did
12:15:36PM 20 you initially meet --

12:15:38PM 21 A. We met --

12:15:38PM 22 Q. -- as a group?

12:15:40PM 23 A. We met at the police department, the
12:15:42PM 24 headquarters at the station, and that's where we
12:15:46PM 25 got wired up.

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:15:46PM 1 Q. And where did you go after the initial
12:15:50PM 2 meeting?

12:15:50PM 3 A. After the initial meeting, after I
12:15:54PM 4 received the money and we both got wired up, we
12:15:58PM 5 were dropped off by detectives in the area, the
12:16:00PM 6 location where we were doing the buy.

12:16:02PM 7 Q. Okay. What was the goal of the
12:16:04PM 8 operation?

12:16:04PM 9 A. The goal of the operation was to buy
12:16:08PM 10 cocaine from the Defendant, Dale Gould.

12:16:10PM 11 Q. Did you obtain drugs from Mr. Gould?

12:16:14PM 12 A. I did.

12:16:14PM 13 Q. We talked earlier about recording
12:16:20PM 14 devices and the fact that you were wearing an audio
12:16:24PM 15 and visual recording device at the time of the
12:16:28PM 16 operation. Where was that on your person or was it
12:16:32PM 17 on your person?

12:16:32PM 18 A. It was on my person. It was on my
12:16:36PM 19 shirt.

12:16:36PM 20 Q. Sorry.

12:16:38PM 21 A. I mean, it's nothing that you would be
12:16:40PM 22 able to see, but it was able to record.

12:16:44PM 23 Q. And who placed that there?

12:16:46PM 24 A. Detective Gill placed it in the shirt
12:16:48PM 25 and I put the shirt on.

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:16:50PM 1 Q. Okay. Now, I'm going to show you what
12:16:52PM 2 is marked as State's Exhibit Number 1.

12:17:04PM 3 MR. SOWARDS: May I approach the
12:17:04PM 4 witness?

12:17:06PM 5 THE COURT: Yes, sir, you may.

12:17:06PM 6 BY MR. SOWARDS:

12:17:12PM 7 Q. Do you recognize that?

12:17:14PM 8 A. I do, yes, sir.

12:17:16PM 9 Q. What is that?

12:17:16PM 10 A. It's the video from the buy operation.

12:17:20PM 11 Q. And how do you recognize it?

12:17:22PM 12 A. I put my initials on it when we went
12:17:24PM 13 over the case with the Solicitor's Office.

12:17:26PM 14 Q. And does that represent a fair and
12:17:28PM 15 accurate depiction of what happened on October 10,
12:17:34PM 16 2013, during this operation?

12:17:34PM 17 A. Yes, sir.

12:17:36PM 18 MR. SOWARDS: Your Honor, the State
12:17:38PM 19 moves to admit Exhibit 1.

12:17:38PM 20 THE COURT: Any exception?

12:17:40PM 21 MS. GAY: No, Your Honor.

12:17:40PM 22 THE COURT: Marked and admitted without
12:17:42PM 23 exception. You may proceed.

12:17:42PM 24 (PLF. EXH. 1 in evidence.)

12:17:42PM 25 (Off-the-record conference at the

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:17:42PM 1 bench.)

12:18:34PM 2 THE COURT: You may proceed.

12:18:34PM 3 MR. SOWARDS: The State would request
12:18:36PM 4 permission to publish the video to the jury.

12:18:40PM 5 THE COURT: You may proceed.

12:20:56PM 6 MR. SOWARDS: We apologize, Your Honor.
12:20:58PM 7 We tried it earlier and it seemed to be working.

12:21:04PM 8 THE CLERK: I know it was working this
12:21:08PM 9 morning when we tried it.

12:21:08PM 10 (Video playing.)

12:21:08PM 11 BY MR. SOWARDS:

12:21:26PM 12 Q. Now, do you recognize this video at
12:21:26PM 13 this point?

12:21:28PM 14 A. I do, yes, sir.

12:21:30PM 15 Q. Ma'am?

12:21:30PM 16 A. I do, yes, sir.

12:21:32PM 17 Q. And what's happening -- I should ask,
12:21:34PM 18 where is this taking place?

12:21:36PM 19 A. This is at Joe Pasta, which is on King
12:21:38PM 20 Street, and this is up -- walking up the side of
12:21:42PM 21 the restaurant.

12:21:48PM 22 Q. And at this point, what is the purpose
12:21:48PM 23 of your operation?

12:21:50PM 24 A. To buy cocaine from Dale Gould, who was
12:21:54PM 25 the manager at the time.

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:21:58PM 1 Q. And this restaurant is in Charleston
12:21:58PM 2 County?

12:22:02PM 3 A. Yes, correct.

12:22:10PM 4 Q. Do you recognize that voice? Who is
12:22:12PM 5 that?

12:22:12PM 6 A. That's Michael.

12:22:32PM 7 Q. And where is the recording device
12:22:32PM 8 located on you?

12:22:34PM 9 A. Right on my chest area.

12:23:00PM 10 Q. For the record, what is happening at
12:23:02PM 11 this point in the video?

12:23:02PM 12 A. We're just sitting there waiting. The
12:23:06PM 13 CI had been texting to the target, and we're
12:23:08PM 14 waiting to see him. We haven't seen him yet.

12:23:12PM 15 Q. Do you recognize that voice, the second
12:23:34PM 16 voice?

12:23:34PM 17 A. Yes. That's the confidential informant
12:23:36PM 18 that was with me.

12:24:18PM 19 Q. Do you recall at this point where you
12:24:20PM 20 were sitting in the restaurant?

12:24:20PM 21 A. Right now we're sitting at a bar table
12:24:24PM 22 that is facing outside the restaurant right in
12:24:28PM 23 front of a window. And this is me advising the
12:24:28PM 24 confidential informant.

12:24:52PM 25 (Video stopped.)

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:24:52PM 1 MS. GAY: Your Honor, I would object to
12:24:54PM 2 the --

12:24:54PM 3 THE COURT: Please approach.
12:24:54PM 4 (Off-the-record conference held at the
12:25:20PM 5 bench.)

12:25:20PM 6 THE COURT: Proceed.
12:25:20PM 7 (Video played.)
12:35:34PM 8 (Video stopped.)

12:35:34PM 9 THE COURT: Ladies and gentlemen, we're
12:35:36PM 10 going to take advantage of this break in testimony
12:35:38PM 11 to take our lunch recess. During the break, please
12:35:40PM 12 do not discuss the case among yourselves. Please
12:35:42PM 13 don't have any interaction with anyone in or about
12:35:44PM 14 the courthouse, and again, please do not make any
12:35:46PM 15 comments regarding your jury service on any social
12:35:50PM 16 networking sites.

12:35:52PM 17 We will resume at 2:00. You will
12:35:56PM 18 return directly to the jury room. Again, as I
12:35:56PM 19 indicated, I would anticipate that we would
12:35:58PM 20 conclude testimony in this case today and have
12:36:02PM 21 closing arguments and instructions tomorrow
12:36:04PM 22 morning.

12:36:06PM 23 Hope you have a great lunch. Please
12:36:06PM 24 leave your notepads in your seats. I know you've
12:36:08PM 25 had a long morning. Please know we appreciate your

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:36:08PM 1 patience.

12:36:18PM 2 (Jury out, 12:36 p.m.)

12:36:42PM 3 THE COURT: Anything before we break
12:36:44PM 4 from the State?

12:36:46PM 5 MR. SOWARDS: Nothing from the State.

12:36:46PM 6 THE COURT: From the defense?

12:36:46PM 7 MS. GAY: Yes, ma'am. I would ask you
12:36:48PM 8 to please allow my client to eat lunch.

12:36:50PM 9 THE COURT: What exactly was his bond?

12:36:52PM 10 MS. GAY: His bond was -- \$70,000? It
12:36:52PM 11 was a surety bond.

12:37:02PM 12 THE COURT: Did you check with his
12:37:02PM 13 bondsman to see if failed --

12:37:02PM 14 MS. GAY: I can do it right now.

12:37:04PM 15 THE COURT: You have to do that,
12:37:04PM 16 otherwise I have to take him into custody.

12:37:08PM 17 The bond is called, sir, once your case
12:37:10PM 18 is called.

12:37:14PM 19 MS. GAY: Give us five minutes, we'll
12:37:34PM 20 figure it out.

12:37:34PM 21 THE COURT: I will allow him to remain
12:37:36PM 22 free on bond while you all figure that out during
12:37:36PM 23 the lunch recess.

12:37:36PM 24 Sir, I need to advise you that if you
12:37:38PM 25 fail to appear, the trial will proceed in your

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:37:40PM 1 absence and a bench warrant will be issued for your
12:37:44PM 2 arrest. Do you understand?

12:37:44PM 3 THE DEFENDANT: Absolutely.

12:37:46PM 4 THE COURT: Anything else before we
12:37:46PM 5 break for lunch from the State?

12:37:46PM 6 MR. SOWARDS: No.

12:37:46PM 7 THE COURT: From the defense?

12:37:48PM 8 MS. GAY: Yes, Your Honor. Is it okay
12:37:50PM 9 if we leave our stuff here?

12:37:50PM 10 THE COURT: Yes. The courtroom will be
12:37:52PM 11 locked.

12:37:54PM 12 MS. GAY: Thank you.

12:37:54PM 13 THE COURT: If you cannot arrange for
12:37:56PM 14 his bail, you need to have your client ready to
12:38:00PM 15 turn himself in this evening, and he will need to
12:38:02PM 16 make arrangements for his vehicle and also for
12:38:04PM 17 someone to bring clothes for him early enough for
12:38:06PM 18 him to dress out in the morning.

12:38:06PM 19 MS. GAY: Do you want the bondsman to
12:38:10PM 20 fax something to me and then give it to you?

12:38:10PM 21 THE COURT: That's fine, but he needs
12:38:14PM 22 to understand that he will be under an additional
12:38:16PM 23 obligation.

12:38:16PM 24 MS. GAY: But in terms of the bondsman
12:38:18PM 25 being willing to stay on the bond, which is what

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

12:38:20PM 1 you're asking, would it be okay if they do
12:38:22PM 2 something and fax it to my office and then I'll
12:38:24PM 3 bring it to you?

12:38:26PM 4 THE COURT: That's fine, as long as the
12:38:30PM 5 State has no exception to that. Have a good lunch.

02:14:54PM 6 (A luncheon recess transpired.)

02:14:54PM 7 THE COURT: Is the State ready to
02:14:54PM 8 proceed?

02:14:54PM 9 MR. SOWARDS: We are, Your Honor.

02:14:54PM 10 THE COURT: Is the defense ready to
02:14:58PM 11 proceed?

02:14:58PM 12 MS. GAY: Yes, ma'am. We were going to
02:15:00PM 13 ask you to charge possession of cocaine. I am in
02:15:02PM 14 the process of getting --

02:15:02PM 15 THE COURT: It's easier to give me any
02:15:06PM 16 written requests for instruction. I have not
02:15:08PM 17 decided to have a charge conference at this moment.

02:15:10PM 18 MS. GAY: She's creating the document
02:15:12PM 19 and it has to be e-mailed. And I will probably
02:15:16PM 20 just e-mail it directly to you, but she hasn't
02:15:20PM 21 figured out how to create it all yet.

02:15:24PM 22 THE COURT: Thank you. I need it
02:15:24PM 23 before the close of business today.

02:15:30PM 24 MS. GAY: Yes, ma'am.

02:15:30PM 25 THE COURT: Is the State ready to

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

02:15:32PM 1 proceed?

02:15:32PM 2 MR. SOWARDS: We are.

02:15:32PM 3 THE COURT: Defense ready to proceed?

02:15:34PM 4 MS. GAY: Yes, ma'am.

02:15:36PM 5 THE COURT: Bear with me a minute. I

02:15:38PM 6 apologize, I've been having a lot of computer

02:15:40PM 7 issues today.

02:16:22PM 8 Ready to resume playing the video?

02:16:26PM 9 MR. SOWARDS: Yes.

02:16:26PM 10 THE COURT: Witness needs to retake the

02:16:28PM 11 stand. I will remind you you are still under oath.

02:18:56PM 12 (Jury in, 2:18 p.m.)

02:18:56PM 13 THE BAILIFF: The jurors are all

02:19:14PM 14 present.

02:19:14PM 15 THE COURT: Ladies and gentlemen, I

02:19:16PM 16 hope you had a pleasant lunch recess. We're now

02:19:18PM 17 going to resume testimony of the witness. Give the

02:19:22PM 18 attorney your full attention.

02:19:22PM 19 You may proceed.

02:19:24PM 20 MR. SOWARDS: Thank you.

02:19:24PM 21 CONTINUING DIRECT EXAMINATION

02:19:24PM 22 BY MR. SOWARDS:

02:19:26PM 23 Q. Detective Frederick, I have a few

02:19:28PM 24 questions that I wanted to ask you before we

02:19:30PM 25 resume --

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

02:19:30PM 1 MS. GAY: Your Honor, I would object to
02:19:32PM 2 that.

02:19:32PM 3 THE COURT: Basis?

02:19:32PM 4 MS. GAY: At this point, we've got the
02:19:34PM 5 video --

02:19:36PM 6 THE COURT: No speaking objections. Is
02:19:38PM 7 there a basis for the objection within the rules?

02:19:40PM 8 MS. GAY: That we were watching a piece
02:19:44PM 9 of evidence and the evidence seems --

02:19:44PM 10 THE COURT: That's still a speaking
02:19:46PM 11 objection.

02:19:46PM 12 MS. GAY: Your ruling?

02:19:48PM 13 THE COURT: Overruled. You may ask the
02:19:50PM 14 question. Make sure however it is germane and
02:19:54PM 15 related. Proceed.

02:19:54PM 16 BY MR. SOWARDS:

02:19:56PM 17 Q. To your knowledge, what is the address
02:19:58PM 18 of the Joe Pasta restaurant?

02:20:02PM 19 A. If you wouldn't mind, I'll refer to my
02:20:06PM 20 supplement. 428 King Street.

02:20:10PM 21 Q. And, to your knowledge, is that located
02:20:10PM 22 in Charleston County?

02:20:12PM 23 A. It is, yes, sir.

02:20:14PM 24 Q. And you previously testified that an
02:20:16PM 25 audio-video recording device was attached to your

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

02:20:22PM 1 shirt. What type of viewing angle does that device
02:20:26PM 2 provide?

02:20:26PM 3 A. It just shoots off of me into the area
02:20:28PM 4 in front of me.

02:20:30PM 5 Q. Okay. And then prior to going to the
02:20:34PM 6 restaurant with the CI, were there any special
02:20:38PM 7 instructions that you received about the operation?

02:20:42PM 8 A. I was just shown a picture of the
02:20:44PM 9 target and knew what we were going in to buy and
02:20:50PM 10 where we were going.

02:20:50PM 11 Q. And what about the CI's presence as far
02:20:58PM 12 as in relation to you throughout the buy?

02:21:00PM 13 A. Like what was our story?

02:21:04PM 14 Q. Well, were there any requirements for
02:21:08PM 15 her as far as her ability to move throughout the --

02:21:10PM 16 A. She was not allowed to go outside of my
02:21:12PM 17 presence. Like if she had to go to the bathroom, I
02:21:16PM 18 was going to go with her. We weren't allowed to
02:21:20PM 19 separate at all during the operation.

02:21:20PM 20 Q. And during the course of the buy, who
02:21:22PM 21 was monitoring -- who, if anyone, was monitoring
02:21:24PM 22 the progress of the buy?

02:21:26PM 23 A. The -- Detective Gill was the case
02:21:30PM 24 agent, but the majority of the detectives had a
02:21:32PM 25 device to listen to the live wire and what was

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

02:21:34PM 1 going on.

02:21:34PM 2 Q. And why would they want to monitor the
02:21:38PM 3 progress of a buy?

02:21:40PM 4 A. In case I gave a danger or duress
02:21:42PM 5 signal and they had to come in.

02:21:44PM 6 Q. Okay.

02:25:12PM 7 (Video played.)

02:57:48PM 8 Q. I want to ask you a few questions about
02:57:50PM 9 the video. Why did you leave the front of the
02:57:56PM 10 restaurant, the bar area where you and the CI were
02:58:00PM 11 sitting?

02:58:02PM 12 A. Because the office was an enclosed
02:58:06PM 13 space that had a door and I'm assuming that's why
02:58:10PM 14 he had us come into the office.

02:58:12PM 15 Q. And when you say, he, who do you mean?

02:58:14PM 16 A. The Defendant, Dale Gould.

02:58:18PM 17 Q. When you got back to the office, who
02:58:20PM 18 else was present in the office?

02:58:20PM 19 A. It was just the Defendant, myself, and
02:58:28PM 20 the confidential informant.

02:58:28PM 21 Q. Was the door open or closed?

02:58:30PM 22 A. He asked me to close it once I walked
02:58:32PM 23 in.

02:58:32PM 24 Q. When you walked into the office, did
02:58:34PM 25 you notice anything on the floor or --

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

02:58:36PM 1 A. Not right away. There's a lot of boxes
02:58:40PM 2 and paperwork throughout the office. He pointed it
02:58:44PM 3 out to me where it was.

02:58:44PM 4 Q. And when you say, it, what did he point
02:58:48PM 5 out?

02:58:48PM 6 A. A bag of white powder, which with my
02:58:50PM 7 training and experience, I noted that it was
02:58:52PM 8 possibly the cocaine.

02:58:52PM 9 Q. We saw in the video that it was picked
02:58:56PM 10 up. Who picked it up?

02:58:58PM 11 A. I picked it up.

02:59:00PM 12 Q. And so I guess when the meeting in the
02:59:12PM 13 office was finished, why did you go back to the
02:59:16PM 14 front of the restaurant where you had been sitting?

02:59:18PM 15 A. I had to pay for the bill from the tab
02:59:22PM 16 that we had, and he asked us not to leave before he
02:59:26PM 17 had come back out there.

02:59:26PM 18 Q. What happened when he came back out
02:59:28PM 19 there?

02:59:28PM 20 A. He came in between -- we were sitting
02:59:30PM 21 on two barstools, and he came between the
02:59:34PM 22 confidential informant and myself, and I don't
02:59:36PM 23 remember the exact statement, but he said -- but
02:59:38PM 24 pointed down to the ground where another small
02:59:44PM 25 plastic bag of white powder was found.

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

02:59:48PM 1 Q. Did you recognize the bag?

02:59:50PM 2 A. Again, with my training and experience,

02:59:54PM 3 I noted that it was possibly cocaine.

02:59:56PM 4 Q. And then -- well, first of all, I just

02:59:58PM 5 want to ask you kind of a technical question.

03:00:00PM 6 There are two videos. Why are there two videos?

03:00:04PM 7 A. Our camera system automatically starts

03:00:08PM 8 another video because of the data that it takes up

03:00:10PM 9 on a disk. So after 30 minutes it restarts a

03:00:12PM 10 video, but it was a continuous video. It just

03:00:14PM 11 restarts it every 30 minutes.

03:00:16PM 12 Q. And at the conclusion of the second

03:00:18PM 13 clip, what happened after that?

03:00:20PM 14 A. After the second clip, we met back up

03:00:22PM 15 with Detective Gill; he picked us up. I gave him

03:00:26PM 16 the bag of cocaine and then we did a debrief of the

03:00:30PM 17 operation.

03:00:32PM 18 Q. Between the time Mr. Gould came out to

03:00:36PM 19 the front of the restaurant and the time you met

03:00:38PM 20 back up with the narcotics investigators, did

03:00:42PM 21 anyone else have possession of that bag?

03:00:44PM 22 A. No, sir.

03:00:44PM 23 Q. And what exactly happened when you met

03:00:50PM 24 back up with Detective Gill and the others?

03:00:54PM 25 A. He immediately took control of the

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

03:00:56PM 1 cocaine and then we debriefed on the operation
03:01:00PM 2 about what happened, who it was and the specifics
03:01:04PM 3 of what happened during the case.

03:01:06PM 4 Q. Now, did Mr. Gould distribute drugs to
03:01:18PM 5 you on October 10th?

03:01:20PM 6 MS. GAY: Objection.

03:01:22PM 7 THE COURT: Please approach. No
03:01:24PM 8 speaking objections.

03:01:52PM 9 (Off-the-record conference at the
03:01:52PM 10 bench.)

03:02:16PM 11 THE COURT: Objection is leading;
03:02:18PM 12 sustained. Rephrase.

03:02:18PM 13 BY MR. SOWARDS:

03:02:22PM 14 Q. To the best of your recollection, what
03:02:24PM 15 did Mr. Gould do on October 10, 2013?

03:02:28PM 16 A. He distributed cocaine to myself and
03:02:34PM 17 the confidential informant.

03:02:34PM 18 Q. Do you see Mr. Gould in the courtroom
03:02:36PM 19 today?

03:02:36PM 20 A. I do, yes, sir.

03:02:38PM 21 Q. Could you please identify him?

03:02:40PM 22 A. He's sitting in the middle at the
03:02:42PM 23 defense table, wearing a tan suit and a blue tie.

03:02:46PM 24 MR. SOWARDS: Please let the record
03:02:48PM 25 reflect that Detective Frederick has identified the

MELANIE FREDERICK - DIRECT EXAM BY MR. SOWARDS

03:02:52PM 1 Defendant, Dale Gould.

03:02:52PM 2 THE COURT: Proceed.

03:02:54PM 3 MR. SOWARDS: Beg the Court's

03:02:56PM 4 indulgence.

03:02:56PM 5 THE COURT: Uh-huh.

03:03:02PM 6 MR. SOWARDS: Nothing further. Please

03:03:04PM 7 answer any questions the defense may have.

03:03:06PM 8 THE COURT: Any cross-examination?

03:03:08PM 9 MS. GAY: One moment, please, Your

03:03:08PM 10 Honor.

03:03:18PM 11 Your Honor, I have no questions for

03:03:20PM 12 this witness.

03:03:22PM 13 THE COURT: Ma'am, you are excused

03:03:22PM 14 subject to being recalled. You may step down.

03:03:26PM 15 State may call its next witness.

03:03:28PM 16 MR. SOWARDS: Your Honor, may Detective

03:03:38PM 17 Frederick be excused?

03:03:38PM 18 THE COURT: I've excused her subject to

03:03:42PM 19 being recalled.

03:03:42PM 20 Proceed.

03:03:46PM 21 MS. LINDER: The State calls Taylor

03:03:50PM 22 Boyd.

03:04:34PM 23 TAYLOR BOYD,

03:04:34PM 24 being first duly sworn, testified as follows:

03:04:34PM 25 THE CLERK: Please be seated. Please

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:04:40PM 1 state your first and last name into the microphone
03:04:42PM 2 and spell your last name.

03:04:46PM 3 THE WITNESS: Taylor Boyd, B-O-Y-D.

03:04:48PM 4 THE COURT: You may proceed.

03:04:50PM 5 MS. LINDER: Thank you, Your Honor.

03:04:50PM 6 DIRECT EXAMINATION

03:04:50PM 7 BY MS. LINDER:

03:04:54PM 8 Q. Good afternoon, Taylor. How old are
03:04:54PM 9 you?

03:04:56PM 10 A. I'm 21 years old.

03:04:58PM 11 Q. And where are you originally from?

03:05:00PM 12 A. I'm from Connecticut.

03:05:00PM 13 Q. And how did you make your way down to
03:05:02PM 14 Charleston?

03:05:04PM 15 A. The College of Charleston brought me
03:05:06PM 16 down here.

03:05:06PM 17 Q. How long have you lived in Charleston?

03:05:08PM 18 A. This is going to be my third year in
03:05:12PM 19 Charleston.

03:05:12PM 20 Q. And how far have you gone in school?

03:05:14PM 21 A. I'm completing my junior year.

03:05:18PM 22 Q. At the College?

03:05:18PM 23 A. The College of Charleston.

03:05:20PM 24 Q. And do you understand why you're here
03:05:24PM 25 today?

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:05:24PM 1 A. I do.

03:05:24PM 2 Q. And why is that?

03:05:24PM 3 A. To testify.

03:05:26PM 4 Q. And have you previously met with myself

03:05:30PM 5 or members of the Solicitor's Office to talk about

03:05:34PM 6 today and what we're going to do?

03:05:36PM 7 A. Yes, I have.

03:05:36PM 8 Q. And have you ever cooperated with law

03:05:40PM 9 enforcement before?

03:05:42PM 10 A. Prior to this, no.

03:05:44PM 11 Q. Have you ever in your lifetime

03:05:46PM 12 cooperated with law enforcement, including this?

03:05:48PM 13 A. Yes.

03:05:50PM 14 Q. And how did you cooperate with law

03:05:56PM 15 enforcement?

03:05:56PM 16 A. I introduced the police officer to Dale

03:06:00PM 17 Gould.

03:06:00PM 18 Q. And do you know who your contact with

03:06:04PM 19 law enforcement at the City was?

03:06:06PM 20 A. Yes, it was Officer Gill.

03:06:10PM 21 Q. Why did you become a CI?

03:06:12PM 22 A. I was charged with a minor possession

03:06:14PM 23 --

03:06:14PM 24 Q. A minor possession --

03:06:20PM 25 A. -- of alcohol.

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:06:22PM 1 Q. -- of alcohol under 21?

03:06:22PM 2 A. Yes.

03:06:22PM 3 Q. And whatever happened with that charge?

03:06:26PM 4 A. That charge was dropped.

03:06:28PM 5 Q. And do you know if that charge was

03:06:32PM 6 handled by myself or if it was a magistrate charge?

03:06:36PM 7 A. It was not you. I believe it was

03:06:38PM 8 magistrate.

03:06:38PM 9 Q. And do you have any other record? Do

03:06:46PM 10 you have any convictions on your record?

03:06:50PM 11 A. I do not.

03:06:50PM 12 Q. All right. I'm going to take you back

03:06:54PM 13 to October 10, 2013, just over a year ago now. Did

03:06:58PM 14 you cooperate with law enforcement back on that

03:07:00PM 15 day?

03:07:00PM 16 A. I did.

03:07:00PM 17 Q. And how did you cooperate with law

03:07:04PM 18 enforcement back on October 10th? What happened?

03:07:06PM 19 A. October 10th, I met with Officer Gill

03:07:10PM 20 and -- Melissa, is it? Is that her name?

03:07:16PM 21 Q. Another police officer?

03:07:18PM 22 A. Another police officer. They searched

03:07:20PM 23 me very thoroughly and then we went over to Joe

03:07:24PM 24 Pasta.

03:07:24PM 25 Q. And before going to Joe Pasta, did you

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:07:32PM 1 meet with -- was there more than one police officer
03:07:34PM 2 around?

03:07:34PM 3 A. Yes, there were a lot of officers.

03:07:38PM 4 Q. And at that meeting before going to Joe
03:07:40PM 5 Pasta, what was searched?

03:07:44PM 6 A. They patted me down, they searched my
03:07:48PM 7 bag and made sure I didn't have anything on me that
03:07:50PM 8 I wasn't supposed to have.

03:07:52PM 9 Q. And did they give you any sort of
03:07:56PM 10 device that you were aware of that was a recorder
03:07:58PM 11 or an audio feed?

03:08:00PM 12 A. They gave me an audio feed.

03:08:02PM 13 Q. And when you were at this meeting
03:08:08PM 14 beforehand, were you given any specific
03:08:10PM 15 instructions, like CI instructions of what to do or
03:08:14PM 16 not to do?

03:08:14PM 17 A. I was told not to have any alcohol at
03:08:20PM 18 the bar, not to try any cocaine, and to stay very
03:08:22PM 19 close to the officer.

03:08:24PM 20 Q. And did you end up going to Joe Pasta
03:08:30PM 21 with the female officer that night?

03:08:32PM 22 A. Yes. All the officers sort of -- after
03:08:36PM 23 they searched me, they drove me over and I went in
03:08:38PM 24 with the officer.

03:08:40PM 25 Q. And did the Defendant in this case,

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:08:46PM 1 Dale, did he know that you were coming to Joe
03:08:50PM 2 Pasta?

03:08:50PM 3 A. Yes. I had texted him as Officer Gill
03:08:52PM 4 had instructed me to and made arrangements to meet
03:08:56PM 5 him there.

03:08:58PM 6 Q. What was the purpose of you meeting
03:08:58PM 7 with him?

03:09:00PM 8 A. The purpose of meeting was to get
03:09:04PM 9 cocaine.

03:09:04PM 10 Q. Once you were at Joe Pasta with the
03:09:06PM 11 other female officer, did you make contact with the
03:09:10PM 12 target, with Dale?

03:09:12PM 13 A. Yes. We went into the bar and ordered
03:09:14PM 14 food first and he came over to us after that.

03:09:18PM 15 Q. And when he came over to you, did you
03:09:22PM 16 have a conversation with him? Did you talk to him
03:09:22PM 17 at all?

03:09:24PM 18 A. Yes. He took us out onto the street
03:09:30PM 19 and we talked a little bit outside of the bar.

03:09:32PM 20 Q. Did you introduce the undercover police
03:09:34PM 21 officer to him?

03:09:34PM 22 A. I introduced the officer to Dale.

03:09:36PM 23 Q. And how did you introduce -- did you
03:09:40PM 24 say, hey, this is an undercover police officer?
03:09:40PM 25 How did you introduce her to him?

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:09:42PM 1 A. I introduced her as my friend, said
03:09:48PM 2 that we were going to a friend's birthday, and she
03:09:50PM 3 was coming with me.

03:09:50PM 4 Q. Aside from on the street and at the
03:09:54PM 5 bar, did you talk with or were you present with any
03:09:58PM 6 other conversation with Dale at Joe Pasta? Did you
03:10:04PM 7 go anywhere else besides the bar or the street?

03:10:08PM 8 A. After we were in the street, we went
03:10:10PM 9 back inside and he told us to come into his office
03:10:14PM 10 in the back.

03:10:14PM 11 Q. Who went back into the office?

03:10:16PM 12 A. The officer and I both followed him
03:10:18PM 13 into the office.

03:10:18PM 14 Q. And when you and the officer went to
03:10:22PM 15 the office following him, who else was in the
03:10:24PM 16 office aside from the three of you?

03:10:26PM 17 A. No one was in the office.

03:10:26PM 18 Q. Do you remember if the door was open or
03:10:30PM 19 closed when you were in there talking?

03:10:32PM 20 A. When we were talking, I believe it was
03:10:34PM 21 closed.

03:10:34PM 22 Q. And what happened when you were back in
03:10:36PM 23 that office?

03:10:38PM 24 A. Well, when we went into the office, he
03:10:42PM 25 pointed towards a bag of cocaine that was on the

TAYLOR BOYD - DIRECT EXAM BY MS. LINDER

03:10:44PM 1 ground. I didn't see him put it on the ground, but
03:10:48PM 2 it was obviously placed there.

03:10:50PM 3 Q. And was there other conversation about
03:10:54PM 4 the bag of cocaine when you were back in the
03:10:56PM 5 office?

03:10:58PM 6 A. Yes. He told me that he wanted us to
03:11:00PM 7 try or to do the cocaine there and he didn't want
03:11:04PM 8 us to leave with it.

03:11:06PM 9 Q. Why so?

03:11:06PM 10 A. He was talking about going to jail for
03:11:12PM 11 distributing it.

03:11:14PM 12 Q. And when you and the officer eventually
03:11:18PM 13 left the office area, did you guys leave with the
03:11:22PM 14 cocaine when you left the office?

03:11:24PM 15 A. No. We left the office without the
03:11:26PM 16 cocaine and we went back to the bar.

03:11:28PM 17 Q. Why did you go back to sit at the bar?

03:11:32PM 18 A. Dale instructed us to go sit at the
03:11:34PM 19 bar.

03:11:36PM 20 Q. And when you were sitting at the bar,
03:11:38PM 21 did you have any further contact with Dale?

03:11:42PM 22 A. Yeah. He followed us out and then once
03:11:44PM 23 we sat down again, he pointed to the ground and
03:11:46PM 24 there was another bag of cocaine on the ground.

03:11:50PM 25 Q. And did anybody end up getting that bag

TAYLOR BOYD - CROSS EXAM BY MS. GAY

03:11:54PM 1 of cocaine that he pointed out so conveniently?

03:11:56PM 2 A. Yeah, the officer picked it up.

03:11:58PM 3 Q. And after that, what did you and the
03:12:02PM 4 officer do?

03:12:02PM 5 A. After that, we finished our meal and
03:12:04PM 6 left.

03:12:04PM 7 Q. When you left Joe Pasta, did you head
03:12:08PM 8 home or did you have some follow-up work to do?

03:12:12PM 9 A. We were picked up right around the
03:12:14PM 10 corner by Officer Gill and they searched me again
03:12:18PM 11 and made sure I still didn't have anything on me
03:12:20PM 12 and then we talked about it a little bit and I
03:12:24PM 13 wrote a little statement.

03:12:34PM 14 MS. LINDER: All right. I don't have
03:12:34PM 15 any other questions for you. You can answer
03:12:36PM 16 anything that the defense may have.

03:12:38PM 17 THE COURT: Any questions for the
03:12:38PM 18 witness?

03:12:40PM 19 MS. GAY: One moment, Your Honor.

03:12:40PM 20 CROSS-EXAMINATION

03:12:40PM 21 BY MS. GAY:

03:13:08PM 22 Q. Hi there. How are you?

03:13:10PM 23 A. I'm okay. Thanks.

03:13:12PM 24 Q. Taylor, my name is Melissa Gay. I
03:13:14PM 25 represent Mr. Gould. I know this has to be an

TAYLOR BOYD - CROSS EXAM BY MS. GAY

03:13:16PM 1 uncomfortable situation for you. Certainly when
03:13:18PM 2 they tell you to act as a confidential informant,
03:13:22PM 3 the word confidential is in there and you may not
03:13:26PM 4 have believed that at some point in time you would
03:13:26PM 5 have to come to court and testify; isn't that true?

03:13:30PM 6 A. Correct.

03:13:30PM 7 Q. But you're here. And you said that --
03:13:32PM 8 was there any point where they gave you any money?

03:13:38PM 9 A. Any money?

03:13:38PM 10 Q. On the night that this was supposed to
03:13:42PM 11 have happened, did they give you cash?

03:13:44PM 12 A. No.

03:13:44PM 13 Q. So you didn't have any money to
03:13:44PM 14 purchase any type of cocaine?

03:13:48PM 15 A. No.

03:13:48PM 16 Q. And I believe you testified that you
03:13:52PM 17 had a minor in possession of alcohol charge and
03:13:54PM 18 that ultimately that charge went away?

03:13:56PM 19 A. Yes.

03:13:56PM 20 Q. It was dismissed. Did you have to
03:13:58PM 21 appear in court?

03:14:00PM 22 A. I did not.

03:14:00PM 23 Q. It just disappeared?

03:14:02PM 24 A. I went to court -- I'm not sure.

03:14:06PM 25 Q. You didn't get convicted?

TAYLOR BOYD - CROSS EXAM BY MS. GAY

03:14:08PM 1 A. No.

03:14:08PM 2 Q. Okay. And you shared with the jury
03:14:12PM 3 today everything that you remember, and I think you
03:14:14PM 4 specifically said that you -- that when you left
03:14:18PM 5 the office area, that there was no cocaine in
03:14:22PM 6 either your possession or the officer's possession?

03:14:24PM 7 A. Correct. We were not allowed to carry
03:14:26PM 8 it out ourselves.

03:14:28PM 9 Q. Wasn't -- neither one of you had it in
03:14:32PM 10 your hands?

03:14:32PM 11 A. The officer did have it in her hands
03:14:34PM 12 for awhile and then she gave it back because she
03:14:36PM 13 didn't want to take it in the office.

03:14:38PM 14 Q. I understand. So when you both left
03:14:40PM 15 the office to head out, neither one of you
03:14:44PM 16 possessed any cocaine?

03:14:44PM 17 A. (Shaking head.)

03:14:44PM 18 Q. And at the end when you left the
03:14:48PM 19 restaurant, the undercover officer had some cocaine
03:14:52PM 20 in her hands?

03:14:52PM 21 A. Correct.

03:14:52PM 22 MS. GAY: I have no further questions,
03:14:54PM 23 Your Honor.

03:14:56PM 24 THE COURT: Any redirect?

03:14:58PM 25 MS. LINDER: No redirect, Your Honor.

TAYLOR BOYD - CROSS EXAM BY MS. GAY

03:15:00PM 1 THE COURT: Any objection to the
03:15:00PM 2 witness being excused?
03:15:04PM 3 MS. LINDER: None from the State.
03:15:06PM 4 THE COURT: From the defense?
03:15:06PM 5 MS. GAY: No, ma'am.
03:15:08PM 6 THE COURT: Ma'am, you're excused.
03:15:08PM 7 State may call its next witness.
03:15:16PM 8 MR. SOWARDS: The State calls Patrick
03:15:16PM 9 Gill.
03:15:28PM 10 MS. GAY: Your Honor, may I approach a
03:15:28PM 11 minute?
03:15:30PM 12 THE COURT: You may.
03:15:30PM 13 (Bench conference.)
03:15:52PM 14 PATRICK GILL,
03:15:52PM 15 being first duly sworn, testified as follows:
03:15:58PM 16 THE CLERK: Thank you. Please be
03:15:58PM 17 seated. Please state your first and last name and
03:16:02PM 18 spell your last name.
03:16:04PM 19 THE WITNESS: Patrick Gill, G-I-L-L.
03:16:08PM 20 THE COURT: You may proceed.
03:16:08PM 21 MR. SOWARDS: Thank you.
03:16:10PM 22 THE COURT: You're welcome.
03:16:10PM 23 DIRECT EXAMINATION
03:16:10PM 24 BY MR. SOWARDS:
03:16:14PM 25 Q. What is your current occupation?

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:16:16PM 1 A. I'm a City of Charleston narcotics
03:16:18PM 2 detective.

03:16:18PM 3 Q. And how long have you been with the
03:16:22PM 4 City of Charleston?

03:16:22PM 5 A. For a little over six years now.

03:16:26PM 6 Q. And what exactly are your duties as a
03:16:30PM 7 narcotics investigator for the City of Charleston?

03:16:32PM 8 A. Right now I'm assigned to the special
03:16:34PM 9 investigations unit, so primarily we -- a lot of
03:16:36PM 10 the guys focus on narcotics cases, drug cases
03:16:40PM 11 inside the city, from downtown to West Ashley. We
03:16:44PM 12 also do some vice stuff, to include alcohol,
03:16:48PM 13 alcohol checks, business checks, stuff like that
03:16:50PM 14 around the city for compliance of alcohol, underage
03:16:54PM 15 drinking and we do a lot of surveillance in the
03:16:56PM 16 area.

03:16:56PM 17 Q. What training have you received?

03:17:00PM 18 A. I've been to numerous amounts of
03:17:04PM 19 narcotics training. I believe a good bit of --
03:17:08PM 20 over 100 hours. I've been to undercover classes,
03:17:12PM 21 undercover school, a week-long school in
03:17:16PM 22 Mississippi. I've been to surveillance classes, CI
03:17:20PM 23 management classes, along with a lot of other
03:17:22PM 24 street level interaction classes with -- either
03:17:26PM 25 being street gangs or street surveillance and stuff

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03:17:30PM 1 like that.

03:17:30PM 2 Q. Did you have the occasion to be working
03:17:34PM 3 on October 10, 2013?

03:17:36PM 4 A. I did.

03:17:38PM 5 Q. And what did you do on that day?

03:17:40PM 6 A. I was the case agent on the operation
03:17:42PM 7 at Joe Pasta. I believe it's 438 King, is the
03:17:48PM 8 address. The main operation was to buy -- do a
03:17:52PM 9 buy/walk slash introduction of an undercover to the
03:17:56PM 10 Defendant, Dale Gould.

03:17:56PM 11 Q. You were the case agent?

03:17:58PM 12 A. Yes.

03:17:58PM 13 Q. What exactly does that mean?

03:18:00PM 14 A. Case agent is usually the lead
03:18:04PM 15 detective that starts the investigation, whether
03:18:06PM 16 they got a specific complaint from a citizen, a
03:18:10PM 17 complaint from an informant, a complaint -- it
03:18:14PM 18 could be from -- the complaint could be from
03:18:16PM 19 anybody or something the officers know that drugs
03:18:20PM 20 are being sold or given in a certain area, there's
03:18:24PM 21 a problem area.

03:18:24PM 22 So as a case agent you establish
03:18:26PM 23 surveillance, who the Defendant is, how the
03:18:30PM 24 operation is going to operate, come up with an
03:18:32PM 25 operational plan, how things should operate. It's

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03:18:36PM 1 usually not A, B, C, or D, because sometimes it
03:18:40PM 2 does steer clear -- or steer away from that, but --
03:18:44PM 3 so you do that. You prepare, you get money, you
03:18:48PM 4 get certain copies of statements for -- whether it
03:18:52PM 5 be for an undercover officer or a confidential
03:18:52PM 6 informant.

03:18:56PM 7 You make sure you have the proper
03:18:58PM 8 equipment and that it's working, you wire up the
03:19:02PM 9 undercover and the CI, and usually you search.

03:19:06PM 10 Q. Would it be fair to say that you were
03:19:08PM 11 in charge of this investigation?

03:19:10PM 12 A. Correct.

03:19:10PM 13 Q. Okay. And what happened -- going back
03:19:14PM 14 to that day, October 10th, what happened first?

03:19:20PM 15 A. What happened first is, early in the
03:19:22PM 16 day I made contact with the informant and directed
03:19:24PM 17 her to initiate contact with Dale Gould. At a
03:19:30PM 18 prior briefing with the informant, she said that he
03:19:32PM 19 needed some time, like, we would say, a heads-up
03:19:38PM 20 notice before she -- she couldn't just stop by, but
03:19:42PM 21 as the time went on and we were going to start the
03:19:46PM 22 operation, me and Detective Frederick picked up the
03:19:50PM 23 informant from a location and driven her back to a
03:19:52PM 24 predetermined location.

03:19:54PM 25 Q. And what happened at the predetermined

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:19:56PM 1 lotion?

03:19:58PM 2 A. At the predetermined location -- it's
03:20:02PM 3 usually our entire unit. I don't remember the
03:20:04PM 4 exact names, I would to -- have to look at the
03:20:06PM 5 report to see who exactly was there. I know my
03:20:08PM 6 lieutenant was there, our sergeant was there,
03:20:10PM 7 myself, Detective Mullin, Detective Frederick was
03:20:12PM 8 there, the CI, we had three patrol officers.

03:20:16PM 9 We always have patrol officers because
03:20:18PM 10 some of us look kind of like me -- you try not to
03:20:22PM 11 look like a cop so you can do some surveilling. We
03:20:24PM 12 don't wear uniforms, so we have to have a uniform
03:20:26PM 13 presence. We do bring that, so we had three patrol
03:20:30PM 14 officers in the area just in case.

03:20:32PM 15 Once we got back, I first started with
03:20:34PM 16 searching the CI, making sure she didn't have any
03:20:38PM 17 contraband or any extra money or anything that she
03:20:42PM 18 brought with her.

03:20:42PM 19 Q. What was the result of that search?

03:20:44PM 20 A. She had nothing on her. After the
03:20:46PM 21 search of her, she sat down and I gave my briefing
03:20:50PM 22 of how the operation was going to be.

03:20:52PM 23 Q. Now, you mentioned that there were a
03:20:56PM 24 lot of people present?

03:20:56PM 25 A. Yes.

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:20:56PM 1 Q. Why were so many people present at the
03:21:00PM 2 predetermined location?

03:21:02PM 3 A. It's just how we operate. We usually
03:21:06PM 4 do it for -- mainly for officer safety reason, and
03:21:10PM 5 especially for a confidential informant reason, we
03:21:14PM 6 want to make sure they're all safe, as well as any
03:21:16PM 7 citizens. Drugs is not a -- you know, we're
03:21:18PM 8 talking about -- that could be a serious crime.

03:21:20PM 9 So we know sometimes violence goes with
03:21:24PM 10 drugs and we want to make sure that the officers,
03:21:26PM 11 plus the informant and all the citizens, are safe
03:21:28PM 12 in the area. And we wanted a little bit more
03:21:30PM 13 because we knew that the Defendant, Mr. Gould, was
03:21:32PM 14 going to do the drug deal inside of the business
03:21:34PM 15 and we wanted to make sure that all of the citizens
03:21:36PM 16 inside the business were safe.

03:21:36PM 17 Q. Would it be fair to say that this was a
03:21:40PM 18 typical investigation as far as your preparation
03:21:44PM 19 and --

03:21:46PM 20 A. Yes.

03:21:48PM 21 Q. Now, we've heard some testimony
03:21:50PM 22 regarding listening devices or recording devices.
03:21:54PM 23 Who made the decision to utilize audio-video
03:22:02PM 24 recording devices?

03:22:02PM 25 A. Every operation we do, buy/walk,

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:22:06PM 1 anything we do when we're buying narcotics,
03:22:08PM 2 buy/walk or buy/bust or an introduction like we
03:22:12PM 3 attempted that night, we put a listening device
03:22:16PM 4 either on the informant -- I'm sorry, the
03:22:18PM 5 confidential informant or the undercover officers.

03:22:22PM 6 So it always happens, but I made the
03:22:24PM 7 decision as to what devices we were going to use
03:22:28PM 8 and how we were going to use them.

03:22:28PM 9 Q. What recording device was Detective
03:22:32PM 10 Frederick wearing during the operation?

03:22:34PM 11 A. Detective Frederick had on two devices.
03:22:38PM 12 I wired up her shirt that had -- it's called an
03:22:42PM 13 Occulis, and it's essentially just a camera that we
03:22:44PM 14 put inside her shirt, and it's hidden. I wired
03:22:46PM 15 that up and made sure it was hidden so that you
03:22:48PM 16 could not see it. She later put it on and I also
03:22:52PM 17 gave her what's called a -- it's called a whip
03:22:56PM 18 wire. It's a little box that has a wire, like --
03:23:00PM 19 essentially it looks like a whip wire attached to
03:23:00PM 20 it, so we could hear her. And that's what
03:23:04PM 21 Detective Frederick had, plus her cell phone.

03:23:08PM 22 Q. And the CI?

03:23:08PM 23 A. The CI had what's called -- it's
03:23:12PM 24 equivalent to a jail broken iPhone, if anybody
03:23:18PM 25 knows what that is. We type in a certain code to

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:23:20PM 1 it and it goes into a listening device and a GPS
03:23:24PM 2 location device so we can listen at -- it's like a
03:23:24PM 3 live time audio.

03:23:28PM 4 So as I instructed -- with the live
03:23:30PM 5 time audio, as she was instructed during my
03:23:32PM 6 prebriefing, Detective Frederick could give out
03:23:40PM 7 locations or key points in what's going on. So
03:23:42PM 8 necessarily since we didn't have eyes in there, we
03:23:44PM 9 could at least hear her voice and what part of the
03:23:48PM 10 operation was going at what time.

03:23:48PM 11 Q. Why did you choose to have Detective
03:23:52PM 12 Frederick wear an audio and video listening device
03:23:56PM 13 and have the CI only have audio?

03:24:00PM 14 A. I knew -- during my briefing I knew
03:24:04PM 15 that Detective -- I directed Detective Frederick to
03:24:06PM 16 not leave the CI's side. There was no need for two
03:24:10PM 17 devices for video. The little whip antenna is not
03:24:20PM 18 always 100 percent. Sometimes it goes in and out
03:24:22PM 19 with static, so we knew that the CI would be with
03:24:22PM 20 her.

03:24:22PM 21 Instead of having Detective Frederick
03:24:22PM 22 with multiple devices on her person or in her
03:24:28PM 23 purse, I at least gave something to the informant.
03:24:32PM 24 And during that operation, as I directed the CI,
03:24:36PM 25 the main goal was that we would have a long-term

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:24:38PM 1 investigation and we would introduce Detective
03:24:42PM 2 Frederick into -- to Mr. Gould instead of always
03:24:46PM 3 having the CI there for further purchases.

03:24:50PM 4 Q. Now, we saw in the video at the outset
03:24:54PM 5 they're walking up the street getting ready to go
03:24:56PM 6 into the restaurant. Where are you at this point?

03:25:00PM 7 A. As they were walking up the street, I'd
03:25:04PM 8 actually just left them off. I don't know if
03:25:08PM 9 anybody is familiar with John Street, but the bus
03:25:08PM 10 barn is right there along with the Children's
03:25:14PM 11 Museum and I believe it's that old train station.
03:25:14PM 12 Right there is where I dropped them off. I left
03:25:18PM 13 Detective Frederick and the CI out with another
03:25:20PM 14 detective. I had Detective Munn with me.

03:25:24PM 15 As soon as we -- as soon as they got
03:25:24PM 16 away from the car, we drove off and I actually sat
03:25:28PM 17 at the Holiday Inn parking lot -- I think it's the
03:25:32PM 18 Holiday Inn or the Hampton Inn. It's that hotel
03:25:34PM 19 right there on John Street, but we had other
03:25:34PM 20 detectives in the area to always have a visual on
03:25:38PM 21 both the CI and the officer.

03:25:38PM 22 Q. And to the best of your recollection,
03:25:44PM 23 where were they?

03:25:44PM 24 A. The other detectives?

03:25:46PM 25 Q. Right.

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:25:46PM 1 A. One detective was on John Street
03:25:52PM 2 slightly behind Joe Pasta, one was across John
03:26:00PM 3 Street diagonally away from Joe Pasta. Is that
03:26:02PM 4 Radcliffe I believe? Doesn't John turn into
03:26:06PM 5 Radcliffe? I don't remember the street name, but
03:26:08PM 6 he could see into the windows. We had patrol
03:26:10PM 7 inside of the bus barn. I was sitting at the hotel
03:26:14PM 8 and I believe one or two other detectives were just
03:26:16PM 9 roving the -- this block radius.

03:26:18PM 10 Q. Now, were you able to monitor the
03:26:24PM 11 operation in real time?

03:26:24PM 12 A. I did. The one device we gave the
03:26:28PM 13 confidential informant is -- like I said, it's
03:26:30PM 14 equivalent to a jail broken iPhone. When we put in
03:26:34PM 15 that code, we have applications on our Smart phones
03:26:38PM 16 that we can listen real time. And again, because
03:26:40PM 17 it's real time, that's why we instructed Detective
03:26:44PM 18 Frederick to kind of let us know how it was going
03:26:46PM 19 on and where she was.

03:26:48PM 20 She could communicate with us, but we
03:26:52PM 21 couldn't communicate with her except for via cell
03:26:54PM 22 phone.

03:26:54PM 23 Q. Was there a time during the operation
03:26:58PM 24 when you lost contact?

03:27:00PM 25 A. There was no time that I lost contact.

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:27:04PM 1 If I needed to speak to Detective Frederick during
03:27:08PM 2 that operation, I would call her on her cell phone
03:27:10PM 3 and she would answer. If she needed to relay
03:27:14PM 4 something to me, she would relay it, because we
03:27:18PM 5 could just hear her.

03:27:20PM 6 Q. And who again sort of orchestrated or
03:27:24PM 7 arranged the meeting with Mr. Gould?

03:27:28PM 8 A. The confidential informant.

03:27:30PM 9 Q. Now, what happened after Detective
03:27:38PM 10 Frederick and the confidential informant left Joe
03:27:42PM 11 Pasta?

03:27:42PM 12 A. Once they left Joe Pasta, she advised
03:27:44PM 13 us that she was walking -- that she was leaving.
03:27:48PM 14 Again, we kind of backed out of there, we had other
03:27:50PM 15 detectives watching her. She crossed the street,
03:27:54PM 16 and as she crossed the street, I pulled up next to
03:27:56PM 17 her, pulled into a driveway and she got into the
03:28:00PM 18 car with -- Detective Frederick and the CI got into
03:28:06PM 19 the car with myself and Detective Munn. We drove
03:28:06PM 20 back to the predetermined location.

03:28:08PM 21 Once we got back to the predetermined
03:28:10PM 22 location, I took possession of the cocaine,
03:28:12PM 23 searched the CI again, the CI wrote a statement, we
03:28:16PM 24 debriefed Detective Frederick and we debriefed all
03:28:20PM 25 of the officers that were involved.

