

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge

JUSTIN J. LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000998

APPENDIX

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S.C. SUPREME COURT

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State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Justin Jamal Lewis,)
)
 Defendant.)
)
)
)

September 4-5, 2018
Florence, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge

A p p e a r a n c e s:

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Circuit Court Reporter
Certified Verbatim Reporter - Master
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1 TRIAL DAY 1 - 09/04/18

2 (Whereupon, the proceedings commenced at 11:19 a.m.)

3 THE COURT: All right. This is -- this -- this is
4 in the matter of *the State v. South Carolina v. Justin*
5 *Jamal Lewis*, Indictment 2017-GS-21-764. This is the
6 first case that the state has called for trial. And Mr.
7 Jordan has informed me that Mr. Lewis has a motion; is
8 that correct?

9 MR. JORDAN: That's correct, Your Honor. Mr. Lewis
10 has informed me that he no longer wishes for me to
11 represent him; that I am terminated by -- as counsel.
12 I've explained to him that -- that that would have to go
13 before Your Honor, based on where we are ---

14 THE COURT: Yeah.

15 MR. JORDAN: --- being up for trial and that I
16 believe he wishes to go forward with that.

17 THE COURT: Mr. Lewis, I'll be happy to hear from
18 you as to your desire to release Mr. Jordan. What's --
19 what's the problem?

20 THE DEFENDANT: Yes, sir. I've been -- I've had
21 this charge for over a year now.

22 THE COURT: Right.

23 THE DEFENDANT: And, you know, basically, from the
24 first day, I've told Mr. Jordan that I wanted to go to
25 trial regarding this case. And, you know, I -- I can't

1 -- I never get to get in touch with him. I'm, like, back
2 and forth. I never know anything that's going on.

3 Multiple times, he called me up; he's told me to
4 come to Florence to meet with him. And when I come, he's
5 not here. And I call him. I've even went as far as to
6 call his personal office where he -- his private office
7 and leave messages with his secretary; never get a call
8 back.

9 Just last week, he told me when I -- I had court
10 Monday; my name was on the list. And I -- and he told me
11 that they had a video, which ever since October of last
12 year, he told me that he was going to view the video
13 hisself.

14 And he told me that the state could take the
15 position where they would say, well, I can't see the
16 video myself until the trial. And I said, "I understand
17 that."

18 But I just -- ever since October of last year, he
19 himself had been supposed to see it and talk to me about
20 it. And every time I come back, it's another some --
21 it's something else that he has that he can't talk --
22 even talk to me about what he's seen.

23 And then, last week, really, was the last straw
24 because Monday, like I said, the -- my name was on the
25 list. I came. I waited. Mr. Jordan told me to come

1 back Tuesday; that he would be viewing the video that
2 evening; and then Tuesday he would talk to me about it.

3 And I -- I asked him -- I said, "Well, I have to see
4 my P.O. on Wednesday anyway. So can I come see my P.O.
5 and then come see you after?"

6 And he said, "Yes. As soon as you leave your P.O.,
7 come straight to me."

8 So I waited. And he told me when -- after I saw my
9 P.O., I waited, waited, waited. He told me that he still
10 hadn't seen the video.

11 So -- okay. I said okay. And I got -- my name was
12 put back on the list that -- last Thursday. So when I
13 got to court, I waited; I was here the whole day.

14 Mr. Jordan told me -- before they took their lunch
15 break, he said, "Well, I can't look at the video now.
16 You'll have to come back after two o'clock and view the
17 video." Well, he would view -- I wouldn't be able to
18 view it.

19 So I said okay. I waited till -- because I guess he
20 assumed that I was just sitting in the courtroom for no
21 reason or something. But he came to me and talked to me
22 in the courtroom and told me what was going on. So
23 that's why I remained in the courtroom.

24 And whenever the judge let us go, then I left; came
25 back at 2. I waited till about 3:30. I was -- I sat and

1 just waited and waited. And if it wasn't for Mr. Floyd,
2 I would've still been waiting.

3 And when I -- when I saw Mr. Floyd, Mr. Floyd
4 informed me that Mr. Jordan had already left the
5 premises. But he told me to wait until two o'clock to
6 meet with him because he had to see me -- he said he had
7 to see me and he had to talk to me hisself.

8 And he told me personally, if I didn't wait, that
9 the prosecutor would issue a -- a bench warrant for me.
10 So clearly, I'm going to stay for that.

11 THE COURT: Well, he -- he's right in this respect.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Floyd and Mr. Jordan and all the
14 lawyers in their office, they -- they -- they try hard to
15 accommodate their clients. But the only -- but there's
16 only two folks that can release you from court. And that
17 would be the solicitor or the judge.

18 THE DEFENDANT: Oh, yeah. But ---

19 THE COURT: So ---

20 THE DEFENDANT: --- see, that's ---

21 THE COURT: --- so he ---

22 THE DEFENDANT: --- the thing ---

23 THE COURT: --- was -- I mean, if -- if you were
24 told to be back at 2 ---

25 THE DEFENDANT: Not by the solicitor, though. He

1 said he couldn't see the video until then. And that's
2 why he wanted me to stay till after 2.

3 THE COURT: Okay.

4 THE DEFENDANT: But before that, he had told me that
5 I would get a bench warrant because the solicitor wanted
6 me to be here. But after, I found out he just wanted me
7 to be here. But when I waited, I waited till almost four
8 o'clock. He never -- Mr. Floyd told me that Mr. Jordan
9 left and never came back. So I was just sitting here,
10 waiting on somebody who's not even coming back.

11 You know, and so it's just like -- and I feel like
12 I'm not being properly represented. I don't feel like
13 it's in my best interests for Mr. Jordan to represent me
14 for the simple fact that he's been over my case for this
15 long and it just seems to get worse and worse with the
16 communication, with anything.

17 I don't -- I never know anything. I -- I don't know
18 what's going on. I try to reach out to him. I'm
19 patient. I come and I wait, and I wait.

20 And I -- whenever somebody tells me I can leave,
21 that's when I leave. But Mr. -- if either he's not here
22 or he sees me, he acts like he doesn't see me. So it's
23 like I don't -- I don't feel comfortable.

24 I feel like I'm being -- excuse the terminology --
25 but I feel like I'm being railroaded because he

1 communicates with the -- I watch him talk to the
2 solicitor, and I watch them communicate. But then, he
3 don't say nothing else to me. It just feels like -- it
4 look -- it -- to -- from plain-eye view, it looks like
5 they're working together.

6 And I don't want to say that, like, accusing him of
7 something. But it's just how I feel. I don't feel
8 comfortable. I don't feel like it's in my best interest
9 for Mr. Jordan to represent me.

10 I -- I'm lost on my case. Like, I don't know
11 anything that's going on with my case.

12 THE COURT: Mr. Jordan?

13 MR. JORDAN: Your Honor, I'll -- I'll say this.
14 Tension has been high between me and Mr. Lewis for a
15 while now, to the point that I asked Mr. Floyd to
16 essentially assist on the case. And he's been involved
17 in the case for a -- a good while now. And he's, I
18 believe -- probably the last four or five times that
19 we've met -- maybe more than that -- Mr. Floyd has been
20 in the room because tension has been high between Mr.
21 Lewis and I.

22 I disagree 100 percent that I -- I -- if I've missed
23 a call -- which I have missed calls, because I've been in
24 court or other places ---

25 THE COURT: Sure.

1 MR. JORDAN: --- I've always tried to contact Mr.
2 Lewis back, every single time. He has been on the list a
3 number of times. It is a relatively old case.

4 It -- it -- it was one of those cases that, I think,
5 got on the trial list once or twice before. But we just
6 didn't get to it. We weren't trying to put anything off.
7 We weren't -- or I wasn't trying to put anything off.

8 You know, I -- I -- I've done the best I can to
9 represent ---

10 THE COURT: Are you ready ---

11 MR. JORDAN: --- Mr. Lewis?

12 THE COURT: --- for trial?

13 MR. JORDAN: I'm absolutely ready for trial. We --
14 I worked on it extensively end of last week, last night,
15 getting it ready for -- to go.

16 I -- we -- we put on the record Monday morning last
17 week, when we had our roster meeting, at that point Mr.
18 Tucker and I said we needed to get together and watch the
19 video. We had scheduled that for Wednesday. Mr. Jordan
20 is right; we -- it did get put off from Wednesday. We
21 did it Thursday.

22 As to the issue -- and I've tried to explain this,
23 and I don't think Mr. Lewis and I can get on the same
24 page. I'm hoping we can right now. Thursday -- or
25 Wednesday, when he came, he came -- he did exactly what

1 he said he did: He came to visit his P.O.; came directly
2 to see me.

3 It -- as Your Honor knows, on plea weeks it can be
4 busy.

5 THE COURT: Yeah.

6 MR. JORDAN: I said, "Mr. Tucker hadn't gotten a
7 chance to get the video." He didn't have it at that
8 point, but it was coming; my understanding was the next
9 day.

10 I said, "Come back tomorrow. Let me put you on --
11 let -- Mr. Tucker is going to put you back on the list
12 and, you know, that way we can work all this out."

13 That -- that next morning we had multiple pleas. I
14 talked to Mr. Lewis. I said, "Mr. Tucker and I are going
15 over to look at the video as soon as we get a break from
16 the pleas. You're more than welcome to stay. Or if you
17 want to come back at 2, I -- I can ask for Mr. Tucker for
18 you to be allowed to leave and come back at 2.

19 He expressed to me he didn't like that arrangement.
20 And he sat for another 15/20 minutes out in the audience.
21 I then left; was gone with Mr. Tucker for probably 20/25
22 minutes when we walked across the street and viewed the
23 video.

24 I came back to talk to Mr. Lewis about the video,
25 and he was gone. I took that as he was gone, and court

1 broke down shortly thereafter, I believe. So, you know
2 ---

3 THE COURT: I'll hear from you.

4 MR. JORDAN: --- that was essentially the -- the
5 back and forth that took place last regarding his two
6 o'clock. I -- I did not intend for him to sit there all
7 day. If anything -- and Mr. Floyd can back me up on
8 this, I went to try and not have him wait that long; to
9 go get some lunch or do whatever he needed to do and come
10 back.

11 So I -- I've tried to work with and I continue to
12 wish to try and work with Mr. Lewis.

13 THE COURT: Okay.

14 Mr. Lewis?

15 THE DEFENDANT: Yes, sir. I only have one question:
16 Is all this on record?

17 THE COURT: Yeah.

18 THE DEFENDANT: Okay. Appreciate it.

19 All right. First of all, I stayed in the courtroom
20 out of respect for the Court because there was court
21 going on. And I'm not going to be up, in and out of the
22 courtroom. So that's why I stayed in the courtroom.

23 I left because everybody was gone. Nobody was in
24 the courtroom but me. So I asked questions, and they
25 said they was coming back at 2. So that's the only

1 reason I left, because I was the last person there.

2 And I don't know if he assumed, because I was gone,
3 that I wasn't coming back. But once everybody leaves,
4 that's the only reason I left.

5 You told me to come back at 2. I came back at 2.
6 You never came back. You never contacted me. Never ---

7 THE COURT: All right. Well, let's -- let -- let me
8 -- and -- unfortunate -- there's -- there's obviously
9 been some miscommunication. There's been some
10 misunderstandings. There's been a lot.

11 But here's -- here's the situation that we have:
12 The case is ready to go to trial. The state has called
13 the case.

14 THE DEFENDANT: And I've been trying to go to trial
15 since day one.

16 THE COURT: And ---

17 THE DEFENDANT: I just ---

18 THE COURT: --- and -- and ---

19 THE DEFENDANT: --- want to be represented ---

20 THE COURT: But here ---

21 THE DEFENDANT: --- properly.

22 THE COURT: --- here's -- here's the issue, though,
23 Mr. Lewis: I -- I -- I'm not sure you want to go trial
24 without a lawyer.

25 THE DEFENDANT: I definitely don't. But I want to

1 be properly represented. And ---

2 THE COURT: Well ---

3 THE DEFENDANT: --- I could've did this last week.

4 He told me that I could've went in front of the just last

5 Thursday. But he never came back. He told me that I

6 could fire him last week. But he never came back.

7 MR. JORDAN: I -- I can ---

8 THE COURT: Here ---

9 MR. JORDAN: --- clear ---

10 THE COURT: --- here -- here's the thing that's --

11 that's important for you to understand. Mr. Jordan is

12 appointed in your case ---

13 THE DEFENDANT: Yes, sir.

14 THE COURT: --- which you're entitled to.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: But what you're not entitled to do is

17 pick and choose what lawyers you want to represent you.

18 So you ---

19 THE DEFENDANT: True.

20 THE COURT: --- it is true. You could fire him.

21 But if you fire him, you either have to hire your own

22 attorney or you have to represent yourself.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You want to go forward and represent

25 yourself?

1 THE DEFENDANT: I would like to hire my own
2 attorney. I've ---

3 THE COURT: Well, I'm ---

4 THE DEFENDANT: --- told him ---

5 THE COURT: --- not going ---

6 THE DEFENDANT: --- that ---

7 THE COURT: --- to continue ---

8 THE DEFENDANT: --- last week.

9 THE COURT: --- the case. The case is up. The --
10 the case is up for trial.

11 THE DEFENDANT: Yeah. I understand that. But all
12 I'm saying is how is it fair for me to be represented ---

13 THE COURT: Because everything that you've shared
14 with the Court is a -- a conflict or a misunderstanding
15 or whatever it may be.

16 THE DEFENDANT: I don't ---

17 THE COURT: But it's all personal between you and
18 Mr. Jordan.

19 THE DEFENDANT: Oh, it's never personal.

20 THE COURT: I've -- well, here's the thing: I've
21 never -- I hadn't heard anything right here that -- that
22 has indicated that Mr. Jordan is not prepared for trial
23 or ---

24 THE DEFENDANT: He doesn't ---

25 THE COURT: --- he's not ready to go forward on your

1 case.

2 THE DEFENDANT: Well, should -- can I -- should I
3 repeat myself? He ---

4 THE COURT: I don't want you to repeat yourself. I
5 want you to tell me -- you haven't talked to him when you
6 wanted to talk him. He's ---

7 THE DEFENDANT: No. I ---

8 THE COURT: --- missed ---

9 THE DEFENDANT: --- haven't talked ---

10 THE COURT: --- calls.

11 THE DEFENDANT: --- to him any. He hasn't sat with
12 me and talked to me any. He never answers. He tells me
13 ---

14 THE COURT: Is that true, Mr. Floyd?

15 MR. FLOYD: Your Honor, I -- I mean, I've seen him
16 meet with him. I mean ---

17 THE DEFENDANT: But does he talk to me about
18 nothing? He just tells me to come back.

19 MR. FLOYD: Your Honor, I can promise you this
20 morning and last week, he tried to have conversations --
21 I'm talking about Mr. Jordan did. And he gets talked
22 over.

23 THE DEFENDANT: I wanted to fire him. He told me I
24 could fire him last week. I waited to fire him in front
25 of the judge, and he never came back.

1 He told me, if I want to fire him, the solicitor
2 said I have to do it on record. So I waited to do the
3 firing on record, and he never came back. I talked to
4 Mr. Floyd. Mr. Floyd told me to come back next week.

5 MR. FLOYD: Your Honor ---

6 THE COURT: I waited.

7 MR. FLOYD: All right. I have personal knowledge of
8 this business, because I was present and I heard it. He
9 walked out -- down the hallway. I don't remember what
10 day it was. He looked at Mr. Jordan and said, "You're
11 fired. You're fired."

12 And he went towards the elevator. Mr. Jordan said,
13 "Your case is up for trial first thing next week."

14 THE DEFENDANT: And I said ---

15 MR. FLOYD: "You're still" ---

16 THE DEFENDANT: --- "You're still" ---

17 MR. FLOYD: --- "fired."

18 THE DEFENDANT: Yes, sir.

19 MR. FLOYD: He left at that point.

20 THE DEFENDANT: And he called me the next day back.

21 MR. FLOYD: The next day, he came back. And he told
22 him, while I was sitting there, that he was not fired.
23 So if he didn't go before Your Honor last week, it was
24 because he decided not to.

25 THE DEFENDANT: He told me he wasn't fired because

1 it wasn't done on record. So I had to wait for the
2 judge. The judge was going on with multiple cases. I
3 sat in the courtroom till everybody left; came back at 2.
4 Mr. Jordan never came back.

5 And you -- and he can vouch for that, because he saw
6 me. He met with me hisself.

7 MR. JORDAN: All right.

8 THE DEFENDANT: Mr. Jordan never came back.

9 MR. JORDAN: I just want to be clear. When --
10 Wednesday is when that occurred.

11 THE DEFENDANT: Thursday.

12 MR. JORDAN: No. Excuse me. Wednesday is when I
13 was fired as Mr. -- as Justin was going to the elevator
14 and I was explaining he was up for trial. I then went to
15 Mr. Tucker and said, "I believe I've been fired."

16 At that point we discussed break -- putting Mr.
17 Lewis back on the trial -- or back on the docket for the
18 next day so that I could explain to Mr. Lewis, as I did
19 Thursday morning, "You can't just fire me at this stage;
20 you have to go in front of the judge."

21 At that point he said he didn't want to do that ---

22 THE DEFENDANT: I never ---

23 MR. JORDAN: --- that I ---

24 THE DEFENDANT: --- got a chance ---

25 MR. JORDAN: --- and Mr. ---

1 THE DEFENDANT: --- to go in front of the judge.

2 MR. JORDAN: He said he didn't want to at that
3 point.

4 THE DEFENDANT: I ---

5 MR. JORDAN: That was the whole purpose for bringing
6 him back Thursday.

7 THE DEFENDANT: I didn't have a choice. I never got
8 a choice. I told you I wanted to fire you. I don't know
9 the proper ---

10 THE COURT: Are you ready ---

11 THE DEFENDANT: --- procedure ---

12 THE COURT: --- to represent yourself? Here's your
13 two choices: You're going to represent yourself, or
14 you're going to allow your attorney, who's had numerous
15 years of experience in criminal law, tells me that he's
16 ready to go forward ---

17 THE DEFENDANT: He saw my video one time.

18 THE COURT: You don't have to see a video a thousand
19 times, Mr. Lewis.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I've seen -- I've seen tens of dozens of
22 videos in my career.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Some of them I do have to watch more
25 than once. Some ---

1 THE DEFENDANT: Yes, sir.

2 THE COURT: --- I don't.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I don't know anything about your case.

5 I don't know -- I don't know anything about the video.

6 But what I'm saying to you is this: The fact that
7 he's only watched the video once doesn't ---

8 THE DEFENDANT: That's not ---

9 THE COURT: --- mean he's ---

10 THE DEFENDANT: --- the only ---

11 THE COURT: --- not ready.

12 THE DEFENDANT: That's not the only -- that's not
13 the only dispute I have against him, though.

14 THE COURT: Well, I'd like to hear the disputes
15 other than you're upset with him because ---

16 THE DEFENDANT: I'm not ---

17 THE COURT: --- he hasn't ---

18 THE DEFENDANT: --- upset.

19 THE COURT: --- he hasn't either returned your calls
20 or he hasn't dealt -- how -- how is he not ready for your
21 trial?

22 THE DEFENDANT: He's not ready for -- first of all,
23 I don't know what he's considered to be prepared for. I
24 don't -- he's not -- I'm not comfortable with him
25 representing me, based off his actions, not off mine.

1 Like I said, last week he told me to wait on him until
2 two o'clock. I stayed here and waited, and he never came
3 back. He told me out of his own mouth ---

4 THE COURT: How does that make him not prepared to
5 try your case?

6 THE DEFENDANT: He never came back to -- to talk to
7 me about something. He told my trial was due for this
8 week. So if it's Thursday of last week and you tell me
9 to wait in the court while we -- to -- so we can talk and
10 you don't come back, Friday you can't do it. Monday is a
11 holiday. Tuesday I go to trial.

12 THE COURT: Here's what you need to understand.
13 Monday is not a holiday for attorneys who are going ---

14 THE DEFENDANT: Well, I ---

15 THE COURT: --- to trial.

16 THE DEFENDANT: --- asked him. I asked him could I
17 meet with him Monday. He told me no; it was a holiday.
18 I asked him could I meet with him on Monday.

19 MR. JORDAN: I said we didn't have court on Monday.

20 THE DEFENDANT: I asked you could I meet with you.
21 You said no; it was a holiday.

22 MR. TUCKER: And, Your Honor ---

23 THE DEFENDANT: I would've ---

24 MR. TUCKER: --- for the record ---

25 THE DEFENDANT: --- came here yesterday.

1 MR. TUCKER: --- the state provided, pursuant to
2 *Hyman v. State*, our obligation, we gave a still from the
3 video that we intend to introduce as evidence to Mr.
4 Jordan, who was assured had shown that to -- to Mr.
5 Lewis. So ---

6 THE DEFENDANT: He ---

7 MR. TUCKER: --- he has seen a still of the video,
8 even if he hasn't seen the video itself ---

9 THE DEFENDANT: The video ---

10 MR. TUCKER: --- where ---

11 THE DEFENDANT: --- I -- I already knew I wasn't
12 going to see the video. The video is not the issue.
13 It's -- it's Mr. Jordan's actions that a issue is. The
14 video is not even the main issue.

15 It's the fact that two times last week, you told me
16 to come see you and then I didn't get to see you. And
17 then you told me out of your own mouth -- you said I
18 don't need to go to trial unless you represent me
19 personally ---

20 THE COURT: All right.

21 THE DEFENDANT: --- because of the solicitor.

22 THE COURT: We're not going to ---

23 THE DEFENDANT: So how ---

24 THE COURT: We're not going to continue repeating
25 these same argument over and over and over. I think I've

1 heard the argument.

2 What I haven't heard is any valid reason why Mr.
3 Jordan, an experienced criminal defense lawyer, is not
4 ready to go to trial. He indicates to the Court he's
5 ready to go forward. You don't like that, Mr. Lewis, and
6 I -- I respect that.

7 But you've not given me any legal reason ---

8 THE DEFENDANT: He told ---

9 THE COURT: --- why ---

10 THE DEFENDANT: --- me ---

11 THE COURT: --- he is not ready, other than he's --
12 he told you to sit in court; you did ---

13 THE DEFENDANT: He used scare tactics to get me to
14 do what he wants me to do. He been trying to get me to
15 plea. He told me I don't need to go to trial unless he
16 represents me personally, when I told him I wanted to get
17 a private attorney.

18 He told me, "You don't need to go to trial unless I
19 represent you because of the solicitor." What does that
20 mean? I don't get what that means. I don't understand
21 what those words mean.

22 THE COURT: There's a jury upstairs, ready to be
23 selected. You can proceed forward with ---

24 THE DEFENDANT: And another -- I got another
25 dispute. I -- the day I got -- the day of my initial

1 appearance, I requested a bench trial. I never heard
2 anything back from it until today, when they told me,
3 "No. You're getting a jury trial."

4 Why haven't I have heard about this before, when I
5 requested a bench trial through ---

6 THE COURT: Do you ---

7 THE DEFENDANT: --- my attorney?

8 THE COURT: --- want a bench trial?

9 THE DEFENDANT: Yes, sir.

10 MR. JORDAN: Your Honor, we've taken -- I've
11 discussed this with Mr. Lewis multiple times, that this
12 -- and I went -- I took this to Mr. Tucker. And I said,
13 "My client has requested a bench trial." He said he --
14 the state was not inclined to go along I would a bench
15 trial. So that was the ---

16 THE DEFENDANT: But I never got any confirmation ---

17 MR. TUCKER: Well ---

18 THE DEFENDANT: --- or heard anything.

19 MR. TUCKER: --- in the sense, Your Honor, thinking
20 down the road, I did not want this to come back -- should
21 Mr. Lewis get convicted, I did not want this to boomerang
22 back on -- he use that as some grounds for a
23 postconviction relief. But if you can give me a couple
24 of minutes, if Mr. Lewis is so inclined for a bench trial
25 ---

1 THE COURT: You're -- y'all -- if y'all need some --
2 a few minutes to talk, I don't -- I'll give you whatever
3 time you need. I -- you know, we're not going to take
4 the balance of the morning. But if you need some time to
5 talk, you can talk.

6 Mr. Lewis, here's what I'm going to ask you to do.
7 You've got two good criminal trial lawyers here, whether
8 you personally like them or not.

9 THE DEFENDANT: Oh, Mr. Floyd has been ---

10 THE COURT: Well, I'm ---

11 THE DEFENDANT: --- nothing but ---

12 THE COURT: -- just telling ---

13 THE DEFENDANT: --- helpful ---

14 THE COURT: --- you that ---

15 THE DEFENDANT: --- to me.

16 THE COURT: --- they're both very ---

17 THE DEFENDANT: If it wasn't ---

18 THE COURT: --- experienced.

19 THE DEFENDANT: --- for him ---

20 THE COURT: They're ---

21 THE DEFENDANT: --- I would be ---

22 THE COURT: --- they're -- they're both good
23 lawyers. You need to talk with them about your decision.
24 And -- and at least -- and here's the thing: It's a
25 decision that you have to make, okay?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: They just won't make it for you. But
3 what they can do and what their job is to do is to give
4 you their opinion as to what they think is in your best
5 interests. And then, you have to make the decision,
6 okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So I want you to take a few moments.
9 Y'all can step out the door -- back door there and talk
10 and then come back in and let me know and we'll -- we'll
11 deal with the issue back on the record.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay?

14 THE DEFENDANT: Yes, sir.

15 MR. CLEMENTS: Judge, may I interject something?
16 With the fact that this might flip-flop one way or
17 another -- and it's ---

18 THE COURT: It's not ---

19 MR. CLEMENTS: --- already in ---

20 THE COURT: --- going to flip-flop. I'm going to
21 get ---

22 MR. CLEMENTS: All right.

23 THE COURT: --- a definite answer here ---

24 MR. CLEMENTS: Yeah.

25 THE COURT: --- in just a little bit.

1 MR. CLEMENTS: Well, I was going to suggest is if we
2 pick the jury, have them come back at like 2:30/three
3 o'clock, and by then, it all could be worked and have a
4 bench trial and whatever or if he backs up on that, you
5 got a jury ready.

6 THE COURT: No. What -- what we're going to do is
7 we're going to let him talk to the lawyers, make his
8 decision; the state then needs to let me know what
9 y'all's decision is. And then we're -- we're going to --
10 we're either going to draw a jury and have a jury trial
11 or we're going to have a bench trial, one of the two.

12 MR. CLEMENTS: All right.

13 THE COURT: All right. Go ahead, and take your
14 time.

15 (Off the record from 11:40 a.m. until 11:48 a.m.)

16 THE COURT: Mr. Lewis, what's -- what's your
17 decision as to whether you want a jury trial or a bench
18 trial?

19 THE DEFENDANT: Could I make one statement?

20 THE COURT: Yes, sir.

21 THE DEFENDANT: I feel like I was tricked into this
22 position, because I requested to fire Mr. Jordan last
23 week. And I feel like, all right, now that it's the day
24 of trial, now you can put me in a position to where I
25 either have to keep you or represent myself. So -- but

1 ---

2 THE COURT: Why do you ---

3 THE DEFENDANT: --- when ---

4 THE COURT: --- think he wants to represent you
5 against your will?

6 THE DEFENDANT: Well, I mean, because I asked to
7 fire him last week and he never came back. I couldn't --
8 I never got to go in front of a judge and say any of this
9 until now.

10 THE COURT: He told me -- and Mr. Floyd verified it
11 -- that on Thursday, when he told you that you'd have to
12 go in front of a judge, that you told him never mind.

13 THE DEFENDANT: No. He said, "You have to go in the
14 judge" ---

15 THE COURT: I've got ---

16 THE DEFENDANT: --- "in front of the judge" ---

17 THE COURT: --- two ---

18 THE DEFENDANT: --- "on record."

19 THE COURT: --- attorneys who have both told me that
20 on Thursday, you decided not to fire him.

21 THE DEFENDANT: I didn't decide not to fire him. He
22 never came back. He -- he -- he also verified that I was
23 here after two o'clock when Mr. Jordan left.

24 THE COURT: I understand that.

25 THE DEFENDANT: So, I mean, they kind of contradict

1 themselves, because if I was going to keep him ---

2 THE COURT: Mr. Lewis ---

3 THE DEFENDANT: --- why did I stay?

4 THE COURT: --- if you could show this Court that he
5 is not prepared to try your case and that he has not done
6 the necessary work to prepare and -- and have your case
7 ready to go to trial, then I would consider your request.
8 But your whole -- everything you've shared with me is
9 based on your personal conflict that he ---

10 THE DEFENDANT: No, sir.

11 THE COURT: --- has made you wait around and he
12 hasn't answered your calls in a timely fashion.

13 THE DEFENDANT: No, sir.

14 THE COURT: Those are the only things you've told
15 me.

16 THE DEFENDANT: He didn't make me wait around. He
17 told me to stay and that he would come back to meet with
18 ---

19 THE COURT: And he ---

20 THE DEFENDANT: --- and he ---

21 THE COURT: --- didn't ---

22 THE DEFENDANT: --- didn't come back.

23 THE COURT: -- come back. And that is the only
24 thing I've heard that you're -- you're basing this
25 request on.

1 THE DEFENDANT: I didn't -- that's not the only
2 thing. I've said a lot of stuff.

3 THE COURT: And every bit of it has been about him
4 either not returning calls or not being available when
5 you wanted him available.

6 THE DEFENDANT: No.

7 THE COURT: You ---

8 THE DEFENDANT: He told ---

9 THE COURT: --- not getting ---

10 THE DEFENDANT: --- me out of his mouth I ---

11 THE COURT: Let me tell you something. When you and
12 I are talking, only one of us is going to be talking.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And I got priority.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, when I'm done, I'm -- I'll hear
17 from you.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: But I'm not going to hear a repeat of
20 all the stuff I've already heard.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, all you've shared with me, you've
23 not given me one legal reason why he is not prepared to
24 try your case.

25 THE DEFENDANT: I don't know legal terminology, so I

1 don't know how to put it in legal terms.

2 THE COURT: I don't know that you've given me
3 anything, other than you -- you haven't -- he hasn't
4 returned your calls in a timely fashion; he hasn't seen
5 you when you've asked to see him.

6 THE DEFENDANT: No. When he said to see me.

7 THE COURT: When he said he was going to see you;
8 then he doesn't talk to you; that last week in court,
9 y'all had a lot of miscommunication; you sat around and
10 had to be in court a lot; and you didn't get a chance to
11 -- to -- for him to see a video; for him to talk with you
12 and all of that.

13 But you haven't given me any basis or any reason to
14 show that Mr. Jordan is not prepared to go forward and
15 represent you in this matter.

16 THE DEFENDANT: He told me, out of his own mouth,
17 "You don't want to go to trial unless I represent you
18 because of the solicitor," when I told him that I was
19 thinking about getting a private attorney. That right
20 there threw me off completely and makes me feel like I
21 can't believe anything anybody says that's around me
22 that's supposed to be representing me. I'm supposed to
23 trust my attorney.

24 THE COURT: All right.

25 THE DEFENDANT: With my life.

1 THE COURT: Well, your case is going forward. Are
2 we going to have a jury trial, or are we going to have a
3 bench trial?

4 THE DEFENDANT: Like I said, I feel like I'm being
5 forced into this situation. This is terrible.

6 THE COURT: We're going to go forward with a jury
7 trial unless you indicate to me anything different.

8 Now, we're going to go upstairs. We're going to
9 pull a jury. Then we're going to break for lunch. And
10 then we're going to begin the trial this afternoon.

11 At this point, Mr. Jordan is going to represent you.

12 THE DEFENDANT: I would like to represent myself.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: A little bit of college.

15 THE COURT: All right. Have you read or gone over
16 the rules of evidence?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. You know the rules of
19 procedure in court?

20 THE DEFENDANT: Yes, sir. Somewhat.

21 THE COURT: All right. You understand that if you
22 represent yourself, you're not going to get any special
23 treatment; you're ---

24 THE DEFENDANT: Yes, sir.

25 THE COURT: --- going to be held to the same

1 standard that Mr. Tucker is held to; and you're going to
2 be required to follow the rules as evidence, just as a
3 lawyer would be required to?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand all that?

6 THE DEFENDANT: Yes, sir. I would like to represent
7 myself with legal aid, legal assistance.

8 THE COURT: You're going to have legal assistance.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're going to have Mr. Jordan sitting
11 there. He's not going to participate. You're going to
12 get to try the case. But if you have a legal question,
13 you can ask him.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And he'll give you his legal advice.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right?

18 THE DEFENDANT: Yes, sir.

19 MR. JORDAN: Your Honor, if I just may briefly put
20 on the record ---

21 THE COURT: Yes, sir.

22 MR. JORDAN: --- a couple things: And again, not to
23 go back and forth, I know that hopefully is about to end.
24 But what I was trying to express Mr. Lewis last -- last
25 week was I didn't recommend him representing himself

1 against a lawyer or solicitor on the other side. I
2 certainly was not trying to, in any way, shape, or form,
3 prevent ---

4 THE COURT: I ---

5 MR. JORDAN: --- him -- and I don't think I did
6 prevent him -- from going and hiring a -- an outside
7 counsel, if he wished to do that. I just want that on
8 the record.

9 And I also want the record to clearly reflect that I
10 strongly dispute some of the assertions that Mr. Lewis
11 has made against me today, as far as not responding to
12 him, not ---

13 THE COURT: Right.

14 MR. JORDAN: --- talking to him, and trying to
15 participate -- and participate in his case.

16 THE COURT: And -- and I -- and -- and I appreciate
17 that, and the record does reflect that, Mr. Jordan.

18 Mr. Lewis, I wasn't part of that conversation. I
19 just know these lawyers because they've been appearing in
20 my court for years.

21 THE DEFENDANT: I understand.

22 THE COURT: And I know their -- their integrity.
23 And I -- I'm confident, again, more than likely, of
24 miscommunication. I'm confident Mr. Jordan would've
25 never told you that you can't hire your own lawyer.

1 THE DEFENDANT: I don't think he meant to say what
2 he said.

3 THE COURT: I think what he meant to say is what he
4 just said, is that you don't want to go into court,
5 representing yourself against Mr. Tucker, as an
6 experienced trial attorney. That would not be in your
7 best interests. You should have an attorney representing
8 you.

9 THE DEFENDANT: Well, the facts of the case are --
10 are in my ---

11 THE COURT: Well, we're not going to go into the
12 facts of the case at this point.

13 THE DEFENDANT: My thing is this: If I wanted to
14 fire him and I waited to be in front of the judge to do
15 so, and then he wasn't present -- I didn't even see Mr.
16 Tucker. So what position does that put me in? I just
17 walk into court my own self and -- I can't do that. I --
18 I -- I can't -- I can't control the courtroom. I can't
19 make motions ---

20 THE COURT: I've got ---

21 THE DEFENDANT: --- without a lawyer.

22 THE COURT: --- two attorneys that have indicated
23 and told me that when Mr. Jordan, on Thursday of last
24 week, was going to put you in front of me -- I was the
25 judge last week -- then that's when you told him no; no;

1 I'm not going to do that.

2 Now, you dispute that, and the record reflects that
3 you dispute that. But I got two lawyers who -- who were
4 there who have ---

5 THE DEFENDANT: He wasn't ---

6 THE COURT: --- told me ---

7 THE DEFENDANT: --- even there during that
8 conversation.

9 THE COURT: Well, that's ---

10 THE DEFENDANT: He was ---

11 THE COURT: --- not what ---

12 THE DEFENDANT: --- even present ---

13 THE COURT: --- he's told me.

14 THE DEFENDANT: --- for the time when I told him I
15 was firing him.

16 THE COURT: All right.

17 THE DEFENDANT: But when he told me I had to do it
18 in front of the judge on record, he said, "I'm not fired
19 right now because you haven't fired me on record."

20 THE COURT: All right.

21 THE DEFENDANT: So I said, "All right. Well, when I
22 do that?"

23 He said, "Well, we're going to lunch. Come back at
24 two o'clock. And you can do everything that you need to
25 do."

1 I came back at two o'clock and waited. Mr. Floyd is
2 the reason why I ended up leaving, because he came and
3 told me, "Mr. Jordan has left. I saw your video."

4 I said, "Well, what's -- what about the other stuff
5 that I need to do?"

6 He said, "You got to be back here next week
7 Tuesday."

8 So I left and I came back today. And I was here at
9 nine.

10 THE COURT: All right. And we're going upstairs
11 right now, and we're going to pull a jury. You know how
12 to do that?

13 THE DEFENDANT: (No audible response.)

14 THE COURT: I know you don't. I think you should
15 strongly reconsider representing yourself. You don't
16 even know how to pull a jury.

17 THE DEFENDANT: Yeah. I want it to be on record
18 that I feel like I've been forced ---

19 THE COURT: The record ---

20 THE DEFENDANT: --- into all ---

21 THE COURT: --- is clear.

22 THE DEFENDANT: --- of this. I've been forced into
23 this situation. I didn't -- I haven't had the chance to
24 properly go through ---

25 THE COURT: Your case ---

1 THE DEFENDANT: --- the procedures ---

2 THE COURT: --- you've been asking for a jury trial
3 for over a year.

4 THE DEFENDANT: No. I've been asking for a -- a --
5 a bench trial ---

6 THE COURT: You've ---

7 THE DEFENDANT: --- for over ---

8 THE COURT: --- been asking for a trial for over a
9 year.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, I've just asked you a moment ago
12 ---

13 THE DEFENDANT: And then I ---

14 THE COURT: --- do you ---

15 THE DEFENDANT: --- finally ---

16 THE COURT: --- want a bench trial, or do you want
17 to a jury trial? You wouldn't answer me. So I said ---

18 THE DEFENDANT: Because your demeanor is -- is
19 intimidating me. I'm -- I'm really feeling like I'm
20 being attacked. I -- I'm -- I'm scared in front of you
21 right now on record ---

22 THE COURT: You have ---

23 THE DEFENDANT: --- to let ---

24 THE COURT: --- no need ---

25 THE DEFENDANT: --- you know.

1 THE COURT: --- to be scared. I'm ---

2 THE DEFENDANT: But ---

3 THE COURT: --- I'm ---

4 THE DEFENDANT: --- I am.

5 THE COURT: --- I'm -- well, you don't have any
6 reason to be afraid.

7 THE DEFENDANT: But I am.

8 THE COURT: I am ---

9 THE DEFENDANT: This sounds ---

10 THE COURT: --- just going ---

11 THE DEFENDANT: --- like ---

12 THE COURT: --- to tell you that your case is going
13 forward ---

14 THE DEFENDANT: Yes, sir.

15 THE COURT: --- and you can -- you have options.

16 And I give you what your options are. You can proceed
17 with your attorney, who is ready to go to trial and has
18 prepared this case; you can represent yourself. You can
19 have either a jury trial, or you can move for the bench
20 trial. And then I'll heard from the state as to their
21 decision regarding jury or bench trial.

22 So I'm making -- I'm trying to make clear your
23 options. Now, the other thing that I'm trying to do for
24 your benefit is to help -- help you to understand that it
25 is not -- and -- and this is not -- this is not

1 particular to you, Mr. Lewis. This a conversation that I
2 would have with any pro se or nonlawyer individual. So
3 this is not particular to you.

4 But any person that stood in front of me in your
5 position, I would tell them it is not in your best
6 interests to represent yourself, not any -- the -- I'm
7 making no comment as to your level of intellect. I'm
8 sure you're a very intelligent young man. But I think
9 I'm a fairly intelligent man.

10 But if you asked me to come out and repair a faulty
11 transmission in your car, I couldn't do it because I
12 don't have the training, even though I'm an intelligent
13 person. You're an intelligent young man.

14 But you've had no legal training. So it's -- it's a
15 disadvantage for you to go forward and represent
16 yourself. And I would not encourage you to do that. I
17 would encourage you to decide to work with your attorneys
18 and -- and have proper legal representation.

19 However, I cannot stop you from representing
20 yourself. I'm just trying to give you good advice. But
21 it's just that. You can ignore that and you can say,
22 "Judge, with all respect, I'm going to represent myself.
23 I feel more comfortable representing myself."

24 That -- that's up to you. But what I'm trying to
25 get you to understand is that you're going to be held to

1 the same standard as the attorneys. You're going to --
2 in selecting the jury, you're going to have -- you're
3 going to have to follow the rules and the procedure of
4 jury selection, just as Mr. Tucker is going to have to.

5 You're going to have -- the -- in the whole
6 procedure of the trial, you're going to have to perform
7 under the same rules and standards as any other attorney
8 that appeared in this Court. And my concern for you is
9 that you're not familiar with those rules and procedures.
10 Not that you're not intelligent; you just haven't been
11 exposed to them, is all.

12 And that's a disadvantage. And so I'm going to
13 leave it at that. But I can't run this Court by allowing
14 defendants to come into this Court the week before trial
15 on a case that's as old as yours and then to come in here
16 and say, at the last minute, "You know what? I'm going
17 to change lawyers, Judge. I need a continuance because
18 I'm changing lawyers."

19 THE DEFENDANT: (Gestured.)

20 THE COURT: Yes, sir.

21 THE DEFENDANT: Can I say one thing for the record?
22 All right. Since before this term of court, I haven't
23 been called in the last two terms or three terms.

24 I've been -- I -- I couldn't -- I went to the public
25 defender's office and tried to do all this stuff. I

1 don't know what to do to go about the process. And I
2 tried to ask questions.

3 This -- this conversation and -- I could've went in
4 front of the judge last Thursday and had this same
5 conversation with you.

6 THE COURT: If we had this conversation last
7 Thursday ---

8 THE DEFENDANT: That's what I was ---

9 THE COURT: --- we ---

10 THE DEFENDANT: --- tried to do.

11 THE COURT: --- I would -- I would not continue this
12 case.

13 THE DEFENDANT: I wasn't trying to continue a case.
14 I was trying to be properly represented.

15 THE COURT: Well, let me ask you a question. If you
16 were ---

17 THE DEFENDANT: Because ---

18 THE COURT: --- to come ---

19 THE DEFENDANT: --- I assumed ---

20 THE COURT: --- in front of my last Thursday ---

21 THE DEFENDANT: Yes, sir.

22 THE COURT: --- I would've shared with you, just
23 like I've shared today, that case is not going to be
24 continued; you're ---

25 THE DEFENDANT: Yes, sir.

1 THE COURT: --- going to proceed either on your own
2 or with a lawyer. What lawyer do you think would take
3 your case on Thursday afternoon to go to trial on Tuesday
4 morning?

5 THE DEFENDANT: I mean, that would've been up for me
6 and my family to decide. But I never got a chance to
7 have the option.

8 THE COURT: Because you told Mr. Jordan that you
9 didn't want to do that.

10 THE DEFENDANT: I didn't. He told me he wasn't
11 fired on record yet.

12 THE COURT: All right.

13 THE DEFENDANT: So I said, "All right. You're not
14 fired. But when the -- when I get to see the judge, I'm
15 going to fire you."

16 THE COURT: I'm going to give you one last
17 opportunity to either decide whether you would like to go
18 forward as a jury trial or a bench trial.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And then we're going to proceed.

21 THE DEFENDANT: All right. Before I made my
22 decision, I just want to put on record I feel like I was
23 forced into this situation. I tried my best to
24 communicate my concerns and have myself properly
25 represented and feel comfortable with who is representing

1 me, you know. So again, I feel like everybody is forcing
2 me into this. And I feel intimidated by everybody in
3 here because it's like everybody is working together
4 against me. So, I mean, I don't know if -- I feel I
5 don't have a option, even though I do have choices.

6 THE COURT: The only ---

7 THE DEFENDANT: Personally ---

8 THE COURT: --- option you don't have is to continue
9 the case here at the last minute.

10 THE DEFENDANT: On record ---

11 THE COURT: We're not going to do that.

12 THE DEFENDANT: On the record I haven't asked ever
13 to continue my case ever.

14 THE COURT: Well, then, there's only a couple of
15 ways we can go, then: We either have to go forward with
16 Mr. Jordan representing you -- and I don't know if Mr.
17 Floyd is going to participate, but if he does, he does --
18 or you represent yourself; and then, whatever decision is
19 made there, then whether or not you're going to go
20 forward as a bench trial or go forward as a jury trial.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And so those ---

23 THE DEFENDANT: And again ---

24 THE COURT: --- are the decisions I need for you to
25 make.

1 THE DEFENDANT: And I have to make them right now at
2 this moment. That's the difference ---

3 THE COURT: This is ---

4 THE DEFENDANT: --- that's the ---

5 THE COURT: --- not ---

6 THE DEFENDANT: --- most difficult ---

7 THE COURT: --- last minute ---

8 THE DEFENDANT: --- thing.

9 THE COURT: --- Mr. Lewis. This didn't ---

10 THE DEFENDANT: It is ---

11 THE COURT: --- come up at ---

12 THE DEFENDANT: --- because ---

13 THE COURT: --- last minute.

14 THE DEFENDANT: --- I tried to do this last week. I
15 was tricked into this situation. I waited for you. I
16 waited to see you. After you were done with all your
17 cases, I was supposed to see you.

18 THE COURT: I'm done with that.

19 THE DEFENDANT: On record, I waited for you.

20 THE COURT: All right.

21 THE DEFENDANT: And I didn't leave until I was told
22 ---

23 THE COURT: All right.

24 THE DEFENDANT: --- to do it.

25 THE COURT: And then, the record is also clear that

1 I've got two licensed, practicing attorneys who are
2 officers of the Court who both indicate that on Thursday
3 morning, you told Mr. Jordan that you did not want to
4 fire him at that point and that's why you were not
5 brought before the Court.

