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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

ORIGINAL

DAN WILLIAMS, II,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
) COURT OF GENERAL SESSIONS
) 06-GS-32-00470
_)

STATE OF SOUTH CAROLINA

vs.

)
)
) TRANSCRIPT OF RECORD
)
)
_)

DAN WILLIAMS, II
DEFENDANT

October 26, 2006
Lexington, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

ROBERT M. MADSEN, ASSISTANT SOLICITOR
Attorney for the State

JAMES R. SNELL, JR., ESQ.
Attorney for the Defendant.

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

DEFENDANT:

PAGE

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: Yes, sir.

2 MR. MADSEN: Your Honor, this is Dan Williams.

3 He is charged in three separate counts: One for
4 distribution of crack cocaine third offense, a separate
5 instance that is distribution of crack cocaine third
6 offense, and then a final instance where he is charged
7 with PWID marijuana third offense, and additionally a PWID
8 crack cocaine third offense.

9 He is represented by Jim Snell of the Lexington
10 Bar, your Honor. Mr. Snell is requesting a mental
11 evaluation on Mr. Williams.

12 THE COURT: Yes, sir, Mr. Snell.

13 MR. SNELL: Yes, your Honor. Well, you heard
14 the Solicitor, I guess, recite the charges, and these
15 originated from an arrest in December of 2005.

16 THE COURT: Okay.

17 MR. SNELL: And in February, the Solicitor in
18 this case offered a plea of PWID first which carried
19 anywhere are really zero to eight years. Against my
20 advice that deal was rejected.

21 The Solicitor again offered a plea of PWID
22 second five to eight years, and against my advice that
23 deal was rejected.

24 I along with the defendant have been served with
25 a Notice of Intent to Seek Life Sentence based on the PWID

1 third that he's charged with carrying up to 30 years and
2 being a most serious.

3 He now stands to go to trial on PWID marijuana
4 third and PWID crack third. If convicted of the PWID
5 crack third, he will receive a life without parole
6 sentence. I believe that's mandatory. And that's the
7 case that we were ready to go forward on this week.

8 He's advised me that there's no witnesses to
9 interview or present on his behalf. He has no alibi or
10 other substantial defense that he's advised me. He is
11 planning on testifying and claiming the drugs maybe.

12 Caution would be the exercise to prevent opening
13 the door for the Solicitor to introduce some distribution
14 allegations on December 1st, 2005 and November 22nd, 2005.

15 I've advised him that there is a mere certainty
16 that at trial he will be convicted and receive a life/no
17 parole sentence.

18 I can find no possible gain to him by proceeding
19 to trial on his charges with his prior record with the
20 plea offers that have been submitted.

21 The defendant and his family have indicated
22 they're relying upon Biblical scripture in making their
23 decision.

24 According to Singleton, there is a cognitive as
25 well as an assistance prong. I find issues present in

1 both.

2 Defendant was previously put before Judge
3 Keesley as he indicated to me that he wanted to hear a
4 judge tell him what his sentences would be, and Judge
5 Keesley did accommodate that request.

6 I am unsure if he understands the nature of the
7 proceedings, the reason for punishment, or nature of
8 punishment. In my mind, a cognitive prong is created.

9 Based upon the defendant's irrational reliance
10 upon Biblical scripture, family members' advice, and his
11 sort of willingness as he's expressed to me to go forward
12 on a trial for life-with-no-parole sentence, I feel there
13 are assistance prong issues as well.

14 Defendant has advised me that he is not
15 suffering from any mental infirmity, takes no mental
16 health medications, has never been hospitalized for mental
17 health, and did not attend any sort of special education
18 classes.

19 From my vantage point I have serious questions
20 concerning his competency and I think it would be in his
21 best interest for him to be evaluated, and I so move.

22 THE COURT: All right, Mr. Snell.

23 Mr. Williams, anything you want to tell me, sir?

24 THE DEFENDANT: He said I need to be evaluated,
25 I need to be evaluated.

1 THE COURT: Okay. All right. I will grant your
2 motion. If you'll get an order.

3 MR. SNELL: I will prepare an order and get it
4 to you, Judge.

5 THE COURT: Thank you.

6 (The proceedings were concluded.)

7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, on the 26th day of October, 2006.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 27, 2007



CAROL M. THUEME, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF LEXINGTON

5 STATE OF SOUTH CAROLINA)

6 -vs-)

TRANSCRIPT OF RECORD

7 DAN WILLIAMS, II,)

06-GS-32-0470

8 Defendant.)

10 April 4 & 5, 2007
11 Lexington, South Carolina

15 B E F O R E:

16 HONORABLE R. KNOX McMAHON, Judge; and a jury.

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

20 ROBERT M. MADSEN, Senior Asst. Solicitor
21 CHRISTOPHER G. SAMELLAS, Asst. Solicitor
Attorneys for the State

22 JAMES R. SNELL, JR., Esquire
23 Attorney for the Defendant

24
25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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Date: 4-4-07County: Lexington

VOIR DIRE

Case No: 06-GS-32-470Judge: McMahonPl./State: StateState/Pl's. Atty: Madsen/Sumella SDefendant: Dan Williams, IIDefense Atty: SnellCourt Reporter: Pantsari

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Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
180	Eleanor Wicker	F	W				✓ (1)
121	Cathy Palmer	F	W			✓ (1)	
174	Roynel Watkins	M	B				✓ (2)
117	Conne Norris	F	W			✓ (2)	
132	Mary Ray	M	W				✓ (3)
158	Lon Simpson	M	W				✓ (4)
69	Amelia Haynes	F	B				✓ (5)
13	George Beckham	M	W			✓ (3)	
162	Gason Snipes	M	W				✓ (6)
34	James Cooke	M	W				✓ (7)
157	John Sigh	M	W				✓ (8)
119	Remone Osby	M	B		✓ (1)		
44	Ngoi Dinh	M	A (Asian)				✓ (9)
116	Janet Norman	F	W				✓ (10)
159	Charles Skinner	M	W				✓ (11)
94	Evelyn Lavigne	F	W			✓ (4)	
42	Freddie Derrick	M	W				✓ (12)

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Date: 7-4-07 13

County: Lexington

VOIR DIRE

Case No: 06-GS-32-470

Judge: McMahon

Pl./State: State

State/Pl's. Atty: Madsen/Samellas

Defendant: Dan Williams II

Defense Atty: Shell

Court Reporter: Pambara

Page 2 of 2

[illegible]

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1 (The following proceedings were reported on
2 April 4, 2007).

3 THE COURT: Solicitor, if you would call your
4 next case for trial, please.

5 MR. MADSEN: Thank you, Your Honor. Your
6 Honor, the State would call Dan Williams, II, Indictment
7 Number 06-GS-32-470, indicted for distribution of crack
8 cocaine.

9 (Hands to Court).

10 THE COURT: Ladies and gentlemen of the jury.
11 panel, the State has called for trial 2006-GS-32-470.
12 It is a true bill indictment, the State versus Dan
13 Williams, II.

14 The indictment basically reads that Dan
15 Williams, II, did in Lexington County, on or about
16 November 22, 2005, knowingly and intentionally,
17 willfully and unlawfully sell, distribute, cultivate,
18 manufacture, deliver, purchase or bring into this State
19 or did provide financial assistance or otherwise aid,
20 abet, attempt or conspire to sell, manufacture,
21 cultivate, deliver, purchase or bring into this State,
22 possess with intent to distribute or was knowingly and
23 intentionally in actual or constructive possession of or
24 did knowingly and intentionally attempt to become in
25 actual or constructive possession of crack cocaine, a

1 controlled substance under the provisions of 44-53-110
2 and 44-53-375 (b) (3) of the South Carolina Code of
3 Laws.

4 This is a true bill indictment for
5 distribution of crack cocaine. The indictment is not
6 evidence. It is not evidence of any of the allegations
7 contained therein. It is merely the formal charging
8 notice document that places the Defendant on notice of
9 the charge of which he is to answer.

10 Solicitor, if you would please introduce
11 yourself and any other members of the Solicitor's Office
12 staff that are going to be assisting you in the
13 prosecution of this case.

14 MR. MADSEN: My name is Robert Madsen. I work
15 for the Solicitor's Office as an assistant solicitor
16 here in Lexington. Trying this case along with me will
17 be Chris Samellas. He is also an assistant solicitor
18 assigned to Lexington County.

19 THE COURT: Thank you, Solicitor. Is any
20 member of the jury panel related by blood or marriage or
21 close personal friends of either Assistant Solicitor
22 Madsen or Assistant Solicitor Samellas or any employee
23 of the Lexington County Solicitor's Office? If so,
24 please stand.

25 (There is no response).

1 THE COURT: The defense in this case is
2 represented by Mr. James Snell.

3 Mr. Snell, would you introduce yourself and
4 any members of your staff that may be assisting you in
5 the defense of this case.

6 MR. SNELL: Thank you, Your Honor. My name is
7 James Snell. I am an attorney with an office out on
8 South Lake Drive here in Lexington. Seated at the table
9 is Lee Snell who will be helping me with this trial, and
10 in the middle is Mr. Williams.

11 THE COURT: Thank you, Mr. Snell. Is any
12 member of the jury panel related by blood or marriage or
13 close personal friends of Mr. Snell or any member of his
14 staff? If so, please stand.

15 (There is no response).

16 THE COURT: Has any member of the jury panel
17 been represented by Mr. Snell? If so, please stand.

18 (There is no response).

19 THE COURT: The allegations in the indictment
20 allege that on November 22nd of 2005 Dan Williams, II,
21 did distribute a quantity of crack cocaine. Does any
22 member of the jury panel have any knowledge about the
23 facts of this case? If so, please stand.

24 (There is no response).

25 THE COURT: Does any member of the jury have

1 any bias or prejudice towards the parties or the subject
2 matter of this case? If so, please stand.

3 (There is no response).

4 THE COURT: Has any member of the jury panel
5 heard or know anything about this case from any source
6 whatsoever? If so, please stand.

7 (There is no response)..

8 THE COURT: I am going to call out a list of
9 potential witnesses in the case. If any of these
10 witnesses are present at this time, I would ask when I
11 call your name, if you would please stand and face the
12 jury panel.

13 Before I get to this point, Mr. Williams,
14 would you please stand for me, sir, and face the jury
15 panel.

16 (The Defendant stands).

17 THE COURT: This is Mr. Dan Williams, II,
18 Thank you, Mr. Williams. You may be seated.

19 Is any member of the jury panel related by
20 blood or marriage or close personal friends of Mr. Dan
21 Williams, II? If so, please stand.

22 (There is no response).

23 THE COURT: The names that I will now call are
24 potential witnesses in the trial of this case.
25 Detective Chris Stout, Lexington County Sheriff's

1 Department. Detective Travis Bass, Lexington County
2 Sheriff's Department. This is Detective Bass. Thank
3 you. You may be seated.

4 Beth Harmon, Lexington County Sheriff's
5 Department. This is Ms. Harmon over to my right. Thank
6 you, Ms. Harmon. Candy Kyzer, Lexington County
7 Sheriff's Department. This is Ms. Kyzer over to my
8 front right.

9 Emily Homer, Lexington County Sheriff's
10 Department. Detective John Moore, Lexington County
11 Sheriff's Department. This is Mr. Moore. Thank you,
12 Detective Moore. Ralph Farmer, Marie Waring.

13 Is any member of the jury panel related by
14 blood or marriage or close personal friends of any of
15 those individuals whose names I called and/or who stood
16 before you? If so, please stand.

17 (Juror stands).

18 THE COURT: This is Mr. Hart. I remember
19 that. Who are you friends with?

20 PROSPECTIVE JUROR: I'm friends with Chris
21 Stout, but he is not here.

22 THE COURT: The fact that you are friends with
23 Detective Chris Stout of the Lexington County Sheriff's
24 Department, could you still be a fair and impartial
25 juror to both the State and the defense in this case?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you. You may be seated. I
3 would set Mr. Hart aside for the trial of this case.
4 Any others?

5 (There is no response).

6 THE COURT: Solicitor, any other names you
7 wish me to call?

8 MR. MADSEN: No, Your Honor.

9 THE COURT: Mr. Snell, any names you wish for
10 me to call?

11 MR. SNELL: No, Your Honor.

12 THE COURT: Any requested voir dire from the
13 State?

14 MR. MADSEN: None from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. SNELL: None, Your Honor.

17 THE COURT: Does any member of the jury panel
18 know of any reason whatsoever why you feel like you
19 could not be a fair and impartial juror to both the
20 state and the defense in the trial of this case? If so,
21 please stand.

22 (There is no response).

23 THE COURT: I find the panel is qualified.
24 The strikes are five and five.

25 Madame Clerk, if you would give us a jury,

1 please.

2 (The jury is impaneled at 2:25 p.m.)

3 (During the jury selection process, the jurors
4 were called forward and peremptory strikes were
5 exercised as noted by the attached voir dire sheet made
6 a part of this record at page 5).

7 THE COURT: Any motions regarding the jury
8 selection process from the State?

9 MR. MADSEN: None from the State, Your Honor.

10 THE COURT: From the defense?

11 MR. SNELL: None from the defense, Your Honor.

12 THE COURT: Solicitor, may I speak with you
13 momentarily at the bench about scheduling matters.

14 (Whereupon there was a bench conference off
15 the record in the presence of the jury but out of the
16 hearing of the jury).

17 THE COURT: Ladies and gentlemen of the jury
18 panel just selected, I will ask you to momentarily step
19 to your jury room. Do not discuss the case with anyone,
20 including your fellow jurors during this brief recess.
21 I will get you back out momentarily. If you would
22 please go with our bailiff.

23 (The jury retires to the jury room).

24 (The jury panel is excused).

25 THE COURT: Anything for the State before we

1 bring in our jury?

2 MR. MADSEN: The one thing, Your Honor, I did
3 want to pass up and have made as a Court's exhibit is
4 Mr. Snell had requested that his client be evaluated.
5 If I recall correctly, the evaluation was ordered by the
6 Honorable Garrison Hill.

7 He was evaluated by the Department of Mental
8 Health. He was found competent to stand trial. It was
9 found that he could assist his counsel, and he did know
10 the difference between right and wrong. The State would
11 stipulate.

12 (Court's Exhibit Number 1 is marked for
13 purposes of the record).

14 THE COURT: I have been handed up what is
15 marked as Court's Exhibit Number 1. It is a cover
16 letter and a five-page document attached thereto from
17 the South Carolina Department of Mental Health Forensic
18 Center in reference to Dan Williams, II.

19 There is a report attached thereto pursuant to
20 44-23-410 finding that Mr. Williams is competent to
21 stand trial. Do you have any questions about this
22 document, Mr. Snell?

23 MR. SNELL: I do not, Your Honor.

24 THE COURT: Do you have any questions
25 concerning Mr. Williams' competency at this time?

1 MR. SNELL: Your Honor, I guess what I would
2 call the Court's attention to -- and certainly not on
3 that document but just related to his competency -- I
4 would call the Court's attention to the finding by the
5 Department of Mental Health that Mr. Williams had some
6 difficulty with the concept of a plea bargain.

7 Mr. Williams was previously before the
8 Honorable Judge Keesley to inquire just about the
9 sentence he may receive, and he didn't necessarily trust
10 the information or the counsel that I was providing him
11 about the potential risk of penalties on this case.
12 Judge Keesley kindly actually ran a copy of the statute
13 off for him and gave that to him. I think we did that
14 in open court.

15 When I moved to have the evaluation, I think
16 the Court at that time had some fairly strong findings
17 that he appeared delusional about his possible defenses,
18 and his contact with reality was suspect, paraphrasing
19 that. I would just like to provide that information to
20 the Court regarding his competency.

21 But I've spent a lot time with Mr. Williams in
22 reviewing the Court process, and he has indicated to me
23 his willingness to go forward with the trial. I
24 certainly wouldn't oppose the Court making any direct
25 inquiry of Mr. Williams concerning that matter.

1 THE COURT: Mr. Snell, do you believes he
2 understands the Court process and the choices that would
3 be available to him and the function of the judge and
4 the jury and the solicitor and the defense lawyer?

5 MR. SNELL: Yes, Your Honor.

6 THE COURT: Mr. Williams, would you please
7 stand.

8 Madame Clerk, would you place Mr. Williams
9 under oath.

10 DAN WILLIAMS, II is first duly
11 sworn.

12 THE COURT: Mr. Williams, I have been handed
13 up this report by the solicitor, Court's Exhibit Number
14 1, which is a report concerning an evaluation that was
15 conducted on you January 9, 2007. Do you recall that
16 evaluation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And it appears that you were
19 examined by a Dr. Michael Ferlauto and a Carol David.
20 They indicate that you were out on bond and that you
21 were competent to stand trial.

22 It further appears they took a rather detailed
23 personal history from you, a mental status examination,
24 and conclusions regarding your competency to stand
25 trial. Do you know today's date?

1 THE DEFENDANT: No, sir, I really don't.

2 THE COURT: What month is it?

3 THE DEFENDANT: April.

4 THE COURT: What day is it in April? What day
5 of the week is it?

6 THE DEFENDANT: Wednesday.

7 THE COURT: What year is it.

8 THE DEFENDANT: '07.

9 THE COURT: What is your date of birth?

10 THE DEFENDANT:

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

12 THE DEFENDANT: Tenth grade. Then I went to
13 Job Corps.

14 THE COURT: Did you go to the tenth grade in
15 Swansea?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: It further indicates that they
18 asked you about the function of the solicitor and the
19 defense lawyer and the judge and the jury. What is the
20 solicitor, the prosecutor's function?

21 THE DEFENDANT: To try and put me in jail.

22 THE COURT: What about the defense lawyer,
23 Mr. Snell?

24 THE DEFENDANT: Try to keep me out of jail.

25 THE COURT: What about the jury?

1 THE DEFENDANT: They listen to the evidence
2 and find me not guilty or guilty.

3 THE COURT: What about me, the judge?

4 THE DEFENDANT: You make the final decision.

5 THE COURT: Do you have any questions of why
6 you are here today?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you understand you are here
9 today to answer the charge of distribution of crack
10 cocaine on November 22, 2005?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand where you are
13 and why you are here?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you cooperating with your
16 attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you communicating with him
19 during the breaks and at other times?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you been out on bond?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So you walked in here today to
24 face this trial?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions you
2 would like to ask me about the procedure, Mr. Williams?

3 THE DEFENDANT: I just don't understand why
4 it --

5 THE COURT: Not about the facts of the case
6 now, not about the facts of your case, just about the
7 procedure.

8 THE DEFENDANT: Oh, no, sir.

9 THE COURT: Your attorney says you might have
10 had some concern about plea bargains. Did you hear
11 Mr. Snell tell me that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Tell me what your concern is about
14 that.

15 THE DEFENDANT: I don't see why I would have
16 to plea bargain on something I didn't do.

17 THE COURT: I agree with that. If you are not
18 guilty, you shouldn't stand up and plead guilty.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Some people plea bargain under a
21 particular case called North Carolina versus Alford,
22 where although they don't admit their guilty, it's a
23 form of a guilty plea. They want the benefit of the
24 bargain.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In other words, a plea bargain
2 they may let you plea -- and I don't know if there have
3 ever been any discussions about plea bargain. You may
4 say: Well, if I could get a better deal, I might get up
5 there and say I have looked at the evidence and I think
6 after looking at the evidence and reviewing it with my
7 lawyer that I believe this jury may convict me, and I
8 want the benefit of a reduced sentence or reduced
9 charge. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that concept?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that what you want to do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there an offer on the table for
16 him, Solicitor? I'm not asking that there be one, I am
17 just asking if there is one.

18 MR. MADSEN: I have told Mr. Snell -- we have
19 gone back and we have made multiple offers over a period
20 of time. He actually has another distribution and a
21 possession with intent to distribute crack pending that
22 are separate from this.

23 We told Mr. Snell today that he could plead
24 straight up. I believe he falls under the 15 to 30. He
25 has priors in the past. This would have had a potential

1 to be a true life case, but we did not notice him.

2 THE COURT: So if he pled today, you would
3 allow him to plead to distribution of crack cocaine, but
4 would you allow him to do that under North Carolina
5 versus Alford, Solicitor?

6 MR. MADSEN: I've never taken a position on
7 that. As long as Your Honor doesn't have a problem with
8 that or no contest.

9 THE COURT: Obviously if the plea were
10 qualified appropriately, I would allow him to plead
11 under North Carolina versus Alford. You are saying you
12 would dismiss the other charges against him; is that
13 correct?

14 MR. MADSEN: I had talked about that with
15 him -- I don't have a problem with that. We talked
16 about doing it concurrently. Quite honestly with the
17 current sentence, he is going to end up facing the same
18 amount of time.

19 THE COURT: So if he pled guilty to what he is
20 facing today or pled guilty under North Carolina versus
21 Alford today, he could receive a sentence of not less
22 than 15, no more than 30 years?

23 MR. MADSEN: That's my understanding.

24 THE COURT: Have you discussed that with him,
25 Mr. Snell?

1 MR. SNELL: I have, Your Honor.

2 THE COURT: Do you want to discuss it with him
3 anymore under North Carolina versus Alford?

4 MR. SNELL: If we may have a few minutes of
5 the Court's time.

6 THE COURT: I will give you a few minutes to
7 discuss that with him. I want you to understand, I
8 don't want it to be taken that I am engaging in any type
9 of plea bargaining with Mr. Williams.

10 However, since you brought the issue up of his
11 understanding of a plea bargain, I will give you the
12 opportunity to do that. Court will be in recess about
13 ten minutes while you discuss that with him.

14 MR. SNELL: Thank you, Your Honor.

15 THE COURT: Mr. Snell, one further thing.
16 Sheriff, once the case is called for trial, he is in
17 custody. You will have to go back here and talk with
18 him. I apologize, I know you didn't know that.

19 MR. SNELL: Yes, sir, Your Honor.

20 (Whereupon there was a recess).

21 THE COURT: Mr. Snell.

22 MR. SNELL: Your Honor, we recessed with, and
23 he has advised me he wishes to proceed to trial.

24 THE COURT: That's fine. Thank you very much,
25 Mr. Snell.

1 Solicitor, anything further before we bring in
2 our jury?

3 MR. MADSEN: No, Your Honor.

4 THE COURT: Mr. Snell, anything before we
5 bring in our jury?

6 MR. SNELL: Nothing further, Your Honor.

7 THE COURT: I want Mr. Cook, Number 34.
8 Mr. Cook would be our foreman.

9 (The jury returns to the courtroom).

10 THE COURT: It appears our jury is back
11 present in the courtroom.

12 Madame Clerk, would you swear our jury please.

13 CLERK: Yes, sir.

14 (The jury is duly sworn at 2:50 p.m.)

15 THE COURT: I told you about the frequent
16 flyer issue. It really comes to roost. I see some
17 familiar faces that I think have perhaps been on all
18 juries we have selected this week.

19 Y'all have heard my opening, some of y'all
20 before; however, it is worth repeating for those of you
21 who haven't. I would ask that you give me your complete
22 and undivided attention.

23 Mr. Foreman, and ladies and gentlemen of the
24 jury, the case we are about to try is the case of the
25 State versus Dan Williams II, the Defendant. What I

1 will now say is intended to serve as an introduction to
2 the trial of this case. These remarks are not a charge
3 on the law.

4 I will instruct you on the law applicable to
5 the case at the end of the trial before you retire to
6 consider your verdict. This is merely an explanation
7 of the procedure that we will follow in the trial so
8 that you may better understand what may be happening.

9 The Defendant is charged by an indictment
10 filed in this court with the crime of distribution of
11 crack cocaine, the elements of which will be explained
12 to you later.

13 The indictment is simply the charge by which
14 the case is brought into court, and it is not in any
15 sense evidence of any of the allegations that it
16 contains.

17 The Defendant has pled not guilty to this
18 indictment. The State therefore has the burden of
19 proving each of the elements of the indictment beyond a
20 reasonable doubt. It will be your duty, ladies and
21 gentlemen, to decide whether the State has met that
22 burden.

23 Your purpose as jurors is to find and
24 determine the facts. You are the sole judge of the
25 facts. If at any time I make any comment regarding the

1 facts, you must disregard it.

2 You are to determine the facts from the
3 testimony you hear and the other evidence introduced
4 in court. It is up to you to determine the inferences
5 which you feel may properly be drawn from the
6 evidence.

7 It is especially important that you perform
8 your duty of determining the facts diligently and
9 conscientiously because ordinarily there is no way to
10 correct an erroneous determination of the facts by a
11 jury.

12 On the other hand and with equal emphasis, the
13 same law that makes you the judges of the facts makes me
14 the judge of the law. The law as given by the Court is
15 the only law you may consider.

16 You must accept and follow it even though you
17 may disagree with it. I cannot tell you what the facts
18 are, and you cannot disagree with me about what the law
19 is or should be.

20 Your job is to take the law as I give it to
21 you, and apply it to the facts as you find them from the
22 testimony of the witness and any other evidence that is
23 introduced during the trial. After doing that, you will
24 render your verdict, a true and just verdict, under the
25 solemn oath that you just took as jurors.

1 Until I advise you to begin your
2 deliberations, you must not discuss the case with
3 anyone, including your fellow jurors, friends, family
4 members or anyone involved in the case. After the case
5 is submitted to you, you must discuss it only in the
6 jury room with your fellow jurors.

7 The attorneys and parties in this case have
8 been advised that they are not to talk with you at all.
9 So if you see anyone involved in the trial and they do
10 not even say hello, they are not being unfriendly or
11 rude. They are merely following the instructions of the
12 Court.

13 During the trial do not read, listen to or
14 watch any news reports about the case. This includes
15 anything that may be in the newspapers, on the internet,
16 radio or television, and do not conduct any independent
17 investigations. You must not consider anything you may
18 have read or heard about the case outside the courtroom,
19 whether before or during the trial.

20 It is important that you keep an open mind and
21 not decide any issue in the case until all of the
22 evidence has been presented, the parties have made their
23 closing arguments, and I have instructed you on the law
24 in this case.

25 It is your solemn responsibility to determine

1 the guilt or innocence of the Defendant, and your
2 verdict must be based solely on the evidence as it is
3 presented to you in this trial and on the law as I
4 instruct you during and at the close of the trial.

5 In just a moment, the solicitor will make
6 what is called an opening statement in which the
7 solicitor will explain to you the issues in this case
8 or at least what the solicitor thinks the issues are
9 in the case.

10 Mr. Snell, the attorney for the Defendant,
11 may also make an opening statement, although he is not
12 required to do so. What the attorneys tell you during
13 their opening statements is not evidence in the case.
14 It is only their contention as to what the issues are.

15 The evidence in the case will be presented to
16 you by the testimony of sworn witnesses from the witness
17 stand and/or by exhibits that may be introduced into
18 evidence.

19 From time to time during the trial, you may
20 hear one of the lawyers say something like: Your Honor,
21 I believe we have a question of law or a matter of law
22 to discuss with you or, Your Honor, may we approach the
23 bench or sometime I myself might find it necessary to
24 excuse you from the courtroom for a short while so the
25 attorneys and I may discuss a matter of law.

1 The reason for this is not to hide anything
2 from you, but it's because you are the judges of the
3 facts in this case. Sometimes when I am discussing
4 matters of law with the attorneys, it may be necessary
5 for me to make some comment as to the facts in
6 connection with ruling whether or not a particular law
7 applies.

8 I am not supposed to tell you what I think the
9 facts are. So I will excuse you from the courtroom
10 while these discussions take place so that in no way
11 will you be influenced by anything that I might say or
12 do in connection with the facts.