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:28:22PM 1 Q. Now, who gave you the baggie?

03:28:26PM 2 A. Detective Frederick.

03:28:30PM 3 MR. SOWARDS: Okay. May I approach,

03:28:32PM 4 Your Honor?

03:28:32PM 5 THE COURT: Yes.

03:28:32PM 6 BY MR. SOWARDS:

03:28:34PM 7 Q. I would like to hand you what's been

03:28:36PM 8 marked as State's Exhibit 2. Do you recognize

03:28:38PM 9 that?

03:28:38PM 10 A. I do.

03:28:40PM 11 Q. And what is that?

03:28:40PM 12 A. This is the --

03:28:44PM 13 Q. Let me ask you first, how do you

03:28:46PM 14 recognize it?

03:28:46PM 15 A. This is -- I know this is what I put

03:28:48PM 16 into evidence that night and that's what the -- it

03:28:50PM 17 looks like the bag that I sealed, and my initials,

03:28:54PM 18 that Detective Frederick gave me after she -- they

03:28:56PM 19 completed the operation at Joe Pasta.

03:28:56PM 20 Q. And to the best of your knowledge, what

03:29:00PM 21 is that?

03:29:00PM 22 A. Through my training and experience, it

03:29:04PM 23 would be cocaine.

03:29:04PM 24 Q. And just tell me, where did you receive

03:29:06PM 25 that?

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:29:08PM 1 A. Received the cocaine or --

03:29:10PM 2 Q. Right.

03:29:10PM 3 A. I received the cocaine after the
03:29:12PM 4 operation from Detective Frederick.

03:29:16PM 5 Q. And what happened after that?

03:29:18PM 6 A. After?

03:29:20PM 7 Q. Who maintained control of it after it
03:29:24PM 8 was handed off to you?

03:29:24PM 9 A. Once Detective Frederick left that
03:29:28PM 10 location, I picked her up, brought her back and
03:29:30PM 11 took control of the cocaine, field-tested it. Once
03:29:34PM 12 you field-tested it, we go into our computer
03:29:38PM 13 system, we log it into evidence, we put it in a
03:29:40PM 14 bag, put a sticker on it with a case number, and we
03:29:44PM 15 put it in either a mailbox or a lockbox that only
03:29:46PM 16 the evidence custodian has a key to.

03:29:48PM 17 Q. That was a lot of things, so I would
03:29:50PM 18 break that out just a little bit. You said
03:29:52PM 19 field-tested. What does that mean?

03:29:54PM 20 A. Our lab division gives us -- it's
03:29:58PM 21 different -- for different drugs it's different
03:30:02PM 22 chemical makeups of testing kits that we can test
03:30:06PM 23 different drugs with. We can test marijuana,
03:30:10PM 24 cocaine, heroin, crack.

03:30:12PM 25 For this we used a cocaine test kit.

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:30:14PM 1 We take a little piece of it and put it on a piece
03:30:18PM 2 of paper, test it. If it tests positive or it
03:30:20PM 3 tests negative, it will turn color. For instance,
03:30:24PM 4 in this test kit, the test dye is red. And if it
03:30:28PM 5 tests positive, it turns blue, which it did turn
03:30:28PM 6 blue.

03:30:28PM 7 We throw that away, because once it's
03:30:32PM 8 in the test kit, it destroys the evidence, and then
03:30:34PM 9 we put the rest into actual evidence.

03:30:36PM 10 Q. And what happened after that? Where
03:30:38PM 11 did you take the item that was recovered?

03:30:40PM 12 A. I took it back to -- I took it back to
03:30:44PM 13 the station and logged it into our computer system,
03:30:46PM 14 sealed it in the bag, and put it into our evidence
03:30:52PM 15 locker area.

03:30:52PM 16 Q. What is the evidence locker area?

03:30:54PM 17 A. At the end of the hallway, there is
03:30:58PM 18 mailboxes and little locker boxes that you can lock
03:30:58PM 19 and the mailbox is locked. And you store it there
03:31:02PM 20 until the evidence custodian comes in the next day
03:31:06PM 21 and retrieves it.

03:31:08PM 22 Q. Who had sole care, custody, and control
03:31:10PM 23 of the drugs from the time Detective Frederick
03:31:14PM 24 passed them off to you until they were dropped off
03:31:18PM 25 into evidence?

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:31:18PM 1 A. I did.

03:31:34PM 2 MR. SOWARDS: Beg the Court's
03:31:34PM 3 indulgence.

03:31:34PM 4 THE COURT: Uh-huh.

03:31:36PM 5 BY MR. SOWARDS:

03:31:42PM 6 Q. There was previously some mention of
03:31:46PM 7 prerecorded funds. What are prerecorded funds?

03:31:48PM 8 A. Prerecorded funds are just that. What
03:31:52PM 9 we do, any operation that we do in narcotics or
03:31:56PM 10 even vice in our unit, we have a specific fund, our
03:32:02PM 11 narcotics fund, that we can sign out money via our
03:32:06PM 12 lieutenant or via our sergeant. We sign for the
03:32:08PM 13 money, we usually photograph it, it becomes a part
03:32:12PM 14 of our case evidence, and we bring that to the buy.

03:32:14PM 15 For this particular operation, I --
03:32:16PM 16 because it was supposed to be an introduction for
03:32:20PM 17 Detective Frederick and she was going to be the
03:32:22PM 18 main buyer in this scene with the Defendant, I gave
03:32:28PM 19 the prerecorded money to Detective Frederick.

03:32:30PM 20 Q. Do you recall how much money you gave?

03:32:32PM 21 A. I believe it was a total of \$100, 60
03:32:36PM 22 for purchasing the illegal narcotics and whatever
03:32:42PM 23 was left over -- well, approximately \$60, and
03:32:44PM 24 whatever she had left was either to -- essentially,
03:32:48PM 25 to fit in, to her because we knew it was in a

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:32:50PM 1 business and she would have to spend money while
03:32:54PM 2 she was in there. It was approximately \$40 to buy
03:32:56PM 3 whatever she needed to buy.

03:33:00PM 4 Q. And what happened to those funds; do
03:33:00PM 5 you know?

03:33:00PM 6 A. I don't recall what she spent on the
03:33:04PM 7 food and the diet soda I think she got, I'm not
03:33:06PM 8 sure what she drank, but I believe she brought out
03:33:12PM 9 a receipt. We recorded that into our narcotics
03:33:18PM 10 fund, the money that she spent, because it was
03:33:20PM 11 given to her for free. We just returned the money
03:33:24PM 12 back into the narcotics fund.

03:33:26PM 13 Q. Now, who was in charge of the CI in
03:33:32PM 14 this case, as far as from your office?

03:33:34PM 15 A. I'm in charge of the CI. It was my
03:33:36PM 16 informant.

03:33:36PM 17 Q. And why was she a CI?

03:33:40PM 18 A. She got caught with minor possession --
03:33:48PM 19 or -- yeah, minor possession. During the ticket
03:33:52PM 20 writing process, she advised me that she knew
03:33:56PM 21 somebody that was selling illegal narcotics out of
03:34:02PM 22 Joe Pasta and that she was willing to cooperate.
03:34:04PM 23 So we started the process to do that. Because it
03:34:10PM 24 was such a minor charge, she was paid also.

03:34:12PM 25 Q. How much was she paid?

PATRICK GILL - DIRECT EXAM BY MR. SOWARDS

03:34:14PM 1 A. I believe \$100.

03:34:14PM 2 Q. Do you know what happened to that minor
03:34:18PM 3 possession charge after the operation was
03:34:20PM 4 concluded?

03:34:20PM 5 A. For awhile we continued it, it being an
03:34:26PM 6 admissible charge. We eventually had to dismiss
03:34:26PM 7 it. The municipal courts wanted to get it off
03:34:32PM 8 their dockets, and I believe it was continued for
03:34:34PM 9 almost a year before the Courts wanted it off their
03:34:38PM 10 docket. We had to end up null processing or
03:34:40PM 11 dismissing it.

03:34:40PM 12 Q. When you say we, who do you mean?

03:34:42PM 13 A. Myself. I talked to my supervisor and
03:34:44PM 14 I believe the attorney that was sitting there was
03:34:50PM 15 Mark Burdine.

03:34:50PM 16 Q. And what happened to the charge?

03:34:50PM 17 A. We dismissed it.

03:34:52PM 18 MR. SOWARDS: Okay. No further
03:35:04PM 19 questions. Please answer any questions that the
03:35:06PM 20 Defendant may have.

03:35:06PM 21 THE COURT: Any questions for the
03:35:08PM 22 witness?

03:35:08PM 23 MS. GAY: Yes, ma'am.

03:35:08PM 24 THE COURT: You may proceed.

03:35:08PM 25 CROSS-EXAMINATION

PATRICK GILL - CROSS EXAM BY MS. GAY

03:35:08PM 1 BY MS. GAY:

03:35:24PM 2 Q. Hello. How are you? As I said, I'm
03:35:28PM 3 Melissa Gay, I represent Mr. Gould, and I have a
03:35:28PM 4 couple of questions for you.

03:35:32PM 5 Let's go from kind of the back or end
03:35:34PM 6 of it to the front. He had you testify that you
03:35:38PM 7 were the only person who touched or had any control
03:35:42PM 8 over the drugs after the time that Frederick, who
03:35:46PM 9 is the young lady that we -- first testified who
03:35:50PM 10 showed us the video --

03:35:52PM 11 A. Yes, ma'am.

03:35:52PM 12 Q. -- picked it up and brought it to you.
03:35:54PM 13 And as far as that goes, you don't have any
03:35:58PM 14 testimony to present to this jury today about where
03:36:00PM 15 those drugs -- any personal individual, in your own
03:36:04PM 16 knowledge, testimony about where the drugs actually
03:36:08PM 17 came from, in your personal testimony?

03:36:14PM 18 Let me rephrase it. Those drugs, that
03:36:16PM 19 package was given to you from her?

03:36:18PM 20 A. Detective Frederick?

03:36:20PM 21 Q. Yes.

03:36:20PM 22 A. Yes, ma'am.

03:36:20PM 23 Q. And what -- how they became in her
03:36:24PM 24 possession, you don't have any evidence or
03:36:26PM 25 testimony to present to this jury today that's your

PATRICK GILL - CROSS EXAM BY MS. GAY

03:36:30PM 1 own personal knowledge?

03:36:30PM 2 A. No, ma'am, I wasn't there.

03:36:32PM 3 Q. Okay. And so when you're talking about
03:36:36PM 4 having the drugs and putting them in the evidence
03:36:38PM 5 locker -- may I see the package?

03:36:40PM 6 A. Yes, ma'am.

03:36:42PM 7 Q. Thank you. This label on here, this is
03:36:48PM 8 generated by you?

03:36:48PM 9 A. No, ma'am. You go inside, this label
03:36:52PM 10 right here, (indicating) is generated by me. We
03:36:56PM 11 seal both ends of it and we put our initials on it,
03:37:00PM 12 we put the case number of the operation, of what
03:37:02PM 13 happened, what was the offense, my name, since I
03:37:06PM 14 submitted it. This is the first evidence that --
03:37:08PM 15 if you had multiple evidence, you would have
03:37:10PM 16 different numbers.

03:37:12PM 17 Once it's submitted into Evidence, they
03:37:14PM 18 do their process and they create that label.

03:37:18PM 19 Q. Okay. On this particular document
03:37:20PM 20 thing that you created, it's signed by you, it has
03:37:22PM 21 Charleston Police Department evidence, a case
03:37:26PM 22 number, 13-164, looks like three-something, badge
03:37:32PM 23 1, item 1, offense narcotics, submitted by P. Gill.
03:37:36PM 24 Is there a date on this?

03:37:38PM 25 A. No, ma'am. In the computer system

PATRICK GILL - CROSS EXAM BY MS. GAY

03:37:40PM 1 there is a date.

03:37:40PM 2 Q. Okay. Is there a document that's
03:37:44PM 3 created in your computer system that tracks that?

03:37:46PM 4 A. Yes, ma'am.

03:37:46PM 5 Q. Okay. So when you do your paperwork,
03:37:50PM 6 you create a docket that talks about what date you
03:37:52PM 7 put this in the evidence locker?

03:37:56PM 8 A. Yes, ma'am.

03:37:56PM 9 Q. Okay. And this you say is the piece of
03:38:00PM 10 paper that was generated by Evidence, you believe?

03:38:02PM 11 A. Again, ma'am, I can't attest as to
03:38:04PM 12 where that sticker comes from. Evidence kind of,
03:38:08PM 13 for lack of a better word, does their own thing.
03:38:14PM 14 When it's submitted, they send it off to labs, or
03:38:14PM 15 whatever they have to do, they properly document
03:38:14PM 16 it.

03:38:18PM 17 Once we submit the evidence, I don't
03:38:20PM 18 know how they label it in their own way. We label
03:38:24PM 19 one way, we create a document on their evidence
03:38:24PM 20 voucher in our module, and then Evidence has their
03:38:26PM 21 own set of protocols and procedures they have to
03:38:30PM 22 follow. I can't testify to say 100 percent that's
03:38:34PM 23 what Evidence put and that's why they put it. I
03:38:38PM 24 can't answer that, ma'am.

03:38:38PM 25 Q. So when you go into your computer and

PATRICK GILL - CROSS EXAM BY MS. GAY

03:38:40PM 1 you type in stuff, you're sending that stuff to
03:38:44PM 2 Evidence, this document that you're creating on
03:38:48PM 3 your computer? You're sending it -- the person
03:38:48PM 4 who is going to retrieve that document is Evidence?

03:38:50PM 5 A. Well, it's a computer system. I mean,
03:38:52PM 6 it's called a -- short term, it's called RMS. I
03:38:56PM 7 don't know what it stands for. I didn't create it,
03:39:00PM 8 we just use it. They have a bunch of different
03:39:06PM 9 modulars. We can look up reports, we can look up
03:39:08PM 10 bicycle registration, vehicles, people.

03:39:12PM 11 Q. It's a database?

03:39:12PM 12 A. Database. And one of the modulars you
03:39:14PM 13 can select is called an evidence module. You put
03:39:16PM 14 your case number in, you put where it was -- where
03:39:20PM 15 it was seized from, your name or case agent name,
03:39:24PM 16 what time -- the date and time it was seized, date
03:39:28PM 17 and time you're storing it, date and time --
03:39:30PM 18 there's another date and time, what the offense
03:39:34PM 19 code was, you save that, you go into property.

03:39:36PM 20 Again, you know, I put 1 of 1, on
03:39:40PM 21 there, put 1 of 1 again in the computer system.
03:39:40PM 22 You label it if it's drugs, weapons, paper.
03:39:46PM 23 Whatever the evidence is, you label it. You put
03:39:50PM 24 cocaine base. You can justify it -- how much --
03:39:52PM 25 you know, you can -- sometimes you can give

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03:39:54PM 1 estimates. It has a bunch of other different
03:39:58PM 2 databases, little fields that you can click. Some
03:40:00PM 3 pertain to drugs, some do not.

03:40:00PM 4 They ask you if it's drug tested. Then
03:40:06PM 5 you're asked specifically if you want the lab to
03:40:06PM 6 drug test it. It says, lab request. You put a
03:40:08PM 7 little paragraph in there of what you're
03:40:10PM 8 submitting. You don't have to, but sometimes you
03:40:12PM 9 put the owner of who it was exactly seized from.
03:40:16PM 10 In drug cases you usually don't, because usually
03:40:20PM 11 it's taken from an informant or undercover officer.

03:40:22PM 12 Q. And then when you push the button, it
03:40:24PM 13 saves --

03:40:24PM 14 A. It saves into the database and then
03:40:28PM 15 Evidence can access it through their system. I've
03:40:32PM 16 never done their system. I'm not an evidence
03:40:34PM 17 custodian so I don't know that.

03:40:34PM 18 Q. I understand. And your testimony was,
03:40:38PM 19 as I said, was sort of starting this way and now
03:40:40PM 20 you've put the drugs off into -- the alleged drugs
03:40:44PM 21 off into something that's evidence that you no
03:40:46PM 22 longer can have -- touch it. Coming back a little
03:40:50PM 23 further before that, the Solicitor asked you some
03:40:54PM 24 specific questions about the money that was given
03:40:58PM 25 to the undercover agent. And do you -- you said

PATRICK GILL - CROSS EXAM BY MS. GAY

03:41:00PM 1 that it was \$100.

03:41:02PM 2 A. I said I believe it was \$100.

03:41:04PM 3 Q. If I show you a document just for the
03:41:06PM 4 purpose of refreshing your recollection, could you
03:41:10PM 5 tell me what you think this might be?

03:41:24PM 6 A. This is -- yep.

03:41:26PM 7 Q. And so \$100 was given to her. When she
03:41:28PM 8 brought back the receipt, did she also have the
03:41:32PM 9 balance of the \$100 that she gave back to you?

03:41:36PM 10 A. I would have to read her report. One
03:41:38PM 11 hundred percent I don't know. Her -- her giving me
03:41:42PM 12 a balance of her receipt for paying for food wasn't
03:41:46PM 13 case sensitive. We did a voucher for it. It's
03:41:50PM 14 documented in our books, saying that she spent that
03:41:52PM 15 much -- or the detective spent that much money; it
03:41:56PM 16 wasn't case sensitive. It had nothing to do with
03:41:58PM 17 the drugs or the operation.

03:42:00PM 18 Q. It would have been case sensitive if
03:42:02PM 19 she didn't tell you that she paid \$60 for the
03:42:06PM 20 drugs. In this file, as you -- since you're the
03:42:08PM 21 lead detective, there was no indication that there
03:42:12PM 22 was any money paid for drugs in this case?

03:42:14PM 23 A. Correct, ma'am.

03:42:16PM 24 Q. So when she handed you the money back,
03:42:18PM 25 which you said it came with a receipt for some

PATRICK GILL - CROSS EXAM BY MS. GAY

03:42:22PM 1 food, whatever that money was, \$100 minus the food,
03:42:24PM 2 she gave it all back to you?

03:42:28PM 3 A. Yes, ma'am. Once when she came back --
03:42:28PM 4 after our debriefing, I collected the money back
03:42:32PM 5 from Detective Frederick, she gave me the receipt.
03:42:34PM 6 I created a voucher for our purposes of what she
03:42:42PM 7 spent that day and then put the rest of the money
03:42:44PM 8 she had back into the narcotics fund.

03:42:44PM 9 Q. Which would have been at least 60-plus
03:42:48PM 10 dollars? You said you felt she spent about \$40.

03:42:50PM 11 A. No, I don't believe she spent \$40 on
03:42:54PM 12 food, ma'am. I think she had \$40 set aside to
03:42:56PM 13 spend on whatever she needed. We didn't know how
03:42:58PM 14 long the operation was going to take. We didn't
03:43:02PM 15 know if she was going to be in there for a couple
03:43:02PM 16 of hours or ten minutes.

03:43:04PM 17 Sometimes there's no way -- we can't
03:43:08PM 18 tell our target to show up at a certain time. The
03:43:08PM 19 target kind of decides when he's going to show up
03:43:10PM 20 and when the drugs are going to be introduced.

03:43:10PM 21 Q. I understand that, sir. But there's no
03:43:16PM 22 indication in this file that any City funds went to
03:43:20PM 23 Mr. Gould?

03:43:22PM 24 A. Correct.

03:43:22PM 25 Q. And in your investigation, I believe

PATRICK GILL - CROSS EXAM BY MS. GAY

03:43:24PM 1 you said that that was -- you actually described it
03:43:28PM 2 as an opportunity for the undercover to meet Mr.
03:43:30PM 3 Gould. There was an occasion several days later
03:43:34PM 4 where drugs were found at Joe Pasta unrelated to
03:43:36PM 5 this arrest; isn't that true?

03:43:38PM 6 A. No, ma'am, there was drugs found, but
03:43:42PM 7 it was related to this arrest.

03:43:44PM 8 Q. Okay. Well, I'm holding a search
03:43:46PM 9 warrant.

03:43:46PM 10 A. Yes, ma'am.

03:43:48PM 11 Q. And I think on the 17th -- this
03:43:50PM 12 incident we decided was done on -- was originally
03:43:52PM 13 done on October 11th, 2013. That's when the video
03:43:56PM 14 was done; that's when Ms. Taylor and the undercover
03:44:02PM 15 officer went to Joe Pasta. That was the 11th of
03:44:06PM 16 October, right?

03:44:06PM 17 A. I believe so, ma'am.

03:44:06PM 18 Q. Okay. Now, the search warrant that I
03:44:10PM 19 have was actually executed on the 17th of October.

03:44:12PM 20 A. Yes, ma'am.

03:44:12PM 21 Q. Do you need to look at it to refresh
03:44:16PM 22 your recollection? It's part of your file.

03:44:16PM 23 A. I do know what you're talking about,
03:44:18PM 24 yes, ma'am.

03:44:18PM 25 Q. And so that particular -- you're still

PATRICK GILL - CROSS EXAM BY MS. GAY

03:44:22PM 1 the lead detective of all this stuff that was going
03:44:24PM 2 on and I know you were either present or involved
03:44:26PM 3 with this search warrant on the 17th of October.

03:44:28PM 4 A. Yes.

03:44:30PM 5 Q. So you were aware that pursuant to this
03:44:32PM 6 search warrant that happened, you know, six days
03:44:34PM 7 later, that some amount of drugs, cocaine, was
03:44:38PM 8 found on the ground in Joe Pasta on that day, the
03:44:42PM 9 17th of October?

03:44:46PM 10 A. Yes, ma'am, the drugs were hidden. It
03:44:48PM 11 wasn't just laying out in plain view, yes, ma'am.

03:44:50PM 12 Q. Okay. That's fine. They were -- I
03:44:50PM 13 guess what I'm saying is, my client isn't being
03:44:54PM 14 charged with drugs that were found on the ground or
03:44:56PM 15 somewhere in Joe Pasta on October 17th?

03:45:00PM 16 A. Correct, ma'am.

03:45:02PM 17 MS. GAY: One moment, please, Your
03:45:02PM 18 Honor.

03:45:02PM 19 THE COURT: Uh-huh.

03:45:04PM 20 BY MS. GAY:

03:45:30PM 21 Q. You mentioned on direct testimony,
03:45:32PM 22 during the course of the situation, there were
03:45:34PM 23 people -- several people, other detectives other
03:45:36PM 24 than you, sort of milling around in the area of
03:45:40PM 25 John Street. And I think this was on King Street?

PATRICK GILL - CROSS EXAM BY MS. GAY

03:45:42PM 1 A. Yes, ma'am, it was on King Street.

03:45:44PM 2 Q. So how many would you say? Three?

03:45:46PM 3 Five? A ballpark would be fine.

03:45:54PM 4 A. Six to eight, no more.

03:45:56PM 5 Q. Six to eight. And you said at one

03:45:58PM 6 point that you had people walking by, looking in

03:46:02PM 7 the windows, just to -- you were keeping the CI and

03:46:06PM 8 undercover officer in sight?

03:46:08PM 9 A. No, ma'am. Nobody was out of their

03:46:10PM 10 vehicles. Different training and experience that

03:46:14PM 11 we've learned to kind of -- once a UC is out of a

03:46:18PM 12 car and during an operation, as long as she or he

03:46:22PM 13 feels safe, we don't necessarily crowd them with

03:46:24PM 14 officers. We kind of stay in the shadows, for lack

03:46:28PM 15 of a better term. We had a car parked across the

03:46:32PM 16 street that could see. We always had eye contact

03:46:34PM 17 either with -- except for while she was in the

03:46:38PM 18 restaurant before she went into the back, where --

03:46:38PM 19 we could always see her visually, her or the CI.

03:46:40PM 20 We didn't have people right on top of her, no,

03:46:42PM 21 ma'am.

03:46:42PM 22 Q. I understand. So during the period --

03:46:44PM 23 obviously there was nothing that they could see

03:46:48PM 24 while they were back in the office with the door

03:46:48PM 25 shut?

PATRICK GILL - CROSS EXAM BY MS. GAY

03:46:48PM 1 A. Yes, ma'am.

03:46:50PM 2 Q. During the period she was in the bar
03:46:52PM 3 area, there's some way for somebody to sort of see
03:46:56PM 4 through the windows, because Joe Pasta has big
03:46:56PM 5 windows, and kind of make contact?

03:46:58PM 6 A. Yes, ma'am.

03:46:58PM 7 MS. GAY: I have no further questions.

03:47:00PM 8 THE COURT: Any redirect?

03:47:06PM 9 MR. SOWARDS: Nothing further, Your
03:47:06PM 10 Honor.

03:47:06PM 11 THE COURT: Any objection to the
03:47:08PM 12 witness being excused from the State?

03:47:10PM 13 MR. SOWARDS: None from the State.

03:47:12PM 14 THE COURT: From the defense?

03:47:14PM 15 MS. GAY: No, Your Honor.

03:47:14PM 16 THE COURT: Sir, you're excused.

03:47:26PM 17 Madame Forelady, ladies and gentlemen,
03:47:28PM 18 we will take an advantage of this break in
03:47:30PM 19 testimony. During the break, please do not discuss
03:47:32PM 20 this case and please leave your notepads in your
03:47:36PM 21 seat.

03:47:38PM 22 (Jury out, 3:47 p.m.)

03:47:38PM 23 THE COURT: Who is the State's next
03:48:12PM 24 witness?

03:48:12PM 25 MS. LINDER: The State's next witness,

03:48:14PM 1 Your Honor, is Linda Wilson.

03:48:14PM 2 THE COURT: And then?

03:48:16PM 3 MS. LINDER: Your Honor, we have three
03:48:16PM 4 witnesses left, the evidence custodian, merely
03:48:18PM 5 saying, I got it; the courier that drives it to the
03:48:24PM 6 lab --

03:48:24PM 7 THE COURT: You have three total?

03:48:24PM 8 MS. LINDER: Yes, three total. I would
03:48:26PM 9 say, max, half hour total for all of them.

03:48:28PM 10 THE COURT: Okay. Sir, if you would,
03:48:30PM 11 stand for me and raise your right-hand to be sworn?

03:48:34PM 12 THE DEFENDANT: Me?

03:48:34PM 13 THE COURT: Yes, sir.

03:48:34PM 14 THE DEFENDANT: Yes.

03:48:36PM 15 DALE GOULD,
03:48:36PM 16 being first duly sworn, testified as follows:

03:48:36PM 17 THE DEFENDANT: Yes.

03:48:40PM 18 THE COURT: You can put your right hand
03:48:42PM 19 down. Please state your full name for the record.

03:48:44PM 20 THE DEFENDANT: Dale Gould.

03:48:46PM 21 THE COURT: Bear with me one second,
03:48:48PM 22 Mr. Gould.

03:48:50PM 23 Other than the fraudulent check
03:48:54PM 24 offenses that have been mentioned by the State, is
03:48:56PM 25 there any other record the State would be seeking

03:49:00PM 1 to use to impeach the Defendant's credibility?

03:49:02PM 2 MS. LINDER: Your Honor, nothing under
03:49:02PM 3 the Rules for impeachment purposes, Your Honor,
03:49:06PM 4 unless he, of course, opens the door about prior
03:49:08PM 5 drugs.

03:49:08PM 6 THE COURT: Sir, we have not actually
03:49:10PM 7 yet reached this point in the trial, but I
03:49:12PM 8 anticipate we will reach it very quickly so I'm
03:49:16PM 9 going to advise you of your rights so you can begin
03:49:20PM 10 to have the conversation with your attorney so we
03:49:20PM 11 don't have to take a lengthy break when the State
03:49:24PM 12 does rest. I anticipate that will probably be
03:49:26PM 13 within 30 minutes of us resuming after this break.

03:49:32PM 14 As I've already explained, we will soon
03:49:34PM 15 reach the stage where the State will rest and you
03:49:36PM 16 will have the opportunity to present anything that
03:49:38PM 17 you would like to present in your defense. You
03:49:42PM 18 have the right to claim protections given to you by
03:49:44PM 19 the Fifth Amendment to the Constitution of the
03:49:48PM 20 United States and that Amendment reads in part: No
03:49:50PM 21 person shall be compelled in any criminal case to
03:49:52PM 22 be a witness against himself.

03:49:54PM 23 This means that you cannot be required
03:49:56PM 24 to testify in this case. You have the right to
03:49:58PM 25 testify; however, no one can make you testify.

03:50:02PM 1 This is a personal right and no one can waive that
03:50:06PM 2 right except you. If you decide to testify, you
03:50:08PM 3 will be subject to the same rules that govern other
03:50:10PM 4 witnesses and you may be examined and
03:50:14PM 5 cross-examined on any relevant issue in this case.

03:50:18PM 6 In addition, if you have any
03:50:18PM 7 convictions involving dishonesty or crimes
03:50:20PM 8 punishable by imprisonment for more than one year
03:50:24PM 9 and this Court determines that the probative value
03:50:28PM 10 of admitting this evidence outweighs the
03:50:28PM 11 prejudicial effect to you, the Solicitor will be
03:50:30PM 12 able to attack your record to -- will be able to
03:50:34PM 13 use your record to attack your credibility.

03:50:36PM 14 And I will advise you in advance that
03:50:38PM 15 the State has indicated to me that you have -- bear
03:50:44PM 16 with me one second -- that you have five counts of
03:50:54PM 17 fraudulent checks from 2009. Under our Rules, they
03:50:58PM 18 can use these offences to attack your credibility,
03:51:00PM 19 because they involve what are considered crimes of
03:51:04PM 20 dishonesty, which would bear on your credibility.

03:51:08PM 21 If you decide to testify, this decision
03:51:08PM 22 on your part must be made freely, voluntarily,
03:51:12PM 23 intelligently, with knowledge of the protections
03:51:14PM 24 given to you by the Fifth Amendment and the
03:51:16PM 25 consequences of your decision to testify. If you

03:51:20PM 1 decide not to testify, I will instruct the jury
03:51:22PM 2 they cannot give the fact that you did not testify
03:51:28PM 3 any consideration whatsoever. In fact, I will
03:51:28PM 4 instruct them that you have no burden of proof in
03:51:30PM 5 this case, you have no duty to testify and the fact
03:51:32PM 6 that you did not testify cannot result in any
03:51:36PM 7 prejudice to you, that it cannot be discussed in
03:51:38PM 8 any manner whatsoever during the deliberation
03:51:42PM 9 process.

03:51:42PM 10 It is left entirely up to you whether
03:51:46PM 11 or not you testify. You may talk to your attorney,
03:51:48PM 12 your family members, or others, but the final
03:51:50PM 13 decision is left entirely up to you. Sir, have you
03:51:54PM 14 understood your rights as I have just explained
03:51:56PM 15 them to you?

03:51:56PM 16 THE DEFENDANT: Yes, I do.

03:51:58PM 17 THE COURT: Do you have any questions
03:51:58PM 18 about what I have just explained to you?

03:52:00PM 19 THE DEFENDANT: At what point would I
03:52:02PM 20 be testifying, if I choose to do so?

03:52:04PM 21 THE COURT: When I make further
03:52:06PM 22 inquiry. Right now I'm just explaining your
03:52:08PM 23 rights.

03:52:08PM 24 THE DEFENDANT: Yes, I understand.

03:52:12PM 25 THE COURT: Okay. And we'll resume

03:52:14PM 1 questioning at the appropriate time.

03:52:18PM 2 All right. Is there anything further
03:52:18PM 3 before we break for the rest room from the State?

03:52:22PM 4 MR. SOWARDS: Nothing, Your Honor.

03:52:24PM 5 THE COURT: From the defense?

03:52:26PM 6 MS. GAY: Not at this point.

03:52:26PM 7 THE COURT: We will be at ease about
03:52:30PM 8 ten minutes, until 4:00.

03:52:38PM 9 (A recess transpired.)

03:52:38PM 10 MS. GAY: Your Honor, I have a matter I
04:08:44PM 11 would like to take up before we start.

04:08:50PM 12 THE COURT: I'm listening.

04:08:52PM 13 MS. GAY: The evidence custodian is in
04:08:54PM 14 the building and she has a document with her, and I
04:08:56PM 15 need to put an objection on the record and discuss
04:08:58PM 16 the fact that I believe that her testimony and
04:09:00PM 17 introduction of the drugs that would follow thereof
04:09:04PM 18 would be in violation of my client's constitutional
04:09:06PM 19 rights under Rule 6 and related case law for the
04:09:08PM 20 chain, because that document was never provided to
04:09:10PM 21 me. I've never seen it before. I never even knew
04:09:14PM 22 it existed until Officer Gill said that we do this
04:09:18PM 23 document and we put it in the computer and all
04:09:22PM 24 these things come out. She has a document, but --
04:09:24PM 25 THE COURT: I don't mean to interrupt

04:09:26PM 1 you, but there's no mystery how drugs are done.

04:09:28PM 2 They're done the same way by every department.

04:09:32PM 3 MS. GAY: I understand that, but I
04:09:34PM 4 would like to put an objection on the record. I
04:09:34PM 5 would like to preserve that, Your Honor.

04:09:34PM 6 THE COURT: The remedy is to give you
04:09:38PM 7 access to the document, not to suppress the drugs.

04:09:40PM 8 MS. GAY: Well, I understand that, but
04:09:42PM 9 I have not seen the document until just a few
04:09:44PM 10 minutes ago when she came here. And it was not
04:09:48PM 11 provided in my discovery material, it was -- never
04:09:50PM 12 been given to me, and so I've never had the
04:09:54PM 13 opportunity to review it.

04:09:54PM 14 And I believe at some point I would
04:09:58PM 15 like to object to the introduction of the drugs.
04:10:00PM 16 I'm going to put that on the record.

04:10:02PM 17 THE COURT: You've already put it on
04:10:02PM 18 the record.

04:10:04PM 19 Would the State like to respond?

04:10:06PM 20 MS. LINDER: I think Your Honor
04:10:12PM 21 accurately responded to that, that it was not for
04:10:14PM 22 the suppression of it, that the chain of custody is
04:10:18PM 23 an internally-maintained document by the City
04:10:22PM 24 Police Department, in this case. And, Your Honor,
04:10:24PM 25 I'm happy to check -- the individual who previously

04:10:28PM 1 had the case file was the one who was sending over
04:10:32PM 2 discovery and I will be happy to check and verify
04:10:34PM 3 that it was sent to her, but I don't believe that
04:10:36PM 4 results in suppression.

04:10:38PM 5 THE COURT: Why do I need verification
04:10:38PM 6 that you actually sent it, if that's what you're
04:10:40PM 7 telling me you did?

04:10:42PM 8 MS. LINDER: Well, I'm not certain.
04:10:44PM 9 That's what we're trying to see right now; however,
04:10:46PM 10 even if it was not sent, I believe the chain of
04:10:48PM 11 custody -- this is an internally-maintained
04:10:50PM 12 document by the City of Charleston; along with the
04:10:54PM 13 witness list given to Ms. Gay, every discussion
04:10:56PM 14 about this case, there was -- as Your Honor put it,
04:11:00PM 15 there is no mystery as far as the drugs are held
04:11:04PM 16 and then they go to the lab, and I do not believe
04:11:06PM 17 the remedy would be suppression of those drugs.

04:11:10PM 18 THE COURT: Anything further?

04:11:12PM 19 MS. GAY: Oh, I know exactly how many
04:11:16PM 20 pages of discovery I have, Your Honor, and I was
04:11:16PM 21 not given that document.

04:11:18PM 22 THE COURT: Do you have access to the
04:11:20PM 23 document?

04:11:20PM 24 MS. GAY: She's in the hall. I've not
04:11:22PM 25 --

04:11:22PM 1 THE COURT: Have you all given her a
04:11:26PM 2 copy?

04:11:26PM 3 MS. LINDER: (Indicating)

04:11:28PM 4 MS. GAY: May I step outside with my
04:11:32PM 5 client for a few minutes?

04:11:32PM 6 (A recess transpired.)

04:11:32PM 7 THE COURT: Is the Defense ready to
04:11:32PM 8 proceed?

04:21:28PM 9 MS. GAY: Yes, Your Honor. I've had a
04:21:30PM 10 chance to review the document. I'm looking at a
04:21:32PM 11 case, State v. Tony T-Juan Sweet, which is just a
04:21:32PM 12 case that has to do with chain and the --

04:21:34PM 13 THE COURT: I'm well familiar with the
04:21:36PM 14 precedent on chain of evidence. I need to know
04:21:36PM 15 what the foundation of your objection is, because
04:21:40PM 16 the whole purpose of not getting a document is to
04:21:42PM 17 have access to it so you can have effective
04:21:46PM 18 cross-examination of the witness, which goes to the
04:21:46PM 19 foundation of either the investigation or some gap
04:21:48PM 20 in the chain.

04:21:50PM 21 So I need to know if you have some good
04:21:52PM 22 faith argument that there was a legitimate gap in
04:21:54PM 23 the chain of custody and in the evidence being
04:21:58PM 24 transmitted somewhere.

04:22:00PM 25 MS. GAY: I have gone over this

04:22:00PM 1 document with my client, Your Honor, and it appears
04:22:00PM 2 that there is no gap.

04:22:02PM 3 THE COURT: Okay. So what is the basis
04:22:04PM 4 of the objection?

04:22:04PM 5 MS. GAY: I initially made it and they
04:22:08PM 6 gave me what I needed, so I'm okay, Your Honor.

04:22:12PM 7 THE COURT: Are we ready to proceed?

04:22:14PM 8 MS. LINDER: Yes.

04:22:14PM 9 MS. GAY: Yes, Your Honor.

04:22:20PM 10 THE COURT: All right. Please bring in
04:22:22PM 11 the jury. Do we have the witnesses ready?

04:22:26PM 12 MR. SOWARDS: We do, Your Honor.

04:22:30PM 13 MS. GAY: As a matter of housekeeping,
04:22:32PM 14 I am not going to ask any questions of these
04:22:34PM 15 people, so it should be very quick.

04:22:36PM 16 THE COURT: That's fine.

04:22:36PM 17 (Jury in, 4:23 p.m.)

04:23:36PM 18 THE BAILIFF: All jurors are present.

04:23:36PM 19 THE COURT: We appreciate your
04:23:38PM 20 patience. During the break we had some matters of
04:23:40PM 21 law that we resolved. Please don't think we take
04:23:42PM 22 your time for granted. And while you were waiting,
04:23:46PM 23 we were working. We will now resume with the
04:23:48PM 24 testimony of the State's next witness. You may
04:23:48PM 25 proceed.

LINDA WILSON - DIRECT EXAM BY MS. LINDER

04:23:50PM 1 MS. LINDER: State calls Linda Wilson.

04:24:06PM 2 LINDA WILSON,

04:24:10PM 3 being first duly sworn, testified as follows:

04:24:10PM 4 THE CLERK: Thank you. Please be

04:24:14PM 5 seated and state your first and last name and spell

04:24:20PM 6 your last name.

04:24:20PM 7 THE WITNESS: Linda Wilson,

04:24:22PM 8 W-I-L-S-O-N.

04:24:22PM 9 THE COURT: You may proceed.

04:24:24PM 10 MS. LINDER: Thank you, Your Honor.

04:24:24PM 11 DIRECT EXAMINATION

04:24:24PM 12 BY MS. LINDER:

04:24:24PM 13 Q. Ms. Wilson, where are you presently

04:24:24PM 14 employed?

04:24:26PM 15 A. City of Charleston Police Department.

04:24:28PM 16 Q. How long have you been with the City?

04:24:30PM 17 A. About six years.

04:24:30PM 18 Q. What's your position with the City?

04:24:32PM 19 A. Evidence technician.

04:24:34PM 20 Q. And what is your role -- what are your

04:24:36PM 21 duties as an evidence technician?

04:24:40PM 22 A. Basically, we --

04:24:40PM 23 THE COURT: Ma'am, I need you to pull

04:24:46PM 24 the microphone down closer and speak loudly into

04:24:46PM 25 it.

LINDA WILSON - DIRECT EXAM BY MS. LINDER

04:24:46PM 1 THE WITNESS: I accept evidence into
04:24:48PM 2 the evidence control room that officers submit to
04:24:52PM 3 evidence.
04:24:52PM 4 BY MS. LINDER:
04:24:52PM 5 Q. And when you -- when you take the
04:24:54PM 6 evidence in, do you identify or assign any case
04:24:58PM 7 numbers or case markers to that case?
04:25:00PM 8 A. We sign an evidence label that matches
04:25:06PM 9 up with the case number that the officer assigned
04:25:08PM 10 to it.
04:25:10PM 11 Q. And how do you receive the evidence?
04:25:12PM 12 Where does it come from when you receive it?
04:25:14PM 13 A. That morning when I came in, for this
04:25:18PM 14 particular evidence, I got it out of a locker, a
04:25:20PM 15 secured locker, that the officer placed it in.
04:25:22PM 16 Q. And once the officer drops off
04:25:26PM 17 evidence, can the officer take it back?
04:25:28PM 18 A. No, ma'am.
04:25:28PM 19 Q. Who has access to that?
04:25:30PM 20 A. Myself and my supervisor.
04:25:32PM 21 Q. And in this case, which is case number
04:25:38PM 22 1316438, did you receive any evidence?
04:25:40PM 23 A. Yes, ma'am.
04:25:40PM 24 Q. And where did you log it in?
04:25:42PM 25 A. I accepted it in through our evidence

LINDA WILSON - DIRECT EXAM BY MS. LINDER

04:25:48PM 1 computer system and evidence control room.

04:25:52PM 2 Q. And when did you log it in?

04:25:54PM 3 A. That was on October 11, 2013.

04:25:58PM 4 Q. At this time, I show you what's been
04:26:10PM 5 marked as State's 2 for identification purposes.

04:26:12PM 6 If you will please take a look at that. Do you
04:26:16PM 7 recognize that?

04:26:16PM 8 A. Yes, ma'am.

04:26:16PM 9 Q. How do you recognize that?

04:26:18PM 10 A. Basically by the case number.

04:26:20PM 11 Q. And does it appear to be in
04:26:26PM 12 substantially the same condition as when you
04:26:28PM 13 received it?

04:26:28PM 14 A. Yes, ma'am.

04:26:28PM 15 Q. And after you created the evidence tag
04:26:32PM 16 and all these numbers, what did you do with this
04:26:36PM 17 item?

04:26:36PM 18 A. It was stored in our evidence control
04:26:38PM 19 room in a locked facility.

04:26:40PM 20 Q. And can just anybody go out to that
04:26:42PM 21 locked facility?

04:26:44PM 22 A. No, ma'am.

04:26:44PM 23 Q. And who was the next person that
04:26:48PM 24 received this item?

04:26:50PM 25 A. Okay. This was -- I signed it over to

LINDA WILSON - DIRECT EXAM BY MS. LINDER

04:26:54PM 1 Susan Payne on October 17, 2013.

04:26:56PM 2 Q. And is it customary for you to sign
04:27:00PM 3 over evidence to Susan Payne?

04:27:02PM 4 A. Yes, ma'am; she takes it to our lab.

04:27:06PM 5 MS. LINDER: I have no further
04:27:06PM 6 questions for this witness. Please answer anything
04:27:08PM 7 that the defense may have.

04:27:10PM 8 THE COURT: Any questions for the
04:27:12PM 9 witness?

04:27:12PM 10 MS. GAY: No, Your Honor.

04:27:12PM 11 THE COURT: Any objection to the
04:27:14PM 12 witness being excused?

04:27:16PM 13 MS. LINDER: None from the State.

04:27:16PM 14 MS. GAY: No, ma'am.

04:27:18PM 15 THE COURT: You're excused, ma'am.
04:27:18PM 16 Have a good day.

04:27:20PM 17 MS. LINDER: State calls Susan Payne.

04:28:02PM 18 SUSAN PAYNE,
04:28:08PM 19 being first duly sworn, testified as follows:

04:28:08PM 20 THE CLERK: Please state your first and
04:28:12PM 21 last name and spell your last name for the record.

04:28:14PM 22 THE WITNESS: My name is Susan Payne,
04:28:16PM 23 P-A-Y-N-E.

04:28:18PM 24 THE COURT: You may proceed.

04:28:18PM 25 DIRECT EXAMINATION

SUSAN PAYNE - DIRECT EXAM BY MS. LINDER

04:28:18PM 1 BY MS. LINDER:

04:28:22PM 2 Q. Make sure -- not everybody is as loud
04:28:26PM 3 as I am, so make sure you speak clearly and loudly.

04:28:26PM 4 Where are you presently employed?

04:28:30PM 5 A. City of Charleston Police Department.

04:28:32PM 6 Q. And how long have you been with the
04:28:34PM 7 City of Charleston?

04:28:34PM 8 A. Since July of 2005.

04:28:36PM 9 Q. And what is your position there?

04:28:38PM 10 A. I'm currently the LIMS administrator
04:28:42PM 11 and evidence custodian for the forensic services
04:28:44PM 12 division.

04:28:46PM 13 Q. And what was your position back in
04:28:48PM 14 October of 2013, a little over a year ago?

04:28:50PM 15 A. The LIMS administrator and evidence
04:28:52PM 16 custodian.

04:28:52PM 17 Q. And as far as part of your duties, do
04:28:58PM 18 you oversee and do you act as a courier for the
04:29:00PM 19 City lab?

04:29:00PM 20 A. Yes, ma'am.

04:29:02PM 21 Q. And can you explain just generally what
04:29:04PM 22 you do when it comes to transferring evidence, I
04:29:08PM 23 guess, for lack of a better term?

04:29:08PM 24 A. Sure. Every morning I go to the police
04:29:12PM 25 station and I go up to the evidence room and go

SUSAN PAYNE - DIRECT EXAM BY MS. LINDER

04:29:14PM 1 over the evidence that's been submitted for the
04:29:16PM 2 night, specifically for the drug lab. I make sure
04:29:18PM 3 that everything is sealed, packaged correctly,
04:29:24PM 4 labeled, descriptions match, and then I accept the
04:29:26PM 5 evidence and bring it to the drug lab.

04:29:28PM 6 Q. And did you receive any evidence from
04:29:32PM 7 -- or accept, rather, any evidence in this case,
04:29:36PM 8 State V Dale Gould, 1316438?

04:29:40PM 9 A. Yes, ma'am.

04:29:40PM 10 Q. And how many items of evidence did you
04:29:44PM 11 receive?

04:29:44PM 12 A. I received one.

04:29:46PM 13 Q. And what did you do with that item of
04:29:50PM 14 evidence?

04:29:50PM 15 A. While at the police station, I made
04:29:54PM 16 sure it was packaged correctly, sealed and
04:29:56PM 17 transferred it to the lab, where I entered it into
04:30:00PM 18 our system, placed it into our safe, and that's it.

04:30:04PM 19 Q. And at this time, I'm going to show you
04:30:06PM 20 what has been marked as State's Exhibit 1. If you
04:30:10PM 21 can please look at it, and let me know if you
04:30:14PM 22 recognize it.

04:30:14PM 23 A. Yes, ma'am.

04:30:16PM 24 Q. How do you recognize it?

04:30:18PM 25 A. It's got our evidence stickers on it

SUSAN PAYNE - DIRECT EXAM BY MS. LINDER

04:30:20PM 1 and Ann Wilson's initials on it.

04:30:24PM 2 Q. And is this in substantially the same
04:30:28PM 3 condition as when you first received it?

04:30:30PM 4 A. Yes.

04:30:30PM 5 Q. And this is the item you submitted to
04:30:34PM 6 the secured safe at the lab?

04:30:36PM 7 A. Yes, ma'am.

04:30:36PM 8 MS. LINDER: I have no further
04:30:38PM 9 questions. Answer any that the defense may have.

04:30:38PM 10 THE COURT: You may proceed.

04:30:40PM 11 MS. GAY: I have no questions for the
04:30:42PM 12 witness.

04:30:42PM 13 THE COURT: Any objection to the
04:30:44PM 14 witness being excused from the State?

04:30:46PM 15 MS. LINDER: None from the State.

04:30:46PM 16 THE COURT: From the defense?

04:30:46PM 17 MS. GAY: No.

04:30:46PM 18 THE COURT: Ma'am, you're excused.

04:30:50PM 19 THE WITNESS: Thank you.

04:30:50PM 20 THE COURT: You're welcome.

04:30:50PM 21 You may call your next witness.

04:30:54PM 22 MS. LINDER: State calls Renee Hilton.

04:31:20PM 23 RENEE HILTON,

04:31:20PM 24 being first duly sworn, testified as follows:

04:31:30PM 25 THE CLERK: Please be seated, state

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:31:34PM 1 your first name and last name, loudly and clearly,
04:31:36PM 2 into the microphone and spell your last name.

04:31:38PM 3 THE WITNESS: Renee Hilton,
04:31:38PM 4 H-I-L-T-O-N.

04:31:40PM 5 THE COURT: And you may proceed.

04:31:40PM 6 MS. LINDER: Thank you, Your Honor.

04:31:42PM 7 THE COURT: You're welcome.

04:31:42PM 8 DIRECT EXAMINATION

04:31:42PM 9 BY MS. LINDER:

04:31:42PM 10 Q. What is your occupation?

04:31:44PM 11 A. I'm a laboratory manager.

04:31:46PM 12 Q. And who is your employer?

04:31:48PM 13 A. The Charleston -- City of Charleston
04:31:50PM 14 Police.

04:31:50PM 15 Q. How long have you been employed by the
04:31:52PM 16 City of Charleston Police?

04:31:52PM 17 A. Four years in January.

04:31:54PM 18 Q. What are your duties as the lab
04:31:56PM 19 manager?

04:31:58PM 20 A. I oversee the operations of the
04:32:00PM 21 laboratory, as well as maintain our instruments and
04:32:04PM 22 oversee the personnel within the laboratory. I
04:32:08PM 23 conduct controlled substance analysis, fire debris
04:32:14PM 24 analysis, as well as serology analysis.

04:32:14PM 25 Q. And if you could, please just tell the

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:32:14PM 1 jury about your training, education and experience.

04:32:16PM 2 A. I have a Bachelor's of Science in
04:32:22PM 3 Chemistry from the University of South Carolina. I
04:32:24PM 4 underwent the training program with the City of
04:32:26PM 5 Charleston in controlled substances, as well as
04:32:26PM 6 fire debris and serology.

04:32:32PM 7 I've completed various online courses
04:32:34PM 8 that deal with drug analysis, as well as the
04:32:36PM 9 instrumentation that goes along with it.

04:32:38PM 10 Q. And have you ever had the occasion to
04:32:40PM 11 chemically analyze substances that are submitted to
04:32:44PM 12 you to determine if the substance contained any
04:32:48PM 13 narcotics?

04:32:48PM 14 A. Yes.

04:32:48PM 15 Q. And do you know approximately how many
04:32:52PM 16 tests you've done?

04:32:52PM 17 A. Since I started, probably about 3,000.

04:32:56PM 18 Q. And have you ever had the occasion to
04:33:02PM 19 analyze substances to see if they contain cocaine
04:33:04PM 20 specifically?

04:33:04PM 21 A. Yes.

04:33:04PM 22 Q. What kind of equipment do you have at
04:33:08PM 23 the lab to do these tests?

04:33:08PM 24 A. We have a color test, which is a
04:33:10PM 25 presumptive test. We have a Fourier Transform

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:33:18PM 1 Infrared Spectrometry, short FTIR, and we have a GC
04:33:20PM 2 MS which is short for gas-chromatograph
04:33:24PM 3 mass-spectrometer.

04:33:24PM 4 Q. And have you previously been admitted
04:33:28PM 5 as an expert in court on drug analysis?

04:33:32PM 6 A. Yes.

04:33:32PM 7 Q. And did you actually testify?

04:33:34PM 8 A. Yes.

04:33:34PM 9 MS. LINDER: Your Honor, at this time
04:33:36PM 10 the State would move Renee Hilton to be qualified
04:33:38PM 11 as an expert in the field of drug analysis.

04:33:42PM 12 THE COURT: Any questions or
04:33:46PM 13 exceptions?

