

Volume I of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Doyet A. Early, III, Circuit Court Judge

RECEIVED

APR 30 2012

S.C. Supreme Court

JORGE A. RODRIGUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED DECEMBER 9-11, 2003	1
SENTENCING TRANSCRIPT DATED APRIL 2, 2004	447
APPLICATION FOR POST-CONVICTION RELIEF (2005-CP-42-449)	456
RETURN (2005-CP-42-449)	463
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 18, 2006 (2005-CP-42-449)	468
ORDER OF DISMISSAL (2005-CP-42-449) (SIGNED BY ROGER L. COUCH)	506
APPLICANT'S EXHIBIT #1 (LETTER DATED SEPTEMBER 5, 2003)	510-A
APPLICANT'S EXHIBIT #2 (LETTER DATED NOVEMBER 26, 2003)	510-B
APPLICATION FOR POST-CONVICTION RELIEF (2010-CP-42-0407)	512
RETURN (2010-CP-42-0407)	519
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 14, 2010 (2010-CP-42-0407)	527
<u>AUSTIN</u> ORDER OF DISMISSAL (2010-CP-42-0407)	534
MOTION TO REMAND FOR CORRECTION OF SCRIVENER'S ERROR AND MOTION TO HOLD APPEAL IN ABEYANCE	538
RETURN TO MOTION TO REMAND AND HOLD IN ABEYANCE	541
SUPREME COURT ORDER DATED MAY 27, 2011	544
ORDER OF DISMISSAL (2005-CP-42-449) (SIGNED BY DOYET A. EARLY, III)	547
NOTICE OF APPEAL DATED JUNE 16, 2011 (2005-CP-42-449)	552

MOTION TO AMEND APPENDIX AND HOLD TIME LIMITS IN ABEYANCE (2005-CP-42-449)	554
RETURN TO MOTION TO AMEND APPENDIX AND HOLD TIME LIMITS IN ABEYANCE	558
SUPREME COURT ORDER DATED APRIL 18, 2012	562
INDICTMENT	565

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,

4 -vs-

5 Juan Enrique Rodriguez and
6 Jorge Alberto Rodriguez,

7 Defendants.

)
) TRANSCRIPT OF RECORD
) 2002-GS-42-714
) 2002-GS-42-715

) December 9 - 11, 2003
) April 2, 2004
) Spartanburg, South Carolina

8
9
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury

12
13
14 A P P E A R A N C E S:

15 DONNIE WILLINGHAM, ESQUIRE
16 JESSICA THILL, ESQUIRE
Attorneys for the State

17 RICHARD HAROLD WARDER, ESQUIRE
Attorney for Juan Enrique Rodriguez

18 JOHN C. GUTIERREZ, ESQUIRE
19 Attorney for Jorge Alberto Rodriguez

20
21
22
23 Linda D. Moffitt
24 Circuit Court Reporter
25

**THIS PAGE INADVERTENTLY
LEFT BLANK**

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	BRYANNA A. ROGERS (SW) In-camera	
4	Direct examination by Ms. Thill	14
5	Cross-examination by Mr. Gutierrez	20
6	Cross-examination by Mr. Warder	23
7	Redirect examination by Ms. Thill	29
8	STEPHEN HENDERSON (SW) In-camera	
9	Direct examination by Mr. Willingham	29
10	Cross-examination by Mr. Gutierrez	34
11	PAUL DORMAN (SW)	
12	Direct examination by Mr. Willingham	83
13	Cross-examination by Mr. Warder	94
14	Cross-examination by Mr. Gutierrez	117
15	Redirect examination by Mr. Willingham	120
16	DAVID TAYLOR (SW)	
17	Direct examination by Ms. Thill	159
18	Cross-examination by Mr. Warder	181
19	Cross-examination by Mr. Gutierrez	185
20	Redirect examination by Ms. Thill	188
21	CECIL GILLIAM (SW)	
22	Direct examination by Mr. Willingham	189
23	Cross-examination by Mr. Warder	205
24	Cross-examination by Mr. Gutierrez	215
25	Redirect examination by Mr. Willingham	221

	<u>INDEX</u>	<u>PAGE</u>
1		
2	<u>WITNESSES</u>	
3	ROBERT LEATHERWOOD (SW)	
4	Direct examination by Mr. Willingham	223
5	Cross-examination by Mr. Warder	246
6	Cross-examination by Mr. Gutierrez	258
7	Redirect examination by Mr. Willingham	268
8	Recross-examination by Mr. Warder	269
9	BRYANNA ROGERS (SW)	
10	Direct examination by Ms. Thill	272
11	Cross-examination by Mr. Warder	281
12	Cross-examination by Mr. Gutierrez	285
13	NICKI SHERRILL (SW)	
14	Direct examination by Ms. Thill	291
15	Cross-examination by Mr. Warder	294
16	Cross-examination by Mr. Gutierrez	294
17	STEPHEN HENDERSON (SW)	
18	Direct examination by Mr. Willingham	296
19	Cross-examination by Mr. Warder	306
20	Cross-examination by Mr. Gutierrez	310
21	Redirect examination by Mr. Willingham	320
22	Recross-examination by Mr. Gutierrez	323
23	FLOYD TURLEY (SW)	
24	Direct examination by Ms. Thill	325
25	Cross-examination by Mr. Warder	332

1		<u>INDEX</u>	
2	<u>WITNESSES</u>		<u>PAGE</u>
3	MATT McDANIEL (SW)		
4	Direct examination by Ms. Thill		336
5	Cross-examination by Mr. Warder		341
6	JASON YOWN (SW)		
7	Direct examination by Mr. Willingham		345
8	Cross-examination by Mr. Warder		349
9	Cross-examination by Mr. Gutierrez		351
10	Redirect examination by Mr. Willingham		353
11	SHANE DEDMON (SW)		
12	Direct examination by Mr. Willingham		355
13	JANE MILLWOOD (SW)		
14	Direct examination by Ms. Thill		360
15	ASHLEY HARRIS (SW)		
16	Direct examination by Ms. Thill		371
17	JACK WESTMORELAND (SW)		
18	Direct examination by Mr. Willingham		379
19	Cross-examination by Mr. Gutierrez		381
20			
21			
22			
23			
24			
25			

1	Jury qualification	53
2	Jury sworn	69
3	Opening statements	75
4	Closing arguments	384
5	Jury charge	423
6	Verdicts	445
7	Sentence	448
8	Certificate	454
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

<u>EXHIBITS</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2	S-1	Photograph	18	227
3	S-2	Preinterrogation waiver form	30	302
4		(Suppression)		32
5	S-3	Tape (not sent to jury)	33	304
6		(Suppression)		34
7	S-4ID	Transcript of tape	30	
8		(Suppression)		34
9	S-5A	Magazine	88	362
10	S-5B	Bullets	88	362
11	S-5C	Zip-lock bag with 9 smaller baggies	88	
12	S-5D	Scanner	88	362
13	S-5E	Ruger nine-millimeter handgun		335
14	S-6A	Magazine	88	380
15	S-6B	Bullets	88	380
16	S-6C	Mac 10 semi-automatic pistol	88	380
17	S-7	Cocaine	89	375
18	S-8	Tape	129	304
19	S-9	Video	129	225
20	S-10	Photograph	129	225
21	S-11	8mm tape	129	
22	S-12	Tape	129	232
23	S-13	Photographs (changed to one photograph)	329	331
24	S-14	Photographs (changed to one photograph)	337	338
25				

<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
1			
2			337 340
3	S-15	Photograph	340
4	S-16	Photograph	340
5	S-17	Photograph	340
6	S-18	Photograph	347 348
7	S-19	Photograph	347 348
8	S-20	Photograph	347 348
9	S-21	Photograph	
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Bond Juan Rodriguez		13
C-2	Bond Jorge Rodriguez		13
C-3	Question from the jury		445
C-4	Question from the jury (answered and returned.)		447

Motion

1 (Proceedings December 9, 2003)

2 THE COURT: Any other matters to address?

3 MR. WILLINGHAM: First of all, defendants are not
4 present. They were notified; their attorneys were
5 notified; the bondsmen were notified. The Rodriguezes were
6 actually noticed from their attorneys to be here yesterday.
7 They did not appear. And it is now 3:00 o'clock on Tuesday
8 and they still have not appeared. Your Honor, the state is
9 ready to proceed forward in their absence.

10 THE COURT: Do you have a copy of the bond or do you
11 have the original bond sheet?

12 MR. WILLINGHAM: Yes, sir. Your Honor, I have copies
13 of Jorge Rodriguez and Juan Rodriguez's bond sheets.

14 THE COURT: All right. Mr. Warder, you represent Juan
15 Rodriguez.

16 MR. WARDER: Yes, sir, Your Honor, I do.

17 THE COURT: When were --

18 MR. WARDER: Certainly on his behalf I would move for
19 a continuance. I would move for a continuance on the
20 grounds that, first of all, his codefendant, Mr. Jorge
21 Rodriguez, is a witness in Juan Rodriguez's case. He gave
22 a statement that is exculpatory to my client.

23 We would have called him had he been here at trial to
24 testify and give that testimony. His absence greatly
25 prejudiced my defense. I would move for a continuance

Motion

1 based upon his absence.

2 THE COURT: All right. Well, how long have you
3 represented Mr. Juan Rodriguez?

4 MR. WARDER: I've represented Mr. Juan Rodriguez for
5 over a year. I can look up the exact date.

6 THE COURT: Okay.

7 MR. WARDER: Since the indictments were prepared.

8 THE COURT: And when were you notified that this case
9 was to be tried this term of court?

10 MR. WARDER: I think I had a letter in September that
11 said it would be placed on the roster. It might have been
12 sometime before that, but September is as near as my
13 recollection from standing here today, Your Honor.

14 THE COURT: And did you notify Mr. Juan Rodriguez that
15 his case was to be scheduled for trial this week?

16 MR. WARDER: I am not sure whether I notified him at
17 that time. I since had conversations with him.

18 THE COURT: Well, I don't mean did you notify him in
19 September. I mean have you notified him anytime before
20 today that his case was to be called for trial this week.

21 MR. WARDER: Yes, sir.

22 THE COURT: And you told him personally that he was to
23 be present if he wanted to participate?

24 MR. WARDER: I told him that his case was to be here
25 and he needed to be here to assist me.

Motion

1 THE COURT: Did you also tell him that the case would
2 be tried in his absence if he failed to appear, or could
3 be?

4 MR. WARDER: I think I conveyed that. I told him that
5 we'd proceed, that I didn't know what Your Honor would do
6 on it.

7 THE COURT: Well, I mean, did you explain to him that
8 under the law, as was reflected on his bond sheet, that the
9 state could proceed in his absence in the trial of the
10 case?

11 MR. WARDER: Yes, sir. I told him the procedure.

12 THE COURT: Okay. And did he indicate to you that he
13 would appear or he understood that he needed to be here?

14 MR. WARDER: Yes, sir. I am sure that he understood.

15 THE COURT: Okay. All right. Mr. Gutierrez, you
16 represent the codefendant, Jorge Rodriguez.

17 MR. GUTIERREZ: Yes, sir, Your Honor.

18 THE COURT: How long have you been representing Jorge
19 Rodriguez?

20 MR. GUTIERREZ: I believe it's getting on to about two
21 years, less than two years, Your Honor.

22 THE COURT: And when were you notified that Mr. Jorge
23 Rodriguez's case was to be disposed of this week?

24 MR. GUTIERREZ: I believe it was the first week of
25 September.

Motion

1 THE COURT: And did you discuss that with Mr. Jorge
2 Rodriguez?

3 MR. GUTIERREZ: I did, Your Honor.

4 THE COURT: Did you explain to him that he would need
5 to be available or be present in court this week in order
6 to have his case tried?

7 MR. GUTIERREZ: Yes, I did.

8 THE COURT: Did you inform him that the case might
9 very well be tried in his absence if he failed to appear?

10 MR. GUTIERREZ: I did, Your Honor, as late as last
11 week.

12 THE COURT: All right. And have you received any
13 subsequent information or word from Jorge Rodriguez
14 regarding why he is not here today?

15 MR. GUTIERREZ: The only thing I have is a returned
16 letter. The post office returned a letter "addressee
17 unknown", notifying him of the date and time of the trial,
18 being yesterday, December 8th.

19 But I have spoken with him over the phone and told
20 him, you know, in addition to the letter that I was
21 informing him that he needed to be here Monday,
22 December 8th.

23 THE COURT: All right. But my question is have you
24 heard anything further from Mr. Jorge Rodriguez as to why
25 he is not here today.

Motion

1 MR. GUTIERREZ: Nothing at all, Your Honor.

2 THE COURT: Okay. And, Mr. Warder, what about
3 Mr. Juan Rodriguez? Have you heard anything from Mr. Juan
4 Rodriguez as to why he is not present here this week or
5 today?

6 MR. WARDER: Yes, sir.

7 THE COURT: You have?

8 MR. WARDER: Yes, sir.

9 THE COURT: And did he indicate to you that he is not
10 coming? Is that --

11 MR. WARDER: Yes, sir.

12 THE COURT: -- a fair statement of the conversation?

13 MR. WARDER: Yes, sir.

14 THE COURT: Okay. All right. Juan Rodriguez's motion
15 for continuance is denied.

16 All right. What else?

17 MR. WILLINGHAM: Your Honor, the next matter that I am
18 aware of would be a Jackson vs. Denno hearing on the
19 statement of Jorge Rodriguez. The state is prepared to go
20 forward.

21 THE COURT: Okay.

22 MS. THILL: The state would like to call Bryanna
23 Rogers to the stand.

24 (Bond of Juan Rodriguez marked Court's Exhibit No. 1;
25 bond of Jorge Rodriguez marked Court's Exhibit No. 2.)

Bryanna A. Rogers (In-camera)
Direct examination by Ms. Thill

1 BRYANNA A. ROGERS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. THILL

4 MR. WARDER: Your Honor, before we start into that,
5 may I inquire how the order the Court is going to proceed
6 in the examination since we have two of us -- will follow
7 throughout this?

8 THE COURT: Well.

9 MR. WARDER: I am not aware of the indictment numbers
10 the --

11 THE COURT: Well, apparently, is there a statement
12 from Jorge Rodriguez, but there's no statement for Juan
13 Rodriguez?

14 MR. WILLINGHAM: There is a statement from Juan
15 Rodriguez as well, Your Honor, but we do not intend to
16 introduce it in our case in chief.

17 THE COURT: Oh.

18 MR. GUTIERREZ: Excuse me. I did not get that.

19 MR. WILLINGHAM: A statement from Juan, but we don't
20 intend to introduce it in our case in chief.

21 THE COURT: Well, how would the defense like to
22 proceed?

23 MR. WARDER: I don't care. I would just like to
24 establish I am going to be afforded a cross-examination or
25 the order --

Bryanna A. Rogers (In-camera)
Direct examination by Ms. Thill

1 THE COURT: All right. Well, for the purpose of this
2 particular hearing we will just allow Mr. Gutierrez to go
3 first since it's his client that the statement deals with.

4 As far as the trial, I don't care how y'all do it.
5 But if you want to go second, you will have to switch
6 seats. If you want to stay in your seat, you will be going
7 first.

8 MR. WARDER: Thank you, Your Honor.

9 Q Bryanna, could you state your name for the record,
10 please?

11 A Bryanna A. Rogers.

12 Q And what's your occupation?

13 A Narcotics investigator.

14 Q Were you involved in a buy-bust takedown involving
15 Juan and Jorge Rodriguez on November the 28th?

16 A Yes, ma'am.

17 Q What happened on that date very briefly?

18 A We were -- Investigator Taylor had set up an
19 undercover operation which was going to be a buy-bust
20 scenario for approximately a kilo of cocaine.

21 The informant was to meet Bo Leatherwood who was later
22 known to us as Robert Leatherwood. And the informant met
23 Mr. Leatherwood and Juan Rodriguez at a Li'L Cricket on
24 Highway 221. And initially the do-the-deal to do an
25 exchange, there were no drugs. There was no money present.

Bryanna A. Rogers (In-camera)
Direct examination by Ms. Thill

1 They couldn't agree on anything. The deal pretty much was
2 terminated. They left.

3 There was contact made again between the C. I. and Bo
4 Leatherwood. They set up a new place. That was going to
5 be a church located on Old Switzer Road and Highway 221,
6 and I believe it was about 11:30 at night.

7 Units from the narcotics unit were on foot in the
8 cemetery at the church and in vehicles in the general area.
9 The informant went to the church parking lot.

10 Bo Leatherwood, Robert Leatherwood, Juan Rodriguez and
11 Jorge Rodriguez arrived in a car. Quantity of cocaine was
12 produced from the car in which Mr. Leatherwood and the two
13 Rodriguezes were in, and the C. I. gave a take-down signal.

14 As we moved in to do the takedown, Mr. Leatherwood
15 fled the scene in the car with Mr. Rod -- with both
16 Mr. Rodriguezes in the car.

17 There was a vehicle pursuit, and after several miles
18 of the pursuit they were apprehended probably maybe five or
19 six miles from the original location.

20 At that time Mr. Leatherwood was -- all three suspects
21 were taken from the car and were Mirandized. And Jorge
22 Rodriguez, I Mirandized him. And he informed me that he
23 had thrown a quantity of cocaine out the window at a
24 bridge.

25 I advised Investigator Taylor, and he had also made

Bryanna A. Rogers (In-camera)
Direct examination by Ms. Thill

1 some statements as to that he and his cousin had some
2 weapons that they also discarded out a window when a marked
3 unit got behind them.

4 Q And after he made those statements to you, what
5 happened next?

6 A I believe initially, like I said, I notified
7 Investigator Taylor that he had said, he had stated, that
8 he had thrown the cocaine out the window by the bridge.

9 And another deputy and myself and Jorge went and tried
10 to find the weapons that he had thrown out when the marked
11 unit got behind them, which was a Mac-10 and a
12 9-millimeter, I believe.

13 After that we had a brief -- we briefly looked for the
14 weapons. We were unable to find them. He wasn't exactly
15 sure where he was when he threw those out.

16 So we took him back to the bridge, which I believe was
17 Old Spartanburg in Spartanburg County, and he said this is
18 the bridge; got him out of the car. And he pointed off the
19 side of the bridge, just some brush where there was a
20 white, a clear bag with some white powder in it that was
21 down, like I said, on the brush right by the, I guess kinda
22 by the water.

23 At that time I left him with Investigator Taylor and
24 went back to the scene where the vehicle was actually
25 stopped.

Bryanna A. Rogers (In-camera)
Direct examination by Ms. Thill

1 Q Okay. I am going to take you back a minute.

2 You said previous to Jorge making those statements or
3 showing you where the evidence was that you had Mirandized
4 him, correct?

5 A Correct.

6 Q How did you advise him of his Miranda rights?

7 A I have a badge carrier that I wear around neck, and on
8 the back of it, it's plastic, and my Miranda cards are in
9 there, and I just read from it.

10 Q Was anyone else present when you gave him his Miranda
11 rights?

12 A There were several other officers, excuse me, that
13 were present. There were four officers, excuse me, three
14 officers that were in the car with me. Lieutenant Hancock
15 was there; Investigator Turley was there; Investigator
16 Henderson and Sergeant Brian Anders. I don't know that we
17 were all. There was three subjects.

18 Q Okay. Can you describe what Jorge Rodriguez's
19 appearance was?

20 A He was Hispanic male. He had, he looked young in his
21 face. He was, I would say, he was shorter than I was,
22 skinny male, and he had been seated in the back seat of the
23 car when we made the stop.

24 (Photograph marked State's Exhibit No. 1 for
25 Identification.)

Bryanna A. Rogers (In-camera)
Direct examination by Ms. Thill

1 Q I am going to show you what's marked as State's
2 Exhibit No. 1.

3 A That would be Mr. Jorge Rodriguez. That was in the
4 car.

5 Q Okay. As a narcotics officer you deal with people who
6 are under the influence of drugs and alcohol, correct?

7 A Yes.

8 Q Did the defendant Jorge Rodriguez appear to be
9 intoxicated?

10 A No.

11 Q Did his ability seem to be impaired?

12 A No.

13 Q Did he respond to your questions?

14 A Yes.

15 Q Was his speech coherent?

16 A Yes.

17 Q Did he at any time ask for an attorney?

18 A No.

19 Q Did he invoke his right to remain silent?

20 A No.

21 Q Did you promise him or force him to make a statement?

22 A No.

23 Q To the best of your knowledge were any of his
24 statements made freely and voluntarily?

25 A Yes.

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Gutierrez

1 MS. THILL: I beg the Court's indulgence.

2 (Pause.)

3 MS. THILL: The state has no further questions.

4 Q Bryanna, please answer any questions.

5 THE COURT: Mr. Gutierrez.

6 MR. GUTIERREZ: Yes, Your Honor. If it please the
7 Court.

8 CROSS-EXAMINATION

9 BY MR. GUTIERREZ

10 Q Officer Rogers, you stated a little while ago that two
11 subjects met the C. R. I. at a store --

12 A Yes, sir.

13 Q -- prior to the takedown. And the two subjects were
14 Juan Rodriguez and Robert Leatherwood.

15 A Yes.

16 Q Okay. You also stated that there were no drugs
17 present. And what I would like to know is how did you know
18 that there were no drugs present.

19 A That from the debriefing from the C. I.

20 Q And whenever you debriefed this C. I., what exactly,
21 if you can remember, did he say about -- or what gave him
22 the information that there were no drugs there?

23 A I didn't debrief the C. I. Investigator Taylor did.
24 It was his case. He handles the C. I.

25 Q So you weren't there to debrief the C. I.

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Gutierrez

1 A No.

2 Q So your knowledge comes from Investigator Taylor --

3 A Yes.

4 Q -- about the presence of drugs or not.

5 A Yes.

6 Q Okay. Also, in your testimony you stated that Jorge
7 Rodriguez stated that he threw the drugs and weapons out of
8 a window of the moving vehicle.

9 A No. He stated that he threw the drug and a weapon.
10 He stated he threw a MAC-10 and his cousin, who was Juan
11 Rodriguez, threw the other gun out, which was a
12 9-millimeter.

13 Q And I know the deputy solicitor has asked you this
14 question, but I would ask you again.

15 Prior to the Miranda warnings did Jorge Rodriguez ever
16 ask for an attorney?

17 A No.

18 Q Never stated he wanted an attorney after the Miranda
19 warnings.

20 A No.

21 Q At any time while you were interviewing him did he
22 ever ask for a attorney?

23 A No.

24 Q Did anybody else interview him while you were -- in
25 your presence?

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Gutierrez

1 A No.

2 Q You were the sole interviewer.

3 A Yes, sir.

4 Q How long did this interview take place?

5 A It was very brief at the side of the road when he made
6 those first statements about the drugs and the gun. I
7 would, I'm not sure how long we looked for the gun, but it
8 was a very short period of time because he wasn't able. He
9 couldn't recognize the area where we were well enough to
10 say that he threw the gun out here.

11 He just -- the only thing that he said that was
12 defining was he threw the drugs out by the bridge. So we
13 returned to the bridge on Old Spartanburg, and there were
14 some units there. I took him there. He pointed out, and
15 then I turned him over to Investigator Taylor.

16 Q And whenever you were interviewing him at the scene of
17 the stop, what body position was he in? Was he standing,
18 seated, on his back or on his stomach?

19 A When I interviewed him, he was standing.

20 Q He was standing. Was he standing with you beside your
21 vehicle?

22 A I think he was standing beside Mr. Leatherwood's
23 vehicle to the best of my knowledge.

24 Q And it was while he was standing that you Mirandized
25 him.

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Warder

1 A No, sir. When he was --

2 Q What position was he whenever you Mirandized him?

3 A I'm not sure, but it was probably before he was, he
4 was standing up. I am not sure if he was -- he was
5 probably -- I'm not sure if he was seated on the ground or
6 still laying on the ground.

7 MR. GUTIERREZ: No more questions.

8 THE COURT: Mr. Warder.

9 CROSS-EXAMINATION

10 BY MR. WARDER

11 Q Was Mr. Jorge Rodriguez individually Mirandized or was
12 it kind of done to all of the defendants who were there
13 being held on the ground?

14 A I only Mirandized Jorge.

15 Q Individually, or were the other defendants laying
16 there prone too?

17 A No. They were, I believe, in other places.

18 Q Okay.

19 A They might have -- I'm sorry.

20 Q How do you set the scene here? You are chasing the
21 car, and the car stops, is that right?

22 A At this time the car stops, no, sir.

23 Q Were you there when the car stopped?

24 A Not when the car actually stopped, no.

25 Q Okay. Where were you at?

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Warder

1 A Coming down the road.

2 Q Okay. You are coming down the road, and the car
3 stops. Where do you see the defendant? Where are they
4 when you first see them?

5 A When I arrived Robert Leatherwood's in the driver's
6 seat, front driver's seat.

7 Q Still in the car.

8 A I'm sorry?

9 Q Still in his car.

10 A Yes.

11 Q Okay.

12 A Juan Rodriguez is in the front passenger seat and
13 Jorge Rodriguez is in the back seat.

14 Q Okay. Tell us about the removal of those. Who
15 removed them?

16 A I am not sure who removed Juan Rodriguez. Myself and
17 Lieutenant Hancock removed Jorge and --

18 Q Okay. When you removed him, where did you take him?
19 How did you do it?

20 A The back window was, had some damage to it, and I
21 believe he came out the passenger. It was a four-door
22 car -- the back passenger side.

23 Q Okay. Did you reach in and drag him out, did he get
24 out?

25 A I believe he was removed with some force from the back

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Warder

1 seat.

2 Q When you say that, does that mean he wasn't reached
3 and drug out?

4 A Yes, sir.

5 Q Okay. Was he then dropped on the ground right after
6 he was drug out of the car?

7 A I don't think he was dropped on the ground. He was
8 placed on the ground and handcuffed.

9 Q Okay. Was he handcuffed before he was placed on the
10 ground, or was he placed on the ground and then handcuffed?

11 A Placed on the ground and then handcuffed.

12 Q Okay. Face down?

13 A Yes.

14 Q Okay. And is that the point you Mirandized him?

15 A Like I told Mr. Gutierrez, I am not sure at that point
16 or when he was, if he was, on the way getting up. I'm not,
17 I can't recall.

18 Q Are you aware that Jorge Rodriguez cannot read or
19 write the English language?

20 A No.

21 Q Did you -- you haven't read the report since then and
22 learned that?

23 A I reviewed my statement.

24 Q Okay. Do you know to what degree he could understand
25 the English language?

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Warder

1 A I am not sure I understand what you mean by what
2 degree he could understand.

3 Q Well, did he understand the rights he was waiving?

4 A He appeared to.

5 Q How did he do that? When he appeared to understand
6 them, how did you ascertain that that was understanding in
7 his appearance as opposed to confusion?

8 A When I spoke with him, he seemed to have some command
9 of the English language.

10 Q But it wasn't a command of -- you, you said that he
11 appeared to understand. And I'm trying to get -- what was
12 there to appear to understand? What is that that makes
13 someone appear to understand?

14 A Can you rephrase that?

15 Q Well, you used the words, and I was trying to get what
16 you meant by them, what you saw that indicated somebody
17 appeared to understand.

18 A When I spoke to him he -- my dealings with other
19 Hispanic people that don't speak English well or don't
20 have, don't seem to understand, they are quick to say they
21 don't speak English.

22 And when I spoke to him, I do recall him having some
23 broken English as to suggest English may not have been his
24 first language, but he had no problem speaking and
25 understanding anything I said.

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Warder

1 The look on his face seemed to convey to me that he
2 understood what I said. He did not look puzzled. He did,
3 he did not have any difficulty answering the questions that
4 I asked him in my opinion.

5 Q Well, did he look scared?

6 A I don't know that he looked scared any, maybe, yes, to
7 an extent he looked scared.

8 Q So he did look scared after you think about it.

9 A Maybe, yes.

10 Q Okay. And were you, was there another officer present
11 when you read these rights?

12 A Yes.

13 Q Officer Hancock?

14 A Officer Lieutenant Hancock was there. He had
15 sustained some injuries, and I'm not, I can't, I can't
16 testify where he was exactly. But there was, in the
17 vehicle that I was driving there was, three other people.
18 And I know there were, at least one of them was, within
19 earshot.

20 Q Have you talked with the other officers to see if they
21 remember this?

22 A Remember the incident or --

23 Q The Mirandizing.

24 A Yes.

25 Q Who told you they remembered it?

Bryanna A. Rogers (In-camera)
Cross-examination by Mr. Warder

1 A Officer Sherrill.

2 Q And you related that Jorge Rodriguez said what about
3 my client, Juan Rodriguez?

4 A He said that his cousin had thrown out a gun, which we
5 later, which he said, I am not sure if he said, it was a
6 9-millimeter.

7 Q Okay. Do you know the relationship of the people in
8 the car?

9 A I believe they are cousins.

10 Q How about the driver?

11 A His relationship to whom?

12 Q To Rodriguezes.

13 A I believe he's a friend of Juan Rodriguez. I don't
14 believe, I don't know if he has any connection to Jorge. I
15 don't know.

16 Q You don't know whether he is married to any of Juan's
17 relatives?

18 A I believe -- no. I don't believe he is married to
19 anyone of Juan's relatives.

20 Q How about to Jorge's relatives?

21 A I don't know.

22 Q Thank you.

23 MR. WARDER: That's all the questions I have.

24

25

Bryanna A. Rogers (In-camera)
Redirect examination by Ms. Thill

1 REDIRECT EXAMINATION

2 BY MS. THILL

3 Q Just a couple of questions, Bryanna.

4 When you were asking Jorge these questions and he
5 responded, he responded in English, correct?

6 A Correct.

7 Q Did he ever ask you to repeat yourself?

8 A Not that I recall.

9 Q Did he ever tell you that he didn't understand what
10 you were saying?

11 A No.

12 Q And he answered all of your questions in English.

13 A Yes.

14 Q Did he ever ask for a lawyer?

15 A No.

16 Q Thank you.

17 MS. THILL: No further questions.

18 THE COURT: You may step down.

19 MR. WILLINGHAM: Your Honor, we call Steve Henderson.

20 STEPHEN HENDERSON, having been

21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. WILLINGHAM

23 Q Tell the Court who you are.

24 A Stephen Henderson.

25 Q And you worked for the sheriff's department back in

Stephen Henderson (In-camera)
Direct examination by Mr. Willingham

1 November of 2001.

2 A Yes, I did.

3 Q And what was your position there?

4 A Narcotics investigator.

5 Q Were you involved in this raid or this buy-bust that
6 we had going on here that we're talking about today?

7 A Yes, I was.

8 Q And was one of your duties and responsibilities that
9 night or early that morning, the next morning, was to talk
10 to the defendants?

11 A It was.

12 Q And you, in fact, talked to Jorge Rodriguez.

13 A Yes, sir.

14 Q And where did you talk to him?

15 A In the, in one of the conference or interview rooms
16 located at the sheriff's office.

17 Q Okay. And before you talked to him did you advise him
18 of his Miranda rights?

19 A I did.

20 Q And did you use anything to assist you in doing that?

21 A Yes, sir. I used a preinterrogation form.

22 (Pre-interrogation waiver form marked State's Exhibit
23 No. 2 for Identification.)

24 Q I am going to show you what's been marked as State's
25 Exhibit No. 2. Do you recognize that?

Stephen Henderson (In-camera)
Direct examination by Mr. Willingham

1 A I do.

2 Q What is it?

3 A It is the preinterrogation waiver form that I
4 completed prior to the interview with Jorge Rodriguez.

5 Q Tell the Court how you advised him of his rights. Did
6 you read them one at a time and he check them off, or did
7 you read them all at once and ask if he understood? How
8 did you, how did you advise him of that?

9 A Yes, sir.

10 We have -- there is also another copy to this. I
11 advised. The whole interview was audiotaped. I advised
12 Mr. Rodriguez of his rights that are listed here in
13 sequence one through five.

14 Also, he stated that he understood his rights, and he
15 also signed here on the paper stating that he did
16 understand his rights and that he was willing to talk.

17 Q How long were you in law enforcement?

18 A Six years, approximately.

19 Q And you dealt with people under the influence of
20 alcohol and drugs?

21 A Yes.

22 Q Did he appear that night to be under the influence of
23 alcohol or drugs?

24 A No.

25 Q Did you promise him anything in exchange for his

Stephen Henderson (In-camera)
Direct examination by Mr. Willingham

1 statement?

2 A No, I did not.

3 Q Did you threaten him in any way?

4 A No, sir.

5 Q As you read him his rights did he appear to understand
6 what you were talking to him about?

7 A He did.

8 Q And were you able to understand him when he talked to
9 you?

10 A I was.

11 Q I believe you asked him about his level of education,
12 and I believe he told you he had a tenth grade education.

13 A Yes, sir. It's also stated in his interrogation form.

14 Q Okay. But he was unable -- he indicated he was unable
15 to read and write.

16 A Correct.

17 Q And is that why the statement was audio-taped?

18 A Yes, sir.

19 Q When you advised him of his right to remain silent,
20 did he ever say he didn't want to talk to you?

21 A Not at that time. Later on in the interview, he did.

22 Q Whenever you advised him he had a right to an attorney
23 did he ask for one?

24 A Not at that time.

25 Q At what point did he ask for one?

Stephen Henderson (In-camera)
Direct examination by Mr. Willingham

1 A It was later in the interview. It says here that this
2 interview took place at approximately 4:00 a.m. in the
3 morning on the 29th, later on that hour.

4 Q Okay. And whenever he asked for a lawyer or asked to
5 remain silent, what did you do?

6 A I stopped all questioning.

7 Q You stopped it immediately.

8 A Yes, sir.

9 Q All right. Was this conversation you had with him
10 tape-recorded? I think you indicated it was.

11 A It was.

12 (Tape marked State's Exhibit No. 3 for Identification;
13 transcript of tape marked State's Exhibit No. 4 for
14 Identification.)

15 Q Showing you what's been marked State's Exhibit No. 3.
16 Do you recognize that?

17 A Yes, sir. It appears to be the tape, the audio tape,
18 that I used to interview Mr. Rodriguez.

19 Q Okay. And have you listened to that tape recently?

20 A Yes, sir.

21 Q When?

22 A Yesterday.

23 Q In anticipation of trial yesterday?

24 A Correct.

25 Q And does that tape accurately reflect the interview

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 you had with Jorge Rodriguez?

2 A Yes, sir, it does.

3 Q And I show you State's Exhibit No. 4 and ask you if
4 you recognize that.

5 A Yes, sir. It looks like, it looks like the audio
6 tape. We have transcribed onto paper.

7 Q Is this the transcript of that tape?

8 A Correct.

9 MR. WILLINGHAM: Your Honor, at this time I move
10 State's 2, 3 and 4 in for purposes of this hearing.

11 THE COURT: They are admitted.

12 (Preinterrogation waiver form marked State's
13 Suppression Exhibit No. 2; tape marked State's Suppression
14 Exhibit No. 3; transcript of tape marked State's Suppression
15 Exhibit No. 4.)

16 Q If you would, answer any questions the defense lawyers
17 have for you.

18 CROSS-EXAMINATION

19 BY MR. GUTIERREZ

20 Q Officer Henderson, I see on this transcript that you
21 started off. "It is 11/29/2001. It is 4:00 a.m. This is
22 Investigator Steve Henderson of the Spartanburg County
23 Sheriff's Office Unit with Jorge Rodriguez."

24 Is that the, is that the first time that you sat down
25 and talked to him?

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 A Yes.

2 Q That's the first time you met him?

3 A I didn't have any contact with Jorge on the scene that
4 I recall as far as the apprehension. Mine was with
5 Mr. Leatherwood, one of the other defendants.

6 To the best of my knowledge, Jorge was already in the
7 interview room. That's when I went ahead and walked in,
8 and myself and Investigator Taylor walked in, and that was
9 the first time I had any type of dealings with him
10 whatsoever.

11 Q Officer, whenever you and Investigator Taylor walked
12 in, had there been anybody else in the room with them, any
13 other law enforcement officers?

14 A I can't answer that. Not that I seen. There was no
15 one in there when I entered.

16 Q How was he in the interview -- can you describe for me
17 the interview room? Is it a table with one chair on one
18 side and two chairs on the other?

19 A Well, it's just a conference room. It's just your
20 standard, just a long table with several chairs around it.

21 Q And was Jorge Rodriguez, was he handcuffed?

22 A I can't recall.

23 Q Can you recall whether you normally handcuff
24 interviewees?

25 A It varies from officer to officer. I didn't place him

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 in there.

2 Q Who placed in him in there?

3 A I don't know.

4 Q Did he speak to you prior whenever you walked in with
5 Investigator Taylor?

6 A No, sir, not that I can remember. Nothing was said
7 until I walked in. And we sat down, and that's when I just
8 went ahead and started taping everything.

9 Q When did you -- and I imagine you began taping prior
10 to saying it is November the 29th of 2001 at 4:00 a.m.
11 That's whenever the tape was on.

12 A Correct.

13 Q And you are not aware of any other statements he made
14 prior to that.

15 A None to myself. Not that I am aware of.

16 Q Did Jorge Rodriguez appear to have a good command of
17 the English language, a poor command of the English
18 language?

19 A It was a good command. I mean, you can still hear a
20 slight accent, but as far as varying, he's easy to
21 understand.

22 Q Do you know how to spell Rodriguez?

23 A Off the top of my head?

24 Q Right.

25 A R-O-D-R-I-G-U-E-Z.

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 Q Did you know that he spelled it R-O-D-R-I-U-E-Z?

2 A No, sir. I didn't know it.

3 Q So at the end of the session -- I direct your
4 attention. Do you have that in front of you?

5 A Yes, sir, I do.

6 Q Page 20 or 21 down at the bottom where it says "I
7 wanted" -- where Jorge says "I wanted to see a lawyer?"
8 And then there's some, there's these lines drawn, or dashes
9 after that. What do those dashes mean?

10 A The best of my knowledge, I believe a lot of it --
11 when you see this transcribed, a lot of it's inaudible on a
12 tape, whether it's too low or it's muffled or someone's
13 pulled away too far from the tape recorder, and then the
14 person who transcribed this just couldn't understand it.

15 Q And why would that be that they wouldn't be able to
16 understand it?

17 A It could be for very different reasons -- a person
18 speaking too low, a background noise, being, there being
19 too much distance between them and the, and the tape
20 recorder. I'm sure there are several things that could
21 cause a tape to be inaudible.

22 Q And, again, I draw your attention to page 20 or page
23 21. You asked Mr. Rodriguez, "All right. Well, I'm going
24 to read some stuff to you in a statement that you made,
25 just whether the facts contained are true and correct.

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 This is a certified, and you've made no request for the
2 advice or presence of a lawyer before or during any part of
3 this statement or at any time before it was finished. Did
4 you request that this statement be stopped," and then we
5 have Jorge going uh-huh. Is that an affirmative answer or
6 is it a distortion, because I see the little dashes right
7 there after that.

8 A I can't say what, what he was saying, I mean, by three
9 M's and a hu in there. You know, without really hearing
10 the tape, I don't know that I could make that distinction
11 on what he was --

12 Q You don't recall whether you made a distinction?
13 Because your answer afterward was okay.

14 A No, sir, not from two years ago. I mean, I, I've
15 heard the tape and what's on here. And this, and this is
16 what I recall.

17 Q And you've -- have you heard the tape recently? Did
18 you listen to it yesterday?

19 A Yesterday morning, yes, sir.

20 Q And while you were listening to it you went over the
21 transcript.

22 A Yes, sir, while I was briefly looking from page to
23 page while I was listening to it.

24 Q I see that he's stated something right after you said
25 okay. He stated something inaudible, and then it picked

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 up, "I want to see a lawyer though."

2 You asked him, "You want to see a lawyer?"

3 And then he stated, "I wanted to see a lawyer."

4 Do you think that has any significance about that he
5 wanted to see a lawyer?

6 MR. WILLINGHAM: Objection, Your Honor. That's asking
7 for speculation on the part of this officer as far as what
8 the defendant was asking.

9 Q Does that have any significance --

10 THE COURT: I think the question is was it significant
11 to the witness.

12 MR. WILLINGHAM: Okay, Your Honor.

13 Q Does that have any significance to you that he stated
14 he wanted to have a lawyer?

15 A There is significance in it, I guess, depending on how
16 you look at it, just saying that he wanted to see a lawyer,
17 because as soon as he mentioned lawyer, that's when I, I
18 went ahead and stopped the whole interview.

19 Q Okay. Also, I have one more question.

20 Well, he stated that he could not -- I draw your
21 attention to page three. Let's go back to page three where
22 you are asking him about his education.

23 A Okay.

24 Q He stated that he couldn't read English or Spanish and
25 he couldn't write English.

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 Then on page four you're asking him. Well, you're
2 stating to him it is now 4:07 a.m. "Jorge stated to me
3 that he is unable to read or write the English language.
4 It's going to be audio-taped for that purpose."

5 Is that whenever you began to audio-tape?

6 A No, sir. I audio-taped from the beginning of page one
7 when I said it's 4:00 a.m.

8 Q I'm just curious as to why there would be that
9 distinction about "And this is going to be audio-taped for
10 that purpose."

11 A Well, it's really, it's just really just another, just
12 another purpose it's going to be audio-taped. You know,
13 maybe it's just a misquote on my part. Maybe I should have
14 distinguished in the, on the tape that it was just another
15 purpose that it should be, that it was audio-taped.

16 Q Exactly.

17 Sir, then I, I asked you why you asked him to start by
18 telling a story, and I quote, "Like you were telling me a
19 bedtime story."

20 I'm asking you that because I find that kind of
21 confusing.

22 A It's not to confuse. It's just a lot of times you're
23 just trying to relax and just tell them tell me everything
24 from the beginning. You start from the beginning, and tell
25 me exactly you want me to know and exactly what happened,

Stephen Henderson (In-camera)
Cross-examination by Mr. Gutierrez

1 and it's just a story. You're telling -- I was trying,
2 you're just trying, to put him in ease and let him know
3 that you're not, not there to do anything, you just want to
4 know what happened.

5 Q Put him to ease or put him to sleep?

6 A At 4:00 a.m., I think we're both ready.

7 Q Okay. Because bedtime stories are usually not true,
8 and I am wondering if perhaps that may have, that may have
9 brought about some type of confusion in his, in the
10 subsequent questions and answers later on.

11 I mean, whenever you give a statement or whenever you
12 ask somebody to give a statement or you question somebody
13 in an interview, you want the truth from them.

14 A Correct.

15 Q And does it seem to you that the truth is at odds with
16 a bedtime story?

17 A They conflict, yes. I would say they would.

18 MR. GUTIERREZ: I have no more questions.

19 Q Answer any questions that Attorney Warder has.

20 MR. WARDER: Your Honor, I have been informed by the
21 solicitor they were going to redact some references to my
22 client in the codefendant's statement. Based on that, I
23 would have no questions.

24 THE COURT: Okay. Anything further from the state?

25 MR. WILLINGHAM: No, sir.

Motion

1 THE COURT: You may step down.

2 MR. WILLINGHAM: That will be our showing, Your Honor.

3 THE COURT: Anything on behalf of the defense?

4 MR. GUTIERREZ: Yes, sir, Your Honor.

5 I would move to suppress the statements that he gave,
6 that Jorge Rodriguez gave, at the scene and the statement
7 that he gave later on before Officer Henderson.

8 I don't believe he understood or had the capacity to
9 understand the Miranda warnings at the time they were given
10 by Officer Bryanna Rogers, and I certainly think that the
11 line of questions and the explanation given about his
12 rights by Officer or Investigator Henderson at the time of
13 the interview later on, that they would have, would have
14 presented such a source of conflict and confusion to Jorge
15 Rodriguez that I don't believe these statements have the
16 voluntariness and willfulness required by the Miranda
17 rights.

18 THE COURT: All right. Well, based upon the testimony
19 and evidence received, I do find that the state has proven
20 by a preponderance of the evidence that the statement given
21 by Jorge Rodriguez was freely and voluntarily made after he
22 had been advised of his Miranda rights on two separate
23 occasions.

24 He appeared to understand the rights. He obviously
25 gave those rights up and agreed to speak with the officers,

Motion

1 at least for some period of time.

2 At some point during the second interview, at least
3 that interview with Officer Henderson, he did indicate his
4 desire then that he have a lawyer present, and the
5 testimony reflects that the questioning and the interview
6 was terminated at that point.

7 So clearly it appears from the testimony presented
8 that Mr. Rodriguez did have a sufficient understanding of
9 the English language to understand those rights and to
10 converse with the officers as they have testified to.

11 They indicated they had no difficulty in understanding
12 the conversations they had with him, and he did appear to
13 understand everything they said; and that his responses
14 were, appeared to be appropriate to the questioning.

15 So based upon that fact, I do find, and the evidence,
16 I do find that the statements were freely and voluntarily
17 made and are therefore admissible.

18 MR. GUTIERREZ: Thank you, Your Honor.

19 MR. WILLINGHAM: Your Honor, an additional matter.

20 On page ten of the transcript, line 21, Jorge makes
21 reference to who had the other gun. The answer was, "My
22 cousin." Your Honor, the state will prepare a redacted
23 copy of that transcript and tape, because I believe that
24 would raise a Brewton issue.

25 MR. WARDER: Page ten?

Motion

1 MR. WILLINGHAM: Page ten.

2 MR. WARDER: What about on the oral statement? Are
3 you going to redact?

4 MR. WILLINGHAM: Yes, sir.

5 Also, Your Honor, Investigator Rogers will be
6 instructed that any reference that Jorge Rodriguez made to
7 Juan Rodriguez possessing or pointing a firearm, she will
8 not be allowed to testify because of Brewton.

9 Additionally --

10 THE COURT: Well, let me ask you this.

11 Now, on page ten, the portion that is being redacted
12 is, "Who had the gun?"

13 "My cousin."

14 "Did you see him point it?"

15 "No. He didn't point it at all because he was driving
16 the car, and he, and that's all that happened."

17 MR. WILLINGHAM: Yes, sir.

18 MR. WARDER: Your Honor --

19 MR. WILLINGHAM: Unless he believes that is the other
20 cousin Bo, but Bo is not a cousin.

21 THE COURT: Well, I don't know. I thought that's what
22 y'all agreed to redact, was the reference to the gun.

23 MR. WILLINGHAM: That's what I looked through the
24 transcript and seen as probably, possibly being a Brewton
25 issue. He may think it's not a Brewton issue and may not

Motion

1 have an objection to it. I was just offering that to Mr.
2 Warder and to the Court, and the state would be willing to
3 do that.

4 MR. WARDER: Your Honor, I would see it as a Brewton
5 issue on who had the other gun, and the answer, "My
6 cousin."

7 THE COURT: Well, would there be something else being
8 pointed?

9 MR. WARDER: I don't know.

10 The answer to the next question refers to the driver
11 of the car. My client, I don't think any of the testimony
12 will say, was the driver of the car.

13 THE COURT: Well, I don't know how to respond to that.

14 It says, "Who had the other gun?"

15 Jorge says, "My cousin." I assume his cousin is Juan.

16 MR. WARDER: Yes, sir.

17 THE COURT: And then the question was, "Did you see
18 him point it," referring to the gun had by the cousin.

19 Jorge says, "No. He didn't point it at all because he
20 was driving a car and he, and that's all that happened."

21 MR. WARDER: It is confusing, Your Honor, because at
22 another place in the transcript Jorge says Bo is his
23 cousin, and then he says he's like his cousin.

24 THE COURT: He said who is his cousin?

25 MR. WARDER: Huh?

Motion

1 THE COURT: What did you say? Who was his cousin?

2 MR. WARDER: On page 13 at the fourth line down the
3 question by the investigator is, "How long have you known
4 Bo?"

5 THE COURT: Right.

6 MR. WARDER: And the answer is, "He's my cousin, so
7 he's like my cousin. He's married to my cousin's, my
8 cousin's sister married his brother."

9 THE COURT: All right. So you think then on page ten
10 he's referring to Bo instead of Juan?

11 MR. WARDER: I just don't know, Your Honor.

12 THE COURT: Well, who was driving the car -- Bo?

13 MR. WARDER: Huh.

14 THE COURT: Was Bo driving the car?

15 MR. WARDER: Yes, sir.

16 THE COURT: Well, that's who he's referring to then.
17 He considers him his cousin because he's married into his
18 family, I'm assuming.

19 MR. WARDER: I would ask to go back to, "Who had the
20 gun," and they strike my cousin, and then quit there.

21 THE COURT: Well, then what would the reference, "Did
22 you see him point it," be to?

23 MR. WARDER: I guess something the driver did.

24 THE COURT: Well, it's obviously in response to who
25 had the gun.

Motion

1 MR. WARDER: Then they should redact it all as a
2 precaution.

3 THE COURT: Well, you may not have to redact any of it
4 if it relates to Bo as opposed to Juan.

5 MR. WARDER: Well, it's ambiguous. I don't know. I
6 don't want the jury to misinterpret it and my Brewton
7 become because --

8 THE COURT: Well, what's the state's position?

9 MR. WILLINGHAM: Your Honor, I was doing it out of an
10 abundance of caution. I think --

11 THE COURT: I mean, what's the state's position as to
12 who Jorge is referring to?

13 MR. WILLINGHAM: I don't have a definitive answer. I
14 believe it could be either Juan or Bo, and that's why I
15 agreed to take it out.

16 THE COURT: Well, isn't Bo testifying in this case?

17 MR. WILLINGHAM: Yes, sir.

18 THE COURT: Well, is he going to testify he was
19 driving the vehicle?

20 MR. WILLINGHAM: Yes, sir.

21 THE COURT: Well, that would take care of it, wouldn't
22 it?

23 MR. WILLINGHAM: Yes, sir.

24 THE COURT: And that means he is the person that Jorge
25 referred to as his cousin because he's married into his

Motion

1 family.

2 MR. WILLINGHAM: Yes, sir.

3 THE COURT: Is Bo going to say he had a gun?

4 MR. WILLINGHAM: No, sir.

5 THE COURT: He is not?

6 MR. WILLINGHAM: No, sir.

7 MR. WARDER: I think I would move to strike it all.

8 THE COURT: All right. So y'all agree then to redact
9 beginning on page ten the question, "Who had the gun;" the
10 answer, "My cousin;" the question, "Did you see him point
11 it;" the answer, "No. He didn't point it at all because he
12 was driving a car, and that's all that happened." Is that
13 accurate?

14 MR. WARDER: Yes, sir.

15 THE COURT: Okay.

16 MR. WILLINGHAM: Your Honor, the next matter is not a
17 Brewton issue, but it's an issue I think Mr. Gutierrez will
18 be concerned about.

19 It's on page 13 at 21 at the bottom where it asks if
20 he has ever been arrested before. The answer was, "Yes.
21 I've been arrested an awful lot."

22 Question, "For what?"

23 Answer, "Assaulting a minor and trespassing, a warrant
24 for my arrest in different courts and stuff like that."

25 Question, "Have you had any drug charges on you?"

Motion

1 Answer, "No."

2 I think that probably is protected.

3 MR. GUTIERREZ: Yes.

4 It is my understanding that he doesn't have any
5 arrests on his warrant, his rap sheet, excuse me.

6 MR. WILLINGHAM: He has arrests. He has no
7 convictions.

8 THE COURT: All right. So y'all agree on page 13 at
9 the bottom of the page, the last question, "Have you ever
10 been arrested before," is to be redacted.

11 The response, "Yes. I had been arrested an awful
12 lot," is to be redacted.

13 First question on page 21, "For what," is to be
14 redacted.

15 The response is to be redacted.

16 Next question, "Have any drug charges on you," is
17 redacted.

18 The response is redacted.

19 And I guess that next, what's that for?

20 MR. WILLINGHAM: Judge, you can't understand what that
21 is on the tape.

22 THE COURT: All right. Did I state it correctly as to
23 what was to be redacted?

24 MR. GUTIERREZ: Yes, Your Honor.

25 MR. WILLINGHAM: Yes, sir.

Motion

1 THE COURT: Okay. Anything else?

2 MR. WILLINGHAM: The only other thing that I saw was
3 on page 17 about three-quarters of the way down. They're
4 talking about the gun.

5 And, "Who did you get it from?"

6 "A friend."

7 Investigator Henderson asked, "How come Juan had it?"

8 The answer, "Because it, wanted to use it. I wanted
9 it for protection from that black dude, the one that would
10 shoot."

11 I think probably that question and answer needs to be
12 redacted.

13 MR. WARDER: I move to --

14 THE COURT: Beginning where, now, on page 17?

15 MR. WILLINGHAM: Page 17. It says, "How come Juan had
16 it?" It's about three-quarters of the way down.

17 MR. WARDER: Six lines up from the bottom.

18 THE COURT: I've got it. All right. "How come Juan
19 had it?" Then the response will be redacted.

20 MR. WILLINGHAM: Yes, sir.

21 THE COURT: The question is, "Did you both have a
22 gun?"

23 MR. WILLINGHAM: Yes, sir. I think that stays.

24 THE COURT: That stays. Okay.

25 MR. WARDER: The answer is no. I think that's

Motion

1 probably --

2 MR. WILLINGHAM: Judge, that's all I saw as far as a
3 Brewton issue. I don't know if Mr. Warder or Mr. Gutierrez
4 have any other Brewton issues in the transcript that need
5 to be redacted.

6 MR. WARDER: I don't think there is any other, and I
7 think we've agreed that the oral statement can be redacted.
8 That is all of my Brewton.

9 THE COURT: Any oral statement referencing Juan is to
10 be redacted?

11 MR. WARDER: When the officer testified, she testified
12 as to a statement made as to Juan there on the questioning
13 on the scene, that he threw the gun out the --

14 THE COURT: That Jorge told her Juan threw the gun
15 out?

16 MR. WARDER: Yes, sir.

17 THE COURT: That's what I asked.

18 Y'all agree that there will be no reference to any
19 statement made by Jorge regarding conduct committed by
20 Juan.

21 MR. WILLINGHAM: Yes, sir.

22 THE COURT: Okay. All right. Anything further?

23 MR. WILLINGHAM: Not from the state, Your Honor.

24 THE COURT: All right. Any voir dire requests?

25 MS. THILL: I believe ours is on the bench, Your

Motion

1 Honor.

2 THE COURT: Mr. Warder.

3 MR. WARDER: Your Honor, I just ask Your Honor to
4 inquire whether or not the fact that the defendants were
5 not here would so effect the jury that they couldn't listen
6 and follow the instructions on the issue.

7 THE COURT: I will.

8 MR. GUTIERREZ: None from our side, Your Honor.

9 THE COURT: Okay. Bring the jury panel around,
10 please.

11 Where in the county did this supposedly occur?

12 MR. WILLINGHAM: Your Honor, this happened on Old
13 Switzer.

14 THE COURT: Old Switzer Road?

15 MR. WILLINGHAM: Yes, sir. It's Old Switzer Church
16 Road. It's --

17 THE COURT: Woodruff?

18 MR. WILLINGHAM: On the way to Woodruff. It's between
19 Woodruff and Spartanburg on 221.

20 THE COURT: Near Switzer?

21 MR. WILLINGHAM: Yes, sir.

22 MR. WARDER: Your Honor, I think there will be no
23 question on the strikes. We will get ten instead of five.

24 MR. WILLINGHAM: Ten and ten, Your Honor.

25 MR. WARDER: We get double strikes.

Jury qualification

1 THE COURT: Ten and ten.

2 (Bench conference held off the record.)

3 (The following takes place in the presence of the jury
4 venire.)

5 THE COURT: Good afternoon, ladies and gentlemen of
6 the jury panel.

7 We are ready to begin with jury selection in the next
8 case that's going to require some of your participation,
9 and these are actually two defendants being tried together.
10 The two defendants are Juan Enrique Rodriguez and Jorge
11 Alberto Rodriguez.

12 They are each charged with the same offenses. There
13 are three offenses alleged against each that are set forth
14 in separate indictments.

15 Each of the defendants is charged in count one of the
16 indictment with trafficking in cocaine. The state alleges
17 that on or about November the 28th of 2001 that Juan
18 Enrique Rodriguez and Jorge Alberto Rodriguez did knowingly
19 sell, manufacture, deliver, purchase or bring into the
20 state; or they did provide financial assistance or did
21 otherwise aid, abet, attempt or conspire to sell,
22 manufacture, deliver, purchase or bring into the state; or
23 they did knowingly actually or constructively possess, or
24 did knowingly attempt to actually or constructively
25 possess, more than 200 grams of cocaine, a schedule two

Jury qualification

1 controlled substance.

2 Each of the defendants is also charged with possession
3 of or visibly displaying a firearm during the commission or
4 attempted commission of a violent crime, the state alleging
5 that violent crime to be trafficking in cocaine.

6 They also further allege that each of the defendants
7 did also point or present a firearm at one B. Rogers in
8 violation of a particular statute.

9 Now, as to each of the allegations and as to each of
10 the charges brought against each of the defendants, they
11 have entered pleas of not guilty. And, as you know, those
12 pleas of not guilty place upon the state the burden of
13 establishing the allegations in the indictment, the burden
14 of proving each of the essential elements of the crimes
15 charged; and therefore the burden is upon the state to
16 establish the guilt of each of the defendants to the
17 satisfaction of a jury beyond a reasonable doubt before any
18 verdict of guilty could be returned as to any of the
19 charges.

20 Now, before we begin with jury selection I'm going to
21 be asking you a number of questions, and the purpose of the
22 questions is to determine whether or not there is some
23 reason why any one of you jurors should not be selected to
24 participate in the trial of this particular case.

25 So as these questions are asked if you need to

Jury qualification

1 respond, I would simply ask that you please stand, and I
2 will address those matters with you individually.

3 Now, first of all, I've told you basically what the
4 allegations are that have been brought against each of the
5 defendants.