6 THE DEFENDANT: I never told Mr. Jordan ---

7 THE COURT: All right.

8 THE DEFENDANT: --- I didn't want to fire him.

9 THE COURT: That's fine. Now, do you intend to go -
10 --

11 THE DEFENDANT: I never ---

12 THE COURT: --- forward ---

13 THE DEFENDANT: --- got the chance to fire Mr.
14 Jordan.

15 THE COURT: Do you intend to go forward with your
16 counsel or on your own?

17 THE DEFENDANT: It's the worst situation. But I --
18 I want to go forward on my own with -- with legal aid.
19 Because ---

20 THE COURT: What do ---

21 THE DEFENDANT: --- I feel ---

22 THE COURT: --- mean, with legal aid?

23 THE DEFENDANT: With -- with -- with -- with -- with
24 assistance so I can ask legal questions, like you said
25 earlier.

1 THE COURT: Well, he'll ---

2 THE DEFENDANT: Because I feel like ---

3 THE COURT: --- he'll ---

4 THE DEFENDANT: --- I've been ---

5 THE COURT: --- he'll ---

6 THE DEFENDANT: --- forced into ---

7 THE COURT: --- he'll be ---

8 THE DEFENDANT: --- this situation.

9 THE COURT: --- available.

10 THE DEFENDANT: I feel like I've been forced into
11 this situation by everybody. Because I tried to
12 communicate with Mr. Jordan. I've been completely
13 patient with Mr. Jordan. Even when he puts me on the
14 back burner, I still wait on him. I still wait every
15 time. And Thursday was a prime example of how ---

16 THE COURT: This case is ---

17 THE DEFENDANT: --- this whole ---

18 THE COURT: --- going forward, Mr. Lewis. You've
19 indicated you want to represent yourself. Mr. Jordan
20 will be available if you have any questions.

21 Now, do you want to go forward as a bench trial or
22 as a jury trial?

23 THE DEFENDANT: (No audible response.)

24 THE COURT: Just so you're clear ---

25 THE DEFENDANT: Who is the judge ---

1 THE COURT: --- just so ---

2 THE DEFENDANT: --- over ---

3 THE COURT: --- you're ---

4 THE DEFENDANT: --- my case?

5 THE COURT: --- clear: A jury trial would be -- I
6 would be the presiding judge; the jury would be the fact
7 finders that the evidence would be presented to the 12
8 members of the jury. The 12 members of the jury, after
9 hearing all of the evidence, would make the decision on
10 this case.

11 If you go forward with a bench trial, I am the trial
12 judge. You would go forward. And the procedure would be
13 essentially the same, as far as the presenting of
14 evidence. That evidence would be presented. And then
15 the Court would act as the jury and make the decision,
16 based upon the evidence that is presented.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The -- the only difference is -- is that
19 with a jury trial, you've got the 12 citizens that are
20 going to be selected. They would make the call ---

21 THE DEFENDANT: Yes, sir.

22 THE COURT: --- as to your guilt or innocence. If
23 you go with a bench trial, you just substitute the judge
24 for that jury and the -- the judge makes the call ---

25 THE DEFENDANT: Yes, sir.

1 THE COURT: --- based on the evidence.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That's -- that's the -- the difference.

4 THE DEFENDANT: Yes, sir. I would like to proceed
5 with a bench trial.

6 THE COURT: No jury, just a ---

7 THE DEFENDANT: Also ---

8 THE COURT: --- judge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We can do that.

11 Now ---

12 MR. TUCKER: And for the record, Your Honor, the
13 state would have no objection to a bench trial either.

14 THE COURT: Oh. I was about to ask the -- the
15 state's position. Okay.

16 Now, so what we're going to do, then, is we're going
17 -- now, and -- and let me -- your -- I just want a final
18 say from so you so that we don't have any confusion.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Because I don't want you to feel like
21 anybody's pressuring you to choose one or the other.

22 THE DEFENDANT: I feel that already now.

23 THE COURT: Well ---

24 THE DEFENDANT: I feel -- and, like, I -- I've been
25 trying to communicate and go through this stuff. I just

1 don't know who to talk to. And I ask everybody who do I
2 talk to ---

3 THE COURT: You've got ---

4 THE DEFENDANT: --- for this?

5 THE COURT: --- two outstanding lawyers standing
6 next to you.

7 THE DEFENDANT: Today.

8 THE COURT: They've ---

9 THE DEFENDANT: But not ---

10 THE COURT: --- been there.

11 THE DEFENDANT: They haven't. Mr. Floyd has helped
12 me as much as he could, considering the fact that he was
13 not even over my case. Because he always answers my
14 questions. But I haven't even been able to ---

15 THE COURT: Before I ---

16 THE DEFENDANT: --- communicate ---

17 THE COURT: --- let this ---

18 THE DEFENDANT: --- with Mr. Jordan ---

19 THE COURT: --- jury go ---

20 THE DEFENDANT: --- Jordan.

21 THE COURT: Before I let this jury go and we proceed
22 with a bench trial, are you sure that you want to go
23 forward with a bench trial? Because once I let this jury
24 go, then that decision is irrevocable. We're going to go
25 forward with a bench trial regardless of if you change

1 your mind. There's no changing your mind after I've let
2 that jury go.

3 THE DEFENDANT: Uh-huh.

4 THE COURT: So what is it, bench trial or jury
5 trial?

6 THE DEFENDANT: I want ---

7 THE COURT: I'm going to ask you for the last time,
8 Mr. Lewis. And then we're going to proceed with a jury
9 trial if you don't give me an answer. You can proceed
10 with a bench trial or a jury trial. But the reason that
11 this is the last time I'm asking you, because if you
12 choose bench trial, then the next thing I'm going to do
13 is excuse that jury upstairs.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And then, there's no turning around or
16 no changing your mind. That's not going to -- it's not
17 going to work that way. If you choose a jury trial, we
18 will then go up and we will draw a jury.

19 Now, that's where we're at. And Mr. Jordan would
20 help with the jury selection.

21 THE DEFENDANT: I would like to proceed with a bench
22 trial.

23 THE COURT: You do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. All right. Well, here's

1 what we're going to do: It's 12 -- 12 -- it's 12:12.

2 I'm going to go upstairs. I'm going to excuse that panel
3 with instructions for them to call back after six o'clock
4 this evening. We're going to start back at two o'clock.

5 MR. TUCKER: Yes, sir.

6 THE COURT: And we'll be in Courtroom 3A. And at
7 that point, Mr. Lewis, during the lunch break, if you
8 have questions and you need to talk with your attorneys
9 -- or with these attorneys that are available, do that.

10 Mr. Jordan, I know you've got the jury list. Share
11 that -- well, I'm sorry. We're not doing that. Just do
12 -- just do aside with that, but any questions that Mr.
13 Lewis may have as to opening statements, questioning
14 witnesses, and things of that nature.

15 MR. JORDAN: Yes, sir.

16 THE COURT: All right?

17 All right. Maryann, I don't think -- we -- we don't
18 need to be on the record with me excusing the jury. So
19 just -- you can move up to Courtroom 3A at your leisure.
20 I'm going to go on up there and excuse them, though. So
21 we don't need to be on the record for that. Okay.

22 (Off the record from 11:48 a.m. until 2:25 p.m.)

23 (Whereupon, State's Exhibits 1 through 3 were
24 premarked for identification while off the record.)

25 THE COURT: All right. This is Indictment No. 2017-

1 GS-21-764, *State of South Carolina v. Justin Jamal Lewis*.
2 Mr. Lewis is charged under this indictment with the
3 offense of distribution of heroin.

4 The allegations in the indictment allege (As read):
5 ". . . that Mr. Lewis did, in Florence County, on or
6 about February the 3rd of 2017, distribute, dispense, or
7 deliver, or did aid, abet, attempt, or conspire to
8 distribute, dispense, or deliver a quantity of heroin, a
9 controlled substance under the provisions of Section 44-
10 53-110, et seq., of the South Carolina Code of Laws, 1976
11 as amended."

12 And as the record continues from earlier this
13 morning, Mr. Lewis has -- has been represented by Mr. Jay
14 Jordan for quite some time. And Mr. Lewis is proceeding
15 today pro se and representing himself. I did discuss
16 with Mr. Lewis the risk involved of -- of proceeding in
17 that fashion and that he would be held to the same
18 standard as any attorney, with regards to the rules of
19 court, the evidence -- rules of evidence, and the rules
20 of procedure. I think he understands that.

21 Mr. Lewis has had some level of college education.
22 He -- he understood our conversation. I did ask and Mr.
23 Jordan is remaining, not to represent Mr. Lewis, but to
24 be available to Mr. Lewis, should he have any questions
25 regarding procedure or anything that goes on during the

1 court. But Mr. Lewis has chosen to represent himself in
2 this matter.

3 He also made a motion for a -- a bench trial, rather
4 than having a jury trial. The state has conceded or --
5 or agreed as well -- was in agreement with the case being
6 tried before the Court without a jury. And so we are
7 here, present today to proceed in that fashion.

8 Because we don't have the jury and -- and all the
9 logistics that go along with informing the jury of -- of
10 the matters and things, I think we're just ready to
11 proceed.

12 Now, just, Mr. Lewis, for your information, I'll
13 just kind of give you a brief sketch of the way we're
14 going to proceed. I'm going to recognize Mr. Tucker on
15 behalf of the state, and he'll be allowed to make an
16 opening remark, an opening statement. Once he finishes
17 his opening statement, I'll then recognize you.

18 Now, he -- he can either make one or he can waive
19 that, and the same for you. I'll recognize you. You can
20 either make an opening statement if you'd like, or you
21 can waive that. It -- it -- it's up to you.

22 And then I'll recognize Mr. Tucker for the state's
23 first witness. And then we'll proceed and allow the
24 state to put up whatever evidence they're going to put
25 up.

1 You will have the opportunity throughout their
2 presentation of evidence to cross-examine any witnesses
3 that -- that they put up, if you choose to. You can
4 cross-examine a witness, or you can choose to not ask any
5 questions. But that's solely up for you to decide how
6 you would like to handle that.

7 And we will go through that process. If there's any
8 -- any evidence that the state wishes to move into
9 evidence, if you have an objection to that evidence, you
10 can -- you can note that objection. You can let the
11 Court know that you object. And then I'll hear what your
12 -- what the basis of your objection is.

13 If I agree with you, then that -- that item will not
14 come into evidence. If I overrule your objection, then
15 that item will go into evidence. But I will note your
16 objection for the record so that the record's clear, and
17 the same with Mr. Tucker.

18 At -- at the -- at the close of the state's case --
19 and Mr. Jordan will be available to help you with -- with
20 -- with this, if you need it -- I'll take up any motions
21 at the close of the state's case. Once the state has
22 finished their case -- and I don't know if that'll be
23 this afternoon or if we'll go into tomorrow. But
24 whenever they finish, then you will have an opportunity
25 to put up any case, if you wish to.

1 But you are not required to put in any evidence at
2 all. You -- you are the defendant in this case. And so
3 you maintain your right to remain silent. So you do not
4 have to put any evidence into the record. But if you
5 want to, you'll certainly have that opportunity when it's
6 time for the defense's case.

7 And then, if you do decide to call witnesses or to
8 put in evidence, then Mr. Tucker would have the
9 opportunity -- just as you did with the state's
10 witnesses, he would have the opportunity to cross-examine
11 any witnesses that you may put up.

12 And then, at the conclusion of all of the evidence,
13 once all the evidence is in the record, then I'll hear
14 from each of you, if you choose to, to make a closing
15 argument. And then at that point, the case will be up
16 for the Court to review and -- and make a decision.
17 Okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. So without any further ado,
20 then I'll recognize Mr. Tucker for an opening statement.

21 MR. TUCKER: And, Your Honor, may it please the
22 Court: Before we begin openings ---

23 THE COURT: Yes.

24 MR. TUCKER: --- there is a couple of matters I'd
25 like to place on the record.

1 THE COURT: All right.

2 MR. TUCKER: In conferring with Mr. Lewis, we've had
3 Mr. Jordan present with him. Mr. Lewis has stipulated to
4 the admission of three items of evidence into evidence at
5 this ---

6 THE COURT: All right.

7 MR. TUCKER: --- point: State's 1 being the buy
8 video regarding this matter; State's 2 will be a still
9 photo from said buy video; and State's 3 will be the
10 substance that was tested and shown to be heroin. That
11 will be State's 3. Mr. Lewis has stipulated to those
12 items coming into evidence.

13 THE COURT: All right. Is that correct, Mr. Lewis?
14 You have no objection -- no legal objection to those
15 three items?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. We will ---

18 MR. TUCKER: Yeah. And ---

19 THE COURT: --- note that ---

20 MR. TUCKER: --- Your Honor, likewise, I also
21 inquired of Mr. Lewis about any witnesses he may or may
22 not -- or would call, whether or not he had any items of
23 evidentiary value that he would be seeking to introduce.
24 He informed me that the witnesses that he would've called
25 are the ones that I am going to put on the stand. So at

1 this point, you know, barring him testifying on his own
2 behalf, but he's not -- my understanding is he doesn't
3 have any additional witnesses to put on the stand, nor
4 does he have any items of evidence.

5 THE COURT: Okay. And obviously, if at any time
6 that changes, Mr. Lewis, and you do decide to call
7 someone, you -- you just need to let Mr. Tucker know,
8 okay?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. All right. So those items:
11 The buy video, the still photo from that video, and the
12 substance -- in this case, the item sold, which came back
13 as heroin -- those three items are in evidence without
14 objection.

15 (Whereupon, State's Exhibits 1 through 3 were
16 entered into evidence.)

17 THE COURT: Mr. Tucker?

18 MR. TUCKER: Thank you, Your Honor. May it please
19 the Court?

20 THE COURT: Yes, sir.

21 OPENING STATEMENT BY MR. TUCKER

22 MR. TUCKER: Your Honor, briefly, the facts that
23 bring us here today occurred on February the 3rd, 2017.
24 On that date, around the afternoon around 4/4:30, Agents
25 Rollins Rhodes and Jason Pate with the Florence County

1 Sheriff's Office Narcotics Unit initiated what is
2 commonly referred to as a controlled purchase with an
3 individual, utilizing a confidential informant.

4 Now, this informant is David Daniels. He is unique
5 in a couple of ways in that he wasn't necessarily working
6 off charges. He was a paid informant. But he was an
7 informant, as he will tell you, that knew the defendant,
8 Justin Jamal Lewis.

9 At any rate, Your Honor, as is customary with these
10 kinds of operations, the confidential informant met with
11 both Agents Rhodes and Pate. His person was searched, as
12 was his vehicle. His vehicle was outfitted with two
13 audio and video recording devices, one pointed at each
14 window, both the driver's side and the passenger's side.

15 As is customary with these particular kinds of
16 cases, Your Honor, the evidence will show that the
17 confidential informant was directed to go to a
18 predetermined location once the controlled purchase had
19 taken place. And at that time he would be searched
20 again; the video and audio recording devices would be
21 recovered, as would any substances that the individual
22 sold him would have been.

23 At any rate, Your Honor, also as is standard in
24 these particular kinds of operations, the confidential
25 informant was given funds by the agents with which to

1 purchase any contraband or illegal items.

2 At any rate, Your Honor, once these objectives were
3 complete, the confidential informant, as you will hear
4 and as you will see on the video, indicated that he
5 needed gas. At this point the money that was taken from
6 him, as you will hear, some of which was given back to
7 him so that he could purchase gasoline with.

8 At any rate, Your Honor, the video picks up with him
9 leaving. You will hear him dial someone. He has a short
10 conversation with this person. And he indicates that he
11 is on his way there and indicates words to the effect of,
12 "Do you have the stuff? We're not going to have to drive
13 around Johnsonville all day, are we?" or words to that
14 effect.

15 At any rate, Your Honor, once that conversation is
16 concluded, you will see and you will hear the
17 confidential informant in this matter pull in. You can
18 see the top of the awning of the gas station. You will
19 hear the confidential informant get out of the vehicle
20 briefly. You will actually see, in his left hand, he has
21 a couple of \$1 bills or a few \$1 bills.

22 He's in the store briefly; comes back out. You will
23 hear him open the gas cap. You will actually hear him
24 put the gas in. He gets back into the car in a very
25 quick fashion.

1 At any rate, Your Honor, as the video proceeds, you
2 will hear and you will see how he goes to this location
3 after he calls the person again to find out where exactly
4 they are. And this person -- and you will hear and --
5 and the evidence will show that the person that got into
6 his vehicle at this point is the defendant, Justin Jamal
7 Lewis.

8 Your Honor, at this point Mr. Lewis actually got
9 into the car as if he knew that, standing, looking
10 through a window or reaching in through the window
11 might've drawn undue attention. But at any rate, he
12 actually got into the car. He directed the confidential
13 informant to make a series of right-hand turns, which was
14 essentially a circle. And within a very short time, less
15 than about a minute/minute and a half, he returns the --
16 Mr. Lewis right back to where he picked him up from.

17 At this point he goes to a predetermined location.
18 He gives the items that he recovered, which was, as you
19 will see, State's Evidence 3, which turned out to be a
20 plastic bag containing 0.09 grams of heroin, a Schedule I
21 substance.

22 The C.I. was also searched again, Your Honor, to
23 make sure there wasn't any other items in the vehicle.
24 And at that point they recovered the audio and video
25 recording devices.

1 You will hear from Agent Pate. He actually watched
2 the video. You'll hear from Agent Rollins Rhodes, who
3 watched the video. And they were able to positively
4 identify, along with the C.I.'s positive identification
5 of the individual, as the person who sold him the heroin
6 being Mr. Justin Jamal Lewis.

7 You will also hear how Rollins Rhodes identified Mr.
8 Lewis from a DMV photo. You will also hear how the item
9 was sent to the lab there at the sheriff's office and,
10 again, was positively tested to be 0.09 of heroin.
11 You'll also hear from the confidential informant, when he
12 tells you he gave him cash money for these items, all of
13 these things taking place in Florence County in the
14 Johnsonville area, Your Honor.

15 THE COURT: All right. Thank you, Mr. Tucker.

16 Mr. Lewis, I'll be -- recognize you for an opening
17 statement, sir.

18 OPENING STATEMENT BY THE DEFENDANT

19 THE DEFENDANT: Yes, sir. My name is Justin Lewis.
20 I'm here to defend myself.

21 When you see the video, you'll see a confidential
22 informant speaking with law enforcement officers about
23 coming to meet me. And he also mentions someone else's
24 name before he left that he was planning on meeting as
25 well. When he got to the gas station, you see that he

1 goes without the video and audio and does -- I guess,
2 goes and gets gas, I'm assuming.

3 Afterwards, you see me get into his car. He picks
4 me up and drops me off, as if he were to give me a ride.
5 As Mr. Tucker said, there are audio and video placed,
6 facing both -- both windows, passenger and driver.

7 But you never see a exchange of money. You never
8 hear a conversation or -- of exchange of money. You
9 never see a exchange of drugs. You never hear a
10 conversation of exchange of heroin. You just see me
11 getting in -- in the car and getting out of a car.

12 THE COURT: Okay. All right. Thank you, sir.

13 All right. Mr. Tucker, you may call your first
14 witness, sir.

15 MR. TUCKER: Thank you, Your Honor. At this point
16 the state would call Investigator Jason Pate to the
17 stand.

18 THE COURT: All right. Investigator Pate, if you
19 would please come around and be sworn, sir.

20 (Whereupon, the witness came forward.)

21 DEPUTY CLERK OF COURT: Sir, please place your left
22 hand on the bible and raise your right hand.

23 THE WITNESS: (Complied.)

24 JASON PATE, having been first duly sworn,
25 testified as follows:

DIRECT EXAMINATION BY MR. TUCKER - JASON PATE

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1 DEPUTY CLERK OF COURT: Thank you. You may be
2 seated in the witness box.

3 THE WITNESS: (Complied.)

4 DEPUTY CLERK OF COURT: State your name for the
5 record, please.

6 THE WITNESS: Jason Pate.

7 MR. TUCKER: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. TUCKER:

11 Q Investigator Pate, where do you presently work?

12 A Florence County Sheriff's Office.

13 Q And how long approximately have you worked for the
14 sheriff's office?

15 A Seventeen years.

16 Q Now, presently, you are a narcotics officer, are you
17 not?

18 A I am.

19 Q And how long have you been working at the sheriff's
20 office in that capacity?

21 A Two years.

22 Q Prior to that, did you -- I'm assuming you had other
23 jobs within the sheriff's office?

24 A I did.

25 Q And could you tell the Court a little bit about what

1 those were?

2 A I was -- started off with the patrol division. And
3 I moved over to the PACE team, which is Proactive
4 Criminal Enforcement.

5 Q Okay. Now, when you moved to narcotics, did you
6 receive any kind of specialized training or attend any
7 kind of seminars to aid you in your narcotics detection?

8 A I been a member of NCEA, National Criminal
9 Interdiction Conference, and so forth.

10 Q Okay. Now, when you went to work for the narcotics
11 division, do they just kind of turn you loose or did you
12 have to work with another narcotics officer with more
13 experience than yourself?

14 A I had to work with Investigator Rhodes.

15 Q Now, is that Rollins Rhodes?

16 A That is.

17 Q Now, Deputy Pate, let me ask you: Were you employed
18 in a capacity as a narcotics officer on or about February
19 the 3rd, 2017?

20 A I was.

21 Q Now, do you recall yourself and Agent Rhodes being
22 involved in what is referred to as a -- or a controlled
23 purchase?

24 A Yes, sir.

25 Q And do you recall who the focus of that particular

1 investigation was?

2 A Justin Lewis.

3 Q Do you know how Mr. Lewis, with regards to this
4 operation, got started that day?

5 A We received information from the criminal --
6 confidential informant.

7 Q Okay. Now, that confidential informant, would that
8 be David Daniels?

9 A Yes, sir.

10 Q Now, did you direct Mr. Daniels to meet yourself and
11 Agent Rhodes at a location for the purpose of this
12 investigation?

13 A Investigator Rhodes set it up.

14 Q All right. And did -- or subsequently, did Mr.
15 Daniels kind of meet you and Agent Rhodes?

16 A Yes, sir.

17 Q And could you tell the Court a little bit about what
18 happened once he got to where you two were?

19 A Once we met, Investigator Rhodes searched him and
20 along with the vehicle, as well as give him documented
21 funds for the purchase, and outfitted him with audio and
22 video recording equipment.

23 Q Now, you said you searched both his car and his
24 person, referring -- I'm referring to Mr. Daniels.

25 A Investigator Rhodes searched.

1 Q Okay. And did you participate in that search?

2 A No, sir.

3 Q Okay. Do you know whether or not Agent Rhodes found
4 anything of interest on his person or in his car?

5 A No, sir.

6 Q Okay. Now, with regards to the search, do you have
7 any idea why you guys search vehicles and -- and the
8 confidential informants themselves before you send them
9 on these -- or controlled purchases?

10 A Just to make sure there's nothing illegal -- I mean,
11 hold everyone accountable.

12 Q Okay. Now, when you say just to make sure they
13 don't have anything illegal, are you checking to make
14 sure they themselves don't have any drugs prior to
15 showing up to work for you guys?

16 A Yes, sir.

17 Q Now, once the search was completed, you mentioned
18 the -- the placement of audio and video recording
19 devices. Did you participate in that?

20 A Investigator Rhodes.

21 Q Were you there when this was done, though?

22 A Yes, sir.

23 Q All right. Do you recall what particular kind of
24 audio and video recording devices were used in this case?

25 A No, sir.

DIRECT EXAMINATION BY MR. TUCKER - JASON PATE

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1 Q Were these -- I've seen some, where they're affixed
2 to a -- kind of a key chain. I've seen some where
3 they're affixed to a teddy bear. Do you know what
4 particular kinds these were?

5 THE DEFENDANT: Objection.

6 THE COURT: What's the ---

7 THE DEFENDANT: He said he don't know what kind they
8 used.

9 THE COURT: All right.

10 THE DEFENDANT: That's leading ---

11 THE COURT: He indicated he did not know. If -- if
12 he knows, he can -- he can say. But if he doesn't know,
13 then -- then that's it.

14 MR. TUCKER: And I can move on, Your Honor.

15 THE COURT: All right.

16 Q Now, once the audio and video recording devices were
17 placed, what, if anything, happened at that point?

18 A Now, at that time he was given the funds and audio
19 and video placed. He left after -- went to the store and
20 got some gas. And then he met with Justin Lewis.

21 Q Now, when you said he stopped and got gas, do you
22 recall approximately how long it was or how long it took
23 him to get gas?

24 A Just a few minutes ---

25 Q Now ---

1 A --- not ---

2 Q --- was he ---

3 A --- long at all.

4 Q Referring to Mr. Daniels, was he under observation
5 by yourself and Agent Rhodes at this point?

6 A We did drive by while he was at the store, getting
7 gas.

8 Q Okay. Now, after he got gas, you indicated that he
9 left and went somewhere and met with the target of the
10 investigation, Mr. Lewis?

11 A Yes, sir.

12 Q And again, this was someone that he had indicated to
13 you -- I mean, he -- I mean, referring to Mr. Daniels --
14 that he could've purchased some heroin from?

15 A Yes, sir.

16 Q All right. Was there any conversation between
17 yourself and the confidential informant about what would
18 happen once the transaction was complete?

19 A He was told to meet at a predetermined location once
20 the transaction was complete.

21 Q Okay. And did that subsequently take place?

22 A Yes, sir.

23 Q Okay. And with regards to that, when he appeared at
24 this predetermined location, what, if anything, occurred
25 at that point?

DIRECT EXAMINATION BY MR. TUCKER - JASON PATE

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1 A He handed Investigator Rhodes the substance. And
2 Investigator Rhodes took possession of the cameras and
3 also searched him, as well as the vehicle.

4 Q Now, in addition to the -- you mentioned the
5 substance. Could you describe what that substance was
6 and -- and what kind of package it was in?

7 A It was a ziplock bag containing -- I think it was
8 six blue bindles of -- of heroin.

9 Q Okay.

10 MR. TUCKER: And, Your Honor, if I could approach
11 the witness?

12 THE COURT: Yes, sir.

13 Q Agent Pate, I'm showing you what's been moved into
14 evidence as State's 3 and ask first if you recognize it.

15 A Yes.

16 Q How do you recognize it?

17 A That's a -- the blue bindles, the ziplock bag, and
18 that's the BEST pack that Investigator Rhodes turned in
19 and ---

20 Q Okay. And does ---

21 A --- and the case number.

22 Q Does that appear to be the items that were taken off
23 of the confidential informant on February 3rd, 2017?

24 A Yes, sir.

25 Q Now, to your knowledge, did the confidential

1 informant -- meaning Mr. Daniels -- did he identify to
2 you and to Agent Rhodes from whom he had purchased those
3 items?

4 A Yes.

5 Q Who ---

6 A Justin ---

7 Q --- did he say?

8 A Justin Lewis.

9 Q Okay. And after that, did you have any additional
10 involvement in this case? Did you yourself look at the
11 video at -- at some point in time thereafter?

12 A Yes, sir.

13 Q And were you able to identify the person in the
14 video that got into the car with the confidential
15 informant on February 3rd, 2017?

16 A Yes, sir.

17 Q And who was that?

18 A Justin Lewis.

19 Q Okay.

20 MR. TUCKER: I don't believe I have any additional
21 questions, Your Honor.

22 THE COURT: All right.

23 Mr. Lewis, you have any questions for this witness,
24 sir?

25 THE DEFENDANT: Yes, sir.

1 CROSS-EXAMINATION

2 BY THE DEFENDANT:

3 Q Mr. Pate, how did you become involved in this
4 initial investigation?

5 A Investigator Rhodes is my partner. We work the
6 Johnsonville area of Florence County.

7 Q So as far as me being a target, how did that initial
8 investigation come about? How did you become a part of
9 that?

10 A The confidential informant gave your name; said that
11 he could purchase heroin from you.

12 Q Okay. And any other -- any other information, any
13 other observations that brought you to the idea that
14 maybe this informant could purchase drugs from me, other
15 than the fact that he said it?

16 A Not that I'm aware of.

17 Q Okay. All right. And about your confidential
18 informant, do you know anything about your confidential
19 informant -- his history? his past? anything?

20 A I know something about it. Yes.

21 Q Could you enlighten us on that, what you do know
22 about him?

23 A I know he -- are you talking about his criminal
24 history?

25 Q His background, period. Anything you might know

1 about him.

2 A I know his name is David Daniels from the
3 Johnsonville area. He has a shoplifting from on his
4 criminal history, as well as a DUI, I think.

5 Q Okay. And he was a confidential informant because
6 of a charge he caught, or was he just being paid to
7 basically buy drugs from people?

8 A He was caught -- yeah -- during that investigation.
9 But he was not arrested.

10 Q Oh, okay. And what instructions did you give Mr.
11 Daniels, as far as what he should do in this situation?

12 A Well, he was given the money. He was searched. He
13 went and got gas, picked you up, and came right back to a
14 predetermined location once he had the substance.

15 Q Okay. And how much money was he given?

16 A I don't recall.

17 Q You don't recall how much money he was given?

18 A (No audible response.)

19 Q How much -- do you recall how much gas money he was
20 given?

21 A I don't recall.

22 Q Okay. And you said that he was allowed to go get
23 gas before he came to pick me up?

24 A Yes.

25 Q And was he being monitored the whole time that he

1 got his gas, or did you just pass by ---

2 A We just ---

3 Q --- like you ---

4 A --- passed ---

5 Q --- said?

6 A --- by.

7 Q You didn't monitor the whole incident?

8 A No.

9 Q So is it possible that Mr. Daniels could have done
10 something in between there that you don't know about
11 because you didn't monitor him? Is it possible? I'm
12 just asking is it possible.

13 A It's possible. But it was audio and video recorded
14 ---

15 Q Okay.

16 A --- entire.

17 Q Are you aware that Mr. Daniels left the audio and
18 video when he went to get gas, like in the car without
19 his person? Were you aware of it?

20 A I'm not aware of that.

21 Q Okay. So in between Mr. Daniels getting out of his
22 car -- I'm assuming he went into a store, came back out,
23 and pulled the latch to pump his gas. Is it possible
24 that in between the time that he was off of camera and
25 off of audio, that things could have transpired in

1 between that he could've maybe purchased drugs from
2 somebody in that time period?

3 MR. TUCKER: Your Honor, that calls for speculation.
4 I would object on those grounds.

5 THE DEFENDANT: I'm just asking is it ---

6 THE COURT: I'm ---

7 THE DEFENDANT: --- possible.

8 THE COURT: --- I'm going to let him ask the
9 question as a hypothetical.

10 Q Yeah. Is -- is -- is -- is it possible?

11 A Anything is possible, but -- is that good enough?

12 Q Was he instructed to keep the audio and video on his
13 person at all times? Or was he given the leeway to come
14 and go as he pleased?

15 A Well, we knew he was getting gas.

16 Q Yes, sir.

17 A And the car was wired up, audio and videos, so ---

18 Q Okay. But was he instructed to be on audio and
19 video at all times, or was he ---

20 A He was ---

21 Q --- given ---

22 A --- told ---

23 Q --- leeway ---

24 A --- it was okay to get gas, if that's what you're
25 asking.

1 Q So he was given leeway to ---

2 A --- to get ---

3 Q --- to go ---

4 A --- gas.

5 Q Okay. Thank you. All right. And you said that
6 there were phone conversations between me and Mr. Daniels
7 regarding drugs?

8 A That's a -- I think Investigator Rhodes would have
9 to answer that.

10 Q Okay. So you don't know anything about any phone
11 conversations?

12 A I don't know for sure. No.

13 Q Okay. And real -- did you even -- did you do an
14 incident report regarding this?

15 A I did not.

16 Q Did you do any type of documentation?

17 A I did not.

18 Q Is there a reason for that?

19 A I was assisting Investigator Rhodes.

20 Q Okay. Okay. So you said you don't know whether
21 there were any phone conversations between me and Mr.
22 Daniels regarding a purchase of a certain amount of
23 drugs?

24 A I do not.

25 Q And you guys do not keep track of phone records,

1 track these guys -- your confidential informants' phones
2 to see who they talk to, who they text? You don't do
3 that type of stuff in these types of investigation?

4 A This is Investigator Rhodes's case. I was
5 assisting. I don't ---

6 Q Okay.

7 A --- know anything about the phone calls.

8 Q Okay. Okay. And you said you do know that Mr.
9 Daniels has a criminal record? What -- what was that
10 criminal record, you said, again?

11 A A shoplifting and a DUI.

12 Q Okay. And you said he was picked up, but he was
13 never arrested. What were -- what were the -- what was
14 that charge for?

15 A I think it was conspiracy, a conspiracy charge.

16 Q Conspiracy?

17 A To distribute.

18 Q To distribute?

19 A (No audible response.)

20 Q Okay. And ---

21 A Or attempt to possess.

22 Q Okay. And you said those charges were thrown away?

23 A No. He was never prosecuted. He was never arrested
24 for them.

25 Q Oh, okay. Okay. All right. So he had a conspiracy

CROSS-EXAMINATION BY THE DEFENDANT - JASON PATE 79

1 to distribute heroin, but he was never charged with ---

2 MR. TUCKER: Objection: characterization, Your
3 Honor. I don't believe that's what Agent Pate testified
4 to.

5 THE COURT: I'll -- I'll sustain that. He never
6 said what it was.

7 THE DEFENDANT: He said -- okay. He said conspiracy
8 to distribute drugs.

9 THE COURT: Right.

10 THE DEFENDANT: So he -- yes, sir.

11 Q All right. Other than that, that's the only thing
12 that you know about Mr. Daniels? Does he have any drug
13 addictions, you know, or mental instability -- or mental
14 illnesses, any of that, that you ---

15 A I -- I ---

16 Q --- know about?

17 A --- don't know.

18 Q Okay. Cool. All right. No more questions.

19 THE COURT: Okay. Anything on redirect?

20 MR. TUCKER: Nothing on redirect, Your Honor.

21 THE COURT: All right. Thank you very much, sir.
22 You may step down.

23 THE DEFENDANT: Thank you, Judge.

24 (Whereupon, the witness exited the witness stand.)

25 MR. TUCKER: Your Honor, at this time the state

1 would call David Daniels to the stand.

2 THE COURT: Mr. Daniels, if you would please come
3 around to be sworn, sir.

4 (Whereupon, the witness came forward.)

5 DEPUTY CLERK OF COURT: Sir, please place your left
6 hand on the bible and raise your right hand.

7 THE WITNESS: (Complied.)

8 DAVID DANIELS, having been first duly sworn,
9 testified as follows:

10 DEPUTY CLERK OF COURT: You may be seated in the
11 witness box and state your name for the record, please.

12 DIRECT EXAMINATION

13 BY MR. TUCKER:

14 Q Would you state your name for the record, please.

15 A Oh. David Daniels.

16 Q Mr. Daniels, how old are you?

17 A Thirty-three.

18 Q And do you live in Florence County presently?

19 A I do.

20 Q And for how long?

21 A About 20/25 years.

22 Q So the better part of your adult life, then?

23 A Pretty much.

24 Q Okay. With regards to work, what do you do for a
25 living?

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 81

1 A I work at plants.

2 Q Have you done that most of your life?

3 A Yes, sir.

4 Q Now, are you presently employed right now?

5 A No, sir.

6 Q Okay. Now, had you heard Mr. Lewis talk to -- or
7 asking about Agent Pate about your arrest record. Could
8 you tell the Court what you've been arrested for?

9 A I've been arrested for DUI ten years ago and
10 shoplifting three -- three to four years ago.

11 Q Okay. Were you convicted or pled guilty to both of
12 those charges?

13 A I did.

14 Q Now, with regards to your involvement with the
15 Florence County Sheriff's Office, did you at some point
16 become affiliated with them and begin working for them as
17 what we refer to as a C.I., or confidential informant?

18 A I did.

19 Q Do you recall how you came to the attention of Agent
20 Rhodes and -- and how you began that relationship?

21 A Me and my girlfriend was caught.

22 Q You say you and your girlfriend were caught?

23 A Yeah. My ---

24 Q Doing ---

25 A --- girlfriend ---

1 Q --- what?

2 A My girlfriend was caught with heroin, possession ---

3 Q Okay.

4 A --- of heroin.

5 Q Was it just possession?

6 A Yeah.

7 Q Now, did -- were you ever charged subsequently with
8 that?

9 A No.

10 Q After this incident, did you at some point start
11 working for the Florence County Sheriff's Office
12 Narcotics Unit as a confidential informant?

13 A I did.

14 Q Now, if you weren't working off any charges, what
15 was the motivation for you working for them as a
16 confidential informant?

17 A I done it for money.

18 Q You said you did it for money?

19 A Yeah.

20 Q How much would you get paid, typically?

21 A It varied: anywhere from 35 to 80 dollars.

22 Q Per time?

23 A Yeah.

24 Q That doesn't sound like a whole of money for the
25 risk you're taking.

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 83

1 A No.

2 Q Now, were you employed or working for the sheriff's
3 office as a confidential informant on or about February
4 3rd, 2017?

5 A I was.

6 Q Directing your attention specifically to the
7 afternoon thereof, do you recall talking to or meeting
8 with Agents Pates and Rhodes with the sheriff's office
9 narcotics unit?

10 A I did.

11 Q When you met with them, what was the discussion
12 between you and them with regards to what you would be
13 doing that day?

14 A They -- we had it set up to meet at a certain spot.
15 And I was to go and purchase heroin from Mr. Justin
16 Lewis.

17 Q Now, you said Mr. Justin Lewis. Without going into
18 how you know him, did you know Justin Lewis prior to
19 February the 3rd?

20 A I did.

21 Q Would you be able to recognize him if you saw him on
22 or before February the 3rd?

23 A I will.

24 Q All right. Now, with regards to you meeting them
25 there, did this meeting take place in Florence County?

1 A It did.

2 Q After you were briefed on what they wanted you to
3 do, do -- were you subsequently searched by either Agents
4 Pate or Rhodes?

5 A Yes, sir.

6 Q Now, were -- did they find anything on you, in terms
7 of any sort of illegal substances?

8 A No, sir.

9 Q Are you aware whether or not they searched your
10 vehicle?

11 A I was aware.

12 Q Do you know whether or not they found anything of an
13 illegal nature in your vehicle?

14 A They did not.

15 Q Once you and your vehicle were searched, what, if
16 anything, happened at that point?

17 A They put the audio and video equipment in my car.

18 Q Now, when you say audio and video equipment, did
19 they show you where or were you aware where in your
20 vehicle they placed those things?

21 A Yes. It was a -- a cell phone.

22 Q Okay. So they -- both the audio and video recording
23 devices were inside a cell phone?

24 A Yes.

25 Q Now, were you able to turn off either the audio or

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 85

1 video yourself?

2 A No.

3 Q So they are the ones -- either Agent Rhodes or Agent
4 Pate actually turned the -- the recording devices on for
5 you; is that correct?

6 A They did.

7 Q All right. And subsequently, at any time during
8 this encounter later on, did you ever turn the -- the
9 audio and video recording device off?

10 A No, sir.

11 Q Would you have know how, even if you'd wanted to?

12 A No, sir.

13 Q All right. Once your vehicle is given the audio and
14 video recording devices, what, if anything, happened at
15 that point?

16 A I was -- received the money to purchase the heroin.

17 Q Now, do you recall how much money you were given?

18 A I believe it was \$75.

19 Q Now, did you have any of your own personal money on
20 you prior to receiving this money from them?

21 A No, I did not.

22 Q Okay. Did they subsequently take any money from you
23 when they searched you?

24 A No, they did not.

25 Q Okay. Now, with regards to once you received the

1 money, what, if anything, happened at that point?

2 A I told him that I had to have gas.

3 Q When you say you told him, to whom are you
4 referring?

5 A Officer Rollins.

6 Q Okay. When you told him you had to stop and get
7 gas, what, if anything, did he tell you?

8 A He just told me to stop, get gas, and go straight to
9 Justin, get the substance, and come back.

10 Q Okay. Now, do you recall whether or not -- after
11 you left Agents Rhodes and Pate, whether or not you made
12 any phone calls to anybody?

13 A No, sir.

14 Q Did -- at any point during that trip, did you
15 contact the defendant, Justin Lewis?

16 A After you left?

17 Q After you left from there, when you were searched
18 and the video and recording ---

19 A I ---

20 Q --- devices ---

21 A --- I did. I called him to make sure he was going
22 to be there.

23 Q Okay. Now, when you say you called him, you called
24 the defendant, Justin Jamal Lewis?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 87

1 Q And you had his cell phone number?

2 A Yes, sir.

3 Q Now, what, if anything, did you tell him when you
4 called him?

5 A I asked him -- you talking about before I left?

6 Q Yes.

7 A Before I left, I asked him if he had something.

8 Q Some -- something?

9 A If I had -- yes. If he had some mud.

10 Q Okay. Now, by that you meant heroin?

11 A Yeah. It's a street name.

12 Q And what, if anything, did the person on the other
13 end of the phone tell you?

14 A He said he had it.

15 Q Okay. Now, you had spoken to Justin Lewis on the
16 phone before?

17 A Yes, sir.

18 Q You dialed Justin Lewis's cell phone number?

19 A Yes, sir.

20 Q Did it sound like Justin Lewis on the other end of
21 the phone?

22 A Yes, sir. It was.

23 Q All right. Now, when he indicated that he did have
24 some, what, if anything, did you do?

25 A Do what? Can you repeat the question?

1 Q Yes, sir. Once he indicated that he did have some,
2 what, if anything, did you do after he said -- made that
3 statement to you on the phone?

4 A I got in the car, and I went to the gas station. I
5 got gas. I went straight to Mr. Lewis. Then I came
6 straight back.

7 Q Now, when you say you went straight to Mr. Lewis,
8 where was this at, in terms of you picking him up?

9 A I picked him up on Marion Street, on the corner in
10 front of the elementary school.

11 Q Now, is this in Johnsonville?

12 A It is.

13 Q And to your knowledge, is Johnsonville in Florence
14 County?

15 A It is.

16 Q Now, when you pulled up, what, if anything, did Mr.
17 Lewis do?

18 A He was coming cross the yard. And he wanted to get
19 in the car.

20 Q Now, again, did he subsequently get in the car with
21 you?

22 A He did.

23 Q All right. So you were close as -- as two people
24 sitting in the front of a car from one another, correct?

25 A We were.

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 89

1 Q All right. Do you see the person in the courtroom
2 today that you knew as Justin Jamal Lewis and the person
3 who got into your vehicle sitting in the courtroom today?

4 A Yes, sir.

5 Q Could you point him out, please.

6 A It's the defendant.

7 MR. TUCKER: Let the record reflect that the witness
8 has identified the defendant, Justin Jamal Lewis.

9 THE COURT: It reflects.

10 Q Now, once he got into the vehicle, what, if
11 anything, occurred then?

12 A He told me to go around the block. We went straight
13 on -- I believe that's Butler Street -- and take a right
14 on Broadway Street, on Main Street. And we took a
15 straight right on the next road. And three-quarters of
16 the way, he told me to -- let's changed it. We exchanged
17 heroin and money.

18 Q Okay. When you say you exchanged it, he gave you
19 the substance that's already been moved into evidence as
20 State's 3 ---

21 A He did.

22 Q --- the heroin?

23 A Yes, sir.

24 Q And you, in turn, gave him ---

25 A The money.

1 Q --- money?

2 Now, did you have the money in one hand or another?

3 Do you recall?

4 A To start with, I had it in my left hand. Because he
5 normally just reaches through the window. But this time,
6 he wanted to get in the car. So I had to swap hands.

7 Q Okay. Now, when you gave him the money, he gave you
8 the heroin. What, if anything, occurred at that point?

9 A We exchanged. And I took him to the exact same
10 corner and dropped him off.

11 Q So you say you essentially just kind of made a
12 circle?

13 A Yes, sir.

14 Q Now, when you dropped him back off, how long did it
15 take, from the time you picked him up until the time you
16 dropped him off, ballpark?

17 A Maybe a minute and a half ---

18 Q Okay.

19 A --- to two minutes at the most.

20 Q Do you recall him saying anything else to you,
21 initially when he got into the vehicle, about 7.5's or
22 anything along those lines?

23 A He asked me if I knew anybody that wanted any 7.5's,
24 Lortabs.

25 Q Okay. And again, that's a controlled substance?

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 91

1 Are you aware?

2 A It is.

3 Q All right.

4 A Yes, sir.

5 Q Now, with regards to the gas station -- I'm going to
6 back up just a little bit. When you stopped and got gas,
7 did you turn the audio and video recording devices off?

8 A I did not.

9 Q And again, I asked you if you did -- wouldn't have
10 known how to do it even if you wanted to; is that
11 correct?

12 A That's correct.

13 Q Do you recall how long it took you to go in, pay,
14 come back out, and pump the gas?

15 A Maybe three to four minutes.

16 Q Okay. Now, did you purchase any sort of illegal
17 substances from anybody at -- either there at the --
18 inside the gas station or there at the pump?

19 A I did not.

20 Q Okay. Did you have anything on you at this point,
21 in terms of illegal substances, in the way of heroin?

22 A I did not.

23 Q All right. Now, when you left Mr. Lewis and you
24 reported back to Agents Pate and Rhodes, this was at a
25 predetermined location that you guys had talked about

1 before you left?

2 A Yes, sir.

3 Q And what, if anything, occurred at this point?

4 A I pulled up at the spot that we agreed upon. And I
5 gave Officer Rollin [sic] Rhodes the substance, heroin.

6 Q Okay. All right. And it was at -- at this point
7 did anything else happen, or did you on about your way at
8 that point?