04:33:46PM 14 MS. GAY: No, Your Honor.

04:33:46PM 15 THE COURT: So admitted without
04:33:46PM 16 objection; you may proceed.

04:33:46PM 17 BY MS. LINDER:

04:33:50PM 18 Q. Did you receive any items of evidence
04:33:52PM 19 in this case, the OPA is 1316438?

04:33:52PM 20 A. Yes.

04:33:56PM 21 Q. And did you do any drug testing on
04:34:00PM 22 those -- in that lab?

04:34:02PM 23 A. Yes.

04:34:04PM 24 Q. And as a result of your test, did you
04:34:08PM 25 compile or complete a report?

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:34:10PM 1 A. Yes.

04:34:10PM 2 Q. And did you submit that report and your

04:34:14PM 3 findings to the City?

04:34:16PM 4 A. Yes.

04:34:16PM 5 Q. At this time I show you what's been

04:34:32PM 6 marked as State's 3 for identification purposes.

04:34:36PM 7 Do you recognize this?

04:34:36PM 8 A. Yes.

04:34:36PM 9 Q. How do you recognize it?

04:34:40PM 10 A. My signature is on the bottom.

04:34:42PM 11 Q. And what is it?

04:34:42PM 12 A. It is a lab report.

04:34:46PM 13 Q. Who prepared it?

04:34:48PM 14 A. I did.

04:34:48PM 15 MS. LINDER: And, Your Honor, at this

04:34:54PM 16 time the State would like to offer State's Exhibit

04:35:00PM 17 3 into evidence.

04:35:00PM 18 THE COURT: Any objection?

04:35:00PM 19 MS. GAY: No, Your Honor.

04:35:02PM 20 THE COURT: Marked and admitted without

04:35:02PM 21 objection.

04:35:08PM 22 You may proceed.

04:35:10PM 23 (PLF. EXH. 3 in evidence.)

04:35:10PM 24 BY MS. LINDER:

04:35:18PM 25 Q. All right. And I will put this up on

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:35:20PM 1 the Court's overhead projector. If you can direct
04:35:24PM 2 your attention to the TV screen behind you.

04:35:48PM 3 We can go without. Who needs
04:35:52PM 4 technology? I will let you look at your Exhibit
04:35:56PM 5 Number 3. In this case, in your expert opinion,
04:35:58PM 6 were -- did you test the substance that was drugs?

04:36:00PM 7 A. Yes.

04:36:02PM 8 Q. What were your findings specifically?

04:36:02PM 9 A. Cocaine.

04:36:04PM 10 Q. And what was the weight of that

04:36:06PM 11 cocaine?

04:36:06PM 12 A. 0.23 grams.

04:36:08PM 13 Q. And what methods did you use to test
04:36:10PM 14 the drugs?

04:36:12PM 15 A. I used the color test, FTIR, and GC MS.

04:36:20PM 16 Q. And those tests are all scientific
04:36:20PM 17 tests done by you?

04:36:22PM 18 A. Yes.

04:36:22PM 19 Q. And they were done in the lab?

04:36:22PM 20 A. Yes.

04:36:22PM 21 Q. And how do you receive the physical
04:36:32PM 22 items that you are going to test?

04:36:34PM 23 A. They are usually brought over by our
04:36:38PM 24 evidence technician, Susan Payne, and put in a
04:36:42PM 25 safe, and I retrieve them from our safe.

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:36:44PM 1 Q. At this time I show you what's been
04:36:46PM 2 marked as State's Exhibit 2. Do you recognize
04:36:52PM 3 that?

04:36:52PM 4 A. Yes.

04:36:52PM 5 Q. And how do you recognize it?

04:36:54PM 6 A. On the packaging of the evidence, my
04:36:58PM 7 initials are on there, as well as an evidence
04:37:00PM 8 sticker and my handwriting. And the evidence
04:37:02PM 9 within the packaging also has my initials as well
04:37:06PM 10 as my handwriting on it.

04:37:08PM 11 MS. LINDER: Your Honor, at this
04:37:08PM 12 time --

04:37:08PM 13 BY MS. LINDER:

04:37:12PM 14 Q. Does that appear to be in essentially
04:37:14PM 15 the same condition as it was when you first
04:37:16PM 16 received it?

04:37:16PM 17 A. Yes.

04:37:16PM 18 MS. LINDER: Your Honor, at this time,
04:37:16PM 19 the State would seek to admit State's Exhibit 2
04:37:20PM 20 into evidence.

04:37:20PM 21 THE COURT: Any objection?

04:37:20PM 22 MS. GAY: No, Your Honor.

04:37:22PM 23 THE COURT: Marked and admitted without
04:37:24PM 24 objection.

04:37:24PM 25 (PLF. EXH. 2 in evidence.)

RENEE HILTON - DIRECT EXAM BY MS. LINDER

04:37:24PM 1 BY MS. LINDER:

04:37:24PM 2 Q. And, Ms. Hilton, if you can tell the
04:37:32PM 3 jury, does that report and those drugs go together
04:37:34PM 4 with your findings?

04:37:34PM 5 A. Yes.

04:37:40PM 6 Q. And so this exhibit, Exhibit Number 2,
04:37:44PM 7 it's already been into evidence, can you explain --
04:37:48PM 8 what are these initials?

04:37:50PM 9 A. They're my initials.

04:37:52PM 10 Q. And what is the purpose of the location
04:37:54PM 11 where you put them?

04:37:56PM 12 A. To show no tampering with the evidence.
04:37:58PM 13 I put half on and half off the seal, so you can
04:38:04PM 14 tell it hasn't been tampered with.

04:38:06PM 15 Q. And this -- inside here on this baggie,
04:38:12PM 16 there's more handwriting. What is this
04:38:14PM 17 handwriting?

04:38:14PM 18 A. It's the lab number associated with the
04:38:18PM 19 case number, as well as the weight and my initials.

04:38:22PM 20 Q. And if you could again in your expert
04:38:24PM 21 opinion tell us what your findings were for what
04:38:26PM 22 these drugs are.

04:38:28PM 23 A. Cocaine.

04:38:28PM 24 Q. And the weight?

04:38:28PM 25 A. 0.23 grams.

RENEE HILTON - CROSS EXAM BY MS. GAY

04:38:34PM 1 MS. LINDER: I have no further
04:38:36PM 2 questions for this witness.

04:38:36PM 3 THE COURT: Any questions for the
04:38:36PM 4 witness?

04:38:38PM 5 MS. GAY: One moment, Your Honor.

04:38:38PM 6 CROSS-EXAMINATION

04:38:38PM 7 BY MS. GAY:

04:39:30PM 8 Q. This document that's State's Exhibit
04:39:36PM 9 Number 3, this is the actual drug report?

04:39:36PM 10 A. Uh-huh.

04:39:36PM 11 Q. And on this particular document, I know
04:39:38PM 12 that you talked about it and we were going to show
04:39:42PM 13 it up there, but it didn't work out. It's my
04:39:46PM 14 understanding that the weight is 0.23 grams, which
04:39:50PM 15 is what? Less than a quarter of a gram?

04:39:52PM 16 A. Uh-huh.

04:39:54PM 17 THE COURT: Ma'am, you need to say yes
04:39:54PM 18 or no for us.

04:39:56PM 19 THE WITNESS: I'm sorry. Yes, ma'am.

04:39:58PM 20 BY MS. GAY:

04:39:58PM 21 Q. So if a gram was an amount, it would be
04:40:02PM 22 more than four times this amount right here?

04:40:06PM 23 A. Yes, ma'am.

04:40:06PM 24 Q. And so this, which is some kind of a
04:40:10PM 25 smushed-up stuff, they're not going to be able to

RENEE HILTON - CROSS EXAM BY MS. GAY

04:40:14PM 1 take this apart, because of the need to keep this
04:40:18PM 2 in a tight, sealed package. So you're the only
04:40:22PM 3 person that handled this. So they're not going to
04:40:24PM 4 be able to handle this, they're just going to be
04:40:28PM 5 able to look at it through here. This stuff right
04:40:30PM 6 here that is in here, this is some kind of -- like
04:40:36PM 7 a coroner of a baggie or something?

04:40:38PM 8 A. Yes, ma'am.

04:40:38PM 9 Q. Okay. And so this little powdery
04:40:42PM 10 substance right here, if we took it all and we
04:40:46PM 11 knocked it down to this little itty, bitty corner
04:40:50PM 12 right here -- when you saw it, do you remember if
04:40:54PM 13 it was above this much right here, this little tiny
04:40:56PM 14 corner right here?

04:40:58PM 15 A. I can't remember that.

04:41:00PM 16 Q. Okay. You can't remember that. If
04:41:02PM 17 there was a baggie with like a gram in it, or
04:41:06PM 18 something like that, it would be at least four
04:41:06PM 19 times this much?

04:41:08PM 20 A. Yes, ma'am.

04:41:08PM 21 Q. So if it was going to be -- all of this
04:41:10PM 22 right here ended up in this thing -- tiny little
04:41:14PM 23 thing like that, you-all will all be able to touch
04:41:16PM 24 this and look at it. If it was going to be a gram,
04:41:18PM 25 it would be like four times this much and sort of

RENEE HILTON - CROSS EXAM BY MS. GAY

04:41:22PM 1 more of -- the corner would be a lot fuller?

04:41:24PM 2 A. Yes.

04:41:24PM 3 Q. And so -- and as I said, they don't get
04:41:28PM 4 to touch this, this dusty stuff. They just get to
04:41:30PM 5 look at it in this bag, right?

04:41:32PM 6 A. Yes, ma'am.

04:41:32PM 7 Q. Okay. And you were the only person
04:41:36PM 8 that actually had the occasion to see this in any
04:41:38PM 9 kind of state other than all smushed-up like this?

04:41:42PM 10 A. Yes.

04:41:42PM 11 MS. GAY: I have no further questions,
04:41:44PM 12 Your Honor.

04:41:44PM 13 THE COURT: Any redirect?

04:41:46PM 14 MS. LINDER: No, redirect, Your Honor.

04:41:48PM 15 THE COURT: Any objection to the
04:41:48PM 16 witness being excused from the State?

04:41:48PM 17 MS. LINDER: None from the State.

04:41:52PM 18 THE COURT: From the defense?

04:41:52PM 19 MS. GAY: No, ma'am.

04:41:52PM 20 THE COURT: Ma'am, you're excused.

04:42:00PM 21 Anything further from the State?

04:42:02PM 22 MR. SOWARDS: No, Your Honor. The
04:42:02PM 23 State rests.

04:42:02PM 24 THE COURT: Madame Forelady, ladies and
04:42:04PM 25 gentlemen, the State has rested their case.

04:42:06PM 1 There's a matter of law very briefly that I'm going
04:42:10PM 2 to take up with them. During this break, please do
04:42:12PM 3 not discuss the case and please leave your notepads
04:42:14PM 4 in your seats. We appreciate your patience.

04:42:18PM 5 (Jury out, 4:42 p.m.)

04:42:22PM 6 THE COURT: The State has rested. Any
04:42:50PM 7 motions?

04:42:52PM 8 MS. GAY: Yes, Your Honor; I will make
04:42:54PM 9 a motion for a directed verdict. Even in the light
04:42:56PM 10 most favorable to the State, I believe they have
04:42:58PM 11 failed to meet the elements of -- the factual basis
04:43:00PM 12 for the elements required to prove the charge in
04:43:02PM 13 this case. I believe that they have not.

04:43:06PM 14 THE COURT: Is that the full argument
04:43:18PM 15 or --

04:43:18PM 16 MS. GAY: Your Honor, I believe you
04:43:22PM 17 ruled against me, so I put it on the record.

04:43:22PM 18 THE COURT: Well, you never know. You
04:43:26PM 19 need to make a full record.

04:43:28PM 20 MS. GAY: Well, Your Honor, let's talk
04:43:30PM 21 about the evidence for a second. They've had
04:43:30PM 22 absolutely no evidence to say that anybody saw him
04:43:32PM 23 drop it. They have a conclusory statement from an
04:43:36PM 24 officer; when asked, what did he do, he distributed
04:43:40PM 25 drugs. That is certainly, you know, the ultimate

04:43:42PM 1 question here at this point. And also, not what --
04:43:46PM 2 the witness doesn't get to decide that.

04:43:50PM 3 She testified specifically that she
04:43:52PM 4 obtained drugs from him. She did not say anything
04:43:56PM 5 about how he gave them to her. We have a video
04:44:02PM 6 where he is at no time handing any type of drugs or
04:44:06PM 7 substance to them. The incident that happened in
04:44:08PM 8 the office, when they walked out of the office, the
04:44:12PM 9 substance was in his hands.

04:44:14PM 10 He said he was throwing it away, or
04:44:16PM 11 whatever. From that point until the point where
04:44:18PM 12 the officer walks out of the building with drugs in
04:44:20PM 13 her hand, which is less than a quarter of a gram,
04:44:24PM 14 Your Honor, there's no -- there's no testimony
04:44:28PM 15 whatsoever that he provided that to her.

04:44:30PM 16 And, Your Honor, as I said, even if you
04:44:32PM 17 -- obviously, I'm going to ask the Court to
04:44:36PM 18 consider charging a lesser included offense of
04:44:38PM 19 possession in this case. I believe that they've
04:44:40PM 20 established the elements for that.

04:44:42PM 21 He did in fact possess the cocaine on
04:44:44PM 22 the video; he did, in fact, use the cocaine. There
04:44:50PM 23 was a discussion of him -- there was video of him
04:44:50PM 24 possessing cocaine, but I don't believe there is
04:44:52PM 25 sufficient evidence to establish that he

04:44:56PM 1 distributed or possessed it with the intent to
04:44:58PM 2 distribute it to any of these witnesses in this
04:44:58PM 3 case.

04:45:00PM 4 With regard to the drugs themselves,
04:45:02PM 5 there was specific testimony that there was
04:45:04PM 6 supposed to be \$100 given, that she was supposed to
04:45:08PM 7 buy \$60 worth, which would have been a gram. There
04:45:12PM 8 is a fourth of that amount, or less, in the baggie
04:45:16PM 9 that was found on the ground. The itty, bitty,
04:45:18PM 10 tiny dust that's in the baggie is not at all
04:45:18PM 11 consistent with what the testimony was, that they
04:45:22PM 12 were supposed to obtain a gram of cocaine. There
04:45:24PM 13 was no money transferred at all.

04:45:26PM 14 There was -- you know, this was not any
04:45:28PM 15 type of transaction that involved any type of
04:45:32PM 16 proceeds for any sale or sharing of -- he said, I
04:45:38PM 17 didn't put it there. That was, you know, on the
04:45:42PM 18 ground. That was abandoned property. I don't know
04:45:44PM 19 where that came from. And so, certainly, what
04:45:48PM 20 happened in the office, I believe, Your Honor, is
04:45:52PM 21 -- there's definitely enough evidence to establish
04:45:54PM 22 that he possessed cocaine.

04:45:56PM 23 What happened outside of the office
04:45:58PM 24 after they left with some substance in her hand, I
04:46:02PM 25 believe there's absolutely no evidence to establish

04:46:04PM 1 that he did, in fact, distribute it to them. If we
04:46:06PM 2 even went to possession with intent, there should
04:46:10PM 3 be at least some type of -- more than a gram or
04:46:12PM 4 some inference amount that brings it up beyond
04:46:16PM 5 that --

04:46:16PM 6 THE COURT: That doesn't apply an
04:46:18PM 7 inference amount, does it? It actually does
04:46:22PM 8 inference amounts for trafficking and other things,
04:46:24PM 9 but it doesn't for distribution, does it?

04:46:26PM 10 MS. GAY: Well, it says, if it's a gram
04:46:28PM 11 or more.

04:46:28PM 12 THE COURT: There's no amount that's
04:46:30PM 13 ever been attached to distribution.

04:46:34PM 14 MS. GAY: I understand that, but I
04:46:34PM 15 believe that there are facts to establish
04:46:38PM 16 possession, Your Honor, and that's it.

04:46:38PM 17 THE COURT: Well, there's no minimum
04:46:40PM 18 amount for possession either, simple possession.

04:46:42PM 19 MS. GAY: I understand.

04:46:42PM 20 THE COURT: Only time there's inference
04:46:46PM 21 amounts is for trafficking.

04:46:46PM 22 MS. GAY: Yes, ma'am. And I do know as
04:46:48PM 23 long as it's measurable and testable in the State
04:46:52PM 24 of South Carolina, it's enough to be possession.
04:46:54PM 25 I've explained that to my client as well.

04:46:54PM 1 THE COURT: It's enough for
04:46:56PM 2 distribution as well, because all it requires is
04:46:58PM 3 the sale of a substance.

04:46:58PM 4 MS. GAY: I understand that. And I
04:47:00PM 5 would say that the evidence does not support a sale
04:47:02PM 6 in any way, shape, or form. I would tell you that
04:47:06PM 7 that's what I believe to be the lack of evidence in
04:47:10PM 8 this case, which would -- should have you consider
04:47:10PM 9 a directed verdict on my client's behalf.

04:47:14PM 10 THE COURT: Okay. Would the State like
04:47:18PM 11 to respond?

04:47:18PM 12 MR. SOWARDS: Yes, Your Honor. We
04:47:20PM 13 agree that in -- at least in the parts of the video
04:47:26PM 14 when they were in the office, that there is enough
04:47:30PM 15 evidence to establish possession. There's also
04:47:30PM 16 evidence that we saw in the video where Mr. Gould
04:47:36PM 17 does attempt to share the drugs with the detective
04:47:40PM 18 -- the undercover detective and the confidential
04:47:40PM 19 informant.

04:47:44PM 20 And as you said, the statute doesn't
04:47:48PM 21 prescribe a specific amount that you need to charge
04:47:54PM 22 or convict of distribution. It says to aid, abet,
04:47:58PM 23 attempt to conspire to manufacture, distribute,
04:48:00PM 24 dispense, deliver, or purchase cocaine.

04:48:04PM 25 And much has been made of the fact that

04:48:08PM 1 no money ever exchanged hands, but we think that
04:48:12PM 2 the attempt to share, or just even the attempt to
04:48:16PM 3 just give it to them, is sufficient. And I think
04:48:22PM 4 we also heard testimony from both Detective
04:48:26PM 5 Frederick and the CI that the CI texted Mr. Gould
04:48:30PM 6 in advance and set up this meeting and they did go
04:48:32PM 7 and meet him.

04:48:34PM 8 And then we heard testimony from the
04:48:38PM 9 chain, right from Detective Gill all the way to
04:48:40PM 10 when it was tested in the lab and tested positive
04:48:44PM 11 for cocaine, that it occurred in Charleston County.
04:48:48PM 12 And then we have the nearly 45-minute-long video.

04:48:52PM 13 So we believe that the State has
04:48:56PM 14 submitted sufficient evidence to get this to the
04:48:58PM 15 jury and overcome the defense's motion for a
04:49:02PM 16 directed verdict.

04:49:02PM 17 THE COURT: Anything further from the
04:49:02PM 18 defense?

04:49:02PM 19 MS. GAY: No.

04:49:06PM 20 THE COURT: Considering the evidence in
04:49:08PM 21 the light most favorable to the State, who is the
04:49:10PM 22 nonmoving party, the Court is only concerned with
04:49:12PM 23 the existence or nonexistence of evidence, and not
04:49:14PM 24 its weight. I am not the fact finder. It's not
04:49:18PM 25 for me to resolve factual disputes.

04:49:18PM 1 Where there is direct evidence and/or
04:49:22PM 2 substantial circumstantial evidence reasonably
04:49:24PM 3 tending to prove the Defendant's guilt -- of course
04:49:28PM 4 with the caveat that the State is not required to
04:49:30PM 5 prove his guilt beyond every other or -- excluding
04:49:34PM 6 every other reasonable hypothesis. There is direct
04:49:36PM 7 evidence in the nature of two eyewitnesses, as well
04:49:40PM 8 as a video which has accompanying audio and video
04:49:44PM 9 which very clearly shows Mr. Gould attempting and
04:49:52PM 10 concluding a transfer of a substance, a white
04:49:58PM 11 powdery substance.

04:49:58PM 12 Our law is very clear; the transfer can
04:50:00PM 13 involve money, barter or gift, but there does not
04:50:04PM 14 have to be anything given in exchange for drugs
04:50:08PM 15 should there be a transfer -- for there to be a
04:50:08PM 16 transfer to constitute distribution. And contrary
04:50:12PM 17 to the argument made by defense counsel, there is
04:50:14PM 18 no inferential amount either -- that must be proven
04:50:20PM 19 in order to establish distribution.

04:50:22PM 20 The State only has to prove beyond a
04:50:24PM 21 reasonable doubt that the Defendant distributed
04:50:26PM 22 cocaine. And that means that he either delivered
04:50:30PM 23 or -- he delivered, or to actually constructively
04:50:36PM 24 or attempt to transfer a drug other than by
04:50:36PM 25 administering or dispensing.

04:50:38PM 1 And there is -- there is a whole lot of
04:50:44PM 2 surreptitious conversation that goes on between
04:50:46PM 3 them that is an attempt for him -- it appears
04:50:48PM 4 objectively from the video, to make sure they're
04:50:52PM 5 not narcotics agents and he doesn't want to get
04:50:54PM 6 caught selling drugs. But those are all
04:51:00PM 7 inferential matters as well as direct evidence, and
04:51:00PM 8 certainly you can argue the contrary if you'd like,
04:51:00PM 9 Ms. Gay.

04:51:02PM 10 Certainly there is direct, as well as
04:51:04PM 11 substantial circumstantial evidence, reasonably
04:51:06PM 12 tending to prove your client's guilt and,
04:51:08PM 13 therefore, the motion for a directed verdict is
04:51:10PM 14 denied.

04:51:10PM 15 THE COURT: Sir, if you would stand
04:51:10PM 16 for me, please. I remind you you are still under
04:51:14PM 17 oath.

04:51:14PM 18 THE DEFENDANT: Yes, ma'am.

04:51:14PM 19 THE COURT: Have you had a full
04:51:14PM 20 opportunity to discuss with your lawyer whether you
04:51:18PM 21 should or should not testify?

04:51:20PM 22 THE DEFENDANT: A full opportunity?
04:51:22PM 23 Not quite, but I'll go under her advice.

04:51:24PM 24 THE COURT: I'm sorry?

04:51:26PM 25 THE DEFENDANT: A full opportunity?

04:51:26PM 1 No.

04:51:28PM 2 THE COURT: Why have you not had a full
04:51:30PM 3 opportunity?

04:51:30PM 4 THE DEFENDANT: Been so busy, I haven't
04:51:32PM 5 had a chance to understand it all.

04:51:32PM 6 THE COURT: Do you need more time to
04:51:34PM 7 talk with your lawyer at this time about whether
04:51:34PM 8 you should or should not testify?

04:51:36PM 9 MS. GAY: Your Honor, I think that
04:51:38PM 10 during most of these breaks we've been pretty busy
04:51:40PM 11 doing --

04:51:40PM 12 THE COURT: You had an extended lunch
04:51:44PM 13 break, it was over an hour and a half.

04:51:44PM 14 MS. GAY: I understand that.

04:51:44PM 15 THE COURT: And that's why I did it the
04:51:46PM 16 way I did it.

04:51:46PM 17 MS. GAY: I think he just hasn't
04:51:48PM 18 decided yet, Your Honor.

04:51:48PM 19 THE COURT: I need him to decide.

04:51:50PM 20 MS. GAY: I've told him what I believe
04:51:52PM 21 to be his, you know, rights and his situation.
04:51:56PM 22 I've also explained to him, this is his choice and
04:51:58PM 23 not mine.

04:51:58PM 24 THE COURT: Absolutely.

04:52:00PM 25 MS. GAY: So if he wants to talk with

04:52:00PM 1 me again, Your Honor, there's nothing else I can
04:52:04PM 2 say.

04:52:04PM 3 THE COURT: Yeah. I'm going to give
04:52:04PM 4 him the opportunity to talk with you for another
04:52:08PM 5 five minutes or so, but there's a difference
04:52:10PM 6 between not understanding what his basic rights are
04:52:14PM 7 and his right to testify or not to testify, what
04:52:16PM 8 can be used against him, or if he simply hasn't
04:52:20PM 9 made up his mind.

04:52:20PM 10 And as accommodating as I would like to
04:52:22PM 11 be, I can't wait for him to equivocate about that.
04:52:24PM 12 Either he wants to testify or he doesn't.

04:52:26PM 13 MS. GAY: I understand.

04:52:26PM 14 THE COURT: And he needs to make a
04:52:28PM 15 decision in the next five minutes.

04:52:30PM 16 MS. GAY: Can we just walk right out
04:52:32PM 17 here?

04:52:32PM 18 THE COURT: Yes, ma'am. That's why I
04:52:34PM 19 did it in advance, so you could have a meaningful
04:52:36PM 20 opportunity to discuss it.

04:52:38PM 21 MS. GAY: I understand, Your Honor.

04:52:38PM 22 (A recess transpired.)

04:52:38PM 23 MS. GAY: Did you receive the e-mail
04:52:38PM 24 that I sent you?

04:54:40PM 25 THE COURT: I did, and it's not the

04:54:42PM 1 right statute, but you're going to need to print
04:54:42PM 2 your own jury charges if you want to make them part
04:54:44PM 3 of the record.

04:54:44PM 4 MS. GAY: She sent it to me in an
04:54:48PM 5 e-mail and -- all gobbledygook gook and the code
04:54:50PM 6 was all messed up. So I just asked her to send it,
04:54:54PM 7 which would have been something I would have held
04:54:54PM 8 up to change around. Can I bring that in the
04:54:58PM 9 morning?

04:54:58PM 10 THE COURT: That's fine. You may want
04:55:00PM 11 to double-check it, however --

04:55:00PM 12 MS. GAY: I imagine it may not be
04:55:04PM 13 right. I was trying to get it here.

04:55:04PM 14 THE COURT: I understand.

04:55:08PM 15 MS. GAY: Is attempt to distribute the
04:55:10PM 16 same statute or --

04:55:10PM 17 THE COURT: Yes.

04:55:12PM 18 MS. GAY: -- or is that under like 420
04:55:12PM 19 or something like that? What is that thing that
04:56:20PM 20 they do sometimes with section 420? The last
04:56:20PM 21 portion of it became -- this concept became
04:56:24PM 22 apparent to me, that there is a charge that is
04:56:28PM 23 4453420, which is a conspiracy to violate narcotics
04:56:32PM 24 laws. Penalty-wise, I believe it carries half
04:56:34PM 25 the substantive --

04:56:36PM 1 THE COURT: Unless you have case law
04:56:38PM 2 that tells me that's a lesser included offense and
04:56:40PM 3 it's been approved, it does not have the same
04:56:40PM 4 elements. It doesn't meet the elements.

04:56:44PM 5 MS. GAY: Well, it's a thought.

04:56:44PM 6 THE COURT: I need you to talk to your
04:56:48PM 7 client about whether he wants to testify. We will
04:56:50PM 8 deal with the charge conference at the appropriate
04:56:54PM 9 time.

04:56:54PM 10 Sir, if you would stand, I will remind
04:56:54PM 11 you that you're still under oath.

04:57:42PM 12 Have you had adequate time to discuss
04:57:44PM 13 with your attorney whether you should or should not
04:57:46PM 14 testify?

04:57:46PM 15 THE WITNESS: Yes, I have.

04:57:46PM 16 THE COURT: Do you need to speak with
04:57:48PM 17 her any more at this time?

04:57:50PM 18 THE WITNESS: No, I do not.

04:57:50PM 19 THE COURT: And, sir, do you wish to
04:57:52PM 20 testify?

04:57:52PM 21 THE DEFENDANT: No, I do not.

04:57:54PM 22 THE COURT: Okay. Then does the
04:57:56PM 23 defense rest, Ms. Gay?

04:57:56PM 24 MS. GAY: Yes, ma'am. And I renew my
04:57:58PM 25 motion for a directed verdict --

04:58:00PM 1 THE COURT: You're getting ahead of me.

04:58:02PM 2 Sir, have a seat for me. Thank you very much.

04:58:04PM 3 I'm going to bring the jury back in and
04:58:06PM 4 give you the opportunity to rest in their presence
04:58:10PM 5 and then we will proceed with the remainder of the
04:58:12PM 6 matters we need to deal with before adjourning.

04:58:18PM 7 Please bring in the jury.

04:58:18PM 8 (Jury in, 4:58 p.m.)

04:59:18PM 9 THE BAILIFF: All jurors are present.

04:59:20PM 10 THE COURT: Thank you. Defense, you
04:59:20PM 11 may proceed.

04:59:22PM 12 MS. GAY: Thank you, Your Honor. At
04:59:24PM 13 this time, the defense would rest.

04:59:26PM 14 THE COURT: Madame Forelady, ladies and
04:59:28PM 15 gentlemen, both the State and the defense have
04:59:30PM 16 rested their case. The next part of the process is
04:59:32PM 17 closing arguments and the instruction, and that
04:59:34PM 18 will take us well beyond probably 6:00 or 7:00. So
04:59:38PM 19 we're going to adjourn for -- at least your portion
04:59:40PM 20 of this, we'll adjourn for the evening while the
04:59:42PM 21 attorneys and I deal with additional matters of law
04:59:44PM 22 so we can be ready for closing arguments and the
04:59:48PM 23 charge in the morning.

04:59:48PM 24 During this break, it is essential that
04:59:50PM 25 you have no discussion about this case among

04:59:52PM 1 yourselves or with anyone else. To even discuss
04:59:54PM 2 what you have heard is a part of the deliberative
04:59:58PM 3 process because it requires you to process and draw
05:00:00PM 4 conclusions with the information that you have
05:00:02PM 5 heard. You are not allowed to do that until you've
05:00:06PM 6 heard closing arguments and the Court's
05:00:08PM 7 instructions. And even then, you're only allowed
05:00:12PM 8 to do that among you 12 in the jury room during the
05:00:14PM 9 deliberation process.

05:00:14PM 10 I would also ask that you not read,
05:00:18PM 11 watch, or listen to any media accounts, if there be
05:00:20PM 12 any. That includes radio, television, newspaper,
05:00:20PM 13 and Internet. And please do not make any comments
05:00:26PM 14 regarding your jury service on any social
05:00:28PM 15 networking sites. You will return directly to the
05:00:32PM 16 jury room at 9:30, at which time we will resume
05:00:36PM 17 with closing arguments and instructions.

05:00:36PM 18 And, again, please don't have any
05:00:38PM 19 contact with anyone in or about the courthouse. In
05:00:40PM 20 this late stage of the process it would be very
05:00:44PM 21 unfortunate if a conversation was misinterpreted.
05:00:50PM 22 Please leave your notepads in your seats. We'll
05:00:50PM 23 secure them during the evening recess.
05:00:50PM 24 Hopefully -- well, it's 51 degrees. It warmed up a
05:00:52PM 25 little bit.

05:00:54PM 1 See you in the morning at 9:30.

05:01:28PM 2 (Jury out, 5:01 p.m.)

05:01:30PM 3 THE COURT: The defense has rested.

05:01:36PM 4 Any motions?

05:01:36PM 5 MS. GAY: Yes, ma'am. I would again

05:01:38PM 6 renew my motion for a directed verdict, Your Honor.

05:01:42PM 7 THE COURT: Would the State like to

05:01:44PM 8 respond?

05:01:44PM 9 MR. SOWARDS: No, Your Honor. No

05:01:56PM 10 response.

05:01:56PM 11 THE COURT: The Court relies on its

05:01:58PM 12 previous ruling and denies the motion, as there is

05:02:00PM 13 direct as well as substantial circumstantial

05:02:04PM 14 evidence reasonably tending to prove the

05:02:06PM 15 Defendant's guilt.

05:02:14PM 16 I will give the jury a general

05:02:16PM 17 instruction regarding their responsibility and my

05:02:18PM 18 responsibility, how they judge witness credibility

05:02:22PM 19 and believability. I will give them a general

05:02:44PM 20 instruction regarding expert witness testimony.

05:02:48PM 21 And I will instruct them on direct and

05:02:56PM 22 circumstantial evidence from State v. Grippon.

05:02:58PM 23 I may consider the new circumstantial

05:03:00PM 24 evidence charge, but that is generally only

05:03:04PM 25 appropriate when the State is solely relying on

05:03:08PM 1 circumstantial evidence to prove their case, and
05:03:10PM 2 that is not factually the posture in this case. I
05:03:12PM 3 will think about it over the evening as to whether
05:03:16PM 4 I will incorporate that language.

05:03:16PM 5 I'll give them a general instruction
05:03:18PM 6 that the charge, the arrest, and the indictment are
05:03:20PM 7 not evidence, as well as on the presumption of
05:03:22PM 8 innocence. And then I will instruct Victor V.
05:03:28PM 9 Nebraska on reasonable doubt. I will then instruct
05:04:00PM 10 on the elements of the State having to prove the
05:04:02PM 11 Defendant's identify as the person who committed
05:04:04PM 12 the crime beyond a reasonable doubt.

05:04:14PM 13 I will instruct on the failure of the
05:04:18PM 14 Defendant to testify, which we know what that
05:04:20PM 15 standard language is. Actually, I may instruct
05:04:24PM 16 failure of the Defendant to testify before I
05:04:26PM 17 instruct on reasonable doubt, but I'll probably
05:04:30PM 18 reorient that. I will give the elements of
05:04:38PM 19 distribution, which we all know those. And then I
05:04:44PM 20 will explain the form of the verdict.

05:04:44PM 21 Are there any exceptions to the charges
05:04:46PM 22 proposed from the State?

05:04:48PM 23 MR. SOWARDS: None from the State.

05:04:48PM 24 THE COURT: From the defense?

05:04:50PM 25 MS. GAY: Your Honor, I would like you

05:04:52PM 1 to charge possession, and I will have a document to
05:04:56PM 2 give that to you. I do believe that there is
05:04:58PM 3 evidence in this case that the jury may conclude
05:05:02PM 4 that he merely possessed drugs, and I believe that
05:05:04PM 5 that's an appropriate lesser included in this case.

05:05:08PM 6 THE COURT: Any exception from the
05:05:08PM 7 State?

05:05:10PM 8 MR. SOWARDS: None, Your Honor.

05:05:10PM 9 THE COURT: Then I will charge simple
05:05:14PM 10 possession of marijuana.

05:05:18PM 11 LAW CLERK: Cocaine.

05:05:20PM 12 THE COURT: Cocaine, I'm sorry. I was
05:05:22PM 13 reading something and trying to do two things at
05:05:24PM 14 once, which is not always a good thing. We did
05:05:26PM 15 some research during the break. Conspiracy is not
05:05:28PM 16 considered a lesser included offense, it's a
05:05:30PM 17 substantive offense, and that comes from the
05:05:32PM 18 Supreme Court precedent.

05:05:34PM 19 MS. GAY: Thank you, Your Honor.

05:05:34PM 20 THE COURT: You are welcome. And if
05:05:50PM 21 you would, give us a moment while we reprint the
05:05:54PM 22 verdict forms and you can review that prior to
05:05:58PM 23 adjourning. Anything further that we need to take
05:06:00PM 24 up before adjourning from the State?

05:06:02PM 25 MR. SOWARDS: Nothing from the State.

05:06:04PM 1 THE COURT: From the defense?

05:06:06PM 2 MS. GAY: I'm thinking this out loud,
05:06:08PM 3 Your Honor; as I sat in the last minutes here, I
05:06:10PM 4 thought of some other things. Would you consider
05:06:12PM 5 charging mere presence, that my client was merely
05:06:16PM 6 present at the time she found those drugs on the
05:06:18PM 7 floor?

05:06:18PM 8 Obviously, mere presence wouldn't
05:06:20PM 9 necessarily apply to what happened in the office,
05:06:22PM 10 but it certainly could apply to what happened
05:06:26PM 11 outside the bar area.

05:06:26PM 12 THE COURT: Where is the sale alleged
05:06:30PM 13 to have taken place?

05:06:30PM 14 MS. GAY: Well, that's kind of
05:06:32PM 15 interesting because it's really two stuffs.
05:06:34PM 16 There's the stuff that happened in the office, that
05:06:38PM 17 has no drug report, no chemical analysis, nothing.
05:06:42PM 18 It was left with it being something in Mr. Gould's
05:06:46PM 19 hand. And then there is the situation where
05:06:50PM 20 something was supposed to have been dropped on the
05:06:52PM 21 floor that she picked up and did turn out to be
05:06:54PM 22 drugs.

05:06:54PM 23 THE COURT: The video shows your client
05:06:56PM 24 with the drugs and them discussing the drug
05:06:58PM 25 transaction. He just can't get her to taste the

05:07:02PM 1 drugs.

05:07:02PM 2 MS. GAY: I understand that, but
05:07:02PM 3 there's actually no chemical report that says what
05:07:04PM 4 he had in his hand at that time was drugs.

05:07:06PM 5 THE COURT: They never will have that,
05:07:08PM 6 will they?

05:07:08PM 7 MS. GAY: Well, I know, but we have to
05:07:10PM 8 talk about stuff in terms of the argument. For
05:07:14PM 9 instance, back to one of the other cases that I had
05:07:16PM 10 with you, Your Honor, there were two places where
05:07:18PM 11 drugs were found. And, interestingly, the jury
05:07:20PM 12 found that -- with Ms. Linder here, the jury found
05:07:26PM 13 that the Defendant was guilty of the drugs they
05:07:28PM 14 found at the hospital, but not the drugs they found
05:07:30PM 15 at the scene, and actually bifurcated it, amazingly
05:07:34PM 16 to us, and that's what they did.

05:07:38PM 17 So I believe we have two separate
05:07:38PM 18 situations and he could be merely present when she
05:07:42PM 19 picked it up off the floor, which is the substance
05:07:44PM 20 that they did determine was .23 grams of cocaine.

05:07:50PM 21 THE COURT: Would the State like to
05:07:50PM 22 respond?

05:07:54PM 23 MR. SOWARDS: Your Honor, I think mere
05:07:56PM 24 presence would be appropriate if he knew nothing
05:07:58PM 25 about it, but they were back in the office

05:08:00PM 1 discussing the drugs and he consumed some drugs in
05:08:04PM 2 front of them. He tells them to go back out to the
05:08:06PM 3 front of the restaurant and he comes back out there
05:08:10PM 4 and the drugs are on the floor again; he pointed
05:08:12PM 5 them out. I think that the mere presence charge
05:08:14PM 6 would not be appropriate.

05:08:16PM 7 THE COURT: Anything further?

05:08:18PM 8 MS. GAY: Well, Your Honor, I would
05:08:18PM 9 just say that the jury has every right to separate
05:08:20PM 10 the two situations. And they have every right to
05:08:24PM 11 say, well, we believe he did whatever he did or
05:08:26PM 12 didn't do, and what the State can prove with what
05:08:30PM 13 happened in the office.

05:08:30PM 14 And then at a later time I think --
05:08:32PM 15 they say that the drugs, the drugs, and it's just
05:08:34PM 16 supposedly the stuff that was taken out of the
05:08:36PM 17 building, but there is truly no connection to the
05:08:40PM 18 stuff that they are alleging to be drugs in his
05:08:42PM 19 hand in the office and the stuff that she picked up
05:08:46PM 20 off the ground. There's no connecting witness,
05:08:48PM 21 there's no testimony whatsoever in the case that
05:08:50PM 22 they are the same thing.

05:08:50PM 23 So I believe the jury has every right
05:08:52PM 24 to separate out the two situations and make
05:08:56PM 25 decisions that he could have in fact been merely

05:09:00PM 1 present standing at the bar with them when she
05:09:02PM 2 picked up the stuff that they then chemically
05:09:06PM 3 tested to be drugs.

05:09:06PM 4 THE COURT: How is the State prejudiced
05:09:06PM 5 by the Court instructing mere presence? Even
05:09:12PM 6 though I don't really think there's a factual basis
05:09:16PM 7 for it, but I'm trying to figure out how you could
05:09:20PM 8 be prejudiced by it.

05:09:24PM 9 MR. SOWARDS: Our response to that,
05:09:26PM 10 Your Honor, would just be that it might serve to
05:09:28PM 11 confuse the jury if there's --

05:09:30PM 12 THE COURT: How would it confuse the
05:09:30PM 13 jury? You have the burden of proving and need to
05:09:34PM 14 prove that he was there and had the drug
05:09:34PM 15 transaction or you don't. I guess I'm trying to
05:09:36PM 16 figure out how you're prejudiced by it. If all you
05:09:40PM 17 can prove is that he's merely present, then he's
05:09:44PM 18 not guilty. I mean, that's the essence of a mere
05:09:44PM 19 presence charge.

05:09:44PM 20 So how are you prejudiced by that? If
05:09:48PM 21 your case is as strong as you contend, which is you
05:09:56PM 22 prove that he -- that a drug transaction was
05:09:58PM 23 initiated and that it was completed, then he wasn't
05:10:02PM 24 merely present, was he? I don't think there really
05:10:04PM 25 is any factual support for it, but I can't discern

05:10:08PM 1 any error by instructing it.

05:10:10PM 2 MR. SOWARDS: I think just off the top
05:10:12PM 3 of my head right now -- I mean, I'm not sure.

05:10:38PM 4 THE COURT: Okay. Anything further?

05:10:38PM 5 MS. GAY: No, Your Honor, but I will
05:10:40PM 6 have that in the morning as well.

05:10:42PM 7 THE COURT: Have what in the morning?

05:10:44PM 8 MS. GAY: The mere presence --

05:10:46PM 9 THE COURT: I already have a mere
05:10:46PM 10 presence charge. If I'm going to use one, I will
05:10:50PM 11 use mine and --

05:10:50PM 12 MS. GAY: Okay. Thank you. You still
05:10:52PM 13 would like me to bring the lesser included charge
05:10:54PM 14 of possession, or you have your own?

05:10:54PM 15 THE COURT: I have one that I would
05:10:56PM 16 use. If you want to mark something for the record,
05:10:58PM 17 that's up to you. I always use my standard
05:11:00PM 18 instructions.

05:11:02PM 19 MS. GAY: Okay. Thank you, Your Honor.

05:11:04PM 20 THE COURT: You are welcome. Anything
05:11:04PM 21 else before we adjourn for the evening from the
05:11:04PM 22 State?

05:11:06PM 23 MR. SOWARDS: No, nothing from the
05:11:08PM 24 State.

05:11:08PM 25 THE COURT: From the defense?

05:11:08PM 1 MS. GAY: Well, Your Honor, we've been
05:11:10PM 2 working with the bondsman, who for some reason, for
05:11:14PM 3 the first time in 23 years, doesn't want to stay on
05:11:16PM 4 the bond.

05:11:16PM 5 THE COURT: That's probably because
05:11:18PM 6 your client can't pay him another fee for him.

05:11:20PM 7 MS. GAY: That wasn't it.

05:11:20PM 8 THE COURT: What is it?

05:11:22PM 9 MS. GAY: He's paid all the bond.

05:11:24PM 10 THE COURT: He's going to have to pay
05:11:26PM 11 an additional bond. He doesn't get to pay -- his
05:11:26PM 12 obligation on that bond has ended, so that bondsman
05:11:32PM 13 is going to have to write a new bond, and he knows
05:11:32PM 14 that.

05:11:32PM 15 MS. GAY: He agreed to pay more money
05:11:34PM 16 if necessary.

05:11:34PM 17 THE COURT: Okay.

05:11:34PM 18 MS. GAY: His boss is here in the
05:11:38PM 19 courtroom. He went out there to talk to
05:11:38PM 20 Mr. Sinkler. This has all been happening so fast.
05:11:44PM 21 He didn't know if we could post another bond with
05:11:48PM 22 another bondsman or what. It's all moving pretty
05:11:52PM 23 fast here today.

05:11:52PM 24 So he would be able to do that we
05:11:54PM 25 believe, but Mr. Sinkler did not want to stay on it

05:11:58PM 1 or didn't want to continue the relationship, which
05:12:00PM 2 didn't make a whole lot of sense to me. In all the
05:12:02PM 3 years that I've ever dealt with bondsmen, they have
05:12:08PM 4 never chosen to do that. Mr. Gould showed up for
05:12:08PM 5 every single -- I mean, everything.

05:12:10PM 6 THE COURT: That's not a barometer for
05:12:12PM 7 me. I've had people show up for everything and
05:12:18PM 8 disappear during deliberation.

05:12:18PM 9 MS. GAY: Could we take a few minutes
05:12:20PM 10 just to see if we can contact another bondsman?

05:12:20PM 11 THE COURT: Sure. But it's after
05:12:22PM 12 5:00 and I'm having to pay the deputies overtime.

05:12:28PM 13 MS. GAY: We just need to make a phone
05:12:36PM 14 call.

05:12:36PM 15 THE COURT: Really, Ms. Gay, these
05:12:38PM 16 arrangements should have been made long before
05:12:40PM 17 today.

05:12:40PM 18 MS. GAY: We could have been over by
05:12:44PM 19 today. That was part of the problem, Your Honor.
05:12:44PM 20 It's complicated.

05:12:46PM 21 THE COURT: I've never really known a
05:12:48PM 22 case to be one day, unless there's one witness, and
05:12:52PM 23 I've been doing this for 19 years. I've never had
05:12:54PM 24 a one-day case.

05:12:56PM 25 (Off-the-record conference.)

05:12:56PM 1 MS. GAY: Judge, can I ask a question?

05:12:56PM 2 THE COURT: Yes.

05:20:10PM 3 MS. GAY: If he goes to the jail now
05:20:12PM 4 and has the \$50,000 bond on it, can he post it?

05:20:16PM 5 THE COURT: I have no idea how that's
05:20:18PM 6 going to work. He has a bond. He's just going to
05:20:22PM 7 have to write it on that bond that's been done.
05:20:24PM 8 I'm not doing a new order.

05:20:26PM 9 MS. GAY: I understand, but I'm just
05:20:26PM 10 trying to figure out if the bondsman decided to
05:20:30PM 11 post it in 20 minutes --

05:20:32PM 12 THE COURT: I have no idea how that
05:20:32PM 13 works. You'd have to ask the clerk at the jail. I
05:20:36PM 14 have no idea.

05:20:38PM 15 MS. GAY: Okay. If it's already been
05:20:40PM 16 posted by somebody, it wouldn't show it as a
05:20:46PM 17 postable bond?

05:20:46PM 18 THE COURT: You're asking me questions
05:20:48PM 19 I have no idea about.

05:20:48PM 20 MS. GAY: And I've never in my life not
05:20:50PM 21 seen somebody willing to stay on it.

05:20:52PM 22 (Off-the-record conference.)

05:20:52PM 23 THE COURT: All right. What's going
05:23:30PM 24 on?

05:23:32PM 25 THE DEFENDANT: My attorney is talking

05:23:34PM 1 to the bail bondsman.

05:23:36PM 2 THE COURT: Okay.

05:24:44PM 3 MS. GAY: I have Mr. Holliday on the
05:24:46PM 4 phone and he's willing to put it all together. He
05:24:48PM 5 has to talk to this gentleman, who is the person
05:24:52PM 6 that's going to cosign. He's here today. He needs
05:24:52PM 7 to know what he needs to do to be able to do this.
05:24:56PM 8 He's right here. Does he need to meet this man
05:25:00PM 9 right here downstairs?

05:25:00PM 10 THE COURT: I have no idea. I don't
05:25:02PM 11 know the mechanics of all of that.

05:25:06PM 12 THE BAILIFF: What happens, Judge, if
05:25:06PM 13 his bond is off and it's the same original bond,
05:25:10PM 14 then it would be as if a bondsman is coming down to
05:25:12PM 15 the jail. He's going to go to the jail --

05:25:14PM 16 THE COURT: If this is the same
05:25:16PM 17 bondsman, or a different one?

05:25:16PM 18 MS. GAY: It's a different bondsman.

05:25:18PM 19 THE COURT: Then he's going to have to
05:25:20PM 20 go to the jail.

05:25:20PM 21 THE BAILIFF: He has to go to the jail
05:25:22PM 22 and he has to post a bond, because you're not doing
05:25:24PM 23 any type of ordering stuff in reference to it.

05:25:28PM 24 MS. GAY: Well, if the bondsman went
05:25:28PM 25 off bond, there would have to be an order to vacate

05:25:30PM 1 --

05:25:30PM 2 THE COURT: Once the case is called,
05:25:32PM 3 his obligation has ended.

05:25:34PM 4 MS. GAY: Okay. Then the clerk's
05:25:36PM 5 office would have to be sending something to the
05:25:38PM 6 jail saying --

05:25:38PM 7 (Off-the-record conference. Attorney
05:25:38PM 8 Gay talking on the phone.)

05:26:24PM 9 THE BAILIFF: Are we ready to take him
05:26:24PM 10 then?

05:26:24PM 11 THE COURT: I would assume so, if
05:26:28PM 12 that's the way it has to be done. Because I'm not
05:26:32PM 13 trying to sound flippant, I just have no idea how
05:26:36PM 14 it operates.

05:26:40PM 15 MS. GAY: I just want to make one more
05:26:42PM 16 phone call to the jail, it won't take but a minute,
05:26:44PM 17 and then we'll see whether or not --

05:26:44PM 18 THE COURT: Yeah. I can't have -- the
05:26:46PM 19 bus is downstairs waiting.

05:26:48PM 20 MS. GAY: I understand.

05:26:50PM 21 THE COURT: They've delayed already and
05:26:52PM 22 now I'm holding up a whole bunch of other people.

05:27:00PM 23 You might want to leave any valuables
05:27:02PM 24 with the people that you came with, sir.

05:27:06PM 25 THE DEFENDANT: Thank you, Your Honor.

05:27:28PM 1 THE COURT: You're welcome, sir.

05:27:30PM 2 Is there anything else from the State?

05:27:32PM 3 MR. SOWARDS: Nothing.

05:27:32PM 4 THE COURT: Anything from the defense?

05:27:32PM 5 MS. GAY: No, Your Honor.

05:27:34PM 6 THE COURT: All right. See you at

7 9:30.

8 (These proceedings were recessed, to be

9 continued November 20, 2014 @ 9:30 a.m.)

10 (The following proceedings, in re State

11 v. Gould, were had November 20, 2015, Charleston

12 County, @ 9:46 a.m.)

08:43:16AM 13 THE COURT: Anything before we proceed

09:46:24AM 14 with arguing closing arguments from the State?

09:46:24AM 15 MR. SOWARDS: Nothing from the State.

09:46:26AM 16 THE COURT: From the defense?

09:46:26AM 17 MS. GAY: My e-mail is not working

09:46:28AM 18 correctly so my document is on its way. I will

09:46:30AM 19 hand it to you --

09:46:30AM 20 THE COURT: Which document is that?

09:46:32AM 21 MS. GAY: You suggested that I have a

09:46:34AM 22 written document about my request to charge for

09:46:36AM 23 possession, which I'm bringing. It will be here

09:46:38AM 24 shortly.

09:46:40AM 25 THE COURT: For what purpose?

09:46:42AM 1 MS. GAY: You told me that -- when you
09:46:44AM 2 said -- you did agree that you would give him the
09:46:46AM 3 possession charge, but you said you might want
09:46:48AM 4 something in writing.

09:46:48AM 5 THE COURT: No. I'm using my own
09:46:52AM 6 possession charge. I said if you want something
09:46:54AM 7 for the record other than what I'm going to
09:46:56AM 8 instruct and you want to have it marked, then you
09:47:00AM 9 need to have that --

09:47:00AM 10 MS. GAY: Oh, no, I don't need that. I
09:47:02AM 11 was confused, sorry.

09:47:02AM 12 THE COURT: That's okay.

09:47:14AM 13 Have you checked any technology you
09:47:14AM 14 plan on using to make sure it's working?

09:47:16AM 15 MR. SOWARDS: We have.

09:47:16AM 16 THE COURT: Bring in the jury.

09:48:26AM 17 (Jury in, 9:48 a.m.)

09:48:28AM 18 THE COURT: Any objection to the form
09:49:20AM 19 of the verdict from the State?

09:49:22AM 20 MR. SOWARDS: No.

09:49:22AM 21 THE COURT: From the defense?