6 This incident is alleged to have occurred back on
7 November the 28th of 2001 down in the Switzer or near the
8 Switzer community of Spartanburg County, which is also near
9 Woodruff, South Carolina.

10 The defendants, Juan Enrique Rodriguez and Jorge
11 Alberto Rodriguez, are not present here today.

12 The law provides that when a defendant does not
13 appear, so long as certain procedures are followed, that
14 the state may still, notwithstanding their absence, go
15 forward and try the case in their absence. That can be
16 done so long as the defendants have been notified of their
17 right to be present and notified of their right to
18 participate in the trial of the case.

19 If a defendant is notified of the date and the time of
20 the trial and his right to be present and fails to appear,
21 the state has the right to still go forward with the trial
22 of the case.

23 All of those procedures have been followed in this
24 particular case, and the state is intending to go forward
25 with the trial of the case in the absence of the two

Jury qualification.

1 defendants.

2 Notwithstanding their absence, each of the defendants
3 is represented by counsel.

4 Richard Warder is the lawyer for Juan Enrique
5 Rodriguez, and he is seated first at the defense table to
6 your right.

7 John Gutierrez is the lawyer for Jorge Alberto
8 Rodriguez, and he's seated to the left of Mr. Warder and to
9 your left at the defense table.

10 Presenting the case for the state is Jessica Thill and
11 Donnie Willingham, both assistant circuit solicitors for
12 the Seventh Judicial Circuit.

13 Potential witnesses to be called in the trial of the
14 case are the following: Brian Andrews with the Spartanburg
15 County Sheriff's Department.

16 Are these witnesses outside?

17 MR. WILLINGHAM: The majority are here, Your Honor.
18 Some of them are not. Mr. Andrews is not.

19 THE COURT: Those who are present, as your name is
20 called I'm going to ask that you please stand so the jury
21 can see who you are.

22 Brian Andrews, Nate Cantrell, Shane Dedmon, Paul
23 Dorman. He is in the back.

24 Ken Hancock, Ashley Harris. These are all with the
25 sheriff's department.

Jury qualification

1 Steve Henderson, Reed Lindsey, Roger Luther, Matt
2 McDaniel, Jane Millwood, Matthew Owens, Bryanna Rogers,
3 Nicki Sherrill, David Taylor, Floyd Turley, Jason Yown,
4 Robert Leatherwood who is not with the sheriff's
5 department. He is a citizen of Woodruff. And Cecil
6 Gilliam.

7 Are there any other potential witnesses on behalf of
8 the state?

9 MS. THILL: No, sir, Your Honor.

10 THE COURT: Or the defense?

11 MR. GUTIERREZ: No, Your Honor.

12 THE COURT: Is there any member of the jury panel
13 connected by blood or marriage or have any sort of
14 relationship or knowledge of any individual who has been
15 identified for your benefit? If so, please stand.

16 JUROR NUMBER 138: I know Ashley Harris.

17 THE COURT: Your name is what, please, ma'am?

18 JUROR NUMBER 138: Janice Walker.

19 THE COURT: And your juror number is what?

20 JUROR NUMBER 138: 138.

21 THE COURT: And how do you know Mr. Harris?

22 JUROR NUMBER 138: He grew up in our neighborhood.

23 THE COURT: Okay. Would that fact in any way affect
24 your judgment in this case?

25 JUROR NUMBER 138: No.

Jury qualification

1 THE COURT: All right. Thank you, ma'am. You may be
2 seated.

3 Anyone else know any of the potential witnesses, and
4 also whether or not you know any of the lawyers involved in
5 the case? If so, please stand.

6 Has anyone --

7 JUROR NUMBER EIGHT: Your Honor --

8 THE COURT: Yes, sir.

9 JUROR NUMBER EIGHT: I don't know, but in the interest
10 of openness, I work with the newspaper, and we have a
11 professional relationship with the solicitor's office.

12 THE COURT: Okay. Anybody in particular?

13 JUROR NUMBER EIGHT: Well, the solicitor.

14 THE COURT: Okay. And your number is what? You are
15 Mr. Beck.

16 JUROR NUMBER EIGHT: Yes, sir.

17 THE COURT: Your number is what?

18 JUROR NUMBER EIGHT: Eight.

19 THE COURT: Eight.

20 All right. Would that in any way affect your judgment
21 in the case?

22 JUROR NUMBER EIGHT: No.

23 THE COURT: Okay. Thank you. Be seated.

24 Anyone else?

25 (No response.)

Jury qualification

1 THE COURT: All right. Now, I've basically told you
2 what the case is about and where it occurred.

3 Is there any member of the jury panel who has heard
4 anything about the case from any person or any other
5 source? If so, please stand.

6 (No response.)

7 THE COURT: Is there anything about the nature of the
8 charge itself that would prevent any juror from being able
9 to be fair and impartial to either side? If so, please
10 stand.

11 (No response.)

12 THE COURT: Does any member of the jury panel have a
13 family member who has ever been arrested or convicted of a
14 drug offense? If so, please stand.

15 Yes, ma'am.

16 JUROR NUMBER 61: My exhusband was convicted and
17 served four and a half years.

18 THE COURT: And your juror number is what?

19 JUROR NUMBER 61: Sixty-one.

20 THE COURT: And your last name?

21 JUROR NUMBER 61: Harvey.

22 THE COURT: Would that have any impact upon your
23 decision?

24 JUROR NUMBER 61: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Anyone else?

2 (No response.)

3 THE COURT: Has any member of the jury panel had any
4 sort of experience with a police officer of any type that
5 might affect your judgment or impair your ability to be
6 fair in the case if you were selected? If so, please
7 stand.

8 (No response.)

9 THE COURT: Does any juror have a family member that's
10 been prosecuted or have a case pending that is going to be
11 prosecuted by the Seventh Judicial Circuit Solicitor's
12 Office? If so, please stand.

13 (No response.)

14 THE COURT: The fact that the defendants in this case
15 are not present in court, would that affect any juror's
16 ability to be fair and impartial to either side if you were
17 selected as a juror? If so, please stand.

18 (No response.)

19 THE COURT: Based upon what you know up to this point,
20 has any member of the jury panel already formed an opinion
21 as to what you think the ultimate decision ought to be in
22 the case? If so, please stand.

23 (No response.)

24 THE COURT: Does any juror know of any reason
25 whatsoever why you think you could not be fair and

Motion

1 impartial if you were called upon to participate in this
2 particular case? If so, please stand.

3 (No response.)

4 THE COURT: Any other questions requested by the
5 state?

6 MS. THILL: No, sir, Your Honor.

7 THE COURT: By the defendant Juan Rodriguez?

8 MR. WARDER: No, Your Honor.

9 THE COURT: By the defendant Jorge Rodriguez?

10 MR. GUTIERREZ: No, Your Honor.

11 THE COURT: Draw us a jury, please, ma'am.

12 (Whereupon, a jury was impanelled.)

13 THE COURT: All right. Of those jurors who have been
14 selected, please go with a bailiff to a jury room. I will
15 bring you back in just a few minutes.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Any matters to address regarding jury
19 selection by the state?

20 MS. THILL: Yes, sir.

21 (Whereupon, the remaining members of the jury venire
22 were excused from the courtroom.)

23 THE COURT: All right. I will hear from the state.

24 MS. THILL: Thank you, Your Honor. May it please the
25 Court.

Motion

1 The defense struck, I'm sorry, the defense struck
2 seven individuals in this case. Six were white females.
3 He took three white females and three black females.

4 All of the individuals, all seven that were struck,
5 were white. Therefore the state would argue that's a prima
6 facie case of gender and race discrimination in his
7 challenges and we would ask that he produce gender and race
8 neutral reasons for his strikes.

9 THE COURT: All right. Mr. Warder.

10 MR. WARDER: Your Honor, I will have to go back. I
11 mean, I had a reason for striking each one. We have got to
12 go through.

13 Whites are not a group with a history of
14 discrimination against, and I think that they are not as a
15 protected class. I would argue every time you strike, we
16 strike --

17 THE COURT: Okay. We'll deal with the females then.

18 MR. WARDER: Okay. I don't have a response. I think
19 they are a protected class.

20 THE COURT: So what's your reason for striking them
21 then?

22 MR. WARDER: Okay. You will have to go through them.
23 I don't remember which ones we struck.

24 THE COURT: That's what we are here for, to go through
25 them. You don't know which ones you struck?

Motion

1 MR. WARDER: No. I would have --

2 THE COURT: Okay. Well, we will start with 68.

3 MR. WARDER: Your Honor, we struck her because of the
4 proximity of Roebuck to Switzer, and we thought that the
5 nature of the case and that being close it might lead to
6 some prejudice with this drug transaction in her
7 neighborhood.

8 THE COURT: All right. 151.

9 MR. WARDER: Yes, sir.

10 She was works at a hospital. We thought that people
11 that worked at the hospital had a prejudice against drugs
12 and were overly -- they saw because they work with the bad
13 effects of drugs and it would lead them to be prejudiced
14 against people that were accused of being involved in drug
15 trafficking.

16 THE COURT: She is a speech pathologist.

17 MR. WARDER: Well, she works at Spartanburg Regional.
18 I mean --

19 THE COURT: Well, they have got lots of people that
20 work up there that don't deal with any kind of drug
21 difficulties.

22 MR. WARDER: Well, I think they -- the nurses and the
23 people at the hospital talk about drug type all of the
24 time.

25 THE COURT: Okay. All right. Number two.

Motion

1 MR. WARDER: Retired school teacher. School teachers
2 usually rely upon law enforcement to keep order at schools,
3 giving great weight to the testimony.

4 THE COURT: All right. Number five.

5 MR. WARDER: We struck her because she was a life
6 insurance -- we consider them people very conservative,
7 generally quite pro law enforcement.

8 THE COURT: Life insurance salesman?

9 MR. WARDER: Life insurance people in general that
10 deal with -- very conservative.

11 THE COURT: Okay. 162.

12 MR. WARDER: A nurse. Once again, deals with and sees
13 the bad effects of drugs in the hospital situation and
14 talks to doctors and ambulance people that have knowledge
15 of the bad effects of drugs.

16 THE COURT: All right. 24.

17 MR. WARDER: Your Honor, she was a legal secretary for
18 a lawyer we knew. We thought she might be exposed to a
19 philosophy of cases that might, might not help us.

20 THE COURT: Okay. State wish to be heard?

21 MS. THILL: Yes, sir, Your Honor.

22 We would argue that those are not gender neutral
23 reasons and that they are based on pretext.

24 THE COURT: Okay. Well, I do think they are clearly
25 gender neutral. I do not find that they are pretext. So

Motion

1 any motion to quash is denied.

2 MS. THILL: Thank you, Your Honor.

3 THE COURT: Anything further?

4 MS. THILL: None from the state.

5 THE COURT: Who is the first witness?

6 MR. WILLINGHAM: Depending on how long you want to go,
7 Judge. The first witness scheduled is David Taylor. I
8 have got to do Paul Dorman today, so I may have to take him
9 out of order depending on --

10 THE COURT: How long will he take?

11 MR. WILLINGHAM: Paul Dorman? He shouldn't take more
12 than 15 minutes.

13 THE COURT: All right. Well, that's probably as far
14 as we're going to get today.

15 Okay, sir.

16 MR. WARDER: May it please the Court. We would move
17 to sequester the witnesses.

18 THE COURT: And what do you perceive the necessity to
19 be?

20 MR. WARDER: Your Honor, there is a large number of
21 witnesses that will testify to the events that took place
22 on a relatively dark night.

23 We think that they will hear the testimony of one
24 another and that there is danger that they may have their
25 memory refreshed or influenced by the testimony of other

Motion

1 witnesses.

2 We think we are entitled to have the individual
3 recollection of each witness without hearing the testimony
4 of the other witnesses on the events that happened that
5 night with having their memory influenced by the testimony
6 they heard.

7 THE COURT: Okay. Does the state wish to be heard?

8 MR. WILLINGHAM: Your Honor, we object to
9 sequestration. I believe it's in the discretion of the
10 court. I don't believe that is a reasonable basis for
11 requiring sequestration of the witnesses.

12 THE COURT: Well, is it going to cause any hardship to
13 the state?

14 MR. WILLINGHAM: No, sir.

15 THE COURT: All right. Motion for sequestration is
16 granted. You've got the list.

17 Everybody who has been notified or identified as a
18 witness, you will have to exclude yourself from the
19 courtroom. You may not discuss your testimony with any
20 other witness.

21 MR. WILLINGHAM: Your Honor, can we keep our case
22 agent, David Taylor, here?

23 THE COURT: Mr. Taylor may remain and Mr. Dorman may
24 remain. He is the first witness.

25 MR. WILLINGHAM: Thank you, Your Honor.

1 (Whereupon, the witnesses were sequestered.)

2 THE COURT: All right. Any other matters to address
3 before the jury is sworn?

4 MR. WILLINGHAM: None from the state, Your Honor.

5 MR. WARDER: No, sir.

6 THE COURT: Okay. Bring the jury in, and ask
7 Ms. Thompson, Sheila Thompson, to take the foreperson's
8 seat.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 ready to begin with the trial of the case for which you
13 have been selected.

14 And, Ms. Thompson, I'm going to ask you to serve as
15 the foreperson of the jury.

16 As the foreperson you're going to have three specific
17 duties that none of the other jurors will have.

18 Number one, you're going to be asked to serve as the
19 spokesperson. And by that I simply mean if you or a fellow
20 juror has any difficulty or problem or question, if you'll
21 let the bailiff know of that fact, he will let me know.
22 And I will try to assist you in resolving any problem or
23 answering any question.

24 Secondly, you are going to be asked to preside over
25 the deliberations when the time comes for deliberations.

1 And that, of course, won't be until the end of the trial
2 after all of the evidence has been received and the jury
3 has been instructed by me as to the law. But when the time
4 comes for jury deliberations, you are asked to preside over
5 that process in the jury room simply to ensure that it's
6 carried out in some orderly fashion.

7 And, thirdly, you are going to be asked to actually
8 write the verdict of the jury, whatever that decision might
9 be. And you'll do that on a verdict form that I'll provide
10 you at the trial's conclusion on which you will indicate
11 the jury's unanimous decision.

12 Now, the foreperson has those specific duties that
13 I've indicated, but that doesn't mean that she's any more
14 important than any of you other jurors, because the
15 decision of a jury is the unanimous consensus opinion of
16 all 12 of you jurors, and so all of you will have an equal
17 say and an equal vote in what the ultimate decision will be
18 in this case.

19 Someone simply has to be delegated those
20 responsibilities that I have indicated, and I have
21 delegated those to Ms. Thompson in appointing her as the
22 foreperson. But all of you jurors are equally important so
23 far as the ultimate decision in this case is concerned,
24 because, as I've stated, the decision of the jury must be
25 unanimous. All 12 must be in agreement.

Jury sworn

1 Now, Mr. Hatchette, you have been selected as an
2 alternate juror. And your having served on a jury panel
3 before, you understand the purpose and the function of an
4 alternate juror. So we do appreciate your participation as
5 an alternate, just as we appreciate the participation of
6 all of you jurors who have been selected to decide the
7 verdict in this particular case.

8 You may swear the panel.

9 (Whereupon, the jury was duly sworn.)

10 THE COURT: All right. Ladies and gentlemen, as you
11 know, you have been selected to decide the verdicts in the
12 case of the State vs. Juan Enrique Rodriguez and Jorge
13 Alberto Rodriguez.

14 Each of the defendants have been accused by the state
15 with the criminal offenses known as trafficking in cocaine;
16 possession of a firearm during the commission of a violent
17 crime, the violent crime being alleged to be trafficking in
18 cocaine; and also pointing or presenting a firearm at some
19 person.

20 The allegations setting forth those charges are
21 contained in the indictments. The indictments are not
22 evidence of anything, and they'll be in the jury room
23 because they'll serve as the verdict form at the trial's
24 conclusion, but they are not evidence in the case, and you
25 are not to consider them as such. They simply serve to put

1 a person on notice as to what the state accuses them of
2 having done by way of the commission of some type of
3 criminal offense. And, of course, it puts the jury on
4 notice as to what the charges are that have been brought
5 against the defendant.

6 But other than serving as the verdict forms in this
7 case, they serve no function so far as you 12 jurors are
8 concerned.

9 Now, as to each of the allegations and as to each of
10 the charges that are set forth in each of the indictments
11 the defendants, and each of them, have entered a plea of
12 not guilty.

13 That plea of not guilty therefore places upon the
14 state the burden of proving the allegations, proving the
15 essential elements of the crimes charged; and therefore the
16 burden is on the state to prove the guilt of the defendant
17 to the satisfaction of you 12 jurors beyond a reasonable
18 doubt before a verdict of guilty could be returned.

19 Every person and any person who is accused of a crime
20 is always under the constitution and the laws of this state
21 to be presumed innocent of those charges.

22 That presumption of innocence remains with any
23 defendant, as it does with these defendants, from the time
24 of their arrest and throughout the course of the criminal
25 process and even throughout the course of the actual trial

1 in the case.

2 That presumption of innocence will be with each of
3 these defendants even at the time that you go back into
4 your jury room to begin with your deliberations in the
5 case.

6 That presumption of innocence will be with those
7 defendants there, and it will remain with them forever
8 unless you 12 jurors determine that they are no longer
9 entitled to that presumption of innocence.

10 That is after you've considered all of the evidence in
11 the case, decided the facts from that evidence and applied
12 the law that I will have provided you, if you determine
13 that one or both of the defendants' guilt has been proven
14 beyond a reasonable doubt, then that defendant would no
15 longer be entitled to that presumption of innocence.

16 But it's only unless and until you 12 jurors are
17 convinced of a defendant's guilt beyond a reasonable doubt
18 that that defendant would no longer be entitled to that
19 presumption of innocence.

20 That presumption of innocence applies to every
21 defendant, and it does not matter whether the defendant is
22 present or is absent during the trial of the case. The
23 same presumption applies to an absent defendant as it does
24 to a defendant that happens to be present at the trial of
25 the case.

1 You may not permit the fact that a defendant is absent
2 from the trial to weigh in the slightest degree against the
3 defendant. You may not consider it in any fashion
4 whatsoever in your decision. The burden is still upon the
5 state to establish the defendant's guilt to your
6 satisfaction by evidence which convinces you of that
7 defendant's guilt beyond a reasonable doubt.

8 Now, the way the trial will proceed is that in a
9 moment the lawyers will address you in opening statements.
10 Lawyers can address the jury on two occasions in the trial,
11 before the evidence has been introduced and after all of
12 the evidence has been received.

13 Keep in mind however that lawyers' statements are not
14 evidence in the case. You may not consider the lawyers'
15 statements as being any evidence that you will use in
16 arriving at your decision.

17 The lawyers are not witnesses. They don't tell you
18 anything from personal knowledge. They won't be testifying
19 under oath from the witness stand as will witnesses. They
20 will not be subjected to direct and cross-examination. So
21 what they tell you is not evidence in the case, but their
22 statements do serve a purpose, and so you should listen to
23 what they have to say.

24 The opening statements will serve to provide you with
25 a basic understanding as to what this case is about so that

1 you will have some context in which to place the evidence
2 that we will be receiving shortly thereafter.

3 The closing statements occur after all of the evidence
4 has been received. And those statements provide the
5 lawyers with an opportunity to discuss with you the
6 evidence that you've seen and heard during the trial of the
7 case. And through that discussion each will have an
8 opportunity to try to persuade you or to convince you that
9 that evidence does or does not support a particular
10 decision.

11 It's in between the opening and closing statements of
12 the lawyers that we actually receive the evidence that you
13 will consider in deciding the facts and arriving at your
14 ultimate decision.

15 As I've told you, the state has the burden of proof.
16 They've got to establish the defendant's guilt, and so they
17 will go forward first in their presentation of evidence.

18 A defendant never has to testify. A defendant never
19 has to produce any witnesses or offer any evidence because
20 the burden is not upon a person accused to prove that they
21 are not guilty. The burden is upon the state in bringing
22 the charge to prove that they are guilty.

23 So while evidence may not be presented by a defendant
24 in a given case, that cannot be considered by you in any
25 fashion whatsoever in your determination as to that

1 person's guilt.

2 After all of the evidence has been received and after
3 the lawyers have provided you with their final summations,
4 I will then instruct you on the law that's applicable in a
5 case of this nature, and then you will be asked to go back
6 and begin with your deliberations.

7 Through that process you 12 jurors are simply called
8 upon through the exercise of good judgment and common sense
9 conscientiously applied to the testimony and evidence in
10 the case to decide what you believe to be the true facts as
11 they relate to these allegations.

12 Once you decide those facts, you will then apply the
13 law that I will have provided you, and you will determine
14 whether or not either or both of these defendants are
15 guilty of any of the three charges that have been brought
16 against them.

17 If you are convinced of a defendant's guilt beyond a
18 reasonable doubt, your verdict would be guilty as to that
19 particular defendant on that particular charge. And if you
20 have a reasonable doubt as to the guilt of a defendant or
21 as to a defendant's guilt as to a charge, you must resolve
22 that doubt in that person's favor and return a verdict of
23 not guilty.

24 All that we ask for you to do is to pay careful
25 attention throughout the trial of the case. Give every

Opening statements.

1 witness the same degree of attention and consideration.

2 Now, you will decide what evidence to accept and what
3 evidence to reject and what testimony is believable and
4 what testimony, if any, is not. But you should give every
5 witness the same degree of attention so that you will be in
6 a position at the trial's conclusion to properly judge a
7 witness' testimony in light of all of the evidence
8 presented during the trial of the case.

9 It's also important that you keep an open mind
10 throughout the course of the trial. And you are not to
11 begin making up your minds or formulating your opinions as
12 to what you think the ultimate decision ought to be in the
13 case until all of the evidence has been received, until you
14 have been instructed by me as to the law and until you have
15 then been asked to go back and begin with your
16 deliberations. That is process that is designed for you 12
17 jurors to arrive at a fair and just decision.

18 So I do thank you in advance for your participation as
19 well as your careful attention. Please give the lawyers
20 your attention now as they give you their opening
21 statements.

22 Ms. Thill.

23 MS. THILL: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes.

Opening statements

1 MS. THILL: Ladies and gentlemen of the jury, you are
2 here today because on November the 28th of 2001 the
3 defendants, Juan and Jorge Rodriguez, possessed 243 grams
4 of cocaine. That's almost nine ounces.

5 But not only did they possess it. They attempted to
6 sell it to a confidential informant working for the
7 sheriff's office narcotics unit.

8 So what happened that fall evening? Robert
9 Leatherwood set up a drug transaction between Cecil Gilliam
10 and Juan and Jorge Rodriguez. Cecil Gilliam was working as
11 a confidential informant for the sheriff's office.

12 They decided to meet at the Li'L Cricket at Highway
13 221 and 225 (sic), but the deal fell through.

14 Cecil and Bo talked again, and they decided at this
15 time they were going to meet at the church on Old Switzer
16 Road, which they did.

17 Cecil got into the vehicle with Juan Rodriguez, Jorge
18 Rodriguez and Robert Leatherwood. The defendants showed
19 him the cocaine, and he gave a signal. And when he gave
20 that signal, he got out of the vehicle, and the police came
21 in, but not before the defendants were able to flee the
22 scene.

23 A chase ensued, and they were finally stopped a short
24 distance later. During that chase, however, they tried to
25 get rid of the evidence.

Opening statements

1 Juan and Jorge Rodriguez threw the cocaine out the
2 window. They also threw a Ruger pistol and a MAC-10 pistol
3 that they had in their possession out the window.

4 So when the police finally stopped their vehicle,
5 there were no drugs or no guns in that car. But a short
6 time later they found the drugs and the guns on the side of
7 the road where the defendants had discarded them during the
8 chase.

9 Now, as representatives of the state, Mr. Willingham
10 and I have to prove those allegations to you, and we're
11 going to do that from this witness stand.

12 You're going to hear from the testimony of the
13 confidential informant I told you about, Cecil Gilliam.

14 You are also going to hear testimony from Robert
15 Leatherwood, the man who set up the transaction and was in
16 the vehicle with the two defendants.

17 You're also going to hear from a number of narcotics
18 investigators that were there that day.

19 You're going to hear from evidence technicians that
20 handled the drugs and weapons.

21 You are also going to hear from the forensic
22 criminologist who basically tested the drugs.

23 Now, so as not to bring about any confusion, I just
24 want to warn you ahead of time that one of the evidence
25 technicians, Paul Dorman, is going to testify first. We

Opening statements

1 are going to take him out of order. The reason for that is
2 because he has some other responsibilities that he needs to
3 attend to tomorrow. So just be aware that you are going to
4 hear from him first.

5 After all of this took place Juan and Jorge Rodriguez
6 and Robert Leatherwood were arrested for trafficking in
7 cocaine. They were also arrested with possessing a violent
8 weapon or possessing a weapon during a violent crime and
9 also pointing and presenting a weapon at an individual.

10 This is a very important day for the defendants. It's
11 also a very important day for the state and the narcotics
12 investigators that were involved in this investigation.

13 We only ask that you listen to all of the evidence and
14 that you use your common sense, because we're confident
15 that if you do that you will render a fair and just
16 verdict. Thank you.

17 THE COURT: Mr. Warder.

18 MR. WARDER: Thank you, Your Honor.

19 Madam forelady and ladies and gentlemen of the jury, I
20 want to thank you for being here. I know that jury service
21 is a great inconvenience. I appreciate you answering your
22 subpoenas and being here today. This is the only way we
23 can settle disputes between citizens and the state.

24 I am here today defending a man who is not here. His
25 Honor will charge you that your oath requires that you give

Opening statements

1 the presumption of innocence great weight and you convict
2 only if you can find evidence that will convince you beyond
3 a reasonable doubt. I submit to you that will not happen.

4 I submit to you we are about to begin the trial where
5 my client is included in the solicitor's view of they and
6 them and these people. My client was only present, and His
7 Honor will tell you about mere presence at the scene of a
8 crime. One is not guilty simply because he is there with
9 other people that are engaged in illegal conduct.

10 We will be hearing about the drug deal that was set up
11 between a fellow that Bo Leatherwood believed to be named
12 Arlington and Leatherwood. These two individuals set this
13 up, not my client, Juan Rodriguez.

14 The solicitor tells you the Rodriguezes, like she
15 wants to lump them together. They're cousins. Juan
16 Rodriguez could only be convicted if his conduct is such
17 that he engaged in illegal -- he cannot be convicted for
18 Mr. Leatherwood's illegal conduct, he cannot be convicted
19 for his cousin's conduct. He is only responsible for his
20 own conduct, the things he does or doesn't do.

21 That's what we will be asking you for. We will be
22 asking you to really listen to the testimony, to listen to
23 the evidence and to don't group it into they and them and
24 those people but to analyze and to hear what they say, the
25 police say, about Juan Rodriguez.

Opening statements

1 We think you will hear testimony from Mr. Leatherwood.
2 Mr. Leatherwood has entered into a deal. He is testifying.
3 He has pled guilty and not been sentenced, and he's waiting
4 to see if his testimony passes the test, and they will then
5 sentence him.

6 We will ask you to consider what he has in this case
7 and if he has any reason to blame-shift; and we will ask
8 you to see if you believe his testimony beyond a reasonable
9 doubt after you hear it, the direct and the
10 cross-examination.

11 This is a case that I am representing a man that is
12 presumed to be innocent and, I submit to you, a man that
13 the testimony will show was merely present with
14 Mr. Leatherwood and his cousin and was not guilty of any
15 crime.

16 You will hear a statement admitted made by his cousin
17 in the moments afterwards. I ask you to listen to that and
18 see what before people had time to talk to their lawyer,
19 the police, what they said to my client. We submit to you
20 therein lies the truth.

21 I appreciate your attention. I will get to speak to
22 you again at the end of the case, and I thank you very much
23 for being here.

24 THE COURT: Mr. Gutierrez.

25 MR. GUTIERREZ: Thank you, Your Honor. May it please

Opening statements

1 the Court.

2 Madam Foreperson, ladies and gentlemen of the jury,
3 I'm John Gutierrez, and I am an attorney representing Jorge
4 Rodriguez, a codefendant in this case.

5 I checked off that you have already heard about the
6 presumption of innocence, and you will hear about that
7 again when the judge charges you at the end or the
8 conclusion of the trial.

9 You will hear more about reasonable doubt. You will
10 hear about how you can't give any weight to the absence of
11 our defendants.

12 So what I am going to talk to you is, are the things
13 that relate to Jorge Rodriguez in this trial.

14 You will see from the testimony of the witnesses that
15 Jorge, cousin to Juan Rodriguez, the codefendant, and
16 cousin by marriage or relationship to Robert Bo
17 Leatherwood, who will testify for the state in this case,
18 was along for the ride, had had no idea that he was
19 involved in a drug transaction.

20 As a matter of fact, what you will find out is that
21 Robert Leatherwood set up this drug transaction, went to
22 meet the confidential informant, along with Juan Rodriguez;
23 no Jorge. That they were essentially going to do the
24 transaction right there and it fell through.

25 You will hear some evidence about how they initially

Opening statements

1 were looking, that the confidential informant was looking,
2 to purchase an ounce of, a pound of cocaine or a kilo of
3 cocaine and that there wasn't that much, that Robert
4 Leatherwood couldn't come up with that much.

5 Okay. And the deal, for whatever reasons, and you may
6 hear about that, fell through. And then they went after
7 that point. They were going to meet. They were going to
8 set up another point where they were going to meet.

9 And during the meantime they picked up Jorge
10 Rodriguez, a cousin to both of them, one by blood and one
11 by marriage, and that Jorge rode along with them. And
12 whenever it came down, it came time for the transaction to
13 take place, he's sitting in the back seat, had the cocaine
14 dumped in his lap whenever the confidential informant
15 jumped in the car. At that point the signal was given for
16 the takedown, and there was a chase and they were all
17 caught after that.

18 As a matter of fact, you'll also hear that the cocaine
19 and drugs were thrown out of the window and at the point of
20 his arrest in the takedown that Jorge Rodriguez pointed out
21 to the police where it was off the side of the road, but
22 they couldn't find it.

23 What I say and what Solicitor Thill says and what
24 Attorney Warder says, this isn't evidence in the case.
25 Listen to the testimony of the witnesses, and from that you

Paul M. Dorman
Direct examination by Mr. Willingham

1 will make your decision. And I thank you again for your
2 time.

3 MR. WILLINGHAM: May it please the Court, Your Honor.

4 THE COURT: Mr. Willingham.

5 MR. WILLINGHAM: We call Paul Dorman.

6 PAUL M. DORMAN, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. WILLINGHAM

9 Q Tell the jury who you are.

10 A Paul M. Dorman.

11 Q Mr. Dorman, where do you work?

12 A Kentucky State Police.

13 Q Kentucky State Police?

14 A Yes, sir.

15 Q What do you do for the Kentucky State Police?

16 A I'm an AFIS analyst.

17 Q What's AFIS?

18 A Automated fingerprint identification system. I
19 process evidence and evaluate fingerprints for the Kentucky
20 State Police.

21 Q How long have you worked for the state of Kentucky?

22 A Just under two years, sir.

23 Q And before you went to Kentucky did you work here in
24 Spartanburg?

25 A Yes, sir, I did.

Paul M. Dorman
Direct examination by Mr. Willingham

1 Q Who did you work for?

2 A The Spartanburg County Sheriff's Office.

3 Q And what was your job with the sheriff's office?

4 A I was a forensics investigator and AFIS analyst for
5 the sheriff's office.

6 Q Tell the jury a little bit more about what a forensics
7 investigator is.

8 A My job was to investigate crime scenes for the
9 sheriff's office.

10 I would go in, photograph the crime scene, document
11 the crime scene, collect evidence from the crime scene,
12 within my abilities process evidence at our lab here or
13 package that evidence up and send to it the SLED crime lab.

14 Q All right. You also said you were an AFIS.

15 A Analyst.

16 Q Analyst. AFIS you said stood for automated
17 fingerprint identification system.

18 A Yes, sir.

19 Q Tell the jury what that is.

20 A What that is, we take fingerprints collected from
21 crime scenes, and then we enter them into a computer system
22 which we pluck the minutiae of the fingerprint, which is
23 the ridge detail of the fingerprint.

24 It goes into the computer system and the data bank
25 that is maintained by SLED. It searches that data bank for

Paul M. Dorman
Direct examination by Mr. Willingham.

1 the possible matches.

2 We get back 25 possible matches to the fingerprint,
3 and then we evaluate those fingerprints, compare them. And
4 when we're able to make a match, an identification, we
5 identify the suspect to the crime.

6 Q Explain to the jury what a fingerprint is.

7 A A fingerprint is basically the ridge detail of your
8 hand, and it's also ridge detail of your feet. Those are
9 the only two places that you have this type of ridge
10 detail.

11 The fingerprint is actually usually this section
12 first, and second joints, that we compare to. And we could
13 also compare the third as well as the palm print. But it's
14 a ridge detail on that fingerprint. And each individual
15 has individual ridge detail that no one else has. Not even
16 identical twins have the same fingerprints.

17 Q Is it a unique way to identify individuals?

18 A Yes, sir, it is.

19 Q Tell the jury what a latent print is.

20 A It would be an invisible or partial visible print
21 that's left behind by a suspect, a victim or a witness.

22 And what we do is we use a different type of
23 processing techniques to make it visible. Either powders
24 or chemicals is what we use to make it a visible print.

25 What it is is a ridge detail that's left behind

Paul M. Dorman
Direct examination by Mr. Willingham

1 through -- the sweat pores deposit a certain amount of
2 sweat from your glands, and that's what leaves the
3 fingerprint behind on whatever you may touch.

4 It's not a hundred percent. All because you touch
5 something does not mean that you're going to leave a
6 fingerprint behind.

7 Q How long have you been in law enforcement?

8 A Twenty-three years.

9 Q And during that time have you looked for latent
10 fingerprints?

11 A Oh, yes, sir.

12 Q How many times?

13 A Millions.

14 Q Okay. What type of training or background or
15 experience do you have to allow you to be able to do that?

16 A From the beginning of law enforcement, I was trained
17 how to examine scenes for fingerprints, how to use powders
18 to develop the print, how to lift it and properly place it
19 on cards and submitting it.

20 Then when I went into the forensics field I went to a
21 basic fingerprint identification school, an advance latent
22 print identification school, a palm print identification
23 and footwear or foot identification; and also I've been
24 trained in chemical processing, powder processing, ultimate
25 light source processing techniques, as well as this

Paul M. Dorman
Direct examination by Mr. Willingham

1 collecting and preserving of fingerprints.

2 Q Have you ever been qualified in court to render an
3 opinion concerning latent fingerprint identification?

4 A Yes, sir, I have.

5 Q And that's been in, actually in, state court in South
6 Carolina?

7 A Yes, sir. Three times.

8 MR. WILLINGHAM: Your Honor, at this time I would move
9 to have Mr. Dorman be allowed to testify to opinion, expert
10 opinion, concerning latent print identification.

11 THE COURT: Any objection, Mr. Warder?

12 MR. WARDER: No, sir.

13 THE COURT: Any objection, Mr. Gutierrez?

14 MR. GUTIERREZ: No, Your Honor.

15 THE COURT: All right. He is so qualified.

16 MR. WILLINGHAM: Thank you.

17 Q You alluded to this earlier, but you said it's not a
18 hundred percent as far as fingerprints.

19 If I lay my hands on this surface and I remove it, can
20 you tell me for sure that you are going to find my
21 fingerprints there?

22 A No, sir.

23 Q Tell the jury why not.

24 A It depends on the condition of the wood, for one; and
25 also if you're a secretor of a lot of sweat, if you don't

Paul M. Dorman
Direct examination by Mr. Willingham

1 sweat a lot, you are not going to possibly leave any
2 fingerprints.

3 It could depend on what you touched earlier, how often
4 you've washed your hands, if you've used different hand
5 creams on your hands, have you touched something that was
6 greasy, have you touched something that would leave residue
7 on your hand that you could transfer it to that wood.
8 There is so many variables as to whether or not you would
9 leave that fingerprint.

10 Q Have you been to crime scenes, murder scenes, burglary
11 scenes before and processed or looked for forensic --

12 MR. WARDER: Objection on relevance, Your Honor.

13 THE COURT: Sustained.

14 Q Did you receive evidence in this case to process --

15 A Yes, sir, I did.

16 Q -- on fingerprints?

17 A Yes, sir.

18 MR. WARDER: Your Honor, I have a matter to take up
19 with the Court.

20 THE COURT: All right. Let me see y'all just a
21 minute.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 (Tape marked State's Exhibit No. 5 for Identification;
25 transcript of tape marked State's Exhibit No. 6 for

Paul M. Dorman
Direct examination by Mr. Willingham

1 Identification; cocaine marked State's Exhibit No. 7 for
2 Identification.)

3 Q I'm going to show you what's been marked for
4 identification purposes as State's Exhibit No. 5. Do you
5 recognize that?

6 A Yes, sir.

7 Q And did you receive that item for processing?

8 A Yes, sir, I did.

9 Q Who did you receive that item from?

10 A This particular item was received from Shane Dedmon.

11 Q And when did you receive it?

12 A On 11/29 of 1400, which would be 2:00 o'clock in the
13 afternoon.

14 Q Okay. And what is that?

15 A It's a handgun, Ruger 9-millimeter, Model P-89 DC,
16 along with a clip with seven live rounds.

17 Q Okay. And did you note the serial number or was that
18 serial number noted?

19 A No. The serial number was already noted.

20 Q And that was 310-20458?

21 A Yes, sir, it was.

22 Q And you had that in your possession until when?

23 A I turned it over to, back to, Shane Dedmon 01/17/02 at
24 approximately 2300 hours.

25 THE COURT: You've got to repeat that last response.

Paul M. Dorman
Direct examination by Mr. Willingham

1 I couldn't hear it either.

2 THE WITNESS: I'm sorry.

3 A I returned it to Shane Dedmon on 01/17/02 at
4 approximately 2300, is when he signed for it.

5 Q January 17th you gave it back to Shane.

6 A Yes, sir.

7 Q Okay. Show you State's Exhibit No. 6 and ask if you
8 received that item for processing.

9 A Yes, sir, I did.

10 Q And when did you receive it?

11 A I received it on 11/29/01 at approximately 11:09 in
12 the morning from Jason Yown.

13 Q Were you asked to process that item as well?

14 A Yes, sir, I was.

15 Q What is that? What are those items in that box?

16 A There was a MAC-10 semiautomatic pistol, a magazine.
17 At the time it did not list how many rounds were with the
18 magazine. It was loaded. And one PMC .45 automatic round,
19 live round.

20 Q Okay. And how long did you have possession and
21 custody of that item?

22 A I had that item until 1/18/02 when I turned it over to
23 Jane Millwood of the evidence section at 7:30 in the
24 morning.

25 Q I'm going to show you what's been marked as State's

Paul M. Dorman
Direct examination by Mr. Willingham

1 Exhibit No. 7, and ask if you received that exhibit for
2 processing.

3 A Yes, sir, I did.

4 Q And when did you receive it?

5 A That was received on 11/29 also.

6 Q And who did you receive it from?

7 A Shane Dedmon.

8 Q And it was in your possession?

9 A Yes, sir, it was.

10 Q Until when?

11 A I returned it to Shane Dedmon on 1/17/02.

12 Q And what is that item?

13 A This was -- at the time I looked I thought it to be
14 suspected cocaine.

15 Q Okay. How was that cocaine packaged or that suspected
16 cocaine, that item, packaged?

17 A This item packaged in plastic bags, approximately
18 seven of them. And then when I opened one of the plastic
19 bags it contained two other plastic bags that made a total
20 of nine plastic bags containing suspected cocaine.

21 Q From November 29th when you gained possession of both,
22 of State's Exhibit 7, until January when you turned it back
23 over to Shane Dedmon, how were those items secured?

24 A Well, first of all, when I received the packaging I
25 separated the suspected cocaine from its original

Paul M. Dorman
Direct examination by Mr. Willingham

1 containers and placed it in other containers so I could
2 process the plastic baggies.

3 I then sealed those numbering which baggies they came
4 out of and put my initials on there. The dates that I
5 sealed it all was on the 29th. I then took this suspected
6 narcotics, placed in it a box with all of the other
7 evidence.

8 From that date on when I was not processing, actually
9 processing, the evidence, it remained in a box that had a
10 seal on it, and it was placed in a secured locker. And
11 that's where it remained until I returned it to Dedmon and
12 Millwood.

13 Q So when you were not processing it, it was secured by
14 being sealed and by being locked.

15 A Yes, sir.

16 Q At any time did you notice any of those locks or seals
17 having been tampered with?

18 A No, sir. The seals were never messed with.

19 Q If they had been tampered with, would you have
20 continued your analysis?

21 A I would have been trying to find out who messed with
22 them and then report it to my supervisor.

23 Q And there's no indication of that happening.

24 A None at all, sir.

25 Q How about State's Exhibits No. 6 and 5? How were they

Paul M. Dorman
Direct examination by Mr. Willingham

1 secured?

2 A They were secured in the same box and in the same
3 locker, sir.

4 Q Okay. You indicated that you processed those items.

5 A Yes, sir. I did.

6 Q Tell the jury what you did and what you mean by
7 process the items.

8 A First, I did a visual examination of all of the items
9 to see if there was any visible fingerprints on the items.
10 I did not see any.

11 I then processed the items with super-glue processing
12 technique, which super glue is heated to a certain state
13 where it begins to fume. The fingerprints, if there are
14 any on the items, specifically adheres to those
15 fingerprints, which makes them visible usually to the eye.

16 And then I take a powdery, the florescent powder or
17 black powder, and process the guns with that.

18 With the plastic baggies, I either use the magnetic
19 powder or black powder to process with.

20 Q Okay. And that was on done on all three state's
21 exhibits.

22 A Yes, sir, it was.

23 Q Did you find any prints?

24 A No, sir, I did not.

25 Q On any of them?

Paul M. Dorman
Cross-examination by Mr. Warder

1 A None of them, sir.

2 Q Okay. If you would, answer any questions the defense
3 attorneys have for you.

4 CROSS-EXAMINATION

5 BY MR. WARDER

6 Q Item five was the Ruger 9-millimeter, is that correct?

7 A On my property form here it shows it as item number
8 five.

9 THE COURT: Excuse me. Please don't turn your back to
10 the court reporter.

11 THE WITNESS: I am sorry.

12 A According to the property form that I have here, it
13 was item number one on this particular property form.

14 Q Okay. Item one would be item five that we have
15 identified in the courtroom today.

16 A Oh, okay, okay.

17 Q And on it, it says item five.

18 A Okay, yes.

19 Q Is that -- when you told Solicitor Willingham that
20 that was a Luger, was that right?

21 A It's a Ruger, yes, sir.

22 Q Okay. And tell me how you did that, now.

23 What did you put in the container to get the super
24 glue print raised? You put the gun?

25 A What we have, and there at the lab what they had

Paul M. Dorman
Cross-examination by Mr. Warder

1 there, it's basically a tank that is set up to house a
2 super glue accelerant, and super glue, and then we place
3 items in it. The super glue fumes and then it --

4 Q Do you have a note or report that details your
5 procedure?

6 A Not with me, no, sir.

7 Q Did you place the gun in all assembled or did you
8 disassemble it?

9 A It was assembled, sir. The magazine was not with it
10 though. The magazine was not in the gun. I had the
11 magazine --

12 Q You removed the magazine and placed the gun in?

13 A Yes, sir.

14 Q Okay. And did you, did you place the magazine in it?

15 A The magazine was also in the tank, also.

16 Q Okay. Did you place the bullets in it?

17 A Yes, sir, I did.

18 Q Okay. Will you open up that item and show it to us?

19 (Pause.)

20 Q Are you looking to see if it's loaded?

21 A Yes, sir. I check once there's a --

22 Q Yes, sir. I could see that. I was looking.

23 A No. I was just making sure.

24 Q You thought it might be loaded?

25 A No. I was just making sure it wasn't.

Paul M. Dorman
Cross-examination by Mr. Warder.

1 Q Okay.

2 A Twenty-three years of experience, I never take for
3 granted.

4 Q Yes, sir. I can see through the barrel and thought
5 maybe you could.

6 THE COURT: Don't turn your back to the court
7 reporter, please.

8 Q Lay that down. Take out the magazine.

9 Okay. And this has been in a super glue tank.

10 A Yes.

11 Q Had glue all over it.

12 A Yes, sir.

13 Q Is there any residue or anything we could look at on
14 it?

15 A No, sir. All of the little bit of residue that might
16 be is right here and this mark right here. Other than
17 that --

18 Q How do you clean the residue off so there's no residue
19 on it?

20 THE COURT: Excuse me just a minute. Let me remind
21 the witness.

22 If you will, turn and put that stuff on the front
23 instead of the side and then speak into the microphone and
24 don't turn your back to the court reporter, please.

25 THE WITNESS: I am sorry, sir.

Paul M. Dorman
Cross-examination by Mr. Warder

1 Q How do you wipe that off or how do you take that off?

2 Why do you take it off?

3 A If someone was to do that -- it would have been done
4 by somebody else. I don't, I never remove the super glue
5 from the items.

6 Q Has it been removed from those?

7 A I wouldn't, I couldn't say, sir. I don't know if it
8 went another, if it went to the SLED lab for processing.
9 If it did, it could be done with acetone. Acetone will
10 remove any residue.

11 Q Okay. Can you tell by looking?

12 A No, sir, I cannot.

13 Q Okay. The clip here, there's no residue on the clip.

14 A No, sir. There was not.

15 Q And the bullets, they're forced down in the clip
16 individually, is that --

17 A Yes, sir.

18 Q Little spring thing in there?

19 A There's a spring in it.

20 Q And you push the bullet down.

21 A Yes, sir.

22 Q And most people do it with their thumb.

23 A Yes, sir.

24 Q Not a fingerprint on any bullet.

25 A No, sir. I did not find any.

Paul M. Dorman
Cross-examination by Mr. Warder

1 Q And how many bullets did you look at?

2 A There are seven bullets with this.

3 Q Now, those bullets appear to have a brass case.

4 A Yes, sir.

5 Q Is that right? Brass could be a good substance, thing
6 to pick up fingerprints, to hold a fingerprint.

7 A It could be, yes, sir.

8 Q And you would think there would be one on there.

9 A Yes, sir. Could be.

10 Q And you're telling us that you looked and examined
11 every one of those bullets.

12 A Yes, sir. I did.

13 Q And where people push them into the magazine, took
14 them out of the case and pushed them, you found not a
15 fingerprint of any kind.

16 A No, sir. I did not.

17 Q And this is on all sides of this magazine where people
18 take it and push it up in the gun. You found not a
19 fingerprint, not a fingerprint anywhere.

20 A That's true, sir.

21 Q And this all would have been up inside the gun.

22 A Yes, sir. It would have been.

23 Q Now, if somebody went to wipe those off before they
24 shoot out the window of a car, would that take quite a bit
25 of time?

Paul M. Dorman
Cross-examination by Mr. Warder

1 A Quite a bit, yes, sir.

2 Q Are you familiar with guns?

3 A Yes, sir, I am.

4 Q And nowhere on the insides of this gun did you check
5 and make sure --

6 A I did not remove, take the gun apart, no, sir.

7 Q You didn't field strip it or anything.

8 A No, sir. I did not.

9 Q Did you look on this part here of the barrel?

10 A Yes, sir. The gun was locked back in the position
11 that you see it now when it was processed.

12 Q Just like it is now.

13 A Yes, sir.

14 Q Not on the trigger or anything.

15 A I did not find any fingerprints at all, sir.

16 Q And this was using the super glue method.

17 A Yes, sir, it was.

18 Q There was some other stuff in there. Did you
19 fingerprint that other stuff in that box too?

20 A Yes, sir. This is the --

21 Q Well, let's see what you fingerprinted. What else did
22 you fingerprint?

23 A This is plastic baggies from this item here.

24 Q Okay. This is the plastic bags that you told us
25 about.

Paul M. Dorman
Cross-examination by Mr. Warder

- 1 A Yes, sir.
- 2 Q And what's that other item in there?
- 3 A That is a scanner.
- 4 Q Did you fingerprint that?
- 5 A Yes, sir, I did.
- 6 Q Does that have batteries in it?
- 7 A I did not check, sir. I am not sure if it did or not.
- 8 Q Well, would the batteries be a good place to look?
- 9 Are they metal coated, the batteries?
- 10 A There's a -- depending on what kind of batteries. I
- 11 didn't check, sir, so I couldn't tell you what kind of
- 12 batteries.
- 13 Q You looked for fingerprints on the batteries.
- 14 A I was checking the outside of it.
- 15 Q Well, it has got a leather case. Did you take it out
- 16 of a leather case to check it?
- 17 A I took -- that's not a leather case, sir. That's a
- 18 plastic case.
- 19 Q Well, does it come out of that plastic case?
- 20 A No, sir; no, sir. It does not.
- 21 Q Did you look on the batteries in there?
- 22 A No, sir, I did not.
- 23 Q How come you didn't look on the inside of the door
- 24 that covers the batteries, or the batteries themselves, if
- 25 you were hunting for any?

Paul M. Dorman
Cross-examination by Mr. Warder

1 A Mistake on my part if I didn't, sir.

2 Q Well, I understand that. There wasn't any time
3 pressure on it, was there? You had this from November the
4 29th to January the 17th. Did you have plenty of time to
5 look every place there was for a fingerprint?

6 A I just checked the outside, sir. That's the only
7 place I checked.

8 Q Well, you have been trained to do this.

9 A Yes, sir.

10 Q And I take it as part of your training they told you
11 that sometimes the outside might get wiped off but if you
12 would look on the inside there would be fingerprints.

13 A It was an oversight on my part, sir.

14 Q Okay. And if you had done that we might possibly know
15 who handled this and to who it belonged.

16 A There would be a possibility.

17 Q Yes, sir.

18 And you told me that there were -- is that seven
19 plastic bags in here?

20 A There's nine plastic. There's nine plastic bags in
21 there, sir.

22 Q Yes, sir. The cocaine was found in seven. And those
23 were in two more bags?

24 A And then there were two more bags in one of the
25 baggies, sir.

Paul M. Dorman
Cross-examination by Mr. Warder

1 Q Now, plastic bags. They usually would collect oil off
2 a person's skin, wouldn't they?

3 A They could, sir.

4 Q And actually here we had an opportunity. The outer
5 bag would protect the inner bag, wouldn't it?

6 A Possibility, yes, sir.

7 Q So if you had plastic baggies that somebody had
8 handled and you put enough plastic bags to keep it, that
9 would protect them from getting them wiped off as people
10 transported it.

11 A It could. It would depend on how much they handled
12 it. Plastic does not completely protect it.

13 Q Okay. Now, was this evidence in that evidence bag
14 when you got it?

15 A No, sir. This is what I placed it in after I
16 processed it.

17 Q Okay. When they brought you that bag, for example,
18 how was it wrapped?

19 A I think -- I'm not for sure, sir. But I'm thinking
20 that was brought to me in paper bags.

21 Q Okay. You told me on your direct examination that you
22 are a crime scene processor. You are a person that is
23 trained to go out to the crime scene.

24 A Yes, sir.

25 Q And did you go to this crime scene?

Paul M. Dorman
Cross-examination by Mr. Warder

- 1 A No, sir, I did not. Shane Dedmon handled that part.
2 Q Okay. You didn't go out there and collect any of this
3 evidence.
4 A No, sir. I did not.
5 Q And how was that gun brought to you?
6 A This particular gun, it was brought to me. I can't
7 remember how Shane Dedmon gave it to me. I don't know if
8 it was in a --
9 Q I mean, he didn't just poke it in his hand and bring
10 it in there.
11 A No, sir. I can't remember if he had it in a box or if
12 he had it in a paper bag. I know some evidence is in a
13 paper bag.
14 THE COURT: Mr. Warder, please identify which gun you
15 are referring to.
16 MR. WARDER: Yes, sir.
17 Q The Ruger that was unboxed and setting out here, that
18 gun was the one that he brought you and you can't recall.
19 A I can't recall how it --
20 Q That's item number five.
21 A Yes, sir.
22 Q And was the clip in item number five when he brought
23 it to you, or was it out?
24 A It was out, I believe, sir.
25 Q Okay. Were the bullets in the clip, or were they out?

Paul M. Dorman
Cross-examination by Mr. Warder

1 A I believe they were out.

2 Q Was there one in the chamber, or had that bullet been
3 removed?

4 A There was no bullets in the chamber, no, sir.

5 Q Okay. Now, a lot of times the preservation of
6 evidence is important in your work, isn't it, how things
7 are preserved before you get them?

8 A Yes, sir.

9 Q Fingerprints can be destroyed by the handling of them
10 by police themselves.

11 A Yes, sir.

12 Q In case they botch them, is that right?

13 A If it's not handled properly, yes, sir.

14 Q And what did you notice about this weapon that would
15 indicate that there had been some effort to preserve the
16 fingerprints? Was the packaging in something special that
17 preserved the fingerprints?

18 A Again, sir, I can't remember exactly how it was
19 brought to me. It was in the lab. And I was asked to
20 process it. And I can't remember how it was.

21 Q Do you know how many people played with that gun
22 before they brought it to you?

23 A No, sir. I can't say.

24 Q Items, State's Exhibit 6, which has been -- can you
25 unbox that and show that to us?

Paul M. Dorman
Cross-examination by Mr. Warder

1 THE COURT: Before you do that, let me ask that those
2 items that you took out of the box, please place them back
3 in the box so we don't get things all mixed up here.

4 Q Now, I notice that the other gun had a strap through
5 the action. How come that one was strapped and this one
6 isn't? Is it supposed to be strapped or was it strapped
7 when it left your office?

8 A No, sir, it was not. This is basically the condition
9 that I got, I received it from.

10 Q How come you got one and not the other?

11 A Well, if I am not mistaken, that was already strapped.

12 Q Huh?

13 A I didn't strap it.

14 Q So did I understand that when this gun left you it
15 didn't have that strap in there?

16 A No. When it left me?

17 Q Yeah.

18 A No. I believe it had already been strapped when I
19 received it.

20 Q Well, did that strap go through the glue tank?

21 A Yes, sir.

22 Q So you never, you never unstrapped it.

23 A All I did was place the firearm into the tank.

24 Q Okay. This is another one, I guess, you placed in
25 there.

Paul M. Dorman
Cross-examination by Mr. Warder

1 A Yes, sir. It is.

2 Q What date did you place this in the tank? You had it
3 for about two months. Can you tell me when --

4 A No, sir. I can't say.

5 THE COURT: When you say this, what are you referring
6 to?

7 MR. WARDER: I am sorry.

8 Q Item five, when did you place it in the glue tank out
9 of the two-month period?

10 A I can't give you a date, sir.

11 Q Don't you make a report out when you test something
12 and it's negative?

13 A I have not been given a report, sir, so I haven't had
14 a chance to review a report that I wrote.

15 Q You're testifying from memory? You haven't reviewed
16 your notes from two years ago, is that right?

17 A All I've reviewed is what I received evidence on and
18 when I returned it, sir.

19 Q Do you have a good recollection of putting that in the
20 glue tank?

21 A Yes, sir, I do.

22 Q Two years later that Ruger that nothing come off of,
23 you vividly remember putting it in there.

24 A I remember putting them in the tank, sir, yes, sir.

25 Q Well, that gun you hold in your hand, you remember

Paul M. Dorman
Cross-examination by Mr. Warder

1 putting it in there?

2 A Yes, sir.

3 I also remember that when I received it it was rusty
4 just like it is now because it apparently had been wet.

5 That was one of the things --

6 Q You received it the same day, didn't you?

7 A Yes, sir.

8 Q 11/29/02, is that right?

9 A '01.

10 Q '01. Okay. And it was already rusted.

11 A Yes, sir.

12 Q Now, did you -- was the action opened or closed when
13 it went in the glue tank?

14 A I know that I checked it to make sure that it was not
15 loaded, and it was probably like that, yes, sir.

16 Q Probably.

17 A Yes, sir.

18 Q Does that mean you don't remember?

19 A I don't remember, I mean.

20 Q I mean, I want your honest recollection.

21 A I do not remember closing the action.

22 Q Huh?

23 A I do not remember closing the action. I know I opened
24 it up and locked it back to make sure that it was not
25 loaded.

Paul M. Dorman
Cross-examination by Mr. Warder

1 Q And when you got it out of the box, it was closed,
2 today.

3 A Yes, sir.

4 Q Do you think you put it in the glue tank and then
5 opened and then closed it up and put it back in the box?

6 A I couldn't say if it was somebody else had handled it
7 and then closed it, sir. I just -- right now all I can say
8 is --

9 Q Can you tell me if that stuff is in the same condition
10 it was when it left your lab?

11 A It looks like it has been reboxed.

12 Q Okay. So you can't tell anything by looking at those
13 boxes then about yours. I mean, you don't know whether
14 that's the -- how do you know it's the same gun? Let's
15 narrow that down. How do you know it's the same gun?

16 A This particular one, I don't have a, I don't have the
17 serial number on this one. I can't see where I marked it.
18 Usually I marked it with a sharpie pen.

19 Q You don't see that on there, do you?

20 A I can't, I can't see it where I marked it. I usually
21 mark --

22 Q Would that indicate it's not the same gun?

23 A No, sir. This is the gun. It did not leave the
24 evidence section.

25 Q You weren't there. How do you know that? You don't,

Paul M. Dorman
Cross-examination by Mr. Warder

1 do you, of your personal knowledge?

2 A No, sir. I cannot say that.

3 Q You can't even say it's the same one.

4 A It appears to be the same item that I received. There
5 is still mud in the barrel. There is still mud in here
6 that I seen before.

7 Q Are you identifying it because you recognize the mud?

8 A No, sir. I'm just, I'm just saying that it has the
9 same condition I received it in.

10 Q How would it have left your lab? How would you have
11 packaged it to turn it over to the person you would have
12 gave it to?