9 A No, sir. I was searched, and my car was searched.

10 Q Okay. To your knowledge, did they find anything
11 there with regards to any sort of other illegal
12 substances?

13 A They did not.

14 MR. TUCKER: Your Honor, at this point, I'd like to
15 show the buy video to the witness that's been marked
16 State's 1.

17 THE COURT: All right, sir.

18 MR. TUCKER: And if I could get Mr. Godwin up here.

19 (Off the record briefly.)

20 Q And, Mr. Daniels, if you would, look at that monitor
21 that's right in front of you.

22 (Off the record briefly.)

23 (Whereupon, a portion of video was played in open
24 court.)

25 Q Now, that -- I will -- that voice we just heard, is

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 93

1 that your voice, Mr. Daniels?

2 A Yes.

3 (Whereupon, a portion of video was played in open
4 court.)

5 Q This vehicle we're looking at now, Mr. Daniels,
6 that's your vehicle?

7 A Yes, it was.

8 Q Okay.

9 (Whereupon, a portion of video was played in open
10 court.)

11 Q Okay. Mr. Daniels, that looks to be U.S. currency
12 in your left hand there. It looked like a dollar bill.
13 Is that money that you were going to use to buy gas with?

14 A Yes, sir.

15 (Whereupon, a portion of video was played in open
16 court.)

17 Q Who's that you're speaking to in that phone
18 conversation, Mr. Daniels?

19 A Mr. Justin Lewis.

20 Q I'm sorry?

21 A Mr. Justin Lewis.

22 (Whereupon, a portion of video was played in open
23 court.)

24 Q And when you asked him if he'd got it, you meant --
25 you were referring to heroin?

1 A Yes, sir.

2 (Whereupon, a portion of video was played in open
3 court.)

4 Q This is the gas station at which you stopped?

5 A Yes, sir.

6 (Whereupon, a portion of video was played in open
7 court.)

8 Q Mr. -- you were in the store for just a very short
9 period of time to pay for the gas?

10 A Yes, sir.

11 (Whereupon, a portion of video was played in open
12 court.)

13 Q To whom were you speaking right there on the phone,
14 Mr. Daniels?

15 A I'm talking to Mr. Justin Lewis.

16 (Whereupon, a portion of video was played in open
17 court.)

18 Q And when you say, "Right here at 5 Points in front
19 of the apartments," where was that, in terms of town?

20 A That's -- the apartments are right -- it's right
21 there in front of the elementary school in Johnsonville.

22 Q Okay.

23 (Whereupon, a portion of video was played in open
24 court.)

25 Q Okay. That appears to be money in your left hand

DIRECT EXAMINATION BY MR. TUCKER - DAVID DANIELS 95

1 there; is that correct, Mr. Daniels?

2 A Yes, sir.

3 Q Okay. Is that the money that Agents Pate and Rhodes
4 gave you?

5 A It is.

6 (Whereupon, a portion of video was played in open
7 court.)

8 Q And that looks like you're switching it to your
9 right hand?

10 A Yes, sir.

11 Q And there's the money there?

12 A It is.

13 Q Now, the individual that just got into your car, who
14 is that?

15 A That's ---

16 Q Who is the individual that just got into your car?

17 A That's Justin Lewis.

18 (Whereupon, a portion of video was played in open
19 court.)

20 Q All right. So essentially, it appears as if Mr.
21 Lewis just had you kind of make a series of turns into a
22 circle?

23 A He did.

24 Q And again, I think you had testified that this took
25 less than a minute; is that correct?

1 A Yes, sir.

2 Q Okay. At this point the substance that's tested
3 into evidence as heroin, is that in your possession now?

4 A It is.

5 Q And did you give Mr. Lewis the money?

6 A I did.

7 (Whereupon, a portion of video was played in open
8 court.)

9 Q Now, you were speaking to whom at that point?

10 A Rollin [sic] Rhodes.

11 (Whereupon, a portion of video was played in open
12 court.)

13 Q Now, do you know to whom you're speaking in that
14 phone conversation?

15 A I don't know. Probably my girlfriend.

16 Q Okay.

17 (Whereupon, a portion of video was played in open
18 court.)

19 Q Now, was this you arriving at that predetermined
20 location to meet Agents Pate and Rhodes?

21 A Yes, sir.

22 (Whereupon, a portion of video was played in open
23 court.)

24 Q Now ---

25 MR. TUCKER: May I approach the witness, Your Honor?

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 97

1 THE COURT: y s

2 Q Mr. Daniels, I'm going to hand you what's been
3 marked State's Evidence 2 and ask if you recognize the
4 picture.

5 A I do.

6 Q How do you recognize it?

7 A That's Mr. Justin Lewis.

8 Q Is that as he appeared to you that day that he got
9 into your vehicle?

10 A Yes, sir.

11 Q Okay. And this is the man from whom you got the
12 heroin?

13 A It is.

14 Q And this is the man to whom you gave the money that
15 was given to you by Agent Rhodes?

16 A It is.

17 MR. TUCKER: Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. TUCKER: I believe those are the questions I
20 have, Your Honor.

21 THE COURT: All right. Mr. Lewis?

22 CROSS-EXAMINATION

23 BY THE DEFENDANT:

24 Q Mr. Daniels, let's talk again briefly about your
25 criminal background. You say you had a burglary or --

1 could you express those for us again ---

2 A I didn't have ---

3 Q --- your criminal ---

4 A --- a burglary.

5 Q --- background?

6 A I had a DUI, and I had shoplifting.

7 Q Shoplifting and DUI?

8 A (No audible response.)

9 Q You said something about a distribution of heroin,
10 you said, that you and your friend -- your girlfriend ---

11 A I did not said anything about distribution.

12 Q You said that you and your girlfriend got caught up
13 doing something?

14 A My girlfriend got caught with possession of heroin.

15 Q Okay. And you guys were together?

16 A We were.

17 Q And is that -- what -- what ended -- what ended up
18 -- what ended up happening?

19 A When she got caught?

20 Q Yes, sir.

21 A She got caught. And we worked with the -- the
22 sheriff's office so we wouldn't go -- she wouldn't go to
23 jail.

24 Q Okay. So -- and -- and when was this?

25 A February -- or it was in January when she got

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 99

1 caught. It was the end -- end of January of ---

2 Q January of ---

3 A --- of last year.

4 Q --- of 2017?

5 A Yeah.

6 Q Okay. And you said you don't -- you don't have any
7 prior drug addiction or drug problems that you were
8 dealing with.

9 A At the time?

10 Q Yes, sir.

11 A Yeah. That's how I -- that's how I -- I met you.

12 Q Okay. You said -- you said -- say that again one
13 more time?

14 A Yeah.

15 Q I couldn't ---

16 A I had ---

17 Q --- quite hear.

18 A --- a drug problem. That's -- that's how I met you.

19 Q You said you had a drug problem?

20 A Yeah.

21 Q Okay. And -- all right. So let's get to the actual
22 video. When you got the instructions from Mr. Rhodes or
23 whoever you got them from, their instructions were to buy
24 drugs from me and get it on camera?

25 A They were.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 100

1 Q Okay. And you mentioned some guy's name before you
2 left, actually. You said you were going to try to get
3 somebody to, like, buy. Do you recall whose name you
4 called?

5 A Yes, I do.

6 Q Whose name was that?

7 A That was a different individual that I was going to
8 work with them of getting too.

9 Q Okay. So -- but what -- what did this particular
10 individual have to do with this situation? Because from
11 what I'm understanding, this investigation was solely
12 based off of you -- you attempting to buy drugs from me.
13 So where did this individual's name come into play at?
14 Where did he come from in this whole ordeal?

15 A I ---

16 Q Why -- why would -- why did you bring him up in this
17 situation?

18 A Because I had more than just ---

19 Q Because it's on video and audio; you called his
20 name.

21 A Because like they said, I worked with the sheriff's
22 office. It was just -- I just didn't -- it wasn't just
23 for your case. I worked in -- on several cases.

24 Q But at the beginning of the video, the officer
25 stated that this was a sting to get drugs from Justin

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 101

1 Lewis, right?

2 A (No audible response.)

3 Q So they -- so they sent you to somebody else, too,
4 while you were out to come get me?

5 A No.

6 Q So ---

7 A That's not ---

8 Q --- I'm ---

9 A --- correct.

10 Q All right. So I just wanted to ask how does that
11 guy's name become relevant in this case?

12 A Because as he was setting up the equipment, I was
13 just talking ---

14 Q Okay.

15 A --- casual talking.

16 Q So you -- you assumed you were going to be able to
17 go to multiple people and try to get drugs?

18 A I did.

19 Q You did go to multiple ---

20 A Not that ---

21 Q --- people?

22 A --- day, no.

23 Q All right. All right. And also in the video, I saw
24 a purple bag kind of hanging from the steering wheel.

25 What -- what was that purple bag, and what did it contain

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 102

1 in it?

2 A I'm not sure what it contained at the time. It was
3 just a Crown Royal bag.

4 Q And it was your car, though, right?

5 A Yeah.

6 Q You're not sure what was in the purple bag hanging
7 from the steering wheel?

8 A I put different items in there. I put my cigarettes
9 in there, my lighter, my wallet.

10 Q Oh, okay. Okay. And when you got to the gas
11 station -- first, before -- let me get -- let me rewind
12 myself. What were the instructions given to you by the
13 officer, as far as you executing this?

14 A I was to get gas, go to you, purchase the substance,
15 and return to them.

16 Q Okay. Where did you get gas from?

17 A 5 Points.

18 Q Okay. But in the video, you said you got gas from a
19 Food Chief. That's where you were told to go.

20 A No. I said ---

21 Q Because ---

22 A --- I was just leaving 5 Points.

23 THE DEFENDANT: I want to put on record that in the
24 video, he said he was passing 5 Points; he didn't say he
25 was leaving 5 Points ---

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 103

1 MR. TUCKER: Your Honor ---

2 THE DEFENDANT: --- which means ---

3 MR. TUCKER: --- I object. He can't characterize
4 how the evidence was. You heard the video and the audio.
5 You can draw your own ---

6 THE COURT: Yeah. You ---

7 THE DEFENDANT: Yeah. He ---

8 MR. TUCKER: --- conclusions.

9 THE DEFENDANT: Yeah.

10 THE COURT: --- I mean, you can ask him questions
11 about ---

12 THE DEFENDANT: Yeah.

13 THE COURT: --- his testimony.

14 Q So you're saying you got your gas from 5 Points?

15 A I got my gas from 5 Points.

16 Q All right. And so from 5 Points, how far was your
17 original location from 5 Points?

18 A From where I started?

19 Q Yes, sir.

20 A From the -- our meeting site to there is probably 4
21 miles.

22 Q About 4 miles?

23 A Something like that.

24 Q Okay. And from 5 Points to where you met me is
25 about how far from the place that you got ---

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 104

1 A 5 ---

2 Q --- gas from?

3 A --- Points is about halfway, probably 3 or 4 miles
4 to there.

5 Q Halfway between your original spot and where you met
6 me ---

7 A Yes.

8 Q --- was 5 Points?

9 So that would take about two minutes to get there --
10 two or three minutes to get from 5 Points to Marion
11 Street?

12 A No. Not at the apartments. It's 35 through there,
13 and 25 -- it's half -- halfway from the 5 Points to the
14 apartments is 35. And halfway there is 25.

15 Q Okay. So about how long does ---

16 A And ---

17 Q --- it take to get there?

18 A I didn't -- I had to call you to verify where your
19 location was, because ---

20 Q So you ---

21 A --- the deal was that I would call you when I got to
22 Johnsonville and you would tell me where you were
23 located.

24 Q Okay. And you did indicate to Mr. Tucker that you
25 -- this wasn't your first time meeting me.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 105

1 A It's not.

2 Q All right. And we -- how -- how many times before
3 that have we met?

4 A Probably six or seven.

5 Q And do you know what those incidents were?

6 A Why we met?

7 Q Yes, sir.

8 A To sell me heroin.

9 Q Okay. But this particular -- so what about this
10 particular time that ---

11 A To sell ---

12 Q --- you came ---

13 A --- me ---

14 Q --- to ---

15 A --- heroin.

16 Q Say it again?

17 A You -- what you mean?

18 Q Well, let me finish my question first. What about
19 this particular time did it come about for you to say,
20 "Okay. Well, I'm going to get him to sell me heroin
21 today"? What about this particular time, like why -- if
22 you met me six or seven times before, why now? Or was
23 that all a part of investigation?

24 A I worked on several cases. I mean ---

25 Q Oh. So ---

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 106

1 A --- I ---

2 Q --- you -- so you're basically saying to the Court
3 that Investigator Rhodes sent you six or seven times
4 prior to this ---

5 A No.

6 Q --- to purchase ---

7 MR. TUCKER: Objection ---

8 Q --- drugs ---

9 MR. TUCKER: --- Your Honor.

10 Q --- from me?

11 MR. TUCKER: Mischaracterization. I don't believe
12 that's what the witness testified to. I believe he
13 testified he had purchased ---

14 THE COURT: Well, the -- the witness can correct
15 him. He -- you can -- you can ask him questions about
16 his testimony and you just answer the questions.

17 A No. This was the only time that we investigated
18 you.

19 Q Okay. But before that you were not working with
20 Florence County, the prior times that we met?

21 A To purchase heroin from you? No.

22 Q And how did we meet?

23 A (No audible response.)

24 Q Do we have ---

25 A You were ---

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 107

1 Q --- mutual friends?

2 A --- with ---

3 Q Do we ---

4 A --- another ---

5 Q Do we ---

6 A --- another guy ---

7 Q --- know anybody ---

8 A --- that I buy ---

9 Q --- that knows ---

10 A --- heroin ---

11 Q --- each other?

12 A --- from or was buying heroin from.

13 Q You said it -- say it one more time

14 A You were with another guy that I was buying heroin
15 from.

16 Q And that's -- and you -- that's how you met me?

17 A Yes.

18 Q Do you recall when this was?

19 A The beginning of January.

20 Q Is that the guy's name that you called at the
21 beginning of the -- the video?

22 A That you were with?

23 Q No. Is that the guy's name that you called at the
24 beginning of the video to Investigator Rhodes?

25 A You're talking about the guy that you were with when

1 I met you?

2 Q Yes, sir.

3 A No.

4 Q So then, you're -- so basically, you're saying you
5 met me with somebody that you'd buy heroin from?

6 A Originally, yes.

7 Q And the guy's name that you called at the beginning,
8 is that another guy that you buy heroin from ---

9 A It was.

10 Q --- or is that just somebody you know?

11 A It was.

12 Q It was ---

13 A There's another guy that I'd buy -- I was buying
14 heroin from at the time.

15 Q Okay. And you said you met me through a guy that
16 you'd buy heroin from?

17 A Yes.

18 Q Oh, okay. And -- all right. And you're -- all
19 right. I got a question about the camera. So what was
20 your -- what were the issues with your camera? Did you
21 have any problems, like, you know, setting it up right or
22 -- because it seemed like, in the video, that for the
23 whole video, all we could see was your underarm or
24 something. I couldn't really tell what was going on in
25 the video, even when I wasn't in it. So what was, like

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 109

1 -- what was your thing with the camera? Did you not know
2 it was rolling or did you just -- what was your plan for
3 that?

4 A You always come to the driver-side window. So I had
5 the camera pointing to the driver-side -- to the driver-
6 side window. But you came to the passenger side and got
7 -- and wanted to get in the vehicle. You had never done
8 that before.

9 Q So you're ---

10 A So I ---

11 Q --- saying ---

12 A --- had to switch the camera around.

13 Q So you're saying that out of all the times that I've
14 ever seen you, I have never gotten into your car?

15 A You got in my car one time prior.

16 Q All right. So you're -- so did you purchase heroin
17 from me, or were you giving me a ride when I got in the
18 car the first time?

19 A Every time I've met you, I've bought heroin.

20 Q Every time you met me?

21 A Every time.

22 Q And Investigator Rhodes sent you?

23 A No.

24 Q Oh. Okay. Okay. So you did say that this wasn't
25 the first time that you -- I've rode with you before?

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 110

1 A You've rode with me one time prior.

2 Q And was there any other people present in the car?

3 A Yes.

4 Q There were?

5 A The time -- the prior time or the time that you were
6 investigated?

7 Q Prior time.

8 A Yes, there was people in the car.

9 Q Other people present?

10 A Yes.

11 Q Did I -- do I know those people?

12 A I don't know who you know.

13 Q Okay. Well, here's a better question. Who was
14 present in the car?

15 A My girlfriend and a friend of mine.

16 Q Okay. And your girlfriend is from where?

17 A Johnsonville.

18 Q Where does she go to school?

19 A Johnsonville.

20 Q Johnsonville High School?

21 A Yep.

22 Q Middle school?

23 A Yes.

24 Q Elementary?

25 A (No audible response.)

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 111

1 Q Same place I went to school?

2 A Yes.

3 Q So it's a good chance that we went to school
4 together?

5 A (No audible response.)

6 Q It's a good chance we know each other pretty good?

7 A I -- I don't know what y'all ages are. I guess it's
8 a possibility.

9 Q Yes, sir. All right. Again, with those -- the
10 video -- because like I said, I'm trying to understand
11 where you were going with the video. How were you
12 instructed, as far as to what to record and what not to
13 record? Because it just seemed like you didn't want to
14 record any locations or any scenery. It didn't -- I
15 didn't see much going on in the video besides you -- your
16 arm moving ---

17 A I was ---

18 Q --- to be honest.

19 A --- supposed to get a video of and audio of us
20 having a transaction.

21 Q So you were supposed to get a video and audio of me
22 selling you drugs?

23 A We got ---

24 Q That was the main purpose of the video?

25 A That was the whole investigation.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 112

1 Q Okay. So what were the issues with you getting this
2 video done right?

3 MR. TUCKER: Objection, Your Honor. That -- that --
4 the way the west -- question is worded, he's asking for
5 technical expertise. I don't believe this witness
6 understands.

7 THE DEFENDANT: I can rephrase the question.

8 THE COURT: All right. You need -- all right. If
9 you would, rephrase the question.

10 Q All right. So this is -- this is the question here.
11 All right. Why did you have your -- the -- the camera
12 not clearly showing anything?

13 A At what point?

14 Q At the whole point of the video.

15 A When I'm driving down the road?

16 Q Period. Any part of the video you want to describe.

17 A The only -- the only purpose of the video and the
18 audio was to get the transaction of heroin.

19 Q Okay. Well, that's why I'm saying. What were --
20 why didn't you get that done? If that was the whole,
21 sole purpose of you having a video and audio, what kept
22 you from getting that done?

23 A I think it shows proof that I went there and bought
24 heroin.

25 Q You say it again?

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 113

1 A I believe it shows proof, with the audio and the
2 video, that I went there and I purchased a substance ---

3 Q Want me to rephrase the question?

4 A (No audible response.)

5 Q All right. What kept you from getting a transaction
6 on video?

7 A What you mean? My hand putting ---

8 Q What hindered you -- yes, sir. What hindered you
9 from actually getting what you were sent there to get?

10 A I was searched by Officer Rollin [sic] Rhodes before
11 I left, personally and my vehicle. I had nothing on me
12 then.

13 Q Okay.

14 A And I came back with six bags of heroin.

15 Q Okay. So let me rephrase that question one more
16 time. What prevented you from getting a actual
17 transaction on video? Because you got every -- you got
18 the gas station; you got where you got to the gas
19 station. Well -- well, I could hear you pumping gas, but
20 I can't see nothing. You got -- I don't know. You got,
21 like, trees going by. What -- what kept you from getting
22 the transaction on video? Like ---

23 A I wasn't ---

24 Q You didn't ---

25 A --- I wasn't there to -- to film scenery.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 114

1 Q All right. Let me rephrase my question.

2 MR. TUCKER: Your Honor, I believe that's been asked
3 and answered. He's asking about why he didn't get a
4 transaction on audio and video. I believe the witness
5 has indicated that he did, in fact. Now, in terms of ---

6 THE COURT: Well, I ---

7 MR. TUCKER: --- the quality ---

8 THE COURT: --- I think ---

9 MR. TUCKER: --- of it ---

10 THE COURT: --- his response ---

11 MR. TUCKER: --- he can ---

12 THE COURT: --- was ---

13 MR. TUCKER: --- argue that.

14 THE COURT: --- he did get it on video. But you're
15 talking, I think -- what I get -- gather ---

16 THE DEFENDANT: Yeah. I want ---

17 THE COURT: --- from your ---

18 THE DEFENDANT: --- to know why ---

19 THE COURT: --- question ---

20 THE DEFENDANT: --- he didn't get the transaction on
21 video.

22 THE COURT: --- is -- is why he didn't actually have
23 ---

24 THE DEFENDANT: Audio ---

25 THE COURT: --- the video ---

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 115

1 THE DEFENDANT: --- and video ---

2 THE COURT: --- of the passing of money and drugs.

3 THE DEFENDANT: Passing of money or -- it could've
4 been passing of money or passing of drugs. It didn't
5 have ---

6 THE COURT: Right.

7 THE DEFENDANT: --- to be both or ---

8 THE COURT: And that's your question, is why didn't
9 you get that.

10 THE DEFENDANT: Or -- or a conversation or word --
11 the word heroin.

12 Q Why -- why -- what hindered you from making this
13 happen?

14 A Well, it -- you don't say heroin on the street. You
15 say ---

16 Q All right. Well, whatever term you want to use ---

17 A We did. We talked about drugs. We -- you asked me
18 in the video about did I know anybody who wanted any
19 Lortab 7.5's. We talked about drugs.

20 Q Were -- okay.

21 A There was drugs after ---

22 Q Okay.

23 A --- and not ---

24 Q Okay.

25 A --- before.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 116

1 Q We're not -- but that's -- that's not what we're
2 here talking about right now. We're talking about
3 heroin. So what kept you from getting a transaction of
4 money or the exchange of money or exchange of drugs on
5 camera or anything? What kept that from happening? I
6 hand -- my hand to your hand, what kept you from putting
7 that on camera, if the camera is sitting right there in
8 your lap ---

9 A It shows ---

10 Q --- and you have ---

11 A --- in -- it shows ---

12 Q --- you have ---

13 A --- in the video ---

14 Q --- full control over the camera?

15 A It shows in the video the money is out of my hand
16 and heroin is in my hand.

17 Q Not in this video.

18 MR. TUCKER: Objection, Your Honor: argumentative.

19 THE COURT: All right. Yeah. You ---

20 THE DEFENDANT: All right. So ---

21 THE COURT: --- can't argue with him about what the
22 video shows. You can just ask questions.

23 THE DEFENDANT: Yes, sir.

24 Q So you're -- you're saying that in the video, it
25 shows money -- a money transaction and a drug

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 117

1 transaction?

2 A It shows there was money in my hand, and it shows
3 there was not -- after you left, there was not any money
4 in my hand and there were bags in my hand.

5 Q Okay. All right. So when you got to the gas
6 station, what -- why'd you leave the camera in the car?

7 A Because I was there to pump gas. I always leave my
8 cell phone in the car. My personal cell phone was also
9 in the car.

10 Q Was that your personal cell phone, or was that a
11 police cell phone?

12 A That was a police cell phone.

13 Q Which was given to you to monitor what's going on
14 with you, right?

15 A Me, as far -- and to prove that the transaction
16 happened.

17 Q Okay. Did they start the video when you left the
18 premises, or were you instructed to start the video when
19 the transaction occurred?

20 A I didn't start the video. Officer Rollins started
21 the video.

22 Q Oh. So the video was -- you were supposed to be
23 under surveillance from the time you left to the time you
24 got back?

25 MR. TUCKER: Again, Your Honor, I object. He's

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 118

1 asking ---

2 THE DEFENDANT: It's a ---

3 MR. TUCKER: --- for information ---

4 THE DEFENDANT: --- question ---

5 MR. TUCKER: --- outside the scope of this

6 particular witness's ---

7 Q Were you ---

8 MR. TUCKER: --- knowledge ---

9 Q --- supposed ---

10 MR. TUCKER: --- in terms ---

11 Q --- to do ---

12 MR. TUCKER: --- of surveillance.

13 THE COURT: All right. It's an appropriate
14 question.

15 THE DEFENDANT: Yeah.

16 THE COURT: I'm going to ---

17 Q Were you ---

18 THE COURT: --- allow it.

19 MR. TUCKER: Well, he's asking about whether or not
20 he was supposed to be under surveillance or not. He
21 couldn't possibly know that or whether he was.

22 THE COURT: He can ask him if he knows it.

23 Q Were you ---

24 THE COURT: I mean, he can either say, "I -- I don't
25 know"; "I'm not -- I don't know what their protocol is."

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 119

1 I mean, he can ask the question. He -- if he knows it,
2 he can answer it. If he doesn't, he can't answer it.

3 MR. TUCKER: Yes, sir.

4 Q Were you instructed to be on -- under surveillance
5 of that video throughout this whole time period from the
6 time you left to the time you got back to the officers?

7 A No. I wasn't under surveillance.

8 Q Okay. And -- and the guy that you said -- the name
9 that you called at the beginning, you didn't meet that
10 guy on the time -- in the time you left to the time you
11 came back. You just said -- you just said you was --
12 were going to get him, but you never really actually met
13 him?

14 A I -- I never said I was going there.

15 Q What'd you say?

16 A I told Officer Rollins that I -- I was going to try
17 to get him.

18 Q Too, also?

19 A No. Not that particular day. I did not meet him
20 that -- that day ---

21 Q So that ---

22 A --- that particular ---

23 Q --- all ---

24 A --- day at all.

25 Q So that was just a statement you were making? You

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 120

1 didn't meet -- it wasn't meant to be, like, taken
2 seriously?

3 A It was serious that I was -- we were going to get
4 him later on.

5 Q So you -- oh, so you were planning to get on -- get
6 him later on that day?

7 A No. That was a totally different case.

8 Q Oh, okay. But you -- you never planned on meeting
9 that guy; you just said his name?

10 MR. TUCKER: Your Honor, asked and answered.

11 THE COURT: All right. Sustained.

12 Q And you said you started working with the Florence
13 County Sheriff's Department because of a charge you
14 caught. So you -- you -- but you get paid? So you're
15 not working off a charge? You just get paid ---

16 A I never got a charge.

17 Q You never got a charge for those drugs that you got
18 caught with?

19 A I never got caught with the -- with drugs.

20 Q You -- who got caught with drugs?

21 A My girlfriend was caught with possession of drugs,
22 but she was never arrested.

23 Q Your girlfriend got caught with drugs in the car?

24 A Yes.

25 Q But weren't you with her?

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 121

1 A Yes.

2 Q Okay. So you got caught with drugs.

3 So you basically said you were paid to basically go
4 out here and say, "I bought drugs from -- I buy drugs
5 from him and I get paid"?

6 A (No audible response.)

7 Q So the money they gave you, was that your payment,
8 or was that just money that you were given to go out and
9 buy drugs from whoever you could get drugs from?

10 A No. That was money given to me to go and buy heroin
11 from Mr. Justin Lewis ---

12 Q Okay.

13 A --- and to return.

14 Q And you started this job with Florence County in
15 January?

16 A Yes.

17 Q Okay. But you said you've met with me, and you said
18 you know I -- you met me through a guy that you buy
19 heroin from after that, right? After you started working
20 with Florence County?

21 A No. I met you before.

22 Q January is when you started working with Florence
23 County. This charge is from February.

24 A Yes.

25 Q But you said you met me before then.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 122

1 A I met you before I started working with the
2 sheriff's office. Yes.

3 Q Okay. I don't get anywhere with those questions.

4 So your phone -- your phone -- that's what I wanted
5 to get to. What -- which phone were you using to make
6 all these phone calls? I don't know if you do any
7 texting or all that stuff. Maybe you be on Facebook.
8 What -- who -- which phone did you use, your personal
9 phone or the police line?

10 A I used my personal phone.

11 Q To make all your -- I don't know what word to use --
12 make all your transactions, I guess. Do you use your
13 personal phone?

14 A You talking about in this case?

15 Q Yeah. In -- period.

16 A I used my personal phone to make the phone call.
17 Yes.

18 Q All right.

19 A In this ---

20 Q And did ---

21 A --- case.

22 Q --- did Investigator Rhodes get that phone --
23 confiscate that phone, use that phone -- to get any
24 information, like phone records maybe, texts ---

25 A He confiscated ---

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 123

1 Q --- phone calls ---

2 A --- the phone. Yes.

3 Q He -- he took your phone?

4 A Yes.

5 Q So basically, he took your phone and got the phone
6 records from your phone?

7 MR. TUCKER: Objection, Your Honor. He's asking for
8 information outside the scope of this witness's
9 knowledge. This witness would not have any idea what
10 Investigator Rhodes did ---

11 THE DEFENDANT: If he ---

12 THE COURT: He -- you ---

13 THE DEFENDANT: --- don't know ---

14 MR. TUCKER: --- with the phone or ---

15 THE DEFENDANT: --- he don't ---

16 THE COURT: --- you asked ---

17 THE DEFENDANT: --- know.

18 MR. TUCKER: --- what records ---

19 THE COURT: --- him if ---

20 MR. TUCKER: --- he did get.

21 THE COURT: --- they took it you -- if they took his
22 phone. He told you they did ---

23 THE DEFENDANT: If he ---

24 THE COURT: --- take his phone.

25 THE DEFENDANT: --- don't -- if he say he don't know

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 124

1 ---

2 THE COURT: Hold on.

3 THE DEFENDANT: --- he ---

4 THE COURT: Now, only person talks at a time. Don't
5 interrupt me when I'm talking.

6 THE DEFENDANT: I got you.

7 THE COURT: You asked him, "Did they take your
8 phone?"

9 THE DEFENDANT: Yes, sir.

10 THE COURT: He said, "Yes, they did."

11 And you asked him why they took your phone.

12 THE DEFENDANT: Okay.

13 THE COURT: He can -- if -- if he knows why, he can
14 say. But if he doesn't know why, all he can say is he --
15 they took his phone.

16 THE DEFENDANT: Okay.

17 THE COURT: So you can ask him, "Do you know why
18 they took it?"

19 THE DEFENDANT: Okay.

20 THE COURT: But it -- if -- if he doesn't know,
21 then, of course, he can't answer things he doesn't know.

22 THE DEFENDANT: All right.

23 THE COURT: So you can ask him.

24 Q So Investigator Rhodes did take your phone?

25 A He did.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 125

1 Q How long did he keep it?

2 A He kept it in front of me.

3 Q Kept it in front of ---

4 A Yeah. But I was -- I was searched. He searched
5 through the phone as well.

6 Q Okay. You talking about that specific day. But he
7 never took it into evidence or anything?

8 A No. I wasn't arrested.

9 Q No. I'm saying, like, evidence, as far as trying to
10 get -- convict somebody, like evidence against someone?

11 A No.

12 Q So the phone that you used to call me and whoever
13 else you supposedly called to purchase drugs, they let
14 you keep it?

15 A That is my personal phone. Yes.

16 Q But you used your personal phone to conduct state
17 business, and they let you keep it?

18 A That is my personal phone. Yes, they did.

19 Q And you used it to conduct state business, right?

20 A I used it to make the transaction in this case.

21 Yes.

22 Q And they let you keep it. That's all I needed to
23 know.

24 All right. And then, also in the car after you left
25 me -- dropped me off, you spoke to, I guess, one of the

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 126

1 officers and let him know you was on the way back. And
2 you said something about a -- I guess you had some -- a
3 mixup or something. But you said something about, "I got
4 him," three times. What does -- what did you mean by
5 that when you said, "I got him," three times?

6 A I said -- I said I got you on the -- on the camera
7 three times. Yes.

8 Q So you were just saying you got me -- like, my
9 person -- on camera three times?

10 A And -- while I said was it -- what I meant was it
11 was -- it did not go as planned; you didn't come to the
12 window.

13 Q Okay.

14 A You got in the car.

15 Q But you said I -- I had already previously rode with
16 you before. So it wasn't, like, just something new for
17 me to get in your car, right? Because I had already
18 previously rode with you before, right? You did ---

19 A You ---

20 Q --- state that ---

21 A You previously ---

22 Q Okay.

23 A --- rode with me one time. Yes.

24 Q Okay. And -- all right. So you spoke to the
25 officer. You got off the phone. And then you got -- you

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 127

1 had another phone call. And you said you don't recall
2 who exactly that was?

3 A That was my girlfriend.

4 Q That was your girlfriend?

5 A (No audible response.)

6 Q And you were -- she didn't know what you were doing?

7 A No.

8 Q Oh, okay. So you answered the phone, and you talked
9 to your girlfriend. You let her know what you was doing.
10 And then you got back.

11 A (No audible response.)

12 Q So when you left from Marion Street -- now, you said
13 you got gas from 5 Points, right?

14 A That's correct.

15 Q So when you left 5 Points and you got on the phone
16 with whoever you were talking to, you told them you was
17 passing 5 Points. So what'd you do? You -- did you,
18 like, circle around the block, just to see if you could
19 ---

20 A I said ---

21 Q --- you was ---

22 A --- I had ---

23 Q --- trying to ---

24 A --- just left 5 Points.

25 Q Okay. And you were headed towards town?

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 128

1 A Yeah.

2 Q All right. And then you had to come back in that
3 same direction to go back, right? Because it seemed like
4 if -- I'm just asking. Because it seemed like it took
5 you longer to get back than it did to get there. So I'm
6 just trying to tie it all together.

7 A Because I drove straight out of 5 Points and took a
8 right ---

9 Q Okay.

10 A --- down ---

11 Q Straight out ---

12 A --- Diamond Branch.

13 Q --- of 5 Points?

14 A Because I did ---

15 Q Diamond ---

16 A --- not know your location because you told me, when
17 I got to Johnsonville, to call you.

18 Q So basically, you just went on a joyride until you
19 found out where my location was?

20 A I went for a 20 -- a 30-second joyride. Yes.

21 Q All right. And you made a -- a -- it wasn't a long
22 stop, but you made a stop after you got off that phone.
23 Do you recall, like, exactly? Were you stopped? Did
24 somebody wave at you or flag you down or did something
25 fall in the road or did you -- what -- did you hear a

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 129

1 noise in your car? You ---

2 A The only ---

3 Q --- just kind of ---

4 A --- stop I ---

5 Q --- stopped for like ---

6 A --- made was to wait ---

7 Q --- probably like ---

8 A --- for a car so I could turn onto a road. That was
9 it.

10 Q You said ---

11 A And I ---

12 Q --- you ---

13 A --- stopped to get gas. That was it.

14 Q You said you made a stop to turn on a road because
15 of another car?

16 A Yeah.

17 Q How long was that stop?

18 A Long enough for the car to pass so I could turn onto
19 the road, about ---

20 Q You ---

21 A --- ten seconds.

22 Q Yeah. About 19 -- yeah. Because at about 19:20 in
23 the video, you made a stop and then you kind of got back
24 rolling about another 30/40 seconds. So I just wanted to
25 clarify what you were doing.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 130

1 And you said that was your girlfriend you spoke to
2 on the phone. You let her know what you were doing. And
3 then ---

4 A I never let my girlfriend know what I was doing.
5 She didn't know what -- did not know I was doing that
6 that day.

7 Q It was -- you said something about she caught you in
8 the middle of working.

9 A No. I told her that she called me while I was in
10 the middle of working.

11 Q Okay. But she doesn't know, like, where you work or
12 nothing?

13 A Not that day. No.

14 Q So you -- your girlfriend don't know you're -- what
15 you do for a living? But you guys caught the -- I
16 thought you said that she was the one who caught the
17 charge and that's how y'all started working for the
18 state.

19 A That's how ---

20 Q But now ---

21 A --- it started ---

22 Q --- you're saying ---

23 A Yes.

24 Q --- that she doesn't know that you do this.

25 A You wasn't the one. I was working for them that

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 131

1 day. She was not a part of that.

2 Q She wasn't working?

3 A Not that day. No.

4 Q But she did work, so she knew that you were working
5 for the state?

6 A She knew ---

7 MR. TUCKER: Your Honor, objection. He's got --
8 asking for speculation about what ---

9 THE COURT: All right.

10 MR. TUCKER: --- his girlfriend knew.

11 THE DEFENDANT: The ---

12 THE COURT: You can ask one more time did -- did she
13 know you were working for the state. I -- I think his
14 answer is: She did know, but she didn't know he was
15 working ---

16 THE DEFENDANT: That day.

17 THE COURT: --- that day. That's -- but you can ask
18 him.

19 THE DEFENDANT: Okay.

20 THE COURT: But it -- that's -- that's what his
21 response was.

22 Q So she didn't know that you was working that day.
23 She didn't know what you had going on?

24 A No.

25 Q But she had been -- you said she had been with us

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 132

1 previously when you first -- when I first rode with you?

2 A No. I had just started going out with her. You
3 never rode in the car with me and her.

4 Q I never rode in the car with you and her?

5 A No.

6 Q Not once?

7 A Not her. No.

8 Q Interesting. All right.

9 So you didn't say that that's how we met?

10 A That was ---

11 Q With you and ---

12 A --- with ---

13 Q --- your girlfriend ---

14 A That was ---

15 Q --- and another ---

16 A --- with my ---

17 Q --- guy?

18 A --- prior girlfriend.

19 Q So this was a different girlfriend at this point in
20 time after we met? You had met another -- whole nother
21 girlfriend?

22 A Yeah. I was seeing three girls at the time.

23 Q Oh, okay. So this is just one of your girlfriends
24 that you was dating?

25 A (No audible response.)

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 133

1 Q She didn't know anything -- she wasn't working for
2 the state. She was a different girlfriend.

3 A The girl on the phone was the girl that had caught
4 the charge.

5 Q Okay. But that wasn't the one that we met with?

6 A When you rode prior?

7 Q That's not the same girl?

8 A No.

9 Q Oh, okay. Okay. I was just making sure. I wanted
10 to get everything together. Because you said that I had
11 -- you met me with somebody that you buy heroin from. So
12 I was just -- wanted to clarify.

13 And I want -- one more time, because I didn't really
14 get your answer. You said the guy that you brought up at
15 the beginning of the video was a guy that you buy heroin
16 from, but you didn't go to see him that day. You just
17 said his name for future reference?

18 A For a future case, yes.

19 Q But it ---

20 A That's correct.

21 Q --- had nothing to do with the case that was going
22 on, because this investigation was just for me.

23 A That's correct.

24 Q Okay. All right. And you -- did you do any rehab
25 for your drug addiction?

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 134

1 A In the past year, I have. Yes.

2 Q In this year?

3 A Yes.

4 Q Past year you did rehab for your drug addiction.

5 When did you start rehab?

6 A Around about August last year.

7 Q I thought you said you just -- you started rehab
8 this year.

9 A It was a yearlong -- it was a yearlong rehab. It
10 was Teen Challenge.

11 Q So from August of last year to August of this year,
12 you've been in rehab?

13 A About August of last year till -- February of this
14 year, I was at Teen Challenge. And ---

15 Q Is it ---

16 A --- yeah, about February this year.

17 Q But prior to that, you hadn't received any rehab.
18 You were still a active addict?

19 A Yes.

20 Q Okay. So from about -- yeah. So from -- so you
21 were a active addict, basically, when all these incidents
22 occurred?

23 A Yes.

24 Q Active addict on heroin?

25 A Yes.

CROSS-EXAMINATION BY THE DEFENDANT - DAVID DANIELS 135

1 Q Daily usage?

2 A Yeah.

3 Q So you used heroin daily?

4 A (No audible response.)

5 Q You -- were you -- all right. This is another
6 question. Were you under the influence heroin during
7 these -- during this video?

8 A No.

9 Q Well, did you have heroin that day or the day
10 before, the night before?

11 A The night before, yeah.

12 Q So you were on heroin the night before this incident
13 even occurred?

14 A Yeah.

15 THE DEFENDANT: No further questions.

16 MR. TUCKER: Nothing on ---

17 THE COURT: Redirect?

18 MR. TUCKER: --- redirect, Your Honor.

19 THE COURT: I'm sorry?

20 MR. TUCKER: Nothing on redirect ---

21 THE COURT: All right.

22 MR. TUCKER: --- Your Honor.

23 THE COURT: Thank you very much, sir. You may step
24 down.

25 (Whereupon, the witness exited the witness stand.)

1 MR. TUCKER: And, Your Honor, I would ask that Mr.
2 Daniels be released from his subpoena.

3 THE COURT: All right. Any objection to Mr. Daniels
4 being released from that subpoena?

5 THE DEFENDANT: Huh?

6 THE COURT: In -- in other words, is there any
7 objection to him being released from attendance?

8 THE DEFENDANT: We can't ask him no more questions,
9 right?

10 THE COURT: Right.

11 THE DEFENDANT: Okay. He can go.

12 THE COURT: Right. Do you need -- you -- you don't
13 need him for your case?

14 THE DEFENDANT: Oh, yeah. Yeah. I wanted to call
15 him as a witness for mine.

16 (Off the record briefly.)

17 THE DEFENDANT: Yeah. I want to keep him.

18 THE COURT: All right. Well, I -- what I'm going to
19 do I'm going to excuse him for the day ---

20 THE DEFENDANT: Okay.

21 THE COURT: --- with the understanding he needs to
22 be back in the morning.

23 THE DEFENDANT: Okay.

24 THE COURT: All right. Mr. Tucker, he needs to be
25 back in the morning at 9:30.

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 137

1 MR. TUCKER: Okay. And, Your Honor, if -- if I
2 could direct him to go around and wait in the office,
3 I'll let you know.

4 THE COURT: All right. You may call your next
5 witness.

6 MR. TUCKER: Thank you, Your Honor. At this time
7 the state would call Investigator Rollins Rhodes to the
8 stand.

9 THE COURT: All right. Investigator Rhodes, if you
10 would please come around to be sworn, sir.

11 (Whereupon, the witness came forward.)

12 ROLLINS RHODES, having been first duly sworn,
13 testified as follows:

14 DEPUTY CLERK OF COURT: You may be seated in the
15 witness box and please state your name for the record.

16 THE WITNESS: Michael Rollins Rhodes.

17 MR. TUCKER: May it please the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. TUCKER:

21 Q Mr. Rhodes, where are you presently employed?

22 A Florence County Sheriff's Office.

23 Q And how long have you worked with the sheriff's
24 office?

25 A Sixteen years.

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 138

1 Q In what capacity do you currently serve?

2 A I am a narcotics investigator.

3 Q And how long have you been with narcotics?

4 A Ten years.

5 Q Prior to working in narcotics, how long had you been
6 with the sheriff's office?

7 A Five years.

8 Q And what were your primary duties before you went to
9 narcotics?

10 A I worked patrol division.

11 Q Now, with that much time in narcotics, did you
12 receive any sort of special training and attend any
13 seminars or the like?

14 A Numerous. Yes.

15 Q And you heard Agent Pate when he testified. He
16 worked with you, I think, when he first came on board?

17 A He did.

18 Q Did you similarly have to work with someone more
19 experienced when you came on board with narcotics?

20 A I did.

21 Q But -- and -- and presently, you are an agent that
22 you kind of train some of the newer guys and you work
23 kind of ---

24 A Well, he ---

25 Q --- on your own?

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 139

1 A --- he was assigned to the lower end of the county
2 that I work. So we were going to be partners, is the
3 reason we were paired initially.

4 Q I got you. Now, on February the 3rd, 2017, were you
5 employed as a narcotics investigator for the sheriff's
6 office?

7 A I was.

8 Q Do you recall being involved in an investigation in
9 -- regarding the defendant in this case, Mr. Lewis?

10 A I was.

11 Q Now, do you recall how the investigation started
12 that day?

13 A You mean as far as meeting the informant and all or
14 ---

15 Q Yes, sir. When you met with the informant.

16 A Yeah. We planned on meeting the informant and doing
17 a controlled purchase of heroin from Justin Lewis.

18 Q Now, when you say controlled purchase, what do you
19 mean?

20 A What -- we -- we can -- we try our best to control
21 it. We provide the money; we provide the -- the
22 audio/video equipment and send an informant in to buy
23 heroin or, depending on the case, whatever.

24 Q Now, you said you try to control it as best you can.
25 Is that ---

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 140

1 A Yeah.

2 Q --- always ---

3 A Well ---

4 Q --- possible?

5 A Well, being that we work the lower end of the
6 county, the Johnsonville area specifically, drug dealers
7 know us. They know our vehicles. They know our habits
8 like we know their habits. So we have to use an
9 informant, a lot of times, the -- the -- a civilian, to
10 buy the drugs.

11 Q Now, with regards to civilians, how do they come to
12 you in their -- their capacity as confidential ---

13 A Well, it ---

14 Q --- informants?

15 A --- it kind of all depends. You know, a lot of
16 times, we do get people that want to work charges off.
17 Very rarely, but we do get concerned citizens that can
18 deal with drug dealers and they become informants. A lot
19 of times, the -- the informants we use that work charges
20 off, once they -- they kind of satisfy that, you know,
21 they're reliable and -- and can be used further, we'll
22 start paying the informant.

23 Q And so I'm guessing it -- it -- you know, it's
24 almost like a -- a prerequisite that they have some
25 familiarity with illegal drugs or sales or use?

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 141

1 A Well, the -- yeah. I mean, it sounds bad. But
2 yeah. I mean, a drug dealer ain't going sell to just
3 anybody.

4 Q Do they typically sell to people they know?

5 A Absolutely.

6 Q With regards to the informant in this case, Mr.
7 Daniels, do you recall how he came to you or how he
8 became a confidential informant for you?

9 A Yeah. I -- I got out with he and his girlfriend one
10 night. The girlfriend had some drugs on her. They both
11 -- they acknowledged that they could -- could help us out
12 if we could help them out on the charge.