09:49:22AM 22 MS. GAY: No.

09:49:22AM 23 THE COURT: Ladies and gentlemen, we
09:49:22AM 24 have now reached the stage of the trial where we
09:49:22AM 25 will have closing arguments and the Court's

CLOSING ARGUMENT - BY MR. SOWARDS

09:49:26AM 1 instructions. You will hear from the State,
09:49:32AM 2 followed by the defense. I would ask that you give
09:49:32AM 3 the attorneys your undivided attention.

09:49:32AM 4 We're going to order lunch for you here
09:49:34AM 5 today, and it will arrive by noon, just for your
09:49:38AM 6 planning purposes.

09:49:44AM 7 Bear with us, I'll work out the
09:49:46AM 8 logistics. If you all will give the attorneys your
09:49:46AM 9 attention.

09:49:50AM 10 You may proceed when you're ready.

09:49:52AM 11 MR. SOWARDS: Thank you.

09:50:34AM 12 Good morning. Now, I stood before you
09:50:40AM 13 yesterday morning and told you that this case would
09:50:42AM 14 be straightforward. I did not say that it would be
09:50:46AM 15 easy. I don't think it's ever an easy decision to
09:50:50AM 16 serve as a juror and weigh the evidence and decide
09:50:54AM 17 whether one of your fellow citizens is guilty or
09:51:06AM 18 not guilty of a crime; however, I do believe that,
09:51:06AM 19 after hearing all the evidence yesterday and
09:51:08AM 20 watching via video, that this case is
09:51:08AM 21 straightforward.

09:51:08AM 22 You heard from Detective Melanie
09:51:12AM 23 Frederick, who worked as an undercover on this
09:51:16AM 24 operation. You heard from Taylor Boyd, who worked
09:51:20AM 25 as a confidential informant in this operation. You

CLOSING ARGUMENT - BY MR. SOWARDS

09:51:28AM 1 heard from Detective Patrick Gill, who was the lead
09:51:28AM 2 case officer in this operation.

09:51:32AM 3 You also heard from the chain of
09:51:34AM 4 custody witnesses from CPD, from the evidence
09:51:36AM 5 custodian at the police station to the courier who
09:51:42AM 6 took the drugs from the police station to the
09:51:44AM 7 hospital, to the expert scientist who tested them.
09:51:50AM 8 And then after all that, you also had the
09:51:54AM 9 opportunity to watch the video of this operation.
09:51:58AM 10 So you all got to see for yourself what took place
09:52:02AM 11 on that day.

09:52:06AM 12 Now, the incident that gave rise to
09:52:08AM 13 this charge was a CPD narcotics investigation that
09:52:16AM 14 occurred on October 10, 2013, the target of which
09:52:20AM 15 was the Defendant. You saw on the video that they
09:52:28AM 16 walked up to the restaurant on King Street. They
09:52:32AM 17 walked into the restaurant and rendezvoused with
09:52:38AM 18 the Defendant.

09:52:38AM 19 They went back into the office, they
09:52:40AM 20 discussed drugs, they witnessed the Defendant
09:52:44AM 21 consuming drugs and they obtained drugs and left
09:52:46AM 22 with drugs. Like I said, I think it's fairly
09:52:52AM 23 straightforward.

09:52:54AM 24 Now, I'm going to talk a little bit
09:52:56AM 25 about the law in this case. Judge Jefferson will

CLOSING ARGUMENT - BY MR. SOWARDS

09:53:00AM 1 charge you the law and whatever I say that may
09:53:06AM 2 conflict with what she says, you disregard what
09:53:10AM 3 I've said and defer to her. But I am going to talk
09:53:14AM 4 about the law for a moment.

09:53:16AM 5 The State has the burden of proof in
09:53:18AM 6 this case, and that burden is to prove that the
09:53:22AM 7 Defendant is guilty of distribution of cocaine
09:53:26AM 8 beyond a reasonable doubt. Now, I don't think that
09:53:30AM 9 beyond a reasonable doubt -- that you can kind of
09:53:32AM 10 just hear that word and know what it means, but
09:53:36AM 11 it's proof that leaves you firmly convinced of the
09:53:42AM 12 Defendant's guilt.

09:53:42AM 13 There are very few things in this world
09:53:44AM 14 that we know with absolute certainty, and in
09:53:48AM 15 criminal cases the law does not require proof that
09:53:52AM 16 overcomes every possible doubt. You also heard a
09:53:56AM 17 variety of evidence -- or you've seen a variety of
09:53:58AM 18 evidence in this case. You saw direct evidence and
09:54:06AM 19 circumstantial evidence.

09:54:08AM 20 Now, direct evidence has been defined
09:54:10AM 21 as testimony of a person who asserts or claims to
09:54:14AM 22 have actual knowledge of a fact, such as an
09:54:16AM 23 eyewitness. So in this case, that might be
09:54:18AM 24 Detective Frederick telling you what she saw and
09:54:22AM 25 the CI telling you what she saw.

CLOSING ARGUMENT - BY MR. SOWARDS

09:54:26AM 1 With circumstantial evidence it's a --
09:54:30AM 2 or has been defined as proof of a chain of facts
09:54:32AM 3 and circumstances indicating the existence of a
09:54:36AM 4 fact, which would be the buy video or the lab
09:54:42AM 5 testing. You're allowed to make a reasonable
09:54:46AM 6 inference from circumstantial evidence.

09:54:48AM 7 It might be that if you're sitting in
09:54:50AM 8 here all day and you see somebody walk into the
09:54:54AM 9 courtroom and they have an umbrella and there's
09:54:56AM 10 water on it, and then another person walks in and
09:55:00AM 11 they have a rain jacket on and they're brushing
09:55:02AM 12 rain off their coat, you all could reasonably infer
09:55:06AM 13 it's raining outside, even though you're in here
09:55:10AM 14 and you didn't see it for yourself. Now, with
09:55:12AM 15 direct evidence and circumstantial evidence, the
09:55:16AM 16 law doesn't make a distinction, and one does not
09:55:20AM 17 carry more or less weight than the other.

09:55:28AM 18 The Defendant has been charged with
09:55:32AM 19 distribution of cocaine, which is South Carolina
09:55:34AM 20 Code Section 4453370. That crime is to
09:55:42AM 21 manufacture, distribute, dispense, deliver,
09:55:44AM 22 purchase, aid, abet, attempt, or conspire to
09:55:50AM 23 manufacture, distribute, dispense, deliver, or
09:55:54AM 24 possess, with the intent to manufacture,
09:55:58AM 25 distribute, dispense, deliver, or purchase.

CLOSING ARGUMENT - BY MR. SOWARDS

09:56:00AM 1 The State is not required to prove all
09:56:02AM 2 of those things. If we prove one, such as the
09:56:08AM 3 Defendant did dispense cocaine, or the Defendant
09:56:16AM 4 conspired to dispense or distribute cocaine, that's
09:56:18AM 5 all we need to prove.

09:56:22AM 6 Now, in this case, to kind of break it
09:56:26AM 7 down, it's four different elements. The location,
09:56:28AM 8 did it occur in Charleston County? Did the
09:56:32AM 9 Defendant or was the Defendant the one who
09:56:34AM 10 committed the crime? Were there drugs involved?
09:56:40AM 11 And did he commit the act of distribution or those
09:56:42AM 12 other things, conspire to distribute or attempt to
09:56:48AM 13 distribute.

09:56:48AM 14 Now, you heard testimony from several
09:56:52AM 15 people yesterday. I would like to take a minute
09:56:54AM 16 and discuss what they talked about. You heard
09:56:56AM 17 first from Melanie Frederick. She is a
09:57:00AM 18 highly-trained CPD narcotics agent who participates
09:57:04AM 19 in these operations frequently. In this particular
09:57:06AM 20 case she was undercover; she wore a wire.

09:57:12AM 21 She told you that they fitted her with
09:57:16AM 22 an audiovisual recording device which was placed
09:57:20AM 23 right here on the button of her shirt, which is
09:57:22AM 24 what you saw as she was walking around the
09:57:26AM 25 restaurant. She told you that she discussed the

CLOSING ARGUMENT - BY MR. SOWARDS

09:57:28AM 1 cocaine with the Defendant when they were in the
09:57:32AM 2 office. She told you that she obtained cocaine
09:57:32AM 3 from the Defendant.

09:57:36AM 4 Further, she told you that she left the
09:57:36AM 5 Joe Pasta Restaurant with that cocaine that she
09:57:40AM 6 obtained from the Defendant. You also heard
09:57:44AM 7 testimony from Taylor Boyd, who acted as a
09:57:48AM 8 confidential informant in this case. She arranged
09:57:52AM 9 the meeting with the Defendant via text message
09:57:56AM 10 beforehand. Yes, she had a minor possession
09:58:02AM 11 charge, and that's why she acted as the CI in this
09:58:06AM 12 case, and it was eventually dismissed based on her
09:58:08AM 13 work.

09:58:10AM 14 She was present during the buy video.
09:58:12AM 15 She told you that. She corroborated what Detective
09:58:18AM 16 Frederick told you, which is that she observed the
09:58:20AM 17 Defendant discussing cocaine, she observed the
09:58:24AM 18 Defendant consuming cocaine, and she observed
09:58:28AM 19 Detective Frederick leave the restaurant with that
09:58:30AM 20 cocaine that she obtained from the Defendant. And
09:58:32AM 21 she told you that he talked about trying to share
09:58:36AM 22 it with them.

09:58:38AM 23 You also heard testimony from Detective
09:58:42AM 24 Patrick Gill. He's also with the CPD narcotics
09:58:46AM 25 unit. On this particular case, Detective Gill was

CLOSING ARGUMENT - BY MR. SOWARDS

09:58:50AM 1 the lead case officer, which means he kind of
09:58:54AM 2 orchestrated the whole operation. He searched the
09:58:56AM 3 CI before they went on the operation. He fitted
09:59:00AM 4 Detective Frederick with the camera. He searched
09:59:02AM 5 the CI when she returned, and neither time did she
09:59:08AM 6 have drugs on her person.

09:59:12AM 7 He told you that when Detective
09:59:16AM 8 Frederick returned from the operation, that she
09:59:18AM 9 handed him a baggie of cocaine which she obtained
09:59:22AM 10 from the Defendant. He field-tested the cocaine
09:59:24AM 11 right there and it tested presumptive positive. He
09:59:28AM 12 then submitted that cocaine to evidence at CPD.
09:59:34AM 13 Then you heard from Linda Wilson who is the
09:59:36AM 14 evidence custodian at CPD. She told you that she
09:59:42AM 15 received it in her office and nothing happened to
09:59:44AM 16 it between when Detective Gill brought it and then
09:59:46AM 17 when Susan Payne took it to the lab for testing.

09:59:50AM 18 And, finally, you heard from Renee
09:59:58AM 19 Hilton who is the CPD laboratory expert. She told
09:59:58AM 20 you that as an expert she conducted a test on the
10:00:02AM 21 items that were recovered from Joe Pasta -- were
10:00:06AM 22 received from Joe Pasta and the Defendant, and that
10:00:08AM 23 it tested positive for cocaine. And then on top of
10:00:14AM 24 all that, you got to watch a 45-minute video of all
10:00:18AM 25 this taking place.

CLOSING ARGUMENT - BY MR. SOWARDS

10:00:20AM 1 I'd just like to say a few words about
10:00:22AM 2 the beginning of the video. You remember that, as
10:00:26AM 3 I said, the camera was right here (Indicating) on
10:00:30AM 4 Detective Frederick's shirt. So you only saw
10:00:32AM 5 straight forward, there was no 360 view, which is
10:00:36AM 6 why it was important to have her speak with you and
10:00:40AM 7 provide you a little more context about that
10:00:42AM 8 operation.

10:00:46AM 9 At about 13 minutes and 15 seconds into
10:00:50AM 10 the video, they first encountered the Defendant,
10:00:54AM 11 and she says, you must be the infamous Dale. At
10:01:00AM 12 25 minutes, they meet with the Defendant outside of
10:01:04AM 13 the restaurant. They discuss the purpose of the
10:01:06AM 14 visit. What did you want to see -- what were you
10:01:10AM 15 wanting to see me about, again?

10:01:12AM 16 At 27 minutes and 32 seconds into the
10:01:14AM 17 video, they come back inside, Detective Frederick
10:01:20AM 18 updates on her live wire, which Detective Gill and
10:01:22AM 19 others are monitoring for her safety, that they've
10:01:26AM 20 met with the Defendant and they're going to go back
10:01:30AM 21 to the office.

10:01:30AM 22 At 33 minutes and 22 seconds, they go
10:01:34AM 23 back to the office. They were instructed to meet
10:01:38AM 24 the Defendant there. And then at 34 minutes, once
10:01:42AM 25 they're inside the office, they were the only three

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10:01:44AM 1 people in there: Detective Frederick, the CI
10:01:50AM 2 Taylor Boyd, and the Defendant. The door was
10:01:54AM 3 closed.

10:01:56AM 4 At about 34 minutes and 29 seconds,
10:02:02AM 5 they discussed with the Defendant why they were
10:02:08AM 6 there. Once again, we have come here to get
10:02:10AM 7 something for our friend, it's his birthday, we
10:02:12AM 8 wanted to bring him a present, we're going to a
10:02:14AM 9 party. And then at 35 minutes and 20 seconds, the
10:02:18AM 10 Defendant looks down and says, what's that? And
10:02:22AM 11 Detective Frederick looks down and picks it up.
10:02:24AM 12 And you can see her, she's holding it right in her
10:02:26AM 13 hand, right in front of the video, and it's a
10:02:30AM 14 baggie of cocaine.

10:02:30AM 15 She knew from her training and
10:02:32AM 16 experience right then and there that that was a
10:02:34AM 17 baggie of cocaine. That's what she told you. And
10:02:38AM 18 then the Defendant says he wants her to taste it.
10:02:44AM 19 He wants her to taste it because that's the only
10:02:48AM 20 way he'll know she's not a narc or she's not a CI.
10:02:52AM 21 At this point, I submit to you, he seems to be a
10:02:56AM 22 little paranoid about that. He knows what a narc
10:02:58AM 23 is. He knows what a CI is.

10:03:04AM 24 He says, I don't want to go to prison.
10:03:06AM 25 I'll go to prison for a long time if you walk out

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10:03:10AM 1 of here with that, so let's taste it together. He
10:03:14AM 2 even says that that's about a gram of cocaine and
10:03:18AM 3 that's worth about \$60. After that the video cuts
10:03:28AM 4 off and we play a second feed. And I just want to
10:03:30AM 5 reiterate that that was a long video and the
10:03:32AM 6 computer automatically split it into two parts. So
10:03:36AM 7 it's a continuation of what we saw in the first
10:03:38AM 8 video.

10:03:40AM 9 So in the beginning he continues to
10:03:42AM 10 tell her that she needs to taste it. And at this
10:03:46AM 11 point he's already consumed it twice in front of
10:03:50AM 12 her. And then on the second video, at the
10:03:52AM 13 beginning, you see him consume it for the third
10:03:56AM 14 time and he's holding it at this point.

10:04:02AM 15 And what's important to point out, too,
10:04:04AM 16 is that at this point Detective Frederick says that
10:04:08AM 17 when she walked into the office, she didn't see
10:04:10AM 18 drugs on the floor. The first time she noticed
10:04:16AM 19 that there were drugs on the floor is when he told
10:04:18AM 20 her they were there. He pointed out, what's that?
10:04:22AM 21 So then the Defendant instructs them to return to
10:04:26AM 22 the front of the restaurant, finish your drinks or
10:04:30AM 23 whatever. They leave the office, they being
10:04:32AM 24 Detective Frederick and the CI, leave the office
10:04:36AM 25 without the cocaine. Last they saw, the Defendant

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10:04:38AM 1 was holding it.

10:04:40AM 2 So they get back out to the front of
10:04:42AM 3 the office -- or excuse me, the front of the
10:04:44AM 4 restaurant, and they're again approached by the
10:04:50AM 5 Defendant. And, again, he points out something on
10:04:52AM 6 the ground; it's a baggie of cocaine. Detective
10:04:56AM 7 Frederick told you that, based on her training and
10:04:58AM 8 experience, it was the same bag that she touched in
10:05:02AM 9 the office, only it was a little lighter.

10:05:06AM 10 I submit to you that it was lighter
10:05:10AM 11 because he had taken three tastes from it at that
10:05:14AM 12 point. So that's when the video concludes.
10:05:18AM 13 Detective Frederick and the CI leave the
10:05:22AM 14 restaurant, high-five Dale, successful operation.
10:05:28AM 15 After the video, that's when they rendezvoused back
10:05:32AM 16 with Detective Gill and he searches the CI,
10:05:38AM 17 receives the drugs from Detective Frederick and
10:05:40AM 18 field-tests them.

10:05:42AM 19 I told you a few minutes ago that there
10:05:42AM 20 are basically four elements here. Did the crime
10:05:46AM 21 occur in Charleston County? Both Detective Gill
10:05:50AM 22 and Detective Frederick told you that the operation
10:05:52AM 23 took place at 428 King Street, which is here in
10:05:56AM 24 Charleston County. Right down the street.

10:06:00AM 25 Was it the Defendant? Detective

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10:06:04AM 1 Frederick told you here in court that the Defendant
10:06:06AM 2 right there was the individual who was on the video
10:06:12AM 3 consuming drugs and then distributing drugs to her.
10:06:16AM 4 Taylor Boyd told you that it was the Defendant.
10:06:20AM 5 And then you saw for yourself on the buy video that
10:06:24AM 6 it was the Defendant.

10:06:32AM 7 Were they drugs? Detective Frederick
10:06:34AM 8 told you, from her training and experience, that
10:06:36AM 9 she knew as she was handling it -- you saw it right
10:06:38AM 10 on the video -- that it was drugs, that it was
10:06:40AM 11 cocaine. Detective Gill told you that he
10:06:44AM 12 field-tested it and it tested presumptive positive
10:06:48AM 13 for cocaine. And then the CPD expert told you that
10:06:50AM 14 in her lab she tested it and it was cocaine. And
10:06:54AM 15 there was an unbroken chain of custody from when
10:06:58AM 16 Detective Frederick took control of it until when
10:07:00AM 17 she got it.

10:07:02AM 18 And then finally distribution.
10:07:08AM 19 Detective Frederick told you that -- testified that
10:07:14AM 20 the Defendant distributed drugs to her. The CI
10:07:22AM 21 said she witnessed the Defendant distributing
10:07:26AM 22 drugs. You saw the Defendant on the video
10:07:30AM 23 imploring her to take a taste of it, he wanted to
10:07:30AM 24 share it with her.

10:07:32AM 25 We submit to you that's sufficient to

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10:07:34AM 1 meet the statutory requirements, the statutory
10:07:38AM 2 crime of distribution of cocaine. The meeting was
10:07:44AM 3 arranged beforehand. We submit to you that he
10:07:48AM 4 conspired to distribute cocaine. And, like I said,
10:07:54AM 5 in addition to the testimony that you heard, you
10:07:56AM 6 all saw for yourself on that buy video exactly what
10:08:00AM 7 took place.

10:08:06AM 8 Now, I believe the State has met its
10:08:08AM 9 burden to prove beyond a reasonable doubt that the
10:08:12AM 10 Defendant did attempt, did distribute, did conspire
10:08:18AM 11 to distribute drugs to the detective. Now, there
10:08:28AM 12 were several issues that came up, one of which was
10:08:30AM 13 the money. Detective Gill told you that he gave
10:08:32AM 14 Detective Frederick \$100, 60 of which could be used
10:08:40AM 15 to purchase drugs and 40 of which would be used to
10:08:44AM 16 purchase food at the restaurant. He wanted them to
10:08:48AM 17 blend in.

10:08:48AM 18 We never told you that Detective
10:08:52AM 19 Frederick purchased drugs. It's not required under
10:08:56AM 20 the statute that money exchange hands. Sharing
10:09:00AM 21 drugs is sufficient for distribution. Attempting
10:09:08AM 22 to share drugs is sufficient under the statute.
10:09:12AM 23 Conspiring to share drugs is sufficient. There's
10:09:20AM 24 also some testimony about the weight and how he
10:09:24AM 25 said in the office, that looks about like a gram,

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10:09:30AM 1 and Detective Gill testified that it was maybe a
10:09:32AM 2 little less than that when he received it.

10:09:36AM 3 Detective Frederick told you that -- it
10:09:38AM 4 was her testimony that it was the same bag. I
10:09:44AM 5 submit to you that it's reasonable to infer that it
10:09:46AM 6 was lighter the second time she handled it because
10:09:50AM 7 he consumed part of it on three separate occasions.

10:09:54AM 8 And in any event, the weight of the
10:09:56AM 9 drugs is irrelevant. The statute doesn't prescribe
10:10:00AM 10 a weight. It's the act or the attempt or
10:10:06AM 11 conspiring to distribute drugs; that's what's
10:10:10AM 12 important. The weight is not an issue. There's
10:10:14AM 13 also an issue of the handoff. You don't see on the
10:10:18AM 14 video the Defendant handing her drugs, but he
10:10:22AM 15 points them out on the ground, and nobody else saw
10:10:26AM 16 them when they walked in there, back in the office;
10:10:30AM 17 nobody else saw it on the ground when they came in
10:10:34AM 18 the front of the restaurant.

10:10:36AM 19 I think a helpful analogy would be like
10:10:40AM 20 a bank teller. You go to the bank teller, you
10:10:44AM 21 drive up to the window and you put your deposit, or
10:10:46AM 22 whatever, into the tube, and it shoots back to the
10:10:48AM 23 teller. And that person does whatever the
10:10:54AM 24 transaction is, and you talk about it with that
10:10:56AM 25 person, and you understand from your experience and

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10:11:00AM 1 through inference and from the conversation that
10:11:04AM 2 you're having with the person what's happening.

10:11:10AM 3 And then finally there was some
10:11:14AM 4 testimony elicited by the defense attorney about
10:11:18AM 5 the restaurant itself, it's a busy place. Well,
10:11:22AM 6 the first time they met back in the office, nobody
10:11:26AM 7 saw drugs on the floor until they were pointed out
10:11:30AM 8 by the Defendant. They had been sitting up there
10:11:34AM 9 at the front of the restaurant previously and when
10:11:36AM 10 they came back, nobody noticed drugs on the floor
10:11:40AM 11 until the Defendant pointed them out.

10:11:46AM 12 I think that we have presented enough
10:11:52AM 13 evidence, more than enough evidence, to meet our
10:11:54AM 14 burden and that I submit to you when you all view
10:12:00AM 15 the evidence and consider the evidence, that you
10:12:04AM 16 will agree and find the Defendant guilty of
10:12:10AM 17 distribution of cocaine.

10:12:12AM 18 I thank you for your service today and
10:12:12AM 19 for yesterday and for your undivided attention. I
10:12:18AM 20 know yesterday was a long day, and we appreciate
10:12:18AM 21 that. Thank you.

10:12:22AM 22 THE COURT: Ms. Gay, you may proceed.

10:12:36AM 23 MS. GAY: Hi. As the Solicitor said,
10:12:38AM 24 it's been a long couple of days. As I said, this
10:12:40AM 25 is the most important day of Mr. Gould's life and

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10:12:44AM 1 it's a significant burden and job that you all have
10:12:46AM 2 as being the triers of the facts in this case. One
10:12:48AM 3 of the things that I talked to you about -- well, a
10:12:52AM 4 couple of things that I talked to you about in the
10:12:54AM 5 beginning of my opening, I would hope that you at
10:12:54AM 6 least saw what it was that I was referring to and
10:12:58AM 7 -- when the Solicitor first did his opening
10:13:02AM 8 argument and he said, she left with the drugs.

10:13:04AM 9 We're still left, even after all the
10:13:06AM 10 testimony and a full day, she left with the drugs.
10:13:08AM 11 The question is, did they come from Mr. Gould?
10:13:12AM 12 That's the issue. And there's a few things that I
10:13:14AM 13 also said in my opening argument that talked about
10:13:16AM 14 how if you go from A to Z, in a perfect situation,
10:13:22AM 15 you really do follow and you know -- you know all
10:13:22AM 16 the way through exactly what happened and there's
10:13:24AM 17 no real gigantic hole there.

10:13:26AM 18 The concept that he said about the bank
10:13:30AM 19 teller, I mean, I know when I sit in line for a
10:13:32AM 20 bank teller, I can see my tube and I can actually
10:13:34AM 21 see the lady pull it out of the tube, do whatever
10:13:38AM 22 it is she's going to do and send it right back to
10:13:40AM 23 me, so there's not a question in there about how my
10:13:44AM 24 money or deposit was transacted and handled by the
10:13:48AM 25 lady in the bank. I can see pretty much exactly

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10:13:50AM 1 what is happening.

10:13:52AM 2 In this case, this's not what we have.

10:13:54AM 3 And, you know, this is America. And what we have

10:13:56AM 4 here is, we have an undercover officer who

10:14:02AM 5 believes, and it's her opinion, that the drugs came

10:14:04AM 6 from Mr. Gould, from Dale. That's what she

10:14:08AM 7 believes and that's her opinion.

10:14:10AM 8 If you noticed that the question was

10:14:12AM 9 asked, what did Dale Gould do? He distributed

10:14:16AM 10 drugs to me. That's her opinion. That's not

10:14:18AM 11 evidence. That's what we have here. She --

10:14:20AM 12 Detective Gill wasn't there. The only person who

10:14:22AM 13 was -- really law enforcement knowledge, was

10:14:26AM 14 Detective Frederick. She believes it, and I

10:14:28AM 15 understand that she believes it, but as I said,

10:14:30AM 16 it's America and that's not evidence. That's not

10:14:34AM 17 enough evidence to convict somebody of a crime in

10:14:34AM 18 this country.

10:14:38AM 19 So what we need to talk about first and

10:14:40AM 20 of utmost importance, what does it mean to have

10:14:42AM 21 reasonable doubt? And what does it mean to have

10:14:44AM 22 proof beyond reasonable doubt? And as you recall,

10:14:46AM 23 when I did my opening, I said that's, you know, a

10:14:50AM 24 doubt that would cause a reasonable person to

10:14:52AM 25 hesitate to act. It's not the absence of doubt.

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10:14:54AM 1 I am not the law. I am not the person
10:14:58AM 2 that is going to tell you the law. Judge Jefferson
10:15:00AM 3 is going to tell you the law. I'm going to
10:15:02AM 4 advocate for my client, and I'm going to tell you
10:15:06AM 5 what I feel these facts and circumstances lead to,
10:15:06AM 6 but I will tell you that she's going to say
10:15:10AM 7 basically the exact same thing about what
10:15:10AM 8 reasonable doubt is. She is going to say, a doubt
10:15:14AM 9 that would cause a reasonable-minded person to
10:15:16AM 10 hesitate to act and convict. That's what
10:15:20AM 11 reasonable doubt is.

10:15:20AM 12 What you have to understand, the burden
10:15:20AM 13 for the State of South Carolina is not just, is
10:15:24AM 14 there a reasonable doubt. They have to prove their
10:15:26AM 15 case beyond a reasonable doubt. So they have to
10:15:30AM 16 prove to you that all of those reasonable doubts
10:15:34AM 17 that would cause a reasonable person to hesitate to
10:15:36AM 18 act can be put aside so that you can sign your name
10:15:40AM 19 or check the box that says guilty. And that's a
10:15:44AM 20 very, very, very important thing. And that's well
10:15:46AM 21 beyond the scope of just kind of going, well, I
10:15:48AM 22 believe it to be and it's my opinion that ... it
10:15:52AM 23 requires proof and evidence, and it requires
10:15:54AM 24 significant things.

10:15:54AM 25 My client stands before you today as an

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10:15:58AM 1 innocent man. He's not been convicted of anything.
10:16:00AM 2 He's been accused. He stands over there cloaked in
10:16:04AM 3 innocence as a person, just like you, or me, or the
10:16:08AM 4 Judge, or the Solicitor, or the Court Reporter, or
10:16:08AM 5 the police officers, or anybody else. He's an
10:16:10AM 6 innocent person until you, the jury, decide that he
10:16:14AM 7 may not be. In order to do that, you the jury have
10:16:18AM 8 to decide that these prosecutors have proven beyond
10:16:22AM 9 a reasonable doubt that he's, in fact, guilty of
10:16:22AM 10 this offense.

10:16:24AM 11 And the things that we need to talk to
10:16:26AM 12 you about here are very, very important because
10:16:28AM 13 what do we really know of this case? What is proof
10:16:32AM 14 beyond -- you know, facts beyond change, things
10:16:34AM 15 that we know? We know, because Detective Gill
10:16:36AM 16 testified to it, that six days after the incident
10:16:40AM 17 that happened with the undercover officer and
10:16:44AM 18 Taylor -- they keep referring to her as a CI.
10:16:44AM 19 She's a 21-year-old little kid who was paid \$100 to
10:16:50AM 20 come into the situation. She's not a CI, she's a
10:16:54AM 21 baby who was put up to this and then paid money to
10:16:56AM 22 do this.

10:16:56AM 23 Taylor and Detective Frederick came in
10:16:58AM 24 there on the 11th of October. Well, six days
10:17:02AM 25 later, on the 17th of October, Detective Gill

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10:17:06AM 1 testified that they came back in to do a search
10:17:10AM 2 warrant at Joe Pasta, unrelated to my client, not
10:17:12AM 3 having anything to do with Dale Gould, not having
10:17:16AM 4 any charges on him, nothing, and they found a bag
10:17:18AM 5 of cocaine laying on the floor in this restaurant
10:17:20AM 6 on that day.

10:17:20AM 7 Okay. You could say that's not
10:17:22AM 8 relevant to this case, but it's certainly relevant
10:17:26AM 9 to the location of Joe Pasta and what might be on
10:17:30AM 10 the floor in the Joe Pasta Restaurant, and that's
10:17:30AM 11 the truth. If you noticed, I specifically said to
10:17:34AM 12 him, does that have anything to do with my client?
10:17:38AM 13 And he said no.

10:17:46AM 14 What else do we know beyond change? We
10:17:48AM 15 know that on the 11th, this baggie of drugs that
10:17:52AM 16 you all are going to get to go back there and get
10:17:52AM 17 to touch and feel to the extent that this plastic
10:17:54AM 18 bag will let you, but this little itty, bitty
10:18:00AM 19 dust-like bag of drugs was found and picked up off
10:18:02AM 20 the floor by Detective Frederick. That's what we
10:18:06AM 21 know. That's the extent of what we know.

10:18:06AM 22 We know that this baggie is drugs
10:18:10AM 23 because we have a drug report from a chemist, Renee
10:18:16AM 24 Hilton. And we have people that came and said that
10:18:18AM 25 this was, in fact, the bag that was found on the

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10:18:18AM 1 ground. Detective Gill touched it, Detective
10:18:20AM 2 Frederick touched it, the lady from -- the evidence
10:18:22AM 3 custodian touched it, the lab technician touched
10:18:26AM 4 it, you know, the chemist Renee Hilton touched it.
10:18:28AM 5 We know that this is drugs. We do not know that
10:18:32AM 6 this came from Dale Gould. We do not know that.

10:18:34AM 7 What we know is we have this. And that
10:18:36AM 8 that is a tiny, itty, bitty little amount of drugs.
10:18:40AM 9 If you remember -- and you can't take it out. I
10:18:44AM 10 wish you could. If you could take it and you could
10:18:46AM 11 put it in a corner, it's about the size of a split
10:18:48AM 12 pea or maybe even a whole pea. This is nowhere
10:18:54AM 13 near a gram of drugs. This is .23 grams and it's
10:18:56AM 14 less than a quarter gram drugs. This is not --
10:18:58AM 15 this is not -- that's all we know, that this is
10:19:02AM 16 drugs.

10:19:02AM 17 What else do we know that are facts
10:19:06AM 18 beyond change? We know that Taylor, who was
10:19:08AM 19 texting, and we know that Taylor was -- said that
10:19:12AM 20 she had all this stuff going on with her phone.
10:19:14AM 21 Where are those records? This is the City of
10:19:18AM 22 Charleston. This is the State of South Carolina.
10:19:20AM 23 They don't have Subpoenas that they can get text
10:19:24AM 24 message records. I've seen them in other cases.
10:19:26AM 25 Certainly they can do that.

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10:19:28AM 1 They had her wired up. They had her
10:19:30AM 2 debriefed. They had conversations with her before
10:19:32AM 3 and after, at all times. What, did they not
10:19:36AM 4 consider taking her cell phone? They don't even
10:19:38AM 5 need her cell phone to look at the messages. They
10:19:42AM 6 could have taken her cell phone and taken some
10:19:46AM 7 pictures or they could have just used their powers
10:19:48AM 8 of the State and police and Subpoenaed the text
10:19:48AM 9 messages that were supposed to be between her and
10:19:54AM 10 Mr. Gould about some kind of drug transaction. We
10:19:56AM 11 don't have those, but we know that she was texting,
10:19:58AM 12 because she testified to it.

10:20:00AM 13 What we have is that there are two sort
10:20:02AM 14 of separate situations here. We have this very
10:20:06AM 15 long video, and you'll be able to listen to it and
10:20:08AM 16 watch it closely. And we have a situation where
10:20:12AM 17 Taylor and Detective Frederick come into the office
10:20:16AM 18 and there is some stupid stuff going on in there.
10:20:20AM 19 Whatever was going on, it was ridiculous. I wish
10:20:22AM 20 it wasn't the case, but it is.

10:20:24AM 21 So we've got this man in there trying
10:20:24AM 22 to impress two women. One who is, you know, young
10:20:28AM 23 and real pretty -- both of these women are
10:20:30AM 24 beautiful. The undercover agent is beautiful,
10:20:34AM 25 Taylor's beautiful, they're both beautiful women.

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10:20:36AM 1 He's in there being all impressive. You know what,
10:20:40AM 2 we know that he's in there and we know that he does
10:20:42AM 3 some snorting of something, but what we don't know
10:20:44AM 4 is what he snorts. We have no idea what he does --
10:20:50AM 5 what that is. We have not -- no idea if that's
10:20:50AM 6 cocaine or not.

10:20:52AM 7 They say, this is supposed to be, and
10:20:54AM 8 it's in their opinion, and it may in fact be the
10:20:58AM 9 same thing, but there's no evidence to connect
10:21:00AM 10 that. There's no person that says they saw him
10:21:04AM 11 drop it on the ground. There's no person that says
10:21:06AM 12 Dale Gould had the stuff in his hand in the office
10:21:10AM 13 and then he walked out and dropped it on the
10:21:12AM 14 ground. They have, what, six to eight undercover
10:21:16AM 15 cops floating around in the vicinity.

10:21:18AM 16 They have eye-to-eye communication at
10:21:20AM 17 all times in case something goes wrong. Have you
10:21:24AM 18 ever been to Joe Pasta? If you haven't, there are
10:21:26AM 19 two giant windows. The whole thing is basically
10:21:30AM 20 glass in the front. They have all these people
10:21:32AM 21 sitting around watching. Not one person came and
10:21:34AM 22 testified that they saw Dale drop anything that
10:21:34AM 23 day. Not one person came and testified that they
10:21:38AM 24 saw him bend down, move his arm, nothing.

10:21:40AM 25 So what we don't have any idea of is

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10:21:44AM 1 what, in fact, Mr. Gould, or Dale, had in his hands
10:21:48AM 2 at the time he was in the office. The last part of
10:21:50AM 3 the video says, well, I'm not real sure what this
10:21:52AM 4 -- this is. I'm going to throw this away. Okay.
10:21:56AM 5 The end. That's where it ends. So this concept of
10:21:58AM 6 him offering drugs to them or saying, why don't you
10:22:02AM 7 taste it, or whatever, that's all icky. That's all
10:22:02AM 8 icky.

10:22:06AM 9 But the problem is that we can't say
10:22:08AM 10 that that's drugs. There is no evidence in this
10:22:10AM 11 case whatsoever to say that what he had in his
10:22:14AM 12 hands at that time is drugs. Because this is
10:22:18AM 13 drugs. But is that the same thing? How do we know
10:22:20AM 14 that? How do we know that's the same drugs?
10:22:24AM 15 Because the officer wants us to believe it.
10:22:26AM 16 Because the State of South Carolina and the
10:22:28AM 17 Solicitor wants us to believe it; but that's not
10:22:28AM 18 evidence.

10:22:30AM 19 That's not an actual connection in this
10:22:32AM 20 case. That's not a testimony -- that's not
10:22:34AM 21 testimony. That's not -- that's not direct. It's
10:22:40AM 22 not even circumstantial. It's a belief that we
10:22:42AM 23 believe it's the same drugs. That is not enough.
10:22:44AM 24 That's not enough in this case.

10:22:46AM 25 And then the situation -- what else do

CLOSING ARGUMENT - BY MS. GAY

10:22:48AM 1 we have? We have no money. We have some
10:22:50AM 2 conversation about, oh, well, you all go have a
10:22:54AM 3 good time. Oh, what's that? Look. We don't have
10:22:58AM 4 any idea how that stuff got on the ground. We know
10:23:00AM 5 that six days later, there was a bag of cocaine on
10:23:04AM 6 the floor in the Joe Pasta Restaurant. We don't
10:23:06AM 7 have any idea how the drugs got on the ground in
10:23:10AM 8 this case. For all we know, she picked something
10:23:14AM 9 up on her shoe as she was walking around.

10:23:16AM 10 What she says, oh, I'm so clumsy. I'm
10:23:20AM 11 not suggesting, you know, that it fell out of her
10:23:22AM 12 pocket, but we don't have any idea to know. I
10:23:26AM 13 could make it up. You all could make it up. You
10:23:28AM 14 can go back there and come up with any version of
10:23:30AM 15 reality you want to that says possibly how the
10:23:30AM 16 drugs got there, but that's not evidence and that's
10:23:34AM 17 not testimony in this case and that's not proof.

10:23:36AM 18 And I think the reality is, that's
10:23:40AM 19 doubt. And that's where we're at in this case.
10:23:42AM 20 That's doubt in itself. How did that stuff that we
10:23:46AM 21 know to be drugs, how did it end up on the ground?
10:23:48AM 22 And if they claim that he was having some kind of,
10:23:52AM 23 you know, offer of drugs or attempt to distribute
10:23:56AM 24 them in the office, how do we have any idea whether
10:24:00AM 25 what he had in his hands was drugs or is that stuff

CLOSING ARGUMENT - BY MS. GAY

10:24:02AM 1 right there? Because we don't. We don't have any
10:24:04AM 2 connection. We don't have any testimony. We have
10:24:08AM 3 a belief. We have an opinion, but that's not
10:24:10AM 4 enough.

10:24:14AM 5 What else that we don't know? As I
10:24:16AM 6 said, we don't have any texting that shows any type
10:24:18AM 7 of conversation, which we all know we've all seen
10:24:22AM 8 on TV. And TV is pretty accurate sometimes.
10:24:24AM 9 Sometimes. They do have the ability to Subpoena
10:24:28AM 10 text messages. They do have the ability to bring
10:24:30AM 11 that to you. So the things they didn't bring to
10:24:34AM 12 you are the things we need to focus on here.

10:24:36AM 13 She has this camera on. We watched her
10:24:38AM 14 necklace floating around. There's this camera in
10:24:42AM 15 between her chest. There's no point where she even
10:24:46AM 16 bends down enough to see the drugs on the floor to
10:24:50AM 17 pick them up. That's a total black spot. Have
10:24:52AM 18 absolutely no idea how -- how she -- oh, yes, she's
10:24:54AM 19 reaching down. But she didn't turn her body to
10:24:56AM 20 actually show that they were even on the floor.
10:25:00AM 21 Like I said, for all we know, they were stuck on
10:25:02AM 22 her shoe and it came off as she was walking across
10:25:06AM 23 from the office down.

10:25:08AM 24 I mean, unfortunately, for whatever
10:25:08AM 25 reason, this place has cocaine on the floor. I

CLOSING ARGUMENT - BY MS. GAY

10:25:12AM 1 don't know. It's a restaurant full of people,
10:25:14AM 2 young people, lots of people. There's all kinds of
10:25:18AM 3 things that go on out there in the world. This is
10:25:20AM 4 a happening spot. How do we know how she -- how
10:25:24AM 5 those drugs -- that drug right there (Indicating)
10:25:24AM 6 ended up near her to be picked up? We don't have a
10:25:30AM 7 chemist that says that what happened in the office
10:25:30AM 8 had anything to do with cocaine.

10:25:32AM 9 We have some specific testimony, and
10:25:34AM 10 that specific testimony off the witness stand was
10:25:38AM 11 from the officer. Well, first, it was the opening
10:25:42AM 12 argument, which is not testimony, that said she
10:25:44AM 13 left with drugs. What her testimony was, is I
10:25:50AM 14 obtained drugs. No details. No, I saw him drop
10:25:54AM 15 it. No, I saw him drop the drugs so I picked them
10:25:58AM 16 up. He told me to pick up the drugs. We have none
10:26:00AM 17 of that. We have, I obtained drugs. There is a
10:26:04AM 18 specific reason why that word was used, there's a
10:26:08AM 19 specific reason why nothing else was said; because
10:26:10AM 20 there's nothing else there.

10:26:12AM 21 The other thing we have is from Taylor,
10:26:14AM 22 I didn't see him put it on the ground. That's the
10:26:18AM 23 testimony in this case; I didn't see him put it on
10:26:18AM 24 the ground. So that's what we have. So as I said,
10:26:22AM 25 we have two separate problems. We have what

CLOSING ARGUMENT - BY MS. GAY

10:26:26AM 1 happened in the office, but we have no chemist to
10:26:28AM 2 say that what was in his hands at any time was
10:26:32AM 3 cocaine. We have no chain of custody to say that
10:26:36AM 4 whatever he had that minute when he was putting it
10:26:38AM 5 in his nose was in fact an illegal substance at
10:26:42AM 6 all.

10:26:42AM 7 We have at the end of the moment him
10:26:44AM 8 saying, well, I'm just going to throw this away.
10:26:48AM 9 We have no offer of actual -- we have no
10:26:52AM 10 distribution there. We have no actual factual
10:26:52AM 11 basis for distribution, because he never offered
10:26:56AM 12 drugs. They call it drugs. Does that mean it's
10:27:00AM 13 drugs? Does that mean it's drugs because they call
10:27:04AM 14 it drugs? Okay.

10:27:04AM 15 We all know that the chemist has to
10:27:06AM 16 come in and tell us it's drugs. That's why we had
10:27:08AM 17 the little show and they all came in and the
10:27:10AM 18 chemist said, this is drugs. There is no chemist
10:27:16AM 19 that says that what happened on that video in that
10:27:18AM 20 room were drugs. None. So whatever it is he's
10:27:20AM 21 talking about and doing with them, tasting,
10:27:22AM 22 sharing, whatever, no evidence whatsoever that that
10:27:24AM 23 is drugs. No evidence whatsoever.

10:27:28AM 24 And then when they leave, the last
10:27:30AM 25 verbal statement he says, well, I'm just going to

CLOSING ARGUMENT - BY MS. GAY

10:27:32AM 1 throw this away. They come out, they're sitting in
10:27:36AM 2 the bar, they're waiting around, he comes up,
10:27:38AM 3 comments are made. Oh, she picks up that.
10:27:44AM 4 (Indicating) She believes that this is what she
10:27:46AM 5 had in her hand. This doesn't even look anything
10:27:48AM 6 like what she had in her hands. I don't care what
10:27:48AM 7 anybody does, if they say there's three ounces of
10:27:52AM 8 cocaine out of a gram, it's not this. This is
10:27:52AM 9 dust. This is a package that you can't hardly even
10:27:56AM 10 get it together. If it was all in a clump, it
10:27:58AM 11 would be like the tiniest little clump.

10:28:02AM 12 If somebody is going to be purchasing
10:28:04AM 13 and/or getting or sharing a gram of cocaine with
10:28:04AM 14 somebody, it's not -- this is not what they're
10:28:08AM 15 going to get. To go partying with your friends,
10:28:12AM 16 not with this. This is something that was found on
10:28:14AM 17 the ground. This is something she brought out. I
10:28:18AM 18 am not contesting that that's not cocaine.

10:28:20AM 19 I know that's cocaine, but there is
10:28:20AM 20 absolutely no evidentiary connection between my
10:28:24AM 21 client and that. Nobody saw him put it there, and
10:28:28AM 22 that's important. And you can jump through all the
10:28:30AM 23 hoops and do everything the Solicitor told you to
10:28:32AM 24 do and look at the circumstances and go, well,
10:28:34AM 25 reasonable people would say that, if I started in

CLOSING ARGUMENT - BY MS. GAY

10:28:36AM 1 A, I would get to Z on this one, and my position is
10:28:40AM 2 you maybe get to D or E, or L, or F, but you're not
10:28:44AM 3 going to get to Z. And the Judge is going to
10:28:48AM 4 instruct you, if you don't get to Z, you don't
10:28:54AM 5 convict him. They have to prove all of the
10:28:56AM 6 elements of the offense beyond a reasonable doubt.

10:28:58AM 7 She's also going to tell you and she's
10:28:58AM 8 going to charge you one thing, that merely being
10:29:00AM 9 present at the scene of the crime, you have to
10:29:04AM 10 convict -- I mean, you have to acquit him. If you
10:29:04AM 11 find that he's merely present while illegal
10:29:08AM 12 substances are near him, that you have -- and
10:29:10AM 13 that's all you find, that you have to acquit him,
10:29:14AM 14 that it's not enough. And that's called a mere
10:29:16AM 15 presence because Dale is merely present at the time
10:29:20AM 16 where this officer picks up the drugs and goes, oh,
10:29:24AM 17 it's time for us to leave now. He's merely
10:29:28AM 18 present. He's not someone that they can connect as
10:29:30AM 19 the source of that particular piece of drugs.

10:29:32AM 20 And those drugs, whether or not they
10:29:34AM 21 are connected to the stuff in the office, if those
10:29:38AM 22 were even drugs, there's not evidence to tie that
10:29:42AM 23 together. That's like jumping from L to P. Just
10:29:46AM 24 like whoosh. (Indicating) We're over here. And
10:29:48AM 25 now we're going to say, oh, yes, and now we get to

CLOSING ARGUMENT - BY MS. GAY

10:29:50AM 1 go to Z and we're convicting. See, that's what
10:29:52AM 2 this is about.

10:29:52AM 3 When -- I told you when we started that
10:29:54AM 4 nothing is ever as easy as the Solicitor says.
10:29:58AM 5 When the Solicitor says, this is going to be a
10:29:58AM 6 simple case and you're just going to convict -- we
10:30:00AM 7 wouldn't have trials if that was the case. We
10:30:04AM 8 wouldn't ask you to take time from your life to
10:30:06AM 9 come over here and tell us what you think because
10:30:10AM 10 we differ. I represent him. They represent the
10:30:14AM 11 State. We have different opinions. It's up to you
10:30:16AM 12 to decide what they proved today. Not what
10:30:20AM 13 Detective Frederick's opinion is. Not what she
10:30:22AM 14 really wants to even believe. Not what she spent
10:30:24AM 15 all of her night doing.

10:30:26AM 16 Do you realize, if you sat down and
10:30:28AM 17 added up the resources that were used on this
10:30:30AM 18 night, six to eight undercovers, possibly at least
10:30:34AM 19 one, if not more, marked vehicles, detectives
10:30:40AM 20 getting paid however much a year sitting out there
10:30:42AM 21 -- 30, \$60,000? .23 grams of cocaine found on a
10:30:48AM 22 floor. \$60,000? Point 23 grams of cocaine found
10:30:54AM 23 on the floor. My client is not guilty, and I think
10:30:58AM 24 at the end of all of your deliberations, you will
10:30:58AM 25 agree with me and find him not guilty.

CLOSING ARGUMENT - BY MS. GAY

10:31:02AM 1 I will leave you with this. In the
10:31:06AM 2 City Paper recently, a gym teacher found a baggie
10:31:10AM 3 of weed on the floor as the class was leaving his
10:31:10AM 4 gym. That's why we call it high school. Okay. In
10:31:14AM 5 the scheme of things -- that's a joke. But you
10:31:16AM 6 know what? Stuff is found on the ground. Stuff is
10:31:18AM 7 put on the ground. This is some stuff they found
10:31:22AM 8 in a school.

10:31:22AM 9 Six days later, cocaine was found on
10:31:26AM 10 the floor of Joe Pasta, unrelated to my client. My
10:31:32AM 11 client was not at all charged with that. My client
10:31:34AM 12 has nothing to do with that. This place is a place
10:31:38AM 13 where young partiers come. That doesn't have
10:31:42AM 14 anything to do with Dale Gould. And I believe,
10:31:44AM 15 after you deliberate, you will find him not guilty.

10:31:46AM 16 THE COURT: Ladies and gentlemen, we
10:32:08AM 17 have now reached the stage where I will instruct
10:32:12AM 18 you.

10:32:12AM 19 Does anybody need to go to the restroom
10:32:14AM 20 before I begin the process? It will be 20 minutes.
10:32:18AM 21 Please move that podium for me so that I can see
10:32:22AM 22 the jury. There is to be no movement in the
10:32:22AM 23 gallery during closing instructions.

10:32:44AM 24 During this trial, ladies and
10:32:46AM 25 gentlemen, you and I have certain duties to

JURY CHARGE

10:32:48AM 1 perform. As the trial Judge, it is my
10:32:50AM 2 responsibility to preside over the trial of this
10:32:52AM 3 case. I also have the duty to rule upon or pass
10:32:56AM 4 upon the admissibility of evidence that has been
10:32:58AM 5 offered during the trial.

10:33:00AM 6 You are to consider only the competent
10:33:04AM 7 evidence that is before you. You are to consider
10:33:06AM 8 only the testimony which has been presented from
10:33:08AM 9 the witness stand, together with the other exhibits
10:33:10AM 10 which have been made a part of the record in this
10:33:10AM 11 case.

10:33:14AM 12 I have the additional duty to charge
10:33:16AM 13 you on the law applicable to this case. And just
10:33:18AM 14 so you know, charge is a legal term of art that
10:33:22AM 15 simply means instruction. So when you hear me use
10:33:24AM 16 the word, charge, and, instruction, they are
10:33:28AM 17 interchangeable. As I have explained, I have the
10:33:30AM 18 additional duty to charge you on the law applicable
10:33:32AM 19 to this case. As the presiding Judge, I'm the sole
10:33:36AM 20 judge of the law of this case and it is your duty
10:33:38AM 21 as jurors to accept and apply the law as I now
10:33:42AM 22 state it to you.

10:33:42AM 23 If you have a preconceived idea as to
10:33:44AM 24 what the law is or what the law ought to be in a
10:33:48AM 25 case, or in this case, and it should not agree with

JURY CHARGE

10:33:50AM 1 what I now tell you the law is, you are obligated
10:33:54AM 2 under the oath that you have taken to abandon the
10:33:58AM 3 preconception on your part, because you are sworn
10:34:02AM 4 to accept the law and apply the law precisely as I
10:34:06AM 5 now state it to you.

10:34:06AM 6 In every case tried in this Court
10:34:08AM 7 before the jury, the jury becomes the sole and
10:34:10AM 8 exclusive judges of the facts in the case. You are
10:34:12AM 9 the judges of the facts in this case. This Court
10:34:16AM 10 is the judge of the law. The Constitution of our
10:34:20AM 11 State has declared that a trial Judge should not
10:34:24AM 12 intimate, state, comment upon, or make any
10:34:26AM 13 statement to a trial jury about the facts in a
10:34:28AM 14 case.

10:34:28AM 15 Since you the jury are the sole judges
10:34:32AM 16 of the facts of this case, you are not to infer
10:34:34AM 17 anything from what I have said during the progress
10:34:36AM 18 of this trial in ruling upon the admissibility of
10:34:38AM 19 evidence, or otherwise, or anything that I say now
10:34:42AM 20 to you during the course of this instruction, that
10:34:44AM 21 I have any opinion about the facts. The law does
10:34:46AM 22 not allow me to have an opinion about the facts.