13 A This particular case, I gave this firearm back to
14 Dedmon, and he may have repackaged it this way.

15 Q Well, did you have in a bag when it left?

16 A No, sir.

17 Q He just carried it down the hall?

18 A I'm not sure how we did it, sir. It could have been
19 placed in a -- it could have been placed in this box and he
20 put it in here. I know this, these here, because that's
21 the way I packaged those bullets.

22 Q Did you package them?

23 A Yes, sir, I did.

24 Q You've got some initials or something on there like
25 you are trained to do at evidence school.

Paul M. Dorman
Cross-examination by Mr. Warder

1 A What I did is I crisscrossed it like you see it here,
2 and that's the way that I put it in.

3 Q Tell me. You've been --

4 A I did not initial, no, sir.

5 Q You're a trained evidence technician, is that right?

6 A Yes, sir, I am.

7 Q And part of your training is that you initial and you
8 put things, identifying marks, on them so we can identify
9 them.

10 A Yes, sir.

11 Q And that's what every evidence technician is trained
12 to do.

13 A Yes, sir.

14 Q And you're telling me in this case you didn't do what
15 you had been trained to do.

16 A I cannot see the mark here that I, where I initialed
17 in here.

18 Q You don't know if there is a mark in there.

19 A No, sir. I did not see one.

20 Q And part of every good investigation is to tag and to
21 package and to label.

22 A The items were tagged and they --

23 Q Do you see those tags on anything?

24 A They've been repackaged.

25 Q Are any of the tags you put on there still there?

Paul M. Dorman
Cross-examination by Mr. Warder

1 A The only ones that I can see are right here, sir.

2 Q On item five and item six is any of the marks, tags or
3 anything you did on them?

4 A On the bags here, these here. Those are the only
5 things I see right now, sir. Excuse me. Those are the
6 only things I see right now where I repackaged.

7 THE COURT: If you would just talk into the
8 microphone, don't look. You don't have to look at her.
9 Just talk into the microphone. That's what she needs to
10 hear.

11 Q This clip, did it have bullets in it?

12 A Yes, sir, it did.

13 Q And they were pushed down in there?

14 A Yes, sir, they were.

15 Q And these, are these 45 caliber?

16 A They appear to be, yes, sir.

17 Q And did you take each one of them out of that clip?

18 A Yes, sir, I did.

19 Q One at a time?

20 A Yes, sir, I did.

21 Q How did you do that?

22 A I wore gloves and I pushed them out from behind, like
23 so, pushing each one of them out.

24 Q You remember that from two years ago?

25 A I remember that the bullets were still in the magazine

Paul M. Dorman
Cross-examination by Mr. Warder

1 when I received it.

2 Q Okay. And on any of those bullets -- there is one,
3 two, three, four, five, six, seven, eight, nine, ten -- 13
4 bullets. Is that how you make that out?

5 A Yes, sir.

6 Q On not one of those 13 bullets, there is not one
7 fingerprint.

8 A No, sir.

9 Q And these bullets would have been protected because
10 they would have been in this metal case, this magazine down
11 in there, is that right?

12 A Yes, sir.

13 Q So any fingerprints that were on them, we wouldn't
14 expect it to get destroyed, would we?

15 A If there were fingerprints there.

16 Q Well, the truth of the matter is we talk about things
17 that have fingerprints. But a metal bullet when you push
18 it into a clip and you take it out, it's nearly always a
19 fingerprint.

20 A No, sir.

21 Q Okay. What happens to the oil on the thumb that keeps
22 them from being a fingerprint?

23 A There is no oil on the thumb unless somebody used it
24 before and had touched something that has oil.

25 Q Our body perspires and we have --

Paul M. Dorman
Cross-examination by Mr. Warder

1 A That is sweat, sir, 96 percent water. The rest is
2 amino acids and lipids, sir.

3 Q Okay.

4 A No water.

5 Q And your testimony was there's no fingerprints on any
6 of those bullets.

7 A That's correct, sir.

8 Q None on the outside of the clip.

9 A That's correct, sir.

10 Q None on any part of the gun.

11 A The gun as you see it now is rusted even worse than
12 what it was, but it came to me in a rusty condition.

13 Q And is there anything else you examined and found
14 nothing on except the things we've got here?

15 A This is it, sir. This is all that was given to me.

16 Q Is this outside bag, is that your bag?

17 A No, sir, it's not.

18 Q Is the bag we see right inside of it that says county
19 drug analysis, is that yours?

20 A Yes, sir.

21 Q And this is where you put the stuff that you took out
22 of the bags that come out of the box that we've labeled
23 item five, is that right?

24 A Yes, sir.

25 Q In here is what you took out of item five, the bags in

Paul M. Dorman
Cross-examination by Mr. Warder

1 there.

2 THE COURT: Excuse me just a minute. I think we have
3 a juror problem.

4 What's the matter?

5 THE FOREPERSON: Yes. Could you point the gun in a
6 different direction?

7 THE COURT: Don't point the guns at the jurors.

8 Rest assured they are unloaded however.

9 Q Why did it take two months to do this analysis?

10 A I have, I had various duties within the agency.

11 One of my primary duties was also investigating
12 homicides and shootings. And during this time period I had
13 three shootings back to back, and I had other duties that I
14 was having to perform. So I was not able to put all of my
15 attention to just this particular case.

16 Q Okay. And during those two months you had three
17 shootings back to back, is that right?

18 A Yes, sir.

19 Q Okay. You put that stuff back in the box.

20 A Yes, sir.

21 Q Before you put the bullet back in there, we are in
22 agreement that there's no way that there is a unique
23 marking of yours on that bullet bag. Is there?

24 A No, sir. There is not.

25 Q Okay. And that evidence tape that's on the bag that

Paul M. Dorman
Cross-examination by Mr. Warder

1 you put into Exhibit 6 is the standard evidence tape that's
2 used throughout the crime.

3 A For the sheriff's office, yes, sir.

4 Q And those bullets could have been bagged by anybody
5 who had a bag and tape.

6 A The way it's bagged, that's the way that I did this
7 particular, but, again, like you said, I didn't initial, so
8 I don't know.

9 Q And it could be anybody. Anybody can fold a piece of
10 tape over it, can't they?

11 A They could, yes, sir.

12 Q And the same bullets over here. Anybody could fold a
13 paper in any fashion.

14 A Yes, sir.

15 Q And the truth of the matter is you can't honestly say
16 those are even the items you examined.

17 A Yes, sir. I know they are for sure because of the
18 serial number on it.

19 Q Well, do you remember the serial number?

20 A The serial number is on the property form, sir.

21 Q Okay. Is that a property form that you filled out?

22 A No. This property form was filled out by Shane
23 Dedmon, sir.

24 Q By somebody else.

25 A Yes, sir.

Paul M. Dorman
Cross-examination by Mr. Warder

1 Q At some other time.

2 A When it was collected, yes, sir.

3 Q Thank you.

4 THE COURT: All right. Ladies and gentlemen, we are
5 going to have to take a short break, so I'll ask you to
6 please go to your jury room.

7 Do not discuss the case at all. We will bring you
8 back after a short break.

9 If you need to make a phone call, let the bailiff
10 know. We're going to finish the witness tonight. But if
11 you need to make a phone call, let the bailiff know.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. Court's in recess for ten
15 minutes.

16 The witness can step down.

17 You can't discuss your testimony during the break.

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Bring the jury in, please,
20 sir.

21 Close those boxes, please, so the court reporter can
22 see you.

23 Mr. Gutierrez, how long do you have -- what kind of
24 questions do you have?

25 MR. GUTIERREZ: Just a couple of questions, Your

Paul M. Dorman
Cross-examination by Mr. Gutierrez

1 Honor.

2 THE COURT: Mr. Warder just about covered it, didn't
3 he?

4 MR. GUTIERREZ: Yes, sir.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: All right. Mr. Gutierrez.

8 MR. GUTIERREZ: Yes, Your Honor. If it please the
9 Court.

10 CROSS-EXAMINATION

11 BY MR. GUTIERREZ

12 Q Mr. Dorman, just a few questions.

13 The first thing I was going to ask you was about the
14 fingerprints. Do fingerprints, do they fade, evaporate or
15 disappear?

16 A They can, yes, sir.

17 Q They can.

18 Is it -- whenever you testified earlier that you
19 received these items to test them for fingerprints, did you
20 test them within a week or did it take you the full time
21 till January the 17th to test them? Do you remember
22 whether you --

23 A It was over a period of time, sir. It wasn't
24 immediate.

25 Q It wasn't immediate.

Paul M. Dorman
Cross-examination by Mr. Gutierrez

1 A No, sir.

2 Q Did you do it all at one time or did you do it a
3 little bit one week, a little bit the next week and then so
4 on and so forth?

5 A It was in day periods. I did the plastic bags first.
6 I fumed them first. And then I later did the guns.

7 Q Okay. Let's talk about the plastic bags. You have a
8 total of, how many bags did you say?

9 A Nine.

10 Q Nine bags in total.

11 A Yes, sir.

12 Q And they were in another large bag too as well.

13 A I believe that's, that was correct, sir.

14 Q Right.

15 A There was nine bags in all.

16 Q And all nine bags were in another bag.

17 A I believe so.

18 Q Is that how it was given to you, or was there a bag
19 missing?

20 A If I remember right, everything that narcotics had
21 given to me in a brown, just a paper bag --

22 Q A brown paper bag.

23 A -- but somebody came in and handed it to me, and it
24 was something that they had collected out there at the
25 scene.

Paul M. Dorman
Cross-examination by Mr. Gutierrez

- 1 Q Okay. And from your notes or from your recollection,
2 did each of those bags contain the cocaine or was there one
3 bag that contained the bags of cocaine?
- 4 A There was seven baggies.
- 5 Q Individual.
- 6 A Individual baggies. But there was one bag that had
7 actually two baggies inside of it. So it had -- each baggy
8 contained a certain amount of suspected cocaine. That's
9 the way I remember it.
- 10 Q Okay. Seven bags. One bag contains two bags.
- 11 A Right.
- 12 Q That would be a total of eight bags, wouldn't it?
- 13 A It would be nine bags.
- 14 Q Well, if there's seven bags and you take from one, and
15 one of those contains two bags, well, then it would be a
16 total of nine bags in total.
- 17 A Nine bags, yes, sir.
- 18 Q Was there ever a mother bag, a bag that had all of the
19 cocaine in it, or were these all each individual bags?
- 20 A I believe there was a large bag, but I can't be for
21 sure. I would have to separate everything.
- 22 Q Did you test that bag?
- 23 A I would have to separate it and tell you to look for
24 sure. I am not sure, sir.
- 25 Q Okay. Now, you stated that there are no fingerprints

Paul M. Dorman
Redirect examination by Mr. Willingham

1 on any of the bags that you tested when you tested every
2 bag, including if there was another larger bag, you would
3 have tested that one as well.

4 A Yes, sir, if it was part of the evidence, yes, sir.

5 Q And no fingerprints.

6 A None, sir.

7 Q And you also testified earlier that this MAC-10, and
8 we won't take it out, but that MAC-10, that, what would you
9 say about the appearance of that MAC-10 right now? What is
10 its physical appearance?

11 A It's in very poor condition, rusty.

12 Q Was it like that whenever you received it on --

13 A It was, it was beginning to rust due to it had been in
14 water.

15 Q Was it like this when you received it?

16 A It's worse than what it was before.

17 Q And there were no fingerprints on that or any parts
18 thereof, including the bullets.

19 A That's correct, sir.

20 Q I believe that's all I have. Thank you, Mr. Dorman.

21 REDIRECT EXAMINATION

22 BY MR. WILLINGHAM

23 Q Mr. Dorman, what is a chain-of-custody form?

24 A A chain of custody is a form that they fill out
25 showing the evidence, and then each person that handles the

Paul M. Dorman
Redirect examination by Mr. Willingham

1 evidence should be signing the form and putting on the date
2 and the time.

3 Q So the chain-of-custody form indicates when a person
4 receives it and when they get rid of it.

5 A Yes, sir.

6 Q And was a chain of custody form done on State's
7 Exhibit No. 7?

8 A I believe it was, sir, but I don't have a copy of
9 that. All I have is the copy of where we did the
10 certificate of proof of chain of physical custody on this
11 one.

12 Q That's the chain-of-custody form, isn't it?

13 A Yes, sir, for the note.

14 Q I mean, it's not evidence. It's a chain-of-custody
15 form.

16 A It's not. It's a chain of custody, yes, sir.

17 Q And you signed that form at the bottom.

18 A Yes, sir, I did.

19 Q And you indicated on that form that you got the drugs
20 from who?

21 A They came from Shane Dedmon.

22 Q And what did you receive from Shane Dedmon according
23 to that chain of custody?

24 A One large zipper-lock bag with seven smaller baggies
25 containing suspected cocaine.

Paul M. Dorman
Redirect examination by Mr. Willingham

- 1 Q And what did you do with it after you were done?
- 2 A I returned it to Shane Dedmon.
- 3 Q Okay. As far as State's Exhibit No. 6, which is the
- 4 MAC-10, you got a chain-of-custody form on that too, don't
- 5 you?
- 6 A Yes, sir, I do.
- 7 Q And you sign it.
- 8 A Yes, sir.
- 9 Q That's your signature right there.
- 10 A Yes, sir, it is.
- 11 Q And that indicates that you got State's Exhibit No. 6
- 12 from who?
- 13 A No. 6. I received that one. That's a MAC-10.
- 14 Q Yes.
- 15 A MAC-10. I received that from Jason Yown.
- 16 Q And when?
- 17 A That was on the 29th.
- 18 Q And when did you get rid of it?
- 19 A On the 18th of January of '02.
- 20 Q Okay. And on State's Exhibit No. 5.
- 21 A Yes, sir.
- 22 Q There's a chain-of-custody form on that.
- 23 A Yes, sir.
- 24 Q You signed it.
- 25 A Yes, sir.

Paul M. Dorman
Redirect examination by Mr. Willingham

- 1 Q It's got your signature on it.
- 2 A Yes, sir.
- 3 Q Does it indicate when you received it?
- 4 A Received it from Shane Dedmon on 11/29/01.
- 5 Q And does that indicate what you did with it?
- 6 A I then returned it to Shane Dedmon on the 17th of
- 7 January of '02.
- 8 Q All right. So you got State's Exhibit No. 7 and No. 5
- 9 from Shane Dedmon.
- 10 A Yes, sir.
- 11 Q You got State's Exhibit No. 6 from Jason Yown.
- 12 A Yes, sir.
- 13 Q Jason Yown's prints on this?
- 14 A No, sir.
- 15 Q Anybody, any law enforcement, police officer's --
- 16 A None.
- 17 Q -- prints on this?
- 18 A No, sir.
- 19 Q Seven and 5. Got these from Shane Dedmon.
- 20 A Yes, sir.
- 21 Q Shane Dedmon's prints on this?
- 22 A No, sir.
- 23 Q Any law enforcement officer's prints?
- 24 A No, sir.
- 25 Q Anybody's prints that you could find?

Paul M. Dorman
Redirect examination by Mr. Willingham

1 A No, sir.

2 Q Does that mean nobody touched it?

3 A Does that mean nobody touched it, sir?

4 Q It doesn't mean that, does it?

5 A No, sir, no, it does not.

6 Q Thank you.

7 THE COURT: Thank you. You may step down.

8 Any objection to the witness being excused?

9 MR. GUTIERREZ: None, Your Honor.

10 MR. WARDER: I don't know, Your Honor. I don't know
11 whether I will need him or not because he's so out of
12 order. I don't know what the other testimony will be,
13 whether we will need to call him for something or not.

14 THE COURT: All right. Have a seat over there in the
15 chair. I will deal with that shortly.

16 Ladies and gentlemen, we are going to recess for the
17 evening.

18 Let me caution you that as you go home it's perfectly
19 understandable that you might have a spouse or a child or a
20 friend that wants to talk about what you're doing down
21 here. You're not permitted to do that. You cannot discuss
22 the case in any fashion whatsoever with any person
23 whatsoever.

24 You're only permitted to discuss the case when you are
25 actually involved in your jury deliberations, and of course

1 that won't be until all of the evidence has been received
2 and you have been instructed by me as to the law.

3 Now, after you've reached a decision in the case, you
4 can talk about it as much or as little as you would like to
5 as many or as few as you would like, but until you've
6 reached a decision you're not permitted to discuss the case
7 in any fashion whatsoever with any person whatsoever.

8 So with that, have a good evening. Please report
9 directly to your jury room at 9:30 in the morning; 9:30 in
10 the morning.

11 Officer Westmoreland will see you get escorted to the
12 parking lot.

13 (The following takes place outside the presence of the
14 jury.)

15 THE FOREPERSON: May we approach?

16 THE COURT: Yes, ma'am.

17 (Bench conference off the record with forelady and
18 juror after which they were excused from the courtroom.)

19 THE COURT: All right. Now, what about Mr. Dorman?

20 Mr. Warder, do you think you are going to need him
21 later on?

22 MR. WARDER: I don't know. It depends on what the
23 other officers testify.

24 THE COURT: What do you anticipate might happen that
25 you would need Mr. Dorman to come back?

1 MR. WARDER: Your Honor, at this time I can't
2 anticipate, because the testimony develops in such a
3 strange way I can't anticipate that.

4 THE COURT: Well, you developed it.

5 MR. WARDER: Yes, sir. In my mind, I don't know what
6 anybody else will say about the condition of that stuff
7 and --

8 THE COURT: Well, does it matter what they say about
9 the condition of it? I mean, we have Mr. Dorman's
10 preserved testimony as to what he stated the condition was.

11 MR. WARDER: Yes, sir.

12 At this time I could not tell Your Honor in all
13 honesty a scenario I will need him.

14 THE COURT: I didn't think you would be able to.

15 MR. WARDER: But, by the same token, you know, I am
16 trying to represent a fellow that's not here and I want --
17 you know, and I'm trying to think, and the whole
18 possibility of the testimony is out there.

19 THE COURT: Well, let's assume that your client was
20 here. How would that help us resolve this situation we're
21 in now?

22 MR. WARDER: Well, I don't know, because that's the
23 problem with taking the witnesses out of order. It's just
24 the nature of the beast when you take somebody that doesn't
25 fit in logically, and then it's harder to predict whether

1 or not you need that to develop some other line with that
2 person.

3 THE COURT: Okay. What's Mr. Dorman's situation?

4 MR. WILLINGHAM: Your Honor, he has got
5 responsibilities and duties back in Kentucky. That's why
6 we had to use him here today or yesterday.

7 I have talked to the D. A. up there to make sure that
8 we would not conflict with any cases they had going. Today
9 and yesterday was our only opportunity for him.

10 THE COURT: Okay. Well I'm going to release him but
11 with the understanding that if something develops that
12 requires his appearance, he will have to come back.

13 THE WITNESS: I just may as well stay.

14 THE COURT: Well, now, understand it may not develop.
15 And if it does, it may not develop until who knows when. I
16 don't know how long this case is going on.

17 MR. WILLINGHAM: We will talk to Mr. Dorman.

18 THE COURT: I mean, I can't envision that it's going
19 to be a problem, but, you know, I don't know everything
20 there is to know about the case, and Mr. Warder is
21 intimately familiar with the facts and circumstances, and
22 he's not certain that something might not develop.

23 So, I mean, I think the likelihood of Mr. Dorman being
24 needed as a result of some other witness' testimony is
25 minimal at worst. However, I won't know that. But if he

1 needs to get back, he will be able to go back. It just
2 might be that he would have to return for some reason, or
3 we agree to some sort of stipulation of fact.

4 MR. WILLINGHAM: Okay.

5 THE COURT: But I will leave that to you and
6 Mr. Dorman.

7 I mean, if he's not going to be able to return, then
8 he will have to stay. If he is able to return, then he is
9 permitted to leave.

10 MR. WILLINGHAM: Yes, sir.

11 THE COURT: Okay. Anything further?

12 MR. WARDER: What time does Your Honor want to start
13 in the morning?

14 THE COURT: 9:30, the same time I told the jury to be
15 back.

16 Court is in recess until 9:30.

17 END OF PROCEEDINGS DECEMBER 9, 2003

18

19

20

21

22

23

24

25

1 (Proceedings December 10, 2003)
2 (Tapes marked State's Exhibit No. 8 and 9 for
3 Identification; photograph marked State's Exhibit No. 10 for
4 Identification; 8-millimeter marked State's Exhibit No. 11
5 for Identification; tape marked State's Exhibit No. 12 for
6 Identification.)

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: All right. Let me address one matter for
10 the record.

11 This morning prior to us beginning I received a note
12 from the jury foreperson indicating that another juror,
13 Ms. Shaw, had indicated to the foreperson that she,
14 Ms. Shaw, believed that her husband was acquainted or
15 familiar with Mr. Leatherwood, one of the witnesses in the
16 case.

17 Ms. Shaw indicated to the foreperson that she had
18 discussed with her husband whether or not he knew
19 Mr. Leatherwood, and her husband indicated to her that he
20 had ridden motorcycles with a Bo Leatherwood.

21 Based upon that information, the foreperson sent me a
22 note indicating that Ms. Shaw's husband knew
23 Mr. Leatherwood.

24 So as a result of that I brought Ms. Shaw into
25 chambers and inquired of her as to that information, and

1 she said that it was true, that when she went home that the
2 name rung a bell with her and that she had asked her
3 husband if she (sic) knew Mr. Leatherwood, and her husband
4 said, yes, that he had ridden motorcycles with him in some
5 fashion.

6 As a result of her disregarding a court's instruction,
7 I propose that she be removed from any further
8 participation in the trial of this case.

9 Is there any objection to that from the state?

10 MS. THILL: No, sir, Your Honor.

11 THE COURT: From the defendant --

12 MR. WARDER: No, Your Honor.

13 THE COURT: -- Juan Rodriguez?

14 MR. WARDER: No, Your Honor.

15 THE COURT: Jorge Rodriguez?

16 MR. GUTIERREZ: None, Your Honor.

17 THE COURT: All right. After I removed Ms. Shaw, I
18 also had Ms. Thompson, the forelady, come to my chambers,
19 and I also inquired of her as to whether or not there was
20 any discussion about the connection with Leatherwood and
21 Shaw in the jury room, and she said the only discussion
22 was, was what I had stated, is that Ms. Shaw indicated that
23 her husband knew Mr. Leatherwood, but there was no other
24 discussion about the case or about any connection with
25 Mr. Leatherwood with this case or any other circumstances

1 of their connection other than the fact they rode the
2 motorcycles together.

3 So based upon that, I see no need to make any further
4 inquiry of the jury.

5 Does the state agree or disagree with that conclusion?

6 MS. THILL: The state agrees, Your Honor.

7 THE COURT: What about Juan Rodriguez?

8 MR. WARDER: Yes, Your Honor. We agree.

9 THE COURT: How about Jorge Rodriguez?

10 MR. GUTIERREZ: We do agree, Your Honor.

11 THE COURT: Okay. Any other matters to address before
12 the jury is brought in?

13 MR. WARDER: Yes, Your Honor.

14 Your Honor, there is a series of about, I don't know,
15 20 photographs that I have been furnished a copy of, and my
16 copy is pretty near legible.

17 Yesterday during cross-examination of our first
18 witness I noticed that the state had a crystal clear copy
19 of them, and of course I inquired whether I could use them
20 during cross-examination, and they told me that after they
21 put them in evidence we could use them.

22 They are really Brady material. There is some in
23 there that shows the handling of casings that I'm not going
24 to cross-examine him on.

25 I would ask that I either, one, be given a legible

1 copy that I can cross-examine from, or, two, the
2 photographs be placed in some common area of the court so
3 both sides can have access to them.

4 They are simply digitally printed, but I want access
5 to a photograph so I can hand it to a witness and so he can
6 really see what it's showing or portraying.

7 MR. WILLINGHAM: Judge, we will be glad to mark them
8 for identification, the color pictures, if he'd like to use
9 them.

10 THE COURT: Okay.

11 (Bench conference held off the record.)

12 MR. WARDER: Your Honor, I have got a couple of other
13 matters we need to address.

14 We have not been -- revealed the deal that the
15 original snitch was made, in other words, for
16 consideration, cooperation.

17 THE COURT: Who would be the original snitch?

18 MR. WARDER: The original snitch would be a Cecil
19 Gilliam, I think.

20 THE COURT: Okay.

21 MR. WARDER: He was working with the law enforcement.
22 He was the gentleman that actually got in the car and was
23 there at the time all of this happened.

24 And I was told by the solicitor yesterday that some
25 officer would tell me that, but I'm starting my second day

1 of trial and I have not been told.

2 I would like for them to disclose to me what charges
3 the witness, Cecil Gilliam, was working off, what benefit
4 he got from working with law enforcement, whether there
5 were charges that were dismissed or whether they were
6 contingent upon his testimony here today so that I can
7 properly cross-examine him when that opportunity arises.

8 So I would ask that they be required now to reveal to
9 me any promises, leniency, dismissal of charges or
10 substantial benefit he got for his cooperation.

11 THE COURT: All right. What's the state's position?

12 MR. WILLINGHAM: Judge, Cecil Gilliam was charged. He
13 worked off charges as a result of this.

14 He was charged with trafficking cocaine and
15 distribution of cocaine -- distribution of crack.. Those
16 charges have been subsequently dismissed.

17 THE COURT: He was charged with trafficking in
18 cocaine?

19 MR. WILLINGHAM: Yes, sir.

20 THE COURT: And distribution of crack cocaine?

21 MR. WILLINGHAM: Yes, sir, not arising out of this, of
22 course not arising out of this, incident. But earlier he
23 had those charges. He worked those off with the sheriff's
24 office.

25 THE COURT: And those charges were dismissed as a

1 result of cooperation in this case?

2 MR. WILLINGHAM: In this case and in other cases, yes,
3 sir.

4 MR. WARDER: Your Honor, I will need to know what
5 amounts and how many charges so that I can have a basis to
6 cross-examine them.

7 THE COURT: Well, that is the basis. I mean, they
8 just stated it.

9 MR. WARDER: Well, I think it would make some
10 difference whether or not he was trafficking in ten grams
11 of crack cocaine or trafficking in 400 grams.

12 THE COURT: Well, you would be able to ask him,
13 wouldn't you?

14 MR. WARDER: Well, I wouldn't be able to know whether
15 he told me the truth or not.

16 THE COURT: But you would, because if he doesn't tell
17 the truth, then the solicitor over there has an obligation
18 to reveal to you what the truth is, and then you'd have an
19 additional opportunity to examine the witness further.

20 The solicitor would have an obligation to reveal not
21 only to the Court but to defense counsel if a witness they
22 put on the witness stand fails to provide truthful
23 testimony during the testimony of a witness.

24 MR. WARDER: I understand that, Your Honor.

25 But my problem is if they would inadvertently miss

1 that testimony or forget to do that, I would never pick
2 that up until -- probably never. And so that's why I think
3 that Brady requires that I be given that in enough detail
4 so that I can make my own determination as to whether or
5 not that witness is telling the truth or lying so I will
6 know how to proceed.

7 THE COURT: Okay. Provide the defense counsel with
8 the substance and the extent of any consideration
9 Mr. Gilliam got for assisting the state in this case.

10 MR. WILLINGHAM: Your Honor, it is my understanding he
11 was charged with crack -- I misspoke earlier when I said
12 this. It was crack and crack cocaine.

13 THE COURT: Well, now, please understand I don't want
14 just an understanding. I need to know what it is.

15 MR. WILLINGHAM: Okay. I am going off his rap sheet,
16 Judge. If you will give me a minute, I can go pull his
17 original file.

18 THE COURT: Okay.

19 MR. WARDER: Your Honor, one more before we get to
20 where -- it's my understanding that the witness, Cecil
21 Gilliam, made a statement after this was given to the
22 police.

23 I understand, Your Honor, under the rules if that
24 statement contains no Brady material they would not be
25 required to turn that over to me until after the witness

1 testified.

2 Being it hasn't been, I assume it contains no Brady
3 material.

4 However, I would at this time move, Your Honor, to
5 require that the statement now be given to me before, even
6 though the rule provides, Your Honor, in the discretion of
7 the court it be ordered before that.

8 The reason is so I wouldn't have to ask for a break in
9 a proceeding when that witness testified so that I can
10 study the statement and so that I can talk it over with
11 co-counsel and so that I can be prepared to properly
12 cross-examine and protect my client's Fifth Amendment
13 rights. So I would ask that now at least that statement be
14 made available.

15 MR. WILLINGHAM: Your Honor, that statement has been
16 made available to him through discovery already.

17 THE COURT: Are you referring to some written
18 statement?

19 MR. WARDER: Yeah.

20 THE COURT: All right. I think Cecil Gilliam's
21 debriefing was in a written statement.

22 All right. Mr. Willingham says that that statement
23 has been provided to you.

24 MR. WARDER: Your Honor, co-counsel tells me it might
25 have been in a variety of stuff I signed for Monday on

1 another case. I am not sure. If co-counsel has it --

2 THE COURT: Well, if it was provided in another case,
3 that wouldn't be provided in this case.

4 MR. WARDER: Your Honor, I have what purports to be
5 the statement of 10/28, and I can use this copy just fine.

6 THE COURT: And you have had that since February?

7 MR. WARDER: I don't know about that. I didn't think
8 I had any and I kind of thoroughly went through the
9 material but --

10 THE COURT: You thoroughly went through it?

11 MR. WARDER: My material.

12 MR. GUTIERREZ: Your Honor, I was with Mr. Warder
13 after we were in His Honor's chambers Monday, and I believe
14 one of your, one of the solicitor's assistants, Christina,
15 had him sign for discovery. And I noticed that one of the
16 things that he signed for was discovery on this case that
17 Christina gave him. And that was Monday.

18 THE COURT: Well, I want y'all to be clear about this.

19 If the state has failed to properly comply with
20 discovery and it's detrimental to the preparation of the
21 trial of this case, then obviously I would consider
22 imposing sanctions for their failure to comply with the
23 requirements of discovery as well as consider a motion for
24 a continuance of the trial so that you can benefit from the
25 disclosure. But I don't know that unless you tell me. And

1 if you wait until we start trying this case, I won't know
2 anything about that. So if there is a discovery issue or a
3 discovery problem, you need to notify me of that in
4 advance.

5 MR. WARDER: As I read the rules, they don't have to
6 actually provide me with this until after that witness
7 testifies.

8 THE COURT: Well, unless, as you say, it contains
9 Brady material. Does it contain any Brady material, or do
10 you know?

11 MR. WARDER: I haven't been through this to be honest.

12 THE COURT: Okay. Well, so you have had it at least
13 since Monday?

14 MR. WILLINGHAM: Your Honor, he has had it since --

15 THE COURT: Well, I say at least since Monday.

16 MR. WILLINGHAM: Right. Juan Rodriguez, Judge, has
17 another case, P. W. I. D. meth. That's discovery he got on
18 Monday. The trafficking stuff he's had since February.

19 THE COURT: Do y'all keep track of when that discovery
20 is provided?

21 MR. WILLINGHAM: Yes, sir.

22 THE COURT: And that discovery in this case was
23 provided when?

24 MS. THILL: May I approach, Your Honor?

25 This is the discovery for this case and this charge.

1 This was the discovery provided to him on Monday at his
2 request regarding the P. W. I. D. meth charge.

3 THE COURT: Well, what I am saying is -- this is an
4 affidavit of who?

5 MS. THILL: Apparently someone from Mr. Warder's
6 office, although he is unclear who it would have been. But
7 that's signed by Jennifer Thurmond who is an administrative
8 assistant in our office. That individual was present when
9 she copied discovery in our open-file policy.

10 THE COURT: All right. And that voluntary statement
11 relates to who?

12 MS. THILL: That relates to all of the voluntary
13 statements by Jorge, Juan and Cecil and Robert.

14 THE COURT: Well, see, that's the problem. It says
15 all voluntary statements, but it doesn't tell us who they
16 are.. So we don't know what statements Mr. Warder received,
17 if any.

18 I mean, you know, if you had a list, if it was listed,
19 and I suggested that before, because this is an issue that
20 comes up frequently about discovery.

21 The state says we gave it; the defense says we didn't
22 get it; we've got an affidavit that says we gave it;
23 they've got an affidavit that says we received it. But we
24 don't know what was given or what was received.

25 I've suggested previously that you might want to make

1 a list of those items that were provided so then we would
2 know. We wouldn't have to have these discussions. We
3 would know what had been provided and what had been
4 received rather than, you know, the state and the defense
5 just arguing about what was given and what was not given.

6 MR. WARDER: Your Honor, as long as Bo is not going to
7 be called immediately, so I'd have a little more time,
8 there would be no prejudice to me even if I hadn't gotten
9 it, you know, so I can study it. It appears to contain no
10 Brady that I can --

11 THE COURT: Well, I don't know what order these
12 witnesses are going to be called. So I don't know if
13 Mr. Leatherwood is going to be the next witness, or
14 Mr. Gilliam or Mr. Dorman.

15 MS. THILL: At this time the state intends to call him
16 as our third witness this morning, Your Honor. I am sorry.
17 Cecil will be called -- is his name Cecil or Bo?

18 MR. WARDER: Cecil.

19 MS. THILL: Cecil will be called as our second
20 witness.

21 MR. WARDER: If they are going to get the
22 pictures I'll probably --

23 THE COURT: They what?

24 MR. WARDER: I am sorry. If they were going to go get
25 the record, get the file or the record, probably maybe by

1 that time I can have this statement digested.

2 THE COURT: Okay.

3 MR. WARDER: Your Honor, I am going to go down to the
4 clerk's office and get a copy of this statement.

5 (Pause.)

6 MR. WILLINGHAM: Your Honor, Cecil Gilliam was charged
7 with trafficking crack 28 to 100, P. W. I. D. cocaine, P.
8 W. I. D. marijuana. Those charges were dismissed March 20
9 of 2003.

10 THE COURT: Dismissed when?

11 MR. WILLINGHAM: March 20th of 2003.

12 Judge, I just asked the defense lawyers to make sure
13 this issue wouldn't come up with any other pieces of
14 evidence. We have, there are audio tapes and video tapes.
15 They are referenced in the material. There is a statement
16 transcribed. Mr. Warder I believe has seen those tapes.
17 Mr. Gutierrez says he has not. I don't know how to deal
18 with that issue. They were noted in the file that they
19 were available. He had every opportunity to see them. I
20 don't know what to do after that at that point.

21 THE COURT: Were they turned over through discovery?

22 MR. WILLINGHAM: They were made available. They were
23 not copied.

24 MR. WARDER: Your Honor, they were turned over to me,
25 but they were not turned over to my co-counsel. I have my

1 copies of those here with me today. Of course they are
2 quite detailed, so if you need to see them.

3 THE COURT: Why weren't they turned over?

4 Well, first, did you file a motion for discovery?

5 MR. GUTIERREZ: Yes, I did, Your Honor, and --

6 THE COURT: When was that filed?

7 MR. GUTIERREZ: Friday.

8 I had already looked. I had already looked over all
9 of this with the prior solicitor whenever he made those
10 available to me, but I wasn't told that -- I knew that
11 there was an audio tape. I did know there was a video
12 tape. I had already looked. I had already gone over
13 everything prior to, I believe it was, this summer with the
14 other solicitor. And I forget his name.

15 MR. WILLINGHAM: Russ Racine.

16 MR. GUTIERREZ: Russ Racine.

17 THE COURT: You didn't file a motion for discovery?

18 MR. GUTIERREZ: I was under the impression that I had
19 filed a motion, and then whenever I was reviewing this fall
20 for this trial I noticed that I didn't, and so I had
21 already gotten all of the stuff that I had wanted, but I
22 went ahead and filed my motion for discovery on Friday
23 because if the --

24 THE COURT: Well, let me ask you this.

25 If you got everything that you wanted, then why did

1 you file the motion for discovery on Friday?

2 MR. GUTIERREZ: Because I did not have -- I noticed I
3 did not have these interrogation forms right here. I had
4 looked through them, but I did not have copies of them.

5 THE COURT: Well, isn't that the reason that you
6 should have filed a motion for discovery in a timely
7 fashion --

8 MR. GUTIERREZ: Yes, sir.

9 THE COURT: -- so that if you don't have something,
10 then we can address? How am I to address their failure to
11 turn something over to you that you haven't requested until
12 Friday?

13 MR. GUTIERREZ: And, as a matter of fact, whenever I
14 got the -- I got some of the items on Friday and some of
15 them on Monday.

16 THE COURT: Okay. How long do y'all think it will
17 take for y'all to get ready to try this case that y'all
18 wanted to try this week?

19 I mean, everybody said they're ready to go, but nobody
20 seems to be ready. How long is it going to take for y'all
21 to get ready?

22 We will start with the state. When do y'all think
23 y'all will be ready?

24 MR. WILLINGHAM: Judge, with all due respect, we're
25 ready. I can't help it if he hadn't watched the video

1 tape.

2 THE COURT: Well, there are other issues besides that
3 video tape such as these statements that y'all say were
4 turned over that they say they didn't get. You don't have
5 any record that you turned it over except some document
6 that says we've turned over everything. Well, now, that
7 doesn't help me determine what has been disclosed and what
8 has not been disclosed.

9 MR. WILLINGHAM: Additionally, Your Honor, Ms. Thill
10 has talked to Mr. Warder, I believe, late last week and
11 told him we have an open-file policy. If he wanted to come
12 and look at anything that we have, he is welcome to do
13 that.

14 THE COURT: That, that's not, that's not -- I don't
15 consider that to be complying with the discovery.

16 When the defense makes a request for disclosure, I
17 don't think that's a proper compliance with discovery to
18 say, well, you can come up here or you can go to the
19 sheriff's department or the city police department and just
20 have a look.

21 That's not, that's not discovery. That's
22 you-hunt-for-it. That's not, that's not telling them what
23 you have and disclosing it. That's telling them to find
24 what you've got if they need it. That's not proper
25 discovery. I would never consider that to be compliance

1 with a discovery request.

2 Is it? Well, you come and look if you want to or hunt
3 around and see if you can find something.

4 I mean, what happens if they file a motion for
5 discovery and you say, well, you can come over here, and
6 then you file a motion for reciprocal discovery and they
7 say, well, you can come over to the office and look around
8 if you want to. Do you think that would be compliance with
9 a request for discovery?

10 MR. WILLINGHAM: But, Judge, that's not how it's
11 phrased to them.

12 We have a file. They are welcome to look at our file.
13 It's made available pursuant to the rules.

14 THE COURT: Okay. And how do we know what's in it?
15 You've got some sort of inventory of what's in there?

16 MR. WILLINGHAM: I've got a trial notebook that they
17 are welcome to look through, Judge. Everything that's in
18 the file is in my notebook. I don't know how to keep up
19 with it any other way. I mean, I --

20 THE COURT: Well, I go through this often, and, you
21 know, y'all say, well, we have got an open-file policy and
22 they can look at the file. Then, of course, there's no
23 inventory of what's in there.

24 The defense says, well, I looked in there and that
25 wasn't in there. And then you say, well, I thought it was

1 in there; and one time even found out that when the state
2 claimed it was in there, it wasn't in there, but it was in
3 the sheriff's-department file.

4 I don't understand it. I think y'all are going to
5 need to establish some sort -- I know y'all have got lots
6 of policies up there, but I think y'all need to establish
7 one about discovery and make a listing and an inventory of
8 what's disclosed and what you have in your open file so
9 that we can have a meaningful discussion about what might
10 have been disclosed and what might not have been disclosed.

11 Now, what about the video? Mr. Warder has apparently
12 seen it. Have you discussed that with Mr. Gutierrez?

13 I mean, Mr. Gutierrez, do we need to take a recess
14 for, you know, an hour or a day or a week so you can
15 benefit from the discovery that has been provided?

16 MR. WARDER: Your Honor, obviously I think we need to
17 do something, because certainly if these people are caught,
18 post conviction relief will be the next thing, the adequacy
19 of the representation. So I think if we could --

20 THE COURT: Well, that's why I suggest that we have
21 adequate representation in every case. That's what I think
22 we ought to have, whether they're here or not here.

23 Post conviction relief is always a potential. That's
24 why in every case, no matter what the charge, no matter
25 what the penalty, no matter what the circumstances, a

1 client should always be given adequate representation.

2 Surely, you'd agree with that, wouldn't you, Mr. Warder?

3 MR. WARDER: Yes, sir.

4 THE COURT: Okay.

5 MR. WARDER: And I think one of the issues that would
6 come up is that everybody doesn't see all of the video. I
7 think that would be the first thing on post conviction
8 relief before all of these on there. Videos of the scene,
9 certainly I can discuss with him some of the stuff, but for
10 us to work together, he needs to see all of that.

11 THE COURT: How long is the video?

12 OFFICER TAYLOR: Your Honor, I'm going to guess 25
13 minutes -- 20 to 25 minutes, maybe 15.

14 THE COURT: Okay. We are going to take a 30-minute
15 recess.

16 Y'all try to go through the discovery and benefit from
17 what's been provided, and let's see if we can't try this
18 case in an appropriate fashion when we get back.

19 Court is in recess for 30 minutes.

20 (Whereupon, a recess was taken.)

21 THE COURT: Can we bring the jury in now? Y'all are
22 not through?

23 MR. WARDER: These tapes haven't played yet.

24 THE COURT: They haven't been played yet?

25 MR. GUTIERREZ: Your Honor, I wasn't furnished any of

1 the audio tapes, as well as the video tape.

2 I have not seen the video tape. I am satisfied with
3 the video tape, or my observations of it, but now I have
4 been told that there is 45 minutes of wire tapes that --
5 and I understand -- are there more tapes that you plan to
6 introduce?

7 MR. WILLINGHAM: We have been through everything.
8 That tape has no reference to Jorge Rodriguez on it at all,
9 just like this video tape has no reference to your
10 defendant, Jorge Rodriguez, at all.

11 The other tape involved Jorge Rodriguez's statement.
12 It involves the redacted version of his statement.

13 There is a tape of Juan Rodriguez the state is not
14 introducing.

15 MR. GUTIERREZ: Well, wouldn't the tapes and video
16 tapes that don't have anything to do about Jorge Rodriguez
17 be exculpatory -- Jorge Rodriguez?

18 THE COURT: Bring the jury in, please.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Ladies and gentlemen, let me apologize for
22 the delay in having you brought back.

23 There have been a number of issues that have arisen
24 that were beyond my control. I believe I have them under
25 control now, but I didn't know that at the time, and that's

1 the reason I've had to deal with some issues.

2 We are going to need a little additional time before
3 we can get back to the trial of the case. We will be in a
4 position to continue with the trial at 2:30 this afternoon.
5 And you can rest assured at 2:30 this afternoon there will
6 be no additional waste of your time.

7 Also, let me address one issue. As you well know, or
8 you've learned by now, that one of your fellow jurors has
9 been excused from any further participation.

10 So, Mr. Hatchette, you were the alternate. You are
11 now one of the 12.

12 As you are excused, let me again caution the panel.
13 Apparently one misunderstood my instruction.

14 You may not discuss this case in any fashion
15 whatsoever with any person whatsoever until the case is
16 over and you have decided the verdict. There is to be no
17 discussion of any kind about this case with any person at
18 all.

19 If some issue comes up or if something arises that you
20 think needs to be addressed, you simply let the foreperson
21 know that you need to talk to me about it, and I will be
22 happy to discuss it with you. But you are not to discuss
23 this case with any juror or with any person at all, period.

24 Now, with that, I'm going to excuse you and ask that
25 you report back to your jury room at 2:30 this afternoon.

1 Again, as I asked you yesterday, when you leave the
2 courthouse, please leave the courthouse property directly
3 so that you won't be inadvertently exposed to some
4 discussions or matters that relate to the case.

5 When you come back, I simply ask that you please
6 report back to your jury room, and be there no later than
7 2:30 this afternoon. We will at that time continue with
8 the trial of this case without interruption.

9 Thank you again for your patience and understanding.
10 You are excused until 2:30 this afternoon.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Now, I want the lawyers in
14 this case to fulfill their obligations, and I want y'all to
15 sit down and talk to each other. I want y'all to comply
16 with discovery, and I want the discovery to be used or
17 reviewed, looked at, read, seen, heard.

18 There's no point in having discovery rules and methods
19 if nobody is going to comply with them and nobody is going
20 to take advantage of it.

21 So I want the lawyers to discuss the evidence in this
22 case. I want discovery to be complied with. And I want
23 the lawyers to be prepared to go forward with this case at
24 2:30 this afternoon.

25 If this case is not prepared to go forward at 2:30

1 this afternoon I will intend to impose appropriate
2 sanctions. Does everybody understand that?

3 MR. WILLINGHAM: Yes, sir.

4 MR. WARDER: Yes, sir.

5 THE COURT: Court is in recess until 2:30.

6 (Whereupon, a recess was taken.)

7 THE COURT: Prior to the or after the lunch recess
8 Juror Number 37, Mr. Dean, indicated that there was some
9 lady sitting in the courtroom that he knew from his
10 employment. He indicated he had worked with her five years
11 ago, I believe. Her name is to be Leatherwood.

12 He doesn't know if she's connected with the witness or
13 not. He said he does not know the witness. He does know
14 the lady seated in the courtroom.

15 He also indicated that while he does not know, while
16 he does know Ms. Leatherwood, he does not know the witness.
17 And the fact that he knows her if she is connected with the
18 witness would have no impact or any bearing upon his
19 decision in the case.

20 Anyone wish to address the issue?

21 MR. WARDER: Yes, sir. Your Honor, if it please the
22 Court.

23 I have spoken with Ms. Leatherwood about it. She
24 recognized the witness while he was there.

25 He worked with her at a place of employment where they

1 worked on small teams, seven or eight people, and he worked
2 with her for five years. During that time they talked
3 about all of their personal lives together as employees,
4 fellow events and things that happened in their lives.
5 Yesterday, when she was leaving the courthouse the witness
6 waved to her.

7 This case is a case that's predicated upon a
8 codefendant, Ms. Leatherwood's son, also named Leatherwood,
9 as testifying. And he will provide the principal
10 information. He will say that he was one that -- of the
11 three defendants, and this is what each of them did. His
12 testimony could be fairly categorized as the most important
13 witness in the case.

14 I do not believe that a man could work with a person's
15 mother for five years and have a very amicable relationship
16 with her without in some way it casting a very favorable
17 impression upon her son. And I think that that 5-year
18 relationship with Ms. Leatherwood would bolster her son's
19 credibility in this witness' eyes.

20 And even though he doesn't know her obvious prejudice
21 that feels, I think it could not help but prejudice my
22 client who will be accused by Mr. Leatherwood of all kinds
23 of bad conduct. And I think that it would be very
24 difficult for my client to get a fair trial that was not
25 affected by the favorable impression that he would have

1 over Ms. Leatherwood.

2 She tells me that they got along good and smoke all of
3 the time, and five years is a significant period of time to
4 work in close contact with somebody.

5 But the plant ultimately closed down, and they all
6 lost their jobs. But I think that that in itself would
7 grant, would create prejudice, and my client should be
8 granted a mistrial.

9 I point out the obvious that Your Honor were here --
10 and although this is the second day in this trial, in terms
11 of how far we've marched into this trial, we've marched a
12 very short distance.

13 THE COURT: Well, who would be responsible for that?

14 MR. WARDER: Your Honor, there has just been a number
15 of things come up, you know. I certainly don't think my
16 client's responsible.

17 THE COURT: Well, I don't think your client could be
18 responsible since he's failed to appear.

19 MR. WARDER: So, but I urge the Court out of an
20 abundance of precaution because of the seriousness that
21 he's charged with, and there is only one possible sentence
22 as I understand, 25 years, and I think that this panel
23 should be dismissed and we should draw another jury.

24 THE COURT: Does the state wish to be heard?

25 MR. WILLINGHAM: Just very briefly, Your Honor.

1 I believe that this witness was not unlike the other
2 witness who disregarded your instructions, was not trying
3 to mislead the Court whenever he did not stand in relation
4 to Bo Leatherwood or Robert Leatherwood. He's clearly
5 stated to the Court he didn't know him.

6 Whenever he did come, whenever that Ms. Leatherwood
7 was in the courtroom and put two and two together that
8 maybe the witness was related in some fashion or form and
9 brought to the Court's attention, I think that that shows
10 honesty and credibility on the part of that juror that when
11 he tells you that he, that that would not affect his
12 decision-making ability one way or the other, I believe
13 that credibility is something the Court would weigh in
14 determining whether to keep him. I think he should stay

15 THE COURT: What is the purpose of Ms. Leatherwood
16 being here? Has she got something to do with the case? Is
17 she going a witness or anything?

18 MR. WILLINGHAM: No. That's Bo Leatherwood's mama.

19 THE COURT: I understand. So he called her and told
20 her to come on down and watch him testify, or what?

21 MR. WILLINGHAM: No, sir. She was here yesterday when
22 he pled guilty. I don't know her motivation for being
23 here, but I would assume it's to see her son in court
24 because she's not going to see him for seven years in the
25 Department of Corrections, at least.

1 THE COURT: All right. Mr. Warder, I would be happy
2 to have Mr. Dean come in, and I'd be happy to question him
3 further about his ability to be fair based upon his
4 connection with Ms. Leatherwood if you would like for me
5 to, or I would be happy to do it in chambers if you'd
6 prefer.

7 MR. WARDER: Well, Your Honor, I think it will have to
8 be explored, so I guess we will have to do it on the
9 record.

10 THE COURT: Well, I was planning on doing it on the
11 record, whether it be in court in the presence of all of
12 the spectators or whether it be in chambers.

13 MR. WARDER: Your Honor, I have no preference as to
14 that, whatever Your Honor prefers.

15 THE COURT: Okay. Ask Mr. Dean to come in, please.

16 (The following takes place in the presence of the
17 juror.)

18 THE COURT: Mr. Dean, if you would, just have a seat
19 in that chair right there. I'm just going to ask you a few
20 questions.

21 You had indicated earlier that when we recessed for
22 lunch that you recognized someone in the courtroom that you
23 believe to be Ms. Leatherwood.

24 JUROR NUMBER 37: Yes.

25 THE COURT: And you had indicated to me in chambers

1 that you had known her based upon you having, you and she
2 having, been employed at the same location for some time.

3 JUROR NUMBER 37: That's correct.

4 THE COURT: And that that's how you knew who she was
5 but that you did not know her son who I understand now is
6 the person who is identified as a witness in this case.

7 JUROR NUMBER 37: Uh-huh.

8 THE COURT: That is Ms. Leatherwood's son and he will
9 be testifying during the course of this trial.

10 You indicated to me in chambers that you did not know
11 her son, Bo Leatherwood or Robert Leatherwood.

12 JUROR NUMBER 37: No. I do not.

13 THE COURT: Is that true? You do not?

14 JUROR NUMBER 37: No.

15 THE COURT: Have you ever met him so far as you know?

16 JUROR NUMBER 37: Never seen him as far as I know.

17 THE COURT: Okay. Have you ever had any conversations
18 with Ms. Leatherwood about her son or about what he does or
19 any activities he might be engaged in?

20 JUROR NUMBER 37: No. The last time I remember even
21 talking with Jackie was, like I say, over five years ago
22 when we worked together. So I don't recall anything, no.

23 THE COURT: All right. Have you seen Ms. Leatherwood
24 in the last five years so far as you recall?

25 JUROR NUMBER 37: No.

1 THE COURT: Have you had any conversations with her so
2 far as you recall?

3 JUROR NUMBER 37: No, sir.

4 THE COURT: And you've had none with her son.

5 JUROR NUMBER 37: No, sir.

6 THE COURT: All right. Understanding that you did
7 previously work with Ms. Leatherwood and the fact that her
8 son will be a witness during the trial of this case, would
9 your previous connection with Ms. Leatherwood in any way
10 have any impact upon your decision in the case?

11 JUROR NUMBER 37: No.

12 THE COURT: Would it in any way impact how you
13 assessed the credibility or the believability of the
14 witness Leatherwood?

15 JUROR NUMBER 37: No, because I don't know him, so,
16 no.

17 THE COURT: Would you have any tendency to believe the
18 testimony of Mr. Leatherwood based upon the fact that you
19 have previously been acquainted with his mother?

20 JUROR NUMBER 37: No.

21 THE COURT: Is there any question in your mind about
22 your ability to put aside that connection with
23 Ms. Leatherwood and assess the credibility of each witness
24 based upon the information received during the course of
25 this trial?

1 JUROR NUMBER 37: I would be fine to answer anything,
2 I mean, I wouldn't have any problem.

3 THE COURT: Are you certain that you have no question
4 about your ability to be fair and impartial --

5 JUROR NUMBER 37: No.

6 THE COURT: -- and to judge the credibility of the
7 testimony of Mr. Leatherwood just as you would any other
8 witness in the case?

9 JUROR NUMBER 37: Yeah, correct.

10 THE COURT: And you would not permit your prior
11 connection with Ms. Leatherwood to affect that decision.

12 JUROR NUMBER 37: No.

13 THE COURT: Okay. Thank you.

14 If you will, take Mr. Dean back to the jury room,
15 please.

16 (The following takes place outside the presence of the
17 juror.)

18 THE COURT: All right. I find based upon the
19 interview of the witness that the witness can be fair and
20 impartial. There's no reason to excuse him as a juror and
21 there's no reason to grant a mistrial in the case; and
22 therefore the defendant's request for a mistrial is denied.

23 Any other matters to address before the jury is
24 brought in by the state?

25 MS. THILL: None by the state, Your Honor.

David Taylor
Direct examination by Ms. Thill

1 THE COURT: By defendant Juan Rodriguez.

2 MR. WARDER: No, Your Honor.

3 THE COURT: By defendant Jorge Rodriguez?

4 MR. GUTIERREZ: No, Your Honor.

5 THE COURT: Bring the jury in, please.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: Good afternoon, ladies and gentlemen. Let
9 me thank you again for your patience and understanding.

10 As you know, when we were last here, at least during
11 the presentation of evidence, the state was in the midst of
12 their presentation. So we are going to continue with their
13 presentation of evidence this afternoon.

14 Ms. Thill.

15 MS. THILL: Thank you, Your Honor.

16 The state would like to call Investigator David
17 Taylor.

18 DAVID TAYLOR, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. THILL

21 Q If you could, please state your name for the record.

22 A I am Sergeant David Taylor with the sheriff's office.

23 Q And how many years have you been employed by the
24 sheriff's office?

25 A In this summer coming will be 17 years.

David Taylor
Direct examination by Ms. Thill

1 Q And as an employee of the sheriff's office what sort
2 of education and training have you received?

3 A I've attended the South Carolina Criminal Justice
4 Academy. I attended Spartanburg Methodist College and
5 various training throughout the years.

6 Q Okay. And what have your previous assignments with
7 the sheriff's office been?

8 A Over the last several years I've been assigned to the
9 narcotics unit as an investigator and now sergeant.

10 Q As a narcotics officer do you employ informants to buy
11 drugs on behalf of the sheriff's office?

12 A Yes, we do.

13 Q Okay. And do you know Cecil Gilliam?

14 A Yes, I do.

15 Q How do you know Cecil?

16 A I met Cecil a couple of years ago. He had been
17 involved in a prior arrest and had called wanting to help
18 the sheriff's office.

19 Q Okay. And at that time he became a confidential
20 informant?

21 A He did.

22 Q Okay. And what did he receive in exchange for being a
23 confidential informant?

24 A He received a reduction in his charges that he had
25 against him at that time.

David Taylor
Direct examination by Ms. Thill

1 Q Okay. Was he employed as a confidential informant in
2 this case?

3 A Yes, he was.

4 Q And how many other occasions was he employed as a
5 confidential informant by the sheriff's office?

6 A For the sheriff's office, none that I can think of.

7 Q Was he employed by other agencies as a confidential
8 informant?

9 A Yes, he was. As a result of his charges and wanting
10 help on those charges, he was employed by other agencies.

11 Q You said that he received a reduction in his charges.
12 Were there charges dismissed as a result of his work?

13 A That is correct.

14 Q Okay. And you said that Cecil was working as a
15 confidential informant on November the 28th.

16 A That is correct, yes, ma'am.

17 Q Okay. And what type of operation did you plan to run
18 that day?

19 A That day we was involved in a buy-bust situation.

20 Q Can you explain to the jury what a buy-bust is?

21 A Yes.

22 A buy-bust is basically where law enforcement officers
23 or somebody affiliated with the sheriff's office buys or
24 purchases or attempts to purchase drugs, and then they are
25 arrested at that time immediately.

David Taylor
Direct examination by Ms. Thill

1 Q Okay. And where did y'all meet on November the 28th?

2 A The initial meeting was, it started at the Li'L
3 Cricket at 221 and 295.

4 Q Did you meet with Cecil before going to the Li'L
5 Cricket?

6 A Yes.

7 Prior to meeting, that meeting, we did meet. He was
8 searched. His vehicle was searched. He was wired with a
9 listening device that I furnished from the sheriff's office
10 so we could hear what was going on.

11 Q Can you explain to the jury how you searched Cecil?

12 A I served Cecil basically like you would see a suspect
13 being searched.

14 I go up and down his legs. I search his waistband,
15 his crotch area, his chest, his arms, all the way around to
16 make sure no contraband is hidden on his person.

17 I then search his vehicle. I go under the seats, push
18 the seats down looking in the glove compartment, visors,
19 back seat, trunk area, all around the vehicle.

20 Q Okay. And after you searched him did you instruct him
21 what he was supposed to do during the buy-bust?

22 A He knew exactly what to do, the takedown signal to use
23 and everything.

24 Q Okay. And what was that takedown signal?

25 A The takedown signal was at that night, I advised him

David Taylor
Direct examination by Ms. Thill

1 to talk about his man in Charlotte; Charlotte being the key
2 word that was basically away from everything else that we
3 would be talking about.