13 Q Now, is this a common occurrence in ---

14 A It is ---

15 Q --- your capacity ---

16 A --- it is ---

17 Q --- as an ---

18 A --- very ---

19 Q --- investigator?

20 A --- common. I mean, a lot of times, we have to make
21 those deals to get the drugs off the street.

22 Q And with regards to the charge facing the -- Mr.
23 Daniels's girlfriend, it was possession of heroin?

24 A It was possession.

25 Q And what would Mr. Daniels have been charged with,

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 142

1 if anything?

2 A If -- if anything, maybe an attempt to possess or
3 attempt to distribute maybe.

4 Q Now, in -- in terms of that particular kind of
5 charge, would you ---

6 A It ---

7 Q --- consider ---

8 A --- just ---

9 Q --- it to be ---

10 A --- not ---

11 Q --- a serious charge?

12 A Just not likely that -- that he would -- on -- on a
13 -- an incident like that.

14 Q Now, ultimately, though, he progressed to the point
15 where he became a paid informant?

16 A He did. I don't remember how many buys we used him
17 for before we started paying him. But yeah. Eventually,
18 he was -- we saw that he was reliable and -- and he knew
19 a lot of players in the game.

20 And -- and during this time, Johnsonville was the --
21 the worst area in the county for selling heroin, heroin
22 overdoses, heroin, deaths. So we focused on that area
23 hard. And he was -- he was one of the many informants we
24 used that -- that dealt with a lot of heroin dealers.

25 Q Now, directing your attention, again, back to

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 143

1 February the 3rd, 2017, you and Agent Pate met with Mr.
2 Daniels?

3 A We did.

4 Q Now, with regards to what directions you gave him or
5 the discussion that took place between the two -- I think
6 we caught a little of it at the beginning of the video
7 when it popped on -- the informant had indicated to you
8 that he thought he could purchase heroin from the
9 defendant, Justin Lewis?

10 A Right. I -- I'm sure I had a prior conversation
11 with the informant, you know, hey, just checking in -- or
12 him checking in with me or me with him, either way,
13 anybody we can deal with today?

14 He says, "Yeah. I can deal with Justin Lewis."

15 "Okay. Let's meet here at this time and see if we
16 can get it going."

17 Q Okay. Now, and is that what you did, in terms of
18 the events of February 3rd ---

19 A Yes.

20 Q --- 2017?

21 A Yes. Right.

22 Q Now, when you met with Mr. Daniels, you and Agent
23 Pate, what, if anything, did you do initially?

24 A We got -- we -- we -- we spoke -- we initial met and
25 spoke. He says he can deal with -- with Justin. I got

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 144

1 our equipment out, the money; searched him, searched his
2 person and his vehicle.

3 Q And for what purpose do you ---

4 A For any ---

5 Q --- do that?

6 A --- any illegal contraband, whether it's drugs -- we
7 don't want them taking weapons with them. Anything that
8 we feel unsafe for them to have or that might could hurt
9 our case, we take either from them -- if it's illegal
10 drugs that we find, then they go to jail. I mean,
11 they're arrested. We just -- I mean, if you're that --
12 if you're not smart enough to not bring drugs to that,
13 then ---

14 Q Right.

15 A --- then you're not reliable for us and we take you
16 to jail. But that -- that's our main concern, is -- is
17 any safety issue or any drug issue.

18 Q Now, Mr. Lewis asked Mr. Daniels about his heroin
19 use at or around the time that this incident occurred.
20 Let me ask you: On the day in question, February the
21 3rd, when you met with Mr. Daniels, did he appear to be
22 impaired in any kind of way?

23 A He did not.

24 Q Did he appear unsteady on his feet, slurring his
25 words, or anything like that?

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 145

1 A No. I had no concern of his sobriety during that
2 time.

3 Q Okay. Now, once you conducted the search, I assume
4 that you did not find anything by way of contraband,
5 illegal drugs, or weapons?

6 A No.

7 Q Okay. What, if anything, occurred after that?

8 A He was given the recorder.

9 Q Now, let me ask you about the recorder itself.

10 A Right.

11 Q Who placed the recorder in Mr. Daniels's vehicle?

12 A I did -- well, it -- it -- it's not actually placed
13 in the vehicle. This particular recorder is a -- what we
14 call our phone-case recorder. It holds an iPhone. It
15 looks like -- like maybe one of your Otterbox cases that
16 -- or protective case on your phone. It has a camera on
17 that does audio and video.

18 And -- and that -- that he has told himself. It's
19 not a -- I mean, sometimes we use it as -- as a
20 stationary unit. But in this instance, we -- we had him
21 hold it as it was his cell phone. We put a cell phone in
22 it so, you know, there's no confusion. Is that a --
23 well, what is that you're holding? You know, well --
24 well, it's my cell phone.

25 Q Okay.

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 146

1 A So ---

2 Q But is there any way that a person holding the cell
3 phone can look to make sure everything's in frame or
4 everything is captured on video?

5 A No. It -- it's -- it's -- he has -- it -- it -- the
6 informant had no way of knowing. He knows kind of at
7 what angle he needs to hold the camera. But he doesn't
8 know himself if he gets it.

9 Well, he can say, "Well, yeah. I think I got him on
10 camera." But -- but he has no idea what it's actually
11 ---

12 Q Now ---

13 A --- recording.

14 Q --- does the informant have the ability to turn off
15 the device or ---

16 A No.

17 Q --- turn it back on?

18 A I turn the recorder on, and I turn the recorder off.

19 Q Okay. Now, with regards to -- again, you mentioned
20 that he doesn't know whether or not -- what's on it,
21 what's in frame, what's not. Ultimately, is -- is it
22 when he brings the phone back to you and you look at it
23 at -- on your laptop is when you find out whether or not
24 -- what's on the video and what had occurred?

25 A Right.

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 147

1 Q Okay. Now, when you gave him the -- the money and
2 -- and you gave him the recording device, he mentioned to
3 you about stopping to get gas; is that correct?

4 A Right.

5 Q Now, the fact that -- that he was about on empty and
6 the fact that he had asked about stopping to get gas, did
7 that cause you any kind of concern?

8 A None.

9 Q Okay. Well, with regards to gas, were you able to
10 ride by and make sure he, in fact, had stopped for gas?

11 A Yeah. Yeah. We -- we would not have been able --
12 maybe we could have stopped with him at the gas station.
13 But it -- it -- it could've jeopardized -- you know, if
14 people -- when people see us come into town, their phones
15 are ringing: "Hey, the cops are in town." Because they
16 see us. So we didn't want to jeopardize that.

17 Q Okay.

18 A So we -- I mean, we can go by and see him there.
19 But it would just -- it's not practical for us to be able
20 to stop with him at that point.

21 Q Now, you've seen the video in this case, have you
22 not?

23 A Yes.

24 Q And -- and without having to play it all over again,
25 let me ask you if -- what your recollection is of -- of

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 148

1 the video. But there was a point where he calls
2 presumably Mr. Lewis or the -- the person that he
3 indicated was Mr. Lewis on the other end of the phone.
4 He was using his personal cell phone for that situation?

5 A Yes.

6 Q Now, Mr. Lewis asked about a state-issued cell
7 phone. In your experience what would happen if the --
8 the -- the target of the investigation received a call
9 from a strange number or one that somehow got tied back
10 to the ---

11 A They would ---

12 Q --- sheriff's office?

13 A --- probably wouldn't have answered the phone, first
14 off, from a number he didn't recognize. And, I mean, it
15 -- it's just -- it's easier to not kind of take things
16 out of the norm as much as we can, you know, by still
17 controlling it. So if -- if our informant would've used
18 another number or whatever, either he wouldn't have
19 answered it. It would -- may have tipped him off of, you
20 know, well, why is he calling me from another number and
21 whatever. So ---

22 Q And neither of those situations was ideal for you or
23 for ---

24 A No.

25 Q --- the investigation?

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 149

1 A Right. No.

2 Q Okay. Now, with regards to your instructions to the
3 -- Mr. Daniels when he left, you and Agent Pate initially
4 -- he was to travel, get gas, and then from there, go
5 straight to where Mr. Lewis had indicated he was?

6 A Right.

7 Q Now, again, you indicated and I believe Agent Pate
8 indicated that you rode by, but you actually couldn't
9 stop at the gas station. But you kind of rode by to make
10 sure he, in fact, had stopped there?

11 A Right.

12 Q Now, I assume that same concern would've been in
13 play when he actually got into Johnsonville, close to
14 where Mr. Lewis was?

15 A Right. If -- if Mr. Lewis would've seen us, then
16 the -- the deal would not have gone.

17 Q Yeah. At -- at -- are you able to monitor anything?
18 In other words, that recording device, it's just one-way;
19 is that correct?

20 A That particular device, yes.

21 Q So you couldn't hear what was going on?

22 A Right.

23 Q All right. Now, at some point after the transaction,
24 Mr. Daniels calls you and says, "Hey, I'm on the way
25 back"; is that correct?

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 150

1 A That's right.

2 Q Okay. What, if anything, occurred when he got back
3 to the ---

4 A When he got back, I immunity went to him and
5 retrieved the drugs and asked him who he bought it from.

6 Q Did he ---

7 A The ---

8 Q --- indicate from whom he had purchased ---

9 A He indicated ---

10 Q --- those ---

11 A --- Justin.

12 Q --- items?

13 A Yes.

14 Q Now, when you say Justin, you're referring to the
15 ---

16 A To ---

17 Q --- defendant?

18 A Right.

19 Q Okay.

20 A I turned the camera off; secure the drugs; search
21 the C.I. in this case and his vehicle and found nothing
22 of any contraband.

23 Q Okay. And the buy money that you gave him to take
24 with him for this transaction, was that still on him?

25 A No.

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 151

1 Q Now, when you took the drugs, what did you do with
2 them?

3 A I take them to our -- to the sheriff -- to the
4 narcotics office at the sheriff's office; placed them in
5 a BEST pack, which is our kit that -- that our chemist
6 gets. And then it -- from then on, whenever he can test
7 it, it's -- it's sent to evidence. And then evidence
8 gives it to the -- to the -- to Mitch, the ---

9 Q Okay.

10 A --- I can't think ---

11 Q When you ---

12 A --- of his ---

13 Q --- say Mitch, you're referring to Lt. Mitch ---

14 A Yeah.

15 Q --- Hansen ---

16 A I'm sorry.

17 Q --- the analyst?

18 A Yeah.

19 Q Okay. And so that -- all that's done there at the
20 facility, correct?

21 A Right.

22 Q Now, with regards to the video, did you get a chance
23 to look at the video yourself?

24 A Yes.

25 Q And did you see a part of the video at which the

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 152

1 suspect got into the informant's vehicle?

2 A Yes.

3 Q Now, were you able to -- to kind of pull a -- what
4 we refer to as a still photo from that video?

5 A I was.

6 MR. TUCKER: And may I approach, Your Honor?

7 THE COURT: Yes, sir.

8 Q Is -- what I'm showing you is State's Exhibit -- or
9 State's Evidence 2 and ask if you identify that.

10 A Yeah. That's Justin Lewis.

11 Q And where did this still come from?

12 A From the video buy on February 3rd, 2017.

13 Q Okay. And while I'm here, let me also ask you if
14 you will take a look at what's been marked State's
15 Evidence 3 and ask if you recognize that.

16 A Yes. That's the BEST pack that I filled out and
17 placed the drugs in.

18 Q Okay. And inside the items -- those are the heroin
19 bundles that ---

20 A Yeah. That ---

21 Q --- Mr. Daniels ---

22 A Yeah.

23 Q --- purchased ---

24 A It's a ---

25 Q --- from ---

DIRECT EXAMINATION BY MR. TUCKER - ROLLINS RHODES 153

1 A It's a glassine packet. Yes.

2 Q Okay. Now, with regards to the video, you said you
3 were able to pull that -- that still that I showed you?

4 A (No audible response.)

5 Q And were you able to compare it with any other item
6 that identified the suspect in the photo?

7 A Yeah. From a South Carolina driver's license photo.

8 Q Okay. And where -- who -- to whom was that South
9 Carolina photo registered to?

10 A Justin Jamal Lewis.

11 Q Okay. So you were able to positively identify him
12 from that photo and that still photo?

13 A Right.

14 Q And -- and, of course, again, Mr. Daniels knew Mr.
15 Lewis? And ---

16 A Right.

17 Q --- so there was no doubt that Mr. Lewis was the one
18 who sold the heroin to Mr. Daniels?

19 A Correct.

20 Q All right. Now, with regards to -- once the video
21 was placed into evidence and once the heroin was
22 submitted to Lt. Hansen, with regards to any other thing,
23 was there anything else that you did with regards to this
24 case as it relates to the defendant, Mr. Lewis, in this
25 matter?

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 154

1 A I don't think so.

2 Q Okay.

3 MR. TUCKER: Those are all the questions I believe I
4 have, Your Honor.

5 THE COURT: All right. Mr. Lewis?

6 THE DEFENDANT: Yes, sir.

7 CROSS-EXAMINATION

8 BY THE DEFENDANT:

9 Q Mr. Rhodes, you said I had become a target in your
10 investigation?

11 A Yes, sir.

12 Q Based off of what information?

13 A Information from informants throughout the community
14 of Johnsonville.

15 Q Multiple informants?

16 A Probably. Yeah.

17 Q No -- any documentation or any -- any kind of ---

18 A Unh-unh.

19 Q --- records ---

20 A Nope.

21 Q --- or anything behind that ---

22 A Nope.

23 Q --- or just -- that's just -- well, okay.

24 And as far as your C.I., how much did you actually
25 know about him before this all -- like, before he started

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 155

1 working with you?

2 A What do you mean?

3 Q How much did you know about your C.I. before you
4 started working with him?

5 A I knew he was a heroin addict.

6 Q Okay.

7 A Yeah.

8 Q Okay. That's all you knew?

9 A Basically, yeah.

10 Q Okay. So basically, you chose him because he was a
11 heroin addict and you figured you could get heroin
12 dealers by using him?

13 A No, not really. I -- I -- I used him because he was
14 a heroin addict and he knew heroin dealers. Yes.

15 Q Okay. And -- all right. And throughout the
16 process, is there any, like, drug testing that goes on or
17 any kind of thing to, like, basically monitor -- because
18 you did say you -- you meet these guys and they're heroin
19 addicts.

20 A Uh-huh.

21 Q We all know that a drug like that, you can't just
22 put down in one day. So, like ---

23 A I don't know that. No.

24 Q Well ---

25 A I've never used heroin, so I have no idea.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 156

1 Q Well, I mean, from what I have seen ---

2 A Right.

3 Q --- anybody who is on a heavy drug obviously can't
4 put them down in one day.

5 A Okay.

6 Q So basically, what I'm asking you is: Is there
7 anything that goes about, as far as drug testing or
8 monitoring these ---

9 A We -- we ---

10 Q --- C.I.s ---

11 A --- have that option available if we feel the need
12 to do so. Yes.

13 Q Okay. You have that option available?

14 A Right. We -- the informant signed a -- a agreement
15 for a drug test if needed.

16 Q Okay. So there is a possibility that you could drug
17 test them ---

18 A Yes, sir.

19 Q --- if you choose to?

20 A Right.

21 Q Was this particular C.I. under any, like,
22 monitoring, being drug tested or ---

23 A No.

24 Q He wasn't?

25 A (No audible response.)

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 157

1 Q Is there a reason for that?

2 A He gave me no reason to -- to need to.

3 Q He gave you no reason to need to drug test him?

4 A Right.

5 Q Okay. So he could've been under the influence of
6 heroin at any time that you've ever met with him and you
7 wouldn't know it?

8 A Are you asking my opinion?

9 Q Is it possible?

10 A Are you asking my opinion?

11 Q Is it possible?

12 A No, it's not possible.

13 Q It's not possible for him to have been under the
14 influence of any drugs, even though you haven't drug
15 tested him?

16 A No.

17 Q It's not possible?

18 A Not possible.

19 Q Based off of?

20 A My opinion.

21 Q Okay. So in your opinion, it's not possible that he
22 could've been under any influence of anything because ---

23 A No. My opinion is no.

24 Q Okay. Because you drug tested him or you didn't?

25 MR. TUCKER: Your Honor, it's been asked and

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 158

1 answered.

2 THE COURT: He did not drug test him. It was just
3 his opinion on -- based on his observations.

4 Q So basically, he could use drugs at any time and, if
5 you don't drug test him, you won't know it, correct?

6 MR. TUCKER: Again, Your Honor, I believe it's asked
7 and answered.

8 THE DEFENDANT: That's a ---

9 MR. TUCKER: He -- he ---

10 THE DEFENDANT: --- different ---

11 MR. TUCKER: --- said in ---

12 THE DEFENDANT: --- question.

13 MR. TUCKER: --- his opinion, no.

14 THE COURT: He -- he's told you that he did not drug
15 test him.

16 THE DEFENDANT: Right.

17 THE COURT: So his opinion is based on his
18 observations.

19 THE DEFENDANT: Okay.

20 THE COURT: But I don't really understand. You keep
21 asking him ---

22 THE DEFENDANT: I'm asking him -- I'm basically
23 trying to ask is it possible that because you hadn't drug
24 tested him, that he could've been on drugs and you didn't
25 know it? Anytime -- not -- I mean, even when he's not

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 159

1 around you, is there any possible way he could've been on
2 drugs and you wouldn't know?

3 MR. TUCKER: And, Your Honor, that calls for
4 speculation.

5 THE COURT: Well, here ---

6 MR. TUCKER: I mean ---

7 THE COURT: --- here ---

8 MR. TUCKER: --- he would only be able to observe
9 when ---

10 THE COURT: Well ---

11 MR. TUCKER: --- he's in his presence.

12 THE COURT: Here -- here's the thing. Mr. Lewis,
13 it's not relevant whether he was on drugs or not some
14 other time.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What might be relevant is on this day
17 that -- that the investigator was working with him. And
18 -- and so you can ask him about that.

19 THE DEFENDANT: Okay.

20 THE COURT: But I -- but I think you did. And I
21 think he told you, based on his observations, he didn't
22 feel that he was.

23 THE DEFENDANT: Okay. So go ---

24 THE COURT: But ---

25 THE DEFENDANT: --- to the next question?

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 160

1 THE COURT: --- but -- but whether he was on drugs
2 the night before or two days after really isn't relevant
3 to the issues in this case.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So ---

6 THE DEFENDANT: Okay. All right. I kind of lost my
7 spot.

8 Q So you did know that he had a -- a drug addiction,
9 though?

10 A Yes.

11 Q But you didn't -- you never drug tested him, because
12 you didn't think that he would do drugs again? Is that
13 why you didn't ---

14 A I never ---

15 Q --- drug test him?

16 A --- had any reason to drug test him.

17 Q But you knew he was a drug addict prior to this?

18 A Right.

19 Q Okay. And the instructions that you gave him, I
20 kind of heard briefly in the video what you were trying
21 to tell him to do. But I kind of want -- want you to
22 explain. What were his instructions?

23 A To get you on camera.

24 Q All right. To get me on camera?

25 A Uh-huh.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 161

1 Q So you just told him to get a video of me, period?

2 A No. To get you on camera, selling drugs, the rest
3 he went to you.

4 Q Okay. So your instructions were to get a video and
5 audio of me selling your confidential informant drugs?

6 A Right.

7 Q Okay. All right. And when he left, he said he
8 needed to get gas?

9 A Correct.

10 Q How much gas money did you give him?

11 A I think it was five dollars.

12 Q Five dollars in gas?

13 A I think so. Yeah.

14 Q Okay. And then, you gave him money to purchase
15 drugs?

16 A Correct.

17 Q How much money did you give him to purchase drugs?

18 A I think it was \$75.

19 Q Okay. Okay. So that's about \$80 altogether that he
20 had to do the stuff that he needed to do?

21 A It was 5 dollars to get gas and 75 to buy heroin
22 from you.

23 Q Okay. And you said -- because I heard you say
24 something about -- well, I don't know if it was you or
25 not. I'm not going to say it was you or if it was

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 162

1 anybody else, because I didn't see who it was. But I
2 heard in the video that you said -- not you -- but
3 someone said, "He's walking around Johnsonville."

4 So basically, there was a phone conversation before
5 that video got on between you -- supposedly between me
6 and your C.I.?

7 A Uh-huh. Yeah.

8 Q Set -- you're basically trying to set up the
9 transaction, right?

10 A Right.

11 Q But none of that was on video?

12 A No.

13 Q None of that got documented -- okay.

14 All right. And that phone -- all right. That --
15 that's what I wanted to ask you about, the -- the phone.
16 So you supplied your confidential informant with a phone
17 case?

18 A Yes.

19 Q Was this case with the actual phone?

20 A Uh-huh.

21 Q All right. And so you gave him -- basically gave
22 him a phone for work, and then he had his personal phone?

23 A Correct.

24 Q But you told the Court the reason why he didn't use
25 his phone for work is because maybe I wouldn't answer the

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 163

1 phone or something if he called me off that number?

2 A Off what number?

3 Q Off a random number. That -- is that why he didn't
4 use his -- his work phone for the transaction?

5 A No.

6 Q Why'd he -- why'd he use his personal phone?

7 A The -- the phone that he had was not a working
8 phone. It would power on, and that was it. Well, it
9 would do everything but make a phone call.

10 Q The -- the one that you supplied him with?

11 A Right.

12 Q Okay. Okay. And then, he used his personal cell
13 phone for the transactions?

14 A Correct.

15 Q And the -- well, he said that you took his phone,
16 but then he said I guess you gave it back to him. So
17 what did you do with the information that was in the
18 phone regarding all these cases that he's -- he's talking
19 about, all these guys that he's talking about he's
20 getting? Because, I mean, if you got so many guys -- one
21 person is going after so many guys, you got to keep up
22 with that stuff, phone numbers and all that stuff, text
23 messages. Where is that information? That's too -- a
24 lot of stuff could get mixed up.

25 A Well, I mean, I don't understand your question.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 164

1 What ---

2 Q All right.

3 A Where ---

4 Q I'll rephrase ---

5 A --- is all ---

6 Q --- the question.

7 A --- the information on every case we've -- we've ---

8 Q No, sir.

9 A --- used him on? Is that ---

10 Q No, sir.

11 A --- what you're asking?

12 Q No, sir. No, sir. Where is the information out of
13 the cell phone that he used on this particular day?

14 A I don't know that I got any information. And I may
15 have looked at his phone, but I don't know that I
16 recorded any information.

17 Q Okay.

18 A I don't ---

19 Q So ---

20 A --- have it in my notes where I -- I did on your
21 case. So that's of no concern.

22 Q So you don't have it in your notes -- any
23 information that came out of the cell phone that he used
24 for this case?

25 A Unh-unh.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 165

1 Q And that cell phone was not admitted into evidence,
2 not even the phone records, text messages, anything --
3 anything that could show that he was communicating with
4 individuals about drugs?

5 A No. Not on your particular case.

6 Q And you allowed him to keep this phone after all
7 these incidents? So he's -- basically has all the
8 evidence in his pocket.

9 A Well, I don't -- I don't -- I don't understand -- I
10 don't have any evidence from his phone for your case. I
11 may have evidence from his phone on different cases. But
12 what is that ---

13 Q Did he use his cell phone to contact me to ---

14 A Yes.

15 Q But you don't have any records of that?

16 A No.

17 Q And ---

18 A Other than ---

19 Q --- you don't ---

20 A --- him talking ---

21 Q --- have any ---

22 A --- to you on the phone during the video.

23 Q Talking to me on the phone during the video?

24 A Uh-huh.

25 Q You can hear me talk on the phone in the video?

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 166

1 A No. I mean, he said he called you. So he -- I have

2 ---

3 Q So basically ---

4 A --- no reason ---

5 Q --- you ---

6 A --- not to believe him.

7 Q Basically, you used his word?

8 A Right.

9 Q Okay. And you did say that you knew prior to this
10 that he was a drug addict and you never drug tested him?

11 A Right.

12 Q And he told you that he was speaking to me and you
13 went with it?

14 A Absolutely.

15 Q All right. So the guy that his name that he called
16 -- I wanted to get to that too while I got you up here.
17 The guy's name that he called at the beginning of the
18 video, were there plans on him going to meet with him as
19 well or what -- what was all that? Because when -- when
20 I hear my name called and then I hear another guy's name
21 called, it kind of makes me wonder, Well, what does he
22 have to do with me?

23 A Well, there's several things he has to do with you.
24 He sells heroin in the Johnsonville area. And you sell
25 heroin in the Johnsonville area.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 167

1 The other thing is he was just mentioning, "Hey, I
2 can do Dustin Bell too." Okay?

3 But that's not the way we work. If I'm going buy
4 drugs from you, then I'm buying drugs from you. I'm not
5 going buy drugs from you and Dustin Bell on the same
6 video.

7 Q But is that what you told him in the video? Or did
8 -- or I don't know who was speaking. But what was the
9 response to that statement when he said that ---

10 A "That'd be great," was my response.

11 Q Okay. But it wasn't planned on him going to the guy
12 ---

13 A No.

14 Q --- I don't know ---

15 A The plan was to go buy heroin from you.

16 Q That was that plan?

17 A And that's -- right -- and then ---

18 Q So ---

19 A --- come back.

20 Q So why did you think that he brought that guy's name
21 up after you've already informed him that the camera's
22 rolling? You stated for the camera that this
23 investigation was to get him to buy drugs from me. Why
24 do you think he would even bring that up ---

25 A I have no ---

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 168

1 Q --- in this type ---

2 A --- idea ---

3 Q --- of situation?

4 A --- why he would bring that up. Don't -- I don't

5 know what he's thinking. I have no idea. I mean, I

6 don't -- I don't ---

7 Q You didn't ---

8 A --- I don't ---

9 Q --- you haven't -- you didn't -- so you didn't prep
10 him before all these ---

11 A Prep ---

12 Q --- was he ---

13 A --- him?

14 Q Yes, sir.

15 A What do you mean?

16 Q Prepare him.

17 A For?

18 Q For doing this stuff.

19 A Sure. Sure.

20 Q Or you just brought him in ---

21 A I mean, he ---

22 Q --- off the street?

23 A --- just said -- he -- he made a -- a statement. He
24 can make a statement.

25 Q I'm listening.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 169

1 A Right?

2 Q He just said ---

3 A Right?

4 Q Yes, sir.

5 A Okay.

6 Q He just ---

7 A So I -- I'm -- he made a statement: "Hey, I also
8 can deal with Dustin Bell."

9 I said, "That would be great." And that was the end
10 of it.

11 Q Oh. But it wasn't the plan for him to deal with
12 Dustin Bell that day?

13 A I don't know how many times I got to tell you this.
14 The plan that day was to deal with you, Justin Lewis, and
15 only you, Justin Lewis.

16 Q Okay. Then, you said you gave him gas money to get
17 gas; he stopped and got gas. Was he given permission to
18 leave the camera -- the phone with the camera behind
19 while he goes and handles his business?

20 A To get gas is meaning handling his business?

21 Q I mean, you could say that. But ---

22 A I did say that.

23 Q So you told him to leave the phone -- leave the
24 camera in the car while you go get your gas?

25 A I didn't him that, per se. No. No, I didn't.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 170

1 Q Did you give him permission to leave the phone in
2 the car?

3 A I didn't tell him either way.

4 Q So ---

5 A His instruction was to get gas.

6 Q His instruction was to go get gas?

7 A Right.

8 Q But these events were supposed to be on audio and
9 video from the time he left to the time he got back,
10 right?

11 A Right.

12 Q So then, if he leaves from out of the camera, 30
13 seconds/a minute/two minutes, that leaves a window of
14 opportunity for him to do whatever he feels. So now he's
15 not on duty anymore, because he's not being monitored,
16 correct? Or is he still being monitored, but just not on
17 video? You -- were you there watching him while was
18 getting gas?

19 A No.

20 Q You just drove by?

21 A Correct.

22 Q All right. But you drove by and watched him pump
23 gas, or you drove by, watched him get back in the car?

24 A He was pumping gas when we drove by.

25 Q He was pumping gas?

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 171

1 So he had already been -- been to the gas station by
2 the time you had passed by?

3 A He was at the gas station when ---

4 Q Which gas station was that?

5 A 5 Points.

6 Q 5 Points gas station?

7 A (No audible response.)

8 Q All right. And what -- do you know anything about
9 that store, other than, like -- does any problems happen
10 out there or any issues, you know, like ---

11 A What do you mean?

12 Q Is that store a -- a good store to go to? Do you
13 ever have any problems with that store?

14 A I don't -- I don't -- I go there often.

15 Q You go there yourself often?

16 A Uh-huh.

17 Q And it's -- you have good -- you never have any
18 problems with that store?

19 A I've ---

20 Q No ---

21 A --- never ---

22 Q --- issues ---

23 A --- I have ---

24 Q no criminal ---

25 A --- never

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 172

1 Q --- activity?

2 A --- had a problem with that store.

3 Q You never had to go there for any incidents or
4 anything?

5 A Sure.

6 Q Involving?

7 A Several things. I've been to a wreck there. Been
8 to a robbery there.

9 Q Okay.

10 A I mean, I don't -- do you want the whole list of
11 things?

12 Q Yeah. Have you had -- ever had any -- have you ever
13 had any incidences where people have sell -- have been
14 selling drugs there?

15 A Selling drugs there?

16 Q Or ---

17 A I think so. Yes.

18 Q Oh, you have ---

19 A Uh-huh.

20 Q --- at that store?

21 A Right.

22 Q All right. So your -- but you feel confident that
23 your C.I., who left the camera and the audio in the car
24 at the store that you know is known for drug activity,
25 you feel confident that he just went, paid for gas, and

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 173

1 came back out?

2 A One hundred percent.

3 Q But you know, prior to this day, he was a drug and
4 you never drug tested him?

5 A Correct.

6 Q And you didn't tell him that he could leave the
7 camera, but he did ---

8 MR. TUCKER: Again, Your Honor, this has been ---

9 THE DEFENDANT: Right.

10 MR. TUCKER: --- asked and answered. He's asked
11 that question, at least by my count, three times. And
12 he's been answered at least ---

13 THE COURT: Okay.

14 MR. TUCKER: --- three times.

15 THE COURT: You have asked that question ---

16 THE DEFENDANT: Okay.

17 THE COURT: --- over and over. He's answered. That
18 answer is on the record. So ---

19 THE DEFENDANT: Okay.

20 THE COURT: --- it's been recorded.

21 Q So is it possible that he could've spoke to somebody
22 else, shake somebody else's hand at that gas station
23 before he came back to the car, or gave a girl a hug?
24 Anything -- from the time he got out that car to the time
25 he got back in, is it even possible that he could've did

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 174

1 that?

2 A I think it's possible that he shook a hand or gave a
3 girl a hug. But I don't think it's possible that he
4 bought heroin in that store.

5 Q So it is possible that he could've had some
6 interaction with others that's ---

7 MR. TUCKER: Again, Your Honor, asked and answered.

8 THE COURT: Sustained.

9 Q All right. As far as time frame is concerned, what
10 type of time limit -- do you give these guys a time limit
11 or, like, do you monitor the time -- tell them you have a
12 certain amount of time to go here and there, or do you
13 just let them go?

14 A No. We don't -- a lot of -- no. I won't say that
15 we give them a certain amount of time. I mean, if it --
16 if he's going -- depending on where they're going, if we
17 feel like it's taking a little longer, then we'll call
18 them ---

19 Q Okay.

20 A --- and say, "Hey, what's going on?" Or they'll
21 call us.

22 But no. We don't -- we don't -- our -- our cameras
23 have a certain amount of time they can record.

24 Q Okay. Okay. And Mr. Daniels -- so at this point he
25 had started getting paid to basically bring people to you

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 175

1 at this point, right?

2 A What do you mean, bring people to me?

3 Q Well -- all right. Well, I don't know how to word
4 it. But did he start being paid to purchase drugs from
5 drug dealers and getting -- and -- and -- and getting
6 them on camera?

7 A Yes.

8 Q Okay. So at that point in time, he did ---

9 A Right.

10 Q --- start getting paid?

11 Okay. And was Mr. Daniels employed at the time? Or
12 are you ---

13 A I do ---

14 Q --- not sure?

15 A --- not recall.

16 Q Okay. So you don't know whether he had a job or
17 not?

18 A I do not recall.

19 Q Okay. What -- this incident happened on what date?

20 A The 3rd of February.

21 Q Which is a ---

22 A 2017.

23 Q Which is a -- what day of the week or ---

24 A I -- I don't know. I have no idea what day of the
25 week it was. I'd have to go back and look.

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 176

1 THE DEFENDANT: Do you know what day of the week
2 that is, Your Honor?

3 THE COURT: I can go back and tell you. What date?
4 February ---

5 THE DEFENDANT: --- 3rd.

6 THE WITNESS: --- 3rd, 2017.

7 THE COURT: February 3rd of 2017. It's a Friday.

8 THE DEFENDANT: It's a Friday? Okay.

9 Q So you can't guarantee that he didn't have a job.
10 But it's safe to say, if he's out and about during the
11 middle of the day on a Friday, he doesn't have a job. So
12 I'm going just say he wasn't working.

13 So he was getting paid to buy drugs from drug
14 dealers?

15 MR. TUCKER: Again, Your Honor, asked and answered
16 for about ---

17 THE DEFENDANT: But that's not ---

18 MR. TUCKER: --- at least the ---

19 THE DEFENDANT: That was ---

20 MR. TUCKER: --- fourth time now.

21 THE DEFENDANT: --- a statement. My bad.

22 THE COURT: Exactly. And -- and you're not here to
23 make statements. You're here to ask questions.

24 THE DEFENDANT: That's my fault. All right.

25 Q So -- all right. You searched Mr. Daniels when he

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 177

1 came back. You gave him all his stuff back, and he left.

2 And that was -- is that the last time you got any

3 information about this particular incident from him?

4 Because once -- because -- is that the last time you got

5 any information from him, when -- after you left him go?

6 Did he ---

7 A Any information on you or ---

8 Q Yes, sir.

9 A --- in general?

10 Q On me.

11 A From him?

12 Q Yes, sir.

13 A I think so.

14 Q Yes, sir. Well, I mean, he's the only one involved

15 in this case. So -- and you let him take his phone,

16 though, right?

17 A Take it where?

18 Q Back with him, like ---

19 A Yes.

20 Q --- home?

21 Okay. So in the other phone, there's no records of

22 any phone calls or text messages ---

23 A That phone ---

24 Q --- between ---

25 A --- is not ---

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 178

1 Q --- me and ---

2 A --- capable ---

3 Q --- Mr. Daniels?

4 A --- of doing that.

5 Q Okay. So his phone was the only phone that was
6 capable of documenting phone calls and ---

7 A Right.

8 Q --- text messages and ---

9 A That's right.

10 Q You didn't see those as useful?

11 A No.

12 Q Okay. That's fair enough.

13 As far as the drugs, when you got the drugs, what
14 was -- what did you do with them ---

15 A Put them ---

16 Q --- when you ---

17 A --- in evidence.

18 Q --- when you got the drugs from Mr. Daniels?

19 A I put -- they were secured in my vehicle until we
20 searched his person and his vehicle. They were taken
21 back to the Florence County Sheriff's Office.

22 Q That same day?

23 A Yeah. I think so.

24 Q You think so or ---

25 A No. I'm going look and see and ---

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 179

1 Q Yeah. I need ---

2 A --- tell you.

3 Q --- you to tell me exactly when.

4 A Yeah, that same day.

5 Q Same day?

6 So at about -- is it -- is there any record of what
7 time you turned those -- that evidence in?

8 A No.

9 Q No record?

10 It just tells you that it's the same day, on the
11 3rd?

12 A Uh-huh. Yeah.

13 Q Okay. And when did you obtain the warrant for this
14 arrest, in relation to that time and to the ---

15 A What day did I get your arrest warrant?

16 Q Yes, sir.

17 A I don't remember.

18 Q You don't remember?

19 A You were part of a -- a 14-person case. And I've
20 got ---

21 Q No. There's ---

22 A --- them all ---

23 Q There's only one person ---

24 A --- together.

25 Q --- on this case ---

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 180

1 A Okay.

2 Q --- and that's me.

3 A Right.

4 Q There's no 14-person case.

5 A Okay.

6 Q And to your knowledge, were there any fingerprints
7 off of the plastic? Because they -- I -- I read -- I
8 read that there were bags inside of a ziplock bag. So to
9 -- were there any fingerprints taken off of the bags
10 inside the bag or the ziplock bag that the bags were in?

11 A Not to ---

12 Q Do you ---

13 A --- my knowledge.

14 Q To your knowledge? Okay. That was what I wanted to
15 know. Okay.

16 And Mr. Pate, that's your partner or is that your
17 assistant?

18 A My partner.

19 Q So what role does he play in this whole deal, like
20 what does he ---

21 A He does the same thing as I do, except ---

22 Q Well, he ---

23 A --- I happen to be the case agent on your case.

24 Q Okay. Well, did you give him the option or the
25 opportunity to write any type of reports, document

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 181

1 anything, incident report, or ---

2 A No.

3 Q --- was he just riding -- going with whatever you
4 say goes?

5 A That's right.

6 Q That's what all he was doing?

7 A Yeah. He ---

8 Q So he ---

9 A -- was there ---

10 Q --- was just ---

11 A --- he was ---

12 Q --- basically ---

13 A --- there as backup and as a witness.

14 Q Okay. Okay. Okay. But he never gave any
15 documentation or nothing. And you said that the
16 investigation started based off of the C.I.?

17 A Well, his information, as well as other information.
18 Yeah.

19 Q Is there any documented information that you can
20 show the Court that will let them know that that led to
21 this investigation ---

22 A No.

23 Q So basically, the only thing that you have that led
24 to this investigation was your C.I., who told you that I
25 was a drug dealer?

CROSS-EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 182

1 A Okay.

2 Q I'm asking a question, yes or no.

3 A Yeah.

4 Q Okay. And did you know your C.I.'s criminal history
5 or did you know that he had a -- been -- oh. You said
6 you pulled him over with his girlfriend.

7 A Uh-huh.

8 Q So you knew that he had a criminal history, and you
9 knew that he was a drug addict?

10 A (No audible response.)

11 Q You never -- but you never drug tested him?

12 A (No audible response.)

13 Q Okay. And you used only the information that he
14 gave you to start this investigation?

15 A Yes.

16 THE DEFENDANT: No further questions.

17 MR. TUCKER: Nothing on redirect, Your Honor.

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

19 You may ---

20 THE WITNESS: Thank you ---

21 THE COURT: --- step down.

22 THE WITNESS: --- Judge.

23 (Whereupon, the witness exited the witness stand.)

24 MR. TUCKER: And, Your Honor, if I may approach to
25 look at the -- I think that's ---

1 THE COURT: Yeah.

2 MR. TUCKER: --- in.

3 (Off the record briefly.)

4 MR. TUCKER: And, Your Honor, given that the drugs
5 and the video and the still photo are in evidence
6 already, at this point, the state would rest.

7 THE COURT: All right. Let me -- tell you what.
8 Let me -- if -- if -- let me get Mr. Lewis and Mr.
9 Jordan. How about y'all come up here real quick. Let me
10 ask y'all something.

11 (Off the record briefly.)

12 THE COURT: Okay. What we're ---

13 MR. TUCKER: And, Your Honor ---

14 THE COURT: --- going to ---

15 MR. TUCKER: --- I may have misspoke.

16 THE COURT: Oh, okay. I'm sorry. Go ahead.

17 MR. TUCKER: I was thinking that Mr. Hansen's report
18 was in the package of items that were admitted into
19 evidence. It's not. It's just the stuff.

20 So I'll have to put him up to get his report itself
21 into evidence, unless Mr. Lewis would stipulate to the
22 actual report showing that the substances were heroin,
23 which I can ask him if he'd be willing to stipulate.

24 THE COURT: Well, I tell you what. Why don't --
25 we're going to -- we're going to break for the evening

1 and ---

2 MR. TUCKER: Yes, sir.

3 THE COURT: --- start back in the morning. Y'all
4 can talk about that. If -- if they don't stipulate to it
5 and you need to put up an additional witness, you can do
6 that in the morning. If they stipulate to it, then we'll
7 just pick up with the defense's case at that point.

8 MR. TUCKER: Okay. Thank you, Your Honor.

9 THE COURT: Okay? So what we're going to do is
10 we're going to be at ease for the evening.

11 Mr. Lewis, whatever bond you've been on, it --
12 you're still on that.

13 THE DEFENDANT: Okay.

14 THE COURT: So you're still -- obviously, you need
15 to be back tomorrow. We're -- we'll start at 9:30.

16 If y'all get here a little -- I'll be here earlier.
17 So if you get here earlier and y'all need to speak to me
18 or anything like that, just let me know. But we'll start
19 the case back at 9:30.

20 MR. TUCKER: Yes, sir.

21 THE COURT: All right. Court will be in recess till
22 that time.

23 (Whereupon, the proceedings adjourned at 4:49 p.m.)
24
25

1 TRIAL DAY 2 - 09/05/18

2 (Whereupon, the proceedings resumed at 9:40 a.m.)

3 THE COURT: All right. When we left off yesterday,
4 y'all were going to discuss whether or not they were
5 going to -- the defense was going to consent to the -- a
6 report of some sort?

7 MR. TUCKER: That's correct, Your Honor. If you
8 recall, I had -- the state had rested, but I said I
9 needed to call one additional witness in the event that
10 -- to reopen it wouldn't -- it -- defense wouldn't
11 stipulate. We weren't able to stipulate.

12 And I believe he actually wants to call the witness
13 too. So what I'm doing is just asking to call one
14 additional witness before I rest.

15 THE COURT: All right. We'll allow that.

16 MR. TUCKER: Okay. At this time, Your Honor, the
17 state would call Mitch Hansen to the stand.

18 THE COURT: All right. Mr. Hansen, if you'll please
19 come around and be sworn.

20 (Whereupon, the witness came forward.)

21 MITCHELL HANSEN, having been first duly sworn,
22 testified as follows:

23 DEPUTY CLERK OF COURT: Thank you. You may be
24 seated in the witness box, and state your name for the
25 record.

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 186

1 THE WITNESS: Mitchell Hansen.

2 MR. TUCKER: May it ---

3 THE COURT: Yes.

4 MR. TUCKER: --- the Court?

5 DIRECT EXAMINATION

6 BY MR. TUCKER:

7 Q Mr. Hansen, where are you employed?

8 A Florence County Sheriff's Office.

9 Q And how long have you been there?

10 A A little over seven years.

11 Q And what's your official title there?

12 A I'm a lieutenant/chemist -- drug chemist.

13 Q Okay. And prior to working at the Florence County
14 Sheriff's Office, did you do that job or one similar in
15 any other law enforcement agency?

16 A Yes. I worked at Sumter County Sheriff's Office,
17 running their drug -- drug lab. I was trained at SLED
18 under drug analysis. I have a associate's in science,
19 associate's in arts, a bachelor's in chemistry, and basic
20 law enforcement training.

21 Q Okay. Now, what are some of your duties there at
22 the sheriff's office as a chemist?

23 A We manage the drug lab. We -- we test all unknown
24 substances, chemical analysis on any unknown substances.
25 We write reports. We weigh them. We inventory, the

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 187

1 whole nine yards ---

2 Q Okay.

3 A --- records.

4 Q You mentioned some of your training. Do you have to
5 have any specific training to be a chemical analyst there
6 in the position you currently hold?

7 A Yes. You have to have a -- a drug-analysis training
8 from SLED.

9 Q And do you have that?

10 A Yes, I do.

11 Q Okay. Now, have you had an occasion to chemically
12 analyze substances to determine whether or not the
13 substance is a narcotic before?

14 A Yes.

15 Q Okay. Do you recall how many times? I know it's
16 got to be a lot. But do you have a ballpark figure?

17 A Let's see. I probably have worked, ballparking,
18 over 15,000 cases.

19 Q All right. And on average, can you reduce that down
20 to how many you would probably do in a typical week out
21 there in terms of chemical analysis?

22 A Averaging on -- on a week -- on -- on items or
23 cases?

24 Q Items.

25 A Of items it's going to be a lot higher. It's kind

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 188

1 of hard to say. It depends on how many items are in a
2 case. Some weeks we can do 150 items; some weeks may be
3 50.

4 Q Okay. Sounds like a lot in either case.

5 A Right.

6 Q Okay. Now, have you ever been qualified as an
7 expert in the field of chemical analysis in any court
8 here in South Carolina?

9 A Yes, I have.

10 Q Do you recall about how many times you were
11 qualified as an expert in the field of chemical analysis?

12 A Fifty.

13 MR. TUCKER: Your Honor, at this time the state
14 would move to admit Lt. Hansen as an expert in the field
15 of chemical analysis for the purpose of identifying
16 illegal substances.

17 THE COURT: Any objection to Lt. Hansen's
18 qualification as an expert in chemical analysis?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Without objection.

21 MR. TUCKER: Thank you.

22 Q Lt. Hansen, could you explain, typically, how, once
23 an item is -- is seized by the arresting officer and
24 logged into evidence, how it comes around to you there at
25 the sheriff's office and what the steps are?

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 189

1 A Once the officers seize any evidence, it's placed in
2 what we call a BEST Kit, which is a -- it's got a -- a
3 request forms, chain of custodies, and a -- and a
4 evidence bag, which -- that is tamper-evident. The
5 officer fills that out and submits the proper paperwork,
6 along with the drugs, into evidence.