10:34:50AM 23 This is a matter for you solely as the
10:34:52AM 24 jury to determine. As jurors, then, it is your
10:34:56AM 25 duty, as I have instructed you, to determine the

JURY CHARGE

10:34:58AM 1 effect, the value, the weight, and the truth of the
10:35:02AM 2 evidence presented during this trial. Necessarily,
10:35:04AM 3 you must assess the credibility of witnesses who
10:35:08AM 4 have testified in this case.

10:35:10AM 5 Credibility is simply a legalistic term
10:35:14AM 6 meaning believability. It becomes your duty as
10:35:16AM 7 jurors to analyze and to evaluate the evidence and
10:35:18AM 8 to determine that evidence which convinces you of
10:35:22AM 9 its truth. Some of the things you may consider as
10:35:26AM 10 you decide whether or not to believe a witness's
10:35:28AM 11 testimony about a particular matter includes, what
10:35:32AM 12 was the manner and appearance of the witness that
10:35:34AM 13 testified? Was he or she straightforward or
10:35:36AM 14 hesitant in answering? Was the testimony of a
10:35:40AM 15 witness consistent or inconsistent? How did the
10:35:42AM 16 witness come to know the facts that he or she
10:35:46AM 17 testified to or what was his or her ability to know
10:35:48AM 18 these facts? Is there some reason a witness would
10:35:52AM 19 want to give testimony that would help or hurt one
10:35:54AM 20 side or the other; in other words, was the witness
10:35:58AM 21 biased or prejudiced? And was the testimony of a
10:36:00AM 22 witness strengthened or weakened by other testimony
10:36:04AM 23 or evidence?

10:36:06AM 24 You can believe as much or as little of
10:36:08AM 25 each witness's testimony as you think proper. I

JURY CHARGE

10:36:12AM 1 further instruct you that in determining the
10:36:14AM 2 question of the credibility of witnesses --
10:36:16AM 3 credibility or believability of witnesses who have
10:36:20AM 4 testified, you may believe one witness as against
10:36:22AM 5 several witnesses, or several witnesses as against
10:36:26AM 6 one witness. You may believe a part of the
10:36:28AM 7 testimony of a witness and reject the remaining
10:36:30AM 8 part of that same witness.

10:36:32AM 9 If you have a good and sound reason,
10:36:34AM 10 you may believe the testimony of the witness in its
10:36:38AM 11 entirety or reject the testimony of a witness in
10:36:40AM 12 its entirety. You may consider the demeanor of the
10:36:44AM 13 witness, that is, the appearance and manner of the
10:36:46AM 14 witness from the witness stand.

10:36:48AM 15 I instruct you, ladies and gentlemen,
10:36:50AM 16 that throughout this process, you have but one
10:36:52AM 17 objective, to seek the truth, regardless of its
10:36:56AM 18 source.

10:37:00AM 19 The Rules of Evidence ordinarily do not
10:37:04AM 20 permit witnesses to testify to opinions or
10:37:06AM 21 conclusions. An exception to this Rule exists for
10:37:08AM 22 witnesses we call expert witnesses. A witness who
10:37:12AM 23 by their education, training, and experience has
10:37:16AM 24 become an expert in some art, science, profession,
10:37:18AM 25 or calling, may state an opinion as to relevant and

JURY CHARGE

10:37:22AM 1 material matters in which the witness claims to be
10:37:24AM 2 an expert and may also state the reasons for that
10:37:28AM 3 opinion.

10:37:28AM 4 You should consider any expert opinion
10:37:32AM 5 received in this case like any other evidence.
10:37:34AM 6 Give it the weight you think it deserves. If you
10:37:38AM 7 decide that the opinion of an expert witness is not
10:37:40AM 8 based on sufficient education and experience, or if
10:37:44AM 9 you conclude that the reasons given in support of
10:37:46AM 10 the opinion are not sound, or that the opinion is
10:37:48AM 11 outweighed by other evidence, you may disregard the
10:37:52AM 12 opinion entirely. An expert witness's testimony is
10:37:56AM 13 to be given no greater weight than that of other
10:37:58AM 14 witnesses simply because the witness is an expert.
10:38:02AM 15 Further, you are not required to accept an expert's
10:38:04AM 16 opinion even though it is not contradicted.

10:38:08AM 17 There are two types of evidence which
10:38:10AM 18 are generally presented during a trial, direct
10:38:12AM 19 evidence and circumstantial evidence. Direct
10:38:16AM 20 evidence is the testimony of a person who asserts
10:38:20AM 21 or claims to have actual knowledge of the facts,
10:38:24AM 22 such as an eyewitness. Circumstantial evidence is
10:38:26AM 23 proof of a chain of facts and circumstances
10:38:28AM 24 indicating the existence of a fact.

10:38:32AM 25 The law makes absolutely no distinction

JURY CHARGE

10:38:34AM 1 between the weight or value to be given to either
10:38:36AM 2 direct or circumstantial evidence. Nor is a
10:38:40AM 3 greater degree of certainty required of
10:38:42AM 4 circumstantial evidence than of direct evidence.
10:38:46AM 5 You should weigh all of the evidence in this case.
10:38:48AM 6 I further instruct you that crimes may
10:38:50AM 7 be proven by circumstantial evidence. The law
10:38:52AM 8 makes no distinction between the weight or value to
10:38:54AM 9 be given to either direct or circumstantial
10:38:58AM 10 evidence; however, to the extent the State relies
10:39:02AM 11 on circumstantial evidence, all of the
10:39:06AM 12 circumstances must be consistent with each other
10:39:08AM 13 and when taken together point conclusively to the
10:39:10AM 14 guilt of the Defendant. If these circumstances
10:39:14AM 15 merely portray the Defendant's behavior as
10:39:16AM 16 suspicious, the proof has failed.

10:39:16AM 17 The State has the burden of proving the
10:39:20AM 18 Defendant guilty beyond a reasonable doubt. This
10:39:20AM 19 burden rests with the State regardless of whether
10:39:24AM 20 the State relies on direct evidence, circumstantial
10:39:28AM 21 evidence or some combination of the two. After
10:39:32AM 22 weighing all of the evidence, if you are not
10:39:34AM 23 convinced of the guilt of the Defendant beyond a
10:39:36AM 24 reasonable doubt, you must find the Defendant not
10:39:36AM 25 guilty.

JURY CHARGE

10:39:38AM 1 Conversely, if you are convinced of the
10:39:42AM 2 guilt of the Defendant beyond a reasonable doubt,
10:39:42AM 3 then you must find him guilty.

10:39:44AM 4 I instruct you, ladies and gentlemen,
10:39:46AM 5 the fact that the Defendant was arrested, charged,
10:39:50AM 6 and indicted is not evidence in this case and
10:39:54AM 7 cannot be considered by you as evidence of guilt in
10:39:58AM 8 this case, nor does it create any presumption or
10:40:00AM 9 inference of guilt.

10:40:02AM 10 This documentation is simply the formal
10:40:04AM 11 written instrument which contains the charge made
10:40:06AM 12 against the Defendant. It simply serves as the
10:40:10AM 13 formal documentation by which the case is processed
10:40:12AM 14 or brought into the Court. The Defendant has pled
10:40:18AM 15 not guilty to the indictment and that plea casts
10:40:20AM 16 the burden on the State to prove the Defendant
10:40:22AM 17 guilty, because the person charged with committing
10:40:24AM 18 a criminal offense in South Carolina is never
10:40:26AM 19 required to prove himself innocent.

10:40:28AM 20 I instruct you that it is a cardinal
10:40:32AM 21 and important rule of the law of evidence that the
10:40:34AM 22 Defendant in a criminal trial; no matter what the
10:40:36AM 23 seriousness of the charge made against him may be,
10:40:40AM 24 will always be presumed to be innocent of the crime
10:40:42AM 25 for which he's indicted, unless his guilt has been

JURY CHARGE

10:40:46AM 1 proven by evidence satisfying that guilt beyond a
10:40:50AM 2 reasonable doubt.

10:40:50AM 3 This presumption of innocence does not
10:40:52AM 4 cease when you retire to deliberate, but
10:40:54AM 5 accompanies the Defendant from the time of his
10:40:58AM 6 appearance throughout the trial until you reach a
10:41:00AM 7 verdict in this case.

10:41:02AM 8 Our Supreme Court has said that the
10:41:04AM 9 presumption of innocence is like a robe of
10:41:06AM 10 righteousness placed about the shoulders of the
10:41:08AM 11 Defendant and remains with him and assigns him to
10:41:12AM 12 that class, the innocent, until that presumptive
10:41:16AM 13 robe of righteousness has been stripped from his
10:41:18AM 14 person by evidence satisfying you of that guilt
10:41:18AM 15 beyond a reasonable doubt.

10:41:22AM 16 Madame Forelady, ladies and gentlemen,
10:41:24AM 17 the presumption of innocence is not merely legal
10:41:26AM 18 theory. It is not just a legal phrase. It is the
10:41:30AM 19 substantial right to which every Defendant is
10:41:34AM 20 entitled, unless you the jury are satisfied from
10:41:36AM 21 the evidence of his guilt beyond a reasonable
10:41:38AM 22 doubt.

10:41:40AM 23 I instruct you and emphasize that the
10:41:42AM 24 fact that the Defendant did not testify is not a
10:41:46AM 25 factor to be considered by you in any way in your

JURY CHARGE

10:41:50AM 1 deliberation and in your consideration on the
10:41:52AM 2 question of the guilt or the innocence of the
10:41:54AM 3 Defendant. It must not be considered by you in any
10:41:58AM 4 manner whatsoever. A Defendant has the
10:42:02AM 5 Constitutional right to remain silent and the
10:42:04AM 6 assertion of this right must not be considered by
10:42:06AM 7 you in your deliberations. I repeat, under your
10:42:08AM 8 oath, you are to draw no conclusion whatsoever from
10:42:12AM 9 the fact that the Defendant in this case did not
10:42:14AM 10 testify. The fact that this Defendant did not
10:42:18AM 11 testify should not be discussed in any manner
10:42:20AM 12 whatsoever during your deliberations.

10:42:22AM 13 The burden of proof, as I have
10:42:24AM 14 instructed you, is on the State. The Defendant is
10:42:26AM 15 not required to prove his innocence. The burden
10:42:30AM 16 remains on the State to prove his guilt beyond a
10:42:34AM 17 reasonable doubt. The State has the burden of
10:42:36AM 18 proving the Defendant guilty beyond a reasonable
10:42:38AM 19 doubt. Some of you may have served as jurors in
10:42:40AM 20 civil cases, where you were told that it is only
10:42:44AM 21 necessary to prove that a fact is more likely true
10:42:48AM 22 than not true, such as by the greater weight or
10:42:52AM 23 preponderance of the evidence.

10:42:52AM 24 In criminal cases, the State's proof
10:42:54AM 25 must be more powerful than that. It must be beyond

JURY CHARGE

10:42:58AM 1 a reasonable doubt. Proof beyond a reasonable
10:43:00AM 2 doubt is proof that leaves you firmly convinced of
10:43:06AM 3 the Defendant's guilt. There are very few things
10:43:08AM 4 in this world that we know with absolute certainty,
10:43:10AM 5 and in criminal cases, the law does not require
10:43:14AM 6 proof that overcomes every possible doubt.

10:43:16AM 7 If based on your consideration of the
10:43:18AM 8 evidence, you are firmly convinced that the
10:43:20AM 9 Defendant is guilty of the crime charged, you must
10:43:22AM 10 find the Defendant guilty. If, on the other hand,
10:43:24AM 11 you think there is a real possibility that the
10:43:26AM 12 Defendant is not guilty, you must give the
10:43:30AM 13 Defendant the benefit of that doubt and find him
10:43:32AM 14 not guilty.

10:43:36AM 15 The Defendant is charged with
10:43:42AM 16 distribution of cocaine. The State must prove
10:43:44AM 17 beyond a reasonable doubt that the Defendant
10:43:46AM 18 distributed cocaine. Distribute means to deliver
10:43:48AM 19 or to actually, constructively, or attempt to
10:43:54AM 20 transfer a drug other than by administering or
10:43:58AM 21 dispensing. Deliver means to actually,
10:44:00AM 22 constructively or attempt to transfer a drug. A
10:44:02AM 23 transfer can involve an exchange for money, a
10:44:06AM 24 barter or a gift. There does not have to be
10:44:10AM 25 anything given in exchange for the drug or a

JURY CHARGE

10:44:10AM 1 transfer to constitute distribution.

10:44:22AM 2 Included within the offense of
10:44:22AM 3 distribution of cocaine is the lesser offense of
10:44:22AM 4 simple possession. Simple possession does not
10:44:26AM 5 require the distribution of the cocaine. The State
10:44:30AM 6 must prove beyond a reasonable doubt that the
10:44:32AM 7 Defendant knowingly or intentionally possessed
10:44:34AM 8 cocaine. Knowingly means with knowledge,
10:44:38AM 9 consciously, not accidentally; intentionally means
10:44:42AM 10 willfully, intending the result that actually
10:44:44AM 11 occurs, not accidentally or involuntarily.

10:44:48AM 12 Intent may be shown by acts and conduct
10:44:48AM 13 of the Defendant and other circumstances from which
10:44:52AM 14 you may naturally and reasonably infer intent. To
10:44:56AM 15 prove possession, the State must prove beyond a
10:44:58AM 16 reasonable doubt that the Defendant had both the
10:45:00AM 17 power and intent to control the disposition or use
10:45:02AM 18 of the cocaine. Possession may be either actual or
10:45:06AM 19 constructive. Actual possession means that the
10:45:10AM 20 cocaine was in the actual physical custody of the
10:45:14AM 21 Defendant. Constructive possession means that the
10:45:18AM 22 Defendant had dominion and control or the right to
10:45:20AM 23 exercise dominion and control over the cocaine
10:45:22AM 24 itself or the property on which the cocaine was
10:45:24AM 25 found.

JURY CHARGE

10:45:26AM 1 Mere presence at the scene where the
10:45:26AM 2 drugs were found is not enough to prove possession.
10:45:32AM 3 Actual knowledge of the presence of the cocaine is
10:45:32AM 4 strong evidence of the Defendant's intent to
10:45:36AM 5 control its disposition or use.

10:45:38AM 6 The Defendant's knowledge and
10:45:40AM 7 possession may be inferred when the substance is
10:45:42AM 8 found on the property under the Defendant's
10:45:44AM 9 control; however, this inference is simply an
10:45:46AM 10 evidentiary fact to be taken into consideration by
10:45:50AM 11 you along with the other evidence in the case and
10:45:52AM 12 to be given the weight, value and effect you decide
10:45:58AM 13 it should receive. Two or more persons may have
10:46:02AM 14 joint possession of a drug.

10:46:04AM 15 I further instruct you that mere
10:46:06AM 16 presence at the scene is not sufficient to prove
10:46:08AM 17 someone guilty of a crime. A Defendant's presence
10:46:12AM 18 where a crime is being committed or mere
10:46:14AM 19 association with a person who commits a crime does
10:46:18AM 20 not make him an accomplice or an aider or abetter
10:46:20AM 21 of the person committing the crime.

10:46:24AM 22 The burden on the State is to prove
10:46:24AM 23 every element of the crime charged. If you find
10:46:26AM 24 after reviewing all the evidence that the State has
10:46:28AM 25 proven that the Defendant was only present at the

JURY CHARGE

10:46:32AM 1 scene of the crime, and that they have not proven
10:46:36AM 2 beyond a reasonable doubt any other participation
10:46:38AM 3 in the crime, you must find the Defendant not
10:46:40AM 4 guilty. The law is that proof at the scene of the
10:46:46AM 5 crime is not sufficient to find someone guilty.

10:46:48AM 6 The State must also prove the
10:46:50AM 7 identification of the Defendant as the person who
10:46:52AM 8 committed the crime charged. The State has the
10:46:56AM 9 burden of proving the identity beyond a reasonable
10:46:58AM 10 doubt. You must be satisfied beyond a reasonable
10:47:00AM 11 doubt of the accuracy of the identification of the
10:47:04AM 12 Defendant before you may convict him.

10:47:06AM 13 Identification testimony is an
10:47:08AM 14 expression or belief or impression by a witness.
10:47:12AM 15 You must determine the accuracy of the
10:47:14AM 16 identification, you must consider the believability
10:47:16AM 17 of each identification witness as -- in the same
10:47:20AM 18 way as any other witness. You may consider whether
10:47:22AM 19 the witness had an adequate opportunity to observe
10:47:26AM 20 the offender at the time of the offense. This will
10:47:28AM 21 be affected by how long or short a time was
10:47:32AM 22 available, how far or close the witness was,
10:47:36AM 23 lighting conditions and whether the witness had a
10:47:38AM 24 chance to see another person in the past.

10:47:40AM 25 Once again, I instruct you, the burden

JURY CHARGE

10:47:42AM 1 of proof is on the State and it extends to every
10:47:44AM 2 element of the crime charged, and this includes the
10:47:48AM 3 burden of proving beyond a reasonable doubt the
10:47:50AM 4 identity of the Defendant as the person who
10:47:52AM 5 committed the crime. If, after examining the
10:47:54AM 6 testimony, you have a reasonable doubt as to the
10:47:56AM 7 accuracy of the identification, you must find the
10:48:00AM 8 Defendant not guilty.

10:48:00AM 9 Ladies and gentlemen, there are three
10:48:02AM 10 possible verdicts in this case. You don't have to
10:48:04AM 11 try to write this down; the verdict form will go
10:48:08AM 12 into the jury room with you. And I will also go
10:48:10AM 13 over the form with you prior to you beginning
10:48:12AM 14 deliberation. There is no significance whatsoever
10:48:14AM 15 to the order in which I state these potential
10:48:18AM 16 verdicts. It's simply that one must be stated
10:48:20AM 17 first.

10:48:22AM 18 And the options are as follows: As to
10:48:24AM 19 indictment 2014-GS-10-320, we the jury, by
10:48:34AM 20 unanimous consent, find the Defendant guilty of
10:48:36AM 21 distribution of cocaine; or as to the lesser
10:48:36AM 22 included offense, guilty of possession of cocaine;
10:48:40AM 23 or not guilty. Again, there is absolutely no
10:48:42AM 24 significance whatsoever as to the order in which I
10:48:44AM 25 have stated these potential verdicts.

JURY CHARGE

10:48:48AM 1 Ladies and gentlemen, your verdict must
10:48:50AM 2 be unanimous, which means that all 12 of you must
10:48:52AM 3 agree in order to reach a verdict in this case.

10:48:54AM 4 Madame Forelady, when the jury has
10:48:56AM 5 reached a verdict, it will be your responsibility
10:48:58AM 6 to fill out the verdict form and sign and date it
10:49:00AM 7 and knock on the door and advise the bailiff that
10:49:02AM 8 the jury has reached a verdict.

10:49:04AM 9 Also, if the jury has any questions
10:49:06AM 10 during deliberations, it will be your
10:49:08AM 11 responsibility to write them out and follow the
10:49:10AM 12 same procedure by advising the bailiff that the
10:49:12AM 13 jury has a question.

10:49:14AM 14 Ladies and gentlemen, I will advise you
10:49:14AM 15 that if you have any questions during
10:49:16AM 16 deliberations, please know there will be a delay in
10:49:20AM 17 our response. There's a procedure that we have to
10:49:22AM 18 follow in answering your questions. So note, if
10:49:24AM 19 you have a question, there will be a delay, because
10:49:26AM 20 we are following that procedure.

10:49:28AM 21 Again, ladies and gentlemen, your
10:49:32AM 22 verdict must be a unanimous one. I'm going to ask
10:49:34AM 23 that you return to your jury room, but do not yet
10:49:38AM 24 begin your deliberations. I have some very brief
10:49:40AM 25 matters of law that I need to take up with the

JURY CHARGE

10:49:42AM 1 attorneys that may require further instruction or
10:49:42AM 2 clarification of an instruction; however, if there
10:49:48AM 3 is no further instructions, we will send in your
10:49:50AM 4 pads, the verdict form, and the evidence, and at
10:49:54AM 5 that time we will excuse the alternates.

10:49:54AM 6 I will tell you in advance, that if you
10:49:56AM 7 want to -- the evidence will go back with you,
10:49:58AM 8 which includes the video that you have seen.
10:50:00AM 9 Because we are having some technological hiccups,
10:50:04AM 10 we're trying to reequip -- you know, being in the
10:50:06AM 11 courthouse is like owning a house. You have to
10:50:08AM 12 upgrade every year. We were the newest courthouse
10:50:10AM 13 for a moment, but now they've built a new one in
10:50:14AM 14 Sumter and a new one in Dorchester, so now we're
10:50:14AM 15 the old kid on the block.

10:50:16AM 16 We have learned with technology that
10:50:20AM 17 every year we have to upgrade it and so we're in
10:50:20AM 18 the process of upgrading courtrooms and jury rooms.
10:50:24AM 19 So we don't have the technology for you to be able
10:50:26AM 20 to play that DVD in the jury room. So if you would
10:50:30AM 21 like to watch it, let us know and we will bring you
10:50:32AM 22 back into the courtroom and it will be played for
10:50:34AM 23 you at your pleasure. Also, I have arranged for
10:50:40AM 24 your lunch to arrive at 11:30. So I give that to
10:50:44AM 25 you for planning purposes.

10:50:44AM 1 Again, do not yet begin your
10:50:46AM 2 deliberations until we advise you to begin. Please
10:50:48AM 3 leave your notepads in your seats and go with the
10:50:52AM 4 bailiff.

10:50:52AM 5 (Jury out, 10:50 a.m.)

10:51:00AM 6 THE COURT: Any exceptions from the
10:51:18AM 7 State.

10:51:18AM 8 MR. SOWARDS: None from the State.

10:51:22AM 9 THE COURT: From the defense?

10:51:22AM 10 MS. GAY: No, Your Honor.

10:51:24AM 11 THE COURT: Could you all please make
10:51:24AM 12 sure that all the evidence is there with the Court
10:51:28AM 13 Reporter? You can start getting the notebooks and
10:51:30AM 14 put the alternate's notebook on the ledge for me
10:51:30AM 15 and then bring her out.

10:52:20AM 16 MS. GAY: Your Honor, do we need to be
10:52:20AM 17 part of the next move?

10:52:22AM 18 THE COURT: I need you all to hang
10:52:22AM 19 tight for a second. Okay. If you could go ahead
10:52:32AM 20 and get me the alternate, take in the notebooks,
10:52:34AM 21 and the evidence and the verdict form.

10:52:34AM 22 (Alternate juror returned to
10:52:34AM 23 courtroom.)

10:54:08AM 24 THE COURT: Ma'am, we thank you for
10:54:10AM 25 your time and attention to this case. I know being

10:54:14AM 1 the alternate is thankless. You get to do all the
10:54:14AM 2 work and, unless somebody is ill or otherwise
10:54:16AM 3 unavailable, you don't get to deliberate. I've
10:54:18AM 4 watched you, and you were timely and attentive and
10:54:22AM 5 we appreciate your participation in the process.

10:54:24AM 6 I hope it was educational for you. You
10:54:26AM 7 are welcome to remain with us until the jury
10:54:28AM 8 reaches a verdict or you're welcome to leave. I
10:54:30AM 9 would ask that you stay until the lunch arrives.
10:54:34AM 10 We'll put you in a multipurpose room so that you
10:54:38AM 11 can be comfortable.

10:54:38AM 12 Also, you can discuss the case if you
10:54:40AM 13 would like, but I would ask that you not do it
10:54:42AM 14 until after the panel is released on Friday. You
10:54:44AM 15 also don't have to discuss it. Oftentimes lawyers
10:54:46AM 16 will contact you to see how they can do a better
10:54:50AM 17 job. We will destroy your notes for you. And I
10:54:56AM 18 hope you have a wonderful day. You are excused
10:54:58AM 19 with the Court's profound thanks. Go with
10:55:00AM 20 Mr. Julius; he'll make you comfortable until your
10:55:00AM 21 lunch arrives.

10:55:04AM 22 THE JUROR: Thank you.

10:55:04AM 23 THE COURT: You're welcome, ma'am.

10:55:08AM 24 The record should reflect that the jury
10:55:08AM 25 began its deliberations at 10:52 a.m.)

10:55:14AM 1 All right. We'll be at ease until --
10:55:16AM 2 but I would ask that you stick close in case they
10:55:18AM 3 have questions. Once the jury receives its lunch,
10:55:22AM 4 I'll let you go for a brief lunch. Please make
10:55:22AM 5 sure my clerk has your cell phone numbers.

10:55:22AM 6 (There was a break in these
11:21:02AM 7 proceedings, 10:55 a.m.)

11:21:02AM 8 THE COURT: We have a note from the
11:21:58AM 9 jury. Okay. They want to see the video. So I
11:22:20AM 10 need you to cue the video up and we need to prepare
11:22:22AM 11 for them to watch the video. It just simply says,
11:22:26AM 12 we want to see slash view the video.

11:22:28AM 13 MS. LINDER: And, Judge, since the
11:22:32AM 14 video was sent back with the jury, if we could get
11:22:34AM 15 it, just to make sure that the sound is set up
11:22:34AM 16 properly.

11:22:34AM 17 THE COURT: Yes.

11:22:36AM 18 If you could get that exhibit, please.
11:22:36AM 19 And also have the foreperson sign and date this
11:22:40AM 20 note so I can mark it as an exhibit.

11:22:46AM 21 MS. LINDER: And, Judge, I'm guessing
11:22:48AM 22 they mean in the entirety.

11:22:48AM 23 THE COURT: I would assume so, unless
11:22:52AM 24 they give us the high sign.

11:22:52AM 25 The State ready to proceed?

11:31:12AM 1 MR. SOWARDS: Yes.

11:31:12AM 2 THE COURT: Defense ready to proceed?

11:31:14AM 3 MS. GAY: Yes.

11:31:16AM 4 THE COURT: Please bring in the jury.

11:32:24AM 5 (Jury in, 11:32 a.m.)

11:32:24AM 6 THE COURT: If you all could move that

11:32:28AM 7 podium for me again.

11:32:32AM 8 Ladies and gentlemen, we received your

11:32:34AM 9 note regarding replaying the video. I think it's

11:32:36AM 10 about 45 minutes, give or take. I really -- that's

11:32:40AM 11 about an estimate. We went downstairs to check and

11:32:42AM 12 see if your lunch has arrived. What we'll do is

11:32:46AM 13 play the video. If your lunch hasn't come yet,

11:32:50AM 14 we'll play it in its entirety, but, once your lunch

11:32:54AM 15 comes, I will give you the opportunity to stop and

11:32:56AM 16 eat and then continue viewing it, if you would

11:32:58AM 17 like. During the playing, once it's played in its

11:33:00AM 18 entirety, if you need a replay, just let us know

11:33:00AM 19 and we'll accommodate your request.

11:33:06AM 20 Isn't it about 45 minutes?

11:33:10AM 21 MS. LINDER: Between 45 minutes and an

11:33:10AM 22 hour, Judge.

11:33:12AM 23 A JUROR: Do we have the option to just

11:33:14AM 24 view pieces of it?

11:33:16AM 25 THE COURT: Yes. If you want to do

11:33:18AM 1 that, you need to let the foreperson know, she can
11:33:20AM 2 write those down and we can cue those to those
11:33:22AM 3 points, but you can't tell me that here. So if you
11:33:26AM 4 all want to do that, I'm going to send you back
11:33:28AM 5 into your jury room. Tell us the portions you want
11:33:30AM 6 to watch and we'll cue that to those and then we'll
11:33:32AM 7 have you watch those.

11:33:34AM 8 Okay. If you all will go back into
11:33:36AM 9 your jury room. Let us know when you're ready.

11:33:48AM 10 (Jury out, 11:33 a.m.)

11:33:48AM 11 (COURT'S EXH. 1, Jury note, was marked
12 for identification.)

13 (A recess transpired.)

14 THE COURT: We have two notes from the
15 jury. First question: May we -- and their lunch
16 has arrived and I have instructed for it to be
17 taken into them.

18 First question: May we have a copy of
19 the Judge's instructions? And my response would be
20 as follows: Ladies and gentlemen of the jury, our
21 procedures do not allow for a copy of the jury
22 charge slash instructions to be given to you. If
23 there is a specific instruction that you would like
24 given again or the entire instruction, please
25 advise us and I will accommodate your request.

1 Any exception to that from the State?

2 MR. SOWARDS: None.

3 THE COURT: From the defense?

4 MS. GAY: No, Your Honor.

5 THE COURT: Please have this marked.

6 We have two smokers. Let them know
7 they can smoke. After they eat lunch, take them
8 downstairs, but they can't deliberate while
9 smoking.

10 (COURT'S EXH. 2, Jury note, was marked
11 for identification.)

12 (COURT'S EXH. 3, Jury note, was marked
13 for identification.)

14 THE COURT: Here's what they want to
15 see. It's entitled, Video. One, first
16 introduction between the three people. Two,
17 outside meeting between three people. Three, no
18 mute audio. Four, to the end.

19 I don't know what, to the end, means.
20 I'm going to have to ask them.

21 MS. GAY: What does no mute mean?

22 THE COURT: That's probably the portion
23 where you muted the audio because of the
24 statements.

25 And I will have to instruct them on

1 that portion of it, that there are certain
2 determinations I make as a judge of the Court, and
3 they should -- maybe I will just -- I don't know.
4 If you all can agree, I guess we could just say --
5 I don't know because that wouldn't be accurate
6 also, to say it's not available, because it is
7 available.

8 MS. GAY: You could say as a matter of
9 law that certain portions of it aren't relevant.

10 THE COURT: I'm not going to say that.
11 I'm going to tell you in just a second. Give me a
12 moment. What I'm going to say to them is that
13 there are certain determinations that I make as the
14 judge of the law concerning the admission of
15 certain statements and documents based on the Rules
16 of Evidence and Rules of Procedure, and that all
17 the audio you're entitled to hear is -- all
18 portions of the video that you are entitled to hear
19 are available and leave it at that. Is there any
20 exception from the State?

21 MR. SOWARDS: None.

22 THE COURT: From the defense?

23 MS. GAY: I need to think about it for
24 just a second. Can you repeat it one more time?

25 THE COURT: Ladies and gentlemen, there

1 are certain determinations that I make as the judge
2 of the law concerning the admission of documents
3 based on the Rules of Evidence and the Rules of
4 Procedure. All of -- and naturally I will say,
5 concerning the admission of the video based on the
6 Rules of Evidence and the Rules of Procedure. All
7 of the video that you are entitled to hear is
8 available. And you are not to speculate or draw
9 any conclusions as to why some portions of the
10 video are muted.

11 MS. GAY: That sounds fine.

12 THE COURT: Is that acceptable to the
13 State?

14 MR. SOWARDS: That's fine.

15 THE COURT: Any objection from the
16 defense?

17 MS. GAY: No.

18 THE COURT: What I'm going to do is ask
19 them if they want to -- is there any exception --

20 MS. GAY: No.

21 THE COURT: I'm going to ask them if
22 they want to eat, smoke, and then hear the video or
23 whether they want to stop eating and hear the
24 video. Is there any exception from the State?

25 MR. SOWARDS: None. Is that just on

1 the excerpts portion?

2 THE COURT: I'll get some clarity from
3 the Foreperson.

4 Please get Ms. Middleton for me.

5 (Foreperson in the courtroom.)

6 THE COURT: Ms. Middleton, if you could
7 accommodate us. There are several things that you
8 may need to consult with the jury to get clarity.
9 I know your lunch has just been given to you so I
10 need for you, first, to ask them whether they want
11 to eat and then watch the video, or do they want to
12 stop eating and watch the video?

13 Do you have another note for me?

14 FOREPERSON: Yes, ma'am, I do.

15 THE COURT: Give it to the bailiff.

16 The next part is, we did not understand
17 when it said, to the end, on the note. So if you
18 could --

19 FOREPERSON: Your Honor, we were asking
20 from the part where we want to see the --

21 THE COURT: From the three meeting
22 outside?

23 FOREPERSON: The initial introduction
24 to the end of the tape, of the video.

25 THE COURT: That was -- that was the

1 clarity we needed.

2 Now, I've got your third -- fourth
3 note. Please repeat instructions for distribution.
4 Ask them if they want to hear that -- in other
5 words, I need to know if they want to see the
6 video, rehear the instructions right now or whether
7 they want to finish eating, smoke, and then do
8 that.

9 FOREPERSON: I will.

10 THE COURT: And as soon as you get that
11 answer, knock on the door and let the bailiff know
12 for me.

13 FOREPERSON: Thank you, Your Honor.

14 MS. GAY: I would ask, Your Honor, that
15 when you charge the distribution, you also charge
16 the lesser included --

17 THE COURT: They didn't ask me for
18 that. I'm going to instruct what they asked me. I
19 have to follow their instructions when they ask for
20 reinstruction. I can't take any latitude. If they
21 ask for distribution, that's what I'm going to
22 instruct them on.

23 We'll let them eat. And then give a
24 moment -- I'm typing out the answer to the question
25 to attach to the note. And then I will let you go

1 eat as well.

2 (COURT'S EXH. 4, Jury note, was marked
3 for identification.)

4 MS. LINDER: They were at the high-top
5 counter and then there's eight minutes before they
6 go outside to the curb to talk. They said the
7 initial encounter, so I was taking that as the --

8 MS. GAY: I understand that, but what
9 do they do in the eight minutes, talk to him or
10 just don't talk to him? Maybe we should look at
11 what you're saying.

12 THE COURT: What they said was the
13 first introduction between three people, outside
14 meeting between three people, and then from that
15 point to the end of the video.

16 MS. LINDER: So, Judge, I guess for
17 planning, it's -- there's about a 15-second spot
18 where there's the initial hi, how are you, what's
19 your name. And then there is an eight-minute lull
20 where they're not together, and then they're
21 together outside at the curb. And then from there,
22 it's pretty steady.

23 So I didn't know if you wanted me to
24 play those eight dead minutes, for lack of a better
25 term --

1 THE COURT: We're going to follow their
2 instructions. I asked her for clarity. She said
3 they wanted to see it from the outside meeting
4 between the three people to the end of the video.

5 MS. LINDER: So not the initial --

6 THE COURT: They want that, too. The
7 first introduction between the three people, and
8 then they want it from the outside meeting between
9 three people to the end of the video. I asked her
10 specifically and that's what she said.

11 In the future -- I thought about this
12 last night. They would like to view the video
13 privately, and they're entitled to. And I
14 understand you said that you can't redact it, but
15 you can. You just need to take it to AVS or
16 somebody and let them do it. They shouldn't have
17 to watch the video with us. They should be able to
18 stop and start that video if they want to. It's in
19 evidence.

20 In the future, for trial preparation
21 purposes, you all should get a separate piece of
22 evidence so that the jury can view it outside.
23 They shouldn't have to view it in the courtroom
24 with us. And there is a way to redact it, even
25 with the special software that the police uses.

1 AVS deals with every kind of software there is.
2 They do it for civil litigators all the time. They
3 should do it for the State as well.

4 All right. Because the next question
5 was, may we view the video privately for viewing
6 and deliberation?

7 MS. GAY: We can leave.

8 THE COURT: No. They want to be able
9 to start and stop, and talk while they're stopping
10 and starting. They should be able to do that,
11 that's the whole purpose of deliberation. Because
12 of our technological limitations, we're not able to
13 do that right now. That's why I instructed the
14 State as I just did, so in the future we won't have
15 this issue come up.

16 THE COURT: Would you mark that as a
17 Court's Exhibit?

18 THE COURT REPORTER: Yes, ma'am.

19 (COURT'S EXH. 5, Response to Jury note,
20 was marked for identification.)

21 THE COURT: In response to question
22 number 3, I've typed it. And as soon as my clerk
23 brings it to me, I will let you all read it before
24 I send it in to the jury. That eliminates me
25 having to bring them back in, and I will reinstruct

1 them as to that portion of their note.

2 Please approach -- well, actually, I'll
3 read it to you. As to question number three,
4 ladies and gentlemen of the jury, there are certain
5 determinations I make as the Judge of the law
6 concerning the admission of the video based on the
7 Rules of Evidence and Rules of Procedure. All of
8 the audio from the video that you are entitled to
9 hear is audible. You are not to speculate or draw
10 any inferences or conclusions as to why these
11 portions are unavailable for the purpose of your
12 deliberations. If you desire to have any of the
13 testimony or video replayed, please advise the
14 bailiff and we'll accommodate your request.

15 Are there any exceptions from the
16 State?

17 MR. SOWARDS: None.

18 THE COURT: From the defense?

19 MS. GAY: No, ma'am.

20 THE COURT: Okay. I will attach that
21 to the note so that the jury can -- they will know
22 that's the response to question number three. And
23 we've already gotten clarity from them as to what
24 portions of the video they wanted replayed.

25 Now, that should -- and then they

1 wanted to be reinstructed. What I'm going to do is
2 I'm going to break for 30 minutes, which is --
3 let's say 10 'til 1, give or take, because they
4 have to eat and then they want to smoke. So I'm
5 thinking 10 of 1:00, 1:00.

6 Make sure we have your cell numbers in
7 the event we have another note. Okay. You can
8 leave that there. I don't think we'll need to
9 disturb it.

10 (A recess transpired.)

11 (COURT'S EXH. 6, Jury Note, was marked
12 for identification.)

13 (COURT'S EXH. 7, Jury Note, was marked
14 for identification.)

01:23:38PM 15 THE COURT: All right. State ready to
01:23:40PM 16 proceed?

01:23:40PM 17 MS. LINDER: Yes, Judge.

01:23:42PM 18 THE COURT: Defense ready to proceed?

01:23:44PM 19 MS. GAY: Yes, ma'am.

01:23:44PM 20 THE COURT: I'm going to let them watch
01:23:46PM 21 the video first, and then I'm going to reinstruct
01:23:50PM 22 them; however, in the interim they've sent two
01:23:54PM 23 notes that say, may we -- well, one says, may we
01:23:56PM 24 view video privately for viewing and deliberation.
01:23:58PM 25 And they sent another note that said, may we view

01:24:00PM 1 the video in private for viewing and deliberation
01:24:04PM 2 in compliance with the Rules.

01:24:06PM 3 Don't forget, you have a lawyer on that
01:24:08PM 4 jury, who I made the foreperson. So she knows that
01:24:14PM 5 they're entitled to view the video without us
01:24:14PM 6 watching them.

01:24:14PM 7 MS. GAY: I have a suggestion on that.

01:24:16PM 8 THE COURT: Uh-huh.

01:24:16PM 9 MS. GAY: We were talking about the
01:24:18PM 10 possibility of someone else muting the areas --

01:24:20PM 11 THE COURT: Like who?

01:24:22PM 12 MS. GAY: Like, maybe a person -- I
01:24:24PM 13 wouldn't be opposed to it being Ms. Linder, if
01:24:28PM 14 she --

01:24:28PM 15 THE COURT: They want to be able to
01:24:30PM 16 watch it and talk.

01:24:32PM 17 MS. GAY: I know, without us being in
01:24:32PM 18 the room is what I'm saying.

01:24:34PM 19 THE COURT: How could she do it without
01:24:36PM 20 us being in the room?

01:24:36PM 21 MS. GAY: Without all of us being in
01:24:38PM 22 the room.

01:24:38PM 23 THE COURT: They can't deliberate in
01:24:38PM 24 anybody's presence.

01:24:38PM 25 MS. GAY: So they'd just have to be

01:24:38PM 1 quiet.

01:24:46PM 2 THE COURT: Yeah. Unfortunately, yeah.
01:24:46PM 3 And I'm going to explain to them that we have some
01:24:50PM 4 technology challenges that prevent us from being
01:24:54PM 5 able to send it in to them, and they are correct,
01:24:56PM 6 they're able to do that, and we apologize that they
01:24:58PM 7 are unable to do that because of our limitations.

01:25:02PM 8 Is there any exception to the Court
01:25:02PM 9 proceeding in that way from the State?

01:25:04PM 10 MR. SOWARDS: None.

01:25:04PM 11 THE COURT: From the defense?

01:25:06PM 12 MS. GAY: Well, I feel like I should at
01:25:08PM 13 least object or say that --

01:25:08PM 14 THE COURT: Do you have a solution for
01:25:10PM 15 me?

01:25:10PM 16 MS. GAY: I don't know that I have a
01:25:12PM 17 solution.

01:25:12PM 18 THE COURT: We need a solution.

01:25:14PM 19 MS. GAY: My client should not have to
01:25:16PM 20 be in the room while they're viewing the evidence.

01:25:18PM 21 THE COURT: I'm sorry, I don't
01:25:18PM 22 understand what you mean.

01:25:18PM 23 MS. GAY: I don't think that he should
01:25:20PM 24 be in the room with them while they're viewing the
01:25:24PM 25 evidence again. That's my opinion. I don't

01:25:26PM 1 think that any of us should be in the room again.

01:25:26PM 2 THE COURT: Yeah, but what option do
01:25:28PM 3 you have for me? It's like giving me a problem
01:25:32PM 4 without a solution. I have to -- you can't just
01:25:32PM 5 object. There needs to be some solution. And so
01:25:36PM 6 I've done -- you know, in older courthouses this
01:25:42PM 7 happens all the time. They don't have any
01:25:44PM 8 technology so you can't ever view anything by
01:25:44PM 9 yourself.

01:25:44PM 10 So if that was the basis for a
01:25:46PM 11 reversal, a lot of criminal and civil cases would
01:25:48PM 12 get reversed, but they don't, because we know there
01:25:50PM 13 are limitations in every courtroom. So if you have
01:25:52PM 14 a solution, I would be glad to entertain it.

01:25:56PM 15 MS. GAY: Well, my solution was for
01:25:56PM 16 maybe one person to stay in the courtroom and show
01:25:58PM 17 --

01:25:58PM 18 THE COURT: I need a solution that
01:26:00PM 19 complies with the Rules, because the jury has to
01:26:00PM 20 deliberate in secret. They can't even divulge it
01:26:06PM 21 after a verdict.

01:26:08PM 22 MS. GAY: Okay. Hold on one second.

01:26:50PM 23 THE COURT: Okay.

01:26:50PM 24 MS. GAY: I have spoken to my client in
01:26:50PM 25 detail, Your Honor. And he's told me that he

01:26:52PM 1 really just wants me to shut up now. He's fine.

01:26:52PM 2 THE COURT: Okay. So there's no

01:26:52PM 3 exception then, right?

01:26:54PM 4 MS. GAY: No.

01:26:54PM 5 THE COURT: All right. Bring in the
01:26:54PM 6 jury for me.

01:28:24PM 7 (Jury in, 1:27 p.m.)

01:28:44PM 8 THE BAILIFF: All jurors are present,
01:28:44PM 9 Your Honor.

01:28:46PM 10 THE COURT: Ladies and gentlemen, I
01:28:52PM 11 hope you enjoyed your lunch. I've answered, I
01:28:54PM 12 think, all of your other questions in written form,
01:28:58PM 13 as it regards your request to reinstruct, for
01:29:04PM 14 distribution. I also received your other notes
01:29:04PM 15 regarding viewing the video privately.

01:29:04PM 16 And while you're correct, that you
01:29:08PM 17 should be able to do that, your deliberations have
01:29:10PM 18 to be secret. We cannot be privy to it. We
01:29:12PM 19 simply, because of our limitations right now in
01:29:14PM 20 changing our technology, do not have the ability
01:29:18PM 21 for you to view it privately in your jury room.

01:29:20PM 22 These videos utilize different types of
01:29:24PM 23 software. Each police agency and other agencies
01:29:26PM 24 have different software. This is not just a
01:29:30PM 25 regular Windows Media Player. It's a whole

01:29:34PM 1 different kind of software. The only place we have
01:29:36PM 2 the ability to play it is on that laptop. That
01:29:38PM 3 laptop has other things that you all can't see.

01:29:40PM 4 The only way I can let somebody else
01:29:44PM 5 play it for you is to have someone else in your
01:29:46PM 6 room with you, which violates our Rules on your
01:29:48PM 7 deliberations being private. Because you wouldn't
01:29:50PM 8 be able to talk, as I assume you all want to do, as
01:29:50PM 9 you start and stop the video.

01:29:52PM 10 While you are correct that you should
01:29:54PM 11 be able to do that, I apologize profusely that
01:29:56PM 12 right now our limitations will not allow us to
01:30:00PM 13 accommodate that request.

01:30:00PM 14 However, pursuant to your earlier note
01:30:02PM 15 on replaying the portions that you've asked for,
01:30:06PM 16 however you are not limited to that. If there are
01:30:08PM 17 other portions that you want replayed or you want
01:30:10PM 18 the portions that you've requested replayed, just
01:30:14PM 19 let us know and we will accommodate your request.
01:30:14PM 20 However, I have to ask that you not engage in any
01:30:20PM 21 deliberations in our presence.

01:30:24PM 22 Replay the video, please.

01:30:24PM 23 (Requested portions of video played in
01:58:06PM 24 open court.)

01:58:06PM 25 THE COURT: Ladies and gentlemen, if

01:58:08PM 1 there's any additional portion of the video that
01:58:10PM 2 you wish to be replayed or played, please advise us
01:58:16PM 3 after I have reinstructed you on the elements of
01:58:18PM 4 distribution, as you requested, and we will
01:58:20PM 5 accommodate your request immediately.

01:58:22PM 6 The Defendant is charged with
01:58:24PM 7 distribution of cocaine. The State must prove
01:58:26PM 8 beyond a reasonable doubt that the Defendant
01:58:28PM 9 distributed cocaine. Distribute means to deliver
01:58:32PM 10 or to actually constructively or attempt to
01:58:34PM 11 transfer a drug other than by administering or
01:58:38PM 12 dispensing. Deliver means to actually
01:58:42PM 13 constructively or attempt to transfer a drug. A
01:58:44PM 14 transfer can involve an exchange for money, a
01:58:48PM 15 barter, or a gift. There does not have to be
01:58:52PM 16 anything given in exchange for the drugs for a
01:58:54PM 17 transfer to constitute distribution.

01:58:56PM 18 That will conclude the additional
01:58:58PM 19 instruction. If you need any further portions of
01:59:00PM 20 the law instructed or if you need this
01:59:02PM 21 reinstructed, please do not hesitate to let us know
01:59:04PM 22 and I will accommodate your request immediately.

01:59:08PM 23 If you need any other portion of the
01:59:10PM 24 video played, let us know.

01:59:12PM 25 Go with the bailiffs, please.

01:59:16PM 1 (Jury out, 1:58 p.m.)

01:59:32PM 2 THE COURT: Are there any exceptions

01:59:38PM 3 from the State?

01:59:38PM 4 MR. SOWARDS: None.

01:59:40PM 5 THE COURT: From the defense?

01:59:42PM 6 MS. GAY: No, Your Honor.

01:59:42PM 7 THE COURT: We will await further

01:59:44PM 8 instructions from the jury.

9 (A recess transpired.)

10 THE COURT: Mr. Butler, if you would

11 please get the Foreperson for me, please.

12 (Whereupon, the Foreperson is present

13 in the courtroom.)

02:20:08PM 14 THE COURT: I need some clarity. Will

02:20:12PM 15 the Judge please read again the whole jury

02:20:14PM 16 instruction? Do you all mean the whole instruction

02:20:16PM 17 or just --

02:20:18PM 18 FOREPERSON: Yes, ma'am.

02:20:18PM 19 THE COURT: Okay. I just needed that

02:20:18PM 20 clarity.

02:20:24PM 21 FOREPERSON: Yes, ma'am.

02:20:24PM 22 (COURT'S EXH. 8, Jury note, was marked

23 for identification.)

02:20:54PM 24 THE COURT: Anything from the State?

02:20:56PM 25 MR. SOWARDS: Nothing.

02:20:58PM 1 THE COURT: Anything from the defense?

02:21:00PM 2 MS. GAY: Nothing.

02:21:26PM 3 (Jury in, 2:20 p.m.)

02:21:28PM 4 THE BAILIFF: All seated, Your Honor.

02:21:46PM 5 THE COURT: In response to your

02:21:46PM 6 request, ladies and gentlemen, I'm reinstructing

02:21:50PM 7 you as follows:

02:22:02PM 8 During this trial, ladies and

02:22:02PM 9 gentlemen, you and I have certain duties to

02:22:04PM 10 perform. As the trial Judge it is my

02:22:06PM 11 responsibility to preside over the trial of this

02:22:08PM 12 case and I also have the duty to rule upon or pass

02:22:12PM 13 upon the admissibility of evidence offered during

02:22:16PM 14 this trial.

02:22:16PM 15 You are to consider only the competent

02:22:18PM 16 evidence before you and you are to consider only

02:22:22PM 17 the testimony that has been presented from the

02:22:24PM 18 witness stand, together with any exhibits which

02:22:28PM 19 have been made a part of the record in this case.

02:22:32PM 20 I have the additional duty to charge or instruct

02:22:36PM 21 you on the law applicable to this case. As the

02:22:40PM 22 presiding Judge, I'm the sole judge of the law of

02:22:40PM 23 this case and it is your duty to accept and apply

02:22:44PM 24 the law as I now state it to you.

02:22:48PM 25 If you have a preconceived idea as to

02:22:50PM 1 what the law is or what the law ought to be in a
02:22:54PM 2 case, or in this case, and it does not agree with
02:22:56PM 3 what I tell you the law is, you are obligated under
02:22:58PM 4 the oath which you have taken to abandon this
02:23:00PM 5 preconception on your part, because you are sworn
02:23:04PM 6 to accept the law and apply the law precisely as I
02:23:06PM 7 now state it to you.

02:23:08PM 8 In every case tried in this court
02:23:10PM 9 before a jury, the jury becomes the sole and
02:23:16PM 10 exclusive judge of the facts in the case. You the
02:23:16PM 11 jury are the judges of the facts in this case.
02:23:18PM 12 This Court is the judge of the law. The
02:23:22PM 13 Constitution of our state has declared that a trial
02:23:24PM 14 judge should not intimate, state, comment or make
02:23:28PM 15 any statement to a trial jury about the facts in
02:23:32PM 16 the case.

02:23:32PM 17 Since you the jury are the sole judges
02:23:34PM 18 of the facts in this case, you are not to infer
02:23:36PM 19 anything from what the Court has said during the
02:23:38PM 20 progress of this trial in ruling upon the
02:23:42PM 21 admissibility of evidence or otherwise, or anything
02:23:44PM 22 that I say now to you during the course of this
02:23:46PM 23 instruction that I have any opinion about the
02:23:48PM 24 facts. The law does not permit me to have an
02:23:50PM 25 opinion about the facts.

02:23:52PM 1 This is a matter solely for you the
02:23:54PM 2 jury to determine. As jurors, then, it is your
02:23:58PM 3 duty, as I have instructed you, to determine the
02:24:00PM 4 effect, the value, the weight, and the truth of the
02:24:04PM 5 evidence presented during this trial. Necessarily,
02:24:08PM 6 you must assess the credibility of witnesses who
02:24:12PM 7 have testified in this case. Credibility is simply
02:24:14PM 8 a legalistic term which means the believability.
02:24:18PM 9 It becomes your duty as jurors to analyze and to
02:24:22PM 10 evaluate the evidence and determine that evidence
02:24:24PM 11 which convinces you of its truth.

02:24:28PM 12 Some of the things you may consider as
02:24:30PM 13 you decide whether or not to believe a witness's
02:24:32PM 14 testimony about a particular matter include: What
02:24:36PM 15 was the manner and appearance of the witness who
02:24:38PM 16 testified? Was he or she straightforward or
02:24:42PM 17 hesitant in answering? Was the testimony of the
02:24:44PM 18 witness consistent or inconsistent? How did the
02:24:46PM 19 witness come to know the facts that he or she
02:24:48PM 20 testified to or what was his or her ability to know
02:24:52PM 21 these facts? Is there some reason a witness will
02:24:54PM 22 want to give testimony that would help or hurt one
02:24:56PM 23 side or the other? In other words, was the witness
02:25:00PM 24 biased or prejudiced, and was the testimony of a
02:25:04PM 25 witness strengthened or weakened by other testimony

02:25:08PM 1 or evidence? You can believe as much or as little
02:25:10PM 2 of each witness's testimony as you think proper.