4 Q And after you completed the searches, what happened
5 next?

6 A After I completed the searches Cecil was sent to the
7 Li'L Cricket at 221 and 295, this being after a phone call
8 was made to Robert Leatherwood.

9 Q And once he contacted Leatherwood, what happened?

10 A Actually the day before that he had --

11 MR. WARDER: Objection, Your Honor.

12 THE COURT: What's the ground?

13 MR. WARDER: Not responsive. The question was after
14 that --

15 THE COURT: I heard the question, but what -- it's not
16 responsive?

17 MR. WARDER: Yes, sir.

18 THE COURT: Maybe you better ask the question again.
19 I'm not sure it was not responsive.

20 Q After he spoke with Mr. Leatherwood, what happened?

21 A After he spoke with Mr. Leatherwood he went to the
22 Li'L Cricket at 295 and 221, which is in Spartanburg
23 County.

24 Q Okay. And were you at the Li'L Cricket?

25 A I was not at the Li'L Cricket. I was across the

David Taylor
Direct examination by Ms. Thill

1 street. There is a few little shotgun houses across the
2 street there.

3 Q What were you doing across the street?

4 A I was in what we call the wire vehicle, and I was
5 doing the audio and the video tape of the meeting there at
6 the Li'L Cricket.

7 Q I am going to show you what's been marked as State's
8 Exhibit No. 11 for identification purposes. Can you tell
9 me what that is?

10 A Yes, this is the video tape. We use a small, what
11 they call a 8-millimeter, small handheld camera. This is
12 what we use to do our tapes on.

13 This is the tape of that night. That's my
14 handwriting. Leatherwood and Juan and Jorge is written
15 there that I wrote on there.

16 Q Okay. And has this tape been in your custody ever
17 since that evening?

18 A Yes, it has.

19 Q I am going to show you what's been marked as State's
20 Exhibit No. 9. Can you tell me what that is?

21 A This is the tape that we made off of this tape so that
22 we could show it in a court.

23 Q Okay. And why did you have to make a copy?

24 A Number one, you guys don't have 8-millimeter. Number
25 two, there's other buys that's on the back of this tape

David Taylor
Direct examination by Ms. Thill

1 because we didn't have another tape available that night.

2 Q And since this copy has been made has it been in your
3 custody?

4 A This copy has not, no.

5 MS. THILL: At this time I would like to move State's
6 Exhibit No. 8 into evidence..

7 MR. WARDER: Your Honor, the defendant Juan Rodriguez
8 has an objection to Exhibit No. 8.

9 THE COURT: All right. Let me see y'all just a
10 minute.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: Ladies and gentlemen, I have got one
14 matter to address outside of your presence.

15 So please go to your jury room. Don't talk about the
16 case. I will bring you back in just a moment.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. As I understand it, Mr.
20 Warder, you and Mr. Gutierrez have an objection to the tape
21 being played for the benefit of the jury. The objection is
22 not based upon an improper foundation but is based upon
23 there is inadmissible contained evidence on the tape.

24 MR. WARDER: That's correct, Your Honor.

25 THE COURT: State for the record what you believe to

David Taylor
Direct examination by Ms. Thill

1 be inadmissible.

2 MR. WARDER: Your Honor, the tape is apparently made
3 in a police car that is across from the location they're
4 surveilling.

5 Throughout the tape the officer then talks to other
6 people on some radio and describes what he is seeing, and
7 one case he says there's no dope in that car, let them go.
8 And then he speculates whether or not they have other cars,
9 people out riding around and things like that; things that
10 are highly prejudicial, there's no foundation for and
11 offers opinions, conclusions. And it's inadmissible
12 because of that, and that's the basis of our objection.

13 THE COURT: All right. Ms. Thill or Mr. Willingham.
14 Who is going to handle it?

15 MS. THILL: Your Honor, the state's position would be
16 that Mr. Taylor is simply expressing to other officers what
17 is going on at the scene and that he is not making any
18 commentary based on what's happening in the vehicles. He
19 is just letting the other officers know what is going on of
20 what he observed occurring, and I don't believe that he
21 makes any prejudicial statement against Juan or Jorge
22 Rodriguez.

23 THE COURT: Well, I don't have any difficulty. I
24 don't really have a difficulty with what the officer
25 observed was happening, but, now, y'all have all seen the

David Taylor
Direct examination by Ms. Thill

1 video.

2 MR. WARDER: Yes, sir.

3 MS. THILL: Yes, sir.

4 THE COURT: Well, Mr. Warder says that on the video
5 are contained statements by this witness as to what he
6 perceives or believes is going on in a vehicle and not just
7 what -- not just that the witness is observing somebody
8 doing something, but he's also describing what is occurring
9 or what they are doing that's not apparent from just an
10 observation.

11 For instance, Mr. Warder said at one point the officer
12 says that they don't have any dope in the vehicle. Well,
13 he obviously could not know that from just sitting in a car
14 and looking at a car.

15 MS. THILL: Correct, Your Honor.

16 I believe that portion would come from the fact that
17 he's also at the same time overhearing the wire that was
18 placed on the confidential informant. And I believe the
19 scene that Mr. Warder was referring to is when the
20 defendant, Bo Leatherwood, I am sorry, the codefendant, Bo
21 Leatherwood, and the defendant, Juan Rodriguez, are
22 departing from the Li'L Cricket.

23 Mr. Taylor instructs the units not to move in on the
24 vehicle and to let them leave the scene because there's no
25 drugs in the vehicle based on what he heard on the wire and

David Taylor
Direct examination by Ms. Thill

1 observed.

2 THE COURT: Well, what did he hear on the wire?

3 MS. THILL: I believe that he heard on the wire that
4 there was a disagreement about the fact that Cecil wanted
5 to see the drugs. Juan wanted to see the money. There was
6 some disagreement about that taking place.

7 THE COURT: So you are saying that he's testifying as
8 to what he heard based upon the conversation between Cecil
9 Gilliam and Juan Rodriguez?

10 MS. THILL: And Bo Leatherwood.

11 THE COURT: Well, and/or Bo Leatherwood.

12 Okay. Mr. Warder, do you agree or disagree with that
13 assessment?

14 MR. WARDER: I certainly disagree that my client's
15 voice is even on there. There is no statements by my
16 client. There might be some hearsay they are trying to get
17 in.

18 THE COURT: The voice is not on the video. She is
19 saying that the witness had Mr. Leatherwood wired or Mr.
20 Gilliam wired.

21 MS. THILL: Mr. Gilliam.

22 THE COURT: Mr. Gilliam wired, and that he's listening
23 to the conversation between your client and Mr. Gilliam and
24 Mr. Leatherwood.

25 MR. WARDER: Your Honor, at best he is giving his

David Taylor
Direct examination by Ms. Thill

1 impressions of what that conversation is about.

2 He's certainly not talking -- there's no conversation.

3 And I don't think that his interpretation, if that's what
4 you -- but it is much more than that.

5 Even if it wasn't -- his interpretation of that
6 conversation is not the issue. What was actually said is
7 the only issue. And if there is a tape, they must be
8 putting in the tape of the wire not --

9 THE COURT: Well, I don't necessarily disagree with
10 that, but surely you're not telling me that this police
11 officer can't testify as to what he heard your client
12 and/or other codefendants involved in the transaction were
13 saying during the course of that transaction.

14 MR. WARDER: If he can say exactly what they said. I
15 don't think he can -- I don't think he give the meaning.

16 THE COURT: Well, I don't disagree with that. He
17 can't say what he thinks they said. He can say what they
18 did say.

19 MR. WARDER: That's right. He can say so and so said
20 whatever they said, or he can say someone said, but he
21 can't say his conclusions as to whether or not there were
22 other cars out there or whether or not, I mean, you know,
23 or whether or not there's dope in the car.

24 THE COURT: Well, if he is basing it upon the
25 conversations he has heard, he can.

David Taylor
Direct examination by Ms. Thill

1 MR. WARDER: No, sir. I don't believe. And I
2 respectfully submit that this officer's interpretation of
3 what people are talking about and what the words they say
4 relate to, and without some basis of laying specifically
5 what those words are, it is inadmissible.

6 THE COURT: Okay. The state has represented to the
7 Court that this witness is basing any statement upon a wire
8 transmission that he heard containing the voices of Cecil
9 Gilliam, Robert Leatherwood and Juan Rodriguez. And were
10 those transmissions audio-taped?

11 MR. WILLINGHAM: You hear that conversation, at least
12 Cecil's part of it, on this video tape.

13 THE COURT: I understand.

14 Well, I understood that this witness heard the other
15 conversations too or heard other statements of the two
16 other individuals.

17 MR. WILLINGHAM: Can we ask the witness, Judge? I
18 don't want to misrepresent anything which I understand.

19 THE COURT: You don't know?

20 MR. WILLINGHAM: Yes, sir. It's my understanding, but
21 I don't want Mr. Taylor to say something different.

22 THE COURT: Well, he is a witness now. You're
23 offering evidence. If you don't know what the foundation
24 of it is, you will just have to take that chance, I guess.
25 But what you have represented to me, and I will ask you

David Taylor
Direct examination by Ms. Thill

1 again, is that audio tape in existence?

2 MR. WILLINGHAM: Yes, sir.

3 THE COURT: Okay. So there is an audio tape of those
4 conversations.

5 MR. WILLINGHAM: Yes, sir.

6 THE COURT: And this witness was listening to a
7 conversation between Gilliam, Leatherwood and Rodriguez
8 that he is referencing on this audio.

9 MR. WILLINGHAM: Yes, sir.

10 THE COURT: All right. With that understanding, the
11 objection is overruled.

12 And, of course, if that's not the case, we will have
13 to deal with it again, and I will.

14 MR. WILLINGHAM: Yes, sir.

15 THE COURT: Okay. Bring the jury back.

16 Jorge Rodriguez joins in the objections and statements
17 of Mr. Warder?

18 MR. GUTIERREZ: Yes, sir.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Ms. Thill.

22 MS. THILL: Thank you, Your Honor.

23 BY MS. THILL:

24 Q We're going to go back to when you said that you were
25 stationed outside the Li'L Cricket. What happened while

David Taylor
Direct examination by Ms. Thill

1 you were at the Li'L Cricket?

2 A We arrived first. Cecil Gilliam pulls in, backs in.
3 I'm setting across the street in one of our undercover
4 vehicles, and I began audio and video-taping at that time.

5 Q Okay. And during that time what did you observe?

6 A Basically, Cecil was just sitting there. Once I saw
7 a, the defendants pull in, I started video-taping at that
8 time.

9 Q Okay. And were you able to hear the conversation that
10 was going on?

11 A I could hear the conversation that was strongly on
12 Cecil's side, but you can vaguely hear the other, the co --
13 Mr. Leatherwood talking to Cecil.

14 Q Okay. And what happened once Cecil arrived?

15 A Once Cecil arrives, Mr. Leatherwood and Juan Rodriguez
16 pulled in. A conversation ensued between the two.

17 I never heard the takedown word from Cecil, which
18 indicated to me it was not time for the takedown to happen
19 and that he had not seen any, any drugs.

20 Not hearing that takedown word, I let the officers
21 know in the area it was not that time yet, it was not time
22 to do the deal.

23 Q Okay. And then what happened next?

24 A What happened next after the conversation back and
25 forth, Mr. Leatherwood and Juan Rodriguez pulls out and

David Taylor

Direct examination by Ms. Thill.

1 leaves the area, last seen headed down toward Woodruff.

2 Q I'm going to show you what's been marked as State's
3 Exhibit No. 9. I believe you stated before that this was a
4 video tape that was made from the 8-millimeter.

5 A Made from the copy, that's correct.

6 Q Okay. Who made the copy?

7 A I think it was Tank Davis upstairs in the solicitor's
8 office who made the copy of this one, this being in my
9 possession.

10 Q Have you watched this video?

11 A I have.

12 Q When did you watch it?

13 A As early as today, as late.

14 Q What's on this video tape? Does it accurately and
15 fairly represent what happened on the day in question?

16 A That is correct. It does.

17 Q Is there anything that's on this tape that we've not
18 discussed so far?

19 A No. That's the meeting at the Li'L Cricket.

20 Q Thank you.

21 MS. THILL: At this time I would like to admit State's
22 Exhibit No. 9 into evidence.

23 THE COURT: It's admitted over objection.

24 MS. THILL: At this time I would like to publish it to
25 the jury.

David Taylor
Direct examination by Ms. Thill

1 THE COURT: You may.

2 (Tape marked State's Exhibit No. 9.)

3 (Whereupon, the tape was played for the jury.)

4 Q Mr. Taylor, on that video we saw two individual
5 vehicles, one facing away and one facing towards. Can you
6 tell us what vehicle Cecil was in and describe it for the
7 jury?

8 A Sure.

9 Cecil was in the, I believe it's a Cadillac. He is
10 the one that was backed in. He actually is the first one
11 you see starting to get out of the car. He's a tall black
12 male with a bald head. He starts to get out of the car.
13 Then he steps back in and sits back in his car. He is
14 actually facing me.

15 Q Okay. So when we were looking at the screen, which
16 vehicle was that?

17 A It would be the one on the right, and the one on the
18 left pulls in, pulls on his driver's side.

19 Q So your right --

20 A Driver's side to driver's side.

21 Q So your right.

22 A My, would be my, yeah, my right. I'm sorry.

23 Q You're right. Okay.

24 A I'm confused from looking at it.

25 Q After the suspect vehicle left, what happened next?

David Taylor
Direct examination by Ms. Thill.

1 A At that point we went back to the, there is a fire
2 station or fire house or something there on 295 about a
3 mile and a half below where we are at.

4 We meet behind there and regroup. I check Cecil.
5 Cecil has nothing on him. I redo the recording device. I
6 have to change the batteries because it had been on for a
7 little bit. I just wanted to make sure we had fresh
8 batteries. Redo that again. Again search him, search his
9 vehicle and send him to the next location.

10 Q Okay. Where was the next location?

11 A After a phone call was made we went to the church. I
12 think it's on Old Switzer Road. It's down at Switzer, what
13 I call Switzer crossing towards Woodruff on Highway 221,
14 which is in Spartanburg County.

15 Q Okay. Is there a surveillance video at the church?

16 A No, there is not.

17 Q Why not?

18 A We had to sit so far away from this location, there's
19 like six lanes at this point. I think there's a turning
20 lane. There's a 4-lane highway and there's a turning lane
21 and stuff, and it makes it real wide.

22 We have to actually sit across 221, and you are just
23 about out of listening range on the wire just to stay out
24 of sight to the point that we could not video. There is no
25 way.

David Taylor
Direct examination by Ms. Thill

1 Q Okay. After you got to the church at Old Switzer,
2 what happened then?

3 A Once we got to the church at Old Switzer, again, Cecil
4 pulls in first. We follow him down 221. He backs in.
5 We're sitting kind of up on a grade. You can actually look
6 down on the church a little ways, and we're waiting for
7 Mr. Leatherwood and Juan to pull in.

8 Q Okay. And then what happened next?

9 A The vehicle pulls in. Cecil gets out of the car, gets
10 in the vehicle with them.

11 I hear the takedown word of Charlotte. At that point
12 we move agents in and we go onto the property of the
13 church.

14 Q Okay. And after that happened, what happened next
15 with Cecil?

16 A As we are pulling into the church Cecil -- I see Cecil
17 getting out of the car. I pull the vehicle, our vehicle,
18 in, which is a large van.

19 We get out of the car. We are adjusting our raid --
20 raid gear. I get out of the car, out of the vehicle.

21 At this point Mr. Leatherwood had backed the vehicle
22 up and was started headed out in front of the church.
23 There is like a little horseshoe in front of this church.
24 He had backed up and was headed that way. I was hollering
25 sheriff's office, stop, that kind of stuff.

David Taylor
Direct examination by Ms. Thill

1 Q Okay. And after they left the scene, what did you do
2 next?

3 A As they were leaving the scene, I observed a white
4 male driver and two Hispanic males on the passenger side of
5 this vehicle hanging out of the vehicle.

6 Q Okay.

7 A They go across the church parking lot. At that point
8 I see Investigator Rogers who was in the Blazer, our
9 Blazer, pull behind the vehicle, and a chase ensued there.

10 I secured Cecil at that time. I again patted him down
11 and searched him for any, anything. He has nothing on him.
12 And I took a statement at that point, still listening to
13 the radio of the chase that had started.

14 Q Okay. Did you locate or recover any of the evidence
15 from the scene?

16 A I did not. I did see the powder cocaine in it's
17 original -- in the place where it was located.

18 Q Okay. First I'm going to show you what's been marked
19 as State's Exhibit 6, 7 and 8.

20 A Uh-huh.

21 Q Can you tell me what this is?

22 A This is a MAC-10, I believe it is, that was located by
23 Jason Yown.

24 MR. WARDER: Objection.

25 THE COURT: Is that based upon personal knowledge or

David Taylor
Direct examination by Ms. Thill

1 information received from some other person?

2 THE WITNESS: Your Honor, that's personal knowledge,
3 referring back to the evidence sheet, Your Honor.

4 THE COURT: No. I mean, did you observe the recovery?

5 THE WITNESS: No, sir, I did not.

6 THE COURT: I sustain the objection.

7 Q Were these three items ever in your custody?

8 A Yes, they was.

9 Q When were they in your custody?

10 A Monday the 8th. I believe it's Monday. I signed them
11 out from evidence to bring it over for court purposes on
12 Monday.

13 Q And what did you do with them after Monday?

14 A After Monday, Monday afternoon, I returned them to the
15 sheriff's office and put them back into evidence until
16 today.

17 Q Okay. And what --

18 A I apologize. Yesterday, the 9th.

19 Q Did you have them in your custody again?

20 A I did. I signed them back out on the 9th and brought
21 them to court for court purposes.

22 Q Okay. I'm going to show you what's been marked as
23 Court's Exhibits 5-A, B, C, D and E. Were these items ever
24 in your custody?

25 A Yes, they was.

David Taylor
Direct examination by Ms. Thill

1 Q When?

2 A Monday. I signed them out to come to court
3 appearances. I signed them back in Monday afternoon. I
4 again signed them out on Tuesday morning to bring to court
5 yesterday.

6 Q When you say you signed them in and out, you mean
7 where?

8 A To the evidence office that is located at the
9 sheriff's office.

10 Q I am going to show you what's been marked as State's
11 Exhibit No. 7. Has this item ever been in your custody?

12 A Yes, it has.

13 Q When?

14 A I signed it again out on Monday the 8th and brought it
15 to court and took it back Monday afternoon, and then
16 brought it back Tuesday morning after signing it back out
17 from evidence.

18 Q Let me show you what's been marked as State's Exhibit
19 No. 12. Do you recognize that?

20 A I do.

21 Q What is it?

22 A This is the audio of the wire tape on the night in
23 question.

24 Q Okay. Has this ever been in your custody?

25 A Yes, it has.

David Taylor
Direct examination by Ms. Thill

1 Q When?

2 A The entire time since the incident.

3 Q I'm going to show you what's been marked -- I'm going
4 to show you what's been marked as State's Exhibit No. 3.
5 Do you recognize that item?

6 A I do.

7 Q Has that been in your custody?

8 A Yes, it has.

9 Q What is it?

10 A This is an audio tape of the interview that Stephen
11 Henderson did at the sheriff's office with George
12 Rodriguez, or Jorge.

13 Q And when was it in your custody?

14 A I retrieved it the night in question. It has been in
15 my custody ever since.

16 MS. THILL: I beg the Court's indulgence.

17 (Pause.)

18 Q I'm sorry. Apparently I misspoke. On this box here,
19 these are items 6-A, B and C. Have these been in your
20 custody?

21 A They have.

22 Q And what's this?

23 A That's a gun that I picked up from evidence on Monday.

24 Q Okay. And what did you do with it?

25 A I brought it to court on Monday. I again took it back

David Taylor
Cross-examination by Mr. Warder

1 Monday afternoon and signed it back in, then signed it back
2 out Tuesday morning to bring to court.

3 MS. THILL: I have no further questions.

4 Q Please answer any questions Mr. Warder or Mr.
5 Gutierrez may have for you.

6 CROSS-EXAMINATION

7 BY MR. WARDER

8 Q Did you tell me that one of those tapes had been in
9 your possession for the last two years?

10 A Yes, sir.

11 Q And where do you keep that at?

12 A I have a file cabinet at the sheriff's office that I
13 have a lock and key for.

14 Q Ordinary file cabinet?

15 A Yes, sir.

16 Q And who has access to that?

17 A Just me.

18 Q And different officers have different drawers, or is
19 it your whole file cabinet?

20 A This is mine, my personal.

21 Q A personal file cabinet?

22 A No, sir. It is the sheriff's office vault, but it's
23 my person. I have my own key. No extra key for it.

24 Q And no one has an extra key?

25 A No, sir.

David Taylor
Cross-examination by Mr. Warder

1 Q How do you know that?

2 A I was actually there when they purchased this file
3 cabinet.

4 Q Come with one key, or two?

5 A Came with two keys.

6 Q You have them both?

7 A Yes, sir, I do.

8 Q Got them with you?

9 A Have I got them with me? I don't think so. I will
10 have to check. Yes, sir. I believe that's it right there.

11 Q You carry it around with you?

12 A Yes, sir, on my key ring. This is my personal key
13 ring.

14 Q Where do you leave the other one?

15 A Where do I leave the other one? I would say in my
16 desk drawer. I'd have to go back to my desk. It's in my
17 desk drawer, locked up in my desk drawer.

18 Q Desk locked?

19 A Yes, sir.

20 Q Same key lock your desk?

21 A No, sir.

22 Q That night when you were out there, what time was it?

23 A At which time, sir?

24 Q When you were out at the Li'L Cricket.

25 A That was about nine o'clock, somewhere right in there,

David Taylor
Cross-examination by Mr. Warder

1 9:20.

2 Q Okay. And what time did you leave the Li'L Cricket?

3 A I am guessing 20 minutes later.

4 Q You weren't down there when Mr. Leatherwood's car was
5 stopped.

6 A No, sir, I was not.

7 Q And I believe those cars were pulled in at the Li'L
8 Cricket so that Mr. Leatherwood's window was right next to
9 Mr. Childers' window.

10 A No, sir.

11 Actually, I had asked Cecil just to back in. That way
12 I can keep my eyes on him and see him.

13 Q Okay.

14 A That's normally the way we do, do our deals.

15 Q Were there drivers' sides facing each other?

16 A They were, yes, sir.

17 Q Side to side?

18 A Yes, sir. That is correct.

19 Q So wouldn't it be fair that if Mr. Childers' had
20 rolled down his driver's side window --

21 A Mister who, sir?

22 Q I am sorry. Mr. -- well, the gentleman that would be
23 working for you was Mr. --

24 A Mr. Gilliam.

25 Q -- Gilliam.

David Taylor
Cross-examination by Mr. Warder

1 A Yes, sir.

2 Q If Mr. Gilliam had rolled down his window, he would be
3 right next to Mr. Leatherwood.

4 A Yes, he would, yes, sir.

5 Q They could have talked there.

6 A Yes, sir.

7 Q And at that time you didn't know who Juan Rodriguez
8 was, did you?

9 A No, sir, not at that time, I didn't.

10 Q Okay. He was just somebody that was riding along and
11 showed up you weren't expecting.

12 A No, sir.

13 I had heard the name prior to this. I didn't know
14 that's who it was at this time.

15 Q Well, were you expecting Juan Rodriguez?

16 A I can't say that, no, sir.

17 Q And then the answer to my prior question when I said
18 that he was just someone that showed up that you weren't
19 expecting, the correct answer would have been that's true,
20 yes.

21 A I wouldn't say I was expecting him. No, sir.

22 Q You were not expecting him.

23 A I wouldn't say I was expecting him. No, sir.

24 Q And those items that you testified, you just picked
25 them up from the evidence room and brought them to the

David Taylor
Cross-examination by Mr. Gutierrez

1 courthouse. Is that what you are talking about?

2 A Yes, sir. That is correct.

3 Q And after we were done yesterday, you carried them
4 back to the courthouse.

5 A No, sir.

6 On Monday I took them back and turned them into
7 evidence because they was not I. D.'d or anything. I
8 brought them back yesterday for court reasons.

9 Q Okay. Thank you.

10 MR. GUTIERREZ: Your Honor, if it pleases the Court.

11 CROSS-EXAMINATION

12 BY MR. GUTIERREZ

13 Q Officer Taylor, you stated that you searched Cecil
14 Gilliam.

15 A Yes, sir. I did.

16 Q When did you search him?

17 A I searched him prior to him going to the Li'L Cricket.

18 Q Did you search the vehicle?

19 A Yes, I did.

20 Q Okay. You didn't state that earlier. Is there a
21 reason why you didn't state that?

22 A I did state that earlier.

23 Q Did you search his vehicle prior to him going to the
24 church?

25 A Yes, I did.

David Taylor
Cross-examination by Mr. Gutierrez

1 Q And did you search him prior to going to the church?

2 A Yes, sir. Before and after, I did.

3 Q Now, was Jorge Rodriguez anywhere around the Li'L
4 Cricket or the Switzer Road Church?

5 A No, sir. He was not around the Li'L Cricket.

6 Q Okay. Was he -- did you expect Jorge Rodriguez at the
7 Li'L Cricket with Bo Leatherwood or Robert Leatherwood?

8 A No, sir, during --

9 THE WITNESS: Your Honor, I'm hesitant to answer this
10 question because it's going to be something that I've heard
11 via the phone call.

12 THE COURT: If it is responsive to his question, you
13 may respond to it.

14 A Can you repeat the question, sir?

15 Q Let me just change the question.

16 Let's talk about Cecil Gilliam.

17 A Yes, sir.

18 Q Can you tell me again how you got to meet Cecil
19 Gilliam? I believe it was because he had been arrested.

20 A Yes, sir.

21 He had been arrested by the sheriff's office for some
22 prior drug charges prior to this date.

23 Q Do you know what those charges were?

24 A Trafficking cocaine or crack. I am not exactly sure
25 of that. Another officer actually made that charge. And

David Taylor
Cross-examination by Mr. Gutierrez

1 that's really the only one I know about that sticks out.

2 Q Do you know the amount of crack he was charged with
3 trafficking?

4 A I believe it was 28 to a hundred grams.

5 Q Do you know exactly how much it was?

6 A I do not, no, sir.

7 Q Do you know of any other charges he was charged with
8 in addition to the trafficking crack cocaine?

9 A I think there might have been a possession of crack or
10 possession of marijuana or something like that. I do not
11 recall that, that exact charge.

12 Q Would it refresh your memory if I told that you he was
13 charged with trafficking crack cocaine 70-something grams,
14 possession with intent to distribute cocaine, possession
15 with intent to distribute marijuana? Would that refresh
16 your memory?

17 A That sounds accurate, but I would be guessing if I
18 said that was true.

19 Q And I believe you used the phrase or used the term
20 employed. You employed this man?

21 A No, sir. I didn't employee. Ms. Thill used the
22 phrase.

23 Q My -- beg your pardon then.

24 What exactly is the relationship between you and Cecil
25 Gilliam or the sheriff's department and Cecil Gilliam?

David Taylor
Redirect examination by Ms. Thill

1 A Cecil is what we calling a working informant. I would
2 refer to him as a working informant.

3 Q A working informant?

4 A Yes, sir.

5 Q And he is working off all of these charges, drug
6 charges, including the trafficking crack, possession with
7 intent to distribute cocaine, possession with intent to
8 distribute marijuana. He is working those off.

9 A That is correct.

10 Q Okay. That's all I have. Thank you, Officer Taylor.

11 A Uh-huh.

12 MS. THILL: I just have a few more questions.

13 REDIRECT EXAMINATION

14 BY MS. THILL

15 Q When you use working or confidential informants, what
16 sort of methods are there for dealing with those people as
17 far as in exchange for the work they do for the sheriff's
18 office?

19 A All of the work that the informants do for the
20 sheriff's office is forwarded to the solicitor's office for
21 consideration in this case, which it was in this case.
22 And, as I stated earlier to Solicitor Thill, he had worked
23 for other agencies as well for consideration.

24 Q So it's not unusual for a working informant to work
25 off other drug charges.

Cecil Gilliam

Direct examination by Mr. Willingham

1 A Not at all. That happens. That is a very common
2 practice.

3 Q Are there other cases where informants are paid for
4 the work they do for the sheriff's office?

5 A There is.

6 Q Thank you.

7 MS. THILL: I have no further questions.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 MR. WILLINGHAM: Call Cecil Gilliam, Your Honor.

11 CECIL GILLIAM, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. WILLINGHAM

14 Q Tell the jury who you are.

15 A Cecil Gilliam.

16 Q You're going to have to speak up, Mr. Gilliam.

17 A Cecil Gilliam.

18 Q Mr. Gilliam, you were working for the sheriff's office
19 back in November of 2001.

20 A Yes, sir.

21 Q What were you doing for them?

22 A I was helping them out with a case, well, I'm a C. I.
23 informant or whatever you want to call it.

24 Q You were an informant.

25 A Yes, sir.

Cecil Gilliam

Direct examination by Mr. Willingham

1 Q Okay.

2 THE COURT: Pull that microphone closer to you,
3 please.

4 Q And were you working as an informant on the day we are
5 talking about, November the 27th and 28th of 2001?

6 A Yes, sir.

7 Q Do you know Robert Leatherwood, also known as Bo
8 Leatherwood?

9 A Yes, sir.

10 Q How do you know him?

11 A Well, me and him used to work together at Advance Auto
12 Parts in Woodruff.

13 Q Okay. Were you working that day to set up an
14 undercover buy?

15 A Yes, sir.

16 Q Who were you working with?

17 A Investigator Taylor.

18 Q David Taylor.

19 A Yes, sir.

20 Q Okay. And, well, let's just get this out of the way,
21 Cecil. You had charges pending against you, right?

22 A Yes, sir.

23 Q And the reason you were working was to work off those
24 charges.

25 A Yes, sir.

Cecil Gilliam
Direct examination by Mr. Willingham

1 Q You weren't paid for what you did.

2 A No, sir.

3 Q You were looking at significant time on trafficking
4 crack 28 to 100.

5 A Yes, sir.

6 Q You were looking at time on P. W. I. D. cocaine and P.
7 W. I. D. marijuana.

8 A Yes, sir.

9 Q And you were doing anything that you could to help
10 yourself in that matter.

11 A Yes, sir.

12 Q Including working for the police.

13 A Yes, sir.

14 Q And as a result of your work for the police those
15 charges have been ended, is that right?

16 A Yes, sir.

17 Q Okay. Did you advise the police that you were able to
18 set up a cocaine buy?

19 A Yes, sir.

20 Q Tell the jury how that came to take place.

21 A Well, Bo gave me a call and told me to set me up with
22 a kilo of cocaine. And I called him, Taylor, David Taylor,
23 investigator, and let him know about it, and it just went
24 from there.

25 Q Okay. Tell this jury how it went from there, what,

Cecil Gilliam
Direct examination by Mr. Willingham

1 each step you went through.

2 A Well, like I said, I gave Taylor a call, and he gave
3 me a -- he told me to come down and meet him. I came down
4 to meet him, and he wired me up with a recording device.

5 Q Tell me about that recording device.

6 A It was a small pager, but it was a microphone, some
7 kind of microphone.

8 Q All right. After you got that recording device on,
9 where did you go?

10 A I went to Firestone down by Westgate.

11 Q And why did you go by Firestone?

12 A I got a call from Bo. He told me to come by his job,
13 wanted to talk about the deal.

14 Q That's where Bo worked.

15 A Yes, sir.

16 Q When you got to Firestone, what did you talk about?

17 A Well, just a whole bunch of different things, but we
18 talked about doing a deal later on that night, that his
19 brother and the guy, Juan, would --

20 MR. WARDER: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. WARDER: Ask that the jury be instructed.

23 THE COURT: The jury is asked to disregard the last
24 statement made by the witness.

25 Q After you had that conversation with Mr. Leatherwood,

Cecil Gilliam

Direct examination by Mr. Willingham

1 when was a transaction supposed to take place?

2 A It was supposed to have took place about five o'clock,
3 but it ended up taking place at about, about 8:00 or
4 8:30 or something like that.

5 Q Okay. And where did it ultimately take place?

6 A Down close to Woodruff at a church.

7 Q All right. Before you got to the church though did
8 you meet anywhere else?

9 A Oh, we met at the Li'L Cricket. We left from the --
10 excuse me. That's where it ended up, the final deal go
11 down, is at the church, but we met at the Li'L Cricket on
12 221.

13 Q All right. What happened at the Li'L Cricket?

14 A Well, me and Mr. Leatherwood and the other guy that
15 was in the car with him, we talked about the deal or
16 whatever, and they wanted to see. They wanted to see the
17 money and I wanted to see the drugs or whatever, and we
18 kept going on like that back and forth.

19 Q All right. Who did you meet at the Li'L Cricket?

20 A Bo and Juan.

21 Q Okay. Bo Leatherwood and Juan Rodriguez.

22 A Yes, sir.

23 Q Who did you talk to at the Li'L Cricket?

24 A I was talking to both of them.

25 Q Talking to both of them. Did both of them talk back

Cecil Gilliam
Direct examination by Mr. Willingham

1 to you?

2 A Yes, sir.

3 Q What was said?

4 A Well, like I said, they was asking about the money and
5 stuff like that.

6 Q Did you have any money?

7 A No, sir.

8 Q Why not?

9 A I just didn't. I didn't have any money for the deal.

10 Q Okay. Did you ever see any drugs?

11 A No, sir, not at the Li'L Cricket.

12 Q Now, this Li'L Cricket is on Highway 221 and 295?

13 A Yes, sir.

14 Q What kind of car were you in?

15 A I was in a green STS Cadillac.

16 Q All right. What kind of car was Bo and Juan in?

17 A It was a red Century 4-door.

18 Q Okay. Have you watched that video tape of the Li'L
19 Cricket scene?

20 A I seen it, just a little bit of it. I didn't --

21 Q Is that your car in it?

22 A Yes, sir.

23 Q And it's their car in it as well?

24 A Yes, sir.

25 Q All right. Were you wearing a wire at that time?

Cecil Gilliam
Direct examination by Mr. Willingham

1 A Yes, sir.

2 Q And was it able to pick up what you were saying and
3 what the other people were saying?

4 A Somewhat.

5 Q Have you listened to the tape?

6 A Not all of it.

7 Q I'm sorry?

8 A Not all of it.

9 Q Parts of it?

10 A Yes, sir.

11 Q Do you recognize your voice on it?

12 A Yes, sir.

13 Q Showing you State's Exhibit 12. Does that look like
14 the tape you listened to?

15 A Yes, sir.

16 Q And that's got your voice on it. Who else is on that
17 tape?

18 A Bo is on that tape and Juan is on it.

19 Q Okay. But the transaction didn't go down at the Li'L
20 Cricket.

21 A No, sir.

22 Q Why not?

23 A Well, for one, they didn't have the drugs with them as
24 far as I know. They might have did. I didn't know. I
25 didn't ever get in the car with them, but they said they

Cecil Gilliam

Direct examination by Mr. Willingham

1 didn't. And I didn't have the money to show to them.

2 Q Okay. So what happened after the deal didn't go down?

3 A Well, we went our separate ways, you know, and I
4 was -- we talked a few more words. And, like I said, I
5 went on, and I went back and got on 295 and I went down to
6 the fire department and met back with Officer Taylor, and
7 they went towards Woodruff.

8 Q Who? Who do you say they went towards Woodruff?

9 A Bo and Juan.

10 Q Okay. Now, before you had gone to the Li'L Cricket
11 had you been searched?

12 A Yes, sir.

13 Q Who searched you?

14 A Investigator Taylor and some other officers that was
15 there.

16 Q Did you have any money on you then?

17 A No, sir, none with me.

18 Q Any drugs on you then?

19 A No, sir.

20 Q How about your car? Did he search your car?

21 A Yes, sir.

22 Q Were you present for when they did that?

23 A Yes, sir.

24 Q Who searched it?

25 A There was another officer with Officer Taylor. I

Cecil Gilliam
Direct examination by Mr. Willingham

1 don't --

2 Q But Officer Taylor searched your car.

3 A Yes, sir.

4 Q He was involved with the search effort.

5 All right. When you met back up after the Li'L

6 Cricket scene, what happened then?

7 A Well, we went back up at the fire department down off

8 of 295, and they searched me again. They got the tape

9 recorder back, the wire back and searched my car and stuff

10 again.

11 Q Okay. Did you hear from anybody else?

12 A Yeah. Bo gave me a call back shortly after that.

13 Q Bo Leatherwood called you back.

14 A Yeah.

15 Q And what happened then?

16 A Well, we talked about doing, setting the deal up

17 again, and we met down, and we negotiated another place to

18 meet at, and it ended up being down at, like I said down,

19 close to Woodruff.

20 Q Whereabouts close to Woodruff?

21 A At a church, I think it's Switzer Church.

22 Q Okay. And did you go there to that church?

23 A Yes, sir.

24 Q Were you searched again before you went?

25 A Yes, sir. I was searched when I -- 295.

Cecil Gilliam

Direct examination by Mr. Willingham

- 1 Q All right. What kind of car were you in then?
- 2 A I was still in my Cadillac, STS.
- 3 Q When you got to the church, do you remember what time
- 4 it was?
- 5 A No, sir.
- 6 Q Dark?
- 7 A It was dark.
- 8 Q Okay. When you got to the church, were they there
- 9 already?
- 10 A No, sir.
- 11 Q Anybody there?
- 12 A Nobody but me and the officers that got there before I
- 13 did.
- 14 Q They were in the area.
- 15 A Yes, sir.
- 16 Q But you couldn't see them.
- 17 A No, sir.
- 18 Q After you pulled in did you park?
- 19 A Yes, sir.
- 20 Q What happened after you parked?
- 21 A Well, they pulled in shortly after I parked.
- 22 Q Who is they?
- 23 A Bo Leatherwood and Juan.
- 24 Q Okay. Anybody else with them at that point?
- 25 A There was another guy in the back.

Cecil Gilliam
Direct examination by Mr. Willingham

- 1 Q Okay. Did you know the guy in the back?
- 2 A I think it's Jose, something like that.
- 3 Q Did you know him before? Had you ever met him before?
- 4 A No, sir.
- 5 Q I'm going to write on the back of this. Say that's a
- 6 car. Driver's seat here. 2-door or 4-door car?
- 7 A Four-door.
- 8 Q What kind of car were they in?
- 9 A Century.
- 10 Q All right. Who is driving?
- 11 A Bo is driving.
- 12 Q Bo Leatherwood, right?
- 13 A Yes, sir.
- 14 THE COURT: You are going to need to speak into the
- 15 microphone, and don't turn your back to the court reporter
- 16 while you are testifying.
- 17 THE WITNESS: Yes, sir.
- 18 Q Who is in the passenger seat?
- 19 A Juan is in the passenger seat.
- 20 Q Right here?
- 21 A Yes, sir.
- 22 Q Juan who?
- 23 A Rodriguez.
- 24 Q So there was another person.
- 25 A Yes, sir.

Cecil Gilliam

Direct examination by Mr. Willingham

- 1 Q Where were they?
- 2 A Sitting on the passenger side in the back.
- 3 Q Here?
- 4 A Yes, sir.
- 5 Q Who is that?
- 6 A The guy Juan, not Juan but Jose or whatever his name
- 7 is. Jose. That's what I call him.
- 8 Q You call him Jose. Jose Rodriguez?
- 9 A Yes, sir.
- 10 Q All right. When they got to the church, what
- 11 happened?
- 12 A They pulled in and pulled up beside my car on the
- 13 driver's side of my car, and I got out of my car and got in
- 14 the back seat on the driver's side of their car.
- 15 Q You got in the car here?
- 16 A Yes, sir.
- 17 Q After everybody was in that car, tell me what
- 18 happened.
- 19 A Well, we started talking about, you know, the drugs or
- 20 whatever; and Juan handed the dope back from the front seat
- 21 back into the back seat to the guy that was on the
- 22 passenger's side in the back. He handed it over to me, and
- 23 that's when I was looking at it or whatever; and as soon as
- 24 I got information from Officer Taylor that as soon as I see
- 25 it and get it in my hand to say the word they gave or

Cecil Gilliam
Direct examination by Mr. Willingham

1 something like that.

2 Q What was the word he gave?

3 A Charlotte or something like that.

4 Q Okay. And when you saw the drugs did you say the
5 word?

6 A Yes, sir.

7 Q What happened then?

8 A Well, I was getting out of the car, trying to get out
9 of the car, and then when I --

10 Q Why were you getting out?

11 A Because I could see the officers already coming over.

12 Q Okay. What happened as you were getting out?

13 A Well, as I was getting out, they turned and they seen
14 the officers' lights coming up from behind them on the
15 right-hand side.

16 Q Okay.

17 A And, well, one of the guys -- the guys, two guys, had
18 guns in the car, the two that was on the passenger's side.

19 Q Okay. Show me who had a gun.

20 A The guy in the front driver's side -- no, front
21 passenger's side.

22 Q This guy had a gun.

23 A Right, and the guy in the back.

24 Q This guy here had a gun.

25 A Yes, sir.

Cecil Gilliam

Direct examination by Mr. Willingham

- 1 Q Right?
- 2 A Yes, sir.
- 3 Q Could you tell what kind of guns it was?
- 4 A No, sir.
- 5 Q Was it handguns --
- 6 A Handguns.
- 7 Q -- rifles, shotguns? What kind of gun was it?
- 8 A Handgun, sir.
- 9 Q Handgun.
- 10 All right. So you saw the guns. Where was the dope?
- 11 A Still in my hand, and then the guy in the back seat
- 12 across from me had his hand on it too.
- 13 Q The guy across from you, what did he do?
- 14 A Snatched it back.
- 15 Q Okay. What happened next?
- 16 A Well, I got on out of the car.
- 17 They backed up and went across the front of the church
- 18 and went out of the parking lot.
- 19 Q What did you see happen then?
- 20 A They, they took off. And I was -- the officers come
- 21 in in front of me, and Officer Taylor was there.
- 22 Q Okay. The Century took off.
- 23 A Yes, sir.
- 24 Q Which way was it going?
- 25 A Across the front of the church to the right.

Cecil Gilliam
Direct examination by Mr. Willingham

- 1 Q Okay. And you had gotten out of the car.
- 2 A Yes, sir.
- 3 Q What did those folks do with the guns?
- 4 A Well, they pointed them at me.
- 5 Q They pointed them at you?
- 6 A Yes, sir.
- 7 Q Okay. What did you do when they did that?
- 8 A I turned the dope alose.
- 9 Q I am sorry?
- 10 A I turned the dope alose, the bag that it was in.
- 11 Q You let go of the dope.
- 12 A I turned it alose, yes, sir.
- 13 Q Then what did you do?
- 14 A Stood there.
- 15 Q How many officers were out there?
- 16 A I can't -- ten maybe, 15 maybe.
- 17 Q And they were all converging on you --
- 18 A Yes, sir.
- 19 Q -- or on that scene.
- 20 A Yes, sir.
- 21 Q And after Officer Taylor got there, he secured you.
- 22 A Yes, sir.
- 23 Q What happened then?
- 24 A He searched me, and they searched my car again. And I
- 25 was kind of shaken up. So he was asking me to write a

Cecil Gilliam

Direct examination by Mr. Willingham

1 statement. So, you know, we was just writing the statement
2 from there, what had happened.

3 Q All right. In this car did he ever touch the dope?

4 A Not that I seen.

5 Q Huh?

6 A No, sir.

7 Q Juan Rodriguez ever touch the dope?

8 A Yes, sir.

9 Q And he had a gun.

10 A Yes, sir.

11 Q Jorge Rodriguez ever touch the dope?

12 A Yes, sir.

13 Q He had a gun.

14 A Yes, sir.

15 Q Did you ever touch the dope?

16 A Yes, sir.

17 Q Did you have a gun?

18 A No, sir.

19 MR. WILLINGHAM: Beg the Court's indulgence.

20 (Pause.)

21 MR. WILLINGHAM: I think that's all the questions I
22 have, Your Honor.

23 Q Answer any questions the defense lawyers have.

24 A Yes, sir.

25

Cecil Gilliam
Cross-examination by Mr. Warder

1 CROSS-EXAMINATION

2 BY MR. WARDER

3 Q Mr. Gilliam, sir, at the time this happened you had a
4 charge of trafficking crack cocaine, is that correct?

5 A Yes, sir.

6 Q And the amount you were charged with trafficking was
7 between 28 and 100 grams of crack cocaine.

8 A Yes, sir.

9 Q And you were facing 25 years.

10 A Yes, sir.

11 Q You had a charge of possession with intent to
12 distribute crack cocaine.

13 A Yes, sir.

14 Q Facing another 15 on that charge, is that right?

15 A Yes, sir.

16 Q That's 40 years.

17 You also had a charge of possession with intent to
18 distribute marijuana, is that right?

19 A Yes, sir.

20 Q Facing another five years on that.

21 A Yeah.

22 Q And so you set out a way to get out of those 45 years.
23 Is that what you are telling us?

24 A No, sir. I worked, did anything I could to get, to
25 try to work, to try to lessen the penalty on this.

Cecil Gilliam
Cross-examination by Mr. Warder

1 Q Well, you were trying to get out of it, weren't you?

2 A Well, yes, sir.

3 Q In fact, that's what you did, is that right?

4 A Yes, sir.

5 Q Now, in that regard, you contacted, or did he contact
6 you -- Bo Leatherwood?

7 A He contacted me.

8 Q So you're trying to get out of trouble and set
9 somebody up, and then Bo just calls you.

10 A Well, sir, we was talking about deals. We had talked
11 about stuff like that. He knowed what I done and what I
12 do. I mean, he hung around me.

13 Q He knew you were working for the police?

14 A No. He didn't know that.

15 Q So when you say what you did, he knew you were messing
16 with cocaine.

17 A Okay.

18 Q Is that right?

19 A Yes, sir.

20 Q I mean, is that what you're telling us?

21 A Yes, sir.

22 Q Did you just sell it or do you use it?

23 A Sell it.

24 Q Okay. It's just a business for you, is that right?

25 A Yes, sir.

Cecil Gilliam
Cross-examination by Mr. Warder

1 Q And how long have you been in that business?

2 A How long I used to be in it? I was in it probably
3 about two, maybe three years.

4 Q Okay. And this one deal right here just got you out
5 of it.

6 A I don't know. I had a couple, I had a couple of
7 different things going on too.

8 Q And so you had been talking to Bo about it, and he
9 just, he called that night in response to some conversation
10 you had some other time.

11 A Yes, sir.

12 Q And I believe that -- did he talk about marijuana or
13 was it all about cocaine?

14 A It was all about cocaine.

15 Q No one was dealing on any marijuana, is that right?

16 A Yes, sir.

17 Q Did he tell you how much he had for sale?

18 A We was talking about a key.

19 Q A key.

20 A A kilo.

21 Q Now that's a drug, for a kilo.

22 A Yes, sir.

23 Q About two pounds, 2.2 pounds.

24 A A pound or something like that, a little over a pound.

25 1,900-something grams.

Cecil Gilliam
Cross-examination by Mr. Warder

1 Q Yes, sir. Was he talking price?

2 A No, sir. We never did get to talk about price.

3 That's what I was talking and supposed to meet his people
4 and talk about.

5 Q And where were you at when he called you?

6 A I can't remember. I think I was down in Woodruff, I
7 think it was.

8 Q Did he call you on the cell phone or on a regular
9 telephone?

10 A Cell phone.

11 Q And did you go and see him?

12 A Yes, sir.

13 Q And where did you go see him?

14 A At Firestone.

15 Q That was his place of employment?

16 A Yes, sir.

17 Q Was the deal going to happen at his job when you went
18 over there? Is that why you went over there?

19 A Well, he said his brother and -- he said a couple of
20 guys was supposed to be coming by his job.

21 Q Well, he said his brother, didn't he?

22 A Yes, sir.

23 Q And you were trying not to tell me that.

24 A Well, I said that last time and you said something.

25 Q Now, his brother, were you talking to him too?

Cecil Gilliam
Cross-examination by Mr. Warder

1 A No, sir. I never did talk to him.

2 Q And when you went over to Firestone, Bo's brother
3 couldn't get it, and you had to meet up later, is that
4 right?

5 A Yes, sir.

6 Q And did you set the time to meet them when you went to
7 Firestone?

8 A No, sir. I can't remember. I don't recall exactly
9 what time it was. I think we talked about meeting back up
10 about eight o'clock, I think it was.

11 Q Okay. What time did you get off work?

12 A I don't know. I don't know what time we got off work.

13 Q And you drove down and you met Bo at the Li'L Cricket.

14 A Right.

15 Q And at that time you weren't really going to buy any
16 cocaine. You were just going to get him arrested, is that
17 right?

18 A No, sir. I wasn't trying to get -- well, I don't
19 know. I was trying to buy cocaine for the fuzz, what was
20 going on.

21 Q Well, you knew this was supposed to be, you were
22 supposed to give a signal and the police rush in and snatch
23 him. Wasn't that it?

24 A Right.

25 Q And so when you went down there, you really went down

Cecil Gilliam
Cross-examination by Mr. Warder

1 there to get Bo arrested and get the cocaine so you would
2 get some credit for it on getting out of this 40 years, is
3 that right?

4 A Okay. Yes, sir.

5 Q Now, in your statement you said that Bo said his men
6 could not get it or his man could not get it.

7 A Yes, sir.

8 Q And that was referring to his brother.

9 A No. Some guy he was telling me about, some other guy
10 he was telling me about.

11 Q Okay. And in your statement you said that you called
12 him about five o'clock and he told you to come around about
13 8:00 at work and make the deal, is that right?

14 A Yes, sir.

15 Q And when you got down there, how long did you stay at
16 the Li'L Cricket?

17 A About 30 minutes, maybe an hour, something like that.

18 Q And then you went to the Switzer church. Did you
19 arrange that on a telephone?

20 A Yes, sir.

21 Q What kind of telephone do you have? Do you have a
22 Nextel?

23 A No, sir.

24 Q Do you have a regular one that doesn't have the
25 walkie-talkie?

Cecil Gilliam
Cross-examination by Mr. Warder

1 A Yes, sir.

2 Q And when you met at the church, you got the cocaine in
3 your hand and you gave the signal.

4 A Yes, sir.

5 Q And you said that the fellow in the back seat snatched
6 it back.

7 A Yes, sir.

8 Q And you told us something else. You told us that they
9 had guns.

10 A Yes, sir.

11 Q I guess that would be a pretty important fact to see
12 the gun, is that right?

13 A Yes, sir.

14 Q You said they pointed those guns at you.

15 A Yes, sir.

16 Q Did you see them before they pointed them at you?

17 A No, I didn't see them before they pointed them at me.

18 Q So all of a sudden you're sitting there with the
19 cocaine in your hand and two people point guns at you, is
20 that right?

21 A Right.

22 Q I guess the first thing that must have went to your
23 mind is, gosh, oh, mighty, they are going to shoot me, is
24 that right?

25 A I don't know exactly what was going through my mind at

Cecil Gilliam
Cross-examination by Mr. Warder

1 the time, but that crossed my mind.

2 Q Did you think they might shoot you?

3 A Oh, yeah.

4 Q And certainly, did it shake you up a little bit?

5 A Yeah, just a little bit.

6 Q I mean, by the time the officer got there, that would
7 certainly be fresh on your mind, wouldn't it?

8 A Yes, sir.

9 Q Because the officer came within just minutes, didn't
10 he?

11 A Yes, sir.

12 Q And you told us he was going to take a statement, is
13 that right?

14 A Yes, sir.

15 Q And you knew he was going to take a statement, is that
16 right?

17 A Yes, sir.

18 Q And you knew that statement, it was an important thing
19 in that statement to tell the truth, wasn't it?

20 A Yes, sir.

21 Q Because you knew that statement would be used by
22 officers in evaluating whether to give you some time off
23 your 45 years, is that right?

24 A Yes, sir.

25 Q You knew it would be used by prosecutors in court.

Cecil Gilliam
Cross-examination by Mr. Warder

1 A Yes, sir.

2 Q And so you knew you had to put in all of the important
3 facts, didn't you?

4 A Yes, sir.

5 Q And when you were thinking about that, it was still
6 fresh in your mind those guns had been pointed at you, is
7 that right?

8 A I guess so, yes, sir.

9 Q Well, it had just happened a couple of minutes ago.

10 A Yes, sir.

11 Q It would be fresh, wouldn't it?

12 A Yes, sir.

13 Q And when you were putting the important facts in the
14 statement and being afraid because you had just been scared
15 with those guns, you certainly put in that statement and
16 told that officer them people had guns, didn't you? Huh?

17 A I guess so.

18 Q Well, have you looked at your statement?

19 A Yeah, I looked at it.

20 Q Doesn't mention a gun, does it?

21 A No, sir, not --

22 Q Pardon?

23 A No, sir, I don't think so.

24 Q So when you were making a statement just minutes after
25 this happened and when you, in that statement you were

Cecil Gilliam
Cross-examination by Mr. Warder

1 trying to tell the officers the whole truth, nothing but
2 the truth just minutes after it happened, you never
3 mentioned somebody had just pointed a gun at you. Is that
4 what you are telling us?

5 A Sir, at the time I was there to buy a kilo of cocaine
6 from these guys. I was making sure that I got the
7 information down about the drugs.

8 No, sir, I didn't put it on my statement about the
9 gun.

10 Q You didn't think that because you'd been threatened
11 and stuff like that it might be worth more and this was an
12 important fact to put in your statement?

13 A Yes, sir, it was an important fact to put in there,
14 but, like I said, I was trying to get down all of the
15 information of what happened from that whole day, what
16 Officer Taylor was asking me to write down as a statement,
17 and I didn't put it in there.

18 Q Did you think about not putting it in there and
19 decided you didn't want to?

20 A No, sir. I hadn't thought about it.

21 Q Thank you.

22 MR. GUTIERREZ: May it please the Court, Your Honor.

23 THE COURT: Mr. Gutierrez.

24

25

Cecil Gilliam
Cross-examination by Mr. Gutierrez

1 CROSS-EXAMINATION

2 BY MR. GUTIERREZ

3 Q Mr. Gilliam, let's go a little bit further.

4 Did you tell the police officers those guys have guns?

5 A No, sir. I don't think I did mention it.

6 Q Those guys just screeched out spinning their wheels,
7 leaving the parking lot of the church where the buy-bust
8 had just gone down, right?

9 A Yes, sir.

10 Q They left you standing there in the parking lot,
11 correct?

12 A Yes, sir.

13 Q Yes or no. You were -- you stated a little while ago
14 that you were shook up.

15 A Yes, sir.

16 Q What was it that shook you up?

17 A The gun is what shook me up.

18 Q The gun shook you up?

19 A Yes, sir.

20 Q Okay. Now, what happened next? Did you see police
21 officers chase after the car?

22 A No, sir.

23 I seen, what I seen was the car back up and leave the
24 church. The police cars went by the front of the church on
25 the road --

Cecil Gilliam
Cross-examination by Mr. Gutierrez

1 Q Okay.

2 A -- as there was another van coming up with, Officer
3 Taylor was in, pull up.

4 Q How many of these buy-busts have you done?

5 A One.

6 Q This is the only one that you've done.

7 A Buy and bust.

8 Q How many takedowns, stings or anything, or your
9 helping the police have you been involved in?

10 A Two.

11 Q Let me ask you something else.

12 Whenever you were, whenever you were arrested the
13 police chased after you and got you, didn't they, after
14 they had probable cause to arrest you? Is that not true?

15 A Yes, sir.

16 Q That's something like that happened.

17 What did you think the police officers were going to
18 do after you gave the signal that Charlotte, giving them
19 the signal for the takedown? What did you think they were
20 going to do?

21 A I thought they was going to come over and arrest me.

22 Q Arrest. And whenever they left, what did you think
23 they were going to do then? Did you think they were going
24 to chase them?

25 A I didn't think the chase was going to go down.

Cecil Gilliam
Cross-examination by Mr. Gutierrez

- 1 Q You didn't think they were going to --
- 2 A I didn't think they was going to run, so I --
- 3 Q So you didn't think.
- 4 A No, sir.
- 5 Q No. And/but you could certainly -- and now you're
- 6 wanting us to believe that although you saw two guns
- 7 pointed at you and these suspects had two guns that you
- 8 weren't going to tell any police officers that they had
- 9 guns? You weren't going to warn them?
- 10 A Sir, I was trying to think about what to write down on
- 11 this statement, and this officer was coming up, what do I
- 12 need to do.
- 13 Q Just business as usual then for you.
- 14 Did you write this statement down?
- 15 A No, sir. Officer Taylor wrote it for me.
- 16 Q Did you tell Officer Taylor everything in there?
- 17 A Sir, I was trying to give it to him, all of the
- 18 information to him.
- 19 Q Is everything in there the truth?
- 20 A Yes, sir.
- 21 Q Did you tell Officer Taylor that there were guns in
- 22 the car?
- 23 A No, sir.
- 24 I didn't get, I didn't get around to telling him that.
- 25 Q Didn't get around to telling him.

Cecil Gilliam
Cross-examination by Mr. Gutierrez

1 Okay. You stated earlier that Mr. Leatherwood knew
2 what you had done. Would you tell me what you meant by
3 that statement? I think you described it a little bit
4 further. But did that have something to do with your drug
5 dealing prior to your arrest --

6 MR. WILLINGHAM: Objection, Your Honor. Asked and
7 answered.

8 THE COURT: Overruled.

9 Q -- what you had done? Please explain to me what that
10 was.

11 A Well, Mr. Leatherwood knowed I sold drugs or whatever.
12 That's what I was explaining.

13 Q How would he be in a position to know that?

14 A He hung out with us.

15 Q He hung out with you?

16 A Yes, sir.

17 Q Describe for me what hanging out means.

18 A That means sit around, sit around with us, hang out
19 with us after work, hang out together, come over to my
20 place.