7 Q And then, it's taken from evidence around to your
8 lab?

9 A Yes. I would -- yeah. Yeah. I pick it up from
10 evidence. Sometimes, though, she brings it to me.
11 Sometimes I'd go get it. And we'll transfer it over ---

12 Q Okay.

13 A --- with the chain.

14 Q And that's all done on the secure side of the
15 sheriff's office house?

16 A Yes.

17 Q Okay. Now, when -- in terms of when you get a
18 substance around for chemical analysis, I -- my question
19 is: How do you keep it from getting tangled up in all
20 the other stuff that you got going on in there? Do you
21 do any sort of marking to it or -- how do you handle it
22 once it gets back to you?

23 A Once it gets to me, it gets logged in. It gets
24 assigned a -- a lab number. We have a secure safe that
25 meets DHEC and DEA regulations. I'm the only one that

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 190

1 has access to it. Nothing gets combined with other
2 cases. We only open one case at a time. And it's
3 secured, and I'm the only one with -- with access to
4 this.

5 Q Okay.

6 MR. TUCKER: Your Honor, may I approach the witness?

7 THE COURT: Yes, sir.

8 Q Lt. Hansen, I want to show you what's been marked
9 and been admitted as evidence in State's Exhibit 3 and
10 ask if you can identify that for the Court.

11 A Yes. This is the BEST Kit that was turned in.

12 Q Okay. Is there a corresponding number on there so
13 ---

14 A Yes.

15 Q --- you can ---

16 A There's a ---

17 Q --- identify ---

18 A --- lab number.

19 Q --- it?

20 A It's -- the lab number is F17-0110.

21 Q Now, are you able to correlate that lab number back
22 with a sheriff's office incident-report number?

23 A Yes, I -- yes, I am.

24 Q Okay. And did that incident report or that -- what
25 you're holding there, was that from the Justin Jamal

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 191

1 Lewis case?

2 A Yes, it is.

3 Q Okay. And you can just kind of leave that in front
4 of you there for a moment.

5 When you retrieved that from evidence, what, if
6 anything, did you do with it once it came around to your
7 lab?

8 A Once it comes around to the lab, well, we actually
9 check to see if the seal is intact. And ---

10 Q Was it ---

11 A --- was it ---

12 Q --- intact in this case?

13 A Yes, it is. It's wrote on the bag. It's sealed
14 intact and the date and my initials. From there, I -- I
15 would cut open the bottom of the bag and take the -- take
16 whatever in it's out for analysis. First, we'll weigh
17 it. We'll do a chemical test to kind of determine the
18 direction we need to go with it and an instrumental test,
19 which we run on a GC-mass-spec.

20 Q Okay. And once you do all of that, that tells you
21 what the -- the substance actually is?

22 A Yes. We'll compare it to a known standard. And
23 once I review the data, I make the determination that it
24 -- whether it is or it isn't.

25 Q Okay. And when you do this, do you repair -- or --

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 192

1 or prepare a report to go along with the testing that you
2 do?

3 A Yes, I do.

4 Q Did you prepare such a report in this case?

5 A Yes, I did.

6 Q Do you have it with you?

7 A Yes. I have one.

8 Q Okay.

9 MR. TUCKER: And, Your Honor, if I may approach?

10 THE COURT: Yes, sir.

11 Q And this is the same report that you made a copy of
12 and gave to the prosecution?

13 A Yes.

14 MR. TUCKER: Your Honor, at this time the state
15 would move Lt. Hansen's report on the chemical analysis
16 of the substance he's identified as coming from Jamal --
17 or Justin Jamal Lewis into evidence as State's Evidence
18 4.

19 THE COURT: All right. Any objection to that
20 report?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Without objection, that
23 report is in evidence.

24 (Whereupon, State's Exhibit 4 was marked and entered
25 into evidence.)

DIRECT EXAMINATION BY MR. TUCKER - MITCHELL HANSEN 193

1 Q And, Lt. Hansen, when you ran your report or when
2 you ran your analysis on the substances that you
3 identified as taken from Justin Jamal Lewis, what, if
4 anything, did your test reveal in terms of what the
5 substance was?

6 A My test revealed that it was positive for heroin.

7 Q Okay.

8 A The description of it was a ziplock bag containing a
9 ziplock bag containing six blue, wax, paper bags
10 containing powder substance. And the results were heroin
11 found with a combined weight of 0.09 grams, 1.38 grains,
12 Schedule I.

13 Q Okay. Now, with regards to the heroin, is -- is
14 heroin a -- an addictive substance?

15 A Yes, it is.

16 Q And again, you mentioned it's a Schedule I
17 substance. Could you tell us what that means?

18 A A Schedule I drug has no medical use and is highly
19 addictive.

20 Q Okay. Now, with regards to your analysis, is it --
21 it your expert opinion that the substances that you
22 analyzed as the -- identified those as taken from Justin
23 Jamal Lewis as heroin?

24 A Yes.

25 Q Okay. Now, let me ask you this, Lt. Hansen: Do you

CROSS-EXAMINATION BY THE DEFENDANT - MITCHELL HANSEN 194

1 ever perform any sort of fingerprint analysis on the
2 items submitted to you for chemical analysis?

3 A No. We -- we're strictly -- my lab is strictly
4 chemical analysis.

5 Q Okay. And I assume that if I asked you the same
6 question about DNA, it would be the same response?

7 A Yes.

8 Q Okay. That's beyond your scope, in terms of
9 expertise?

10 A Yes.

11 Q Okay.

12 MR. TUCKER: I believe those are all the questions I
13 have, Your Honor.

14 THE COURT: All right. Mr. Lewis, any questions for
15 this witness?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir.

18 CROSS-EXAMINATION

19 BY THE DEFENDANT:

20 Q Okay. So you said you're trained in drug analysis,
21 correct?

22 A Correct.

23 Q So what does this knowledge consist of? Like, what
24 type of knowledge do you have on the drugs that you
25 analyze?

CROSS-EXAMINATION BY THE DEFENDANT - MITCHELL HANSEN 195

1 A What kind of knowledge do I have?

2 Q Yes, sir.

3 A I was trained at SLED.

4 Q On all the drugs?

5 A On all the drugs and ---

6 Q Okay.

7 A --- drug laws.

8 Q So you have -- so it -- it's safe to say that you
9 have pretty good knowledge on all the drugs that you
10 analyze?

11 A Yes, I do.

12 Q Okay. All right. Is it true that when heroin
13 enters the brain at a rapid pace, it could affect
14 feelings, behavior, bodily functions, things of ---

15 A I -- I ---

16 Q --- that nature?

17 A --- that's beyond my scope of expertise. That, you
18 would have to ask a doctor.

19 Q Okay. Okay. All right. Well, is it true that
20 these drugs can cause mental instability or mental
21 disorders?

22 A Once again, that's a -- a question you would have to
23 ask a doctor.

24 Q Okay. But you did say these drugs are highly
25 addictive?

CROSS-EXAMINATION BY THE DEFENDANT - MITCHELL HANSEN 196

1 A Yes. They're -- they're Schedule I drugs.

2 Q Okay. So does that mean that one who uses those
3 regularly will develop a tolerance that will cause them
4 to need more?

5 A By definition, yes.

6 Q Okay. Okay. And you said you don't know too much
7 about the -- the doctor side of it, so I won't go into --
8 more into that. But you -- in your opinion -- I'll ask
9 you that. In your opinion, is it safe to say that
10 someone on these type of drugs, which you said were not
11 used for medical treatment and are highly addictive,
12 their decision-making isn't -- in your opinion, do you
13 think that decision-making can be affected by a drug of
14 this stature, in your opinion?

15 A I think that would still be a -- a question for a
16 doctor. I'm ---

17 Q Okay.

18 A --- I'm not on the mental state of ---

19 Q Okay.

20 A --- of how a drug reacts ---

21 Q So you're ---

22 A --- in the brain.

23 Q --- basically saying that anyone on this type of
24 drug would definitely need professional treatment to --
25 for ---

CROSS-EXAMINATION BY THE DEFENDANT - MITCHELL HANSEN 197

1 MR. TUCKER: Your Honor, I would ---

2 A No.

3 MR. TUCKER: --- object to characterization. I
4 don't believe that's what he testified ---

5 THE COURT: Yeah.

6 MR. TUCKER: --- to ---

7 THE COURT: I -- I ---

8 MR. TUCKER: --- at all.

9 THE COURT: --- think that the lieutenant has been
10 qualified as a witness in chemical analysis, not -- not
11 on the medical side.

12 THE DEFENDANT: Okay.

13 Q You don't do DNA testing on any of that. So does
14 that process happen before you get these items or after?

15 A That ---

16 Q Or you ---

17 A --- process would happen after, if -- if -- if it's
18 requested.

19 Q If it's requested. And you wouldn't know whether
20 that was actually requested or not, would you?

21 A I would not.

22 Q Okay. Pretty good. And you did analyze the drugs
23 that were in my case, but you wouldn't know whether they
24 were DNA-tested or not, period?

25 A No, I would not.

CROSS-EXAMINATION BY THE DEFENDANT - MITCHELL HANSEN 198

1 Q Thank you. No more questions for you.

2 MR. TUCKER: Nothing on redirect, Your Honor.

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

4 You may step down.

5 MR. TUCKER: And, Your Honor, I would ask if Lt.

6 Hansen could released from his subpoena here today.

7 THE COURT: Any objection to Lt. Hansen being
8 excused?

9 THE DEFENDANT: (No audible response.)

10 THE COURT: Thank you very much, sir. You're free
11 to go.

12 (Whereupon, the witness exited the witness stand.)

13 THE COURT: Anything further from the state?

14 MR. TUCKER: Nothing further, Your Honor. And at

15 ---

16 THE COURT: The state ---

17 MR. TUCKER: --- this ---

18 THE COURT: --- rest?

19 MR. TUCKER: --- point, the state would rest.

20 THE COURT: Okay. Now, did y'all have an
21 opportunity, Mr. Lewis, to -- to talk with Mr. Jordan and
22 discuss -- at the close of the state's case, I take up
23 any motions that there may be ---

24 THE DEFENDANT: Yes, sir.

25 THE COURT: --- from the defense. And -- and so at

1 this time, the state has rested. And so I'll take up any
2 motions that the defense may have.

3 THE DEFENDANT: Yes, sir. At this time I would like
4 to motion for a directed verdict because the state has
5 not met the burden of proof or satisfied the necessary
6 elements so far.

7 THE COURT: I'm -- I'm going to respectfully deny
8 the motion. I think they've -- there's evidence in the
9 record, depending on how it's viewed by the fact finder.
10 And so I think it's a question for the fact finder. I
11 don't -- I don't -- I don't think it's a legal issue. So
12 I -- I'm going to respectfully deny the motion.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, is the defense ready, then, to
15 proceed?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. You may call your first
18 witness.

19 THE DEFENDANT: I would like to call Investigator
20 Rhodes ---

21 THE COURT: All right.

22 THE DEFENDANT: --- to the stand.

23 THE COURT: Investigator Rhodes, if you'd ---

24 THE COURT: Your Honor, I would simply ask if -- if
25 -- and I know that he has latitude; he has the right to

1 present a case. But my fears is that he's going to
2 subject Agent Rhodes to the same line of questioning that
3 he did yesterday. And while my objection may be a little
4 bit premature, I ---

5 THE COURT: Well ---

6 MR. TUCKER: --- just have a concern along those
7 lines.

8 THE COURT: --- I'm -- I mean, we're not going back
9 over ---

10 THE DEFENDANT: The same questions, but ---

11 THE COURT: --- the same ---

12 THE DEFENDANT: --- he was a ---

13 THE COURT: --- stuff we ---

14 THE DEFENDANT: --- prosecution ---

15 THE COURT: --- did yesterday.

16 THE DEFENDANT: --- witness yesterday. Now he's a
17 defense witness.

18 THE COURT: I understand that. But I -- I'm going
19 to -- it -- Investigator Rhodes, please take the stand.

20 (Whereupon, the witness came forward.)

21 THE COURT: Mr. Tucker, I'll just have to entertain
22 your objections as they -- they come up.

23 And, Investigator Rhodes, you are still under oath
24 from ---

25 THE WITNESS: Okay.

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 201

1 THE COURT: --- from your testimony yesterday ---

2 THE WITNESS: Yes, sir.

3 THE COURT: --- please.

4 Okay? All right, sir.

5 ROLLINS RHODES, having been previously duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY THE DEFENDANT:

9 Q All right. Mr. Rhodes, I'm going fast-forward. I'm
10 not going to ask you none of the same questions. I'm
11 going fast-forward to a spot in the video when -- after
12 your C.I. supposedly was supposed to come buy drugs from
13 me. Do you know who he spoke with on the phone on the
14 way back to you, after he got off the phone with you to
15 let you know he was on the way back?

16 A He said his girlfriend.

17 Q He said his girlfriend?

18 A Right.

19 Q And you check his -- but you checked his phone ---

20 A I did not.

21 Q You did not check his phone?

22 A (No audible response.)

23 Q Okay. And was this phone conversation or even the
24 stop for gas documented in any incident report, as far as
25 what went on that day?

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 202

1 A That's -- the -- the only documentation is on the
2 video.

3 Q On the video? Okay.

4 A (No audible response.)

5 Q Okay. And I listened and I noticed that at the
6 beginning, when he said that he needed gas, someone
7 mentioned Food Chief had gas. So what -- where in that
8 time frame, from the time he left to the time he got gas,
9 did you or him decide to not go to Food Chief but to go
10 to 5 Points instead?

11 A I don't remember.

12 Q You don't remember? So ---

13 A No.

14 Q --- it was basically his choice where he chose to
15 go, even though you recommended ---

16 A I ---

17 Q --- Food Chief?

18 A --- I don't -- I don't remember recommending Food
19 Chief. I -- I just ---

20 Q Well, it's in video -- it's ---

21 A Okay.

22 Q --- in video. Okay.

23 All right. So you don't remember recommending Food
24 Chief, so maybe that wasn't you.

25 A (No audible response.)

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 203

1 Q And you also say that you knew the C.I. was a drug
2 addict and he was a paid confidential informant, which
3 means you gave him money to buy drugs from drug dealers,
4 correct?

5 A I'm -- I'm confused on your question.

6 Q All right. I'll say it again. You knew your C.I.
7 was an active drug addict, correct?

8 A Actively? I -- I don't know about actively. I knew
9 he had used heroin in the past.

10 Q Did you ---

11 A Yeah.

12 Q --- offer drug rehab to your C.I. prior to any
13 investigations?

14 A No, sir.

15 Q Not even offered?

16 A No, I didn't offer. No.

17 Q Okay. And you did have knowledge -- you said to the
18 Court you had knowledge that he was a drug addict?

19 A (No audible response.)

20 Q And he was a paid ---

21 MR. TUCKER: Your Honor, I object to the
22 characterization. Again, I believe his testimony was he
23 was not aware that he was active addict. He was aware
24 that the C.I. had used drugs in the past.

25 THE DEFENDANT: That's what I said.

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 204

1 THE COURT: All right. I'm going to sustain the
2 objection.

3 THE DEFENDANT: All right.

4 Q And he was a paid C.I.? You said yesterday,
5 correct, that you gave him \$80: \$5 dollars for gas and
6 \$75 for drugs?

7 A I think that's correct. I'm not sure exactly how
8 much his payment was.

9 Q Okay. Okay. And do you recall your C.I. being
10 employed at the time or having any line of working going
11 on while this investigation ---

12 A I -- like I answered yesterday, no, I'm not.

13 Q Okay. All right. And after the investigation, was
14 any rehab offered to this guy after all these events?

15 A I've never offered rehab to the informant.

16 Q Okay. And did you mention about how much he was
17 paid each time he, I guess, got drugs from a dealer?

18 A It just -- it all depends. From 35 to 80 dollars a
19 buy.

20 Q And what is it based off of, the amount?

21 A Well, that -- that could be a factor in it. Yeah.

22 Q But do you ---

23 A Just depends on the case.

24 Q So just whatever you decide to give him at the
25 moment?

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 205

1 A Could be. Yeah.

2 Q Okay. And he didn't have any job that you know of,
3 so that was his only form of income, correct?

4 A I have no idea.

5 MR. TUCKER: Again, Your Honor, he's asking for
6 facts or a response outside this witnesses's knowledge.

7 THE COURT: Well ---

8 MR. TUCKER: He's asking ---

9 THE COURT: --- he can ask ---

10 MR. TUCKER: --- whether or not ---

11 THE COURT: --- the question. And the witness can
12 answer, "I don't know that."

13 MR. TUCKER: Yes, sir.

14 THE COURT: So . . .

15 Q So you said you don't know?

16 A (No audible response.)

17 Q Okay. Getting back to the video, we talked about it
18 yesterday. A name that was mentioned at the beginning,
19 after the opening statement given, saying this
20 investigation is to buy drugs from me, Justin Lewis,
21 another name was mentioned. Yesterday you said that you
22 didn't go after that person in the same time frame that
23 you went after me, correct?

24 A Yes.

25 Q Okay. Was this person eventually arrested ---

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 206

1 MR. TUCKER: And I ---

2 Q --- that you ---

3 MR. TUCKER: --- would object ---

4 Q --- call his name?

5 MR. TUCKER: --- to relevance of the question, Your

6 Honor ---

7 THE COURT: Sustained. That ---

8 MR. TUCKER: --- what he ---

9 THE COURT: --- has no relevance ---

10 THE DEFENDANT: No relevance?

11 THE COURT: --- to this case.

12 THE DEFENDANT: All right.

13 Q Do you know -- do you know for a fact that this
14 person was not contacted throughout this time frame, from
15 the time he left to the time that he come back?

16 MR. TUCKER: Again, Your Honor, same objection.
17 He's asking again whether or not the other subject was
18 contacted.

19 THE COURT: He ---

20 MR. TUCKER: Again, it's ---

21 THE COURT: --- he's asking ---

22 MR. TUCKER: --- relevance.

23 THE COURT: --- about during this time frame we saw
24 on the video. I think that's relevant.

25 A I do not.

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 207

1 Q You don't?

2 A (No audible response.)

3 Q And you don't know the relevance of why your C.I.
4 brought the person's name up from the beginning, correct?

5 THE COURT: Mr. Lewis, you went all over this
6 yesterday.

7 Q So you didn't -- you don't know whether he met with
8 this guy or not?

9 A (No audible response.)

10 Q All right. Let's talk about the incident report
11 that you -- that you gave. So besides the video that we
12 have, what facts did you use in preparing this incident
13 report?

14 A What facts did I use ---

15 Q Yes, sir.

16 A --- to prepare my incident report?

17 Q Yes, sir.

18 A I gave the confidential informant money to go
19 purchase heroin from you. Informant did that on video
20 and brought back the heroin to me.

21 Q You ---

22 A And I placed it into evidence.

23 Q Okay. Let me reword the question. What was your --
24 what was the source of the information that you used to
25 fill out this incident report, besides the video that

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 208

1 we've seen? Because the incident report describes the
2 allegations, but not the video. So what source did you
3 use to get this information to file this incident report?

4 A I sent the informant to buy heroin from you. He did
5 so; brought back heroin to me. And we had a video.

6 Q Okay. So you're basically saying the informant was
7 the source of the information?

8 A Yeah.

9 Q Okay. And I know yesterday you said that he didn't
10 have to take any drug test before becoming a confidential
11 informant. I remember you said that. But was he drug-
12 tested after these events?

13 A No.

14 Q Of receiving drugs?

15 A (No audible response.)

16 Q So what you're telling the Court is you allow the
17 C.I. to go buy drugs and don't test them for those drugs,
18 but you knew that prior to this, he had been on heroin
19 before?

20 A Correct.

21 Q Okay. So is it possible -- I'm not asking about in
22 your opinion. I'm talking about is it humanly possible
23 that your confidential informant could have been under
24 the influence of any drugs at this time because he was
25 not drug-tested? Is it humanly possible, not your

DIRECT EXAMINATION BY THE DEFENDANT - ROLLINS RHODES 209

1 opinion?

2 A I don't know.

3 Q Okay. Okay. And one more question: Is it humanly
4 possible, based off the video, from the time that he left
5 the camera to the time that he came back after he chose
6 to go to a known drug location, regardless of the fact
7 that he was referred to a gas station on a different side
8 of town, is it humanly possible that he could have met up
9 with somebody quickly -- humanly possible, not your
10 opinion?

11 A Well, that would be my opinion. And it's -- the
12 answer is no.

13 Q Well, I'm asking not in your opinion. Is it humanly
14 possible?

15 A No.

16 Q It's not humanly possible?

17 A (No audible response.)

18 Q Okay. No further questions.

19 MR. TUCKER: Nothing on cross-examination, Your
20 Honor.

21 THE COURT: All right. Thank you very much, sir.
22 You may step down.

23 THE WITNESS: Thank you, Judge.

24 (Whereupon, the witness exited the witness stand.)

25 THE COURT: You may call your next witness, sir.

1 THE DEFENDANT: He's not here.

2 THE COURT: Where is he?

3 THE DEFENDANT: Pate -- I wanted to call Pate and
4 Davis -- Daniels, I mean.

5 THE COURT: He wanted to call Daniels, I know, for
6 sure.

7 THE DEFENDANT: Yeah.

8 MR. TUCKER: Yeah. Your Honor, and he is on his
9 way. He had a flat tire and should be here momentarily.
10 He made no mention or -- of his desire to recall Pate,
11 who is on vacation ---

12 THE DEFENDANT: He never ---

13 MR. TUCKER: --- at Santee.

14 THE DEFENDANT: --- was released by the Court,
15 though. He was admitted as a witness and never was
16 released.

17 THE COURT: You never told me you wanted and -- you
18 wanted to put Pate on the stand. That's why I didn't
19 order him to be back.

20 THE DEFENDANT: I didn't know that I had -- I didn't
21 know. I thought, if he's already on here, that I could
22 call him as my witness too. And I could call him ---

23 THE COURT: Yesterday ---

24 THE DEFENDANT: --- back up ---

25 THE COURT: --- they -- what was his name, Daniels?

1 MR. TUCKER: Yeah. David Daniels was the C.I. ---

2 THE COURT: David Daniels ---

3 MR. TUCKER: --- and just ---

4 THE COURT: --- was on the list.

5 THE DEFENDANT: See, I wasn't ---

6 THE COURT: And you ---

7 THE DEFENDANT: --- asked about ---

8 THE COURT: --- and you specific ---

9 THE DEFENDANT: --- Pate.

10 THE COURT: --- you specifically asked ---

11 THE DEFENDANT: --- to keep him.

12 THE COURT: --- to keep him. And so ---

13 THE DEFENDANT: But see ---

14 THE COURT: --- I told him yes ---

15 THE DEFENDANT: Yes, sir.

16 THE COURT: --- he had to stay.

17 THE DEFENDANT: But I wasn't asked about Pate,
18 because I would've said keep him too. I thought ---

19 THE COURT: Well, you ---

20 THE DEFENDANT: --- I was ---

21 THE COURT: --- you didn't let me know about Pate,
22 which is why I didn't order him -- for him to be back
23 here today.

24 THE DEFENDANT: Well, I thought, because he
25 conducted the investigation, that he would be here. I

1 just assumed. I didn't know I had to ---

2 THE COURT: Well ---

3 THE DEFENDANT: --- call him back. Because I
4 would've definitely told him to keep him.

5 (Whereupon, Mr. Jordan and the defendant conferred.)

6 THE DEFENDANT: I would've definitely asked to keep
7 him, because I needed ---

8 THE COURT: Well, you didn't -- you didn't ask, and
9 I didn't order him to stay. And he's not here. I -- I
10 don't know what ---

11 THE DEFENDANT: So -- but the -- the same way Mr.
12 Daniels was released, he doesn't have to be released the
13 same way?

14 THE COURT: I told Mr. Daniels he had to be back.

15 THE DEFENDANT: Because I wasn't asked whether the
16 -- whether I wanted to ---

17 THE COURT: Mr. Lewis, I -- you asked Mr. Daniels to
18 be back. I told Mr. Daniels he had to be back.

19 THE DEFENDANT: I wanted Mr. Pate back too. I
20 didn't know.

21 THE COURT: You never asked the Court to ask -- to
22 require Mr. Pate to be back. I -- I can't read your
23 mind, sir. And I -- I don't know where -- is -- is he
24 available? I don't know where he is.

25 MR. TUCKER: No. He is at the -- he is on vacation,

1 actually, Your Honor. He's actually at Santee, I
2 believe, is where he's at today on vacation.

3 THE DEFENDANT: Your Honor, I was asked about Mr.
4 Daniels. So that's why I said no. I -- I didn't --
5 because I didn't know the procedure yet. So when you
6 asked me about Mr. Daniels, I said yes, sir, to keep him.

7 So when you didn't ask me about the other two guys,
8 I just assumed that they both would just be here. I
9 didn't know that they would be able to leave.

10 THE COURT: He -- he's not available. And I didn't
11 order him to be back.

12 THE DEFENDANT: I ---

13 THE COURT: I would have if you'd have asked me to
14 have ---

15 THE DEFENDANT: Because ---

16 THE COURT: --- him back.

17 THE DEFENDANT: --- because I feel like he's a key
18 witness. If he was the witness in ---

19 THE COURT: He was on the stand yesterday, and you
20 had every opportunity to question him on the stand
21 yesterday.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So we'll -- we'll be in recess and ---

24 MR. TUCKER: Your Honor, I was told Mr. Daniels is
25 about 10 to 15 minutes away. So if we ---

1 THE COURT: All right. Well, we'll -- we'll be at
2 ease. Do you have any other witnesses, other than Mr.
3 Daniels, at this point?

4 THE DEFENDANT: (Shook head from side to side.)

5 THE COURT: All right. So we're going to be at ease
6 until Mr. Daniels can get ---

7 MR. TUCKER: Okay. Thank you, Your Honor.

8 THE COURT: --- can get here.

9 (Off the record from 10:16 a.m. until 10:47 a.m.)

10 THE COURT: Just before we get started back, to
11 address some of the concerns Mr. Lewis raised earlier:
12 When I was going back in my mind -- well, first of all,
13 let me back up a little bit.

14 Mr. Lewis, you recall, when we started, I told you
15 that you're going to be held to the same standard as any
16 attorney.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And I haven't actually done that. I've
19 given you some leeway. Typically, if Mr. Jordan or
20 another attorney was representing you in this matter, you
21 wouldn't be -- you wouldn't be recalling the state's
22 witnesses in your case.

23 You would've had the opportunity to question them
24 when you had them on the stand. And probably, from a
25 strategic standpoint, you wouldn't want to call witnesses

1 that had already been on the stand.

2 But, you know, I let you do it. The -- the thing
3 about the excusing some and not others, if -- if I recall
4 yesterday, when Officer Pate was on the stand, he -- he
5 was the first witness.

6 MR. TUCKER: That's correct, Your Honor.

7 THE COURT: Yeah. And he testified. And when he
8 finished testifying, nobody asked me if he could be
9 excused because he didn't leave. He stayed for the whole
10 trial. And then, I think, Mr. Daniels might've been
11 next.

12 MR. TUCKER: That's correct, Your Honor.

13 THE COURT: And they -- he was going to leave. And
14 so Mr. Tucker asked the Court if -- if he could be
15 excused. I asked if you had any objections, and you did.
16 So I had him come back.

17 And then, I don't think any of the other witnesses,
18 other Mr. Hansen earlier -- he -- well, he didn't testify
19 yesterday. Then, the other -- Investigator Rhodes, I
20 think, was next. He didn't leave either.

21 So the reason you weren't asked about the other two
22 witnesses is they weren't leaving. So there was no
23 request that they be released.

24 And -- and so therefore, when we started back today,
25 Officer Pate isn't here. He -- he wasn't required to be

1 here.

2 THE DEFENDANT: (Gestures.)

3 THE COURT: Yes, sir.

4 THE DEFENDANT: May I make one statement?

5 THE COURT: Yeah.

6 THE DEFENDANT: Okay. I just felt like at this
7 point, not being able to call those -- that witness is
8 damaging to my case. Because yesterday I was basically
9 cross-examining him based off of the state's foundation.
10 And I wanted to build a defense foundation with those
11 witnesses, as ---

12 THE COURT: Well, you ---

13 THE DEFENDANT: --- opposed to ---

14 THE COURT: --- you -- you just called Investigator
15 Rhodes back to the stand.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And -- and if I'm not mistaken, you
18 didn't ask him one thing different than you asked
19 yesterday. So you're not doing any -- you didn't build
20 anything new for the defense. You're asking the same
21 questions you asked him yesterday.

22 THE DEFENDANT: Yes. Well, I asked about the DNA
23 too. That's what I wanted to get into. But ---

24 THE COURT: Well, what was -- what were you going to
25 ask Pate about different than what -- than what you asked

1 him yesterday?

2 THE DEFENDANT: About the procedures that they went
3 about doing, as far as this whole thing has been ---

4 THE COURT: You -- you asked ---

5 THE DEFENDANT: --- transpired ---

6 THE COURT: --- yesterday. You went through all of
7 that.

8 THE DEFENDANT: I didn't get to go ---

9 THE COURT: And through ---

10 THE DEFENDANT: --- into the ---

11 THE COURT: --- all of his questioning, he kept
12 responding to you that he didn't know, because
13 Investigator Rhodes was the one who set up the case.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So for you to come back and ask him
16 today all those questions again, he's still not going to
17 know.

18 THE DEFENDANT: Well, I wanted to get into some
19 different things with Mr. Pate.

20 THE COURT: And you had that opportunity yesterday.
21 You didn't take it.

22 THE DEFENDANT: Yes, sir. Well, I -- I would like
23 to say that I did state for the record, when asked which
24 witnesses I wanted to call, that I wanted to call all the
25 same witnesses back today again for myself.

1 THE COURT: No. I -- I didn't recall you telling me
2 that. You specifically asked Mr. Daniels to stay, and
3 I've required him to stay.

4 THE DEFENDANT: Yes, sir. And I did state for the
5 record that I would like to call all the same witnesses
6 back.

7 THE COURT: Well, I'll note your -- or your
8 exception to that. I didn't hear that. The record will
9 reflect it. And if that's the case ---

10 THE DEFENDANT: Yes, sir.

11 THE COURT: --- I'll note your exception to my
12 ruling. But we're going to continue at this point. So
13 you may call your next witness.

14 THE DEFENDANT: Okay. I would like to call David
15 Daniels.

16 THE COURT: All right. Mr. Daniels, if you'd come
17 around and take the stand.

18 (Whereupon, the witness came forward.)

19 THE COURT: And you are still under oath from
20 yesterday. Okay? So we're not going to place you back
21 under oath. You're still under your oath from yesterday.

22 THE WITNESS: Yes, sir.

23 DAVID DANIELS, having been previously duly
24 sworn, testified as follows:
25

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 219

1 DIRECT EXAMINATION

2 BY THE DEFENDANT:

3 Q Mr. Daniels, I'm going to talk about a little bit --
4 yesterday you brought up some work history. You said you
5 have been working. I don't remember -- recall where you
6 said you were working. Could you tell me where you were
7 working at?

8 A At that point in time?

9 Q Yes, sir.

10 A I was unemployed at that moment.

11 Q Okay. And are you currently working?

12 A I have a job that I will be starting as -- when this
13 case is done.

14 Q So but you're not currently working at this moment?

15 A That's correct.

16 Q Okay. So at that point in time, your only source of
17 income was working with the Florence County Sheriff's
18 Department, correct?

19 A That's not correct.

20 Q But you were not employed.

21 A I was not employed.

22 Q So you were getting unemployment?

23 A No. My mom and dad helped me out.

24 Q Okay. So on top of your parents helping you out,
25 your only source of income, personal source of income,

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 220

1 was through the Florence County Sheriff's Department?

2 A That's correct.

3 Q And they paid you money to buy drugs from dealers?

4 A That's correct.

5 Q Okay. All right. Now, let's go into some details
6 about the video. All right. The camera -- all right.

7 So you said that this camera was on an actual phone, so
8 it appeared to be a regular cell phone, correct?

9 A It did.

10 Q All right. And was the camera positioned in the
11 same way as if it was a real phone? So was it ---

12 MR. TUCKER: Your Honor, I'm not sure if I
13 understand the question.

14 THE DEFENDANT: I can rephrase.

15 THE COURT: Come on, guys. Let -- let's all get on
16 the same page here. This is easy. He's asking: Is the
17 camera on the device you had in the same position as it
18 is on a cell phone. Is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That was a pretty clear question, I
21 think.

22 A I'm not sure about that.

23 Q You're not sure about where the camera position was?

24 A That's correct.

25 Q All right. So what were you, in your mind, going to

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 221

1 do to ensure that you got all these events on camera, if
2 you didn't know specifically where the camera was
3 located?

4 A I just assumed that it was in that spot, the same
5 position.

6 Q As a actual cell phone?

7 A Yeah.

8 Q So in ---

9 A That's correct.

10 Q --- your mind, you were using a camera as if you
11 were on your own cell phone, videoing something, correct?

12 A That's correct.

13 Q Okay. So we could assume that based off of that,
14 you would find angles that you could capture what's going
15 on by using that cell phone-style camera, correct?

16 A Can you repeat that question?

17 Q You will assume that you were using a camera that
18 was similar to a cell phone-style camera.

19 A That's correct.

20 Q So you would use angles based off of that, correct?

21 A That's correct.

22 Q Okay. And you said yesterday that your instructions
23 were to get these events -- your specific instructions
24 were to get these events on camera, correct?

25 A That's correct.

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 222

1 Q All right. The audio portion, were you familiar
2 with how the microphone worked on it, or was it the same
3 way you assumed that it would work the same way as a cell
4 phone?

5 A I assumed it worked just like a cell phone.

6 Q Okay. So when you positioned your phone, you
7 positioned it to where you felt you could get the most
8 information captured by audio and video?

9 A That's correct.

10 Q Okay. So let's talk about before you left. You
11 said you needed gas in your car, correct?

12 A That's correct.

13 Q Okay. And a officer asked you did Food Chief have
14 gas, correct, in the video? Or do you not recall?

15 A I don't recall.

16 Q Okay. What -- all right. Let's talk about
17 demographics. As far as where you were starting and
18 where your destination was, you say that you were closer
19 to 5 Points than Food Chief or would you say it's about
20 the same distance?

21 A Are you talking about the ---

22 Q Your ---

23 A --- meeting site?

24 Q Yes, sir.

25 A The distance from the meeting site to the gas

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 223

1 station?

2 Q Yes, sir.

3 A The 5 Points would be closer.

4 Q So you're saying that 5 Points is closer to Marion
5 Street than Food Chief?

6 A No. What I just asked was you were talking about
7 the meeting spot that we -- that we meet at?

8 Q No, sir. I'm ---

9 A You're ---

10 Q --- talking ---

11 A --- talking about ---

12 Q --- about ---

13 A --- where ---

14 Q --- your destination.

15 A Oh. Oh. It's about the same.

16 Q So you're saying that from Marion Street to Food
17 Chief is the same distance as from 5 Points to Marion
18 Street?

19 A The Food Chief is probably a little closer.

20 Q Okay. And you don't recall being asked whether Food
21 Chief had gas or not?

22 A I do not recall.

23 Q Okay. All right. And you did say that after you
24 got off the phone with the officers and you wanted to get
25 back to them, that you got a phone call from your

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 224

1 girlfriend.

2 A That's correct.

3 Q All right. And was this the same girlfriend that
4 you got caught with ---

5 MR. TUCKER: Objection, Your Honor. What's the
6 relevance of which girlfriend called him on this
7 particular day?

8 THE COURT: I -- I don't know what the relevance is.
9 I'll -- I'll allow the question. I don't -- I don't know
10 what the relevance is.

11 Q Would you -- would -- is -- was this the same
12 girlfriend that you got caught with heroin prior to
13 working with the sheriff's department?

14 A No, it wasn't.

15 Q It was not the same girlfriend?

16 A It was not the same girlfriend.

17 Q And were -- did you present that to the officers
18 after returning to them, that you had got that phone
19 call, seeing that it was on video, just to explain what
20 went on in that situation?

21 A No, I did not.

22 Q Okay. All right. And when -- you did also say that
23 you made a brief stop to allow a car to turn into a lane
24 yesterday on record. Where was that actually at, as far
25 as when you -- where you're going, based on where you're

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 225

1 coming from?

2 A I was going back to the meeting site.

3 Q Okay.

4 A And that was -- that one time at 5 Points, I had to
5 wait on a car coming down the -- coming down the road
6 before I could make my turn. There was another one when
7 I was on the way from -- or to -- to you. I had to wait
8 for a car to pass so I could turn onto that road as well.

9 Q So you actually had to make a brief stop at 5 Points
10 after you met with me to go back to the officers? You
11 actually had to make a brief stop because you had to wait
12 for a car to turn?

13 A Yes. I had to stop in the highway.

14 Q And you said that was by 5 Points, right?

15 A Yes.

16 Q Did you meet up with your girlfriend at any time
17 from the time you left to the time you got back?

18 A I did not.

19 Q Okay. All right. I want to get a little bit back
20 into the camera. I remember you said that you wasn't --
21 you weren't there to capture any scenery; you were there
22 to capture a -- a -- a drug deal, correct?

23 A That's correct.

24 Q But you were sent to specific locations, correct?

25 A That's correct.

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 226

1 Q Okay. So did, at any time, the officers question
2 you on the video or why nothing really is being seen, as
3 far as where you're at? Did they have any questions,
4 like were they skeptical on -- as to what you were doing?

5 A No, they were not.

6 Q They weren't skeptical at all?

7 A No.

8 Q Okay. And yesterday on record, you did say that the
9 night before, you had consumed heroin, correct?

10 A Yes, I did.

11 Q All right. So you would be able to say that in this
12 time frame, you were an active addict of some sort, maybe
13 not all day, but you were a active addict?

14 A I was.

15 Q Okay. In your personal opinion, do you think being
16 on drugs affects you mentally?

17 A Yes.

18 Q You do?

19 A (No audible response.)

20 Q In what ways ---

21 A At that ---

22 Q --- do you think that being on heroin would affect
23 your mental state?

24 A As to -- as to how?

25 Q How you think, how you act, how you interact with

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 227

1 people, how you go about doing certain things, how you
2 react to certain things.

3 A When you're on it?

4 Q Yes, sir.

5 A Yeah.

6 Q So all those things are affecting when you're on
7 heroin?

8 A When -- when it's -- yeah. When you're high on it,
9 yeah.

10 Q Okay. And you did state that it was about seven
11 months after that you got admitted into rehab, probably
12 around August, correct?

13 MR. TUCKER: Your Honor, I -- I have to object.
14 These are all questions that he asked yesterday that the
15 witness went into ad nauseam yesterday, both ---

16 THE COURT: Sustained.

17 MR. TUCKER: --- on direct and cross.

18 THE DEFENDANT: All right.

19 THE COURT: Sustained.

20 THE DEFENDANT: Got you.

21 Q All right. So you said that all those things can be
22 affected by the use of that drug?

23 MR. TUCKER: Again, Your Honor, asked and answered.

24 THE DEFENDANT: That's ---

25 MR. TUCKER: This is the ---

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 228

1 THE DEFENDANT: I'm ---

2 MR. TUCKER: --- fourth time he's asked the same
3 question.

4 THE COURT: Sustained. Mr. Lewis, you went through
5 every bit of this yesterday. You've asked him about -- I
6 -- I didn't stop you about the relevance because you're
7 asking this witness about how heroin affects his judgment
8 when he's high.

9 But he testified yesterday that at the time that
10 this went down, he wasn't high. So what's the relevance?

11 THE DEFENDANT: Because there's no proof that he
12 wasn't high. He's ---

13 THE COURT: There's ---

14 THE DEFENDANT: --- just saying ---

15 THE COURT: --- no proof that he was.

16 THE DEFENDANT: Correct.

17 THE COURT: All the proof is -- in this record is
18 his testimony that he was not.

19 THE DEFENDANT: But there is ---

20 THE COURT: And then, the video.

21 THE DEFENDANT: Okay. And the -- and -- but there
22 -- is it -- is it true that there is a possibility that
23 he could've been high? And that ---

24 THE COURT: There's a ---

25 THE DEFENDANT: --- could be the ---

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 229

1 THE COURT: --- possibility that you're high right
2 now.

3 THE DEFENDANT: Correct. So that's why I kind of
4 felt like it was relevant.

5 THE COURT: Okay. It's -- you -- you need to move
6 on. You've asked all these questions yesterday.

7 THE DEFENDANT: I got you.

8 Q All right. Now, when you returned back and you gave
9 the officers all the stuff that they needed, what were
10 your instructions from them?

11 A When I left the site?

12 Q Yes, sir.

13 A I was free to go.

14 Q Okay. You were free to go after that. And nothing
15 else would come up, correct?

16 A As to how?

17 Q Well, you were done with this job?

18 A Yeah. I was free to go.

19 Q Okay. All right. And so basically, this operation
20 took about a day, maybe less, to do, from start to
21 finish?

22 A Might've took, start to finish, about a hour.

23 Q So you -- so from start to finish, this whole
24 investigation took about a hour?

25 A No. Just my part.

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 230

1 Q Just your part?

2 A (No audible response.)

3 Q And you did bring to the officers' attention that I
4 may be someone that you could purchase heroin from,
5 correct, that day?

6 A I did tell them that. Yes.

7 Q Okay. And they took that information and started
8 the investigation, correct?

9 A That's ---

10 Q Involving ---

11 A --- correct.

12 Q --- you, correct?

13 A That's correct.

14 Q Okay. And with all that, from -- from the
15 beginning, you -- from the time you initiated this
16 investigation and everything was put together, now you're
17 gone and you came back. You're saying that all that took
18 a hour?

19 A To -- to capture the -- the -- to capture the
20 transaction ---

21 Q The whole ---

22 A --- yes.

23 Q --- process, from start to finish, that you just
24 described.

25 A The transaction took a hour.

DIRECT EXAMINATION BY THE DEFENDANT - DAVID DANIELS 231

1 Q And did -- did the officers give you any other
2 information, maybe, to kind of go off of, you know,
3 besides the fact that you assumed that you could buy
4 drugs from me? Well, did they give you any other
5 information, any other background information regarding
6 the history or anything, to kind of like prep you for
7 this or was it solely based off of your -- your thoughts
8 and what you thought you could do?

9 A I told the officers -- I told Officer Rollin [sic]
10 Rhodes that I could purchase heroin from you.

11 Q And that was it?

12 A Yes.

13 Q Okay. No more questions.

14 MR. TUCKER: No questions, Your Honor.

15 THE COURT: All right. Thank you very much, sir.
16 You're free to go.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: All right. You have any other witnesses
19 or testimony, Mr. Lewis?

20 THE DEFENDANT: Yeah. I want to call myself.

21 THE COURT: All right, sir. Come around and be
22 sworn.

23 (Whereupon, the defendant came forward.)

24 JUSTIN LEWIS, having been first duly sworn,
25 testified as follows:

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 232

1 DEPUTY CLERK OF COURT: Please be seated in the
2 witness box and state your name for the record.

3 THE COURT: And let -- let me -- go ahead and state
4 your name.

5 THE DEFENDANT: Justin Lewis.

6 THE COURT: All right. Mr. Lewis, just I want to
7 make sure, so there's no concern or question about this.
8 You understand that by taking the stand, you're going to
9 be -- you're going to testify. You understand now that
10 Mr. Tucker is going to have every opportunity to cross-
11 examine you and you must answer his questions as well?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right, sir. Okay. Go ahead, sir.

14 DIRECT TESTIMONY

15 BY THE DEFENDANT:

16 A The beginning of 2017, I was reenrolling back into
17 school at Colorado -- Colorado Tech to do management --
18 business management. I didn't have a car or anything or
19 any income or nothing. So I figure I would go back to
20 school, try to make some type of positive moves.

21 I walk everywhere -- I walked everywhere. Like,
22 anywhere I needed to go, I walked. So it would -- at
23 around this time, it's very common that you probably
24 would've seen me walking because I had no ride. Both my
25 parents worked every day, all day. So the only way I'm

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 233

1 going to get anywhere is to walk.

2 Mr. Daniels -- I met him through a friend that I
3 went to school with at the store. Because I was walking
4 there. She seen me. I -- it was cold. It was still,
5 like, wintertime.

6 And she said hey -- she said hey to me. She didn't
7 know that I had walked to the store. But she said hey.
8 We talked for a little bit. And then I walked out the
9 door. And I went to walking.

10 That's when she stopped me and asked me, "Are you
11 good? Do you need a ride or anything?"

12 I was, like, "Yeah. You know, I'm trying to go to
13 the library."

14 So I caught -- I caught a ride with her and Mr.
15 Daniels. I didn't -- I really still don't know him by --
16 I definitely really didn't -- didn't even know his name
17 at that point. But they gave me a ride.

18 And the first issue with Mr. Daniels was that day.
19 Because he got upset that she got into the backseat of
20 that car. Because it was a small car. So she got into
21 the backseat and let me sit in the front.

22 And his response was, "My own girl has to sit in the
23 backseat to take somebody somewhere."

24 So I didn't never have any problem with him or
25 anything, arguments or anything. I didn't even say

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 234

1 anything. I just got a ride, because I needed a ride.

2 But after that, she told me -- she was, like, "Well,
3 if you -- if I'm ever around and you need a ride, I'll
4 pick you up. Just let me know if you need a ride."

5 So on this particular day of this incident, I was at
6 my girlfriend's house. I had just got my refund check.
7 So I was with her, trying to decide what I was going to
8 do: whether I was going to help her with her car
9 payments with my refund or try to get my own car.

10 We ended up getting into a disagreement about it.
11 So I told her I was about to leave. I didn't leave
12 immediately, because I didn't have a ride or anywhere to
13 go at that moment. So I stayed with her.

