

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County

Honorable Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

VANESSA L. FRAYER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001338  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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INDEX

INDEX ..... i

TRIAL TRANSCRIPT DATED AUGUST 12, 2013.....1

FINAL BRIEF OF APPELLANT .....172

FINAL BRIEF OF RESPONDENT .....190

UNPUBLISHED OPINION NO. 2016-UP-511 (filed December 14, 2016) .....206

REMITTITUR .....208

APPLICATION FOR POST-CONVICTION RELIEF .....209

RETURN AND MOTION FOR A MORE DEFINITE STATEMENT .....216

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 22, 2018.....223

ORDER OF DISMISSAL.....258

INDICTMENTS .....274

SENTENCE SHEET.....276

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NO. 2014-GS-10-07082
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
VANESSA FRAYER,	)	
	)	
DEFENDANT.	)	

August 12, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge; and a Jury.

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

Stephanie Linder, Assistant Solicitor  
For the State

Scott Maynor, Assistant Solicitor  
For the State

Jason King, Esquire  
For the Defense

Shirene C. Hansotia, Esquire  
For the Defense

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I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

Jury Voir Dire	--	5
Jury Selection	--	11
Pretrial Motion - Redact Parts of Video	--	20
Motion in Limine	--	35
Opening Statement by Ms. Linder	--	45
Opening Statement by Mr. King	--	46

WITNESSES(SW) Patrick Gill:

Direct Examination by Ms. Linder	--	49
Cross-Examination by Mr. King	--	58

(SW) Christopher Singleton:

Direct Examination by Ms. Linder	--	68
----------------------------------	----	----

(SW) Detective Sean Engles:

Direct Examination by Ms. Linder	--	86
Cross-Examination by Mr. King	--	97

(SW) Linda Wilson:

Direct Examination by Mr. Maynor	--	106
----------------------------------	----	-----

(SW) Susan Payne:

Direct Examination by Mr. Maynor -- 109

(SW) Ashley Earl:

Direct Examination by Mr. Maynor -- 112

Motions following the State resting

Directed Verdict -- 120

Mere Presence -- 127

Closing Argument by Ms. Linder -- 128

Closing Argument by Mr. King -- 139

Jury Charge -- 143

Verdict -- 161

Sentencing -- 170

CERTIFICATION OF TRANSCRIPT -- 171

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Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

STATE  
EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	DVD	5	74
2	Lab Report 6/18/14	5	117
3	Aerial 11 x 17 Map	5	57
4	Drugs	5	118

DEFENSE  
EXHIBITS

DEFENDANT'S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Confidential Inf. Payment Form	5	--

COURT  
EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Jury Note	160	--

1 (WHEREUPON, State's Exhibits 1 through 4 were marked for  
2 identification.)

3 (WHEREUPON, Defendant's Exhibit 1 was marked for  
4 identification.)

5 THE COURT: Ms. Linder, you may call your first case.

6 MS. LINDER: The State calls the State versus Vanessa  
7 Frayer.

8 THE COURT: Ladies and gentlemen of the jury panel, we  
9 are about to begin the trial of the State of South Carolina  
10 versus Vanessa Frayer 2014-GS-10-07082.

11 I hold in my hand an indictment. As I mentioned  
12 earlier, this is just a document that starts the criminal  
13 procedure. As Ms. Laquetta sits there at the defense table  
14 she is presumed to be just as innocent as you and I.

15 Each of you have been qualified. None of you have  
16 exercised an exception. And these questions, once again,  
17 are to determine whether or not you can be fair and  
18 impartial with regard to the trial of this particular case  
19 given the facts of the case and the personalities involved  
20 in it.

21 I remind you that you are under oath and ask that you  
22 pay very close attention and give truthful responses to the  
23 questions.

24 I am going to ask Ms. Frayer if she can stand and face  
25 the jury panel.

1 (WHEREUPON, Mr. Frayer complies.)

2 THE COURT: Thank you, Ms. Frayer. You may be seated.

3 Is anyone related by blood or marriage; do you have a  
4 close social, business, or personal relationship with Ms.  
5 Frayer?

6 No response.

7 Potential witnesses in this case are Ashley Earl from  
8 the Charleston Police Department Lab; Sean Engles,  
9 Charleston Police Department; Linda Wilson, Charleston  
10 Police Department; Susan Payne, Charleston Police Department  
11 Lab; Patrick Gill, Charleston Police Department; and  
12 Catherine Elaine Rouse.

13 Is anyone related by blood or marriage; do you have a  
14 close social, business, or personal relationship with any of  
15 these witnesses; if so, please stand.

16 No response.

17 I am going to ask Mr. King if he could stand up and  
18 identify himself and co-counsel if you could please, sir.

19 MR. KING: I am Jason King, Public Defender's Office,  
20 and I am representing Ms. Vanessa Frayer. With me is  
21 Shirene Hansotia.

22 THE COURT: Is anyone related by blood or marriage; do  
23 you have a close social, business, or personal relationship  
24 with either of these lawyers; have they represented you  
25 before or are they presently representing you; if so, please

1 stand.

2 No response.

3 Ms. Linder, you are recognized. And if you could stand  
4 and identify the members of your office.

5 MS. LINDER: Thank you, Your Honor. My name is  
6 Stephanie Linder, and I work with the Ninth Circuit  
7 Solicitor's Office. Our solicitor is Scarlett Wilson.  
8 Assisting me with this trial is of Scott Maynor also with  
9 the Solicitor's Office.

10 Sitting up here is Sean Engles, the case agent with the  
11 City of Charleston Police Department. And also coming in  
12 and out will be my investigator who is Kenny Barfield.

13 THE COURT: Thank you, Ms. Linder.

14 Is anyone related by blood or marriage; do you have a  
15 close social, business, or personal relationship with either  
16 of the lawyers; if they have represented you in the past or  
17 they currently have a matter with you; if so, please stand.

18 (WHEREUPON, potential juror stood.)

19 Yes, sir, if you could come forward.

20 POTENTIAL JUROR: How are you doing?

21 THE COURT: Good morning. How are you? Your name and  
22 number.

23 POTENTIAL JUROR: My name is Don Mccune. I am Juror  
24 Number 211. I have a son-in-law that is a solicitor in  
25 Berkeley County, an assistant solicitor of Berkeley County.

1 And I have worked with Ms. Linder professionally when I was  
2 doing criminal defense work.

3 THE COURT: Okay. Very good. Thank you for  
4 identifying yourself. We have already previously asked you  
5 the questions, but given all of those circumstances could  
6 you listen to the evidence in this case or the lack of  
7 evidence, listen to the law as I charge it to you, and give  
8 both the State and the defendant a fair and impartial trial?

9 POTENTIAL JUROR: Yes, Your Honor.

10 THE COURT: You are qualified to serve.

11 (WHEREUPON, potential juror returns to seat.)

12 THE COURT: Has any member of the jury panel formed or  
13 expressed an opinion about any issue or matter involved in  
14 this case; if so, please stand.

15 No response.

16 Is any member of the jury panel aware of any bias or  
17 prejudice towards either the State or the defendant in this  
18 case; if so, please stand.

19 No response.

20 Is any member of the jury panel -- is there any member  
21 of the jury panel who has served as a member of the Grand  
22 Jury who issued the indictment in this case; if so, please  
23 stand.

24 No response.

25 I have asked this question previously with regard to

1 law enforcement and no one was disqualified as a result of  
2 that, but I am going to ask every member of the jury panel  
3 who has family members are -- who are law-enforcement  
4 officers or former law-enforcement officers to stand.

5 Yes, sir, your name?

6 POTENTIAL JUROR: Don Mccune.

7 THE COURT: Very good. And there were some other --  
8 this is a different panel. There is no one else who has a  
9 family member who is in law enforcement or a former law-  
10 enforcement officer?

11 (WHEREUPON, no additional responded.)

12 THE COURT: Very good. Thank you, sir.

13 Ladies and gentlemen of the jury panel this is -- the  
14 allegations in this case arise out of an event that took  
15 place here in Charleston County on June 13th, 2014. They  
16 are alleging that it was a distribution of cocaine base.

17 Did anybody witness this event, have you read anything  
18 about it, do you know anything about it; if so, please  
19 stand.

20 No response.

21 Is there any member of the jury panel who belongs to an  
22 organization whose primary purpose is the promotion of law  
23 enforcement; Mother's Against Drunk Driving, Student's  
24 Against Drunk Driving - the Highway Patrol has an  
25 organization that supports them. Just about every Sheriff's

1 Department throughout the state have Sheriff's associations.  
2 Is there anybody who is a member of any of these  
3 organizations or do you contribute to any of them; if so,  
4 please stand.

5 No response.

6 Does any member of the jury panel know of any reason  
7 whatsoever why you should not serve as a juror in this case  
8 with particular emphasis being placed on your ability to be  
9 fair and impartial to both the State and the defendant; if  
10 so, please stand.

11 No response.

12 Any additional questions from the State?

13 MS. LINDER: None from the State, Your Honor.

14 THE COURT: Any from defense?

15 MR. KING: We just -- what I requested when I submitted  
16 in my voir dire. I believe number six, Your Honor.

17 THE COURT: All right. I have reviewed these  
18 questions, and I am going to make those a part of the  
19 record. However, I think the question I have asked  
20 adequately covers those matters.

21 And the strikes are five and five. Do you agree, Ms.  
22 Linder?

23 MS. LINDER: We do agree.

24 THE COURT: All right. Mr. King?

25 MR. KING: Yes, Your Honor.

1 THE COURT: Strikes are five and five. And, Mr. Clerk,  
2 if you could give us a jury.

3 THE CLERK: Printing them now, Judge.

4 THE COURT: We are going to get two alternates, and  
5 strikes are going to be one and two on each.

6 THE CLERK: Okay, ladies and gentlemen, if I call your  
7 name if you will please gather your belongings and come up  
8 to this podium just like I am and stand here.

9 I will then ask the parties questions and then I will  
10 either ask you to have a seat back in the audience or I will  
11 ask you to have a seat in the jury box.

12 The bailiffs will direct you how to come up here, and  
13 then I will direct you if you need to go in the audience or  
14 back to the jury box.

15 Juror Number 329. Michael Weeks, 329.

16 (WHEREUPON, a white male came forward.)

17 THE CLERK: What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. KING: Please excuse this juror.

21 THE CLERK: Mr. Weeks, please have a seat back in the  
22 audience. You have been excused from the trial of this  
23 case.

24 Juror Number 106, Laurie Free; 106.

25 (WHEREUPON, a white female came forward.)

1 THE CLERK: What say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. KING: Please excuse this juror.

5 THE CLERK: Ms. Free, please have a seat back in the  
6 audience. You have been excused from the trial of this  
7 case.

8 THE CLERK: Juror Number 21, Preston Blanton; 21.

9 (WHEREUPON, a white male came forward.)

10 THE CLERK: What say you for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KING: Please seat this juror.

14 THE CLERK: Mr. Blanton, please have a seat back in the  
15 jury box. You have been selected as a juror in this case.

16 Juror Number 114, Ruth Gittins; 114.

17 (WHEREUPON, a white female came forward.)

18 THE CLERK: What say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please seat this juror.

22 THE CLERK: Ms. Gittins, please have a seat back in the  
23 jury box. You have been selected as a juror in this case.

24 Juror Number 158, Yuen Jeffries; 158.

25 (WHEREUPON, an Asian female came forward.)

1 THE CLERK: What say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. KING: Please seat this juror.

5 THE CLERK: Ms. Jeffries, please have a seat back in  
6 the jury box. You have been selected as a juror in this  
7 case.

8 Juror Number 211, Donald Mccune; 211.

9 (WHEREUPON, a white male came forward.)

10 THE CLERK: What say you for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KING: Please seat this juror.

14 THE CLERK: Mr. Mccune, please have a seat back in the  
15 jury box. You have been selected as a juror in this case.

16 Juror Number 88, Anthony Duncan; 88.

17 (WHEREUPON, a black male came forward.)

18 THE CLERK: What say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please seat this juror.

22 THE CLERK: Mr. Duncan, please have a seat back in the  
23 jury box. You have been selected as a juror in this case.

24 Juror Number 41, Latasha Brown; 41.

25 (WHEREUPON, a black female came forward.)

1 THE CLERK: What say you for the State?

2 MS. LINDER: Please excuse this juror.

3 THE CLERK: Ms. Brown, please have a seat back in the  
4 audience. You have been excused from the trial in this  
5 case.

6 Juror Number 349, Gregg Zeleniak; 349.

7 (WHEREUPON, a white male came forward.)

8 THE CLERK: What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KING: Please seat this juror.

12 THE CLERK: Sir, please have a seat back in the jury  
13 box. You have been selected as a juror in this case.

14 Juror Number 115, Melissa Godfrey; 115.

15 (WHEREUPON, a white female came forward.)

16 THE CLERK: What say you for the State?

17 MS. LINDER: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KING: Please seat this juror.

20 THE CLERK: Ms. Godfrey, please have a seat back in the  
21 jury box. You have been selected as a juror in this case.

22 Juror Number 281, Kenan Schnupp; 281.

23 (WHEREUPON, a white male came forward.)

24 THE CLERK: What say you for the State?

25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KING: Please seat this juror.

3 THE CLERK: Sir, please have a seat back in the jury  
4 box. You have been selected as a juror in this case.

5 THE CLERK: Juror Number 324, John Wall; 324.

6 (WHEREUPON, a white male came forward.)

7 THE CLERK: What say you for the State?

8 MS. LINDER: Please excuse this juror.

9 THE CLERK: Mr. Wall, please have a seat back in the  
10 audience. You have been excused from the trial in this  
11 case.

12 Juror Number 188, Renatta Litmon; 188.

13 (WHEREUPON, a black female came forward.)

14 THE CLERK: What say you for the State?

15 MS. LINDER: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KING: Please seat this juror.

18 THE CLERK: Ms. Litmon, please have a seat in the jury  
19 box. You have been selected as a juror in this case.

20 Juror Number 240, Barbara Parks; 240.

21 (WHEREUPON, a black female came forward.)

22 THE CLERK: What say you for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KING: Please seat this juror.

1 THE CLERK: Ms. Parks, please have a seat in the jury  
2 box. You have been selected as a juror in this case.

3 Juror Number 1, Ann Adams; 1.

4 (WHEREUPON, a white female came forward.)

5 THE CLERK: What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KING: Please seat this juror.

9 THE CLERK: Ms. Adams, please have a seat in the jury  
10 box. You have been selected as a juror in this case.

11 Juror Number 116, Peggyann Godfrey; 116.

12 (WHEREUPON, a black female came forward.)

13 THE CLERK: What say you for the State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. KING: Please seat this juror.

17 THE CLERK: Ms. Godfrey, please have a seat in the jury  
18 box. You have been selected as a juror in this case.

19 THE CLERK: Now picking for the first alternate.

20 Strikes are one and two.

21 Juror Number 104, Kim Ford; 104.

22 (WHEREUPON, a black female came forward.)

23 THE CLERK: What say you for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MR. KING: Please seat this juror.

2 THE CLERK: Ms. Ford, please have a seat in the jury  
3 box. You have been selected as a juror in this case.

4 Now picking for the second alternate. Strikes are one  
5 and two.

6 Juror Number 120, Sharon Gormley; 120.

7 (WHEREUPON, a white female came forward.)

8 THE CLERK: What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KING: Please excuse this juror.

12 THE CLERK: Ms. Gormley, please have a seat back in the  
13 audience. You have been excused from the trial in this  
14 case.

15 Juror Number 231, Robert Naman; 231.

16 (WHEREUPON, a white male came forward.)

17 THE CLERK: What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. KING: Please seat this juror.

21 THE CLERK: Mr. Naman, please have a seat in the jury  
22 box. You have been selected as a juror in this case.

23 Your Honor, the jury has been selected and are seated.

24 THE COURT: Ladies and gentlemen, the balance of the  
25 jury pool there is one more case that needs to be selected

1 so y'all need to return to the jury assembly room on the  
2 second floor. Thank you very much.

3 (WHEREUPON, jury pool exits courtroom August 12, 2015, 10:07  
4 a.m.)

5 THE COURT: I am going to ask the members of the jury  
6 to stand and raise your right hand as the clerk administers  
7 the oath.

8 (WHEREUPON, the jury was duly sworn.)

9 THE CLERK: If you have accepted this oath please have  
10 a seat..

11 (WHEREUPON, all 14 jurors took their seat.)

12 THE CLERK: Please let the record reflect that all 14  
13 jurors took their seats in response to my questions.

14 THE COURT: Mr. Donald Mccune I am going to ask that  
15 you serve as the foreman of this jury, and I am going to ask  
16 that you have a seat on this outside chair and ask if y'all  
17 could just switch chairs.

18 (WHEREUPON, jury members complied.)

19 THE COURT: Mr. Mccune, throughout the trial I am going  
20 to ask that you remain in that seat. The two alternates on  
21 the back I am going to ask that y'all stay on those two back  
22 seats.

23 The rest of you are general admission. So y'all can  
24 come in -- it is probably -- logistically it would be better  
25 for you to come in last so people don't have to walk over

1 you.

2 All right. Mr. Mccune, you like everyone else when it  
3 comes time to deliberate are going to have one vote;  
4 however, you are going to have additional responsibility,  
5 one of which is to preside over the deliberation process.

6 And essentially that means just assure that everybody's  
7 voice is heard. If there are questions or concerns that  
8 develop throughout the trial of this case I am going to ask  
9 the jurors to communicate those questions and concerns to  
10 you, you reduce it in writing, give it to the bailiff. If  
11 there is something I can answer or help you with, I will be  
12 happy to do so.

13 Throughout the trial of this case there are going to be  
14 times when y'all are in the jury room outside of our  
15 presence, and I am going to order and instruct and demand  
16 that you not to talk about the case.

17 There will come a time at the conclusion of the case  
18 after you have heard all of the evidence, I have charged you  
19 the law and I tell you to begin deliberations that you can  
20 talk about it. But until then it would be premature to do  
21 that.

22 Do not discuss the case amongst yourselves when you  
23 break for lunch. I can promise you that your spouse,  
24 significant others, and coworkers are going to say tell me  
25 what's going on in the courthouse.

1           This is one time where you don't have to answer your  
2 spouse or your significant other. You tell them that you  
3 have been ordered not to discuss it.

4           At the conclusion of your service here this week you  
5 will be happy -- you will be free to talk to anybody about  
6 the case as you see fit. But until that time it would be  
7 inappropriate to do that.

8           I am going to ask that you return to the jury room.  
9 And once again, do not discuss the case. Everyone remain  
10 seated as the jury exits the courtroom.

11 (WHEREUPON, jury exits courtroom 8/12/15, 10:15 a.m.)

12           THE COURT: Anything from the State before we recess  
13 for five minutes?

14           MS. LINDER: Nothing from the State.

15           THE COURT: Anything from defense?

16           MR. KING: No, Your Honor. I just didn't mention this  
17 in chambers, I do have a brief pretrial motion. It wouldn't  
18 involve any testimony but it just would involve maybe  
19 redacting parts of the video if we could address that at  
20 some point.

21           THE COURT: Yes, we can do that right now if you would  
22 like.

23           MR. KING: Yes, Your Honor. In the video it is about a  
24 23-minute video, and the informant is dropped off at a  
25 staging location and walks a few blocks to a house.

1           On his way there he encounters a man, and I am asking  
2 to redact -- really redact the portions before and after he  
3 has gone into the house.

4           At the beginning he runs into a man on the street and  
5 they have a discussion. There is talk about -- I think the  
6 informant is asking him to take him to a lady's house to buy  
7 some drugs.           So there is a person on the video and I  
8 think that would involve hearsay, the confrontation clause;  
9 and also I object under Rule 403 that any probative value is  
10 outweighed by unfair prejudice.

11           There are some other things that are just not relevant  
12 that, you know, he sees different people on the way there  
13 and asked do you have anything, you know, I think just  
14 looking for drugs. But the specific thing before the  
15 alleged transaction is this man that is met that the  
16 discussion has happened.

17           THE COURT: Okay. I will be glad to hear from the  
18 State with regard to the individual before the buy where  
19 there is a discussion about ---

20           MS. LINDER: Your Honor, as far as the buy video is  
21 concerned I think as far as what happens I think Mr. King  
22 wants something redacted or muted before the buy and then  
23 something done after. As far as what is done before, Your  
24 Honor, I think is important to show the entire thing.

25           What happens on it is this case there are two reasons -

1 and we will have testimony from the officers. Sometimes you  
2 target a person, you make a phone call, you set up a buy.  
3 And sometimes due to incidents happening in the general you  
4 just kind of send someone who can buy from someone, anyone;  
5 and that is what is done in this case.

6 The defendant -- or the CI in this case -- by playing  
7 that it also shows why the narcotics, this specialized unit,  
8 didn't do that step of planning and having a phone call and  
9 making it happen. Otherwise, it just looks like he is  
10 randomly walking around.

11 Also it helps explain why during the roving perimeter  
12 of other narcotics individuals they didn't know exactly  
13 where he was going. They knew a general area. He actually  
14 went down the street, went through a cut, went on a  
15 different street.

16 So it also explains why maybe we do not have a roving  
17 perimeter unit who can get in and actually see them walking  
18 into a certain place.

19 Furthermore, that conversation what happens is the CI  
20 walks down one street, turns down another, sees a man and  
21 says hey do you know where I can get any dope around here.  
22 And the man talks about, oh, well yeah, well, I am waiting  
23 for this guy in this white car; this guy in this white car  
24 has dope, you know, but I am still waiting for him. So it  
25 is like just kind of looking around for stuff.

1           The CI did not say I know there is a lady, I know where  
2 she lives, can you take me to her. He is just kind of  
3 talking to whoever on the street trying to buy drugs from  
4 whoever he can. Because it is a general area.

5           And then furthermore I think it is important because I  
6 am uncertain of exactly what the argument will be from the  
7 defense about this matter; however, in this case \$60 were  
8 given to buy some crack, but he was shorted. He was shorted  
9 on the quantity. It was not point six. He was shorted by  
10 about half.

11           And I think it is important because if you have a very  
12 trained ear and you listen to that video many times you hear  
13 on the walk that the lady shorts you. It said -- it says --  
14 what does he say. He said her 20's look like 15's.

15           I think that is very important because I don't want my  
16 CI who used to have a drug issue who has a record I don't  
17 want there to be any whiff of oh, well, he could have that,  
18 he used it, he snuck it for himself. And I think that that  
19 part if they can understand it can help explain.

20           I don't think that that says -- nobody says I bought  
21 from her five times before. Nobody says I bought this type  
22 of drug from her before. Nobody says any of that. And I  
23 think to cut off a vast majority of the beginning sound it  
24 would just look like a man just kind of wandering around.

25           THE COURT: Does the video show the buy itself?

1 MS. LINDER: Yes. It shows -- it shows her face on it,  
2 yes. But there's also multiple faces on it.

3 THE COURT: Right.

4 MS. LINDER: So you hear a lot of people talking in  
5 there.

6 THE COURT: I understand what you're saying, but I am  
7 not going to allow the voices of somebody who is not in this  
8 to talk because they have got a right to cross-examine them.

9 Obviously if you were able to locate them and bring  
10 them in you could do that. But -- and I don't think it  
11 makes any difference one way or the other, but I am going to  
12 order that you mute the conversation with the people, the  
13 bystanders.

14 MS. LINDER: All right. Then, Judge, I would ask for  
15 Mr. King -- because this guy he talks to a fellow and -- I  
16 am trying -- how he walks -- you see a one-armed guy on a  
17 bicycle go by and then he turns on a street. He talks to  
18 another guy. They start walking. They are talking. They  
19 talk all the way up until the door.

20 And at the door you see the one-armed bicycle guy again  
21 and you see all these other people who were there. And I  
22 think it is going to be very tricky of exactly when to cut  
23 off. And I want to make sure Mr. King and I are on the same  
24 page and the court is aware of exactly what second we are  
25 supposed to be hitting mute or what second we can unmute it.

1 THE COURT: It is when third parties are talking.

2 MS. LINDER: I understand that, Judge. When the buy is  
3 taking place you hear noise in the background of other  
4 people's conversations.

5 THE COURT: Okay.

6 MS. LINDER: I don't have any way of ---

7 THE COURT: If they are not -- if it is just noise you  
8 don't have to mute that, but -- and of course I haven't seen  
9 it ---

10 MS. LINDER: Right.

11 THE COURT: --- and don't know the exact. You know, in  
12 a vacuum it is very difficult to say. But it seems like to  
13 me some small amount beforehand to buy and then a small  
14 amount afterwards, that is the relevant stuff. I don't  
15 know -- I might be missing something, but I haven't seen the  
16 video.

17 MS. LINDER: Okay. All right. Then I will mute the  
18 part where he is talking to the man on the way to do the  
19 buy.

20 THE COURT: Okay. Is there any other request?

21 MR. KING: There are a couple more, Judge. Now once  
22 they are inside the house where the alleged transaction  
23 takes place -- this might get a little trickier. But there  
24 is another guy who walks in who appears to be talking as  
25 well. And this is sort of right at ---

1 THE COURT: What does he say?

2 MR. KING: It is kind of difficult to understand, but I  
3 mean it is possible that he is asking to buy drugs as well.  
4 It is kind of hard to understand exactly what is being said;  
5 but, you know, ---

6 THE COURT: Okay. Well, if ---

7 MR. KING: --- but I am assuming what ---

8 THE COURT: If you can't really -- and that really is  
9 not prejudicial to her and it's just -- I'm not going to --  
10 and if you can't understand it I am certain the jury can't.

11 Really the issue is whether or not she sold the dope  
12 and whether or not it is on video. So if that's an audible  
13 conversation between the confidential informant or with the  
14 defendant then -- and if it is just garbled up conversation  
15 then I am not going to require it.

16 MR. KING: It is not very loud, but you can understand  
17 some of what is being said.

18 THE COURT: Does he say anything about your client?

19 MR. KING: He approaches her, Your Honor.

20 THE COURT: Oh, okay.

21 MR. KING: My -- my translation would be -- I beg the  
22 court's indulgence. It sounds like he says I just sold  
23 something, I wanted to get a dime but all I got is seven.  
24 It sounds like he may be offering trying to buy drugs for  
25 seven dollars -- ten dollars for seven dollars. I can sort

1 of get that out of it. And, you know, one could argue that  
2 he is there trying to buy drugs for seven dollars in the  
3 middle of this alleged transaction.

4 THE COURT: And looking at the video you might could  
5 conclude that he was trying to do that with the defendant?

6 MR. KING: Yes. Yes, Your Honor.

7 THE COURT: Okay. Well, I am not going to allow that.

8 MS. LINDER: Judge, I think we may need to try to watch  
9 the video because ---

10 THE COURT: Let's do that. Let's ---

11 MS. LINDER: I am unaware of how to -- I am unaware  
12 of how to mute everything especially when it is in the  
13 middle -- the room is like the size of this table and there  
14 are about six people in there.

15 I am not sure how to mute one part and not another once  
16 they are in the house. It is one thing when they are on the  
17 street on the way. But ---

18 THE COURT: What transpires between -- what do you  
19 maintain transpires between the defendant and the  
20 confidential informant?

21 MS. LINDER: The confidential informant goes up to her  
22 and she asks -- he asks her for a 60. She is then telling  
23 other people who are in the house to don't disrespect this;  
24 and she is kind of giving orders as she is sitting on a  
25 chair, and all these other people are wondering around. And

1 she is ---

2 THE COURT: What she says is admissible.

3 MS. LINDER: Right. And then she is doing something  
4 with the drugs. The CI is kind of backing out. People are  
5 leaving the house, coming back into the house. They are  
6 kind of all over. There is -- different people are saying  
7 things on the video. I don't know how to -- it is kind of  
8 like she is running court when you watch it.

9 THE COURT: I will tell you what we are going to do is  
10 we are going to watch it ---

11 MS. LINDER: Okay.

12 THE COURT: --- and I will tell you how we are going to  
13 do it.

14 MS. LINDER: That is great, Judge.

15 THE COURT: Very good.

16 MS. LINDER: It is difficult with just trying to  
17 explain what happened.

18 THE COURT: Very good.

19 MS. LINDER: Thank you.

20 THE COURT: Let's watch.

21 MR. KING: And, Your Honor, the final thing, after the  
22 CI leaves the house he is walking back. He makes what  
23 appears to be a phone call to I guess to the police, his  
24 contacts. And he makes some statements there about I think  
25 he is saying that she served me in the house. So he is

1 making some hearsay statements on the phone to police as he  
2 is walking back.

3 THE COURT: Now is he going to be here?

4 MR. KING: The informant?

5 THE COURT: Yes.

6 MS. LINDER: He is going to be here. However, Judge,  
7 again I would ask so much of showing what a CI buy is is  
8 showing that the police is instructing the CI certain things  
9 to do.

10 And the CI in this case is constantly singing on his  
11 phone, talking on his phone. He calls Engles Mamma, you  
12 know, to try and make it not look weird as he is saying I am  
13 on Athens. And he is telling locations as he is going.

14 So much of this is showing that the narcotics unit is  
15 running this buy. And if you take away everything that the  
16 CI is doing directly as a result of being directed by the  
17 police then I think it kind of guts everything.

18 He is here. He is going to testify. However, again, I  
19 mean it was a year-and-a-half ago. I think that is more  
20 contemporaneous to everything, and I think that shows the  
21 whole video. He is not talking to anybody else.

22 THE COURT: Well, my point -- my reason for asking if  
23 he was going to be here and if he is going to testify then  
24 he can ask him about what he says on the video.

25 MS. LINDER: Yes, Judge, he can cross him on all of

1 that.

2 THE COURT: Well, that's I am going to let that in.

3 MS. LINDER: Judge, we are on our second laptop so far  
4 this morning. She is getting it set up where if I can play  
5 it on the defense one I will.

6 If I can approach to get the video.

7 THE COURT: Yes.

8 (WHEREUPON, break was had to set up video.)

9 (WHEREUPON, play video 8/12/15, 10:32 a.m.)

10 THE COURT: All right. That conversation, anybody got  
11 something, you can't even hear what the other fellow said;  
12 so I am going to allow that in.

13 Was that one of the conversations you were talking  
14 about?

15 MR. KING: That was one but not my main ---

16 THE COURT: Okay, well that one is coming in. You  
17 can't hear what the other fellow says. He says you got  
18 something. All right.

19 MR. KING: In about a minute is the one that - the one  
20 that I am concerned with, Your Honor.

21 THE COURT: Okay. Very good.

22 (WHEREUPON, resume video 8/12/15, 10:42 a.m.)

23 THE COURT: Okay.

24 (WHEREUPON, video paused 8/12/15, 10:45 a.m.)

25 THE COURT: All right, this conversation is to be

1 muted.

2 MS. LINDER: Okay.

3 MR. KING: It roughly starts about seven minutes and  
4 forty-five seconds.

5 MS. LINDER: From here where they are walking or ...?

6 THE COURT: Well, the gentleman he was talking to him,  
7 all the conversation between the CI and this gentleman is to  
8 be muted.

9 MS. LINDER: It continues, Judge, as they are walking  
10 towards the house. They are walking together.

11 THE COURT: Well, it sounded as though they were. But  
12 the entire conversation.

13 THE COURT: We can go ahead.

14 (WHEREUPON, video resumed 8/12/15, 10:46 a.m.)

15 (WHEREUPON, stopped video 8/12/15, 10:51 a.m.)

16 THE COURT: The statements made by this fellow who is  
17 supposedly making a buy, his voice is to be muted.

18 MS. LINDER: Okay, Judge, I want to look and make this  
19 seconds to absolutely. I would say that when she is saying  
20 I am making a 60 she is talking about the CI just ordered  
21 the 60 that is her -- we can mute the him asking, but I  
22 would ask that we can unmute it for her to be saying I am  
23 making 60 because that ---

24 THE COURT: That's not a problem.

25 MS. LINDER: Okay.

1 THE COURT: It is what this gentleman said.

2 MS. LINDER: Okay.

3 THE COURT: All right. And the fellow who was acting  
4 in a boisterous manner was walking in, what he has to say  
5 can be muted as well. But what she says about that can be  
6 let in.

7 MS. LINDER: Okay.

8 (WHEREUPON, resumed video 8/12/15, 10:51 p.m.)

9 (WHEREUPON, stopped video 8/12/15, 10:52 p.m.)

10 MR. KING: And, Your Honor, just that -- the other lady  
11 there making statements as well I guess I would move to  
12 exclude where she says let me wrap it up. The other lady in  
13 the house thinks she is smoking a cigar or something. I  
14 would move to exclude that as well.

15 THE COURT: All right. I couldn't even tell what she  
16 was saying. I didn't know whether that was a lady or a man.  
17 But she -- what did she say?

18 MR. KING: I think she says let me wrap that up for  
19 you. I can ---

20 THE COURT: To the extent you can mute that, mute that  
21 as well.

22 MS. LINDER: Judge, we will -- we will absolutely try  
23 our best. It is tough when he is talking to her and the CI  
24 is talking to the defendant and then somebody else is  
25 yelling something and then -- we will absolutely do our best

1 trying to get all the seconds down according to what Mr.  
2 King says and the court orders.

3 (WHEREUPON, video resumes and pauses 7/12/15, 10:53 a.m.)

4 THE COURT: I mean the buy has already taken place.  
5 What do we need the rest of this for?

6 MS. LINDER: Judge, I would say the CI walks back  
7 through the cut and then the CI is by himself and he is  
8 reporting back to Engles the location, everything. He is  
9 saying what happened.

10 And I think that that shows that the City is showing  
11 they are controlling the situation, they are directing of  
12 the situation and the CI is obeying their orders by, you  
13 know, by telling them their location, by telling them what  
14 is happening, by telling all of those so they know also  
15 where the perimeter is having to go to try and keep him  
16 surrounded as best as possible if distraction is needed.

17 THE COURT: How much further have we got to go?

18 MR. KING: It is I think about seven more minutes, Your  
19 Honor.

20 THE COURT: Okay.

21 (WHEREUPON, video resumes 8/12/15, 10:55 a.m.)

22 (WHEREUPON, video paused.)

23 THE COURT: Is there anything from this point forward  
24 that you have an objection to?

25 MR. KING: I think that is about it. I think at this

1 point he just walks back and ---

2 THE COURT: Okay. Well, good.

3 MR. KING: --- meets back up.

4 THE COURT: All right. Very good. To the extent these  
5 people that I've deleted would not be present and would  
6 violate the confrontation clause we are going to go ahead  
7 and do that.

8 But really taken in the big picture you really can't  
9 understand what any of them are saying really. So it makes  
10 no difference. But I am going to require that they delete  
11 it. And we will proceed forward in that fashion. Is there  
12 anything else?

13 MR. KING: No, Your Honor.

14 MS. LINDER: Judge, I would just ask that -- we do not  
15 have the ability to alter it so we are just going to have to  
16 be muting it.

17 So I would ask that we do openings. I could do my  
18 first witness. My next witness would be the CI. So I would  
19 ask that over the lunch break Mr. King and I can agree on  
20 what seconds and everything for the muting.

21 THE COURT: Okay.

22 MS. LINDER: So if we could just do our openings, have  
23 that one witness and then we will make sure that we agree on  
24 like exactly what seconds to achieve what the court has  
25 ordered.