21 Q Did you have any other work that you did?

22 A Yes, sir.

23 Q Where else did you work during those two or three
24 years?

25 A I owned a club uptown Woodruff.

Cecil Gilliam
Cross-examination by Mr. Gutierrez

1 Q Excuse me?

2 A I owned a club uptown Woodruff.

3 Q You owned a club?

4 A Yes, sir.

5 Q Okay. Was it a night club?

6 A It's a private club.

7 Q Okay. And you stated earlier that the car you were in
8 on the night of this incident was a Cadillac STS, green.

9 A Yes, sir.

10 Q Is that your car?

11 A Yes, sir.

12 Q Do you own that vehicle?

13 A No, sir, not now.

14 Q Not now.

15 That's a nice car, isn't it? Did you buy that car
16 from the profits of the club?

17 A No, sir.

18 Q Okay. Also you stated in your statement, and I'm
19 reading from it, line three to four, "I made a couple of
20 calls to Bo about this deal and he told me that his man
21 could not get it until tomorrow." Is that man or men? I'm
22 just --

23 A Man.

24 Q Man. Okay. Bo tell you who his man was?

25 A Yes, he did, but I don't remember --

Cecil Gilliam
Cross-examination by Mr. Gutierrez

1 Q Okay.

2 A -- the name.

3 Q You also stated earlier in your testimony that the
4 drugs were not in the car. How did you know the drugs were
5 not in the car?

6 A I am sorry. I didn't know -- at the Li'L Cricket I
7 didn't know that the drugs was in the car or not.

8 Q The drugs could have been in the car.

9 A They could have been. I never got in the car at Li'L
10 Cricket.

11 Q You didn't search the car or look inside the car, did
12 you?

13 A No, sir.

14 Q When Bo Leatherwood opened up the door to go into the
15 Li'L Cricket did you have a chance to look in and get a
16 better look at the other fellow that was in the car?

17 A Juan. I looked at Juan because he was sitting in the
18 passenger's side.

19 Q Did he have any drugs on him that you could see?

20 A Nothing I could see.

21 Q Any guns? See any guns?

22 A Nothing I could see.

23 Q Did you see Jorge Rodriguez at that point?

24 A No, sir. He wasn't at the Li'L Cricket.

25 Q It wasn't at the Li'L Cricket. That's all I have.

Cecil Gilliam
Redirect examination by Mr. Willingham

1 Thank you.

2 REDIRECT EXAMINATION

3 BY MR. WILLINGHAM

4 Q You say you didn't talk to Bo Leatherwood about price.

5 Did you talk to anybody about price?

6 A Well, we -- I was mentioning something about 65. We
7 had talked about price because I had said something about
8 \$6,500 or something like that.

9 Q And who did you talk with about price?

10 A I think it was me, Juan and Bo at the Li'L Cricket.

11 Q Okay. And who do you understand -- you said that the
12 dope was supposed to come from Bo's brother. Who do you
13 understand Bo's brother to be?

14 A His younger brother.

15 Q What's his name?

16 A I don't recall his name.

17 Q Okay. Was his younger brother ever part of this
18 transaction though?

19 A No, sir.

20 Q You indicated that you had a regular phone but you
21 didn't have one of the ones with the walkie-talkie picture
22 or Nextel.

23 A No, sir.

24 Q Did anybody?

25 A Juan had one.

Cecil Gilliam
Redirect examination by Mr. Willingham

1 Q Juan had one?

2 A Yes, sir.

3 Q Where did he have one at?

4 A Well, he had in his hand.

5 Q Where? At the Li'L Cricket or at the church or where?

6 A At the Li'L Cricket.

7 Q Okay. And did he ever talk on that phone?

8 A Yes, sir. He was talking two or three times on it.

9 Q And what did he say?

10 A I don't know. I think he was saying in it Spanish, I
11 think it was.

12 Q He was talking in Spanish.

13 A Or I just couldn't hear him one. I couldn't
14 understand what he was saying. Let me say that.

15 Q Okay. And Juan was the one doing the talking.

16 A Yes, sir.

17 Q Okay.

18 MR. WILLINGHAM: Nothing else, Your Honor. Thank you.

19 THE COURT: You may step down.

20 MR. WILLINGHAM: Call Robert Leatherwood, Your Honor.

21 Your Honor, we ask that Cecil be excused.

22 THE COURT: Any objection?

23 MR. WARDER: No, Your Honor.

24 MR. GUTIERREZ: None, Your Honor.

25 THE COURT: He may be excused.

Robert Leatherwood
Direct examination by Mr. Willingham

1 (Whereupon, the witness was excused.)

2 ROBERT LEATHERWOOD, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. WILLINGHAM

5 Q Tell the jury who you are.

6 A Robert Leatherwood.

7 Q Mr. Leatherwood, you're charged in this case with
8 trafficking in cocaine.

9 A Yes, sir.

10 Q Resisting arrest.

11 A Yes, sir.

12 Q Failure to stop for law enforcement.

13 A Yes, sir.

14 Q And you understand that anything that you say in this
15 courtroom today can be used against you.

16 A Yes, sir.

17 Q And you understand that you have a right to have a
18 lawyer.

19 A Yes, sir.

20 Q And, in fact, you've got a lawyer.

21 A Correct, sir.

22 Q He's sitting right over there in the corner --
23 Mr. Andy Johnston. That's your lawyer.

24 A Yes, sir.

25 Q Do you understand you're facing significant time on

Robert Leatherwood
Direct examination by Mr. Willingham

1 these charges?

2 A Correct, sir.

3 Q Up to 25 years on the cocaine; one year on the
4 resisting arrest; and three years on failure to stop.

5 A Yes, sir.

6 Q And, in fact, you've already entered a guilty plea to
7 those charges, haven't you?

8 A Yes, sir. I have.

9 Q But you haven't been sentenced, have you?

10 A Correct, sir.

11 Q The reason you haven't been sentenced is you are
12 hoping for some reward for your testimony, is that fair?

13 A Yes, sir.

14 Q What reward are you expecting?

15 A Seven years no-parole, sir.

16 Q You are expecting a recommendation from the state for
17 seven years without parole.

18 A Correct, sir.

19 Q What do you have to do in exchange to get that?

20 A Truthful testimony, sir.

21 Q Okay. Are you prepared to do that today and waive
22 your rights?

23 A Yes, sir, I am.

24 Q Do you know Cecil Gilliam?

25 A Yes, sir, I do.

Robert Leatherwood
Direct examination by Mr. Willingham

1 Q How do you know him?

2 A We both grew up in Woodruff together, sir.

3 Q You're going to have to speak up for me because I
4 can't hear you back here.

5 A We both grew up in Woodruff together, sir.

6 Q How long have you known him?

7 A Pretty much all of my life, sir.

8 Q Do you know the defendant, Juan Rodriguez?

9 A Yes, sir, I do.

10 Q How do you know him?

11 A We grew up together also; and his sister is married to
12 my brother.

13 Q Showing you State's Exhibit No. 10. Who is that?

14 A Juan Rodriguez.

15 Q Does that accurately reflect how he looked back in
16 November of 2001?

17 A Yes, sir.

18 MR. WILLINGHAM: Your Honor, at this time I move
19 State's Exhibit No. 10 into evidence.

20 THE COURT: Any objection?

21 MR. GUTIERREZ: No objection.

22 MR. WARDER: No, sir.

23 THE COURT: It's admitted.

24 (Photograph marked State's Exhibit No. 10.)

25 Q And this is who?

Robert Leatherwood
Direct examination by Mr. Willingham

1 A Juan Rodriguez.

2 Q I want to note on the back of the picture who it is.

3 Okay. And how is he related to you, again?

4 A His sister is married to my brother.

5 Q His sister is married, and that makes him your
6 brother-in-law sort of.

7 A Basically my brother's brother-in-law.

8 Q Kind of akin, but not really.

9 A Right.

10 Q Do you know Jorge Rodriguez?

11 A I did not know him until I met him the night of
12 November the 27th, I believe it was.

13 Q Okay. I show you what's been marked as State's
14 Exhibit No. 1 and ask you if you recognize him.

15 A Yes, sir.

16 Q Who is that?

17 A Jorge Rodriguez.

18 Q Does that accurately reflect how he looked like back
19 in November?

20 A Yes, sir, it does.

21 MR. WILLINGHAM: Your Honor, I would move State's
22 Exhibit No. 1 into evidence.

23 THE COURT: Any objection?

24 MR. WARDER: No, sir.

25 MR. WILLINGHAM: Your Honor, I will note on the back

Robert Leatherwood
Direct examination by Mr. Willingham

1 who this is as well.

2 (Photograph marked State's Exhibit No. 1.)

3 Q There was supposed to be a transaction between you and
4 Cecil, is that right?

5 A Yes, sir.

6 Q How did that come about?

7 A Me and Mr. Gilliam had got together and was talking.

8 Q You need to speak up. I'm having a hard time hearing
9 you over here.

10 A Me and Mr. Gilliam had got together and we was talking
11 prior to the day in question, and it was supposed to have
12 been with a different subject, being D. K. Arlington.

13 Well, he went to Chicago because his grandfather had
14 died, and Cecil wanted me to contact my brother and see if
15 I could get ahold of Juan. Me and Juan talked probably two
16 or three days prior.

17 Q What did you and Juan talk about?

18 A Just wanted to know if he could get his hands on any
19 weed to begin with.

20 Q To begin with it was weed.

21 A Correct.

22 Q And then what did it change to?

23 A Cocaine.

24 Q Okay. And what did Juan tell you?

25 A He said let him check and he would call back.

Robert Leatherwood
Direct examination by Mr. Willingham

1 Q He would check and call back.

2 A He would check and he would get back with me on it.

3 Q All right. And did he call you back?

4 A He called me back the next day. I told him how much
5 Mr. Gilliam wanted.

6 Q How much did he want?

7 A He wanted a full kilo.

8 Q A key.

9 A Yes, sir.

10 Q Is that a bunch?

11 A I am not sure myself because I never messed with it.
12 I'm assuming it is because that's what everyone talks
13 about.

14 Q All right. Was Juan able to get a key?

15 A No, sir.

16 Q Was Juan able to get any?

17 A He said he probably had a quarter of a key.

18 Q A quarter-key.

19 A Yes, sir.

20 Q Okay. And after Juan told you he could get his hands
21 on a quarter-key, what did you do?

22 A I contacted Cecil Gilliam, and me and him had talked
23 about it again to try to set up where we were going to meet
24 at.

25 Q How many times did y'all talk, you and Cecil?

Robert Leatherwood
Direct examination by Mr. Willingham

1 A Numerous times.

2 Q Were you aware -- did he ever come to your work at
3 Firestone?

4 A Yes, sir, he did.

5 Q Did y'all talk about it there?

6 A Yes, sir, we did.

7 Q Were you aware he was wearing an electronic monitoring
8 device?

9 A No, sir, I was not at the time.

10 Q You are aware of it now.

11 A Yes, sir, I am.

12 Q And, in fact, you have listened to the tape
13 recordings, haven't you?

14 A Yes, sir, I have.

15 Q I am showing you State's Exhibit No. 12. You listened
16 to those.

17 A I listened to one of them. I am not exactly sure
18 which one that is.

19 Q Okay. But it's got your voice on it.

20 A Uh-huh.

21 Q And it's got who else's voice on it?

22 A Cecil Gilliam's.

23 Q Okay. And anybody else?

24 A There is background of other voices, one being Juan
25 Rodriguez, some being numerous other people that was in the

Robert Leatherwood
Direct examination by Mr. Willingham

1 shop at Firestone when Mr. Gilliam was there.

2 Q All right. And you have listened to this tape as
3 recently as today.

4 A Today, yes, sir.

5 Q And does it accurately reflect the conversations
6 you've had with him?

7 A Yes, sir, it does.

8 MR. WILLINGHAM: Your Honor, at this time I move
9 State's Exhibit Number 12 into evidence.

10 THE COURT: Any objection?

11 MR. WARDER: I don't think -- he said he listened to
12 the tape. I don't think the witness has identified that as
13 the tape he listened to.

14 THE COURT: Well, is that the tape that he listened
15 to?

16 MR. WILLINGHAM: Yes, sir.

17 THE COURT: Well, show it to him.

18 Q Is that the tape that Rusty Clevenger from our office
19 showed you this morning?

20 A It was inside the recorder. I did not see the tape.

21 THE COURT: Let me ask the members of the jury,
22 please, go to your jury room. Don't discuss the case.
23 I'll bring you back in just a moment.

24 (The following takes place outside the presence of the
25 jury.)

Robert Leatherwood
Direct examination by Mr. Willingham

1 THE COURT: All right. Put the tape in the machine
2 and let's see if the witness can identify what he has
3 listened to previously.

4 MR. WILLINGHAM: Yes, sir, Your Honor. I have
5 Investigator Clevenger and we are working on it right now.

6 (Pause.)

7 MR. WILLINGHAM: Let him listen to it.

8 (Whereupon the tape was played for the witness.)

9 THE WITNESS: Yes, sir. That is the tape, Your Honor.

10 THE COURT: Is that the tape?

11 THE WITNESS: Yes, sir, it is.

12 THE COURT: Okay. Any other objections?

13 MR. WARDER: No, sir. That is our only objection.

14 MR. GUTIERREZ: None from me, Your Honor.

15 THE COURT: Bring the jury back.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Mr. Willingham.

19 MR. WILLINGHAM: Thank you, Your Honor. May it please
20 the Court.

21 Q So you have had an opportunity to review that tape.

22 A Yes, sir.

23 Q Is that the tape you listened to this morning?

24 A Yes, sir, it is.

25 Q Is this tape one that has the conversation between you

Robert Leatherwood
Direct examination by Mr. Willingham

1 and Cecil on it?

2 A Yes, sir, it is.

3 Q Does it accurately reflect the conversations you had
4 with Cecil?

5 A Yes, sir.

6 MR. WILLINGHAM: Your Honor, at this time I move
7 State's Exhibit No. 12 into evidence.

8 THE COURT: Any objection?

9 MR. GUTIERREZ: No, sir.

10 MR. WARDER: If that's the only conversation on the
11 tape.

12 THE COURT: It is admitted.

13 (Tape marked State's Exhibit No. 12.)

14 Q After y'all met up at Firestone, was the transaction
15 supposed to take place there?

16 A Yes, sir, it was.

17 Q Did it take place there at Firestone?

18 A No, sir.

19 Q Why not?

20 A Because Juan never came up there, and I didn't want it
21 there at my work.

22 Q Okay. So Cecil came up there but the transaction
23 didn't take place.

24 A Correct.

25 Q And Juan never showed.

Robert Leatherwood
Direct examination by Mr. Willingham

1 A Correct.

2 Q Did y'all agree to meet somewhere else?

3 A At the time, no, sir; later on, yes, sir.

4 Q Later on. How did y'all hook up later on?

5 A When I left work a little bit after eight o'clock I
6 went to my house and Juan met me there.

7 Q Okay. Juan was at your house?

8 A Yes, sir.

9 Q And where did you live?

10 A 741 Gray Street in woodruff.

11 Q In Woodruff.

12 All right. After you met up with Juan were you
13 confident the deal could proceed then?

14 A Yes, sir, I was.

15 Q Why were you confident?

16 A Because me and Juan had talked. They scanned me to
17 see if I was wired, and then after that me, Juan and his
18 cousin got in my car and left.

19 Q What did he scan you with?

20 A It was a little black box.

21 Q Look kind of like that?

22 A Yes, sir.

23 Q State's Exhibit No. 5-D?

24 A Yes, sir, it does.

25 Q Who scanned you?

Robert Leatherwood
Direct examination by Mr. Willingham

1 A Jorge.

2 Q Jorge scanned you.

3 A Yes, sir.

4 Q All right. After that happened, what happened next?

5 A After we talked for about five minutes, then me, Juan
6 and Jorge got in my mom's car, and we left my house. And
7 the other two left in Juan's brother's car.

8 Q Okay. And where were y'all supposed to meet at that
9 point?

10 A At that point it was up on 221 and 295 at the Li'L
11 Cricket.

12 Q Okay. How did -- who all left with you from your
13 house?

14 A Me, Juan and Jorge.

15 Q You, Juan and Jorge. Who was driving?

16 A I was.

17 Q Where was Juan?

18 A Juan was up beside me in the front passenger seat.

19 Q Where was Jorge?

20 A He was sitting behind Juan in the rear.

21 Q Okay. What were y'all driving?

22 A A '95 Nissan Sentra.

23 Q Did all three of you go up to the Li'L Cricket?

24 A Yes, sir.

25 Q What happened at the Li'L Cricket?

Robert Leatherwood
Direct examination by Mr. Willingham

- 1 A We pulled up. Cecil was already there. We talked to
2 him for a second. I run into the store, and then we left.
- 3 Q Did the transaction take place there?
- 4 A No, sir, it did not.
- 5 Q Why not?
- 6 A Because Juan didn't want to deal with Cecil
7 straightforward; Cecil didn't want to deal with Juan. They
8 wanted me to hold one another's until it went through.
- 9 Q They wanted you to hold one another's?
- 10 A Juan wanted me to hold Cecil's money --
- 11 Q Yeah.
- 12 A -- while -- and he wanted only to deal with me.
- 13 Q Okay.
- 14 A And then Cecil wanted me to hold Juan's stuff because
15 he only wanted to deal with me.
- 16 Q Stuff. You mean dope.
- 17 A Correct.
- 18 Q Okay. And did that happen?
- 19 A No, sir, it did not.
- 20 Q How long were you at the Li'L Cricket?
- 21 A Roughly 25 or 30 minutes probably.
- 22 Q Okay. And no transaction took place.
- 23 A No, sir.
- 24 Q Was money discussed there?
- 25 A The amount was brought up but no one ever seen any.

Robert Leatherwood
Direct examination by Mr. Willingham

1 Q The amount of money was brought up but nobody ever saw
2 any money.

3 A Right.

4 Q How much money was brought up?

5 A I am not exactly sure of the correct dollar amount.

6 Q Ballpark, I mean.

7 MR. WARDER: I object to ballpark, Your Honor.

8 THE COURT: Sustained.

9 MR. WILLINGHAM: I withdraw the question, Your Honor.

10 Q How about dope at the Li'L Cricket, did you see any
11 there?

12 A No, sir.

13 Q So the deal fell through at the Li'L Cricket.

14 A Correct.

15 Q Where did y'all go next?

16 A Me and Juan and Jorge left Li'L Cricket and went back
17 to Juan's house on Old Spartanburg Highway. Cecil said he
18 had to go pick up his brother because if it wasn't going to
19 happen there, he wanted someone with him just in case.

20 Q Cecil said that.

21 A Correct.

22 Q So and did y'all agree to meet somewhere else?

23 A We went back to Juan's house, and I waited for Cecil
24 to call me to find out where we were going to meet at.

25 Q All right.

Robert Leatherwood
Direct examination by Mr. Willingham

- 1 A He called me, and that's when we arranged to meet at
2 the church on 221 at Switzer.
- 3 Q Who decided that place?
- 4 A Cecil did.
- 5 Q Okay. And who went with you there?
- 6 A Me, Juan and Jorge, again.
- 7 Q You, Juan and Jorge. Who was driving?
- 8 A I was.
- 9 Q Who was the passenger?
- 10 A Juan.
- 11 Q Who was the back-seat passenger?
- 12 A Jorge.
- 13 Q Do you remember what time of the day this was?
- 14 A 9:30 or ten o'clock.
- 15 Q Okay. At night.
- 16 A Correct, sir.
- 17 Q Who got to the church first, you or Cecil?
- 18 A I passed by the church. There was no one there; and
19 rode around until he got there, sir.
- 20 Q Okay. Did y'all have anybody else out in the area?
- 21 A Juan's younger brother was riding through.
- 22 Q Who is Juan's younger brother?
- 23 A Junior.
- 24 Q Junior?
- 25 A Yes, sir.

Robert Leatherwood
Direct examination by Mr. Willingham

1 Q What was Junior doing?

2 A Him and Cramer was riding through in the Cadillac
3 looking around for Cecil's brother.

4 Q Junior and Cramer were riding around looking for --
5 were they lookouts for you?

6 A Yes, sir.

7 Q Okay. You rode by the church and nobody was there.

8 A Correct.

9 Q You rode back by. Who was there?

10 A Cecil was there back then.

11 Q What was he driving?

12 A A greenish-blue Cadillac.

13 Q Okay. Did he have anybody with him?

14 A No, sir.

15 Q What happened when you got to the church?

16 A I pulled in right next to him. He gets out of his car
17 and into the car with us.

18 Q All right. Where does he get in the car with you?

19 A He gets in the back passenger, back seat behind me.

20 Q Back driver's side.

21 A Right.

22 Q Behind you.

23 A Correct.

24 Q Okay. And what happened when he gets in the back
25 driver's side behind you?

Robert Leatherwood
Direct examination by Mr. Willingham

1 A I am looking forward, and at the time he is looking
2 over the merchandise, the dope.

3 Q Who is looking over the merchandise?

4 A Cecil is.

5 Q And where did that come from?

6 A Jorge handed it to him.

7 Q Jorge handed the dope to --

8 A Cecil.

9 Q -- Cecil. And Cecil is looking over it. What was
10 said?

11 A He said, all right, let me get my money.

12 Q All right. How much money is he supposed to be
13 getting?

14 A That's all he said.

15 Q Okay. What happened as he said, all right, let me get
16 my money?

17 A He was getting out of the car to go to his car.

18 Q Okay. What happened as he got out of that car to go
19 to his car?

20 A That's when all of the other cars came pulling in the
21 parking lot.

22 Q Where was the dope?

23 A Jorge was still holding it, I do believe. I'm not
24 exactly sure. I never seen it.

25 Q Okay. You never seen it.

Robert Leatherwood
Direct examination by Mr. Willingham

1 A No, sir.

2 Q What do you mean by you never saw it?

3 A I never actually seen the dope.

4 Q Well, how did you know what they were doing back there
5 in the back seat?

6 A Because I had been talking to Cecil about it prior to,
7 and that's just what they pretty much had.

8 Q Okay. After Cecil gets out of the car, what happens
9 then?

10 A That's when all of the other cars came pulling in the
11 parking lot.

12 Q How many other cars?

13 A I remember a van, a Blazer and maybe one other. I am
14 not for sure what it was.

15 Q Did you see any people on foot?

16 A Not until the van stopped and a few people got out of
17 it.

18 Q How many people got out of it?

19 A I am not sure because at the time I was in the process
20 of trying to leave the parking lot.

21 Q Why were you leaving?

22 A Because I heard Juan holler go, and pulled. And when
23 I looked over toward him I could see the reflection of the
24 gun in his hand.

25 Q Who had a gun?

Robert Leatherwood
Direct examination by Mr. Willingham

1 A Juan Rodriguez at the time.

2 Q All right. And he's sitting over there next to you.

3 A Correct.

4 Q He tells you what?

5 A To go.

6 Q To go.

7 A Right.

8 Q And what do you do?

9 A I took off out of the parking lot.

10 Q Has he got the gun pointed at you?

11 A Yes, sir, he does.

12 Q Like he is going to shoot you.

13 A It's down where it can't be seen outside the car, but
14 it was pointed at me.

15 Q What kind of gun was it?

16 A I'm not exactly sure what type it was, but I know it
17 was a shiny one.

18 Q It was a shiny one.

19 A Yes, sir.

20 Q So he says go. He's got a gun. Anybody else got a
21 gun?

22 A I'm not sure. After I was back at the sheriff's
23 office they asked me who had pointed a gun at them, and I'm
24 assuming that it was Jorge because Juan told him to put it
25 down as we were pulling out of the parking lot.

Robert Leatherwood
Direct examination by Mr. Willingham

1 Q Juan told Jorge to put it down?

2 A Correct.

3 Q What was Jorge doing?

4 A I have no idea. I was looking for a way out at the
5 time, not at them.

6 Q All right. So did you find a way out?

7 A Yes, sir, I did.

8 Q And how did you get out?

9 A I went out the lower end of the parking lot and
10 proceeded toward Old Spartanburg Highway.

11 Q All right. So you were on Old Switzer Road.

12 A Yes, sir.

13 Q And you went down Old Spartanburg Highway.

14 A Correct.

15 Q Did you stop then?

16 A No, sir.

17 Q Did you have anybody following you then?

18 A There were two cars behind me.

19 Q Okay. Did you know who it was then?

20 A At the time, no, sir.

21 Q What did you think it was?

22 A To begin with, we thought that Cecil had set Juan up
23 and it was some of his people. When I was arrested I was
24 pretty well sure it was the police.

25 Q Okay. So you are going down Old Spartanburg Highway.

Robert Leatherwood
Direct examination by Mr. Willingham

- 1 Do you stop?
- 2 A No, sir, I do not.
- 3 Q Old Spartanburg Highway dead-ends in Highway 290.
- 4 A Correct.
- 5 Q Did you stop there?
- 6 A No, sir, I did not.
- 7 Q Did you go right or left on 290?
- 8 A I took a left on 290, sir.
- 9 Q Took a left on 290. That's going towards Duncan.
- 10 A Correct.
- 11 Q Did you ever stop on 290?
- 12 A No, sir.
- 13 Q Did you ever turn off of 290?
- 14 A Yes, sir.
- 15 Q Where?
- 16 A Several miles down in, I think it was, West Road to
- 17 the left.
- 18 Q All right. You took a left on West Road. Did you
- 19 stop on West Road?
- 20 A No, sir.
- 21 Q West Road has got a pretty good curve in it.
- 22 A Right.
- 23 Q And comes back up 417, right?
- 24 A Uh-huh.
- 25 Q Did you stop at 417?

Robert Leatherwood
Direct examination by Mr. Willingham

- 1 A No, sir. I cross over 417 and then I actually did
2 stop on West Road, but it was after I crossed on 417.
- 3 Q Okay. Right there at 417 or just a little piece down
4 the road?
- 5 A No, sir, a little piece down from it.
- 6 Q All right. And why did you finally stop?
- 7 A Because I seen blue lights in the rear-view.
- 8 Q Isn't it true that the officer came up and got in
9 front of you so you couldn't go any further?
- 10 A I was -- yes, sir, but I was already slowing down at
11 the time.
- 12 Q How fast were you were driving, Mr. Leatherwood, when
13 this was going on?
- 14 A I would say the fastest that I got up to was probably
15 75 or 80.
- 16 Q What was Juan and Jorge saying to you as you were
17 riding down the road?
- 18 A Really they were not saying much to me at all. Juan
19 was on his Nextel back and forth with his brother.
- 20 Q What was he saying?
- 21 A They were speaking Spanish. At some point they would
22 speak English. He would tell him to get up there and get
23 the heat off. Most of it was Spanish.
- 24 Q Juan was telling somebody on a Nextel what?
- 25 A To come up there and pull the heat off of us.

Robert Leatherwood
Direct examination by Mr. Willingham

1 Q Did you know what he meant by that? What did it mean
2 to you when he said get the heat off?

3 A I would assume to run block to give us time to get
4 away.

5 Q All right. Did anybody come and run the block?

6 A No, sir.

7 Q What were they doing while you were boogieing it down
8 the road?

9 A By looking around pretty much. I mean, like I said, I
10 was trying to, I was watching the road. I was driving at a
11 great deal of speed.

12 Q After you were stopped by the law enforcement
13 officers, you were taken out of the car.

14 A Yes, sir.

15 Q Fairly forcibly.

16 A Yes, sir, I was.

17 Q Put on the ground.

18 A Yes, sir.

19 Q Handcuffed.

20 A Yes, sir.

21 Q How many officers did it take to get you handcuffed?

22 A I would say three, sir.

23 Q Okay. And after it took three officers to get you
24 handcuffed, what happened next?

25 A I was slid up to the back of the car. I was read my

Robert Leatherwood
Cross-examination by Mr. Warder

1 rights, and then I was taken to the local hospital here in
2 the area.

3 Q And why did you go to the hospital?

4 A Because I had severe lacerations to my face.

5 Q Did you have to stay at the hospital?

6 A No, sir. I was treated and released.

7 Q You had road rash.

8 A I had road rash. I have five stitches above my eye,
9 and then I was taken back to the sheriff's office.

10 Q And you were charged with trafficking.

11 A Yes, sir.

12 Q Resisting arrest.

13 A Correct.

14 Q And failure to stop.

15 A Yes, sir.

16 Q If you would, answer any questions that the defense
17 lawyers have for you.

18 CROSS-EXAMINATION

19 BY MR. WARDER

20 Q Mr. Leatherwood, sir, you pled guilty to resisting
21 arrest.

22 A Yes, sir.

23 Q And you went to the hospital.

24 A Yes, sir.

25 Q Tell me. What did you do when you were resisting

Robert Leatherwood
Cross-examination by Mr. Warder

1 arrest out there that night?

2 A I'm assuming I was resisting arrest because I did not
3 stop or because I left the parking lot to begin with.

4 Q Well, the solicitor made it seem like you were in some
5 fight with the officers and you went to the hospital. Did
6 you fight and resist those officers?

7 A At the scene, no, sir.

8 Q Well, how did you get injured?

9 A When I was taken out of the car, I mean, I had no
10 hands to stop me, and I went face first into the road.

11 Q So your physical resistance was falling on your face
12 in the road.

13 A Yes, sir.

14 Q Were you hit or struck?

15 A No, sir. I was -- when I had stopped, I had put my
16 arms outside the window, and I was removed through the
17 window to the street.

18 Q Okay. You pled guilty to failure to stop. After the
19 blue light was behind you did you fail to stop?

20 A No, sir.

21 Q Did you stop as soon as the blue light come on behind
22 you?

23 A Not immediately, but, yes, sir, pretty soon.

24 Q How quick?

25 A A matter of moments.

Robert Leatherwood
Cross-examination by Mr. Warder

1 Q My question is are you guilty of failure to stop.

2 A Yes, sir.

3 Q Now, you talked to a guy named D. J. Arlington
4 originally, is that right?

5 A Yes, sir.

6 Q And he wanted you to sell some or buy some marijuana?

7 A To get rid of some; to sell some.

8 Q Okay. You were supposed to sell marijuana.

9 A Yes, sir.

10 Q And who did you contact to sell marijuana?

11 A I contacted Cecil Gilliam.

12 Q Okay. So you and Mr. Gilliam, the original
13 conversation was about him buying marijuana.

14 A Yes, sir.

15 Q And how much marijuana was he going to buy?

16 A Whatever D. J. had.

17 Q Did he talk about quantities, how much he'd take or --

18 A No, sir.

19 Q -- or how much he wanted?

20 A No, sir. He never said any quantity. He just said he
21 would take whatever he had.

22 Q Okay. So originally it was going to be that he took
23 all of Mr. Arlington's marijuana.

24 A Yes, sir.

25 Q Did you have to get in contact with him again?

Robert Leatherwood
Cross-examination by Mr. Warder

1 A About D. J?

2 Q Yeah.

3 A The only time I contacted him again about when was
4 when he had left to go to Chicago to let him know that it
5 wasn't going to happen.

6 Q Okay. What did Mr. Gilliam do then?

7 A Sir?

8 Q Did Mr. Gilliam still want to buy something?

9 A Yes, sir.

10 Q Did he say he would take something besides marijuana?

11 A He told me to see if I could get in contact with Juan
12 Rodriguez, or my brother to get ahold of Juan to see if
13 Juan had any. At the time it was still marijuana.

14 Q Okay. So he was still trying to buy marijuana.

15 A Yes, sir.

16 Q And he wanted you to contact your brother to see if
17 your brother could help set up a deal.

18 A Right.

19 Q And did he tell you how much marijuana he wanted at
20 that time?

21 A No, sir, he didn't.

22 Q No one had any marijuana?

23 A No, sir.

24 Q How did this cocaine thing come about?

25 A After we talked to Juan, and Juan said, you know, that

Robert Leatherwood
Cross-examination by Mr. Warder

1 he was low on marijuana, he didn't have any or whatever,
2 that's when Cecil asked about the cocaine.

3 Q And did Cecil say how much cocaine he wanted?

4 A A kilo.

5 Q Did he say how much he would pay for it?

6 A He said that he was getting money from his brother and
7 from other people because they were going to cut it and
8 everything, but he never came with an exact dollar amount.

9 Q He was going to kinda take up a collection from his
10 family.

11 A Right. It kept growing with every conversation.

12 Q And how many times -- when was the first time he
13 contacted you about that?

14 A I would say three to four days prior to the 27th.

15 Q Okay. And on the 27th, was what day, it was the day
16 that you finally --

17 A That was the day that it happened, yes, sir.

18 Q Okay. And that was the day you went to the Li'L
19 Cricket?

20 A Yes, sir.

21 Q Now, when you went to the Li'L Cricket there was three
22 people in your car.

23 A Correct.

24 Q And there was never just two of you there.

25 A No, sir.

Robert Leatherwood
Cross-examination by Mr. Warder

1 Q And when you parked at the Li'L Cricket, you parked so
2 that your driver's door was next to Mr. Gilliam's driver's
3 door.

4 A Correct.

5 Q And you and him could talk.

6 A Right.

7 Q And did Juan talk to Mr. Gilliam?

8 A If he did, it was when I had went into the store.

9 When I was there, no, he never did.

10 Q So all of the time you were in the car you were the
11 only one from that car that talked to Mr. Gilliam.

12 A Correct.

13 Q And you did get out, and you were the individual that
14 walked to the store.

15 A Yes, sir.

16 Q What did you get in the store?

17 A A beer.

18 Q One beer?

19 A Yes, sir.

20 Q You were the only one drinking beer?

21 A Yes, sir.

22 Q And when you got back in the car and when you pulled
23 out, there was still three of you in there.

24 A Correct.

25 Q And the same three of you went from there to Juan's

Robert Leatherwood
Cross-examination by Mr. Warder

1 house --

2 A Yes, sir.

3 Q -- and waited for Mr. Gilliam to call.

4 A Correct.

5 Q Mr. Gilliam called, and the three of you got back in
6 the car.

7 A Yes, sir.

8 Q Now, you told us that Juan had a gun.

9 A Yes, sir.

10 Q And you saw the gun after the police come to the
11 parking lot or to the church parking lot.

12 A Yes, sir.

13 Q And it was pointed down and at your direction.

14 A Yes, sir.

15 Q Was he threatening you?

16 A He was telling me to go, and he never actually came
17 out and threatened me, no, sir.

18 Q Well, would you not have went if he hadn't have
19 said -- if he didn't have a gun?

20 A No, sir, I would not have.

21 Q So you left under duress.

22 A Yes, sir.

23 Q And really I guess your flight from the police would
24 have been a forced thing, kind of a kidnapping.

25 A Yes, sir.

Robert Leatherwood
Cross-examination by Mr. Warder

1 Q And while you were kidnapped, then I guess there were
2 some cars behind you.

3 A Yes, sir.

4 Q And you didn't know who that was that was behind you
5 during this kidnapping.

6 A No, sir.

7 Q You thought it might have been some of Mr. Gilliam's
8 thugs out after you, is that right?

9 A Correct.

10 Q And did Juan continue to hold you at gunpoint while he
11 forced you to drive the car, or did he point it somewhere
12 else?

13 A It stayed right there at his side at me.

14 Q Well, certainly while he was holding the gun on you,
15 he wasn't pointing it at no police or no officers or
16 anything, was he?

17 A No, sir.

18 Q Juan never pointed that gun at anybody besides you.

19 A No, sir.

20 Q And, in fact, if I understand it, the other gun, Juan
21 made sure that his brother put it down or his cousin put it
22 down.

23 A Well, he made the statement. You know, he told him to
24 put it down, but I never seen it because, like I said, I
25 was looking for a way out while all of that was going on in

Robert Leatherwood
Cross-examination by Mr. Warder

1 the back.

2 Q And you never saw that other gun --

3 A No, sir.

4 Q -- if there was one.

5 A No, sir.

6 Q I mean, as far as you know there wasn't.

7 A Only from what I hear, correct, sir.

8 Q I mean, from your own personal knowledge of --

9 A Right.

10 Q -- the things you observed in that car, you don't know
11 whether there was ever another gun in there.

12 A Correct.

13 Q And you certainly never saw any dope.

14 A No, sir.

15 Q And Juan certainly wasn't passing any dope around
16 where you could see it, giving it to people in the interior
17 of that car.

18 A No, sir.

19 Q And I guess it would be fair to say that Juan's
20 actions were the ones you could really observe because you
21 were up there in the seat right next to him.

22 A Correct.

23 Q And Juan never handed the dope back to the back.

24 A If he did it was done and I was looking around to see
25 if anyone was coming around while we were sitting at the

Robert Leatherwood
Cross-examination by Mr. Warder

1 church parking lot.

2 Q Were you expecting somebody to come around?

3 A No, but I was nervous. I had never done anything like
4 that prior to this and I wanted to make sure. I mean, I
5 was just looking. I wanted to make sure.

6 Q Vigilant. You didn't hang out down at Mr. Gilliam's
7 house while he dealt dope, did you?

8 A No, sir.

9 Q And you and him didn't have conversations and dealings
10 before this day.

11 A No, sir.

12 Q You probably didn't even know he was a dope dealer,
13 did you?

14 A No, sir.

15 Q Now, you have yourself been charged with trafficking
16 in cocaine out of this.

17 A Yes, sir.

18 Q Did I understand you pled guilty to that?

19 A Yes, sir. I did.

20 Q And you pled guilty to it even though you never saw
21 any in the car.

22 A Yes, sir.

23 Q And you certainly never had possession of any.

24 A No, sir.

25 Q It sounds to me like you are really not guilty of it.

Robert Leatherwood
Cross-examination by Mr. Warder

1 MR. WILLINGHAM: Objection, Your Honor. That's
2 calling for a conclusion. It's a legal statement, no
3 question.

4 THE COURT: Put in it the form of a question if you
5 want him to answer it.

6 Q Are you really guilty of trafficking in cocaine?

7 A Yes, sir.

8 Q Tell me what you did to be guilty of trafficking in
9 cocaine.

10 A I knew about the drug deal that was going down and I
11 knew that it was going to be there; therefore I feel that I
12 am guilty.

13 Q On that cocaine charge the maximum sentence was 25
14 years and a hundred-thousand-dollar fine.

15 A Yes, sir.

16 Q On the resisting arrest it was one year and a thousand
17 dollars.

18 A Yes, sir.

19 Q On the failure to stop it is three years and \$500.

20 A Yes, sir.

21 Q Twenty-nine years, \$101,500.

22 A Correct.

23 Q And you are expecting seven years.

24 A Yes, sir.

25 Q And you told us it was for truthful testimony.

Robert Leatherwood
Cross-examination by Mr. Warder

- 1 A Yes, sir.
- 2 Q Who decides it's truthful?
- 3 A Sir?
- 4 Q Who decides if your testimony is truthful, the jury or
5 the solicitor?
- 6 A I would assume as long as whatever is in my
7 statement --
- 8 Q So to get out of 29 years and \$101,000 you have to say
9 things that are like your statement.
- 10 A From, to be honest as I was in that statement, yes,
11 sir.
- 12 Q As honest as you were in that statement.
- 13 A Well, as.
- 14 Q So you get seven years if you have the same degree of
15 honesty today as you did then.
- 16 A No, sir. That's not how I meant it.
- 17 Q Yes, sir. Do you mean if you testify like your
18 statement?
- 19 A No, sir. I am just meaning that as long as I am
20 honest.
- 21 Q Well, is the solicitor the person that gets to decide
22 whether you are honest?
- 23 A I would assume so.
- 24 Q And you've got -- to get that seven years, you've got
25 to do what he considers honest, is that right? I just want

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 your understanding.

2 A I have to testify honestly, I mean.

3 Q And that's what you did.

4 A Yes, sir. I have.

5 Q You honestly were kidnapped and subject to duress when
6 you drove that car.

7 A I wouldn't -- if you look at it that way, yes, sir, I
8 guess so.

9 Q And thank you.

10 MR. GUTIERREZ: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. GUTIERREZ

14 Q Mr. Leatherwood, let's talk about that honesty.

15 THE COURT: Let me ask you to hold off just a minute.
16 Let me see y'all just a second.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: All right. Mr. Gutierrez.

20 MR. GUTIERREZ: Yes, sir, Your Honor. If it please
21 the Court.

22 Q Mr. Leatherwood, when was the first time you saw Jorge
23 Rodriguez?

24 A The night of November 27th.

25 Q Okay. Is that the, which night was that?

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 A That was the night that the deal was supposed to have
2 or the deal went down.

3 Q You maybe mean November the 28th?

4 A 28th. I am sorry; I'm sorry.

5 Q And when on that night? And you can talk about this
6 in a chronological text of after we went to this or before
7 we went to this. When was the first time you laid eyes on
8 him?

9 A That would be at my house when I got home from work,
10 from Firestone, that night.

11 Q Okay. And did you speak with him?

12 A No, sir. He swiped me, and that was about it for me
13 and him talking.

14 Q Okay. But you know, but you've known Juan Rodriguez
15 before, right?

16 A Yes, sir; yes, sir.

17 Q Do you remember giving this statement?

18 A Yes, sir.

19 Q And this statement was before Officer Cantrell.

20 A Yes, sir.

21 Q Do you remember who you said swiped you? Actually,
22 let me read what I have on the statement.

23 "Juan said this, step one," in quotes, "and he began
24 to run a black box around my chest and said he was checking
25 for me a wire."

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 Do you remember making that statement to Officer
2 Cantrell?

3 A Yes, sir. But as I made that statement it was Juan
4 who said it and Jorge was the one who swiped it.

5 Q And that's not what's written here though, is it, sir?

6 A I did not write that myself, sir.

7 Q Can I show it to you?

8 A Yes, sir.

9 Q Right there.

10 A Uh-huh. I have read that prior, yes, sir.

11 Q You read that prior?

12 A Yes, sir, I have read it.

13 Q Did you read it after Officer Cantrell wrote the
14 statement, this statement, on your behalf?

15 A Yes, sir, that night. I did.

16 Q That night you did.

17 A Yes, sir.

18 Q And you checked it for errors?

19 A Not exactly.

20 Q Well.

21 A I mean, I read it, but then I was, you know, escorted
22 off to a cell.

23 Q Did you sign each page?

24 A I believe I did, sir.

25 Q You believe you did.

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 Does each page not have, "I have read this statement
2 consisting of so many pages and I certify that the facts
3 contained herein or true and correct"?

4 A I believe it does.

5 Q And this statement says that Juan Rodriguez --

6 A Says that Juan did it.

7 Q Okay. And then after that point what happened, after
8 you were swiped with the box?

9 A I mean, me and Juan had talked. And then we got into
10 my mother's car -- me and Juan and Jorge -- and went to 221
11 at the Li'L Cricket.

12 Q Would you show -- you went to the Li'L Cricket?

13 A Yes, sir.

14 Q You and --

15 A Juan and Jorge.

16 Q And Jorge?

17 A Yes, sir.

18 Q Would you show me in your statement where it says
19 that?

20 A In my statement I think it says me and Juan went.

21 Q In your notes to that it says, "Me and Juan left in my
22 mother's car, and I called Cecil to tell them we had a
23 quarter of kilo and that we would meet him at the Li'L
24 Cricket."

25 Is it your testimony now that Jorge and Juan were with

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 you when you went to the Li'L Cricket?

2 A Yes, sir. They both were with me.

3 Q Whenever you talked with --

4 A Cecil.

5 Q -- Cecil. And that's your honest recollection of what
6 happened.

7 A Yes, sir, it is.

8 Q Okay. You also state in here in this statement,

9 "Juan's cousin had a MAC-10 and it appeared that he pointed
10 it because Juan told him to put it down."

11 A Yes, sir.

12 Q Okay. But you didn't see what he was pointing at.

13 A No, sir. I did not.

14 Q He could have been pointing it in the air.

15 A Correct.

16 Q Pointing at the ground.

17 A Correct.

18 Q Pointing it at himself.

19 A Correct.

20 Q How did you know it was a MAC-10?

21 A I didn't. Officer at the sergeant's station was, he
22 was going over everything, was it this, was it that. I
23 told him I didn't know. He said who had the MAC-10, who
24 had the other gun. And I just assumed that that was it
25 because the other one, the one that Juan had, he had

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 already asked me about prior to.

2 Q And do you recollect whenever you were asked about
3 which gun was pointed at you in the front seat by Juan
4 Rodriguez you referred to it as the shiny one?

5 A Right.

6 Q But you never saw the MAC-10, did you?

7 A No, sir, I did not.

8 Q So at that point you didn't know whether it was shiny
9 or not, did you?

10 A He showed me the pictures of it.

11 Q Showed you the pictures of it.

12 A Yes, sir.

13 Q And then after that, at that point after you saw the
14 pictures, then it appeared that the MAC-10 may have been
15 pointed at some point.

16 A Which was which.

17 Q Okay. Do you remember when you made this statement?

18 A I would say it was after I was released from the
19 hospital and taken back to the sheriff's station.

20 Q Let's look up here. Take a look at what it has on the
21 statement. What time does that say?

22 A 4:30.

23 Q On what day?

24 A The 29th.

25 Q Would that be the next morning?

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 A Yes, sir, it would be.

2 Q Okay. November?

3 A 2001.

4 Q And that's whenever you made this statement.

5 A Correct.

6 Q And you made this statement after an officer showed
7 you pictures of the MAC-10.

8 A No, sir.

9 I seen the pictures just several days ago. That's why
10 I said the shiny one. When the MAC-10 in the statement --
11 what the officer was assuming, it was because I said it was
12 bigger. It was -- the one up front was a smaller handgun.
13 He asked was it a handgun, was it a machine gun, was it a
14 shotgun. I told him it was a handgun that I seen up front.

15 Q And you never saw the pistol in the back, did you?

16 A No, sir, I did not.

17 Q How did you know it was a MAC-10?

18 A I didn't know it was a MAC-10.

19 Q Whenever you gave this statement at 4:30 that morning
20 you said a MAC-10.

21 A I never said MAC-10. No, sir, I did not. I know
22 exactly what you're talking about with it being in the
23 statement. I never said it was a MAC-10.

24 Q When did you make this statement?

25 A At 4:30 on the 29th.

Robert Leatherwood
Cross-examination by Mr. Gutierrez

- 1 Q And what does this statement say?
- 2 A He had a MAC-10 and it appeared that he had pointed
- 3 it.
- 4 Q How did you know it was a MAC-10? I ask you again.
- 5 A I did not know it was a MAC-10.
- 6 Q Why did you put MAC-10 in your statement?
- 7 A I didn't write the statement, sir.
- 8 Q So you're saying this statement is not your statement.
- 9 A Yes, sir, it is my statement.
- 10 Q You just said you didn't write it and you didn't put
- 11 the MAC-10 in there.
- 12 A No, sir. I didn't.
- 13 Q It has MAC-10 in here. Is this your statement?
- 14 A Yes, sir, it is.
- 15 Q Is this a true and accurate reflection of what you
- 16 thought occurred that night --
- 17 A Yes, sir, it is.
- 18 Q -- and what occurred that night?
- 19 A Yes, sir, it is.
- 20 Q Then how did the MAC-10 language get in here?
- 21 A I am assuming the officer wrote it down being that --
- 22 I mean, I don't know anything about guns. I couldn't look
- 23 at one and tell you what kind it is.
- 24 Q How at 4:30 in the morning did you know what type of
- 25 pistol was in the back seat, if any was?

Robert Leatherwood
Cross-examination by Mr. Gutierrez

1 A I did not know that the type it was. I did not write
2 MAC-10.

3 Q You didn't write this statement. Did you ever have a
4 chance to read it?

5 A Yes, sir, I did read it.

6 Q Did you read it at 4:30 a.m. the morning of November
7 the 29th, 2001?

8 A Yes, sir, I did.

9 Q And when you saw the name MAC-10 in there did you
10 question whoever wrote this for you? And I assume that
11 Officer M. D. Cantrell --

12 A I mean, while we were doing it, he was asking me which
13 gun was which, this and that and the other. I mean, and he
14 was giving names to them himself.

15 Q And why would he ask you that? Didn't you tell him
16 that you never saw anything except the pistol --

17 A Correct.

18 Q -- that was shoved into your side? Did you even
19 really know that there was a second pistol?

20 A No, sir. At the time I didn't until we got back and
21 it was giving a statement and they were telling me this and
22 that and the other.

23 Q Okay. Were you scared whenever this pistol -- which
24 one was it?

25 A The shiny one.

Robert Leatherwood
Redirect examination by Mr. Willingham

1 Q The shiny one was stuck in your side.

2 A Yes, sir. I was.

3 Q Did you put that in the statement that you gave at
4 4:30, November 29th of 2001?

5 A No, sir, I did not.

6 Q As a matter of fact, you never mentioned anything
7 about being forced to drive out of the parking lot or held
8 at gunpoint.

9 A Not in my statement, no, sir, I didn't.

10 Q No, you didn't.

11 MR. GUTIERREZ: That's all I have, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. WILLINGHAM.

14 Q Mr. Leatherwood, you don't truly concede, believe
15 yourself to be a victim, do you?

16 A No, sir, I do not.

17 Q I mean, you are in this up to your eyeballs --

18 A Correct.

19 Q -- just like the rest of them.

20 A Correct.

21 Q And that pistol never was shoved in your side.

22 A No, sir, it wasn't.

23 Q Was it?

24 A No, sir, it wasn't.

25 Q As far as the honesty and who determines whether

Robert Leatherwood
Redirect examination by Mr. Willingham

1 you're telling the truth, you don't know who gets to make
2 that determination, do you?

3 A No, sir, I do not.

4 Q You just know that you've got to tell the truth.

5 A Correct.

6 Q Showing you State's Exhibit 6-C, is that the gun
7 shoved in your side?

8 A No, sir. It was not.

9 Q State's 5-E?

10 A That's the one that was up front, yes, sir.

11 Q Who had it?

12 A Juan.

13 Q What happened to that gun?

14 A What happened to it?

15 Q As y'all were riding down the road.

16 A It was thrown out at some point.

17 Q When you were arrested were there any guns in the car?

18 A No, sir.

19 Q Any dope in the car when you were arrested?

20 A No, sir.

21 Q What happened to it?

22 A Everything was thrown out.

23 Q Who threw it?

24 A Juan threw out his gun and Jorge threw out the dope
25 and the other gun.

Robert Leatherwood
Recross-examination by Mr. Warder

1 Q Thank you.

2 THE COURT: Have you got a question?

3 MR. WARDER: Yes.

4 THE COURT: Okay.

5 RECROSS-EXAMINATION

6 BY MR. WARDER

7 Q You are telling the truth about you drove off and
8 drove down that road in that car because Juan forced you to
9 do it by pointing the gun at you. That is the truth, is
10 that right?

11 A Yes, sir, it is.

12 Q And you would never have done that if he hadn't
13 pointed that gun at you.

14 A No, sir. I would not have left the parking lot.

15 But as far as being kidnapped or whatever, no, sir, I
16 was not kidnapped. I wasn't -- I was scared.

17 Q And I don't mean -- you don't consider kidnapping when
18 somebody would point a gun at you and force you to drive a
19 car?

20 A All he said was go. He didn't say I'm going to shoot
21 you if you don't go, I'm going to do this. All he said was
22 go.

23 Q I thought your honest testimony was, and as a result
24 of that, you did that. You did it because you were afraid
25 you would be shot.

Robert Leatherwood
Recross-examination by Mr. Warder

1 A I feared for my life, yes, sir, I did.

2 Q Okay. So Juan pointed the gun at you, and you drove
3 that car away from there because you feared for your life.

4 A Correct.

5 Q And that's the truth.

6 A Yes, sir, it is.

7 Q And you didn't mention that to the officers.

8 A No, sir, I did not.

9 Q Didn't seem important that night?

10 A I was so nervous, so scared, I didn't think of
11 anything hardly.

12 Q Yes, sir.

13 THE COURT: Mr. Gutierrez, is there anything else?

14 MR. GUTIERREZ: Nothing, Your Honor.

15 THE COURT: Mr. Willingham?

16 MR. WILLINGHAM: No, sir, Your Honor.

17 THE COURT: Thank you step down.

18 Ladies and gentlemen, we are going to recess for the
19 evening.

20 Remember my caution given you previously. Don't talk
21 about the case with any person whatsoever in any fashion
22 whatsoever. Do not permit yourselves to be exposed to any
23 type of media coverage in the event there is something on
24 television, radio or newspaper or whatever.

25 Have a good evening. Please report directly to your

Robert Leatherwood
Recross-examination by Mr. Warder

1 jury room at 9:30 in the morning -- no. Excuse me. At ten
2 o'clock in the morning. I've got something scheduled for
3 9:30. At ten o'clock, please report back to your jury
4 room. Ten o'clock in the morning.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Court is in recess until 9:30 in the
8 morning.

9 END OF PROCEEDINGS DECEMBER 10, 2003

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Bryanna Rogers
Direct examination by Ms. Thill

1 (Proceedings December 11, 2003)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MS. THILL: We are, Your Honor.

6 THE COURT: Bring them in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good morning, ladies and gentlemen.

10 We are going to continue with the state's presentation
11 of evidence.

12 Ms. Thill.

13 MS. THILL: Thank you, Your Honor. The state would
14 like to call Bryanna Rogers to the stand.

15 BRYANNA ROGERS, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. THILL

18 Q If you could, please state your name and introduce
19 yourself to the jury.

20 A My name is Bryanna Rogers.

21 Q And what is your occupation?

22 A Narcotics investigator.

23 Q And what agency do you work for?

24 A Spartanburg County Sheriff's Office.

25 Q And how long have you been with the sheriff's office?

Bryanna Rogers
Direct examination by Ms. Thill

1 A Approximately four and a half years.

2 Q Can you explain to the jury what education and
3 training you've received?

4 A I graduated from the South Carolina Criminal Justice
5 Academy.

6 I've attended a D. E. A., which is drug enforcement
7 agency basic -- basic drug class.

8 I've gone to several methamphetamine classes through,
9 through the South Carolina Law Enforcement Division and
10 also at the Criminal Justice Academy.

11 Q Okay. And were you employed in your current position
12 as a narcotics investigator on November 28th of 2003 --
13 2001?

14 A Yes, ma'am.

15 Q Were you involved in a buy-bust takedown involving
16 Juan and Jorge Rodriguez?

17 A Yes, ma'am.

18 Q Okay. I would like to fastforward to when you were at
19 Old Switzer Church. What happened when you arrived there?

20 A When we arrived there we were actually down Old
21 Switzer, and I couldn't see the church parking lot. It's
22 very open. There is really no place for us to hide per se.

23 And I believe we arrived approximately sometime after
24 11:00, maybe around 11:30. And I think that Bo Leatherwood
25 and Juan Rodriguez and Jorge Rodriguez arrived around

Bryanna Rogers
Direct examination by Ms. Thill

1 11:30 in the church parking.

2 Q Okay. And what happened next?

3 A The criminal informant that was working for the
4 sheriff's office, we were advised over a radio that he had
5 gotten into --

6 MR. WARDER: Objection to what they were advised on
7 the radio.

8 THE COURT: Sustained.

9 A The interaction between the C. R. I. and the suspects
10 in the vehicle occurred, and we were given a takedown
11 signal.

12 I left Old Switzer Road travelling towards Highway
13 221, and as I pulled into the parking lot of Highway 221
14 there were several officers of my unit with their raid vest
15 on in the parking lot attempting to take down the suspect
16 in the vehicle. The vehicle, which was a Nissan, proceeded
17 to leave the parking lot.

18 Q Bryanna, I'm going to show you a map of the area.

19 Can I have you step off the stand and mark where the
20 Old Switzer Church is?

21 (Whereupon, the witness left the stand.)

22 A How do you want me to mark it, with an X?

23 Q Yes.

24 A It is right here at the intersection of Highway 221
25 and Old Switzer Road.

Bryanna Rogers
Direct examination by Ms. Thill

1 Q Okay. And what county is that in?

2 A Spartanburg County.

3 Q Okay. And what happened after the suspects fled from
4 Old Switzer Road?

5 A Myself, I was driving an undercover vehicle and I
6 began to follow the vehicle, and we traveled down Old
7 Switzer Road here.

8 Like I said, they made a left onto -- excuse me, a
9 right onto Old Switzer, and from here we turned right onto
10 Old Spartanburg; traveled Old Spartanburg all the way up to
11 Highway 221, or excuse me, Highway 290.

12 From Old -- we made a left onto 290, and at about 417
13 Bo Leatherwood made an indication like he was going to turn
14 left, however, he didn't. He continued to go to West Road,
15 which I believe is this road here, where he made left.

16 I made contact with his vehicle in an attempt to stop
17 him. At that time he was able to recover, made the
18 left-hand turn here.

19 My lieutenant was directly behind me and a marked unit
20 was behind him with lights and siren going. My lieutenant
21 passed me and the marked unit came behind my lieutenant.

22 I got in behind them. We continued down West Road,
23 crossed over four seven -- 417. And West Road when you
24 cross over 417 turns into Bethany Church Road. There is a
25 stop sign here at Half Mile Road. At Half Mile Road the

Bryanna Rogers
Direct examination by Ms. Thill

1 chase was ended.

2 Q And can you put a mark where the chase ended?

3 A Uh-huh.

4 Q Thank you. If you would like to, take your seat
5 again.

6 (Whereupon, the witness returned to the stand.)

7 Q While this chase was proceeding did you observe
8 anything or witness anything that the defendants were
9 doing?

10 A Yes, ma'am.

11 When we first turned onto Old Switzer, you could see
12 the defendant. It took us a little bit to catch up to him.
13 But when we were turning and getting ready to go onto Old
14 Spartanburg, actually I believe it was once he was on Old
15 Spartanburg, we could see.