13 In determining what the true facts are in this
14 case, you must decide whether or not the testimony of
15 the witnesses is believable. It will be my
16 responsibility to rule as a matter of law as to whether
17 certain testimony is admissible at all or not. But once
18 the testimony is admitted, whether or not you believe it
19 is solely for you to determine.

20 In deciding whether to believe a witness, you
21 have a right to consider the interest of any witness,
22 the bias of any witness, the prejudice of any witness,
23 the opportunity for the witness to have seen the matters
24 and things about which the witness may testify, and the
25 way the witness acts on the witness stand.

1 You have a right to consider anything that is
2 in the record that will help you evaluate the testimony
3 of the witnesses. That means it is your duty to pay
4 close attention to these witnesses, to observe the
5 witnesses, to listen to the witnesses, and to pay close
6 attention to the attorneys and to the Court.

7 Don't let your thoughts wander but give strict
8 attention to the testimony in this case so that at the
9 end of the testimony, after the arguments of counsel and
10 the charge on the law by the Court, you will then be in
11 a position to determine what the true facts are and to
12 apply the law to those facts and thus render a true and
13 just verdict.

14 Mr. Foreman, it will be your added
15 responsibility to preside in the jury room and be the
16 jury's spokesperson here in court. It will also be
17 your duty to write the verdict, but I will give you
18 further instructions about that at the conclusion of
19 the case.

20 Just for purposes of housekeeping, as I tell
21 all jurors, if I want to take a break, we take a break.
22 The same goes for y'all. If you are sitting out here
23 too long and you need to take a break, just to get a
24 breath of fresh air or a refresher break, please raise
25 your hand. We will all take a break together.

1 You are not being held captive out here, and
2 it's not some type of judicial marathon. Again, if
3 anyone needs a break at any time, just please get my
4 attention or the attention of the bailiff.

5 Further, if you cannot hear a particular
6 witness, particularly those of you furthest away from
7 witness stand, please again raise your hand. If you
8 can't hear what they are saying, you won't be able to
9 determine what the facts are. You won't be able to
10 apply those facts to the law as I give it to you. So
11 pay close attention.

12 Also, we would probably take an afternoon,
13 short afternoon, break. Mr. Foreman, during that break
14 if you would check, I usually like to work until about
15 5:30, quarter to six.

16 However, if any of the members of the jury
17 have commitments they need to get to, picking up
18 children or any type of commitment, if you would just
19 let me know after that break, I would appreciate it.

20 Any objection from the State to anything I
21 have said to the jury?

22 MR. MADSEN: None from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. SNELL: None from the Defendant, Your
25 Honor.

1 THE COURT: Solicitor, you may address the
2 jury.

3 OPENING STATEMENT

4 MR. MADSEN: May it please the Court,
5 Mr. Snell: Hopes, dreams, and desires. Ladies and
6 gentlemen, this case is about hopes, dreams and desires.
7 Because drugs, no matter who you are, whether you are
8 young, whether you are old, whether you are rich,
9 whether you are poor, drugs take away people's hopes,
10 dreams, and desires.

11 Ladies and gentlemen, that defendant over
12 there, Dan Williams II, he makes money off of selling
13 drugs that take away people's hopes, dreams, and
14 desires.

15 This is going to be a short case. You are
16 going to hear from a handful of witnesses, but it's an
17 extremely important case. It's an important case
18 because everyone has hopes, dreams, and desires.

19 You are going to hear Dan Williams, II, he has
20 a nickname like a lot of people do, Bubba Dan. It's
21 kind of an unusual nickname, but you will hear that
22 quite a bit. Everyone knows him by Bubba Dan.

23 You are going to hear from law enforcement how
24 they set up what they call an undercover buy. When you
25 do an undercover buy, it would be wonderful to go get

1 the preacher out of the First Baptist Church and have
2 him go around, but they use what they call a
3 confidential informant or a C.I.

4 They can go places that maybe a law
5 enforcement officer can't go. We have a narcotics task
6 force here. You are going to hear from a couple of
7 those individuals who work on that narcotic's task
8 force.

9 They are going to tell you what they do. They
10 are going to tell you what precautions they use to kind
11 of control the buy, to kind of control that C.I. In
12 this instance they used an undercover officer, John
13 Moore, to actually drive the C.I. around.

14 You are going to hear from that C.I. from this
15 witness stand as to what happened. You are going to
16 hear about how he is wired up with audio, not only so
17 that buy is recorded, but also for his safety, how the
18 officers are listening. So if something goes wrong, the
19 officers can be there real quick.

20 You are going to hear all that from them. You
21 are going to hear how Bubba Dan sold him a 40, a \$40
22 amount of crack cocaine at his residence right out the
23 back door, real fast, real quick. You are going to hear
24 that audiotape. It's not going to be perfect, and it's
25 not going to be crystal clear.

1 This isn't the movies. If this was the
2 movies, ladies and gentlemen, I would be standing in
3 front of you, I would have a whole head of hair, I would
4 look like Mathhew McConaughey, and instead of having a
5 keg, I'd have more like a six pack.

6 But you are going to be able to make out the
7 important things on that tape. You are going to hear
8 the undercover officer speaking, telling you what is
9 going to happen, where they are going to go.

10 You are going to hear the confidential
11 informant. You are going to hear him ask: Hey, Bubba,
12 I want a 40. You are going to hear those items off the
13 tape. It is a very, very quick transaction, but you are
14 going to hear all those items.

15 You are going to hear from them that Bubba Dan
16 was the target, that they went to his address, which is
17 out in Swansea off of and what they did with
18 those drugs afterwards.

19 Ladies and gentlemen, I will come back and I
20 will talk to you a little bit more at the end of this
21 case about those hopes, dreams, and desires. But I feel
22 confident after hearing all the evidence, you will find
23 Bubba Dan guilty of distribution of crack cocaine.
24 Thank you.

25 THE COURT: Thank you, Solicitor. Mr. Snell.

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1 the kind of doubt that makes someone hesitate before
2 they act. If you have any doubt at the conclusion of
3 this trial of whether or not Mr. Williams distributed
4 described crack cocaine on November 22, 2005, that doubt
5 must be resolved in favor of Mr. Williams, and you must
6 find him not guilty.

7 The allegation in this case is on that date
8 that Mr. Williams distributed, I believe, \$40 worth of
9 crack to the undercover operative. The evidence will
10 show that Mr. Williams didn't encounter the operative on
11 that date, that he didn't sell or provide any crack to
12 anyone on that date, and he is not guilty.

13 In fact, the informant in this case is someone
14 who's got a prior criminal record for drawing and
15 uttering fraudulent checks based on some convictions in
16 2004 and was paid a hundred dollars to participate. So
17 he is certainly far removed from the preacher, and we
18 believe the evidence will show that should be taken into
19 account and consideration.

20 So, again, this is the most important day in
21 Mr. Williams' life. We ask at the conclusion of the
22 trial that you render a verdict of not guilty. Thank
23 you.

24 THE COURT: Thank you, Mr. Snell. Solicitor,
25 you may call your first witness.

1 MR. MADSEN: The State would call Detective
2 Travis Bass.

3 KENNETH TRAVIS BASS, being
4 first duly sworn, testified as follows:

5 CLERK: State your full name and spell your
6 last name for the court reporter.

7 THE WITNESS: Kenneth Travis Bass, B-A-S-S.

8 DIRECT EXAMINATION

9 BY MR. MADSEN:

10 Q Detective Bass, where do you reside?

11 A In the Lexington County area, here in Lexington
12 County.

13 Q And where are you currently employed?

14 A For the Lexington County Sheriff's Department.

15 Q And how long have you been employed by them?

16 A This last time approximately a year now.

17 Q You have some prior law enforcement experience?

18 A Yes.

19 Q Where was that at?

20 A With the Lexington County Sheriff's Department,
21 with the Lexington County Sheriff's Department at
22 the jail and also with the Swansea Police
23 Department.

24 Q And how much total law enforcement experience do
25 you have?

1 A Approximately ten years.

2 Q With the Sheriff's Office right now, what are your
3 actual job duties or job description?

4 A I am assigned to the Lexington County Multiagency
5 Narcotics Enforcement Team. We go out --

6 Q It's the Lexington County?

7 A Multiagency Narcotics Enforcement Team.

8 Q Could you tell the jury what that is or what that
9 is comprised of?

10 A It's Lexington County sheriff's deputies that are
11 assigned to narcotics. We also have employed with
12 us different agencies. I believe it's Cayce,
13 Lexington City, and Irmo. They assign a couple of
14 their officers to us as well.

15 Q Back when -- you said you worked at Swansea Police
16 Department?

17 A Yes, sir.

18 Q When you worked at Swansea Police Department, were
19 you assigned anywhere when you worked at the
20 Swansea Police Department?

21 A I worked the road with the Swansea Police
22 Department to begin with, and then they assigned me
23 to the task force with the county.

24 Q Were you working as a narcotics officer back on
25 November 22, 2005?

1 A Yes, I was.

2 Q Were you with the county then or were you a Swansea
3 employee that was over at the county?

4 A I was assigned to Swansea.

5 Q Could you kind of tell this jury, what does an
6 narcotics officer do? What are your day-to-day
7 duties?

8 A Basically we answer any kind of complaints that
9 come in from citizens about drug activities that
10 are going on. We also investigate different drug
11 activities as well.

12 We go out and pull surveillance on houses that
13 people are complaining about drug activity going
14 on, interview individuals that have information
15 about drug activity. We also do other things as
16 far as undercover operations, do vice, things like
17 that.

18 Q Do y'all ever do what they call controlled buys?

19 A Yes, sir.

20 Q Could you describe to the jury what a controlled
21 buy means.

22 A Basically a control buy is we will take an
23 informant that we have or we will use one of our
24 undercover officers. If we have a location that we
25 are going to that we have known to be selling

1 drugs, we will wire up the informant or the
2 undercover officer, make sure they no have extra
3 money of their own, no weapons on them, no drugs at
4 all, send them in. They go they make the purchase
5 from this location. After that they meet back up
6 with us and other officers.

7 We get the narcotics from them. Then we
8 re-search them to again to make sure they have
9 nothing else on them again and retrieve our
10 surveillance equipment from them and basically have
11 them write us a statement after that on the
12 timeline of what just took place, what they did,
13 what was said, and everything, describing the
14 individual they dealt with. Then we go about our
15 business.

16 Q So you use a C.I. or a confidential informant?

17 A I'm sorry.

18 Q You use C.I.s or confidential informants quite a
19 bit during those controlled buys?

20 A C.I.s and confidential informants are one and the
21 same for us. We use either term.

22 Q Do you also use undercover officers?

23 A Yes, sir.

24 Q What are the benefits of a using a C.I. as compared
25 to an undercover officer?

1 A C.I.s are normally easier to get into a location.
2 If they've dealt with an individual before, it's
3 easier for them to deal with them again. Sometimes
4 our undercover officers, they are seen a lot out in
5 public, and they are already identifiable as law
6 enforcement officers. Sometime those individuals
7 will not deal with them. They know that they are
8 law enforcement and they have nothing to do with
9 them.

10 Q When you use a confidential informant, do you just
11 give them money and say: See you later. Go by
12 drugs. Come back up to Sheriff's Office and
13 deliver the drugs to me. How do y'all go about
14 that?

15 A No, sir, we don't do that. Basically like I said a
16 minute ago, we will meet the informant somewhere at
17 a predetermined location. We will talk with them a
18 little bit about what is going to transpire. We
19 will check them for anything. Like I said, any
20 kind of weapons they have. If they have any kind
21 of narcotics on them then, any extra money, we take
22 all that from them.

23 After we search them for anything like that,
24 we will place a transmitting device on them so that
25 we can hear what is going on for their safety and

1 also so that we can record the transaction if it
2 takes place.

3 Q Let me ask you right there. When you put that
4 device on them, does that just record what is going
5 on or can you, as an officer, hear that?

6 A I hear that. It does both.

7 Q Let me ask you, do you recall November 22nd of
8 2005?

9 A Yes.

10 Q Did you institute a controlled buy at that point in
11 time?

12 A Yes.

13 Q Who was the target of that controlled buy?

14 A Bubba Dan.

15 Q And do you know what Bubba Dan's real name is?

16 A Dan Williams, II.

17 Q Was there a target location for that controlled
18 buy?

19 A Yes, it was.

20 Q What was that location?

21 A Address in Swansea.

22 Q Let me show you State's Exhibit 1 for I.D.
23 purposes. Do you recognize that?

24 A Yes, sir.

25 Q And what is that?

1 A It's a picture of -- it's a map of in the
2 Swansea area. It's about the 700 block, 700, 800
3 block of

4 Q Does that fairly and accurately represent that
5 area?

6 A Yes, sir.

7 MR. MADSEN: Your Honor, at this time we would
8 move to move State's Exhibit 1 for I.D. into evidence.

9 THE COURT: Mr. Snell?

10 MR. SNELL: No objection, Your Honor.

11 THE COURT: State's 1 is in evidence without
12 objection.

13 (State's Exhibit Number 1 is received into
14 evidence).

15 BY MR. MADSEN:

16 Q Address whose address is that?

17 A Bubba Dan's.

18 Q What county is that address in?

19 A Lexington County.

20 Q Is it a home or a trailer?

21 A It's a trailer.

22 Q Can you show the jury on State's Exhibit Number 1
23 which residence that is.

24 A Yes. (Witness leaves the witness stand). It's the
25 trailer right here (indicating).

1 Q Let me show you a photograph marked as State's.
2 Exhibit Number 2 for I.D. purposes. Do you
3 recognize that?

4 A Yes, sir.

5 Q What is that a photograph of?

6 A It's the front of Bubba Dan's house at Address
7

8 Q And State's Exhibit 3 for I.D. purposes. Do you
9 recognize that?

10 A Yes, sir.

11 Q What is that?

12 A It's the same location, just the end of the trailer
13 looking down the front.

14 Q And finally State's Exhibit Number 4 for I.D.
15 purposes. Do you recognize that?

16 A Yes, sir.

17 Q What is that?

18 A The back door and vehicle of the same residence.

19 (Attorneys confer).

20 MR. MADSEN: Your Honor, we would move State's
21 Exhibit 2, 3 and 4 into evidence.

22 THE COURT: Mr. Snell?

23 MR. SNELL: No objection, Your Honor.

24 THE COURT: State's Exhibit 2, 3, and 4 in
25 evidence without objection.

1 (State's Exhibits Number 2-4 are received into
2 evidence).

3 BY MR. MADSEN:

4 Q Let's get something straight. State's 2, 3, and 4,
5 those actually aren't pictures of his residence on
6 November 22nd; are they?

7 A No, sir.

8 Q Are you aware of what type of vehicle Bubba Dan
9 drives?

10 A I'm sorry?

11 Q Are you aware of what type of vehicle Bubba Dan
12 drove?

13 A Yes, sir.

14 Q What type of vehicle was that?

15 A It's a red in color Chevy S-10 pickup.

16 Q The same one in State's Exhibit number 4?

17 A Yes, sir.

18 Q I will show you State's Exhibit number 5 for I.D.
19 purposes. What is that a picture of?

20 A It's the tailgate and license tag of a red Chevy
21 pickup, tag number South Carolina.

22 Q And who does that tag come back to on that truck?

23 A Dan Williams, II.

24 (Attorneys confer).

25 MR. MADSEN: Your Honor, we move State's

1 Exhibit Number 5 into evidence.

2 MR. SNELL: No objection, Your Honor.

3 THE COURT: State's 5 in evidence without
4 objection.

5 (State's Exhibit Number 5 is received into
6 evidence).

7 BY MR. MADSEN:

8 Q Did you utilize a confidential informant or an
9 undercover officer for this controlled buy?

10 A We used both. For the buy itself though we used a
11 confidential informant.

12 Q Who was the confidential informant in this case?

13 A The confidential informant's name?

14 Q Yes.

15 A Ralph Farmer.

16 Q How did you get him as a confidential informant?

17 A He actually was working with another agent at the
18 time, Agent Step Koon. Whenever Step Koon left, I
19 started working with him.

20 Q Was he working off any type of charges for you?

21 A No, sir.

22 Q Was he compensated for his work as a C.I.?

23 A Yes, sir.

24 Q And who was the undercover officer involved?

25 A Agent John Moore.

1 Q Who does John Moore work with?

2 A The Lexington County Sheriff's Department Narcotics
3 Enforcement Team.

4 Q Can you tell the jury, where do y'all stage or meet
5 up prior to doing the controlled buy?

6 A This individual buy, we met at a location right
7 there off of Highway 321 in the Swansea area.

8 Q When you get there with you being the case officer,
9 what do you do with the C.I.?

10 A The first thing I did was he gets there. I met
11 him, started talking to him about this particular
12 buy we were about to take part in. Then I began --
13 made sure he emptied his pockets, made sure he had
14 nothing in them. He had no money on him, no
15 weapons, no drugs. Everything was fine with that.

16 Q If you find drugs on him, if you were to find drugs
17 on a C.I., what happens?

18 A He is going to be put in handcuffs and taken to
19 jail right then.

20 Q Did you find anything on Ralph that day?

21 A No, sir, I did not.

22 Q After you searched him, what happened with Ralph
23 next?

24 A We talked a little bit more about the buy that was
25 about to take place, and then I took a transmitting

1 device that we use and placed it on him.

2 Q Is that an audio or a video?

3 A That's an audio.

4 Q When that is placed on a C.I., is that always
5 placed in the same location every time you use a
6 C.I.?

7 A No, sir.

8 Q Why is that?

9 A For, one, his safety. If the individual that we
10 are going to purchase from, if they have a history
11 or any knowledge of possibly what is going on, they
12 may be inclined to pat our C.I.s down and see if
13 they are actually wired and working for the police.
14 So we put it in different locations.

15 Q After you searched him and wired him up, do you
16 give him anything, the C.I.?

17 A Before he left, yes, sir.

18 Q What is that?

19 A I gave him \$40 to go make the buy with.

20 Q When he left, who did he leave with you?

21 A Agent John Moore.

22 Q Did they leave in Ralph's car?

23 A No, sir, they used an undercover vehicle of ours.

24 Q And who was driving that vehicle?

25 A Agent Moore.

TRAVIS BASS -- DIRECT -- MR. MADSEN

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1 Q Once the buy is going on and he's wired up, can you
2 hear what is going on?

3 A Yes, sir.

4 Q I've got in my hand State's Exhibit Number 6 for
5 I.D. purposes. Have you had a chance to review
6 this audio?

7 A Yes, I have.

8 Q Does it fairly and accurately represent that
9 controlled buy on November 22, 2005?

10 A Yes, sir.

11 MR. MADSEN: Your Honor, at this point I would
12 move to move State's Exhibit number 6 for I.D. purposes
13 into evidence.

14 MR. SNELL: No objection, Your Honor.

15 THE COURT: State's 6 in evidence without
16 objection.

17 (State's Exhibit Number 6 is received into
18 evidence).

19 BY MR. MADSEN:

20 Q Tell the jury, once you have searched the C.I.,
21 wired the C.I. up, and given him the money and he
22 has left with the undercover Officer, what happens
23 next? What do you do next?

24 A Basically they leave the location. Myself and
25 other agents that are involved in this, we follow

1 behind, at a reasonable distance behind, them so
2 somebody doesn't think we are the police following
3 somebody.

4 But we follow behind them. Once they get to
5 the location that we are going to on
6 myself and other agents, we sit down the road
7 somewhere, either pull over on the side of the
8 road, maybe pull into an abandoned house that we
9 can find, just somewhere where we can hear the wire
10 and make sure everything goes fine, make sure
11 nobody is getting hurt, and also so that we can
12 make the recording for it.

13 Q Did you do that in this case?

14 A Yes, sir.

15 Q Once the drug sale was completed, what happened
16 after that?

17 A Once everything was completed, the C.I. got back in
18 the car with Agent Moore. They then left the
19 location on from Bubba Dan's house. They
20 met back up with me and the other agents.

21 At that time I recovered the narcotics, the
22 crack cocaine, from Agent Moore, debriefed my
23 informant, which entails searching him all over
24 again, making sure he has no drugs from this buy
25 that just took place, make sure he has no more

1 weapons on him than when he left with, make sure he
2 has no extra money, and also to recover the
3 surveillance device.

4 Q If you were to search that C.I. when he gets back
5 and you found -- I guess is it called pinching?

6 A Yes...

7 Q That he has some drugs that he hasn't left with,
8 what would you have done with him?

9 A He would have been placed in handcuffs and taken to
10 jail.

11 Q Did you find anything on Ralph when he came back?

12 A No, I did not.

13 Q Did you find any money?

14 A No, sir.

15 Q Did you find any drugs?

16 A No, sir.

17 Q Was he paid for this buy?

18 A Yes, he was.

19 Q And how much was that?

20 A I believe it was a hundred dollars.

21 Q Once the sale of drugs is over and you are given
22 the crack cocaine by Detective Moore, what do you
23 then do with it?

24 A Once I get back to the office, I fill out a best
25 kit, which it's placed into. On the best kit I

1 write down the date, the case number, the agency
2 that I am employed by, my name, signed and printed.
3 It's sealed up. Other paperwork is also filled out
4 in the best kit. After that I take it to the
5 Sheriff's Office and put it into evidence.

6 Q Let me show you what has been marked as State's
7 Exhibit Number 7 for I.D. purposes. Do you
8 recognize that?

9 A Yes, sir.

10 Q What is that?

11 A It's the best kit that I used on the 22nd of
12 November.

13 Q And is there a case number that you generate or
14 that the Sheriff's Office generates in regards to
15 this case?

16 A Yes, sir.

17 Q What was that?

18 A 05-093765.

19 Q Is there a signature on there indicating that that
20 envelope was sealed by someone?

21 A Yes, sir.

22 Q Who is that?

23 A That's me, my signature.

24 (Attorneys confer).

25 MR. MADSEN: Your Honor, the State would move

1 State's Exhibit Number 7 for I.D. purposes into
2 evidence.

3 MR. SNELL: No objection.

4 THE COURT: State's 7 in evidence without
5 objection.

6 (State's Exhibit Number 7 is received into
7 evidence).

8 BY MR. MADSEN:

9 Q Once you take and you put the crack cocaine in this
10 State's Exhibit Number 7 for evidence, how do you
11 seal this?

12 A There is a thin strip across where the green is on
13 there. It's some type of adhesive glue. You pull
14 the strip off and fold the top of the bag over, and
15 it seals it down.

16 Q Is there a way to tell if anyone has tampered with
17 this bag once you seal it?

18 A The blue markings on the side there, they will
19 stretch if you try to tear it, and I believe the
20 green sealant on the green glue, it will somehow or
21 another distort that.

22 Q Is there a controlled number that is associated
23 with these drugs?

24 A Yes, sir, the control number is C-Charlie-008717.

25 Q Once you've sealed the drug that you've gotten from

1 the undercover officer, what do you then do with
2 those?

3 A Once they are sealed in the bag and all the
4 paperwork is done, I turn it into evidence. If
5 it's during normal hours, we usually give it to the
6 evidence custodians. If it's after hours, lock it
7 in a locker.

8 Q In this case was it during regular hours or after
9 hours?

10 A No, sir, it was after hours.

11 Q So what do you do with that?

12 A I locked it in a locker.

13 Q Is that some place that me or anyone on the jury as
14 a private citizen could just walk into?

15 A No, sir.

16 Q How do you get back there?

17 A We have I.D. cards that you have to put in front of
18 a little magnetic strip type thing. It opens the
19 door. That's the only way you can get in.

20 Q And when you take this back to the Sheriff's
21 Office, do you take it back and just throw it on a
22 desk and leave it for someone to log it in the next
23 day or check it in?

24 A No, sir.

25 Q Where do you then go once you are inside the

1 Sheriff's Office?

2 A Well, once I put it into evidence, I put it into a
3 locker and shut the locker door. You've got a
4 little button that pushes and it's locked.

5 Q Can you get back in to get these out once you have
6 put them in that locker?

7 A No, sir, I cannot.

8 Q Approximately how many times did you use Ralph as a
9 confidential informant?

10 A Myself, probably six to ten times.

11 Q At any point in time, did you have any reason to
12 question his credibility?

13 A No, sir.

14 Q How about his reliability?

15 A No, sir.

16 Q This controlled purchase took place on what day?

17 A November 22, I believe it was, 2005.

18 Q Let me show you what has been marked State's
19 Exhibit number 8 for I.D. purposes. Do you
20 recognize that?

21 A Yes, sir.

22 Q What is that a photograph of?

23 A That's a South Carolina driver's license for Dan
24 Williams, II.

25 (Attorneys confer).

1 MR. MADSEN: Your Honor, at this point in time
2 we move for State's Exhibit Number 8 for I.D. purposes
3 into evidence.

4 THE COURT: Mr. Snell?

5 MR. SNELL: No objection, Your Honor.

6 THE COURT: State's 8 in evidence without
7 objection.

8 (State's Exhibit Number 8 is received into
9 evidence).

10 BY MR. MADSEN:

11 Q Detective Bass, State's Exhibit Number 8, whose
12 driver's license is that?

13 A Dan Williams, II.

14 Q What did you know him by?

15 A Bubba Dan.

16 Q And on this driver's license, does it indicate what
17 date it was issued?

18 A The issue date is 11/10/2005.

19 Q And does it indicate -- so approximately 12 days
20 before this buy?

21 A Yes, sir.

22 Q Does it indicate what his address is?

23 A Address Swansea, South Carolina.

24 Q That's this location here (indicating)?

25 A Yes, sir.

TRAVIS BASS -- DIRECT -- MR. MADSEN

1 Q Detective Bass, do you see the individual you know
2 as Bubba Dan in the courtroom today?

3 A Yes, sir, I do.

4 Q Could you point him out, please.

5 A It's the Defendant sitting in the middle.

6 Q What is he wearing?

7 A Sir?

8 Q What is he wearing?

9 A It's a white shirt with gray sleeves.

10 MR. MADSEN: Your Honor, if the record could
11 reflect he has identified the Defendant.

12 THE COURT: So reflected.

13 BY MR. MADSEN:

14 Q Once you get done and you have packaged up the
15 drugs and done everything else, do you run right
16 out and arrest Bubba Dan?

17 A No, sir.

18 Q And why is that?

19 A For one it would give my informant up.

20 Q What do you mean by that?

21 A If we were to go ahead and make the buy, and I went
22 and obtained an arrest warrant for that
23 distribution, it would be easier for individuals to
24 find out who the informant is that actually made
25 the buys from them.

1 Q Detective Bass, if you could answer any questions
2 Mr. Snell has.

3 A Yes, sir.

4 THE COURT: Thank you, Solicitor. Mr. Snell.

5 CROSS EXAMINATION

6 BY MR. SNELL:

7 Q Detective Bass, to help me understand, at the time
8 the alleged buy took place, where were you?

9 A As far as when the transaction was going on?

10 Q Yes, sir.

11 A I believe if I can show you on here.

12 Q Please.

13 A (Witness leaves the witness stand). If I remember,

14 I believe I was sitting at the intersection of

15 Martin Kneece Road and Highway 6.

16 Q So you are here (indicating)?

17 A Yes, sir.

18 Q Can you, just to refresh our recollection, shows us
19 where Mr. Williams' mobile home was?

20 A Here (indicating).

21 Q If you had to estimate, how far away do you think
22 you were?

23 A Maybe a half a mile at the very most.

24 Q So you yourself weren't an eyewitness and didn't
25 personally observe the transaction alleged to have

1 occurred between your C.I. and Mr. Williams?

2 A No, sir, I was not.

3 Q Now, it's also been your testimony that the
4 informant was paid a hundred dollars to participate
5 in the buy; is that correct?