1 THE COURT: All right. We certainly won't play the  
2 video before lunch.

3 MS. LINDER: Right. Thank you, Judge.

4 THE COURT: Very good. All right. Are y'all ready for  
5 the jury?

6 MS. LINDER: Yes, Judge.

7 THE COURT: We are ready.

8 (WHEREUPON, pause awaiting jury.)

9 MS. LINDER: Judge, just in an abundance of caution I  
10 guess I would like to do a motion in limine in response to  
11 your ruling. We would just ask that the defense not try to  
12 go into that the CI -- he can ask the CI any questions he  
13 wants. Absolutely. But not make arguments for the jury  
14 that potentially the CI was -- was buying drugs or trying  
15 to -- trying to put sound to what we were instructed to  
16 mute, in other words.

17 THE COURT: I have no idea what you just said.

18 MS. LINDER: Okay. What I don't want is -- and I don't  
19 think Mr. King would, but I understand he is representing  
20 his client. I don't -- I don't want it to get to a point  
21 where Mr. King is kind of filling in the muted spaces in the  
22 video by arguing to the jury like, you know, he could have  
23 been talking to that guy on that street and he could have  
24 bought crack from him. We don't know. I mean I don't want  
25 him to try and make any of those kinds of arguments.

1 THE COURT: Well, you -- I will require that you make a  
2 contemporaneous objection in that regard. I don't think that  
3 he would do that, but if he does I want you to object.

4 MS. LINDER: I will, Judge.

5 THE COURT: Very good.

6 MR. KING: The only thing I can think of, Judge, is I  
7 mean I had thought it is possible during that long walk  
8 (pause) ---

9 (WHEREUPON, two jurors begin to enter courtroom.)

10 THE COURT REPORTER: Judge.

11 THE COURT: Yes.

12 (WHEREUPON, jurors were escorted out of courtroom.)

13 THE BAILIFF: Sorry, Judge.

14 THE COURT: Go ahead.

15 MR. KING: I had thought previously, you know, it could  
16 be an argument. They searched the CI beforehand to see if  
17 he has drugs. You know, I guess it is possible they could  
18 pick something up along the way. I hadn't intended to argue  
19 that he would have bought it from anybody else.

20 I mean if the CI wanted to set somebody up, you know,  
21 during that long walk there might be some places where he  
22 could have stashed it and grabbed it or something.

23 But I wouldn't be implying that he bought it from  
24 anybody on there. So I mean I think -- I think muting it  
25 would resolve that. But if that would open the door to what

1 we have excluded I can stay away from that too.

2 THE COURT: Very good. I will ask that you object  
3 contemporaneously if he says anything that you find to be  
4 objectionable.

5 MS. LINDER: Thank you.

6 THE COURT: Very good. We are ready for the jury.

7 (WHEREUPON, jury enters courtroom 8/12/15, 11:03 p.m.)

8 THE CLERK: All jurors are present, Your Honor.

9 THE COURT: Mr. Foreman, ladies and gentlemen of the  
10 jury, we are about to begin the case of the State of South  
11 Carolina versus Vanessa Laquetta Frayer.

12 She has been accused of distribution of cocaine base.  
13 And as I mentioned to you, this indictment bears absolutely  
14 no evidentiary value whatsoever. And to these charges Ms.  
15 Frayer has pled not guilty.

16 And any time someone in the United States of America is  
17 accused of a crime and they plead not guilty certain  
18 constitutional rights come into play. The first of which is  
19 Ms. Frayer is presumed to be innocent. It is like a  
20 protective cloak that guards her as an American citizen  
21 throughout this trial. She is presumed to be just as  
22 innocent as me or you, and that protective cloak is with her  
23 throughout the trial of this case on into the deliberation  
24 process.

25 And she is presumed to be innocent only to the extent

1 that you and your deliberation would find that the State has  
2 proven her guilty beyond a reasonable doubt.

3 The second constitutional safeguard is the State bears  
4 the burden of proof. There are certain elements to the  
5 offense of distribution of cocaine base, and the State is  
6 going to be required to prove each and every one of those  
7 elements.

8 And there are some practical reasons behind that is  
9 that they are the ones with the wherewithal to gather all  
10 this evidence. They are the ones bringing the charges.  
11 They are going to be required to prove it.

12 There are some Third World countries where you can be  
13 accused of a crime and hauled up before a court and they say  
14 prove your innocence. We all know that quite often it is  
15 impossible to prove your innocence. You aren't required to  
16 do that in the United States of America.

17 They are the ones that bear the burden of proof, and  
18 they have to prove each and every element of this offense.  
19 The defendant need not testify; he need not present any  
20 evidence whatsoever. The burden rests solely on this date.

21 The third constitutional safeguard is that the State  
22 has to meet the highest burden of proof. Many of you have  
23 served on a civil jury before where you're -- a car accident  
24 would be a good example, a medical malpractice, a contract  
25 dispute, where essentially you are arguing over money; and

1 those type proceedings imagine with me if you will the  
2 scales of justice where the lady is blindfolded from all  
3 bias and all prejudice. When the proceedings start the  
4 scales are even. And in those cases if the plaintiff were  
5 to tilt the scales ever so slightly in their favor then they  
6 would prevail, a preponderance of the evidence, ever so  
7 slightly, more likely than not. Because in that case really  
8 all you are talking about is money.

9 But in this case we are talking about very important  
10 constitutional rights and liberties, and the State has to  
11 meet the highest burden of proof known to our judicial  
12 system which is proof beyond a reasonable doubt which I  
13 envision as locking up the scales. Proof beyond a  
14 reasonable doubt I will define that in greater detail at the  
15 conclusion of the case.

16 The -- we are going to start this proceeding. Many of  
17 you have served on a jury before. Many of you have watched  
18 television and seen proceedings on television.

19 I just kind of want to tell you what to expect. But  
20 Ms. Linder is going to have an opportunity to stand before  
21 you and kind of tell you a little about this case, a little  
22 bit about the law and what she intends to prove.

23 And then the defendant although they are not required  
24 to give a opening statement they are going to be given an  
25 opportunity to do that. And I anticipate that they will

1 talk to you a little bit about the case and their defenses.

2 After that then we will begin the taking of evidence in  
3 this matter. Evidence takes a number of different forms.  
4 The first and perhaps most voluminous is oral testimony that  
5 comes from the witness stand.

6 Witnesses will get up on the witness stand. They will  
7 swear to tell the truth, the whole truth and nothing but the  
8 truth. And then the State will have an opportunity to ask  
9 them some questions. And then the defense will have an  
10 opportunity to cross-examine them.

11 The State goes first in the presentation of evidence.  
12 Evidence takes the form of oral testimony, stipulations of  
13 counsel, documents that are entered into evidence. All of  
14 those are going to be there for your consideration.

15 The State goes first. The defendant, although they are  
16 not required to do anything, will be given an opportunity at  
17 the conclusion of the State's case to present any evidence  
18 that they might have to support any defense that they might  
19 allege. But once again, they are not required to do that.

20 Mr. Foreman, ladies and gentlemen of the jury, you and  
21 I have certain distinct roles in this matter. My job is to  
22 be the trier of the law, and I am required to determine what  
23 evidence you get to hear. I am to preside over the  
24 proceeding, and I am going to charge you the law.

25 You are judges in a way as well. You are the judges of

1 the facts. You're the ones that listen to the evidence and  
2 determine what the truth is.

3 " Every case that is tried in this court or any court in  
4 the United States of America there is always a conflict with  
5 regard to the facts.

6 There is a very rare occasion where everybody agrees on  
7 the facts, but there's differing inferences to be drawn from  
8 the facts. But in both cases there is a question of fact  
9 that you are going to be called upon in your collective  
10 wisdom to resolve. And the law doesn't allow me to have an  
11 opinion about the facts. That is going to be completely  
12 your province, sole and exclusive duty to determine what the  
13 truth is in this case.

14 Once you have heard all of evidence in your  
15 deliberation process you are going to determine what the  
16 truth is and apply it to the law as I charge it to you.

17 Ladies and gentlemen of the jury, as the triers of fact  
18 you are necessarily going to be called upon to determine the  
19 credibility of witnesses.

20 I will charge you the law in greater detail, but I want  
21 to tell you from the very beginning that you are going to be  
22 called upon to determine the believability of witnesses.

23 I will tell you from the outset that you are not to  
24 leave your common sense at home. We all known how to  
25 evaluate whether someone is telling us the truth or not in

1 our everyday lives. Ask yourself what opportunity these  
2 people had to observe the things to which they are  
3 testifying. Ask yourself whether or not what they say is  
4 corroborated by other evidence or whether or not it is  
5 contradicted.

6 You can believe one witness against many, many against  
7 one, or none of what a witness says. Ask yourself whether  
8 or not this particular witness has an interest or bias or  
9 prejudice.

10 In addition to that, you know, any of you you have  
11 raised teenage children. Sometimes it is just as important  
12 to watch the manner in which they tell you as opposed to  
13 what they tell you. Their demeanor.

14 And the law says you can take that into consideration  
15 too, whether or not they look like they are telling a lie or  
16 telling the truth. You have an opportunity to do that. I  
17 will charge you in greater detail with regard to that at the  
18 conclusion of the case.

19 There is always in every case that has been tried you  
20 will hear the lawyer stand up and say I object, I have a  
21 question of law I would like to take up with the court.

22 The reason for that is this is a procedure -- or  
23 proceeding that is governed by the rules of evidence and the  
24 rules of criminal procedure, and that's my job is to enforce  
25 those rules. And quite often when they make an objection it

1 requires I comment on the facts. But of course as I have  
2 already told you, that is your job; and it is inappropriate  
3 for you to hear anything that I have to say about the facts.

4 At the conclusion of the case after you have reached  
5 your verdict if there is a particular point of law that you  
6 had an interest in and if I can remember what it was I will  
7 be happy to share it with you at that time. But until then  
8 it is inappropriate for y'all to hear those conversations.  
9 So it is not as if I'm trying to keep something from you.  
10 But that is the reason why those conversations take place  
11 outside of your presence.

12 At the conclusion of the presentation of all of the  
13 evidence the lawyers will have an opportunity to stand up  
14 before you and give a closing argument.

15 And those are very similar in form to the opening  
16 statements. They will stand up before you and talk to you.  
17 They are summary in form.

18 But the closing arguments are truly argumentative in  
19 nature because at that point in time you will have heard all  
20 of the evidence and they can point to the evidence that  
21 supports their relative theory.

22 These are very fine lawyers. They have been dealing  
23 with the case for a long time. And although what they say  
24 is not evidence it will aid you immensely in your  
25 deliberation process, so pay very close attention.

1 I am going to ask and order and direct that you not  
2 take notes given the subject matter of this case and the  
3 length of the case. So it is going to require that you pay  
4 very close attention.

5 I will also admonish you that it is very important that  
6 you pay very close attention because this is an important  
7 case. It is an important case to the State of South  
8 Carolina. It is an important case to the defendant. It is  
9 an important case to you because you have taken a solemn  
10 oath to listen to the evidence, to find out what the truth  
11 is and apply it to the law.

12 One of the things that you need to be aware of is that  
13 if I make an error with regard to my job as a trier of law,  
14 if I let into evidence what shouldn't come in or vice versa  
15 or if I charge the law in an inappropriate way quite often  
16 those errors can be corrected very easily; but one thing you  
17 need to understand is if there is ever an error in the  
18 findings of fact quite often those never can be corrected.  
19 So that is why it is important for you to pay very close  
20 attention as this case proceeds because it is a very  
21 important matter.

22 You are participating in a time-tested system. You  
23 have taken a very solemn oath to listen to the evidence and  
24 apply it to the law. So pay very close attention. These  
25 are important matters.

OPENING BY MS. LINDER

45

1 I know that y'all probably have things that you would  
2 rather be doing this week, but I can promise you there is  
3 not anything more important than what you are doing here  
4 today. So pay very close attention and let's proceed  
5 forward with very serious minds.

6 Ms. Linder, you are recognized.

7 MS. LINDER: Thank you, Your Honor. May it please the  
8 court.

9 THE COURT: Yes.

10 **OPENING BY MS. LINDER:**

11 Good morning, ladies and gentlemen. The case that you  
12 are going to be listening to today and maybe into tomorrow  
13 is a fairly simple and straightforward one. Drugs are  
14 illegal. It is illegal to possess drugs. It is illegal to  
15 possess drugs with the intent to distribute. And it is  
16 illegal to distribute drugs. In the State of South Carolina  
17 cocaine base, also known as crack, is considered a drug.  
18 That is why we are all here because back on June the 13th of  
19 2014 this defendant, Vanessa Frayer, distributing cocaine  
20 base crack here in Charleston County.

21 You are going to hear from a bunch of people on the  
22 stand about this case. And you will hear that back on June  
23 13th of 2014 the City of Charleston Police Department used  
24 their narcotics unit. They had developed a confidential  
25 informant. He was wired up with audio and video equipment.

1 And he went into an area to purchase drugs. He ended up  
2 purchasing drugs from this defendant, Vanessa Frayer.

3 All that was on audio and video. Those drugs were  
4 later tested by the lab and indeed came back as cocaine base  
5 crack. Very simple and straightforward.

6 I would ask that you pay close attention over the next  
7 day or day-and-a-half. And at the end I will address you  
8 again and ask you to render a verdict of guilty for Vanessa  
9 Frayer for distribution of cocaine base. Thank you.

10 THE COURT: Mr. King, you are recognized.

11 MR. KING: Thank you, Your Honor. May it please the  
12 court.

13 **OPENING BY MR. KING:**

14 This is something that the police were in control of.  
15 There is going to be a video in this case. Most of the time  
16 in criminal cases there are videos, maybe a surveillance  
17 video that is going to capture whatever it happens to  
18 capture. If there is a robbery in the street and there is  
19 City surveillance, if there is some sort of robbery in a  
20 store and there are surveillance cameras, it captures what  
21 it can capture and they show you what they can show.

22 Well, the difference in this case is that the police  
23 are in complete control of this. This is something that  
24 they tried to set up.

25 They equipped this informant with sophisticated audio

1 and video equipment and they said they are not going to be  
2 monitoring this.

3 So the police are in control of this, and if the State  
4 is asking you to convict someone when they are in control  
5 then there should really be no doubt. There should really  
6 be no speculation about what is going on in the video. And  
7 it is not clear.

8 What you would expect to see is a video of Ms. Frayer  
9 putting drugs in this informant's hand and the informant  
10 putting money in her hand.

11 They would mark the money. They would take and  
12 photocopy it and then take the serial numbers down. You  
13 know, they should be able to show you that she was in  
14 possession of that money that was marked. And they are not  
15 going to be able to show you that she was in possession of  
16 any money.

17 And they are dealing with confidential informants which  
18 can be kind of a dirty business because you are dealing with  
19 people, not police officers, not people who are trained or  
20 anything but just people who go out on the street and then  
21 they try to get them to bring back drugs.

22 This guy that you are going to hear from gets paid  
23 every time he brings something back for the police. And he  
24 may have some credibility problems that you may hear about.

25 Ms. Frayer was not arrested that day, so they can't say

1 that they arrested her and they found this marked money in  
2 her pocket. They didn't arrest her as long as three months  
3 later.

4 So as the judge told you, the burden of proof in this  
5 criminal case is very high. It is the highest burden we  
6 have in our court system. And we must hold them to this  
7 burden, and that is what we ask you to do.

8 THE COURT: Thank you, Mr. King. Mr. Linder, you are  
9 recognized and you may call your first witness.

10 MS. LINDER: Thank you, Your Honor. The State called  
11 Patrick Gill.

12 THE CLERK: This way, sir. Up here, please.

13 THE COURT: Please follow the clerk's instruction. I  
14 am going to ask you to place your left hand on the Bible and  
15 raise your right hand as the clerk administers the oath.

16 (WHEREUPON, the witness was duly sworn.)

17 THE COURT: Have a seat in the witness chair. Pull up  
18 real close to that microphone. I am going to ask that you  
19 speak loudly, clearly, and slowly in order that we can hear  
20 everything that you have to say. And let's start with your  
21 full name, please, sir.

22 MR. GILL: Patrick Gill.

23 THE COURT: Very good.

24 Ms. Linder.

25 MS. LINDER: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MS. LINDER OF PATRICK GILL:

2 Q. Good morning. Can you please tell the jury what is  
3 your occupation.

4 A. I'm a narcotics detective with the City of Charleston  
5 Police Department.

6 Q. And what do your duties include with narcotics?

7 A. On day-to-day we investigate narcotic complaints or we  
8 either have proactive narcotics duties where CI's give us  
9 information or we have complaints in certain areas and we  
10 seek out local to mid-range to high-level drug dealers on a  
11 day-to-day.

12 Q. And how long have you been employed by the City?

13 A. Six-and-a-half years.

14 Q. Can you tell the jury a little bit about your  
15 education, your training, your experience.

16 A. I graduated from the Citadel. I have a bachelor's in  
17 criminal justice. I went to the South Carolina Criminal  
18 Justice Academy. Like I said, I have been a cop for about  
19 six-and-a-half years. I have been with the narcotics unit  
20 for about three years now.

21 Probably have over 100 hours of training in reference  
22 to surveillance, CI work, interviewing people, narcotics  
23 investigation, narcotics work, just to name a few.

24 Q. And were you working on June the 13th of 2014?

25 A. I was.

1 Q. Did you have the occasion to become involved in the  
2 investigation of this case, the State versus Vanessa Frayer  
3 in any way?

4 A. Yes, I was.

5 Q. And how did you become involved in that?

6 A. When we all have -- whoever is available at the day or  
7 the time of the buy, a controlled buy, we send out  
8 communication with each other and we all show up for safety  
9 reasons for either the informant or other officers and we  
10 have a briefing with the control -- with the case agent.

11 Q. So you are a part of the team so to speak?

12 A. Yes.

13 Q. And you said a controlled buy was done. Can you  
14 explain to the jury what a controlled buy is?

15 A. A controlled buy is one of two things. Either it is an  
16 undercover officer or it is a confidential informant. But  
17 when we do it for this case it was a confidential informant.

18 A controlled buy is when the case agent has a  
19 confidential informant and we give them a prerecorded sum of  
20 narcotics money. We wire them up. We search them. We give  
21 a briefing to the team. We make sure our patrol uniform  
22 officers are there. And we give a complete briefing of what  
23 is supposed to happen during the controlled buy.

24 Q. So you can use a UC, or undercover police officer, or a  
25 CI. Is the buy always done the same way; or are there two

1 different types of buy, how to finish up the buy?

2 A. There's a couple ways of doing it. There's either a  
3 buy-bust or a buy-walk. Lots of time for officer safety  
4 reasons and confidential informant reasons and safety  
5 reasons we do a lot of buy-walks.

6 Q. What is that; what is a buy-walk?

7 A. It is kind of exactly as it sounds. A buy-walk is  
8 essentially when we do a briefing we get the CI wired up  
9 with our equipment and we give them the pre-recorded money.  
10 And that is our money.

11 And after he is searched and we are all briefed we go  
12 to a predetermined area where we are doing the buy; and the  
13 CI walks in, does a controlled purchase and walks back out  
14 either to where the case agent is or whoever is assigned to  
15 pick up the confidential informant. And we kind of let our  
16 money and we do an investigational off of that.

17 Q. And what is the other kind of -- instead of a buy-walk  
18 what else can you do?

19 A. A buy-bust would be almost the same thing but as soon  
20 as the purchase is completed we go and arrest the  
21 individual. But it hurts the investigation and we are not  
22 allowed to fully investigate and it kind of puts in danger a  
23 lot of officers and the confidential informant.

24 Q. And back on June the 13th of 2014 where did this buy  
25 happen?

1 A. In the area of Poinsett Street at the dead end area.

2 Q. And is that Charleston County?

3 A. Yes.

4 Q. When -- when this buy was getting set up back on June  
5 the 13th how did you first get involved they day?

6 A. That day we go to work. Usually sometimes we  
7 communicate via text message through our work cell phones or  
8 the case agent talks to us. We all have to share an office.  
9 He communicates what time we have a briefing, what time he  
10 plans on doing a buy, when the CI is going to be there.

11 So you usually have pre-determined location where we  
12 all meet after we have an established time. Once we all  
13 show up here ---

14 Q. What happens at the briefing?

15 A. Once we all show up at the briefing the case agent will  
16 search the CI. He will wire up our equipment and make sure  
17 he doesn't have any extra money, give him our money, like  
18 our pre-recorded narcotics money.

19 He will then make sure a patrol officer is there so we  
20 have a uniform presence. And then he will brief everybody  
21 what their roles and duties are for that operation.

22 Q. And what are different roles and duties or safety  
23 precautions that the -- that the unit takes -- I can't  
24 speak. That the unit does in these buys?

25 A. The case agent and one other person is usually the

1 person that handles this confidential informant. If the  
2 confidential informant ever, you know, asked for help or  
3 feels unsafe the case agent and one other detective at the  
4 time it is determine -- you know, it could be anybody as  
5 part of our unit. They will take care of the confidential  
6 informant, make sure he is driven in, make sure he is safe.

7 Certain people -- other detectives are used for  
8 surveillance so we can watch either a house or the target or  
9 the confidential informant so we don't lose sight.

10 We have a live-time wire that we can listen to so we  
11 can hear everything in real time. So we are all listening  
12 to that at the same time. And we have a supervisor that  
13 overseas for safety. And then we have patrol that sits out  
14 of the area just in case anything goes bad and we need a  
15 uniform presence.

16 Q. And you described that the CI gets searched. Can you  
17 describe the CI search?

18 A. It is usually done by the case agent. It can be -- or  
19 it can be assigned by the case agent. But it is essential  
20 the CI shows up and his outer garments or shirts, his mouth  
21 if he is wearing a hat, all of his pockets, his shoes, his  
22 socks.

23 And it is that for two reasons. One to make sure he  
24 doesn't have any weapons for his safety, our safety; and so  
25 we don't think he is going to do anything to a target or

1 whoever he is trying to buy drugs from or make sure he does  
2 have not other drugs on him and that the drugs that he will  
3 have on him is done -- is gotten from the target that we set  
4 out to, and that he has no money on him. So he only has our  
5 money, so he is not purchasing money (sic) with his money;  
6 it is from our narcotics. And it is done before and after  
7 each controlled purchase.

8 Q. And now you had mentioned that there is a real-time  
9 audio feed. Is he wired up with anything else, the CI, the  
10 confidential informant?

11 A. The real-time audio feed is kind of just like a cell  
12 phone. We can just listen to it. It's, you know, cell  
13 phone like a phone conversation and multiple people can  
14 listen to it, so we can always hear everything.

15 And then there is also a camera that is put on the --  
16 it is like a first-person view on the person and we will see  
17 everything he sees and where he goes. And that is always  
18 recording. It records audio and video.

19 Q. And after everyone has their duties and the location is  
20 known, the CI is searched, what happens next?

21 A. When everything happens we will all leave the area.  
22 the patrol officer will leave to go to his area where he is  
23 supposed to go out of -- out of direct view.

24 All the other detectives under cover will go relatively  
25 close to the buy location. And the case agent and his -- so

1 whatever detective he chooses will drive the CI into that  
2 area and drop him off and make sure all of the equipment is  
3 on him and everything is ready to go.

4 Q. And how did that go in this case after the CI was  
5 dropped off?

6 A. After the CI was dropped off we all listened to the  
7 wire. And the CI was dropped off about a block out of the  
8 area so -- just for safety reasons so the target doesn't see  
9 you getting in and out of the vehicle.

10 The target went down I believe it like Romney and  
11 Athens. He cut through a little cut. It is like just  
12 abandoned property. And it goes right to Poinsett Street.  
13 And he went down it, Poinsett Street.

14 Q. And did the CI make a buy in this case?

15 A. Yes.

16 Q. And what happened after the buy?

17 A. After the buy the CI disengages from the target, walks  
18 back to a predetermined location where ever again the case  
19 agent decides it is safest to meet. And he will get picked  
20 up by the case agent and we will go to our predetermined  
21 location where we all can meet up again.

22 Q. And when the CI meets at that location for the  
23 debriefing does the CI do anymore paperwork or anything like  
24 that?

25 A. Once we get back to the station location where all the

1 other detectives show up where the case agent will take the  
2 drugs from the CI that he just purchased, we will research  
3 the CI and make sure he is not trying to take any of our  
4 money or there's no extra drugs. Make sure nothing else is  
5 on him, again. And then he will write a written statement  
6 with the case agent.

7 MS. LINDER: Your Honor, may approach?

8 THE COURT: Yes.

9 Q. At this time I am going to show you what has been  
10 marked as State's Exhibit 3. If you could look at that. Do  
11 you recognize it?

12 A. Yes.

13 Q. How do you recognize it?

14 A. It looks like an aerial view of the area where we did  
15 the buy and the two streets I just described.

16 Q. And is that a fair an accurate representation of that  
17 area?

18 A. Yes.

19 MS. LINDER: I would seek to have State's Exhibit 3  
20 admitted.

21 THE COURT: Any objection from defense?

22 MS. LINDER: No, Your Honor.

23 THE COURT: It is into evidence as State's exhibit and  
24 it is denominated as State's Exhibit ...?

25 MS. LINDER: Three.

1 THE COURT: Three is into evidence.  
2 (WHEREUPON, State's Exhibit Number 3 was admitted into  
3 evidence.)  
4 Q. And I am going to ask if you would look at the screen  
5 in front of you. It is also behind you and over here  
6 (pointing). But it is a touch screen in front of you.  
7 Okay. Can you show on this map -- can you tell the  
8 jury what this map is showing?  
9 A. This map is showing the aerial view of the two streets  
10 just described and the main street where the target was and  
11 where the CI went to to make a controlled purchase.  
12 Q. And can you using your finger on the screen kind of  
13 show the jury everything.  
14 A. This is -- I know this is Poinsett Street down here  
15 (pointing). This is Romney Street up top (pointing). This  
16 would be Athens Court (pointing). And this would be the cut  
17 (pointing).  
18 The CI went down Romney Street, walked down through  
19 Athens Court to the cut and then back towards the dead end  
20 of Romney Street back this way (pointing) where I just put  
21 that "X". And that is where he made the controlled purchase  
22 from the target.  
23 Q. And Detective Gill, do you know Vanessa Frayer; do you  
24 recognize her in the courtroom?  
25 A. I do

1 Q. And what is she wearing?

2 A. She is wearing all black. She is sitting at that table  
3 over there next to Mr. King.

4 MS. LINDER: Beg the court's indulgence.

5 No further questions. If you could please answer  
6 anything Mr. King may have.

7 THE COURT: Cross-examination, Mr. King.

8 **CROSS-EXAMINATION BY MR. KING OF OFFICER GILL:**

9 Q. Good morning. Did you write a report in this case?

10 A. I don't believe I did. I was just -- I wasn't the case  
11 agent.

12 Q. You have testified about informants, confidential  
13 informants?

14 A. Correct.

15 Q. And the experience you have had in narcotics and  
16 dealing with informants?

17 A. Correct.

18 Q. You have had a good deal of experience with that?

19 A. Yes.

20 Q. Informants, they are not police officers; right?

21 A. Correct.

22 Q. There are occasions where undercover police officers  
23 are used in these operations, right?

24 A. Yes.

25 Q. But in this case it was an informant? They are not

1 trained or anything, right, other than maybe some briefing  
2 that you give them?

3 A. Correct.

4 Q. And you are kind of dealing with I guess maybe kind of  
5 a dirty business, you're kind of -- you have kind of got to  
6 deal with some unsavory people in that job; is that right,  
7 when you are dealing with informants sometimes?

8 A. I mean they are your words. I don't believe that they  
9 are unsavory or ---

10 Q. Well ---

11 A. It is a dirty job.

12 Q. What I mean is you deal -- when you try to get an  
13 informant you normally don't get -- you are dealing with  
14 someone who may have a criminal record, right?

15 A. They can, yes.

16 Q. Often drug addicts themselves?

17 A. I'm sure they could be, but they could not be as well.

18 Q. But you're looking for that type of person who could go  
19 in and pull this stuff off, right?

20 A. Yes.

21 Q. So informants you have dealt with in general you have  
22 dealt with some who have criminal records you said?

23 A. I have dealt with some with criminal records and with  
24 no criminal records. I have dealt with both.

25 Q. And you treat the informants different than police,

1 undercover officers?

2 A. In what aspect?

3 Q. Well, you don't -- you don't really trust the  
4 informants; right?

5 A. I don't really know how to answer that. I mean how are  
6 you talking about trust? I mean we, yeah, we search them  
7 and stuff. So yes, we are not going to take an informant's  
8 word that they don't have any drugs. But that is for to  
9 make sure our investigation is done properly.

10 Q. Right. Right. You said you make them sign some  
11 paperwork right when they become an informant?

12 A. They have to sign paper- -- I didn't say that; but yes,  
13 they do have to sign paperwork when they become an  
14 informant.

15 Q. Promising not to get in any trouble, things like that;  
16 there are promises that they have to agree to?

17 A. There's a list of rules. I believe there's five or six  
18 roughly outlined. It's the rough rules, correct.

19 Q. I guess that's if someone violates those rules they  
20 would -- you know, they could be terminated as an informant  
21 and you wouldn't want to deal with them anymore?

22 A. They could be terminated depending on how or what rule  
23 they broke, yes.

24 Q. So in addition to making them sign these promises you  
25 search them before you send these informants out, right?

1 A. Yes, we search them before every controlled buy and  
2 after every controlled buy.

3 Q. And you said that was for to make sure they don't have  
4 any weapons?

5 A. Correct.

6 Q. And to make sure they don't have any drugs already on  
7 them?

8 A. Correct.

9 Q. And to make sure that they don't have any money already  
10 on them?

11 A. Correct.

12 Q. And that's because you said because you don't trust  
13 them 100 percent to just take their word for it that they  
14 may have nothing on them?

15 A. You said that. I said we do it to help our  
16 investigation to make sure our investigation is done  
17 properly.

18 Q. And a big part of what you do is writing reports as a  
19 police officer, right?

20 A. Yes.

21 Q. You document -- try to document whatever you can?

22 A. Yes.

23 Q. But you didn't document anything in this case?

24 A. I wasn't the case agent. There was no need for me to  
25 write a report being a surveillance and listening to the

1 wire.

2 Q. Is the case agent normally the only person who writes a  
3 report in criminal cases?

4 A. It doesn't -- it depends. It depends on what the case  
5 is, what other officers saw. There are certain times where  
6 officers can observe things that the case agent didn't see  
7 or confirm what a CI did or didn't do or what a CI did see  
8 or didn't see.

9 Q. And in this case you didn't actually -- you weren't  
10 present in this house on this video; you didn't actually  
11 personally observe anything that happened; is that right?

12 A. Correct.

13 MR. KING: That's all the questions I have, Your Honor.

14 THE COURT: Any redirect, Ms. Linder?

15 MS. LINDER: No, Your Honor.

16 THE COURT: You may step down. Any objection to this  
17 witness being excused?

18 MS. LINDER: None from the State.

19 THE COURT: Mr. King?

20 MR. KING: No. I might excuse this witness, Your  
21 Honor.

22 THE COURT: You are free to leave. Thank you, sir.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: You may call your next witness.

25 MS. LINDER: Your Honor, there is a State matter that I

1 discussed with you before we started the trial.

2 THE COURT: Okay. Very good. All right. We are going  
3 to recess until 1:30, 1:30 sharp. Once again, do not  
4 discuss this case amongst yourselves or with anyone else.

5 There is not anything in the world that you can't look  
6 up on the Google nowadays. And don't look up any of the --  
7 any of the personalities here. Don't look at doing any  
8 investigation about anything.

9 Everything that you need to know about this case you  
10 are going to hear in this courtroom straight from the  
11 horse's mouth. So don't look up any law. Don't look  
12 through any independent investigations.

13 Some of y'all might be familiar with this area that we  
14 are talking about. Don't go by and look at it and do any  
15 independent investigation in that regard.

16 I am going to ask that you be back at 1:30, 1:30 sharp.  
17 And I am going to ask that everyone remains seated as the  
18 jury exists the courtroom.

19 (WHEREUPON, jury exits courtroom 8/12/15, 11:35 a.m.)

20 THE COURT: Anything from the State before we recess?

21 MS. LINDER: Nothing from the State, Judge.

22 THE COURT: Anything from the defense?

23 MR. KING: Your Honor, it may be an appropriate time to  
24 ask if Ms. Frayer may remain out on a bond during the rest  
25 of this trial after we break. I think she was in the wrong

1 courtroom this morning.

2 I was a little worried this morning, but she has always  
3 appeared. When she has had to appear, she appears. She  
4 showed up for a status conference. She did show up today.

5 THE COURT: Any objection from the State?

6 MS. LINDER: Your Honor, I would request that she be  
7 taken in. She hasn't initially made all appointments with  
8 Mr. King. She was late today. She is on probation.  
9 She's -- I mean she has a lot of things -- a lot of moving  
10 parts right here.

11 THE COURT: Well, I'm going to allow her to remain out  
12 on bond.

13 However, you understand that if you don't show up  
14 the trial is going on -- going on without you; do you  
15 understand that?

16 MS. FRAYER: Yes, sir.

17 THE COURT: And do you also understand that you will be  
18 subjected to an additional criminal prosecution for failure  
19 to appear; do you understand that?

20 MS. FRAYER: Yes, sir.

21 THE COURT: Will you show back up at 1:30?

22 MS. FRAYER: Yes, sir.

23 THE COURT: Will you be 15 minutes early?

24 MS. FRAYER: Yes, sir.

25 THE COURT: All right. Very good. I will allow you to

1 remain on bond.

2 MR. KING: Thank you, Your Honor.

3 THE COURT: We will stand at ease.

4 (WHEREUPON, recess for lunch 8/12/15, 11:38 a.m.)

5 (WHEREUPON, resumed trial 8/12/15, 1:31 p.m.)

6 THE COURT: Anything from the State before we bring the  
7 jury out?

8 MS. LINDER: Your Honor, I just wanted to put on the  
9 record that over lunch Blake -- Blake. Over the lunch break  
10 Mr. King reviewed the video input. We wrote down the areas  
11 he thought should be muted.

12 We actually all went up in his office together, went  
13 through it, every single part of it; and we agree that 7:45  
14 to 12:15 needs to be muted; 13:50 to 14:04; 14:56 to 15:02;  
15 and 15:21 to 15:32. Those are all the times that need to be  
16 muted. We have watched it together and we are in agreement  
17 with all of those items.

18 THE COURT: I like all of the togetherness and  
19 cooperativeness. I like that.

20 MR. KING: I do agree, Judge, just preserving you have  
21 overruled one objection when the CI is making the phone call  
22 back and we are again just ---

23 THE COURT: Okay. And you have said it on the record.

24 MR. KING: Just preserve that on the record, Judge.

25 THE COURT: Very good.

1 MR. KING: One more. I just have to apologize, Judge.  
2 Said on the record, of the next witness. The next experts  
3 we have a little dispute over what part of the record may  
4 come in.

5 THE COURT: Okay.

6 MR. KING: Specifically possession of cocaine base,  
7 three convictions for possession of cocaine base. And I am  
8 arguing that they come in under Rule 609-1. Because it  
9 carries over a year.