16 I could see a passenger or somebody on the passenger
17 side out the window pointing a gun at us. I was on the
18 radio advising fellow units that there was a weapon
19 involved. At that time we backed off for the safety.
20 There was four of us in a vehicle.

21 When we got onto Highway 290 we got up closer to the
22 vehicle again to be able to get a tag number in case we
23 weren't able, if we lost the car, we lost sight of the
24 vehicle, we would be able to give it out to be on the
25 lookout, a BOLO, to other vehicles.

Bryanna Rogers
Direct examination by Ms. Thill

1 At that time I could see Jorge Rodriguez who was in
2 the back seat kinda ducking down and looking up, and the
3 person in the front seat which was, excuse me, the front
4 passenger seat, Juan Rodriguez, peaking around his corner,
5 his side of the chair looking back, and again, in the same
6 manner, kinda up and down, which led us to believe that
7 instead of shooting --

8 MR. WARDER: Objection to what it led them to believe,
9 Your Honor.

10 THE COURT: Sustained.

11 Q Okay. You said the chase ended at Half Mile Road.
12 How did the chase end?

13 A Sergeant Andrews blocked the vehicle. He came in
14 front of the vehicle that Bo Leatherwood was driving, and
15 Bo stopped.

16 Q Okay. And what happened next?

17 A All three suspects were taken out of the vehicle.

18 Q I'm going to show you what's been marked as State's
19 Exhibit No. 1. Can you tell me who that is?

20 A Jorge Rodriguez.

21 Q Okay. And what happened after the suspects were taken
22 out of the vehicle?

23 A I was involved in taking Jorge Rodriguez out of the
24 vehicle. He was placed on the ground. He was handcuffed.
25 He was Mirandized.

Bryanna Rogers
Direct examination by Ms. Thill

1 Q Okay. So you are familiar with the Miranda warnings.

2 A Yes, ma'am.

3 Q Did you have occasion to give Jorge Rodriguez the
4 Miranda warnings?

5 A I did.

6 I wear a badge on my neck that on the front of the
7 badge is my actual sheriff's office badge, and on the back
8 there's a pocket with a clear plastic coating over it, and
9 I just turned it over and I could read right from the card
10 to the suspect.

11 Q Okay. And that's how you advised him of his Miranda
12 warnings.

13 A Yes.

14 Q Was anyone else present?

15 A Officer Sherrill.

16 Q Okay. Now, as a narcotics officer you have had
17 occasion to deal with people who are under the influence of
18 alcohol, the influence of alcohol and drugs, correct?

19 A Yes.

20 Q Did the defendant Jorge Rodriguez appear to be
21 intoxicated in any way?

22 A No.

23 Q Did he respond to your questions?

24 A He did.

25 Q Was his speech coherent?

Bryanna Rogers
Direct examination by Ms. Thill

1 A It was.

2 Q Did he at any time ask for an attorney?

3 A No.

4 Q Did he at any time invoke his right to remain silent?

5 A No.

6 Q Did you promise anything to him?

7 A No.

8 Q Did you coerce or threaten him in any way?

9 A No.

10 Q What can you tell us today, what rights you advised
11 him of?

12 A That he had the right to remain silent; he had a right
13 to an attorney; that if he wanted to have an attorney
14 present he could before any questioning.

15 Q So to the best of your knowledge were any statements
16 made to you by Juan or by Jorge Rodriguez made voluntarily
17 and freely?

18 A Yes.

19 Q And what, if any, statements did he make to you?

20 A When he got out of the vehicle, when he was taken out
21 of the vehicle, I asked him if he had anything on him, any
22 drugs, any guns. And he stated that he had thrown the
23 drugs out by the bridge.

24 He wasn't familiar with the street names, but he said
25 when we crossed over a bridge I threw it out the window.

Bryanna Rogers
Direct examination by Ms. Thill

1 I also asked him about a gun. He said he threw that
2 out the window when --

3 MR. WARDER: Your Honor, may we approach the bench?

4 THE COURT: Yes.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 Q I'm sorry, Bryanna. Continue.

8 A He stated he threw the drugs out at the bridge. Like
9 I said, he wasn't sure exactly what street that was, but he
10 said he threw a gun out when the marked unit got behind
11 him.

12 At that time he also had a small amount of marijuana
13 on his person which he turned over. He told us where it
14 was and we retrieved that from him.

15 At that point we were mostly concerned about the gun
16 because it was loaded, and he and another deputy and I got
17 into a car and he tried to take us to the point about where
18 he thought he threw it out. We were unsuccessful finding
19 it.

20 At that time after that I took him back to where the
21 bridge is, and I had advised Investigator Taylor that we
22 were coming back to that area. He had said he threw it
23 over the bridge, and we returned to that area where
24 Investigator Taylor was. And I turned him over to
25 Investigator Taylor after he showed that on the right side

Bryanna Rogers
Cross-examination by Mr. Warder

1 of the bridge he threw it out, and I believe pointed it
2 out. It was in some brush.

3 Q Okay. One last question.

4 Can you tell me of the suspects, who was in the
5 vehicle and where they were located in the vehicle?

6 A Yes.

7 Bo Leatherwood who is Robert Leatherwood was the
8 driver; Juan Rodriguez was in the front-passenger seat; and
9 Jorge Rodriguez was in the back-passenger area.

10 Q Thank you.

11 MS. THILL: We have no further questions.

12 Q Answer any questions Mr. Warder or Mr. Gutierrez may
13 have for you.

14 CROSS-EXAMINATION

15 BY MR. WARDER

16 Q Ms. Rogers, did Jorge advise you where he got the
17 cocaine?

18 A I believe he said he brought it from Florida.

19 Q Okay. In your incident report you say that he said
20 that he had brought nine ounces from Florida and that some
21 black guy wanted to buy it. Is that correct?

22 A Yes.

23 Q And at the time he told you that, it was immediately
24 after his apprehension after this chase.

25 A It was, yes. It was sometime after that, yes.

Bryanna Rogers
Cross-examination by Mr. Warder

1 Q Okay. Now, in regard to the chase, how soon did Bo
2 Leatherwood stop after the blue lights come on behind him?

3 A Do you want me to show you on the map?

4 Q If you could, please.

5 (Whereupon, the witness left the stand.)

6 A Highway 290 from here is fairly straight. I could see
7 the blue lights in my rearview mirror but the -- when I
8 made contact with Bo Leatherwood's vehicle we were here at
9 this intersection.

10 When he turned, as soon as they turned, my lieutenant
11 came around and then Sergeant Andrews came by him. And
12 through here he would have seen the blue lights, and he
13 didn't stop until this intersection at Bethany Church and
14 Half Mile Road.

15 Q Sometimes I can't tell distance on maps that do not
16 have a scale on them.

17 Could you give me some idea of the distance between
18 those two events happening, the distance from the point the
19 blue lights came behind him and the point he stopped at
20 Half Mile Road and West Road?

21 A When, from this intersection of 290 and West Road to
22 this intersection is probably maybe two to three miles.
23 I'm not sure. I haven't clocked it off, but that would be
24 an estimate, my guess.

25 Q But your testimony was that, as I understood it, that

Bryanna Rogers
Cross-examination by Mr. Warder

1 the car with the blue lights on didn't get behind you until
2 you were almost to the corner on West Road after the
3 straightaway there, is that correct?

4 A No.

5 My testimony is that at this point my lieutenant was
6 behind him and the blue lights were behind my --

7 Q Okay. I thought you told us that you hit him at that
8 intersection, ran into him.

9 A Yes, sir.

10 Q You would have been the first car behind him?

11 A I was the first car behind him from the initial X
12 until the intersection.

13 Q Okay. Did your lieutenant pass you in the
14 intersection?

15 A At this intersection?

16 Q Yes.

17 A Yes.

18 Q Didn't pass you on the straightaway after the
19 intersection, right in the intersection.

20 A Well, the reason I didn't continue to pursue him is if
21 I had continued I would have gone off an embankment, so it
22 was quicker for --

23 Q So you lost control of your car kind of when you
24 struck him.

25 A No. I don't think I lost control. If I had continued

Bryanna Rogers
Cross-examination by Mr. Warder

1 to attempt to hit him I would have lost control.

2 Q What direction did your car go through the
3 intersection? Did you have to back it up?

4 A No, sir.

5 Q Okay. You continued behind him.

6 A After the other, the other two vehicles passed me,
7 yes, sir.

8 Q Were you at a complete stop when they went by you?

9 A Yes.

10 Q And so you hit him and your car came to a stop at that
11 intersection.

12 A Yes.

13 Q And then the other cars however didn't pass you. They
14 simply drove around because you were in the --

15 A Yes.

16 Q Okay. So then it would have been about -- and of
17 those two cars was the first one the one that had the blue
18 light on, or was it the second one?

19 A The second.

20 Q So between Bo Leatherwood and the blue lights, there
21 still would have been a car.

22 A Correct.

23 Q Okay. Did the car with the blue lights ever pass the
24 car that was between them and get directly behind him?

25 A I believe he did at the intersection of 417 and West

Bryanna Rogers
Cross-examination by Mr. Gutierrez

1 Road.

2 Q Okay. So when the blue lights got directly behind
3 him, Bo Leatherwood would have traveled about how far?

4 A Less than a mile, maybe a mile at the most.

5 Q Okay. Now, did you know that Bo Leatherwood was
6 driving under duress, that he was only running because they
7 were pointing a gun at him and he really didn't want to do
8 that?

9 A No, sir.

10 Q When you were following did you see anybody pointing a
11 gun at him?

12 A No, sir.

13 Q Did the position of the occupants look like they could
14 be pointing a gun at him?

15 A I don't know.

16 Q Well, when you got there did Bo Leatherwood say thank
17 God, you've saved me, they were making me drive like this?

18 A When I got there, I had no contact with Bo
19 Leatherwood.

20 Q Thank you very much.

21 MR. GUTIERREZ: If it pleases the Court.

22 THE COURT: Mr. Gutierrez.

23 CROSS-EXAMINATION

24 BY MR. GUTIERREZ

25 Q Officer Rogers, you stated that Bo Leatherwood stopped

Bryanna Rogers
Cross-examination by Mr. Gutierrez

1 whenever his vehicle was blocked by, and I didn't catch who
2 that was that blocked his vehicle. I take it that was the
3 marked vehicle.

4 A Yes, sir. It was Sergeant Andrews.

5 Q Sergeant Andrews?

6 A Yes, sir, Sergeant Brian Andrews.

7 Q Did you observe the vehicle come to a stop after being
8 blocked?

9 A As I arrived on the scene Sergeant Andrews' car was
10 coming, was actually stopped, and he and Investigator
11 Henderson were opening that vehicle, and then we pulled up
12 and we got out and we went directly to the passenger or to
13 the back passenger.

14 Q To the back passenger.

15 At any time during this pursuit did you recognize
16 exactly who it was that was hanging out of the car pointing
17 a weapon at Roger?

18 A No, I did not.

19 Q You couldn't tell if it was -- was it somebody
20 definitely on the passenger's side?

21 A It was definitely on the passenger's side.

22 Q And you have seen photos of Jorge Rodriguez and Juan
23 Rodriguez since that time.

24 A Yes, I have.

25 Q And you are still not able to make any positive clear

Bryanna Rogers
Cross-examination by Mr. Gutierrez

1 identification of which one it was that was hanging out.

2 A No, sir. It was probably 11:30 at night, and there is
3 no street lights on any of it.

4 Q Did the Blazer have a problem keeping up with the
5 defendant's vehicle?

6 A Yes. It is not in the best condition.

7 Q And you also had three other -- you had three
8 passengers in your Blazer as well.

9 A I did.

10 Q Did you ever lose sight of the defense vehicle?

11 A When we would come around some of the curves for a
12 brief second you would, because I would have to slow down
13 for safety purposes.

14 Q Were any bridges located near those curves or corners?

15 A I believe at Old Spartanburg there is the bridge the
16 question.

17 Q And that was the bridge in which --

18 A Where the drugs were found.

19 Q Did you ever see through any -- who, if anybody, threw
20 drugs or weapons out of the vehicle?

21 A No, I didn't.

22 Q To your knowledge do you have, do you know whether
23 anybody has seen? Let me rephrase that one.

24 You stated that Jorge Rodriguez after you pulled him
25 out of the vehicle and Mirandized him stated that -- you

Bryanna Rogers
Cross-examination by Mr. Gutierrez

1 stated that you removed a bag of G-P-M. What is G-P-M?

2 A Green plant material.

3 Q And that's --

4 A Frequently marijuana. But before it's tested we refer
5 to it as G-P-M, just green plant material.

6 Q Right. How much was in there?

7 A I don't recall. It was minimal.

8 Q Minimal?

9 A Personal usage.

10 Q Then you Mirandized Jorge Rodriguez.

11 A No, sir. I Mirandized him before the marijuana was
12 found.

13 Q I'm sorry. After you took Jorge Rodriguez out of the
14 vehicle, then you Mirandized him?

15 A Yes.

16 Q Were other officers Mirandizing the other defendants?

17 A I believe so. I was involved with what I was doing.
18 I can't testify to what they were doing.

19 Q And it's your testimony that at that point Jorge
20 Rodriguez advised you that he had thrown the cocaine and
21 then the guns, then a gun, out the window.

22 A Yes, sir.

23 I asked him questions about where the drugs were and
24 where the gun was, and he stated that he had thrown the
25 drugs out near a bridge and he had thrown the gun out when

Bryanna Rogers
Cross-examination by Mr. Gutierrez

1 he saw the blue lights or the marked unit behind him.

2 Q And that's what he told you there at the scene.

3 A Yes.

4 Q Officer Rogers, let's go back to the -- just for a
5 second let's go back to the Li'L Cricket.

6 A Okay.

7 Q In your report you state that at that time Leatherwood
8 did not have the contraband, slash, cocaine. How did you
9 know that at that point?

10 A After we left the Li'L Cricket we went to a local fire
11 department to reconvene and try and figure out what we were
12 going to do. And at that time Investigator Taylor who is
13 the case agent had stated that he --

14 MR. WARDER: Objection.

15 THE COURT: Sustained.

16 Q Did you know of that of your own personal knowledge or
17 investigation --

18 A Yes.

19 Q -- whether there was contraband or cocaine?

20 A Of my own personal knowledge?

21 Q Or by your own investigation.

22 A By my own investigation, I would say no.

23 Q Okay. I see here in your report that you sat in on
24 the statement given by Robert Leatherwood to Investigator
25 Cantrell. Is that true?

Bryanna Rogers
Cross-examination by Mr. Gutierrez

1 A It is.

2 Q And did you observe Robert Leatherwood write a
3 statement or did -- excuse me. Did you observe
4 Investigator Cantrell write the statement?

5 A Yes.

6 Q To your knowledge was the statement Robert Leatherwood
7 gave an accurate statement of what, of what was written?
8 And by that I say whenever, if I could explain that
9 further, in your report you say you sat in on it.

10 Were you actually able to hear what was being said by
11 Leatherwood and having that match what was written on the
12 statement?

13 A Yes.

14 Q And how would you be in that position? How were you
15 in that position? Were you sitting at the table with them?

16 A I was. We don't interview, we try not to interview,
17 anybody by themselves, especially if they're going to give
18 a statement and it is going to be against them. So that
19 way --

20 Q And as you heard Robert Leatherwood give the
21 statement, you saw Investigator Cantrell write that on the
22 paper.

23 A Yes.

24 Q That's all I have. Thank you.

25 MS. THILL: The state has no further questions.

Nicki Sherrill
Direct examination by Ms. Thill

1 THE COURT: You may step down.

2 MS. THILL: May she be excused, Your Honor?

3 THE COURT: Any objection?

4 MR. WARDER: No objection, Your Honor.

5 THE COURT: She may also be excused.

6 (Whereupon, the witness was excused.)

7 MS. THILL: The state would next call Nicki Sherrill.

8 NICKI SHERRILL, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. THILL

11 Q Good morning.

12 A Good morning.

13 Q If you could, please state your name for the record
14 and introduce yourself to the jury.

15 A Officer Nicki Sherrill, Spartanburg County Sheriff's
16 Office.

17 THE COURT: Please speak into the microphone.

18 A Officer Nicole Sherrill, Spartanburg County Sheriff's
19 Office.

20 Q And how many years have you been working for the
21 sheriff's office?

22 A Two years.

23 Q And what education and training have you received?

24 A I have a bachelor's degree in criminal justice, and
25 then I have interview and interrogation classes through the

Nicki Sherrill
Direct examination by Ms. Thill

1 office.

2 Q And what have your assignments been over the last two
3 years?

4 A I have been with, on uniform patrol primarily. I've
5 worked with narcotics for eight months. And while I was --
6 when you get hired at the sheriff's office, you do a week
7 in narcotics and a week in detectives and a week in every
8 division at the sheriff's office.

9 Q And were you employed in your current capacity on
10 November the 28th of 2001?

11 A Yes, ma'am.

12 Q Were you involved in a buy-bust takedown that involved
13 Juan and Jorge Rodriguez on November the 28th?

14 A Yes, ma'am.

15 Q We are going to fastforward to when y'all were at the
16 Old Switzer Church. Tell us about who you were with and
17 what happened there.

18 A I was in an undercover Blazer with Bryanna Rogers.
19 Investigator Bryanna Rogers was the driver. Investigator
20 Reed Lindsey was in the front-passenger seat. A trainee,
21 Todd Rufner, was in the back seat, and I was in the back
22 seat as well.

23 We were parked about a fourth of a mile down the road
24 from the church. We could not see the informant from where
25 we were sitting, however, we saw the suspects drive by us

Nicki Sherrill
Direct examination by Ms. Thill

1 and go to the church. We were to wait for instructions to
2 go to the church when the buy had gone down.

3 We got instructed to go to the church. The suspects
4 took off. We had wanted to block, and they went through a
5 different one. We were instructed to follow after them.
6 We did.

7 We went down Old Switzer Road. When we got in behind
8 them the individual in the front passenger's side held a
9 gun out the window, which we saw and we notified the other
10 officers that there was a gun out the window pointed at us.

11 And they instructed us to go ahead and try to hit the
12 suspect vehicle, and so we hit the suspect vehicle. At
13 that point that slowed us down.

14 The suspects did not wreck. They kept going, and at
15 that point, that is when Lieutenant Hancock in his vehicle
16 and Sergeant Brian Andrews who was in the patrol car with
17 lights and sirens passed us and got in behind the suspects,
18 and then eventually the suspects stopped.

19 When the suspects stopped the individuals in Brian
20 Andrews' vehicle and Lieutenant Hancock's truck had already
21 gotten out of their vehicle and were getting the suspects
22 out.

23 We ran up to the vehicle as well. By the time I got
24 up to the vehicle the suspects were already out of the
25 vehicle.

Nicki Sherrill

Cross-examination by Mr. Warder

Cross-examination by Mr. Gutierrez

1 Bryanna Rogers. I was primarily standing by her. She
2 had the back-seat passenger out, Jorge. And he at that
3 point was already handcuffed and was being Mirandized.

4 Then, then from there on we were put, told to go
5 spread out along that road and just search for drugs and a
6 weapon that were disposed of out of the vehicle.

7 Q Thank you.

8 MS. THILL: I have no further questions of this
9 witness.

10 Q Answer any questions Mr. Gutierrez or Mr. Warder may
11 have, please.

12 CROSS-EXAMINATION

13 BY MR. WARDER

14 Q Did the defendant Jorge after being Mirandized say
15 anything about where the drugs originated from?

16 A Not to me, sir.

17 Q Did you hear anything he said was my question.

18 A I did not hear anything he said.

19 Q Thank you.

20 CROSS-EXAMINATION

21 BY MR. GUTIERREZ

22 Q Officer Sherrill, you said the, you said that you saw
23 the passenger in the front seat pull out a pistol. Could
24 you identify that passenger in the front seat?

25 A The passenger in the front seat was Juan Rodriguez.

Nicki Sherrill

Cross-examination by Mr. Warder

Cross-examination by Mr. Gutierrez

1 Q Okay. Is that the one you saw point a pistol?

2 A I saw the pistol out the front window. We had our
3 eyes on the individuals the entire time. Nobody switched
4 seats. The individual that was pulled out of the front
5 seat was Juan Rodriguez.

6 Q Did you see anybody hanging out of the vehicle during
7 the pursuit?

8 A His whole body was not hanging out. His arm was
9 hanging out with the pistol pointed in our direction.

10 Q Could you identify that pistol at that point?

11 A Not, not from where -- a vehicle, no.

12 Q Okay. The reason why I ask that is you can identify
13 the tag. You were close enough to identify the tag of the
14 vehicle at that point, weren't you?

15 A Yes, but a pistol, I mean, it was a handgun. I could
16 tell you it was a handgun.

17 Q A small handgun, a large handgun?

18 A It was a fairly small handgun, about the size we
19 carry.

20 Q A shiny handgun, a dull-finish handgun?

21 A I can't -- that is two years ago. I can't remember
22 that.

23 Q Where were you seated in the Blazer?

24 A Behind the front passenger, actually more towards the
25 middle. The other officer scooted over and ducked down,

Stephen Henderson
Direct examination by Mr. Willingham

1 and I was looking out the window, assisting Bryanna Rogers
2 in to what I saw because she was concentrating on the road
3 and driving and hitting the suspect.

4 Q You were in the back seat.

5 A Uh-huh.

6 Q Is there not a third row or anything?

7 A No, yeah, yes, sir.

8 Q You were in the back seat, middle.

9 A Yes, sir.

10 Q Thank you.

11 MS. THILL: The state has no further questions.

12 We would ask that she be excused at this time, Your
13 Honor.

14 THE COURT: Any objection?

15 MR. GUTIERREZ: No objection.

16 MR. WARDER: No, Your Honor.

17 THE COURT: She may be excused.

18 (Whereupon, the witness was excused.)

19 MR. WILLINGHAM: Call Steve Henderson, Your Honor.

20 STEPHEN HENDERSON, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. WILLINGHAM

23 Q Tell the jury who you are.

24 A Stephen Henderson.

25 Q And, Mr. Henderson, back in November of 2001 were you

Stephen Henderson
Direct examination by Mr. Willingham

1 working at the sheriff's office?

2 A Yes. I did.

3 Q What were you doing for them?

4 A I was a narcotics investigator.

5 Q Okay. How long were you in law enforcement?

6 A Approximately six years.

7 Q Okay. Were you part of the narcotics team back in
8 November of 2001?

9 A I was.

10 Q Were you involved in the arrest and takedown of Bo
11 Leatherwood, Jorge Rodriguez and Juan Rodriguez?

12 A Yes.

13 Q What was your role?

14 A I was assigned as one of the takedown units with
15 another investigator. We were on foot in a cemetery
16 located behind the church.

17 Q Okay. Did you actually arrest any of the three
18 defendants in this case?

19 A I actually made a physical arrest on Leatherwood after
20 the pursuit.

21 Q Okay. After the arrest of Leatherwood, I believe he
22 was taken to the hospital.

23 A I believe so.

24 Q Okay. And the next time you had involvement with the
25 Rodriguezes was back at the sheriff's department.

Stephen Henderson
Direct examination by Mr. Willingham

1 A Correct.

2 Q And I believe at the sheriff's office you talked to a
3 fellow named Jorge Rodriguez, is that correct?

4 A Yes, sir.

5 Q And before you talked to Jorge Rodriguez did you
6 advise him of his rights?

7 A I did.

8 Q Did you use anything to assist you in advising him of
9 his rights?

10 A Yes, sir. I used a preinterrogation form.

11 Q I show you what's been marked State's Exhibit No. 2
12 for identification purposes and ask if you recognize that.

13 A Yes, sir, I do.

14 Q What is it?

15 A It's the preinterrogation waiver form I completed with
16 Jorge Rodriguez.

17 Q Does that form have a part or section on there where
18 you advised him of his rights?

19 A Yes, sir, it does.

20 Q And explain to this jury how you advised him of his
21 rights, how you went through that form.

22 A There are originally two copies of this form.

23 In his presence sitting down in front of him I fill
24 out everything as far as his information, his name, his
25 address and so on.

Stephen Henderson
Direct examination by Mr. Willingham

1 And then in sequence one through five he has Miranda
2 warnings that I read aloud to him. He's also -- I sign it
3 and put my name, and there is also a witness, which was
4 Investigator Taylor there at the time.

5 Mr. Rodriguez also signed it saying that he had
6 understood his rights in my presence and Investigator
7 Taylor's presence.

8 Q The top of that form has information about Jorge
9 Rodriguez, where he lives, his age, his date of birth.
10 Where did you get that information from?

11 A From Mr. Rodriguez.

12 Q He told you that?

13 A Yes, sir.

14 Q It also has listed that you advised him he had the
15 right to remain silent.

16 A Yes, sir.

17 Q Anything he said could be used against him in court.

18 A Yes, sir.

19 Q That he had the right to an attorney.

20 A Yes, sir.

21 Q If he couldn't afford an attorney, one would be
22 appointed to him.

23 A Yes, sir.

24 Q And he had the right to stop questions at any time.

25 A Yes.

Stephen Henderson
Direct examination by Mr. Willingham

1 Q All of those rights were advised to him --

2 A They were.

3 Q -- by using that form.

4 A Yes, sir.

5 Q Did he appear to understand what you were saying to
6 him?

7 A He did.

8 Q And did he, in fact, sign that he understood what his
9 rights were?

10 A Yes, he did.

11 Q Sign that form?

12 A This one here, yes, sir.

13 Q Now, you said you were in law enforcement for six
14 years and worked in narcotics.

15 Have you had plenty of opportunity to deal with people
16 that were under the influence of alcohol and drugs?

17 A I did.

18 Q Did Jorge Rodriguez appear to be under the influence
19 of any alcohol or drugs when you were talking to him on the
20 early morning hours of November the 29th of 2001?

21 A No, he did not.

22 Q Was his speech coherent? Was it where you could
23 understand it?

24 A Yes, it was.

25 Q And whenever you talked to him and asked him a

Stephen Henderson
Direct examination by Mr. Willingham

1 question did his responses make sense?

2 A Yes, sir.

3 Q He wasn't talking out of his head or anything.

4 A No.

5 Q Were you -- did you promise him anything to get him to
6 waive his rights?

7 A No.

8 Q Did you threaten him in any way to get him to waive
9 his rights?

10 A Not at all, no, sir.

11 Q Did he ever ask for anything that wasn't provided for
12 him?

13 A No.

14 Q Okay. And did he, in fact, agree to talk to you?

15 A Yes, sir, he did.

16 Q And I believe there is a second part of that form that
17 talks about him giving up his rights and talking to you.

18 A Yes, sir.

19 Q And did he agree to do that?

20 A Yes, he did.

21 Q Did he appear to understand that when you were talking
22 to him?

23 A Yes, sir, he did.

24 Q And did he, in fact, sign that he understood?

25 A He did.

Stephen Henderson
Direct examination by Mr. Willingham

1 Q Does that form accurately reflect all of the things
2 you just mentioned?

3 A Yes, it does.

4 MR. WILLINGHAM: Your Honor, at this time I move
5 State's Exhibit No. 2 into evidence.

6 THE COURT: It is admitted.

7 (Preinterrogation waiver form marked State's Exhibit
8 No. 2.)

9 Q And did, in fact, he talk to you?

10 A Yes, sir, he did.

11 Q When you advised him of his right to remain silent did
12 he say he didn't want to talk to you?

13 A No, sir, not at that time.

14 Q When you told him that he had a right to a lawyer did
15 he say I want a lawyer?

16 A No, sir.

17 Q At some point he did though.

18 A Correct.

19 Q At what point did he do that?

20 A Later on in the interview, and I'm recalling from
21 memory. It was later on that hour.

22 Q And as soon as he asked for a lawyer, what happened?

23 A I stopped all questioning.

24 Q Now, was this statement recorded in any way?

25 A Yes, sir. It was audio-taped.

Stephen Henderson
Direct examination by Mr. Willingham

1 Q It was audio-tapped. And I show you what's previously
2 been marked as State's Exhibit No. 3. Do you recognize
3 that?

4 A Yes, sir.

5 Q What is it?

6 A It's the audio tape that I used to record the
7 interview of Mr. Rodriguez.

8 Q Have you listened to that tape?

9 A Yes, sir.

10 Q Whose voices are on that tape?

11 A Mine along with Jorge Rodriguez.

12 Q Does that tape accurately reflect the conversation you
13 had with him?

14 A It does.

15 MR. WILLINGHAM: Your Honor, at this time actually I
16 move State's Exhibit No. 8 into evidence, will be a
17 substitute for State's Exhibit No. 3.

18 MR. GUTIERREZ: And, Your Honor, I would like to renew
19 my objection. I think it has already been preserved on the
20 record as to the introduction of that tape.

21 THE COURT: Let me see y'all just a minute.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 THE COURT: It is admitted over the objection of Mr.
25 Gutierrez.

Stephen Henderson
Direct examination by Mr. Willingham

1 MR. WILLINGHAM: Thank you, Your Honor.

2 (Tape marked State's Exhibit No. 3; tape marked State's
3 Exhibit No. 8.)

4 MR. WILLINGHAM: Your Honor, may we approach one more
5 time?

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: All right. Ladies and gentlemen, the
9 solicitor is going to be playing the tape that has just
10 been introduced into evidence, so you will be listening to
11 the tape as it is played.

12 He is also going to be handing you a document which is
13 purported to be a transcript of the conversations that are
14 contained on the tape.

15 Now, understand that that transcript is not a
16 certified court reporter's verbatim transcript of what's
17 contained on the tape. The reason I explain that to you is
18 that, for instance, during the course of this trial we have
19 a certified court reporter that takes down everything that
20 is said.

21 At the conclusion of a trial if the court reporter
22 transcribes what occurred during the trial, it is presumed
23 to be an accurate representation of what occurred during
24 the course of the trial. It is accepted just as the tape
25 would be.

Stephen Henderson
Direct examination by Mr. Willingham.

1 That's not what's being presented to you. The
2 document that's going to be presented to you was prepared
3 by the solicitor's office. Someone in their office
4 listened to the tape, and they typed up what they believed
5 to be an accurate representation of what's on that tape.
6 And that transcript may or may not be accurate. I don't
7 have any idea.

8 There is no objection to you having that transcript
9 for the purpose of following along as the tape is being
10 played. However, understand that it's not a certified
11 transcript and that if you hear something on the tape which
12 you believe is not the same as what's in the transcript,
13 then you must accept what's on the tape as being the
14 evidence that you will consider because the tape is what's
15 actually being introduced into evidence.

16 You will have the transcript just while you are here
17 in the courtroom to assist you in following along as the
18 tape is played. But once that tape has been concluded or
19 the playing of the tape has been concluded, the transcripts
20 will be taken back up. You won't have them in the jury
21 room during your deliberations, but you will have the tape
22 in the jury room during the deliberations.

23 Okay.

24 MR. WILLINGHAM: Thank you.

25 THE COURT: All right. You can pass out the

Stephen Henderson
Cross-examination by Mr. Warder

1 transcripts or have the bailiff pass them out.

2 (Whereupon, State's Exhibit No. 8 was played for the
3 jury.)

4 Q Investigator Henderson, does that accurately reflect
5 the conversation you had?

6 A Yes, sir.

7 Q Whenever he asked for a lawyer or you stopped the
8 interview, did he ever ask for a lawyer before 4:25 in the
9 morning?

10 A No, sir, not to my knowledge, not to me.

11 Q Showing you State's Exhibit No. 1. Is that the person
12 you took the statement from?

13 A Yes, sir.

14 Q Jorge Rodriguez?

15 A Yes, sir.

16 Q If you will, answer any questions the defense lawyers
17 have for you.

18 CROSS-EXAMINATION

19 BY MR. WARDER

20 Q Mr. Henderson, I want to draw your attention back out
21 there to the scene of when Bo Leatherwood's car was
22 stopped.

23 A Okay.

24 Q And I believe that you took Bo out of the car.

25 A Yes, sir.

Stephen Henderson
Cross-examination by Mr. Warder

1 Q And after he got out of the car, was there some
2 resistance?

3 A Yes, sir.

4 Q Bo received some injuries.

5 A I believe so.

6 Q Do you know how he got those injuries?

7 A Probably just from the resisting and the affect of the
8 arrest, I would assume. I did not take him to the
9 hospital, so I have no idea what his injuries were.

10 Q Well, can you tell me what he did in the resistance?

11 A What I recall when I first approached the car, I had
12 my gun pointed at him and I commanded him to let me see his
13 hands. I could not see his right hand. He kept his right
14 hand down by the seat and had his left hand up.

15 I kept shouting for him to show me his hands, show me
16 his hands. He never gave me his hands or never showed his
17 hands to me.

18 Finally I approached the car, and I believe we opened
19 the door or I opened the door and tried to pull him outside
20 the car. And another detective, Lindsay, when we got him
21 on the ground come and helped me to handcuff him.

22 Q Did you have to hit him, strike him?

23 A Yes, sir.

24 Q Do you know how many times you had to strike him?

25 A No, sir. I don't recall from memory, I don't.

Stephen Henderson
Cross-examination by Mr. Warder

1 Q Okay. He said that he was pulled out the window, but
2 the door was open.

3 A It very well could have been the window. I mean, this
4 is two years ago. I'm not for sure.

5 Q Okay. When you got to him did he tell you that he had
6 been forced to drive at gunpoint and he was an unwilling
7 victim of a kidnapping there?

8 A No, sir.

9 Q He didn't tell you that Juan had held a gun on him and
10 made him drive the car away and he didn't want to do that?

11 A No, sir. He didn't say anything to me.

12 Q And you were the first person to him then.

13 A Yes, sir.

14 Q No one was holding a gun on him when you had him.

15 A No, sir.

16 Q I mean, no other codefendant.

17 A No, sir.

18 Q But he didn't mention that.

19 A Did not?

20 Q Did not mention that.

21 A No, sir, not to me.

22 Q Okay. On his statement there back at page ten he said
23 that he was the -- his hand was out the window with his
24 gun.

25 Did you ask any follow-up questions at any other time

Stephen Henderson
Cross-examination by Mr. Warder

1 and in the statement about his hand going out the window
2 with the gun as it says on page ten?

3 A Give me just a second and let me --

4 Q Okay.

5 (Pause.)

6 Q I was referring to about halfway down when you said,
7 "Okay. But your gun came out the window," and when he
8 said, "Yes, my gun came out the window and I brought it
9 back in," did you question at any other time that wasn't on
10 the tape about that event?

11 A No, sir, nothing other than what's on the audio tape.

12 Q Everything about that was on the tape, so we heard all
13 that was about that.

14 A Yes, sir.

15 Q Okay. And at the time you were questioning about
16 where the cocaine come from, at that time did you know that
17 he told another officer that he got the cocaine in Florida?

18 A I recall I believe before I went to the interview
19 someone had said something about, about Florida, and I
20 can't say who it was. I can just remember somebody saying
21 that's why my attention was on Florida as far as saying
22 something to him.

23 Q Thank you very much.

24 MR. GUTIERREZ: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 CROSS-EXAMINATION

2 BY MR. GUTIERREZ

3 Q Investigator Henderson, let's first go to the
4 beginning of the statement. This statement that we've
5 handed out to the jury so that they could --

6 MR. GUTIERREZ: Your Honor, I have a matter with the
7 Court right now. Can we approach?

8 THE COURT: Go ahead.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 Q Officer Henderson, let's refer to the statement right
12 here. Did Jorge Rodriguez ever sign this statement?

13 A This?

14 Q This.

15 A No, sir, not the thing that I have. I can't see what
16 you are holding up. If you are holding the same copy I
17 am --

18 Q Okay. I'm sorry. We have the preinterrogation waiver
19 form right here.

20 A Right.

21 Q We have that, and we see where he signed there. But
22 as far as the actual statement that he gave, did he ever
23 sign any of this?

24 A No, sir, the statement he was giving was audible.

25 Q Now, did he ever have a chance to read or have the

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 statement read back to him once it was printed out?

2 A No, sir.

3 Q And so would you agree with me if I said that this
4 from page one to page 21, which is also what the jury has
5 been handed to follow along with the audio tape, is your
6 recollection or your account of what was said between the
7 two of you based on the interview and then the audio tape?

8 A No, sir, it's not my recollection. I didn't
9 transcribe this.

10 Q You did not transcribe it.

11 A No, sir.

12 Q Who did transcribe it?

13 A I will assume one of the secretaries in the sheriff's
14 office.

15 Q Did you review that for accuracy?

16 A To be honest with you, I have not even seen this
17 until -- I am no longer employed at the sheriff's office.
18 Me seeing this, this is the first time I have actually had
19 a chance to go over this when I found out about the court
20 date which was earlier this week. So I don't even know who
21 transcribed it.

22 Q And you haven't had a chance to look over it and read
23 over it with the audio tape. Would you say it's an
24 accurate recollection or recollection or accounting?

25 A Yes, sir. It's an accurate recollection.

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 Q You didn't see any problems in the --

2 A Well, besides, I mean, there's several spots in here
3 where they're inaudible and I see you've got -- I mean,
4 this is what one person hears might be different than what
5 another person hears. I might be able to make out one word
6 that another person can't.

7 Q So it's fair to say that after the statement was made
8 you never had a chance to read it until you got to court
9 this week.

10 A Correct.

11 Q Now, let's go back to the beginning of the interview.
12 It's 4:00 a.m. on November 29th of 2001, is that correct?

13 A Yes, sir.

14 Q Okay. And before you asked him any questions, you
15 Mirandized him again, is that correct?

16 A Yes. This is the first time I had Mirandized him.

17 Q Although he's Mirandized by you and for the first time
18 then.

19 A Yes, sir.

20 Q Okay. Isn't it true that on page one and -- well, a
21 good portion of page two you asked him questions. You
22 engaged him in a question-and-answer type of scenario where
23 you are asking him.

24 Well, let's take it from the first question.

25 "What I am going to do before we do it, I'm going to

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 make sure. I think you have already been read your rights
2 out there on the road, haven't you? You understand your
3 rights. What I am going to do is write them down and make
4 sure you understand them. I'm going to explain them to
5 you. Okay, J-O-R-G-E. Yes, sir."

6 So you were questioning him at that point, weren't
7 you?

8 A Basic, basic questions, nothing on criminal activity
9 though.

10 Q But you were engaging him in a question-and-answer
11 scenario, kind of like an interview.

12 A No, sir. I don't really think that's an interview,
13 but I was asking him questions, yes.

14 Q And what would you say is the difference between that
15 and an interview?

16 A Well, this, I never asked him a question on any type
17 of criminal activity besides his name, date of birth or his
18 age and where he lived.

19 Q Well, not everything in the rest of the transcript or
20 the audio tape interview, not everything, all of your
21 questions, there are directly related to criminal activity,
22 are they?

23 A No, sir.

24 Q Did you ever ask him if he wanted a lawyer?

25 A I'm sorry?

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 Q Did you ever ask Jorge Rodriguez at any time in this
2 interview or prior to the interview if he wanted a lawyer?

3 A Not that I remember directly asking him do you want a
4 lawyer besides just the basic Miranda warning.

5 Q Well, the basic Miranda warning that I have here on
6 page two begins, "All right." And then it ends, "All this
7 means is that your statement," well, all right, it says,
8 and then you give him the Miranda warnings, and then you
9 say, "All this means is that understand your rights.
10 Okay."

11 Did you ask him then if he wanted a lawyer?

12 A No, sir.

13 Q Did he ever say that he understood his rights? Did
14 you ask him if he understood his rights?

15 A No, sir. He signed the preinterrogation waiver form
16 stating that he understood his rights.

17 Q It says right here, says that you said, and this is on
18 the bottom of page two, "That you understand what your
19 rights are, sign that right there, and I will read the rest
20 of it to you."

21 A Okay.

22 Q Did you ask him if he understood his rights or did you
23 just tell him to sign saying that he understood what his
24 rights are?

25 A I don't directly remember. Apparently it's not

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 reflected that I said do you understand your rights.

2 Q What it does say is, "Sign that right there and I will
3 read the rest of it to you."

4 A That's what it says, yes.

5 Q Okay. Let's go turn to page four. Down at the bottom
6 you begin. Well, let's go back to page three.

7 MR. GUTIERREZ: Excuse me, Your Honor.

8 Q Let's go back to three.

9 After you deal with the preinterrogation waiver form
10 you ask him a series of other questions. Of course these
11 are after he's been Mirandized, which is what you recollect
12 was on page two.

13 A Right.

14 Q And you asked him a series of questions. Those don't
15 really relate to any type of criminal activity, do they,
16 whether he can read or write or what year he finished
17 school?

18 A No, sir, not if he can read and write, no, sir.

19 Q Or how long he lived in his home town.

20 Now we go to page four.

21 And your question begins, "It is now 4:07 a.m.,
22 November 29th of 2001."

23 And then you go on to tell, to state something about
24 his being unable to read or write and that this interview
25 is going to be audio-taped for that purpose.

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 Had you told him before it was going to be
2 audio-taped?

3 A I don't recall actually stating to him. I mean, the
4 recorder was not hidden in any way. It was setting right
5 in front of us.

6 Q Setting right in front. And you turned it on right
7 before you started talking to him.

8 A Yes, sir.

9 Q And then you tell him, and then you ask him, or you
10 state, "Jorge, I want you to start just like you telling me
11 a story, like you are telling me a bedtime story. Okay?"

12 Why would you ask him to tell you a story?

13 A As far as just telling me a story, just telling me
14 everything that happened.

15 Q Do you find that to be a confusing or that that
16 probably could promote some kind of confusion within the
17 interview if you are expecting a truthful recollection of
18 facts and circumstances and events and then, but you ask
19 for a bedtime story?

20 A No, sir.

21 It's -- I have two kids. It's probably just the
22 father in me coming out. You're trying to put somebody at
23 ease when you want them to tell you the truth. You're just
24 trying to tell him you can just go ahead and tell me what
25 you want me to know, tell me the truth. That's just, I

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 guess, the father in me coming out.

2 Q And actually it's tell you what you want to know,
3 isn't it, not what he wants to know?

4 A Well, first I wanted --

5 Q You are looking for what you want to know.

6 A In the long run, yes, sir.

7 Q Yes, sir.

8 Okay. So if he told you a story and made up
9 something, whether it be to protect somebody, take a fall,
10 confuse you, tell you a pack of lies, make it up as he goes
11 along -- he would be doing exactly what you asked him to,
12 wouldn't he, on page four?

13 A No, sir.

14 Q Well, you asked him to tell you a story.

15 A Correct.

16 Q A bedtime story.

17 A I said like you're telling me a story. I did not ask
18 him to tell me a lie or tell me a pack of lies though.

19 Q No. You told him to tell a story.

20 Okay. Did he ever implicate his cousin in any type
21 of, any part of this drug transaction?

22 MR. WARDER: Your Honor, I have a matter I want to
23 take up.

24 THE COURT: All right. Let me see y'all just a
25 minute.

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 Q Did Jorge ever admit to pointing a weapon at anybody
4 in his interview?

5 A The only thing that, the way it looks like he said was
6 that he just -- his hand when he turned around, and you can
7 just about hear on the audio, and during the interview is
8 kind of showing me as he's explaining how he said his hand
9 come out the window and he had a gun in his hand.
10 Directly, he never said that he pointed the gun at anyone.

11 Q Did he -- in fact, is it your understanding that he
12 said that he had it in his hand, "And just like when you
13 turn, my hand went out the window like this"? Did he mean
14 by you?

15 A Can you tell me what page you are looking at, please?

16 Q Page ten.

17 A I'm sorry.

18 Could you ask the question one more time?

19 Q On any of this interview statement does he admit to
20 pointing a weapon?

21 A No, sir. He never said he pointed. He said the gun
22 come out, come out the window.

23 Q Does he admit to hanging out of the window?

24 A No, sir.

25 Q Did you ever find a book bag on the scene?

Stephen Henderson
Cross-examination by Mr. Gutierrez

1 A No, sir, I didn't.

2 Q Did you find -- was Jorge Rodriguez wearing a jacket
3 at the scene?

4 A I don't recall. I did not deal with him as far as an
5 arrest at the scene.

6 Q Whenever you interviewed him was he wearing a jacket?

7 A I can't recall what he was wearing.

8 Q You don't recall what he was wearing at all?

9 A No, sir.

10 Q Let's turn to page 21. Excuse me. Page 20.

11 After you read some conclusion stuff to him about you
12 asked him whether you swear the facts contained are true
13 and correct and certifies you've made no request for the
14 advice or presence of a lawyer before or during any part of
15 this statement, does he ask for a lawyer then or does he
16 say he wanted a lawyer?

17 A No, sir. The way the transcriber, it says he says a
18 uh-huh.

19 Q You listened to the tape with us just then. Did you
20 hear anything else?

21 A As far as after that?

22 Q As far as that uh-huh, and then we have those dotted
23 lines. Could you make out what that was?

24 A No, sir, I could not make out what it was.

25 Q And then you said okay. Did you make out that?

Stephen Henderson
Redirect examination by Mr. Willingham

1 A Yes, sir.

2 Q And then he says, "I want to see a lawyer."

3 Is that what you heard right whenever you said that?

4 "I want to see a lawyer."

5 A Yes, sir.

6 Q You asked him, "Then you want to see a lawyer." And
7 then he repeats or replies, "I wanted to see a lawyer."

8 A Correct.

9 Q Do you find that unusual that he would have said at
10 the end of an interview that he wanted to have a lawyer?

11 A No, sir.

12 MR. GUTIERREZ: That's all I have.

13 REDIRECT EXAMINATION

14 BY MR. WILLINGHAM

15 Q Whenever the tape finished and you were advising him
16 of his rights on that preinterrogation waiver form, there
17 is a section on there that he indicates where he
18 understands his rights and he signs it.

19 A Yes, sir.

20 Q State's Exhibit No. 2.

21 A Correct.

22 Q To you that's a pretty good indication that he
23 understands his rights.

24 A Yes, sir.

25 Q And the next statement, it says, "I waive or give up

Stephen Henderson
Redirect examination by Mr. Willingham

1 my rights as explained above and agree to talk to Officer
2 Henderson in reference to trafficking cocaine and any other
3 criminal charges, and any statement I may make is of my
4 own -- I waive or give up my rights as explained above and
5 agree to talk to Officer Henderson in reference to
6 trafficking cocaine and any other criminal charges, and any
7 statement that I may make is of my own free will without
8 fear, threat or promise, favor or reward of any kind, and I
9 am unable (sic) to read and write the English language and
10 finished ten years in school."

11 He signed that too, right?

12 A Yes, sir.

13 Q A pretty good indication that he understood what was
14 going on and waived his rights.

15 A Correct.

16 Q You didn't make him. You didn't make him sign that,
17 did you?

18 A No, I did not.

19 Q You didn't force him or twist his arm to get him to
20 sign those two places, did you?

21 A No, sir.

22 Q Did you threaten him?

23 A Not at all.

24 Q Promise him anything to get him to do it?

25 A No.

Stephen Henderson
Redirect examination by Mr. Willingham

1 Q Did it of his own free will.

2 A Correct.

3 Q Now, whenever you're talking a big deal made out of
4 stories and bedtime stories, things like that, what you're
5 wanting, and I think the question was, you wanted him to
6 tell you what you wanted to know. I think that was the
7 question asked by the defense lawyer. What was it you
8 wanted to know?

9 A The truth as far as the events that happened earlier.

10 MR. WARDER: Objection to what he wanted to know, Your
11 Honor.

12 THE COURT: Sustained.

13 Q Okay. Let's go to page ten.

14 He, being Jorge, never says that he pointed the gun.
15 He never used the word point.

16 A Right.

17 Q Did he?

18 A No, sir.

19 Q But you asked him about pointing a gun, right?

20 A Yes, sir.

21 Q And his answer was, "I had it in my hand just like
22 when you turned my hand went out the window like this."

23 He's showing you how he held his hand and the gun out the
24 window.

25 A Yes, sir.

Stephen Henderson
Recross-examination by Mr. Gutierrez

1 Q And you say, "Okay. But your gun came out the
2 window."

3 His answer was, "Yeah, my gun came out the window and
4 I brought it back in."

5 A Correct.

6 Q While he never uses the word point, he's still got
7 that gun outside that car in his hand.

8 A Yes, sir.

9 Q Thank you.

10 MR. GUTIERREZ: Follow-up, Your Honor.

11 THE COURT: Yes.

12 RECROSS-EXAMINATION

13 BY MR. GUTIERREZ

14 Q Now, about the gun, now, whenever he said that he,
15 whenever he said that he went out the window, you described
16 that he was moving around. Was he moving around as if he
17 was turning in a chair and pointing a weapon or was he just
18 like turning around to look backwards?

19 A I'm not sure I understand what you're saying I
20 described.

21 Q You stated that we could almost hear it and he was --

22 A Okay, right.

23 Q -- making a gesture or something --

24 A Right.

25 Q -- and turning in the chair to describe his

Stephen Henderson
Recross-examination by Mr. Gutierrez

1 explanation about, "I had it in my hand." I quoting. "I
2 had it in my hand," on page ten, "and just like when you
3 turned my hand went out the window like this."

4 A Correct.

5 Q And would you describe for us what his movements were
6 then?

7 A It's nothing more than assuming he's sitting here.
8 I'm Mr. Rodriguez. He says he's turned and his hand went
9 out the window like this.

10 Q And of course it's not against the law to point a gun
11 out the window, is it?

12 A To present one, it is, sir.

13 Q But to point one out the window.

14 A If I am not mistaken, it's pointing and presenting a
15 firearm.

16 Q Did you ever see him point a gun in the pursuit?

17 A No, sir, I never seen it.

18 MR. GUTIERREZ: That's all I have.

19 THE COURT: Anything further?

20 MR. WILLINGHAM: No, sir.

21 THE COURT: You may step down.

22 Do you have something?

23 MR. WARDER: No, sir.

24 THE COURT: Ladies and gentlemen, we are going to take
25 a break before we go any further.

Floyd Turley
Direct examination by Ms. Thill

1 Let me ask you to please retire to your jury room. Do
2 not discuss the case in any fashion. We'll bring you back
3 after a break.

4 As you leave, if you will give those transcripts to
5 the bailiff, he will take those from you.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Court is in recess for 15 minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: Bring the jury in, please.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. Solicitor.

14 MS. THILL: Thank you, Your Honor. May it please the
15 Court.

16 The state would call Investigator Floyd Turley to the
17 stand.

18 FLOYD TURLEY, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. THILL

21 Q If you could, please, state your name for the record
22 and introduce yourself to the jury.

23 A My name is Floyd Turley.

24 Q And what is your occupation?

25 A I am an investigator for the Spartanburg County

Floyd Turley
Direct examination by Ms. Thill

1 Sheriff's Office.

2 Q And how many years have you been working for the
3 sheriff's office?

4 A I've been working for the sheriff's office for three
5 and a half years now.

6 Q Can you explain to the jury what sort of education and
7 training you have received?

8 A I have been in law enforcement for a total of eight
9 and a half years, and I started in Ohio where I went to the
10 academy.

11 I come down to South Carolina about three and a half
12 years ago where I've also trained and studied here with the
13 sheriff's office.

14 I've taken tests to be South Carolina approved by the
15 state, and certified. And once I made it onto the
16 sheriff's office I also received additional training as to
17 how the sheriff's office would like things done.

18 Q Okay. And were you employed in your current capacity
19 as an investigator with the sheriff's office on
20 November 28th of 2001?

21 A Yes, ma'am, I was.

22 Q And were you involved in a buy-bust takedown involving
23 Juan and Jorge Rodriguez on November 28th?

24 A Yes, ma'am.

25 Q Once you arrived at Old Switzer Church, what happened?

Floyd Turley
Direct examination by Ms. Thill

1 A We arrived.

2 I was riding with Lieutenant Hancock, and I was a
3 passenger in his vehicle.

4 Once he received the signal to go ahead and move in,
5 Lieutenant Hancock and myself drove into the parking lot.
6 As we pulled into the parking lot there were -- our other
7 undercover vehicles were also pulling into the parking lot.

8 At that time the target vehicle was backing out of the
9 church parking lot at a very quick high rate of speed. At
10 that time as they drove across our headbeams I can see into
11 the vehicle. And I saw Juan Rodriguez sitting in the front
12 passenger seat as the vehicle spun around to go back out
13 onto, I believe it was, Switzer Road. And they turned
14 right, and at that time we went ahead and followed them
15 out.

16 Q Okay. How did the chase end?

17 A It ended on, I believe, West Road. And the vehicle I
18 believe if I remember correctly, Sergeant Andrews was able
19 to catch up to the vehicle and get the vehicle stopped.

20 Q Okay. And after the chase ended you also helped look
21 for some of the contraband involved in the incident,
22 correct?

23 A Yes, ma'am, I did.

24 Q Where did you look?

25 A I looked alongside West Road. If I was coming from --

Floyd Turley
Direct examination by Ms. Thill

1 if I was going in the same direction as the vehicle was
2 travelling and all of the other patrol cars were
3 travelling, I looked on the right-hand side of the road.

4 Q I'm sorry. Continue.

5 A I looked on the right-hand side of the road and into
6 the woods on that side.

7 Q Okay. And what, if any, items did you recover?

8 A I recovered a black box which was later found to be a
9 RF signal box and a Ruger-fire handgun.

10 Q What is an RF signal box?

11 A I am not familiar with that but I was told that it
12 would --

13 MR. WARDER: Objection to what he was told, Your
14 Honor.

15 THE COURT: Sustained.

16 Q Floyd, I need to show you what's been marked as
17 State's Exhibit No. 5-D. Can you identify what that item
18 is for me?

19 A Yes, ma'am.

20 This is the RF signal box that I located in the woods.

21 Q Okay. And how did it come into your possession,
22 again?

23 A As I was searching for contraband alongside the woods,
24 I found it laying in the woods on top of some tripura.

25 Q Okay. I am going to show you a map.

Floyd Turley
Direct examination by Ms. Thill

1 If you could come off the stand, could you show me
2 where you located that black box? I'm going to give you a
3 pen to put in where you located it.

4 (Whereupon, the witness left the stand.)

5 A Okay. Found, that this is West Road here. Just in
6 this curve right here, somewhere in this curve. I'm going
7 to stick this pen, I would say, right about here.

8 Q Okay. Can you mark where you found the Ruger pistol
9 that you testified to?

10 A The pistol was found not too far from the box. I am
11 going to say approximately ten feet. It was in the same
12 area, just a little bit hard to find because it was further
13 down on the ground.

14 Q You can have a seat.

15 (Whereupon, the witness returned to the stand.)

16 Q And this black box you found marked as State's Exhibit
17 5-D, is it substantially in the same condition as when you
18 first saw it?

19 A Yes, ma'am. It was a little wet, but it's dry now.
20 Other than that, it is.

21 Q And once you located it, what did you do?

22 A I picked this up and I gave it to our I. D. tech who
23 is going to be Shane Dedmon who was at the scene that
24 night.

25 (Photographs marked State's Exhibit No. 13. Later

Floyd Turley
Direct examination by Ms. Thill

1 changed to one photograph.)

2 Q Floyd, I'm going to show you what's been marked for
3 identification purposes as State's Exhibit Number 13. Do
4 you recognize the top two pictures?

5 A Yes, ma'am, I do.

6 Q What are those pictures of?

7 A These are photos of a Ruger pistol, a handgun,
8 automatic, semiautomatic.

9 Q And do those pictures fairly and accurately represent
10 the Ruger that you found on the eve of November the 28th?

11 A Yes, ma'am.

12 Q And has this photograph been changed in any way you
13 can tell?

14 A Not that I am aware of.

15 MS. THILL: At this time I would move State's Exhibit
16 No. 13 into evidence.

17 MR. WARDER: Your Honor, if it please the Court, we
18 would have an objection to that coming into evidence. It
19 appears to be a group of four photographs on one page, only
20 two of which can be identified by this witness and
21 certainly --

22 MS. THILL: Again, Your Honor, removing the two bottom
23 pictures, I would move State's Exhibit No. 13 into
24 evidence.

25 MR. WARDER: If it please the Court, in this form we

Floyd Turley
Direct examination by Ms. Thill

1 have no objection to its introduction.

2 MR. GUTIERREZ: No objection, Your Honor.

3 THE COURT: It's admitted.

4 (Photograph marked State's Exhibit No. 13.)

5 Q I'm going to show you what's been marked as State's
6 Exhibit Number 5-E. Do you recognize that?

7 A Yes, ma'am, I do.

8 Q How do you recognize it?

9 A I recognize this as the Ruger pistol semiautomatic.
10 That's a nine-millimeter. This is the weapon that I found
11 alongside the road in the ground, on the ground in the
12 grass.

13 Q And that's the same Ruger pistol you indicated was in
14 the --

15 A Yes, ma'am.

16 Q Is it substantially in the same condition as when you
17 recovered it?

18 A Yes, ma'am.

19 Q Okay. Once you located the pistol, what did you do
20 then?

21 A I let that lay there on the ground and notified -- I
22 stood beside it and notified Shane Dedmon, and he come to
23 recover the weapon.

24 MS. THILL: No further questions, Your Honor.

25 Q Floyd, please answer any questions the defense

Floyd Turley
Cross-examination by Mr. Warder

1 attorneys have.

2 THE WITNESS: Yes, ma'am.

3 CROSS-EXAMINATION

4 BY MR. WARDER

5 Q Officer, is there something about that Ruger that
6 would allow you to identify that as opposed to any other
7 Ruger of the same make and model and manufacturer?

8 A The serial numbers.

9 Q Did you record the serial number that night?

10 A No, sir, I did not.

11 Q Okay. So would it be fair to say from your personal
12 observation you have no idea what the serial number of the
13 gun you saw out on the road was?

14 A No.

15 Q Okay. And then you could only identify this as a
16 similar gun to the one you found out on the road and it
17 could or could not be the same gun. Would that be a fair
18 and accurate statement?