6 A I'm sorry?

7 Q It was your testimony that the informant was paid a
8 hundred dollars to participate in the buy?

9 A Yes, sir.

10 Q Is that the standard payment for the informant?

11 A It depends, yes, sir. It depends on the informant.

12 Q Has that been the standard payment for this
13 informant for your deals with him in the past?

14 A Yes, sir.

15 Q You testified he was reliable. At the time that
16 you were using him as your informant, were you
17 aware, I guess, of his criminal convictions for
18 drawing and uttering fraudulent checks?

19 A Yes, sir.

20 Q No further questions. Thank you.

21 THE COURT: Thank you, Mr. Snell. Solicitor,
22 anything on redirect?

23 MR. MADSEN: No, Your Honor.

24 THE COURT: Thank you, Detective Bass. You
25 may step down. Solicitor, you may call your next

1 witness.

2 MR. MADSEN: Your Honor, the State would call
3 Ralph Farmer.

4 THE COURT: Mr. Farmer, if you would come
5 around, please.

6 RALPH EDWARD FARMER, being
7 first duly sworn, testified as follows:

8 CLERK: Have a seat right up there, please,
9 sir. Speak up loud and clear and state your full name
10 on the record, spelling your last.

11 THE WITNESS: Ralph Edward Farmer.

12 THE COURT: You may have to speak up a little
13 bit or speak into the microphone for me, please.

14 THE WITNESS: Ralph Edward Farmer.

15 DIRECT EXAMINATION

16 BY MR. MADSEN:

17 Q You need to move that up a little bit. Ralph, are
18 you a little bit nervous today?

19 A A little bit.

20 Q Ralph, where did you grow up?

21 A Richland County.

22 Q And how long have you lived in Richland County?

23 A I've lived in Richland County 25 years.

24 Q Where at in Richland County?

25 A Eastover.

1 Q Do you still live in Richland County now or
2 Lexington?

3 A No, Lexington.

4 Q What kind of work do you do, Ralph?

5 A I'm an iron worker.

6 Q What does an iron worker do?

7 A I'm a welder fitter.

8 Q Like a pipe fitter?

9 A No, structural.

10 Q Did you have an occasion to work as a confidential
11 informant for the Lexington County Sheriff's
12 Department?

13 A Yes, I did.

14 Q Did you work with just one detective or did you
15 work with a couple of them?

16 A Several.

17 Q Could you tell the jury which detectives you worked
18 with.

19 A Travis Bass, John Moore, Agent Koon.

20 Q Step Koon?

21 A Yes.

22 Q Were you paid for your work as a confidential
23 informant?

24 A Yes, I was.

25 Q In your role as a confidential informant, you went

1 out and you bought drugs?

2 A Yes.

3 Q Did that ever cause you fear to actually have to go
4 do that?

5 A Always.

6 Q Why is that?

7 A The situations: Going in, guns, the attitude that
8 different people might have.

9 Q Approximately how many cases did you work on as a
10 confidential informant for the Sheriff's
11 Department?

12 A Twenty or more.

13 Q Now, Ralph, you have been convicted of some crimes;
14 isn't that correct?

15 A Yes, I have.

16 Q You have been convicted for three counts of
17 fraudulent check in 2004 in magistrate's court; is
18 that correct?

19 A Yes.

20 Q And a breach of trust in magistrate's court in, I
21 believe, 2006?

22 A Yes.

23 Q Do you recall back November 22, 2005?

24 A Somewhat, yes, sir.

25 Q During that day were you working as a confidential

RALPH FARMER -- DIRECT -- MR. MADSEN

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1 informant for the Sheriff's Department?

2 A Very possible, yes.

3 Q What officers were you working with?

4 A As far as I know, Agent Koon and John Moore.

5 Q And on that day was there a target that you were
6 working or was there an individual who was a target
7 of a controlled buy?

8 A Yes, there was.

9 Q Who was that?

10 A Bubba Dan.

11 Q And how long have you known Bubba Dan?

12 A Approximately four to six years.

13 Q Do you see Bubba Dan in the courtroom today?

14 A Yes, I do.

15 Q Can you point him out and tell me what he is
16 wearing.

17 A The Defendant, blue and white shirt, number 7 on
18 the sleeve.

19 MR. MADSEN: Your Honor, if the record could
20 reflect he has identified the Defendant.

21 THE COURT: All right, so reflected.

22 BY MR. MADSEN:

23 Q Ralph, are you aware of where Bubba Dan lived?

24 A Yes, sir.

25 Q What road did he live off of?

1 A Number 6.

2 Q Let me show you State's Exhibit Number 1. Can you
3 point out to the jury which trailer is his. You
4 can come down if you need to.

5 THE COURT: Just keep your voice up for us,
6 Mr. Farmer, when you are away from the microphone.

7 THE WITNESS: All right.

8 A (Witness leaves the witness stand). This is
9 Highway 6 (indicating), and this is his trailer
10 right here (indicating).

11 THE COURT: You may have to turn around. When
12 your back is to the jury, it's kind of hard for them to
13 hear. If you would point that out again.

14 THE WITNESS: The corner trailer right here
15 (indicating).

16 THE COURT: Thank you, Mr. Farmer.

17 (Witness resumes the witness stand).

18 BY MR. MADSEN:

19 Q Let me show you State's Exhibits Number 2, 3, and
20 4. Do you recognize those?

21 A Yes, I do.

22 Q What are those photographs of?

23 A The front of his trailer, the back of his trailer,
24 and a partial side view of his trailer.

25 Q When you say his trailer, who are we talking about?

1 A Bubba Dan's.

2 Q On that day before going to Bubba Dan's, do you go
3 to Bubba Dan's by yourself?

4 A Sometimes. It's a different situation.

5 Q How about on this time, do you and law enforcement
6 officers meet up any place?

7 A Yes, we did.

8 Q Where is that?

9 A At the water tower in between Gaston and Swansea.

10 Q When you are there, does anyone search you?

11 A Yes, they do.

12 Q What are they looking for?

13 A Drugs and money.

14 Q Do they find any on you?

15 A No, sir.

16 Q Do they wire you up?

17 A Yes, they do.

18 Q What do they do when they wire you up?

19 A Put a hearing device on me so they can clearly hear
20 what I do and say.

21 Q When they wire you up in the 20-odd times that you
22 have been working as a confidential informant, do
23 they always put it in the same place?

24 A No, they don't.

25 Q Have you had a chance to listen to State's Exhibit

1 Number 6, an audio of this case?

2 A I believe I have, yes.

3 Q Does it fairly and accurately represent what you
4 heard on there as far as this buy?

5 A Yes, it does.

6 MR. MADSEN: Your Honor, at this point in time
7 we would move to publish State's Exhibit Number 6.

8 THE COURT: All right. You may publish it.
9 How long is it, Solicitor?

10 MR. MADSEN: I believe about four minutes.

11 THE COURT: About 40?

12 MR. MADSEN: About four.

13 THE COURT: Thank you.

14 (State's Exhibit Number 6 is played for the
15 jury.

16 BY MR. MADSEN:

17 Q How did you get to Bubba Dan's residence?

18 A In an undercover car.

19 Q Were you driving that car?

20 A No, I wasn't.

21 Q You could hear on the tape where you are saying:

22 Stop, stop, stop, trying to stop the car. Why were
23 you saying that?

24 A To keep from Bubba seeing who else was in the car.

25 Q Why is that?

1 A To be sure I make that deal.

2 Q Can you tell the jury, once you got out of the car,
3 what happened?

4 A I walked straight up to the door. Bubba was
5 standing in the door. I told him what I wanted.
6 He gave it to me. I gave him the money and turned
7 around and got back in the car.

8 Q What did he give you?

9 A Some rock cocaine.

10 Q When you say you walked to the door, which door did
11 you walk to?

12 A The back door.

13 Q Let me show you State's Exhibit Number 4. Is that
14 the back door that you went to?

15 A Yes, it is.

16 Q Where was he?

17 A Standing on the top step.

18 Q And where were you standing?

19 A On the ground in front of him.

20 Q What did you ask him for?

21 A Forty.

22 Q What did you give him for that 40?

23 A Forty dollars.

24 Q Once he gave you the 40, what did you then do?

25 A I told him I appreciated it, turned around and

1 walked back to the car, got in the car. Myself and
2 John Moore left.

3 Q Let me show you State's Exhibit number 4 again
4 showing that back door. It's got a truck in there.
5 Do you recognize that truck?

6 A That's Bubba Chevrolet pickup.

7 Q Let me show you State's Exhibit Number 9 for I.D.
8 purposes. Do you recognize that?

9 A That's another one of Bubba's cars.

10 Q Was that car there that night?

11 A Yes, I believe so.

12 MR. MADSEN: Your Honor, the State would move
13 State's Exhibit Number 9 for I.D. purposes into
14 evidence.

15 THE COURT: Mr. Snell?

16 MR. SNELL: No objection.

17 THE COURT: State's 9 in evidence without
18 objection.

19 (State's Exhibit Number 9 is received into
20 evidence).

21 BY MR. MADSEN:

22 Q Once you get back into that car, what do you do
23 with the crack cocaine?

24 A Laid it on the console so Agent John could see it.

25 Q Then what does he do with it?

RALPH FARMER -- DIRECT -- MR. MADSEN

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- 1 A I tried to get him to get out of the yard as soon
2 as we could so we could get it put into a bag.
- 3 Q Did y'all do that?
- 4 A Yes, we did.
- 5 Q Once you leave Bubba's, where do y'all go?
- 6 A To a scheduled meeting place.
- 7 Q Back at the water tower?
- 8 A Most of the time, yes.
- 9 Q Once back there, does anyone search you?
- 10 A Yes, they do.
- 11 Q Did they found anymore money on you?
- 12 A No.
- 13 Q Do they find any drugs on you?
- 14 A No.
- 15 Q The drugs you got from Bubba, who ended up with
16 those?
- 17 A Agent John Moore.
- 18 Q The gentleman sitting right here?
- 19 A Yes.
- 20 Q And you were paid a hundred dollars for this buy?
- 21 A I would say yes. I think so.
- 22 Q You were paid some amount of money for it?
- 23 A Yes, I was.
- 24 Q Who was the man who sold you those drugs that day?
- 25 A Bubba Dan.

1 Q Answer any questions Mr. Snell has for you, please.

2 THE COURT: Thank you, Solicitor. Mr. Snell:

3 MR. SNELL: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. SNELL:

6 Q Mr. Farmer. I am James Snell, attorney for
7 Mr. Williams. I don't believe we have met or
8 spoken previous to today; have we, sir?

9 A No, sir.

10 Q I guess could you show me on the map where you
11 pointed Mr. Williams' residence to be. You can
12 certainly step down.

13 THE COURT: Keep your voice up for me, please.

14 A (Witness leaves the witness stand). Right here
15 (indicating).

16 Q And when you rode to Mr. Williams' residence, who
17 were you riding with?

18 A John Moore.

19 Q What kind of car were y'all in?

20 A I'm not exactly sure the kind. The color was red.

21 Q Gray?

22 A Red.

23 Q Red, okay. Are you sure it was red?

24 A Yes.

25 Q And a big car or small car?

1 A Medium size.

2 Q Where did that car park? Can you point out on the
3 map where you were saying: Stop, stop.

4 A Yeah, I can point it out on the map. But I can't
5 exactly show you where as far as to the trailer.

6 Q If you could please, point on the map.

7 A (Witness leaves the witness stand). We stopped
8 here (indicating).

9 Q That's your person that stopped here. Where did
10 the car stop on the road?

11 A We pulled into the driveway and parked here
12 (indicating).

13 Q Okay. And where did you go when you got out of the
14 car?

15 A To the back of the trailer.

16 Q Can you describe the back of that trailer. You can
17 have a seat.

18 A (Witness resumes the witness stand). One door with
19 a set of steps.

20 Q Isn't there a deck or porch or is it -- how is that
21 entranceway?

22 A Just steps going into the back door.

23 Q When you approached the trailer on November 22,
24 2005, your testimony was you were wearing the wire
25 or a recording device?

1 A Yes, I was.

2 Q Where was that recording device placed on you?

3 A If I'm not mistaken, it was in a jacket.

4 Q Was anyone else there -- who was there at the house
5 on that day?

6 A Bubba and his son.

7 Q And was anyone else present or walking through the
8 yard or anything like that, sir?

9 A John Moore was in the car that dropped me off.
10 That was the only other individual.

11 Q Tell us, before you do a buy such as this one and
12 they put the wire on you, could you describe to us
13 what kind of search they put you through?

14 A A physical search. They searched my billfold.
15 They pat me down, make me take my shoes off, check
16 his socks, shoes, whatever it takes.

17 Q You testified that you've known Mr. Williams for
18 several years?

19 A Yes.

20 Q Do you know what his occupation is?

21 A Nothing that I know of.

22 Q Do you know -- you talked about his son. Do you
23 know anyone else in his family?

24 A No.

25 Q Now, you testified that you work, correct, as a

1 welder?

2 A Yes, welder fitter.

3 Q And were you currently employed November 22, 2005?

4 A I believe so.

5 Q Where would you have been employed at?

6 A Biotech.

7 Q What would have been your rate of pay?

8 A Twelve dollars an hour.

9 Q How many times -- you also testified that you've
10 been an informant approximately 20 times; is that
11 correct, sir?

12 A Yes.

13 Q How many times have you testified in court before?

14 A None.

15 Q This is your first time testifying in Court?

16 A Yes.

17 Q Now, a hundred dollars for somebody who makes \$12
18 an hour isn't a lot of the money; is it?

19 A No, it's not.

20 Q Did you have a special need for money at this time?

21 A Not really.

22 Q You also testified that you were convicted in court
23 for three counts of drawing and uttering a
24 fraudulent check; is that correct?

25 A Yes.

1 Q And one count of breach of trust?

2 A Yes.

3 Q Were you having financial problems back in 2004 and
4 2005?

5 A No.

6 Q And it is your testimony on November 22, 2005, that
7 you did make this transaction with Dan Williams,
8 the Defendant today?

9 A Yes.

10 MR. SNELL: No further questions.

11 THE COURT: Thank you, Mr. Snell. Anything in
12 redirect, Solicitor?

13 MR. MADSEN: Nothing, Your Honor.

14 THE COURT: Thank you, Mr. Farmer. You may
15 step down.

16 Mr. Foreman, hand ladies and gentlemen of the
17 jury, I will take a brief recess. During this recess in
18 your jury room, I would remind you, you are not to
19 discuss the case with anyone. That includes your fellow
20 jurors during this recess.

21 Remember to keep an open mind about the case
22 until you have heard all the evidence, the closing
23 arguments by the attorneys, and the charge on the law by
24 the Court. With that being said, if you would go with
25 our bailiff, please.

1 (The jury retires to the jury room).

2 THE COURT: Court will be in recess 15
3 minutes.

4 (Whereupon there was a recess).

5 THE COURT: Anything before we bring our jury,
6 Mr. Snell?

7 MR. SNELL: Briefly. I didn't get a chance a
8 to talk with Mr. Madsen about this. We did the Blair
9 issue earlier.

10 THE COURT: Yes, sir.

11 MR. SNELL: I didn't put it down in my notes.
12 I don't know if the Court made a finding that he was
13 competent to stand trial.

14 THE COURT: If I didn't, I would confirm that
15 I made the finding that he is competent to stand trial.
16 He appears to know where he is and when it is and what
17 he is here for.

18 Based on both the report of January 12, 2007,
19 and you relating to me your opinion of his mental state
20 and my talking with him, I think he is competent to
21 stand trial and competent to assist in his own defense.

22 MR. SNELL: Thank you, Your Honor.

23 THE COURT: Anything further?

24 MR. MADSEN: No, Your Honor.

25 THE COURT: Bring us our jury, please.

1 (The jury returns to the courtroom).

2 THE COURT: Our jury is back present and we
3 are continuing with the presentation of the testimony by
4 the State.

5 Solicitor, you may call your next witness.

6 MR. MADSEN: Your Honor, the State would call
7 Detective John Moore.

8 THE COURT: Detective Moore.

9 JOHN A. MOORE, being
10 first duly sworn, testified as follows:

11 CLERK: Have a seat and state your full name
12 and spell your last, please.

13 THE WITNESS: John A. Moore, M-O-O-R-E.

14 DIRECT EXAMINATION

15 BY MR. MADSEN:

16 Q Detective Moore, where are you currently employed
17 at?

18 A I am currently employed with the Lexington County
19 Sheriff's Office as a detective assigned to the
20 narcotics division.

21 Q And how long have you worked for the Sheriff's
22 Department?

23 A I've been with the Lexington County Sheriff's
24 Office since '03. Prior to that I worked 20 years
25 for Orangeburg County Sheriff's Office.

1 Q And what did you do when you were in Orangeburg
2 County?

3 A I was captain over narcotics.

4 Q And would that have included just Orangeburg
5 County?

6 A I had four counties. It was actually Orangeburg,
7 Barnwell, Bamberg, and Calhoun.

8 Q That was some kind of task force down there?

9 A Yes, sir, it was a task force we had there. It was
10 a huge task force.

11 Q When you came up here to Lexington in '03, what
12 position did you start out with in our Sheriff's
13 Office?

14 A I started out in the Sheriff's Office working
15 narcotics, straight to the narcotics division, and
16 I've been in narcotics the whole time, except for a
17 short stint where I went to work for Homeland
18 security. It's still with the Sheriff's Office. I
19 was just reassigned to Homeland Security.

20 Q So how much law enforcement experience do you have
21 total?

22 A Twenty-four years.

23 Q Of that 24 years, how much would be in narcotics?

24 A I've been in narcotics since 1988.

25 Q Nineteen years?

1 A That's close. It's been a long time.

2 Q Did you have an occasion to become involved in this
3 case on November 22, 2005?

4 A Yes, sir. I was asked by the case agent, Travis
5 Bass, to do the undercover with the informant.

6 Q Was there a target for this undercover buy?

7 A Yes, sir. The target was Dan Williams, II or they
8 call him Bubba Dan.

9 Q And was there a target location that Bubba Dan was
10 supposed to be at?

11 A On the Swansea address.

12 Q Can you the tell the jury what your
13 responsibilities and duties in reference to this
14 undercover buy were?

15 A Yes, sir, I would be glad to. My goals actually
16 doing the undercover on this part is actually
17 three. Number one, I like to control the deal as
18 best I can.

19 Even though the informant was making the
20 purchase, I want to control him, where the buy is
21 being made. My second goal is to witness and
22 describe.

23 I want to witness what is going on. I
24 describe residences. I describe vehicles, anybody
25 that is in the yard. That's the witness part of

1 that.

2 The third goal of this is a safety issue. My
3 goal is to make sure that that informant and
4 myself, of course, go in as safely as possible and
5 come back out.

6 If there's any problems, I will call the deal
7 right then. Because no matter what is going on, no
8 matter what type of dope we are working on, it's
9 not worth anybody's life.

10 Q And in this case were you aware whether or not the
11 C.I. was wired with audio?

12 A All our deals we wire, either the informant or the
13 undercover.

14 Q Do you have a way when you do this or when you are
15 an undercover officer that you can contact other
16 officers?

17 A Yes.

18 Q How is that?

19 A I contact other officers, whether it's by radio or
20 Nextel, a little beep on the Nextel. During the
21 transmission of the wire or the bug, sometimes we
22 call it, it's concealed.

23 In this particular case, it was concealed on
24 the informant because the Defendant, Bubba Dan, did
25 not know me. So the informant did not feel like he

1 would be comfortable selling to me.

2 Q And I think the testimony was that y'all staged at
3 the water tower. What did you do with the
4 confidential informant?

5 A Once the informant was searched and wired up, it
6 was my responsibility to drive him to the location.

7 Q And how did you come down. Could you show the jury
8 using State's Exhibit Number 1.

9 A Can I get up?

10 Q Yes, sir.

11 A (Witness leaves the witness stand). Came down I.W.
12 Hutto Road. We made a right on Martin Kneece road,
13 went to I think you heard on the wire
14 when I was briefing the wire or what we call giving
15 it a header, what we are doing, when I started
16 giving that header is right there at

17 From here (indicating) to the residence, it's
18 about a half a mile, 30 seconds I think you heard
19 me say, 30 seconds. That's giving the header.
20 That's just basically what we are doing at that
21 particular moment and what I see, describing
22 everything as I went in.

23 I think you heard on the wire, the residence I
24 described was as a single wide trailer, the color
25 of the vehicles that was in the yard, and the light

1 on.

2 Q Let me show you State's Exhibits 2, 3, and 4 and
3 ask if you recognize those.

4 A Absolutely. This is the Defendant's trailer, his
5 residence I went to that night. That's a little
6 side view of it, and that's the back door and his
7 vehicle.

8 Q Using State's Exhibit Number 2, when you pull up
9 into his residence, where do you pull?

10 A That's the front of the residence. We pull to the
11 left side of the driveway, followed straight down
12 and it comes into --

13 Q Let me show you State's Exhibit Number 3 and 4.

14 A It comes to this side (indicating) of the trailer.
15 That's where I parked on this side right here
16 (indicating). The informant Ralph got out of my
17 car and met with the Defendant at the top of the
18 stairs there.

19 Q We heard on the wire something about: Stop, stop
20 stop. Did you stop the vehicle right when Ralph
21 told you to stop?

22 A No, sir.

23 Q Why is that?

24 A It's not up to him to control the actions of me.
25 My goal is I want to witness the Defendant and the

1 informant talking or going into the house. I don't
2 want him to control the deal. I control it. My
3 goal at that point was to witness the door and/or
4 the Defendant if he goes into the residence.

5 Q And when you pulled up to the side of that
6 residence, what did Ralph do?

7 A Ralph got out of the vehicle. We was given a
8 description of the cars. I think you heard on the
9 wire we were given a description of the car.

10 Q Let me show you again State's Exhibit Number 4. Do
11 you recognize that vehicle?

12 A Yes, sir, I do.

13 Q What is that?

14 A That's the vehicle that has been at the residence
15 every time I've been there, and it also comes back,
16 running the tag, back to the Defendant.

17 Q And how about State's Exhibit 9, do you recognize
18 that?

19 A Yes, sir, that's the vehicle that we called out
20 that night.

21 Q Who does that vehicle come back registered to?

22 A To the Defendant, Bubba Dan.

23 Q Let me show you this again. On State's Exhibit
24 Number 9, you called out on the wire a tag number
25 of 148RRX?

1 A Yes, sir.

2 Q Was that the actual tag on the vehicle?

3 A No, sir.

4 Q Why is that?

5 A The actual tag is . . . From the way the car was
6 sitting, the pickup truck was sitting, I miscalled
7 the first number. I called it a 1. From where I
8 was sitting, we was angled out trying to look at
9 the vehicles.

10 Q Who does that car tag come back to?

11 A To the defendant.

12 Q So once Ralph gets out of your undercover vehicle,
13 where does he go?

14 A To the back door, to the steps.

15 Q The steps that we see in State's Exhibit Number 4?

16 A That's correct.

17 Q And what can you see?

18 A The back light comes on to the residence, the door
19 opens, and the Defendant, sitting by counselor,
20 comes out to greet the informant.

21 Q How long is Ralph up there at the back door with
22 the Defendant?

23 A I mean it's quick. You heard on the tape it was
24 pretty quick.

25 Q Once Ralph gets done and comes back, what does he

1 do?

2 A The norm. He comes back into the vehicle. As soon
3 as he opened the door, my policy and my work ethic
4 is to take the dope right away from him. Whoever I
5 am working with, I don't let them hold the dope. I
6 want to take the dope. I control the evidence.

7 I got the evidence, got him back in the car.
8 I asked him: Was that our target, the name Bubba
9 Dan that he goes by? He said: absolutely. You
10 heard that as well.

11 We're backing up, and as I was trying to back
12 out around there, I was worried about running into
13 some trees that was there. So I was trying to back
14 up and get out.

15 At the same time, I was making sure it's still
16 safe to leave there. There is nobody coming out.
17 Nobody trying to overtake us for any reason
18 whatsoever or might even pose a threat to us. I
19 was doing all that, controlling the vehicle,
20 controlling the evidence, and backing out of the
21 yard without running into anything.

22 Q Now, the crack cocaine that Ralph gave you, what
23 did you do with it?

24 A In the car we've got some baggies. Once I got out
25 of the driveway, I got into the glove box and got a

1 baggie and put the dope in the baggie. It was
2 maintained in my control until I met special Agent
3 Bass back at the water tower at our meeting
4 location.

5 Q Let me show you State's Exhibit Number, I believe
6 it's 7. Let me show you State's Exhibit Number 7.
7 When you talk about the bag you put it in, that's
8 not this best kit; is it?

9 A No, sir, that's the little small bag that's inside
10 the best kit.

11 Q And once you put it in that, where do you and Ralph
12 go then from Bubba Dan's?

13 A We leave going back the same route I directed you,
14 and the water tower is back up there in that area.

15 Q The house that you went to, what county is that in?

16 A That's in Lexington County in the area of Swansea.

17 Q Once you get back to that staging location, is it
18 your duty to search the C.I.?

19 A No, sir.

20 Q What do you end up doing with the crack cocaine
21 that you have taken?

22 A I maintained the crack until I can give it to the
23 agent, which is right there on the scene.

24 Q What agent did you give this crack cocaine to?

25 A Travis Bass.

1 Q Now, Detective Moore, when you are going out and
2 you are doing this ride along and that, are you
3 wearing a shirt and tie, nice and prettied up?

4 A No, sir, I'm not.

5 Q Why is that?

6 A That's not the typical way. The typical thing what
7 I like to do when we are doing any kind of
8 undercover is I like to put on work clothes, put
9 some tools in the car or the truck, whatever we are
10 using.

11 I've done several things where I've cut some
12 wood and got saw dust on me, wore painter pants
13 with paint on it. I've done a lot of difficult
14 type of deals.

15 To seal that deal, you've got to look the
16 part, and looking the part is if you are going to
17 be a painter or you are going to be in a band or
18 look like a painter or something of that nature.

19 A lot of times I will go jog just before the
20 deal so I get hot and sweaty like I'm coming from
21 work and put on the clothes. It's all to sell what
22 you're there to sell.

23 Q When you give the crack cocaine over to Agent Bass,
24 do you tamper with it in any way besides putting it
25 in the bag?

1 A Absolutely not.

2 Q Is it in the same or substantially the same
3 condition as when you give it to him?

4 A Yes, sir, it is.

5 Q Could you point out please the individual that you
6 saw come to that back door?

7 A The Defendant sitting in the middle of counsel
8 wearing the shirt with Number 7 on it.

9 MR. MADSEN: Your Honor, if the record can
10 reflect he has identified the Defendant.

11 THE COURT: So reflected.

12 BY MR. MADSEN:

13 Q If you would answer any questions Mr. Snell has.

14 THE COURT: Thank you, Solicitor. Mr. Snell.

15 CROSS EXAMINATION

16 BY MR. SNELL:

17 Q Detective Moore.

18 A Good afternoon, counselor.

19 Q Good afternoon, sir. I'm James Snell. I don't
20 think we've ever met or talked before?

21 A No, sir.

22 Q If you could on the map, could you show me where
23 you parked the car that was used during this
24 incident?

25 A (Witness leaves the witness stand). I went to the

1 residence and went over here on the side
2 (indicating). So if you are facing the residence,
3 it would be the left side.