10 And I believe according to the rule if it is not the  
11 accused, if it is not the defendant, then the State would  
12 have to argue that the probative value of convictions are  
13 outweighed by the unfair prejudice under 403 analysis.

14 THE COURT: Right. What does the State have to say  
15 about that? And this is whose record?

16 MS. LINDER: The confidential informant.

17 THE COURT: Okay.

18 MS. LINDER: And, Your Honor, we did discuss the  
19 record. And he has a number of impeachment type items as  
20 far as dishonesty in the past ten years; and we agreed on  
21 all of those magistrate ones that come in.

22 I would just request that the possession of cocaine  
23 base don't come in as they were all years before this. He  
24 has not been charged or anything.

25 THE COURT: How long -- how long ago?

1 MS. LINDER: The last conviction was two years -- a  
2 little more than two years before this occurred -- or this  
3 buy occurred. THE COURT: Okay. That is certainly within  
4 the ten-year framework. I am going to allow those in. And  
5 everybody knows that, you know, a confidential informant we  
6 all know that they have difficult backgrounds.

7 I think it is important for the jury to hear that. And  
8 they will give it whatever weight they think is appropriate.

9 Anything else from anybody?

10 MS. LINDER: Nothing from the State.

11 MR. KING: Thank you.

12 THE COURT: We are ready for the jury.

13 (WHEREUPON, jury enters courtroom 8/12/15, 1:38 p.m.)

14 THE COURT: Mr. Foreman, ladies and gentlemen of the  
15 jury, thank you for being here and being here on time. Once  
16 again I ask that you pay very close attention.

17 The State, you are recognized. Ms. Linder.

18 MS. LINDER: Thank you, Your Honor. May it please the  
19 court. The State calls Christopher Singleton.

20 THE COURT: Mr. Singleton, if you could please come  
21 over here. The clerk will direct you around. I am going to  
22 ask that you place your left hand on the Bible and raise  
23 your right hand as the clerk administers the oath.

24 (WHEREUPON, the witness was duly sworn.)

25 THE COURT: I am going to ask you if you could to have

1 a seat in the witness chair. Pull up real close to that  
2 microphone. Speak loudly, clearly, and slowly in order that  
3 we can hear everything that you have to say. And let's  
4 start with your full name, please, sir.

5 THE WITNESS: Christopher B. Singleton.

6 THE COURT: Thank you, Mr. Singleton.

7 Ms. Linder, you are recognized.

8 **DIRECT EXAMINATION BY MS. LINDER OF CHRISTOPHER SINGLETON:**

9 Q. Good afternoon, Mr. Singleton.

10 A. Yes, sir.

11 Q. Can you tell the jury a little bit about yourself.

12 Where are you from?

13 A. Charleston, South Carolina.

14 Q. And how far did you go in school?

15 A. Finished.

16 Q. Finished ...?

17 A. High school.

18 Q. High school?

19 A. Yes, ma'am.

20 Q. Have you done any college?

21 A. Trident Tech.

22 Q. Trident Tech. Have you ever served in the military?

23 A. Yes, ma'am.

24 Q. And are you currently in the military?

25 A. No, out. No, ma'am, out.

- 1 Q. You are out?
- 2 A. Yes, ma'am.
- 3 Q. Do you receive any disability from the VA?
- 4 A. Yes, ma'am.
- 5 Q. Have you ever cooperated with law enforcement before?
- 6 A. Yes, ma'am.
- 7 Q. Have you cooperated with the City of Charleston Police
- 8 Department before?
- 9 A. Yes, ma'am.
- 10 Q. Do you currently have any pending criminal charges?
- 11 A. No, ma'am.
- 12 Q. Did you have pending criminal charges when you first
- 13 started working with law enforcement?
- 14 A. No, ma'am.
- 15 Q. Were you paid by law-enforcement for your work?
- 16 A. No, ma'am.
- 17 Q. Were they -- did they give you money for your time?
- 18 MR. KING: Your Honor, I object to leading.
- 19 THE COURT: I will allow her to ask. That is a good
- 20 question.
- 21 Q. Did they pay you money for when you did work?
- 22 A. Yes.
- 23 Q. And do you know why you are here today?
- 24 A. Yes, ma'am.
- 25 Q. And what have I told you is the most important thing

1 about you being here today?

2 A. To be honest.

3 Q. You working with the City of Charleston back on June  
4 the 13th of 2014?

5 A. Yes, ma'am.

6 Q. And who was your contact person; who was your person at  
7 the City if you wanted to talk to someone?

8 A. Officer Engles.

9 Q. And is he in the courtroom?

10 A. Yes, ma'am.

11 Q. Can you point him out to the jury?

12 A. Right there (pointing).

13 Q. And did you buy drugs back on January -- I'm sorry,  
14 June the 13th of 2012 while you were working for the City?

15 A. Yes, ma'am.

16 Q. And how much and what type of drugs?

17 A. I spent \$60. I was supposed to get a 60, but it didn't  
18 look like a 60.

19 Q. A 60 of what?

20 A. Crack cocaine.

21 Q. Where did you buy it?

22 A. On -- I forget the street name. It is by Food Lion  
23 back in there.

24 Q. Is that West Ashley, Downtown; where is that?

25 A. Downtown.

1 Q. And do you know the person you bought it from?

2 A. Yes, ma'am.

3 Q. Is she in the courtroom?

4 A. Yes, ma'am.

5 Q. What is she wearing?

6 A. Black. All black.

7 Q. Where is she sitting?

8 A. Right there over there (pointing).

9 MS. LINDER: Judge, I would like the record to reflect  
10 that the defendant pointed at the CI. Mr. Singleton pointed  
11 out the defendant.

12 THE COURT: Very good.

13 Q. Okay. We are going to get into specifics about that  
14 actual day, okay. What happened when you first met with  
15 Engles that day; what did he do?

16 A. He talked to me. You know, normal routine and all  
17 that.

18 Q. What is the normal routine?

19 A. Well, do what we've got to do on your up day. And I  
20 mean I went down Romney Street. I walked around the corner.

21 Q. Before you went to do the buy ---

22 A. Yes, ma'am.

23 Q. --- did you meet with him and just talk about what was  
24 about to happen?

25 A. Yes, ma'am. Yes, ma'am.

1 Q. Okay. And when you talked to him did he -- did he  
2 search you?

3 A. Yes, ma'am.

4 Q. And can you tell me how was his search; was it just  
5 like an occasional pat-down, or what was his search like?

6 A. He searched, fully searched you; pockets, wallet,  
7 everything on you. Take your shoes off. And he had another  
8 officer, you know, go behind and check me again.

9 Q. All right. And did they find ---

10 A. No.

11 Q. --- anything bad on you?

12 A. No, ma'am. No, ma'am.

13 Q. And was this done before the buy or after the buy?

14 A. Before the buy and after when you come back.

15 Q. All right. Did he just kind of let you out or did he  
16 give you anything to make the buy?

17 A. Yeah, he did.

18 Q. What did he give you?

19 A. He gave me the money to make the buy.

20 Q. Did you have any of your money on you?

21 A. No, ma'am. He did not allow me to have money on me.

22 Q. Did he put anywhere equipment on you at all ---

23 A. Yes, ma'am.

24 Q. --- before -- what did -- what did he put on you as far  
25 as your understanding goes?

1 A. A camera.

2 Q. A camera?

3 A. Yes, ma'am.

4 Q. And when you were meeting with Engles -- take that  
5 back. When you -- the camera was on you?

6 A. Yes, ma'am.

7 Q. Have you ever watched a video in my office?

8 A. Yes, ma'am.

9 MS. LINDER: And, Your Honor, if I may approach.

10 THE COURT: You may.

11 Q. At this time I show you what's been marked as State's  
12 Exhibit 1 as evidence.

13 A. Yes, ma'am.

14 Q. Do you can recognize it?

15 A. Yes, ma'am.

16 Q. How do you recognize it?

17 A. My initials.

18 Q. Your initials. And is this the video we watched  
19 together in my office?

20 A. Yes, ma'am.

21 Q. And by initialing it and here today is this a fair and  
22 accurate representation of what happened back on June the  
23 13th of 2014?

24 A. Yes, ma'am, accurate.

25 MS. LINDER: Your Honor, at this time the State would

1 seek to exhibit -- State's Exhibit 1 into evidence and  
2 publish it for the jury.

3 THE COURT: Any objection from the defense?

4 MR. KING: Just the objections made before trial,  
5 Judge.

6 THE COURT: Okay. Very good. You are protected on the  
7 record. But it is admitted over your objection. And that  
8 is denominated as State's Exhibit ...?

9 MS. LINDER: State's Exhibit 1, Your Honor.

10 THE COURT: State's Exhibit 1 is into evidence.  
11 (WHEREUPON, State's Exhibit 1 was admitted into evidence.)

12 Q. All right. And I am going to actually play this right  
13 now.

14 A. Yes, ma'am.

15 Q. So I am going to sit down. It is going to come up on  
16 the screen in front of you.

17 A. Yes, ma'am.

18 Q. That screen behind you is pretty clear. And then it is  
19 also going to be over here. So we are just going to kind of  
20 sit quietly. And the clerk is probably going to dim the  
21 lights a little bit so it is easier to see. And I will get  
22 up and address you again after we watch it, okay?

23 A. Yes, ma'am.

24 (WHEREUPON, video played 1:46 p.m.)

25 MS. LINDER: I would like to go through a little bit of

1 what was on the video with you.

2 A. Yes, ma'am.

3 Q. On the video kept hearing things like on Athens, next  
4 street over, dead end. What does all that mean; what are  
5 you saying?

6 A. Because I am saying things -- letting him know where I  
7 am going at.

8 Q. Let who know?

9 A. Officer Engles.

10 Q. And why are you telling him where you are going?

11 A. Because I let him know where I am going at in case any  
12 trouble had come up. Any trouble.

13 Q. All right. And in the house when you say I need 60  
14 what are you talking about?

15 A. Sixty dollars worth of crack.

16 Q. Worth of crack?

17 A. Yes, ma'am.

18 Q. And you are told in the video to go over there, go over  
19 there; and then you said yes, ma'am, yes, ma'am. Who is  
20 telling you to go over?

21 A. The lady of the house telling me to go over -- move  
22 over there, move over there.

23 Q. And in there you hear a female voice talk about \$60 and  
24 \$60. Who is that female who is saying that?

25 A. The lady in the courtroom.

- 1 Q. The lady in the courtroom?
- 2 A. Yes, ma'am.
- 3 Q. And was she standing or sitting?
- 4 A. Sitting.
- 5 Q. She was sitting. And if I'm not getting this right  
6 tell me, but it sounded like you were talking and you said  
7 I'm acting like I'm talking to Mamma. What does that mean?
- 8 A. I am talking to Officer Engles.
- 9 Q. Why would you say Mamma?
- 10 A. That's the way I talk.
- 11 Q. That is the way you talk?
- 12 A. Yes, ma'am.
- 13 Q. You want people to think you are talking to your mama?
- 14 A. Yeah.
- 15 Q. And again, why are you talking to Engles on the phone?
- 16 A. Because he will know where I'm -- my movement, my  
17 awareness, where I'm going at, and where I'm coming from.
- 18 Q. So when you ordered up the 60 who did you order from?
- 19 A. The young lady in the courtroom.
- 20 Q. And that lady sitting down on the video, who is that?
- 21 A. The young lady sitting in the courtroom.
- 22 Q. After you got back with Engles kind of where the video  
23 cut off ---
- 24 A. Yes, ma'am.
- 25 Q. --- when you were back with him ---

- 1 A. Yes, ma'am.
- 2 Q. --- and what did you do with the drugs that you  
3 purchased?
- 4 A. I handed it to him.
- 5 Q. And was it \$60 worth?
- 6 A. It didn't look like \$60. But that is what I paid for.
- 7 Q. Okay. And you handed it to Engles. And did you do  
8 anything else; did you have to give him any change from the  
9 money he gave you?
- 10 A. No, I gave all -- gave the whole \$60 out.
- 11 Q. Did you -- who took off the video equipment?
- 12 A. Engles and his partner.
- 13 Q. And did you get searched again?
- 14 A. Yes, ma'am.
- 15 Q. And what was that search like; how did they do that  
16 search?
- 17 A. The same way he searched me when I get to him, the same  
18 way he took me back and searched me again. Foot, hand,  
19 hands, everything; up shirt.
- 20 Q. And when you met with Engles did you -- did you write a  
21 statement?
- 22 A. Yes, ma'am.
- 23 Q. And what was -- why did you write the statement?
- 24 A. That is the rules you have got to write the statement  
25 with everything you do.

1 Q. And you wrote a statement for law enforcement that day?

2 A. Yes, ma'am.

3 MS. LINDER: Beg the court's indulgence.

4 Q. Have you ever been in trouble with the law before?

5 A. Yeah, a while back.

6 Q. Have you been convicted of some property crimes of

7 receiving stolen goods, ---

8 A. Yes, ma'am.

9 Q. --- bad checks?

10 A. Yes, ma'am.

11 Q. Have you ever been convicted ---

12 A. Yes, ma'am.

13 Q. --- a couple of years ago about possession of cocaine

14 base?

15 A. Yes, ma'am.

16 Q. Have you been clean?

17 A. Yes, ma'am.

18 Q. Life has been good?

19 A. Yes, ma'am. For years.

20 MS. LINDER: Please answer anything the defense may

21 have.

22 MR. KING: Yes, ma'am.

23 THE COURT: Yes, sir, you are recognized.

24 MR. KING: Thank you, Your Honor.

25 THE COURT: Mr. King.

1 CROSS-EXAMINATION BY MR. KING OF CHRISTOPHER SINGLETON:

2 Q. Mr. Singleton.

3 A. Yes, ma'am.

4 Q. Good afternoon. I just want to ask you a few  
5 questions.

6 A. Yes, sir.

7 Q. Back during this timeframe you said -- you are on  
8 disability. Were you working anywhere?

9 A. Yes.

10 Q. Where did you work?

11 A. I worked for roofing part-time, yard man.

12 Q. Did you also get disability?

13 A. No, I didn't get it right then.

14 Q. Part-time as a roofer?

15 A. Yes, ma'am -- yes, sir.

16 Q. Did you make money doing that?

17 A. No, they had me as the yard man just cleaning up.

18 Q. Do you have kids?

19 A. Yeah.

20 Q. Did you have any children to support back then?

21 A. No, because my kids are grown up now.

22 Q. So at some point back in 2014 you decided to enter a  
23 new career path and become an informant; how does that come  
24 about?

25 A. Not really, no. Met up because my brother had issues

1 seven times and then I figured I have got to clean myself  
2 up. And then I talk -- I met up with Officer Engles and one  
3 of his friends. We got together. And that's how it  
4 happened.

5 Q. Was it your idea?

6 A. Both of us idea. Not mine. Not.

7 Q. So May 29th, 2014, I think you signed some paperwork to  
8 kind of initiate you becoming an informant, right?

9 A. Yes.

10 Q. Code name Snakebite; ---

11 A. Yes.

12 Q. --- is that right?

13 A. Yes, sir, that's me.

14 Q. Did you come up with that one?

15 A. Yeah.

16 Q. Pretty cool name.

17 A. Yes, ma'am.

18 Q. Kind of vicious sounding though, right?

19 A. Yes, ma'am.

20 Q. Snakebite?

21 A. Yes, sir.

22 Q. You made money doing this, didn't you?

23 A. Yes, sir. Yes, sir.

24 Q. It looks like, if I am right on this, you did about 16  
25 times this sort of thing?

- 1 A. Yes, sir.
- 2 Q. And you got paid it look like maybe as low as \$40,  
3 sometimes \$60, \$80; right?
- 4 A. Yes, sir.
- 5 Q. And even as high as 150 one time?
- 6 A. Yes, sir.
- 7 Q. And do you think it is fair to say - I added it up -  
8 \$880?
- 9 A. Yes, sir.
- 10 Q. Between May 29th, 2014, ---
- 11 A. Yes, sir.
- 12 Q. --- and January 9th, 2015?
- 13 A. Yes, sir.
- 14 Q. And you stopped January 9th, 2015?
- 15 A. Yes, sir.
- 16 Q. Why did you stop?
- 17 A. Because I'm going to stop for a little while to stop  
18 doing it, because I was in the mental health court under  
19 Judge Currie.
- 20 Q. Okay.
- 21 A. Yes.
- 22 Q. So you made close to 1000 bucks?
- 23 A. Yes, sir.
- 24 Q. In about six months?
- 25 A. Yes, sir.

1 Q. Did you get any other benefits?

2 A. No, that is when my disability started kicking in.

3 That is why I slowed down.

4 Q. Your disability kicked in about the time you finished  
5 doing this?

6 A. Yes, sir. Yes, sir.

7 Q. So you had another income coming in at that point?

8 A. Yes, sir. Yes, sir.

9 Q. Because this could be a dangerous thing, right?

10 A. Yes, sir.

11 Q. It could be hazardous to your health?

12 A. Hazardous, yes, sir.

13 Q. So it is not something a lot of people might even want  
14 to do?

15 A. Yes, sir.

16 Q. You put yourself out there and people on the street?

17 A. Yes, sir.

18 Q. It could be dangerous. So when you were doing this you  
19 didn't have a lot of money coming in?

20 A. No, sir.

21 Q. But you didn't have to pay child support or anything  
22 like that?

23 A. No, my kids were grown.

24 Q. Grown?

25 A. Yes.

1 Q. You had to pay rent I guess; you have got to live  
2 somewhere?

3 A. Yes. Yes, sir.

4 Q. Food to eat?

5 A. Yes, sir.

6 Q. You weren't using it for drugs or anything?

7 A. No, no, I didn't buy any.

8 Q. Because drugs cost money.

9 A. Yes, sir.

10 Q. You said you met with the solicitor in preparation for  
11 this?

12 A. Yes, sir.

13 Q. And how many times did you meet with her?

14 A. One time.

15 Q. And she has told you to be honest?

16 A. Yes, she said be honest.

17 Q. But you have got a record with some dishonest things on  
18 it, right?

19 A. Yes, sir. Yes, sir.

20 Q. It was back in 2008 you had a conviction for possession  
21 of cocaine base, right?

22 A. Yes, sir.

23 Q. In 2008 six counts of fraudulent checks?

24 A. Yes, sir.

25 Q. 2009 possession of cocaine base?

- 1 A. Yes, sir.
- 2 Q. And then in 2009 shoplifting?
- 3 A. Yes, ma'am.
- 4 Q. You weren't being honest then, were you?
- 5 A. Yes, I was honest.
- 6 Q. When you committed the shoplifting?
- 7 A. Yes.
- 8 Q. That was honest?
- 9 A. Yes, spent my time.
- 10 Q. I mean when you were actually shoplifting, ---
- 11 A. Yeah.
- 12 Q. --- stealing?
- 13 A. Yeah.
- 14 Q. That is not honest, is it?
- 15 A. Yeah, I was using it when I was stealing.
- 16 Q. And you also got convicted of petty larceny in 2009,
- 17 another ---
- 18 A. Yes, sir.
- 19 Q. --- like stealing?
- 20 A. Yes, sir.
- 21 Q. And then in 2012 possession of cocaine base?
- 22 A. Yes, sir.
- 23 Q. And then in 2013 receiving stolen goods?
- 24 A. Yes, sir.
- 25 Q. And you weren't being honest then when you were

1 receiving the stolen goods?

2 A. Oh, no, but I get my time for it.

3 MR. KING: That's all the questions I have, Your Honor.

4 THE COURT: Any redirect?

5 MS. LINDER: No redirect, Your Honor.

6 THE COURT: All right. Any objection to this witness  
7 being excused from the defense?

8 MR. KING: No, Your Honor.

9 MS. LINDER: None from the State.

10 THE COURT: You are free to leave. Thank you, sir.

11 You may call your next witness.

12 MS. LINDER: The State calls Detective Sean Engles.

13 THE COURT: Yes, sir, if you could come forward and  
14 place your left hand on the Bible and raise your right hand  
15 as the clerk administers the oath.

16 (WHEREUPON, the witness was duly sworn.)

17 THE COURT: Have a seat in the witness chair. Pull up  
18 real close to that microphone. Speak loudly, clearly and  
19 slowly in order that we can hear everything that you have to  
20 say. And let's start with your full name, please, sir.

21 THE WITNESS: Sean Engles.

22 THE COURT: Say that again.

23 THE WITNESS: Sean Engles.

24 THE COURT: Spell that last one for us.

25 THE WITNESS: E-N-G-L-E-S.

1 THE COURT: Very good. Thank you. Yes, ma'am.

2 MS. LINDER: Thank you, Your Honor.

3 **DIRECT EXAMINATION BY MS. LINDER OF SEAN ENGLER:**

4 Q. Detective Engler, can you please tell the jury what is  
5 your occupation.

6 A. I am a police officer. I am a narcotics detective with  
7 the Charleston Police Department.

8 Q. And how long have you been employed by the Charleston  
9 Police Department?

10 A. Over eight years.

11 Q. And what do your duties include with CPD and with the  
12 narcotics unit?

13 A. I investigate narcotics-related offenses, whether they  
14 come in as complaints or through our own proactive investi-  
15 gations. I deal with informants. I deal with undercover  
16 officers. Occasionally I will supervise operations. But  
17 quite frequently I manage operations. And a part of that is  
18 developing arrest warrants and search warrants.

19 Q. And can you tell the jury a little bit about your  
20 education and your training and your experience?

21 A. So I'm about two-thirds of the way through my master's  
22 degree with the Citadel. I graduated with a business degree  
23 from the University of Maryland. 2007 I graduated the  
24 Criminal Justice Academy in South Carolina in Columbia with  
25 honors.

1 I have undergone countless hours of training related to  
2 tactics, surveillance, informant management, a two-week  
3 school with the DEA, the Drug Enforcement Administration.

4 Q. Were you working back on June the 13th of 2014?

5 A. Yes.

6 Q. And were you involved at all with this case, the State  
7 versus Vanessa Frayer back on that day?

8 A. Yes, I was the case agent for this case.

9 Q. And as the case agent that day what was the objective  
10 that day?

11 A. We had the Police Department in general was aware of  
12 several recent incidents in a specific area of downtown. So  
13 to develop information and help the other investigators out  
14 we decided to conduct a narcotics operation in that area.

15 So developed an operation utilizing one of the  
16 informants who I managed and deployed him out into that  
17 area.

18 Q. And the jury has already heard some testimony. Can you  
19 tell them exactly what a controlled buy is.

20 A. A controlled buy is a -- a controlled buy of narcotics  
21 is a purchase of narcotics where law enforcement has a hand  
22 and a level of control in the operation.

23 In this case and in most cases we provide the funds for  
24 the purchase. We are able to document the purchase using  
25 some sophisticated technology, video camera that records the

1 transaction.

2 And when the narcotics are purchased then the person  
3 purchasing the narcotics, whether it is an undercover  
4 officer or an informant, brings those back to the case agent  
5 so that we are able to log them properly and submit them  
6 into evidence.

7 Q. And on this buy in particular back on June the 13th  
8 where was this buy conducted?

9 A. Poinsett Street towards the dead end.

10 Q. And that is here in Charleston County?

11 A. Yes, it is.

12 Q. And as the agent preparing and planning all of this why  
13 did you decide to use a confidential informant instead of an  
14 undercover officer?

15 A. Confidential informants have a lot of benefits. A lot  
16 of times they are more familiar with the area as opposed to  
17 an undercover officer you might be a new face and might draw  
18 some suspicion from people in a certain -- on a block or in  
19 a neighborhood that are very familiar with one another. So  
20 the informant provides that access into those areas.

21 Q. Let's talk about the CI that was involved in this case,  
22 Mr. Singleton. Or he goes by the nickname Snakebite, well,  
23 the nickname with you?

24 A. Yes.

25 Q. Can you kind of explain your relationship with him and

1 if you can do that for the jury.

2 A. Yes. Snakebite was a very active informant with us.  
3 And he assisted in numerous investigations of a similar  
4 nature doing control buys.

5 He has always been reliable. When I have dealt with  
6 him he has always been responsive to our instruction. And  
7 he has been effective in conducting these operations.

8 Everything that we later review on the video has been  
9 consistent with the statements he gives us after the buys.  
10 And ....

11 Q. Now he had talked to Mr. King and gotten into him with  
12 this. Was he a paid informant or did he have pending  
13 charges with him?

14 A. He was a paid informant.

15 Q. And did you pay him only if he produced, only if he  
16 brought you back drugs; is that the only time you paid him?

17 A. No, we had some incidents where there were attempted  
18 buys and for whatever reason the buy didn't happen. So  
19 Snakebite came back to me. He gave me the money and said I  
20 couldn't buy today. And I would still pay him at the end of  
21 the day.

22 Q. And generally speaking with CI's in general do you pay  
23 them for intel ---

24 A. Yes.

25 Q. --- on occasions?

1 A. Yes. If they are -- if we are able to kind of run with  
2 that intelligence, the information they give us, and develop  
3 some -- or verify its credibility, yeah, we pay him for  
4 that.

5 Q. All right. So back on the 13th once you kind of ironed  
6 out some of the basics about what your plans were that day -  
7 you have already talked about the location and everything -  
8 who else gets involved with the buy aside from just you and  
9 the CI?

10 A. So we have a -- our narcotics unit we have several  
11 members. And I will -- if I am organizing a buy I will  
12 alert everyone else hey I have a buy, come meet me and the  
13 informant at this location at this time.

14 So then everyone will -- the unit will show up. I will  
15 let them know kind of the course of where the investigation  
16 is going, the location.

17 They will become familiar with what the informant looks  
18 like. And I will identify whether or not we have a specific  
19 target in mind, how much money the informant is going to be  
20 buying worth of drugs, what kind of drugs. As many  
21 specifics as I know at the time I will relay to my team  
22 members.

23 Additionally we have a uniform officer who assists us  
24 with these -- with these operations. And we also go over  
25 some safety considerations in the event that an officer is

1 compromised in a way that is dangerous or if the informant  
2 somehow gets into some kind of altercation or gets into  
3 trouble.

4 Q. Do you give the informant specific instructions on what  
5 to do or what not to do when they are out making a buy or  
6 attempting to make a purchase?

7 A. Yes.

8 Q. What instructions do you give?

9 A. So I will provide them with the money and I will -- I  
10 will tell the informant to continually keep us updated as to  
11 their location. Because we have a -- we have an audio  
12 monitoring system, but we are not able to do a live view.

13 After -- like the video like you saw, it is something  
14 that is viewed after the fact. So I ask the informant to  
15 give us update as to their location, tell us any pertinent  
16 information such as specific people or houses that they have  
17 come across while they are out deployed.

18 I give them instruction as to if they were to become in  
19 trouble if they are able to just call my cell phone and we  
20 will talk about it; or if it is an urgent matter I ask them  
21 to say help help and through the live audio feed I have at  
22 that point the officers, narcotics, and the uniformed  
23 officers, would go in and take action to ensure that CI's  
24 safety. I also ---

25 Q. Oh, go ahead.

1 A. I'm sorry. So also I instruct the informant to after  
2 the transaction is made just proceed directly back to me and  
3 once they reach me then I will take the drugs from them.

4 Q. Before you send the informant out to do the buy do you  
5 search the informant?

6 A. Yes, thoroughly.

7 Q. Can you describe that search.

8 A. It is a very thorough search. I ask them to open the  
9 webs of their fingers, open their mouth. I will take their  
10 shoes off, feel their feet, feel their socks, in and out of  
11 pockets, deep into the waistline. A very thorough search.

12 Q. And what are you -- what is the purpose of you doing  
13 that search?

14 A. Well, we want to make sure that the informant or the  
15 person that we are sending in to conduct this transaction is  
16 not in possession of any weapons or in position of any drugs  
17 that would compromise the investigation.

18 Q. Now when you -- after you search the CI what do you  
19 leave him with aside from his clothing?

20 A. I would give the informant the money to make the buy  
21 and I will make sure that they don't have any money on them  
22 that they have brought. So, you know, if they show up with  
23 \$20 in their wallet I will put \$20 in my glove box until the  
24 deal is over with, and as we part ways I will give them  
25 their money back.

1 Q. And do you give them anything to maintain communication  
2 with you?

3 A. Yes, the informant is also given the audio monitoring  
4 device. And then we also outfit them with a camera so that  
5 we can later view the transaction.

6 Q. Okay. So you search him, everyone has their duties,  
7 the CI knows the objective; what happens next kind of when  
8 you break; what happens next?

9 A. So I will have given assignments to the other officers  
10 in my unit and then the patrol officers what we will  
11 generally do is form a perimeter out of site but still close  
12 enough to respond in the event of an emergency.

13 So we will have this perimeter around the informant.  
14 And then I will take the informant to an area where I can  
15 insert them or drop them off without them being seen so it  
16 appears as if they are just walking up into the area.

17 Q. And where did you drop him off that day?

18 A. It was Enston Street. It was west of -- northwest of  
19 King and Simons. A couple of blocks.

20 Q. All right. And can you explain where the CI went that  
21 day?

22 A. Yes, the CI came down -- is it coming up on the map?

23 Q. I will. Okay. I'm sorry (map scrolling). All right.  
24 I will hold it here. Go ahead.

25 A. My finger will make a mark?

1 Q. Yes.

2 A. Okay. So the CI came down on to Simmons Street, walked  
3 to King Street, turned onto Romney Street, came down Athens  
4 Court, and then ultimately came down this cut before  
5 reaching Poinsett Street and coming to a house on the south  
6 side of Poinsett Street.

7 Q. Did the informant end up buying drugs that day?

8 A. Yes.

9 Q. What happened after he bought the drugs; where did he  
10 go?

11 A. He came back to me, and I was parked near that same  
12 location where he was dropped off.

13 Q. How much drugs did he buy?

14 A. Sixty dollars worth of crack cocaine.

15 Q. And after he brought everything back to you what did  
16 you do with the drugs?

17 A. When I -- when I received them from the informant we  
18 went back to the staging area. Which basically there is the  
19 drop-off point and then there is the staging area where we  
20 can assemble and not have to worry about anyone watching our  
21 actions.

22 But so we go back to the staging area and I looked at  
23 it and it looked consistent with -- from my experience to be  
24 crack cocaine, cocaine base.

25 And then I have a field test which is a chemical

1 solution and an eye dropper. And so I took a sample from  
2 the rock, the cocaine base. And I used the eyedropper. And  
3 our indicator is that that substance turns a bright blue,  
4 which occurred. So I knew it was going to be a narcotic.

5 Q. So when he returns and you did that with the drugs what  
6 else happened at the briefing location then?

7 A. So the units, the other officers, will all reassemble.  
8 We will make sure that everyone knows the operation went  
9 smoothly.

10 And then I will conduct a search of the informant. In  
11 my cases I will conduct a secondary search. I will then  
12 have a meeting with the informant and allow him to prepare a  
13 statement.

14 Q. In this case did the informant write a statement?

15 A. Yes.

16 Q. When you searched the informant, Mr. Singleton, the  
17 secondary time did he have anything on his person that he  
18 was not supposed to?

19 A. No.

20 Q. Why do you take a written statement from someone right  
21 after things happen?

22 A. After something happens it is the point where it  
23 freshest in their mind. That is the primary reason.

24 Q. With the drugs after you field tested them what did you  
25 do with them?

1 A. Our procedure is to take them back to the police  
2 department where we have an evidence drop box. So that  
3 evidence the cocaine base is sealed and initialed so that it  
4 is obvious that it can't be tampered with. Then it is  
5 placed in this lockbox where only the evidence custodian can  
6 access it. Where after that it goes to the lab for  
7 analysis.

8 MS. LINDER: May I approach?

9 THE COURT: You may.

10 Q. At this time I am going to show you what's been marked  
11 as State's Exhibit 4. Will you look at this. Do you  
12 recognize it?

13 A. Yes.

14 Q. How do you recognize it?

15 A. Well, I put my own initial on it. This is the sealed  
16 bag that I was talking about that I placed into evidence.

17 Q. And did those drugs remain in your sole care, custody,  
18 and control from the time you received them from the  
19 informant until they went to evidence?

20 A. Yes.

21 Q. And do those appear to be in substantially the same  
22 condition?

23 A. They do.

24 Q. Do you see the person in the courtroom today who sold  
25 drugs back on June the 13th, 2014?

1 A. I do.

2 Q. And where is she?

3 A. She is at the defense table in the middle.

4 MS. LINDER: I have no further questions for this  
5 witness. If you can please answer anything that the defense  
6 may have.

7 THE COURT: Mr. King, you are recognized.

8 MR. KING: Thank you.

9 **CROSS-EXAMINATION BY MR. KING OF SEAN ENGLER:**

10 Q. Mr. Engler, how are you doing? Just a few questions  
11 for you. You said you had been an officer for eight years  
12 maybe over eight years.

13 A. Yes.

14 Q. Has that been in narcotics?

15 A. No.

16 Q. You have spent time dealing with CI's during your  
17 employment there at the Police Department?

18 A. Yes, I have been with the narcotics unit for over three  
19 years now.

20 Q. And when you are dealing with informants sometimes you  
21 are dealing with people who have criminal records, right?

22 A. Yes.

23 Q. Sometimes people who are drug addicts?

24 A. Yes.

25 Q. Ex-cons; sometimes I guess even current criminals,

1 right; I guess there's been some CI who may have committed  
2 some crime while they were an active CI in your experience?

3 A. Yes, that had occurred.

4 Q. So you are dealing with in general with sometimes  
5 people who are not always upstanding citizens, let's put it  
6 that way?

7 A. Some of them are not. Some of them are.

8 Q. And I guess sometimes in this business that is  
9 necessary though, right; you would -- you wouldn't go to the  
10 upper-class suburban neighborhood in Charleston and somebody  
11 with a good job and get them to be a CI, right; you usually  
12 are going to get someone who has some ---

13 A. That -- that is incorrect. I would love to have a CI  
14 from that demographic if they were able to give me access to  
15 narcotics. That is -- that is what I investigate.

16 Q. Yeah, it would be the same problem as I guess the  
17 undercover cop, right, you need someone who is familiar with  
18 the area and, you know, wouldn't be immediately recognized  
19 as a police officer; right?

20 A. I'm sorry, can you just rephrase that. I'm not  
21 understanding what you're asking.

22 Q. I guess what I'm saying is -- the same reasons you  
23 wouldn't use -- you want to use somebody who is familiar  
24 with the area they are going to; generally, right?

25 A. Yes, that is ideal.

1 Q. And someone who wouldn't stand out?

2 A. Yes.

3 Q. Someone who was able to interact with people who sell  
4 drugs, right?

5 A. Yes.

6 Q. This was referred to as a controlled buy, right?

7 A. This type of incident, yes, this was a controlled buy.

8 Q. That's because you try to control -- you try to control  
9 all aspects that you can, right?

10 A. That's right. Yes.

11 Q. You wire him up with you said sophisticated audio and  
12 video equipment?

13 A. Yes.

14 Q. Now you mentioned undercover officers versus  
15 confidential informants. I guess all things being equal you  
16 would prefer to use an undercover officer, wouldn't you?