14 I got on Facebook and I seen Mr. Daniels' girlfriend
15 was on Facebook. Because we never exchanged numbers or
16 anything. So the only way I could have contacted her was
17 through Facebook.

18 And I messaged her. I asked her was she around;
19 could she give me a ride; I would give her gas money.
20 Because I had just got my refund check.

21 So she told me that she wasn't around but that she
22 -- she -- I think she called him "D.D."

23 MR. TUCKER: Your Honor, I would object to hearsay
24 about what his girlfriend said to him ---

25 THE COURT: All right.

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 235

1 MR. TUCKER: --- or what ---

2 THE COURT: Sustained ---

3 MR. TUCKER: --- she said.

4 THE COURT: --- as to what she said to you. But you
5 can ---

6 THE DEFENDANT: Say that again?

7 THE COURT: You can't testify what ---

8 THE DEFENDANT: What she said.

9 THE COURT: --- what she said to you. You ---

10 THE DEFENDANT: Oh, I can ---

11 THE COURT: --- can just testify what you did.

12 THE DEFENDANT: Okay.

13 A I called her to get a ride.

14 THE COURT: Right.

15 A I got his number from her through Facebook, his cell
16 phone number, that same day. So I called his -- I called
17 him. And I -- I was, like, "Hey, I'm walking past Evans
18 Brothers now, you know what I'm saying, going to my
19 girl's house."

20 This was before me and her got into a argument. He
21 was going to give me a ride, but he never came. So when
22 I hit her back and asked her was he still out, she said
23 yes. He came and got me, picked me up, and took me to
24 the library.

25 Because I was trying to get a car. And there was a

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 236

1 car lot, like, right down the street. But I needed to
2 get some documents before I could even go there.

3 So when he came and got me, me and her was fussing.
4 So I kind of was really trying to get out the house. So
5 once I got out the house, she kind of like came to the
6 door and came behind me. So I was rushing, like I'm
7 going and go.

8 And that kind of like just explains my, like, how I
9 was acting. Because I was upset because me and my
10 girlfriend just got into a argument, just as anybody
11 would be upset.

12 And if you -- and then, I was assuming that he was
13 going to be with her, his girlfriend. So when I looked
14 in the car, I seen she wasn't there. I didn't think
15 nothing of it. I just got in it. I just needed a ride.

16 And you can kind of see, even in the still photo,
17 how I looked into the backseat and didn't see her and was
18 kind of like all right. Because I'd never rode in the
19 car with him by myself before prior to this event.

20 So I wasn't worried or anything. But it was just
21 new to me that he came without her.

22 So I didn't know whether he was trying to get me to
23 get in the backseat. Because he was, like, "Come on,
24 man."

25 And I was, like, "Yeah. You got to move your

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 237

1 stuff." Like, I thought he was kind of like trying to
2 put me in the backseat or something.

3 So I jumped into the car. I told him to take a
4 right. Because where we were at, I was coming out the
5 backdoor of the apartments. So that's why I was coming
6 through that field. Because it's a big field behind the
7 apartments.

8 I come out the backdoor of the apartment. He met me
9 right at the end, like, of the sidewalk where the
10 apartments stop. I got in the car. He took a right.

11 Because where we're at, you got to take a right.
12 There's a light. You take another right. And then, the
13 library is, like, 50 feet up the street.

14 So he took a right; took a right at the light. And
15 he was riding like crazy, looking crazy, like looking
16 around and stuff.

17 So I was, like, "Yo, let me out right here. I'll
18 walk the rest of the way, you know what I'm saying."

19 And as far as when we were talking about -- when I
20 had mentioned the pills, I had five surgeries on my body
21 in my lifetime. The doctor told me that I've taken
22 enough cortisone for a lifetime because of football
23 injuries.

24 So at the time, when I -- when it's cold outside, my
25 body, like, goes through pain, like pain -- bad pain that

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 238

1 ain't never going to go away. It's only going get worse
2 as I get older.

3 So the only way I knew to get rid of pain --
4 ibuprofen never worked. So when I -- anybody I knew that
5 had pills, I would take them. And since then, I have
6 found other ways to deal with that pain, like dieting to
7 reduce fluid in my body, stuff like that.

8 But at the time I was taking pills. Because my body
9 ached so bad some days, I can't even get out the bed
10 without, like, stretching my body out. I can't even get
11 out the bed. Because I got hip -- I got a torn hip
12 muscle. I had three knee surgeries and a broken foot.

13 So that explains the conversation about pills.
14 Because I wanted to take -- I take -- I took them two at
15 that time. I don't take them anymore. But I took them
16 two at that time.

17 But after Mr. Daniels let me out, I left. And she
18 called me to make sure -- well, she messaged me ---

19 THE DEFENDANT: Well, you said I can't say what she
20 did.

21 A I -- I messaged her back to let her know that he had
22 picked me up. So then I guess that's why she called him:
23 to basically make sure that he had done what he said he
24 was going to do and that I gave him gas money. Because
25 she would always tell me that she couldn't trust him with

DIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 239

1 money.

2 MR. TUCKER: Again, Your Honor, going to hearsay.

3 THE DEFENDANT: Oh, yeah.

4 THE COURT: All right.

5 THE DEFENDANT: Sorry.

6 THE COURT: Sustained.

7 THE DEFENDANT: Sorry. Sorry.

8 A So she gave -- she -- she -- I told her that he
9 picked me up. And I guess she called him to clarify that
10 or whatever.

11 But after that, I probably got, like, a ride from
12 them, like, three more times after that. And then I stop
13 hearing from them. And she told me that he had went to
14 Greenville or something. So I was, like, okay.

15 I mean, and that was the end of it. I had never
16 even come across them ever again. And like I said, him,
17 I -- to this day, I don't even know anything about him,
18 you know what I'm saying.

19 THE COURT: Okay. All right. Anything further,
20 sir?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Mr. Tucker?

23 MR. TUCKER: Thank you, Your Honor. May it please
24 the Court?

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. TUCKER:

3 Q Now, Mr. Lewis, just so I'm clear ---

4 MR. TUCKER: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 Q This is you, correct?

7 A Oh, yeah.

8 Q Okay. And that's you as you're about to get into
9 the C.I.'s car, correct?

10 A Yes, sir.

11 Q The video and the audio that we played yesterday
12 that you cross-examined the witnesses about extensively,
13 that is your voice that we're hearing, is it not?

14 A Yes, sir.

15 Q All right. So you're not disputing the fact that
16 you got into the car with the C.I. on the date in
17 question?

18 A No, sir.

19 Q All right. Let me ask you a question: You
20 mentioned that the C.I. came and you -- he just happened
21 to be coming through Johnsonville and saw you walking and
22 just stopped to give you a ride?

23 A No, sir. That's not how it happened.

24 Q Oh, that's right. You mentioned that -- that there
25 was a Facebook post and then that she must've called him

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 241

1 to let you know where you were and that you needed a
2 ride?

3 A No, sir. That's not what I said.

4 Q How did he know where to pick you up exactly?

5 A I contacted his girlfriend. She sent me his phone
6 number, and I talked to him on the phone.

7 Q So that was you talking to the C.I. when he's
8 talking to you on the phone in the video, correct ---

9 A No. That's ---

10 Q --- when he's ---

11 A --- not ---

12 Q --- coming to pick you up?

13 A Unh-unh.

14 Q Okay. That's ---

15 A He didn't ---

16 Q --- not you he's -- he's talking to -- when he says,
17 "I'm coming. Where are you?"

18 A No. That ain't me.

19 Q That's ---

20 A Because ---

21 Q --- not you?

22 A No. Because ---

23 Q All right.

24 A --- let me -- and I'm going tell you why it's not
25 me. Because you can see in the video. He didn't know

1 where exactly to come get me from. I told him I was at
2 the apartments. But he assumed that I was by them,
3 walking on the street.

4 Q Okay. Let me ask you a question: How soon after
5 you have that conversation with him does he show up to
6 pick you up?

7 A Oh, it was a while. He didn't come at first.

8 Q So your testimony is that this must've been a phone
9 call he made to prior to meeting up with Agents Pate and
10 Rhodes, correct?

11 A It -- the way that he got on the phone and then he
12 came straight, that -- that didn't happen between us. He
13 didn't come to get me initially when I first asked for a
14 ride.

15 Q Because, now, the funny thing is during that video,
16 the C.I. never mentions that he had spoken to you earlier
17 about coming to pick you up because you needed a ride
18 somewhere, correct?

19 A Well, he didn't -- he didn't state that he spoke to
20 me earlier about a ride. But he did state that he spoke
21 to me earlier because he told the investigators that he
22 could get something from me. So ---

23 Q Bear ---

24 A --- when he ---

25 Q --- with me ---

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 243

1 A --- asked those ---

2 Q --- just a minute and follow what I'm asking. On
3 the video, you know, whether or not you're admitting that
4 that's you talking to him on the phone, you would agree
5 with me that a phone call is made from the C.I. to a
6 person, correct?

7 A I would agree.

8 Q He's talking to someone on that phone, isn't he?

9 A Yes, sir.

10 Q You would further agree with me that on that tape,
11 he says, "I'm coming to Johnsonville. Where are you at?"
12 And he also says, "Do you have stuff, or are going to
13 have to ride around Johnsonville?" You would agree he
14 says that to whomever he's speaking on the ---

15 A Yes.

16 Q --- phone, right?

17 A To whoever he spoke to. Yes, sir.

18 Q Where were you at that point, in ---

19 A In the ---

20 Q --- terms of ---

21 A --- same spot.

22 Q You -- so you were in Johnsonville, correct?

23 A I was in the same spot.

24 Q Would that be Johnsonville?

25 A Yes, sir.

1 Q Okay. So you're in Johnsonville. This person that
2 he's talking to also is in Johnsonville, if you're not
3 admitting that's you he's speaking to on the phone,
4 correct?

5 A We all were in Johnsonville.

6 Q Okay. All right. But you're in Johnsonville, same
7 as the person, apparently, that he's talking to on the
8 phone, correct?

9 A Sir?

10 Q You're in Johnsonville; the person that he's talking
11 to is in Johnsonville ---

12 A You already ---

13 Q --- correct?

14 A --- asked me that.

15 Q All right. Now, when you got into the car, you
16 mentioned that there was a conversation immediately. And
17 we hear that on the video about the 7.5.

18 A Yes, sir.

19 Q You indicated that that conversation was a reference
20 to your use of 7.5, correct?

21 A I was letting him know that I knew where some was
22 at. Because I take them myself.

23 Q Okay. You were letting him know -- did you say,
24 "7.5, I've got those, if you know anybody who needs any,"
25 or words ---

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 245

1 A No.

2 Q --- to that effect?

3 A I didn't say anything about, "I got them."

4 Q Okay. Well, when you told him that you had -- you
5 knew where some was, what was the purpose of making that
6 statement?

7 A Because I knew that he and his girlfriend had took
8 pills before.

9 Q Okay. So you knew that -- did they have
10 prescriptions to get these pills?

11 A I don't know.

12 Q Well, so had you ever seen him go to the pharmacy to
13 get this prescription refilled?

14 A The -- him and his girlfriend or the person that I
15 get them from?

16 Q Well, let me ask you another question: That's the
17 -- the -- when you get into the car, you don't say, "I
18 know where some's at." You say to him, "I've got those
19 7.5's if you need [sic] someone who needs them."
20 Correct?

21 A No, sir.

22 Q That's not?

23 So if the judge hears the video and it's -- you're
24 saying, "I've got the 7.5's if you know someone who needs
25 them," that would be a true statement, right? And that's

1 on the video.

2 A I said, "There -- it's some 7.5's," like in -- like
3 slang words.

4 Q Well, that's not what I asked you. I'm saying that
5 the voice on the video says, "I've got those 7.5's if you
6 know somebody who needs them"?

7 A Not me personally. No.

8 Q Okay. All right. Let's go to the car ---

9 A I said ---

10 Q --- to the car ride ---

11 A --- I ---

12 Q --- itself.

13 A --- I got some -- if I said, "I got some," I got
14 some from somebody.

15 Q So you couldn't possibly mean, "I've got some to
16 sell to someone" ---

17 A No.

18 Q --- "illegally"?

19 A Because I needed them myself.

20 Q Okay. Let's look at the car ride. Now, you say you
21 got into the car -- ostensibly, he was going to give you
22 a ride, correct?

23 A Yes, sir.

24 Q Now, apparently, you had this earlier conversation
25 with Mr. Daniels, and he drove all the way to

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 247

1 Johnsonville to pick you up for the sole purpose of
2 giving you a ride ---

3 A No.

4 Q --- somewhere, correct?

5 A No. He was -- when I got in contact with him, it
6 was because he had already been out. She wasn't with
7 him. I'm used to contacting her, and they come and get
8 me together.

9 But she wasn't with him. So I guess she made the
10 arrangements for him to come get me. And that's why he
11 didn't come immediately, because he had other stuff to do
12 before he could come get me.

13 Q Okay. Now, all this took place while the camera's
14 rolling. Now, when you come up to the car -- and you
15 said you looked in and noticed that she wasn't there, and
16 that's sort of gave you some pause, correct?

17 A Yes, sir.

18 Q All right. But you didn't say, "Hey, where's your
19 girlfriend at?"

20 A No. Because I already ---

21 Q You didn't ---

22 A --- already seen ---

23 Q --- say on the video, "I -- I thought your
24 girlfriend was coming with you."

25 A No. I didn't know whether -- I didn't care whether

1 or not she came or not. I just wanted a ride.

2 Q But you got in the car, right?

3 A Yes, sir.

4 Q All right. Now, he is giving you a ride somewhere.

5 Now, when we watch the video, it takes all of about a

6 minute, maybe a half a minute. You're directing him

7 where to turn, correct?

8 A Correct.

9 Q You said, "Take a right; take a right." You
10 mentioned in your direct testimony that you wanted him to
11 stop and let you out because he was driving erratic or he
12 was looking around and you got concerned about the way he
13 was driving or the way he was looking and asked to be let
14 out, correct?

15 A Yeah. Because I told him where the library was. He
16 knows where the library is, first of all.

17 Q Was the library within walking distance from where
18 you were when he picked you up?

19 A I -- I wouldn't want to walk to the ---

20 Q Oh.

21 A --- library from there.

22 Q Well, I didn't ask you if you wanted to walk there.
23 Was it within walking distance?

24 A Physically, yes, sir.

25 Q Okay. All right. So now, at no time during the

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 249

1 video do I hear you mention, "Hey, man, you're driving
2 crazy. Stop; let me out. How about slowing down." You
3 never once ask him to -- to change the way that he was
4 driving whatsoever, did you?

5 A No. But you do hear me in the video say, "Come on,
6 man, just let me out right here."

7 Q Just let you out right here, after 30 seconds, after
8 you direct him to make a series of turns, and he drops
9 you off right in the same spot that you were when he
10 picked you up, isn't he?

11 A No, sir.

12 Q He didn't drop you off in the same spot?

13 A No, sir. And the video does not reflect that.

14 Q Well, you asked about the -- the C.I., and you
15 mentioned something about the C.I. -- he possibly
16 would've been mad at you because you were in the car and
17 you got in the backseat with his girlfriend, correct?

18 A No, sir. He -- his girlfriend would get in the
19 backseat whenever I would get in. And he would get mad
20 about that. He would want her to ride in the front and
21 me in the back. But she would get in the back, because
22 I'm big and I couldn't really fit in the backseat.

23 Q Okay. But again, you mentioned that the -- you
24 didn't really know him like that; you kind of knew him
25 through the girlfriend, correct?

1 A I knew him through her.

2 Q But again, he told you he had three different
3 girlfriends, and we're not clear about which one was
4 where when?

5 A He said that in court. But back then, I only knew
6 one girlfriend that he had.

7 Q Okay. Now, so again, if -- if I understand your
8 testimony correctly, this is a person, Mr. Daniels, that
9 you really didn't know that well and ---

10 A Correct.

11 Q --- you thought perhaps might bear some sort of a
12 grudge because you get in the backseat with his
13 girlfriend and you think that may have made him mad ---

14 A Maybe ---

15 Q --- right?

16 A Yes, sir.

17 Q All right. So Mr. Daniels has a conversation while
18 the audio and video was running to someone in
19 Johnsonville that he is going to meet, correct?

20 A Correct.

21 Q Now, at that point also he asked, "Do you have the
22 stuff, or are we going to have to ride around
23 Johnsonville to get it?" Now, whoever he's talking to --
24 you claim it's not you -- but that apparently he's going
25 to Johnsonville?

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 251

1 A Correct.

2 Q Now, this is the same time, apparently, that he'd
3 had a previous conversation with you about coming to pick
4 you up to take you to the library, right?

5 A No. This ain't the same time.

6 Q Okay. Well, it was the same day, wasn't it?

7 A It's the same day. Yes, sir.

8 Q Okay. All right. So now, when he comes to
9 Johnsonville, he goes right to where you are, correct?

10 A Correct.

11 Q He picks you up?

12 A He knew where I was at.

13 Q He picks you up, right?

14 A Yes, sir.

15 Q Now, you get into the car. And immediately, your
16 first word out of your mouth is, "I got those 7.5's if
17 you need them."

18 A Yeah.

19 Q That's the first conversation -- that's how you
20 start the conversation when you get in the car, right?

21 A Yes, sir.

22 Q All right. Then you direct him to make a series of
23 turns and he drops you back off, the whole thing taking
24 more -- less than 30 seconds. You claim it was because
25 he was driving erratically or he was driving -- but

CROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 252

1 there's nothing on the video that says where you admonish
2 him about driving unsafely or he's doing something that
3 you don't approve of and you want out.

4 A But I got ---

5 Q Correct?

6 A But I got out the car.

7 MR. TUCKER: I don't believe I have any further
8 questions, Your Honor.

9 THE COURT: All right. All right. Thank you very
10 much, sir. You may step down.

11 (Whereupon, the defendant exited the witness stand.)

12 THE COURT: Mr. Lewis, do you have any other
13 testimony or any other evidence, sir, to present?

14 THE DEFENDANT: I do have another -- more testimony
15 to, like, go back off ---

16 THE COURT: All right.

17 THE DEFENDANT: --- of what he was saying, if you
18 want me to get back on the stand ---

19 THE COURT: Yeah.

20 THE DEFENDANT: --- redirect myself?

21 THE COURT: I thought -- I thought you were done.

22 THE DEFENDANT: Yeah. I want to redirect myself.

23 THE COURT: All right.

24 (Whereupon, the defendant came forward.)

25 THE COURT: Okay. You're still under oath, sir.

REDIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 253

1 THE DEFENDANT: Okay.

2 REDIRECT TESTIMONY

3 BY THE DEFENDANT:

4 A All right. Going back to the -- like -- like you
5 said, with the -- when I got in and said something about
6 the pills, the reason why I said something about it,
7 because I took it myself and I knew that he took them.
8 So maybe he would rather, you know, get -- me give him a
9 pill than give him money for gas.

10 So I offered him a pill. "Hey, you want a 7.5, you
11 know what I'm saying?" He could have it. So I offered
12 it to him.

13 It doesn't -- it's not me trying to -- I -- I know
14 he doesn't have any money, you know what I'm saying. So
15 why would I be trying to sell him something, if I already
16 knew in my mind this man has no money, no job, or
17 anything?

18 The only reason that we kind of came to agreement
19 was because I was offering gas money. That was the only
20 reason that he would even come get me on her behalf is
21 because I offered gas money. Because if I didn't, he
22 would've never even came, you know what I'm saying.

23 And that was -- the whole thing was I'm paying for a
24 ride, you know what I'm saying, every time he came to get
25 me. And he testified that that wasn't the first time

REDIRECT TESTIMONY BY THE DEFENDANT - JUSTIN LEWIS 254

1 that we rode together. He testified to that in court.

2 It wasn't -- he didn't clarify which girlfriend he
3 claimed he was with at the time. But I know that the one
4 I knew was the one we were with when he rode with me the
5 first time and all the times after that. But that one
6 day, he came by himself.

7 And the only reason he came by himself is because
8 when I contacted her, she said they were not together. I
9 told her, "I'm on Marion Street in the white apartments."
10 She sent me his phone number. I called him. And that's
11 how I get set up with a ride.

12 After that, I didn't speak to him again. I stood by
13 the window, watched, watched, and watched. He called me.
14 I didn't even answer the phone when he called me. I came
15 straight out the door.

16 So -- and -- and low key -- that's kind of why I
17 think in the video you see he's saying, "Hello, hello,"
18 like, on the phone. Because he was calling me. But I
19 never even answered. I just came out. Because I assume,
20 once he was calling me, that he was outside.

21 Mind you, I told you earlier, when I initially asked
22 for a ride, he didn't come. It was a while before he
23 even came. So when I did get a call from him, I'm -- I'm
24 assume already -- he already here, you know what I'm
25 saying.

RECROSS-EXAMINATION BY MR. TUCKER - JUSTIN LEWIS 255

1 It wasn't like he's trying to find out where I'm at.
2 Because I assume she already told him where I was at.
3 Because I told her where I was at.

4 So that explains that situation. And like I said,
5 this wasn't the first time that I met Mr. Daniels. I
6 just wasn't familiar with his person. I don't know him.

7 I grew up with his girlfriend in school. We went
8 from elementary to graduating high school together. So
9 that's why she felt comfortable with me, offering me a
10 ride. And I felt comfortable with offering her gas
11 money.

12 But I was specifically told to never give him the
13 money. The fact that he came by himself is the only
14 reason I gave him money. But you can't even see me
15 giving him money on the video because he doesn't have the
16 camera on me or even in a way where you could see my arm
17 or anything.

18 So I can't defend that fact based off the video
19 because you -- he won't show me in the video.

20 THE COURT: All right. Any cross-examination to
21 that?

22 MR. TUCKER: Oh, just one question, Your Honor.

23 RECROSS-EXAMINATION

24 BY MR. TUCKER:

25 Q On the video, when you get in the car, you mention

1 the 7.5's. At no time during the transportation or the
2 ride in the car did you ever say, "Hey, I'll give you a
3 pill in exchange for gas." Did you ---

4 A No, sir.

5 Q --- ever say, "Hey, here's five bucks, man. Here's
6 for gas for coming to get me and taking me around the
7 block"?

8 A The -- the gas ---

9 Q Did you ---

10 A --- payment ---

11 Q --- ever say ---

12 A --- wasn't on ---

13 Q --- that on the video?

14 A The gas payment was understood. So I didn't have to
15 say it.

16 Q Okay. Did you say it on the video?

17 A It was understood. No, sir. I didn't ---

18 Q Did you ---

19 A --- say it ---

20 Q --- say it ---

21 A --- on ---

22 Q --- on the video?

23 A No, sir.

24 Q Okay. Thank you.

25 THE COURT: All right. Thank you, sir. You may

1 step down.

2 (Whereupon, the defendant exited the witness stand.)

3 THE COURT: Give me one second.

4 (Off the record briefly.)

5 THE COURT: All right. Mr. Lewis, any -- anything
6 further? Any further testimony or evidence, sir?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. So the defense rests?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. At this point I'll take up
11 any motions at the close of the evidence. And I ---

12 MR. TUCKER: None ---

13 THE COURT: --- go ahead.

14 MR. TUCKER: --- from the state, Your Honor.

15 THE COURT: Okay. Let's see if he wants to ---

16 THE DEFENDANT: I would ---

17 THE COURT: Go ahead, sir. Yeah.

18 THE DEFENDANT: I would like to renew my motion for
19 a directed verdict.

20 THE COURT: All right. I'm going to respectfully
21 deny that motion, although I will note that you -- you
22 did renew that motion for the record. Again, like I
23 said, Mr. Lewis, I think it's a factual issue that -- at
24 -- at -- at -- here, as opposed to a legal issue. And
25 that ---

1 THE DEFENDANT: Yes, sir.

2 THE COURT: --- so we're going to let the case go
3 forward.

4 Now, typically, we'll -- we would move into closing
5 arguments. Do y'all need a few minutes to gather your
6 thoughts, or are you ready to go?

7 THE DEFENDANT: I'm ready.

8 MR. TUCKER: I'm ready, Your Honor.

9 THE COURT: Okay. All right. Well, I'll -- Mr.
10 Lewis, you did put up testimony. And so I will hear from
11 you first, and then I'll hear from Mr. Tucker. Yes, sir.

12 THE DEFENDANT: Yes, sir.

13 CLOSING ARGUMENT BY THE DEFENDANT

14 THE DEFENDANT: Your Honor, as I stated earlier, at
15 the time of the allegations, I was, you know, trying to
16 find work and going back to school. I was already
17 enrolled in school.

18 And actually, on the day of these allegations, I had
19 already received my refund check that week. So I was
20 working on my stuff, you know, trying to get the job,
21 trying to get a car.

22 I was -- I'm -- I was already enrolled in SC Works,
23 which is the unemployment office. So any programs that
24 they had, I would try my best to get to, to try working.
25 So at this point I was enrolled in school and enrolled in

1 SC Works, which is unemployment.

2 You know, back and forth, you -- like I said, I was
3 walking everywhere, because I couldn't get anything done
4 where I was at. At home I didn't have the Internet or
5 the computer. So I had to go back and forth from my
6 girlfriend to friends to the library to get stuff done.

7 I caught numerous rides from numerous people. So I
8 looked at -- when Mr. Daniels and his girlfriend came
9 around, I looked at it as a win-win for both of us. You
10 know, they're both out of work; I'm out of work. I need
11 rides; they need money. I -- we can help each other
12 through this. So I kind of looked at them as kind of
13 like -- not friends-friends -- well, she's a friend --
14 but, you know, somebody that I can lean on, you know.

15 I did my stuff, everything that I thought I was
16 supposed to be doing: you know, taking care of my child,
17 trying to pay -- pay the stuff that she needs to get
18 done, without a job, you know, just doing under-the-table
19 work. I've always been working under the table,
20 landscaping.

21 So it's not a business that I have where it's
22 continuous money, but, you know, a yard here, a yard
23 here. I can make maybe 75/50 dollars. I can send my
24 baby 50 and I got some, you know, extra change in my
25 pocket.

1 So the refund check was a blessing to me because it
2 helped me to get the ball rolling ---

3 THE COURT: Refund check -- is that ---

4 THE DEFENDANT: From school. I ---

5 THE COURT: From school?

6 THE DEFENDANT: Yeah. I had already enrolled in
7 school and received my refund check. That's why I could
8 offer money for gas, you know what I'm saying.

9
10 THE COURT: What -- why would you get a refund check
11 from ---

12 THE DEFENDANT: Well ---

13 THE COURT: --- school?

14 THE DEFENDANT: --- whenever you -- whenever you
15 enroll for school, you get a FAFSA -- you do your FAFSA,
16 right? After you do your FAFSA, I always -- I -- I be in
17 it, so I go apply for every grant I can -- grants on
18 grants. And when I get my grants, after everything is
19 paid for, for my school, everything that's over, I get in
20 an actual refund check to myself.

21 THE COURT: Okay.

22 THE DEFENDANT: So after I finished that process, I
23 got my refund check. So that's why I had money to offer
24 gas. So that's the only reason that I became available
25 to them, you know what I'm saying.

1 Like I said, I never knew Mr. Daniels, never --
2 other than the phone conversation when he was supposed to
3 come get me, we never had any conversations. We never
4 talked. We never hung out. He never asked me for
5 nothing. I never gave him nothing.

6 I just observed things that they were doing. That's
7 why I would offer him stuff like that, because -- all
8 right. Shoot. I'm -- I'm in pain. You claim you're in
9 -- he told me he had back problems and stuff, why he
10 would take pills.

11 I told him my issues by the issues. You know, we
12 were -- we're, like -- the time we spoke in the car, you
13 know, the first time, it was like he was cool. So that's
14 why I trusted him.

15 The only reason I would even -- I wouldn't give any
16 -- I'm not just going to give any and everybody money. I
17 don't care if you're giving me a ride or not. I'm not
18 supporting nobody's habit.

19 So I trusted him, you know what I'm saying. Because
20 I felt like we had some sort of a connection. And he
21 betrayed my trust by using me to maybe protect someone
22 else. Because if you're a drug addict on drugs that you
23 haven't been receiving treatment for and that such a
24 strong drug that it affects you in the ways that he
25 describe, you're going to want to get those drugs.

1 At that time I never knew that he was doing anything
2 extreme like that. He didn't seem like that. Like, his
3 person didn't seem like he was a drug addict. So I
4 didn't take him as that, you know.

5 But had I known, I would've separated myself from
6 him from the simple fact that, you know, bad things breed
7 more bad things. I've already been in enough trouble in
8 my life, I feel like, to where as though I needed to do
9 things the right way.

10 That's why I enrolled in school. I was trying to
11 find a job. But I had a job -- had plenty of jobs before
12 that, you know what I'm saying. But things happen.

13 So I was working on getting a better job, a better
14 situation. I didn't have a car. My transportation went
15 down. So I had to start my whole life over.

16 And I looked at him and his girlfriend maybe a
17 blessing from God. God sent them to me to help me, and
18 He sent me to them to help them maybe, you know what I'm
19 saying. You never know.

20 But as far as selling heroin, I've -- I would --
21 first of all, knowing the things that come from that,
22 seeing people that I went to school with -- one of my
23 good friends in school, which was another Caucasian male
24 like him -- I have all friends. Like, I'm not -- I don't
25 have a certain demographic of friends. We all cool

1 together.

2 He died from overdosing on heroin, you know. And he
3 was trying to help me find a job. And he died. I didn't
4 even know he was on it, you know?

5 So that's it.

6 THE COURT: Thank you, sir.

7 Mr. Tucker?

8 MR. TUCKER: Thank you, Your Honor. May it please
9 the Court?

10 CLOSING ARGUMENT BY MR. TUCKER

11 MR. TUCKER: Your Honor, the facts of this case are
12 fairly straightforward. They came from the witness stand
13 and from the evidence that I moved into the record.

14 With regards to this case, from the beginning, I put
15 up Agent Rhodes -- or Pate, rather, first. Now, Agent
16 Pate told you he was just getting started. He was
17 working with Agent Rhodes with regards to conducting
18 investigations.

19 But what he did tell you is that he participated in
20 the search of the confidential informant -- in this case,
21 Mr. Daniels. He was there when the person was searched
22 of Mr. Daniels. He was there when the vehicle was
23 searched of Mr. Daniels.

24 Again, he told you that they didn't find any
25 contraband on him and, pretty much, that when he left

1 there, it was the understanding that he was going to go
2 see this defendant, Justin Jamal Lewis, for the purpose
3 of buying heroin. The confidential informant told them
4 he thought he could purchase from Mr. Lewis. Now, they
5 gave him the funds with which to purchase the heroin, and
6 they gave him some gas money.

7 Now, once the video pops on, Your Honor, it stays on
8 the entire time. After Agent Pate, we heard from the
9 confidential informant, Mr. Daniels.

10 Now, what's unusual and what's -- what's whimsical
11 or funny about this particular case is when Mr. Daniels
12 was on the stand and when he was being cross-examined by
13 Mr. Lewis, he asked about how he knew him. And, of
14 course, the -- the -- opening the door, the C.I. said --
15 Mr. Daniels told him, "Because I've bought heroin from
16 you before."

17 And Agent Rhodes told you the same thing. The
18 reason that they use confidential informants, those that
19 are known to drug dealers, is because they are wily; they
20 sell to people that they know only. And they're reticent
21 to sell to anybody that they don't know or, particularly,
22 anybody in an undercover capacity.

23 So I suggest that he sold to Mr. Lewis and Mr. Lewis
24 sold the drugs to -- to the confidential informant
25 because he knew him. He had dealt with him before.

1 Now, on this particular occasion, we have the
2 benefit of a video in this case. Now, when the C.I.
3 leaves the location where Agents Pate and Rhodes are and
4 they outfit the car with the recording devices, there is
5 a phone call made.

6 Now, it's strange credibility to suggest at the --
7 everything that we heard was captured; he was to go
8 straight there after stopping to get gas. But if you
9 believe Mr. Lewis, apparently, he stopped to pick Mr.
10 Lewis up to take him to the library but put him off
11 before he goes to buy whoever he gets the drugs from,
12 according to Mr. Lewis.

13 THE DEFENDANT: Objection.

14 MR. TUCKER: Now ---

15 THE DEFENDANT: I never said that it happened before
16 or after. I don't know when it happened. I never said
17 that he bought drugs before or after.

18 THE COURT: All right.

19 THE DEFENDANT: I just said I got a ride.

20 THE COURT: All right.

21 MR. TUCKER: With regards to the phone conversation
22 that Mr. Daniels is having with the person that he's
23 talking to about coming to pick him up and asking, "Do
24 you have the stuff on you, or are we going to have to
25 ride around Johnsonville?" -- now, Mr. Daniels doesn't

1 say to this person, "Hey, I got to pick a guy up and give
2 him a ride first, but I'll be over there after five
3 minutes."

4 He goes straight from having that phone conversation
5 to getting gas and then straight to where Mr. Lewis is
6 at. He knows right where Mr. Lewis is at because Mr.
7 Lewis had called and told him, "This is where I am; pick
8 me up."

9 Now, when you -- Mr. Lewis made much to do about the
10 gas stop or about him stopping there at the gas station.
11 Now, Agent Rhodes told you that the confidential
12 informant was given about five bucks to purchase gas.
13 And you can actually look at the video and see he's got
14 what looks to be \$1 bills in his left hand when he stops
15 to get gas.

16 He goes into that store; presumably, pays for the
17 gas; comes back out and pumps it. He's there all of two
18 minutes, which would be the exact time it would take to
19 go in and pay for gas, come back out, and pump it.

20 Now, he doesn't have the money ---

21 THE DEFENDANT: Objection.

22 MR. TUCKER: --- in his hand at that point. But
23 now, Mr. Lewis would have you believe that he probably
24 bought drugs there and that's what he gave the agents
25 when he comes back from meeting with Mr. Lewis.

1 Now, Agent Rhodes told you that he had about \$75.
2 And you can actually see the money in the C.I.'s hand
3 when he picks Mr. Lewis up.

4 THE DEFENDANT: Objection.

5 MR. TUCKER: He's got it in his left hand.

6 THE DEFENDANT: You can't see no -- you can't count
7 the money or see a amount of how much he had in his hand.

8 THE COURT: You need to stop object. But the
9 evidence is in. I'll have the video. I'll be able to
10 watch it. I'll be able to determine ---

11 THE DEFENDANT: Yes, sir.

12 THE COURT: --- what's on there.

13 THE DEFENDANT: Yes, sir.

14 MR. TUCKER: At that point when Mr. Lewis gets in
15 the car, you can see the C.I. has got it in his right
16 hand now. And he kind of holds it up where Mr. Lewis
17 probably could've seen it. And certainly, you can see it
18 on the video.

19 So he's got the money out. But what -- if -- if he
20 had purchased drugs at the convenience store or the gas
21 station, Your Honor, he wouldn't have had any money to
22 give Mr. Lewis or whoever it was he -- he bought the
23 drugs from, according to Mr. Lewis. But he had exactly
24 the amount of money when he left. He had no money when
25 he came back.

1 We know this because Agents Pate and Rhodes searched
2 him when he got back. The only thing he had in his
3 possession after dropping Mr. Lewis off was those six
4 bags of heroin that was testified to as heroin by Lt.
5 Hansen.

6 Now, with regards to the conversation about the
7 pills, now, you can hear it for yourself, Your Honor.
8 When he gets into the car, he says, "I got those 7.5's if
9 you know anybody who needs any."

10 Now, Mr. Lewis would have you believe he's merely
11 suggesting that he knows where Mr. Daniels can go buy
12 some. But he even admits on the stand he didn't know Mr.
13 Daniels that well. So how would he know that he had a
14 problem or that he had a penchant for 7.5 Loricets?

15 But again, he tells him that, not because he wants
16 him to -- tells him where he can go ---

17 THE DEFENDANT: Can ---

18 MR. TUCKER: --- get some.

19 THE DEFENDANT: --- I object?

20 MR. TUCKER: I think the meaning's ---

21 THE COURT: No, sir.

22 MR. TUCKER: --- quite clear.

23 THE COURT: I heard -- I heard your argument. I
24 heard everything you presented. And I'm hearing from Mr.
25 Tucker.

1 THE DEFENDANT: Can I object that one statement,
2 though? I just want to say one thing.

3 THE COURT: No, sir.

4 Go ahead.

5 MR. TUCKER: When he's talking about that, I think
6 the meaning is clear, Your Honor. And I think you can
7 certainly glean the -- the meaning from it. He's wanting
8 him -- that, you know, "I've got some if you know
9 somebody who wants to purchase some." I think the
10 meaning is quite clear.

11 Now, when he picks him up, Mr. Lewis doesn't say
12 anything about driving erratically or "Take me to the
13 library." When he gets into the car, you would think, if
14 somebody were coming to pick you up, "Hey, man, I
15 appreciate you coming to pick me up," or, "Hey, I
16 appreciate you going out of your way like this," or, "Can
17 I buy you some gas?"

18 None of that. He gets in the car, goes right to the
19 7.5 conversation, and then he directs him to make a
20 series of turns. There's very little conversation taking
21 place between. Certainly, you don't hear Mr. Lewis
22 complain about the manner in which Mr. Daniels is
23 driving.

24 All he says, "Turn right here; turn right here; turn
25 right here;" and then, "Let me out." And then it's over

1 in a matter of 20 seconds or 20 seconds thereabouts.

2 That is consistent with somebody who gets into the
3 car, drives around; hands him drugs; he hands him the
4 money; gets right back out. There is no other reason
5 that the trip would've taken that little bit of time and
6 there was that very little conversation.

7 Sometimes what's not said is just as important as
8 what is said. What we do know is the audio and video
9 recorder stays on the entire time, Your Honor, from the
10 time that Mr. Daniels leaves. After he drops Mr. Lewis
11 off, he doesn't stop anywhere. He goes straight back
12 from there. And he goes straight back to that
13 predetermined location where he met Agents Rhodes and
14 Pate.

15 And it's at that point that they take those six bags
16 of heroin that he got from Mr. Lewis. They take it into
17 custody. It's submitted, and it's tested as such by the
18 chemist, Lt. Hansen.

19 Again, Your Honor, I think the evidence speaks for
20 itself. This is a case where no -- he's not right on
21 frame, hand-to-hand. But quite clearly, you can see him.
22 And from -- based on the totality of circumstances, I
23 believe you can glean exactly what happens here.

24 Now, the -- the C.I. got on the stand. Again, I
25 think it takes great courage to come in here and get on

1 the stand. Sometimes I wish we had more C.I.s like him.

2 But again, he does come with baggage. As Agent
3 Rhodes told you, most C.I.s do have a drug problem that
4 are in the drug business. That's what makes them good
5 C.I.s, is because they know the people who do the
6 selling.

7 And that's the exact case here. But Mr. Daniels, I
8 would suggest, has more credibility than Mr. Lewis does.
9 Mr. Lewis knows if he gets convicted here today, he's
10 most likely going to prison. And he knows he wants to
11 say anything and do anything to keep that from happening.

12 Mr. Daniels has no axe to grind against Mr. Lewis.
13 There's no reason in this world he would get on the stand
14 and lie about buying six bags of heroin from Mr. Lewis.

15 He sold drugs. Mr. Daniels bought the drugs from
16 him. And then he takes the drugs straight to Agents Pate
17 and to Agent Rhodes. They are tested as such. It is six
18 bags of what turns out to be heroin.

19 Your Honor, you heard Agent Rhodes tell you and Lt.
20 Hansen tell you heroin is a highly addictive drug. And
21 you heard Agent Rhodes tell you that the Johnsonville
22 area -- they had a problem. This man is part and parcel
23 of that problem.

24 And we simply ask you to look at all the evidence.
25 And after you've looked at the evidence and after you've

1 heard everything here today and yesterday, we hope that
2 you'll find this man guilty and finally make him be
3 responsible for the things that he has done.

4 THE COURT: Thank you, Mr. Tucker.

5 I do have a -- a question. I'll be taking the
6 evidence back to review everything. Will this disc play
7 on my computer?

8 MR. TUCKER: It probably will not, Your Honor. It's
9 best if you looked at it on this laptop that Mr. Godbold
10 has. But it's the same video.

11 THE COURT: Oh, okay.

12 MR. TUCKER: It just ---

13 THE COURT: It -- it -- I just -- I -- I know that
14 like the -- the case that we're doing next week, I had to
15 review a video. And Keith had to actually get it to work
16 on my laptop. But it wouldn't work. So you'll -- if you
17 -- if -- if it won't work on my computer, please send one
18 back that we can look at it on ---

19 MR. TUCKER: Yes, sir.

20 THE COURT: --- okay?

21 MR. TUCKER: And like I said, again, it -- the disc
22 sometimes makes background noise and it's hard to hear.
23 That's why we had to download it onto the computer so we
24 could watch it. In fact, that's what was played in
25 court, was there.

1 THE COURT: Okay.

2 MR. TUCKER: But the disc is a direct reflection of
3 it.

4 THE COURT: Okay. All right. I just want to be
5 able to ---

6 MR. TUCKER: Yes, sir.

7 --- review that.

8 All right. Folks, I'm going to gather the evidence,
9 go back and -- into my chambers. I'm going to review
10 that. And let me -- let me just say, so that we don't --
11 I'm going to let y'all -- I'm going to let y'all go to
12 lunch, rather than wait around. Because I'm going to --
13 it's going to take me some time to look at the video and
14 everything.

15 So let's just make sure that everyone's back here by
16 1:30. Okay? That gives you enough time to get away and
17 come back. And in the meantime, I'll go over all this.

18 MR. TUCKER: Okay.

19 (Off the record from 11:49 a.m. until 1:59 p.m.)

20 THE COURT: All right. I'm -- let's see. Let the
21 -- I -- I want the record to reflect I have Exhibits
22 State's 1, the video; State's 2, the still photo taken
23 from that video; State's 3, the drugs; and State's 4, the
24 chemist's report. And those are the four exhibits in the
25 case. I'm returning those to madam court reporter.

1 THE COURT REPORTER: Thank you, Your Honor.

2 VERDICT OF THE COURT

3 THE COURT: Ladies and gentlemen, after having
4 reviewed all of the evidence, I went back in the
5 quietness of -- of my chambers and -- and listened to the
6 -- listened to and watched the videotape. And
7 considering all of the evidence in the case, it -- it
8 appears to the Court, as the fact finder in this case,
9 that the state has proven the elements of distribution of
10 heroin; that it has proven all those elements beyond a
11 reasonable doubt; and find Mr. Lewis, the defendant in
12 this case, guilty of distribution of heroin.

13 I'm going to make -- go a little beyond and -- and
14 make a -- a comment about part of the reasoning of -- of
15 -- of the Court, which I -- I don't believe is necessary
16 in a criminal matter. But in viewing all of the evidence
17 that was submitted, I think the video made it clear
18 beyond a reasonable doubt, even though the transaction
19 was not recorded on the video, as far as visually you
20 could see it.

21 All of the facts and circumstances show that Mr.
22 Daniels was searched prior to leaving the -- Investigator
23 Rhodes; had nothing -- no -- no drugs in his vehicle, no
24 drugs on his person; was given \$75 and then an additional
25 \$5 for gas; stopped at the store to get gas. If there

1 was anything in this case that -- that raised some doubt,
2 it was there. I've watched the time stamp on the video.
3 He was in the store for about 40 -- 42 seconds, may --
4 maybe not even long -- it might've been 32 -- came back
5 out; and -- and was essentially -- and he pumped the gas
6 and -- and was back in the car, all in less than a minute
7 and a half, which supports that he only got \$5 worth of
8 gas or something of that nature.

9 And then, if you watch the video closely, he -- he
10 does make a call to someone that he is on the way and
11 that conversation. But he clearly has in his hand a
12 handful of cash. And when he -- when Mr. -- right prior
13 to Mr. Lewis getting in the vehicle, as he turns, I
14 guess, to take the -- the -- apparently, there were items
15 in the front seat that he had to remove -- his hand went
16 by and there was clearly a \$20 bill and additional bills
17 in his hands.

18 So he had cash in his hand. Mr. Lewis gets in the
19 car. It -- there's the discussion, which -- which we've
20 all heard. And then less than 40 seconds later, he's out
21 of the car.

22 The video never turns off. It's never interrupted.
23 No one else ever gets in the car. No one else ever
24 approaches the car.

25 The car is driven back to Agent Rhodes. And the

1 only thing in the car at that stage is no cash and
2 heroin. The defense's position and the story that the
3 defense put up, that he offered in the Lortab or -- or
4 the -- usually, he -- he pays him something just doesn't
5 -- doesn't add up.

6 What -- what happened is whatever cash there was in
7 that hand either had to go to Mr. Lewis or just
8 disappeared. But taking all the evidence in the light of
9 the -- and -- and -- and in light of all that evidence,
10 it -- I -- I believe it rises beyond a reasonable doubt
11 that a distribution of heroin took place.

12 And so therefore, the verdict of this Court is
13 guilty of distribution of heroin.

14 At this point are any -- if there -- are -- are any
15 motions at the reading of the verdict?

16 MR. TUCKER: None from the state, Your Honor.

17 THE COURT: If -- let -- let me -- let me just say
18 this. And I -- and I'll give you the time you need to
19 talk.

20 It -- for -- for purposes of this posttrial motion
21 -- and it's up to you, Mr. Lewis. If you want Mr. Jordan
22 to articulate that, if there's no objection, I'll -- I'll
23 -- I'll allow Mr. Jordan to articulate the posttrial
24 motion, if you would like him to do so. But if you want
25 to do it, that's fine. It -- we'll do whatever you want

1 to do.