4 Q Let me go over here. Is your car -- you can have a
5 seat.

6 A (Witness resumes the witness stand).

7 Q Is your car pulled all the way in the back or are
8 y'all still kind of in the front?

9 A I'm pulled to the side with the front end to the
10 back.

11 Q So you had a vantage of both the front and the back
12 of the mobile home?

13 A I had the vantage of the back only.

14 Q I guess in your long career in law enforcement,
15 have you testified in other trials before?

16 A Yes, sir, I have testified in State and Federal
17 court and civil court.

18 Q About how many trials do you think you have
19 testified in?

20 A Probably -- I couldn't tell you. It has been quite
21 a few.

22 Q But a lot?

23 A A lot, yes, sir.

24 Q Now, in this particular buy, I guess just to sort
25 of refresh my recollection, what type things did

1 you yourself do or do you recall to make your
2 appearance look like someone who would participate,
3 I guess, in a drug buy? We heard about painter
4 pants and chain sawing.

5 A Right. We had a small medium car and it's red in
6 color. Actually I put some carpet tools in the
7 back seat, and I had my blue jeans that's kind of
8 torn. I had a shirt on that's a blue T-shirt that
9 has a stripe on the thing, and it's got holes in
10 it, real work clothing.

11 Q It sounds to me like these buys are almost like
12 theater, I guess in a way?

13 A You've got to look the part if you're going to get
14 the stuff, you know. You can't go down there like
15 I am dressed today.

16 Q Right.

17 A Or you are endangering people. All this, like I
18 said at the beginning, is safety. All this what we
19 are putting up is plots. That's what we've got to
20 do.

21 We've got to look at the part, be the part,
22 and you've got to know the street lingo and you've
23 got to know the dealing. I promise you if you go
24 into these places and you don't look like you are
25 doing it, somebody is going to get hurt.

1 Q That's right. How many feet away do you think from
2 Mr. Williams and your C.I. were you during the
3 alleged buy?

4 A I would assume, looking over the hood of the car
5 from the driver's side, looking that way, estimate
6 about 25, 30 feet.

7 Q And you were seated in the car?

8 A Yes, sir.

9 Q And where was Mr. Williams? Am I correct in
10 understanding he was sort of in the door frame of
11 the mobile home?

12 A Actually on the top step. When he turned the light
13 on, he came out, came to the top step, and he just
14 kind of looked at the car, and he looked at me.
15 Then he recognized Ralph, and him and Ralph did the
16 deal, but he definitely -- him and I made eye
17 contact.

18 Q Do you know approximately what time of day this
19 was?

20 A It was in the evening.

21 Q Do you know what time?

22 A I think it was 7:13, I believe, something of that
23 nature. It's wintertime. So it is dark outside,
24 but the lighting from the back porch and the
25 lighting from inside the house illuminated him

1 where I could see him.

2 Q No further questions. Thank you so much, sir.

3 A Thank you, counselor.

4 THE COURT: Anything on redirect, Solicitor?

5 MR. MADSEN: No, Your Honor.

6 THE COURT: Thank you. Detective Moore, you
7 may step down. Solicitor, you may call your next
8 witness.

9 MR. MADSEN: Your Honor, the State would call
10 Beth Harmon.

11 THE COURT: Ms. Harmon, if you would come
12 around, please.

13 MARGARET ELIZABETH HARMON,
14 being first duly sworn, testified as follows:

15 CLERK: State your full name and spell your
16 last, please.

17 THE WITNESS: Margaret Elizabeth Harmon,
18 H-A-R-M-O-N.

19 DIRECT EXAMINATION

20 BY MR. MADSEN:

21 Q Do you go by Beth?

22 A Yes.

23 Q Beth, where are you currently employed at?

24 A Lexington County Sheriff's Department.

25 Q And how long have you been employed there?

1 A Almost five years.

2 Q What do you do with the Lexington Sheriff's
3 Department now?

4 A I am currently an evidence custodian.

5 Q Prior to being an evidence custodian, what did you
6 do?

7 A I was a 911 dispatcher.

8 Q Do you recall, when did you become an evidence
9 custodian?

10 A January of 2005.

11 Q January of 2005?

12 A Yes.

13 Q Could you kind of tell the jury, what does an
14 evidence custodian at the Sheriff's Department do?

15 A Evidence custodians are responsible to maintain
16 chain of custody, as well as the integrity of all
17 evidence that is turned into our division. We have
18 three people in our office. There's two of us and
19 the sergeant.

20 We have a secured building that is alarmed.
21 There are three keys to it. We take the evidence
22 out of the locked locker and sign that evidence in.
23 We basically make sure that the description the
24 officer has written on the paperwork is actually
25 what we have.

1 We package it or seal it if it's something
2 that needs to be packaged or seal. If it's
3 clothing, we box it up and take it to the warehouse
4 or take it to S.L.E.D., wherever it needs to go.

5 Q As far as the Sheriff's Office, can me as a private
6 citizen, just walk back into the Sheriff's Office?

7 A No, sir.

8 Q What would I need to do to get back in the
9 Sheriff's Office?

10 A You have to be escorted by an employee or you have
11 to have a proxy card to get to our division.

12 Q A proxy card?

13 A Yes, it's an I.D. card that you scan onto a
14 magnetic reader, and it will unlock the door for
15 you.

16 Q Then how about once I get in the Sheriff's Office,
17 can I just walk back into the evidence locker even
18 once I am in the Sheriff's Office?

19 A No.

20 Q Why is that?

21 A The locker is locked from the front. They are only
22 able to be unlocked from the back with a key. Only
23 the evidence custodians have access to the back
24 side of those lockers.

25 Q Let me show you State's Exhibit Number 7. Do you

1 recognize that?

2 A Yes.

3 Q What is that?

4 A It's a best kit.

5 Q And did you take that into evidence?

6 A I did.

7 Q When did you take that into evidence?

8 A November the 23rd, 2005, at 10:56 in the morning.

9 Q And what time does the evidence department accept
10 stuff in person?

11 A We are there Monday through Friday from eight until
12 five with the exception of any holidays.

13 Q What if an officer gets some kind of piece of
14 evidence after hours, what do they do with it?

15 A They are responsible for sealing that evidence
16 properly, such as drugs. They would be sealed in a
17 best kit or a bag, and they drop those into a
18 locker and lock the locker.

19 Q Once they drop those into a locker, can that
20 officer get them back?

21 A No.

22 Q Who has to get them from there?

23 A The evidence custodian in the morning.

24 Q And you got this case?

25 A I did.

1 Q Once you get this out of that locker, what do you
2 do with State's Exhibit Number 7?

3 A I verify that the best kit control number is the
4 one that's written on the paperwork, that the form
5 B. is filed -- or is completed, filled out, that
6 the drug lab request form is filled out, and that
7 the bag is sealed.

8 Q Were all those things done on State's Exhibit
9 Number 7?

10 A Yes, it was.

11 Q Did you notice any tampering with State's Exhibit
12 Number 7?

13 A No, I did not.

14 Q At any point in time, did you tamper with State's
15 Exhibit Number 7 or has it substantially changed in
16 any condition from when you took it in?

17 A No, it has not.

18 MR. MADSEN: That's all the questions I have
19 for Ms. Harmon.

20 THE COURT: Thank you, Solicitor. Mr. Snell.

21 MR. SNELL: No questions of this witness, Your
22 Honor.

23 THE COURT: Thank you, Ms. Harmon. You may
24 step down.

25 Solicitor, you may call your next witness.

1 MR. MADSEN: Your Honor, the State would call
2 Candy Kyzer.

3 CANDY KYZER, being
4 first duly sworn, testified as follows:

5 CLERK: State your full name, spelling your
6 last.

7 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

8 DIRECT EXAMINATION

9 BY MR. MADSEN:

10 Q Candy, where are you currently employed?

11 A Lexington County Sheriff's Department.

12 Q And how long have you worked there?

13 A Going on 12 years.

14 Q What is your position currently?

15 A Evidence custodian.

16 Q Same thing as Beth?

17 A Yes.

18 Q How long have you been doing it?

19 A For four years.

20 Q Prior to that what did you do?

21 A I was a computer operator in the warrant division
22 and then also worked in our finance department at
23 the Sheriff's Department.

24 Q Do you and Beth have the same duties?

25 A Basically. I deal a little bit more of the

1 releasing of, the evidence and stuff than what she
2 does.

3 Q Let me show you State's Exhibit Number 7. Do you
4 recognize that?

5 A Yes, I do.

6 Q What is that?

7 A It's a best kit.

8 Q Is there an officer that was related to that best
9 kit?

10 A Yes.

11 Q Who is that?

12 A Travis Bass.

13 Q Did you end up turning State's Exhibit number 7
14 over to anyone?

15 A Yes, I did.

16 Q Who was that?

17 A Emily Homer.

18 Q Who is Emily Homer?

19 A She is the chemist for the Sheriff's Department.

20 Q And when did you do that?

21 A June 28th -- or 20th.

22 Q When you turned State's Exhibit Number 7 over to
23 Emily, did it appear that it had been tampered
24 with?

25 A No, it had not.

1 Q Was it in -- did you tamper with it in any way?

2 A No, I did not.

3 Q Does it appear to be in the same or substantially
4 the same condition as when you had State's Exhibit
5 Number 7?

6 A Yes.

7 Q And where did you actually get State's Exhibit
8 Number 7 from?

9 A From our drug room. That's where we store all the
10 best kits that are waiting to go to the drug lab.

11 Q And who placed it in that room?

12 A Beth Harmon did.

13 Q Did you actually end up getting State's Exhibit
14 Number 7 back from Emily Homer, the chemist?

15 A Yes, I did.

16 Q When was that?

17 A On June 26th.

18 Q Where did you then place State's Exhibit Number 7?

19 A It went back into our drug room. We have boxes
20 that are numbered for each best kit or piece of
21 evidence that is drug related that comes in, and
22 this one just happened to go into a box, and it was
23 box 225.

24 Q And has it sat there until you brought it to court
25 today?

1 A Yes, it has.

2 Q That's all the questions I have. Answer any
3 Mr. Snell has.

4 THE COURT: Mr. Snell.

5 MR. SNELL: No questions of this witness, Your
6 Honor.

7 THE COURT: Thank you, Ms. Kyzer. You may
8 step down.

9 Solicitor, you may call your next witness.

10 MR. SAMELLAS: Thank you, Your Honor. The
11 State calls Emily Homer.

12 EMILY DIANE HOMER, being
13 first duly sworn, testified as follows:

14 CLERK: State your full name and spell your
15 last.

16 THE WITNESS: My name is Emily Diane Homer,
17 H-O-M-E-R.

18 DIRECT EXAMINATION

19 BY MR. SAMELLAS:

20 Q Thank you, Ms. Homer. Ms. Homer, where are you
21 presently employed?

22 A At the Lexington County Sheriff's Department.

23 Q And what is your position at the Lexington County
24 Sheriff's Department?

25 A I'm the chemist and deputy.

1 Q And how long have you been employed in that
2 position?

3 A About a year and a half.

4 Q Could you please describe for the jurors what your
5 duties are as a chemist.

6 A As a chemist my first duty is to analyze drug
7 evidence. I also run the forensic drug analysis
8 lab. I also give different types of advice about
9 chemicals that the department may need.

10 Q Could you please tell us a little about your
11 educational background.

12 A I have a Bachelor of Science in Chemistry from the
13 University of South Carolina. I also have a
14 Master's Degree in Organic Chemistry from the
15 University of South Carolina.

16 Q Do you have any teaching experience?

17 A Yes, sir, I do. I taught in graduate school
18 organic and general chemistry, and I currently also
19 tutor in chemistry and algebra and different maths.

20 Q Do you have any certifications?

21 A I'm certified by S.L.E.D. as a chemical analyst I
22 am also certified by the State Law Enforcement
23 Association as a police officer.

24 Q Tell us a little bit about becoming certified by
25 S.L.E.D.. What is S.L.E.D.?

EMILY HOMER -- DIRECT -- MR. SAMELLAS

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1 A S.L.E.D. is the South Carolina Law Enforcement
2 Division. The certification there took about six
3 months. It's one-on-one training in their drug
4 analysis lab. There's different types of training,
5 not only -- it's divided into different modules.
6 Not only are you tested on your ability to analyze
7 certain drug cases but also on your knowledge of
8 different drugs.

9 Q In your work have you had the opportunity to
10 analyze substances to determine whether or not they
11 contain crack cocaine?

12 A Yes.

13 Q Can you tell us about approximately how many times
14 you have analyzed these substances?

15 A To date I've approximately analyzed about 550
16 cases.

17 Q Is that all crack cocaine?

18 A No. Each case may or may not have one piece of
19 evidence. Some cases have up to 20 pieces of
20 evidence, but probably over half is about crack
21 cocaine.

22 Q So probably over half of the 550 cases --

23 A Uh-huh. (Indicating affirmative response).

24 Q -- where substances you looked at that were crack
25 cocaine; is that correct?

1 A Yes, sir.

2 Q And do you do these analyses as a regular part of
3 your duties at the Lexington County Sheriff's
4 Department?

5 A Yes, sir.

6 Q And Ms. Homer, have you ever before qualified as an
7 expert witness in the State courts of South
8 Carolina in chemical analysis?

9 A Yes.

10 MR. SAMELLAS: Your Honor, at this time the
11 State would move to have Emily Homer qualified as an
12 expert witness in chemical analysis.

13 THE COURT: Mr. Snell, do you have any
14 questions as to qualifications?

15 MR. SNELL: No, Your Honor.

16 THE COURT: Thank you.

17 Mr. Foreman, and ladies and gentlemen of the
18 jury, normally a person cannot give opinion testimony.
19 Normally when a person testifies, they must testify as
20 to what they either saw, heard or sensed by smell or
21 something of that nature.

22 However, there is an exception when someone is
23 qualified because of education or experience. They are
24 permitted to give their opinion in certain areas if the
25 Court qualifies them that way.

EMILY HOMER -- DIRECT -- MR. SAMELLAS

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1 This witness, Ms. Emily Homer, will be
2 qualified in the area of chemical analysis to give
3 opinion testimony in that area. This does not mean that
4 you must accept the opinion, but it is evidence for you
5 to use in any way you deem fit.

6 Thank you, Solicitor. You may proceed.

7 MR. SAMELLAS: Thank you, Your Honor.

8 BY MR. SAMELLAS:

9 Q Ms. Homer, I am going to hand you what has been
10 previously admitted into evidence as State's
11 Exhibit Number 7. Do you recognize that Exhibit,
12 Ms. Homer?

13 A Yes, I do.

14 Q How do you recognize that?

15 A This is a best kit first of all. How do I
16 recognize it for this case?

17 Q Yes.

18 A It has the same best kit number as is on the chain
19 of custody forms. That best kit number is
20 C-008717. It also is labeled with the same case
21 number of 05-093765.

22 I recognize it as also when I get a case, I
23 will also assign it a laboratory number if the case
24 number and the best kit number match. The
25 laboratory number is the same.

1 Q On that bag?

2 A On the bag as it is that I generated with the
3 report information.

4 Q What is that laboratory number on that for right
5 now?

6 A LL06-0149.

7 Q Are there any other markings that you make on that
8 bag?

9 A Yes. I also first initial the best kit number. I
10 put my initials by it. I also notate with the date
11 and my initials and a notation on the bag as far as
12 if the seal is intact. All those are my
13 handwriting and my initials.

14 Q When did you receive this best kit?

15 A On June 20, 06.

16 Q Do you know who you received it from?

17 A From Candy Kyzer.

18 Q And how was this best kit packaged when you receive
19 it? Is it sealed?

20 A Yes, it was sealed.

21 Q Was there any indication when you received this
22 best kit that it had been tampered with in any
23 manner?

24 A No.

25 Q How do you know it had not been tampered with when

1 you received it?

2 A Because I mark on the best kit bag whether or not
3 the seal was intact. I also, when I work on a
4 case, I generate a work sheet. It's just so I can
5 keep track, notate, and keep track of what I saw
6 with the case. I also notate on my work sheet
7 whether or not the seal was intact.

8 Q What ways could you tell if it had been tampered
9 with?

10 A If the writing is distorted on the top or the
11 sides, if the glue itself is distorted, if any
12 edges have been cut.

13 Q So you do an examination of this when you get it?

14 A Yes, sir..

15 Q In this case, of course, you said it was not
16 tampered with. If something had been tampered
17 with, what would you have done?

18 A I first mark it on my work sheet whether or not
19 it's been tampered with. I would then contact the
20 deputy and contact the Solicitor's Office before
21 pursuing further.

22 Q Can you tell us for what purpose you received
23 State's Exhibit Number 7. What is that best kit
24 for?

25 A For analysis.

1 Q And did you perform any tests on that?

2 A Yes.

3 Q On the drugs in that. How many tests did you
4 perform?

5 A Four different tests.

6 Q Can you tell the jury what those four tests were.

7 A The four tests can be divided into two different
8 groups. The first is a presumptive test, which
9 will give me the clue as to a class of drugs that I
10 may be working with. There was one chemical test
11 run with that presumptive test.

12 The next clarification is a confirmatory test.
13 That will confirm, as the name states, the definite
14 drug that I have present. There were three types
15 of confirmatory tests.

16 Q And from these tests that you performed, were you
17 able to form an opinion to a reasonable degree of
18 certainty within your field of expertise in
19 chemical analysis as to what the contents of
20 State's Exhibit Number 7 is?

21 A Yes.

22 Q What is your opinion?

23 A It was cocaine base or the slang term crack.

24 Q Can you tell us what the weight of that crack
25 cocaine was.

1 A Point-25 grams.

2 Q Ms. Homer, after you tested these drugs and found
3 out they were crack cocaine, what did you do with
4 them?

5 A I then put it back in the Ziploc bag that it was --
6 inside of this best kit bag, the drugs were placed
7 in a separate Ziploc bag. I placed them back in
8 that Ziploc bag.

9 Then I also put the original best kit bag
10 inside of my own packaging, this outer K-pack bag.
11 I sealed it with the date and put my initials at
12 the bottom.

13 Q So the best kit is actually in that package, the
14 outside, the furthest outside package that State's
15 Exhibit Number 7 is in; is that correct?

16 A Yes, it's actually inside my own sealed bag.

17 Q That you initialed and dated?

18 A Yes.

19 (Attorneys confer).

20 Q Ms. Homer, I am now handing you what has been
21 marked for identification purpose as State's
22 Exhibit Number 10. Do you recognize this,
23 Ms. Homer?

24 A Yes.

25 Q What is it?

1 A This is an original document of my report
2 pertaining to this case.

3 Q And what type of report are we talking about here?

4 A This is the laboratory report.

5 Q How do you know that's your lab report?

6 A Because my signature is at the bottom.

7 Q Did you date the report?

8 A Yes.

9 Q What date is on that report?

10 A June 21, 2006.

11 Q Is that the day after you tested these drugs?

12 A Yes.

13 Q Now, you have both State's Exhibit Number 7 up
14 there and State's Exhibit Number 10. Does State's
15 Exhibit Number 7, does anything on that exhibit
16 match your report that is State's Exhibit
17 Number 10?

18 A Yes, several things.

19 Q Can you tell us what matches?

20 A The first thing is the case number that was written
21 by the deputy on the original best kit number
22 matches the case number that I wrote in the report
23 05-093765.

24 The second thing is, like I said, any case or
25 every case in the lab I generate my own laboratory

1 number, and that laboratory number must also match.
2 The laboratory matches my report number, as it is
3 written on the day I did the analysis on the best
4 kit bag.

5 Q Does everything match up there?

6 A Yes.

7 Q So those are the drugs in this case that are
8 presently in the court today; is that correct?

9 A Yes.

10 Q Let me ask you one other question with regard to
11 State's Exhibit Number 7. After you put those in
12 the bag, sealed and all, you gave those back to
13 someone at the Lexington County Sheriff's
14 Department; is that correct?

15 A Yes, I did.

16 Q And who did you give those drugs back to?

17 A Candy Kyzer.

18 MR. SAMELLAS: With respect to State's Exhibit
19 Number 10, Your Honor, which is the lab report in this
20 case by Ms. Homer, at this time the State would move to
21 offer that into evidence?

22 THE COURT: Mr. Snell?

23 MR. SNELL: No objection, Your Honor.

24 THE COURT: State's Exhibit 10 is in evidence
25 without objection.

1 (State's Exhibit Number 10 is received into
2 evidence).

3 MR. SAMELLAS: Thank you, Your Honor. If you
4 will beg my indulgence one minute.

5 THE COURT: Yes, sir.

6 (Pause).

7 MR. SAMELLAS: No further questions, Your
8 Honor.

9 THE COURT: Thank you, Solicitor. Mr. Snell.

10 MR. SNELL: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MR. SNELL:

13 Q Ms. Homer, am I correct in understanding that you
14 took possession of this item on June 20, 2006?

15 A Yes, sir, I did.

16 Q And when did you return this item back to
17 Ms. Kyzer?

18 A I don't have a copy of the evidence tag. It should
19 be on the evidence tag the date that I turned it in
20 to her.

21 Q I will show you a chain of custody report. I will
22 show you a chain of custody report that has been
23 provided to me from the Solicitor's Office.

24 A Okay.

25 Q I think it's that bottom entry?

1 A On the 26th. I do need to see -- on the evidence
2 tag, I signed the date that I turned it back into
3 her, and I put a time. So 6/26 -- this copy is
4 hard to read -- 12:43.

5 Q Yes, ma'am. So from June 20, 2006, to June 26,
6 2006?

7 A Yes, sir.

8 Q Can you describe for us what kind of tests you do.
9 Do these involve dipping the substance into a
10 solution or putting it into like a machine or how
11 are the tests -- how are they actually conducted?

12 A Do you want me to address the presumptive test
13 first?

14 Q You can begin with the presumptive test, please,
15 ma'am. Thank you.

16 A The presumptive test that I do, like I said, it
17 gives me a presumptive idea the class of drug I am
18 working with it. It involves a chemical reaction.
19 Actually I use a few different chemicals to test
20 the drug sample.

21 What I use is -- this may get a little
22 detailed -- but I have reaction wells that I first
23 put into the well. This is first tested by my
24 chemical solution to make sure that the wells are
25 clean, that there isn't any other substance in the

1 wells.

2 I take a small sample of the drug and react
3 it, in this case with two different types of
4 chemicals. And depending on what color change, it
5 will give me an idea only, again, a type of drug
6 that I am working with you. The color change I
7 noticed showed it was a type of caine. It had a
8 functional group similar to other caines.

9 Q On the presumptive test, how long does it take to
10 get that reaction?

11 A Depending on the chemicals in there, anywhere
12 between a few seconds and a minute or so. Then the
13 confirmatory test that I did, the first one was --
14 which is also written on the report -- is infrared
15 spectroscopy. It's actually F.T.I.R. spectrometer.
16 Should I go into more?

17 Q Well, about how long does it take to conduct that
18 test?

19 A For that test it's usually maybe five minutes or
20 so. Then the next confirmatory test that I did was
21 actually a multi-- it's two parts to this next
22 confirmatory test.

23 It's called the gas chromatograph mass
24 spectrometer. The first part of it is -- excuse
25 me. Let me backtrack. What I first do is take

1 another sample of the drug, and I will find an
2 appropriate solution to dissolve this drug.
3 Depending on it's properties, whether it's
4 dissolves well in polar, like water like substances
5 or non polar.

6 I will find appropriate solvents to dissolve
7 that drug in, and then introduce it to the gas
8 chromatograph mass spectrometer. What that does is
9 it kind of gives you a fingerprint identification
10 ultimately that I can match with my standards to
11 without a doubt confirm that this is cocaine base,
12 crack.

13 Q How long does it take that test to run?

14 A It depends on how the instrument is running that
15 day. Before I ever introduce any samples to that
16 instrument, I have to do quality control. I have
17 to check the instrument if there is anything that's
18 not running up to my standard or to S.L.E.D.'s
19 standards. Then I don't usually inject just one
20 sample, but usually it takes for one sample about
21 two to three hours.

22 Q What is the fourth test you run?

23 A The fourth test is the test where I find the
24 appropriate solvent. Because depending on the type
25 of drug, if I've already narrowed it down to being

1 a cocaine, depending on the type of solvent, it
2 will tell me whether or not it's cocaine base or
3 powder cocaine.

4 Q How long does it take to run that test?

5 A That's what I do to get it prepared for the
6 G.C.M.S. It's a few seconds.

7 Q It's already taken care of?

8 A Uh-huh. (Indicating affirmative response).

9 Q And in this particular case just to clarify, you
10 are not an eyewitness to any of the alleged drug
11 transaction, like the alleged buy in this case?

12 A No. I actually -- I specifically try to tell the
13 deputies and narcotics units I don't want to know
14 anything about the case. For that reason we have
15 generated -- I use, instead of getting actual
16 reports from the sheriff's department, I have my
17 own request form that restricts them from just
18 telling me strictly case number, lab number. I am
19 not told anything about the case.

20 Q Thank you very much.

21 MR. SNELL: No further questions.

22 THE COURT: Thank you, Mr. Snell. Solicitor,
23 anything on redirect?

24 MR. SAMELLAS: Just one question, Your Honor.

25 THE COURT: Yes, sir.

REDIRECT EXAMINATION

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BY MR. SAMELLAS:

Q Ms. Homer, of all the tests you performed, they all came back to being crack cocaine, didn't they, as the results in this case?

A Yes.

Q Thank you.

MR. SAMELLAS: No further questions, Your Honor.

THE COURT: Thank you. Anything on recross?

MR. SNELL: No, Your Honor.

THE COURT: Thank you. You may step down, Ms. Homer. Thank you.

Solicitor, you may call your next witness.

MR. MADSEN: Your Honor, that would be the State's case. The State rests.

THE COURT: Perhaps this would be a good breaking point for the afternoon.

Mr. Foreman, and ladies and gentlemen of the jury, we are now going to take our evening break. I remind you during the break that you are not to discuss this case with anyone. This includes your fellow jurors, your friends, your family, people involved in the trial or anyone else.

Please let me know if anyone tries to talk

1 with you about the case. Remember to keep an open mind
2 about this case until I instruct you to begin your
3 deliberations.

4 Ladies and gentlemen, I would ask you to
5 please be back in your temporary home, your jury room,
6 at 09:30, at 9:30 in the morning. We will try to start
7 promptly thereafter. With that, you are now excused and
8 please have a good evening. Thank you very much.

9 (The jury is excused for the day at 5:14 p.m.)

10 THE COURT: Mr. Snell, do I need to interview
11 the Defendant regarding his right to testify.

12 MR. SNELL: Please, Your Honor.

13 THE COURT: Mr. Williams, would you please
14 stand.

15 Madame Clerk, would you place him back under
16 oath for me, please.

17 CLERK: Yes, sir. Raise your right hand.

18 DAN WILLIAMS, II is first duly
19 sworn.

20 THE COURT: Mr. Williams, I need to go over
21 some things with you. I do this with everyone who is on
22 trial. So that's why I have you placed under oath. We
23 have reached the stage of the trial where the State has
24 rested. Your side, the defense, now has the opportunity
25 to present evidence for the jury to consider. Do you

1 understand where we are in the trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In that regard you may call
4 witnesses to testify. If you choose to testify
5 yourself, you may do so. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: No one can force you to testify.
8 You have an absolute right to remain silent. If you
9 choose not to testify, I will tell this jury that they
10 cannot hold your silence against you in any way. I
11 will tell them that they are not to discuss the fact
12 that you did not testify in the jury room. Do you
13 understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If your side offers no evidence at
16 all, in other words, if neither you nor anyone on your
17 behalf testifies or offers any exhibits, then your
18 attorney will get to make the last argument to the jury.
19 Otherwise, the prosecutor, the solicitor, gets to make
20 the last argument. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Solicitor, does the Defendant have
23 a record about which he can be impeached under 609?