17 A. Yes.

18 Q. If that person could get in and not be recognized and  
19 get it done, right?

20 A. All other things being equal, yes.

21 Q. Because when you are dealing with informants you are  
22 dealing with people that you could have some trust problems  
23 with? What I mean by that is you search him, ---

24 A. Yes.

25 Q. --- right? And you search him -- I don't know if at

1 some point in the past maybe somebody had some drugs on  
2 them, but you search him to make sure he doesn't have drugs  
3 already on him?

4 A. Yes.

5 Q. It is not a strip search?

6 A. It is not a strip search.

7 Q. Like if somebody goes to jail for drugs they are going  
8 to strip them down and do a complete strip search, right?

9 A. Yes.

10 Q. So the search you did, it could have been more  
11 thorough; right, it probably could have been a more thorough  
12 search than what you did?

13 A. A complete strip search would have been more thorough  
14 than what I did.

15 Q. You had mentioned that he was paid even though he  
16 didn't bring back drugs, right?

17 A. Yes.

18 Q. That was only one time though, wasn't it?

19 A. I would have to see -- or obtain a document. I don't  
20 recall exactly many times that was.

21 MR. KING: May I approach, Your Honor?

22 THE COURT: Yes, you may.

23 Q. I am just going to show you that is Exhibit 1.

24 A. Thank you.

25 Q. If that refreshes your memory. Let me ask this: You

1 wouldn't have worked with him if he kept coming back over  
2 and over again with no drugs; you wouldn't have worked with  
3 him very long?

4 A. That's probably true.

5 Q. And can you confirm there that I guess out of 16 times  
6 there was once that he didn't bring back drugs?

7 A. Yes, that's right.

8 Q. And that was the fourth out of the 16?

9 A. Yes, the -- well, the first -- the first line item is  
10 not a buy.

11 Q. That's right. It is 15. I am counting the debrief.  
12 So a third time out of fifteen?

13 A. Yes.

14 Q. Let's talk a minute about what you do, about your job.  
15 You find evidence, right; I guess we will start there. It  
16 is a part of your job is to find evidence to bring to court,  
17 right?

18 A. Yes.

19 Q. The more evidence you have the better?

20 A. Yes.

21 Q. The better for your case, right?

22 A. Yes.

23 Q. Now as part of this controlled buy you provide the  
24 informant with funds, with money; right?

25 A. Yes.

1 Q. It is not his own money; it is official money that has  
2 to be kept track of, right?

3 A. Yes.

4 Q. You photocopy that money, ---

5 A. Yes.

6 Q. --- right? And that was provided in discovery that  
7 came here. So you would know the serial numbers on the  
8 money, that \$60; right?

9 A. Yes, and I just want to make clear that it is regular  
10 money just that it is tracked. It is not special ---

11 Q. Right, it is not special money.

12 A. It is not special money.

13 Q. But you could identify that money if you saw it?

14 A. Yes.

15 Q. For example in Ms. Frayer had been arrested and had  
16 that \$60 on her you would have been able to identify  
17 that ---

18 A. Yes.

19 Q. --- by referring back to your photocopy ---

20 A. That's right.

21 Q. --- and your paperwork that you have documented?

22 A. Yes.

23 Q. But in this case that is not --- well, you could have  
24 in this situation went into the house and then just tried to  
25 arrest Ms. Frayer, right; and that's what you call the

1 buy-bust?

2 A. Yeah, a buy-bust would have been if at the point of the  
3 transaction that the police stormed in and took down the  
4 drug dealer.

5 Q. Is that sometimes done, buy-bust as opposed to a buy-  
6 walk?

7 A. Sometimes, but less frequently.

8 Q. And there is one benefit to that, right; on a buy-bust  
9 you go in and you know exactly who the person is, right; no  
10 question about an identification or anything; you have got  
11 the person there, right?

12 A. That is one of the benefits despite the many drawbacks.

13 Q. And another one would be, you know, presumably it would  
14 have the marked money on them?

15 A. Yes.

16 Q. And that would be evidence you could present in  
17 court ---

18 A. You are right.

19 Q. --- when it came to trial? But you don't have that in  
20 this case?

21 A. No, we don't.

22 Q. And you testified about, you know, Ms. Frayer sold  
23 drugs. But you are not present inside of that house, right?

24 A. I was not there.

25 Q. You are just -- are you listening in to the audio while

1 this is going on?

2 A. I am, yes.

3 Q. And you are back at the staging location waiting there?

4 A. No, I am in the parameter capacity where I am not at  
5 the staging area. I am within a reactionary distance in  
6 case something were to happen.

7 Q. But you didn't personally observe what went on in that  
8 house?

9 A. No, not until the video.

10 Q. You don't know any more than we do about -- we have  
11 seen the video. You don't know anything more than we do  
12 about what went on inside of that house?

13 A. That is accurate.

14 Q. So the informant comes back and he hands you what you  
15 believed to be drugs, crack cocaine?

16 A. Yes.

17 Q. And you noted in your supplemental report you do a  
18 field test and you noted it was point-four grams?

19 A. Yes.

20 Q. And you didn't arrest anyone that day back in June  
21 2014, right; you didn't arrest anybody at that time, it was  
22 almost three months later?

23 A. Correct.

24 Q. The warrant wasn't even drafted until almost three  
25 months later; is that right?

1 A. Yes.

2 Q. And again, you didn't recover any marked money from Ms.  
3 Frayer?

4 A. No.

5 MR. KING: That's all the questions.

6 THE COURT: Any redirect?

7 MS. LINDER: No redirect.

8 THE COURT: You may step down.

9 You may call your next witness.

10 MR. MAYNOR: The State calls Linda Wilson.

11 THE COURT: Yes, ma'am, please come forward. Follow  
12 the clerk's instructions. I am going to ask you to come  
13 behind. Place your left hand on the Bible and raise your  
14 right hand as the clerk administers the oath.

15 (WHEREUPON, the witness was duly sworn.)

16 THE COURT: Have a seat in the witness chair. Pull up  
17 real close to that microphone. Speak loudly, clearly, and  
18 slowly in order that we can hear everything that you have to  
19 say. And let's start with your full name, please, ma'am.

20 THE WITNESS: Linda Wilson.

21 THE COURT: Very good. Yes, sir.

22 **DIRECT EXAMINATION BY MR. MAYNOR OF LINDA WILSON:**

23 Q. Good afternoon, Ms. Wilson.

24 A. Hi.

25 Q. Can you turn and tell the jury where you are presently

1 employed.

2 A. I work at the City of Charleston Police Department,  
3 evidence division.

4 Q. How long have you been with the City?

5 A. A little over six years.

6 Q. What is your position?

7 A. Evidence technician.

8 Q. And what are the duties of an evidence technician?

9 A. What I do I take in evidence. I secure it in our  
10 evidence control room. And I maintain the chain of evidence  
11 for each piece of evidence that comes in.

12 Q. So I guess more specifically how do you receive that  
13 evidence?

14 A. I come in early in the mornings and I receive it from  
15 our mailbox, locked mailbox, secured lock. And that's how I  
16 bring it in. Or either the officers hand it to us during  
17 the day.

18 Q. Generally an officer would place the evidence in that  
19 secured lockbox?

20 A. Yes, sir.

21 Q. And can just anybody access that evidence lock box?

22 A. Not just anybody.

23 Q. Who can access that?

24 A. Myself and my supervisor and my coworker.

25 Q. How is it secured?

1 A. It is padded. It is locked.

2 Q. On June 16th, 2014, did you receive evidence from  
3 Detective Engles?

4 A. Yes, ma'am.

5 Q. Was that evidence regarding this case, the State v.  
6 Vanessa Frayer?

7 A. Yes, sir.

8 Q. And where were those items, in this case, where were  
9 they dropped off?

10 A. They were dropped off in the mailbox.

11 Q. Once Officer Engles dropped that off could he retrieve  
12 it back?

13 A. No, sir.

14 Q. And who has the ability to retrieve those items?

15 A. Myself, my supervisor and coworker.

16 MR. KING: Your Honor, may I approach the witness?

17 THE COURT: You may.

18 Q. I am going to hand you what has been marked as State's  
19 Exhibit 4. Do you recognize this?

20 A. Yes, sir.

21 Q. And what is that?

22 A. This is the evidence which the voucher says is cocaine.  
23 And it was evidence that Detective Engles turned in June the  
24 16th, 2014.

25 Q. Is that in the same or substantially similar condition

1 as the first time you saw it?

2 A. Yes, sir.

3 Q. And who did you say -- whose name is on there that you  
4 submitted it to you -- or to the lockbox?

5 A. Detective Engles.

6 Q. Detective Engles. And then can you tell me who  
7 received it from evidence from Engles?

8 A. From me I received it from the mailbox on June 16th,  
9 2014, about 6:16 that morning.

10 Q. And after that was logged in where was the evidence  
11 placed?

12 A. It was placed in our secure evidence room until the lab  
13 came and signed it out.

14 Q. And does a courier come and sign it out?

15 A. Yes, sir.

16 Q. Can you tell me the name of the individual who handled  
17 that evidence next?

18 A. That was Susan Payne.

19 MR. KING: Court's indulgence for one moment?

20 THE COURT: Yes.

21 MR. KING: Ms. Wilson, thank-you. Would you answer any  
22 questions Mr. King has.

23 THE WITNESS: Yes, sir.

24 MR. KING: I have no questions for this witness.

25 THE COURT: You may step down and you may be excused.

1 Thank you, ma'am.

2 You may call your next witness.

3 THE COURT: Yes, ma'am. Please come forward. Follow  
4 the clerk's instructions on how to get to the witness stand  
5 there. Place your left hand on the Bible and raise your  
6 right hand as the clerk administers the oath.

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: Pull up real close to that microphone.  
9 Speak loudly, clearly and slowly in order that we can hear  
10 everything that you have to say. And let's start with your  
11 full name, please, ma'am.

12 THE WITNESS: It is Susan Murray Payne.

13 THE COURT: Very good.

14 **DIRECT EXAMINATION BY MR. MAYNOR OF SUSAN PAYNE:**

15 Q. Good afternoon, Ms. Payne. Can you tell the jury  
16 where you are presently employed.

17 A. The City of Charleston Police Department.

18 Q. How long have you been working with the City?

19 A. Ten years.

20 Q. What is your position?

21 A. I am loans administrator and evidence custodian for the  
22 forensic services division.

23 Q. As the evidence custodian can you explain your duties.

24 A. Yes, sir. I am responsible for picking up evidence and  
25 delivering it to the different disciplines for testing.

1 Q. And did you have any involvement with this case on June  
2 16th, 2014?

3 A. Yes, sir.

4 Q. Can you explain that.

5 A. Yes, sir. I went to the station to pick up evidence  
6 from our evidence room and then I brought it to our lab for  
7 testing.

8 Q. And what item was it that you picked up?

9 A. It was a plastic bag with rock-like substance.

10 MR. MAYNOR: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 Q. I am going to hand you what's been marked as State's  
13 Exhibit 4. Would you take a look at that. Do you recognize  
14 that?

15 A. Yes, sir.

16 Q. Is that that same evidence?

17 A. Yes, ma'am.

18 Q. And when did you first see it?

19 A. On June 16th of 2004 -- or 2014. Excuse me.

20 Q. Is that in the same condition or substantially similar  
21 condition as when you saw it the first time?

22 A. Yes, sir.

23 Q. And per the Charleston Police Department's procedure  
24 what did you do when you checked out this evidence?

25 A. I made sure it was sealed and initialed and that the

1 description matched what was actually in the evidence bag.

2 Q. Now is there a way to determine who you received that  
3 item from, who the last person was?

4 A. Yes, the chain of custody.

5 Q. And what was their name?

6 A. It was Linda Wilson.

7 Q. And can you tell me who retrieved the evidence from the  
8 vault that you placed in there -- did you place that  
9 evidence in -- what did you do with the evidence once you  
10 had it?

11 A. I entered it into our database system and then I placed  
12 it into the safe in the lab.

13 Q. Is there a way to identify on that evidence who picked  
14 it up after you?

15 A. Yes, sir.

16 Q. What was her -- what was their name?

17 A. Ashley Earl.

18 Q. Thank you. Answer any questions Mr. King has.

19 THE COURT: Mr. King, you are recognized.

20 Cross-examination.

21 MR. KING: No questions, Your Honor.

22 THE COURT: You may step down, and you may be excused.

23 Call your next witness.

24 MR. MAYNOR: The State calls Ashley Earl.

25 THE COURT: Yes, ma'am. Please come forward and follow

1 the clerk's instructions there. Place your left hand on the  
2 Bible and raise your right hand as the clerk administers the  
3 oath.

4 (WHEREUPON, the witness was duly sworn.)

5 THE COURT: Have a seat in the witness chair. I am  
6 going to ask you to speak loudly, clearly and slowly in  
7 order that we can hear everything that you have to say. And  
8 let's start with your full name, please, ma'am.

9 THE WITNESS: Ashley Carr Earl.

10 THE COURT: Thank you.

11 **DIRECT EXAMINATION BY MR. MAYNOR OF ASHLEY EARL:**

12 Q. Good afternoon, Ms. Earl. Can you tell us what you do.

13 A. I am an associate criminalist for the Charleston Police  
14 Department.

15 Q. Were you working in June 2014 for them?

16 A. Yes,

17 Q. How long have you been employed there?

18 A. I have been working with them since November of 2012.

19 Q. Can you explain a little bit about the position?

20 A. Yes, I do controlled substances analysis for the  
21 Charleston Police Department. Evidence will come in that  
22 has been submitted to be tested for the presence of a  
23 controlled substance, and I will perform different types of  
24 tests in order to determine what it is.

25 Q. Could you explain to the jury what type of training or

1 education you have.

2 A. Yes, I have a bachelor's of science in biology from  
3 Winthrop University. I have also gone through the  
4 Charleston Police Department Forensic Services Training  
5 Program which is a mentoring program as well as classes and  
6 a type of course that you have to follow through in order to  
7 become proficient.

8 I take yearly proficiency tests. And this is all in  
9 accordance with our lab guidelines because we are a  
10 nationally accredited lab. So it all falls within the  
11 guidelines of that.

12 Q. And as part of your job do you chemically analyze  
13 substances to determine whether they are narcotics or not  
14 narcotics?

15 A. Yes.

16 Q. How many times would you say you have done that in your  
17 career?

18 A. Today I have done almost 2,000 cases.

19 Q. And have you determined in some of these same tests  
20 whether or not something is cocaine based?

21 A. Yes.

22 Q. How many times would you say you have done that?

23 A. Our program doesn't allow to track as far as what  
24 number of samples we have used to determine what it is, but  
25 I would say that cocaine base is one of our more common

1 substances that we get in. And I do perform the tests  
2 weekly.

3 Q. Are these tests part of your regular activity with your  
4 job?

5 A. Yes.

6 Q. And what kind of equipment would you use in your lab?

7 A. We have balances that we use weighing the items. We do  
8 color tests to help determine what the item is. We also  
9 have an FTIR which is a fourier transform infrared  
10 spectratrascopy machine.

11 It shoots an infrared beam at the substance and is able  
12 to reach across different wavelengths and is able to give it  
13 the chemical footprint of what it is.

14 We also use a GCMS which is a gas chromatography-mass  
15 spectrometer. And that -- that substance is put into a  
16 liquid and it is shot into it. It kind of separates all of  
17 the compounds. We are able to see exactly what is in there  
18 and again read the results to known libraries in order to do  
19 matches.

20 Q. If you took these different types of test and these --  
21 this equipment collectively how precise or accurate would  
22 you say it is when you test for the whether an item is in  
23 fact narcotic or cocaine base?

24 A. It is very precise. It is able to tell you if it is or  
25 not. There is no question.

1 Q. Now have you been admitted as an expert before?

2 A. Yes, I have.

3 Q. And have you testified in court before?

4 A. Yes.

5 Q. How many times have you testified?

6 A. I have testified once as an expert witness and then  
7 another time just as a chain of custody issue.

8 MR. MAYNOR: Your Honor, at this time the State would  
9 move to have Ms. Earl be declared as an expert in the field  
10 of drug analysis.

11 THE COURT: Any query with regard to her  
12 qualifications?

13 MS. LINDER: No, Your Honor. I have no objection.

14 THE COURT: All right. Mr. Foreman, ladies and  
15 gentlemen of the jury, ordinarily a witness can only testify  
16 as to things they see, hear, and feel and perceive directly;  
17 however an expert witness is an exception to that, and if I  
18 qualify her as an expert she can testify in her field of  
19 expertise.

20 And because of her education, training or experience in  
21 a particular field, she is not only allowed to testify as to  
22 what she saw, heard, and felt, but render opinions in that  
23 area of expertise.

24 The fact that she is an expert doesn't mean that you  
25 have to believe what she has to say just by virtue of the

1 fact that she is an expert. You evaluate it just like you  
2 would any other testimony.

3 Yes, sir. And she is so qualified.

4 Q. Thank you, Ms. Earl. As a result of completing your  
5 drug analysis do you generate any sort of records or report?

6 A. Yes, we generate a lab report.

7 Q. Did you do a report for this case?

8 A. Yes, I did.

9 MR. MAYNOR: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 Q. I am going to hand you what has been marked as State's  
12 Exhibit 2. Do you recognize that?

13 A. Yes, I do.

14 Q. What is that?

15 A. This is the lab report I generated for this case.

16 Q. And you prepared that?

17 A. Yes, I did.

18 Q. And when did you do that?

19 A. I prepared the report on June 18th, 2014.

20 Q. And was that signed by you?

21 A. Yes, it is.

22 Q. Is that a fair and accurate representation of that  
23 document as you -- when you generated it?

24 A. Yes.

25 MR. MAYNOR: Your Honor, the State would seek to submit

1 State's Exhibit 2 into evidence and publish to the jury if  
2 we may.

3 THE COURT: Any objection with regard to this document?

4 MR. KING: No objection, Your Honor.

5 THE COURT: All right. It is in evidence without  
6 objection from the State. And this is known as State's  
7 Exhibit ...?

8 MR. MAYNOR: Number 2.

9 THE COURT: Number 2 is into evidence.  
10 (WHEREUPON, State's Exhibit Number 2 was admitted into  
11 evidence.)

12 MR. MAYNOR: Permission to publish?

13 THE COURT: Yes. Just wait one moment while we get  
14 that -- there we go.

15 Q. It may be a little difficult to see. I will see if I  
16 can (adjusting ELMO).

17 Q. Can you tell us what is on this report?

18 A. Yes, at the top of the report there is the lab number.  
19 As well as on the other side of the top on the right-hand  
20 side is the case number assigned by the Police Department.

21 It has the date published. It has the date it was  
22 submitted to our laboratory. If you look on -- under the  
23 line it has all of the evidence that was in that case, which  
24 was one item. It has the description of the evidence. And  
25 then the results as well as the methods used.

1 Q. Thank you.

2 MR. MAYNOR: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 Q. I am going to hand you something else in conjunction  
5 with what is on that screen. Do you recognize this?

6 A. Yes, I do.

7 Q. What is that?

8 A. This is the item that was submitted into the case.

9 Q. And how can you tell that?

10 A. It has on the outside of the plastic bag I have written  
11 the lab number, the weight, and my initials on the items.  
12 So I am able to tell that this is the case I analyzed.

13 MR. MAYNOR: Your Honor, at this time -- is that --  
14 excuse me.

15 Q. Is that, right there in your hand, does that appear to  
16 be in substantially the same condition as it was when you  
17 first retrieved it?

18 A. Yes.

19 MR. MAYNOR: Your Honor, at this time we would like to  
20 offer State's Exhibit 4 into evidence.

21 THE COURT: Any Objection from defense?

22 MR. KING: No, Your Honor.

23 THE COURT: State's Exhibit 4 is into evidence without  
24 objection from defense.

25 (WHEREUPON, State's Exhibit Number 4 was admitted into

- 1 evidence.)
- 2 Q. Ms. Earl, can you tell us if that item has been
- 3 tampered with in any way?
- 4 A. It does not appear to be.
- 5 Q. And can you tell us how you know that; is that -- do
- 6 those items in that bag match the items in this report?
- 7 A. Yes, it does. It has the same weight as the one item
- 8 in this report. There was only one item that was submitted
- 9 to our lab for this case. This is the only item. And like
- 10 I said, it has been labeled with the lab case number as well
- 11 as the weight and my initials.
- 12 Q. What was the weight?
- 13 A. The weight is point-two-five grams.
- 14 Q. What was the outcome of your test?
- 15 A. The outcome of my test was that this contained cocaine
- 16 base.
- 17 Q. And from those tests were you able to form an expert
- 18 opinion as to what was that exhibit?
- 19 A. Yes.
- 20 Q. What was your opinion?
- 21 A. My expert opinion was that this substance in here is
- 22 point-two-five grams of cocaine base.
- 23 Q. Ms. Earl, thank you very much. Answer any questions
- 24 that Mr. King has.
- 25 A. All right. Thank you.

1 Q. Thank you.

2 THE COURT: Mr. King, you are recognized.

3 MR. KING: I have no questions, Your Honor.

4 THE COURT: You may step down. And you may be excused.

5 You may call your next witness.

6 MS. LINDER: The State rests.

7 THE COURT: Mr. Foreman, ladies and gentlemen of the  
8 jury, at this juncture we are required to take up matters of  
9 law outside of your presence. I am going to ask that you  
10 return to the jury room. Do not discuss the case.

11 Everyone remain seated as the jury exits the courtroom.

12 (WHEREUPON, jury exits courtroom 8/12/15, 3:06 p.m.)

13 THE COURT: Glad to hear motions at this time.

14 MR. KING: Your Honor, at this time the defense would  
15 make a motion for a directed verdict.

16 THE COURT: Okay. I will be glad to hear the State's  
17 response.

18 MR. MAYNOR: Your Honor, the State's response would be  
19 that in the light most favorable the court should consider  
20 obviously in the light most favorable to the State the  
21 existence or nonexistence of the evidence that we have heard  
22 today and not so much the weight.

23 I would submit to you that this evidence we have heard  
24 today does not support a directed verdict. And mostly  
25 because we have heard from two Charleston police officers

1 who both were able to identify the defendant, they were able  
2 to identify that there was in fact a controlled purchase of  
3 drugs in the area and on Poinsett Street within the County  
4 of Charleston.

5 And we also heard evidence and testimony from a  
6 confidential informant Mr. Singleton who was able to also  
7 identify the defendant and tell us about presenting \$60 in  
8 pre-recorded currency to the defendant in exchange for  
9 drugs. Those drugs were handed off by Detective Engles to  
10 the Charleston Police Department's evidence custodian. She  
11 transferred those drugs to the courier who in fact got them  
12 to the lab and they were tested and came back positive for  
13 cocaine base. So we would ask that you deny any motion for  
14 a directed verdict.

15 THE COURT: It does appear to be a question of fact for  
16 the jury. I deny the motion for directed verdict. However,  
17 you are protected on the record.

18 Ms. Frayer, I am going to ask you to stand and raise  
19 your right hand as the clerk administers the oath.  
20 (WHEREUPON, Ms. Frayer was duly sworn.)

21 THE COURT: Ms. Frayer, how are you doing -- you can  
22 put your hand down. How are you doing today?

23 MS. FRAYER: Fine.

24 THE COURT: All right. At this time I am going to  
25 explain to you certain of your rights. If you do not

1 understand anything I say, please let me know. If you want  
2 me to explain anything in more detail, let me know and I  
3 will be happy to do that. Do you understand?

4 MS. FRAYER: Yes, sir.

5 THE COURT: All right. We have now reached the stage  
6 in the trial where you may present your defense. You have  
7 the right to claim the protections given to you by the Fifth  
8 Amendment to the Constitution of the United States of  
9 America.

10 This amendment states in relevant part no person shall  
11 be compelled in any criminal case to be a witness against  
12 him or herself.

13 This means that you cannot be required to testify in  
14 this case. You have the right to testify on your own  
15 behalf; however, no one can make you testify. This is a  
16 personal right and no one can waive this right except you.

17 If you decide to testify you will be subject to the  
18 same rules that govern other witnesses and you may be  
19 examined and cross-examined on any relevant issue in this  
20 case.

21 In addition if you have any convictions involving  
22 dishonesty or false statements or for crimes punishable by  
23 imprisonment for more than one year this court determines  
24 that the probative value of admitting this evidence outweigh  
25 the prejudicial effect to you. The solicitor will be able

1 to introduce your record to attack your credibility.

2 If you decide to testify, this decision on your part  
3 must be freely, voluntarily and intelligently made; the  
4 knowledge and the protections given to you by Fifth  
5 Amendment and the consequences of your decision to testify.

6 If you decide not to testify I will instruct the jurors  
7 they cannot give the fact that you did not testify any  
8 consideration whatsoever in their deliberations.

9 There is to be absolutely no prejudice to you because  
10 you did not testify. It is left entirely up to you whether  
11 or not to testify. You may talk with your attorney, your  
12 family members, friends or anyone else. But the final  
13 decision will be left entirely up to you.

14 Do you understand what I have explained to you?

15 MS. FRAYER: Yes, sir.

16 THE COURT: Do you have any questions about what I have  
17 explained to you?

18 MS. FRAYER: No, sir.

19 THE COURT: All right. Have you discussed with your  
20 lawyer whether you should testify or not testify?

21 MS. FRAYER: Yes, sir.

22 THE COURT: Do you need any additional time to confer  
23 with him?

24 MS. FRAYER: No, sir.

25 THE COURT: Do you wish to testify?

1 MS. FRAYER: No, ma'am.

2 THE COURT: Very good. You may be seated.

3 Mr. King, are you in -- will you be offering any  
4 testimony?

5 MR. KING: No, Your Honor.

6 THE COURT: Okay. Very good. All right.

7 I will go over the charge. I am going to charge the  
8 fact the indictment is not evidence, charge presumption of  
9 innocence, reasonable doubt the differing roles of the judge  
10 and the trial jury, direct and circumstantial evidence.

11 I will charge them the law about how to evaluate  
12 credibility of witnesses, charge them the law with regard to  
13 expert witnesses.

14 I am going to charge them the law with regard to  
15 failure of the defendant to testify. I am going to charge  
16 them the law with regard to the prior record of a witness  
17 and how they are to evaluate that.

18 I am going to charge the law with regard to  
19 distribution of crack cocaine and define what distribution  
20 is. And I will ask that each of you come forward and take a  
21 look at the verdict form.

22 (WHEREUPON, counselors complied.)

23 THE COURT: Is there any objection with regard to the  
24 verdict form from the State?

25 MS. LINDER: No objections to regard with the verdict

1 form. But I do have a request for a charge for the jury.

2 THE COURT: All right. Any objection to the verdict  
3 form from the defense?

4 MR. KING: No, Your Honor.

5 THE COURT: And I will be happy to entertain any  
6 additional requests to charge.

7 MS. LINDER: Your Honor, the State would just ask for  
8 some sort of instruction to the jury about the video. Mr.  
9 King mentioned in his opening about how it's all audio,  
10 video recorded and how things shouldn't be left up to  
11 speculation and they are the technical people and they are  
12 the ones in charge.

13 And I just didn't know if there is some sort of  
14 instruction you could give to the jury that outside of their  
15 presence there were some rulings made by the court and even  
16 mention that something to the effect of the portions of the  
17 video that were muted were based on prior rulings by the  
18 court and it was not some sort of improper behavior by  
19 the -- or there was no fault or default or problem with the  
20 recording itself, it was based on prior rulings and that's  
21 why they were only allowed to see a set -- or hear certain  
22 portions.

23 THE COURT: What do you have to say on that, Mr. King?

24 MS. LINDER: I think that would be a charge on the  
25 facts, Your Honor. I think we are allowed to charge the law

1 in South Carolina for the jury, but explaining to them  
2 things about the video would be a charge on the facts.

3 THE COURT: If you -- if you make reference or try to  
4 draw an adverse inference from things being muted it would  
5 be unfair to the State to allow you to do that without there  
6 being an appropriate explanation. Do you intend on doing  
7 that?

8 MR. KING: No, Your Honor, I am planning to avoid that  
9 at all costs.

10 THE COURT: All right. Well, I don't find it necessary  
11 to give a charge in that regard. Are y'all ready to proceed  
12 forward with closings?

13 MS. LINDER: Yes.

14 THE COURT: And the State goes first under these  
15 circumstances. And we are going to rest -- we are going to  
16 stand at ease for about five minutes. We will come back and  
17 give the closing arguments.

18 MR. KING: Could we have a little more time for  
19 closing, maybe ten to fifteen minutes just to get my notes  
20 together and prepare?

21 THE COURT: Nine minutes. No, we will -- we will --  
22 ten minutes. We will be back in in ten minutes.

23 MR. KING: Thank you.

24 THE COURT: It might be good for you to sit right there  
25 for when we -- so when we get ready to come back. Don't let

1 me hunt you down. All right. Very good. We will stand at  
2 ease.

3 (WHEREUPON, break was had 8/12/15, 3:15 p.m.)

4 THE COURT: Anything from the State?

5 MS. LINDER: Nothing from the State.

6 THE COURT: Anything from defense?

7 MR. KING: No, Your Honor.

8 THE COURT: All right. We are ready for the jury.

9 MR. KING: Your Honor, I apologize. I -- may I request  
10 mere presence charge. I am just trying to make sure I don't  
11 miss anything. Would it be possible -- I -- I guess I would  
12 request a mere presence charge. I apologize.

13 THE COURT: I'm not real sure whether that -- whether  
14 that applies. But I will be glad to hear from what the  
15 State has. What does the State have to say?

16 MS. LINDER: Your Honor, our position is that it does  
17 not apply. There has been no testimony that she was merely  
18 present. In fact all the testimony that was from any  
19 persons inside that place were that she had an active role  
20 taking the order and making the sale and doing the  
21 distribution itself.

22 There has been no testimony of it. And as Mr. King  
23 pointed out in his opening you don't even see a hand to  
24 hand. So there is no way to really point it at someone  
25 else. So we would object to any mere presence.

1 THE COURT: All right.

2 MS. LINDER: Especially because the language of the  
3 distribution includes conspiring, aiding, abetting, and all  
4 of that. And I think that would cover things better.

5 THE COURT: All right. You are protected on the  
6 record. I don't think it applies. And I think probably  
7 where you have a constructive possession case with where  
8 there is some amount of controlled substance in a room I  
9 think that would apply. This case is there is no evidence  
10 of that in this case.

11 We are ready for the jury.

12 THE BAILIFF: Thank you.

13 (WHEREUPON, jury enters courtroom 8/12/15, 3:35 p.m.)

14 THE BAILIFF: All jurors are present, Your Honor.

15 THE COURT: Mr. King, you are recognized.

16 MR. KING: I believe the State will go first. Oh, I'm  
17 sorry, the defense rests. I apologize.

18 THE COURT: Very good.

19 MR. KING: I'm sorry.

20 THE COURT: All right. Mr. Foreman, ladies and  
21 gentlemen of the jury, you have heard all of the evidence  
22 that is going to be presented in this case. And at this  
23 time you will hear closing arguments from counsel. Under  
24 these circumstances the State goes first. Yes, ma'am.

25 MS. LINDER: Thank you, Your Honor.

1 CLOSING BY MS. LINDER:

2       So as I told you just a few short hours ago the case is  
3 reasonable pretty -- it is pretty straightforward. Drugs  
4 are illegal. It is illegal to possess drugs. It is illegal  
5 to possess with intent to distribute. And it is illegal to  
6 distribute drugs in the State of South Carolina. Cocaine  
7 base crack is an illegal drug.

8       Back on June the 13th of 2014 this defendant did just  
9 that. Vanessa Frayer did just that. She sold drugs. She  
10 distributed drugs, crack cocaine, to a confidential  
11 informant who was working under the direction and control of  
12 the City Police Department.

13       What I would like to do is I would like to kind of take  
14 you through a little bit about what you heard just in  
15 summary. If anything I say doesn't match up with what you  
16 remember, obviously go with what your thoughts are on it.

17       First, I want to talk to you about what you heard. The  
18 first witness you heard from was Patrick Gill. Patrick Gill  
19 told you he has been trained for who knows how long. He has  
20 all these different courses he has taken. He has all these  
21 different degrees. He has been in the narcotics unit for a  
22 number of years. He told you kind of the basics, the  
23 background; so you kind of knew settling you in and warming  
24 you up about what you were about to hear.

25       He explained to you what a controlled buy is. A

1 controlled buy is one of many things that a narcotics unit  
2 does within a police department to attempt or to do things  
3 with narcotics.

4 A controlled buy is where law enforcement has as much  
5 control as they can and they go make a buy of drugs. It is  
6 not hard. You heard about what a buy-bust and a buy-walk.

7 A buy-bust is just what it sounds like. You go, you  
8 make a buy. You are busted right there. The cops come  
9 storming in. A buy-walk is you go you make a buy and then  
10 the person walks away.

11 He told you about the pros and cons of each, about  
12 compromising officer safety if they come rushing into a  
13 location that they are not fully aware of.

14 He talked to you about CI safety, because if they are  
15 in an area with a lot of people their safety could be  
16 compromised. The CI safety could also be compromised  
17 because they get burned in a sense. Their identity is  
18 called to the world at that point.

19 That CI for all we know - it is up to the narcotics  
20 unit - could be involved in other investigations. Maybe the  
21 plan is two weeks later to go to that same street to buy  
22 drugs. You know, if you go in and bust them the  
23 investigation is over.

24 He also talked to you about why an informant is used as  
25 opposed to an undercover police officer. I would agree I

1 would love to toss a police officer up there and say I went  
2 undercover, I went and bought drugs. Great.

3 I wouldn't have to go through prior record. I wouldn't  
4 have to, you know, kind of help him and ask him to  
5 articulate a little bit better so you as a jury can  
6 understand it.

7 But that is not realistic in all these cases. It is  
8 just not. I would be -- I would look weird if I walked up  
9 in my suit and I said hey can I buy some drugs.

10 I don't care what corner of Charleston County I am  
11 going to to do that; unless I know you, a lot of times I  
12 would submit to you that drug dealers don't deal with people  
13 they don't know, especially in their home. You have to use  
14 CI's who have access to people.

15 Gill also told you about the basic debriefing. A  
16 search is done. They get wired up. They are given the pre-  
17 recorded money to go make this buy. He also told you he  
18 used a map. I am not going to try to put it up there  
19 because I -- it was going all over.

20 This is just a map of Charleston County. It is zoomed  
21 in. He drew that pathway for you. You are going to have  
22 this back there. If you want to look at it and you want to  
23 try to figure out how he walked or trace the steps, you will  
24 have this back there in the room with you to go over.

25 We also heard from another law-enforcement officer. We

1 heard from Detective Engles. Engles is the case agent.  
2 Engles similar to Gill told you about all of his training,  
3 all of his education, all of his experience.

4 He went through the basics about a controlled buy. He  
5 went through the basics about buy-bust, buy-walk, CI, UC.  
6 But what really matters about what Engles was talking about,  
7 Engles was in charge of this. He is the one who made the  
8 decision.

9 That day the decision was not let's call this person,  
10 let's call "x" and buy from them. That day he testified  
11 there were complaints going on about certain incidents in  
12 the area I believe were his words. And so they were trying  
13 to get someone in there to try to see if they could learn  
14 some information. They were trying to see what they could  
15 do. They were targeting a general area.