02:25:14PM 3 I further instruct you that in
02:25:16PM 4 determining the question of the credibility or
02:25:20PM 5 believability of witnesses who have testified, you
02:25:24PM 6 may believe one witness against several witnesses,
02:25:24PM 7 or several witnesses as against one witness. You
02:25:28PM 8 may believe a part of the testimony of a witness
02:25:30PM 9 and reject the remaining part of the testimony of
02:25:32PM 10 that same witness.

02:25:34PM 11 If you have a good and sound reason,
02:25:36PM 12 you may believe the testimony of a witness in its
02:25:38PM 13 entirety, or reject the testimony of a witness in
02:25:40PM 14 its entirety. You may consider the demeanor of a
02:25:42PM 15 witness, that is, the manner and appearance of the
02:25:46PM 16 witness from the witness stand.

02:25:48PM 17 Throughout this process, ladies and
02:25:50PM 18 gentlemen, you have but one objective, to seek the
02:25:52PM 19 truth regardless of its source. The Rules of
02:25:56PM 20 Evidence ordinarily do not permit witnesses to
02:25:58PM 21 testify to opinions or conclusions. An exception
02:26:02PM 22 to this Rule exists for witnesses we call expert
02:26:06PM 23 witnesses; a witness who by their education,
02:26:08PM 24 training, and experience has become an expert in
02:26:12PM 25 some art, science, profession or calling, may state

02:26:16PM 1 an opinion as to relevant and material matters in
02:26:20PM 2 which the witness claims to be an expert and may
02:26:22PM 3 also state the reasons for the opinion.

02:26:24PM 4 You should consider any expert opinion
02:26:28PM 5 received into evidence in this case like any other
02:26:30PM 6 evidence. Give it the weight you think it
02:26:34PM 7 deserves. If you decide that the opinion of an
02:26:36PM 8 expert witness is not based on sufficient education
02:26:40PM 9 and experience, or if you conclude that the reasons
02:26:42PM 10 given in support of the opinion are not sound, or
02:26:44PM 11 that the opinion is outweighed by other evidence,
02:26:46PM 12 you may disregard the opinion entirely.

02:26:50PM 13 An expert witness's testimony is to be
02:26:52PM 14 given no greater weight than that of other
02:26:54PM 15 witnesses simply because the witness is an expert.
02:26:56PM 16 Further, you are not required to accept an expert's
02:27:02PM 17 opinion even though it's not contradicted.

02:27:04PM 18 There are two types of evidence which
02:27:06PM 19 are generally presented during a trial, direct
02:27:10PM 20 evidence and circumstantial evidence. Direct
02:27:12PM 21 evidence is the testimony of a person who asserts
02:27:14PM 22 the claim to have knowledge of a fact, such as an
02:27:18PM 23 eyewitness. Circumstantial evidence is proof of a
02:27:24PM 24 chain of facts and circumstances indicating the
02:27:26PM 25 existence of a fact.

02:27:28PM 1 The law makes absolutely no distinction
02:27:30PM 2 between the weight or value to be given to direct
02:27:32PM 3 or circumstantial evidence, nor is a greater degree
02:27:36PM 4 of certainty required of circumstantial evidence
02:27:42PM 5 than of direct evidence. You should weigh all of
02:27:42PM 6 the evidence in this case.

02:27:44PM 7 Crimes may be proven by circumstantial
02:27:46PM 8 evidence. Again, the law makes no distinction
02:27:50PM 9 between the weight or value to be given to either
02:27:52PM 10 direct or circumstantial evidence. However, to the
02:27:54PM 11 extent the State relies on circumstantial evidence,
02:27:58PM 12 all of the circumstances must be consistent with
02:28:00PM 13 each other, and when taken together point
02:28:06PM 14 conclusively to the guilt of the accused beyond a
02:28:08PM 15 reasonable doubt. If these circumstances merely
02:28:10PM 16 portray the Defendant's behavior as suspicious, the
02:28:14PM 17 proof has failed.

02:28:14PM 18 The State has the burden of proving the
02:28:18PM 19 Defendant guilty beyond a reasonable doubt. This
02:28:20PM 20 burden rests with the State regardless of whether
02:28:20PM 21 the State relies on direct evidence, circumstantial
02:28:24PM 22 evidence, or some combination of the two.

02:28:28PM 23 After weighing all of the evidence in
02:28:32PM 24 this case, if you are not convinced of the guilt of
02:28:34PM 25 the Defendant beyond a reasonable doubt, you must

02:28:36PM 1 find the Defendant not guilty. Conversely, if you
02:28:40PM 2 are convinced of the guilt of the Defendant beyond
02:28:42PM 3 a reasonable doubt, then you must find him guilty.

02:28:44PM 4 I instruct you that the fact that the
02:28:48PM 5 Defendant was arrested, charged, and indicted is
02:28:50PM 6 not evidence in this case. It cannot be considered
02:28:52PM 7 by you as evidence of guilt in this case, nor does
02:28:56PM 8 it create any presumption or inference of guilt.

02:29:00PM 9 This documentation, ladies and
02:29:00PM 10 gentlemen, is simply the formal written instrument
02:29:04PM 11 which contains a charge made against the Defendant.
02:29:08PM 12 It simply serves as the formal documentation by
02:29:10PM 13 which the case is processed or brought into the
02:29:12PM 14 court.

02:29:12PM 15 The Defendant has pled not guilty to
02:29:16PM 16 the indictment and that plea casts the burden on
02:29:18PM 17 the State to prove the Defendant guilty, because
02:29:20PM 18 the person charged with committing a criminal
02:29:24PM 19 offense in the State of South Carolina is never
02:29:24PM 20 required to prove himself innocent.

02:29:26PM 21 I instruct you that it is a cardinal
02:29:30PM 22 and important Rule of the Law of Evidence that the
02:29:32PM 23 Defendant in a criminal trial, no matter what the
02:29:36PM 24 seriousness of the charge made against him may be,
02:29:40PM 25 will always be presumed to be innocent of the crime

02:29:42PM 1 for which he's indicted unless his guilt has been
02:29:46PM 2 proven by evidence satisfying that guilt beyond a
02:29:48PM 3 reasonable doubt.

02:29:50PM 4 This presumption of innocence does not
02:29:52PM 5 cease when you retire to deliberate, but it
02:29:54PM 6 accompanies the Defendant from the time of his
02:29:58PM 7 appearance throughout the trial until you reach a
02:30:00PM 8 verdict in this case. Our Supreme Court has said
02:30:02PM 9 that the presumption of innocence is like a robe of
02:30:06PM 10 righteousness placed about the shoulders of the
02:30:08PM 11 Defendant and remains with him and assigns him to
02:30:10PM 12 that class, the innocent, until that presumptive
02:30:14PM 13 robe of righteousness has been stripped from his
02:30:16PM 14 person by evidence satisfying you of that guilt
02:30:20PM 15 beyond a reasonable doubt.

02:30:20PM 16 The presumption of innocence is not a
02:30:22PM 17 mere legal theory. It is not just a legal phrase.
02:30:26PM 18 It's the substantial right to which every Defendant
02:30:28PM 19 is entitled unless you the jury are satisfied from
02:30:32PM 20 the evidence of his guilt beyond a reasonable
02:30:34PM 21 doubt.

02:30:36PM 22 I instruct you and emphasize that the
02:30:38PM 23 fact that the Defendant did not testify is not a
02:30:42PM 24 factor to be considered by you in any way in your
02:30:44PM 25 deliberations and in your consideration on the

02:30:46PM 1 question of the guilt or innocence of the
02:30:48PM 2 Defendant. It must not be considered by you in any
02:30:48PM 3 manner whatsoever.

02:30:54PM 4 A Defendant has the Constitutional
02:30:54PM 5 right to remain silent, and the assertion of this
02:31:00PM 6 right must not be considered by you in your
02:31:00PM 7 deliberations. I repeat, under your oath, you are
02:31:04PM 8 to draw no conclusion whatsoever from the fact that
02:31:06PM 9 the Defendant in this case did not testify. The
02:31:10PM 10 fact that this Defendant did not testify is not to
02:31:12PM 11 be discussed in any manner whatsoever in your jury
02:31:16PM 12 deliberations.

02:31:18PM 13 The burden of proof, as I've stated to
02:31:20PM 14 you, is on the State. The Defendant is not
02:31:22PM 15 required to prove his innocence. The burden of
02:31:24PM 16 proof remains on the State to prove guilt beyond a
02:31:28PM 17 reasonable doubt. The State has the burden of
02:31:32PM 18 proving the Defendant guilty beyond a reasonable
02:31:32PM 19 doubt.

02:31:36PM 20 Some of you may have served as jurors
02:31:38PM 21 in civil cases where you were told that it is only
02:31:40PM 22 necessary to prove that a fact is more likely true
02:31:42PM 23 than not true, such as by the greater weight or
02:31:46PM 24 preponderance of the evidence.

02:31:46PM 25 In criminal cases, the State's proof

02:31:50PM 1 must be more powerful than that. It must be beyond
02:31:52PM 2 a reasonable doubt. Proof beyond a reasonable
02:31:54PM 3 doubt is proof that leaves you firmly convinced of
02:31:58PM 4 the Defendant's guilt. There are very few things
02:32:00PM 5 that we know with absolute certainty, and in
02:32:04PM 6 criminal cases the law does not require proof that
02:32:06PM 7 overcomes every possible doubt.

02:32:08PM 8 If, based on your consideration of the
02:32:10PM 9 evidence, you are firmly convinced that the
02:32:14PM 10 Defendant is guilty of the crime charged, you must
02:32:16PM 11 find the Defendant guilty. If on the other hand,
02:32:20PM 12 you think there is a real possibility that the
02:32:22PM 13 Defendant is not guilty, you must give the
02:32:24PM 14 Defendant the benefit of that doubt and find him
02:32:28PM 15 not guilty.

02:32:28PM 16 The Defendant is charged with
02:32:30PM 17 distribution of cocaine. The State must prove
02:32:34PM 18 beyond a reasonable doubt that the Defendant
02:32:36PM 19 distributed cocaine. Distribute means to deliver
02:32:40PM 20 or to actually, constructively, or attempt to
02:32:44PM 21 transfer drugs, other than by administering or
02:32:46PM 22 dispensing. Deliver means to actually,
02:32:50PM 23 constructively, or attempt to transfer a drug. A
02:32:52PM 24 transfer can involve an exchange for money, a
02:32:56PM 25 barter, or a gift. There does not have to be

02:32:58PM 1 anything given in exchange for the drug for a
02:33:00PM 2 transfer to constitute a distribution.

02:33:06PM 3 Included within the offense of
02:33:08PM 4 distribution of cocaine is the lesser offense of
02:33:12PM 5 simple possession. Simple possession does not
02:33:14PM 6 require distribution of the cocaine. In order to
02:33:20PM 7 prove possession of cocaine, the State must prove
02:33:22PM 8 beyond a reasonable doubt that the Defendant
02:33:24PM 9 knowingly or intentionally possessed cocaine.
02:33:28PM 10 Knowledge means -- knowingly means with knowledge,
02:33:30PM 11 consciously, not accidentally.

02:33:34PM 12 I apologize, ladies and gentlemen,
02:33:34PM 13 there is something in my eye that is really
02:33:36PM 14 affecting my ability to read and I apologize for
02:33:40PM 15 this interruption.

02:33:44PM 16 The State must prove beyond a
02:33:46PM 17 reasonable doubt that the Defendant knowingly or
02:33:48PM 18 intentionally possessed cocaine. Knowingly means
02:33:50PM 19 with knowledge, consciously, not accidentally.
02:33:52PM 20 Intentionally means willfully intending the result
02:33:58PM 21 which actually occurred, not accidentally or
02:33:58PM 22 involuntarily. Intent may be shown by acts and
02:34:02PM 23 conduct of the Defendant and other circumstances
02:34:06PM 24 from which you may naturally and reasonably infer
02:34:10PM 25 intent.

02:34:10PM 1 To prove possession, the State must
02:34:12PM 2 prove beyond a reasonable doubt that the Defendant
02:34:14PM 3 had both the power and intent to control the
02:34:16PM 4 disposition or use of the cocaine. Possession may
02:34:20PM 5 be either actual or constructive. Actual
02:34:24PM 6 possession means that the cocaine was in the actual
02:34:26PM 7 physical custody of the Defendant.

02:34:30PM 8 Constructive possession means that the
02:34:32PM 9 Defendant had dominion or control, or the right to
02:34:34PM 10 exercise dominion or control, over either the
02:34:36PM 11 cocaine itself or the property on which the cocaine
02:34:36PM 12 was found.

02:34:36PM 13 Mere presence at the scene where drugs
02:34:42PM 14 were found is not enough to prove possession.
02:34:46PM 15 Actual knowledge of the presence of the cocaine is
02:34:46PM 16 strong evidence of the Defendant's intent to
02:34:50PM 17 control its disposition or use. The Defendant's
02:34:54PM 18 knowledge and possession may be inferred when a
02:34:56PM 19 substance is found on the property under the
02:34:58PM 20 Defendant's control; however, this inference is
02:35:02PM 21 simply an evidentiary fact to be taken into
02:35:06PM 22 consideration by you along with the other evidence
02:35:08PM 23 in the case and to be given the weight, value, and
02:35:10PM 24 effect you decide it should have. Two or more
02:35:16PM 25 persons may have joint possession of a drug.

02:35:18PM 1 I further instruct you that mere
02:35:22PM 2 presence at the scene of a crime is not sufficient
02:35:22PM 3 to prove someone guilty of a crime. A Defendant's
02:35:24PM 4 presence where a crime is being committed or mere
02:35:28PM 5 association with a person who commits a crime does
02:35:30PM 6 not make a Defendant an accomplice or an aider and
02:35:36PM 7 abetter of the person committing the crime.

02:35:36PM 8 The burden is on the State to prove
02:35:40PM 9 every element of the crime charged. If you find,
02:35:42PM 10 after reviewing all the evidence, that the State
02:35:46PM 11 has proven that the Defendant was only present at
02:35:48PM 12 the scene of a crime and that they have not proven
02:35:52PM 13 beyond a reasonable doubt any other participation
02:35:52PM 14 in the crime, then you must find the Defendant not
02:35:56PM 15 guilty. The law is that proof of -- is that proof
02:36:00PM 16 at the scene of the crime is not sufficient to find
02:36:04PM 17 someone guilty.

02:36:06PM 18 The State must also prove beyond a
02:36:10PM 19 reasonable doubt the identification of the
02:36:10PM 20 Defendant as the person who committed the crime
02:36:14PM 21 charged. The State has the burden of proving
02:36:18PM 22 identity beyond a reasonable doubt. You must be
02:36:18PM 23 satisfied beyond a reasonable doubt of the accuracy
02:36:22PM 24 of the identification of the Defendant before you
02:36:24PM 25 may convict the Defendant.

02:36:26PM 1 Identification testimony is an
02:36:28PM 2 expression or belief or impression by a witness.
02:36:30PM 3 You must determine the accuracy of the
02:36:34PM 4 identification of the Defendant. You must consider
02:36:36PM 5 the believability of each identification witness in
02:36:38PM 6 the same way as any other witness. You may
02:36:40PM 7 consider whether the witness had an adequate
02:36:44PM 8 opportunity to observe the offender at the time of
02:36:44PM 9 the offense.

02:36:46PM 10 This will be affected by things like
02:36:48PM 11 how long or short of time was available, how far or
02:36:52PM 12 close the witness was, the lighting conditions and
02:36:54PM 13 whether the witness had the chance to see or know
02:36:56PM 14 the person in the past. Once again, I instruct
02:36:58PM 15 you, the burden of proof on the State extends to
02:37:00PM 16 every element of the crime charged, and this
02:37:02PM 17 includes the burden of proving beyond a reasonable
02:37:06PM 18 doubt the identity of the Defendant as the person
02:37:10PM 19 who committed the crime.

02:37:10PM 20 If, after examining the testimony, you
02:37:14PM 21 have a reasonable doubt as to the accuracy of the
02:37:16PM 22 identification, you must find that the Defendant is
02:37:20PM 23 not guilty.

02:37:20PM 24 There are three possible verdicts in
02:37:24PM 25 this case which you may find. There is no

02:37:24PM 1 significance whatsoever in the order in which I
02:37:28PM 2 state them. And as I've already explained, the
02:37:28PM 3 options are guilty of distribution of cocaine or,
02:37:28PM 4 as to the lesser included offense, guilty of
02:37:34PM 5 possession of cocaine, or not guilty. Again, there
02:37:36PM 6 is no significance whatsoever to the order in which
02:37:38PM 7 those verdicts are stated.

02:37:42PM 8 Ladies and gentlemen, your verdict must
02:37:44PM 9 be unanimous in order for you to come to a verdict.
02:37:46PM 10 Again, that means that all 12 of you must agree in
02:37:50PM 11 order for a verdict to be reached.

02:37:52PM 12 With that additional instruction, you
02:37:54PM 13 all are placed back into the hands of the bailiff.
02:37:56PM 14 If you need anything further, please do not
02:37:58PM 15 hesitate to let us know.

02:38:02PM 16 (Jury out, 2:37 p.m.)

02:38:04PM 17 THE COURT: Any exceptions from the
02:38:26PM 18 State?

02:38:26PM 19 MR. SOWARDS: None.

02:38:28PM 20 THE COURT: From the defense?

02:38:28PM 21 MS. GAY: No, Your Honor.

02:38:30PM 22 THE COURT: We will await further
02:38:32PM 23 instruction from the jury.

02:38:32PM 24 (A recess transpired.)

03:35:32PM 25 THE COURT: You may be seated. The

03:35:36PM 1 jury has reached a verdict. Is the State ready to
03:35:42PM 2 proceed?

03:35:42PM 3 MR. SOWARDS: Yes.

03:35:42PM 4 THE COURT: Is the defense ready to
03:35:44PM 5 proceed?

03:35:44PM 6 MS. GAY: Yes.

03:35:46PM 7 THE COURT: Please bring in the jury.
03:35:48PM 8 (Jury in, 3:36 p.m.)

03:36:50PM 9 THE BAILIFF: All jurors are present,
03:36:50PM 10 Your Honor.

03:36:50PM 11 THE COURT: Thank you.

03:36:56PM 12 Madame Forelady, is it correct that the
03:36:58PM 13 jury has reached a verdict?

03:37:00PM 14 FOREPERSON: Yes, ma'am.

03:37:00PM 15 THE COURT: Give the verdict form to
03:37:02PM 16 the bailiff, please.

03:37:08PM 17 Thank you, sir.

03:37:18PM 18 If you could stand for publication of
03:37:20PM 19 the verdict.

03:37:22PM 20 THE CLERK: In the Court of General
03:37:26PM 21 Sessions for the Ninth Judicial Circuit, the State
03:37:28PM 22 of South Carolina, County of Charleston; the State
03:37:30PM 23 of South Carolina versus Dale Gould, indictment
03:37:32PM 24 number 2014-GS-10-0320.

03:37:36PM 25 As to indictment number

VERDICT

03:37:38PM 1 2014-GS-10-0320, we the jury by unanimous consent
03:37:42PM 2 find the Defendant guilty of distribution of
03:37:48PM 3 cocaine. Dated November 20, 2014, signed Anita
03:37:48PM 4 Middleton, Foreperson of the jury.

03:37:52PM 5 Madame Forelady, ladies and gentlemen
03:37:54PM 6 of the jury, if this is your verdict, please
03:37:58PM 7 signify by raising your right hand.

03:37:58PM 8 Thank you. You may put it down.

03:37:58PM 9 Your Honor, please let the record
03:37:58PM 10 reflect all jurors raised their right hand.

03:38:02PM 11 THE COURT: Is there any request to
03:38:02PM 12 poll the jury from the State?

03:38:04PM 13 MR. SOWARDS: No, Your Honor.

03:38:06PM 14 THE COURT: From the defense?

03:38:08PM 15 MS. GAY: Yes, ma'am.

03:38:08PM 16 THE COURT: Please poll the jury.

03:38:08PM 17 Ladies and gentlemen, give the clerk your
03:38:10PM 18 attention.

03:38:10PM 19 THE CLERK: Madame Forelady, ladies and
03:38:12PM 20 gentlemen, I will ask you each two questions.

03:38:14PM 21 First, is this your verdict? And then second, is
03:38:16PM 22 this still your verdict? When I call your juror
03:38:20PM 23 number, please just raise your hand so I will know
03:38:20PM 24 who I'm speaking with.

03:38:24PM 25 Juror 243, is this your verdict, ma'am?

VERDICT

03:38:26PM 1 JUROR 243: Yes.

03:38:26PM 2 THE CLERK: Is this still your verdict?

03:38:26PM 3 JUROR 243: Yes.

03:38:28PM 4 THE CLERK: Thank you.

03:38:30PM 5 Juror 14, is this your verdict, sir?

03:38:30PM 6 JUROR 14: Yes.

03:38:34PM 7 THE CLERK: Is this still your verdict?

03:38:34PM 8 JUROR 14: Yes.

03:38:36PM 9 THE CLERK: Thank you.

03:38:36PM 10 Juror 15, is this your verdict, sir?

03:38:36PM 11 JUROR 15: Yes.

03:38:40PM 12 THE CLERK: Is this still your verdict?

03:38:40PM 13 JUROR 15: Yes.

03:38:42PM 14 THE CLERK: Thank you, sir.

03:38:42PM 15 Juror 34, is this your verdict, ma'am?

03:38:46PM 16 JUROR 34: Yes.

03:38:46PM 17 THE CLERK: Is this still your verdict?

03:38:46PM 18 JUROR 34: Yes.

03:38:46PM 19 THE CLERK: Thank you, ma'am.

03:38:48PM 20 Juror 35, is this your verdict, sir?

03:38:48PM 21 JUROR 35: Yes.

03:38:52PM 22 THE CLERK: Is it still your verdict?

03:38:52PM 23 JUROR 35: Yes.

03:38:54PM 24 THE CLERK: Thank you, sir.

03:38:56PM 25 Juror 132, is this your verdict, sir?

VERDICT

03:38:56PM 1 JUROR 132: Yes.

03:38:58PM 2 THE CLERK: Is it still your verdict?

03:38:58PM 3 JUROR 132: Yes.

03:38:58PM 4 THE CLERK: Thank you, sir.

03:39:02PM 5 Juror 162, is this your verdict, ma'am?

03:39:02PM 6 JUROR 162: Yes.

03:39:04PM 7 THE CLERK: Is it still your verdict?

03:39:04PM 8 JUROR 162: Yes.

03:39:04PM 9 THE CLERK: Thank you, ma'am.

03:39:06PM 10 Juror 174, is this your verdict, ma'am?

03:39:06PM 11 JUROR 174: Yes.

03:39:10PM 12 THE CLERK: Is this still your verdict?

03:39:10PM 13 JUROR 174: Yes.

03:39:10PM 14 THE CLERK: Thank you, ma'am.

03:39:12PM 15 Juror 208, is this your verdict, ma'am?

03:39:12PM 16 JUROR 208: Yes.

03:39:16PM 17 THE CLERK: Is this still your verdict?

03:39:16PM 18 JUROR 208: Yes.

03:39:16PM 19 THE CLERK: Thank you, ma'am.

03:39:18PM 20 Juror 336, is this your verdict, sir?

03:39:18PM 21 JUROR 336: Yes.

03:39:22PM 22 THE CLERK: Is this still your verdict?

03:39:22PM 23 JUROR 36: Yes.

03:39:24PM 24 THE CLERK: Thank you, sir.

03:39:26PM 25 Juror 356, is this your verdict, sir?

VERDICT

03:39:26PM 1 JUROR 356: Yes.

03:39:28PM 2 THE CLERK: Is this still your verdict?

03:39:28PM 3 JUROR 356: Yes.

03:39:28PM 4 THE CLERK: Thank you, sir.

03:39:30PM 5 Juror 388, is this your verdict, ma'am?

03:39:30PM 6 JUROR 388: Yes.

03:39:34PM 7 THE CLERK: Is it still your verdict?

03:39:34PM 8 JUROR 388: Yes.

03:39:36PM 9 THE CLERK: Your Honor, the jury has

03:39:38PM 10 been polled. The verdict stands.

03:39:38PM 11 THE COURT: Thank you. Madame

03:39:40PM 12 Forelady, ladies and gentlemen, we thank you for

03:39:42PM 13 your time and attention to this case. I hope the

03:39:44PM 14 jury service has been educational for you and I

03:39:46PM 15 hope that in some small measure it's reinstalled

03:39:50PM 16 your faith in the system, and your willingness to

03:39:52PM 17 participate in it certainly helps us greatly.

03:39:56PM 18 As I explained during jury

03:39:58PM 19 qualifications, real court is nothing like what you

03:40:00PM 20 see on television. Charleston County is one of the

03:40:04PM 21 busiest counties in the state, second only to --

03:40:06PM 22 well, not second, actually neck and neck with

03:40:08PM 23 Greenville and Richland, which is Columbia, the

03:40:12PM 24 capital. We hold jury trials with four trial

03:40:14PM 25 courts operating pretty much every week of the year

03:40:18PM 1 except holidays. So as you can imagine, we have a
03:40:20PM 2 very heavy docket and we would not be able to
03:40:24PM 3 dispose of it without you all being willing really
03:40:26PM 4 to donate your time to us as jurors.

03:40:28PM 5 You're allowed to discuss this case if
03:40:30PM 6 you would like. Oftentimes lawyers will contact
03:40:34PM 7 you because they would like a layperson's
03:40:36PM 8 perspective on their performance, how they can do
03:40:38PM 9 better. Don't be surprised if you should be
03:40:40PM 10 contacted regarding your participation in the case.
03:40:44PM 11 That's why we call it the practice of law, it's
03:40:48PM 12 never perfected. And oftentimes lawyers will
03:40:52PM 13 contact you regarding their performance to see if
03:40:52PM 14 they can better present cases.

03:40:54PM 15 By the same token, if you do not wish
03:40:58PM 16 to discuss the case, don't feel compelled to. If
03:40:58PM 17 someone should exceed your comfort level, please
03:41:02PM 18 make us aware of it so that we can take the
03:41:02PM 19 appropriate action to protect your privacy.

03:41:04PM 20 If you need a work excuse, please go to
03:41:06PM 21 the first floor of the clerk's office. Any of the
03:41:10PM 22 deputy clerks can give you a work excuse; otherwise
03:41:12PM 23 we will mail those to you tomorrow along with your
03:41:14PM 24 checks. Immediately following your dismissal we
03:41:22PM 25 will be continuing these proceedings and sentencing

03:41:24PM 1 the Defendant. If anybody would like to stay for
03:41:26PM 2 that, you are welcome to. Just let the bailiff
03:41:28PM 3 know and you will be brought back into -- or you
03:41:32PM 4 can remain in the jury box for those proceedings.

03:41:34PM 5 Madame Forelady, I need you to sign and
03:41:36PM 6 date the actual indictment, so we will do that as
03:41:42PM 7 we excuse you.

03:41:44PM 8 Thank you all again, and you are
03:41:46PM 9 excused with the Court's profound thanks.

03:43:10PM 10 I'll hear post trial motions in a
03:43:10PM 11 minute. I need a sentencing sheet.

03:43:12PM 12 Any post trial motions from the State?

03:43:12PM 13 MR. SOWARDS: No.

03:43:14PM 14 THE COURT: From the defense?

03:43:14PM 15 MS. GAY: Yes, Your Honor. I've filed
03:43:14PM 16 a motion to set aside the verdict. As I said
03:43:16PM 17 before in my prior motions, I don't believe that
03:43:18PM 18 there was adequate evidence to establish all the
03:43:22PM 19 elements of the offense, particularly cocaine being
03:43:24PM 20 the substance that may have been distributed.

03:43:28PM 21 There was definitely a disjoining of
03:43:32PM 22 what happened in the office to what happened when
03:43:36PM 23 the agent picked up something off the ground. And
03:43:38PM 24 even though the factual scenario may have been that
03:43:40PM 25 there was an attempt to share or some discussion in

03:43:42PM 1 the office, there was no evidence to establish that
03:43:44PM 2 that in fact -- the substance that was on the video
03:43:48PM 3 was in fact cocaine.

03:43:50PM 4 THE COURT: Would the State like to
03:43:52PM 5 respond?

03:43:52PM 6 MR. SOWARDS: Only to say, Your Honor,
03:43:52PM 7 that --

03:43:54PM 8 THE COURT: Oh, we need the Defendant.
03:43:58PM 9 We'll have to do that all over again.

03:44:00PM 10 MS. GAY: I didn't realize they had
03:44:12PM 11 removed him from the courtroom.

03:44:12PM 12 THE COURT: Is the Defendant on
03:44:14PM 13 probation?

03:44:24PM 14 MS. GAY: During the period of time
03:44:26PM 15 from the time he was arrested until today, he was
03:44:28PM 16 on probation. Probation has been resolved.

03:44:32PM 17 THE COURT: Make sure if they haven't
03:44:34PM 18 issued a warrant for the arrest prior to today --

03:44:36PM 19 MS. GAY: They did issue a warrant and
03:44:36PM 20 we had a hearing, an actual hearing, that he was
03:44:40PM 21 continued.

03:44:40PM 22 THE COURT: He was continued?

03:44:42PM 23 MS. GAY: Continued on probation at the
03:44:42PM 24 hearing, so he was issued --

03:44:44PM 25 THE COURT: Did they issue --

03:44:46PM 1 MS. GAY: The conviction today is not a
03:44:48PM 2 violation. While he was on probation, after his
03:44:52PM 3 arrest, based on circumstances, they actually
03:44:54PM 4 issued a violation. And I did a hearing in
03:44:58PM 5 probation court for the -- on the violation, where
03:45:00PM 6 the Judge found that he be continued.

03:45:02PM 7 THE COURT: Not willfully violated?

03:45:06PM 8 MS. GAY: Did not willfully violate him
03:45:06PM 9 and continued him.

03:45:06PM 10 THE COURT: And in the interim, it
03:45:08PM 11 expired and no additional warrants were issued?

03:45:12PM 12 MS. GAY: Correct.

03:45:12PM 13 THE COURT: All right. You can go
03:45:14PM 14 again.

03:45:14PM 15 MS. GAY: Your Honor, as I said, I
03:45:16PM 16 filed a motion to set aside the verdict and that
03:45:18PM 17 the verdict is not a product of evidence that
03:45:24PM 18 established all the elements of the offense in this
03:45:26PM 19 case. That motion would be based on my other
03:45:32PM 20 motions that I made, both the directed verdict
03:45:34PM 21 motion and the renewed directed verdict motion
03:45:36PM 22 after I rested, Your Honor.

03:45:38PM 23 In this situation, specifically, I
03:45:42PM 24 believe that they did not establish the element of
03:45:44PM 25 the substance being cocaine, that he may have had

03:45:48PM 1 any kind of attempt or any type of distribution.

03:45:54PM 2 All the elements being -- all the definitions

03:45:56PM 3 thereof.

03:45:56PM 4 There was a video that established that

03:46:00PM 5 something went on in the office involving some form

03:46:02PM 6 of substance, but that there was no actual evidence

03:46:06PM 7 to establish that that was, in fact, cocaine.

03:46:08PM 8 That, later, when the substance was picked up off

03:46:12PM 9 of the floor, there was no connection between that

03:46:14PM 10 package and what had happened in the -- in the

03:46:16PM 11 office, so there was no evidence presented that

03:46:20PM 12 Mr. Gould offered any -- any actual cocaine to the

03:46:26PM 13 -- to the informant and/or the undercover officer,

03:46:30PM 14 Your Honor.

03:46:32PM 15 THE COURT: Would you like to respond?

03:46:32PM 16 I'm referring to the State.

03:46:34PM 17 MR. SOWARDS: Yes, Your Honor. I think

03:46:36PM 18 that, just briefly, the evidence in this case in

03:46:38PM 19 the form of the testimony from the officers, the

03:46:42PM 20 CI, the video that we watched was sufficient. And

03:46:46PM 21 also I would add that the questions that the jury

03:46:52PM 22 sent out as they were deliberating, plus the time

03:46:54PM 23 it took, they carefully considered all of that and

03:46:58PM 24 we feel the verdict should stand.

03:47:06PM 25 THE COURT: Anything further from the

03:47:06PM 1 defense?

03:47:06PM 2 MS. GAY: No, Your Honor.

03:47:08PM 3 THE COURT: The motion is considered
03:47:08PM 4 and denied. There is direct as well as substantial
03:47:14PM 5 circumstantial evidence reasonably tending to prove
03:47:16PM 6 the Defendant's guilt. Without belaboring the
03:47:18PM 7 point, because we were all here and heard the
03:47:18PM 8 testimony that was presented both in the form of
03:47:22PM 9 the two eyewitnesses, the undercover officer, as
03:47:26PM 10 well as Taylor Boyd, who was the CI in this case,
03:47:34PM 11 as well as that of Detective -- or Officer Gill,
03:47:38PM 12 who also took part in setting up the confidential
03:47:44PM 13 buy.

03:47:44PM 14 And I guess, maybe going in the
03:47:46PM 15 opposite order, the jury deliberated for just about
03:47:48PM 16 three-and-a-half-hours. During that deliberation
03:47:48PM 17 they asked to review certain portions of the
03:47:52PM 18 evidence and they also asked the Court to
03:47:54PM 19 reinstruct them, which indicates to me that they
03:47:56PM 20 carefully deliberated and gave very careful and
03:47:58PM 21 diligent consideration on the issues and the
03:48:02PM 22 elements of the offense charged and there is no
03:48:06PM 23 basis for the Court to disturb their factual
03:48:10PM 24 finding of guilt.

03:48:10PM 25 In addition, the video showed a package

03:48:12PM 1 of a white substance. Then that substance or the
03:48:16PM 2 link to that substance was corroborated by the
03:48:20PM 3 eyewitnesses in that case, that being both the
03:48:26PM 4 officer and the CI. And their testimony provided
03:48:30PM 5 the factual link to the cocaine.

03:48:32PM 6 While there is no video of the actual
03:48:36PM 7 substance, there really are some incredibly
03:48:40PM 8 incriminating conversations that took place during
03:48:42PM 9 the course of the CI's interaction with the
03:48:46PM 10 Defendant that very clearly indicates there was a
03:48:48PM 11 drug transaction taking place, and his attempts to
03:48:50PM 12 avoid being inculpated in that drug transaction.

03:48:54PM 13 That being, if they were simply
03:48:58PM 14 exchanging drugs or -- or if he had no
03:49:02PM 15 participation in the drugs, there would not have
03:49:04PM 16 been a discussion about tasting the drug and all
03:49:08PM 17 the other statements that were really quite
03:49:10PM 18 damaging to him in the video. And I think that
03:49:12PM 19 that provided more than substantial circumstantial
03:49:18PM 20 evidence, as well as direct evidence, that
03:49:20PM 21 reasonably tended to prove his guilt, that rose
03:49:20PM 22 above mere suspicion.

03:49:22PM 23 Out of an abundance of caution, I
03:49:24PM 24 instructed mere presence and I very carefully
03:49:26PM 25 instructed proof beyond a reasonable doubt, so that

03:49:34PM 1 the jury was very clear on the elements that the
03:49:38PM 2 State has to establish, as well as the additional
03:49:40PM 3 direct and circumstantial evidence, which indicated
03:49:42PM 4 that the jury -- if the State was relying on
03:49:48PM 5 circumstantial evidence, that it had to be more
03:49:48PM 6 than just something that suggested the tendency to
03:49:52PM 7 have committed a crime. That it had to prove
03:49:54PM 8 beyond a reasonable doubt the actual transaction or
03:49:56PM 9 the elements of the offense.

03:49:58PM 10 Therefore, the motion for a new trial
03:50:00PM 11 or to set aside the verdict is denied. There is
03:50:04PM 12 both -- and I considered the renewal of the
03:50:08PM 13 previous motions. Those are likewise denied.
03:50:10PM 14 There is more than sufficient evidence in the
03:50:14PM 15 record to establish the Defendant's guilt in
03:50:16PM 16 support of the jury's verdict.

03:50:18PM 17 As I understand, he only had -- he had
03:50:22PM 18 a possession charge and a PWID charge when his
03:50:26PM 19 probation ended, correct?

03:50:26PM 20 MR. SOWARDS: That's correct.

03:50:26PM 21 THE COURT: What years were those
03:50:30PM 22 offenses?

03:50:30PM 23 MR. SOWARDS: He had -- the possession
03:50:32PM 24 was in 2011 and the distribution was 2012.

03:50:36PM 25 THE COURT: It wasn't a distribution.

03:50:36PM 1 It was a PWID, wasn't it?

03:50:38PM 2 MS. GAY: Yes, ma'am.

03:50:40PM 3 THE COURT: That's what he was on
03:50:42PM 4 probation for?

03:50:42PM 5 MS. GAY: We don't know. It's on the
03:50:54PM 6 rap sheet.

03:50:54PM 7 THE COURT: I need to know exactly what
03:50:56PM 8 his record is. You all should have the NCIC.

03:51:22PM 9 MS. LINDER: It appears that the
03:51:24PM 10 conviction date for this --

03:51:26PM 11 THE COURT: Do you all have an NCIC to
03:51:30PM 12 supplement his record?

03:51:30PM 13 MS. LINDER: We do, Your Honor. On the
03:51:32PM 14 rap sheet it says possession with intent to
03:51:36PM 15 distribute. We're just aware, because of being
03:51:38PM 16 involved in the prosecution of the case, that it
03:51:38PM 17 actually was a distribution --

03:51:40PM 18 THE COURT: Well, it wasn't a
03:51:42PM 19 distribution. He pled to PWID and that's what he's
03:51:44PM 20 convicted of. If he had a distribution and you all
03:51:48PM 21 pled him to the PWID, that what it is. Not a
03:51:48PM 22 distribution. It's a possession with the intent to
03:51:52PM 23 distribute.

03:51:52PM 24 MS. LINDER: Judge, I agree that PWID
03:51:54PM 25 is what the rap sheet says.

03:51:58PM 1 THE COURT: I need to know exactly what
03:52:00PM 2 his rap sheet says his convictions are and what
03:52:02PM 3 years those convictions were in, so the record can
03:52:02PM 4 be clear as to his prior record. We sort of talked
03:52:04PM 5 about what his prior record is, but I need to know
03:52:06PM 6 exactly what his prior record is.

03:52:10PM 7 MS. LINDER: Prior record: In 2009,
03:52:14PM 8 five counts of fraudulent check; in 2011,
03:52:14PM 9 possession of cocaine; October 12th of 2012, the
03:52:20PM 10 rap sheet had him down as MDP, comma, drugs, which
03:52:22PM 11 is manufacturing, distribution, possession. So
03:52:24PM 12 it's a PWID of cocaine.

03:52:28PM 13 THE COURT: Okay. Thank you. I needed
03:52:30PM 14 the record to be accurate.

03:52:30PM 15 MS. LINDER: Yes, Judge.

03:52:32PM 16 THE COURT: What's the State's
03:53:26PM 17 position? Is it a third -- are you counting this
03:53:28PM 18 as a third?

03:53:28PM 19 MR. SOWARDS: We are, Your Honor.

03:53:28PM 20 THE COURT: And what is the defense's
03:53:30PM 21 position?

03:53:30PM 22 MS. GAY: I believe that to be true,
03:53:32PM 23 Your Honor. I don't have it -- there's no way
03:53:34PM 24 around that one.

03:53:36PM 25 THE COURT: Be glad to hear any -- and

03:53:38PM 1 it's my understanding that it's a mandatory minimum
03:53:42PM 2 of 10, maximum of 30, and/or \$50,000, which only
03:53:44PM 3 the fine can be suspended, I think. And it's also
03:53:54PM 4 classified as serious. And I assume that you have
03:54:04PM 5 explained that to him?

03:54:04PM 6 MS. GAY: Well, we are briefly.

03:54:06PM 7 THE COURT: Be glad to hear from the
03:54:08PM 8 State.

03:54:08PM 9 MR. SOWARDS: Your Honor is familiar
03:54:14PM 10 with the facts in the case on that, and we don't
03:54:16PM 11 have anything else to add. We'd leave the
03:54:18PM 12 sentencing to the sound discretion of the Court.

03:54:22PM 13 THE COURT: Okay.

03:54:22PM 14 MS. GAY: I need to ask her something.

03:54:26PM 15 THE COURT: Sure.

03:54:44PM 16 (Off-the-record conference.)

03:54:44PM 17 MS. GAY: Are you ready for me to talk,
03:54:46PM 18 Your Honor?

03:54:46PM 19 THE COURT: Sure.

03:54:46PM 20 MS. GAY: Obviously, we've spent a
03:54:50PM 21 couple of days with Mr. Gould, Your Honor, and Mr.
03:54:54PM 22 Gould has some supporters that have been here
03:54:56PM 23 throughout the case. One of them is the owner of
03:54:58PM 24 Joe Pasta Restaurant, and he is a personal friend
03:55:02PM 25 as well as employer -- previous employer of Mr.

03:55:06PM 1 Gould, is very close to him and supportive.

03:55:08PM 2 Mr. Gould has -- after this arrest, he
03:55:12PM 3 completely got out of food and beverage. That was
03:55:16PM 4 just not -- there was some issues about him working
03:55:20PM 5 in the restaurant and being on probation and
03:55:22PM 6 things. So he just went and did something
03:55:24PM 7 completely different. And as he told you and we
03:55:28PM 8 discussed in the beginning, he has -- he has
03:55:30PM 9 training in restorative fabric.

03:55:34PM 10 And so he went to work at his current
03:55:36PM 11 job that he had before he came in yesterday, which
03:55:40PM 12 is -- he works for a dry cleaners and he has
03:55:44PM 13 specialized training to work. He cleans certain
03:55:48PM 14 things, not just pants and shirts. He has skill to
03:55:54PM 15 clean certain things, specialty items. He's
03:55:56PM 16 single, no children, Your Honor. He -- he has been
03:56:00PM 17 working in this community and living in this
03:56:02PM 18 community for quite some time.

03:56:04PM 19 Dale, have you lived here your whole
03:56:06PM 20 life?

03:56:06PM 21 THE DEFENDANT: No, 11 years.

03:56:10PM 22 MS. GAY: He's been here 11 years, Your
03:56:12PM 23 Honor. He's somebody who stands before you asking
03:56:14PM 24 for mercy. Obviously, this is a significant
03:56:16PM 25 mandatory minimum sentence, we've talked about

03:56:20PM 1 that, and we would ask you to consider that, Your
03:56:24PM 2 Honor. I'm going to let his friends --
03:56:26PM 3 THE COURT: Absolutely.
03:56:26PM 4 MS. GAY: -- talk for him and then --
03:56:28PM 5 THE COURT: How old is your client?
03:56:30PM 6 THE DEFENDANT: 53.
03:56:32PM 7 MS. GAY: 53, Your Honor. And his
03:56:32PM 8 level of education, he's an educated man. He's got
03:56:36PM 9 -- as I said, he's got specific training in --
03:56:38PM 10 THE COURT: How far did you go in
03:56:40PM 11 school?
03:56:40PM 12 THE DEFENDANT: College.
03:56:42PM 13 THE COURT: Did you finish or --
03:56:44PM 14 THE DEFENDANT: No, I did not finish.
03:56:46PM 15 THE COURT: How many years did you go
03:56:46PM 16 to college?
03:56:46PM 17 THE DEFENDANT: Three, plus several
03:56:48PM 18 other trade schools in my field.
03:56:52PM 19 THE COURT: Where are you originally
03:56:54PM 20 from?
03:56:54PM 21 THE DEFENDANT: New York.
03:56:54PM 22 THE COURT: What part of New York?
03:56:56PM 23 THE DEFENDANT: New York City, or just
03:56:58PM 24 outside of it, Yonkers.
03:57:02PM 25 THE COURT: Anything further, Ms. Gay?

03:57:06PM 1 MS. GAY: Not from him at this moment,
03:57:06PM 2 Your Honor. I would like for his family to --
03:57:08PM 3 would you like to stand up and --

03:57:08PM 4 THE COURT: Tell us your name, sir.

03:57:10PM 5 THE WITNESS: Harrison Edelston, the
03:57:12PM 6 owner of Joe Pasta. I've been here 16 -- 17 years,
03:57:18PM 7 and I've known Dale a couple of years. And other
03:57:20PM 8 than this situation, which is a major situation,
03:57:24PM 9 but we're not discussing that, we're discussing his
03:57:26PM 10 character now, and he's a fantastic person.

03:57:30PM 11 He's a hard worker, one of the hardest
03:57:34PM 12 workers I know, he's someone that you can count on.
03:57:36PM 13 If he says he's going to do something, he follows
03:57:40PM 14 through. He's the perfect epitome of somebody who
03:57:44PM 15 has turned his life around. He made a mistake --
03:57:46PM 16 made a mistake and saw that path was not for him.
03:57:50PM 17 He turned himself around.

03:57:52PM 18 He's got a fantastic job at East Bay
03:57:56PM 19 Cleaners downtown and has a wonderful boss who has
03:57:58PM 20 pulled him under his wing. And he uses his skills
03:58:02PM 21 -- specialized skills in these upscale fabrics that
03:58:06PM 22 he works with. You know, a lot of, you know,
03:58:08PM 23 well-known people around Charleston go to this
03:58:12PM 24 particular cleaners because they know the quality
03:58:14PM 25 of work they do, and he provides that service. He

03:58:18PM 1 has an amazing girlfriend that he met -- met her at
03:58:26PM 2 the very end at Joe Pasta, like a week before all
03:58:28PM 3 this happened.

03:58:28PM 4 And she has her own business in
03:58:32PM 5 Tennessee, and they've kept in contact back and
03:58:34PM 6 forth. And she is highly educated and she's been a
03:58:38PM 7 fantastic influence on him. She owns her own
03:58:42PM 8 business, well educated and, you know, upstanding
03:58:44PM 9 citizen in Tennessee. He's -- he's really made a
03:58:50PM 10 most conscious effort to turn his life around.

03:58:52PM 11 And this, to me, is the perfect epitome
03:58:56PM 12 of what you want in a person. People make
03:59:00PM 13 mistakes, you know, and I believe in giving people
03:59:02PM 14 second chances. And he may take -- it may have
03:59:06PM 15 taken him a third or fourth chance, but once this
03:59:10PM 16 happened, he made a solid turn-around of his life.
03:59:12PM 17 And from what I heard with the -- on probation, the
03:59:16PM 18 probation officer said, what have you done since
03:59:20PM 19 then? He gave the case of what he's done. So he
03:59:20PM 20 told the -- you know, he asked, you know, all the
03:59:24PM 21 questions.

03:59:24PM 22 He said, well, take a drug test. If
03:59:28PM 23 you take a drug test now, would you pass it? And
03:59:28PM 24 so Dale went and took a drug test, and passed it.
03:59:32PM 25 And he said, what have you done since? And he was

03:59:34PM 1 -- he was proud of him. He let him off of
03:59:36PM 2 probation. He said, you've fulfilled everything
03:59:38PM 3 that you have to.

03:59:38PM 4 The bail bondsman who was concerned
03:59:42PM 5 yesterday, I went and talked to him, and he said if
03:59:46PM 6 you needed -- he would be a witness here if you
03:59:48PM 7 needed him. He's got -- he's got a few good
03:59:56PM 8 quality friends and that's what a person needs.
03:59:58PM 9 I'm a good quality friend, Lindy is a good quality
04:00:02PM 10 friend. You'll learn about her, she works at the
04:00:04PM 11 College of Charleston.

04:00:10PM 12 He's kind of found his way with some
04:00:12PM 13 good solid people who have had a good positive
04:00:12PM 14 influence on him. And he could take that one way
04:00:14PM 15 or the other. He took it in a solid manner and
04:00:20PM 16 he's on the path of getting his life turned around.
04:00:22PM 17 He has an apartment, car, he's a tax-paying
04:00:24PM 18 citizen. He's a wonderful person of society.

04:00:28PM 19 He's the epitome of what this -- it's
04:00:32PM 20 unfortunate that this will be taken away with the
04:00:34PM 21 sentence, but he's already on the path and has been
04:00:34PM 22 for a year. It's been a year that he's been on the
04:00:38PM 23 path of what -- rehabilitation of what you would
04:00:40PM 24 want him to be. And there is -- every -- there is
04:00:44PM 25 so many facts I could point out or questions that

04:00:46PM 1 you may have that I could show you in addition to
04:00:48PM 2 this that he has proved himself and he has made the
04:00:52PM 3 turn-around.

04:00:52PM 4 And it's unfortunate, you know, a year
04:00:56PM 5 later is when -- I wish this was a year ago, where
04:01:00PM 6 I was being able to see all of this and mention all
04:01:02PM 7 this and it could be taken into consideration. He
04:01:06PM 8 has done the work and I hate to see him, you know
04:01:14PM 9 -- you know, that being -- all that hard work taken
04:01:16PM 10 away, because he is -- he's a great friend, a great
04:01:20PM 11 person, a trustworthy hard-working -- hardest
04:01:24PM 12 worker I know. Hardest worker that I have ever
04:01:28PM 13 met, and you trust his word and he's made a
04:01:32PM 14 turn-around.

04:01:32PM 15 He has a year behind him of showing
04:01:36PM 16 that and proving that. Please don't -- I ask you
04:01:38PM 17 -- mercy of the Court, please keep him on that path
04:01:42PM 18 rather than sending him in the wrong direction. I
04:01:46PM 19 think that's what America is about, is building the
04:01:48PM 20 American dream. He's fighting towards the American
04:01:52PM 21 dream and being a free man and supporting society.
04:01:56PM 22 He's not on unemployment. He's not -- he sustains
04:01:58PM 23 himself in the community. Thank you, ma'am.

04:02:02PM 24 THE COURT: You're welcome, sir.

04:02:04PM 25 Tell us your name for the record.

04:02:04PM 1 THE WITNESS: My name is Lindy Coleman,
04:02:08PM 2 and I've lived in Charleston 18 years. I work at
04:02:12PM 3 the College of Charleston. I've had the pleasure
04:02:12PM 4 of knowing Dale almost his entire time in
04:02:16PM 5 Charleston. I'm a long-time volunteer at Crisis
04:02:20PM 6 Ministries and Dale was there as a resident, as
04:02:24PM 7 well as I had the opportunity to see him rise up
04:02:26PM 8 through the ranks and be a very active and
04:02:30PM 9 supportive member of that -- of that Crisis
04:02:36PM 10 Ministries community.

04:02:36PM 11 You know, I've seen people in soup
04:02:40PM 12 kitchens and work in soup kitchens and volunteer in
04:02:40PM 13 soup kitchens for many, many years and Dale is one
04:02:42PM 14 of the rare cases who -- who took advantage of the
04:02:46PM 15 opportunity that he had when he had a roof over his
04:02:50PM 16 head and three meals in him to take that further
04:02:52PM 17 and to --and to be a role model to younger --
04:02:56PM 18 younger men coming into the shelter, as well as
04:03:00PM 19 being a tremendous asset to the staff in the
04:03:02PM 20 kitchen. And he was really a shining light in that
04:03:06PM 21 capacity at that place -- in a very unlikely place.
04:03:10PM 22 So I've had the opportunity to see him in that
04:03:12PM 23 capacity.

04:03:12PM 24 And then in the future years, in the
04:03:16PM 25 fairly recent past, he's been a tremendous form of

04:03:18PM 1 support to me in terms of doing construction work
04:03:22PM 2 for me at a condominium that I own. He's a very,
04:03:24PM 3 very gifted and skilled handy person, handyman in
04:03:28PM 4 lots of areas. He did a lot of work for me at my
04:03:32PM 5 mother's condominium last year, tremendous amount
04:03:36PM 6 of very good quality work.