24 MR. MADSEN: He has a record, but he cannot be
25 impeached.

1 THE COURT: Then I would not be concerned with
2 that. The decision about whether you testify or not is
3 your decision to make and yours alone. I expect that
4 you have conferred with your attorney or with other
5 individuals whose opinions you value on important
6 decisions, but the decision about whether you testify or
7 not is your call, your decision. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has anyone exercised any undue
10 influence over you to get you to choose to testify or
11 not to testify?

12 THE DEFENDANT: No, sir.

13 THE COURT: Today are you under the influence
14 of any drug, alcohol, medication or anything that
15 adversely affects your thinking ability?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you suffer from any physical or
18 emotional or mental problems that affect your thinking
19 today.

20 THE DEFENDANT: Not that I know of, sir.

21 THE COURT: Whatever decision you have made
22 about whether to testify or not to testify, is it your
23 decision made of your own free will and accord?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I find that the Defendant

1 knowingly and intelligently understands his right to
2 testify or not to testify. You may sit down,
3 Mr. Williams.

4 Mr. Snell, before I go any further, do you
5 have any motions?

6 MR. SNELL: I move for a directed verdict,
7 Your Honor, and I move for a directed verdict in favor
8 of the Defendant in that evidence, when viewed in the
9 light most favorable to the State, fails to create an
10 issue for the jury.

11 As a further point, it's my understanding that
12 in order to show the Defendant is guilty of distribution
13 of crack, the State must prove two things beyond a
14 reasonable doubt.

15 First, that the Defendant distributed crack to
16 another without lawful authority to do so. And, second,
17 that the Defendant knew the substance he distributed was
18 crack.

19 In this case, Your Honor, my understanding of
20 the testimony as presented, from the evidence presented
21 by the State, we have a confidential informant who made
22 a request of Mr. Williams for, I believe, \$40.

23 I don't know if there was a request made
24 specifically for crack. I don't know if there is any
25 foundation laid showing that was a term for crack or

1 showing how that could be construed as a request for
2 crack.

3 It's my understanding that's the only direct
4 witness or eyewitness or sort of the mechanics of the
5 individuals' hands exchanging goods. So we would ask
6 under those facts for a directed verdict in favor of
7 this Defendant.

8 THE COURT: All right. I would respectfully
9 deny your motion. I think there is other direct
10 testimony. There may be only one eyewitness to the
11 transaction; however, ear testimony is direct testimony,
12 number one.

13 Number two, circumstantial evidence is as good
14 as direct evidence, and criminal intent can be inferred
15 from all the facts and circumstances surrounding the
16 transaction.

17 I would certainly charge the jury on the issue
18 of criminal intent and that that is an element of the
19 offense charged in this case. I would respectfully deny
20 your motion.

21 MR. SNELL: Thank you, Your Honor.

22 THE COURT: I will give you over the evening
23 to think about your decision to or not to testify. I
24 would ask this though, Mr. Snell, if you could notify --
25 do you have other witnesses?

1 If you don't want to tell me at this point, I
2 am not trying to ask you to reveal your trial strategy.
3 If you prefer not to tell me at this point, that's fine
4 also.

5 MR. SNELL: Well, Your Honor, we may have, in
6 addition to Mr. Williams, if he decides to testify, we
7 may have two other witnesses that will be very, very
8 quick.

9 THE COURT: And have I called those names to
10 the jury?

11 MR. SNELL: You have not, Your Honor.

12 THE COURT: Well, I would need to ask the
13 jury, A., I would need to ask the jury whether or not,
14 depending on who those witnesses are, if the jury
15 members know any of them.

16 B., I would ask you to provide the names and
17 D.O.B.s of those witnesses to the Solicitor's Office so
18 they can check their criminal history, if any. I don't
19 know who they will be for that matter.

20 MR. SNELL: We will do that before we leave
21 today, Your Honor.

22 THE COURT: The only other thing, giving
23 Mr. Williams the opportunity to think about his decision
24 to testify or not to testify over the evening break, I
25 don't want to prejudice the State in any manner.

1 I would ask if you would let the solicitor
2 know by 8:30, 8:45 in the morning whether or not he has
3 to get ready for A., both doing the closing, and B.,
4 crossing the Defendant, if you have no objections.

5 MR. SNELL: We don't, Your Honor. Another
6 kind of matter I would like to ask. Is it possible your
7 order may have the Defendant maybe brought to the
8 courthouse by about 8:30 in the morning?

9 THE COURT: Sheriff?

10 DEPUTY: Yes, sir.

11 MR. SNELL: Thank you so much, Your Honor.

12 THE COURT: Yes, sir. If y'all would make
13 sure Mr. Snell has access to his client by 08:30.

14 Anything further, Solicitor?

15 MR. MADSEN: No, Your Honor.

16 THE COURT: If you would just let Mr. Snell
17 know where he can get in touch with you in the morning.
18 With that being said, court will be in recess until
19 9:30. Thank you very much.

20 (Whereupon the proceedings were concluded for
21 April 4, 2007).

22 (The following proceedings were reported on
23 April 5, 2007).

24 THE COURT: Mr. Bailiff, would you see if
25 Mr. Sigh, the juror is back there. If he is, would you

1 bring him in here for me, please. I believe that's how
2 you pronounce his name.

3 (The juror enters the courtroom).

4 THE COURT: Mr. Sigh, I understand you have a
5 commitment today; is that correct?

6 JUROR: I'm not obligated to it, sir, just if
7 I can get off. If the trial is going, I consider myself
8 obligated here first.

9 THE COURT: I understand you had want to
10 attend a funeral; is that correct?

11 JUROR: Yes, sir.

12 THE COURT: What time is that funeral?

13 JUROR: I think 12:00.

14 THE COURT: Twelve hundred hours?

15 JUROR: Yes, sir.

16 THE COURT: If you would just step out in the
17 hallway for me momentarily.

18 (The juror leaves the courtroom).

19 THE COURT: Again, Solicitor and Mr. Snell, I
20 understand Mr. Sigh wants to attend a funeral for a
21 young man that was killed in Iraq. Are there any
22 objections from the State if I excuse him and place the
23 alternate on the primary jury?

24 MR. MADSEN: If he desires to be excused,
25 that's an understandable reason.

1 THE COURT: Any objection from the defense,
2 Mr. Snell?

3 MR. SNELL: No objection, Your Honor.

4 THE COURT: Thank you. If you would bring him
5 back in, please.

6 (The juror returns to the courtroom).

7 THE COURT: Mr. Sigh, I am going to excuse you
8 from your jury service for the remainder of the day and
9 the remainder of the week.

10 JUROR: Sir, I'd like to serve, sir, so nobody
11 has to pick up my slack.

12 THE COURT: Well, I can either keep you or I
13 cannot keep you. I don't mind excusing you. I think if
14 you want to go to the funeral, I think that is
15 admirable. That's why we have alternates.

16 The case would mostly likely -- we could be at
17 a point where the jury would probably be deliberating
18 early afternoon. With that being said, I think you have
19 filled your duties and responsibilities as a juror this
20 week.

21 I appreciate your service, and I appreciate
22 your commitment to attending that funeral today. So I
23 am going to excuse you for the day and the remainder of
24 the week. This is the last case we have for trial this
25 week anyway. There is no slack to be pulled up for

1 tomorrow or anything like that. All right?

2 JUROR: Thank you, sir.

3 THE COURT: Thank you very much. I appreciate
4 your service.

5 JUROR: Thank you, sir.

6 (The juror leaves the courtroom).

7 THE COURT: Anything from the State before we
8 bring in our jury?

9 MR. MADSEN: No, Your Honor.

10 THE COURT: Mr. Williams, would you please
11 stand for me. You are still under oath. Have you made
12 a decision regarding whether or not you are going to
13 testify or not testify?

14 THE DEFENDANT: I will testify.

15 THE COURT: You will testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Thank you. You may be seated,
18 Mr. Williams.

19 If you would have Mr. Garrick bring us our
20 jury. Anything from the defense before I bring the
21 jury, Mr. Snell?

22 MR. SNELL: Nothing, Your Honor.

23 THE COURT: Are there names I need to ask the
24 jury about that may testify?

25 MR. SNELL: Yes, Your Honor, Joanne Stone and

1 Margie Redmond.

2 THE COURT: Is Ms. Stone and Ms. Redmond in
3 the courtroom?

4 MR. SNELL: They are, Your Honor.

5 THE COURT: When I call your name, I will ask
6 the jury if any member of the jury panel is related by
7 blood or marriage to Joanne Stone or Margie Redmond. I
8 would just ask you to stand at that time so the jury can
9 see you. Thank you.

10 Mr. Bailiff, would you bring us our jury and
11 Ms. Trim has been promoted to the primary jury.

12 (the jury return to the courtroom at
13 9:35 a.m.)

14 THE COURT: Good morning. It appears our jury
15 is present. As you will notice, I have excused one of
16 your numbers. That is why we select alternates. I
17 appreciate all of your service, and I appreciate the
18 alternate going from that duty and responsibility as an
19 alternate to a member of our primary jury.

20 The State has rested. The defense may now
21 present evidence if it chooses to do so. The defense is
22 never required to present any evidence. I understand
23 the defense will present evidence, and there are two
24 individuals that may testify before you whose names were
25 not called prior to your selection as members of this

1 jury.

2 Joanne Stone. Is Ms. Stone in the courtroom?

3 Ms. Stone. This is Ms. Stone to my front left on the
4 front row behind the Defendant's table. Thank you

5 Ms. Stone.

6 And Ms. Margie Redmond. This is Ms. Redmond
7 also on the front row behind the defense next to

8 Ms. Stone. Thank you, Ms. Redmond. You may be seated.

9 The question, of course, is: Is any member of
10 the jury panel related by blood or marriage or close
11 personal friends of either Ms. Joanne Stone or
12 Ms. Margie Redmond? If so, please stand.

13 (There is no response).

14 THE COURT: Let the record show that no one
15 stands.

16 With that being said, Mr. Snell, you may call
17 your first witness.

18 MR. SNELL: Yes, Your Honor. We call Mr. Dan
19 Williams to the stand.

20 DAN WILLIAMS, II, being
21 first duly sworn, testified as follows:

22 CLERK: Once you have a seat state your full
23 name on the record, spelling your last.

24 BAILIFF: My name is Dan Williams,
25 W-I-L-L-I-A-M-S.

1 DIRECT EXAMINATION

2 BY MR. SNELL:

3 Q Tell us how old you are, Mr. Williams.

4 A I'm 41 years of age.

5 Q And, Mr. Williams, where are you from?

6 A Swansea.

7 Q And how long have you been living in Swansea?

8 A All my life.

9 Q And tell us, where do you live in Swansea?

10 A Address

11 Q Is that the address that has been referred to in
12 this case?

13 A Yes, sir.

14 Q And that's your mobile home in the exhibits and the
15 pictures we have seen put forward?

16 A Yes, sir.

17 Q You have been in Swansea all those years. What
18 school did you go to?

19 A I went to Swansea High School.

20 Q What kind of work do you do?

21 A I'm a dry wall installer.

22 Q And how long have you been working in dry wall
23 installation?

24 A About 15 years.

25 Q Were you working in dry wall installation back in

1 November of 2005?

2 A Yes, sir.

3 Q Who lives with you?

4 A I had a lady named Charlain (phonetic) that comes
5 over.

6 Q But you live in the trailer by yourself?

7 A Yeah.

8 Q And do you have a family?

9 A No.

10 Q Do you have any children?

11 A I have one.

12 Q Tell us about that child.

13 A I have one by a girl about a year ago name Vigh,
14 Victoria Edmonds. She is one years old.

15 Q Is that your daughter?

16 A Yes, sir.

17 Q Where does Victoria live?

18 A A little small town called Happy Town.

19 Q I'll tell you, I'm not familiar with Happy Town.
20 Can you explain that to us.

21 A It's on the back side of Gaston.

22 Q So it's a little community?

23 A Yes, sir.

24 Q Now, you have been charged with distributing crack
25 cocaine on November 22, 2005. Are you guilty of

1 that?

2 A No, sir.

3 Q Did you distribute crack cocaine on that date?

4 A No, sir.

5 Q Did you have any encounter with the informant,
6 Mr. Farmer, who testified or with any of the police
7 officers on that date?

8 A No, sir.

9 Q Did you have any conversations by telephone,
10 e-mail, just anything at all with them?

11 A No, sir.

12 Q Why do you think you have been charged?

13 A Because they say I sold crack to an undercover
14 agency.

15 Q But is that true?

16 A No, sir.

17 Q Now, were you arrested on November 22, 2005?

18 A No, sir.

19 Q When were you arrested?

20 A December 8th.

21 Q What year?

22 A '05.

23 Q And are you asking this jury to find you not guilty,
24 of distributing crack cocaine on November 22, 2005?

25 A Yes, sir.

1 MR. SNELL: One moment, please.

2 THE COURT: Yes, sir.

3 (Pause).

4 BY MR. SNELL:

5 Q I don't have any further questions for you. Please
6 answer any questions the State would have for you.

7 THE COURT: Thank you, Mr. Snell. Solicitor.

8 CROSS EXAMINATION

9 BY MR. MADSEN:

10 Q How are you doing, Mr. Williams?

11 A How you doing?

12 Q Mr. Williams, do you know Detective Bass?

13 A Yes, I do.

14 Q Did you know him prior in November of 2005 before
15 you were arrested?

16 A Yes, I do.

17 Q You knew him from when you were in Swansea?

18 A Yes, sir.

19 Q How about Detective John Moore, did you know him
20 back during that time?

21 A I don't know him, period.

22 Q Swansea is a pretty small place, isn't it?

23 A Yes, sir.

24 Q Before getting arrested on this, you and Detective
25 Bass didn't have any hard feelings or anything like

1 that with one another; did you?

2 A No, sir.

3 Q As far as you know, you and Detective Moore never
4 had any hard feelings or anything like that? You
5 all didn't know each other.

6 A No, I don't know him.

7 Q You live alone at but you have a friend who
8 will sometimes come over every once in a while?

9 A Yeah, I have a girlfriend.

10 Q Let me ask you a couple of other questions. Back
11 during November of 2005, was your trailer broken
12 into?

13 A I don't know. I ain't sure. Because I know they
14 put -- yeah, I believe it was broken into because
15 they put a -- my sister -- put a stick in the
16 window, in the back bedroom window.

17 Q I mean, you stayed there in and out everyday?

18 A Yeah.

19 Q So you don't remember if it was broken into?

20 A Yeah.

21 Q You are not trying to tell this jury that someone
22 broke in, distributed --

23 A I'm talking about when I went to jail, somebody
24 broke in my house.

25 Q Oh, okay. I'm talking about during this time that

1 this buy went on, you are not telling this jury
2 that someone broke into your house, sold drugs out
3 of your house, and that you just didn't know about
4 it?

5 A No, I ain't saying that.

6 Q How long have you lived at Address

7 A About five years.

8 Q And that's that trailer right there (indicating)?

9 A Yes, sir.

10 Q With this (indicating) being

11 A Yes, sir.

12 Q And when you pull around to the back, you are going
13 to pull through this driveway right here
14 (indicating), and you generally park your cars,
15 come around this way (indicating) and park back
16 here (indicating); right?

17 A Yes, sir.

18 Q And you have got two vehicles, don't you?

19 A Yes, sir.

20 Q You have got this red pickup truck in State's
21 Exhibit Number 4, correct?

22 A Yes, sir.

23 Q And you had this pickup truck back in November of
24 '05?

25 A Yes, sir.

1 Q You have got this Pontiac, this green Pontiac?

2 A Yes, sir.

3 Q Those are your two cars, aren't they?

4 A Yes, sir.

5 Q And you drive those?

6 A Yes, sir.

7 Q And what is shown in State's Exhibits Number 2 and
8 3, that's your trailer; isn't it?

9 A Yes, sir.

10 Q And you generally -- let me show you State's
11 Exhibit Number 4. You parked them in the back and
12 kind of go in and out the back door, don't you?

13 A I go out the front mostly.

14 Q You park your cars in the back though?

15 A Yep.

16 Q Then instead of going in that back door, you walk
17 around to the front door?

18 A No, I mean, I go out the back when I get ready to
19 drive the cars, but usually I go out the front
20 door.

21 Q Okay. But if you park your cars, you park them
22 generally behind, and then you come in that back
23 door?

24 A Yeah.

25 Q And if you are going to get in your car and go

1 somewhere --

2 A I walk out the back door.

3 Q But if you're going to do something in the front
4 yard, you will obviously come out the front door;
5 aren't you?

6 A Yep.

7 Q You would agree with me that people that sell crack
8 cocaine ought to be punished; isn't that right?

9 A Yes, sir.

10 Q Back during November of '05, were you using crack
11 cocaine?

12 A Yes, sir.

13 Q So you are at your residence and you are using
14 crack cocaine. How did you get that money?

15 A I worked for it.

16 MR. SNELL: Your Honor, let me object.

17 THE COURT: About how he got the money?

18 MR. SNELL: Yes, Your Honor. If we may
19 approach.

20 THE COURT: No, sir, I overrule the objection.

21 MR. SNELL: Thank you, Your Honor.

22 A I work.

23 Q Crack cocaine can get kind of expensive, can't it?

24 A Yes, sir.

25 Q It's a bad drug, isn't it?

1 A Yes, sir.

2 Q As soon as you take it, you want more; don't you?

3 A Yes, sir.

4 Q And it's sold in \$20 increments. It's sold in \$40
5 increment. If someone asks for a 40, you know what
6 a 40 means; don't you?

7 A Yes, sir.

8 Q It means \$40 of crack cocaine?

9 A Yes, sir.

10 Q That's kind of the lingo, isn't it?

11 A What you mean?

12 Q That's kind of the language that's used. You just
13 don't walk up to someone and say: I would like to
14 purchase \$40 of crack cocaine, please. You would
15 say: I want a 40, wouldn't you?

16 A I don't know. I get it from people that's coming
17 through the block when I was on it back in '05.

18 Q You don't want to be convicted of distribution of
19 crack cocaine, do you?

20 A Why should I be convicted of something I ain't
21 done?

22 THE COURT: Answer his question, Mr. Williams.

23 THE WITNESS: All right, sir.

24 BY MR. MADSEN:

25 Q Yes or no, you don't want to be convicted?

1 A No, sir. I just had a baby. I am working good.

2 Q And you are telling this jury that you are using
3 crack cocaine back in November of '05, but you
4 weren't selling it trying to feed that habit; were
5 you?

6 A No, sir, I was working good. I get paid by the
7 board. So I make good money.

8 Q And these officers didn't have any kind of ill will
9 with you to them or them to you, did they?

10 A No, sir, not that I know.

11 Q And that's your residence that they went up to,
12 isn't it?

13 A That's what they say.

14 Q Let me ask you this. I'm kind of curious. Bubba
15 Dan, how did you get that nickname?

16 A My cousin and stuff started calling me that.

17 Q I mean, you had it since you were a little kid?

18 A Yeah.

19 Q I was kind of wondering and something popped in my
20 mind. That movie with Tom Hanks, Forrest Gump, I
21 was trying to remember if that guy in there was
22 named Bubba Dan. I know it was Bubba Gump Shrimp
23 Company, but I didn't know if he was Bubba Dan or
24 just Bubba. I wondered if that's how you got your
25 nickname.

- 1 A No, sir.
- 2 Q You had it since you were a little kid?
- 3 A Yes, sir.
- 4 Q And a lot of people call you Bubba Dan. Some
- 5 people call you Bubba. Does your family call you
- 6 that?
- 7 A No, they call me Dan. Some of them call me Bubba
- 8 Dan. Some of them call me Bubba.
- 9 Q No other Bubbas living at Address were
- 10 there?
- 11 A No, sir.
- 12 Q How many brothers and sisters do you have?
- 13 A I got five sisters.
- 14 Q Five sisters?
- 15 A Yes, sir.
- 16 Q So you are the only boy?
- 17 A Yes, sir.
- 18 Q Do your sisters have any children?
- 19 A Yes, sir.
- 20 Q You have nieces, nephews, both?
- 21 A Both.
- 22 Q How old are your nephews?
- 23 A One should be about five.
- 24 Q Do you have any of them that are older?
- 25 A No, just nieces.

1 MR. MADSEN: That's all the questions I have.

2 THE COURT: Thank you, Solicitor.

3 Mr. Snell, do you have any in redirect, sir?

4 REDIRECT EXAMINATION

5 BY MR. SNELL:

6 Q Mr. Williams, let me make sure we are clear. Tell
7 us about your children.

8 A I only have one little girl. I had her a year ago.
9 She is one year now. Her name is Victoria Inman.

10 Q Thank you.

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

12 THE COURT: Thank you, Mr. Snell. Anything on
13 recross on that issue, Solicitor?

14 MR. MADSEN: No, Your Honor.

15 THE COURT: Thank you, Mr. Williams. You may
16 step down, sir.

17 Mr. Snell you may call your next witness.

18 MR. SNELL: Your Honor, we will call
19 Ms. Joanne Stone.

20 THE COURT: Ms. Stone, if you would come
21 around and be sworn.

22 JOANNE STONE, being
23 first duly sworn, testified as follows:

24 CLERK: Have a seat over there please, ma'am
25 and state your full name and spell your last.

1 THE WITNESS: Joanne S-T-O-N-E.

2 DIRECT EXAMINATION

3 BY MR. SNELL:

4 Q Ms. Stone, what's your relationship to the
5 Defendant, Dan Williams?

6 A My brother.

7 Q And how long have you known him?

8 A All my life.

9 Q Do y'all live in the same community?

10 A Most all of us.

11 Q Do you consider yourself close to your brother?

12 A Yes.

13 Q How many children does your brother have?

14 A One.

15 Q And tell us about that child.

16 A I haven't seen her. I just been told about her,
17 but Margie have seen her the most, not me.

18 Q Is it a boy or a girl to the best of your
19 knowledge?

20 A A girl.

21 Q Does he have a son?

22 A No.

23 Q Would you know if he had a son?

24 A I wouldn't know nothing about it.

25 Q Thank you.

1 MR. SNELL: No further questions.

2 THE COURT: Thank you, Mr. Snell. Solicitor,
3 do you have any questions for Ms. Stone?

4 MR. MADSEN: No, sir, Your Honor.

5 THE COURT: Thank you. Thank you very much,
6 Ms. Stone. You may step down.

7 Mr. Snell, you may call your next witness.

8 MR. SNELL: The Defendant rests, Your Honor.

9 THE COURT: Thank you very much. Solicitor,
10 anything in reply?

11 MR. MADSEN: No, Your Honor.

12 THE COURT: Mr. Foreman, and ladies and
13 gentlemen of the jury, we are at the point of the trial
14 where you have heard all the testimony you are going to
15 hear during the trial of this case.

16 At this point I have under the law certain
17 motions that I have to hear that should not take very
18 long. We will take a brief recess. After the recess --
19 and I will give you further instructions after the
20 recess.

21 During this recess do not discuss the case
22 with anyone, including your fellow jurors. Remember to
23 keep an open mind about the case until you have heard
24 the closing arguments of the attorneys, the charge on
25 the law by the Court, and you are advised to begin your

1 deliberations. With that, Mr. Foreman, ladies and
2 gentlemen, if you would go with our bailiff, please.

3 (The jury retires to the jury room).

4 THE COURT: Mr. Snell, if you want to put
5 anything on the record concerning me overruling your
6 objections, you may certainly do so to protect that on
7 the record.

8 MR. SNELL: Your Honor, I put that objection
9 in place because the Defendant feels that that line of
10 questioning, that the prejudicial value outweighs the
11 probative value.

12 Additionally, it's just irrelevant. That
13 entire line of questioning wasn't relevant to the
14 specific matter at hand as to was Mr. Williams
15 distributing crack cocaine on November 22, 2005.

16 THE COURT: No, sir. That's not what you
17 objected to. You objected to the question where the
18 solicitor asked: Where did you get that money? You did
19 not object to the question that the solicitor asked:
20 Were you taking crack cocaine in November 2005? The
21 solicitor asked that question and that question was
22 answered, and there was no objections made for me to
23 rule on.

24 The next question was: Where did you get that
25 money? The relevancy of that is that he was asked on

1 direct if he was employed and what type of work he did.
2 He did dry wall for 15 years, and so his response was
3 into the question about the money.

4 That's why, just to give you my reason, of why
5 I overruled that objection. I felt like the door was
6 opened on the money, number one, where he got the money.
7 Then, number two, that was a specific question the
8 solicitor had asked. However, you are protected on the
9 record in that regard.

10 MR. SNELL: Thank you very much, Your Honor.

11 THE COURT: Thank you, Mr. Snell. Any
12 motions, Mr. Snell?

13 MR. SNELL: Your Honor, we make a motion for
14 directed verdict. I believe on the evidence provided to
15 the Court, we believe the evidence, when viewed in the
16 light most favorable to the State, it fails to create a
17 question of fact for the jury on the grounds that much
18 of the case as presented is a circumstantial case.

19 I understand that the State has to prove by
20 the clear and convincing standard to overcome -- to get
21 past directed verdict at this stage of this trial. We
22 feel the State has failed to meet that burden. So we
23 ask again for a directed verdict.

24 THE COURT: Thank you, Mr. Snell. Solicitor,
25 any response?

1 MR. MADSEN: Your Honor, I believe in the
2 evidence in the light most favorable to the State, we
3 have met our burden at this point in the trial.

4 THE COURT: Thank you. I believe there is
5 sufficient direct and/or circumstantial evidence. I
6 would respectfully deny the Defendant's motion for
7 directed verdict. Any specific requests to charge?

8 MR. SNELL: I have some, Your Honor.

9 THE COURT: All right.

10 MR. SNELL: I provided these previously to the
11 solicitor.

12 THE COURT: I will number them as I go through
13 them.

14 MR. SNELL: Yes, sir.

15 THE COURT: Do you have the indictment, Madame
16 Clerk?

17 CLERK: Yes, sir.

18 THE COURT: Solicitor, as to Defendant's
19 request number one?

20 MR. MADSEN: I would object to that, Your
21 Honor. I believe from what I have heard Your Honor
22 charge and what is pretty much standard, I don't believe
23 that would be appropriate.

24 I believe that the standard charge, that you
25 take that and the jury decides the credibility of

1 witnesses would be more appropriate than singling out
2 one individual or one individual type of person. So we
3 would object to that. I just don't believe there is a
4 basis in law for that charge.

5 THE COURT: I would respectfully deny charging
6 request to charge number one. I believe that is a
7 charge on the facts. You can certainly argue that to
8 the jury, Mr. Snell.

9 MR. SNELL: Yes, Your Honor.

10 THE COURT: As to number two, Solicitor?

11 MR. MADSEN: I would also object to that one,
12 Your Honor. My problem with that one is pretty much in
13 two parts. First, the Defendant distributed crack
14 cocaine to another without lawful authority.

15 I don't believe that anyone in this State can
16 distribute crack cocaine, whether it be a medical
17 provider. There isn't an instance where someone can
18 distribute crack cocaine and have lawful authority. I
19 would object to that part.

20 The second part, Your Honor, I would object to
21 that because I believe that is just in Your Honor's
22 normal criminal intent charge as part of a standard
23 charge. So I don't believe Defendant's second request
24 to charge would be appropriate.

25 THE COURT: As far as distribution, this is

1 typically what I charge. The Defendant is charged with
2 the distribution of crack cocaine. The State must prove
3 beyond a reasonable doubt that the Defendant distributed
4 crack cocaine.

5 Distribution means to deliver or to actually,
6 constructively or attempt to transfer a drug, other than
7 by administering or dispensing. I think that comes
8 directly out of 44-53-110 and the definition of
9 distribution.