16 So he told you where they were targeting. It was a  
17 general area. He told you because of that he opted, he  
18 chose, to use an informant, an informant who was an  
19 informant for what I would submit to you is a long period of  
20 time for an informant.

21 He used a paid informant. He wasn't someone who was  
22 trying to get a sweet deal from the prosecutor. He was  
23 paid. And he further explained to you though he wasn't paid  
24 if he produced, he was paid for his time more or less. CI  
25 as he testified, to get paid for information if it is

1 verified and corroborated. They get paid for making buys.  
2 They get paid for trying to get buys. You like it, you  
3 don't like, that is not really what we are here for. What  
4 we here for is to see what happened that day. And you are  
5 here as judges of the facts to determine what exactly  
6 happened that day.

7 Engles further talked to you about what happened at the  
8 briefing. He talked about that he explained what he did to  
9 the other officers.

10 They all gathered. They all gather. Okay, you two  
11 perimeter on these areas. Okay, and you two you are going  
12 to be stationary here. And here is this -- here is this  
13 word. If he said help, everyone get in there.

14 They have all got their walkie-talkies to the same  
15 station so they could all listen. They were all ready to  
16 go. They were there. This is what they do every day. So  
17 they got ready. So all of the other officers were ready.  
18 And then they had to get the CI ready.

19 They didn't say hey Chris here is some cash, head out.  
20 No, no. They know that sometimes cases come to where we are  
21 today. They come to trial. So they try to get everything  
22 in line that they can.

23 So the case agent, Engles, described to you, and also  
24 did Gill, that search was done, a thorough search. Shoes  
25 off, socks off, pockets, body. I mean not a strip search

1 but they were after all outside in a debriefing.

2 He explained to you that search. He explained that the  
3 CI didn't have anything on him. He didn't have cash, didn't  
4 have drugs, didn't have weapons; had nothing. He had a  
5 phone, and that phone was used for communication with law  
6 enforcement.

7 He talked to you about the money. He gave the CI  
8 money. That was the other thing that the CI had. The CI  
9 was going to go by \$60 worth of cocaine base or crack.

10 So he also talked to you about the instructions that he  
11 gives. He gives instructions to the CI, don't get in  
12 someone's car I think was one of them. You know, let me  
13 know where you are.

14 Especially in something like this I would submit to you  
15 that there is an area. They are not saying, you know, go to  
16 102 Main Street in the red brick house on the third floor in  
17 the second bedroom on the left. They don't know exactly  
18 where he is going.

19 They know he was targeting a specific area where  
20 incidents were occurring and place were occurring, but that  
21 is why it is super important; he said tell us where you are;  
22 you have got all of us here listening on this live feed,  
23 tell us where you are; don't get into a car.

24 He is telling him the extraction word, help. He is  
25 telling him to let him know when the deal is done. He tells

1 him to walk -- as soon as the deal is done walk directly  
2 back to him. He tells him all of that.

3 He gives him all of these instructions because he is  
4 trying to be as in control of the situation as possible on  
5 things like this.

6 You heard from the chain of custody witnesses. Chain  
7 of custody witnesses just show you that he brought the crack  
8 that came from her hand, I am going to submit to you, to the  
9 CI's hand. Went to Detective Engle's hand, which went to a  
10 mailbox that he didn't have access to. Was picked up by  
11 Linda Wilson in evidence. She created more labels. It was  
12 then picked up by Susan Payne, the courier. Took it to the  
13 lab. The lab then created their labels.

14 You see all these seals and initials and writing. That  
15 is all to show you that this is it, this is the same stuff.  
16 From start to finish the same stuff.

17 And you heard Ashley Earl talk to you. And she  
18 explained to you this report. She explained to you the  
19 weight with the plastic bag and the rock-like substance,  
20 two-point-five gram -- point-two-five grams of cocaine base.

21 Again, you will have this stuff back there with you. I  
22 encourage you to look at it. Go through it. Think about  
23 it. Talk about it.

24 Now we get to talk about the CI, Christopher Bernard  
25 Singleton. I just want to say that he's not a saint. He

1 didn't say he was a saint. He was very honest. He was very  
2 honest with the things he has been through in his life.

3 He told you about being born and raised in Charleston.  
4 He told you he graduated high school. He told you he was in  
5 the military. And he told you that he is currently  
6 receiving disability benefits from the military.

7 As many people do he found himself with a substance  
8 abuse issue and got into some legal trouble. Yes, he told  
9 you that. But he was proud of himself for where he is  
10 today. And he was proud of himself for where he was even  
11 back in June of 2014. He hadn't been in trouble in years  
12 before this happened. He was doing so good he has told you.

13 He is not a saint. But, you know, he has access. He  
14 has access to do these buys. So he told you what he did.  
15 He told similar, I would submit to you, as Engles and Gill,  
16 about the searching, about the money, about all of this.

17 He told you about the instructions. I think he  
18 referred to -- again, if my memory is wrong, use yours. I  
19 think he referred to it as like because that is what you do,  
20 that is the routine.

21 And he said that when I asked like why did you write a  
22 statement. Because that's what you do. Why did you tell  
23 Engles -- why did you say things like Athens Court. Because  
24 that's what you do. Because he listened to the instructions  
25 that Engles gave him and he followed those instructions to a

1 tee.

2       So you are going to get the video back there. Actually  
3 you are going to get -- the video is in evidence. If you  
4 would like to watch the video the judge will instruct you on  
5 ways that we can go about playing that video for you. Feel  
6 free to watch it once, ten times, however many times you  
7 need to watch it.

8       I would submit to you listen. Listen and watch that  
9 video. I think you should watch. I think you should watch  
10 how this defendant holds court. She is the only one sitting  
11 in there. Everyone else is standing. She is the one  
12 sitting down.

13       Go back. Go back and look at twelve minutes and one  
14 second and look at her. Decide if that is her. Go back at  
15 twelve minutes and two seconds and look at her. Decide if  
16 that is her. Go back to 14 minutes and 20 seconds and look  
17 at it. Decide if it is her. Decide if it is her by  
18 watching the whole thing. But it is not just the picture.  
19 It is not just in the picture.

20       Listen to it. You hear the CI say he's on Athens, he  
21 is going to the next street over, there is a dead end.

22       You hear when he enters the house he orders up. He  
23 orders up from her. He needs a 60. He needs a 60. He told  
24 you what a 60 means, \$60 worth of cocaine base crack.

25       So she goes through and -- if you hear him he is really

1 apologetic. He is afraid of her. She said get the "F",  
2 whatever. Go stand over there. Go stand over there. Yes,  
3 ma'am. Yes, ma'am. Apologize. Yes, ma'am. Yes, ma'am.  
4 You will hear that on there. He is taking orders from the  
5 woman in charge, from the woman who is passing out and  
6 selling dope.

7 And you hear her say \$60, \$60. You hear her say -- \$60  
8 means something to her. That \$60 -- that \$60 sale she just  
9 caught.

10 You also hear the CI talking on there and you heard him  
11 testify that when he is going as instructed from the house  
12 after the buy directly back to Engles. I mean he is walking  
13 a few different streets. You see him get in that minivan.  
14 It is not a real tough vehicle, but you see him get in that  
15 minivan and get unhooked.

16 You hear him saying hello, hello, she shorted me on the  
17 60, I am acting like I'm talking to my mom, only a part of  
18 that, on my way to you.

19 He says all these things because he knows there is a  
20 live feed, he knows the routine, he knows what he is  
21 supposed to do; and he does it. He did all of that. He is  
22 giving the location as he was instructed to do. He is  
23 telling them what is happening as he is instructed to do.

24 And you heard him on the stand. He pointed out. He  
25 pointed out the defendant. Lady in black. Lady in black

1 sitting at that table. That is Ms. Frayer. That drug deal,  
2 that is the lady who sold him cocaine base back on June the  
3 13th of 2014.

4 There was no question in his mind. He said that, gosh,  
5 I think maybe eight questions into it before the video. And  
6 then he said it again. And then he said it again.

7 I ask that you think of everything that you heard  
8 today, you think of the conduct that occurred. And I ask  
9 that you render a verdict of guilty of distribution of  
10 cocaine base crack for the defendant Vanessa Frayer. Thank  
11 you.

12 THE COURT: Thank you, Ms. Linder.

13 Mr. King, you are recognized.

14 CLOSING BY MR. KING:

15 This hasn't been a very long trial, but it is a serious  
16 trial. It is not simple, as the solicitor says. I guess as  
17 she said illegal drug -- illegal drugs are illegal. But  
18 that is not what we are arguing about. What we are arguing  
19 about is whether they have proven that Vanessa Frayer sold  
20 drugs that day.

21 And really the witnesses they put up that has  
22 anything -- who even witnessed anything is this informant,  
23 Mr. Singleton. And this is a guy who has a history of  
24 stealing, has a history of doing dishonest things.

25 He is at least a former addict, crack cocaine, which

1 costs money. And addicts need money for drugs. And he was  
2 getting paid money.

3 If he showed back up, gave Officer Engles those drugs,  
4 he got money. Now one time he said he came back and didn't  
5 have any and still got paid. But I don't think he would  
6 have lasted very long if that happened more than once. If  
7 you didn't come back with drugs 14 other times.

8 Now it sounds like an informant would be useful for  
9 tips, information. But to rely on that person to make this  
10 case, to put him on the stand and ask you to make the  
11 decision based on his credibility is asking a lot.

12 A CI can give information. An informant can give  
13 information. Inform, that is where the word comes from.  
14 And then the police follow up on that and investigate and  
15 bring evidence to court.

16 But they are relying really on him in this case. You  
17 have to take his word for it. The police officers didn't  
18 witness this or anything that happened.

19 And Mr. Singleton has done dishonest things. He has  
20 been convicted of dishonest crimes. Can we trust him? You  
21 know, he said -- he testified it was short. The one thing  
22 he was supposed to go get \$60, and he didn't come back with  
23 \$60 worth like he was supposed to. He claims it was short.  
24 There's -- is there something there?

25 Engles notes in his report it is point-four grams, but

1 then the chemist is point-two-five grams. And if you look,  
2 State's Exhibit Number 2, this form from the chemist, is has  
3 point-two-five grams. What Engles had is point-four grams.  
4 That's almost half; from point-four to point-two-five.

5 And you will notice on here if you look at this  
6 back -- Exhibit Number 2 it has subjects, right. It doesn't  
7 have Frayer, Vanessa Frayer's name written right there as  
8 the subject of this investigation. He has it under  
9 investigation.

10 So if Vanessa Frayer sold drugs on June 15th and they  
11 are so sure of it why on June 16th is it under investigation  
12 and why did it take almost three months for the arrest  
13 warrant even to the come out?

14 So it is not simple. And as I said this morning in  
15 opening, that, you know, the police have control over this.  
16 It is a controlled buy. This is not something that happened  
17 to get captured on video and the police can say well this is  
18 all that we have, you know, the surveillance camera only  
19 captured this.

20 They are in control of this investigation and they need  
21 to be held to their burden. They have sophisticated  
22 equipment. They have years of experience. Between Officer  
23 Gill he is in narcotics and doing this sort of thing. And  
24 all that experience and sophisticated equipment this video  
25 is the best they can do to bring to you?

1           It is not a clear video. And if she were selling  
2 drugs, if she is a drug dealer, they could go back. They  
3 could go back the next day. And if she is selling drugs  
4 they could easily get this drug deal captured on video.

5           One thing I brought up in the trial - and this is  
6 important too - they act like the buy-bust is something they  
7 just never do. But, you know, that's they have marked  
8 money. What they do is they get cash. They photocopy it so  
9 they have a record and serial number so they can identify  
10 that cash. They give it to the informant and he is supposed  
11 to have given it to Ms. Frayer, but they can't prove it.  
12 They didn't go in and arrest her and find marked money on  
13 her. They didn't arrest anybody for almost three months.

14           So there's a big piece of evidence missing that you  
15 would expect in a case like this, a controlled buy where  
16 they have control. They could have arrested for then, but  
17 they didn't.

18           So as I said, it is a very serious matter. The State  
19 wants to convict her with a serious crime, for you to make  
20 this decision.

21           And the burden in this criminal cases is high. It is  
22 very high. It is not did she probably do it, did she maybe  
23 do it; it is proof beyond a reasonable doubt that she did  
24 it.

25           And this burden protects all of us. It protects

1 everybody so people aren't falsely convicted. It is  
2 important. And for them to ask you to make this decision  
3 they have got to supply you with the evidence to make that  
4 decision and to make the right decision.

5 And if the evidence isn't there it would be the wrong  
6 decision. And that's what we want to avoid in our criminal  
7 system. That is why we have that high burden of proof to  
8 avoid false convictions.

9 So send a message that there will be no convictions in  
10 this county without the evidence, without proved beyond a  
11 reasonable doubt.

12 Don't let it happen to Vanessa Frayer. And don't let  
13 it happen in Charleston County today. Thank you.

14 THE COURT: Thank you, Mr. King.

15 Mr. Foreman, ladies and gentlemen of the jury, you have  
16 taken a very solemn oath that you will listen to the  
17 evidence to determine what the truth is, apply it to the law  
18 and render a verdict that speaks the truth. And I am  
19 convinced that you will do that.

20 I have watched you throughout today, and I have noticed  
21 that y'all have paid very close attention throughout the  
22 trial of this case. And you've got all the tools necessary  
23 to determine what the facts are. But you have to in order  
24 to apply it to the law you have got to understand the law.

25 I am going to charge you the law here momentarily. And

1 it is sort of like taking a dose of medicine, there is no  
2 easy way to do it. It is not the most exciting thing. And  
3 I know it is getting into mid-afternoon. I am going to ask  
4 you to perk up a little bit because these are important  
5 matters and you have got a very solemn duty to perform, so  
6 pay very close attention.

7 Mr. Foreman, ladies and gentlemen of the jury, the  
8 indictment charges the defendant with distribution of crack  
9 cocaine. I will remind you the fact that the defendant was  
10 arrested, charged, and indicted is not evidence, cannot be  
11 considered by you as evidence of guilt, nor does it create  
12 any presumption or inference of guilty.

13 This document is simply the formal written instrument  
14 which contains the charges made against the defendant. It  
15 is the formal document by which this case is brought to  
16 court.

17 I will remind you that during this trial you and I have  
18 certain duties to perform. As the trial judge it is my  
19 responsibility to preside over the trial, and I also have  
20 the duty to rule on admissibility of evidence all during  
21 this trial. You are to consider only the competent  
22 evidence before you. You are to consider only the testimony  
23 which has been presented from this witness stand, any  
24 exhibits which have been made a part of the record and any  
25 stipulations of counsel.

1 I have the additional duty to charge you the law  
2 applicable to this case. As the presiding judge I am the  
3 sole judge of the law. It is your duty as jurors to accept  
4 and apply the law as I now state it to you.

5 If you already have an idea as to what the law is or  
6 what the law ought to be and it does not agree with I now  
7 tell you what the law is, you must abandon this idea because  
8 you are sworn to accept the law and apply the law exactly as  
9 I state it to you.

10 In every case tried in this court before a jury the  
11 jury becomes the sole and exclusive judge of the facts in  
12 any given case.

13 The trial judge cannot intimate, state, comment on or  
14 make any statement to a trial jury about the facts in the  
15 case. Since you the jury are the sole judge of the facts in  
16 the case you are not to infer from what I have said during  
17 the progress of this trial and ruling upon admissibility of  
18 evidence or otherwise or anything that I say now during the  
19 course of this instruction to you that I have any opinion  
20 about the facts.

21 The law simply does not allow me to have an opinion  
22 about the facts. This is a matter solely for you the jury  
23 to determine. As jurors it is your duty to determine the  
24 effect, value, weight, and truth of the evidence presented  
25 during this trial.

1           Mr. Foreman, ladies and gentlemen of the jury, the  
2 defendant has pled not guilty to this indictment. That plea  
3 puts the burden on the State to prove the defendant guilty.

4           A person charged with committing a criminal offense in  
5 South Carolina is never required to prove him or herself  
6 innocent.

7           I charge you that it is an important rule of law that  
8 the defendant in a criminal trial no matter what the  
9 seriousness of the charge might be will always be presumed  
10 to be innocent of the crime for which the indictment was  
11 issued unless guilt has been proven by evidence satisfying  
12 you of that guilt beyond a reasonable doubt.

13           This presumption of innocence does not end when you  
14 begin your deliberations but it accompanies the defendant  
15 throughout the trial until you reach a verdict of guilt  
16 based on the evidence satisfying you of that guilt beyond a  
17 reasonable doubt. Presumption of innocence is like a robe  
18 of righteousness placed about the shoulders of the defendant  
19 which remains with the defendant until it has been stripped  
20 from the defendant by evidence satisfy you of the  
21 defendant's guilt beyond a reasonable doubt.

22           Presumption of innocence is not a mere legal theory.  
23 It is not just a legal phrase. It is a substantial right to  
24 which every defendant is entitled unless you the jury are  
25 satisfied from the evidence of the defendant's guilt beyond

1 a reasonable doubt.

2       What is reasonable doubt in the law? A reasonable  
3 doubt is the kind of doubt that would cause a reasonable  
4 person to hesitate<sup>s</sup> to act.

5       The State has the burden of proving the defendant  
6 guilty beyond a reasonable doubt. Some of you have served  
7 as jurors in civil cases where you were told that it is only  
8 necessary to prove that a fact is more likely true than not,  
9 such as by a greater weight or the preponderance of the  
10 evidence.

11       A criminal case is the State's proof must be more  
12 powerful than that. It must be beyond a reasonable doubt.  
13 Proof beyond a reasonable doubt is proof that leaves you  
14 firmly convinced of the defendant's guilt.

15       There are very few things in the world we know with  
16 absolute certainty. In a criminal case the law does not  
17 require proof that overcomes every possible doubt.

18       If based on your consideration of the evidence you are  
19 firmly convinced the defendant is guilty of the crime you  
20 must find the defendant guilty.

21       If on the other hand you think there is a real possible  
22 the defendant is not guilty you must give the defendant the  
23 benefit of the doubt and find her not guilty.

24       Ladies and gentlemen of the jury, there are two types  
25 of evidence generally presented during a trial, direct

1 evidence and circumstantial evidence.

2 Direct evidence directly proves the existence of a fact  
3 and does not require deduction. Circumstantial is proof of  
4 a chain of facts and circumstances indicating the existence  
5 of a fact.

6 Crimes may be proven by circumstantial evidence. The  
7 law makes no distinction between the weight or value to be  
8 given to either direct or circumstantial evidence.

9 However, to the extent the State relies on  
10 circumstances evidence all of the circumstances must be  
11 consistent with each other and when taken together point  
12 conclusively to the guilt of the accused beyond a reasonable  
13 doubt.

14 If these circumstances merely portray the defendant's  
15 behavior as suspicious, the proof has failed.

16 The State has the burden of proving the defendant  
17 guilty beyond a reasonable doubt. This burden rests with  
18 the State regardless of whether the State relies on direct  
19 evidence, circumstantial evidence, or some combination of  
20 the two.

21 Ladies and gentlemen of the jury, necessarily you must  
22 determine the credibility of witnesses who have testified in  
23 this case.

24 Credibility simply means believability. It becomes  
25 your duty as jurors to analyze and to evaluate the evidence

1 and determine which evidence convinces you of its truth.

2 In determining the believability of witnesses who have  
3 testified in this case you may believe one witness over  
4 several witnesses or several witnesses over one witness.  
5 You may believe a part of the testimony of a witness and  
6 reject the remaining part of the testimony of that same  
7 witness. You may believe the testimony of a witness in its  
8 entirety or reject the testimony of a witness in its  
9 entirety.

10 You make consider whether any witness has exhibited to  
11 you any interest, bias, prejudice, or other motive in the  
12 case. You may also consider the appearance and manner of a  
13 witness while on the witness stand, their demeanor.

14 Rules of evidence ordinarily do not permit witnesses to  
15 testify to opinions or conclusions. An exception to this  
16 rule exists for witnesses we call expert witnesses.

17 A witness who by education, experience has become an  
18 expert in some art, science, profession or calling may state  
19 an opinion as to relevant material matter in which the  
20 witness claims to be an expert and may also state the  
21 reasons for the opinion.

22 You should consider any expert opinion received in  
23 evidence in this case like any other evidence. Give it the  
24 weight you think it deserves. You decide that the opinion  
25 of a witness is not based on sufficient education and

1 experience, if you conclude that the reasons given in  
2 support of the opinion are not sound or that the opinion is  
3 outweighed by other evidence you may disregard the opinion  
4 entirely.

5 An expert witness's testimony is to be given no greater  
6 weight than that of other witnesses simply because a witness  
7 is an expert. Further you are not required to accept an  
8 expert's opinion even though it is not contradicted.

9 Mr. Foreman, ladies and gentlemen of the jury, I  
10 instruct you and emphasize the fact the defendant did not  
11 testify is not a factor to be considered by you in any way  
12 in your deliberations and in your consideration on the  
13 question of guilt or innocence of the defendant.

14 It must not be considered by you in any manner  
15 whatsoever. A defendant has a constitutional right to  
16 remain silent, and the assertion of this right must not be  
17 considered by you in your deliberations.

18 Mr. Foreman, I am going to ask that you enforce that  
19 rule. There will be no discussion about the fact that the  
20 defendant did not testify. I repeat, under your oath you  
21 are to draw no conclusion whatsoever from the fact the  
22 defendant in this case did not testify. The fact that this  
23 defendant did not testify should not even be discussed in  
24 the jury room.

25 The burden of proof as I have stated it to you is on

1 the State. The burden -- the defendant is not required to  
2 prove her innocence. The burden of proof remains on the  
3 State to prove guilt beyond a reasonable doubt.

4 Mr. Foreman, ladies and gentlemen of the jury, a person  
5 who has a past criminal record is competent to testify  
6 during a trial. Their past record does not affect the  
7 ability of that witness to testify. Past record may only be  
8 considered by you if at all in determining the witness's  
9 believability. Remember you are the sole judges of the  
10 facts in the case and the believability of any and all of  
11 the evidence.

12 The defendant is charged with distribution of crack  
13 cocaine. The State must prove beyond a reasonable doubt the  
14 defendant distributed crack cocaine.

15 Distribute means to deliver or to actually  
16 constructively or attempt to transfer a drug other than  
17 administering or dispensing.

18 To deliver means to actually, constructively or attempt  
19 to transfer a drug. A transfer can involve an exchange for  
20 money, for barter, or a gift. There does not have to be  
21 anything given in exchange for the drugs for a transfer to  
22 constitute distribution.

23 Mr. Foreman, I am going to come forward and share with  
24 you the verdict form.

25 (WHEREUPON, verdict form provided to foreman.)

1 THE COURT: Mr. Foreman, I am going to ask you to stand  
2 up. I will go over this form with you. It is fairly  
3 simple. The State of South Carolina, County of Charleston,  
4 the State versus Vanessa Frayer. It has got General  
5 Sessions here in the 9th Circuit. It has got the warrant  
6 number and the indictment number. It is just one charge,  
7 distribution of crack cocaine.

8 It says we the jury by unanimous consent find the  
9 defendant non guilty or guilty. It is completely within  
10 your province to make those determinations.

11 The verdict must be unanimous. It can't be eleven to  
12 one, eight to four, six to six. Everyone has to agree.  
13 Notify the bailiff upon reaching a verdict. There is a  
14 place for you to sign and date.

15 I would ask you if you can have a seat.

16 The other thing that I wanted mention, Mr. Foreman, is  
17 that you are to preside over the deliberation process and  
18 just ensure that everybody's voice is heard.

19 In the event someone would get up and use the restroom,  
20 stop deliberations. Because everybody has to participate  
21 in all of the deliberation process.

22 From time to time questions come up in the jury room.  
23 But I don't anticipate this is going to happen because y'all  
24 have paid attention to the evidence and to the testimony.  
25 Y'all have the ability and the tools to resolve factual

1 issues in this case. And you have heard me charge the law.

2       Once again, y'all have the difficult question is to  
3 determine what the facts are in the case. And if you have a  
4 question and it is a factual question, I can't answer. Like  
5 you have heard the law as I charged it to you.

6       If there is a question in your mind whether -- whether  
7 or not the problem is a question of law or question of fact  
8 reduce it to writing, give it to the foreman and he will,  
9 give it to the bailiff.

10       If it is something I can help you with, I will. But I  
11 don't anticipate that is going to happen. Y'all have  
12 everything that is necessary to resolve this case and I am  
13 confident that you won't need to do that.

14       I am going to ask the alternates to remain with me. I  
15 have told you every time that you left the courtroom do not  
16 begin deliberations. And once again I am going to tell you  
17 to do that once again because I am going to have to talk  
18 with these very fine lawyers to determine whether or not  
19 they have an objection to the manner in which I have charged  
20 the law.

21       If there is a clarification that I need to make I will  
22 bring you back in here and we will do that. Otherwise, we  
23 will gather up the documentary evidence. I will ask the  
24 bailiff to bring the documentary evidence into the jury  
25 room. He will probably give you some paper and some pencils

1 to aid you in the deliberation process and tell you to begin  
2 deliberations.

3 But do you begin deliberations until you receive  
4 instructions from the bailiff to do so. I am going to ask  
5 each of you to follow the bailiff into the jury room and all  
6 the alternates to remain with me. Thank you.

7 (WHEREUPON, jury exits courtroom 8/12/15 4:00 p.m.)

8 THE COURT: I want to speak with the alternate for a  
9 moment. Thank you so much for coming. I know that y'all  
10 feel like y'all were invited to a dance and didn't get to  
11 dance. But your service is very valuable.

12 You know, there is a lot of time and resources gone  
13 into the preparation and the presentation of this case; and  
14 if we were to lose one of the jurors, if one of them were to  
15 get sick, get involved in an automobile accident, or if they  
16 later discovered that they had a relationship with one of  
17 the witnesses who they know as Bubba but there name is  
18 Theodore when we read it out, quite often those things  
19 happen and we have to activate one of the alternate jurors  
20 so we don't have to start all over again.

21 That happens quite often. But in this case fortunately  
22 it did not. But your service is valued, and it is concluded  
23 for the day.

24 This is indeed a public forum. You are welcome to stay  
25 with us if you are interested to see what happens.

1 Otherwise, you can call the clerk's office if you are just  
2 interested to find out what the verdict was you are welcome  
3 to do that as well.

4 I have some good news for you. The first of which is  
5 you have earned a three-year exemption if called upon to  
6 serve as a juror in this court. It does not apply for  
7 federal court, magistrate's court, and municipal court. But  
8 if you are called to this court remind them that you served  
9 this week. You might tell them that I presided and what  
10 case it was and assist them in that regard. You can  
11 exercise an exemption. However if you want to serve, you  
12 can. You can serve. That is sort of within your  
13 discretion.

14 The other good news is you are going to be paid  
15 handsomely for your service, ten dollars a day and I think  
16 five -- twenty-five cent a mile maybe. Something like that.  
17 It is a small -- small token of appreciation for your  
18 service.

19 I know y'all had things y'all would rather be doing,  
20 but these are important things. You know, we are only a  
21 breath away from being accused of a crime ourselves; so it  
22 is important that we have people, residents, to hear these  
23 type of disputes and that it not be a professional jury or  
24 someone like myself to make those type determinations.

25 So hopefully it has been a learning experience for you.

1 Have either of you served on a jury before?

2 ALTERNATE JUROR: No, sir.

3 ALTERNATE JUROR: (Juror shakes head.)

4 THE COURT: All right. Well hopefully it has been a  
5 learning experience. Do y'all have any questions?

6 ALTERNATE JUROR: No, sir.

7 THE COURT: All right. Well, y'all are free to leave.  
8 Thank you very much. And y'all do not need to come back.  
9 You are through for the week.

10 ALTERNATE JUROR: Thank you.

11 THE COURT: Good. Have a good week.

12 Any objection with regard to the jury trial from  
13 the -- jury charge from the State?

14 MS. LINDER: No objection, Your Honor.

15 THE COURT: Any from defense?

16 MR. KING: Just the mere presence charge (inaudible).

17 THE COURT: Very good. All right.

18 THE COURT REPORTER: I'm sorry, I didn't hear that.

19 MR. KING: I'm sorry, the mere presence charge that I  
20 requested earlier.

21 THE COURT: All right.

22 MR. KING: I just renew that objection.

23 THE COURT: I am going to ask that you come forward and  
24 we are going to ask the court reporter to assist us in  
25 getting all of the documentary evidence together. I am

1 going to ask that you bring the documentary evidence and put  
2 it in front of the court reporter in one pile.

3 (WHEREUPON, exhibits were reviewed by counselors.)

4 THE COURT REPORTER: We have got State's 1, 2, 3, and 4  
5 which are here (placed on table).

6 The defense we had one; but this was not admitted, just  
7 marked for identification (held back from table).

8 THE COURT: Is everything that is on the table in  
9 evidence?

10 MS. LINDER: Yes.

11 THE COURT: Is there anything on the table that is not  
12 in evidence?

13 MS. LINDER: No.

14 THE COURT: All right. Let me hear from defense, Mr.  
15 King; is everything on the table into evidence?

16 MR. KING: Yes, Your Honor, except for the muted  
17 portions of disk. I don't -- I guess if they want to watch  
18 the disk they would ---

19 THE COURT: They would do it ---

20 MR. KING: --- be brought out?

21 THE COURT: That is correct.

22 MR. KING: Yes, Your Honor.

23 THE COURT: Is there anything in that pile that is not  
24 in evidence?

25 MR. KING: No, Your Honor.

1 THE COURT: All right. Well, I am going to ask the  
2 bailiff to take the documentary evidence to the jury room  
3 and tell them to begin deliberations.

4 (WHEREUPON, exhibits were taken by bailiff.)

5 (WHEREUPON, recess 8/12/15, 4:18 p.m.)

6 (WHEREUPON, 8/12/15, 5:20 p.m. resume trial.)

7 THE COURT: The question has been posed the jury would  
8 like to watch at least a portion of the video from where the  
9 CI enters the house until he leaves. And then they have  
10 also said that for scheduling purposes we need to make calls  
11 if you are to continue to deliberate tonight.

12 All right. Can you cue that up and get it right before  
13 the CI comes in.

14 MR. MAYNOR: Yes, Your Honor, we can get it started.  
15 They said they wanted to see when he walks into the house  
16 and ---

17 THE COURT: It says a portion of the video from where  
18 the CI enters the house until he leaves.

19 MR. MAYNOR: Okay.

20 THE COURT: Which is really only about two minutes.

21 MR. MAYNOR: Yes, it is not long. We will get it cued  
22 up and edit the same portions that we edited before.

23 (WHEREUPON, break to cue disk.)

24 THE COURT: Before the jury comes back in I am going --  
25 I am not going to keep them here past 6:30. I think what I

1 will -- and explain to them that they have the ability to  
2 come, certainly no rush. They have the ability to come back  
3 in the morning to deliberate.

4         What is the State's position with regard to that  
5 instruction?

6         MR. MAYNOR: Your Honor, I believe it would be fine. I  
7 would like to defer to Ms. Linder since this is her case.  
8 And she should be back in the room shortly.

9         THE COURT: If she wants to weigh in she needs to be  
10 here. All right. What do you think about it?

11         MR. KING: I think we are okay with that, Judge,  
12 sending them home at 6:30.

13         THE COURT: Okay. And I am going to tell them that so  
14 they can give their family members and friends that  
15 instruction that they will be pulling out of here at 6:30  
16 and we are going to tell them that the deliberation process  
17 is left completely up to them and that they're -- we have  
18 all week and that they can come back and continue  
19 deliberations as long as is necessary. Okay. All right.

20         We are ready -- we are ready for the jury.  
21 (WHEREUPON, jury enters 8/12/15, 5:25 p.m.)

22         THE COURT: Mr. Foreman, ladies and gentlemen of the  
23 jury, we have cued up the video to show you the portion that  
24 you have requested.

25         And for scheduling purposes you have asked to make

1 phone calls. I need to inform you that we will continue  
2 deliberations through 6:30 p.m. So you can let your family  
3 members and friends know that you will be departing here at  
4 6:30, no later than 6:30.

5 But y'all need to understand that this is very  
6 important matter. It is not a matter that needs to be  
7 rushed. We have the balance of the week to resolve this  
8 matter. Don't feel pressure with regard to time.

9 These are important matters. Involves important  
10 matters to the State, to the defendant, and an important  
11 matter to y'all. So give it the proper amount of  
12 consideration.

13 And in the event there has not been a verdict by 6:30  
14 we will come back in the morning. So you can -- and I am  
15 going to give the bailiff instructions that allow you to  
16 make the necessary phone calls to deal with your family  
17 members and friends.

18 Pay very close attention as we have cued up this video.  
19 (WHEREUPON, played portion of video requested by jury.)

20 THE COURT: Very good.

21 Mr. Foreman, ladies and gentlemen of the jury, return  
22 to the jury room to resume deliberations.

23 (WHEREUPON, jury out to resume deliberations 5:31 p.m.)

24 THE COURT: All right. We will stand at ease.

25 (WHEREUPON, Court's Exhibit 1, jury note, was marked for

1 identification.)

2 (WHEREUPON, recess 5:32 p.m.)

3 (WHEREUPON, resumed trial 8/12/15, 6:22 p.m.)

4 THE BAILIFF: All jurors are present, Your Honor.

5 THE COURT: Mr. Foreman, ladies and gentlemen of the  
6 jury, we are waiting on the solicitor to show up and we will  
7 receive your verdict momentarily.

8 (WHEREUPON, 6:24 p.m. solicitor enters.)

9 THE COURT: Mr. Foreman have you received a verdict --  
10 I mean have you reached a verdict?

11 THE FOREMAN: Yes we have, Your Honor.

12 THE COURT: Is it unanimous?

13 THE FOREMAN: Yes, it is, Your Honor.

14 THE COURT: I would ask you to give the verdict form to  
15 the bailiff.

16 (WHEREUPON, the foreman complied.)

17 THE COURT: The verdict form appears to be in order.  
18 And I will ask the clerk to publish it.

19 THE CLERK: Thank you, Your Honor. Please have the  
20 defendant stand.

21 The verdict form in the matter of the State of South  
22 Carolina versus Vanessa Frayer, defendant, as to  
23 distribution of crack cocaine we the jury by unanimous  
24 consent find the defendant guilty. Signed by the foreperson  
25 of the jury on 12th of August, 2015.

1 Ladies and gentlemen, if this was your verdict, please  
2 raise your right hand.

3 THE CLERK: Thank you. Please let the record reflect  
4 that all 12 jurors raised their right hand.

5 THE COURT: Any additional polling from the State?

6 MS. LINDER: None from the State, Your Honor.

7 THE COURT: Any from the defense?

8 MR. KING: Yes, Your Honor.

9 THE COURT: Very good.

10 THE CLERK: Ladies and gentlemen, what we are going to  
11 do now is called polling the jury. When I call your juror  
12 number please raise your hand. I will acknowledge you; you  
13 can put hand down. I will then ask you two questions: Was  
14 that your verdict? And is that still your verdict?

15 Please answer verbally to both of those questions.

16 THE CLERK: Juror Number 211 was that your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Is that still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Thank you. Juror Number 1 was that your  
21 verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is that still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Thank you. Juror Number 21 was that your

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is that still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror Number 88 was that your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is that still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is that still your verdict, sir?