2 THE DEFENDANT: I'll have Mr. Jordan.

3 THE COURT: All right. Mr. Jordan, you want to make
4 a posttrial motion, then?

5 MR. JORDAN: Your Honor, my client would like to --
6 to make a motion for a new trial on a couple grounds:
7 From -- and -- and bearing in mind that I've been sitting
8 through this, of course, as you're aware, and -- and ---

9 THE COURT: Yes, sir.

10 MR. JORDAN: --- he's been coming over to me during
11 the course of the trial, asking for legal analysis, I
12 guess. I've tried to help him to the best of my ability.

13 I know he is -- and we certainly don't want to go
14 through -- back through it again. But he had a -- what
15 appears to be a legitimate misunderstanding as to the
16 witness situation. He feels that he was prohibited from
17 calling a witness, bearing in mind he got the benefit of
18 asking questions of that witness yesterday.

19 THE COURT: Officer Pate?

20 MR. JORDAN: That's be correct, Your Honor.

21 THE COURT: Yeah.

22 MR. JORDAN: So for that reason, we would request a
23 -- a new trial.

24 THE COURT: All right. I -- I'm going to
25 respectfully deny the motion. I -- I -- I -- I don't

1 know what questions Mr. Lewis would've posed to Officer
2 Pate, had he been here.

3 But a couple of things: He did have him on the
4 stand yesterday and -- and had every right to ask him --
5 and he -- he was on cross-examination. He could've gone
6 anywhere he wanted to go and ask any questions he wanted
7 to ask.

8 And he asked him quite a few questions. And -- and
9 I -- the -- the witnesses he recalled from yesterday that
10 he recalled here today, the -- nothing in -- nothing new
11 came from any of that. It -- the -- the same questions
12 were asked; the same ground was covered.

13 And so I -- I'm not of the belief that that would've
14 been different with Officer Pate. But even so, even if
15 it would've been, Officer Pate -- Mr. Lewis -- and -- and
16 I understand his -- his confusion with -- with regards to
17 the -- the policy and the procedures.

18 However, as we said earlier, he's -- he's -- he's
19 bound by those same procedures as -- as any attorney
20 would be. I did not order all of the witnesses to
21 remain. He -- Mr. Lewis indicated that he asked for
22 that. I -- I did not hear that. I -- it -- and if -- if
23 -- if I made an error, then -- then I did.

24 But -- but he didn't subpoena any of those
25 witnesses. Those were subpoenaed by the state. The

1 state put up their case. They rested their case.

2 He did ask that Mr. Daniels be required to return,
3 and I ordered that. He did not mention Investigator
4 Pate. Investigator Pate was not under subpoena by the
5 defense. And it -- it was not requested that -- if -- if
6 Mr. Lewis would've asked for Investigator Pate to return,
7 I -- I more than likely would've ordered that as well.

8 But I certainly will note your exception to that
9 ruling. And I'm going to deny the motion for a new
10 trial.

11 Anything further?

12 MR. TUCKER: Nothing from the state, Your Honor.

13 THE COURT: All right. Then, if you're ready to
14 proceed, I'll -- I'll hear from you, as far as any -- any
15 position that the state may have regarding sentencing or
16 I -- I guess I need to hear whether or not Mr. Lewis has
17 any prior record that would ---

18 MR. TUCKER: Yes, sir. May ---

19 THE COURT: --- influence ---

20 MR. TUCKER: --- I approach, Your Honor?

21 THE COURT: Yes, sir.

22 MR. TUCKER: I'm handing up a sentencing sheet with
23 regards to this matter. And this would actually be a
24 second offense for Mr. Lewis. He was convicted in 2014
25 for possession with intent to distribute Schedule

1 I/II/III substance. He was given a three-year sentence
2 with probation. There was a violation of probation
3 later. It looks like 18 months were revoked.

4 In 2016 it looks as if there was some sort of armed
5 robbery or armed with deadly weapon. It looks like it's
6 -- there was a conviction. It was an interstate transfer
7 of -- from Maryland with probation.

8 And it looks like he's on some sort of parole or
9 probation with regards to it. But it's a Maryland case,
10 so I'm not sure what the nature of it was. But it looks
11 to be some sort of robbery offense.

12 In addition to the possession with intent to
13 distribute he was convicted of in 2014, Your Honor, he
14 has pending a possession with intent to distribute
15 marijuana, possession with intent to distribute in
16 proximity. That was a case that's still pending that
17 happened after this case, for which he was on trial for,
18 in which there was a traffic stop and then -- that there
19 was sufficient marijuana so that the state could indict
20 him for possession with intent to distribute. So he has
21 that pending also.

22 THE COURT: All right. That the extent of his
23 record?

24 MR. TUCKER: That is, Your Honor.

25 THE COURT: Okay.

1 MR. TUCKER: And like I said, there's some
2 miscellaneous stuff, I think, out of Maryland. It looks
3 like ---

4 THE COURT: Yeah. I ---

5 MR. TUCKER: --- a disorderly conduct, assault
6 second-degree in 2011.

7 THE COURT: Okay.

8 MR. TUCKER: Yeah. That looks to be it.

9 THE COURT: Mr. Lewis, did you spend any time in
10 jail once you got arrested on this charge?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you recall how long that was, sir?

13 THE DEFENDANT: Maybe a little less than a week.

14 MR. TUCKER: Yeah. It looks like he was arrested on
15 the 8th of February. It looks like he bonded out on the
16 12th, Your Honor.

17 THE COURT: Okay.

18 MR. TUCKER: So I'm thinking ---

19 THE COURT: So ---

20 MR. TUCKER: --- four or five days?

21 THE COURT: --- five days?

22 MR. TUCKER: Yeah.

23 THE COURT: All right. Mr. Lewis, is there anything
24 you want to share with the Court or anything you want to
25 say ---

1 THE DEFENDANT: Yes, sir.

2 THE COURT: --- prior to sentencing?

3 THE DEFENDANT: Yes, sir. It's an unfortunate
4 situation. You know, I, in my heart, know what the
5 situation was. But I got to go with -- with what the
6 judgment is.

7 And, you know, I can't -- there's nothing I can say
8 now that can change your mind. But as far as me
9 personally, who I am, I just want it to be known that the
10 picture that they wanted to paint of me, that's not me.

11 I'm actually a person who works -- works for a
12 living, takes care of my child. I -- I work for a
13 living. I -- I -- before I had to go to court last week,
14 I had a job.

15 But the fact that I had to miss three days of work,
16 they had to let me go. I was working through a temp
17 agency. And they don't do temporary replacement. So
18 they had to permanently replace me because of three days'
19 missed work.

20 So I've been working. I -- you know, I've been a
21 working man. I haven't been no -- what they try to make
22 me out to be, that's not me.

23 (Off the record briefly.)

24 MR. TUCKER: Your Honor, in speaking to Mr. Jordan,
25 he had brought up a question regarding sentencing by

1 relying on the prior conviction in 2014, which was in
2 Florence County. I believe Mr. Jordan is of the opinion
3 that the state would have to show a certified copy of the
4 conviction, which, of course, I'm happy to do. It's
5 right here in Florence County. I can go down to the
6 first floor and get it. And that certainly would satisfy
7 his objection.

8 MR. JORDAN: And ---

9 THE COURT: Okay.

10 MR. JORDAN: --- Your Honor, I'm not trying to bear
11 -- or to veer out of my lane. This ---

12 THE COURT: No.

13 MR. JORDAN: --- is an ---

14 THE COURT: No, you're ---

15 MR. JORDAN: --- unusual circumstance.

16 THE COURT: --- fine.

17 MR. JORDAN: But I -- I asked Mr. -- Mr. Lewis if I
18 could request this. But I -- I -- if -- and this is
19 based on memory. I -- this is an unusual circumstance,
20 as I said.

21 I thought -- my recollection was that in order for
22 it to be taken as a second, Your Honor had to be provided
23 a -- a certified copy; that you couldn't just rely on the
24 NCIC for purposes of establishing a second offense.

25 THE COURT: Okay. I'm not -- I'm not sure. And I

1 know -- and they did change the statute. Because it
2 used to be that this was nonparolable. And the statute
3 changed, and this is now parolable.

4 And it -- it may reference the -- the -- but I'm ---

5 MR. JORDAN: And my recollection of the list is
6 based on five years ago ---

7 THE COURT: Well, I think ---

8 MR. JORDAN: --- the procedure ---

9 THE COURT: --- when they did change it, I -- I
10 think, for certification on the prior conviction, it has
11 to come with regards to the third offense.

12 MR. JORDAN: Okay.

13 THE COURT: However, just out of an abundance of
14 caution, if you'd -- would get that for me.

15 MR. TUCKER: Yes, sir.

16 THE COURT: A first offense would carry zero to 15.
17 And a second is not less than 5, no more than 30 and/or a
18 fine of up to \$50,000.

19 SENTENCE OF THE COURT

20 THE COURT: So the -- the sentence of the Court --
21 and -- and -- and I'll allow you to provide that
22 certification for the record after we complete this --
23 I'm -- I'm going to find that you are to be committed to
24 the state Department of Corrections for a period of 15
25 years and to give you credit for the time that you have

1 served. Good luck to you, sir.

2 MR. TUCKER: Thank you, Your Honor.

3 (Whereupon, the proceedings adjourned at 2:17 p.m.)

4 (Whereupon, the proceedings resumed at 2:34 p.m.)

5 MR. TUCKER: And, Judge, with regards to 2017-GS-21-
6 0764, I went downstairs to the clerk's office, got a
7 certified copy of the sentencing sheet from 2014, clearly
8 reflecting his prior conviction was for possession with
9 intent to distribute.

10 THE COURT: Okay.

11 MR. TUCKER: And I'll move that ---

12 THE COURT: Well ---

13 MR. TUCKER: --- that into the record ---

14 THE COURT: If you'll ---

15 MR. TUCKER: --- at this time.

16 THE COURT: --- move that into the record, we'll
17 mark it as a Court's Exhibit. And -- and that'll -- that
18 will support the concern that Mr. Jordan had regarding
19 whether or not it enhances.

20 MR. TUCKER: Yes, sir.

21 THE COURT: Okay?

22 MR. TUCKER: Thank you, Your Honor.

23 THE COURT: Thank you, Todd. Appreciate it.

24 MR. TUCKER: Yes, sir.

25

1 (Whereupon, Court's Exhibit 1 was marked for
2 identification.)

3 (Whereupon, the proceedings concluded at 2:34 p.m.)

4 --- END OF TRANSCRIPT OF RECORD ---

5

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth 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 hearing of the captioned cause, relative to appeal, in the Circuit Court for Florence County, South Carolina, on the 4th and 5th days of September, 2018.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM, RVR
Official Court Reporter

Columbia, South Carolina
August 17, 2019

FORM 5

RECEIVED

STATE OF SOUTH CAROLINA)

County of Florence)Justin Jamal Lewis 362322)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

Referred to)

Answered)

FEB 27 2019PCR/PB

APPLICATION FOR

POST-CONVICTION RELIEF

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 Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions;
Twelfth Judicial Circuit; County of Florence, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-21-00764
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 5, 2018; fifteen years department of corrections
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) counsel did not file notice of appeal
- (b) counsel did not provide defendant with requested information on appeal

- (c) defendant was not informed on appeal process and rights
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) evidence of material fact not previously heard or presented requiring vacation of conviction
- (c) conviction and sentence subject to collateral attack
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) counsel failed to investigate and challenge admissibility of evidence pre-trial
- (b) evidence withheld from defendant damaging defense
- (c) defendant was denied appeal rights and due process rights were violated
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? Yes
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. Motion For Reconsideration of Sentence
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of General Sessions; Twelfth Judicial Circuit; County of Florence, SC
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Motion Granted; Sentence reduced to Twelve years
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. December 17, 2018
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) All grounds are Post Conviction Relief issues
 (b) _____
 (c) _____

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? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

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. Wallace Jordan 181 N. Irby St
Florence, SC 29501
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial
 ii. Sentencing
 iii. Motion For Reconsideration of Sentence

19. State clearly the relief you seek in filing this application:

Conviction and sentence vacated; reverse for new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
County of Florence)

VERIFICATION

I, Justin Jamal Lewis 362322, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 21 day of February, 2019.

Catharine A. Amerson (L.S.)
Notary Public

My Commission Expires: December 22, 2029

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Justin Jamal Lewis 362322, 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.

Justin Jamal Lewis
Applicant

SWORN or affirmed to and subscribed before me this
21 day of February, 2019.

Catherine A. Cramer
Notary Public

My Commission Expires: December 22, 2029

State of South Carolina }
County of Florence }

Justin Jamal Lewis }
Applicant }

V. }
State of South Carolina }
Respondent }

In The Court of Common Pleas ²⁹⁵
Case No.: 2017-GS-21-00764

Memorandum of Law In Support
of Defendant's Application For Post
Conviction Relief

Procedural History

On September 4, 2018 trial began regarding the above case. Prior to trial the above defendant met with his attorney, Wallace Jordan, Judge Russo, and Solicitor Todd Tucker in the jury selection room because the defendant had previously requested to remove Attorney Jordan from his case in front of the judge for the record and was denied the right to do so on multiple occasions until the day of trial after notifying his attorney and Solicitor Tucker verbally. During the meeting held in the jury selection room, which was said by Judge Russo on record during a hearing December 7, 2018 to have been recorded in the trial transcript that day of September 4, 2018, Judge Russo informed the defendant that he would not have time to replace Attorney Jordan and that the trial would not be continued one day for the purpose of doing so despite the legitimate concerns the defendant had with his representation and attempts to remove Jordan pre-trial were unsuccessful. The defendant claimed that Attorney Jordan failed to investigate the evidence involved in the state's case against the defendant. Jordan did not challenge the admissibility of the evidence in pre-trial motions though the defendant

stated that Jordan promised him he would do so. The defendant also stated that he made numerous attempts to contact Jordan prior to trial regarding these motions all of which were unsuccessful. The defendant stated The defendant stated he requested copies of his Discovery Packet and Complete Defense File regarding this case for his personal records to prepare his defense. Attorney Jordan failed to provide the defendant with complete copies of these documents. The defendant stated that Attorney Jordan informed him that the reason he was not given copies of these documents was due to the fact that the state had yet to provide him with any evidence regarding the above case until the day of trial. The defendant claims he was not provided with any documents regarding the evidence against him in this case until the day of trial. On this day the defendant was provided with a partial copy of his Discovery Packet and was not provided with any more of the of the entitled documents despite his requests. Despite these clear issues the defendant was told by Judge Russo that he would either have to proceed with Attorney Jordan as counsel or go forward and represent himself pro se. The court denied the defendant his right to effective assistance of counsel which is a violation of the defendant's Constitutional rights.

On October 3, 2018 the defendant was called to court to proceed with a Motion for Reconsideration of Sentence hearing. Though the defendant

requested that Attorney Jordan on his case as stand by counsel, Jordan was not present during this proceeding. The absence of Attorney Jordan during court proceedings involving this case in which he was appointed stand by counsel is a violation of the defendant's Sixth and Fourteenth Amendment rights. The defendant stated to the court that he was unprepared to proceed with the hearing because he was unable to consult counsel due to Attorney Jordan's absence. The court continued the hearing to December 7, 2018. On December 7, 2018 Attorney Jordan was present for this hearing and proceeded as stand by counsel for the defendant. Prior to the defendant being allowed to consult his counsel, Judge Russo stated to the defendant on the record that he was not entitled to representation during these proceedings which was a violation of the defendant's Sixth and Fourteenth Amendment rights as well as state law. After the defendant made the court aware that he knew his rights the defendant was allowed the right to consult his counsel.

Grounds

The following grounds are in support of the defendant's application for Post Conviction Relief:

1. Was counsel's assistance ineffective? Counsel failed to investigate the state's evidence against the defendant prior to trial. Counsel also

neglected to challenge the admissibility of the evidence in pre-trial motions which the defendant claims counsel promised him would be filed. Counsel had no logical reasoning behind not challenging the state's evidence in pre-trial motions. Counsel's failure to investigate and challenge the admissibility of the state's evidence prejudiced the defendant and damaged the defense. Counsel's deficient performance fell below the objective standard of reasonableness especially due to counsel's pre-trial negligence. The defendant is entitled by law to effective assistance of counsel. See U.S.C.A. Const. Amend. SIX (6).

Counsel failed to provide defendant with copy of Report of Chemical Analysis for the purpose of establishing the physical evidence in this case. Counsel also failed to provide defendant with Sworn Statement for the purpose of establishing a proper chain of custody. The defendant claims that his counsel informed him that the state had these documents but would not provide them to be disclosed to the defendant to prepare the defense. Counsel failed to raise the issue of these missing documents and also failed to file for a preliminary hearing to raise this issue though the defendant claims he requested that his counsel raise these concerns and file for his preliminary hearing. These documents by law should have been provided to the defense. See Rule 6 SCRCrimP; Rule 5 SCRCrimP. Counsel's negligence rendered his assistance ineffective and prejudiced the defendant.

Counsel failed to file for direct appeal nor did counsel provide defendant with the proper paperwork and information for the filing of direct appeal all of which the defendant claims he requested of his counsel following trial. Due to counsel's negligence the defendant was denied his constitutional rights to appeal his case. By law the defendant is entitled to effective assistance of appellate counsel. See U.S.C.A. Const. Amend. Six (6).

Due to counsel's pre-trial negligence the defendant attempted to replace his attorney numerous times prior to trial but each attempt was unsuccessful because he was unable to see the judge before trial. On September 4, 2018 prior to entering the courtroom the defendant met with his counsel, Judge Russo, and Solicitor Tucker to discuss the issues the defendant met with his counsel attempting to fix prior to trial regarding counsel's negligence pre-trial. The defendant attempted to replace counsel but was told that his trial would not be continued one day for the purpose of replacing his counsel though his concerns were reasonable regarding his counsel's ineffective performance. On December 7, 2018 after the defendant consulted counsel during a hearing in regards to the defendant's motion to reconsider sentence, Judge Russo informed the defendant that the meeting held on September 4, 2018 prior to entering the court should be a part of the trial transcript. Counsel also failed to attend the defendant's initial hearing for his motion to reconsider sentence on October 3, 2018 which was continued to December 7, 2018

because the defendant was unprepared and counsel was absent, Counsel's failure to attend this hearing prejudiced the defendant and damaged the defense. These acts rendered counsel's assistance ineffective. The defendant is entitled to effective assistance of counsel in all court proceedings even when seeking relief. See U.S.C.A. Const. Amend. Six (6). See Title 18 U.S. Const, § 3006A 2b.

2. Is there evidence of material fact not previously heard and presented that requires vacation of conviction and sentence? A report of Chemical Analysis and Sworn Statement were not disclosed to the defense nor presented to the court in this case which rendered the evidence inadmissible by law. Counsel informed the defendant that these documents were present in this case but the state did not provide these documents to be disclosed to the defendant. Counsel and the state took advantage of the defendant's lack of knowledge of law making the defendant believe that these documents were present in this case but unavailable to the defendant in contravention of state law. See SCR CrimP Rule Six (6). The state committed a Brady violation by not providing the defense with these documents. See Brady v. Maryland 373 U.S. 83 (1963). The state also violated state law by withholding evidence from the defense. See SCR CrimP Rule 5. The defendant requested these documents from the state through his counsel but was denied. These actions prejudiced the defendant and damaged the defense.

3. Is the conviction or sentence subject to collateral attack upon any ground of alleged error previously available under any common law, statutory or other writ, motion, petition, proceeding or remedy?

The court made a judicial error by enhancing the defendant's charge to a second offense improperly in contravention of state law. See S.C. Code § 44-53-470. Judge Russo attempted to amend the judicial error on a motion for reconsideration of sentence on October 3, 2018 and finally on December 17, 2018.

A judicial error is not open for correction on motion in the court which made the error. See *Bostwick v. Van Vleck* (1900) 106 Wis. 387, 82 N.W. 302.

The court pronounced a judgment of guilty upon the defendant on a second offense charge completing the judicial act. See *Comstock v. Boyle* (1908) 134 Wis. 613, 126. This judicial error should have been corrected during a separate proceeding or the correction should have been made and the defendant should have been notified immediately following the correction. The correction of this error was made in attempt to satisfy the defendant's motion for reconsideration of sentence which was improper and unlawful.

During trial the defense made a motion for a directed verdict because the evidence did not meet the necessary elements for the defendant to be found guilty. The court denied this motion though it never specified the exemption under which the denial was based. This issue should have been raised in a direct appeal by the defense but the defendant was denied his right to appeal his case because of his counsel's negligence violating the defendant's due process rights. See U.S.C.A Const. Amend. Fourteen (14). The court took advantage of the defendant's lack in knowledge of law by not informing the defendant of his appeal rights and the process.

This Memorandum of Law supports the defendant's application for Post Conviction Relief along with attachments to support the defendant's Memorandum of Law.

Sworn To Before Me, This

21 Day of Feb 2019

Notary Public For South Carolina

Catharine A. Amos

My Commission Expires:

December 22, 2029

Respectfully Submitted

Justin J. Lewis

Justin Jamal Lewis, 362322

Kershaw C.I., OA-52

4848 Goldmine Hwy

Kershaw, SC 29067

**LEGAL
MAIL
ONLY**

To whom it may concern,

I would like to file an appeal to overturn my sentence. Please send me the necessary paperwork to start this process. Thank you.

Sincerely,

Justin Lewis

Justin Lewis

FILED

2018 OCT 29 AM 10:04

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

15 COPY

COUNTY OF Florence
STATE VS.
Justin Jamal Lewis
AKA:
Race: Black Sex: M Age: 28
DOB: [REDACTED] SS#: [REDACTED]
Address: 215 Byrnes Cir
City, State, Zip: Johnsonville, SC 29555-6516
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2017-GS-21-00764
A/W#: 2017A2110400027
Date of Offense: 2/3/2017
S.C. Code § : 44-53-0370(b)(1)
CDR Code #: 0184

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 2nd offense

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0184
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

[Signature] Solicitor 13601 SC Bar# [Signature] Defendant Pro Se Attorney for Defendant [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.

Credit for 5 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
§ 14-1-206 (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso (Public Def/Probation) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk E. Ragh
Court Reporter: M. News
SCCA/217 (04/2018)

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel
§ Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]
Judge Code: 2141
Sentence Date: 9-5-2018

AMENDED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

305

COUNTY OF Florence
STATE VS.
Justin Jamal Lewis

AKA:

Race: Black Sex: M Age: 28

DOB: [REDACTED] SS#: [REDACTED]

Address: 215 Byrnes Cir

City, State, Zip: Johnsonville, SC 29555-6516

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 1st offense 0-15 yr

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/ minor 1st or CSC w/ minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 13601

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 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 Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$

3% to County (if paid in installments) \$ _____

TOTAL \$ 273.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA:217 (04/2018)

INDICTMENT/CASE#: 2017-GS-21-00764

A/W#: 2017A2110400027

Date of Offense: 2/3/2017

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0184

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2141

Sentence Date: 12-17-2018

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

State of South Carolina)

INDICTMENT NO.: 2017-GS-21-00764

v.)

**ORDER GRANTING
DEFENDANT'S MOTION FOR
RECONSIDERATION OF
SENTENCE**

JUSTIN JAMAL LEWIS,)

Defendant.)

THIS MATTER came before the Court on Defendant's Motion for Reconsideration following a bench trial held on September 4-5, 2018, in Florence, South Carolina, whereby this Court found Defendant guilty of Distribution of Heroin—second offense, and sentenced him to a term of Fifteen (15) years confinement in the Department of Corrections. At trial, the State was represented by Todd Tucker, Esquire, of the Twelfth Circuit Solicitor's Office; Defendant represented himself *pro se*, with assistance of stand-by counsel, Wallace H. "Jay" Jordan, Jr., Esquire.¹

Shortly after sentencing, it was brought to this Court's attention that the State had enhanced Defendant's charge with a prior marijuana conviction in contravention of State law. See S.C. Code § 44-53-470. This Court immediately decided to amend the sentencing sheet to reflect a first offense rather than a second, and scheduled Defendant to be transported at the earliest opportunity to inform him of the amendment. In the meantime, Defendant mailed a very short Motion to Reconsider to the Court, filed September 21, 2018.

On Wednesday, October 3, 2018, Defendant was transported, but stated he was not prepared to go forward with his motion because he was not given notice of the hearing. The Court continued the motion hearing and rescheduled the matter for Friday, December 7. The Court informed

¹ Defendant fired Mr. Jordan the morning of trial and proceeded *pro se*.

CERTIFIED A TRUE COPY
CLERK OF COURT OF G.S.
FLORENCE COUNTY, S.C.

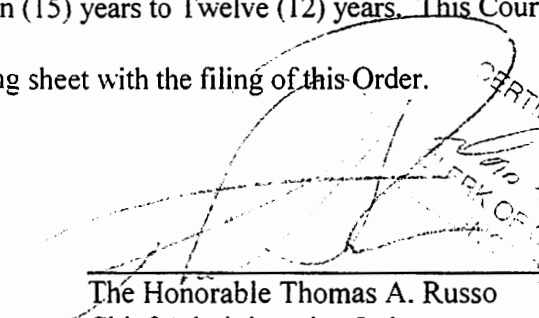
to go or act
contrary to;
violation

wing was
amended
sentencing
sheet not
sent along
with notice
of hearing
date

Defendant of the hearing via mail. On the morning of December 7, Defendant requested to confer with Mr. Jordan prior to his motion, and the Court gave the two time to speak privately. Once the hearing began, Defendant, again proceeding *pro se*, insisted that he be heard on aspects of various other motions he had filed with the Court unrelated to his Motion for Reconsideration. Defendant also opined that he was not prepared to go forward on his Motion for Reconsideration because he did not have his Rule 5. After extensive debate, it became apparent that Defendant was only willing to argue his other motions and not the Motion for Reconsideration before the Court. Because of this, the Court continued the hearing. This Court has not elected to consider Defendant's Motion for Reconsideration based on the written submissions of Defendant.

In South Carolina, Distribution of Heroin—first offense, carries not more than Fifteen (15) years imprisonment, while Distribution of Heroin—second offense, carries no less than Five (5) but not more than Thirty (30) years. Although the Court's original imposition of Fifteen (15) years imprisonment was legally valid and within the sentencing range, the Court has decided to give some consideration to the fact that Defendant should have been sentenced under a lesser range. THEREFORE, this Court GRANTS Defendant's Motion for Reconsideration as to his sentence and reduces Defendant's term of imprisonment from Fifteen (15) years to Twelve (12) years. This Court will contemporaneously prepare an amended sentencing sheet with the filing of this Order.

AND IT IS SO ORDERED.


The Honorable Thomas A. Russo
Chief Administrative Judge
Twelfth Judicial Circuit

December 11 2018
Florence, South Carolina

2018 DEC 11 PM 12:03
DORIS PULLOS CHARRA
CLERK OF COURT
FLORENCE COUNTY, SC

State of South Carolina }
 County of Florence }

Justin Jamal Lewis }
 Applicant }

v. }
 State of South Carolina }
 Respondent }

In The Court of Common Pleas
 Case No.: 2017-GS-21-00764

Motion For Leave To
 Conduct Discovery

Applicant, Lewis, 362322, hereby moves the Court for leave to conduct discovery in the Post Conviction Action pursuant to S.C. Code § 17-27-150 and Rule 26 and 34, SCRPC. In support of this motion, Applicant states the following:

1. Applicant is presently serving a twelve (12) year sentence for Distribution 1st and has filed for post conviction relief;
2. S.C. Code § 17-27-150 specifically authorizes discovery in "PCR" proceedings upon a showing of good cause
3. Applicant submits that good cause exists for the authorization of discovery for the following reasons;
 - (A) Use of discovery procedures will expedite Applicant's preparation and ability to adequately present his grounds for relief.
 - (B) Applicant has yet to receive his complete copy of his Rule 5/Brady Material from his conviction and sentence he is now challenging;
 - (C) Applicant has not been fully apprised of the evidence involved in his case
 - (D) Discovery will permit Applicant to obtain necessary information through means such as dispositions, interrogatories, affidavits, and documents produced by the prosecuting agencies which will allow Applicant to present only relevant material facts obtained through these sources and would support his grounds for relief. Wherefore, Applicant has presented good cause for invocation of discovery and therefore respectfully requests the Court authorize him to conduct discovery pursuant to S.C. Code § 17-27-150 and Rule 26, 34, SCRPC.

Sworn To Before Me, This
21 Day of Feb 2019

Notary Public For South Carolina
Catherine A. Amos

My Commission Expires:
December 23 2029

Respectfully Submitted

Justin Jamal Lewis
 Justin Jamal Lewis, 362322
 Kershaw C.I., OA-52
 4848 Goldmine Hwy
 Kershaw, SC 29067

State of South Carolina }
County of Florence }

Justin Jamal Lewis }
Applicant }

State of South Carolina }
Respondent }

In The Court of Common Pleas
Case No.: 2017-GS-21-00764

Applicant's First Request For
Production of Documents And
Tangible Objects

Please take notice that the Applicant, Justin Jamal Lewis, 362322, respectfully requests that the Attorney General produce, within thirty (30) days, all documents within the Attorney General's and/or Solicitor's possession, custody or control requested herein, in accordance with the definitions and instructions given in this request.

Instructions

1. Scope of Request For Production. This request for production shall cover all documents and tangible objects in the Attorney General's possession, custody, or control or at any other location associated with the Attorney General or any agents of the Attorney General. The term "document" includes without limitation all communications, correspondence, letters, memoranda, notes, charts, tables, spreadsheets, reports, compendia, compilations, books, monographs, abstracts, summaries, diaries, calendars, planners, schedules, digests, ledgers, logs, lists, and all recordings of information, images or sounds on paper, of any kind or description whatsoever including drafts of any of these items. Any document bearing any notation, marking or writing of any kind different from the original shall be treated as a separate document. The term "document" also includes, without limitation, all memory media of any kind, and all other non-paper forms of recorded or memorialized data, words, information, images or sounds.

Request For Production

Applicant requests that the Attorney General produce the following documents and tangible items:

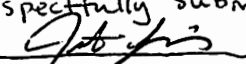
1. The solicitor's entire file related to the prosecution of the Applicant for the above case.
2. All documents concerning any results or reports of any scientific or physical test or experiments conducted on any item of evidence allowed into court or involved in this case.

Sworn To Before Me, This
21 Day of Feb 2019

Notary Public For South Carolina
Cathrine A. Chreese

My Commission Expires:
December 22, 2029

Respectfully Submitted,


Justin Jamal Lewis, 362322
Kershaw C.I. 0A 52
4848 Goldmine Hwy
Kershaw, SC 29067

State of South Carolina }
 County of Florence }

Justin Jamal Lewis }
 Applicant }

v. }
 State of South Carolina }
 Respondent }

In The Court of Common Pleas

Certificate of Service

I the Applicant in the above captioned matter do hereby under penalty of perjury certify that I have served an Application for Post Conviction Relief with Memorandum of Law, Motion For Leave to Conduct Discovery, and Applicants First Request for Production of Documents and Tangible Objects along with Certificate of Service upon the below listed parties on the same date:

1. Solicitor Todd S. Tucker
 180. N. Irby St.
 Florence, SC 29501
2. Clerk of Court
 181 N. Irby St., Suite 1100
 Florence, SC 29501
3. Attorney General
 The State of South Carolina
 P.O. Box 11549
 Columbia, SC 29211

Sworn To Before Me, This

21 Day of Feb, 2019,

Notary Public For South Carolina

Christine A. Cameron

My Commission Expires:

December 23, 2029

Respectfully Submitted

Justin Jamal Lewis

Justin Jamal Lewis
 Kershaw C.I. OA 52
 4848 Goldmine Hwy
 Kershaw, SC 29067

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Justin Jamal Lewis, #362322,	)	2019-CP-21-580
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

In response to Justin Jamal Lewis's (Applicant) action for post-conviction relief (PCR) commenced February 28, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury for distributing heroin (2017-GS-21-00764). Applicant proceeded *pro se* at trial with Wallace H. Jordan, Jr., Esquire (Counsel) as standby counsel. Deputy Solicitor Todd S. Tucker prosecuted the case.

Applicant's case proceeded to a bench trial September 4–5, 2018, before the Honorable Thomas A. Russo. Applicant was convicted as indicted. Judge Russo sentenced Applicant to serve fifteen years imprisonment for distribution of narcotics—second offense.¹ However, after realizing Applicant's offense was considered a first offense, Judge Russo immediately amended the original sentencing sheet to reflect Applicant's offense as a first offense, maintaining the fifteen year sentence.

¹ Applicant was originally sentenced pursuant to section 44-53-370(b)(1) of the South Carolina Code.

Applicant moved for sentencing reconsideration on September 21, 2018, and Applicant was transported for a motions hearing on the matter on October, 3, 2018. Judge Russo then continued the motions hearing to allow Applicant more time to prepare for the hearing. There is a letter, not specifically addressed to anyone, in the Clerk's records filed October 29, 2018, indicating Applicant wished to appeal his conviction and sentence; however, this letter was sent prior to Applicant's final judgement.

Thereafter, on December 7, 2018, Applicant was transported for a motions hearing, but Judge Russo again continued the hearing because Applicant was not prepared to proceed. Judge Russo then elected to consider Applicant's motion for reconsideration based upon Applicant's written submissions. Finally, on December 17, 2018, Judge Russo granted Applicant's motion for reconsideration stating, "Although the [c]ourt's original imposition of Fifteen (15) years imprisonment was legally valid and within the sentencing range, the [c]ourt has decided to give some consideration to the fact that [Applicant] should have been sentenced under a lesser range." Judge Russo amended Applicant's sentence from fifteen years' imprisonment to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

Applicant commenced this PCR action on February 28, 2019.

II. Facts

Applicant's charge stems from a controlled drug buy where Applicant sold heroin to a confidential informant. The drug buy video, a still photo from the video, and the heroin were entered into evidence without objection. (Tr. 58).

At the outset of Applicant's trial, Applicant moved to relieve Counsel. (Tr. 5). Applicant informed the trial court he always wished to proceed to trial on his charge, but he could never get in touch with Counsel. Applicant also stated he had been unable to see the video the State would

present at trial. (Tr. 5-10). Counsel stated his relationship with Applicant was strained, but refuted Applicant's contention that Counsel never attempted to communicate with Applicant. (Tr. 10). Further, Counsel stated he was prepared for trial, and Counsel explained why he had been unable to show Applicant the video. Ultimately, Applicant got tired of waiting to see the video and left the courthouse. (Tr. 12-13).

Applicant informed the trial court he waited for Counsel's return, but then left and Counsel never tried to contact him. (Tr. 13-14). After hearing Applicant's reasons for wanting to relieve counsel, the trial court ruled Counsel would represent Applicant. (Tr. 10-33). However, Applicant then indicated he wished to proceed *pro se*, and the trial court conducted a colloquy regarding the dangers of self-representation with Applicant. There was also an issue discussed as to whether Applicant wanted a jury or a bench trial. (Tr. 33-50). Applicant ultimately elected for a bench trial. (Tr. 52). The trial court ultimately allowed Applicant to proceed *pro se*, with Counsel as standby counsel. (Tr. 48).

Investigator Jason Pate, a narcotics officer, testified at trial he and Investigator Rollins Rhodes set up a controlled drug buy targeting Applicant. (Tr. 66-67). The investigators utilized David Daniels as a confidential informant to conduct the controlled buy. (Tr. 67). Daniels was picked up but never arrested for conspiracy to distribute drugs. (Tr. 78; 81-82). Daniels testified he worked as a confidential informant for money, not to work off any charges. (Tr. 82).

Daniels informed the investigators he could purchase heroin from Applicant. (Tr. 70; 73; 83-84). Daniels knew Applicant through another heroin dealer. (Tr. 107). Daniels' car was searched prior to the buy to ensure there were no illegal drugs in the car. (Tr. 68; 84). Thereafter, the investigators installed audio and video recording equipment in Daniels' car. (Tr. 69; 84). After the video and audio recording devices were placed in the car, Daniels was given seventy-five

dollars for the buy. (Tr. 69; 85). Thereafter, Daniels went to a store, purchased gas, and then met with Applicant. (Tr. 69; 86). Daniels testified he did not purchase anything illegal while getting gas. (Tr. 91). Daniels called Applicant to make sure the buy was still on. (Tr. 86). Daniels asked Applicant if he had some “mud,” which is a street name for heroin. (Tr. 87).

Daniels then went to the gas station, got gas, and immediately went to pick up Applicant. (Tr. 88). When Daniels arrived at Applicant’s location, Applicant entered the car. (Tr. 88). Thereafter, Daniels drove his car and purchased heroin from Applicant. (Tr. 89-90). During the car ride, Applicant asked Daniels if Daniels knew of anyone interested in purchasing Lortab. After the transaction, Daniels went back to the corner where he picked up Applicant, and Applicant exited the car. (Tr. 90).

Daniels then immediately went to meet the investigators at a predetermined location. (Tr. 70; 92). Once at the location, Daniels gave the investigators a zip lock bag containing six bindles of heroin. (Tr. 71; 92). Daniels told the investigators he purchased the heroin from Applicant. (Tr. 72). After giving the drugs to the investigators, the investigators searched Daniels and his car again. (Tr. 92). The audio and video recordings corroborated Daniels version of events. During cross-examination of Daniels about the video, Applicant admitted to being in the video. (Tr. 108). Applicant did not dispute that he got into the car with Daniels and was on the audio and video recordings. (Tr. 240).

III. Allegations

Applicant claims he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Failure to investigate and challenge admissibility of evidence pretrial;
 - b. Failure to provide / review the discovery with Applicant; and
 - c. Failure to file an appeal.

2. Evidence of material fact not previously heard or presented requiring vacation of conviction:
 - a. Evidence withheld from Applicant damaging defense.
3. Conviction and sentence subject to collateral attack:
 - a. Applicant was denied appeal rights and due process rights were violated.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records of this PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound

or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal; or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

Roe v. Flores-Ortega, 528 U.S. 470 (2000). Applicant cannot satisfy the requirements set forth in the *Roe* test. Here, Applicant knew of his right to appeal his conviction and sentence as evinced by his October 29, 2018, letter indicating he wished to appeal his conviction. However, Applicant has made no showing he attempted to appeal the final judgement from the December 17, 2018. Therefore, because Applicant proceeded *pro se* and did not file an appeal from the December 17, 2018, judgement, Applicant knowingly and voluntarily waived his right to a direct appeal. *See White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974) (stating in the absence of an intelligent waiver by the defendant, counsel should pursue an appeal on the defendant's behalf).

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Response to Allegation of Newly Discovered Evidence

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to vacation of his sentence and be released, is without merit. The Uniform Post-Conviction Procedure Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the

applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

Here, Applicant's assertion of newly discovered evidence is without merit. Applicant claims there was evidence in the discovery he was unaware of when he proceeded to trial. This assertion does not constitute newly discovered evidence, as the evidence was provided to Counsel in his preparation for trial.

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Procedure Act² and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCPP. 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, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

VII. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

² S.C. Code Ann. §§ 17-27-10 to -160.

Respectfully submitted,

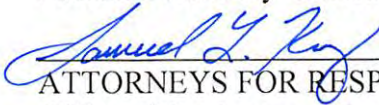
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

9/18, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2019-CP-21-580
	)	
JUSTIN JAMAL LEWIS, #362322,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Overture E. Walker, Esquire
Stoney & Walker, LLC
1527 Blanding Street
Columbia, South Carolina 29201**

DATED this the 18th of September, 2019.

Kasey Knox, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	C/A No.: 2019-CP-21-00580
	)	
Justin Jamal Lewis,	)	
	)	
Applicant,	)	NOTICE OF MOTION AND MOTION
	)	TO AMEND APPLICATION FOR
vs.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

**TO: SAMUEL L. KEY, ESQUIRE, ATTORNEY FOR RESPONDENT AND
RESPONDENT ABOVE-NAMED:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Applicant, Justin Jamal Lewis (hereinafter "Applicant") will move before the Presiding Circuit Court Judge of the Court of Common Pleas for the First Judicial Circuit on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order, pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure, amending the application for post-conviction relief, filed by Applicant on February 28, 2019, to conform to the evidence in the following particulars:

1. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted.

2. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel advised failed to file pre-trial motions challenging the admissibility of evidence.

Applicant entered a plea of not guilty plea and was convicted at trial. Defendant was sentenced to a term of 15 years imprisonment.

3. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to call or communicate with material witnesses whose testimony would have been favorable to Applicant.

4. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to request or procure a copy of the chemical analysis report for establishing the physical evidence and sworn affidavits/statements from witnesses in the chain of custody for purposes of establishing the same pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure.

5. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to timely request a preliminary hearing.

6. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to advise him of his right to appeal and/or provide him with the necessary information for filing a Notice of Appeal

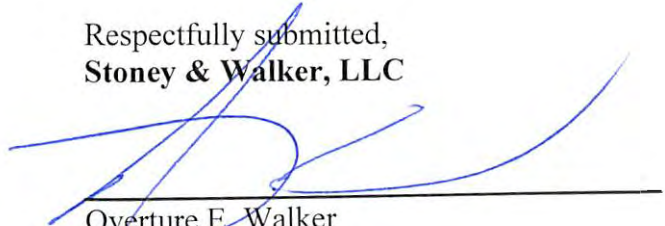
7. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to file a Notice of Appeal on his behalf.

Based on the aforementioned grounds, the application for post-conviction relief, filed by Applicant on February 28, 2019, should be amended to conform to the evidence as set forth above.

This motion is based upon the testimony to be provided by witnesses at the hearing to be scheduled before this Court and upon applicable case law and rules of court.

Pursuant to Rule 11(a) of the South Carolina Rules of Civil Procedure, Applicant, by and through his counsel, certifies that consultation with opposing counsel would serve no useful purpose due to the nature of this motion.

Respectfully submitted,
Stoney & Walker, LLC



Overture E. Walker
1527 Blanding Street
Columbia, SC 29201
Tel: 803.223.6934
Fax: 843.771.9906
Email: owalker@stoneywalkerlaw.com

October 10, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Justin Jamal Lewis, # 362322,	)	Case No.: 2017-GS-21-00764
	)	
Applicant,	)	
	)	AMENDED RETURN AND
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to Justin Jamal Lewis's (Applicant) action for post-conviction relief (PCR) commenced February 28, 2019, and amended October 10, 2019, the State (Respondent) makes this amended return and motion to dismiss:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury for distributing heroin (2017-GS-21-00764). Applicant proceeded *pro se* at trial with Wallace H. Jordan, Jr., Esquire (Counsel) as standby counsel. Deputy Solicitor Todd S. Tucker prosecuted the case.

Applicant's case proceeded to a bench trial September 4–5, 2018, before the Honorable Thomas A. Russo. Applicant was convicted as indicted. Judge Russo sentenced Applicant to serve fifteen years imprisonment for distribution of narcotics—second offense.¹ However, after realizing Applicant's offense was considered a first offense, Judge Russo immediately amended the original sentencing sheet to reflect Applicant's offense as a first offense, maintaining the fifteen year sentence.

¹ Applicant was originally sentenced pursuant to section 44-53-370(b)(1) of the South Carolina Code.

Applicant moved for sentencing reconsideration on September 21, 2018, and Applicant was transported for a motions hearing on the matter on October, 3, 2018. Judge Russo then continued the motions hearing to allow Applicant more time to prepare for the hearing. There is a letter, not specifically addressed to anyone, in the Clerk's records filed October 29, 2018, indicating Applicant wished to appeal his conviction and sentence; however, this letter was sent prior to Applicant's final judgement.

Thereafter, on December 7, 2018, Applicant was transported for a motions hearing, but Judge Russo again continued the hearing because Applicant was not prepared to proceed. Judge Russo then elected to consider Applicant's motion for reconsideration based upon Applicant's written submissions. Finally, on December 17, 2018, Judge Russo granted Applicant's motion for reconsideration stating, "Although the [c]ourt's original imposition of Fifteen (15) years imprisonment was legally valid and within the sentencing range, the [c]ourt has decided to give some consideration to the fact that [Applicant] should have been sentenced under a lesser range." Judge Russo amended Applicant's sentence from fifteen years' imprisonment to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

Applicant commenced this PCR action on February 28, 2019.

II. Allegations Raised and Relief Requested

In his initial application for post-conviction relief, filed pro se, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate and challenge admissibility of evidence pretrial;
 - b. Failure to provide / review the discovery with Applicant; and
 - c. Failure to file an appeal.
2. Evidence of material fact not previously heard or presented requiring vacation of conviction:
 - a. Evidence withheld from Applicant damaging defense.
3. Conviction and sentence subject to collateral attack:

- a. Applicant was denied appeal rights and due process rights were violated.

Through counsel, Applicant amended his application on or around October 10, 2019, to include the follow allegations:

1. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to adequately investigate the criminal charges for which Applicant was convicted;
2. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to file pretrial motions challenging the admissibility of evidence;
3. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to call or communicate with material witnesses who would have been favorable to Applicant.
4. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to request or procure a copy of the chemical analysis report for establishing the physical evidence and sworn affidavits/statements from witnesses in the chain of custody for purposes of establishing the same pursuant to Rule 6...;
5. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to timely request a preliminary hearing;
6. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to advise him of his right to appeal and/or provide him with the necessary information for filing a Notice of Appeal;
7. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to file a Notice of Appeal.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant's allegations are that his counsel was constitutionally ineffective for failing to properly investigate his case; failing to file pretrial motions challenging the admissibility of evidence; failing to to call or communicate with material witnesses who would have been favorable to Applicant; failing to to request or procure a copy of the chemical analysis report for establishing the physical evidence and sworn affidavits/statements from witnesses in the chain of custody for purposes of establishing the same; failing to to timely request a preliminary hearing; failing to advise him of his right to appeal and/or provide him with the necessary information for filing a Notice of Appeal; and failing to file a Notice of Appeal. However, Applicant knowingly and voluntarily waived his right to representation and appeared pro se at trial, and therefore, the

allegations the both the original and amended application should be dismissed with prejudice for failure to state a claim upon which relief can be granted. Rule 12(b), SCRCF.