10 Actually it comes out of 44-53-110, the
11 definition, distribution means to deliver, other than by
12 administering or dispensing a controlled substance. The
13 definition of deliver or deliverer -- deliver or
14 delivery -- means the actual, constructive or attempted
15 transfer of a controlled drug or paraphernalia whether
16 or not there exists an agency relationship.

17 I would be glad to charge like that. However,
18 the second part, I think the Defendant has to knowingly
19 and intentionally, willfully and unlawfully distribute.
20 So I would charge that language.

21 MR. SNELL: That would be fine, Your Honor.
22 Thank you.

23 THE COURT: As to Number three, Solicitor?

24 MR. MADSEN: Your Honor, I would think number
25 three would be a charge on the facts. I believe this is

1 more appropriately a jury argument that Mr. Snell could
2 make during his closing. I believe the credibility of
3 the witnesses is the standard charge, and that would be
4 encompassed within that. That is a charge on the facts.

5 THE COURT: I do give a standard charge on
6 credibility, Mr. Snell: Among other things in
7 determining the believability of witnesses who have
8 testified in this case, you may believe one witness over
9 several witnesses or several witnesses over one witness.

10 You may believe a part of the testimony of a
11 witness and reject the remaining part of the testimony
12 of that same witness. You may believe the testimony of
13 a witness in its entirety or reject the testimony of a
14 witness in its entirety.

15 You may also consider whether any witness has
16 exhibited to you any interest, bias, prejudice or other
17 motive in this case. You may also consider the
18 appearance and manner of a witness while on the witness
19 stand.

20 I think number three would be a charge on the
21 facts also. However, you may certainly argue that to
22 the jury. I will give my standard credibility charge.

23 MR. SNELL: Thank you, Your Honor.

24 THE COURT: As to the fourth, you want an
25 identification charge?

1 MR. SNELL: Yes, sir.

2 THE COURT: I will give my standard
3 identification charge. Quite frankly, I haven't pulled
4 it out because this is the same charge on the prior
5 case. I will do that during the break, and I will give
6 an identification charge.

7 Let me do that and I will get you a copy and
8 allow both of you to look at that copy on the
9 identification charge. Anything further, Mr. Snell?

10 MR. SNELL: Nothing further, Your Honor.

11 THE COURT: Solicitor?

12 MR. MADSEN: No, Your Honor.

13 THE COURT: Solicitor, are you going to open
14 on the law?

15 MR. MADSEN: No, sir.

16 THE COURT: So when the jury comes back in, I
17 will give them some very brief instructions. Then
18 Mr. Snell will close, and then you will do your final
19 close, Solicitor.

20 MR. MADSEN: Yes, Your Honor.

21 THE COURT: Do y'all need any time?

22 MR. MADSEN: We are ready.

23 THE COURT: Besides me going and getting the
24 rest of these charges, do you need any time?

25 MR. SNELL: Your Honor, if we could have 15

1 minutes.

2 THE COURT: Certainly. Court will be in
3 recess for 15 minutes. Thank you very much.

4 (Court's Exhibit Number 1 is marked for
5 purposes of the record).

6 (Whereupon there was a recess).

7 THE COURT: Here is copy of the identification
8 charge. I am going to charge that. Is the State ready?

9 MR. MADSEN: Yes, Your Honor.

10 THE COURT: Defense ready?

11 MR. SNELL: We are, Your Honor.

12 THE COURT: Mr. Bailiff, if you would bring
13 our jury, please.

14 (The jury returns to the courtroom).

15 THE COURT: It appears our jury is back
16 present in the courtroom.

17 Mr. Foreman, and ladies and gentlemen of the
18 jury, you have heard all the testimony and have been
19 presented all the exhibits that are going to be
20 introduced in the trial of this case.

21 We are now at the stage where the attorneys
22 have the opportunity to address you and present their
23 closing arguments to you. These are different from
24 opening statements.

25 These are true arguments where they can

1 comment on the facts and the inferences to be drawn from
2 the facts and the application of their version of the
3 facts and those inferences as it applies to the law.

4 After the closing arguments of the attorneys,
5 I will then charge you on the law which will take about
6 18 minutes, my closing. The case will then be submitted
7 to you for your deliberations.

8 I would ask that during the closing arguments
9 that you give the attorneys your complete and undivided
10 attention as you have done throughout the trial of the
11 case.

12 I would remind those individuals in the
13 courtroom that may be spectators that I do not allow
14 individuals in nor out of the courtroom during closing
15 arguments.

16 You may leave between the closing arguments,
17 in other words, after Mr. Snell's closing and before the
18 solicitor begins. You, of course, may leave after the
19 solicitor's closing arguments and before I charge on the
20 law, but you may not leave nor move about during that
21 time.

22 Also, Mr. Bailiff, I do not allow anyone in
23 the courtroom during closing arguments. So please keep
24 that in mind with the caveat, the elected Clerk of
25 Court, any Justice of the Supreme Court or my wife.

1 They are allowed to come in. With that being said,
2 Mr. Snell, you may address the jury.

3 CLOSING ARGUMENT

4 MR. SNELL: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, it's my
6 privilege and pleasure to address you for the final time
7 in this case. At the beginning of the trial, I told you
8 this was the most important day or days in my client,
9 Dan Williams', life. He has pled not guilty to these
10 charges because he is innocent and did not distribute
11 crack cocaine as has been alleged.

12 During the opening I mentioned how in our
13 society you are innocent until proven guilty, and that's
14 important because it's oftentimes quite difficult for a
15 defendant to come and prove they didn't do something.
16 How do you prove a negative? That's why the burden
17 stays on the State.

18 The Defendant has maintained his innocence.
19 Mr. Williams says he did not distribute the drugs. He
20 hadn't seen Mr. Farmer, who was the paid informant. He
21 had not seen the police officers on that date. It's a
22 simple defense of: I didn't do it. But if you are
23 innocent, that is your defense. There is nothing else
24 to say, other than: It wasn't me.

25 The State presented six witnesses in their

1 case. The first witness you heard from was Detective
2 Bass who was parked about a half mile down the road
3 listening to the audio recording that we had, and we are
4 going to play for you again here in a minute. He was
5 not an eyewitness, didn't purport to see Mr. Williams.

6 The second witness presented by the State was
7 Mr. Ralph Farmer, who is a paid informant, working on
8 the basis of pecuniary gain -- he is getting money --
9 who also had charges for breach of trust and fraudulent
10 checks. I believe the fraudulent checks were from 2004
11 and the breach of trust from 2006.

12 You are allowed to take into account in
13 determining his credibility the fact that he does have
14 those charges, the fact that he is working on pecuniary
15 gain. You observed his mannerisms in court, how he
16 responded to questioning. Mr. Farmer testified that he
17 wasn't aware of Mr. Williams' vocation, that he was
18 employed during this time making, I think, \$12 an hour.

19 The third witness presented by the State was
20 Detective Moore. Detective Moore was a witness who said
21 he had his car pulled where he could see the back of the
22 trailer, but he was sitting inside a vehicle 25 to
23 30 feet away in the dark.

24 He said it was around 7:00 o'clock in
25 November, November 22nd, towards the end of the month,

1 and it was dark outside and Mr. Williams had to come
2 outside and turn the light on. So there was an
3 overhead light, Mr. Williams, and Detective Moore some
4 feet away.

5 The next three witnesses you heard from were
6 Beth Harmon, Candy Kyzar, and Emily Homer who were the
7 employees with Lexington County who work kind of, I
8 guess, in the back room or the background processing
9 evidence that comes in.

10 They were not eyewitnesses. In fact,
11 Ms. Homer testified, who was the lab technician who
12 analyzed the substance, she didn't know anything about
13 the case and, in fact, was protected from knowing. So
14 they weren't witnesses. They didn't see anything. The
15 State has got two witnesses in this case. They have the
16 informant and then they have Detective Moore.

17 In our side we put up two witnesses. We put
18 up Mr. Williams and we put up his sister. Mr. Williams'
19 testimony is the most important testimony this Court has
20 heard, and the jury, y'all have heard, because
21 Mr. Williams has maintained his innocence.

22 He said: I didn't do it. That is
23 significant. That is his testimony. He had an
24 opportunity to present, you know, any defense and
25 judging and gauging credibility, he really could have

1 sat up there and said anything.

2 He could have blamed it on his brother. He
3 could have blamed it on a neighbor. He could have come
4 up with any story, any theory, any theme, but he didn't.
5 He just maintained his innocence. It's simple,
6 straightforward, and honest testimony.

7 Next you heard from Joanne Stone, who is his
8 sister, who testified about his children. I think it's
9 very important and significant because there are
10 problems in the State's case. It's a simple case from
11 their prospective, and it's a simple defense from ours,
12 but there are problems.

13 One of the things the informant testified is
14 that Mr. Williams, or whoever that was at the trailer
15 that day, had a son. She testified Mr. Williams only
16 had a daughter. Mr. Williams testified to the same
17 thing. So whoever that was and whatever happened didn't
18 involve Mr. Williams.

19 I'm going to play the tape that the
20 prosecution had you listen to at the first half of their
21 case. I think it's about four minutes, but I think it's
22 important. It has a couple of points I want to
23 highlight. This is the audiotape of the incident.

24 (State's Exhibit Number 6 is played for the
25 jury).

1 MR. SNELL: Thank you for attentively
2 listening. I think the audio is an important part of
3 the State's case. Now, you know, they are not expected
4 to put up C.S.I. Lexington or anything similar, but they
5 do have the burden of proof.

6 I think in the audio you hear the State's
7 witnesses. You hear the informant. I believe you hear
8 Detective Moore clearly. Any audio of Mr. Williams or
9 alleged to be Mr. Williams or purported to be him is
10 almost not existent, and I submit you can't make heads
11 or tails of anybody else on the audio, other than the
12 informant.

13 So I think it has been shown that it's
14 especially poor quality, and it goes to show just the
15 problems in the State's case, you know, on these
16 charges.

17 Additionally you heard the informant at the
18 end of the recording talk about the son again. That is
19 something he testified to on the stand, and there is no
20 son.

21 In this case Mr. Williams testified, and we've
22 got these exhibits that weren't contested in this case,
23 showing that Mr. Williams lived at this address. We had
24 the photos and Mr. Williams claims, you know, this
25 address.

1 He is telling the truth. He is not trying to
2 put forward some complicated, convoluted,
3 misrepresentation to you or the Court. He's simply here
4 to tell the truth.

5 It's important to understand that we have had
6 two police officers testify. One was an audio witness
7 and one claimed to be an eyewitness. Police officers
8 don't get anymore credibility just because they are
9 police officers.

10 They are witnesses, just as any others. You
11 are to gauge the credibility, their motives, the
12 circumstances, their opportunity to be witnesses -- what
13 did they see and how did they see it -- just as you
14 would any other witness. Also eyewitness testify is not
15 always reliable, and you are the sole judge and
16 determiners of what is reliable.

17 In this case we've got two eyewitnesses. We
18 have the paid informant with the criminal record and we
19 have Detective Moore. I would submit to you of those
20 two, Detective Moore would be the more credible witness,
21 except Detective Moore is 25, 30 feet away in a car.

22 He testified as to sort of his pre-buy
23 procedures, you know, putting on other clothes, jogging,
24 cutting wood, getting himself ready and prepared. He's
25 got to control an informant, control the situation.

1 He's got a lot more going on than other bystanders or
2 other witnesses may have.

3 You are allowed to take all that into
4 consideration. People see things they think they see
5 that they don't. It's dark. Mr. Williams is not like a
6 next door neighbor, a childhood friend, not anyone that
7 he would know outside of his involvement in law
8 enforcement. They don't go to the same church. We
9 haven't heard any testimony like that.

10 I think the other significant problem in this
11 case is the time from the incident to the arrest. The
12 State testified why there is a delay, and they don't
13 want to give up their informant. They want to go back
14 to the office, you know, prepare things and go through
15 their procedure, which is fine.

16 Except those 16, 17 days present an
17 opportunity for there to be a mistake. Whoever there
18 was at that trailer on that day was not put in handcuffs
19 and was not arrested. We have seen the shows where
20 people -- you know, witnesses see a crime, and they are
21 immediately apprehended. That's not this case.

22 There is a delay. Mr. Williams testified that
23 wasn't him, and he didn't do it. There is plenty of
24 opportunity for someone to leave, and Mr. Williams to
25 come back, you know, and later be arrested and charged

1 with this offense.

2 I think that delay is very significant in the
3 case because it presents opportunity for there to be a
4 mistake. These charges are based on a mistake.
5 Mr. Williams has maintained his innocence.

6 So we go to the problems in the case, and we
7 will submit to you these more than establish reasonable
8 doubt. Reasonable doubt is the kind of doubt that would
9 make you hesitate to act.

10 If you have doubt, it must be resolved in
11 favor of the Defendant, Mr. Williams, who I told you at
12 the beginning of this case is an innocent man unjustly
13 accused.

14 There are problems with the eyewitness
15 identification, problems with the audio, the problems
16 with the C.I. or confidential informant, Mr. Ralph
17 Farmer, his motivations, his background, the poor
18 quality audio.

19 Again, we fall back on this son who we heard
20 the testimony of that doesn't exist. We heard the delay
21 between the incident and the date of arrest. All those
22 facts put together, while you have a Defendant who is
23 doing the only thing he can do, which is maintain his
24 innocence, establishes reasonable doubt in this case.

25 The State cannot meet their burden. It's the

1 most important day in his life. He asks y'all to find
2 him not guilty. We ask you to deliberate and consider
3 all the evidence. Consider the problems in the case,
4 how that establishes reasonable doubt, and find
5 Mr. Williams not guilty of distributing crack cocaine on
6 November 22, 2005. Thank y'all very much.

7 THE COURT: Thank you, Mr. Snell. Solicitor.

8 CLOSING ARGUMENT

9 MR. MADSEN: May it please the Court. Let's
10 boil this down real easy. Someone is lying. Someone
11 has got up on that stand, looked y'all in the eyes, and
12 they have lied to you.

13 It's either going to be Dan Williams who sat
14 there and lied to you or the three other officers sat up
15 there and lied to you. Who has the motivation to lie?
16 Who has something to lose? Who is doing a job and who
17 has some type of reason to lie?

18 You heard from the Defendant's own mouth that
19 he had no problems with these officers. Why are they
20 going to put their careers on the line and lie about
21 someone? What things have we given you to kind of
22 determine who would lie?

23 What things have we showed you that
24 corroborate somebody? Have we given you the house that
25 you heard Detective Moore describe? Have we given y'all

1 Detective Bass telling you the target individual, the
2 target location?

3 The Defendant admits that this is his
4 residence. He even got up there on the stand and told
5 you he is not saying that someone else snuck into his
6 house, dealt crack cocaine, and then snuck back out of
7 his house. Is that reasonable? No, it's not
8 reasonable. It's certainly not reasonable.

9 We know that he owns two cars. We know they
10 are both there. What does that indicate? That he is
11 most likely there. So we know it's his house. We know
12 it's his cars. We know that is his address.

13 We know that when the C.I. leaves and goes
14 with Detective Moore, he doesn't have crack cocaine on
15 him because he has been searched. What do we know when
16 he comes back from that house, those few seconds?

17 He then has crack cocaine that he puts on the
18 console that Detective Moore bags up, takes back and
19 gives it to Detective Bass, who then bags it up. We
20 know he didn't have that beforehand. We know he doesn't
21 have the money on him anymore.

22 What does that tell you? He has given \$40 to
23 someone to purchase crack cocaine. That is what
24 happened in this case. Someone has sat up there and
25 they have lied to you. Ladies and gentlemen, that

1 person is Bubba Dan.

2 Those officers don't have a reason to lie.
3 The confidential informant knows if he's caught lying,
4 they told you what would happen if he has pinched
5 anything. If they find something on him, he is taken
6 away in handcuffs.

7 This is a pretty simple case, but it's based,
8 like I told you, in reality. When I woke up today, I
9 don't have anymore hair. I certainly don't look anymore
10 like Matthew McConaughey. It's not like a sitcom where
11 someone has a flower on them with a bug, and they say:
12 I would like to buy a \$40 amount of crack cocaine from
13 you. Is that okay? And everyone gets a giggle when
14 it's done like that.

15 This individual is wired up. It's hidden in a
16 different place every time. It's done not only so the
17 transaction can be recorded, but also for his safety.
18 If that tape was absolutely perfect, if it sounded like
19 it was staged, if he walked up and said:

20 Hey, Dan Williams, II, how are you doing?
21 This is Ralph Farmer. I'm here to buy crack cocaine.
22 Would that be reasonable? Is that realistic with people
23 who kind of run in these circles? No. Walking up and
24 saying: I'm buying a 40. Can I get a 40 from you,
25 Bubba?

1 We know his nickname is Bubba, Bubba Dan. He
2 told you that. So we have got a Bubba Dan who is living
3 at his address who apparently has his cars there, and we
4 know that the C.I. has something when he comes right
5 back that he didn't. You've got an officer who sees
6 Bubba Dan that day.

7 This is kind of where common sense comes in.
8 There's 12 of you. You certainly have got more brain
9 power than the rest of us. But let me ask you this.
10 When you are standing in a house that is lit up, and you
11 are looking out into the dark, can you really see who is
12 out there in the dark? No, not really.

13 But when you are in the dark, and you are
14 looking into an area that is lit, such as a house, can
15 you see back when someone is lit? Of course. That's
16 what common sense is.

17 That's what happened with the officer. He is
18 sitting out there about 30 feet. He's in the dark when
19 he pulls up. Bubba is underneath a light in the back of
20 his house selling this (indicating).

21 This is what I told you about in the
22 beginning. Hopes, dreams, and desires, everyone has
23 them. It doesn't matter if you are rich or if you're
24 poor. Everyone has hopes, dreams, and desires, and this
25 stuff destroys those hopes, dreams, and desires.

1 And this man makes money off of that, by
2 selling this to people. He makes money off of
3 destroying people's hopes, dreams, and desires by
4 selling this poison in our community, this stuff that is
5 ruining a generation of people, not only in our
6 community but communities everywhere.

7 This stuff doesn't take any prisoners. This
8 stuff doesn't discriminate against rich people, poor
9 people. It doesn't discriminate if you're short or if
10 you're tall, if you have got a full head of hair or you
11 don't have any hair on your head. It destroys lives.

12 He sells it to make money. He sold it that
13 day to make money. Those officers don't have any reason
14 to lie to you. Why would they put their careers on the
15 line? They are going to be out there tonight, tomorrow,
16 the next day trying to do the same thing.

17 You know what the target was, Bubba Dan's
18 residence. You know who the target was, Bubba. He has
19 admitted that his vehicles are there. He was the one
20 selling crack cocaine.

21 Y'all have that audiotape in the back if you
22 want to listen to it. Some important things on that you
23 are going to hear: All right, Bubba. How is it going,
24 Baby? No one is going to say: Hey, Bubba. He lives
25 there by himself. He told you that. I need a 40.

1 We know what a 40 is now. We know who sold
2 that 40. As the C.I. told you, it's an extremely
3 discreet, quick thing. He saw another individual in
4 that house. He thought it was Bubba's son.

5 You heard from his sister. I mean, he's got a
6 kid now. She hasn't seen that child. She basically
7 said she wasn't real sure if he had a son. It was a
8 very quick, discreet transaction.

9 It is important. It is extremely important
10 because we don't want this stuff on our streets. People
11 deserve the right to have their hopes, dreams, and
12 desires. This stuff destroys those. He sells it and
13 makes money.

14 Based on all the evidence, I ask that you find
15 him guilty because he did what he is accused of, and he
16 got up on that stand and he looked you in the eye and he
17 lied to you about it. Thank you.

18 THE COURT: Thank you, Solicitor.

19 (Whereupon the Court charged the jury as
20 follows).

21 THE COURT: Mr. Foreman, ladies and gentlemen
22 of the jury, the indictment charges the Defendant with
23 distribution of crack cocaine.

24 I remind you that the fact the Defendant was
25 arrested, charged and indicted in this case is not

1 evidence in this case and cannot be considered by you as
2 evidence of guilt in this case, nor does it create any
3 presumption or inference of guilt.

4 This document, this indictment, is simply the
5 formal written instrument which contains the charge made
6 against the Defendant. It is the formal document by
7 which this case is brought into this court.

8 The Defendant has pled not guilty to this
9 indictment, and that plea puts the burden on the State
10 to prove the Defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is never
12 required to prove himself innocent.

13 I charge you that it is an important rule of
14 the law that the Defendant in a criminal trial, no
15 matter what the seriousness of the charge may be will
16 always be presumed to be innocent of the crime for which
17 the indictment was issued unless guilt has been proven
18 by evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 This presumption of innocence does not end
21 when you begin your deliberations. But it accompanies
22 the Defendant throughout the trial until you reach a
23 verdict of guilt based on the evidence satisfying you of
24 that guilt beyond a reasonable doubt.

25 The presumption of innocence is like a robe of

1 righteousnes placed about the shoulders of the
2 Defendant which remains with the Defendant until it has
3 been stripped from the Defendant by evidence satisfying
4 you of the Defendant's guilt beyond a reasonable doubt.

5 The presumption of innocence is not a mere
6 legal theory. It is not just a legal phrase. It is a
7 substantial right to which every defendant is entitled
8 unless you the jury are satisfied from the evidence of
9 the Defendant's guilt beyond a reasonable doubt.

10 The State has the burden of proving the
11 Defendant's guilt beyond a reasonable doubt. Some of
12 you may have served as jurors in civil cases where you
13 were told that it is only necessary to prove that a fact
14 is more likely true than not true, such as by the
15 greater weight or preponderance of the evidence.

16 In criminal cases the State's proof must be
17 more powerful than that. It must be beyond a reasonable
18 doubt. Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the Defendant's guilt.

20 There are very few things in this world that
21 we know with absolute certainty. In criminal cases the
22 law does not require proof that overcomes every possible
23 doubt.

24 If based on your consideration of the
25 evidence, you are firmly convinced that the Defendant is

1 guilty of the crime charged, you must find the Defendant
2 guilty.

3 If on the other hand, you think there is a
4 real possibility that the Defendant is not guilty, you
5 must give the Defendant the benefit of the doubt and
6 find him not guilty.

7 I remind you that during this trial, you and I
8 have certain duties to perform. As the trial judge, it
9 is my responsibility to preside over the trial of this
10 case, and I also have the additional duty to rule on
11 the admissibility of the evidence offered during the
12 trial.

13 You are to consider only the competent
14 evidence before you. You are to consider only the
15 testimony which has been presented from this witness
16 stand and any exhibits which have been made a part of
17 the record in this case.

18 I have the additional duty to charge you the
19 law applicable to this case. As the presiding judge, I
20 am the sole judge of the law of this case, and it is
21 your duty as jurors to accept and apply the law as I now
22 state it to you.

23 If you already have any idea as to what the
24 law is or what the law ought to be and it does not agree
25 with what I now tell you the law is, you must abandon

1 your idea because you are sworn to accept the law and
2 apply the law exactly as I state it to you.

3 In every case tried in this court before a
4 jury, the jury becomes the sole and exclusive judge of
5 the facts in a case. A trial judge cannot intimate,
6 state, comment on or make any statement to a trial jury
7 about the facts in a case.

8 Since you are the sole judges of the facts in
9 this case, you are not to infer from what I have said
10 during the progress of the trial, in ruling upon the
11 evidence or otherwise, or anything that I now say during
12 the course of this instruction to you that I have any
13 opinion about the facts in this case.

14 The law does not allow me to have an opinion
15 about the facts in this case. This is a matter solely
16 for you the jury to determine. As jurors it is your
17 duty to determine the effect, the value, the weight, and
18 truth of the evidence presented during the trial.

19 There are two types of evidence which are
20 generally presented during a trial, direct evidence and
21 circumstantial evidence. Direct evidence is the
22 testimony of a person who claims to have actual
23 knowledge of a fact, such as an eyewitness, ear witness.
24 It is evidence which immediately establishes the main
25 fact to be proved.

1 Circumstantial evidence is proof of a chain of
2 facts and circumstances indicating the existence of a
3 fact. It is evidence which immediately establishes
4 collateral facts from which the main fact may be
5 inferred. Circumstantial evidence is based on inference
6 and not on personal knowledge or observation.

7 The law makes absolutely no distinction
8 between the weight or value to be given to either direct
9 or circumstantial evidence, nor is a greater degree of
10 certainty required of circumstantial evidence than of
11 direct evidence.

12 You should weigh all of the evidence in this
13 case. After weighing all of the evidence if you are not
14 convinced of the guilt of the Defendant beyond a
15 reasonable doubt, you must find the Defendant not
16 guilty.

17 After weighing all of the evidence in the case
18 if you are convinced of the guilt of the Defendant
19 beyond a reasonable doubt, you must find the Defendant
20 guilty.

21 Necessarily you must determine the credibility
22 of witnesses who have testified in this case.
23 Credibility simply means believability. It becomes your
24 duty as jurors to analyze and to evaluate the evidence
25 and determine which evidence convinces you of its truth.

1 In determining the believability of witnesses
2 who have testified in this case, you may believe one
3 witness over several witnesses or several witnesses over
4 one witness.

5 You may believe a part of the testimony of a
6 witness and reject the remaining part of the testimony
7 of that same witness. You may believe the testimony of
8 a witness in its entirety or reject the testimony of a
9 witness in its entirety.

10 You may consider whether any witness has
11 exhibited to you any interest, bias, prejudice or other
12 motive in this case. You may also consider the
13 appearance and manner of a witness while on the witness
14 stand.

15 Additionally, ladies and gentlemen, the rules
16 of evidence ordinarily do not permit a witness to
17 testify to opinions or conclusions. An exception to
18 this rule exists for witnesses we call expert witnesses.

19 A witness, who by education and experience has
20 become expert in some art, science, profession, or
21 calling, may state an opinion as to relevant and
22 material matter in which the witness claims to be an
23 expert and may also state the reasons for the opinion.

24 You should consider any expert opinion
25 received in evidence in this case and like any other

1 evidence give it the weight you think it deserves. If
2 you decide that the opinion of an expert is not based on
3 sufficient education or experience or if you conclude
4 the reasons given in support of the opinion are not
5 sound or that the opinion is outweighed by other
6 evidence, you may disregard the opinion entirely.

7 An expert witness' testimony is to be given no
8 greater weight than that of other witnesses simply
9 because the witness is an expert. Further, you are not
10 required to accept an expert's opinion even though it is
11 not contradicted.

12 An issue in this case is the identification of
13 the defendant as the person who committed the crime
14 charged. The State has the burden of proving identity
15 beyond a reasonable doubt. You must be satisfied beyond
16 a reasonable doubt of the accuracy of the identification
17 of the Defendant before you may convict the Defendant.

18 Identification testimony is an expression of
19 belief or impression by a witness. You must determine
20 the accuracy of the identification of the Defendant.
21 You must consider the believability of each
22 identification witness in the same way as any other
23 witness.

24 You may consider whether the witness had an
25 adequate opportunity to observe the offender at the time

1 of the offense. This will be affected by things like
2 how long or short a time was available, how far or close
3 the witness was, the lighting conditions, and whether
4 the witness had the chance to see or know the person in
5 the past.

6 Once again, I instruct you the burden of proof
7 on the State extends to every element of the crime
8 charged, and this specifically includes the burden of
9 proving beyond a reasonable doubt the identity of the
10 Defendant as the person who committed the crime. If
11 after examining the testimony you have a reasonable
12 doubt as to accuracy of the identification, you must
13 find the Defendant not guilty.

14 In order to establish criminal liability,
15 criminal intent is required. For example, the mental
16 state required to be proven by the State for a
17 particular crime might be purpose, intent, knowledge,
18 recklessness or criminal negligence.