04:03:38PM 7 He also works with a mutual friend of
04:03:40PM 8 ours who owns a home in Columbia, a rental home in
04:03:44PM 9 Columbia. And he does all the -- they're partners,
04:03:46PM 10 and he does all the work at that house and in
04:03:48PM 11 maintaining that house for the tenant who is there.
04:03:52PM 12 So I really -- and then the most recent -- in the
04:03:56PM 13 most recent years, in terms of being an excellent
04:04:00PM 14 employee for Harrison as well as his latest job
04:04:04PM 15 where he's really gotten to show his skills and use
04:04:06PM 16 his talents that he trained for.

04:04:08PM 17 It's been a tremendous blessing to me
04:04:10PM 18 to see him make -- make good on lots of things.
04:04:14PM 19 And I echo Harrison in saying that this is so
04:04:20PM 20 unfortunate, but I do not think that this is --
04:04:24PM 21 it's a sign of character as a person or a sign of
04:04:28PM 22 what -- what he is capable of doing and can do and
04:04:32PM 23 has done in our community and in our Charleston
04:04:36PM 24 community. Thank you for letting me speak.

04:04:38PM 25 THE COURT: Anything else, Ms. Gay?

04:04:40PM 1 MS. GAY: I think that's it, Your
04:04:42PM 2 Honor.

04:04:42PM 3 THE COURT: Anything further from the
04:04:44PM 4 State?

04:04:44PM 5 MR. SOWARDS: Nothing.

04:04:46PM 6 THE COURT: As you all are aware, the
04:04:50PM 7 minimum mandatory in the statute, which cannot be
04:04:54PM 8 suspended because of his prior convictions, is ten
04:04:54PM 9 years and a mandatory fine of \$50,000. That
04:04:58PM 10 portion of which can be suspended, but the minimum
04:05:02PM 11 mandatory cannot be suspended.

04:05:04PM 12 It is commendable, the things that
04:05:06PM 13 Mr. Gould's friends have spoken of him. It is rare
04:05:10PM 14 that you will have people willing to come to your
04:05:14PM 15 aid in that respect and speak on your behalf, and
04:05:18PM 16 the Court appreciates their comments regarding his
04:05:20PM 17 character and we'll note those for the record.

04:05:32PM 18 Sir, you are sentenced to the State
04:05:38PM 19 Department of Corrections for a period of ten years
04:05:40PM 20 and \$50,000. That would be suspended upon the
04:05:42PM 21 service of ten years. You will get credit for any
04:05:46PM 22 time that you've served to be calculated and
04:05:48PM 23 applied by the Department of Corrections, pursuant
04:05:52PM 24 to 241340.

04:05:54PM 25 Does he need treatment in the ATU unit?

SENTENCING

04:05:58PM 1 THE DEFENDANT: No. Actually, Your
04:06:06PM 2 Honor, I can test positive every day. I'm way
04:06:10PM 3 beyond that stage.

04:06:12PM 4 THE COURT: Okay. Well, I just asked
04:06:12PM 5 if you wanted counselling while there.

04:06:14PM 6 THE WITNESS: I can test negative.

04:06:16PM 7 THE COURT: It's not testing. It's a
04:06:16PM 8 treatment unit.

04:06:18PM 9 THE WITNESS: No. No. I'm fine with
04:06:18PM 10 that. I'm well beyond that stage.

04:06:22PM 11 THE COURT: Okay. Thank you very much.

04:06:26PM 12 THE WITNESS: Thank you, Your Honor.

04:06:26PM 13 THE COURT: You're welcome, sir. You
04:06:30PM 14 have a good day. What remains of it.

15 (These proceedings were concluded 4:06
16 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 28th day of February, 2015 at
13 Charleston, Charleston County, South Carolina.

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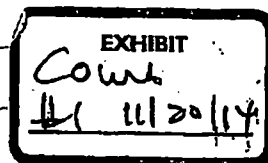
25

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

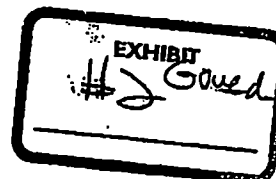
Juror Royce

We want to see/view
the video.

Deanna Middle



Ladies and Gentlemen of the Jury our procedures do not allow for a copy of the jury charge/instructions to be given to you. If there is a specific instruction that you would like given again or the entire instruction please advise us and I will accommodate your request immediately.



Questions

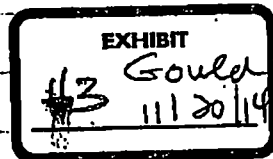
① May we have a
copy of the Judge's
Instruction.

A. Merita M. D.
fore person

Request

Smoke break
for 2 jurors

Handwritten
for person



Video

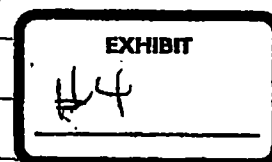
① 1st Introduction between
the 3 people.

② Outside meeting between
3 people

③ No mute audio

④ TO THE END

James M. Miller
Fore person



Question Number 3:

Ladies and Gentlemen of the jury there are certain determinations that I make as the Judge of the law concerning the admission of the video based on the rules of evidence and rules of procedure. All of the audio from the video that you are entitled to hear is audible. You are not to speculate or draw any inferences or conclusions as to why these portions are unavailable for the purposes of your deliberations. If you desire to have any of the testimony or video replayed please advise the bailiff and we will accommodate your request.

Juror request

Please repeat instructions
for distribution.

Franklin
Jury foreperson

EXHIBIT

H. S. Gould
11/22/14

FILED

NOV 23 1914

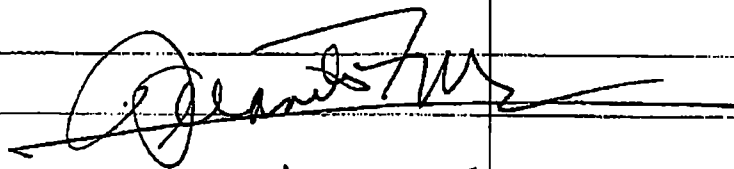
U.S. DISTRICT COURT

FILED

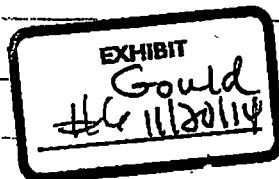
RECEIVED BY 11-20-14

Questions

May we view video privately
for viewing and deliberation.



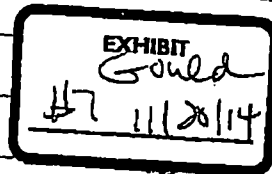
Jerry Forperson



Question

May we view the video
in private for viewing
and deliberation in compliance
with rules.

~~James M. [Signature]~~
Jury fore person



FILED

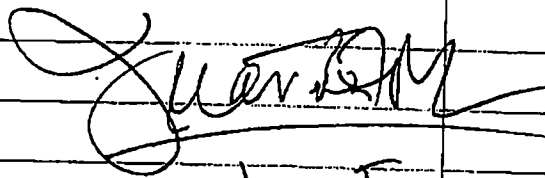
RECEIVED BY MAIL

OFFICE OF THE CLERK

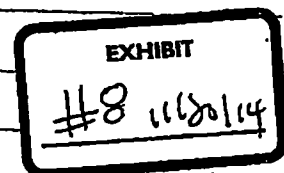
Jury Question

Will the Judge please
 Read again the whole
 Jury Instructions.

Thank you.

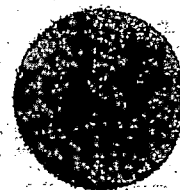


Jury Foreperson





Charleston Police Department
FORENSIC SERVICES DIVISION



Lab #: L13-02225 #1

Drug Analysis

Case #: 1316438

Charleston Police Department
180 Lockwood Blvd
Charleston, SC 29403

October 15, 2013

Date Submitted: October 14, 2013

Subject(s): Under Investigation

This is an official report of the Charleston Police Department Forensic Services Division and is to be used in conjunction with an official criminal investigation. This report contains the conclusions, opinions and interpretations of the analyst whose signature appears on the report.

Evidence

Item 1-1: Plastic bag with white powder

Items	Weight	+/-	Results	Methods
Item 1-1	0.23g	0.01	Cocaine	Color Test FTIR GC/MS

For items in which an uncertainty is reported, that uncertainty has been assigned based on statistical calculations with a minimum coverage probability of 95%.

End of Report

Renée Hilton
Analyst



RUL

SLB 201407957

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1316438

ARREST WARRANT NUMBER

2013A1010900864

DATE OF ARREST

October 18, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *[Signature]*

JAN 14 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1000320

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

VS.

DALE GOULD

DOB: [REDACTED]

W/M

Indictment for

Distribution of Cocaine

FILED

1/27/2014 10:15:42 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

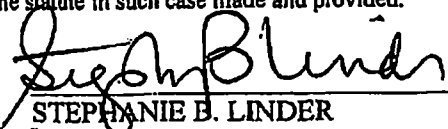
INDICTMENT

At a Court of General Sessions, convened on January 13, 2014 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine

That in Charleston County, South Carolina, on or about October 10, 2013, the Defendant, DALE GOULD, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: cocaine; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

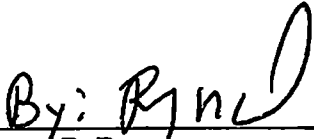
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 5th, 2015

By: 

Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALE GOULD,

APPELLANT

APPELLATE CASE NO. 2014-0025547

ANDERS BRIEF OF APPELLANT

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for directed verdict on the charge of distribution of cocaine where the undercover officer picked up the baggie containing cocaine from the ground in a restaurant and neither the officer nor the confidential informant saw Appellant place the baggie there, raising only a mere suspicion of Appellant's guilt?

STATEMENT OF THE CASE

On October 10, 2013, the Charleston County grand jury indicted Appellant Dale Gould for distribution of cocaine. R. 294 – 295 (Indictment).

On November 19 – 20, 2014, Gould appeared before the Honorable Deadra Jefferson and a jury for a trial on the above offense. Gould was represented by Melissa Gay, and the State was represented by assistant solicitors Whit Sowards and Stephanie Linder. R. 1.

The jury found Gould guilty of distribution of cocaine. R. 256 – 260. Judge Jefferson sentenced Gould to the mandatory minimum sentence of ten years incarceration and \$50,000 fine, with the fine to be suspended upon the service of the ten years.¹ R. 280.

This appeal follows.

¹ Gould was previously convicted of two drug-related offenses such that his conviction constituted a third offense pursuant to S.C. Code Ann. § 44-53-370(b)(1). R. 270, l. 16 – 271, l. 3.

ARGUMENT

The trial court erred in denying Appellant's motion for directed verdict on the charge of distribution of cocaine where the undercover officer picked up the baggie containing cocaine from the ground in a restaurant and neither the officer nor the confidential informant saw Appellant place the baggie there, raising only a mere suspicion of Appellant's guilt.

Relevant Facts

Taylor Boyd was a student at the College of Charleston who was arrested for being a minor in possession of alcohol. R. 78, l. 8 – 80, l. 4. In order to have her charges dismissed, she told police that she knew someone who was selling illegal narcotics out of Joe Pasta restaurant and was willing to cooperate with law enforcement. She was also paid one hundred dollars. R. 103, l. 13 – 104, l. 17. Though Boyd was unsure exactly what happened to her charges, Detective Gill, the case agent, was clear that the charges were dismissed in exchange for her cooperation in this case. R. 86, l. 16 – 87, l. 1.

Boyd engaged in an undercover "buy operation" with the Charleston City Police Department's narcotics unit. She and an undercover officer, Melanie Frederick, went to Joe Pasta restaurant, where Gould worked as a manager. Frederick was wearing an audio wire and a front facing camera. They sat at the bar and eventually made contact with Gould. R. 60, l. 4 – 63, l. 17; R. 64, l. 12 – 65, l. 24; R. 71, l. 24 – 73, l. 5; R. 80, l. 17 – 82, l. 14. The jury was able to view and listen to the forty-five minutes of footage from the evening, with the exception of certain portions muted by agreement of the State and the defense. See State's Ex. 1 (DVD of Buy Operation); R. 31, l. 19 – 32, l. 15.

On the video, the three all went outside of the restaurant and Gould told Boyd that he did not understand what she was referring to in the text messages that she sent him.²

² None of Boyd's alleged text messages to Gould were admitted into evidence.

They then returned inside the restaurant and went into an office in the back. Frederick shut the door. Gould pointed out that there was something on the ground, which Frederick picked up. Gould suggested that they see what it was and split it three ways. Frederick and Boyd refused to try the substance, but eventually Gould tried it. He told Boyd and Frederick that he was going to throw the rest away. R. 73, l. 8 – 74, l. 17; R. 82, l. 15 – 84, l. 11; State's Ex. 1 (DVD of Buy Operation). Neither Boyd nor Frederick left the office with the item picked up from the floor. R. 84, l. 12-16; R. 87, ll. 2-17.

Boyd and Frederick returned to the bar. Gould eventually came out and allegedly pointed out something on the ground near the bar. Though it is not shown on the video, Frederick purportedly picked it up. She testified at trial that it was "another small plastic bag of white powder" containing what she noted was "possibly cocaine." She and Boyd then left the restaurant and made contact with the rest of the undercover team. R. 74, l. 20 – 75, l. 3; R. 84, l. 17 – 85, l. 13. The bag and its contents were logged into evidence and subsequently tested. It was determined that the bag contained 0.23 grams of cocaine. R. 134, l. 18 – 138, l. 25.

At the close of the State's case, defense counsel made a motion for directed verdict. She renewed the motion at the end of the defense's case. Both motions were denied. R. 142, l. 8 – 149, l. 14; R. 156, ll. 3-15; see also R. 264, l. 15 – 268, l. 16.

Discussion

The video of the undercover buy operation showed two separate incidents – the first in an office and the second at the bar. First, the undercover officer, Frederick, and the confidential informant, Boyd, went into an office in the back of the restaurant where Gould was sitting. After talking for a few minutes, Gould asked, "What's that; what's

that on the floor?" When Frederick picked it up, Gould told her "you've got to do it, so I know you're not law enforcement." Frederick testified that what she picked up in the office was a bag of white powder, which she noted was "possibly cocaine." Gould eventually did "a bump" but when neither Frederick nor Boyd would try the contents of the package, Gould said "well, I'm gonna, I found it on the floor, so I'm probably going to throw it away." He then told them to go finish their drinks but not to leave. Frederick and Boyd left the office empty-handed and returned to the bar. State's Ex. 1 (DVD of Buy Operation); R. 73, l. 8 – 74, l. 17; R. 83, l. 24 – 84, l. 19.

Though you can hear his voice, Gould cannot be seen on the video after they left the office. According to Frederick, Gould then came up between her and Boyd at the bar. She could not remember what he said, but claimed Gould "pointed down to the ground where another small plastic bag of white powder was found." She said that she recognized that the bag contained what was "possibly cocaine." R. 74, l. 18 – 75, l. 3. Boyd also testified that Gould followed them out of the office and that once they sat down again, "he pointed to the ground and there was another bag of cocaine on the ground." Frederick picked up the bag and then they left the restaurant. R. 84, ll. 17 – 85, l. 6.

Contrary to the State's contention during argument on the motion for directed verdict, Frederick never said that the bag she picked up at the bar was the same bag that she picked up in the office. She called it "another small plastic bag of white powder." R. 74, ll. 20-25. When the solicitor asked her whether she "recognize[d] the bag," she simply responded "again, with my training and experience that it was possibly cocaine." R. 75, ll. 1-3. She did not say that the second baggie appeared to be the same as the one

that she saw in the office. Rather, Frederick made the conclusory statement that Gould “distributed cocaine to myself and the confidential informant.” R. 76, ll. 14-17. As such, what occurred in the office was a nullity since the contents of the bag were never tested and were never confirmed to be cocaine. Regarding the second bag, neither Frederick nor Boyd testified that they saw Gould place the bag there. Although they said that he pointed out the baggie, that is not substantial circumstantial evidence that he placed the baggie there.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E.2d 1916 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant’s favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637

(Ct. App. 1999). Our courts define suspicion as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

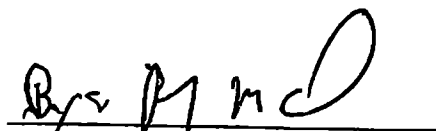
In one of the Supreme Court’s most recent circumstantial evidence case, State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Court held the prosecution failed to present substantial circumstantial evidence of Bostick’s guilt. The Court began its analysis with a review of “three seminal cases from our jurisprudence analyzing the proof necessary in cases with circumstantial evidence,” which included State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Each of those cases resulted in reversal and remand for entry of judgment of acquittal because the State failed to produce substantial evidence to overcome the motion for directed verdict. 392 S.C. at 139-41, 708 S.E.2d at 777-78. The court likewise determined that the evidence presented in Bostick “raised only a suspicion of guilt.” Id. at 141, 708 S.E.2d at 778. Although the police found items belonging to the victim in a burn pile behind the home of Bostick’s mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim’s home, and DNA from blood on Bostick’s jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

Shortly after Bostick, the Supreme Court noted in State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011), that it has “repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” The court held that the circumstantial evidence presented in Odems’ case did not reasonably tend to prove his guilt, and thus failed the “*well-settled directive* that circumstantial evidence that is not substantial is insufficient to go to a jury.” 395 S.C. at 592, 720 S.E.2d at 53 (emphasis added). The primary pieces of circumstantial evidence against Odems were: “(1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him.” Id. at 588, 720 S.E.2d at 51. The court found that even though Odems’ overall actions may have appeared suspicious, mere suspicion is insufficient to support a guilty verdict. Id. at 590, 720 S.E.2d at 52. Likewise, in the present case, Gould’s behavior at most appeared suspicious. He was thus entitled to a directed verdict. Accordingly, Gould’s conviction should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Dale Gould respectfully requests that this Court enter a directed verdict of acquittal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Laura R. Baer', written over a horizontal line.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of August, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston CountyDeadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALE GOULD,

APPELLANT

APPELLATE CASE NO. 2014-0025547

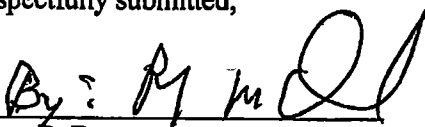
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dale Gould states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on November 20, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Dale Gould.

Respectfully submitted,

By: 

Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

This 5th day of August, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALE GOULD,

APPELLANT

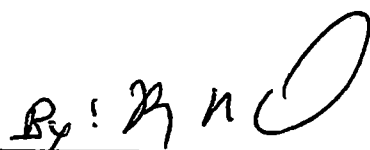
APPELLATE CASE NO. 2014-0025547

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript of trial held November 19-20, 2014;
- (3) Court's Exhibits 1-8 (Jury Notes and Responses);
- (4) State's Exhibit 1 (DVD of Undercover Buy); and
- (5) State's Exhibit 3 (Drug Analysis Report).

I certify that this designation contains no matter which is irrelevant to this appeal.

August 5th, 2015

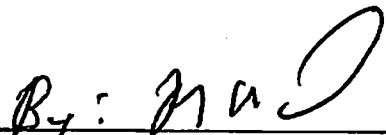
Laura R. Baer
Appellate DefenderSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 5, 2015



Laura R. Baer
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

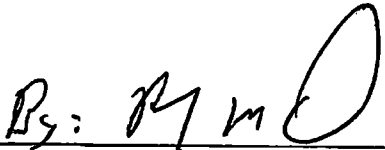
DALE GOULD,

APPELLANT

APPELLATE CASE NO. 2014-0025547

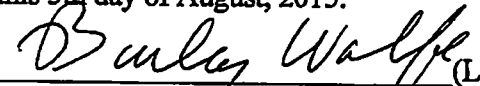
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and on Dale Gould, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 5th day of August, 2015.

By: 

Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of August, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021

The South Carolina Court of Appeals

The State, Respondent,

v.

Dale Gould, Appellant.

Appellate Case No. 2014-002557

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2014GS1000320

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OFFICE

ORDER

It appears that Appellant, Dale Gould, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Dale Gould, 00335171

Salley W. Elliott, Esquire

Alan McCrory Wilson, Esquire

Laura Ruth Baer, Esquire

The Honorable Deadra L. Jefferson

FILED

October 1, 2015



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Close

The South Carolina Court of Appeals
ATTORNEY GENERALS
OFFICE

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CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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FAX: (803) 734-1839
www.sccourts.org

October 22, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Dale Gould
Lower Court Case No. 2014GS1000320
Appellate Case No. 2014-002557

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Dale Gould, 00335171
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Laura Ruth Baer, Esquire

CASE HISTORY FOR CASE 2013A1010900864

The State of South Carolina VS Dale Gould

FILED DATE: 10/18/2013

CASE TYPE: GS

STATUS: Appeal

JUDGE: Clerk Of Court C P, G S, And Family Court

ARRESTING AGENCY: Charleston City Police Department

CASE PARTIES:

Defendant Gould, Dale

[REDACTED] Franklin, TN 37067

Officer Gill, Officer

180 Lockwood Blvd., Charleston, SC 29403-

Defendant Attorney Lewis, Benjamin Carter

O.T. Wallace Bldg., 101 Meeting St., 5Th Floor, Charleston, SC 29401

Bond Entity Sinkler Southeast Bonding/A Gage/Palmetto Surety Corpor

3870 Leeds Avenue, Suite 105, North Charleston, SC 29405

Defendant Attorney Gay, Melisa White

PO Box 2144, Mt. Pleasant, SC 294652144

Court Reporter Lauder, Denise

100 Broad Street, Suite 248, Charleston, SC 29401

CASE HISTORY FOR CASE 2013A1010900864

Gould, Dale

Age: 54

DOB: [REDACTED]

DL#: [REDACTED]

SSN: [REDACTED]

Franklin, TN 37067

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0185 Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 3rd or sub. offense	10/10/2013	Trial Guilty	11/20/2014
SENTENCING			
Sentenced - 10Y & PAY FNE \$50,000/PROVD UPN SRVCE 10Y			

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Co				
Fine to State 44%	\$0.00	\$0.00	\$0.00	999
Fine to General Fund	0.00	0.00	0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	100.00	100.00	0.00	999
Law Enforcement Funding Surcharge \$	25.00	25.00	0.00	999
PCC Surcharge	150.00	150.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999

Print Date: 04/01/2016

Print Time: 11:22:14AM

Requested By: COCBLC

CaseHistory.rpt

Page 1 of 2

ARREST WARRANT

2013A1010900864

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Dale Gould

Address:

Charleston, SC 29403-5750

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 9 Weight: 175DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0100100Prosecuting Agency: Charleston City Police DepartmentProsecuting Officer: Officer Gill - 0704Offense: Drugs / Distribution of CocaineOffense Code: 0183Code/Ordinance Sec: 44-53-0370(B)(1)This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant DALE GOULDon 10/17/2013Bruce Smith
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

Personally appeared before me the affiant Officer Gill whobeing duly sworn deposes and says that defendant Dale Goulddid within this county and state on or about 10/10/2013

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)

In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribution of CocaineI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 180 Lockwood Blvd.Charleston, SC 29403-Affiant's Telephone (843)577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/10/2013 defendant Dale Gould

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:DESCRIPTION OF OFFENSE: Drugs / Distribution of CocaineHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 10/17/2013Ellen S. Steinberg (L.S.)

Ellen S. Steinberg

Judge Code: 7280Judge's Address 1720 Sam Rittenburg Blvd, Unit 11Charleston, SC 29417-1861Judge's Telephone (843)766-6531Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ORIGINAL

316
ORIGINALForm Approved by
S.C. Attorney General
April 21, 2003
BGCA 518

317

BAIL set by

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, not pros., etc.)

Disposition:

Sentence:

JURORS

BY

CLERK OF COURT

2018 OCT 21 PM 1:20

FILED

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one,

Det. P. Gill

who first being duly sworn deposed and says that, Dale Gould,

did within this county and state on the 10th October 2013 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

Distribution of Cocaine
44-53-370

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on October 10th, 2013 at approximately 2030 hours while at [REDACTED] (Joe Pasta), which is located in the City and County of Charleston, SC 29403, the above named defendant, Dale Gould did so knowingly, willingly, and unlawfully violate SC Statute 44-53-370, Distribution of Cocaine in the following particulars:

On the above date and time the defendant did distribute approximately 1 gram of a white in color powdery substance to an undercover officer with the city of Charleston Police Department while inside [REDACTED] (Joe Pasta). Det. Gill then field tested the white in color powdery like substance and it field tested presumptive positive for cocaine (Approx. 1 gram). The whole transaction was audio and video recorded.

The above is true and believable based on the observations and investigations of Det. Gill and Det. Staton of the CPD Special Investigations Unit.

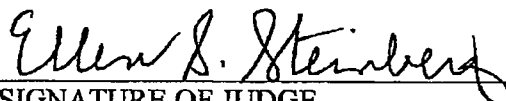
SWORN TO AND SUBSCRIBED BEFORE ME

THIS 17 DAY OF October, 2013



AFFIANT

180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434

 (L.S.)
SIGNATURE OF JUDGE

COMPLAINT #: 13-16438

WARRANT# 2013A1010900864

INVESTIGATING OFFICER: Det. Gill

CPD Form OT3

319

SLB20131007957

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1316438

ARREST WARRANT NUMBER

2013A1010900864

DATE OF ARREST

October 18, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JAN 14 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1000320

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

vs.

DALE GOULD

DOB: [REDACTED]

W/M

Indictment for

Distribution of Cocaine

FILED

1/27/2014 10:15:42 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

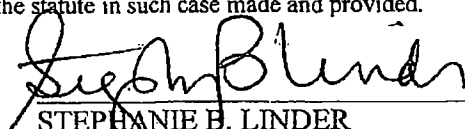
INDICTMENT

At a Court of General Sessions, convened on January 13, 2014 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine

That in Charleston County, South Carolina, on or about October 10, 2013, the Defendant, DALE GOULD, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: cocaine; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

321

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Dale Gould

AKA:

Race: WHITE Sex: M Age: 53DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Charleston, SC 29403-5750DL#: [REDACTED] SID#: SC01684004*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution Cocaine, 3rd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1000320A/W#: 2013A1010900864Date of Offense: 10/10/2013S.C. Code § : 44-53-0370(b)(1)CDR Code #: 0183

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]
Sowards, Whit10/10/14
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ 50,000; provided that upon the service of 10 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>8.40</u>
TOTAL		\$ <u>288.40</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Denise Lander

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128Sentence Date: 11/20/14

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

State of South Carolina)

vs.)

Dale Gould,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Indictment No.: 2014-GS-10-0320

VERDICT FORM**AS TO INDICTMENT NO.: 2014-GS-10-0320:**

We, the jury, by unanimous consent find the Defendant:

☒ Guilty of Distribution of Cocaine

OR

AS TO THE LESSER INCLUDED OFFENSE:

☐ Guilty of Possession of Cocaine

OR

☐ Not Guilty.

Please sign and date

Foreperson

November 20, 2014**Please let the bailiff(s) know when you have finished your deliberations.**

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1316438

ARREST WARRANT NUMBER

2013A1010900864

DATE OF ARREST

October 18, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 14 2014

VERDICT

GUILTY of Distribution
of Cocaine

Foreperson of Petit Jury

Date:

11/20/14

INDICT

DOCKET NO. 2014GS1000320

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

vs.

DALE GOULD

DOB: [REDACTED]

W/M

Indictment for

Distribution of Cocaine

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

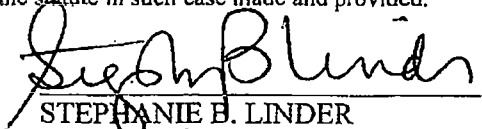
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

14:44:24 Wednesday, April 13, 2016

325

CMTI330D
OMCOMITA
SCDC# > 335171
GOULD, DALE -
OFFENDER TYPE....: ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

04/13/16
C056427

LOC: WALDEN

SCDC CLASSIFICATION...: NON-VIOLENT

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS.....: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION....:

CURRENT SENTENCE: 010-00-000
010-00-000

CONSECUTIVE SENTENCE ...: N

CURRENT SENT START DATE: 10/28/2014

PROJECTED COMPLETION DATES

MAXOUT DATE: 10/30/2020

YOA SIX YEAR DATE: / /

INITIAL PAROLE DATE: 04/12/2017

CURRENT EWC ..: NOT CURRENTLY EARNING EWC

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

NEXT PAROLE HEARING DATE: 04/12/2017

TOTAL GT DAYS EARNED: 000360

TOTAL EARNED WORK CREDITS ...: 000015

TOTAL EDUCATION CREDITS: 000000

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 000533

LABOR CREW/WORK PROG DATE: 01/15/2015

LABOR CREW DISQ REASON:

SUPERVISED REENTRY DATE...: 05/03/20

ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Wednesday, April 13, 2016

Classification Summary Reports

Inmate Number

Classification Summary Report for GOULD, DALE :

CLASSIFICATION SUMMARY REPORT DATED 04/13/2016

SCDC# 00335171

GOULD, DALE

FBI# 225823TB0

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: WALDEN

SECURITY/CUST: 1B MINIMUM OUT-
RESTRICT

CURR INCARC SENT: 10 YRS 0 MOS 0
DAYS

VICTIM
WITNESS:  SEPREQ:N

MED
CLASS: 

INST
RESTRICT: NO RESTRICTION

MENTAL
CLASS: NMH (NO MENTAL HEALTH
TRE

CURRENT
PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 54



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: C 0018 T

PROJ MAXOUT DATE: 10/30/2020

PROJ PAROLE DATE: 04/12/2017

EWC JOB: NO CURRENT JOB

ASSIGNMENT: GENERAL DETAIL UNEMP

EWC
LEVEL: 0 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	START	SENTENCE	V/NV	CAT	INDICT

MDP NARC SCHED-3RD,SUBSE	10	0	0	CHARLESTON	10/28/2014	N	3	14GS1000320
	SENTENCE				SENTENCE			
COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
FRAUD INSUFF FUNDS CHECK	0	0	150	CHARLESTON	06/03/2009	N	1	000000000000

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARIES HISTORY

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

04/12/2016	WALDEN	INCARCERATED	ADMINISTRATIVE
03/15/2016	RIDGELAND	INCARCERATED	ADMINISTRATIVE
03/15/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/02/2016	RIDGELAND	INCARCERATED	ADMINISTRATIVE
02/10/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
02/10/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
02/03/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
02/03/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
01/14/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
01/14/2016	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
12/09/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/09/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
12/02/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/02/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/28/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/28/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/21/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/21/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/16/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/16/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/15/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE

10/15/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/14/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/14/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/13/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/13/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/12/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/12/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/09/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/09/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/08/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/08/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/07/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/07/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/02/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/02/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/01/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/01/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/30/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/30/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/29/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/29/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/28/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/28/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/23/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
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09/22/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/22/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/21/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/21/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/18/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/18/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/17/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
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09/11/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/11/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/10/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/10/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/09/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/09/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/08/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/08/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/04/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/04/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/03/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/03/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/02/2015			

09/02/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/01/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/01/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/01/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/31/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/31/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/28/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/28/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/27/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/27/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/26/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/26/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/25/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/25/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/24/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/24/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/19/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/19/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/13/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/13/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/11/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/11/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/06/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/06/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
07/24/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
07/15/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
07/15/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
07/07/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
07/07/2015	PALMETTO BAPTIST	AUTH ABSENCE (AWL)	MEDICAL
06/30/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
06/30/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
06/02/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
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05/14/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
05/14/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
05/05/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
05/05/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
04/23/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
04/23/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
04/20/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
04/20/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
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12/23/2014	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
11/25/2014	KIRKLAND	INCARCERATED	R&E PROCESSING
11/25/2014	LIEBER	INCARCERATED	NEW ADMISSION
09/03/2009	UNK	RELEASE	EXPIRATION OF SENTENCE
07/13/2009	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
06/10/2009	KIRKLAND	INCARCERATED	R&E PROCESSING
06/10/2009	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER	03/08/2016	04/12/2016	INSTIT TRANSFER	2F5
WARDKEEPER	03/26/2015	03/30/2015	MEDICAL	3P5
WARDKEEPER	02/26/2015	03/12/2015	IN HOSPITAL	3P5
STOP PROGRAM	08/04/2009	09/03/2009	RELEASED/PAROLED	2F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

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Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 02:45:06 PM]

331
STATE OF SOUTH CAROLINACOUNTY OF
STATE

Charleston

VS.
Dale Gould

AKA:

Race: WHITE Sex: M Age: 53

DOB: SS#

Address:

City, State, Zip: Charleston, SC 29403-5750

DL#: SID#: SC01684004

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Distribution Cocaine, 3rd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1000320

A/W#: 2013A1010900864

Date of Offense: 10/10/2013

S.C. Code §: 44-53-0370(b)(1)

CDR Code #: 0183

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *[Signature]*
Sowards, Whit

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 50,000; provided that upon the service of 10 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL	\$	\$ 288.40

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD. or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Denise Lander

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128

Sentence Date: 11/20/14

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston2016-CP-10-1651
IN THE COURT OF COMMON PLEASDale Gould # 335171

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF2016 APR -1 AM 11:24
JULIE J. ARMSTRONG
CLERK OF COURT
FILEDINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be written (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 an additional page. Applicant shall make clear to which questions 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 for 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.

- Place of detention S.C.D.C. Broad River Corr. Inst.
4460 Broad River Rd. Columbia SC 29210
- Name and location of Court which imposed sentence General Session of
Charleston County. 100 Broad St. #106 Charleston, SC 29401
- Name(s) of co-defendant(s) (if any) N/A
- The indictments number or numbers (if known) upon which and the offences for which sentence was imposed:
(a) 2014-GS-10-320

(b) _____
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Nov 20, 2014
 (b) 10 years (min sentence) \$50,000 Fine (suspended)
 (c) _____

6. Check whether a finding of guilty plea was made:

- (a) after a plea of guilty N | A
 (b) after a plea of not guilty N | A
 (c) after a plea of nolo contendere N | A

7. Did you appeal from the judgment of conviction or the imposition of sentence? No

8. If you answer "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. _____
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

(d) if known, citations of written opinion entered pursuant to such results:

- i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state reasons for not appealing:

- (a) My Appellate Attorney Advised me to
 (b) pursue "Ineffective Counsel" through the PCR.
 (c) See Attachment # 4 pages 1 & 2

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

- (a) See Attachment # 1, & Attachment # 2 pages 1-6
page 1 & 2
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each ground set out in (10):

- (a) See Attachment # 3 pages 1 & 2
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) Any petition in State or Federal Courts for habeas corpus or post -- convictions relief? NO
 (c) Any petition in the United States Supreme Court for certiorari other than petitions, if any,
 already specified in (8) NO
 (d) Any other petitions, motions or applications in this or any other Court?
NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. n/n

ii. _____

iii.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

(c) the disposition thereof:

i.

ii.

iii.

(d) the date of each such disposition:

i.

ii.

iii.

(e) if known, citations of written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

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: N/A

i.

ii.

iii.

(b) the proceedings in which each ground was raised: N/A

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) because no speaking objections were permitted
 (b) during trial, Appellate attorney believed no error
 (c) was evident for an appeal

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
 (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? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ?

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. Melissa Gay
P.O. Box 2144
 ii. MT. Pleasant, SC 29465
 iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. Trial Lawyer
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Consideration for possible relief by giving me
the 4 year plea the State offered.
OR over turning the verdict entirely

20. Are you now under sentence from any other court that you have not challenged?

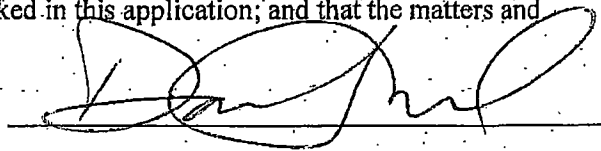
No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 29th
 day of March, 2016.

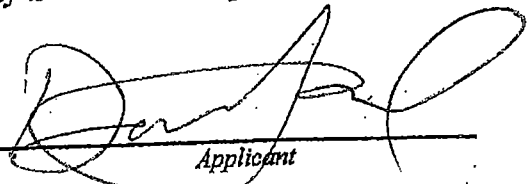
Virginia Robinson (L.S.)
 Notary Public

My Commission Expires: May 20, 2021

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. 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.



Applicant

SWORN to and subscribed before me this 29th
Day of March, 2016
Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

Dale Gould, Indictment #2014-GS-10-320, Question #10,

Strickland v Washington 104 S.C.T. 2052

- 10a) Defense counsel failed to request/obtain text message claimed by the state and testified to by the witness' used to set a "buy".
- 10b) Defense counsel refused to have "baggie" the state claimed I dropped, tested for fingerprint evidence.
- 10c) Defense counsel neglected to depose state witness' for possible impeachment evidence.
- 10d) Defense counsel refused my continuous requests to cross examine the under cover officer. Allowing her to testify without a single challenge.
- 10e) Defense counsel neglected to explain the possible sentencing. As evidenced in the transcript. pages 270-271. lines 1-6
- 10f) Defense counsel was reprimanded by Judge Jefferson for failure to have me obtain bond during the trial.
- 10g) Defense counsel failed/refused/neglected to obtain my record to argue the sentence. Even after explaining to her that I plead to a possible first offense years earlier. As evidenced in the transcript. page 270, lines 13-24.
- 10h) Defense counsel refused to visit the scene of the alleged transaction.
- 10i) Defense counsel neglected to have any discovery evidence in the court room during the trial.
- 10j) Defense counsel failed to object the the term "drug buy", allowing the state and the witness' to repeat it (27) times during questioning.
- 10k) Defense counsel refused to present a single witness in my defense. There were at least (9) employees and (75) guests in the restaurant at the time of the CI and UC's visit.
- 10l) In an effort to show defense counsel's state of mind during the trial, she was in dire financial stress having to borrow \$500.00 dollars from a friend you came to support me. Her excuse was to keep from having her phone service disconnected.

Attachment #1

Page 2 of 2

10m) Defense Counsel failed to obtain the video recording from the restaurant.

10n) Defense Counsel failed to interview the employee that entered the office during the under cover & CI's visit.

10o) Is it the duty of the judge to appoint the jury foreman?

See Transcript, page 234, Lines 3-6

Dale Gould, Indictment #2014-GS-10-320, Question #11

Strickland v Washington 104 S. CT. 2052

- 11a) No text message was ever received or sent pertaining to a drug buy. Proving the statement false.
- 11b) Defense counsel's reason for not ordering the fingerprint evidence was that "it's too expensive". Questioning her "due diligence".
- 11c) Without conducting a deposition from the Undercover or the confidential informant, defense counsel had no physical evidence at trial to challenge their testimony on the stand.
- 11d) Defense counsel's failure to cross examine allowed the state an unbalanced testimony.
A total of 74mins and 40 seconds of state's testimony
A total of 1min and 44 seconds of cross examine.
- 11e) If counsel had explained what a plea bargain entailed. I may have considered accepting the (4) year deal from the state.
- 11f) Defense counsel's neglect to have me obtain a bond prior to the start of trial forced Judge Jefferson to have me taken into custody the first night of trial therefore eliminating any possible chance to review my options for the remainder of the trial.
- 11g) This statement exposes counsel's unwillingness to perform a fair and honest effort to represent me.
- 11h) Without knowledge of the location of the office, counsel could not accurately describe the access the staff and guess' had to the open door of the office.
Anyone of 350 people could have dropped any bag near the office door. It is adjacent to the server's beverage station, both first floor bathrooms, and the rear entry door. Allowing access to everyone throughout the day.
- 11i) By failing to have proper documents on hand, counsel was unable to refer back to properly cross examine witness'.
- 11j) My charge was distribution. Defense counsel allowed the state and the state's witness' to use the term "drug buy" (27) times setting the thought of a sale in the minds of the jury.
- 11k) Any employee could have testified to having been in the office during the course of the evening. As well as having any number of guests accompany them.
- 11l) Perverted counsel from providing the information requested by the judge.

Attachment # 3
Page 2 of 2

- 11m) There is a camera that records the area at the bar where the undercover and the C.Z. were seated. That evidence would have contradicted their testimony that I dropped a baggie between them. In fact, the video would have shown I was not standing between them and would have supported the undercover's own words on the police video. "I am dropping everything tonight".
- 11n) Employee would have testified that he saw nothing on the floor. Also, that the office door is always open when a manager is working inside the office. Exposing the floor surface to every guest and Employee. The undercover and CE testified they did not witness me dropping a baggie.

ARGUMENT

The trial court erred in denying Appellant's motion for directed verdict on the charge of distribution of cocaine where the undercover officer picked up the baggie containing cocaine from the ground in a restaurant and neither the officer nor the confidential informant saw Appellant place the baggie there, raising only a mere suspicion of Appellant's guilt.

Relevant Facts

Taylor Boyd was a student at the College of Charleston who was arrested for being a minor in possession of alcohol. R. 78, l. 8 – 80, l. 4. In order to have her charges dismissed, she told police that she knew someone who was selling illegal narcotics out of Joe Pasta restaurant and was willing to cooperate with law enforcement. She was also paid one hundred dollars. R. 103, l. 13 – 104, l. 17. Though Boyd was unsure exactly what happened to her charges, Detective Gill, the case agent, was clear that the charges were dismissed in exchange for her cooperation in this case. R. 86, l. 16 – 87, l. 1.

Boyd engaged in an undercover "buy operation" with the Charleston City Police Department's narcotics unit. She and an undercover officer, Melanie Frederick, went to Joe Pasta restaurant, where Gould worked as a manager. Frederick was wearing an audio wire and a front facing camera. They sat at the bar and eventually made contact with Gould. R. 60, l. 4 – 63, l. 17; R. 64, l. 12 – 65, l. 24; R. 71, l. 24 – 73, l. 5; R. 80, l. 17 – 82, l. 14. The jury was able to view and listen to the forty-five minutes of footage from the evening, with the exception of certain portions muted by agreement of the State and the defense. See State's Ex. 1 (DVD of Buy Operation); R. 31, l. 19 – 32, l. 15.

On the video, the three all went outside of the restaurant and Gould told Boyd that he did not understand what she was referring to in the text messages that she sent him.²

² None of Boyd's alleged text messages to Gould were admitted into evidence.

②

AH 344 net #2
Page 2 of 6

They then returned inside the restaurant and went into an office in the back. Frederick shut the door. Gould pointed out that there was something on the ground, which Frederick picked up. Gould suggested that they see what it was and split it three ways. Frederick and Boyd refused to try the substance, but eventually Gould tried it. He told Boyd and Frederick that he was going to throw the rest away. R. 73, l. 8 – 74, l. 17; R. 82, l. 15 – 84, l. 11; State's Ex. 1 (DVD of Buy Operation). Neither Boyd nor Frederick left the office with the item picked up from the floor. R. 84, l. 12-16; R. 87, ll. 2-17.

Boyd and Frederick returned to the bar. Gould eventually came out and allegedly pointed out something on the ground near the bar. Though it is not shown on the video, Frederick purportedly picked it up. She testified at trial that it was "another small plastic bag of white powder" containing what she noted was "possibly cocaine." She and Boyd then left the restaurant and made contact with the rest of the undercover team. R. 74, l. 20 – 75, l. 3; R. 84, l. 17 – 85, l. 13. The bag and its contents were logged into evidence and subsequently tested. It was determined that the bag contained 0.23 grams of cocaine. R. 134, l. 18 – 138, l. 25.

At the close of the State's case, defense counsel made a motion for directed verdict. She renewed the motion at the end of the defense's case. Both motions were denied. R. 142, l. 8 – 149, l. 14; R. 156, ll. 3-15; see also R. 264, l. 15 – 268, l. 16.

Discussion

The video of the undercover buy operation showed two separate incidents – the first in an office and the second at the bar. First, the undercover officer, Frederick, and the confidential informant, Boyd, went into an office in the back of the restaurant where Gould was sitting. After talking for a few minutes, Gould asked, "What's that; what's

that on the floor?" When Frederick picked it up, Gould told her "you've got to do it, so I know you're not law enforcement." Frederick testified that what she picked up in the office was a bag of white powder, which she noted was "possibly cocaine." Gould eventually did "a bump" but when neither Frederick nor Boyd would try the contents of the package, Gould said "well, I'm gonna, I found it on the floor, so I'm probably going to throw it away." He then told them to go finish their drinks but not to leave. Frederick and Boyd left the office empty-handed and returned to the bar. State's Ex. 1 (DVD of Buy Operation); R. 73, l. 8 – 74, l. 17; R. 83, l. 24 – 84, l. 19.

Though you can hear his voice, Gould cannot be seen on the video after they left the office. According to Frederick, Gould then came up between her and Boyd at the bar. She could not remember what he said, but claimed Gould "pointed down to the ground where another small plastic bag of white powder was found." She said that she recognized that the bag contained what was "possibly cocaine." R. 74, l. 18 – 75, l. 3. Boyd also testified that Gould followed them out of the office and that once they sat down again, "he pointed to the ground and there was another bag of cocaine on the ground." Frederick picked up the bag and then they left the restaurant. R. 84, ll. 17 – 85, l. 6.

Contrary to the State's contention during argument on the motion for directed verdict, Frederick never said that the bag she picked up at the bar was the same bag that she picked up in the office. She called it "**another** small plastic bag of white powder." R. 74, ll. 20-25. When the solicitor asked her whether she "recognize[d] the bag," she simply responded "again, with my training and experience that it was possibly cocaine." R. 75, ll. 1-3. She did not say that the second baggie appeared to be the same as the one

(4)

Att 346 ent # 2
Page 4 of 6

that she saw in the office. Rather, Frederick made the conclusory statement that Gould “distributed cocaine to myself and the confidential informant.” R. 76, ll. 14-17. As such, what occurred in the office was a nullity since the contents of the bag were never tested and were never confirmed to be cocaine. Regarding the second bag, neither Frederick nor Boyd testified that they saw Gould place the bag there. Although they said that he pointed out the baggie, that is not substantial circumstantial evidence that he placed the baggie there.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E.2d 1 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant’s favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637

(Ct. App. 1999). Our courts define suspicion as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In one of the Supreme Court’s most recent circumstantial evidence case, State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Court held the prosecution failed to present substantial circumstantial evidence of Bostick’s guilt. The Court began its analysis with a review of “three seminal cases from our jurisprudence analyzing the proof necessary in cases with circumstantial evidence,” which included State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Each of those cases resulted in reversal and remand for entry of judgment of acquittal because the State failed to produce substantial evidence to overcome the motion for directed verdict. 392 S.C. at 139-41, 708 S.E.2d at 777-78. The court likewise determined that the evidence presented in Bostick “raised only a suspicion of guilt.” Id. at 141, 708 S.E.2d at 778. Although the police found items belonging to the victim in a burn pile behind the home of Bostick’s mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim’s home, and DNA from blood on Bostick’s jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

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ATTACHMENT # 2
Page 6 of 6

Shortly after Bostick, the Supreme Court noted in State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011), that it has “repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” The court held that the circumstantial evidence presented in Odems’ case did not reasonably tend to prove his guilt, and thus failed the “*well-settled directive* that circumstantial evidence that is not substantial is insufficient to go to a jury.” 395 S.C. at 592, 720 S.E.2d at 53 (emphasis added). The primary pieces of circumstantial evidence against Odems were: “(1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him.” Id. at 588, 720 S.E.2d at 51. The court found that even though Odems’ overall actions may have appeared suspicious, mere suspicion is insufficient to support a guilty verdict. Id. at 590, 720 S.E.2d at 52. Likewise, in the present case, Gould’s behavior at most appeared suspicious. He was thus entitled to a directed verdict. Accordingly, Gould’s conviction should be reversed.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 13, 2015

Mr. Dale Gould, #335171
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Gould:

Enclosed is a copy of the order from the Court of Appeals granting your request to withdraw and dismiss your appeal. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief**. This is one year from the date of the enclosed opinion. This statute of limitations is **very strictly enforced**, so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed. This application must be filed with the clerk of court in the county of your conviction.* There is also now a **one year statute of limitations for filing for federal habeas**. However, you must exhaust your PCR claims in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future**. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

Laura R. Baer
Appellate Defender

LRB

Enclosure: Post-Conviction Relief Application

The South Carolina Court of Appeals

The State, Respondent,

v.

Dale Gould, Appellant.

Appellate Case No. 2014-002557

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2014GS1000320

ORDER

It appears that Appellant, Dale Gould, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Dale Gould, 00335171

Salley W. Elliott, Esquire

Alan McCrory Wilson, Esquire

Laura Ruth Baer, Esquire

The Honorable Deadra L. Jefferson

FILED

October 1, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dale Gould, #335171,

2016-CP-10-1651

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 1, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the January 2014 term of the Charleston County Grand Jury for one (1) count of Distribution of Cocaine, Third Offense (2014-GS-10-00320). Melissa Gay, Esquire, represented him. On November 19, 2014, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. Honorable Deadra L. Jefferson sentenced the Applicant to confinement for ten (10) years.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). However, Applicant submitted an affidavit requesting his petition to be withdrawn and dismissed. The South Carolina Court of Appeals issued an order affirming the withdrawal of his appeal. The Remittitur was sent down on October 22, 2015.

II.

In his application for post conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Defense counsel failed to obtain the video recording from the restaurant."
2. "Defense counsel failed to interview the employee that entered the office during the undercover CI's visit."
3. "Is it the duty of the judge to appoint the jury foreman? (See transcript, page 234, Lines 3-6)"
4. "Defense counsel failed to request/obtain text message claimed by the state and testified to by the witness' used to set a "buy."
 - a. "No text message was ever received or sent pertaining to a drug buy. Proving the statement false."
5. "Defense counsel refused to have "baggie" the state claimed I dropped, tested for fingerprint evidence."
 - a. "Defense counsel's reason for not ordering the fingerprint evidence was that "it's to (sic) expensive. Questioning her "due diligence""
6. "Defense counsel neglected to depose state witness' for possible impeachment evidence."
 - a. "Without conducting a deposition from the undercover or the confidential informant, defense counsel had no physical evidence at trial to challenge their testimony on the stand."
7. "Defense counsel refused my continuous requests to cross examine the undercover officer. Allowing her to testify without a single challenge."
 - a. "Defense counsel's failure to cross examine allowed the state an unbalance testimony. A total of 74 mins and 40 seconds of state's testimony. A total of 1 min and 44 seconds of cross examine (sic)."
8. "Defense counsel neglected to explain the possible sentencing. As evidenced in transcript. Pages 270-271. Lines 1-6."
 - a. If counsel had explained what a plea bargain (sic) entailed. I may have considering accepting the 4 year deal from the state."
9. "Defense counsel was reprimanded by Judge Jefferson for failure to have me obtain bond during the trial."
 - a. "Defense counsel's negelect (sic) to have me obtain a bond prior to the start of trial forced Judge Jefferson to have me taken into custody the first nighth (sic) of trial therefore elimanting (sic) any possible chance to review my options for the remainder of the trial."
10. "Defense counsel failed/refused/neglected to obtain my record to argue the sentence. Even after explaining to her that I plead to a possible first offense years earlier. As evidenced in the transcript. Page 270, lines 13-24."
 - a. "This statement exposes counsel's unwilling to perform a fair and honest

- effort to repersent (sic) me.”
11. “Defense counsel refused to visit the scene of the alledged (sic) transaction.”
 - a. “Without knowledge of the location of the office, counsel could not accurately discribe (sic) the access the staff and guess had to open door of the office. Anyone of 350 people could have dropped any bag hear the office door. It is adjacent to the servers beverage station, both first floor bathrooms and read entry station, both first floor bathrooms, and the read entry dor. Allowing access to everyone throughout the day.”
 12. “Defense counsel neglected to have any discovery evidence in the court room during the trial.”
 - a. “By failing to have proper documents on hand, counsel was unable to refer back to properly cross examine witness’.
 13. “Defense counsel failed to object the term “drug buy,” allowing the state and the witness’ to repeat it 27 times during questioning.”
 - a. “My charge was distribution. Defense counsel allowed the state and the state’s witness’ to use the term “drug buy” 27 times setting the thought of a sale in the minds of the jury.”
 14. “Defense counsel refused to present a single witness in my defense. There were at least 9 employees and 75 guests in the restaurant at the time of the CI and UC’s visit.”
 - a. “Any employee could have testified to having been in the office during the corse (sic) of the evening. As well as having any number of guests accompany them.”.
 15. “In an effort to show defense counsel’s state of mind during the trial, she was in dire financial stress having to borrow \$500.00 dollars from a friend you came to support me. Her excuse was to keep from having her phone service disconnected.”
 - a. “Pervented (sic) counsel from providing the information.