10 THE JUROR: Yes.

11 THE CLERK: Thank you. Juror 114 was that your

12 verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is that still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Thank you. Juror 115 was that your

17 verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is that still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Thank you. Juror 116 was that your

22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is that still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Thank you. Juror 158 was that your  
2 verdict?  
3 THE JUROR: Yes.  
4 THE CLERK: Is that still your verdict?  
5 THE JUROR: Yes.  
6 THE CLERK: Is that still your verdict, ma'am?  
7 THE JUROR: Yes.  
8 THE CLERK: Thank you. Juror 188 was that your  
9 verdict?  
10 THE JUROR: Yes.  
11 THE CLERK: Is that still your verdict?  
12 THE JUROR: Yes.  
13 THE CLERK: Thank you. Juror 240 ---  
14 THE JUROR: Yes.  
15 THE CLERK: Ms. Parks, was that your verdict?  
16 THE JUROR: Yes.  
17 THE CLERK: Is that still your verdict?  
18 THE JUROR: Yes.  
19 THE CLERK: Was that still your verdict, ma'am?  
20 THE JUROR: Yes.  
21 THE CLERK: Thank you. Juror Number 281 was that your  
22 verdict?  
23 THE JUROR: Yes.  
24 THE CLERK: Is that still your verdict?  
25 THE JUROR: Yes.

1 THE CLERK: Thank you. Juror Number 349 was that your  
2 verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is that still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Thank you.

7 Was there any juror whose number I did not call, please  
8 raise your right hand?

9 (WHEREUPON, no one raised their hand.)

10 THE CLERK: Thank you. Your Honor, the jury has been  
11 polled and the verdict stands.

12 THE COURT: Mr. Foreman, ladies and gentlemen of the  
13 jury, Thank you for your service. You have been able to do  
14 what nobody else in this courtroom has been able to do is to  
15 bring finality to this matter.

16 Thank you for your time and your consideration. I have  
17 got good news for you. You -- your jury service is  
18 concluded for the week. You have earned a three-year  
19 exemption.

20 If you are subpoenaed to participate in this court  
21 within the next three years you can exercise an exemption  
22 and opt out. Or you can serve if you want to, but it is up  
23 to you in that regard. It does not apply to federal court,  
24 magistrate's court or municipal court. But for court you  
25 have earned a three-year exemption.

1           You will be paid handsomely for your services here, I  
2 think ten dollars a day and twenty-five cent a mile. It is  
3 a small token of our appreciation.

4           How many of you have never served on a jury before?  
5 (WHEREUPON, show of hands.)

6           THE COURT: Hopefully is hasn't -- I know it has been  
7 an inconvenience for you, but hopefully it has been a  
8 learning experience. Thank you for that.

9           This is a public forum. Under the laws of the State of  
10 South Carolina I am responsible for sentencing the  
11 individual who has been convicted of a crime. It is a  
12 public forum. If you would like to have a seat in the  
13 courtroom and see what the sentence is you are welcome to do  
14 that.

15           But your duty has been discharged. You are free to  
16 leave at this time. No need to report back. Your service  
17 is concluded. Thank you very much.

18 (WHEREUPON, jury exits courtroom 8/12/15, 6/26 p.m.)

19           THE COURT: I will be glad to hear from the State with  
20 regard to sentencing, particularly her past record.

21           MS. LINDER: Thank you, Your Honor. May it please the  
22 court. As far as this defendant's prior record she has a  
23 1989 shoplifting, 1993 simple assault, 1994 shoplifting,  
24 1997 a distribution of cocaine. Two thousand ---

25           THE COURT: What was the sentence on that one?

1           PROBATION: Your Honor, she is currently on probation  
2 for that offense.

3           MS. LINDER: No, not for that offense; for a later one.

4           PROBATION: Another one. I'm sorry. I apologize.

5           MS. LINDER: I'm sorry. She also has a 2002  
6 shoplifting and in 2010 she pled guilty to two distributions  
7 and two proximitities, and for that she received a 10-year  
8 sentence suspended upon probation.

9           THE COURT: Okay. All right. And so this ---

10          MS. LINDER: And Your Honor ---

11          THE COURT: This is a third offense which would  
12 make ---

13          MS. LINDER: Ten and thirty with a nonsuspendible ten.

14          THE COURT: Okay. All right.

15          Be glad to hear from the defendant with regard to  
16 mitigation.

17          MR. KING: Thank you, Your Honor. I always advise  
18 clients to remain silent at this point pending the appeal.  
19 But what I can say, Judge, is that she has never been to  
20 prison before. She does have a record.

21                 It is all misdemeanors except for the drug charges. In  
22 '95 she got two years probation. And what she is currently  
23 on now is probation. So she has never gotten any prison  
24 time.

25                 There was an offer in this case of a distribution

1 second for five years. That would have been at 85 percent.  
2 I think that was just for her to hear, that was -- it was  
3 just difficult for her to I guess taking that and getting  
4 that kind of time. So it ended up here in trial.

5 The minimum is ten, Judge. That's a pretty harsh  
6 sentence. We would ask that you would consider the minimum.  
7 Even though she does have a record that is the minimum for a  
8 third offense.

9 She doesn't have a lot of, you know, terrible other  
10 stuff on her record. But like I said she's -- it's not like  
11 she's been to prison before and just keeps doing it. She  
12 has gotten probation. So this is her first time actually  
13 going to prison, and eight-and-a-half out of ten would be  
14 quite a long time. So we would ask you consider that based  
15 on the fact she has never been to prison before.

16 THE COURT: Okay. I am going to judicially terminate  
17 her probation.

18 PROBATION: Yes, Your Honor.

19 THE COURT: Any financial obligations that have not  
20 been met, reduced to a civil judgment. Those that cannot be  
21 waived.

22 PROBATION: Yes, ma'am.

23 THE COURT: No administrative monitoring.

24 PROBATION: Yes, Your Honor.

25 THE COURT: Anything else from the defense with regard

1 to mitigation?

2 MR. KING: If her family wanted to speak, Judge. I  
3 don't know if they do. You don't have to, but if anybody  
4 wanted to speak now is the time.

5 MR. KING: This is her daughter, Your Honor.

6 THE COURT: All right.

7 MR. KING: Please state your name.

8 MS. DAWSON: Geacnia Dawson. I want to say, Your  
9 Honor, I know what she did was wrong, but the only think I  
10 am saying that she has got 14 kids and no help. She  
11 couldn't get a job. She tried. I mean I help her from day  
12 one. I am a thankful of her. I don't know what happened to  
13 my mamma, but I mean.

14 THE COURT: Thank you for being here. I know she  
15 appreciates your concern. Thank you.

16 THE COURT REPORTER: Could I get your name again,  
17 please.

18 THE COURT: Your name once again.

19 MS. DAWSON: Geacnia Dawson

20 MR. KING: Please spell your first name.

21 MS. DAWSON: G-E-A-C-N-I-A. Dawson, D-A-W-S-O-N.

22 THE COURT: Very good. Anything further?

23 MR. KING: I believe that is all I have, Your Honor.

24 THE COURT: And you have indicated that you're -- you  
25 have spoken with your client but she would like -- not like

1 to say anything with regard to mitigation?

2 MR. KING: That is right, Your Honor. And that is  
3 based on my advice to remain silent at this point.

4 THE COURT: All right. Very good. All right. Ms.  
5 Frayer, if you could stand.

6 On Indictment 2014-GS-10-07082 distribution of crack  
7 cocaine the sentence of the court is you be committed to the  
8 State Department of Corrections for a period of 12 years.

9 Is she entitled to any credit?

10 MR. KING: Yes, Your Honor, she served 128 days.

11 THE COURT: She is given credit for 128 days. Good  
12 luck to you, Ms. Frayer.

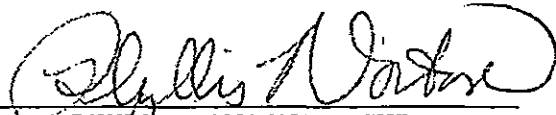
13 (WHEREUPON, trial concludes 8/12/15, 6:34 p.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on August 12, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR  
(Signature in blue ink.)

Date: 9/9/2015

Certified Transcript Provided For: SCC1D  
Certification Reference # 090915 0216

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

Michael G. Nettles, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

VANESSA LAQUETTA FRAYER,

APPELLANT

APPELLATE CASE NO. 2015-001823

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FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUES ON APPEAL.....3

STATEMENT OF THE CASE .....4

STATEMENT OF FACTS.....5

ARGUMENT .....8

CONCLUSION..... 15

TABLE OF AUTHORITIES

**Cases**

<u>Holmes v. South Carolina</u> , 547 U.S. 319, 126 S.Ct. 1727 (2006) .....	14
<u>State v. Burgess</u> , 393 S.C. 396, 712 S.E.2d 1 (Ct. App. 2011).....	12, 13
<u>State v. Burriss</u> , 334 S.C. 256, 513 S.E.2d 104 (1999).....	13
<u>State v. Daniels</u> , 401 S.C. 251, 737 S.E.2d 473 (2012).....	8
<u>State v. Dennis</u> , 321 S.C. 413, 468 S.E.2d 674 (Ct. App. 1996). .....	11, 12
<u>State v. Ellis</u> , 263 S.C. 12, 207 S.E.2d 408 (1974).....	9
<u>State v. Franklin</u> , 299 S.C. 133, 382 S.E.2d 911 (1989).....	9
<u>State v. James</u> , 386 S.C. 650, 689 S.E.2d 643 (Ct. App. 2010).....	9, 12, 13
<u>State v. Kimbrell</u> , 294 S.C. 51, 362 S.E.2d 630 (1987).....	11
<u>State v. Lee</u> , 298 S.C. 362, 380 S.E.2d 834 (1989). .....	8, 9, 10, 11
<u>State v. Peay</u> , 321 S.C. 405, 468 S.E.2d 669 (Ct. App. 1996).....	9, 11
<u>State v. Williams</u> , 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012).....	11

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying defense counsel's request for a jury charge on mere presence where the video recording of the controlled buy showed at least six other people in and around the residence where the informant claimed he purchased the cocaine?

STATEMENT OF THE CASE

On June 13, 2014, the Charleston County grand jury indicted Appellant Vanessa Frayer on one count of distribution of cocaine base. R. 151.

On August 12, 2015, Frayer appeared for trial before the Honorable Michael G. Nettles and a jury. Frayer was represented by Jason King and Shirene C. Hansotia. The State was represented by assistant solicitors Stephanie Linder and Scott Maynor. R. 1.

The jury found Frayer guilty of the above offense. R. 141. Judge Nettles terminated her probation related to a prior conviction and sentenced her to twelve years incarceration. R. 150.

This appeal follows.

STATEMENT OF FACTS

Frayer presented three alternate defenses at trial through counsel's cross-examination and argument. The defense averred that either (1) she was not the person shown on the video selling drugs to the confidential informant; (2) *she was shown in the video but was not involved in sale of drugs to the informant*; or (3) the drugs were picked up by the informant along his lengthy walking route.<sup>1</sup> R. 31, l. 14 – 33, l. 7; R. 64, l. 1 – 70, l. 3; R. 124, l. 15 – 128, l. 13. The State's case included testimony from confidential informant Christopher Singleton (hereinafter "the informant"), testimony from the officers and detectives who coordinated the buy operation, testimony regarding chain of custody and analysis of the drug evidence, and the buy video recorded from a camera worn by the informant. R. 33, l. 10 – 105, l. 6.

The informant admitted that he worked as a confidential informant sixteen times from May 29, 2014 through January 9, 2015, earning a total of eight hundred and eighty dollars. R. 64, l. 22 – 66, l. 25. The informant also admitted to his criminal history, which included both drug offenses and crimes of dishonesty. Specifically, the informant was convicted of possession of cocaine base in 2008, 2009, and 2012, six counts of fraudulent checks in 2008, shoplifting in 2009, petty larceny in 2009, and receiving stolen goods in 2013. R. 63, ll. 4-14; R. 68, l. 17 – 70, l. 2.

The informant testified that he was working as a confidential informant on June 13, 2012 and was given sixty dollars to get "a 60," i.e. sixty dollars' worth of crack cocaine. He

---

<sup>1</sup> Twelve (12) minutes elapsed from the time the informant got out of the officer's van to the time he arrived at the closed-in porch where he allegedly purchased the drugs. Another seven (7) minutes elapsed from the time the informant left the porch to the time he returned to the van. See State's Exhibit 1 (Buy Video), on file with this Court.

was searched before and after the “buy” by Officer Engles and outfitted with a camera. He could not recall the street name where he purchased the drugs, but he said it was downtown near a Food Lion. The informant claimed that he “ordered the 60” from “the lady in the courtroom.” Not surprisingly since she was sitting at the defense table, he pointed to Frayer. R. 55, l. 3 – 61, l. 4; R. 61, l. 18-21.

The video shows at least six other individuals outside the house and on the closed-in porch where the drugs were allegedly purchased by the informant. State’s Exhibit 1 (Buy Video), on file with this Court.<sup>2</sup> Though the informant testified that Frayer is the individual who sold him the drugs, the woman sitting on the porch is only shown briefly and is never seen handing anything to the informant on the video. R. 56, ll. 1-11; R. 112, ll. 22-24; State’s Exhibit 1 (Buy Video), on file with this Court. Notably, there was no evidence that the informant had ever met Frayer before. Rather, the police targeted a general area in response to other incidents that had been reported there. R. 72, ll. 6-17; R. 117, ll. 9-15.

Though the amount of cocaine that he actually received from the purchase “didn’t look like a 60,” the informant did not get any change back from the sixty dollars he allegedly spent. R. 55, ll. 17-20; R. 62, ll. 2-10. There was no testimony regarding what amount he expected to receive for sixty dollars. Regardless, there was a disparity in the weight of the substance recorded by the officer on his report of 0.4 grams and the weight

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<sup>2</sup> As a result of the trial court’s ruling on defense counsel’s pre-trial motion to redact, portions of the buy video were muted by the solicitor when the video was shown to the jury during the trial and upon the jury’s request during deliberations. R. 5, l. 16 - 22, l. 5; R. 50, ll. 8-25; R. 58, l. 25 – 59, l. 24; Supp. R. 1, ll. 14-21; Supp. R. 2, l. 7 – 4, l. 19. The solicitor specifically noted the times that the video was muted in the record. R. 50, ll. 8-25 (“We agree that 7:45 to 12:15 needs to be muted; 13:50 to 14:04; 14:56 to 15:02; and 15:21 to 15:32. Those are all the times that need to be muted. We have watched it together and we are in agreement with all of those items.”).

recorded by the drug analyst of 0.25 grams. R. 89, ll. 17-19; R. 104, ll. 13-22; R. 125, l. 25 – 126, l. 4; State's Ex. 2 (Lab Report). Defense counsel also pointed out that it took the police three months to even draft a warrant to arrest Frayer and that no marked money was recovered from her. R. 89, l. 20 – 90, l. 4; R. 127, ll. 5-17.

Defense counsel requested a mere presence charge. R. 112, ll. 8-12. The solicitor argued that “[t]here has been no testimony that she was merely present.” She noted that the informant’s testimony was that Frayer “had an active role taking the order and making the sale and doing the distribution itself.” The solicitor agreed with defense counsel that there is no “hand to hand” shown on the video. Thus, she argued, “there is no way to really point it at someone else.” Inexplicably, the solicitor further argued that “the language of the distribution includes conspiring, aiding, abetting, and all of that,” which “would cover things better.” R. 112, l. 16 – 113, l. 4.

The trial judge declined to give the charge, stating:

Alright. You are protected on the record. I don't think it applies. And I think probably where you have a constructive possession case with where there is some amount of controlled substance in a room I think that would apply. This case is there is no evidence of that in this case.

R. 113, ll. 5-10. Defense counsel renewed his request for the mere presence charge after the jury instructions were given, before the jury began deliberations. R. 140, ll. 11-22.

ARGUMENT

**The trial court erred in denying defense counsel's request for a jury charge on mere presence where the video recording of the controlled buy showed at least six other people in and around the residence where the informant claimed he purchased the cocaine.**

A mere presence instruction should have been given in this case because, after viewing the video, the jury could have reasonably concluded that Frayer was merely present and was not the individual who sold the informant the drugs. While Frayer is alleged to be the one who spoke to the informant regarding "a 60," the camera did not show who was speaking at that time. Further, as the solicitor conceded at trial, the video did not show Frayer hand anything to the informant. R. 112, ll. 22-25. Thus, if the informant did in fact purchase drugs from someone on the porch, it was not clear that person was Frayer. The solicitor pointed to the informant's testimony that Frayer was the one who sold him the drugs. R. 112, ll. 16-21. However, it was up to the jury to weigh the evidence and determine whether to believe the informant's testimony, which was not substantiated by the video recording. See State v. Daniels, 401 S.C. 251, 260, 737 S.E.2d 473, 477 (2012) (noting that the jury's "core functions" are "to examine evidence and make factual determinations, weigh credibility, and perhaps most importantly, decide whether the State has proven its case beyond a reasonable doubt.").

The law to be charged to the jury is to be determined by the evidence presented at trial. State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989). The trial court commits reversible error when it fails to give a requested charge on an issue raised by the indictment and the evidence presented. Id. The defendant is entitled to a mere presence charge if the evidence supports it. State v. Franklin, 299 S.C. 133, 141, 382 S.E.2d 911,

915 (1989). The failure to charge “mere presence” may constitute reversible error. Lee, 298 S.C. at 364, 380 S.E.2d at 835.

The law on “mere presence” has devolved over the past twenty-five years such that the courts have begun determining the propriety of such a charge based upon the State’s theory of the case rather than based on the evidence. See State v. Peay, 321 S.C. 405, 468 S.E.2d 669 (Ct. App. 1996) (finding “a charge on mere presence is necessary only when the state attempts to establish constructive possession of contraband” and “[w]here the state alleges and proves actual possession, the court need not give a constructive possession or ‘mere presence’ charge”); State v. James, 386 S.C. 650, 689 S.E.2d 643 (Ct. App. 2010) (finding mere presence inapplicable where the State’s theory of the case did not involve accomplice liability and the State did not seek to establish that James was in possession of cocaine). Even so, the facts of the case warranted a mere presence charge.

In State v. Peay, this Court held:

A charge on mere presence is necessary only when the state attempts to establish constructive possession of contraband. State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974). Where the state alleges and proves actual possession, the court need not give a constructive possession or “mere presence” charge. See State v. Lee (the evidence produced by the state tended to show Lee exercised actual possession and control over the cocaine; thus, “mere presence” was not an instruction supported by the evidence presented by the state at trial).

321 S.C. 405, 468 S.E.2d 669 (Ct. App. 1996). However, a review of the cases cited reveals that they do not stand for those propositions. In State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974), there was no charge issue raised in the appeal. Rather, the co-defendants in Ellis argued that a directed verdict should have been granted because the State failed to present any evidence of possession beyond their mere presence. 263 S.C.

at 19-23, 207 S.E.2d at 412-13. Our Supreme Court agreed and vacated one of the defendant's convictions. Id.

In State v. Lee, our Supreme Court found that the evidence presented did not warrant a mere presence instruction. 298 S.C. 362, 380 S.E.2d 834 (1989). The State offered testimony of Agent Ramey of the South Carolina Alcoholic Beverage Control Commission, who was on patrol with an officer from the Charleston County Police Department's Narcotics Unit. Id. at 363, 380 S.E.2d at 835. A group of six people, who were standing in a semicircle, scattered when the officers drove up to them. Id. Ramey testified that she saw Lee, who was standing in the group as they approached, drop a plastic container containing white powder, which was later found to be cocaine. Id. The officers followed Lee around the corner of a nearby building and arrested him. Id.

Lee testified that he was walking along behind the building and saw the officers approach the group that scattered. Id. at 364, 380 S.E.2d at 835. When he was approached and searched, the officers did not find any drugs on him and he was released. Id. As he began to walk away, the officers found cocaine where the group had been standing and stopped him again. Id. Lee testified that the officers told him they were "going to frame him for what they found when he wasn't even no where around." Id. at 365, 380 S.E.2d at 836.

The Lee Court found that the State's evidence "tended to show Lee exercised actual possession and control over the cocaine" and that Lee's defense was that the officers knew he was not involved and were framing him. Id. Thus, the Court determined that "[t]he evidence presented at trial did not support a 'mere presence' instruction; therefore, the trial judge properly refused to so instruct the jury." Id. Thus,

the Lee Court did not look just to the State's theory and evidence. Id. ("This Court has held mere presence instructions are required where the evidence presented at trial reasonably supports the conclusion that the defendant was merely present at the scene where drugs were found, but it was questionable whether the defendant had a right to exercise dominion and control over them." (citing State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987))).

Later the same month that Peay was decided, the same panel of this Court issued its opinion in State v. Dennis, 321 S.C. 413, 468 S.E.2d 674 (Ct. App. 1996), and explained that a "mere presence" instruction is "generally applicable in two circumstances":

First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, "mere presence" is generally an issue where the State attempts to establish the defendant's possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant's "mere presence" near the contraband does not establish his possession.

321 S.C. at 420, 468 S.E.2d at 678. Notably, the defendant in Dennis also denied ever being at the scene such that there was never any issue of accomplice liability. Id. at 420, 468 S.E.2d at 678. Unlike the defendants in Lee and Dennis, Frayer did not testify in the present case and pigeonhole herself into the defense that she was not present on the porch. Instead, she presented alternate defenses in the form of defense counsel's cross-examination and argument regarding the reasonable inferences that the jury could make – one of which was that she was merely present. See generally State v. Williams, 400 S.C.

308, 317, 733 S.E.2d 605, 610 (Ct. App. 2012) (recognizing that the evidence may support charges on defenses that may otherwise seem inconsistent).

Since Dennis, this Court decided State v. James, 386 S.C. 650, 689 S.E.2d 643 (Ct. App. 2010) and found a mere presence charge inapplicable under the accomplice liability theory where there was no evidence that anyone other than James was present at the scene and inapplicable under the possession theory where the State was not attempting to establish constructive possession of contraband. The next year, in State v. Burgess, 393 S.C. 396, 712 S.E.2d 1 (Ct. App. 2011), *modified on other grounds by State v. Burgess*, 408 S.C. 421, 759 S.E.2d 407 (2014) this Court found a mere presence charge inapplicable because the State's case depended on Burgess' actual possession of the crack and the jury charge limited the State to proving actual possession and gave the jury no option to find constructive possession.

Unlike James, 386 S.C. at 654, 689 S.E.2d 645-46, where the defendant was the only person shown on the buy video, the video in the present case revealed that the informant was on the porch for only approximately three minutes and forty-five seconds. The woman who he claimed was Frayer was shown on camera at various times for only less than ten seconds in total. It further showed several other people around the alleged buy location such that even if the jury believed that the woman seated in the chair was Frayer, they could have also reasonably believed that someone else sold the informant the drugs and that Frayer was merely present. See State's Exhibit 1 (Buy Video), on file with this Court.

Additionally, the indictment in the present case read:

That in Charleston County, South Carolina, on or about June 12, 2014, the Defendant, VANESSA LAQUETTA FRAYER, 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 distribute, dispense or deliver a controlled dangerous substance or a controlled dangerous analogue, to wit: cocaine base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

R. 151 (emphasis added).<sup>3</sup> The jury was further instructed: "Distribute means to deliver or to actually constructively or attempt to transfer a drug other than administering or dispensing." R. 136; ll. 15-17 (emphasis added). They were also instructed: "To deliver means to actually, constructively or attempt to transfer a drug." R. 136, ll. 18-19 (emphasis added). Thus, while the State did not specifically argue accomplice liability, this language may have led the jury to believe that Frayer's presence alone was enough to convict her. Cf. Burgess, 393 S.C. at 405, 712 S.E.2d at 6 (where the jury charge specifically limited the State to proving actual possession and gave the jury no option to find constructive possession).

There should not be any different standard for a "mere presence" charge than any other charge requested by the parties. Though our courts have recited the correct standard that the law to be charged is determined from the "issue[s] raised by the indictment and the evidence presented," they have often failed to apply that standard to the request for a mere presence charge. See, e.g., James, 386 S.C. at 653, 689 S.E.2d at 645. It is not the function of the trial judge to weigh the evidence in deciding whether a charge is proper. State v. Burriess, 334 S.C. 256, 513 S.E.2d 104 (1999) ("It is well-settled

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<sup>3</sup> It is not clear from the record whether the indictment was sent back with the jury in addition to the verdict form.

the law to be charged is determined from the evidence presented at trial, and if *any evidence* exists to support a charge, it should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” (emphasis added)). Thus, the State’s theory of the case cannot dictate the propriety of the charge. See Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006) (“[B]y evaluating the strength of only one party’s evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt.”). In the present case, where the jury could have reasonably believed that Frayer was present on the porch but did not actively participate in the sale of the drugs, a mere presence charge should have been given. The need for such a charge was even more imperative because of the mention of aiding and abetting and constructive distribution in the indictment and jury instructions given. Therefore, the trial court erred in failing to give the mere presence charge requested.

CONCLUSION

Based on the foregoing, Appellant Vanessa Frayer respectfully requests that this Court reverse her conviction and grant her a new trial.

Respectfully submitted,



Laura R. Baer  
Appellate Defender


ATTORNEY FOR APPELLANT

This 29th day of June, 2016.

## CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

June 29th, 2016

  
\_\_\_\_\_  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Charleston County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

VANESSA LAQUETTA FRAYER,

APPELLANT

CERTIFICATE OF SERVICE

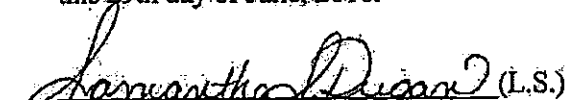
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 29th day of June, 2016.



Laura R. Baer  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 29th day of June, 2016.



(L.S.)  
Notary Public for South Carolina  
My Commission Expires: April 27, 2026.

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions  
Michael G. Nettles, Circuit Court Judge

---

Appellate Case No. 2015-001823

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THE STATE,

Respondent,

v.

VANESSA LAQUETTA FRAYER,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

---

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS .....	3
ARGUMENT .....	6
The trial court properly denied Appellant's request for a jury instruction on mere presence because the evidence presented did not support such a charge.....	6
CONCLUSION.....	11

## TABLE OF AUTHORITIES

### Cases:

<u>State v. Burriss</u> , 334 S.C. 256, 513 S.E.2d 104 (1999).....	8
<u>State v. Dennis</u> , 321 S.C. 413, 468 S.E.2d 674 (Ct. App. 1996) .....	7
<u>State v. Ellis</u> , 263 A.C. 12, 207 S.E.2d 408 (1974) .....	8
<u>State v. Holland</u> , 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009).....	6
<u>State v. James</u> , 386 S.C. 650, 689 S.E.2d 643 (Ct. App. 2010).....	7
<u>State v. Lee</u> , 298 S.C. 362, 380 S.E.2d 834 (1989) .....	8
<u>State v. Peay</u> , 321 S.C. 405, 468 S.E.2d 669 (Ct. App. 1996).....	8

**STATEMENT OF ISSUE ON APPEAL**

The trial court properly denied Appellant's request for a jury instruction on mere presence because the evidence presented did not support such a charge.

**STATEMENT OF THE CASE**

A Charleston County Grand Jury indicted Appellant for distribution of cocaine base. (R.151-152) On August 12, 2015,<sup>1</sup> Appellant proceeded to a trial before the Honorable Michael G. Nettles and a jury. Jason King, Esquire, and Shirene C. Hansotia, Esquire, represented Appellant, and Assistant Solicitors Stephanie Linder, Esquire, and Scott Maynor, Esquire, represented the State. The jury found Appellant guilty, and Judge Nettles sentenced her to twelve years' imprisonment after terminating her probation for a prior conviction. (R. 141, 150.)

Appellant filed a timely notice of intent to appeal and subsequently submitted a Brief in support of her appeal. This Brief of Respondent follows.

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<sup>1</sup> The cover page of the trial transcript lists the date as "August 12, 2013," but the notice of appeal, the sentence sheet, and the verdict form all list the correct date, "August 12, 2015."

### STATEMENT OF FACTS

On June 13, 2014, officers from the City of Charleston Police Department organized a "buy-walk" with the assistance of a confidential informant (CI).<sup>2</sup> The police searched the CI, fitted him with an audio wire and a camera, and gave him prerecorded money. (R. 36, line 24–R. 39, line 18). The police listened through the audio wire after dropping the CI off in the designated area. (R. 40, lines 7–13). The CI made a purchase, walked back to the designated meeting place, was re-searched by police, and wrote a statement. (R. 40, line 14–R. 41, line 6). Appellant was identified as the person who sold the CI the drugs, and police arrested her approximately three months later and charged her with distribution of cocaine base. (R. 81, line 24–R. 82, line 3; R. 88, line 22–R. 90, line 1; R.151-152).

Appellant proceeded to trial on August 12, 2015. She made a pretrial motion to redact portions of the buy video, which was a combined DVD of the video and audio recordings captured by the CI. (R. 5, lines 16–20). After much discussion, the trial judge watched the video. (R. 15, line 6–R. 19, line 4). Both parties agreed partial redaction was proper and agreed to meet during the lunch break to determine which portions of the video to mute when played for the jury, which they did. (R. 19, lines 17–25; R. 50, lines 8–19).

The State then proceeded to present its case. First, the State called Patrick Gill, a narcotics detective with the City of Charleston Police Department. (R. 33, line 10–R. 34, line 5). He explained the process of doing a "buy-walk" controlled drug buy and described what happened in this particular case. (R. 35, line 1–R. 41, line 6). He testified that the team met with

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<sup>2</sup> According to Detective Patrick Gill of the City of Charleston Police Department, a "buy-walk" is when the department searches a CI, fits him with a wire and recording equipment, gives him prerecorded money, and takes him to a predetermined area where the CI then makes a controlled drug purchase and comes back to a designated meeting place. It differs from a "buy-bust," where the police immediately arrest someone following the purchase, because here the arrest took place three months later. (R. 36, lines 2–23).

the CI to do a briefing, during which the CI was searched, wired to an audio recorder and a camera, and given prerecorded money. (R. 37, lines 14–18). He stated that he was able to listen on a real-time wire as the CI walked and that the camera the CI wears gives a first-person view so the police can see everything he sees. (R. 39, lines 8–14).

Next, the State called Christopher Singleton, the CI. He testified he worked with the City of Charleston on June 13, 2014, and bought \$60 worth of crack cocaine, although he thought it did not look like a “60.” (R. 55, lines 3–20). When asked who he bought the drugs from, he identified Appellant. (R. 56 1-lines 1–11). Singleton identified the buy video, State’s Exhibit #1, and testified it was a fair and accurate representation of what happened on June 13, 2014. (R. 58, lines 7–24). The solicitor played the video while Singleton was on the stand and asked him questions about it. She asked him who the female voice belonged to that can be heard talking about \$60 on the video, and he identified the voice as belonging to “the lady in the courtroom.” (R. 60, lines 23–25). He further identified her as the one sitting in the chair in the video. (R. 61, lines 1–4). To clarify, the following exchange took place:

The State: So when you ordered up the 60 who did you order from?

Singleton: The young lady in the courtroom.

The State: And that lady sitting down on the video, who is that?

Singleton: The young lady sitting in the courtroom.

(R. 61, lines 18–21). Singleton testified that when he got back to where the officers were, he gave the drugs he purchased to Detective Engles, the officers searched him again, and he wrote a statement. (R. 61, line 22–R. 62, line 25).

Detective Sean Engles, a narcotics detective with the City of Charleston Police Department, testified next. He explained he was the case agent for this particular drug buy. (R.

72, lines 4–8). He testified about using Singleton as a CI on many occasions because he was reliable and stated, “Everything that we later review on the video has been consistent with the statements he gives us after the buys.” (R. 74, lines 2–10). Detective Engles related that Singleton bought \$60 worth of crack cocaine, which field-tested positive at the scene. (R. 79, line 13–R. 80, line 4). He then testified he took the drugs to the police evidence drop box. (R. 80, line 24–R. 81, line 23).

The State called three more witnesses to complete the chain of custody: Linda Wilson-evidence technician, Susan Payne-evidence custodian, and Ashley Earl-controlled substance analyst. They each testified regarding their roles in handling the drug evidence. (R. 90–100).

At the close of the State’s case, Appellant moved for a directed verdict, which the trial court denied. (R. 105, line 14–R. 106, line 17). The State asked for a jury charge explaining the trial court’s rulings on which portions to mute on the video, but the trial court denied the request. (R. 110, line 7–R. 111, line 11). Defense counsel requested a jury charge on mere presence but made no argument supporting his request. (R. 112, lines 9–12). The State opposed the requested charge, arguing “[t]here has been no testimony that she was merely present” and added that “because the language of the distribution includes conspiring, aiding, abetting, and all of that . . . that would cover things better.” (R. 112, line 16–R. 113, line 4). The trial judge determined a mere presence charge did not apply, stating, “And I think probably where you have a constructive possession case with where there is some amount of controlled substance in a room I think that would apply [, but] there is no evidence of that in this case.” (R. 113, lines 6–10).

The jury found Appellant guilty, and the trial judge sentenced her to twelve years’ imprisonment after terminating her probation for a prior conviction. (R. 141, 150.)

## ARGUMENT

**The trial court properly denied Appellant's request for a jury instruction on mere presence because the evidence presented did not support such a charge.**

Appellant argues the trial court erred in denying defense counsel's request for a jury charge on mere presence because the video recording of the controlled buy showed at least six other people in and around the residence where the informant purchased the crack cocaine. On the contrary, the trial court correctly denied the request because the evidence presented—namely the CI's testimony and the video itself—showed one person transacted the drug sale with the CI, and that person was Appellant. This Court should affirm the trial court's denial of the request.

"The law to be charged must be determined from the evidence presented at trial." State v. Holland, 385 S.C. 159, 165-66, 682 S.E.2d 898, 901 (Ct. App. 2009). In determining whether the evidence requires a particular charge, the trial court views the facts in a light most favorable to the defendant. However, "[a]n instruction should not be given unless justified by the evidence." Id. at 166, 682 S.E.2d at 901. "If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury." Id. Our appellate courts will not reverse the trial court's ruling regarding jury instructions unless the trial court abused its discretion. Id.

Two typical situations exist where a "mere presence" charge is applicable: accomplice liability cases and constructive possession cases.

"Mere presence" is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, mere presence is generally an issue where the state attempts to establish the defendant's possession of contraband because the defendant is present where the contraband is found. In such cases,

the trial court may be required to charge the jury that the defendant's mere presence near the contraband does not establish possession.

State v. James, 386 S.C. 650, 653-54, 689 S.E.2d 643, 645 (Ct. App. 2010) (quoting State v. Dennis, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996)).

Neither of these circumstances is present in the instant case. It does not involve accomplice liability, nor is it a situation where drugs were simply found somewhere with no indication of who had possession. Appellant makes much of the comment by the solicitor that "the language of the distribution includes conspiring, aiding, abetting, and all of that" which "would cover things better." (App.Br.7; R. 113, lines 2-4). Indeed, she characterizes it as an inexplicable argument. However, the words "aid, abet, attempt" are contained in the indictment, and the solicitor was not arguing accomplice liability simply by mentioning the language of the statute. It is clear, and Appellant even notes in her brief, that the State's theory is that Appellant "had an active role taking the order and making the sale and doing the distribution itself." (App.Br.7; R. 112, lines 18-21). At no time did the State argue she had an accomplice-type role in the drug deal.