19 A Well, there's mud on that gun there, sir, and there
20 was mud on the gun that I had found out at the scene.

21 Q Do you recognize the mud?

22 A I recognize it, yes, sir, I do.

23 Q Well, is there something unique about the mud that
24 separates that mud from all of the other mud in the world
25 and mud in South Carolina and mud in Spartanburg County?

Floyd Turley
Cross-examination by Mr. Warder

1 A Well, the mud down here is orange and back up in Ohio
2 the mud is dirty brown.

3 Q Yes, sir. The mud on that gun is like all of the mud
4 in South Carolina.

5 A Yes, sir.

6 Q And are you telling us that you remember where the mud
7 was at in such detail and accuracy that you can identify
8 that from any other Ruger of that make and model that would
9 have been dropped in the mud in South Carolina?

10 A Well, there was mud just on the top near the trigger
11 guard, I believe, and under the barrel where the slide is,
12 and it's still there. I do remember that.

13 Q Okay. From your description of the mud, I take it you
14 picked the gun up and handled it.

15 A No. I never picked up the weapon, sir.

16 Q So you saw the mud under the barrel and under the
17 trigger guard from looking at it without picking it up and
18 handling it, is that correct?

19 A No, sir. That's not what I said, sir.

20 Q You didn't pick it up and handle it?

21 A I did not pick up the weapon, sir.

22 Q You saw mud under it.

23 A No, sir. I never said that.

24 Q Okay. Describe the mud you saw.

25 A A saw a slight spot of orange mud. That's all I can

Floyd Turley
Cross-examination by Mr. Warder

1 describe.

2 Q Okay. Where was the slight spot of the mud at?

3 A Just above the trigger guard, appeared to be slightly
4 under the slide of the weapon.

5 Q Okay. Do you see that mud?

6 A Right here.

7 Q Okay. So you told the jury that you recognize this
8 from the mud smear on it, is that right?

9 MR. WILLINGHAM: Objection, Your Honor. If he would
10 like to publish that to the jury, he may want to introduce
11 it as evidence.

12 THE COURT: Do you have any objection to them showing
13 to it the jury?

14 MR. WILLINGHAM: No, sir, but, again, I think it's
15 proper for him to introduce it into evidence.

16 MR. WARDER: I can do that.

17 THE COURT: Okay. Do you want to consent to have it
18 introduced into evidence, Mr. Warder; or do you have any
19 objection to it being admitted as an exhibit?

20 MR. WARDER: No, sir. I have no objection.

21 THE COURT: That's No. 5-A, B, C, D and E?

22 MR. WARDER: Yes, sir.

23 THE COURT: Which portions of that exhibit are you
24 admitting or agreeing to have admitted, Mr. Warder?

25 MR. WARDER: Well, certainly for the relevant, if the

Floyd Turley
Cross-examination by Mr. Warder

1 state wishes to put in 5-E I wouldn't object to it if
2 that's what they want to do.

3 THE COURT: Well, where are those exhibits?

4 MR. WARDER: 5-E is the gun itself.

5 THE COURT: That's the only one you are agreeing to at
6 the present time?

7 MR. WARDER: Yes, sir.

8 THE COURT: All right. 5-E is admitted without
9 objection.

10 (Ruger 9-millimeter handgun marked State's Exhibit No.
11 5-E.)

12 THE COURT: Are there any other exhibit items in that
13 box, Mr. Warder?

14 MR. WARDER: Yes, sir, there is. And that's correct,
15 Your Honor. This is the mud spot.

16 Q Thank you, Officer.

17 MR. GUTIERREZ: Your Honor, I have no questions for
18 this witness.

19 THE COURT: All right.

20 MS. THILL: The state has no further questions.

21 THE COURT: You may step down.

22 MS. THILL: May Mr. Turley be excused?

23 THE COURT: He may be.

24 (Whereupon, the witness was excused.)
25

Matt McDaniel
Direct examination by Ms. Thill

1 MATT McDANIEL, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. THILL.

4 Q If you could, please, state your name for the record
5 and introduce yourself to the jury.

6 A Matt McDaniel, Spartanburg County Sheriff's Office.

7 Q And how many years have you been with the sheriff's
8 office?

9 A About two and a half years.

10 Q Okay. Can you explain to the jury the education and
11 training you have received?

12 A Education, graduated four-year degree in criminal
13 justice from Marshall University; went to academy at South
14 Carolina Police Academy, graduated in 2001.

15 Q Okay. And what are your current duties with the
16 sheriff's office?

17 A I'm a patrol officer, second shift.

18 Q Were you employed as a sheriff's office deputy on
19 November the 28th of 2001?

20 A Yes.

21 Q Were you involved in a buy-bust takedown involving
22 Juan and Jorge Rodriguez on that date?

23 A I was.

24 Q And what was your involvement?

25 A I was a field training officer at the time. I was

Matt McDaniel
Direct examination by Ms. Thill

1 still undergoing my training before I went by myself on the
2 road, and I was riding with narcotics units that evening,
3 and what I did was I mainly stayed in the background.

4 When we arrived on the scene, pretty much everything,
5 I was in the background of everything. The regular narc
6 units pretty much took care of the takedown and everything.

7 When I, when it was over, we went looking for the
8 supposed drugs thrown out and I had found them that
9 evening.

10 Q So after the chase then did you help -- you helped
11 join the search, correct?

12 A Correct.

13 (Photograph marked State's Exhibit No. 14 for
14 Identification; photograph marked State's Exhibit No. 15.
15 State's Exhibit No. 14 was later changed to one photograph.)

16 Q I am going to show you what's been marked as State's
17 Exhibits 14 and 15 for identification purposes. Can you
18 tell me what those are pictures of?

19 A These are pictures of the drugs that were found that
20 evening after -- on the side of the road by the bridge.

21 Q And how are you able to recognize?

22 A Because of the way it was right here, because I was
23 the one that saw it first, and that's the way they were
24 laying, like that.

25 Q And does this pictures accurately depict the cocaine

Matt McDaniel
Direct examination by Ms. Thill

1 and the manner in which you found it?

2 A They do.

3 MS. THILL: Your Honor, at this time the state would
4 move to admit Exhibits 14 and 15.

5 MR. WARDER: Your Honor, I have some objection.

6 THE COURT: All right. Let me see y'all up here.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 (One photograph marked State's Exhibit No. 14.)

10 Q I'm going to show you what's been marked as State's
11 Exhibit No. 14. Do you recognize that?

12 A I recognize it, yes.

13 Q And what is it a picture of?

14 A It's is a picture of the drugs we found that evening.

15 Q And is that an accurate depiction of the condition
16 that you found the drugs in?

17 A Yeah. We didn't touch it. Yeah.

18 Q And I am going to show you State's Exhibit No. 15.
19 Can you tell me what that is?

20 A It's more of the same.

21 Q Okay. And does that accurately reflect or depict the
22 condition that you saw the drugs in at the scene?

23 A It does.

24 Q And can you tell me what State's Exhibit No. 16 is?

25 A That's a picture of the general area that we were

Matt McDaniel
Direct examination by Ms. Thill

1 asked to look in for the drugs.

2 Q Okay. Is that the area that the drugs were located
3 in?

4 A It was.

5 Q And does that picture accurately reflect that area?

6 A Yes.

7 Q And let me show you State's Exhibit No. 17. Can you
8 tell me what that's a picture of?

9 A That's a picture from the roadway looking down off the
10 bridge, and I think on the back side is the railroad.

11 Q And that's in the vicinity of where you found the
12 drugs?

13 A Correct.

14 Q Does that accurately depict that area?

15 A Yes.

16 Q And last going to have you look at State's No. Exhibit
17 18. What is that a picture of?

18 A That's a picture of the drugs as well.

19 Q Does that accurately --

20 THE COURT: Excuse me. It's a picture of what as
21 well?

22 THE WITNESS: Of the drugs as well.

23 Q Does that accurately depict it?

24 A It does.

25 MS. THILL: Your Honor, at this time the state would

Matt McDaniel
Direct examination by Ms. Thill

1 like to move into evidence Exhibits Nos. 14, 15, 16, 17 and
2 18.

3 MR. WARDER: Your Honor, if it pleases the Court, I
4 have no objections to those five photographs.

5 THE COURT: Mr. Gutierrez, any objection?

6 MR. GUTIERREZ: No objection.

7 THE COURT: They are admitted.

8 (Photographs marked State's Exhibits Nos. 15 through
9 18).

10 Q You said that one of those pictures showed a bridge.
11 This is a map of that general area.

12 Can you come down off the stand and show me where you
13 located the drugs that evening?

14 A Like I said, I wasn't real --

15 THE COURT: The court reporter is going to need to see
16 the witness.

17 A I believe it was right about, right, right in here
18 somewhere.

19 Q Thank you.

20 (Whereupon, the witness returned to the stand.)

21 Q And once you located the drugs, what did you do with
22 it?

23 A I just stayed away from it.

24 I actually located it from the top of the bridge
25 looking down and shined the light on it, and at that time I

Matt McDaniel
Cross-examination by Mr. Warder

1 told Officer Taylor who was in charge of the operation at
2 that time, I said I think these are them right there, as we
3 have always been trained not to touch it, just waited for
4 I. D. to come down or come by and process it.

5 Q Thank you. I have no further questions. Please
6 answer any questions Mr. Gutierrez and Mr. Warder may have.

7 CROSS-EXAMINATION

8 BY MR. WARDER

9 Q Officer, do you remember what time it was that you
10 started to search for the drugs?

11 A I don't recall the precise time. It was sometime
12 after evening because I remember we were using flashlights.

13 Q Okay. Been dusky dark maybe, or it was dark?

14 A It was dark.

15 Q Okay. And did you use any other lights besides
16 flashlights? I mean, did you set up portable lights? Do
17 you have that stuff, or trucks come out?

18 A No. We just used flashlights.

19 Q How big of an area were you searching? How spread out
20 were you?

21 A Do you mean acre? Somewhere around in there, just
22 looking on both sides of the bridge.

23 Q Were you concentrating at a bridge or did you come
24 down and search a roadway and then come to the bridge and
25 search it?

Matt McDaniel
Cross-examination by Mr. Warder

1 A I don't know about the plan and why we were searching
2 there. I mean, we just, I was told to look in this general
3 area and --

4 Q Okay. I take it when you tell me that you were
5 assigned a general area that there was some officer that
6 was in charge and he was giving a number of officers kind
7 of areas to search. Is that what it was?

8 A Yeah, something like that.

9 Q Did you get your assignment there at the scene or did
10 you get it off a map, or how did you do that?

11 A No, just there, just pretty much it was go, you know,
12 look around the area, we think it might be here.

13 Q Okay. And people were pointing areas out and telling
14 you to go to them, is that it?

15 A Yeah, I mean, pretty much.

16 Q And I take it you then kind of swept the area with
17 your flashlight to keep moving and sweeping the area. Is
18 that how you would do it? Is that the technique?

19 A Yeah. It was pretty grown-up, so you couldn't get
20 through a lot of places because the briars were thick, and
21 undercover.

22 Q You were doing that. And when you found something,
23 when you finally saw it and found it, what did you do? Did
24 you then recover or take it and give it to some person?

25 A No.

Matt McDaniel
Cross-examination by Mr. Warder

1 Q Okay.

2 A We, when I found it, like I said, I was on top of the
3 bridge and I had actually shined the light down and noticed
4 the bag actually on top of the brush and everything.

5 I told my ranking officer, I said look, I think
6 there's them right there. And there's policy. We just
7 wait until I. D. comes by.

8 Q So as this worked out you were on the road and you
9 were shining your flashlight down there, and you actually
10 saw it.

11 A True.

12 Q I hand you what's previously been marked as State's
13 Exhibit 16 and ask you if that would show the area on the
14 bridge that you were shining the light from.

15 A Yeah.

16 I was up here on the bridge, but that's the general
17 area. It was down in there, yeah.

18 Q If the jury looked at 16, could they see where you
19 were at, where you were standing at when you saw that?

20 A I don't know; I don't know.

21 Q Okay. Sometime there was -- I hand you what's been
22 marked State's Exhibit No. 17, and it appears to be some
23 kind of road indicator. It doesn't show -- and a
24 guardrail.

25 A Uh-huh.

Matt McDaniel
Cross-examination by Mr. Warder

1 Q What significance is that, the road marker and that
2 guardrail, to anything?

3 A I don't know the answer to that question there.

4 I would say this is the beginning of the bridge right
5 here because you see an abutment there. But other than
6 that, I am not sure.

7 Q It don't have anything to do with the particular
8 location of the drugs.

9 A It's relevant to show the proximity to the bridge
10 there.

11 Q Would it be fair to say that the last time you seen
12 those drugs you were standing on the bridge looking down
13 pointing to your sergeant or whoever it was telling them
14 what you had saw?

15 A Yeah, yes, sir.

16 Q I thank you very much.

17 MR. GUTIERREZ: No questions, Your Honor.

18 MS. THILL: No further questions of this witness, Your
19 Honor.

20 THE COURT: You may step down.

21 MS. THILL: May Deputy McDaniel be excused, Your
22 Honor?

23 THE COURT: He may.

24 (Whereupon, the witness was excused.)

25 MR. WILLINGHAM: Your Honor, we call Jason Yown.

Jason Yown
Direct examination by Mr. Willingham

- 1 JASON YOWN, having been first
2 duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. WILLINGHAM
4 Q Tell the jury who you are.
5 A Investigator Jason Yown, Y-O-W-N.
6 Q And you work as a detective?
7 A Yes, sir, at the Spartanburg County Sheriff's Office.
8 Q How long have you been there?
9 A At the sheriff's office eight years.
10 Q Eight years?
11 A Yes, sir.
12 Q How long have you been a detective?
13 A Four years.
14 Q And were you a detective on November of 2001?
15 A Yes, sir, I was.
16 Q Were you asked to assist in looking for items
17 involving the Leatherwood, Rodriguez, Rodriguez case?
18 A Yes, sir.
19 I received a page from my lieutenant, John Dyas of the
20 sheriff's office. He called me approximately a quarter
21 till 8:00 and asked me to assist in locating.
22 Q And where did you go?
23 A It's West Road which is located off of Highway 290 in
24 the Poplar Springs Community here in Spartanburg County.
25 Q And what were you looking for?

Jason Yown
Direct examination by Mr. Willingham

1 A A weapon, a pistol.

2 Q Okay. And did you find one?

3 A Yes, sir, I did.

4 Q I show you what's been marked as State's Exhibit No. 6
5 which contains Exhibit 6-B, 6-A and 6-C and ask if you
6 recognize that, those items.

7 A Yes, sir, I do.

8 Q And what are they?

9 A This is the weapon that I recovered off of West Road.
10 It was actually partially submerged in a creek. It was
11 around the 300 block of West Road.

12 Q Would you step down real quick?

13 (Whereupon, the witness left the stand.)

14 Q Using that pen, show the jury where on West Road you
15 found them.

16 A Just after there's a 90-degree bend here on West Road,
17 it was just past that. I would say probably less than an
18 eighth or a quarter of a mile past that bend.

19 Q And when did you find that. That was the 29th?

20 A Yes, sir. That was the 29th. I arrived -- may I
21 return?

22 Q Yes, please.

23 (Whereupon, the witness returned to the stand.)

24 A I arrived at that location about ten minutes after
25 8:00. I would say it was roughly 8:30 when I located the

Jason Yown

Direct examination by Mr. Willingham

1 firearm.

2 Q And I believe I. D. was called out there to take
3 pictures of it.

4 A Yes.

5 When I found the vehicle, correct, found the weapon, I
6 left it there. I requested one of our I. D. officers,
7 Deanna Arnold, to respond. She photographed as it was.

8 When I found it, at that time I removed it from the
9 creek and brought it up and unloaded the weapon and
10 photographs were taken again.

11 (Photographs marked State's Exhibits Nos. 19 through 21
12 for Identification.)

13 Q I show you a photograph marked State's Exhibit 19 and
14 ask if you recognize that.

15 A Yes, sir.

16 Q What is it?

17 A It would be this weapon located underneath brush. It
18 would be in the shape that I observed it on that date, the
19 29th.

20 Q State's No. 20, do you recognize that?

21 A Yes, sir.

22 This would be a second photograph of the same thing
23 that was in State's Exhibit 19. I believe from a different
24 angle.

25 Q And State's 21.

Jason Yown
Direct examination by Mr. Willingham

1 A Yes, sir.

2 This would also be what's in 19, 20. This would be a
3 picture of the weapon, again, from another angle.

4 Q Does that accurately reflect how you found that
5 weapon?

6 A Yes, sir.

7 Q Does it show the creek in there?

8 A Yes, sir. I believe in 21.

9 MR. WILLINGHAM: Your Honor, at this time I move
10 State's 19, 20 and 21 in evidence.

11 MR. WARDER: Your Honor, if it please the Court, I
12 have no objection to those three photographs coming into
13 evidence.

14 MR. GUTIERREZ: No objection, Your Honor.

15 THE COURT: They are admitted.

16 (Photographs marked State's Exhibits Nos. 19 through
17 21.)

18 Q You indicated you handled that weapon --

19 A Yes, sir, I did.

20 Q -- and unloaded it?

21 A Yes, sir, I did.

22 I had a pair of latex rubber gloves on when I removed
23 this weapon from the creek and took it to my vehicle and
24 unloaded it there at my vehicle.

25 Q Did you take it anywhere else after that?

Jason Yown
Cross-examination by Mr. Warder

1 A Yes. I took it into the sheriff's office.

2 Q And I believe it was given to Paul Dorman for
3 processing?

4 A It was turned into evidence. I do not know who
5 actually took it out of evidence for processing.

6 Q Answer any questions the defense lawyers have for you.

7 A Yes.

8 CROSS-EXAMINATION

9 BY MR. WARDER

10 Q Did you take other photographs of that gun?

11 A I took no photographs of the gun, sir.

12 Q Okay. So, so you found it out there on the -- and you
13 would have taken it into your custody and taken it to the
14 law enforcement center.

15 A Correct.

16 Q Is that a picture of your hand?

17 A No, sir.

18 Q Okay. And if that gun was out there at the scene,
19 somebody would have taken it back out there?

20 A I don't have a date or time that this was taken, but
21 it appears to be less rusty than it is now. So I would
22 say, I would say that picture was taken the morning of the
23 29th.

24 Q Okay.

25 A That's probably the photographer's hand.

Jason Yown
Cross-examination by Mr. Warder

1 Q Well, if I understand, you took it in your custody and
2 you took it to the sheriff's, so the photographer wouldn't
3 have it out there that morning, would they?

4 A No, sir.

5 I testified I requested I. D. to the scene on West
6 Road where pictures were taken of the weapon there on West
7 Road.

8 Q So the hand that's handling that bullet isn't your
9 hand. That's somebody else's hand.

10 A That's what I testified to, yes, sir.

11 Q And the hand that is handling the clip and handling
12 those bullets, that's not your hand either.

13 A Does not appear to be my hand.

14 Q And the person that laid it out for those to be
15 photographed, looks like around that strip of road, that
16 wasn't something you did.

17 A I may have laid it there, but I am not the person that
18 took the picture, because this would be the woods that I
19 took the gun out of the creek, and I possibly could have
20 laid it on that road.

21 Q There's just the tip of a shoe, and I know that might
22 be hard. Is that the type of shoe you wear?

23 MR. WILLINGHAM: Your Honor, if he would like to refer
24 to the picture and show the jury what he is talking about
25 in those pictures, again, I believe the proper way to do it

Jason Yown
Cross-examination by Mr. Gutierrez

1 is to move it into evidence if he'd like to publish it.

2 MR. WARDER: Your Honor, I am just asking him who
3 handled the gun. The photograph is helping the witness
4 refresh his memory. I am not offering it into evidence.

5 THE COURT: Okay.

6 A Your question again, sir?

7 Q Is that your shoe?

8 A Sir, I wouldn't -- I have no idea. There, again, it
9 would appear to be the person that took the photograph, and
10 I was not the one that took the photograph.

11 Q Thank you very much.

12 A Yes, sir.

13 MR. GUTIERREZ: If it pleases the Court, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. GUTIERREZ

17 Q Did you count the bullets taken from the magazine of
18 that weapon?

19 A If I did, I did not make a note of it. I do not
20 remember actually counting the rounds that were recovered.

21 Q Did you take the rounds out of the magazine?

22 A I do not believe I did. I did not make a note of it
23 in my records, either counting the rounds or removing the
24 rounds from the magazine.

25 Q If you had done those things, would you have been

Jason Yown
Cross-examination by Mr. Gutierrez

1 wearing your latex gloves?

2 A Yes, sir, I would have; and I would have also noted
3 the number of rounds that were recovered.

4 Q You testified that you were the one that extracted the
5 weapon from the creek.

6 A Yes, sir.

7 Q And at that point after you took it out of the creek
8 you brought it up to the road. Was that -- is that your
9 testimony?

10 A Yes, sir.

11 What I mean brought it up, I'm saying probably less
12 than five feet from the road.

13 Q And at that point did anybody else handle the weapon
14 or the bullets or the magazine?

15 A The pictures that the other attorney showed me are not
16 my hand, so I would assume, yes.

17 Q Well, I am not asking you to assume. I am asking you
18 whether you saw anybody else handling the weapon.

19 A I cannot recall. There was another person on the
20 scene though.

21 Q Okay. Did you notice with that other person on the
22 scene whether they were -- who would that have been?

23 A Investigator Deanna Arnold.

24 Q Investigator Arnold?

25 A Arnold.

Jason Yown
Redirect examination by Mr. Willingham

1 Q And she is with what part of the department?

2 A Forensics.

3 Q And was she wearing latex gloves --

4 A I do not know, sir.

5 Q -- while she was there on the scene?

6 A I do not know, sir.

7 Q Thank you, Detective Yown.

8 A Uh-huh.

9 REDIRECT EXAMINATION

10 BY MR. WILLINGHAM

11 Q Detective, that gun never left your custody until you
12 dropped it off at the sheriff's office, is that right?

13 A Correct.

14 Q You recovered it from the creek.

15 A Yes, sir.

16 Q Brought it up to the road --

17 A Yes, sir.

18 Q -- five feet away, you say.

19 A Yes, sir.

20 Q And called I. D.

21 A Yes, sir.

22 Q And waited for Deanna Arnold to get there.

23 A Yes, sir.

24 Q And she took photographs.

25 A Correct.

Jason Yown
Redirect examination by Mr. Willingham

1 Q She took photographs of it both down at the creek and
2 up at the road.

3 A Correct.

4 Q And you were there the whole time she was doing that.

5 A The whole time.

6 Q And it never left your possession, custody or control.

7 A Not until it was placed into evidence at the sheriff's
8 office.

9 Q Thank you.

10 MR. WILLINGHAM: Nothing else.

11 THE COURT: You may step down.

12 All right. Ladies and gentlemen, we are going to
13 recess for lunch.

14 Keep in mind my caution previously given. Do not
15 discuss the case. Allow no one to discuss it with you.

16 Please report directly to your jury room at 2:15 this
17 afternoon; at 2:15 this afternoon. Have a good lunch.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Court's in recess until 2:15.

21 (Whereupon, a recess was taken.)

22 THE COURT: Bring the jury in, please.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Solicitor.

Shane Dedmon
Direct examination by Mr. Willingham

1 MR. WILLINGHAM: Thank you, Your Honor.

2 We call Shane Dedmon.

3 SHANE DEDMON, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. WILLINGHAM

6 Q Tell the jury who you are.

7 A Shane Dedmon.

8 Q And, Mr. Dedmon, where do you work?

9 A I work for the Spartanburg County Sheriff's Office.

10 Q What do you do for them?

11 A I am in the forensics division as a crime scene
12 investigator.

13 Q How long have you been with the sheriff's office?

14 A I have been with the Spartanburg County Sheriff's
15 Office approximately eight years now.

16 Q How long have you been a crime scene investigator?

17 A Approximately since 1990, so that would -- almost,
18 well, 13 years.

19 Q What does a crime scene investigator do?

20 A A crime scene investigator's responsibility is to
21 respond to a crime scene and collect and document evidence
22 that is later to be processed.

23 Q Were you asked to do that in a case involving
24 Leatherwood, Rodriguez and Rodriguez?

25 A Yes, I was.

Shane Dedmon
Direct examination by Mr. Willingham

1 Q I'm going to show you what is originally marked as
2 State's Exhibit No. 5 -- contains State's Exhibits 5-A, 5-B
3 and 5-E -- and ask if you recognize those items.

4 A Yes.

5 Q And have you ever had custody and possession of those
6 items?

7 A Yes, I have.

8 Q Where did you get those items from?

9 A These particular items were recovered off of West
10 Road.

11 MR. WARDER: Objection. The question was where did he
12 get those items from, Your Honor.

13 THE COURT: All right. Listen to the question.

14 Q Where did you get those items from?

15 A West Road.

16 Q Okay. How did you know to go to West Road?

17 A I was requested by Deputy Floyd Turley.

18 Q And was Deputy Turley there on West Road whenever you
19 got there?

20 A Yes, he was.

21 Q Did he show you where those items were?

22 A Yes, he did.

23 Q Did you photograph those items?

24 A I did.

25 Q What else did you do with them?

Shane Dedmon
Direct examination by Mr. Willingham

- 1 A I then took those items into evidence, collected them.
- 2 Q All right. And what did you do with them then?
- 3 A I then placed them in a paper bag and placed them in
- 4 the back of my police vehicle which contains a container
- 5 for evidence; and then I closed the door, which is set to
- 6 automatically lock so you need a key to get in so no one
- 7 can mess with it.
- 8 Q And how long was it in your possession?
- 9 A Until I turned it over to Paul Dorman.
- 10 Q And why did you turn it over to Paul Dorman?
- 11 A So it -- he was our fingerprint guy at the time, our
- 12 AFIS operator, and they requested that it be processed for
- 13 fingerprints.
- 14 Q Show you State's Exhibit 5-D and ask if you recognize
- 15 that.
- 16 A Yes.
- 17 That is a scanner that I also recovered, or that I
- 18 took into my possession, I should say.
- 19 Q Who initially recovered it?
- 20 A I received it from Floyd Turley, Deputy Floyd Turley,
- 21 while we were on West Road.
- 22 Q And you took it from his possession at West Road.
- 23 A Correct.
- 24 Q And after you took possession of that item, what did
- 25 you do with it?

Shane Dedmon
Direct examination by Mr. Willingham

1 A I also placed it in the container that's in my
2 vehicle.

3 Q And after that?

4 A I then took it back to, those two items back to, the
5 office, which were placed into a brown paper bag that was
6 secured, placed into our evidence locker that has a padlock
7 on it; and then the next day I turned them over to Paul
8 Dorman for processing.

9 Q Show you State's Exhibits 5-C and State's Exhibit 7
10 and ask if you recognize those items.

11 A This is the contraband or drugs that I recovered from,
12 I believe it was, Old Spartanburg Highway.

13 Q And when did you recover those items?

14 A I recovered those items on the 29th at a little bit
15 after two o'clock in the morning.

16 Q Okay. And was there an officer there directing you to
17 where they had found drugs?

18 A Yes.

19 I was requested by Sergeant David Taylor with the
20 narcotics division, and he showed me where they were.

21 Q And did you take a picture of them?

22 A I did.

23 I took photographs of the area, and I also took
24 photographs of the drugs, how they were when I located
25 them.

Shane Dedmon
Direct examination by Mr. Willingham

1 I then placed the drugs into a paper bag and took
2 photographs of them then while they were in the paper bag.
3 And then when I got back up to my vehicle I opened up the
4 tailgate to lay the bag out so I could take a better
5 photograph of it to show what I'd taken into my possession,
6 and I placed them into a bag and put them into evidence.

7 Q After you took those items into custody and secured
8 them, what did you do with them next?

9 A They were also taken back to the sheriff's office
10 after I collected the other items and put them into the
11 evidence locker for lock-up.

12 Q Who were they eventually given to?

13 A They were also given to Paul Dorman the same time that
14 the gun and the scanner was given to him.

15 Q Thank you, Mr. Dedmon. Answer any questions of the
16 defense.

17 A Thank you.

18 MR. WARDER: May it please the Court. I would have no
19 questions.

20 THE COURT: Okay.

21 MR. GUTIERREZ: Your Honor, I have no questions of
22 this witness.

23 THE COURT: You may step down.

24

25

Jane Millwood
Direct examination by Ms. Thill

1 JANE MILLWOOD, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. THILL

4 Q If you could, please, state your name and introduce
5 yourself to the jury.

6 A Jane Millwood. I'm an officer in the evidence room;
7 been with the county 23 years; been in evidence 11.

8 Q And as an evidence technician what are your job
9 responsibilities?

10 A To pick up evidence out of the drop box in the squad
11 rooms in the mornings and out of the locker, out of the I.
12 D. division.

13 Q Okay. And can you explain to the jury how the drop
14 box works?

15 A The drop box really looks just like a mailbox, and
16 there's only two keys. I hold one and the officer I work
17 with holds one.

18 And if anything's put in there that we have to have
19 and take it back to the drug vault, we have to come 24
20 hours a day. We're on call. But other than that it's --
21 we're closed on the weekends, and it's just locked all
22 time, and we pick it up on Monday morning. Once we pick up
23 on Fridays, then we don't pick up any more unless we're
24 called Monday morning. We pick it up.

25 Q I'm going to show you what's been marked as State's

Jane Millwood
Direct examination by Ms. Thill

- 1 Exhibit 5-A, 5-B and 5-E. Did you ever receive possession
2 of these items?
- 3 A I have the original paperwork that I signed for.
- 4 Q Okay. And when did you receive these items?
- 5 A January the 18th of 2002.
- 6 Q And who did you receive them from?
- 7 A I would have gotten these out of the I. D. locker in
8 the I. D. division.
- 9 Q And were they ever relinquished from your possession
10 since that time?
- 11 A Not until Officer Taylor picked them up to bring to
12 court.
- 13 Q And on what day did he pick them up to bring them to
14 court?
- 15 A December the 8th of 2003.
- 16 Q And when did he return those items to you?
- 17 A December the 8th at four o'clock in the afternoon.
- 18 Q Okay. And were they ever out of your custody again
19 after that time?
- 20 A No.
- 21 Q Are you sure about that, Jane?
- 22 A Yes, I am.
- 23 Q I'm going to show you what's been marked as State's
24 Exhibit 5-D. Do you recognize this item?
- 25 A It's a scanner, which if anything is sealed with red

Jane Millwood
Direct examination by Ms. Thill

1 tape, I don't open it up. We are not allowed to open it
2 up. But I did sign for it on, out of the locker on January
3 the 18th of 2002.

4 Q Okay. And was it ever out of your possession after
5 that time?

6 A Not until Officer Taylor picked it up December the
7 8th of 2003.

8 Q And was it checked out from you again?

9 A He returned it at four o'clock, December the 8th,
10 2003. He picked it back up December the 9th, 2003, at
11 1300.

12 MS. THILL: Your Honor, at this time I would move
13 State's Exhibit A, B and D into evidence.

14 THE COURT: 5-A, B and D?

15 MS. THILL: Yes, sir, Your Honor. I believe E is
16 already in evidence.

17 THE COURT: It is.

18 MR. WARDER: Your Honor, without objection.

19 MR. GUTIERREZ: No objection, Your Honor.

20 THE COURT: They are admitted.

21 (Magazine marked State's Exhibit No. 5-A; bullets
22 marked State's Exhibit No. 5-B; scanner marked State's
23 Exhibit No. 5-D.)

24 Q Jane, next I am going to show you what's been marked
25 as State's Exhibits 6-A, 6-B and 6-C. Have these items --

Jane Millwood
Direct examination by Ms. Thill

1 what are these items?

2 A What they are to me is just a gun. I mean, I don't
3 know.

4 Q I am sorry. Have they ever been in your custody?

5 A It's on the list with the other items -- the scanner
6 and the gun. And I picked it up the same date, January the
7 18th of 2002.

8 Q Okay. And has it ever been relinquished from your
9 custody?

10 A Only when Officer Taylor picked it up December the
11 8th of 2003.

12 Q And did he return it to you at any point?

13 A December 8th of 2003 at four o'clock.

14 Q And was it taken out of your possession again at any
15 time?

16 A December 9th of 2003 by Officer Taylor at 1300, which
17 is one o'clock in the afternoon.

18 MS. THILL: Your Honor, at this point I would move
19 State's Exhibits 6-A, 6-B and 6-C into evidence.

20 MR. WARDER: Your Honor, I do object to that and would
21 like to be heard on it.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, let me ask you to please go to your jury room.

24 Don't talk about the case. I will bring you back in
25 just a moment as soon as I resolve this issue.

Jane Millwood
Direct examination by Ms. Thill

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Mr. Warder.

4 MR. WARDER: Your Honor, there are two guns in the
5 case.

6 The first gun has been identified throughout the trial
7 as a Ruger. It was the State's Exhibit 5. We did not
8 object to the Ruger they found along the road.

9 There is another gun that has been identified as a
10 MAC-10 throughout the trial. That gun they are now seeking
11 to introduce was found in the weeds in an area in the
12 proximity as near as I can tell of the general area where
13 some drugs were found.

14 That gun's not been identified as a MAC-10. It is not
15 branded with a MAC-10. If I look at it, it doesn't say it
16 is a MAC-10.

17 And I don't think just because it's a gun found in the
18 general area, not identified in any way as a particular
19 type or particular motel or anything. It's unidentified,
20 and I don't think it comes in just because it was in the
21 general area.

22 I think it has to have some nexus to the case and be
23 identified as a gun involved or reason to believe it is the
24 gun involved. And that gun, no one knows whether, and I
25 submit isn't a MAC-10.

Jane Millwood
Direct examination by Ms. Thill

1 The state is seeking to introduce it as a second gun,
2 and I don't think there is sufficient evidence for it to be
3 relevant and be admissible.

4 THE COURT: All right. Mr. Gutierrez, do you want to
5 be heard, or do you just want to join in Mr. Warder's
6 motion?

7 MR. GUTIERREZ: I am going to join in that objection,
8 Your Honor.

9 There are no markings on that that would identify it
10 as a MAC-10. There has certainly been no evidence of any
11 fingerprints that would bring it to the case at hand.
12 There is no serial numbers; no serial numbers identified on
13 the property reports identifying it.

14 It's simply stated that it is a MAC-10. And how do we
15 know it is a MAC-10? We have heard no expert testimony
16 that it is a MAC-10 or what a MAC-10 is.

17 THE COURT: Ms. Thill.

18 MS. THILL: Thank you, Your Honor. May it please the
19 Court.

20 Jorge Rodriguez's statements state that he threw a
21 MAC-10 out of the window. Those are through the testimony
22 of Bryanna Rogers. She testified that Jorge Rodriguez took
23 her to the vicinity of where he threw his weapon out of the
24 vehicle.

25 We have established the proper chain through Bryanna,

Jane Millwood
Direct examination by Ms. Thill

1 through Jorge's statements, through Jason Yown who
2 recovered the weapon and now through Evidence Technician
3 Millwood. And the state feels that there is sufficient
4 evidence to introduce this weapon and that we have complied
5 with all of the requirements as far as the chain.

6 THE COURT: Well, I don't think they are objecting
7 based upon the chain. They are objecting based upon the
8 relevance of the weapon as not having been identified as
9 one that's connected with this case.

10 MS. THILL: Well, but, Your Honor, as I stated
11 previously, you know, Jorge stated that it was a MAC-10.
12 He took --

13 THE COURT: He said he threw out a MAC-10. That's
14 part of their objection that nobody has said that's a
15 MAC-10. Is it?

16 MS. THILL: Correct. But --

17 THE COURT: In other words, if Jorge says he threw out
18 a MAC-10 and a weapon was recovered but nobody has
19 identified it as a MAC-10, how does it make this particular
20 weapon relevant?

21 MS. THILL: I beg the Court's indulgence.

22 (Pause.)

23 MS. THILL: Your Honor, the state's position would be
24 that that would be an issue of fact for the jury to decide
25 whether indeed this was the gun that Jorge did possess and

Jane Millwood
Direct examination by Ms. Thill

1 testify that he threw out. In addition, we would argue --

2 THE COURT: He hasn't testified that he threw that gun
3 out.

4 MS. THILL: No, sir. But his statement has come in
5 stating that he threw a weapon out of --

6 THE COURT: He threw a MAC-10 out.

7 MS. THILL: Correct.

8 THE COURT: Is that a MAC-10?

9 MS. THILL: Yes, sir, Your Honor, it is.

10 THE COURT: And who has identified it as such?

11 MS. THILL: I would have to review the testimony, Your
12 Honor. I am not sure anyone has specifically identified it
13 as a MAC-10.

14 THE COURT: Well, that's what the objection is.

15 MS. THILL: Correct.

16 But, again, I would argue that that's an issue of fact
17 for the jury to decide and that this weapon was found in
18 proximity in time and place and location where Jorge
19 Rodriguez took Officer Bryanna Rogers and stated that the
20 weapon he threw out of the vehicle was located.

21 THE COURT: Let me ask you this.

22 You don't have anybody that can testify that's a
23 MAC-10?

24 MS. THILL: The officer -- Your Honor, we can recall
25 Jason Yown to identify it as a MAC-10. It's identified as

Jane Millwood
Direct examination by Ms. Thill

1 a MAC-10 on all of the evidence sheets.

2 THE COURT: Are they in evidence?

3 MS. THILL: Not yet, Your Honor.

4 THE COURT: Well, that wouldn't help us.

5 And the jury is not in a position to know what it is
6 unless they have some particular expertise.

7 MS. THILL: We will be more than happy to recall Jason
8 Yown and have him testify to the type of weapon that it is.

9 THE COURT: Well, now, that is up to y'all. I mean, I
10 don't care who testifies to it, but, I mean, if that's
11 supposed to be a MAC-10, I don't believe it has been
12 identified as such by any witness.

13 MS. THILL: Yes, sir, Your Honor.

14 We will have Jason Yown come back and testify.

15 THE COURT: Okay. All right. Mr. Warder, in the
16 event that a witness identifies that weapon as a MAC-10,
17 are you going to have any additional objection to it?

18 MR. WARDER: No, sir.

19 THE COURT: Well, can we go ahead and address that
20 while the jury is out?

21 MR. WILLINGHAM: What -- whether it is a MAC-10 or
22 not? I have got Jason Yown coming back from the sheriff's
23 office. We released him after he testified, so he is on
24 his way back in, in route.

25 THE COURT: Okay. Bring the jury in.

Jane Millwood
Direct examination by Ms. Thill

1 MS. THILL: Your Honor --

2 THE COURT: Yes, ma'am.

3 MS. THILL: -- just so I am clear, can I finish the
4 testimony of Ms. Millwood then?

5 THE COURT: Oh sure. You just won't be able to admit
6 that particular item into evidence.

7 MS. THILL: Yes, sir, Your Honor.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. The objection to State's
11 Exhibit No. 6 is for the present time sustained.

12 MS. THILL: Thank you, Your Honor.

13 Q Jane, I'm going to show you what's been marked as
14 State's Exhibit No. 7 for identification purposes. Did you
15 receive these drugs in this case?

16 A I received these drugs in this blue bag, or blue and
17 clear bag, blue and white, which we call a sealed BEST bag,
18 and that's what I signed for.

19 Q And from where did you receive it?

20 A Drop box.

21 Q And when did you receive it from the drop box?

22 A I don't -- January the 18th, 2002.

23 Q Okay. And once you received those drugs, what did you
24 do with them?

25 A When I pick drugs up I do the paperwork on it and do

Jane Millwood
Direct examination by Ms. Thill

1 another chain on it, log it into my computer and it, in
2 turn, goes into our drug vault.

3 Q Okay. Did you open the BEST bag or tamper with it in
4 any way?

5 A No. The lab technician will not take it if it's
6 tampered with.

7 Q And did you relinquish possession of these drugs at
8 any time?

9 A January the 18th, 2002.

10 Q And who did you relinquish them to?

11 A Or I don't -- it may be on the next sheet. I've just,
12 I've just got a sheet where I put it in the drug vault
13 January the 18th, 2002.

14 Q Were they turned over to Ashley Harris?

15 A Yes. But they's usually another chain. He picks it
16 up from the drug vault.

17 Q I'm sorry, Jane. Is this the other sheet you are
18 looking for?

19 A It's just basically like this.

20 Officer Harris said he brought the originals over
21 here, which he usually gives us a copy. So without having
22 a copy of those, and I don't keep the chains. They are in
23 the envelope when I put them in the drug vault.

24 Q Are you sure it's not in there?

25 MS. THILL: Beg the Court's indulgence for one minute.

Ashley Harris
Direct examination by Ms. Thill

1 THE COURT: All right.

2 (Pause.)

3 Q I'm sorry, Jane. If you can tell me one more time,
4 when did you receive those drugs?

5 A I signed for it January the 18th, 2002, and I picked
6 it up from I. D. division drop box, which is some of them
7 call it the drop box and some of them call it the I. D.
8 locker, which they are locked. Just there's only two keys.
9 And then I signed for a sealed BEST bag, and I put it in
10 the drug vault, our drug vault, January the 18th of 2002.

11 Q Thank you very much. No further questions. Please
12 answer any questions Mr. Gutierrez or Mr. Warder has.

13 MR. WARDER: Your Honor, if it please the Court. I
14 have no questions of this witness.

15 MR. GUTIERREZ: I have no questions either, Your
16 Honor.

17 THE COURT: Thank you. You may step down.

18 ASHLEY HARRIS, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. THILL

21 Q Good afternoon, Ashley. Could you please state your
22 name for the record and introduce yourself to the jury?

23 A Yes. My name is Ashley Harris. I work for the
24 sheriff's office in Spartanburg.

25 Q Okay. And how long have you been working for the

Ashley Harris
Direct examination by Ms. Thill

1 sheriff's office?

2 A I've been with the sheriff's office approximately,
3 almost five years now.

4 Q Okay. And what do you do at the sheriff's office?

5 A I'm the forensic chemist for the sheriff's office. I
6 am responsible for testing items that are submitted to
7 determine if they're, they contain narcotics or drugs.

8 Q And can you tell the jury what sort of education and
9 training you've received?

10 A Yes, ma'am.

11 I have a bachelor of science in chemistry from Wofford
12 College here in Spartanburg.

13 I have, after completing Wofford, I went down to the
14 University of South Carolina in Columbia and took some
15 classes in analytical separations, part of analytical
16 chemistry that I do now.

17 I worked for the South Carolina Law Enforcement
18 Division for approximately two years, which is SLED in
19 Columbia, as a forensic chemist in the drug analysis
20 section.

21 And then Spartanburg got a grant to open their own
22 lab. I came up here and continued my education and
23 finished my master's degree in analytical chemistry from
24 Furman University and run the lab here in Spartanburg.

25 Q Okay. And do you attend continuing education classes?

Ashley Harris
Direct examination by Ms. Thill

1 A Yes, ma'am. I attend at least 40 to 60 hours of
2 continuing education in drug analysis every year.

3 Q Okay. And have you had occasion to chemically analyze
4 to determine whether a substance is or contains narcotic or
5 narcotic type drug?

6 A Yes, ma'am.

7 Q Okay. And approximately how many times have you done
8 that?

9 A I've probably performed somewhere between eight to ten
10 thousand examinations since starting drug analysis.

11 Q Okay. And have you ever testified before today as an
12 expert in the analysis of narcotics?

13 A Yes, ma'am. I have been qualified as an expert in the
14 courts of South Carolina 59 times.

15 MS. THILL: Your Honor, at this time I would like to
16 offer Ashley Harris as an expert in the field of chemistry
17 and in the analysis of narcotics.

18 THE COURT: Any objection, Mr. Warder?

19 MR. WARDER: None, Your Honor.

20 THE COURT: Mr. Gutierrez?

21 MR. GUTIERREZ: None, Your Honor.

22 THE COURT: He is so qualified.

23 Q Ashley, I'm going to show you what has been marked as
24 State's Exhibit No. 7 for identification purposes. Can you
25 identify this package?

Ashley Harris
Direct examination by Ms. Thill

1 A Yes, ma'am.

2 These are the drugs that were in L02060064, excuse me,
3 for the case that's going on today.

4 Q Okay. And how are you able to identify it?

5 A I have placed my -- when evidence is picked up, I
6 place my initials on it and assign it a lab number. That
7 lab number is assigned. L02 is, it means it was, it's a
8 lab number. 02 is the year. And 0064, it's the 64th case
9 that came in in the year 2002.

10 After completing the case I again placed it in this
11 heat-sealed bag and placed my initials, the date that I
12 sealed it and the lab number again in that seal.

13 Q And when and where did you receive that package from?

14 A I received this case on January 23rd of last year, and
15 I received it from the Spartanburg County Sheriff's Office
16 drug vault. It's the drug vault adjacent to the evidence
17 room at the sheriff's office.

18 Q And just to be clear, how was it packaged when it came
19 into your possession?

20 A Initially before coming into my possession it was in
21 this bag that's now inside the heat-sealed bag. It's a
22 blue bag. It's got a blue border and the Spartanburg
23 County Sheriff's Office seal on it. It's referred to as a
24 BEST bag. It's a tamper-evident bag. It's not able to
25 keep anybody out, but if anybody tries to get in, it's very

Ashley Harris
Direct examination by Ms. Thill

1 obvious. And if evidence has been tampered with, we will
2 not accept the evidence for analysis.

3 Q Okay. And is it in the same condition as when you
4 sealed it for testing?

5 A Yes, ma'am.

6 Like, as I said, I placed in the heat-sealed bag,
7 again, with my initials, the date that I sealed it and the
8 lab number in the heat seal, and that is intact.

9 MS. THILL: Your Honor, at this time we would like to
10 move State's Exhibit No. 7 into evidence.

11 MR. WARDER: Without objection, Your Honor.

12 MR. GUTIERREZ: None.

13 THE COURT: It is admitted.

14 (Cocaine marked State's Exhibit No. 7.)

15 Q Ashley, when did you test the drugs or the alleged
16 drugs that were inside that bag?

17 A If I may refer back to the worksheet that I do in the
18 lab because I don't remember the date --

19 Q Yeah.

20 A Actually, I opened the sample for analysis and did the
21 presumptive test and took the sample for the confirmatory
22 test on January 28th of last year.

23 Q Okay. And what tests were performed?

24 A Every case that comes into the sheriff's office lab,
25 we perform at least two tests, a presumptive test and a

Ashley Harris
Direct examination by Ms. Thill

1 confirmatory test; on this particular case a presumptive
2 test of a color change, a color test. It's just a chemical
3 reaction test to give me an idea of what I'm looking at.

4 I performed the cobalt thiocyanate tinchloride test,
5 which is one specifically for crack and cocaine. It tested
6 positive for cocaine.

7 So then I took a small sample and placed it on our G.
8 C. mass spec, which is an instrument that determines
9 exactly what something is. It's by breaking it apart and
10 looking at the small pieces to determine what it is. And
11 it again tested positive for cocaine.

12 Q So after both tests, it tested positive for cocaine.

13 A That is correct.

14 Q What do you use? What was the weight of the drugs?
15 Because you also weigh the drugs, correct?

16 A Yes, ma'am.

17 There were nine individual bags within the evidence
18 when I received it. Each individual bag was presumptively
19 tested. Once all nine bags presumptively tested the same,
20 they were combined for one G. C. mass spec sample, and that
21 combined weight of just the drug itself was 243.84 grams.

22 Q Okay. And what do you use to weigh the substance when
23 you are analyzing it?

24 A We have an analytical balance in the lab. It's
25 approximately a \$2,000 balance, very accurate. It's tested

Ashley Harris
Direct examination by Ms. Thill.

1 once a year by an outside source that will come in and
2 calibrate to make sure that it's within calibration. And
3 then once a month it is also calibrated within the lab to
4 make sure that it's functioning properly before it's ever
5 used. It's usually at the beginning of the month.

6 Q Okay. And is that more accurate than what an officer
7 would use in the field to weigh the substance?

8 A Yes, ma'am.

9 Typically, field scales are smaller, typically in the
10 hundred to \$150 range, and they're usually only accurate to
11 a gram or so.

12 The scales in the lab are accurate to a hundredth of a
13 gram and, like I said, they're calibrated once a month and
14 tested once a year by an external agency.

15 MS. THILL: At this time we have no further questions
16 of this witness.

17 Q Please answer any questions the defense attorneys may
18 have.

19 A Yes, ma'am.

20 MR. WARDER: Your Honor, if it please the Court. I
21 have no questions of this witness.

22 MR. GUTIERREZ: I have no questions either, Your
23 Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, sir.

Ashley Harris
Direct examination by Ms. Thill

1 MR. WILLINGHAM: Your Honor, may we approach?

2 THE COURT: Yes.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 THE COURT: Ladies and gentlemen, I have got one
6 matter to address outside of your presence. Please go to
7 the jury room.

8 Don't discuss the case. I will bring you back in just
9 a few minutes.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: We are going to be at ease for ten
13 minutes.

14 (Whereupon, a recess was taken.)

15 THE COURT: Bring the jury in.

16 MR. WARDER: Your Honor, this witness wasn't on the
17 list and wasn't sounded.

18 THE COURT: But he was in the courtroom. You are in
19 the courtroom, you are subject to being called as a
20 witness.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right. Solicitor.

24 MR. WILLINGHAM: Your Honor, we call Jack
25 Westmoreland.

Jack Westmoreland
Direct examination by Mr. Willingham

1 JACK WESTMORELAND, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILLINGHAM

4 Q Tell the jury who you are.

5 A My name is Jack Westmoreland.

6 Q And you work for the sheriff's office.

7 A Yes, sir, I do.

8 Q How long have you been with the sheriff's office?

9 A Twenty years.

10 Q What do you do for them?

11 A I'm assigned to court detail.

12 Q As part of your law enforcement training you have
13 become familiar with handguns?

14 A Yes, I have, sir.

15 Q Have you also had any other experience dealing with
16 handguns to allow you to identify handguns?

17 A I was at one time a gun dealer, federal firearms
18 licensed gun dealer.

19 Q Okay. I show you State's Exhibit No. 6-A, B and C.
20 Based on your experience in law enforcement and as a gun
21 dealer can you tell me what kind of gun that is?

22 A It is a copy of a MAC-10 pistol.

23 Q Is it actually a MAC-10?

24 A No, sir, it is not.

25 Q It is a knock-off of a MAC-10?

Jack Westmoreland
Direct examination by Mr. Willingham

1 A Yes, sir, it is.

2 Q Is it commonly referred to as a MAC-10?

3 A Yes, sir, it is.

4 Q And the clip that is there, State's Exhibit 6-B, I
5 think --

6 A Yes, sir.

7 Q -- is that the proper magazine for that weapon?

8 A It's actually for an 3-M grease gun magazine, but it
9 does fit this gun, yes, sir.

10 Q And it will work in that weapon.

11 A Yes, sir.

12 Q And the ammunition, is that the proper caliber
13 ammunition to be fired with that weapon?

14 A Yes, sir, it is.

15 Q Okay.

16 MR. WILLINGHAM: Your Honor, at this time I move
17 State's Exhibits 6-A, B and C into evidence.

18 THE COURT: Any objection, Mr. Warder?

19 MR. WARDER: No, Your Honor.

20 THE COURT: Mr. Gutierrez?

21 MR. GUTIERREZ: None, Your Honor.

22 THE COURT: It is admitted without objection.

23 (Magazine marked State's Exhibit No. 6-A; bullets
24 marked State's Exhibit No. 6-B; MAC-10 semi-automatic pistol
25 marked State's Exhibit No. 6-C.)

Jack Westmoreland
Cross-examination by Mr. Gutierrez

1 Q Thank you. Answer any questions they have for you.

2 THE COURT: Do you want to ask him any questions?

3 MR. WARDER: No, Your Honor.

4 MR. GUTIERREZ: One question, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. GUTIERREZ

7 Q Officer Westmoreland, you stated this was a knock-off.

8 A Yes, sir.

9 Q Would that pistol as a knock-off, would it have any
10 distinguishable characteristics different from that of a
11 true MAC-10?

12 A Not really, sir. It's a very crudely made MAC-10.
13 It's a copy of the MAC-10.

14 Q That's all I have.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you, sir.

17 MS. THILL: Your Honor, at this time the state rests.

18 THE COURT: All right. Ladies and gentlemen, that is
19 all of the testimony or evidence to be offered by the
20 state.

21 Before we go any further I've got some legal matters
22 to address with the lawyers. It should take only a few
23 moments.

24 So I will ask you to please go to your jury room. Do
25 not yet discuss the case. I will bring you back in just a

Motion

1 few minutes to continue.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any motions or other matters
5 to address on behalf of Juan Enrique Rodriguez, Mr. Warder?

6 MR. WARDER: Your Honor, on behalf of Mr. Rodriguez I
7 would certainly move for a directed verdict.

8 I think there was insufficient evidence to allow the
9 case to go to the jury as to the trafficking cocaine, the
10 possession of a firearm and --

11 THE COURT: Pointing and presenting?

12 MR. WARDER: Yes, sir.

13 THE COURT: All right. Those motions are denied.

14 Mr. Gutierrez, on behalf of Jorge Alberto Rodriguez?

15 MR. GUTIERREZ: The same directed verdict based on the
16 same allegation that there is not enough competent evidence
17 to submit this to a jury.

18 THE COURT: All right. That motion is denied.

19 MR. GUTIERREZ: Thank you, Your Honor.

20 THE COURT: Any other matters to address before we
21 conclude?

22 MS. THILL: None from the state, Your Honor.

23 MR. WARDER: No, sir, Your Honor.

24 Of course, Your Honor, we are not going to offer any
25 testimony at this time. So if there's anything we need to

1 do as to charge or anything else --

2 THE COURT: Have you got some requests?

3 MR. WARDER: I don't have any specific requests. I
4 was going to rely on Your Honor's general charge. I've
5 heard it.

6 THE COURT: Do you think it is a good one?

7 MR. WARDER: Reasonable doubt is a little weak, Your
8 Honor.

9 THE COURT: I'll try to do better.

10 All right. Does the state have any -- does Mr.
11 Gutierrez? Do you have any requests?

12 MR. GUTIERREZ: I would ask an additional charge that
13 they be reminded not to in their deliberations, not to
14 refer to the handout that they got during the audio tape.

15 THE COURT: They have been taken up.

16 MR. GUTIERREZ: I mean, not to consider what they've
17 read but just what they listened to; that based upon the
18 fact that I believe there to be differences between what
19 was, between what was --

20 THE COURT: Okay. Well, I've already told them that
21 when they listened to the tape, and the transcripts have
22 been taken up, and they won't have them. So they'll have
23 to listen to the tape.

24 MR. GUTIERREZ: Thank you.

25 THE COURT: Okay. Does the state have any requests?

Closing arguments

1 MS. THILL: No, sir, Your Honor.

2 THE COURT: Are you all ready to conclude?

3 All right. Bring them back.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: All right. Ladies and gentlemen, as you
7 know, the state has rested.

8 Mr. Warder, is there any additional evidence to be
9 presented?

10 MR. WARDER: Your Honor, on behalf of my client, Juan
11 Rodriguez, we rest.

12 THE COURT: Mr. Gutierrez.

13 MR. GUTIERREZ: Jorge Rodriguez rests as well.

14 THE COURT: Ladies and gentlemen, that's all of the
15 evidence to be presented in the case, and so what remains
16 to be done are the lawyers' final summations, after which I
17 will instruct you on the law, and then you will begin with
18 your deliberations in the case. So please give the lawyers
19 your attention now as they give you their final summations.

20 Mr. Willingham.

21 MR. WILLINGHAM: May it please the Court, Your Honor.

22 Ladies and gentlemen, this is the first opportunity I
23 have had to speak to you. On behalf of the state of South
24 Carolina I want to thank you for being here the past three
25 days. It's been a fairly long case. But it is an

Closing arguments

1 important case.

2 What I like to do with juries when it comes to this
3 time during the trial is talk about the facts, about the
4 facts as you've heard them from that witness stand.

5 I'm not going to go back through all of the testimony,
6 because we will be here another three days. I am not going
7 to do that. We are going to talk about the facts and we're
8 going to talk about the law the judge is going to give you
9 at the very conclusion of the case.

10 We are going to take those facts and we're going to
11 take that law and we are going to put them together and see
12 what the outcome is. The facts in this case are fairly
13 straightforward, fairly simple even though it took three
14 days to get them before you.

15 On November the 28th of 2001 a drug deal was supposed
16 to go down. The deal was set up between Cecil Gilliam and
17 Bo Leatherwood.

18 Bo Leatherwood got his suppliers, Juan Rodriguez and
19 Jorge Rodriguez. They loaded up in their car and they went
20 to do the deal.

21 Initially, the deal didn't go forward. That's at
22 Highway 221 and 295 at the Li'L Cricket. And y'all watched
23 that tape. You saw Cecil sitting there, so Bo sitting
24 there in his car and saw them go into the Li'L Cricket and
25 come out. No money was exchanged; no drugs were exchanged.

Closing arguments

1 The police didn't move in.

2 Calls were made later and a separate location was set
3 up at that location, that location being Old Switzer Road
4 Church. Got there. Cecil got there in his Cadillac, got
5 there first. Bo Leatherwood drove up in his Century. Juan
6 Rodriguez was in the passenger side; Jorge Rodriguez was in
7 the back seat.

8 Cecil gets into their car, all four of them in the
9 same car now. Drugs are presented. Cecil sees the drugs,
10 gives the code word Charlotte, and the police move in.

11 Cecil is getting out. As he gets out, Jorge snatches
12 the drugs back from him. Bo Leatherwood takes off.

13 They take off Old Switzer, onto Spartanburg Highway,
14 290 to West Road, back across 417 to their station, half
15 mile of Bethany Baptist Church Road.