For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections’ records, the record on appeal and Court of Appeals order withdrawing Applicant’s petition for appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant’s allegation as alleging ineffective assistance of counsel. Respondent asserts that Applicant’s allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant’s attorney rendered effective assistance well within the

standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective and whether Applicant's appellate counsel was ineffective.

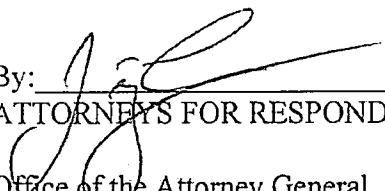
Respectfully submitted,

ALAN WILSON
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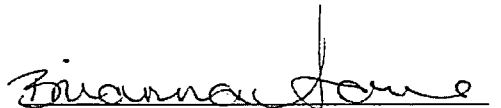
June 23, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-1651
	)	
DALE GOULD, #335171	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, South Carolina 29405

DATED this 23rd day of June, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO: 2016-CP-10-1651
DALE GOULD,	)	
	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
vs.	)	POST CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

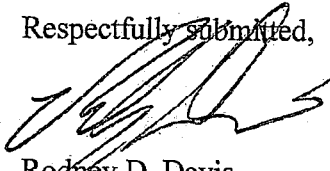
The Applicant, Dale Gould, now having the benefit of appointed counsel, alleges the following:

1. Dale Gould is detained at Manning Correctional Institution under Inmate Number: 335171.
2. He was convicted by a jury and sentenced in Charleston County for Distribution of Cocaine on November 19, 2014 under Indictment Number: 2014-GS-10-0320.
3. The Honorable Deadra L. Jefferson sentenced the Applicant to ten (10) years confinement.
4. He was represented by Melissa Gay on this charge (Applicant's attorney).
5. The Applicant's attorney filed an appeal but it was dismissed on the Applicant's request (Appellate Case #: 2014-0025547).
6. The Applicant filed an *in forma pauperis* application for post conviction relief on April 1, 2016.
7. The undersigned counsel, Rodney D. Davis, was appointed to represent the Applicant on May 18, 2016.
8. The State filed a Return on or about June 23, 2016.
9. Applicant's attorney provided ineffective assistance of counsel by failing to fully investigate the case prior to the guilty trial.

10. Applicant's attorney provided ineffective assistance of counsel by failing to meet with the Applicant a sufficient amount to adequately advise the Applicant and prepare for a resolution.
11. Applicant's attorney provided ineffective assistance of counsel by failing to properly cross-examine witnesses at trial.
12. Applicant's attorney provided ineffective assistance of counsel by failing to properly advise the Applicant concerning the consequences of conviction versus a plea offer from the State.
13. Applicant's attorney provided ineffective assistance of counsel by failing to object to the jury charge mentioning "strong evidence".

Wherefore, based on this Amended Application, the Applicant requests that a hearing on the merits scheduled.

Respectfully submitted,



Rodney D. Davis
Attorney for Applicant
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com
(843) 323-4353

November 27, 2017

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2016-CP-10-1651
_____))
3)
DALE GOULD,)
4)
Applicant,)
5)
vs.) Transcript of Record
6)
STATE OF SOUTH CAROLINA,)
7)
Respondent.) DATE: January 30, 2018
8)

10 | B E F O R E:

11 THE HONORABLE MAITE D. MURPHY

13 | A P P E A R A N C E:

14 RODNEY DUANE DAVIS
 Attorney for the Applicant

16 RASHEEDA CLEVELAND
Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
Circuit Court Reporter

20

21

22

23

24

25

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1 MS. CLEVELAND: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. CLEVELAND: Your Honor, our next case is Dale
4 Gould vs. The State of South Carolina, Docket No.
5 2016-CP-10-1651. Mr. Gould is incarcerated at the South
6 Carolina Department of Corrections pursuant to the
7 Charleston County clerk's order of commitment. He was
8 indicted by the Charleston Grand Jury on January 2014 for
9 one count of distribution of cocaine, third offense.

10 On November 19th, 2014, Mr. Gould proceeded to a
11 jury trial before the Honorable Deadra Jefferson. He was
12 found guilty as indicted. Judge Jefferson sentenced
13 Mr. Gould to confinement for a period of 10 years.

14 Melissa Gay represented him at trial. A notice of
15 appeal was filed on Mr. Gould's behalf and appeal was
16 perfected pursuant to *Anders vs. California*. However, he
17 submitted an affidavit requesting that his petition be
18 withdrawn and dismissed. The South Carolina Court of
19 Appeals withdrew his appeal and the remittitur was sent down
20 on October 22, 2015.

21 On April 1st, 2016, Mr. Gould filed this
22 post-conviction relief action alleging ineffective
23 assistance of counsel.

24 He's present today and represented by Mr. Rodney
25 Davis.

1 THE COURT: Mr. Davis.

2 MR. DAVIS: Thank you, Your Honor. May it please
3 the Court. I am here with Mr. Gould. He intends to go
4 forward. If you could, Your Honor, go over the risks and
5 benefits on the record. We have discussed it, but if you
6 could put that on the record, we would greatly appreciate
7 it.

8 THE COURT: Mr. Gould, if you will please stand.

9 DALE GOULD,

10 having been duly sworn, testifies as follows:

11 THE COURT: Mr. Gould, your attorney tells me that
12 he's discussed with you the potential risks and benefits of
13 going forward here today; is that correct?

14 MR. GOULD: Yes.

15 THE COURT: And you've discussed with him that if
16 your petition is granted, the process starts all over. So
17 you could be looking at a potential sentence of whatever the
18 maximum sentence was for the crimes that you were charged.
19 Do you understand that?

20 MR. GOULD: Yes, I do.

21 THE COURT: What was the sentence that you
22 received? Was it a ten-year sentence; is that right?

23 MR. GOULD: 10 years, \$50,000 fine suspended. She
24 gave me the option, if I could.

25 THE COURT: What was the potential maximum

1 sentence?

2 MR. GOULD: 30.

3 THE COURT: So you understand that if it's granted,
4 you are looking at a potential 30-year sentence? Do you
5 understand that?

6 MR. GOULD: Yes, ma'am.

7 THE COURT: And knowing all that, do you wish to
8 proceed and go forward here today?

9 MR. GOULD: Yes, I do.

10 THE COURT: Do you need more time to discuss with
11 your attorney whether or not you think this is an
12 intelligent decision on your part?

13 MR. GOULD: No, I'm fine with it.

14 THE COURT: And you want to go forward?

15 MR. GOULD: Yes.

16 THE COURT: All right.

17 Mr. Davis, anything further?

18 MR. DAVIS: Just, he indicated correctly, 10 to 30,
19 85 percent, mandatory minimum of 10 on the drug conviction.
20 And so we have discussed that previously. And I think it's
21 a knowing and intelligent decision to go forward.

22 THE COURT: So, Mr. Gould, again, you don't have
23 any questions? You feel you fully discussed this matter
24 with your attorney?

25 MR. GOULD: Yes.

1 THE COURT: And you understand both the risk and
2 the benefit?

3 MR. GOULD: Yes, I do.

4 THE COURT: And you are not under the influence of
5 any drugs or alcohol or anything that might effect your
6 ability to understand what you are doing here today; is that
7 correct?

8 MR. GOULD: No, I am not.

9 THE COURT: Have you ever been treated for any kind
10 of mental health issues or anything of that nature?

11 MR. GOULD: No.

12 THE COURT: So you fully understand what you are
13 doing here today?

14 MR. GOULD: I do, yes.

15 THE COURT: Mr. Davis, you may proceed.

16 MR. DAVIS: Thank you, Your Honor.

17 We would call Mr. Gould to the stand.

18 DALE GOULD,

19 having been duly sworn, testifies as follows:

20 THE CLERK: Spell your first and last name for the
21 record.

22 MR. GOULD: Dale Gould, D-a-l-e, G-o-u-l-d.

23 THE COURT: Your witness.

24 MR. DAVIS: Thank you very much, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q. Mr. Gould, can you tell the judge a little bit
3 about yourself? How old are you?

4 A. 56.

5 Q. And where were you born and raised?

6 A. I was born in Newton, New Jersey; raised in New
7 York.

8 Q. How long have you lived in South Carolina before
9 you were arrested on this incident?

10 A. 11 years.

11 Q. The judge may have asked you this in the opening
12 colloquy, but how far did you go in school?

13 A. Some college.

14 Q. So you graduated high school?

15 A. Yes.

16 Q. Got your diploma?

17 A. Yes.

18 Q. Moving ahead to the arrest on this incident,
19 following that arrest, were you able to make bond, or did
20 you remain in jail until your court date?

21 A. I bonded out, yes.

22 Q. And while on bond or after arrest, were you
23 appointed an attorney, or did you hire someone?

24 A. I hired an attorney.

25 Q. And who did you hire?

1 A. Melissa Gay from Mount Pleasant.

2 Q. Okay. And do you see her in the courtroom here
3 today?

4 A. Yes.

5 Q. Okay. Was there anyone else that you hired, or did
6 Ms. Gay represent you from that point all the way through to
7 the resolution?

8 A. I was originally assigned a public defender until I
9 hired Ms. Gay.

10 Q. Okay. Now, after you hired her, from the time you
11 hired her up until your court date, can you tell Judge
12 Murphy approximately how many times you would have
13 physically met with her?

14 A. Possibly four times I physically met with her.

15 Q. And would that have been at her office?

16 A. Yes.

17 Q. Were there any meetings that you want to add that
18 you would have met with her at the courthouse?

19 A. Twice, I believe, we met for pretrial hearing. The
20 third one she was absent for. I attended that one on me
21 own.

22 Q. Let's just pause there for a second. Can you tell
23 the judge what that appearance was? Do you recall?

24 A. I believe it was just for us to go in and determine
25 whether or not we were prepared for trial.

1 Q. Okay. And once -- when you arrived, what happened?

2 A. Well, whoever was in charge, the judge, I believe
3 it was, asked me if we were ready. And I told him that I
4 have no idea, my attorney is not here, so I can't speak for
5 her. And they said that the prosecution was ready. So they
6 proceeded.

7 Q. In all of these meetings with Ms. Gay, can you tell
8 the judge whether y'all discussed the elements of the
9 offense or what the State would have to prove to a jury to
10 convict you? Did you discuss that?

11 A. No. Her main argument was that it all depended on
12 the video. It was all to the video. That was it.

13 Q. Did you, in these meetings with your attorney, ever
14 discuss potential -- let me back up. Did you ever discuss
15 the possible punishment?

16 A. Only that it carried 10 to 30.

17 Q. Well, let's get specific about that. What
18 information did you find out after conviction that was not
19 shared with you prior to conviction?

20 A. I didn't understand -- it was never explained to me
21 about what a sentence meant, that you could sort of plead --
22 I was thinking you could get a better ratio, like 10/85 is
23 what this one carried. I didn't realize that. I didn't
24 realize it could be a 10/65, or plea would have been four
25 years, 65 and you serve two. I had no idea about those

1 kinds of things.

2 Q. So do you ever recall the phrasing no-parole
3 offense? Do you ever recall that?

4 A. No, that was never discussed.

5 Q. Let's break that out a little bit, what you've just
6 told the judge about. There were discussions about the
7 sentence of 10 to 30, correct?

8 A. Correct.

9 Q. There was no discussion if convicted and sentenced
10 to that range, how much time you would have had to have
11 served?

12 A. That's correct. I didn't know that until after I
13 was sentenced.

14 Q. You referenced something that the judge may not be
15 aware of. Prior to your trial, there were discussions about
16 a plea offer, correct?

17 A. Correct.

18 Q. And what was the State offering at that time?

19 A. The night before, they offered me seven years. And
20 the morning of, just a few minutes before trial started,
21 they offered four years.

22 Q. On each of those, were there any discussions with
23 your attorney about what charge you would be pleading to to
24 get those sentences?

25 A. No.

1 Q. Were there any discussions with your attorney about
2 what ratio or what percentage of either the seven or the
3 four you would have to serve if you accepted it?

4 A. No. The four wasn't even offered to me. It was
5 never discussed by my attorney. It was offered to me
6 straight from the State.

7 Q. Okay. But my question is, on either one of those
8 offers, was there ever discussion about what percentage of
9 time you would serve on them with your attorney?

10 A. No, no.

11 Q. When is it that you learned that your ten-year
12 sentence was 85 percent or a no-parole offense?

13 A. Moments after the sentencing by the judge.

14 Q. And how did you find that out?

15 A. Judge Jefferson asked Ms. Gay if she had explained
16 what the sentence meant to me. And the response was that
17 she's about to do so now. So that was the very first
18 time.

19 MR. DAVIS: And, Judge, at the appropriate time, I
20 will note there is a portion in the transcript that it
21 indicates that.

22 BY MR. DAVIS:

23 Q. During these meetings with your attorney, did she
24 share with you the discovery or the Rule 5 provided to her
25 from the State?

1 A. I don't know what a Rule 5 is.

2 Q. The discovery and/or Rule 5, what the police had?

3 A. Oh, not really. No, actually, I don't think I
4 ever -- she held it up in court that day what they had.

5 Q. You mentioned earlier that it was your
6 understanding from your attorney that the video was a key to
7 this case; is that right?

8 A. Correct.

9 Q. Did you have an opportunity to review that with
10 your attorney?

11 A. I did.

12 Q. I'm sorry?

13 A. I did. I reviewed it myself at her office. I
14 think maybe she had her daughter watch it with me or
15 something.

16 Q. During these handful of meetings with your
17 attorney, were there discussions about potential defenses?

18 A. No, no, no, there wasn't. Only, again, that it was
19 all based on the video and whether or not a jury would
20 believe the video.

21 Q. Going back just for one moment, on the offers that
22 were made, do you recall what, if any, advice you received
23 from your attorney on the offers for the guilty pleas?

24 A. On the seven-year one, the night before we had a
25 discussion on the phone. And it was more like it was up to

1 me to take it. But I kept saying that I don't understand
2 what I would be accepting. But she was confident that we
3 could win a trial. So I took it as advice not to take the
4 plea.

5 Q. Tell Judge Murphy, is this something you would
6 have, in hindsight, would have accepted?

7 A. Not really, but I would rather have had an
8 understanding of what I was declining.

9 Q. During these handful of meetings with your
10 attorney, what, if any, information did she share with you
11 to show what investigation she had conducted?

12 A. Zero. I don't know of any investigation she did
13 do. She did not visit the site where the crime was supposed
14 to take place. So she couldn't possibly understand what
15 circumstances were that were being outlined. She did not
16 interview any of my co-workers that were present that day
17 that the transaction was supposed to have taken place. (I
18 mean, did not interview a single person, especially the
19 bartender who was standing right there at the time. So I
20 don't know what defense she put up at all. She certainly
21 had nothing to discuss with me.

22 Q. To oversimplify it, the defense was you didn't do
23 what they accused you of, right?

24 A. Yes, absolutely.

25 Q. During these meetings, were there any discussions

1 about your right to remain silent at trial?

2 A. Well, I remember once, Judge Jefferson asking me if
3 I was going to testify.

4 Q. Mr. Gould, my question is, during the meetings with
5 your attorney, were there any discussions about your right
6 to not testify at trial?

7 A. No, I was told I was not going to testify.

8 Q. I'm sorry?

9 A. I was told flat out that I was not going to be put
10 on the stand.

11 Q. Again, my question is this. Were there any
12 discussions with your attorney --

13 A. No.

14 Q. -- about your right to not testify?

15 A. No.

16 Q. Contrastingly, were there discussions with your
17 attorney about preparing you to testify?

18 A. No.

19 Q. And now, you already answered, why was there no
20 discussion about your testimony?

21 A. I was told flat out that I wasn't going to be put
22 on the stand, because she just didn't feel like I was a
23 valuable witness, or something like that she said.

24 Q. At trial, you had some concerns about the way that
25 Ms. Gay handled cross-examination of witnesses. What

1 complaints do you have about that process?

2 A. Well, the undercover officer was never
3 cross-examined. She was able to stand up there and tell
4 everyone her side of the story for well over an hour. And
5 when it came time to cross-examine her, even just to simply
6 ask her basic questions, my attorney didn't do what I asked
7 her to do, and that was to cross-examine her.

8 Q. What would you have had Ms. Gay question that
9 officer about?

10 A. Well, first thing I would have asked her, did you
11 witness Mr. Gould drop anything on the floor? Because they
12 testified that they picked it up off the floor. So I would
13 have asked if they saw Mr. Gould put it there. That would
14 have been one, for sure.

15 Q. Are there any other areas of cross-examination to
16 that witness that you have complaints about?

17 A. Well, without having my notes, I can't really go
18 into a whole lot of detail, but I'm sure there would have
19 been a few more questions. Did Mr. Gould pass anything to
20 you or did he sell you anything or did he hand you anything,
21 a lot of questions in that matter. I would like her to at
22 least admit there was absolutely no contact between myself
23 and this baggie that they picked up off the floor. But it
24 all went unanswered, unquestioned.

25 Q. Other than that witness, the undercover officer,

1 are there other witnesses you have complaints about Ms.
2 Gay's cross-examination?

3 A. The officer in charge, he made a couple of comments
4 about -- in his testimony, he made a few comments about
5 always having eyes on the undercovers: I had enough people
6 around that there was always eye contact with the
7 undercover. But when it came time to ask him whether or not
8 he had seen me drop the bag or seen bag on the floor prior
9 to anything, he said, no, he wasn't in eye contact. So he
10 contradicted himself. And I thought maybe she should have
11 brought that up more to the jury and ask why he contradicted
12 himself.

13 Q. So to be clear, it's not that the issue wasn't
14 addressed, it's that it wasn't enhanced enough?

15 A. The second witness, yes. For the first one, it was
16 nonexistent.

17 Q. Other than the undercover officer and the officer
18 in charge, are there any other witnesses that you have
19 complaints about Ms. Gay's cross-examination?

20 A. The confidential informant, with the same issue,
21 she never asked her whether or not I handed it to her or
22 sold it to her or if she saw me drop it on the floor. Not
23 knowing anything about the law, I would assume that would be
24 something real simple to let the jury hear.

25 Q. Following the conviction, this was appealed,

1 correct?

2 A. I had an *Anders* brief drafted by an attorney, an
3 appellate attorney, but I dropped the appeal based on her
4 advice.

5 Q. Let's talk about, just briefly, on that. You had
6 discussions with appellate attorney Ms. Behr?

7 A. Laura Behr, correct.

8 Q. And so can you tell the judge why it was that you
9 withdrew the appeal?

10 A. Yeah. After she dropped the *Anders* brief, she let
11 me know in a letter that we didn't pick -- we couldn't find
12 anything wrong that the judge did during trial. So she
13 recommended that I did have a few good reasons to go after a
14 PCR. So for the sake of not clouding up the court and not
15 taking advantage of the appeal just because I could, I
16 decided to drop it and proceed with the PCR.

17 Q. And was that your decision?

18 A. Yes.

19 Q. Freely and voluntarily made?

20 A. Yes, sir.

21 Q. And that decision was to take advantage of some PCR
22 issues?

23 A. Take advantage of?

24 Q. Argue PCR issues?

25 A. Argue, yes.

1 Q. Okay. And in addition to all the complaints that
2 you made from the trial, was there -- is there an additional
3 one that you are making based on conversations with
4 appellate attorney?

5 A. I'm not sure.

6 Q. Was there a jury charge issue?

7 A. Yes. Oh, heavens, yes. Yes. Yes. Yes. Yes.
8 There is a strong evidence issue. The judge did charge the
9 jury strong evidence. And Ms. Gay did not object to it.

10 MR. DAVIS: Your Honor, if we could have just one
11 moment.

12 THE COURT: Yes, sir.

13 BY MR. DAVIS:

14 Q. Mr. Gould, I believe that is all that you and I
15 discussed. Out of abundance of caution, are there any other
16 complaints you want Judge Murphy to know about as far as Ms.
17 Gay's conduct at trial?

18 A. Conduct? Yeah. There's a few issues I have about
19 conduct. I mean, am I permitted to go ahead with those on
20 personal opinion of her conduct?

21 Q. Let me question you a little bit. There's one
22 other issue I do want to ask about. You wanted Judge Murphy
23 to understand, leading up to trial, there's some concerns
24 you had about the -- can you tell the judge about any
25 complaints you have about the contract for services with Ms.

1 Gay?

2 A. Retainer agreement?

3 Q. Yes.

4 A. I'm not sure it exists. I don't remember signing a
5 retainer agreement. If I did, I asked her for it, because
6 she tried to solicit money from people that came in support
7 of me under basis that I was behind on my payments to her,
8 which is totally false. In fact, I even paid her an
9 additional amount of money the day before trial. But she
10 solicited \$500 from my boss.

11 MS. CLEVELAND: Objection, Your Honor.
12 Relevance.

13 THE COURT: Sustained.

14 BY MR. DAVIS:

15 Q. On that issue, is there anything about that issue
16 that would relate to your opinion about her preparedness for
17 trial? Issue about payments, about retainer, that issue, is
18 there a connection between that, if any, and your opinion
19 about her preparedness for trial?

20 A. I told you I was under a lot of pressure outside of
21 my trial. So, yeah, I think it affected her. She had her
22 phone turned off during the trial. She had her cell phone
23 service turned off during the trial. So she was more
24 concerned about having that taken care of. She paid a lot
25 of attention to that during the trial. She was borrowing

1 other people's phones so she could make phone calls.

2 MS. CLEVELAND: Objection, Your Honor.
3 Speculation.

4 THE COURT: I will allow it.

5 BY MR. DAVIS:

6 Q. So that's pretrial?

7 A. It was the trial, day of.

8 Q. Day of trial? We talked about her
9 cross-examination or her lack of cross-examination of
10 witnesses.

11 A. Uh-huh.

12 Q. At the trial, was there any other conduct that you
13 wished to complain about to Judge Murphy?

14 A. At the trial?

15 Q. Yes, sir.

16 A. I can't recall, to be honest with you. I think I
17 touched on a few that were important.

18 I will tell you what, after trial, she was
19 reprimanded by the judge for not having me secure a trial
20 bond. I was bailed out. I paid all that bail off. So the
21 bail bondsman released me from that bail knowing that I
22 would go to trial. But during the trial, I was supposed to
23 have another bond so that I could stay out for the night
24 until the next day and then I would be given time to review
25 my day of trial with my attorney. But because she failed to

1 do that, they had to take me into custody. I did not have a
2 chance to review the day of trial or go over what could
3 possibly be the next day. And the judge reprimanded her for
4 doing that.

5 Q. The trial began on November the 19th, 2014, and ran
6 into the next day. Were you able to speak with your
7 attorney that evening?

8 A. No, I was not. She briefly spoke to me for a
9 couple of minutes the day -- after the first day for a
10 couple of minutes, and that was it. That is all I was able
11 to talk to her.

12 Q. And so then your testimony is that you were not
13 able to take any notes you had with you back to the
14 detention center?

15 A. Correct, or review anything of the day's events
16 with me attorney.

17 MR. DAVIS: Thank you, Mr. Gould. You could answer
18 any questions the attorney general might have.

19 THE COURT: Mr. Davis, you said you were going to
20 point out in the transcript what page number?

21 MR. DAVIS: Forgive me, Judge. If I can have a
22 moment to do that when they are questioning.

23 THE COURT: Cross-examination.

24 MS. CLEVELAND: Just briefly, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. CLEVELAND:

2 Q. Good morning, Mr. Gould.

3 A. Good morning.

4 Q. Mr. Gould, earlier, you testified that there was a
5 plea offer of seven years and then another offer for four
6 years, correct?

7 A. Correct.

8 Q. And you said it was your decision not to accept the
9 plea?

10 A. That's correct.

11 Q. And in that same vein, did Ms. Gay ever advise you
12 not to take the plea?

13 A. Yes.

14 Q. Did she specifically say to you not to take the
15 plea?

16 A. Specifically, no. She suggested it.

17 Q. Mr. Gould, you also testified that you wanted Ms.
18 Gay to investigate other witnesses. Did you provide her
19 with the names?

20 A. Yes.

21 Q. Telephone numbers of those witnesses?

22 A. I didn't go as far as telephone numbers, no. But,
23 yes, I did.

24 Q. Are any of those witnesses here today?

25 A. No.

1 MS. CLEVELAND: Beg the Court's indulgence for just
2 one moment. Nothing further, Your Honor.

3 THE COURT: Any redirect?

4 MR. DAVIS: No redirect.

5 I apologize, if I can have just a moment.

6 THE COURT: That's fine. You may step down,
7 Mr. Gould.

8 MR. GOULD: Thank you.

9 MR. DAVIS: Thank you so much for that brief
10 discussion with my client. That will be the applicant's
11 presentation.

12 THE COURT: The State will call Melissa Gay.

13 MELISSA GAY,

14 having been duly sworn, testifies as follows:

15 DIRECT EXAMINATION

16 By MS. CLEVELAND:

17 Q. Good morning, Ms. Gay. How long have you been
18 practicing law?

19 A. Since 1991, so almost 28 years.

20 Q. And about how much of that do you spend practicing
21 criminal law?

22 A. Every year since. I do do some other things, but I
23 primarily do criminal law.

24 Q. And, Ms. Gay, were you appointed or retained in
25 this case?

1 A. I was retained.

2 Q. And can you remember approximately when you were
3 retained in this case?

4 A. No. It would have been -- what day was he
5 arrested, approximately? It was within a couple of months
6 after his arrest. It wasn't right away, but I think it was
7 a couple of months later. That's my understanding of what I
8 remember.

9 Q. And do you recall when the case was tried?

10 A. I believe Mr. Davis said it was tried in November
11 of 2014.

12 Q. And do you recall how these charges arose and how
13 the applicant came to be arrested?

14 A. Yes. Mr. Gould was the manager of the Joe Pasta
15 Restaurant on King Street in Charleston. And the police
16 began an investigation that had to do with the sale of
17 cocaine out of that restaurant. The police got a -- I don't
18 know, she was in her 20s -- College-of-Charleston-type
19 student to be the confidential informant. And then she went
20 with a female undercover officer to Joe Pasta to arrange --
21 to buy cocaine from Mr. Gould.

22 There was -- the evidence in the case, there was a
23 video of Mr. Gould -- I mean, obviously, either, I guess,
24 the confidential informant had something on her lapel, some
25 kind of way that was being recorded. So they have

1 conversations with him. They go back into the office.
2 Mr. Gould snorts cocaine, or something that looked like
3 cocaine in the office video, in some kind of attempt to show
4 that it was cocaine that they were talking about.

5 They then -- there's all kinds of funky discussion
6 about partying and things like that. And then this cocaine,
7 or if it's alleged cocaine, then they go back out to the bar
8 and there's a situation where a packet of cocaine is found
9 on the floor, seen on the floor. And I think either -- I
10 think it's actually the undercover cop saying: Is that for
11 us? Are we supposed to pick that up?

12 And Mr. Gould is on video saying, well, I don't
13 know, what is that? I guess you could pick it up. And then
14 they pick it up and say, is this the cocaine? And there's
15 this strange discourse about that.

16 And then, eventually, the undercover and
17 confidential informant leave the building with a package of
18 cocaine. And that's the evidence that happened. There were
19 no other witnesses that I was aware of that were important,
20 because there were no other people in the bar that were
21 paying any attention to what was going on. There was this
22 strange encounter in the office with just the three of them.
23 And then there was this conversation that involved this
24 packet of cocaine on the floor.

25 The undercover officer testified at the trial that

1 she never saw him drop it, things like that. That was all
2 part of -- she said, I saw it on the floor. She never
3 testified that it was -- came directly hand to hand from
4 him. There was always this question of whether or not he
5 had been the one to drop it or not. That was, obviously,
6 the defense.

7 Q. Okay. Did you meet with Mr. Gould to discuss these
8 charges?

9 A. Did I meet with him?

10 Q. Yes.

11 A. Oh, yeah. Whether I met with him physically four
12 to six times, I don't know. But I talked to him a whole
13 bunch of times on the phone. And he was very aware of a lot
14 of things related to the case. And I had lots of
15 conversations with him. And right coming up towards trial,
16 extensively discussed the situation with him.

17 Q. Do you recall what you discussed at those meetings
18 or on the phone?

19 A. Well, I discussed the facts. Mr. Gould did not
20 want to go to prison. So there was a whole a lot of
21 discussion about whether or not there was a plea offer, what
22 the plea offer would be. It did involve active jail time.
23 He had a record. He was also on probation for distribution
24 of cocaine. So that was part of the process, is that if he
25 got convicted, it would violate his probation, things of

1 that nature. He may have been off of probation by the time
2 the trial started, but I can't remember. But there was this
3 prior record that he had. And so there was a bunch of
4 discussion about jail exposure, evidence.

5 I determined that the undercover officer still
6 worked with the department. So she was planning to testify.
7 I was told that the confidential informant was going to come
8 in and testify. I knew who that person was, or we knew, you
9 know, basically, who that person was going to be and that
10 they would be testifying at the trial. And, of course,
11 there was a chemist and things that related to the fact that
12 it was, in fact, drugs.

13 We discussed his -- the offer. We discussed his
14 prior record.

15 You know, he testified that I didn't tell him it
16 was 85 percent. There was a whole a lot of discussion about
17 his prior record as it related to his offer. And if I
18 recall, he didn't have to get convicted of a third if he
19 pled guilty. And that would have been discussed. He didn't
20 have to -- you know, he talks about 65 versus 85 percent and
21 things like that. The offer was for it to be reduced down
22 to be something other than a third. And he absolutely did
23 not want to plead and wanted a trial.

24 And then, you know, at his trial, because it was a
25 third, those were the mandatory minimum sentences. That was

1 85 percent. Those were the penalty ranges that were
2 available upon conviction by the jury.

3 Q. Okay. Did you ever learn of any potential fact
4 witnesses that could have been brought for the defense?

5 A. We talked a lot about what, you know, what was
6 going to happen in the trial, who was going to testify. I
7 was never given any name or number of anybody that he
8 thought needed to come in and testify on his behalf.

9 I talked to his employer who owned Joe Pasta. And
10 he wasn't really a fact witness. He could not have been a
11 fact witness. But as far as people present at the time when
12 this occurred, that would have been helpful to him. I don't
13 recall knowing anybody that would have been.

14 Q. Ms. Gay, what was your overall strategy in this
15 case?

16 A. That he wasn't the one that put it on the floor.
17 It was a little difficult, because there was this whole
18 video of all of this stuff going on in the office. But they
19 did not have any evidence that he's the one that dropped it
20 on the floor. So I never told him to have a trial and not
21 plead. I never told him it was going to be a great case.

22 I have an investigator that works for me also for
23 the last 28 years or so, and we were both telling him he
24 needed to plead guilty, that it was going to not be a good
25 situation if he went to trial.

1 The amended offer for four years would have been a
2 great situation for him. And that just would have been a
3 great situation. And he didn't want to do it. He wanted a
4 trial.

5 Q. Let's go to the trial. Did you cross-examine any
6 of the State's witnesses?

7 A. I really don't remember. In my strategy at trial,
8 which I've had tons of them, a lot of times, I don't ask
9 questions to witnesses if I don't think that they are going
10 to say something helpful to me. So with regard to the
11 undercover police officer, she had already given me
12 everything I needed, which was that she didn't see him drop
13 it on the floor, that it appeared on the ground. There was
14 nothing in her testimony - other than, you know, her wanting
15 to say what she thought was speculation anyway - that was
16 anything that I wanted repeated to the jury. So it would
17 have been my strategy not to ask her any questions too,
18 because she was also pretty savvy and she would have flipped
19 it right around on me and come up with some kind of, I'm
20 positive it was him, all these kinds of things that I didn't
21 feel were necessary to be in front of the jury.

22 Q. Ms. Gay, did you make any motions at the conclusion
23 of the trial?

24 A. We always make a motion to renew all your other
25 motions and your directed verdict motion and all the types

1 of things that are part of the procedure of the case. I
2 would have done all that.

3 Q. Did you see any basis to object to any jury
4 instructions that were provided?

5 A. I think I botched that one. I'm sorry. I think I
6 should have objected to that. I've seen the case law of
7 Mr. Davis. I did not object to that. I do believe I should
8 have, and I did not. And, you know, at the end, you know,
9 of every case, just is exhausting and tiring and
10 overwhelming, because, you know, you are not real sure
11 what's going to happen. So, usually, I think Judge
12 Jefferson hands out maybe even a written thing, but I didn't
13 catch that, but I should have objected.

14 Q. And one last question. Do you feel that you had
15 enough time to prepare Mr. Gould's case?

16 A. Yes, I did. And the thing about the hearing that
17 he said it was like a status conference of some sort, and it
18 was something where I couldn't be there for, I had something
19 else, but it was really more about scheduling and things
20 like that. The court knew I wasn't coming. It was all --
21 it was during a period of time that they were saying if the
22 defendants didn't show up, they would be bench warranted and
23 different scheduling things they were doing. But didn't
24 have any effect on the outcome of the trial or the
25 preparation of the trial. I was prepared to try the case.

1 MS.-CLEVELAND: Beg the Court's indulgence for just
2 one moment. Nothing further from this witness.

3 THE COURT: Thank you.

4 Cross-examination.

5 MR. DAVIS: One moment, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. DAVIS:

8 Q. I have two matters. Ms. Gay, do you have a copy of
9 the transcript, or do you need to see mine?

10 A. I may have one. I do have one, but just tell me
11 what page to go to.

12 Q. Sure. Page 264, this is more of a housekeeping
13 thing, but just to be clear, top of 264, beginning, there's
14 a discussion about whether this conviction violated his
15 probation. Just to be clear, if you can review that, line 1
16 through 6, roughly 1 through 7, that this conviction did not
17 violate his probation?

18 A. Right. That's what I was saying. There was a note
19 in my filed that said something about a probation violation.
20 What they did was continue him on probation, so that it just
21 sort of ran its course. And he was not in violation. He
22 didn't get violated when he was convicted.

23 Q. Fair enough.

24 A. That was a real win.

25 Q. Thank you for clearing that up. And then, can you

1 look over page 271, bottom of 270, Judge is speaking of
2 bottom of 270, goes to 271: It's my understanding that this
3 is a mandatory minimum of 10, maximum of 30, and/or \$50,000,
4 which only the fine could be suspended, I think. And it's
5 also classified as serious. And I assume that you've
6 explained that to him.

7 And your response was: Well, we are briefly.

8 Correct?

9 A. Well, okay, so I had had -- Mr. Gould and I talked,
10 I don't even know how many times before this trial. We had
11 had lots of conversations about his record, the fact that it
12 was a third, the fact that on some level, the offer would
13 have been something less than a third, but it involved
14 active jail time. And we had had a lot of those
15 conversations. To get convicted and to know what the actual
16 sentencing range was going to be, he was -- well, he was
17 upset that he was convicted, is the best way to put it. So
18 he was kind of in shell shock at that point that he was
19 having to deal with the possibility of getting, you know,
20 mandatory minimum ten-year sentence.

21 So I was talking to him. And he was -- at some
22 point I say, can we go off. And we went off the record and
23 there was some conversation. He was just like, you know,
24 asking me lots of things at that point in time. So it is my
25 practice to tell people what their penalty ranges are,

1 because that's the way you discuss with them, this is what
2 you would get if you get convicted, this is what your plea
3 offer would be. And I've done that a hundred -- you know,
4 so many times. There's no way I wouldn't have told him it
5 was 85 percent.

6 If he believed somehow it wasn't 85 percent if he
7 got convicted by a jury -- I can honestly tell you, up to
8 the last offer, I was trying to get Mr. Gould to plead
9 guilty, as opposed to going to trial and potentially getting
10 this kind of sentence. He had finally gotten to a decent
11 offer. But they all involved jail time and he didn't want
12 to go to jail, so we had his trial.

13 Q. But on the prompting of Judge Jefferson, she's
14 asking you, make sure you go over the most serious
15 definition with him.

16 A. Yes. And says, we will be glad to hear from the
17 State. And he talks a little bit. And we took a break for
18 a second, where I talked to him some more, and started
19 talking.

20 Q. Most serious would have been discussed with him
21 during that break, most likely?

22 A. Most likely.

23 Q. You would have reviewed, again, it's a mandatory
24 minimum, 85 percent probably?

25 A. We knew that going into the trial. I mean, I knew.

1 that for sure. That was discussed. And, you know, it was
2 just -- the problem was that in every version of reality, he
3 did not want to go to prison. He wanted to figure out a way
4 to get some kind of probationary sentence, because it was a
5 distribution second offense -- I mean, it was a third
6 offense, but it was a second time he had been charged with
7 distribution.

8 He wasn't on probation for possession. He was on
9 probation for distribution. So there was no offer that
10 involved any -- anything that he could have gotten probation
11 for.

12 MR. DAVIS: Just a moment, Your Honor.

13 Thank you, Your Honor. No other questions of Ms.
14 Gay. Thank you.

15 THE COURT: Any redirect?

16 MS. CLEVELAND: No.

17 THE WITNESS: May I be excused?

18 THE COURT: Any objection? I don't think I have
19 you on my docket.

20 THE WITNESS: It's under witness for Butts.

21 THE COURT: Thank you. Hold on one second. We may
22 try to see if we can do any of it before 1:30 because
23 there's a witness that can't be here until 1:30.

24 Any other witnesses, Ms. Cleveland?

25 MS. CLEVELAND: Nothing further from the State.

1 THE COURT: Parties wish to give a brief summation?

2 MR. DAVIS: Your Honor, may it please the Court.

3 Judge, we would attack this, obviously, from two
4 directions. One, we would argue that counsel's preparation
5 for trial and lack of preparation, lack of investigation,
6 lack of properly advising the client leading up to trial,
7 led to the conviction at trial.

8 You've heard testimony from both witnesses today.
9 Even Mr. Gay indicates this was close to a direct evidence
10 case. But since no one testified to actually seeing an
11 exchange or a dropping of the bag, that was really
12 circumstantial case. So with that, we would argue that more
13 full preparation by the attorney and more full preparation
14 in the sense of meeting and discussing, properly advising
15 Mr. Gould, was ineffective. Ultimately, that led to conduct
16 at trial in dealing with witnesses that was ineffective that
17 could have and would have changed the outcome of the trial.

18 The jury could have come back with a not guilty
19 verdict, came back with potentially possession rather than
20 distribution charge, or been hung up, not able to reach a
21 verdict. So we would argue that in one avenue, we have met
22 our burden in showing ineffective, that the outcome would
23 have been different, and we could be successful on that
24 claim.

25 The more direct argument, Your Honor, deals with

1 the language in the jury charge. It is page 214, line 4, I
2 believe. That whole paragraph, lines 1 through 5, yeah, two
3 sentences, paragraph: Mere presence at the scene where the
4 drugs are found is not enough to prove possession. Actual
5 knowledge of the presence of cocaine is strong evidence of
6 the defendant's intent to control its disposition or use.

7 I did not specifically ask Ms. Gay right then. The
8 transcript is clear. There's no contemporaneous objection
9 right then, nor at the end of the jury charge, no
10 objections, no additions. And she testified herself that
11 she botched that, that she should have objected, and she did
12 not catch it.

13 *State v. Cheeks*, 737 S.E. 2nd 480, it's a 2013
14 case, January of 2013, deals with this very issue. We now
15 overrule *Solomon* to the extent that we no longer use the
16 "strong evidence" charge, which is derived from the
17 statement on the sufficiency of the evidence in *Kimbrell*.

18 And so, clearly, the court instructed on the bench
19 to not use that language because it is, arguably -- not
20 arguably, it is a finding on the facts. So it is not to be
21 used.

22 Ms. Gay indicated she did not object to it. That
23 was a charge given to the jury. And a verdict was found
24 following that charge. That's ineffective assistance. That
25 is not objecting to an inappropriate charge. And that is

1 grounds for success on a PCR.

2 So we would ask that you grant our relief, grant
3 Mr. Gould his PCR request, vacate his conviction, undo his
4 sentence, allow him to begin anew.

5 Thank you, Your Honor.

6 THE COURT: Ms. Cleveland?

7 MS. CLEVELAND: Yes, Your Honor.

8 Your Honor, the State would argue Mr. Gould has not
9 met his burden here today. Ms. Gay testified that she had
10 an overall strategy in the case, that she met with him
11 several times, that she spoke with him in regard to his
12 charges, potential sentences. And she indicated all plea
13 offers to Mr. Gould.

14 She also testified that she had a private
15 investigator in the case, that she did not have the names or
16 numbers of any witnesses to call any witnesses on
17 Mr. Gould's behalf. She also testified that it is not her
18 strategy to cross-examine the State's witnesses.

19 With regards to the jury charge and Mr. Davis's
20 reference to *State v. Cheeks*, I would argue that this case
21 differs from *State v. Cheeks*, because in this case,
22 Mr. Gould was not merely present. He actually did possess
23 drugs in the office. It was on the video that he had the
24 drugs. He met with them under the pretense to do a drug
25 deal. He took them to a room, closed the door. He pointed

1 out the drugs to them on the floor. He also possessed drugs
2 during the discussed transaction.

3 So we would argue that Ms. Gay was effective and
4 that Mr. Gould did not suffer any undue influence by virtue
5 of Ms. Gay's failure to object to the jury instruction.

6 So we would just ask that his application for
7 post-conviction relief be dismissed with prejudice.

8 THE COURT: Thank you, Counsel. I will take this
9 matter under advisement and advise you of my decision.

10 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

cc
AT
GS

398

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Dale Gould, #335171,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2016-CP-10-1651

Order

FILED
2018 APR -9 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 1, 2016 by Dale Gould ("Applicant"). Respondent submitted its Return on June 23, 2016. An evidentiary hearing was convened on January 30, 2018 at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Assistant Attorney General Rasheeda N. Cleveland, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Before this Court were the Charleston County Clerk of Court records, South Carolina Department of Corrections' records, the appellate records, the trial transcript, Respondent's Return, and the application. Based on these records and the testimony presented at the hearing, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the January 2014 term of the Charleston County Grand Jury for one (1) count of Distribution of Cocaine, Third Offense (2014-GS-10-00320). Melissa Gay, Esquire, represented him. On November 19, 2014, Applicant proceeded to a jury trial pursuant to which he was found guilty as

indicted. Honorable Deadra L. Jefferson sentenced the Applicant to confinement for ten (10) years.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). However, Applicant submitted an affidavit requesting his petition to be withdrawn and dismissed. The South Carolina Court of Appeals issued an order affirming the withdrawal of his appeal. The Remittitur was sent down on October 22, 2015.

Summary of Facts

On October 10, 2013, the Charleston County Police Department conducted a control buy operation at the Joe Pasta Restaurant on King Street in downtown Charleston. The entire operation was recorded on video. The undercover detective and the confidential informant arranged a meeting with Applicant at the restaurant. (R. 47). When the detective and the confidential informant returned from that meeting, they both had in their possession a quantity of cocaine. (R. at 48).

II. ALLEGATIONS

In his current *pro se* Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Defense counsel failed to obtain the video recording from the restaurant."
2. "Defense counsel failed to interview the employee that entered the office during the undercover CI's visit."
3. "Is it the duty of the judge to appoint the jury foreman? (See transcript, page 234, Lines 3-6)"
4. "Defense counsel failed to request/obtain text message claimed by the state and testified to by the witness' used to set a "buy."
 - a. "No text message was ever received or sent pertaining to a drug buy. Proving the statement false."
5. "Defense counsel refused to have "baggie" the state claimed I dropped, tested for fingerprint evidence."
 - a. "Defense counsel's reason for not ordering the fingerprint evidence was that "it's

- to (sic) expensive. Questioning her "due diligence"
6. "Defense counsel neglected to depose state witness' for possible impeachment evidence."
 - a. "Without conducting a deposition from the undercover or the confidential informant, defense counsel had no physical evidence at trial to challenge their testimony on the stand."
 7. "Defense counsel refused my continuous requests to cross examine the undercover officer. Allowing her to testify without a single challenge."
 - a. "Defense counsel's failure to cross examine allowed the state an unbalance testimony. A total of 74 mins and 40 seconds of state's testimony. A total of 1 min and 44 seconds of cross examine (sic)."
 8. "Defense counsel neglected to explain the possible sentencing. As evidenced in transcript. Pages 270-271. Lines 1-6."
 - a. If counsel had explained what a plea bargain (sic) entailed. I may have considering accepting the 4 year deal from the state."
 9. "Defense counsel was reprimanded by Judge Jefferson for failure to have me obtain bond during the trial."
 - a. "Defense counsel's negelect (sic) to have me obtain a bond prior to the start of trial forced Judge Jefferson to have me taken into custody the first nighth (sic) of trial therefore elimanting (sic) any possible chance to review my options for the remainder of the trial."
 10. "Defense counsel failed/refused/neglected to obtain my record to argue the sentence. Even after explaining to her that I plead to a possible first offense years earlier. As evidenced in the transcript. Page 270, lines 13-24."
 - a. "This statement exposes counsel's unwilling to perform a fair and honest effort to repersent (sic) me."
 11. "Defense counsel refused to visit the scene of the alledged (sic) transaction."
 - a. "Without knowledge of the location of the office, counsel could not accurately discribe (sic) the access the staff and guess had to open door of the office. Anyone of 350 people could have dropped any bag hear the office door. It is adjacent to the servers beverage station, both first floor bathrooms and read entry station, both first floor bathrooms, and the read entry dor. Allowing access to everyone throughout the day."
 12. "Defense counsel neglected to have any discovery evidence in the court room during the trial."
 - a. "By failing to have proper documents on hand, counsel was unable to refer back to properly cross examine witness'.
 13. "Defense counsel failed to object the term "drug buy," allowing the state and the witness' to repeat it 27 times during questioning."
 - a. "My charge was distribution. Defense counsel allowed the state and the state's witness' to use the term "drug buy" 27 times setting the thought of a sale in the minds of the jury."
 14. "Defense counsel refused to present a single witness in my defense. There were at least 9 employees and 75 guests in the restaurant at the time of the CI and UC's visit."
 - a. "Any employee could have testified to having been in the office during the corse (sic) of the evening. As well as having any number of guests accompany them."
 15. "In an effort to show defense counsel's state of mind during the trial, she was in dire

financial stress having to borrow \$500.00 dollars from a friend you came to support me. Her excuse was to keep from having her phone service disconnected.”

a. “Pervented (sic) counsel from providing the information.”

Applicant filed an amended application on November 27, 2017, to including the following allegations:

1. “Ineffective assistance of counsel by failing to investigate the case prior to the guilty trial.”
2. “Applicant’s attorney provided ineffective assistance of counsel by failing to meet with the Applicant a sufficient amount to adequately advise the Applicant and prepare for a resolution.”
3. “Applicant’s attorney provided ineffective assistance of counsel by failing to properly cross-examine witnesses at trial.”
4. “Applicant’s attorney provided ineffective assistance of counsel by failing to properly advise the Applicant concerning the consequences of conviction versus a plea offer from the State.”
5. “Applicant’s attorney provided ineffective assistance of counsel by failing to object to the jury charge mentioning “strong evidence”.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Trial Counsel Melissa Gay, Esquire, also testified.

Applicant testified that he was fifty-six years old and lived in South Carolina for eleven years before the incident. In regards to his educational background, Applicant testified that he had completed “some” college but did not graduate. He further testified that he retained Trial Counsel to represent him following his arrest. Applicant attested that Trial Counsel failed to appear at pre-trial conference on his behalf, and failed to discuss any of the elemental requirements of the charged offenses. He also testified that he was told by Trial Counsel that the

charged offenses carried a potential sentence of ten to thirty years, but that they never discussed the percentage of his sentence he would be required to serve or if he would be parole eligible.

Applicant further testified that on the morning of his trial, the State offered him a plea deal of four years but there was no discussion of what charge he would be pleading guilty to. Applicant also stated that he only found out that the ten year sentence was as "85%" at the conclusion of his trial. Applicant recalled reviewing the video surveillance tape captured by the confidential informant at Trial Counsel's office prior to trial but the two did not discuss any potential defenses. Applicant also stated that he and Trial Counsel never discussed his right to not testify at trial because Trial Counsel told him he would not testify because she did not feel that he was a valuable witness. He also alleged that Trial Counsel did not conduct any investigation in his case. Regarding his appeal, Applicant testified that he decided to withdraw his appeal after Trial counsel filed an Anders¹ brief.

On cross-examination, Applicant testified that he met with Trial Counsel four times, and did not take the plea offer because Trial Counsel had advised him not to plea. However, he would not take the plea if offered to him again. Applicant also indicated that he gave Trial Counsel a list of witness names but did not provide her with contact information for the named witnesses.²

Trial Counsel testified that she has been in the practice of criminal law for twenty-eight years. She also testified that she had met with Applicant maybe four to six times before trial, and had spoken with him on the phone and written him several times. Trial Counsel further testified that during those meetings she and Applicant discussed the facts of his case, plea offers, and Applicant's prior record. She recalled that Applicant was already on probation for a similar

¹ Anders v. California, 386 U.S. 738 (1967)

² Applicant's potential witnesses were not present during the PCR hearing.

charge at the time of the arrest. Trial Counsel testified that it was her belief that Applicant should have pleaded guilty because four years would have been great. However, Applicant would not plea and wanted to go to trial on the charges against him.

Concerning her investigation, Trial Counsel testified that Applicant never provided her with names of any witnesses but that she and Applicant had many discussions about potential witnesses who were present at the restaurant. In regards to her defense strategy, Trial Counsel testified that their strategy was to prove that Applicant did not place the drugs on the floor in the restaurant.

Regarding her decision to not cross examine the State's witnesses during trial, Trial Counsel recalled that it is her strategy to not cross examine a witness if the testify rendered would not be helpful to the defense. Trial Counsel also recalled that the testimony of the undercover police officer during direct examination gave all that was needed for the defense. However, Trial Counsel further recalled that she should have objected to the jury instruction but did not do so during the trial.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Trial Counsel was ineffective in her representation of him at trial. This Court finds Trial Counsel was not ineffective in her handling of Applicant's trial or appeal. Trial Counsel's actions were reasonable given the circumstances of this case. Strickland requires this Court to presume Trial Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C.

115, 386 S.E.2d 624 (1989). This Court finds Applicant has not done so. Applicant has failed to meet his burden of proving that Trial Counsel was deficient in the handling of his trial or appeal.

However, this Court further finds that Trial Counsel was ineffective in failing to object to the trial judge's 'strong evidence' charge. The Supreme Court of South Carolina instructed the bench in State v. Cheeks, 401 S.C. 322, 727 S.E.2d. 480 (2013) to no longer use the 'strong evidence' charge. Applicant was therefore prejudiced by Trial Counsel's failure to object to the trial judge's use of the term "strong evidence" in his instruction to the jury. Based upon the above, there is a reasonable probability that the result of the trial would have been different.

{Conclusion and signature on the following page.}

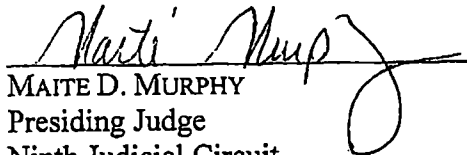
VI. CONCLUSION

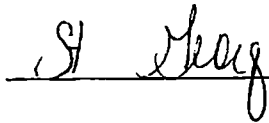
Based upon the foregoing, the Court finds and concludes that Applicant's trial counsel was not ineffective in her representation of him at trial or in the handling of his appeal. However, this Court finds and concludes that Applicant's trial counsel was ineffective in failing to object to the use of the 'strong evidence' charge by the trial judge and that, but for said ineffectiveness, there is a reasonable probability that the result of trial would have been different. As such, Applicant was thereby prejudiced. I therefore hereby order that Applicant's post-conviction relief application is **GRANTED** and that Applicant is entitled to and hereby granted a new trial.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be granted; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections pending a new trial in this case.

AND IT IS SO ORDERED this 29 day of March, 2018.


MAITE D. MURPHY
Presiding Judge
Ninth Judicial Circuit

, South Carolina