19 Criminal intent may be proven by the State --
20 excuse me -- criminal intent must be proven by the State
21 beyond a reasonable doubt. Criminal intent is always a
22 matter that must be determined by the jury from the
23 circumstances surrounding the situation.

24 There is no way to prove intent to a
25 mathematical certainty. There is no way medical

1 science can dissect a person's brain and determine
2 what the person had in mind. So the law says that
3 criminal intent may be inferred from the circumstances
4 shown to have existed. This is how you make a
5 determination of whether or not the element requiring
6 intent was present.

7 It is not necessary to establish intent by
8 direct and positive evidence, but intent may be
9 established by inference in the same way as any other
10 fact, by taking into consideration the acts of the
11 parties and all the facts and circumstances of the case.

12 Criminal intent is a mental state, a conscious
13 wrongdoing. It is up to you to determine what the
14 Defendant intended to do based upon the circumstances
15 shown to have existed.

16 The Defendant is charged with distribution of
17 crack cocaine. The State must prove beyond a reasonable
18 doubt that the Defendant knowingly and intentionally,
19 willfully and unlawfully distributed a quantity of crack
20 cocaine on or about November 22, 2005.

21 There are several definitions from our statute
22 that are relevant to this charge. Cocaine base.
23 Cocaine base means an alkaloid cocaine or free base form
24 of cocaine which is the end product of a chemical
25 alteration whereby the cocaine in salt form is converted

1 to a form suitable for smoking.

2 Cocaine base is commonly referred to as --
3 quote -- rock -- unquote -- or -- quote -- crack
4 cocaine. Distribute. Distribute means to deliver other
5 than by administering or dispensing a controlled
6 substance.

7 Deliver or delivery. Deliver or delivery
8 means the actual, constructive or attempted transfer of
9 a controlled drug or paraphernalia whether or not there
10 exists an agency relationship.

11 Again, distribute means to deliver or to
12 actually, constructively or attempt to transfer a drug
13 other than by administering or dispensing. Deliver
14 means to actually, constructively or attempt to transfer
15 a drug.

16 A transfer can involve an exchange for money,
17 a barter or a gift. There does not have to be anything
18 given in exchange for the drugs for a transfer to
19 constitute distribution.

20 Mr. Bailiff, would you hand this to the jury
21 foreman, please.

22 BAILIFF: Yes, sir.

23 THE COURT: Mr. Foreman, I will allow you to
24 review this document as I go over it with you and the
25 jurors. As you see, this is the caption of this case,

1 the Court identification, the indictment number, and it
2 is captioned verdict form.

3 There are two possible verdicts which you may
4 find in this case: Guilty of distribution of crack
5 cocaine or not guilty of distribution of crack cocaine.
6 There is no significance whatsoever in the order in
7 which I have stated or listed these possible verdicts.
8 It is simply that one must be stated first.

9 Ladies and gentlemen of the jury, your verdict
10 must be a unanimous one. After your deliberations and
11 your determination of the facts of the case and applying
12 the facts to the law as I have stated the law to you, if
13 the jury unanimously finds the Defendant guilty of
14 distribution of crack cocaine, Mr. Foreman, I would ask
15 you to please check to the left of the word guilty on
16 that line and circle that line and the word guilty.

17 The reverse, if after your deliberations, your
18 review of the evidence, your determination of the facts
19 in this case, applying those facts to the law as I have
20 stated the law to you, you find unanimously that the
21 Defendant is not guilty of distribution of crack
22 cocaine, I would ask you to place a checkmark to the
23 left of the words not guilty and circle that entire two
24 words and your checkmark.

25 After the jury has reached its unanimous

1 verdict, whether guilty or not guilty, Mr. Foreman, I
2 would ask you to please sign your name and date it
3 today's date.

4 Again, ladies and gentlemen, your verdict must
5 be a unanimous verdict. All 12 of you must agree on the
6 verdict. Your verdict cannot be based on sympathy,
7 passion, prejudice, emotion or any other consideration
8 not in evidence in this case.

9 Mr. Foreman, when the jury agrees on the
10 verdict and you have completed the verdict form, I would
11 ask you to then knock on the jury room door and inform
12 the bailiff that you have reached a verdict. At that
13 time we will receive you back into the courtroom.

14 Momentarily I will ask you to leave that form
15 on the rail and have you return to your jury room. I
16 have to go over some matters with the attorneys before
17 the case will be submitted to you for your
18 deliberations.

19 You will have all the documents that were
20 introduced into evidence, I believe it was State's 1
21 through 10. Among that will be about the -- I was about
22 to say eight-track -- what is it? A C.D. Is that what
23 it is? The C.D.

24 We will make arrangements for the proper
25 equipment to be in there so that you may review the C.D.

1 for whatever period of time you choose to do so. We
2 will have that to you shortly.

3 Do not begin your deliberations until you are
4 instructed to do so by the bailiff or by the clerk.
5 With that being said, if you would leave the verdict
6 form on the rail right now and if you would please,
7 ladies and gentlemen of the jury, return to the jury
8 room with our bailiff. Thank you very much.

9 (The jury retires to the jury room).

10 THE COURT: Any objections or exceptions from
11 the State?

12 MR. MADSEN: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. SNELL: None, Your Honor.

15 THE COURT: For the record I asked the court
16 reporter to mark your requests for charges, Mr. Snell.
17 They would be part of the record. If y'all would please
18 check the exhibits. Do y'all want an individual to set
19 up the recording equipment in the jury room?

20 MR. MADSEN: That's fine.

21 THE COURT: They will have to have something
22 to play the C.D.

23 MR. SNELL: Certainly.

24 THE COURT: Typically what I have done is I
25 have placed Mr. Reynolds with the Solicitor's Office

1 under oath just for purposes of him delivering the
2 equipment. They have a password, I understand, on it,
3 Mr. Snell. He is not to talk with the jurors otherwise
4 when setting up the equipment. Do you have any
5 objections to that?

6 MR. SNELL: No, objection, Your Honor.

7 THE COURT: If y'all would check the exhibits.
8 Solicitor, if you would get me Mr. Reynolds, please.

9 MR. MADSEN: He is here, Your Honor.

10 (Mr. Reynolds is sworn by the Court).

11 (The jury commences its deliberation at
12 10:50 a.m.)

13 (The following occurred at 12:05 p.m.)

14 THE COURT: I understand we have a verdict.
15 Anything from the State?

16 MR. MADSEN: Nothing from the State, Your
17 Honor.

18 THE COURT: From the defense?

19 MR. SNELL: Nothing from the defense, Your
20 Honor.

21 THE COURT: Mr. Bailiff, if you would bring
22 our jury, please.

23 (The jury returns to open court to report its
24 verdict).

25 THE COURT: It appears our jury is back

1 present in the courtroom. Madame Clerk.

2 CLERK: Mr. Foreman, have you reached a
3 verdict?

4 FOREMAN: Yes.

5 CLERK: Please pass it up by the bailiff.
6 (Hands to Court).

7 THE COURT: Madame Clerk, our verdict appears
8 to be in proper form. If you would please publish it.

9 (Whereupon the verdict of the jury is
10 published as follows).

11 CLERK: Indictment 2006-GS-32-470, the State
12 of South Carolina versus Dan Williams, II, as to the
13 charge of distribution of crack cocaine, we the jury
14 unanimously find the Defendant guilty. It is so signed
15 by the foreperson.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 if this is your verdict, please indicate each of you by
18 raising your right hand.

19 (All jurors so indicate).

20 CLERK: All hands are raised, Your Honor.

21 THE COURT: Anything further for the jury from
22 the State?

23 MR. MADSEN: Nothing from the State, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. SNELL: Nothing from the defense, Your
2 Honor.

3 THE COURT: Any reason in law why sentence
4 should not be imposed at this time?

5 MR. MADSEN: No, Your Honor.

6 MR. SNELL: No, Your Honor.

7 THE COURT: Solicitor, anything additional?

8 MR. MADSEN: Your Honor, Mr. Williams does
9 have a significant prior drug record. Most of it
10 from 1990. He was convicted back then of possession of
11 cocaine, sentenced to probation.

12 Again, back in 1990 in November, he was
13 sentenced for distribution of crack cocaine. In October
14 of 1990, sentenced for distribution of crack cocaine.
15 In 1990, sentenced for conspiracy to distribute crack
16 cocaine. In 1990, also convicted for two distributions
17 within half-mile of a school, both of those relating to
18 those other counts, Your Honor.

19 He was eligible for a life sentence. He was
20 not noticed for this. So my understanding is the
21 sentencing range would be a minimum of 15 years, a
22 maximum of 30 years, and a fine in Your Honor's
23 discretion up to \$50,000.

24 He does have an additional charge pending, a
25 charge of distribution. As Your Honor kind of heard,

1 when he was arrested on December 8th, he was also found
2 inside the house with crack cocaine.

3 It was originally charged as a trafficking.
4 It ended up coming back about nine grams under the
5 weight. So he does have a pending P.W.I.D. crack
6 cocaine offense.

7 THE COURT: That's the date of his arrest,
8 12/8/05?

9 MR. MADSEN: That's correct, Your Honor. The
10 second buy was 12/1/05.

11 THE COURT: With the same C.I.?

12 MR. MADSEN: The same C.I. on 12/1. They
13 ending up doing a search warrant on the 8th, but those
14 two cases are not disposed of.

15 THE COURT: So he has one, two, three, four,
16 five, six prior drug convictions?

17 MR. MADSEN: Yes, Your Honor.

18 THE COURT: And two pending drug convictions?

19 MR. MADSEN: That's correct.

20 THE COURT: Excuse me, two pending drug
21 charges.

22 MR. MADSEN: That's correct.

23 THE COURT: Thank you, Solicitor. Mr. Snell,
24 I will be glad to hear from you, sir.

25 MR. SNELL: Your Honor, we have the

1 unfortunate displeasure of reaching this stage in the
2 proceeding. Mr. Williams, after reviewing the evidence
3 against him and the charge, pled not guilty and
4 maintained his innocence.

5 What I would like to say is -- and I know
6 Mr. Williams would like to have an opportunity to
7 address the Court, along with some of his family if that
8 would be permitted.

9 THE COURT: Yes, sir.

10 MR. SNELL: Since his previous trouble in the
11 '90s until this charge originated from the incident on
12 November 22, 2005, he has been out of trouble. He has a
13 new child. He is currently 41 years of age.

14 My understanding, when I asked the solicitor
15 about the potential sentencing in this case, is between
16 15 and 30 years. We believe a minimum sentence in this
17 case would be appropriate.

18 It will be putting him out of commission until
19 he serves that sentence until he is 56 years old, which
20 will enable him to get back out and get back to work and
21 pay a little bit in Social Security and hopefully get
22 ready to retire and see his daughter's high school
23 graduation.

24 In this particular case, we don't believe any
25 of the facts showed any kind of aggravating factors. It

1 sounded like a straightforward sale. He was not alleged
2 to have been pushing drugs to folks out on the street or
3 school children or anything of that sort.

4 Mr. Williams, would you like to say anything
5 to the Court at this time?

6 THE DEFENDANT: I just wish the judge to be as
7 lenient as possible against me.

8 MR. SNELL: If anybody from his family would
9 like to say anything, stand up and tell the Court your
10 name.

11 THE COURT: Would you mind coming around to
12 the microphone for me, please, ma'am.

13 MS. COKLEY: Jeanette Cokley. I'm Dan
14 Williams first cousin.

15 THE COURT: Copeland?

16 MS. COKLEY: Cokley.

17 THE COURT: Ms. Cokley, I would be glad to
18 hear from you.

19 MS. COKLEY: Me and Dan went to school
20 together. We also played together and everything. You
21 know, I ask you to be lenient towards him if you can,
22 Your Honor, because he do have a new baby, you know.

23 She ain't brand new but she's a little girl,
24 you know, and girls, you know, get attached to their
25 daddies, you know. I ask you to be lenient toward him

1 and give him time to be able to come back out and do
2 things with his child.

3 THE COURT: Thank you, Ms. Cokley. Anyone
4 else?

5 MR. SNELL: Your Honor, before we impose
6 sentence, I do have one final motion for the Court.

7 THE COURT: Certainly.

8 THE COURT: This is Ms. Stedman?

9 MS. REDMOND: Redmond, Margie Redmond. I am
10 Dan's next to the oldest sister. I do ask and pray for
11 mercy for my brother today. Working with alcohol and
12 drugs over 15 years, I know my brother also has a bad
13 habit that I been talking to him about for a long time.
14 I can't turn around the tables or ask that things be
15 different. I just pray and ask for mercy.

16 THE COURT: Thank you, Ms. Redmond.

17 MS. REDMOND: Thank you.

18 MR. SNELL: Your Honor, we do have some other
19 people in the family who have come to show support for
20 Mr. Williams. He has been a good client of mine since
21 2006. So we would again ask the Court for leniency in
22 this case.

23 I do believe the legislature gave the Court
24 discretion to find it on one side or find it on the
25 other. We think in this case the most lenient sentence

1 possible would be appropriate.

2 Your Honor, in this case we had certain issues
3 we would just like to preserve for appeal, and at this
4 time before the Court enters a sentence, we would make a
5 motion for new trial based on those matters.

6 THE COURT: I would respectfully deny that
7 motion. I think there was ample evidence, both direct
8 and circumstantial for the verdict that was rendered by
9 the jury. You are certainly protected for the record,
10 Mr. Snell.

11 MR. SNELL: Thank you, Your Honor.

12 THE COURT: Anything further?

13 MR. SNELL: Nothing further, Your Honor.

14 THE COURT: Solicitor, is this a serious or
15 most serious offense?

16 MR. MADSEN: It would be a serious, Your
17 Honor.

18 THE COURT: Is it considered a violent
19 offense?

20 MR. MADSEN: I believe it is since it's a
21 third offense, but I'm not 100 percent sure. It is a
22 third offense. I believe it's a serious but not a
23 violent.

24 THE COURT: So how much time will he have to
25 serve on whatever I sentence him to?

1 MR. MADSEN: He will serve 85 percent.

2 THE COURT: Has he been out on bond?

3 MR. SNELL: He has, Your Honor.

4 THE COURT: All right. On 2006-GS-32-0470,
5 the State versus Dan Williams, II, having returned a
6 verdict of distribution of crack cocaine, it being shown
7 that this is a third or subsequent offense, the
8 Defendant is committed to the State Department of
9 Corrections for a determinate term of 21 years.

10 Good luck to you, Mr. Williams.

11 MR. MADSEN: Thank you, Your Honor.

12 THE COURT: Mr. Foreman, and ladies and
13 gentlemen of the jury, I never comment on or criticize
14 or commend a jury for its verdict. However, I will say
15 that if you ever find yourself a part of the system, by
16 way of witness or plaintiff or hopefully never by way
17 of a victim in a matter, I hope the jury that sits on
18 that case will be as attentive and as committed to
19 their oath as y'all have been during the trial of this
20 case.

21 This is a very important case, both to the
22 State of South Carolina and to Mr. Williams and to
23 Mr. Williams' family. The solicitor did a very good
24 job, the officers. Mr. Snell did a very good job in
25 representing his client, and of course, presented him as

1 a witness and also presented a family member as a
2 witness.

3 I thank you. It is always my pleasure and my
4 privilege to serve in any of the counties in the State.
5 I particularly like being in my home county quite
6 frankly. I don't get here as often as I would like to
7 really, but I enjoy being at home.

8 You are protected from jury service for the
9 remainder of this calendar year. You are actually not
10 qualified for the rest of this year. I know that
11 disappoints you.

12 You have a three-year protection from jury
13 service. That's just in a State court of record.
14 Federal court can come get you or magistrate or city
15 court. It's just a State court of record.

16 Is the check in the mail, Madame Clerk?

17 CLERK: Oh, yes, sir.

18 THE COURT: We could not pay you for the
19 valuable service that you give to our community. As I
20 tell jurors, the check is this mail, but I would not go
21 home and get on the internet and start booking a cruise,
22 not even to Shull Island.

23 As I say, we cannot pay you for the valuable
24 service you perform for our community and for all the
25 citizens of our community. With that being said, you

1 are now excused from jury service for the remainder of
2 the week.

3 (The jury is excused).

4 THE COURT: Court will be in recess.

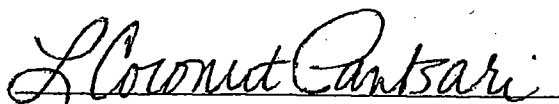
5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 4th and 5th days of April, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 2, 2007



Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAN WILLIAMS, II,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in overruling appellant's relevancy objection in the case.

STATEMENT OF THE CASE

Appellant Dan Williams was found guilty of distribution of crack cocaine, third offense, during the April 2007 term of the Lexington County General Sessions Court before the Honorable R. Knox McMahon, Judge. Appellant was sentenced to imprisonment for a period of twenty years. Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in overruling appellant's relevancy objection in the case.

At trial, Narcotics Officer Kenneth Travis Bass set up a controlled buy targeting appellant, who resided at Address in Swansea. R. p. 36, line 3 – p. 50, line 20. Confidential informant Ralph E. Farmer testified that he made a controlled buy obtaining forty dollars worth of crack cocaine from appellant on November 22, 2005. R. p. 59, line 14 – p. 66, line 23.

Appellant testified at trial. Appellant stated that he had no encounter with Farmer on November 22, 2005, and that he did not distribute crack cocaine to Farmer on November 22, 2006. R. p. 128, line 24 – p. 129, line 11.

During the state's cross-examination of appellant, the solicitor asked if he was using crack on November 22, 2005, and in effect if so where did he get the money for crack cocaine. Appellant stated that he was using crack cocaine on November 22, 2006, and he got the money because he worked for the money. R. p. 134, lines 10 – 15. Defense counsel objected to this line of questioning. R. p. 134, lines 16 – 21. Counsel stated that this colloquy was irrelevant and more prejudicial than probative. R. p. 141, lines 4 – 15. The Court ruled that the questions were in response to appellant's response regarding his employment (dry walling). R. p. 141, line 16 - p. 142, line 9.

As a general rule, evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and any evidence to the contrary is irrelevant and should be excluded if the probative value is substantively outweighed by the danger of unfair prejudice as unfair prejudice produces an undue tendency to suggest a decision based on an improper basis. State v. Brown, 306 S.C. 448,

412 S.E.2d 440. Here, the gist of the irrelevant evidence in question was the suggestion that appellant was a user and/or buyer of crack cocaine, which had no bearing on the issue of whether he was guilty of distributing/selling crack cocaine. At best, it suggested only that appellant was a recreational user (and buyer) of the drug on that day only. A user or buyer does not a seller make. The lower court erred in overruling appellant's relevancy objection in the case in violation of appellant's right to a fair trial guaranteed under the fourteenth amendment due process clause and article 1 § 3 of the South Carolina State Constitution in the case.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Lexington County General Sessions Court for a new trial.

Respectfully submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

July 2, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Lexington County

 R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAN WILLIAMS, II,

APPELLANT

 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dan Williams II states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on April 5, 2007, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Dan Williams II.

Respectfully submitted,

 Wanda H. Carter
 Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

July 2, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 2, 2008

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAN WILLIAMS, II,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon Dan Williams, II, #175376 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 2nd day of July, 2008.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of July, 2008.

(L.S.)
Notary Public for South CarolinaMy Commission Expires: November 16, 2008

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Dan Williams, II,

Appellant.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2009-UP-486
Submitted October 1, 2009 – Filed October 15, 2009

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: Dan Williams, II, appeals his conviction for distribution of crack cocaine. He argues the trial court erred in allowing testimony about his past drug use because the evidence was not relevant to proving he sold crack cocaine. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

HEARN, C.J., KONDUROS and LOCKEMY, JJ, concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

COUNTY OF Lexington)

IN THE COURT OF COMMON PLEAS

Dan Williams, II. 175376
Full name and prison number (if any) of Applicant.

2009 DEC - 7 P 1:40

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

Respondent.

2009CP3205487

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 Inst. 4848 Goldmine
2. Name and location of Court which imposed sentence HWY. Kershaw, SC 29067
Court, Lexington SC 29072
3. Name(s) of co-defendant(s) (if any) xxx None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 06-GS-32-0470 and a period of twenty one
years. Distribution crack cocaine third offense.
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence.
 - (a) April 4, 2007
 - (b) Twenty one years

Revised 3/2003

(c) N/A

2009CP3205487

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

FILED

2009 DEC -7 P 1:40

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. State of South Carolina in The Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. October 15, 2009

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2009-UP-486

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
of U.S. Constitution.

2009CP3205487211

- (b) Due process because the government knowingly elicit
(c) false statements from its witness. Daniel Lee 316
F3d 477 (4th Cir.2003).

11. State concisely and in the same order the facts which support each of the grounds set out
in (10):

2009 DEC -7 1:40

- (a) The testimony of the witness and counsel new it to be
false.
(b) The Due process was a violation of the 5th 4th 14th and
(c) 6th amendment.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
(b) any petition in State or Federal Courts for habeas corpus or post-convictions
relief? no
(c) any petition in the United States Supreme Court for certiorari other than petitions,
if any, already specified in (8)? no
(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or
application:

- (a) the specific nature thereof:
i. Appeal in the South Carolina Court of Appeals.
ii. N/A
iii. N/A
iv. N/A
(b) the name and location of the Court in which each was filed:
i. Appeals court South Carolina , Columbia SC
ii. N/A
iii. N/A
iv. N/A
(c) the disposition thereof:
i. Denied
ii. _____
iii. _____

iv. N/A

(d) the date of each such disposition:

i. October 15, 2009ii. N/Aiii. N/Aiv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Opinion No. 2009-UP-486ii. _____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. N/Aii. N/Aiii. N/A

(b) the proceedings in which each ground was raised:

i. N/Aii. N/Aiii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel(b) Due Process violation of 5 4 14 6 U.S. Constitution amendments.(c) _____17. Were you represented by an attorney at any time during the course of: yes

2009CP320548

2009 DEC -7 P 1:40

- 2009CP3205487
FILED
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction, or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. James R. Snell Jr, Lexington S.C. arraignment
 - James R. Snell Jr. Trial
 - ii. James R. Snell Jr. Sentencing
 - iii. Wanda H. Carter Appellate Defense on Appeal
Columbia S.C.
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment
 - ii. Trial
 - iii. Sentencing
 - Appeal

19. State clearly the relief you seek in filing this application:

Vacate Sentence Remain new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-5487

Dan Williams, II, #175376,)
 Applicant,)

v.)

RETURN

State of South Carolina,)
 Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 7, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the January 2006 term of the Lexington County Grand Jury for Manufacture, Distribution, etc., Ice, Crank, Crack Cocaine 3rd or Subsequent Offense (2006-GS-32-0470). He was represented by James Snell, Esquire. On or about April 4, 2007, the Applicant underwent trial, pursuant to which he was found guilty. He was sentenced to confinement for a period of twenty-one (21) years.

A timely Notice of Appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed the Applicant's appeal by unpublished opinion submitted October 1, 2009 and filed October 15, 2009 (2009-UP-486).

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. "Due process because the government knowingly elicited false statements from its witness."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's second allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

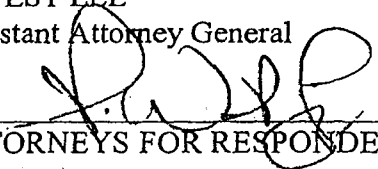
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 4, 2010.

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON)

Dan Williams, II,)

PLAINTIFF,)

-VS-)

State of South Carolina,)

DEFENDANT.)

PCR HEARING
 2009-CP-32-05487

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

MAY 18, 2011

LEXINGTON, SOUTH CAROLINA

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

Charles T. Brooks, III, Esq.
 For the Plaintiff

Kaelon E. May, Esq.
 For the State

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

I N D E X

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Dan Williams II	
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James Ross Snell, Jr.	
Direct	15
Cross	20
Closing Remarks	23
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E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: All right, I understand we
5 have a group from high school here. We are in post-
6 conviction court. This is not jury court. There's
7 no duty. These are civil cases.

8 The persons bringing these
9 applications primarily are asserting that they are
10 entitled to a new trial based on an assertion that
11 their trial counsel or plea counsel was ineffective
12 and that they were prejudiced by that. These are
13 civil cases, even though they arise from criminal
14 convictions.

15 And the applicant has the burden of
16 proof, unlike criminal court where the State would
17 have the burden of proof. The burden of proof is a
18 lower standard in civil court than in criminal
19 court, but the application has the burden.

20 What's the next case?

21 MS. MAY: May it please the Court, Your Honor,
22 the State would call Dan Williams v. State, case
23 number 200-CP-32-5487. This case comes to us on a
24 PCR application filed December 7, 2009, by Dan
25 Williams. He came before the Honorable Judge

1 McMahon on April 4 and 5, 2007.

2 He was charged with manufacturing and
3 distribution of crack cocaine, third or subsequent
4 offense. At trial, Mr. Williams was found guilty,
5 and he was sentenced to confinement for a period of
6 21 years. An appeal was filed on Mr. Williams'
7 behalf.

8 The South Carolina Supreme Court
9 dismissed the appeal by an unpublished opinion on
10 October 15, 2009. I will now turn it over to Mr.
11 Brooks, who represents Mr. Williams.

12 THE COURT: Yes, sir.

13 MR. BROOKS: May it please the Court,
14 Judge, we're ready to begin as soon as you're ready.

15 THE COURT: All right.

16 MR. BROOKS: We call Dan Williams to the
17 stand.

18 THE COURT: Mr. Williams, I need you to
19 come up here toward me so the Clerk can swear you
20 in, please, sir.

21 MR. BROOKS: Yes, sir.

22 (The witness was sworn.)

23 CLERK OF COURT: Please be seated and
24 state your name for the record.

25 THE COURT: Come around here, please.

1 MR. WILLIAMS: Dan Williams.

2 MR. BROOKS: Are you ready, Judge?

3 THE COURT: Yes, sir.

4 DAN WILLIAMS, II, having first been
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Mr. Williams, how are you today?

9 A I'm all right.

10 Q You're currently serving 21 years, is that
11 correct?

12 A Yes, sir.

13 Q And when is your max-out date?

14 A 2025.

15 Q Okay. And when do you come up for parole?

16 A I don't have a parole date.

17 Q Okay, all right. Who did you have as your
18 lawyer?

19 A James Snell.

20 Q And you went to trial, is that right?

21 A Yes, sir.

22 Q He's somebody you hired, is that correct?

23 A My sister hired, yes, sir.

24 Q Okay. Now, you understand we're here for
25 post-conviction relief where you want to start over?

1 A Yes, sir.

2 Q You know what I told you about starting
3 over. It's kind of like playing a computer game,
4 and you press the reset button, but you're playing
5 the same game.

6 A Yes, sir..

7 Q And you start over.

8 A Yes, sir.

9 Q Now, you understand in your situation -- I
10 want to make sure you understand this.. In your
11 situation, if the Judge allows you to start over
12 that you could go back and possibly face a life
13 sentence. Are you aware of that?

14 A Yes, sir.

15 Q Okay. And you told me you still wanted to
16 go forward, isn't that correct?

17 A Yes, sir.

18 Q All right. Now, one thing you talked
19 about with Mr. Snell being ineffective is you said
20 that he didn't go over your discovery with you, is
21 that correct?

22 A Yes, sir..

23 Q That there was a deal offered to you, but
24 you didn't have the discovery to look at to
25 determine whether or not you should have taken this

1 deal, is that right?

2 A I didn't have no information.

3 Q Okay. Tell the Judge about that, now.

4 A When Mr. Snell came to me, he said that
5 the Solicitor had an offer on the table. I said,
6 "What was the offer?" He said, "The Solicitor has
7 eight years on the table."