The evidence shows Appellant was the one who transacted the controlled drug buy with Singleton. The evidence presented here included Singleton's testimony at trial that Appellant was the person from whom he ordered the "60" of drugs. He also identified her as the lady who was sitting in the video. The video itself also provided evidence. While it is true the camera does not actually show the drugs changing hands, the audio recording provides evidence of a drug transaction. In the audio recording, Appellant can be heard asking what is going on, and Singleton can be heard telling her he needs a "60." (Buy DVD at approximately 13:32). One can then hear Appellant say something that sounds like, "I'll get the '60.'" (Buy video at approximately 14:10). She then directs him over to the side while another man comes in. In

another part of the video, Appellant tells Singleton what to do if he wants to pay to smoke it there. (Buy DVD at approximately 14:53). Appellant is the only one sitting in the video. The only other woman shown in the video, who Appellant indicated was her sister, is walking around the whole time. Additionally, Detective Engles testified Appellant delivered \$60 worth of crack cocaine to him after the encounter. (R. 79, line 11–R. 80, line 4).

Appellant argues six people were in and around the area where the drug transaction took place in support of her argument that the trial judge erred in denying her request for a mere presence charge to the jury. However, even though two men were seen outside the door, and two men and Appellant's sister were inside the house, this was not a case where some drugs were simply found on some property and dominion and control of those drugs were at issue. This was a controlled, orchestrated “buy-walk” where the CI went into the house, bought drugs from one person—Appellant—and delivered those purchased drugs to the police. The transaction was captured on video and audio, and as noted above, the recordings, in addition to Singleton's testimony, provide evidence that Appellant was the one selling the drugs. Therefore, the number of people in and around the house is of no significance to this particular set of facts.

Appellant takes issue with this Court's decision in State v. Peay, 321 S.C. 405, 468 S.E.2d 669 (Ct. App. 1996), specifically suggesting that this Court's assessment of State v. Ellis and State v. Lee is incorrect.<sup>3</sup> Specifically, she argues Ellis is a directed verdict case rather than a jury charge case. While this is true, the case still provides guidance on the relationship between constructive possession and mere presence, which the Peay case expands and applies to the jury charge issue. Though Appellant argues both Ellis and Lee do not stand for the propositions this Court cited them for in Peay, the parenthetical about Lee is practically a

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<sup>3</sup> State v. Ellis, 263 A.C. 12, 207 S.E.2d 408 (1974); State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989).

verbatim quotation out of the Lee case except for the omission of the word “below,” the use of a lower case “s” in the word “state,” and the replacement of a semicolon for a period to combine the two sentences into one. Lee, 298 S.C. at 365, 380 S.E.2d at 836. Regardless of whether Ellis has anything to do with a jury charge, Peay is still good law in South Carolina and makes clear that when actual possession is alleged and proved by the State, as is the case here, “the court need not give a constructive possession or ‘mere presence’ charge.” Peay, 321 S.C. at 411, 468 S.E.2d at 673. Singleton’s testimony was that Appellant sold him the drugs. This demonstrates actual possession and does not require a “mere presence” charge.

Appellant also argues that “mere presence” law has “devolved” from being based on the evidence in a case to being based on the State’s theory of a case and argues “the State’s theory of the case cannot dictate the propriety of the charge.” (App.Br.9, 14). She cites State v. Burriss, 334 SC. 256, 513 S.E.2d 104 (1999), for the proposition that “if any evidence exists to support a charge, it should be given” in support of her argument that “she presented alternate defenses in the form of defense counsel’s cross-examination and argument regarding the reasonable inferences that the jury could make – one of which was that she was merely present.” (App.Br.11, 13–14) (emphasis added). However, contrary to Appellant’s statement, she did not present any evidence or argument to support a defense that she was merely present, including during opening, cross-examination, or closing. In her statement of facts, Appellant states that she presented three alternate defenses at trial: “The defense averred that either (1) she was not the person shown on the video selling drugs to the confidential informant; (2) *she was shown in the video but was not involved in sale of drugs to the informant*; or (3) the drugs were picked up by the informant along his lengthy walking route.” (App.Br.5). However, upon reviewing the transcript pages cited to support this statement, the State is unable to discern how Appellant

came to this conclusion. The only defense actually mentioned in defense counsel's opening statement was that Appellant was not arrested until three months after the controlled buy and no prerecorded money was found on her. It would be quite a stretch to translate that defense into a claim that "she was not the person shown on the video selling drugs to the confidential informant." During cross-examination of Singleton, in another section of pages cited by Appellant, the only thing that could possibly be characterized as a defense was questioning Singleton about his criminal history and implying he was not an honest person, possibly calling into question his credibility. And finally, in the last section of cited transcript pages, defense counsel highlighted Singleton's history of dishonesty and then pointed out that he claimed he was not given \$60 worth of crack cocaine and that the video was not clear. While attacking Singleton's credibility could certainly make the jurors wonder whether they could believe him, defense counsel did not *aver* that Appellant was shown in the video but was not involved in the sale of drugs to the informant or that the drugs were picked up by the informant along his lengthy walking route. In short, none of the cited portions of the transcript appear to show anything that rises to the level of the claims made above.

In sum, because no evidence was presented that Appellant was merely present, and accomplice liability was not the State's theory of the case and was not an issue, the trial judge correctly denied Appellant's request for a charge on mere presence. This Court should affirm the trial court's decision.

**CONCLUSION**

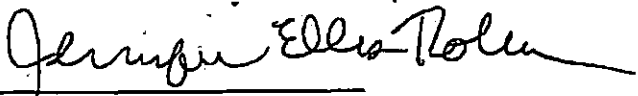
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Attorney General

JENNIFER ELLIS ROBERTS  
Assistant Attorney General

SCARLETT A. WILSON  
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**ATTORNEYS FOR RESPONDENT**

June 30, 2016

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions  
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2015-001823

THE STATE,

Respondent,

v.

VANESSA LAQUETTA FRAYER,

Appellant.

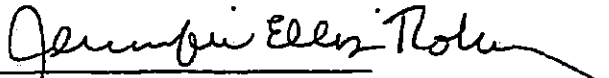
CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),  
SCACR.

ALAN WILSON  
Attorney General

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ATTORNEYS FOR RESPONDENT

June 30, 2016

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions  
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2015-001823

THE STATE,

Respondent,

v.

VANESSA LAQUETTA FRAYER,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 30<sup>th</sup> day of June, 2016.



ANGELA BENNETT  
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Vanessa Laquetta Frayer, Appellant.

Appellate Case No. 2015-001823

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Appeal From Charleston County  
Michael G. Nettles, Circuit Court Judge

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Unpublished Opinion No. 2016-UP-511  
Submitted November 1, 2016 – Filed December 14, 2016

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**AFFIRMED**

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Appellate Defender Laura Ruth Baer, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Jennifer Ellis Roberts, both of  
Columbia; and Solicitor Scarlett Anne Wilson, of  
Charleston, for Respondent.

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**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion."); *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989) ("The law to be charged to the jury is to be determined by the evidence presented at trial."); *State v. Dennis*, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996) ("'Mere presence' is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.' Secondly, 'mere presence' is generally an issue where the State attempts to establish the defendant's possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant's 'mere presence' near the contraband does not establish his possession." (internal citations omitted) (quoting *State v. Austin*, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)); *State v. James*, 386 S.C. 650, 654-55, 689 S.E.2d 643, 645-46 (Ct. App. 2010) (holding a mere presence jury charge not appropriate without theories of accomplice liability or constructive possession).

**AFFIRMED.<sup>1</sup>**

**WILLIAMS, THOMAS, and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.



## The South Carolina Court of Appeals

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December 30, 2016

The Honorable Julie J. Armstrong  
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### REMITTITUR

Re: The State v. Vanessa Frayer  
Lower Court Case No. 2014GS1007082  
Appellate Case No. 2015-001823

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: Alan McCrory Wilson, Esquire  
~~Laura Ruth Baer, Esquire~~  
Jennifer Ellis Roberts, Esquire  
Scarlett Anne Wilson, Esquire

FORM 5

2017-CP-10-1165

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

County of Charleston

Vanesa Jaquetta Frazer

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2017 MAR -5 PM 3:21  
RECEIVED  
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Charleston Co. Detention Center, Roads Ave, Char. Hqts, SC
2. Name and location of Court which imposed sentence Charleston County General Sessions Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-65-10-07082
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 2015

(b) 12 Years

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SC Supreme Court

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. Denied appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. December 14, 2016

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Appellate Case No. 2015-001823

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Given too extensive sentence for charge
- (b) Ineffective lawyer representation
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See # 5 above should constitute grounds for an evidentiary hearing; as to id # 10 above
- (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? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. Direct appeal from sentence
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. Charleston Co. Court of General Sessions to the
  - ii. S.C. Supreme Court
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Denied
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. December 14, 2016
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Appellate Case No. 2015-001823
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Attorney Gen General Sessions filed petition
- (b) for appeal to Supreme Court
- (c) reasons unknown (see #10 above)

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Jason King
- ii. 101 Meeting Street  
Charleston, SC 29401
- iii.

(b) the proceedings at which each such attorney represented you:

- i. See #17 a-d above
- ii.
- iii.

19. State clearly the relief you seek in filing this application:

Sentence reduction. Approval of 65% or 41%  
not 85%. Also parole eligibility

20. Are you now under sentence from any other court that you have not challenged?

Yes

STATE OF SOUTH CAROLINA )

County of Charleston )

VERIFICATION

I, Vanessa Aquetta Freyer #365066, 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.

Van Freyer

SWORN to and subscribed before me this 24  
day of February, 2017.

Sandra S. Dodson (L.S.)  
Notary Public

My Commission Expires: 10-30-2019

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Vanessa Jaguette Prayer #36506, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Vanessa Prayer  
Applicant

SWORN or affirmed to and subscribed before me this  
24 day of February 2019

Sandra S Dodson  
Notary Public

My Commission Expires 10-30-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
VANESSA LAQUETTA FRAYER,	)	
S.C.D.C. No. 365066	)	Case No. 2017-CP-10-1165
Applicant,	)	
	)	
v.	)	<b>RETURN AND MOTION FOR A</b>
	)	<b>MORE DEFINITE STATEMENT</b>
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

In response to the post-conviction relief application filed March 6, 2017, Respondent would show this Court:

I.

Vanessa Laquetta Frayer (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its December 2014 term, the Charleston County Grand Jury indicted Applicant for distribution of cocaine base. (2014-GS-10-07082). The factual scenario giving rise to these charges is as follows:

On June 13, 2014, officers from the City of Charleston Police Department organized a “buy-walk” with the assistance of a confidential informant (CI).<sup>1</sup> The police searched the CI, fitted him with an audio wire and a camera, and gave him prerecorded money. (Tr. 51, line 24–Tr. 54, line 18). The police listened though the audio wire after dropping the CI off in the designated area. (Tr. 55, lines 7–13). The CI made a purchase, walked back to the designated meeting place, was re-searched by police, and wrote a statement. (Tr. 55, line 14–Tr. 56, line 6). Applicant was identified as the person who sold the CI the drugs, and police arrested her approximately three months later and charged her with distribution

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<sup>1</sup> According to Detective Patrick Gill of the City of Charleston Police Department, a “buy-walk” is when the department searches a CI, fits him with a wire and recording equipment, gives him prerecorded money, and takes him to a predetermined area where the CI then makes a controlled drug purchase and comes back to a designated meeting place. It differs from a “buy-bust,” where the police immediately arrest someone following the purchase, because here the arrest took place three months later. (Tr. 51, lines 2–23).

of cocaine base. (Tr. 96, line 24–Tr. 97, line 3; Tr. 103, line 22–Tr. 105, line 1; Indictment).

On August 12, 2015,<sup>2</sup> Applicant proceeded to a trial before the Honorable Michael G. Nettles and a jury. Jason King, Esquire, and Shirene C. Hansotia, Esquire, represented Applicant, and Assistant Solicitors Stephanie Linder, Esquire, and Scott Maynor, Esquire, represented the State. The jury found Applicant guilty, and Judge Nettles sentenced her to twelve years' imprisonment after terminating her probation for a prior conviction. (Tr. 161, 170.)

Applicant filed a timely notice of appeal and an appeal was perfected on her behalf by Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. On appeal, Applicant alleged the trial court erred in denying defense counsel's request for a jury instruction on mere presence where the video recording of the controlled but showed multiple other people in and around the residence where the informant purchased the crack cocaine. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion filed December 14, 2016. State v. Vanessa Laquetta Frayer, 2016-UP-511 (Ct. App. filed Dec. 14, 2016). The Remittitur was sent to the Charleston County Clerk of Court on December 30, 2016.

## II.

In his current Application for post-conviction relief, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "Given too extensive sentence for charge" and
2. Ineffective lawyer representation.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the trial transcript, the appellate records, and

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<sup>2</sup> The cover page of the trial transcript lists the date as "August 12, 2013," but the notice of appeal, the sentence sheet, and the verdict form all list the correct date, "August 12, 2015."

Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

Applicant alleges she received ineffective assistance of counsel. This allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCRCP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of her grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain her allegations. Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

### IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. Applicant alleges ineffective of assistance of counsel. In a post-conviction relief action, the applicant bears

the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel’s performance was deficient Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute, although it is hard to decisively determine this without any accompanying facts due to Applicant’s lack of evidentiary support for allegations within her application. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## V.

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments timely received in advance of the evidentiary hearing will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

## VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

## VII.

WHEREFORE, having made its Return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

[Signature block on following page]

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By: *Megan Harrigan Jameson*  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

May 22, 2017

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

VANESSA LAQUETTA FRAYER, )  
S.C.D.C. No. 365066, )

Applicant, )

vs )

STATE OF SOUTH CAROLINA, )

Respondent. )

IN THE COURT OF COMMON PLEAS

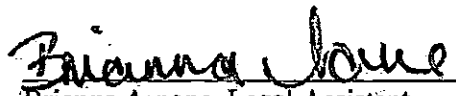
2017-CP-10-1165

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Falk, Esquire  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402

DATED this 23<sup>rd</sup> day of May, 2017.

  
Brianna Arnone, Legal Assistant  
For Respondent



## E X A M I N A T I O N S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jason King	9	17	21	--
Vanessa Frayer	22	26	30	--

1 (May 22, 2018.)

2 THE COURT: All right. So this is Vanessa  
3 Frayer?

4 MS. OPPENHEIMER: Yes, Your Honor.

5 THE COURT: Pardon?

6 MS. OPPENHEIMER: Yes, Your Honor.

7 THE COURT: All right.

8 MS. OPPENHEIMER: This is Vanessa Frayer  
9 versus the State of South Carolina, docket number  
10 2017-CP-10-1165. Applicant was indicted during a  
11 December 2014 term of the Charleston County grand jury  
12 for distribution of cocaine base third offense. Jason  
13 King, Esquire represented applicant on this charge.

14 On August 12, 2015 applicant proceeded to a  
15 jury trial before the Honorable Michael G. Nettles after  
16 which the jury convicted her as indicted. Judge Nettles  
17 sentenced applicant to a term of imprisonment of 12  
18 years. Applicant filed a timely notice of appeal, and  
19 appellate defender Laura R. Baer perfected an appeal on  
20 applicant's behalf. Following briefing, the South  
21 Carolina Court of Appeals affirmed applicant's conviction  
22 and sentence by unpublished opinion on December 14, 2016.  
23 The remittitur was issued on December 30, 2016.

24 Applicant filed an application for  
25 post-conviction relief on March 6, 2017 alleging she was

1 given too extensive of a sentence for the charge and  
2 ineffective assistance of counsel. The State made its  
3 return and motion for a more definite statement on May  
4 22, 2017 requesting an evidentiary hearing be held.  
5 Applicant is present today, and she is represented by  
6 James Falk.

7 THE COURT: All right. She got charged with  
8 distribution of crack; is that right?

9 MS. OPPENHEIMER: That's correct, Your Honor,  
10 third offense.

11 THE COURT: That's zero to fifteen, or zero  
12 to ten?

13 MS. OPPENHEIMER: I believe it is -- beg the  
14 Court's indulgence.

15 THE COURT: Must be zero to 15. Judge  
16 Nettles gave her 12 years.

17 MS. OPPENHEIMER: Yes.

18 THE COURT: That's the only thing she got  
19 indicted on?

20 MS. OPPENHEIMER: That's correct, Your Honor.

21 THE COURT: Ms. Frayer, I just wanted to go  
22 over one thing before we start, and that is you got  
23 charged with distribution of cocaine base, or crack  
24 cocaine. You could get up to 15 years in prison for  
25 that. You went to trial. You were convicted. Judge

1 Nettles gave you a sentence of 12 years. You have asked  
2 to have your conviction set aside because your lawyer,  
3 you said, was ineffective.

4 Just to let you know and have it on the  
5 record, if I grant your application, it wouldn't be that  
6 you got found not guilty. The State would go back and  
7 retry you, or ask to have the Court retry you, and you  
8 would face the same charge of distribution of crack  
9 cocaine. You would face the possibility of being  
10 sentenced to up to 15 years.

11 Whoever the judge is that presides over the  
12 case -- it probably would not be Judge Nettles --  
13 wouldn't be bound to give you the same sentence or less  
14 sentence. He or she could give you up to 15 years. I  
15 just wanted to let you know that so that you could factor  
16 that into your decision as to whether or not you want to  
17 go forward. I understand that you don't like the 12-year  
18 sentence, but you could get up to 15 if convicted.

19 MS. OPPENHEIMER: Just a point of  
20 clarification, Your Honor, I just looked up the potential  
21 sentence, and it's actually ten to thirty years.

22 THE COURT: Oh, on this one?

23 MS. OPPENHEIMER: On this one, yes, and  
24 Mr. King just informed me that she has two prior  
25 proximity convictions, which would make her eligible for

1 a life without parole sentence.

2 THE COURT: Let's talk about that. I don't  
3 see the actual sentencing sheet. I want to make sure I  
4 get that -- so it was distribution of crack cocaine  
5 third.

6 MS. OPPENHEIMER: That's correct.

7 THE COURT: First offense was zero to 15, but  
8 you got convicted of third offense distribution, which is  
9 a minimum of ten years, up to 30 years, plus it is a  
10 strike offense.

11 What the State's attorney was just telling me  
12 was that you had two previous strike offenses, and so you  
13 face the possibility of the State seeking life without  
14 parole. If you are convicted, should you be successful  
15 on this application -- because you would, again, not be  
16 set free. You would be retried. So not only did you get  
17 on the lower end of the sentence that Judge Nettles could  
18 have given you, which was 10 to 30 years, he gave you 12;  
19 the State could go back and ask the Court, if they gave  
20 you notice ahead of time, to treat you as -- or treat  
21 this as the third strike in a strike offense, and you  
22 would then be sentenced to life without parole.

23 Do you understand that?

24 THE APPLICANT: (Nods head.)

25 THE COURT: Have you talked that over with

1 your lawyer?

2 MR. FALK: Your Honor, I've discussed this  
3 matter with her, and I think she understands her  
4 situation.

5 THE COURT: All right. So you want to go  
6 forward today with your post-conviction relief  
7 application?

8 THE APPLICANT: Yes.

9 THE COURT: Okay. In your opinion, does she  
10 understand that, the implications of going forward and  
11 being successful, the possible downside?

12 MR. FALK: Your Honor, what I really believe  
13 is I don't think my client thinks the proof that was  
14 provided to the jury was sufficient for distribution  
15 offense, and that's where I think her biggest concern is,  
16 but I appreciate -- I tried to explain to her before  
17 that -- there's numerous concerns she has with the proof  
18 and what the proof didn't really show, and I told her  
19 that, unfortunately, juries hear the facts and make their  
20 own decision, and the only thing we can do today is  
21 whether or not Mr. King did a bad job, so her concern is  
22 she got too big of a sentence for what she did, what she  
23 feels she did.

24 THE COURT: I understand that, but she got on  
25 the lower end of what she could have gotten for what she

1 went to trial for. She got 12 years. The least she  
2 could have gotten was 10. She faces up to 30 if they  
3 don't ask for life without parole, and there is a  
4 possibility they could ask for life without parole, and  
5 that's what I want to make sure she understands.

6 MR. FALK: I think she understands, and I  
7 can't tell her what to do, and I certainly would suggest  
8 she has a lot at risk if she is successful today.

9 THE COURT: I just want to make sure. I'm  
10 not trying to convince you to go forward or withdraw. I  
11 just want to make sure that you understand that if you  
12 are successful, you could ultimately face a worse or  
13 harsher sentence than you got, and you can't come back  
14 then and say hey, nobody told you this, because I just  
15 told you, okay? So you understand that?

16 I need you to say out loud not just shake  
17 your head.

18 THE APPLICANT: I understand.

19 THE COURT: Okay. We will go forward then.

20 MR. FALK: I'm ready. Can I call Mr. King to  
21 the stand?

22 THE COURT: Go ahead.

23 JASON KING,

24 having been first duly sworn,

25 was examined and testified as follows:

~~JASON KING - DIRECT EXAMINATION~~

1 DIRECT EXAMINATION

2 BY MR. FALK:

3 Q. Hello, Mr. King. Can you tell me how you became  
4 Ms. Frayer's attorney in this case?

5 A. I was appointed from the public defender's office,  
6 and I was appointed to represent her around September  
7 16th, 2014.

8 Q. Were there other members of the public defender's  
9 office who were on her case or has it always been you  
10 from the start to end?

11 A. It looks like -- I didn't remember specifically,  
12 but there is CMF, which is Cantrell Frayer. That's  
13 crossed out with my initials, so it looks like it was  
14 initially assigned to Cantrell Frayer and reassigned to  
15 me.

16 Q. All right. Can you tell me, was my client in  
17 custody prior to trial?

18 A. She was.

19 Q. How many times did you go to Leeds Avenue and  
20 speak to her?

21 A. I spoke with her -- one second, if I can refer to  
22 my notes.

23 I met with her September 29, 2014 at the jail,  
24 October 15, 2014 at the jail, and she bonded out in  
25 January.

JASON KING - DIRECT EXAMINATION

1 Q. And then after January 2015, and then her trial  
2 was in August, how many times did she meet with you at  
3 your office?

4 A. I scheduled two office appointments, February  
5 17th, 2015 and April 2, 2015. I don't have notes whether  
6 she appeared or not, but I did meet with her -- there was  
7 an April 7th, 2015 guilty plea date. I met with her  
8 then. They rescheduled that later to May 5, 2015, and I  
9 met with her then, and I met with her the week before the  
10 trial, around the end of July.

11 Q. You said guilty plea date. Were there plea offers  
12 made in this case?

13 A. Yes.

14 Q. And could you tell me what those were?

15 A. The plea offer was -- she was charged with the  
16 distribution third because of her prior conviction. Her  
17 prior convictions are above possession. It was a  
18 mandatory minimum ten, so the offer was to reduce it to a  
19 second offense, but negotiate a five-year sentence, so  
20 the solicitor would often do that. If there's a  
21 mandatory minimum, she would reduce it down from the  
22 minimum, but then she could negotiate a specific number  
23 and then either go to trial and face 10 to 30 or accept  
24 the negotiated plea where she basically dictates what  
25 sentence she gets.

JASON KING - DIRECT EXAMINATION

1           So, all things considered, it wasn't an unfair  
2 offer.

3           Q. Does it reflect that you recommended that offer to  
4 her or was that rejected on the record, do you know?

5           A. I remember meeting with her and going over that  
6 offer with her more than once. That was the offer at the  
7 April 7, 2015 guilty plea date and the May 5th, 2015, so  
8 I met with her on both of those times and went over the  
9 plea offer with her and advised her to take it.

10          Q. So back in 2015, the guilty plea date, does that  
11 mean she came into the courtroom that day or --

12          A. Not necessarily. I don't believe there was a  
13 hearing, but she showed up. She appeared for the guilty  
14 plea on April 7, 2015, and I think she wanted more time  
15 to retain a private attorney but wasn't able to do that,  
16 so we met again for the May 5th -- another plea date  
17 where she rejected the offer.

18          Q. Okay. When -- do you recall when you got  
19 discovery in this case? And, really, was she in custody  
20 or out of custody?

21          A. I believe she would have been in custody when I  
22 received the discovery.

23          Q. Were you able to show her the videos?

24          A. Yes. I think I even gave her a copy of the video  
25 once she had gotten out at one point.

JASON KING - DIRECT EXAMINATION

1 Q. Is it a fair assessment from looking at the video  
2 that there is no sign of a hand-to-hand transaction on  
3 the video?

4 A. Right. You can't actually see something -- an  
5 actual hand-to-hand exchange. You can see a flash of the  
6 drugs. It's a little difficult to see. I had to slow  
7 down the video, and I actually took some still shots of  
8 it, but you can see a little flash of the plastic baggy  
9 just at the very bottom of the screen, but you can't  
10 actually see her put the drugs into the informant's hand.

11 Q. And I know that at the trial you asked for an  
12 instruction on mere presence, did you not, charge on mere  
13 presence?

14 A. Yes.

15 Q. And what was your theory as far as establishing  
16 mere presence in this case?

17 A. Well, the only reason I really had was that she  
18 wasn't selling drugs. You know, it was her. I was  
19 certain it was her based on her voice and knowing what  
20 she looked like, but the -- so I guess the argument was  
21 that she wasn't selling drugs, so if she's not selling  
22 drugs, then the only theory that she's innocent under is  
23 if she's just there and merely present.

24 Q. Okay. Maybe if you could describe what the video  
25 looks like when the transaction took place.

~~JASON KING - DIRECT EXAMINATION~~

1       A. It took place at her sister's house, and in the  
2 video, the informant comes in, and I actually have a  
3 written transcript that I made of the video. The  
4 informant comes in. The sister is -- feels disrespected  
5 based on something that's said. There's sort of an  
6 exchange there. The informant asked for -- said I need  
7 60, to Ms. Frayer, and Ms. Frayer says 60, yeah, and then  
8 instructs him to go on that side over there.

9           Between that time -- the judge actually kept this  
10 out, but another man walks in, and he's trying to buy as  
11 well, and he said all he's got is \$7. So there's a guy  
12 trying to buy seven dollars' worth, is what it looks like  
13 to me. Ms. Frayer says she needs the \$60 from the  
14 informant and doesn't sell to the guy who's trying to  
15 offer \$7 for a little bit, so there's sort of an exchange  
16 there, I need that 60 more than I need that 7. So  
17 another person is trying to buy during the actual video.  
18 The judge kept that out on pretrial, or put that on mute  
19 during that time.

20           She says -- tells him be polite, says that he can  
21 stay there and smoke, but he's got to pay -- he has to  
22 pay the sister to smoke there. The sister says let me  
23 get you something to wrap that up, and I think that's  
24 basically the end of it.

25       Q. Did her sister testify at the trial?

~~JASON KING - DIRECT EXAMINATION~~

1 A. No.

2 Q. Was there any -- and this was an informant case?

3 A. Yes.

4 Q. Was there drug money introduced in evidence?

5 A. I don't believe so. I don't believe that -- I  
6 believe they arrested her later, so I don't think they  
7 came in and recovered -- they call it a buy-bust and a  
8 buy-walk. In a buy-bust, they immediately move in and  
9 make the arrest, and at that point they may find the  
10 marked money on the defendant.

11 In a buy-walk, they do the buy. They don't come  
12 in until later, and in those situations, they hardly ever  
13 have the marked money because I think the time has passed  
14 between the alleged transaction and when the arrest  
15 happens.

16 Q. So the only proof that there was a transaction --  
17 so what proof was there from the video that there was a  
18 transaction?

19 A. From the video? Well, it would be coupled with  
20 the testimony of the informant, but the video appeared to  
21 be a drug transaction to me, just the language that she  
22 used in the video, the conversation between the parties.

23 Q. What could you have done to generate testimony to  
24 support a charge for mere presence?

25 A. I think we tried to find the sister. Ms. Frayer

## JASON KING - DIRECT EXAMINATION

1 told me leading into trial that it was the sister that  
2 sold the drugs, and we tried to find -- I think my  
3 investigator tried to find the sister but couldn't find  
4 her.

5 Q. But you knew her location.

6 A. I knew --

7 Q. You knew the location of the incident. The  
8 incident took place at the sister's apartment; is that  
9 correct?

10 A. Right, I believe so. According to Ms. Frayer,  
11 that was her sister's place.

12 Q. And what contact information did Ms. Frayer give  
13 you to locate her sister?

14 A. It was the [REDACTED] Poinsett Street. That's all we  
15 had. I didn't have a phone number. Honestly, I didn't  
16 believe that. I mean, I watched the video. I think the  
17 sister could have been charged under hand of one, hand of  
18 all for allowing them to use her place and assisting by  
19 bagging up the drugs, but I didn't believe that it was  
20 the sister -- just from my looking at the video, I didn't  
21 think it was something that I could sell, so I didn't  
22 try -- I didn't pull out all the stops to try to find the  
23 sister. In other words, I didn't assume she wanted to be  
24 found, and I didn't assume she would come in and say she  
25 sold the drugs.

## JASON KING - DIRECT EXAMINATION

1 Q. But had you found her, she could have supported  
2 testimony on the mere presence charge?

3 A. Possibly, possibly, depending on what she said.

4 Q. And prior to the trial, she had turned down an  
5 offer for the five years. Had you explained to her her  
6 sentencing risk at that time?

7 A. Yes. I told her that it was a third offense, that  
8 it was a mandatory minimum ten, that it could not be  
9 suspended, that she would have to serve 75 percent at  
10 least of that sentence, whatever she got. I told her  
11 that was life without parole. That never came up from  
12 the solicitor, but I had her previous sentencing sheets,  
13 and she had convictions for two proximities from two  
14 separate dates. She pled guilty from distributing drugs  
15 from the same address a few years before this, at ■  
16 Poinsett Street, and so I told her that it was  
17 potentially life without parole, but that was never --  
18 the solicitor never brought that up. That was never  
19 threatened, but, you know, at some point I let her know  
20 that, but we operated as if it was a third offense with a  
21 mandatory minimum ten.

22 Q. So your testimony about the two proximity  
23 offenses, you mean that those are each one strikers?

24 A. Right.

25 Q. Okay. And then this would be --

~~JASON KING - CROSS-EXAMINATION~~

1           A. This would be the third. The distribution third  
2 would be the third strike.

3           Q. Distribution third is most serious?

4           A. It's a serious, but that would be the third  
5 serious offense.

6           Q. So that means third serious. Okay.

7                       MR. FALK: I have no other questions.

8                       THE COURT: Cross?

9                                       CROSS-EXAMINATION

10          BY MS. OPPENHEIMER:

11           Q. So I want to talk about this video. Is it fair to  
12 say that in the video Ms. Frayer was the only one  
13 sitting? Everyone else was standing around her?

14           A. I believe that's right.

15           Q. Did it appear as if she was kind of holding court?

16           A. That's the language that the solicitor used in the  
17 trial. That's probably accurate. She sort of -- the  
18 sister is -- it's her house, and she's talking as well,  
19 but it seems to be Ms. Frayer who is sitting there sort  
20 of talking to the people who come in the door.

21           Q. At any point did the CI go up to Ms. Frayer's  
22 sister and ask for drugs?

23           A. No.

24           Q. And Ms. Frayer was the only person he asked to  
25 purchase drugs from?

~~JASON KING - CROSS-EXAMINATION~~

1 A. Yes.

2 Q. And that was a purchase of \$60 worth of crack  
3 cocaine?

4 A. Right. The informant says, I need 60, and  
5 Ms. Frayer says 60? Yeah, go on that side over there.

6 Q. And at trial, did you argue that the money -- the  
7 marked money from the drug buy was never entered into  
8 evidence, they didn't have it?

9 A. I think -- I usually argue that when it's a  
10 buy-walk and not a buy-bust.

11 Q. Okay. And so your argument would have been if  
12 they really wanted to catch her then, they would have  
13 busted up in there and taken the money that the CI just  
14 used and found it on her.

15 A. Right.

16 Q. Now, you went to look for the sister, correct?

17 A. I had an investigator make an effort to try to  
18 find the sister. When she told me that -- this was right  
19 on the brink of trial, that the sister is the one who  
20 distributed the drugs. I didn't believe but -- I made an  
21 effort to find the sister, but I didn't -- you know, when  
22 he couldn't find her, I didn't make any more effort.

23 Q. Do you recall when your investigator would have  
24 tried to find her?

25 A. August 12th, 2015 is the -- I think is the date of

~~JASON KING - CROSS-EXAMINATION~~

1 the report I have from the investigator where he left a  
2 business card at her door, so I think it was right at the  
3 brink of trial.

4 Q. And Ms. Frayer never gave you her phone number to  
5 contact her?

6 A. No.

7 Q. Never gave you any other addresses of her?

8 A. Right.

9 Q. Now, you discussed that you went over all of the  
10 potential sentences with Ms. Frayer. Did she understand  
11 parole eligibility and how that would have affected her  
12 sentence?

13 A. Yes. Back then, a case came out in 2015, Bolin  
14 vs. South Carolina Department of Corrections, and that  
15 sort of cleared up some confusion about second -- first  
16 and second offenses. Back then, although the statute  
17 said you were parole eligible for a second offense, the  
18 department of corrections was still treating it like a no  
19 parole offense, and people were required to serve 85  
20 percent. Since then, Bolin v. SCDC was decided. It said  
21 that all second offenses are parole eligible, and I think  
22 they're 85 percent now.

23 So I didn't have the benefit of that case at that  
24 point, so my advice would have been a second offense,  
25 you're still going to serve 85 percent, but the statute

~~JASON KING - CROSS-EXAMINATION~~

1 said she was parole eligible, so I think what they were  
2 doing back then was giving people parole hearings, and if  
3 they didn't grant parole, they still had to serve 85  
4 percent before they would max out their sentence.

5 Q. But you would have advised her fully on the law at  
6 that time?

7 A. Yes. I didn't push -- I didn't make a big deal  
8 out of parole. She has a prior record. I would have  
9 told her to assume she wouldn't make parole and would  
10 have to max out the sentence. If you talk too much about  
11 parole, then she comes back and says that I promised she  
12 would get parole, so it was mentioned, but it's not  
13 something that I dwelled on very much.

14 Q. Okay. And going back to mere presence, you  
15 attempted to argue that charge, that Judge Nettles charge  
16 that?

17 A. He denied that.

18 Q. He denied your request?

19 A. Yes.

20 Q. So you did attempt to get that instruction?

21 A. Yes.

22 Q. Do you remember his basis of denying that  
23 instruction?

24 A. Not exactly. I think in the transcript he talks  
25 about it, if it were a constructive possession case, then

~~JASON KING - REDIRECT EXAMINATION~~

1 it might apply, but that's not the situation here, and  
2 there was no evidence that she was merely present.