The record establishes Applicant had a full understanding of the consequences of waiving his right to representation and proceeding *pro se* at trial. For a knowing and intelligent waiver to occur, the defendant must be “(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” Osbey v. State, 425 S.C. 615, 619, 825 S.E.2d 48, 50 (2019). The record reflects Applicant was repeatedly advised of his right to counsel, as well as repeatedly warned about the dangers of representing himself. Tr. pp. 33-34, 40-48. Applicant knowingly and voluntarily waived his right to representation and elected to proceed at trial *pro se*, with Jordan acting only as standby counsel. Tr. pp. 47-48.

There is “no constitutional right to hybrid representation,” where the defendant “share[s] the duties of conducting [his] defense with a lawyer.” United States v. Schmidt, 105 F.3d 82, 90 (2d Cir. 1997) (citing McKaskle v. Wiggins, 465 U.S. 168, 183 (1984) (“Faretta does not require a trial judge to permit “hybrid” representation of the type Wiggins was actually allowed”)). Without a constitutional right to standby counsel, a defendant generally cannot prove standby counsel was ineffective. United States v. Cochrane, 985 F.2d 1027, 1029 n. 1 (9th Cir. 1993) (rejecting ineffective assistance of standby counsel argument in this context without foreclosing argument in future); United States v. Windsor, 981 F.2d 943, 947 (7th Cir. 1992) (explaining the “court knows of no constitutional right to effective assistance of standby counsel”); United States v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998) (holding “without a constitutional right to standby counsel, a defendant is not entitled to relief for ineffectiveness of standby counsel”). Cf. United States v. Cohen, 888 F.3d 667, 680 (4th Cir. 2018) (recognizing that a defendant has no right to the appointment of a standby counsel after he chooses to proceed *pro se*).

Further, Applicant is expressly barred from raising ineffective assistance claims about his own conduct in trial. “Thus, whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.” Faretta v. California, 422 U.S. 806, 834 n.46 (1975). Neither may he raise an allegation regarding Jordan’s pretrial conduct because Applicant assumed responsibility for correcting any pretrial errors when he elected to represent himself. See Cook v. Ryan, 688 F.3d 598 (9th Circ. 2012) (holding a pro se defendant cannot complain of quality of defense by arguing ineffective assistance of counsel even if pretrial counsel erred because the defendant had the opportunity to correct those errors).

Accordingly, the record conclusively refutes Applicant’s **all** of applicant’s allegations — he is not entitled to relief on the basis of ineffective assistance of counsel where he voluntarily waived his right to counsel and proceeded pro se. The trial court engaged in a detailed and thorough colloquy with Applicant during which he indicated he understood his constitutional rights to counsel and wished to waive it in order to represent himself.

S.C. Code Ann. § 17-27-70(c) authorizes the court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the State moves for summary dismissal of this application, as it fails to state a genuine issue of material fact. S.C. Code Ann. § 17-27-70; Rule 12(b)(6), SCRCF; Rule 56, SCRCF. Applicant’s allegation he received ineffective assistance of counsel is wholly and clearly without merit, and the application should be dismissed with prejudice.

V. Response to Any Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in Respondent’s original Return or this Amended Return is hereby denied.

VI. Request for Summary Dismissal

WHEREFORE, Respondent moves to summarily dismiss the application with prejudice as the record and applicable case law clearly refute all of Applicant's allegations, and there is no genuine issue of material fact alleged in the application upon which relief may be granted, pursuant S.C. Code Ann. § 17-27-70.

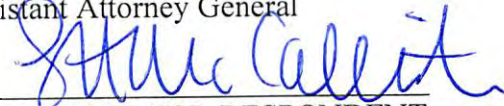
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
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Columbia, SC 29211
Telephone: (803) 734-3737

12/13, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) 2019-CP-21-00580

JUSTIN J. LEWIS,	)	
	)	
Applicant,	)	Transcript of Record
	)	
vs.	)	
	)	DECEMBER 16, 2019
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

B E F O R E:

Honorable D. Craig Brown
 Florence County Courthouse
 Florence, South Carolina

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

Overture Walker, Esquire
Attorney for Applicant

Lindsey McAllister, Esquire
Attorney for State

Sallie Beth Todd
Circuit Court Reporter

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

Certificate of Court Reporter	14

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>

(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

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

2 **MS. MCALLISTER:** May it please the Court, Your Honor.
3 This is Justin Jamal Lewis versus The State of South Carolina.
4 And I believe, I'm sorry -- 2019-CP-21-580. Your Honor, Mr.
5 Lewis was indicted in June of 2017 by the Florence County
6 Grand Jury for distribution of heroin. He proceeded pro se
7 at trial with Mr. Wallace H. Jordan as standby counsel.
8 Deputy Solicitor Todd Tucker prosecuted the case. He
9 proceeded to a bench trial on September 4th through the 5th of
10 2018 before Judge Russo and he was convicted as indicted.
11 Judge Russo originally sentenced him to serve 15 years
12 imprisonment for the distribution 2nd offence; however, Judge
13 Russo later amended the original sentencing sheet to reflect
14 that it was a 1st offense. Applicant then moved for
15 reconsideration on the sentencing. A motion hearing was held
16 on that matter on October 3rd, 2018, and Judge Russo
17 eventually, Your Honor, signed an order granting his motion
18 for reconsideration and resentencing him to 12 years
19 imprisonment. He commenced this PCR action on February 28th,
20 2019. He is represented in this action by Mr. Overture
21 Walker. Your Honor, the state has filed an amended return and
22 a motion to dismiss. And the basis of that motion is the fact
23 that Mr. Lewis proceeded pro se at trial, and so the state
24 would argue that any -- any of his claims that involve conduct
25 at trial are improper in a PCR because he would essentially be

1 asking for relief against himself. Those were his own
2 actions, Your Honor. And in addition, he has -- he has two
3 claims that have to deal with pretrial conduct, Your Honor.
4 It's the state's argument that in this particular case when
5 Mr. Lewis decided to represent himself and essentially assumed
6 representation of the -- of the file, he assumed
7 responsibility for those pretrial issues, and he in fact
8 waived them when he went forward with trial without requesting
9 a continuance to do any -- he charges failure to investigate,
10 but he told the Court he was ready. He wanted a continuance -
11 - he did not want a continuance that he wanted to go forward
12 with trial. So, Your Honor, the state's motion is essentially
13 a motion to dismiss for a failure to state a claim because he
14 can't -- he can't receive post-conviction relief against
15 himself.

16 **THE COURT:** All right.

17 **MS. MCALLISTER:** And I would just rest on the case law
18 that's included in the motion to support that, Your Honor.

19 **THE COURT:** Mr. Walker, how are you doing this morning?

20 **MR. WALKER:** I'm doing well, Your Honor. Good to see
21 you.

22 **THE COURT:** I'm doing well.

23 **MR. WALKER:** May it please the Court, Your Honor. We
24 would ask that you deny the state's motion. Now, certainly I
25 would concede that, you know, as far as any conduct on my

1 client's behalf at trial, we would just have to concede you
2 certainly can't PCR yourself. But with respect to parts of
3 the amended application that reference anything pretrial that
4 has to do with, I guess, counsel up until -- up until the
5 Trial Court had relieved trial counsel. I think that is fair
6 game for purposes of the PCR. For instance, Judge, one of the
7 things that we allege in the amended application for PCR
8 relief is that his attorney failed to adequately investigate
9 the criminal charges. The fact of the matter is, he had
10 counsel up until the day of trial. And even when you look at
11 the trial transcript, there's some back and forth between Mr.
12 Lewis and the Court as to whether or not he was going to
13 proceed without counsel. If I recall correctly from my
14 reading the transcript, he certainly, you know, told the Court
15 that, you know, he wanted new counsel, but the Court was not
16 inclined to grant that. At least, he did not want the
17 attorney that was representing him at that time and the Trial
18 Judge said well you --- pretty much you don't get to pick and
19 choose your lawyer so either you stick with the attorney that
20 you have or go forward today. So I guess, in some sense he
21 didn't willfully go forward without the aid of counsel. He
22 wanted a different attorney but was told by the Trial Court
23 that his case would be going forward. However, Your Honor, I
24 think that there are parts of the -- of this PCR amended
25 application that are relevant, that are pertinent, that the

1 Court should hear. And again, we talked about his counsel
2 adequately failed to investigate the criminal charges, perhaps
3 if that had been done, this information that he would have had
4 at his disposable to perhaps defend himself better at trial.
5 Again, he can't PCR himself, but we're talking about things
6 that was done by counsel, or that were not done by counsel,
7 prior to his attorney being relieved. And we believe that may
8 have had an adverse impact on his ability to represent himself
9 once he was told by the Court that he would have to go forward
10 pro se without the aid or assistance of an attorney. So I
11 believe that paragraph one of our amended application for PCR
12 relief should stand, Your Honor.

13 And frankly, Judge, I believe that paragraph two of the
14 PCR amended application should stand as well as far as counsel
15 failing to advise him or failing to file certain pretrial
16 motions. Again, this was before counsel had been relieved,
17 but certain motions could have been filed and should have been
18 filed challenging the admissibility of certain evidence.

19 **THE COURT:** Well, what would have prohibited him from --
20 from doing that at trial if he felt like certain evidence --
21 why could he not have made his own motions at trial
22 prohibiting the admission of such?

23 **MR. WALKER:** That's a good question, Judge. So, if you
24 have an attorney who is representing you and then the client
25 takes the position that the case had not been adequately

1 investigated, information that he believes would have been
2 pertinent and relevant, then he could have filed those motions
3 himself. But --

4 **THE COURT:** And a lot of times those motions aren't made
5 until trial anyway.

6 **MR. WALKER:** That's correct, Your Honor, they aren't made
7 until trial, but at least there's a period of this process of
8 what we call discovery, or where your attorney investigates
9 the case, or he gets to go through the evidence and sit down
10 with the client and you share information with the client.
11 And, Your Honor, you've represented clients yourself several
12 times over the years prior to taking the bench, and you sit
13 down and you talk with your client and discuss discovery. You
14 sometimes have disagreements over strategy or the way to
15 proceed. At least he would have had the opportunity, or at
16 least he would have known, and would have been better informed
17 as to how to proceed at trial. And so by him saying that his
18 attorney did not adequately investigate the case or not being
19 privy to that information, that certainly impacted his ability
20 to represent himself effectively pro so.

21 **THE COURT:** Okay.

22 **MR. WALKER:** So we take the position, Judge, that is
23 certainly -- we believe that is fair game. We think that is
24 properly before the Court this morning and believe that the
25 motion should be denied. And, Judge, also, you know, he

1 references -- well, we reference, rather, in -- it's paragraph
2 four where my client says that his attorney failed to procure
3 a copy of the Chemical Analysis Report for establishing the
4 physical evidence, as well as sworn affidavits and statements
5 from the witnesses in the chain of custody. Again, that is
6 something that his attorney would have or should have procured
7 through discovery. My client, you know, has made it clear to
8 me that he never saw a Chemical Analysis Report, never had the
9 opportunity to review it, and again, this is something that
10 would have been done prior to the trial counsel being
11 relieved.

12 **THE COURT:** Well, let me ask you this, Mr. Walker, the
13 state has handed me this morning what appears to be their
14 amended return and motion to dismiss, which looks like it was
15 filed today, today. And there's some -- and it was just
16 handed to me a few minutes ago. There's some cases cited in
17 here, specifically *Cook v Ryan* which is a ninth circuit 2012
18 case, it's 688 f.3d 598. For the proposition holding that a
19 pro se defendant cannot complain of quality of defense by
20 arguing ineffective assistance of counsel and even if pretrial
21 counsel erred because the defendant had the opportunity to
22 correct those errors. I haven't read *Cook v Ryan* and don't
23 know exactly what it says, but this is what I'm going to do.
24 Okay. I'm assuming that this -- when were you provided with
25 this amended return and motion to dismiss?

1 **MR. WALKER:** Your Honor, I wasn't provided with it -- a
2 copy of it yet. But in fairness to Ms. McAllister, she did
3 inform me, I believe, on Saturday that the state would be
4 proceeding with a motion to dismiss.

5 **THE COURT:** Okay. Well, let me do this, I'm going to do
6 this. Okay. Because it was just filed today and handed to me
7 today, I'm going to give you ten days if you want to file any
8 kind of memo in opposition to it.

9 **MR. WALKER:** Sure.

10 **THE COURT:** And then I'll make a decision. If I decide
11 to dismiss it, I'll let you know all know, based upon your
12 memos. If I deny her motion to dismiss, then we'll put it on
13 the roster for the next term when -- excuse me, when Seals is
14 not here. No excuse me, Russo is not here, Russo was the
15 Trial Judge. Fair enough?

16 **MR. WALKER:** Yes, Your Honor. That's more than fair.

17 **THE COURT:** All right.

18 **MS. MCALLISTER:** And, Your Honor, do I have the
19 opportunity to submit a memo as well? Would you like one from
20 me or --

21 **THE COURT:** I mean, is this kind of your --

22 **MS. MCALLISTER:** It is. I do have a response to his --
23 to the argument that Mr. Walker made this morning. I can
24 either tell it to you briefly right now or I can put it in a
25 memo, whichever you would prefer.

1 **THE COURT:** Whichever you prefer.

2 **MS. MCALLISTER:** Your Honor, I'll just write -- if he's
3 going to do a memo, I'll just do a memo and put the case law
4 and my argument in the memo.

5 **THE COURT:** Okay. Why don't y'all do that then. Ten
6 days -- well, we've got Christmas next week and then New
7 Years. How about get it to me by the 15th of January.

8 **MR. WALKER:** Fair enough, Judge.

9 **THE COURT:** Is that enough time? That's a month.

10 **MS. MCALLISTER:** Yes, Your Honor.

11 **MR. WALKER:** Your Honor, I beg the Court's indulgence.

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

13 **MR. WALKER:** Your Honor, my client is wanting me to
14 reiterate -- and again, this is not a follow-up argument, but
15 he is wanting me reiterate that one of the grounds in his
16 amended application for PCR relief is that trial counsel did
17 not file for a preliminary hearing. So I just --

18 **THE COURT:** Well, there's no constitutional right to a
19 preliminary hearing, Mr. Lewis. There's no constitutional
20 right to a preliminary hearing, in fact a number of people are
21 indicted before their preliminary hearing ever even is
22 scheduled, if in fact they request a preliminary hearing.
23 Okay.

24 **MR. LEWIS:** Yes, sir. I requested one.

25 **THE COURT:** Sir.

1 **MR. LEWIS:** I requested a preliminary hearing. I
2 requested a preliminary hearing, and it was filed by the Clerk
3 of Court on February 16th. My case wasn't indicted until
4 June, so my -- I mean, the rules say that my preliminary
5 hearing was supposed to be held ten days after I filed for --

6 **THE COURT:** Well, you have ten days to request a
7 preliminary hearing. That's doesn't -- and again, Mr. Walker
8 can more fully explain this to you because he's your lawyer in
9 this matter.

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

11 **THE COURT:** But I will tell you as I said a minute ago,
12 you have no constitutional right to a preliminary hearing.
13 Okay. So you can talk to Mr. Walker about that further.
14 Okay.

15 **MR. LEWIS:** Yes, sir. Rule 2 of the South Carolina Rules
16 of Criminal Procedure says that once I file for my preliminary
17 hearing that it shall be held within ten days following my
18 request.

19 **THE COURT:** And I'm not disputing you or saying that
20 that's not the case, but the constitution takes precedent over
21 any rule of procedure, and therefore you're not under the
22 constitution -- that's not a constitutional right. Okay.

23 **MR. LEWIS:** (Inaudible)

24 **THE COURT:** All right. Like I said, I've decided what
25 I'm going to do on this today. You can further discuss that

1 with Mr. Walker and if he feels like it needs to be addressed
2 in his memo to me, or however he deems appropriate. You have
3 very, very, and I emphasize very competent counsel
4 representing you on this matter and, you know, just because
5 you may think it's an issue, Mr. Walker has been doing this
6 probably longer than I have, it doesn't necessarily mean that
7 it's an issue.

8 **MR. LEWIS:** Yes, sir. My claims are all based off of the
9 law and basically, without proper investigation I would have
10 never known about the evidence that was not supposed to be
11 admitted into court. I did have further investigation prior
12 to being convicted --

13 **THE COURT:** Mr. Walker, I'm sorry, Mr. Lewis, we're not
14 going to get into that today. That may be something if I deny
15 the state's motion to dismiss, then we'll address those issue
16 at a later date. Okay. And you can talk with Mr. Walker
17 about that. Okay.

18 **MR. LEWIS:** Yes, sir.

19 **THE COURT:** Thank you.

20 **MR. LEWIS:** Basically my trial attorney did nothing to
21 test the state's case prior ---

22 **THE COURT:** Mr. Lewis, I've heard all I'm going to hear
23 on your case right now.

24 **MR. LEWIS:** Yes, sir.

25 **THE COURT:** The state's made a motion, I'm giving your

1 lawyer, or both of them, until the 15th of January to file
2 some memos of law in support of their position and we'll go
3 from there. Okay. Have a nice day. Thank you.

4 **(COURT IS ADJOURNED)**

5

6

Lewis vs State

14

2019-CP-21-00580

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Justin Jamal Lewis versus State of South Carolina held in the Court of Common Pleas for Florence County, Florence County Courthouse, Florence, South Carolina, on December 16, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR

Official Reporter

October 12, 2020.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	C/A No.: 2019-CP-21-00580
	)	
Justin Jamal Lewis,	)	
	)	
Applicant,	)	MEMORANDUM IN OPPOSITION TO
	)	RESPONDENT'S MOTION TO
	)	DISMISS
vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

PROCEDURAL HISTORY

On February 28, 2019, Justin Jamal Lewis (hereinafter "Applicant") filed an application/petition for post-conviction relief (PCR) alleging ineffective assistance of counsel. On May 29, 2019, the State (hereinafter "Respondent") filed a motion for an additional time to file the return. On September 19, 2019, Plaintiff filed the original Return with the Court. On October 10, 2019, Applicant filed amendments to his original PCR application and served the same on Respondent. A hearing on the merits was scheduled before the Honorable D. Craig Brown for December 15, 2019. Prior to said hearing, Respondent served Applicant's counsel with a motion to dismiss the PCR petition/application contending that he proceeded *pro se* or represented himself at trial wherein he was convicted – hence he does not have any ground to allege ineffective assistance of counsel. The Court asked for memorandums from both parties before making a ruling.

AUTHORITY

§ 17-27-20 (A) provides in pertinent part: Persons who may institute proceeding;

(A)Any person who has been convicted of, or sentenced for, a crime and who claims:

(1)That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution of this State;

An ineffective assistance claim is based on a violation of the Sixth Amendment right to counsel. Turner v. State, 682 S.E.2d 792, 384 S.C. 451 (2009); Duckson v. State, 355 S.C. 596, 586 S.E.2d 576 (2003); McKnight v. State, 320 S.C. 356, 465 S.E.2d352 (1995). Applicant outlined several grounds in his amended application/petition for PCR relief alleging the ineffectiveness of counsel that had been appointed to his case. The trial judge relieved appointed counsel prior to trial and Applicant proceeded *pro se*. However, the ineffectiveness of appointed counsel alleged by Applicant transpired prior to trial.

Applicant's assertions in Paragraph 1 (failure of counsel to adequately investigate case) and Paragraph 2 (failure to request or procure copy of chemical analysis report) among others in the amended PCR application/petition pertain to counsel's conduct prior to trial thereby triggering the Constitution's guarantee to the right of effective assistance of counsel pursuant to Sixth Amendment at all stages of the criminal proceedings.

Applicant's petition creates genuine issues of fact. Specifically, evidence exists that Plaintiff has been convicted of a crime and that his conviction was in violation of the United States Constitution.

CONCLUSION

Therefore, based on the foregoing argument, Applicant would ask that you deny Respondent's motion to dismiss and allow him proceed with a hearing on the merits of his petition/application.

Respectfully submitted,
Stoney & Walker, LLC

s/Overture E. Walker
Overture E. Walker
1527 Blanding Street
Columbia, SC 29201
Tel: 803.223.6934
Fax: 843.771.9906
Email: owalker@stoneywalkerlaw.com

January 13, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Justin Jamal Lewis, #362322,	)	C.A. No. 2019-CP-21-580
	)	
Applicant,	)	
	)	
v.	)	RESPONDENT'S MEMORANDUM
	)	IN SUPPORT OF MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

This matter is before the Court by way of an application for post-conviction relief (PCR) commenced by Justin Jamal Lewis (Applicant) on February 28, 2019, and amended October 10, 2019. The State made its Amended Return and Motion to Dismiss on December 13, 2019. A hearing convened on December 16, 2019 at the Florence County Courthouse before the undersigned. Because the State's amended return was filed shortly before the hearing, the Court directed the parties to brief the issue of summary dismissal. Respondent asks this Court to grant its motion and dismiss this action with prejudice for the reasons stated below.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury for distributing heroin (2017-GS-21-00764). Applicant proceeded *pro se* at trial with Wallace H. Jordan, Jr., Esquire (Jordan) as standby counsel. Deputy Solicitor Todd S. Tucker prosecuted the case.

Applicant's case proceeded to a bench trial September 4-5, 2018, before the Honorable Thomas A. Russo. Applicant was convicted as indicted. Judge Russo sentenced Applicant to

fifteen years' imprisonment for distribution of narcotics-second offense pursuant to section 44-53-370(b)(1) of the South Carolina Code. However, after realizing Applicant's offense was considered a first offense, Judge Russo immediately amended the original sentencing sheet to reflect Applicant's offense as a first offense, maintaining the fifteen year sentence.

Applicant moved for sentencing reconsideration on September 21, 2018, and he was present for a motions hearing on the matter on October, 3, 2018. Judge Russo continued that hearing to allow Applicant more time to prepare. The Clerk's file contains a letter, not specifically addressed to anyone, filed October 29, 2018, indicating Applicant wished to appeal his conviction and sentence; however, this letter was sent prior to the judgment in Applicant's case becoming final.

Thereafter, on December 7, 2018, Applicant was again transported to court for a motions hearing, but Judge Russo continued the hearing because Applicant was not prepared to proceed. Judge Russo then elected to consider Applicant's motion for reconsideration based upon Applicant's written submissions. Finally, on December 17, 2018, Judge Russo granted Applicant's motion for reconsideration stating, "Although the Court's original imposition of Fifteen (15) years imprisonment was legally valid and within the sentencing range, the Court has decided to give some consideration to the fact that [Applicant] should have been sentenced under a lesser range." Judge Russo amended Applicant's sentence from fifteen years' imprisonment to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

Applicant commenced this PCR action on February 28, 2019.

II. ALLEGATIONS

In his initial application for post-conviction relief, filed *pro se*, Applicant alleges he is

being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate and challenge admissibility of evidence pretrial;
 - b. Failure to provide/review the discovery with Applicant; and
 - c. Failure to file an appeal.
2. Evidence of material fact not previously heard or presented requiring vacation of conviction:
 - a. Evidence withheld from Applicant damaging defense.
3. Conviction and sentence subject to collateral attack:
 - a. Applicant was denied appeal rights and due process rights were violated.

Through counsel, Applicant amended his application on or around October 10, 2019, to include the following allegations:

1. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to adequately investigate the criminal charges for which Applicant was convicted;
2. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to file pretrial motions challenging the admissibility of evidence;
3. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to call or communicate with material witnesses who would have been favorable to Applicant.
4. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to request or procure a copy of the chemical analysis report for establishing the physical evidence and sworn affidavits/statements from witnesses in the chain of custody for purposes of establishing the same pursuant to Rule 6...;
5. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to timely request a preliminary hearing;
6. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to advise him of his right to appeal and/or provide him with the necessary information for filing a Notice of Appeal;
7. Applicant asserts ineffective assistance of trial/plea counsel on the grounds that counsel failed to file a Notice of Appeal.

III. SUMMARY OF FACTS ADDUCED AT TRIAL

At the outset of Applicant's trial, Applicant moved to relieve his counsel. Tr. p. 5. Applicant informed the trial court he always wished to proceed to trial on his charge, but he could never get in touch with Jordan. Applicant also stated he had been unable to see the video the State would present at trial. Tr. pp. 5-10. Jordan stated his relationship with Applicant was

strained, but refuted Applicant's contention he never attempted to communicate with Applicant. Tr. p. 10. Further, Jordan stated he was prepared for trial and explained why he had been unable to show Applicant the video. Tr. pp. 11-13, 24. Ultimately, Applicant got tired of waiting to see the video and left. Tr. pp. 12-13.

After hearing Applicant's reasons for wanting to relieve counsel, Judge Russo ruled Jordan would represent Applicant. Tr. pp. 10-33. However, Applicant then indicated he wished to proceed *pro se*, and the trial court conducted a colloquy regarding the dangers of self-representation with Applicant. Tr. pp. pp. 33-34, 40-48. Judge Russo also inquired whether Applicant wanted a jury or a bench trial. Tr. pp. 33-50. Applicant elected a bench trial. Tr. p. 52. The trial court ultimately allowed Applicant to proceed *pro se*, with Jordan as standby counsel. Tr. p. 48.

Investigator Jason Pate, a narcotics officer, testified at trial he and Investigator Rollins Rhodes set up a controlled drug buy targeting Applicant. Tr. pp.66-67. The investigators utilized David Daniels as a confidential informant to conduct the controlled buy. Tr. p. 67. Daniels was picked up but never arrested for conspiracy to distribute drugs. Tr. pp. 78; 81-82. Daniels testified he worked as a confidential informant for money, not to work off any charges. Tr. p. 82.

Daniels informed the investigators he could purchase heroin from Applicant. Tr. pp. 70, 73, 83-84. Daniels knew Applicant through another heroin dealer. Tr. p. 107. Daniels' car was searched prior to the buy to ensure there were no illegal drugs in the car. Tr. pp. 68, 84. Thereafter, the investigators installed audio and video recording equipment in Daniels' car. Tr. pp. 69, 84. After the video and audio recording devices were placed in the car, Daniels was given seventy-five dollars for the buy. Tr. pp. 69, 85. Thereafter, Daniels went to a store,

purchased gas, and then met with Applicant. Tr. pp. 69, 86. Daniels testified he did not purchase anything illegal while getting gas. Tr. pp. 91. Daniels called Applicant to make sure the buy was still on. Tr. p. 86. Daniels asked Applicant if he had some “mud,” which is a street name for heroin. Tr. p. 87.

Daniels then went to the gas station, got gas, and immediately went to pick up Applicant. Tr. p. 88. When Daniels arrived at Applicant’s location, Applicant got into the car. Tr. p. 88. Thereafter, Daniels drove his car around the block and purchased heroin from Applicant. Tr. 89-pp. 90. During the car ride, Applicant asked Daniels if Daniels knew of anyone interested in purchasing Lortab. Tr. pp. 90, 115. After the transaction, Daniels drove back to the corner where he picked up Applicant, and Applicant exited the car. Tr. p. 90.

Daniels then immediately went to meet the investigators at a predetermined location. Tr. pp. 70, 92. Once at the location, Daniels gave the investigators a zip lock bag containing six bindles of a substance which later tested positive for heroin. Tr. pp. 71, 92. Daniels told the investigators he purchased the heroin from Applicant. Tr. p. 72. After giving the drugs to the investigators, the investigators searched Daniels and his car again. Tr. p. 92. The audio and video recordings corroborated Daniels’ version of events. During cross-examination of Daniels about the video, Applicant admitted to being in the video. Tr. p. 108. The recordings, the bindles of the heroin, and the SLED analysis were admitted into evidence without objection. Tr. pp. 59, 192.

IV. ARGUMENT

Applicant’s allegations are that his counsel was constitutionally ineffective for failing to properly investigate his case; failing to file pretrial motions challenging the admissibility of evidence; failing to call or communicate with material witnesses who would have been

favorable to Applicant; failing to request or procure a copy of the chemical analysis report for establishing the physical evidence and sworn affidavits/statements from witnesses in the chain of custody for purposes of establishing the same; failing to timely request a preliminary hearing; failing to advise him of his right to appeal and/or provide him with the necessary information for filing a Notice of Appeal; and failing to file a Notice of Appeal. However, Applicant knowingly and voluntarily waived his right to representation and appeared *pro se* at trial,¹ and therefore, the allegations in the both the original and amended application should be dismissed with prejudice for failure to state a claim upon which relief can be granted. Rule 12(b), SCRCPP.

The record clearly establishes Applicant had a full understanding of the consequences of waiving his right to representation and proceeding *pro se* at trial. For a knowing and intelligent waiver to occur, the defendant must be “(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” Osbey v. State, 425 S.C. 615, 619, 825 S.E.2d 48, 50 (2019). Before the start of the bench trial, Judge Russo repeatedly advised Applicant of his right to counsel, as well as warning Applicant about the dangers of representing himself. Tr. pp. 33-34, 40-48. Applicant knowingly and voluntarily waived his right to representation and elected to proceed at trial *pro se*, with Jordan acting only as standby counsel. Tr. pp. 47-48.

There is “no constitutional right to hybrid representation,” where the defendant “share[s] the duties of conducting [his] defense with a lawyer.” United States v. Schmidt, 105 F.3d 82, 90 (2d Cir. 1997) (citing McKaskle v. Wiggins, 465 U.S. 168, 183 (1984) (“Faretta does not require a trial judge to permit ‘hybrid’ representation of the type Wiggins was actually allowed.”)).

¹ Notably, Applicant does not dispute this issue, and he has not raised a claim that his waiver of counsel was unknowing or involuntary. See Faretta v. California, 422 U.S. 806 (1975) (holding criminal defendants have a right to refuse counsel and represent themselves in a criminal proceeding). He argues only that he should be allowed to proceed on allegations of pre-trial ineffective assistance.

Without a constitutional right to standby counsel, a defendant generally cannot prove standby counsel was ineffective. United States v. Cochrane, 985 F.2d 1027, 1029 n. 1 (9th Cir. 1993) (rejecting ineffective assistance of standby counsel argument in this context without foreclosing argument in future); United States v. Windsor, 981 F.2d 943, 947 (7th Cir. 1992) (explaining the “court knows of no constitutional right to effective assistance of standby counsel”); United States v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998) (holding “without a constitutional right to standby counsel, a defendant is not entitled to relief for ineffectiveness of standby counsel”). Cf. United States v. Cohen, 888 F.3d 667, 680 (4th Cir. 2018) (recognizing that a defendant has no right to the appointment of a standby counsel after he chooses to proceed *pro se*). Further, Applicant is expressly barred from raising ineffective assistance claims about his own conduct in trial. Faretta, 422 U.S. at 834 n.46 (“Thus, whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.”). Neither may he raise an allegation regarding Jordan’s pretrial conduct because Applicant assumed responsibility for correcting any pretrial errors when he elected to represent himself. See Cook v. Ryan, 688 F.3d 598 (9th Cir. 2012) (holding a *pro se* defendant could not complain of quality of defense by arguing ineffective assistance of counsel even if pretrial counsel erred because the defendant had the opportunity to correct those errors).

Here, Applicant argues he should be allowed to proceed on his claims of pretrial ineffective assistance because if Jordan had done more thorough investigation and preparation, Applicant would have felt more comfortable proceeding with Jordan as counsel or he would have been better able to defend himself. In this case, however, Applicant explicitly told Judge Russo he was not asking for a continuance. Tr. pp. 43, 45. Therefore, he cannot complain now of

counsel's alleged lack of pretrial investigation or failure to review discovery. Applicant assumed responsibility for those tasks when he elected to represent himself, and if Applicant needed more time to ensure he had received and reviewed all evidence and properly prepared his defense, he should have requested a continuance. In any event, the evidence Applicant complains needed to be more thoroughly investigated – the video of transaction and the SLED analysis – were both admitted at trial without any objection from Applicant. Moreover, Applicant went on to admit he is the man in the video, and never raised any argument the video was incorrect or altered in some way. Applicant's only argument is that the video did not sufficiently show the transaction in order to support his conviction, but that is an issue for the factfinder to decide, and it is not properly raised in PCR.

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). "In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." Id. at 363-64, 527 S.E.2d at 747. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993).

Accordingly, the record conclusively refutes **all** of Applicant's allegations - he is not entitled to relief on the basis of ineffective assistance of counsel where he voluntarily waived his right to counsel and proceeded *pro se*. The trial court engaged in a detailed and thorough

colloquy with Applicant during which he indicated he understood his constitutional right to counsel and wished to waive it in order to represent himself. Therefore, he is barred from raising any claims of ineffective assistance – even issues relating to pretrial matters – in a PCR action.

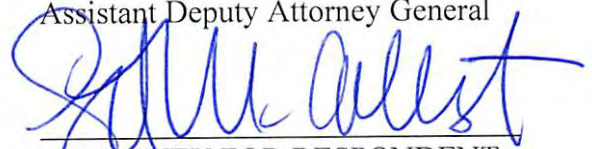
S.C. Code Ann. § 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings. . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See also Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“The. . . presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Therefore, Respondent moves for summary dismissal of this application, as it fails to state a genuine issue of material fact. S.C. Code Ann. § 17-27-70; Rule 12(b)(6), SCRPC; Rule 56, SCRPC.

Applicant’s allegations of ineffective assistance of counsel are wholly and plainly without merit, and this Court should grant Respondent’s motion to dismiss the action with prejudice.

Respectfully submitted,

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By:



ATTORNEY FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

214, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Justin Jamal Lewis, #362322,)

C.A. No. 2019-CP-21-580

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent,)

2020 JUN 19 AM 9:26
 DORIS POULOS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) commenced by Justin Jamal Lewis (Applicant) on February 28, 2019, and amended October 10, 2019. The State made its Amended Return and Motion to Dismiss on December 13, 2019, seeking dismissal of the action on the basis Applicant was not entitled to post-conviction relief as a matter of law because he represented himself at trial. A hearing convened on December 16, 2019, at the Florence County Courthouse before the undersigned. Because the State's amended return was filed shortly before the hearing, the Court heard brief arguments on the issue of summary dismissal, then directed the parties to submit briefs. After review of the pleadings, the arguments and briefs of the parties, and the relevant case law, this Court grants the State's motion and dismisses the action with prejudice for the reasons set forth below.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury for distributing heroin (2017-GS-21-00764). Applicant proceeded *pro se* at trial with Wallace H. Jordan, Jr., Esquire (Jordan) as standby

1 DCB
 p. 1/4/10

CERTIFIED TRUE COPY
 Clerk of Court C.P. & G.S.
 FLORENCE COUNTY, S.C.

counsel. Deputy Solicitor Todd S. Tucker prosecuted the case.

Applicant's case proceeded to a bench trial September 4-5, 2018, before the Honorable Thomas A. Russo. Applicant was convicted as indicted. Judge Russo sentenced Applicant to fifteen years' imprisonment for distribution of narcotics-second offense pursuant to section 44-53-370(b)(1) of the South Carolina Code. However, after realizing Applicant's offense was considered a first offense, Judge Russo immediately amended the original sentencing sheet to reflect Applicant's offense as a first offense, maintaining the fifteen year sentence.

Applicant moved for sentencing reconsideration on September 21, 2018, and he was present for a hearing on his motion on October, 3, 2018. Judge Russo continued that hearing to allow Applicant more time to prepare. The Clerk's file contains a letter, not specifically addressed to anyone, filed October 29, 2018, indicating Applicant wished to appeal his conviction and sentence; however, this letter was sent prior to the judgment in Applicant's case becoming final. Thereafter, on December 7, 2018, Applicant was again transported to court for a motions hearing, but Judge Russo continued the hearing because Applicant was not prepared to proceed.

Judge Russo then elected to consider Applicant's motion for reconsideration based upon Applicant's written submissions. Finally, on December 17, 2018, Judge Russo granted Applicant's motion for reconsideration stating, "Although the Court's original imposition of Fifteen (15) years imprisonment was legally valid and within the sentencing range, the Court has decided to give some consideration to the fact that [Applicant] should have been sentenced under a lesser range." Judge Russo amended Applicant's sentence from fifteen years' imprisonment to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

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2 DCH
2/27/19

II. ALLEGATIONS

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1. Ineffective assistance of counsel:
 - a. Failure to investigate and challenge admissibility of evidence pretrial;
 - b. Failure to provide/review the discovery with Applicant; and
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Through counsel, Applicant amended his application on or around October 10, 2019, to include the following allegations:

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III. SUMMARY OF FACTS ADDUCED AT TRIAL

At the outset of Applicant's trial, Applicant moved to relieve his counsel. Tr. p. 5. Applicant informed the trial court he always wished to proceed to trial on his charge, but he could never get in touch with Jordan. Applicant also stated he had been unable to see the video the State

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while getting gas. Tr. pp. 91. Daniels called Applicant to make sure the buy was still on. Tr. p. 86. Daniels asked Applicant if he had some “mud,” which is a street name for heroin. Tr. p. 87.

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IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, reviewed the relevant case law, and considered the legal arguments presented by both parties. After a thorough review of the case records and the arguments presented, this Court finds summary dismissal is appropriate because, for the reasons explained below, Applicant is not entitled to post-conviction relief on the basis of ineffective assistance of counsel, even for pretrial conduct, where Applicant represented himself at trial. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina

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p. 5710

Code section 17-27-80.

Applicant's allegations are that his counsel was constitutionally ineffective for failing to properly investigate his case before trial; failing to file pretrial motions challenging the admissibility of evidence; failing to call or communicate with material witnesses who would have been favorable to Applicant; failing to request or procure a copy of the chemical analysis report for establishing the physical evidence and sworn affidavits or statements from witnesses in the chain of custody for purposes of establishing the same; failing to timely request a preliminary hearing; failing to advise him of his right to appeal and/or provide him with the necessary information for filing a Notice of Appeal; and failing to file a Notice of Appeal.

However, South Carolina Code section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings. . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." See also Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("The. . . presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). This Court finds Applicant knowingly and voluntarily waived his right to representation and appeared *pro se* at trial,¹ and therefore, the allegations in the both the original and amended applications should be dismissed with prejudice for failure to state a claim upon which relief can be granted. Rule 12(b), SCRCF; Rule 56, SCRCF.

¹ Applicant does not dispute that he voluntarily represented himself at trial, and he has not raised a claim that his waiver of counsel was unknowing or involuntary. See Faretta v. California, 422 U.S. 806 (1975) (holding criminal defendants have a right to refuse counsel and represent themselves in a criminal proceeding). He argues only that he should be allowed to proceed to an evidentiary hearing on allegations of pre-trial ineffective assistance of counsel by Jordan.

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P. 6/7/10

This Court has reviewed the trial record and finds it clearly establishes Applicant had a full understanding of the consequences of waiving his right to representation and proceeding *pro se* at trial. For a knowing and intelligent waiver to occur, the defendant must be “(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” Osbey v. State, 425 S.C. 615, 619, 825 S.E.2d 48, 50 (2019). Before the start of the bench trial, Judge Russo repeatedly advised Applicant of his right to counsel, as well as warning Applicant about the dangers of representing himself. Tr. pp. 33-34, 40-48. Applicant knowingly and voluntarily waived his right to representation and elected to proceed at trial *pro se*, with Jordan acting only as standby counsel. Tr. pp. 47-48.

There is “no constitutional right to hybrid representation,” where the defendant “share[s] the duties of conducting [his] defense with a lawyer.” United States v. Schmidt, 105 F.3d 82, 90 (2d Cir. 1997) (citing McKaskle v. Wiggins, 465 U.S. 168, 183 (1984) (“Faretta does not require a trial judge to permit ‘hybrid’ representation of the type Wiggins was actually allowed.”)). Without a constitutional right to standby counsel, a defendant generally cannot prove standby counsel was ineffective. United States v. Cochrane, 985 F.2d 1027, 1029 n. 1 (9th Cir. 1993) (rejecting ineffective assistance of standby counsel argument in this context without foreclosing argument in future); United States v. Windsor, 981 F.2d 943, 947 (7th Cir. 1992) (explaining the “court knows of no constitutional right to effective assistance of standby counsel”); United States v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998) (holding “without a constitutional right to standby counsel, a defendant is not entitled to relief for ineffectiveness of standby counsel”). Cf. United States v. Cohen, 888 F.3d 667, 680 (4th Cir. 2018) (recognizing that a defendant has no right to the appointment of a standby counsel after he chooses to proceed *pro se*). Further, the Court finds Applicant is expressly barred from raising ineffective assistance claims about his own conduct in

7 DCF
1.7.10

trial. Faretta, 422 U.S. at 834 n.46 (“Thus, whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.”). Neither may he raise an allegation regarding Jordan’s pretrial conduct because Applicant assumed responsibility for correcting any pretrial errors when he elected to represent himself. See Cook v. Ryan, 688 F.3d 598 (9th Cir. 2012) (holding a *pro se* defendant could not complain of quality of defense by arguing ineffective assistance of counsel even if pretrial counsel erred because the defendant had the opportunity to correct those errors).

In this case, Applicant argues he should be allowed to proceed on his claims of pretrial ineffective assistance because if Jordan had conducted a more thorough investigation and preparation, Applicant would have felt more comfortable proceeding with Jordan as counsel or he would have been better able to defend himself. In this case, however, Applicant explicitly told Judge Russo he was not asking for a continuance. Tr. pp. 43, 45. Therefore, the Court finds he cannot complain now of counsel’s alleged lack of pretrial investigation, failure to review discovery, or trial preparation. The Court finds Applicant assumed responsibility for those tasks when he elected to represent himself. If Applicant needed more time to ensure he had received and reviewed all evidence and properly prepared his defense, he should have requested a continuance, for which he was given an opportunity to do so. In any event, the evidence that Applicant complains needed to be more thoroughly investigated – the video of transaction and the SLED analysis – were both admitted at trial without any objection from Applicant. Tr. pp. 59, 192. Moreover, Applicant went on to admit he is the man in the video, and never raised any argument the video was incorrect or altered in some way or that the evidence should not be admitted for any other reason. Tr. pp. 59, 192.

Applicant's only argument is that the video did not sufficiently show the transaction in order to support his conviction, but that is an issue for the factfinder to decide, and it is not properly raised in PCR. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). "In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." Id. at 363-64, 527 S.E.2d at 747. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993).

Accordingly, this Court finds the record conclusively refutes Applicant's allegations, and the Court further finds he is not entitled to relief on the basis of ineffective assistance of counsel where he voluntarily waived his right to counsel and proceeded *pro se*. The trial court engaged in a detailed and thorough colloquy with Applicant during which he indicated he understood his constitutional right to counsel and wished to waive it in order to represent himself. Moreover, Applicant never requested a continuance in order to have more time to prepare his case. Thus, this Court finds Applicant is barred as a matter of law, by the authorities cited above, from raising any claims of ineffective assistance – even issues relating to pretrial matters – in a PCR action.

Therefore, this Court grants Respondent's motion for summary dismissal of this application, as it fails to state a genuine issue of material fact upon which relief could be granted and fails to state any claim cognizable in a PCR action according to the uncontested facts of the

case. S.C. Code Ann. § 17-27-70; Rule 12(b)(6), SCRCP; Rule 56, SCRCP.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Respondent's motion for summary dismissal should be granted, and this application for post-conviction relief must be dismissed with prejudice. Additionally, this Court grants PCR counsel's motion to be relieved.

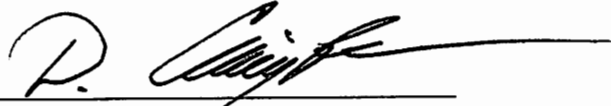
Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, he must serve and file a notice of appeal. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. Respondent's motion to dismiss the action is granted and Application for Post-Conviction Relief is dismissed with prejudice;
2. Counsel for Applicant is relieved; and
3. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

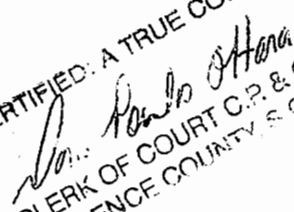
6-11, 2020


D. CRAIG BROWN
Presiding Circuit Court Judge
Twelfth Judicial Circuit

2020 JUN 19 AM 9:26
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

DCB
1-10-2020

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

2017 JUN -8 PM 12:30

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

DOCKET NO. 2017-GS-21-00764

The State of South Carolina
County of
FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

vs.

JUSTIN JAMAL LEWIS

Indictment for

DISTRIBUTION OF HEROIN

WITNESSES

M R Rhodes Florence County Sheriff

Todd Tucker

ARREST WARRANT NUMBER

2017A2110400027

ACTION OF GRAND JURY

TRUE BILL

Hindi Oense
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
DISTRIBUTION OF HEROIN

At a Court of General Sessions, convened on JUNE 8, 2017 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- DISTRIBUTION OF HEROIN

That JUSTIN JAMAL LEWIS did in Florence County, on or about February 3, 2017, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Heroin, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(B)(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.
Justin Jamal Lewis

AKA: _____
Race: Black Sex: M Age: 28
DOB: [REDACTED] SS#: [REDACTED]
Address: 215 Byrnes Cir
City, State, Zip: Johnsonville, SC 29555-6516
DL#: [REDACTED] SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 1st offense 0-15yr

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 13601
Solicitor SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: _____

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017-GS-21-00764

A/W#: 2017A2110400027

Date of Offense: 2/3/2017

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0184

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel

§ Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]

Judge Code: 2141

Sentence Date: 12-17-2018