8 Then he came back, and I said, "Well, why
9 don't you show me some evidence?" He said, "The
10 Solicitor won't show you no evidence unless you take
11 a jury trial."

12 Q Okay.

13 A And so he said, "That's really what you
14 want to do?" I said, "Yes, if I can't see no
15 evidence, I'd rather take a jury trial."

16 Q Now, knowing what was against you, if you
17 had to do it all over again, you would have taken
18 that deal, is that right?

19 A Yes.

20 Q And you'd have done --

21 A Well, he told me it was a black man that I
22 knew all of my life that I sold the crack to.
23 That's what he told me.

24 Q All right.

25 A I told him I didn't sell no crack to no

1 black man. And he said they had the black man and
2 me on tape. That's what he told me.

3 Q Okay.

4 A And I had --

5 Q And you didn't get to see all of the
6 material until trial came up?

7 A Exactly.

8 Q Okay. Now, obviously, if you could do it
9 all over again, you'd take that deal, correct?

10 A Oh, yes.

11 Q Okay. Now -- and that's why you're saying
12 that Mr. Snell was ineffective in communicating to
13 you and showing you the discovery, is that right?

14 A Yes, show me, yes.

15 Q Okay. And is that pretty much your
16 application?

17 A Yes.

18 Q Okay. And that's why you want the Judge
19 to grant your PCR here today, is that right?

20 A Yes, sir.

21 Q Is there anything else you need to tell
22 the Judge other than that?

23 A Well, he really didn't -- he didn't do
24 nothing in the trial that I see. He didn't object
25 to nothing.

1 Q He didn't object to nothing?

2 A Not that I heard in there.

3 Q All right. What other complaints have you
4 got? I know your main complaint was not seeing that
5 discovery, knowing what was against you, when the
6 deal was on the table.

7 A Yes.

8 Q So that's what your main gripe is?

9 A Yes.

10 Q Is that right?

11 A That's what my main gripe was, yes.

12 Q Is there anything else other than that,
13 that you want to tell the Judge?

14 A Yes, why he lied to me.

15 Q What do you mean he lied to you?

16 A He told me that I sold the drugs to a
17 black man, and they had him as their witness.

18 Q Mr. Snell told you you sold drugs to a
19 black man?

20 A Yes, around my age, 40 years old.

21 Q Okay. And you didn't get to see the
22 discovery?

23 A No.

24 Q So what came out during the trial?

25 A It was a white man.

1 Q Okay. Do you think that would have made a
2 difference?

3 A Yes, that would have made a big
4 difference.

5 Q What kind of difference would that have
6 made?

7 A Because he got me believing they think I
8 sold crack to a black man.

9 Q Okay.

10 A That would have made a difference on my
11 offer.

12 Q That would have made a difference on your
13 offer?

14 A Yes, on the offer they offered me.

15 Q So if you had sold crack to a white man,
16 it would have been a different offer?

17 A No, he's saying I sold crack to a black
18 man 40 years, around my age. That's what they had
19 on me.

20 Q Okay.

21 A Okay. And I'm asking him to show me some
22 paperwork.

23 Q Okay.

24 A He said they ain't showing me nothing
25 unless I took a jury trial.

1 Q Okay.

2 A And so I had --

3 Q So, basically, what I'm hearing and what
4 we talked about is your main issue with the way Mr.
5 Snell represented you was you didn't get a chance to
6 look over your discovery so that you knew and could
7 have formed an intelligent decision whether to --

8 A Yes.

9 Q -- take that deal?

10 A Yes, sir.

11 Q And is that pretty much it?

12 A Yes.

13 Q Is there anything else?

14 A Nothing but mainly I feel like he didn't
15 do a great job that day in court.

16 Q I understand that. But is there anything
17 else --

18 A No.

19 Q -- any other issue you want to tell this
20 Judge about how Mr. Snell represented you --

21 A No.

22 Q -- other than not going through the
23 discovery?

24 A No, sir.

25 Q Okay. Answer any questions of the

1 Attorney General.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MS. MAY:

5 Q Mr. Williams, you talked about discovery
6 that wasn't shared with you that would have changed
7 your mind. What discovery specifically are you
8 talking about?

9 A Well, what I found out is when they come
10 with warrants, they usually give you the discovery,
11 like you said. They let you know -- they didn't
12 give me nothing letting me know. All they told me
13 is I was supposed to have sold this dope to so and
14 so.

15 Q So you were given no discovery at all?

16 A No, not that I know of. The only time I
17 was showed discovery was at the trial. And he put
18 some paper and asked me did I know that name. And I
19 was trying to read it, but I was trying to really
20 pay attention to what was going on up here.

21 Q Okay. Were you guilty of the charge?

22 A Yes.

23 Q You were?

24 A Yes.

25 Q Then why would you want to plead guilty

14

1 instead of going to trial if you weren't guilty?
2 I'm sorry, okay. And so aside from the discovery or
3 the lack of discovery that you say you weren't
4 shown, is there anything else that you think your
5 attorney could have done?

6 A Yes, I think he could have questioned the
7 witness that said I sold him the crack more than
8 what he did.

9 Q So he didn't question the witness
10 adequately?

11 A Yes, he questioned him, but they was basic
12 questions. I mean, he ain't go -- I ain't seen no I
13 know the man's whole history about him, how he say
14 he knows me. He told two lies on the stand. That
15 man didn't know me.

16 Q Okay.

17 MS. MAY: Your Honor, I have no other
18 questions.

19 THE COURT: All right, redirect?

20 MR. BROOKS: No, sir, no other questions.

21 THE COURT: Thank you, Mr. Williams. You
22 may step down.

23 MR. BROOKS: We call Mr. Snell to the
24 stand, Judge.

25 THE COURT: Come around, please, Mr.

1 Snell.

2 (The witness was sworn.)

3 CLERK OF COURT: Please be seated and
4 state your name for the record.

5 MR. SNELL: James Ross Snell, Jr.

6 MR. BROOKS: Are you ready, Judge?

7 THE COURT: Yes, sir.

8 JAMES ROSS SNELL, JR., having
9 first been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q Mr. Snell, you were representing Mr.
13 Williams in this matter?

14 A I did.

15 Q Can you kind of give a brief summary of
16 what the State's case was against him?

17 A I can. Mr. Williams was charged with two
18 counts of distribution of crack cocaine from
19 separate controlled buys conducted by the Lexington
20 County Sheriff's Department, one on December 1,
21 2005, and another on November 22, 2005.

22 There were two accompanying counts of
23 proximity to a school. After those dates, the
24 Sheriff's Department obtained a search warrant,
25 searched the house, and the resulting charges were

16

1 trafficking in crack cocaine and possession with
2 intent to distribute marijuana.

3 And of those, two of the distribution
4 charges were strikes. And to my understanding, the
5 possession and the trafficking were also strikes.

6 Q When you say "strikes," you're referencing
7 the two-strike, three-strike law?

8 A Right. And a conviction on any one of
9 them would have resulted in an automatic sentence of
10 life without parole.

11 Q Did he have a prior record?

12 A He did.

13 Q And his prior record had strikes on him
14 already?

15 A It did. I confirmed the existence of a
16 prior record. I actually went myself personally and
17 pulled the original court files. I didn't just
18 trust what was in the printout report. I went and
19 actually pulled the original court files and looked
20 at the actual documents to confirm his prior record.

21 Q Was there an offer made in this case?

22 A There was an offer. One of the first
23 things I did was whenever I see a proximity charge,
24 I'm always suspicious of them, simply because
25 oftentimes law enforcement will use proximity as a

1 -- I don't know if you'd call it a kick or just an
2 add-in.

3 They just fill out the additional charge.
4 And I went out to Mr. Williams' -- to the residence,
5 the alleged offense myself and measured off the
6 distance to the school they alleged in my car and
7 noticed the odometer said it was further than the
8 statute would proscribe.

9 Then I went to actually the County
10 Planning Office and got an aerial map, figured out
11 the distance it matched. So I met with the
12 Solicitor on that and got those charges I'll call
13 administratively dismissed.

14 He was offered -- to wrap up the remaining
15 two distributions and the trafficking and the PWID,
16 he was given an offer of PWID crack, which is
17 possession with intent to distribute, first offense,
18 with an eight-year cap.

19 And this would have been a -- we could
20 have picked the Judge, and we had an opportunity to
21 create a very favorable sentencing environment.
22 Now, although we had the standard paper discovery,
23 which would have included the incident reports,
24 copies I think of some of the law enforcement
25 narratives, and some details, including drug lab

18

1 screening reports and those things, I was able to
2 provide those to Mr. Williams at the time that offer
3 was presented.

4 The Solicitor's Office, however, withheld
5 the identity of the informant who was involved in
6 the controlled buys, pending Mr. Williams' decision
7 whether or not he wanted to accept the plea on the
8 basis that once that informant's identity was
9 revealed, they were concerned, number one, that his
10 personal safety may be jeopardized; and, number two,
11 his usefulness to law enforcement in further
12 operations would be jeopardized.

13 Q This is the CI, correct?

14 A This is the CI. So I presented the offer
15 of PWID first with an eight-year cap. And my
16 understanding at the time, Mr. Williams, although he
17 could have been eligible for probation or time-
18 served, his max-out date or his full eligibility
19 date at worst would have been about two years,
20 including credit for the time he had served.

21 We had actually gotten him released. I
22 obtained a consent order on his behalf to reduce his
23 bond to allow him to be released pending his
24 disposition.

25 Mr. Williams turned down the offer and

1 requested that I obtain additional information
2 regarding the confidential informant and his
3 identity. And Mr. Williams understood that by
4 requesting that information that the policy of the
5 Solicitor's Office would be that they would pull all
6 offers off the table, and he would be going to
7 trial.

8 Q Okay. How did you know he understood
9 that?

10 A On June 9, 2006, Mr. Williams signed and
11 executed a document that previously had been
12 provided to counsel in this case, stating that "I
13 understand that once this request is transmitted to
14 the Solicitor, the Solicitor has stated he will no
15 longer entertain any plea negotiations, and my case
16 is to go to trial."

17 Q Did he fully understand what he was doing?

18 A I had concerns regarding Mr. Williams and
19 his understanding of his case. It was -- because
20 he's got these two separate distributions and the
21 charges as a result of the search warrant, and a
22 conviction on any of them would have subjected him
23 to the life without parole.

24 And we had been served with what purported
25 to be a notice of intent to seek a life sentence by

1 the State, which had been served on Mr. Williams and
2 on me.

3 I had Mr. Williams at a hearing in front
4 of a Circuit Judge requesting that Mr. Williams be
5 evaluated by the South Carolina Department of Mental
6 Health, because I had concerns regarding his
7 competency to stand trial, his understanding of the
8 proceedings.

9 But he passed the evaluation. And then
10 further, before his trial, I had Judge McMahon do an
11 inquiry regarding his understanding of the
12 circumstances, what was going on, and Judge McMahon
13 found him also at that time competent.

14 Q Okay.

15 MR. BROOKS: Beg the Court's indulgence?

16 THE COURT: Yes, sir.

17 MR. BROOKS: No other questions, Judge.

18 THE COURT: All right, questions of the
19 witness?

20 MS. MAY: Just briefly, may it please the
21 Court.

22 CROSS-EXAMINATION

23 BY MS. MAY:

24 Q Mr. Snell, how long have you been
25 practicing?

1 A I believe since November 15, 2004.

2 Q And how much of that would you say has
3 been criminal law?

4 A At least 40 percent.

5 Q Okay. And if you would just kind of
6 briefly go over your initial meeting with Mr.
7 Williams and whether you were retained or appointed.

8 A Absolutely. I was retained. When I was
9 contacted, Mr. Williams was incarcerated at the
10 detention center. I think his bond was high. I
11 think it was over \$200,000.

12 And I met with Mr. Williams. Our first
13 meetings would have been with him at the detention
14 center. Once I obtained the proper consents and
15 authorizations to begin representation, we started
16 out by filing standard discovery motions, Rule 5 and
17 Brady.

18 I also negotiated a consent order with the
19 Solicitor to reduce his bond I believe from over
20 \$200,000 to \$50,000. Subsequent meetings would have
21 been at primarily my office. If I had to estimate,
22 there would have been at least 20 meetings.

23 Q Okay. And you spoke about the signing and
24 executing of the document by Mr. Williams, that you
25 advised him of this offer. When he signed it, did

1 you go over this document with him?

2 A I did, in full.

3 Q Okay. And did you at that time -- was
4 there any reason for you not to believe that he
5 understood what y'all had discussed?

6 A Not at that time, no, ma'am.

7 Q Okay. And did you interview any witnesses
8 before going to trial?

9 A I had talked to one of the police officers
10 involved in the case, I think the main investigating
11 officer. Now, also on that same document, Mr.
12 Williams had indicated to me that he had no
13 witnesses that he -- there were no defense witnesses
14 available. And I talked to one of the -- like I
15 said, the main State's witness involved in the case.

16 MS. MAY: Your Honor, I have no more
17 questions for the witness.

18 THE COURT: Anything further of this
19 witness?

20 MR. BROOKS: Nothing further, Judge.

21 THE COURT: Thank you, Mr. Snell. You may
22 step down.

23 MR. SNELL: Thank you.

24 MR. BROOKS: Judge, that's the applicant's
25 case.

1 THE COURT: Does the State have any
2 additional evidence?

3 MS. MAY: No, Your Honor.

4 THE COURT: Do you all wish to make any
5 closings?

6 MR. BROOKS: We'll waive presentment on
7 the record, Judge.

8 THE COURT: All right. I'll review the
9 transcript, and the records, and the testimony
10 that's been presented. And I'll notify you of my
11 decision in writing. Thank you very much.

12 MR. BROOKS: Thank you, Judge.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON MAY 18, 2011, IN LEXINGTON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
TWENTY-NINTH DAY OF AUGUST 2011.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

ORIGINAL

STATE OF SOUTH CAROLINA

FILED COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2009-CP-32-5487

Dan Williams, II, #175376,

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post conviction relief (PCR) filed December 7, 2009. Respondent made its Return on or about March 4, 2010. An evidentiary hearing into the matter was convened on May 18, 2011 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of James R. Snell, Jr., Esquire (Mr. Snell) Applicant's trial counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

indicted at the January 2006 term of the Lexington County Grand Jury for Manufacture, Distribution, etc., Ice, Crank, Crack Cocaine 3rd or Subsequent Offense (2006-GS-32-0470). He was represented by James Snell, Esquire. On or about April 4, 2007, the Applicant underwent trial, pursuant to which he was found guilty. He was sentenced to confinement for a period of twenty-one (21) years.

A timely Notice of Appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed the Applicant's appeal by unpublished opinion submitted October 1, 2009 and filed October 15, 2009 (2009-UP-486). Remittitur was issued on November 2, 2009.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel – “the testimony of the witness and counsel new it to be false”
2. Due Process Violation – “because the government knowingly elicited false statements from its witness.”

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing the Applicant testified that his trial counsel did not review the discovery materials concerning Applicant's charges and case with the Applicant. The Applicant testified that he did not have the discovery to assist him in determining whether he should take a plea deal. Applicant testified that there was a plea offer of 8 years presented to him, but the solicitor would not reveal all of the evidence against the Applicant unless Applicant proceeded to trial. Applicant testified that he is, in fact, guilty of the crime he was charged with. Applicant admitted his participation in the drug deals. Applicant testified that his trial counsel informed the Applicant that

the confidential informant, who bought the drugs from Applicant, was a black male approximately the age of the Applicant. Applicant testified that he is requesting relief in the form of vacation of his conviction and sentence and given the opportunity to take the plea offer of 8 years originally offered to the Applicant.

Mr. Snell's Testimony

At the evidentiary hearing Mr. Snell testified that he was retained to represent the Applicant and that he had about 20 meetings with the Applicant during his representation. Mr. Snell testified that the charges against the Applicant arose from two control buys and a subsequent execution of a search warrant at the Applicant's residence. Mr. Snell testified with the Applicant's prior record, a conviction on any of the charges against the Applicant would have resulted in life without parole for the Applicant. Mr. Snell testified that he confirmed Applicant's prior record. Counsel testified that he was able to speak with the solicitor resulting in a bond reduction for the Applicant, allowing Applicant out on bond. Mr. Snell testified the State offered the Applicant a plea to possession with intent to distribute first offense with a sentence cap of 8 years. Counsel testified that the Applicant turned down this plea offer, wanting to proceed to trial. Counsel testified that the State withheld the identity of the confidential informant involved in the control buy with the Applicant and that if the State had to disclose the identity of the informant there would be no plea deal and the Applicant's case would be called for trial. Mr. Snell testified that he was unable to establish an alibi for the Applicant and that Applicant did not offer any potential witnesses for defense of his case.

Mr. Snell testified that the State served a notice of intent to seek life without parole (LWOP). Counsel testified that he discovered a typo in the Notice of Intent of LWOP document's caption,

which precluded the State from pursuing LWOP. Counsel testified that Applicant proceeded to trial facing fifteen to thirty years.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the ~~South Carolina Department of Corrections~~, the application for post-conviction relief, the transcript from Applicant's trial, records from Applicant's prior appeal proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann §17-27-80 (2003), this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

(1) Ineffective Assistance of Counsel

At the PCR hearing Applicant failed to directly address his claim of ineffective assistance of counsel due to the alleged false testimony of a witness and counsel's supposed knowledge of such. Applicant's major assertion presented at the PCR hearing was that trial counsel was ineffective in failing to share and review the discovery with Applicant, thereby preventing Applicant from making a knowing and intelligent decision about whether to accept a plea bargain that was offered by the State. Applicant's counsel testified that the State had offered the Applicant a plea bargain in which there would have been a sentence cap of 8 years. The Applicant was facing life imprisonment. The Applicant's underlying charges were drug buys that involved a confidential informant. It was made clear to the Applicant and counsel that, if the State had to disclose the name of the confidential informant, there would be no plea bargain and the Applicant's cases would be called for trial. However, if the Applicant indicated that he would accept the plea offer, the State would put an 8-year cap on the sentence exposure. The State informed counsel and Applicant, that the State wanted to be able to use that confidential informant for other transactions.

This Court finds that the State is ordinarily privileged from disclosing the name of a confidential informant. State v. Wright, 322 S.C. 484, 472 S.E.2d 642 (Ct. App.1996). However, the State may be compelled to reveal an informant's identity where the informant is either an active participant in a criminal transaction or a material witness to the question of the defendant's guilt or innocence. State v. Batson, 261 S.C. 128, 198 S.E.2d 517 (1973). Even if the informant is an active participant in the criminal act and/or a material witness, the court may still sustain an invocation of the nondisclosure privilege if other factors and circumstances warrant doing so. State v. Bultron, 316 S.C. 323, 457 S.E.2d 616 (Ct. App.1995). The trial court must balance the public's interest in perpetuating the flow of vital information to law enforcement officials against the right of the individual to prepare his defense. Id. The burden is on the accused to show facts and circumstances giving rise to the exception to the privilege against disclosure. Batson, supra; State v. Shupper, 263 S.C. 53, 207 S.E.2d 799 (1974).

Remarkably, the Applicant testified at the PCR hearing that he is guilty of the crime charged. Applicant admitted under oath that he participated in the drug deals. Also, trial counsel testified that he and the Applicant reviewed the discovery materials together, however Applicant advised counsel there were no witnesses for counsel to interview or present on Applicant's behalf. (Tr. p. 192, lines8-9). Counsel testified that Applicant could not provide him with an alibi or any other substantial defense. (Tr. p.192, lines9-10). Counsel stated under oath that based on the facts of Applicant's case, the State's evidence, Applicant's prior record, and the lack of a viable defense, that counsel advised Applicant it was a mere certainty that at trial Applicant will be convicted and receive a sentence of life without parole. (Tr. p.192, lines15-17). Therefore, it seems rather impossible for this Court to determine that Applicant can prove prejudice even if Applicant showed deficient performance of

counsel. However, this Court finds there is absolutely no showing of deficient performance of trial counsel. The only testimony approaching that standard is the Applicant's claim that he was told by his trial counsel that the confidential informant was a black male approximately the same age as Applicant. The Applicant testified that he had not sold any drugs to such a person. Apparently, Applicant decided the State could not prove him guilty because no drug transaction occurred between the Applicant and a black male. When the informant was disclosed and the videotape of the transaction shown at trial, the confidential informant was not a black male, but a white male. This Court finds that the Applicant did participate in a drug buy, has readily admitted such, and thus while Applicant may not have sold drugs to a black male, the fact remains that Applicant sold drugs to a confidential informant, who testified at the Applicant's trial.

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Except for the identity of the confidential informant, the Applicant could not point to any specific matters counsel failed to discover such that there is a reasonable probability the result of the proceeding would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Applicant had sufficient time to confer with counsel, especially since counsel was able to get Applicant released on bond. This Court finds the Applicant was properly advised of the facts and circumstances surrounding his case, such that Applicant was able to make a knowing and intelligent decision whether to accept the State's plea offers. The Applicant was even given a last minute opportunity, before opening statements at trial, to

enter an Alford plea with a sentence range of 15 to 30 years, but again rejected the plea offer and proceeded to trial. This Court finds that the Applicant has failed to show how he was prejudiced by trial counsel's alleged ineffectiveness; therefore this allegation is denied and dismissed.

(2) Due Process Violation

At the PCR hearing the Applicant failed to directly address his claim of violation of due process, ~~when~~ the State knowingly elicited false statements from its witness; however, that claim falls under Applicant's allegation of prosecutorial misconduct, which Applicant addressed at the PCR hearing. This Court finds Applicant's testimony is not credible. This Court does find trial counsel is credible. This Court finds that the Applicant has failed to prove that trial counsel told Applicant the confidential informant was a black male. In any event, trial counsel did not make the facts of the case and had nothing to do with creating the predicament caused by Applicant's prior convictions. Even if this Court were to assume trial counsel advised Applicant the drug deals were with a black male, there is no indication that trial counsel was repeating something different than what he had been told and there is no evidence that the allegedly incorrect information was anything other than a mistake. This Court finds the State was acting within its province in withholding disclosure of the informant's identity in exchange for the plea bargain, and gave logical, practical reason for doing so. While, trial counsel could have moved to disclose the name of the informant, the only reasonable conclusion this Court finds is that the plea bargain would have been withdrawn and the Applicant would have found himself in the same position. This Court finds there has been no showing of prosecutorial misconduct, therefore this allegation is denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not

established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 1st day of July, 2011.

William P. Keesley
William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

Luxington, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas
Honorable William P. Keesley, Circuit Court Judge

Case No: 2009-CP-32-5487

Dan Williams, II.....Appellant

S.C.D.C. 175376

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 12th day of July, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Certificate of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on July 12, 2011, addressed to the following as indicated below:

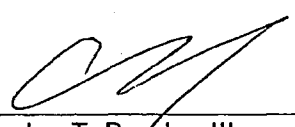
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Kaelon E. May, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Dan Williams, II, 175376
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina, 29067

Dated: July 12, 2011


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

ARREST WARRANT

K- 017392

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

THE STATE
against

Address: _____

Phone: _____ SSN: _____

Sex: _____ Race: _____ Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: _____ Agency ORI#: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

Offense: _____

Offense Code: _____

Code/Ordinance Sec. _____ 112

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.) _____

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on 12-8-05

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

CLAYTON W. PRINCE
511 GREEN RD.
LEWISTON, SC 29051

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)

AFFIDAVIT

Personally appeared before me the affiant _____ who
being duly sworn deposes and says that defendant _____
did within this county and state on _____ violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: DISTRIBUTION OF STONY CORN

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON 11-11-2005 THE DEFENDANT, DAN WILLIAMS II, DID DISTRIBUTE
A QUANTITY OF CRACK COCAINE TO AN OFFICER OF LAW ENFORCEMENT
THIS INCIDENT OCCURRED AT 701 HWY 8 IN THE SWANSEA AREA OF
LEWISTON TOWN, S.C. THE INCIDENT TOOK PLACE WITHIN ONE HALF
MILE OF SWANSEA PRIMARY SCHOOL LOCATED AT 1115 E. HUNTER ROAD.
THIS INCIDENT WAS MONITORED AND RECORDED BY AGENTS VIA TECHNICAL
MEANS.

Signature of Affiant _____

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
LEWISTON

Affiant's Address _____

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on _____ defendant _____
did violate the criminal laws of the State of South Carolina (or ordinance of _____)
☐ County/ ☐ Municipality of _____ as set forth below:

DESCRIPTION OF OFFENSE: 11-21-170
DISTRIBUTION OF STONY CORN

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 12/8/2005

Signature of Issuing Judge (L.S.) _____

Judge Code: _____

Judge's Address _____

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

WITNESSES

LCSD Lexington County Multi-Agency
Narcotics Enforcement Team
Bass, K. T.

DOCKET NO. 06 -GS-32- 470

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

January TERM 2006

THE STATE

vs.

Dan Williams, II

A-2006-32-00046

1/11/2006 2:50 PM

ARREST WARRANT NUMBER

K017392

ACTION OF GRAND JURY

TRUE BILL

Ben A. Lucas
Foreperson of Grand Jury

Date: *3/1/06*

VERDICT

Guilty

CDR# 0114

Indictment for

Manufacture, Distribution, etc., ice, crank,
crack cocaine 3rd or subsequent offense

§44-53-375(B)(3)

DONALD V. MYERS, SOLICITOR

James M. Wicks
Foreperson of Petit Jury

Date: *4/5/07*

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR

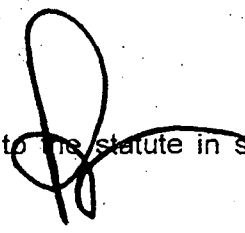
) Manufacture, Distribution, etc., ice, crank, crack cocaine
) 3rd or subsequent offense

§44-53-375(B)(3)

At a Court of General Sessions, convened on January, 2006, the Grand Jurors of Lexington County present upon their oath:

That Dan Williams, II did in Lexington County on or about November 22, 2005, knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, posses with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-375(B)(3), Code of Laws of South Carolina, 1976, as amended. Such being the third or subsequent offense.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

The State of South Carolina)

Plaintiff,)

vs.)

Dan Williams, II)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
OF THE
ELEVENTH JUDICIAL CIRCUIT

Indictment No.: 2006-GS-32-470

VERDICT FORM

PLEASE CHECK AND CIRCLE THE APPROPRIATE VERDICT BELOW AND
FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

AS TO THE CHARGE OF DISTRIBUTION OF CRACK COCAINE, WE THE
JURY UNANIMOUSLY FIND THE DEFENDANT

☒ **GUILTY**

☐ **NOT GUILTY**

April 05, 2007.

Lexington, South Carolina


FOREPERSON'S SIGNATURE

Please notify the bailiff after completing all deliberations.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LexingtonSTATE VS.AKA: DRAL WILLIAMS IIRace: R Sex: M Age: 41DOB: 11-12-65 SS#: Address: City, State, Zip: Summerville SC 29160DL# SID# INDICTMENT/CASE# 2011-GS-32-470AW#: 15017392Date of Offense: 11-22-05S.C. Code §: 44-53-375CDR Code #: 0114

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Distribution Crack Cocainein violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0114
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 90 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 State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ 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 \$ §35.13 (Public Def/Prob) \$500 \$ §73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00§33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00§50-21-114(BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ 225.00

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 FundOther: RECOMMEND DRUG TREATMENT☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

Beth A. Carney
Clerk of Court/ Deputy Clerk
Court Reporter: C. Carney

PRESIDING JUDGE

Judge Code: 211Sentence Date: 5/24/2007