3 Q. Okay.

4 MS. OPPENHEIMER: I have no further  
5 questions.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. FALK:

9 Q. So your record is that you sent your investigator  
10 out one time?

11 A. That's right. Well, I'm sorry. I didn't -- if I  
12 can look at his report, just to make sure.

13 That's right. He went there once. He left a  
14 business card, and that was it. Like I said, I didn't --  
15 if I had felt like she would have been -- there was  
16 something there, I might have made a better effort to  
17 find her, but, like I said, she's -- you know, she's  
18 telling me her sister is the one that sold the drugs. I  
19 didn't believe that from watching the video.

20 Like I said, I made an effort to find her, but I  
21 didn't make a strong effort because I didn't think  
22 that -- I didn't think she was going to say what  
23 Ms. Frayer thought she might say.

24 Q. And there were other people in the video that the  
25 jury saw?

~~VANESSA FRAYER - DIRECT EXAMINATION~~

1       A.   There were -- I think there was at least one other  
2 person who comes in who I believe is also trying to buy  
3 drugs as well, so I think there's at least one other  
4 person.  There may be more.  I can't remember.

5       Q.   Okay.

6               MR. FALK:  No further questions.

7               THE COURT:  Recross?

8               MS. OPPENHEIMER:  Nothing.

9               THE COURT:  You may step down.  You're free  
10 to go.  Thanks.  Next witness?

11              MR. FALK:  We call Ms. Frayer to the stand.

12                       VANESSA FRAYER,

13                   having been first duly sworn,

14                   was examined and testified as follows:

15                               DIRECT EXAMINATION

16       BY MR. FALK:

17       Q.   And, Ms. Frayer, you were present while Mr. King  
18 was testifying, correct?

19       A.   Yes.

20       Q.   He had testified regarding some conversations he  
21 had about a plea agreement.  Now, is it true that in  
22 about January of the year that you went to trial, that  
23 was 2015, by January of that year, you made bail, or you  
24 made bond?

25       A.   Yes.

VANESSA FRAYER - DIRECT EXAMINATION

1 Q. And how many times did you come to court prior to  
2 the day that your trial started?

3 A. Once.

4 Q. Okay. And what's your recollection of what  
5 happened on that day?

6 A. I didn't -- I don't much remember because I don't  
7 think I waited in the courtroom. He did. I don't  
8 remember what happened.

9 Q. What kind of conversations did you have with him  
10 regarding any plea offers that the State might have made?

11 A. None. He was just telling me that I had a court  
12 date, but we didn't have a conversation on it. He told  
13 me five years, and it turned into second -- we never had  
14 a conversation like that.

15 Q. So it's your testimony that he didn't have any  
16 conversation with you about potential plea offers that  
17 were made?

18 A. No.

19 Q. Had you had the chance to accept -- had you been  
20 given five years, what would you have done?

21 A. I would have take it.

22 Q. And was there -- just to be clear, from what you  
23 were saying, he was testifying that the State -- did he  
24 ever tell you what the sentencing range was for  
25 distribution third on cocaine?

VANESSA FRAYER - DIRECT EXAMINATION

1 A. No.

2 Q. So it's your testimony that you went to trial not  
3 knowing that you were facing 10 to 30 years?

4 A. No, I didn't know that.

5 Q. And is it your testimony that you were never  
6 advised that the State had agreed to have you plead to a  
7 distribution second?

8 A. No, never told me that.

9 Q. Okay. And it's your testimony that he never  
10 advised you that the State was willing to charge you --  
11 was offering you to plea to five years?

12 A. He never told me that.

13 Q. Now, what kind of conversation did you have with  
14 him as far as your sister?

15 A. I never did have a conversation with him about my  
16 sister.

17 Q. Okay.

18 A. He never asked me anything about -- nothing about  
19 the video. He showed me the video a day before court.

20 Q. Okay. So there was no discussion with you about  
21 trying to locate your sister?

22 A. Never.

23 Q. Did you ever tell him that you wanted -- you were  
24 trying to assert that it was your sister who was selling?

25 A. Never.

VANESSA FRAYER - DIRECT EXAMINATION

1 Q. Okay. What do you feel that Mr. King could have  
2 done better in this case that he didn't do?

3 A. He didn't do nothing. He didn't contact me. I  
4 called the office a couple times to get in contact with  
5 him because at the time, when he was -- like, I was  
6 trying to get in contact with him about something when I  
7 got out of court, and I can't get in contact -- I tried  
8 to contact him to tell him I was going to change lawyers,  
9 and then when I contact him to tell him I was going to  
10 change lawyers, he told me I was coming up for court. He  
11 had me on the docket for court. That's how we got in the  
12 conversation about court, and that was that.

13 Q. I've written you a couple of times while you were  
14 in custody, and you never advised me about any possible  
15 plea offers; is that right?

16 A. Yes.

17 Q. Is this the first time you're hearing that there  
18 was a plea offer?

19 A. Yes.

20 MR. FALK: I have no further questions.

21 THE WITNESS: He had never come to visit me  
22 in the jail either. I have never saw this man until that  
23 day I went to his office when they told me I had to go  
24 see him, and then that day when I went to go see him in  
25 his office, he was in court, so he had to call me again

VANESSA FRAYER - DIRECT EXAMINATION

1 to come down there. He told me he had -- I have never  
2 saw that man until, like he said, a week prior to the  
3 time I went to the courthouse, and he told me I got to  
4 sit outside because my daughter went with me, and we sit  
5 outside and he came back and he told me something about a  
6 jury trial.

7 BY MR. FALK:

8 Q. And what was the arrest date here? You were  
9 arrested in September of 2014?

10 A. Yes.

11 Q. Does that sound about right?

12 A. Uh-huh.

13 Q. And you bailed out, or you made bond, in January  
14 of 2015?

15 A. Uh-huh.

16 Q. And so it's your testimony that he never saw you?

17 A. He never came to me at county jail. He never came  
18 and saw me at the jail, not one time.

19 Q. Sometimes -- so he also never called or did the  
20 video conference with you?

21 A. No.

22 Q. Okay.

23 MR. FALK: I have no further questions.

24 THE COURT: Cross?

25 CROSS-EXAMINATION

~~VANESSA FRAYER - CROSS-EXAMINATION~~

1 BY MS. OPPENHEIMER:

2 Q. So you said you reviewed the video with Mr. King,  
3 right?

4 A. The day -- like, I think it was, like, two days  
5 before I went to court. He told me I was going to court.

6 Q. But at some point you did see that video, correct?

7 A. At some point I did, yeah.

8 Q. In that video, you're sitting in a chair, and  
9 everyone else is standing around you?

10 A. No.. I'm sitting in the chair by the door, and  
11 everybody else is over there by the bar.

12 Q. Well, the confidential informant came up to you  
13 and asked you --

14 A. No, he never came up to me in the video.

15 Q. Okay. But he testified at trial that he bought  
16 drugs from you, correct?

17 A. He testified to that at the trial.

18 Q. And he said that he got \$60 worth of crack cocaine  
19 from you, but he didn't think it was \$60 worth, correct?

20 A. Yeah. I think that's what he said.

21 Q. And he never approached anyone else in that house  
22 about buying drugs?

23 A. We didn't even talk about drugs. We talked about  
24 money.

25 Q. Who did you talk about money with?

~~VANESSA FRAYER - CROSS-EXAMINATION~~

1 A. I told -- like, I talked to my sister. I talked  
2 to Joan. I talked to him.

3 Q. Okay.

4 A. We never talked about drugs. We testified about  
5 money, but we never said nothing about drugs.

6 Q. Okay. And you said that you never talked to  
7 Mr. King about your sister?

8 A. Never.

9 Q. So you never even gave him any leads to  
10 investigate, did you?

11 A. I never talked to him about it. How can I, when I  
12 never saw him?

13 Q. Well, you attempted to contact him, right?

14 A. Yeah. I attempted to contact him because I told  
15 you, I was going to get my own lawyer.

16 Q. And he came to visit you in the county jail,  
17 correct?

18 A. No, he didn't.

19 Q. And you didn't see him a couple times prior to the  
20 trial?

21 A. I told you I saw him that one day, that day when I  
22 went there to talk to him about getting my own attorney,  
23 and then he told me he had video that day, and then he  
24 told me I had court the next -- two days later.

25 Q. Well, if you wanted a new attorney, why didn't you

## VANESSA FRAYER - CROSS-EXAMINATION

1 hire one?

2 A. Because I was. That's why I went to him because  
3 my attorney told me I had to go to him so he could get me  
4 released or something like that. That's why I was trying  
5 to get in contact with him, but he said he was in court  
6 about something. I don't know.

7 Q. Did you have any communication with this attorney  
8 that you wanted to hire?

9 A. Did I have communication with him?

10 Q. Do you have any letters or anything from this  
11 attorney that you wanted to hire?

12 A. No, I don't, because I was going to see him. I  
13 just told him I had to let my attorney that I had go and  
14 come back and see him.

15 Q. So you never really contacted a private attorney  
16 to represent you, did you?

17 A. Yes, I did.

18 Q. Now, I want to talk about your potential sentence.  
19 Were you aware you were facing a minimum of ten years?

20 A. Was I aware?

21 Q. That you were facing a minimum of ten years?

22 A. No.

23 Q. You were not aware? And this was the third time  
24 you had been arrested for distributing drugs, correct?

25 A. Yes.

VANESSA FRAYER - REDIRECT EXAMINATION

1 Q. So you were aware when you pled guilty to those  
2 prior two offenses that those would have been strikes  
3 against you, correct?

4 A. No, because my second offense, I wasn't aware  
5 of -- I was pleading guilty to something that wasn't --  
6 the video that might prove that it was me.

7 Q. The second time you pled guilty, you weren't aware  
8 what you were pleading to?

9 A. Yeah. I didn't know I was pleading guilty -- I  
10 didn't know.

11 Q. You just went to court and said I'm guilty and  
12 they sentenced you?

13 A. That's what my lawyer had told me to say.

14 MS. OPPENHEIMER: I have no further  
15 questions, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. FALK:

18 Q. Do you recall the name of the lawyer who told  
19 you -- the private lawyer?

20 A. The lawyer that I was going to get?

21 Q. Yeah.

22 A. I was going to get Mike DuPree.

23 MR. FALK: Thank you. No further questions.

24 MS. OPPENHEIMER: Nothing further, Your  
25 Honor.

1                   THE COURT: You may step down. Do you have  
2 any other witnesses?

3                   MR. FALK: We do not, Your Honor.

4                   THE COURT: How about from the State?

5                   MS. OPPENHEIMER: No witnesses, Your Honor.

6                   THE COURT: Okay. Let's hear your argument.

7                   MR. FALK: Your Honor, it's our contention  
8 that Mr. King provided ineffective assistance of counsel.  
9 Obvious disputes in the testimony, but my client  
10 testifies that she had one contact with him prior to  
11 going to trial, that she did not view the video until  
12 maybe a day before the trial, and that it never was  
13 communicated to her that there were potential plea offers  
14 being made in this case, and she went to trial not  
15 knowing that she was facing a sentence of 10 to 30 years.

16                   There was testimony that Mr. King was looking  
17 for her sister who possibly could have helped testify  
18 possibly as shoring up testimony about a mere presence  
19 charge, and I'm not sure that Mr. King was as diligent as  
20 he could have been in order to locate witnesses for Ms.  
21 Frayer's trial. They did have her address, so whether  
22 that one trip there and leaving a business card is really  
23 a sufficient effort to go and find a potential witness is  
24 the Court's determination, but it would be our position  
25 that is insufficient investigation of the case, and,

1 quite honestly, this is the first that I was made aware  
2 of this plea offer issue, but if it was, in fact, that  
3 there was a plea offer made, my client testified that she  
4 never heard about that.

5 It certainly proved to her detriment that she  
6 could have gotten five years. Whether or not that would  
7 have been at 65 percent time or 85 percent time, it's  
8 still less than the 12 years that she's serving.

9 THE COURT: Did you make any effort to get  
10 ahold of the sister? Was she willing to come and testify  
11 that she was the one selling drugs?

12 MR. FALK: No, Your Honor.

13 THE COURT: All right. Go ahead.

14 MS. OPPENHEIMER: May it please the Court,  
15 Your Honor: Mr. King testified he met with the applicant  
16 numerous times, not only in the jail, but in court as  
17 well. He had notes from their conversations of this plea  
18 offer reduction to a second offense and a negotiated  
19 five-year sentence. He advised Ms. Frayer to take that  
20 plea offer, and she rejected it.

21 He also testified that he attempted to locate  
22 the sister. The only address he was provided for the  
23 sister by Ms. Frayer was the incident location. His  
24 investigator went there, left a business card, but  
25 without other addresses or phone numbers, he had no other

1 way or means to contact this woman, and Ms. Frayer  
2 indicates that she never even told him that her sister  
3 was the one selling the drugs.

4 And based on this video, Your Honor, it's  
5 clear Ms. Frayer is holding court. Everyone is standing  
6 around her. She's sitting there. The CI only approaches  
7 her to purchase drugs from her, never approaches anyone  
8 else and asks for drugs. This was -- it was very clear  
9 that even though Mr. King requested a mere presence  
10 charge, Judge Nettles said there was no evidence of it  
11 whatsoever based on the video, and he denied that  
12 request.

13 In addition, with regards to the drug money  
14 that was never found, Mr. King did argue that to the  
15 jury. He argued that if they really wanted to get  
16 Ms. Frayer for selling drugs, they could have done a  
17 buy-bust rather than a buy-walk, but there is ample  
18 evidence in the record they did a buy-walk. CI testified  
19 Ms. Frayer was the one selling him the drugs, and there's  
20 another individual who comes to Ms. Frayer to attempt to  
21 purchase a lesser amount of drugs and she says no, I  
22 needed \$60.

23 So, Your Honor, I believe that with  
24 everything Mr. King was given, he definitely did his due  
25 diligence in trying to find the sister. He testified he

1 didn't think the sister was even selling drugs, but he  
2 looked into it anyways. There's ample testimony that the  
3 plea offers were discussed with Ms. Frayer, and therefore  
4 we would ask you find that Ms. Frayer was provided  
5 effective assistance of counsel.

6 Thank you.

7 THE COURT: All right. Well, I find that the  
8 evidence presented at the hearing today, the applicant  
9 has failed to provide sufficient evidence to convince me  
10 that her attorney was ineffective. He documented that he  
11 made an offer, he made her aware of the offer. The  
12 evidence about the video, it appears clear to everyone  
13 that she was, in fact, the person making the drug deal.

14 There was no evidence presented that the  
15 sister would have been willing to say it was her, and  
16 there's been no evidence that anything that Mr. King did  
17 fell below that of an effective counselor, so I am going  
18 to deny the claim, ask the State to prepare an order.

19 MS. OPPENHEIMER: Thank you, Your Honor.

20 - - -

21 (Whereupon, the proceedings were concluded.)

22 - - -

23

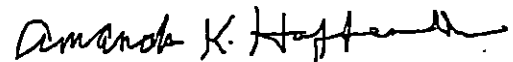
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25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 22nd of May 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 1, 2018



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Circuit Court Reporter

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
 )  
Vanessa L. Frayer, #365066, )  
 )  
 ) Applicant, )  
 )  
 ) v. )  
 )  
State of South Carolina, )  
 )  
 ) Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-1165

ORDER OF DISMISSAL

FILED  
2018 JUL 10 PM 12:35  
CLERK OF COURT

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed March 6, 2017, by Vanessa L. Frayer (Applicant). The State (Respondent) made its Return and Motion for a More Definite Statement on May 22, 2017, requesting an evidentiary hearing be held. An evidentiary hearing was convened on May 22, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by James K. Falk, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its December 2014 term, the Charleston County Grand Jury indicted Applicant for distribution of cocaine base, third offense (2014-GS-10-07082). Assistant Public Defender Jason T. King, of the Ninth Circuit Public Defender's Office, represented Applicant on this charge. On August 12, 2015, Applicant proceeded to a jury trial before the Honorable Michael G. Nettles. Following deliberations, the jury convicted Applicant as indicted. Judge Nettles sentenced her to a term of imprisonment of twelve years.

R

Applicant filed a timely notice of appeal, and Appellate Defender Laura R. Baer, of the South Carolina Commission on Indigent Defense, Office of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether the trial court erred in denying defense counsel's request for a jury charge on mere presence where the video recording of the controlled buy showed at least six other people in and around the residence where the informant claimed he purchased the cocaine?" Following briefing, the South Carolina Court of Appeals issued an unpublished opinion affirming Applicant's conviction and sentence. *State v. Frayer*, Op. No. 2016-UP-511 (S.C. Ct. App. Filed December 14, 2016). The Remittitur was issued on December 30, 2016.

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "Given too extensive sentence for charge;" and
2. "Ineffective lawyer representation."

At the hearing, Applicant proceeded forward on the claims in her original application, as well as allegations her trial counsel was ineffective for failing to investigate, failing to obtain a jury instruction on mere presence, failing to convey a plea offer, and failing to prepare for trial.

#### STATEMENT OF FACTS ADDUCED AT TRIAL

On June 13, 2014, officers from the City of Charleston Police Department organized a "buy-walk" with the assistance of a confidential informant (CI).<sup>1</sup> The police searched the CI, fitted him with an audio wire and a camera, and gave him prerecorded money. Tr. 51, line 24-

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<sup>1</sup> According to Detective Patrick Gill of the City of Charleston Police Department, a "buy-walk" is when the department searches a CI, fits him with a wire and recording equipment, gives him prerecorded money, and takes him to a predetermined area where the CI then makes a controlled drug purchase and comes back to a designated meeting place. It differs from a "buy-bust," where the police immediately arrest someone following the purchase, because here the arrest took place three months later. Tr. 51, lines 2-23.

Tr. 54, line 18. The police listened through the audio wire after dropping the CI off in the designated area. Tr. 55, lines 7–13. The CI made a purchase, walked back to the designated meeting place, was re-searched by police, and wrote a statement. Tr. 55, line 14–Tr. 56, line 6. Applicant was identified as the person who sold the CI the drugs, and police arrested her approximately three months later and charged her with distribution of cocaine base. Tr. 96, line 24–Tr. 97, line 3; Tr. 103, line 22–Tr. 105, line 1.

Applicant proceeded to trial on August 12, 2015. She made a pretrial motion to redact portions of the buy video, which was a combined DVD of the video and audio recordings captured by the CI. Tr. 20, lines 16–20. After much discussion, the trial court watched the video. Tr. 30, line 6–Tr. 34, line 4. Both parties agreed partial redaction was proper and agreed to meet during the lunch break to determine which portions of the video to mute when played for the jury, which they did. Tr. 34, lines 17–25; Tr. 65, lines 8–19.

The State then proceeded to present its case. First, the State called Patrick Gill, a narcotics detective with the City of Charleston Police Department. Tr. 48, line 10–Tr. 49, line 5. He explained the process of doing a “buy-walk” controlled drug buy and described what happened in this particular case. Tr. 50, line 1–Tr. 56, line 6. He testified the team met with the CI to do a briefing, during which the CI was searched, wired to an audio recorder and a camera, and given prerecorded money. Tr. 52, lines 14–18. He stated that he was able to listen on a real-time wire as the CI walked and that the camera the CI wore gave a first-person view so the police could see everything the CI sees. Tr. 54, lines 8–14.

Next, the State called Christopher Singleton, the CI. He testified he worked with the City of Charleston on June 13, 2014, and bought sixty dollars’ worth of crack cocaine, although he thought it did not look like a “sixty.” Tr. 70, lines 3–20. When asked who he bought the drugs



from, he identified Applicant. Tr. 71, 1-lines 1-11. Singleton identified the buy video, State's Exhibit #1, and testified it was a fair and accurate representation of what happened on June 13, 2014. Tr. 73, lines 7-24. The solicitor played the video while Singleton was on the stand and asked him questions about it. She asked him who the female voice belonged to that can be heard talking about \$60 on the video, and he identified the voice as belonging to "the lady in the courtroom." Tr. 75, lines 23-25. He further identified her as the one sitting in the chair in the video. Tr. 76, lines 1-4. To clarify, the following exchange took place:

The State: So when you ordered up the 60 who did you order from?

Singleton: The young lady in the courtroom.

The State: And that lady sitting down on the video, who is that?

Singleton: The young lady sitting in the courtroom.

Tr. 76, lines 18-21. Singleton testified when he got back to where the officers were, he gave the drugs he purchased to Detective Engles, the officers searched him again, and he wrote a statement. Tr. 76, line 22-Tr. 77, line 25.

Detective Sean Engles, a narcotics detective with the City of Charleston Police Department, testified next. He explained he was the case agent for this particular drug buy. Tr. 87, lines 4-8. He testified about using Singleton as a CI on many occasions because he was reliable and stated, "Everything that we later review on the video has been consistent with the statements he gives us after the buys." Tr. 89, lines 2-10. Detective Engles related that Singleton bought \$60 worth of crack cocaine, which field-tested positive at the scene. Tr. 94, line 13-Tr. 95, line 4. He then testified he took the drugs to the police evidence drop box. Tr. 95, line 24-Tr. 96, line 23.

The State called three more witnesses to complete the chain of custody: Linda Wilson-evidence technician, Susan Payne-evidence custodian, and Ashley Earl-controlled substance analyst. They each testified regarding their roles in handling the drug evidence. Tr. 105–19.

At the close of the State's case, Applicant moved for a directed verdict, which the trial court denied. Tr. 120, line 14–Tr. 121, line 17. The State asked for a jury charge explaining the trial court's rulings on which portions to mute on the video, but the trial court denied the request. Tr. 125, line 7–Tr. 126, line 11. Defense counsel requested a jury charge on mere presence but made no argument supporting his request. Tr. 127, lines 9–12. The State opposed the requested charge, arguing “[t]here has been no testimony that she was merely present” and added that “because the language of the distribution includes conspiring, aiding, abetting, and all of that . . . that would cover things better.” Tr. 127, line 16–Tr. 128, line 4. The trial court determined a mere presence charge did not apply, stating, “And I think probably where you have a constructive possession case with where there is some amount of controlled substance in a room I think that would apply [, but] there is no evidence of that in this case.” Tr. 128, lines 6–10.

#### **TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified on her own behalf and presented the testimony of Assistant Public Defender Jason T. King (hereinafter “Counsel”). This Court also had before it a copy of Applicant's trial transcript, the records of the Charleston County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant first presented the testimony of Counsel. Counsel testified he was appointed to represent Applicant on or about September 16, 2014, and he was the second attorney assigned to her case. He testified Applicant was initially in custody

prior to trial, and he met with her twice in the county jail before she was released on bond in January of 2015. He elaborated those meetings took place on September 29, 2014, and October 15, 2014. He further testified they had two meetings scheduled in his office, one on February 17, 2015, and the other on April 2, 2015, after Applicant was released on bond, but he was unsure if she had appeared for those meetings. He elaborated they met at the courthouse on April 7, 2015, and May 5, 2015, during which time Applicant's case had been scheduled for a plea. He further elaborated during their April 7<sup>th</sup> meeting, Applicant indicated she wanted more time in which to hire private counsel.

Counsel also testified the State offered to reduce the charge to distribution of cocaine, second offense with a negotiated five-year sentence in exchange for Applicant's plea. He testified he met with Applicant regarding this offer and advised her to take the offer. He further testified, however, Applicant rejected the offer.

Counsel testified he explained to Applicant she was charged with distribution of cocaine, third offense, and this carried a minimum of ten years. He elaborated he explained to her the eighty-five percent rule, as well as the difficulty presented with her two prior proximity convictions. He further elaborated Applicant had pled guilty to selling drugs from the same house twice before, and this was her third strike. He explained Applicant would have been eligible for life without the possibility of parole based on these prior convictions.

He testified this was a confidential informant case, which was based on a buy-walk. He explained when Applicant was arrested, she did not have the pre-marked money on her, and the money was not introduced at trial. Counsel testified he highlighted the fact the State did not introduce this pre-marked money into evidence at trial. He further explained the State was able to prove Applicant sold the drugs based on the video of the buy-walk and the CI's testimony.

Counsel testified he received the discovery in this case while Applicant was in custody. He elaborated he reviewed the video of the drug buy and gave Applicant a copy of that video. He further elaborated the video depicted a hand-to-hand transaction. He explained it appeared on the video as if Applicant was holding court. He testified on the video, a flash of the baggie which contained the drugs could be seen, but the baggie was not in the CI's hand. He elaborated the transaction took place at Applicant's sister's house, and her sister felt disrespected when the CI entered the home. He elaborated the CI told Applicant he "needed sixty," and Applicant then instructed the CI to go to the other side of the room. He explained the CI never approached Applicant's sister in order to purchase drugs. Counsel also testified Applicant instructed the CI he could stay and smoke the cocaine, but he would need to pay her sister in order to do so. He further testified Applicant's sister wrapped up the cocaine for the CI.

He further elaborated another individual attempted to buy seven dollars' worth of cocaine from Applicant, but Applicant would not sell to him because she needed the sixty dollars the CI was offering. Counsel explained he was able to suppress this other potential transaction at trial.

Counsel also testified he requested a charge on mere presence, and the only argument for such a charge was Applicant was not selling the drugs. He explained the trial court declined to charge mere presence. He further explained had this been a constructive possession case, mere presence might have applied, but that was not the situation. He testified in order to support this argument, he attempted to locate Applicant's sister, who did not testify at trial.

He elaborated he had his investigator attempt to locate Applicant's sister on August 12, 2015, and he left his business card at her sister's house. He further elaborated he was unable to find Applicant's sister, as the only contact information they had for her was the address at which this drug transaction took place. He further elaborated he did not believe Applicant's sister could

be charged for her involvement, and he did not believe her sister would testify she was the one selling the drugs. Counsel explained based on the video, he did not believe Applicant's sister was the one selling the drugs.

Following Counsel's testimony, Applicant testified on her own behalf. Applicant testified she was released on bond in January of 2015. She also testified she appeared in court approximately once before trial. She further testified she did not have any conversations with Counsel regarding a plea offer, and she would have taken the five-year offer had Counsel presented her with such. She testified she and Counsel did not discuss the potential sentence she faced, and she was unaware her charge carried between ten to thirty years.

Applicant also testified Counsel did not meet with her while she was in the county jail nor video conferenced him. She explained she had not met with Counsel until she went to meet with him in his office, which was approximately one week prior to trial. She elaborated Counsel did not do anything in preparation for her case and never contacted her, but she attempted to contact him. She further testified she did not discuss her sister with Counsel, and they never discussed the drug buy video. She elaborated Counsel showed her the video one day before court. She further elaborated she did not tell Counsel anything about locating her sister, nor told him her sister was the one selling drugs. Applicant also testified on the video the CI talked to her sister about money, not drugs.

Applicant testified she wanted a new attorney, but her trial was quickly approaching. She explained she had no letters to Counsel regarding her desire to hire new counsel.

#### 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*

In a post-conviction relief action, an 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). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

*Counsel's alleged failure to investigate*

Applicant contends Counsel was ineffective for failing to investigate. Specifically, Applicant contends Counsel was ineffective for failing to contact her sister prior to trial and failing to present the testimony of her sister at trial. "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

Here, Counsel testified he had his investigator attempt to locate Applicant's sister, but he was unable to locate her. Additionally, Counsel's investigator left a business card at the address provided for Applicant's sister, to no avail. Furthermore, he testified the only possible location of Applicant's sister he had was the location of the drug buy. Applicant provided him with no other contact information for her sister. Indeed, Applicant contends she never discussed her

sister with Counsel. Based on the foregoing, this Court finds Counsel's investigation into Applicant's sister was reasonable.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. An applicant for post-conviction relief "*must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial.*" *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in original). When an applicant merely speculates as to what the witnesses' testimony would have been, that speculation, by itself, cannot satisfy the applicant's burden of showing prejudice. *Id.* (quoting *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)). Applicant wholly failed to present the testimony of her sister at the evidentiary hearing. Without such testimony, this Court is left to speculate as to what Applicant's sister would have testified. Such speculation does not rise to the level of proof required in order for Applicant to meet her burden. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to obtain a jury instruction on mere presence*

Applicant contends Counsel was ineffective for failing to obtain a jury instruction on mere presence. As an initial matter, this Court finds Applicant has failed to establish any deficiency on the part of Counsel, as he did, indeed, request a charge on mere presence. *See Tr. 127.*

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "The law to be charged must be determined from the evidence presented at trial." *State v. Holland*, 385 S.C. 159, 165-66, 682 S.E.2d 898, 901 (Ct. App. 2009). In

determining whether the evidence requires a particular charge, the trial court views the facts in a light most favorable to the defendant. However, “[a]n instruction should not be given unless justified by the evidence.” *Id.* at 166, 682 S.E.2d at 901.

Two typical situations exist where a “mere presence” charge is applicable: accomplice liability cases and constructive possession cases.

“Mere presence” is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, mere presence is generally an issue where the state attempts to establish the defendant’s possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant’s mere presence near the contraband does not establish possession.

*State v. James*, 386 S.C. 650, 653-54, 689 S.E.2d 643, 645 (Ct. App. 2010) (quoting *State v. Dennis*, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996)).

Neither of these circumstances is present in the instant case. It does not involve accomplice liability, nor is it a situation where drugs were simply found somewhere with no indication of who had possession. The evidence shows Applicant was the one who transacted the controlled drug buy with the CI. The evidence presented here included the CI’s testimony at trial that Applicant was the person from whom he ordered the “sixty” of drugs. He also identified her as the woman who was sitting in the video. The video itself also provided evidence. While it is true the camera does not actually show the drugs changing hands, the CI never approaches anyone else requesting drugs, but rather only approaches Applicant. She then directs him over to the side while another man comes in. Applicant also tells the CI what to do if

he wants to pay to smoke it there. Moreover, Applicant is the only one sitting in the video, and it appeared as if she was "holding court." Additionally, Detective Engles testified Appellant delivered sixty dollars' worth of crack cocaine to him after the encounter. Tr. 94, line 11–Tr. 95, line 4. Furthermore, the trial court specifically denied Counsel's request for a charge on mere presence, indicating there was no evidence of such in this case. See Tr. 127-28. Based on the foregoing, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to convey a plea offer*

Applicant alleges Counsel was ineffective for failing to convey a plea offer from the State. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009).

Here, Applicant testified Counsel did not convey a plea offer for a term of imprisonment of five years and a reduction of the charge to distribution of cocaine, second offense. She further testified had Counsel presented her with this offer, she would have accepted it. By contrast, Counsel testified the State made an offer for a reduction to distribution of cocaine, second offense with a negotiated sentence of five years. He testified he conveyed and reviewed this offer with Applicant more than once. This Court finds Counsel's testimony with regards to this allegation very credible, whereas Applicant's testimony is not credible. Furthermore, because Counsel did indeed convey the State's offer to Applicant, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.



Moreover, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Counsel testified after discussing the plea offer with Applicant and advising her to take the offer, Applicant rejected it. Although Applicant contends she would have accepted this offer, this Court finds Applicant's testimony is not credible. Therefore, Applicant has wholly failed to establish despite Counsel's alleged deficiencies, she would have accepted the plea offer. This Court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to prepare for trial*

Applicant alleges Counsel was not prepared for trial. Specifically, Applicant contends Counsel neither contacted her nor did anything in preparation for trial. "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence that counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (holding the post-conviction relief court's determination trial counsel's preparation was inadequate was not supported by the record when counsel had been practicing law for thirty years, half of his practice involved criminal cases, and trial counsel met with his client on a number of occasions). Here, Counsel testified he met with Applicant on a number of occasions. He further testified he explained to Applicant the charge and the potential sentence, and also reviewed the discovery materials with her. Applicant, on the other hand, testified she did not meet with Counsel until she went to meet with him in his office

approximately one week prior to trial. She further testified she and Counsel discussed neither her charge, the potential sentence, nor the discovery. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Based on the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Counsel. In addition, Applicant has presented no evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this Court with any reason as to why additional preparation on the part of Counsel would have affected the outcome at trial. Accordingly, this allegation must be denied and dismissed with prejudice.

*Harsh sentence for which Applicant was charged*

Applicant further contends the sentence she was given is too harsh for that with which she was charged. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. *Clark*, 259 S.C. 378, 192 S.E.2d 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Here, Applicant was charged with distribution of cocaine, third offense. For such an offense, Applicant "must be imprisoned for not less than ten years nor more than thirty years." S.C. Code Ann. § 44-53-375(A)(3). Applicant was sentenced to a term of imprisonment of twelve years. Clearly, the sentence Applicant received was well within the sentencing range prescribed. Accordingly, this allegation must be denied and dismissed with prejudice.

**CONCLUSION**

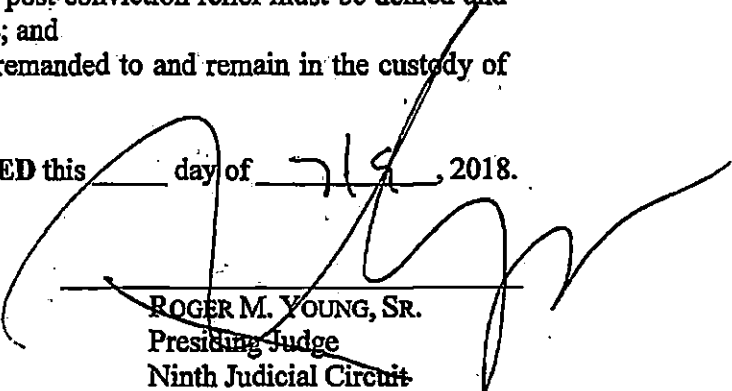
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this \_\_\_\_\_ day of 7/9, 2018.

  
 \_\_\_\_\_  
 ROGER M. YOUNG, SR.  
 Presiding Judge  
 Ninth Judicial Circuit

  
 \_\_\_\_\_ South Carolina

SLB20140909779

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1409843

ARREST WARRANT NUMBER

2014A1010900552

DATE OF ARREST

September 4, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

DEC 1 - 2014

Date: *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1007082

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2014

THE STATE

vs.

VANESSA LAQUETTA FRAYER

DOB: [REDACTED]

B/F

Indictment for

Distribution of Cocaine Base

FILED

12/10/2014 4:51:38 PM

JULIE J. ARMSTRONG

CLERK OF COURT



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON  
STATE VS.

VANESSA LAQUETTA FRAYER

AKA. Vanessa L Frayer, Vanessa Frayer

Race: Black Sex F Age: 45

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# SC00704116

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2014GS1007082  
A/W: 2014A1010900552  
Date of Offense: 06/13/2014  
S.C Code §: 44-53-0375 (B) (1)  
CDR Code #: 3014

SENTENCE SHEET

TO: DISTRIBUTION OF COCAINE COCAINE BASE JRD  CONVICTED OF or  PLEADS

In violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3039

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lowd Act)

The charge is  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury (def's initials)

The plea is  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST

Stephanie B Linder 72656  
Stephanie B Linder, Assistant Solicitor SC Bar#

Defendant

Attorney for Defendant

68630  
SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 12 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. 128 days

The Defendant is to be placed on 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 \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab Or Job Corp. \_\_\_\_\_

Recipient \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other \_\_\_\_\_

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 Fcc) \$50 \$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90 5 (SCCIA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \$ 8.40

TOTAL \$ 288.40

Clerk of Court/Deputy Clerk: Colleen Norton

Court Reporter: \_\_\_\_\_ Presiding Judge: Michael J. Smith

Judge Code: 2190

Sentence Date: 8-12-15