16 Cecil wasn't there any more. You've got Bo, Juan and
17 Jorge riding down the road trying to get away from the
18 police throwing out dope, throwing out a MAC-10 or a copy
19 of a MAC-10, throwing out a scanner. And finally when the
20 police get them stopped, they're arrested and they're
21 charged.

22 Ladies and gentlemen, those are the facts. That's
23 what happened. That's what the testimony is as to what
24 happened.

25 So what's the law? I'm going to tell you what the

Closing arguments

1 statutes say and the law says, but the judge is the expert
2 on the law. He's the one that gets to charge the law and
3 tell you what the law is.

4 But I believe the judge will tell you that in South
5 Carolina it's against the law to traffic in cocaine.
6 Section 44-53-370 of our code of laws, that's the section
7 of it, it says it is unlawful to traffic in cocaine.

8 You can traffic in cocaine in a number of ways. The
9 law breaks down into three different ways.

10 The first way you can be guilty of trafficking is if
11 you sell it, manufacture it, deliver it, purchase or bring
12 into the state ten grams or more of cocaine. That's way
13 number one that you can be guilty of trafficking -- sell it
14 or manufacture it or deliver it or purchase or bring into
15 the state.

16 What evidence do we have here of this? They delivered
17 it. They delivered it to the church. They brought it into
18 the state. And there was some discussion in Jorge's
19 statement it came from Florida.

20 The other way to be guilty of trafficking cocaine is
21 to otherwise aid, abet, attempt or conspire to aid,
22 attempt, abet or conspire to sell, manufacture, deliver,
23 purchase or bring into the state ten grams or more of
24 cocaine. That's how Bo Leatherwood is guilty.

25 You know, everybody made a big deal out of, you know,

Closing arguments

1 Bo never touched the dope, Bo never saw the dope, Bo just
2 set the deal up. Bo -- all he did was he was the middle
3 man.

4 Well, the middle man is guilty just like the rest of
5 them because he aided, he abetted, conspired, attempted to
6 sell, attempted to deliver more than ten grams of cocaine,
7 just like Juan Rodriguez and Jorge Rodriguez are guilty of
8 aiding, abetting, attempting and conspiring to sell,
9 manufacture, deliver cocaine.

10 Do all three, to use my words when I asked Bo
11 Leatherwood about whether he was a kidnapping victim, they
12 all three were up in it to their eyeballs. They all three
13 knew what was going on and they all three were actively
14 participating, and they are all three guilty.

15 The third way of being guilty of trafficking cocaine
16 is to actually, to actually possess or constructively
17 possess more than ten grams of crack cocaine.

18 Now, what do I mean by that? Actual possession. I've
19 got this ink pen and this legal pad in my possession. I
20 actually possess it.

21 Constructive possession is my car keys are in that
22 black bag on that table and my car is out in the parking
23 lot. I've got control and dominion over that car. I'm in
24 constructive possession of that car. I'm not touching it,
25 I don't have it with me, but I've got control over it, and

Closing arguments

1 I can have access to it any time I want it. These people
2 are guilty of actually possessing and constructively
3 possessing this crack cocaine as well.

4 Testimony was from Cecil that Juan had it, that Jorge
5 had it, he had it, and then Jorge snatched it back. Juan
6 himself in his statement tells law enforcement, yeah, I had
7 the dope and I threw it out the window. He is guilty.

8 All three of them are guilty of trafficking in
9 cocaine. As I said, there are three ways to be guilty of
10 trafficking. It's not complicated; it's not difficult. It
11 is fairly straightforward, a straightforward case. They
12 were involved in a drug deal with 243.84 grams of cocaine.

13 They're also charged, they're also charged with
14 possession of a firearm during the commission of a violent
15 crime. Again, the state legislature when they pass laws
16 passed one, and it's in our law books. It's Section
17 16-23-490 that says it's unlawful for any person to have a
18 firearm while they're committing a violent crime.

19 Now, break it down into three elements -- person,
20 possess firearm and violent crime. The reason I break that
21 down is I have to prove every one of those in order for the
22 defendants to be guilty.

23 The same thing as with trafficking. Every element I
24 break out, is I have to prove each one of them for them to
25 be guilty.

Closing arguments

1 In this case who had the firearms? You remember the
2 testimony of the witnesses. People with firearms are Juan
3 Rodriguez and Jorge Rodriguez.

4 Juan was in the front, got the shiny silver gun.
5 State's Exhibit No. 5-E, shiny silver, is the one that
6 everybody has testified Juan had.

7 Jorge in the back seat had this gun. So Juan and
8 Jorge, two firearms, two weapon, two handguns during the
9 commission of a violent crime.

10 The judge will tell you that according to our state
11 law trafficking in cocaine is a violent crime. He will
12 tell you that.

13 If you find the defendants guilty of trafficking
14 cocaine and you believe from the testimony that they had
15 handguns, then they're guilty of this charge as well.

16 How do you know they had them? Cecil told you they
17 had them. Cecil had these guns pointed at him. Bo
18 Leatherwood told you at least Juan had them because
19 whenever Juan said go, he went.

20 Now, the defendants' lawyers got up here in
21 cross-examination and tried to say, well, you know, poor
22 Bo, he's just a victim, a victim of kidnapping. And
23 everybody got a little chuckle out of that, a good laugh.
24 But Bo Leatherwood is no victim. Bo Leatherwood is a
25 criminal just like Cecil Gilliam is a criminal. We are

Closing arguments

1 going to talk about that in just a little but. But he is
2 no victim, but he saw the gun that Juan had.

3 How do we know Jorge? Cecil knew him as Jose. But
4 how do we know Jorge in the back seat had a gun? He said
5 so. You listen to his statements. He told police, yeah, I
6 had that gun. What did you do with it? I threw it out the
7 window along with the dope. He admitted to it. That's how
8 we know that.

9 We also know it because Jorge took it back up here to
10 West Road where it was found. He said it's over in here.
11 Sure enough they look, and all of the guns were found
12 there.

13 On the statement, where did you throw the dope out,
14 Jorge? It was close to a bridge. Sure enough? Old
15 Spartanburg Highway. That's where the dope was found,
16 right next to a bridge, right where Jorge said it would be.
17 So he is guilty. They are both guilty of possession of a
18 firearm in the commission of a violent crime.

19 The last thing they are charged with is pointing and
20 presenting a firearm. The legislature said that's illegal
21 if you point or present a firearm.

22 What evidence do we have that Juan Rodriguez pointed
23 or presented a firearm? Well, Cecil saw it; Bo Leatherwood
24 saw it. It wasn't stuck in his side as if, you know, he
25 were a kidnapping victim, but it was there. It was

Closing arguments

1 present; it was on the scene.

2 Bryanna Rogers saw it as she's in that car, in that
3 Blazer, travelling down the highway; and Nicki Sherrill saw
4 it. Nicki Sherrill was so accurate as to say it was the
5 front passenger. I don't need to turn this over. Y'all
6 what's on the other side. Front passenger is Juan. That's
7 the evidence we have that he possessed, presented and
8 pointed a firearm.

9 What evidence do we have that Jorge possessed,
10 presented and pointed a firearm? Again, it comes from
11 Cecil saying they were pointing it at him. It comes from
12 Jorge himself who testified that he had the gun, and, now,
13 he wasn't hanging out the window like they were asking
14 about, but he had the gun and he had it out the window.

15 What is he doing with it out the window? At that
16 point he ain't pointing it out. The word pointing was not
17 used by him. If he wasn't pointing, he was literally
18 presenting it. And those law enforcement officers were
19 behind him and they saw what was going on.

20 Ladies and gentlemen, these two defendants, Juan
21 Rodriguez and Jorge Rodriguez, are guilty of all of the
22 charges.

23 Now, how do we know that? I am going to go through it
24 again. It comes from the testimony of the officers that
25 were involved; it comes from the testimony of Cecil

Closing arguments

1 Gilliam; it comes from the testimony of Bo Leatherwood; it
2 comes from the statement that Jorge Rodriguez himself gave
3 to law enforcement; it comes from the facts that these
4 items were found right where the chase scene was and chase
5 route was and right where Jorge Rodriguez said they would
6 be.

7 Now, this will be the last time I get to talk to you,
8 the first and the last as far as I am concerned, because
9 when I sit down if they want to they have an opportunity
10 and a right to make final statements to you. And when
11 they're done the judge will tell you what the law is.

12 I won't get to come back up here and say, ladies and
13 gentlemen of the jury, that's wrong; what Mr. Warder said
14 is just flat wrong; what Mr. Gutierrez has said was just --
15 I don't know where he got it from. I won't be able to do
16 that. As much as I may want to get back up here and say,
17 ladies and gentlemen, y'all don't buy that because that
18 ain't what was in the record, I won't get to.

19 So what I have to do is kind of anticipate what they
20 may or may not bring up, and I may or may not do a good job
21 anticipating. I don't know.

22 But one of the things I suspect they will bring up is
23 credibility or believability of the state's witnesses.
24 They may want to ask you do you really want to convict Juan
25 Rodriguez and Jorge Rodriguez on the word of two dope

Closing arguments

1 dealers, Cecil and Bo, people that have been given deals,
2 people that have worked charges off, people that are
3 getting lenient sentences. Do you want to believe people
4 like that? And I find that's a pretty good question.

5 You need to ask yourself do you believe them, but also
6 ask yourself whether folks like us, folks in this
7 courtroom, could go out to Firestone the night before and
8 hook up a deal for a kilo of cocaine. I don't think folks
9 like us can do that. I don't think the Juan Rodriguezes
10 and the Jorge Rodriguezes of the world, the drug dealers,
11 are going to trust folks like us.

12 So the only way you get the Juan Rodriguezes and the
13 Jorge Rodriguezes off the street is to climb that ladder.

14 Start with Cecil. Cecil buys it. Where is he buying
15 it from? Buying it from the Rodriguezes through Bo.

16 He got his charges dismissed. He worked them off.
17 Some informants are paid; some informants here do it out of
18 the goodness of their heart; and some informants are
19 working off charges. Cecil happens to be the one that
20 worked off charges.

21 And as he testified, he's got a lot of things going.
22 It wasn't just this case getting those charges dismissed.
23 But he was looking at significant time.

24 But, ladies and gentlemen, those charges were
25 dismissed back in March. If he was to be up here

Closing arguments

1 testifying to anything other than what happened or anything
2 other than the truth, if he was up here just to say what
3 the state wanted him to say, we ain't got anything hanging
4 over his head any more.

5 What's his motivation? What's his incentive any more?
6 He had the incentive to work. He had the incentive to make
7 these cases to get those charges off. Those charges were
8 not hanging over his head when he testified today.

9 Now, you may say, solicitor, well, you are talking out
10 of both sides of your mouth because Bo Leatherwood has
11 charges hanging over his head. But Bo Leatherwood is
12 guilty. He is guilty of trafficking cocaine just like the
13 Rodriguezes are. And he's already pled guilty and admitted
14 for what he has done. Even somehow during
15 cross-examination the defense lawyer tried to make it out
16 he wasn't guilty of anything. But he's along with the rest
17 of them.

18 Ask about his credibility. Yes. He is looking for
19 himself. He is looking for something less than the maximum
20 amount of time.

21 But, ladies and gentlemen, seven years without parole,
22 a slap on the wrist for Bo Leatherwood? Seven years
23 without parole.

24 But y'all don't look at just their testimony. Their
25 testimony by itself, that may be a little bit suspect.

Closing arguments

1 You've got other things, other things lending credibility,
2 other things that corroborate what happened.

3 Jorge Rodriguez in his statement tells basically the
4 same thing that Bo Leatherwood does. That lends
5 credibility to Bo Leatherwood. Whether you like him or
6 not, he is a convicted criminal, convicted drug trafficker.
7 He told you what happened.

8 We are not trying to pretty these witnesses up for you
9 and we aren't trying to come in here and make saints out of
10 them. We are bringing them as we get them because that's
11 the only way that you can go out and get the bigger
12 dealers. That's the only way you can go out and get the
13 Juans and Jorges of the world.

14 How else do we know? What other corroboration did we
15 have? They couldn't by a kilo, so they're going to get a
16 quarter key. That's what Ashley Harris testified to.
17 243 grams is a little bit less than a quarter key. 250
18 grams would be a quarter.

19 What other corroboration do we have? The statements
20 match up of where the drugs were thrown out, where the guns
21 were thrown out, the scanner. Bo said they scanned him
22 with that scanner to see if he was wearing a wire.

23 All of those things lend to the credibility, the
24 consistency in their statements from then to now,
25 consistency in the statements of all of the witnesses, of

Closing arguments

1 all of the law enforcement officers who saw what happened
2 that tracked exactly what Bo said happened, that tracked
3 exactly what Cecil said happened, that tracked what Jorge
4 say happened, all lends to credibility and believability.

5 Ladies and gentlemen, this is not a typical case as I
6 told you. This is basically a, we call it sometimes a
7 throw-down case. This is more of a run-and-sling type
8 case. But you've got the evidence. You know who did it.
9 Beyond a reasonable doubt you know who did it. Bo
10 Leatherwood is guilty; Juan Rodriguez is guilty; and Jorge
11 is guilty.

12 Remember the evidence. Use your common sense. Apply
13 the facts to the law. When you do that, no matter what I
14 say, no matter what they may be getting ready to say, when
15 you do that there will be one true and just verdict based
16 on the facts and based on the law, and that will be a
17 verdict of guilty. Thank you.

18 THE COURT: Mr. Warder.

19 MR. WARDER: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. WARDER: Ladies and gentlemen, I certainly want to
22 begin by thanking you again for spending these two days
23 with us. We know it's a great inconvenience.

24 I've observed you paying attention. We appreciate
25 your service, because this is the only way that citizens

Closing arguments

1 can have their cases fairly judged.

2 You know, when the state turns its might on its
3 citizens and it starts a prosecution, they just seem to
4 want to steam-roll. Pretty soon they're talking about they
5 and them and all three, and they're convincing by saying
6 you know and they all did.

7 But that's not what the constitution talks about. The
8 constitution talks about individuals and individual rights
9 and the fact that they prove each individual guilty, not
10 they guilty. But they don't lump together.

11 You know, one cannot be a criminal without intending
12 to be a criminal. His Honor will tell you that mere
13 presence with a group of people that engage in illegal
14 activity is not in and of itself a crime. Conspire is not
15 mere presence. It's active conspiring.

16 You know, it's easy to play fast and loose with the
17 facts. You know, just like the solicitor, he tells you
18 remember guilty. Remember Cecil. Well, he just got the
19 testimony from Rodriguez. Minutes ago he said that. No
20 testimony. Any testimony in the record of that?

21 But it's a fact that makes my client look bad that's
22 not there, but if he can talk to you about it like it's a
23 fact, maybe you will believe it's a fact and maybe it will
24 be easier for you to do what they want to do to Juan
25 Rodriguez.

Closing arguments

1 You know, I don't represent Bo Leatherwood, and Bo
2 Leatherwood might be just what he says. And Jorge
3 Rodriguez is a cousin of mine, but that don't mean that
4 it's them and they. My client can only be guilty if the
5 state can prove he did acts that are criminal beyond a
6 reasonable doubt.

7 This is a trial in my mind, and I'm talking to you
8 about one individual, Juan Rodriguez, and what they've
9 proved or failed to prove about Juan Rodriguez.

10 Now, when we talk and examine Bo Leatherwood and when
11 he told us he wasn't really guilty of things, we didn't
12 believe it. I didn't believe it. But we elicited that
13 testimony to demonstrate he would shape the things he says
14 to put himself in the best possible light that the truth
15 was not important to him, that he would say things like he
16 was forced to drive the car away, that he didn't see or
17 know anything, that he was just almost a victim of
18 circumstances, that he didn't regress to prove to you that
19 he would say anything, and he should not be believed.

20 You know, the solicitor says no doubt they had guns
21 because Gilliam said it. Does anybody really believe that
22 guns were turned on Gilliam and he got out of the car and
23 minutes later would not mention it to the police when he
24 gave a detailed statement? Does anybody believe that's the
25 way human beings act?

Closing arguments

1 If somebody points a gun at you and you think they are
2 going to shoot you, a minute later will it slip your mind
3 when somebody says what happened? The thing that you don't
4 mention is the thing that puts you in fear of your life?

5 Human beings don't act that way. And that's important
6 because it demonstrates, once again, an individual that
7 will do anything to put himself in a better light with the
8 truth being unimportant. And I submit to you that proof
9 beyond a reasonable doubt requires more than that quality
10 of evidence.

11 The one thing a jury does is require the state to
12 bring forth convincing, believable evidence that would
13 convince you beyond a reasonable doubt.

14 You don't take everything that's said in this
15 courtroom and take it back to the jury room and say, well,
16 what all was said. Hopefully, you first go back to the
17 jury room and decide what's believable of what you heard in
18 the courtroom. In other words, lies should not weigh the
19 same as truthful things.

20 So in deciding your job is not to see everything that
21 was said. Your job is to see what is truthful that was
22 said and what is believable and what is persuasive and then
23 take the things you find to be believable and truthful and
24 persuasive, and you stack them all up and you say what do
25 we need to see if the state has proven. And that is how

Closing arguments

1 you approach your job.

2 And what the state must prove His Honor will tell you.

3 And he will tell you a number of things. Crimes have a
4 number of elements. And he will say the state must prove
5 each and every element beyond a reasonable doubt.

6 This case is not simply the carrying of everything you
7 heard back. It's the carrying and evaluating of everything
8 you heard through your common sense.

9 You know, you all have had to evaluate things you have
10 heard to see whether or not they are truthful. We do it
11 all of our lives from when we are children the things
12 playmates tell us. And we say is that right, does that
13 make sense.

14 Sometimes things don't have what we call the ring of
15 truth and sometimes things don't make sense, and we perfect
16 those tools all of our lives. Sometimes we can go up and
17 we know when an acquaintance, we know is telling a lie
18 before he gets very far into it. We know their mannerisms,
19 the things they do. We've heard them.

20 You know, you don't leave your brains outside of the
21 courtroom. You use those same skills that you honed all of
22 your life about seeing how things sound and whether they
23 make sense. And you use them in here, and you should use
24 them in here to decide what believable evidence the state
25 has put up, because the only evidence you heard is the

Closing arguments

1 state's. You should decide what believable they have and
2 how much weight it has because what the evidence must do is
3 convince you beyond a reasonable doubt.

4 Now, part of the state's burden is it's required to
5 bring in here proof that proves each and every element.
6 And if there's something that doesn't make sense or isn't
7 here and if there's something that is not here that you
8 need to fairly decide the case, then that's a reasonable
9 doubt that arises from the lack of evidence. And a
10 reasonable doubt His Honor will tell you can come from the
11 evidence or the lack thereof.

12 In this particular case we started off with the
13 testimony of the fellow from the Kentucky State Police, the
14 fellow Dorman.

15 Mr. Dorman told you, said I am a fingerprint guy. He
16 said I fingerprinted all of these things and we opened up
17 the boxes and we went through them. And I think that he
18 fingerprinted 32 things. I think it was a gun, a clip.
19 And I can't -- seven bullets in the first one. Another gun
20 and clip and 13 bullets. And he said to you there were no
21 fingerprints.

22 It's okay for you to stop and evaluate and see whether
23 that makes sense or not. And it's okay for us to use your
24 common sense on how guns are loaded, how things are put in
25 the clips. It's okay to see whether it sounds logical,

Closing arguments

1 because ultimately in deciding this case your common sense
2 is the tool. He says he's an expert and there was no
3 fingerprints, no police fingerprints, certainly none of my
4 client's fingerprints.

5 The state puts up Mr. Gilliam. Mr. Gilliam is a man
6 that not only has he been arrested for trafficking, his
7 charges were dismissed. And the state in an effort says,
8 see, he has nothing to gain, they're dismissed.

9 But double jeopardy didn't attach. He didn't go
10 through a trial. They were dismissed with a stroke of
11 their pen and they are back with a stroke of their pen.
12 It's not at all what they are trying to paint out for you.

13 There's no constitutional bar to the second
14 prosecution of a man that's charges are dismissed. He was
15 just dressed up to look like he was impartial. You've got
16 to think about what's happening here.

17 And when they told you that, they told you a piece of
18 the truth, not the whole truth. And they treat you like
19 you should believe him in spite of the outlandish story he
20 told about being at gunpoint and not telling anybody about
21 it when the police come just seconds later. He said they
22 arrived almost instantly. One of them stated they were to
23 take his statement. He doesn't advise them.

24 They put up Leatherwood. He's an incredible fellow.
25 He has pled expecting a recommendation of seven years. But

Closing arguments

1 they didn't sentence him yet. And they have to make the
2 recommendation for him to get the seven. Who has he got to
3 make happy?

4 After you listened to his testimony, there was no
5 doubt he would say anything from being kidnapped. On
6 direct he said what they wanted.

7 When I said, well, and people put a gun to you and
8 force you to drive off, that sounds like a kidnapping to
9 me, a carjacking maybe, but, you know, a crime, and he
10 agreed. Do you believe it is kidnapping? They don't even
11 believe it. Their witness. They don't even believe that.

12 He would say anything to get that 7-year deal
13 including over and over again when he would tell facts that
14 may be not guilty, I'm guilty and I want my seven years.

15 This case, this case you are getting, you're getting
16 stuff that you wouldn't rely on in any decision in your
17 life.

18 Would anybody buy a used car because one of those guys
19 said it was good? You would make no decision. And you're
20 being asked to find proof beyond a reasonable doubt based
21 upon their testimony.

22 You know, the codefendant in this case, he didn't come
23 in the courtroom, but you do know what he said. And he
24 said he went to Florida and got it. He had the nine
25 ounces.

Closing arguments

1 You know, and listen to his statement. Go back. He
2 says he threw the dope out. They say he grabbed it back.

3 I represent Juan Rodriguez. I am not a they. He's
4 one as an individual. He is a human being separate, and
5 his case should be decided separate.

6 In fact, His Honor will tell you to decide the guilt
7 of each defendant individually. And you do that by
8 deciding in each case whether each defendant has been
9 proven guilty on each and every element beyond a reasonable
10 doubt.

11 There are some things that were never put in evidence
12 and there were some that are in evidence that you have
13 never seen and heard. There's Exhibit 12. It's a
14 tape-recording. It's a tape-recording of a conversation.

15 I submit to you it wasn't played because it doesn't
16 support the state's theory. Juan Rodriguez's voice
17 shouldn't be heard on this tape if what they say is true.

18 You know, this is the tape that was made at the Li'L
19 Cricket, and they say that we were negotiating or talking.
20 There were three people in that car, but Juan Rodriguez
21 wasn't. And I submit to you there's -- why would they put
22 it in evidence and never play it?

23 You know, and I want to talk about some other, because
24 I think it demonstrates. Remember the officer that saw the
25 guns, the dirt spot above the trigger that made him

Closing arguments

1 identify the gun. And I think that bears looking at, a
2 significant dirt spot that even today he can recognize the
3 gun.

4 And you should ponder that testimony because I submit
5 to you that's another man that will say anything rather
6 than admit some luminant fact that he thought might hurt
7 the defendant.

8 The only reason for that testimony could be that he
9 perceived that if he could only recognize it as a type of
10 gun that the defendant had that he wouldn't have done a
11 good enough job, and so his testimony could only be
12 accounted for some effort to make it sound better than it
13 was. And so he says. And he looked at it right then and
14 said that's it, I can identify that's the gun because
15 that's the dirt spot. And then he went into the kind of
16 clay we have down here. Yes, sir. That's the South
17 Carolina dirt on it. Examine that and see if anybody
18 believed. And if that officer would come in here and say
19 those things, then you should evaluate the case.

20 I would liken this case to kind of like to a meal and
21 some relation to a Thanksgiving dinner. And you come.
22 When you start looking at the food, the turkey is rotten
23 and stinks. And the, another part, the dressing looks bad
24 and smells terrible. And somebody says to you, well, try
25 the green bean casserole over there.

Closing arguments

1 You know, what I'm saying is that if part of their
2 case stinks and is undigestible, how much do you have to
3 chew on before you see what's happened? They are asking
4 you to keep chewing. They'll find something good.

5 They're asking you on this testimony that they
6 presented in this courtroom for you to find guilt beyond a
7 reasonable doubt, and I submit to you that reasonable doubt
8 is the highest standard of proof we use in the legal
9 system.

10 You know, for a policeman to stop and frisk you he has
11 to have what we call an articulable suspicion, and that
12 means that he can articulate and tell, and tells what it
13 was. He just can't do that for no reason.

14 For a magistrate to give a warrant he has to have
15 probable cause. If somebody's to sue you and take your
16 money, say you caused a car wreck, they have to prove it by
17 the preponderance of the evidence. Somebody wants to
18 accuse you of fraud, not only take money for the damages
19 they suffered but take, get punitive damages, you know,
20 those damages they got against tobacco companies for
21 millions of dollars when they proved what we all knew that
22 they are bad for your health, they have to prove that by
23 clear and convincing evidence. But when they come to drag
24 you away, they have to prove it beyond a reasonable doubt.

25 And this is just kind of a chart that sets forth

Closing arguments

1 different standards of proof. You might look at the case
2 and you might say it's highly unlikely, or you might say
3 probably not, unlikely, possibly not, maybe, perhaps. And
4 that's probably about the middle line. If you say perhaps,
5 it still wouldn't be. That might be enough to make you
6 wonder.

7 But if they produce more than you suspect, sworn
8 statement, you know, he's possibly guilty. You say
9 probably guilty or it's likely he's guilty or it's highly
10 likely, that isn't enough.

11 The evidence they present has got to be of the quality
12 and the nature and the quantity that makes it more than all
13 of that. That's what's here today.

14 They're saying that Juan Rodriguez trafficked in
15 cocaine; not that he wasn't just there, not that he hadn't
16 went for a ride with his brother, his cousin; but that he
17 was there intentionally, deliberately. And they have to
18 prove that beyond all reasonable doubt, every reasonable
19 doubt, so that the only doubt that would remain when you
20 are done is -- I submit to you it's like the pointing a
21 firearm. The testimony is there were one instance where
22 the one hand was outside of the car. We have a statement
23 of Jorge Rodriguez that said I stuck my hand and the gun
24 out. They want to tell you that that's proof beyond a
25 reasonable doubt that my client pointed the firearm.

Closing arguments

1 You know, this is the most important day. But part of
2 what juries do is make better laws. You know, by their
3 actions you're sending a message. And I think that the
4 correct message is that the constitution still works and
5 it's still alive, that juries fairly expect good cases
6 built on believable, truthful evidence, cases that, that
7 persuade without stretching or bending the facts and that
8 the burden always remains on the state to do this beyond
9 all reasonable doubt.

10 Certainly winning and losing is always thought of in
11 the courtroom, and I can lose a lot sometimes, but I submit
12 to you that the real state of South Carolina never loses
13 when juries require that prove be furnished beyond a
14 reasonable doubt because the State of South Carolina is not
15 the solicitor's office over here or not those officers.

16 The State of South Carolina are really your fellow
17 citizens. And you all must remember that when the
18 constitution is protected, when the system is required to
19 work, when you require fair, quality evidence from truthful
20 witnesses who have nothing to gain that are telling the
21 facts, believable as it is, when that is required and when
22 jurors require the state meet its burden, our system works.
23 Our citizens are protected. The State of South Carolina
24 wins.

25 I want in this case a verdict that allows the State of

Closing arguments

1 South Carolina to win, and in this case as to my client,
2 Juan Rodriguez, that verdict is not guilty. It's the fair,
3 the right and the just verdict, and the verdict that will
4 be required by the law as His Honor will give it to you.
5 Thank you very much for serving on this jury and being
6 here. We appreciate it.

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

8 THE COURT: Yes, sir.

9 MR. GUTIERREZ: Madam Foreperson, ladies and
10 gentlemen, again, my name is John Gutierrez. I know if
11 y'all are like I am right now, your head is abuzz with
12 facts, evidence, statements, testimony, things like that.
13 It has been a long week, a long three days.

14 First off, I am going to tell you right now I am going
15 to have to refer to my notes. There is just a whole lot
16 and I need to refer to them. I beg your indulgence on that
17 matter.

18 I first want to thank you for being so patient. This
19 has been a long trial. There's been lots of witnesses and
20 there's been lots of discussion between the lawyers and the
21 solicitor's office about certain legal matters that maybe
22 you weren't privy to. What you have been privy to is the
23 state's presentation of the evidence in this case.

24 And I would submit to you there is two types of
25 evidence. There is good evidence and there is bad

Closing arguments

1 evidence.

2 Now, the burden of proving all of the allegations
3 against my client, Jorge Rodriguez, is up to the state
4 represented by the solicitors here. And in their capacity
5 they are going to present evidence to you. And he told you
6 that what he was, and Mr. Willingham told you that he was,
7 going to talk about the facts in the case, that this case
8 is about the facts.

9 Well, you guys are the triers of the facts. Anything
10 Mr. Willingham or myself or Mr. Warder has said unto you is
11 just merely argument. You know, we are going to summarize,
12 you know, state the facts in a light favorable to us.
13 That's what's expected.

14 Now, let's go back to the evidence presented to you.
15 We have several witnesses. They started out, the
16 solicitor's office started out, with, I believe it was, a
17 fingerprint analysis guy who found no fingerprints. As a
18 matter of fact, he also in addition to stating other
19 things, he stated that, well, maybe some of the evidence
20 that he looked at that he was supposed to look for
21 fingerprints on wasn't properly marked and things like
22 that.

23 I believe Mr. Warder said there were over 30 pieces,
24 30 items, including plastic bags, brass cartridges, guns,
25 magazines and had no fingerprints on them. Maybe that's

Closing arguments

1 significant and maybe that's not. Maybe it's just no
2 evidence, which I would lump in the category of bad
3 evidence.

4 Now, I'm going to have to refer to my notes like I
5 said. Let's see.

6 Now, let's talk about the next witness that we have
7 which was the testimony of Officer Taylor. Now, Officer
8 Taylor described to you his relationship with a witness you
9 are going to meet later, and that was Cecil Gilliam, the C.
10 I. or the confidential prevalent informant. And he told us
11 all, that, yes, they use these types of fellows to set up
12 these deals and everything and that we are all to accept
13 that.

14 Well, right now, we have got two guys, two defendants,
15 on the trial of their life. And their, the major witness,
16 the one that is setting them up, is an admitted criminal.
17 He admitted he had been dealing drugs for two or three
18 years before he was caught.

19 As a matter of fact, I believe the crime that he was
20 caught for carries at least as much if not more total time
21 than what these guys were individually charged with. Is
22 that significant?

23 Well, I guess the judge will tell you that you will
24 have to listen to his, you will have to take what you heard
25 him testify to, and by him I mean Mr. Gilliam, and give it

Closing arguments

1 some type of weight.

2 Well, how do you do that? How do you give weight to
3 somebody's testimony? Well, it depends on whether you
4 believe it or not. I really think it does.

5 And if somebody, maybe you've all known somebody, you
6 know, that if they told one lie, they told a hundred, and
7 if, and you know some people that you can just bet the farm
8 on that they are honest, and I submit most people are
9 usually in those two types of groups right there.

10 Now, Cecil Gilliam would have you believe that he
11 himself, a former drug dealer, crack dealer, admitted drug
12 dealer, crack dealer, that he was going to tell the truth
13 in everything that he said or everything that he testified.

14 And whenever he testified he said that, that, that
15 whenever the signal was given all of a sudden some guns
16 that he had never seen before, didn't see them in this
17 little Century, were now pointed at him by Jorge Rodriguez
18 in the back seat and Juan Rodriguez in the front seat.

19 And then and I assume, and maybe I shouldn't do that,
20 but he was so shocked by all of that that he neglected to
21 even inform the police whenever he was giving his statement
22 that, man, they pulled guns on me and you want to go ahead
23 and radio ahead and tell those fellows that these guys are
24 armed and dangerous? Didn't know they had guns or I would
25 have told you earlier that they had guns if I'd seen them

Closing arguments

1 before but I just saw them right then. Is that really
2 believable, that they needed those guns, they needed them
3 to be pointed at somebody? It was in his statement. It
4 was in his testimony at trial. Is that believable?

5 Well, I would submit to you that you place the
6 appropriate amount of weight on that type of testimony, and
7 I mean all of the testimony.

8 Okay. Do you remember where Cecil Gilliam says that
9 as far as the cocaine, whenever he got in the car, the
10 cocaine was passed from the front seat to the back seat,
11 from Juan in the front seat to Jorge in the back seat. He
12 said that, put in both of their hands.

13 And remember that point about what he said because the
14 next star witness for the prosecution, Robert Leatherwood,
15 Bo Leatherwood, says that Jorge pulled it out of his jacket
16 and gave it to the C. I. or Cecil Gilliam. Again, the
17 facts don't match. They just don't match.

18 Now, we go straight into Robert Leatherwood and his
19 testimony. And of course this is all real believable
20 because he had never messed with drugs before. You
21 remember when he said that? And we asked him. Oh, no,
22 I've never messed with drugs before. And that was right
23 before he started going into all of this about how, about
24 drugs. Jorge scanned me. Well, no. It was Juan that
25 scanned. They both scanned me with that scanner.

Closing arguments

1 And he also testified later on that, well, there was a
2 gun that was, well, it looked like that he was pointing it
3 at me. I may have made some reference to being shoved in
4 his side, and I apologize. That wasn't in the evidence,
5 and that was improper.

6 But whether shoved, whether a foot away, it was still
7 by his testimony pointed at him, and in fear of that he
8 took off at the command of the man that was pointing it.
9 Is that believable?

10 Remember also whenever he said that, well, since I saw
11 the blue lights, I stopped, that's whenever I stopped, I
12 was going to stop. And then place that testimony against
13 the testimony of the police officers who said, yeah, he
14 stopped all right, whenever we blocked him, then he
15 stopped. And this guy who was just, you know, just, he
16 fought with the police and sustained injuries. Now, what
17 does he say? He says, nay, I just fell down.

18 The police officers that come up later on said, yeah,
19 I did it because he was resisting and wouldn't put his
20 hands behind his back.

21 How much of Robert Leatherwood's testimony is
22 credible? To me it seemed like it was just, that he was
23 wanting to say anything he could to do one thing, and one
24 thing only, save himself. In order to save himself, as Mr.
25 Warder said, he has to satisfy the prosecution by his

Closing arguments

1 testimony. He has to do certain things that will make
2 their case for them. But I submit to you that the case is
3 not made. The burden on them has not been met by their
4 witness, Robert Leatherwood.

5 Oh, yeah, the guy in the back. Did he have a gun?
6 Oh, it appeared he had a gun. That's what he said.

7 And, by the way, this big bag of dope right here. Oh,
8 I never saw that. I didn't see that. I wasn't looking
9 back there whenever there was a deal going on that I admit
10 to having brokered.

11 How much of it do you believe? I mean, if you can't,
12 if the guy is not being truthful, how much weight can you
13 afford any of his testimony? He is doing one thing, and
14 one thing only, and he is trying. And like Solicitor
15 Willingham said, seven years, if he gets it, that's no slap
16 on the wrist. But it's a lot better than what he would
17 have gotten. And certainly there is a little bit of relief
18 on his part knowing that if he does what Solicitor
19 Willingham and Solicitor Thill wants him to do, which, and
20 remember what he said about that was to tell the truth?
21 Well, then he gets the seven years.

22 I would submit to you that his involvement was a major
23 part of this, if not all of it, that as far as my client,
24 as far as the role Jorge Rodriguez had in it, that it was
25 only his mere presence there.

Closing arguments

1 But do you remember what Cecil, what Robert
2 Leatherwood said? He said, well, you know, after they
3 scanned me, then all three of us, all three of us went over
4 to the Li'L Cricket. Well, that just wasn't true.

5 We had officers and witnesses testify that there were
6 only two people in that car. But Robert Leatherwood would
7 have to tell you whenever they went to Li'L Cricket that
8 Jorge was there as well. He gets his facts messed up. And
9 why? Because he doesn't know what the truth is, certainly
10 doesn't know how to tell the truth.

11 Okay. I mentioned that about him stopping the car.
12 And so I go right over to the testimony of Bryanna Rogers,
13 and I bring up her testimony because it is valuable for me
14 for two reasons.

15 One is she says, you know, she was in that Blazer
16 following. And then if you remember her talking about the
17 marked vehicle, which I assumed that is where lights are
18 going and everything, that it blocked Bo Leatherwood's
19 vehicle. And that's why he stopped. That's what he said
20 was a lie or what she said was a lie. I would submit to
21 you I found a whole lot of lies within Robert Leatherwood's
22 testimony.

23 Now, let's also talk about another passenger in that
24 Blazer with Bryanna Rogers, and that was Nicki Sherrill.
25 Now, Bryanna says that she saw the back passenger out the

Closing arguments

1 window pointing a gun and Nicki Sherrill who is right
2 behind her says it was the front passenger pointing a
3 weapon. She's pointed out that it was the front passenger
4 and she knew that. If you remember her eloquent narration,
5 it said the front passenger.

6 So were both of them pointing weapons? Which one was
7 pointing weapons? We don't know. We have two police
8 officers saying two entirely different things, the only two
9 police officers that state anything about anybody pointing
10 a weapon. I made notes.

11 Okay. Now we get to a part of the case that deals
12 with a statement taken at four o'clock in the morning by
13 Investigator Steve Henderson on Jorge Rodriguez. And I
14 spent a little time on cross-examination, and I am going to
15 spend a little bit of time on it here.

16 Jorge Rodriguez cannot read or write English, cannot
17 read or write Spanish. He can understand Spanish.

18 I would submit to you that he has, and you could tell
19 it from listening to the tape that you will listen to, that
20 he has a less than average understanding of the English
21 language.

22 I would also submit to you that the Miranda warnings
23 given by Investigator Henderson prior to taking those
24 statements were not in proper form and produced
25 involuntariness to the statements or the answers to the

Closing arguments

1 questions that were asked to him.

2 And this is why I say that, and this is why I believe
3 that. He started him up with questions. Then he popped
4 that preinterrogation waiver form on him. He stuck that in
5 front of a guy that cannot read and said, okay, here, I am
6 going to read off all of these things for you and sign
7 right here and says he can understand everything. Okay.
8 And then I am going to read this right here to you and this
9 is about waiving your rights and everything like that. And
10 you don't ever hear him ask say, now, having told you that
11 do you want a lawyer, do you want somebody that will read
12 this back to you in Spanish, do you want somebody to you
13 that will help explain this to you in a language that you
14 are familiar with? Not required by the Miranda rights, but
15 still is it improper? Does it bear on the weight of that
16 statement? Yes, it does. It certainly does.

17 Because then after that point Investigator Henderson
18 says, now, Jorge, it's four o'clock in the morning, 4:15,
19 tell me a story. And he goes on to talk to him about this,
20 talk to him about the, the events, the incidents that took
21 place earlier that day.

22 And then at the end of everything Jorge, obviously
23 confused about what's going on, said I wanted a lawyer.
24 Was he ever asked did he want a lawyer? How simple is
25 that, do you want a lawyer? You know, sign this stuff

Closing arguments

1 right here that you can't read and we will just talk about
2 things. And what's he done? He's got a statement in.

3 And the statement, listen to it. You can't hardly
4 understand anything in the audio tape. What you can are --
5 or what you can hear are incomprehensible uh-huhs and
6 uh-uhs and things like that. It is not reliable. I
7 believe it was taken involuntarily from someone who had no
8 comprehension about what he was doing. He certainly
9 couldn't read it.

10 Okay. Now, having said that, this part here, the top
11 part of it, the burden of proof, let's talk about that.
12 The State of South Carolina is represented by the
13 solicitors for the county of Spartanburg, the
14 Seventh Judicial Circuit.

15 They have a slew of statements, pictures, witnesses,
16 evidence. You only got the best of it. You didn't get all
17 of it. No, sir.

18 The witness list that we get is trimmed. The evidence
19 that we get that's put in, not all of it is going to be
20 given to you. What does that tell you? They're good at
21 their job. They know what to give you and what not to give
22 you. You don't get all of it.

23 But still the burden of proof is on them. Based on
24 what they did give you is it good enough? Has that burden
25 been met? I submit to you it certainly hasn't been. The

Closing arguments

1 witnesses lied. The evidence is incomplete.

2 Now, having said that, let's talk about guilty beyond
3 a reasonable doubt. And guilty beyond a reasonable doubt,
4 what does that mean? That means what would cause a
5 reasonable person to hesitate to act. That's if you have
6 that much doubt that's going to cause you to hesitate, then
7 that's reasonable doubt. If you find reasonable doubt
8 here, it's not guilty.

9 Okay. Now, having said that, let's look at the
10 charges that he's charged with.

11 Jorge. Now, you've got him getting picked up.
12 Obviously, somewhere along the line he got picked up.
13 You've got testimony from some witnesses to say that he had
14 it on him in his jacket. Some of them say that somebody
15 gave it to him.

16 I would submit to you that produces enough reasonable
17 doubt on the issue of whether there was a commission of the
18 trafficking of cocaine over 200 grams. Possessing and
19 pointing, and presenting and pointing a firearm, again, by
20 their own evidence that they've put forth we have
21 contradictory statements from police officers about who was
22 pointing. Again, bad evidence.

23 Now, based on the evidence of, well, so and so had a
24 gun, Cecil Gilliam saying that they had guns they pointed,
25 Robert Leatherwood saying it appeared he had a gun but I

Closing arguments

1 couldn't see it because I was driving, had a gun pointed at
2 my side, based on that, that's their case. Is it enough?
3 Does it reach the point of beyond a reasonable doubt?

4 That is only going to be decided, not by me, not by
5 Solicitor Thill, not by Solicitor Willingham or Attorney
6 Warder or His Honor. That big challenge is up to you guys,
7 the 12 of y'all.

8 And that's where I go back to the part about, despite
9 what Mr. Willingham said, you guys are the triers of the
10 facts, and by that I mean that we don't give you the facts.
11 I'm not giving you facts here. I'm giving you argument.

12 It's is solely up to you, and for that reason I place
13 that burden of deciding the facts as being one of the
14 greatest roles a citizen can play for his country and his
15 community. It is a somber privilege that you have here
16 today because you hold my fellow's fate in your hands.

17 And I'm going to leave you with that now, and I know
18 you will do the right thing and find him not guilty.
19 Again, I thank you for your time and your patience.

20 THE COURT: All right. Ladies and gentlemen, the
21 court reporter is going to have to take a short break to
22 rest her hands.

23 So I am going to ask you to please go to the jury
24 room. Don't yet talk about the case. We will bring you
25 back in just a few minutes.

Jury charge

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Court's in recess for ten minutes.

4 (Whereupon, a recess was taken.)

5 THE COURT: Bring the jury in.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: All right. Ladies and gentlemen, you have
9 heard and seen all of the evidence. I'm now going to
10 instruct you on the law, and then you'll go back and begin
11 your deliberations.

12 Now, it's your exclusive duty to determine what the
13 facts are. And you do that through your own common sense
14 examination of the evidence in the case. And from that
15 evidence you'll decide the facts. You'll then apply the
16 law that I will have provided you, and you will determine
17 whether or not either defendant is guilty of any crime
18 alleged against those particular defendants.

19 Of course you'll consider the charges separately and
20 you'll consider the defendants separately and decide the
21 facts as it relates to each of the separate defendants on
22 each of the separate charges and then apply the law and
23 arrive at your decision.

24 Now, as you know, each of the defendants, Juan Enrique
25 Rodriguez and Jorge Alberto Rodriguez, are charged with the

Jury charge

1 same criminal offenses, and those offenses are set forth in
2 separate indictments. One relates to Juan Rodriguez; the
3 other relates to Jorge Rodriguez.

4 And, Madam Forelady, I will ask that you indicate the
5 jury's unanimous decision as to each of the separate
6 defendants and each of the separate charges on the back of
7 each indictment.

8 I've indicated by writing count one and count two and
9 count three, and you'll write the unanimous decision as to
10 those separate counts on the back of the appropriate
11 indictment. And of course you can see from the inside of
12 the indictment what count one is, what count two is and
13 what count three is.

14 Count one is simply the charge of trafficking; and
15 count two is the possession of a firearm during the
16 commission of a violent crime, which the state alleges to
17 be trafficking in cocaine; and then the third count is
18 pointing or presenting a firearm at another person.

19 Now, as to each of the charges that have been set
20 forth in each of those indictments, each of the defendants
21 in this case have entered a plea of not guilty. As you
22 know, that plea of not guilty has therefore placed upon the
23 state the burden of establishing the allegations set forth
24 in each count of each indictment.

25 The burden is on the state to establish each of the

Jury charge

1 essential elements that constitute each of the crimes
2 alleged against each defendant, and therefore the burden is
3 on the state to establish the guilt of the defendant beyond
4 a reasonable doubt before a verdict of guilty could be
5 returned.

6 The burden is never upon a person accused of a crime
7 to prove that they are not guilty or to prove that they are
8 innocent because in many circumstances that might not be
9 possible.

10 You are instructed that it is a vital and important
11 and cardinal rule of law that every defendant in a criminal
12 trial, no matter how serious the offense might be for which
13 that person stands charged, that person shall always be
14 presumed innocent of that charge. And that presumption of
15 innocence remains with any defendant, as it does with these
16 defendants, from the moment that they are placed under
17 arrest and throughout the course of the criminal process
18 and even throughout the course of the actual trial in the
19 case.

20 That presumption of innocence will be with each
21 defendant even as you go back to begin your deliberations.
22 And that presumption of innocence will be with each of them
23 there, and it will remain with them forever, unless you 12
24 jurors determine that a defendant is no longer entitled to
25 that presumption of innocence.

Jury charge

1 That is if, after you carefully considered the
2 evidence, decided the facts and applied the law, if you
3 determine that a defendant has been proven guilty of some
4 crime alleged against them, then the defendant would no
5 longer be entitled to that presumption of innocence, but
6 it's only unless and until you 12 jurors are convinced of a
7 defendant's guilt beyond a reasonable doubt that the
8 presumption of innocence would no longer be applicable.

9 Now, while the state does have the burden of proving a
10 defendant's guilt to your satisfaction beyond a reasonable
11 doubt, that does not mean that the state has to prove a
12 defendant's guilt beyond all doubt or beyond any possible
13 doubt, but the state does bear the burden of proving a
14 defendant's guilt to your satisfaction beyond a reasonable
15 doubt.

16 The term reasonable doubt should be given its plain
17 and ordinarily meaning. A reasonable doubt is the kind of
18 doubt that would cause a reasonable person to hesitate to
19 act upon the information provided.

20 A defendant is entitled to every reasonable doubt that
21 arises from the evidence or lack of evidence in a case.
22 And if, upon any factual issue essential to a finding of a
23 verdict of guilty, you have some reasonable doubt as to how
24 that issue should be resolved, it would be your duty to
25 resolve that reasonable doubt in favor of that defendant.

Jury charge

1 And therefore if upon your consideration of the whole
2 case you have a reasonable doubt as to a defendant's guilt,
3 you must resolve that reasonable doubt in his favor and
4 return a verdict of not guilty. And, on the other hand,
5 after you've considered the evidence and decided the facts
6 and applied the law, if you have no reasonable doubt as to
7 a defendant's guilt, then of course it would be your
8 corresponding duty to convict the defendant or to find him
9 guilty of any crime that has been proven to your
10 satisfaction beyond a reasonable doubt.

11 Now, because you are the judges of the facts, you
12 therefore necessarily, as I told you, are the judges of the
13 credibility of each witness that has testified during the
14 trial of the case.

15 And in assessing a witness' credibility there are some
16 factors which you should consider, and I am going to list
17 them for you.

18 You may consider the demeanor of the witness, that is
19 how the witness appeared from the witness stand as they
20 testified. Did they appear to you to be telling the truth
21 and to have knowledge of the facts to which that witness
22 has testified?

23 You may consider whether or not the testimony of a
24 witness is consistent or inconsistent with other testimony
25 or other evidence.

Jury charge

1 You may consider what opportunity a witness had to
2 observe facts by the use of their senses and then be able
3 to come into court and to accurately recollect to you as to
4 what they have previously seen or heard.

5 You may consider any bias or prejudice that a witness
6 might have. That simply means do you have some reason that
7 a witness would come into court and would testify one way
8 or another to help or to hurt one side or the other.

9 You may consider any interest that a witness might
10 have in the case if you determine that a witness does have
11 an interest and that that interest would bear upon that
12 witness' credibility.

13 You may consider whether or not the testimony of a
14 witness is strengthened, or is it weakened by other
15 testimony or other evidence received during the trial of
16 the case?

17 Also, when you assess the credibility of an expert
18 witness you must judge an expert witness' testimony just as
19 you do any other witness, and it is for you to determine
20 the credibility of an expert witness just as you do all
21 others.

22 Now, because you judge the facts and because you judge
23 the credibility of the witnesses, you are permitted to
24 believe as much or as little of what a witness has
25 testified to as you deem is appropriate.

Jury charge

1 You can believe everything that a witness testified
2 to, or you may choose to believe none of it. You may
3 believe some portion of a witness' testimony and reject
4 some other portion of that same witness' testimony.

5 In a given case you could believe one witness as
6 opposed to several, or several as opposed to one. But
7 whatever your good judgment and common sense tells you is
8 the most credible testimony and evidence is the evidence
9 you should accept, and you should reject any testimony that
10 you find not to be credible or believable.

11 The sole objective, as I've stated, is to simply reach
12 the truth in the matter, and by doing that you will have
13 fulfilled your obligations.

14 Now, the same law that provides that you are the
15 judges of the facts also provides that I am the judge of
16 the law, and that simply means that no one is going to tell
17 you how to arrive at your determination of fact. You do
18 that, as I've stated, through the exercise of good judgment
19 and common sense conscientiously applied to the testimony
20 and evidence in the case.

21 Under your oaths as jurors however you must accept the
22 law as I give it to you as being the law that is applicable
23 in this particular case, and you are not to concern
24 yourself with what you thought the law was before you came
25 to serve as a juror or what you think the law ought to be.

Jury charge

1 You must simply accept the law as I give it to you as
2 being the law that is applicable in this case, and then you
3 take that law and you apply it to the facts as you 12
4 jurors determine those facts to be based upon your
5 examination of the testimony and evidence in the case.

6 Now, although it's ordinarily a function of the court
7 to determine the admissibility of evidence, it's always the
8 jury's function to determine what weight or value to give
9 to any evidence, if any, that has been received during the
10 trial of the case.

11 Now, during the trial of this case there has been
12 admitted during the trial certain statements which were
13 attributed to one of the defendants pursuant to some
14 interrogation or some questioning by law enforcement
15 officers, and you are instructed that in regards to any
16 statement which is alleged to have been made by a defendant
17 pursuant to questioning by a law enforcement officer before
18 you can consider any of the information or facts contained
19 in the statement you must determine whether or not there
20 was a statement made, and if there was, was the statement
21 given to the law enforcement officers freely and
22 voluntarily.

23 Now, before you may consider that statement you have
24 to be satisfied beyond a reasonable doubt that the
25 statement was voluntarily made by the defendant, and you do

Jury charge

1 that by considering the totality of the circumstances
2 surrounding the making of any statement.

3 You must consider a number of factors relating to the
4 characteristics of the accused, as well as the
5 circumstances surrounding the interrogation.

6 Some of the factors that you must consider are whether
7 or not the accused was advised of and understood his
8 constitutional rights to remain silent; that anything he
9 might say would be used in court; that he had the right to
10 the presence and assistance of a lawyer, and if he couldn't
11 afford one, one would be appointed for him; that he could
12 stop the questioning at any time that he wished. And you
13 must also consider evidence relating to his age,
14 intelligence, education, capacity and experience, as well
15 as the nature of the interrogation itself, including
16 whether or not there were any threats, coercion, pressure
17 or promises made.

18 Now, if, after you have carefully consider the
19 totality of the circumstances relating to the making of any
20 statement, if you are not satisfied beyond a reasonable
21 doubt that that statement was made freely and voluntarily,
22 then you must not consider that statement in any fashion
23 whatsoever against that defendant.

24 Should you find beyond a reasonable doubt that the
25 statement made by a defendant was given freely and

Jury charge

1 voluntarily, then may consider that statement as you deem
2 it's appropriate, that is you may accept it or you may
3 reject it in whole or in part based upon your own
4 determination as to the validity of it.

5 Now, every crime has as an essential element the
6 necessity of criminal intent. Intent means the state of a
7 person's mind which directs his objects towards a specific
8 object or goal, and criminal intent is a state of a
9 person's mind that operates jointly with an act in the
10 commission of a crime.

11 Criminal intent is a mental state of conscious
12 wrongdoing in contrast to the commission of an act which is
13 the result of accident, inadvertence, mistake or duress.

14 Now, intent may be proven by the acts, declarations
15 and conduct of a defendant, as well as any other
16 circumstances which have been established by the evidence
17 in the case from which you may naturally and reasonably
18 infer any intent beyond a reasonable doubt.

19 Now, in this case there are three separate and
20 distinct criminal offenses. Those three are charged
21 against both of the defendants.

22 The first contained in the indictment is trafficking
23 in cocaine; second is possession of a firearm during the
24 commission of a violent crime; and the third is pointing or
25 presenting a firearm at another person.

Jury charge

1 I'm going to instruct you on the law as it relates to
2 trafficking first; then I'll instruct you on the law as it
3 relates to possession of a firearm; and then I'll instruct
4 you on the law as it relates to pointing or presenting a
5 firearm.

6 Now, Section 44-53-370 of the Code of Laws provides as
7 follows: Any person who knowingly sells, manufactures,
8 cultivates, delivers, purchases or brings into the state;
9 or who provides financial assistance or otherwise aids,
10 abets, attempts or conspires to sell manufacture,
11 cultivate, deliver, purchase or bring into the state; or
12 any person who is knowingly in actual or constructive
13 possession or who knowingly attempts to become in actual or
14 constructive possession of more than ten grams of cocaine
15 or any mixtures containing cocaine is guilty of the crime
16 of trafficking in cocaine.

17 Now, obviously there are some elements of trafficking
18 that are set forth in that statute that are not applicable
19 under the facts of the case, and the state is not alleging
20 either of the defendants to be guilty under some of the
21 acts of trafficking that are set forth in the statute.

22 In this particular case the state alleges that each of
23 the defendants did traffic in more than 200 grams of
24 cocaine based upon some of the specific acts of trafficking
25 that are set forth in the statute.

Jury charge

1 So before a defendant in this case may be found guilty
2 of trafficking in cocaine as alleged in each of the
3 indictments, it would be necessary that the state has
4 proven to your satisfaction beyond a reasonable doubt that
5 a defendant did sell or deliver; or did otherwise aid,
6 abet, attempt or conspire to sell or deliver 200 grams or
7 more of cocaine; or that a defendant did knowingly have in
8 his actual or constructive possession a quantity of
9 200 grams or more of cocaine.

10 Now, cocaine is classified in the law as a schedule
11 two narcotic drug and therefore is declared to be a
12 controlled substance under the law, and the weight of any
13 controlled substance under the law includes the substance
14 in pure form or any compound or mixture of the substance
15 with some other substance.

16 Now, under the law to sell or to deliver is defined as
17 selling, meaning to transfer cocaine in exchange for money
18 or other consideration. To deliver means to transfer the
19 cocaine from one person to another, whether or not the
20 transfer was in exchange for money or any other
21 consideration, although there might be evidence of such in
22 the trial of the case.

23 To aid or to abet means to combine with another person
24 or persons and to actively participate in the commission of
25 a criminal offense. An attempt to commit a crime means

Jury charge

1 that a person commits some act or some acts that directly
2 move towards the commission of the intended criminal
3 offense but which fall short of the ultimate completion of
4 the intended crime. To conspire to sell or to deliver
5 means to combine and to agree with one or more other
6 persons to commit the crime of selling or delivery of
7 cocaine.

8 Before a person may be found guilty of the crime of
9 possession of cocaine it must be proven beyond a reasonable
10 doubt that the person did knowingly or intentionally have
11 in his actual or constructive possession the quantity of
12 cocaine as alleged.

13 Now, knowingly is defined as having knowledge of the
14 fact, that is it's an act done wilfully and purposefully
15 and consciously. Intentionally is defined as purposefully,
16 that is by aim or design and not by accident or
17 inadvertently.

18 Actual possession of a substance occurs when the
19 substance is shown to have been in the actual physical
20 custody or control of a person charged with possession so
21 long as they have knowledge of its presence; and
22 constructive possession occurs when a person, although not
23 in actual physical custody of the substance, exercises
24 dominion and control over the substance or has the right to
25 exercise dominion and control over the substance. A person

Jury charge

1 has possession of a substance within the meaning of the law
2 when he has both the power and the intent to control the
3 disposition or use of the substance.

4 Now, the act of possession, as well as the elements of
5 knowledge and intent, may be proven by either direct
6 evidence or circumstantial evidence, that is evidence from
7 which such fact may be reasonably inferred, or it may be
8 proven by both types evidence, both direct evidence and
9 circumstantial evidence; and possession of a substance may
10 be jointly shared by two or more persons.

11 Now, you are permitted to infer the act of possession
12 of a substance as well as the elements of knowledge and
13 intent from evidence of acts, declarations or conduct of
14 the person charged with possession and any other
15 circumstances established by the evidence in the case which
16 would reasonably warrant your arriving at such a
17 conclusion.

18 Proof of mere presence however of a defendant at or
19 near a location where a quantity of cocaine is found is not
20 sufficient by itself to prove the defendant guilty of the
21 crime of possession of the cocaine. A defendant's mere
22 presence where a quantity of cocaine is located even with
23 knowledge of its presence is not sufficient standing alone
24 to prove the crime of possession, and neither does the mere
25 association with a person who commits a crime make a

Jury charge

1 defendant guilty of any crime committed by another.

2 So if, after your careful review of the evidence
3 presented in this case, you determine that the state has
4 only proven that a defendant was merely present at or near
5 a place where a quantity of cocaine was located but the
6 state has failed to prove a particular defendant
7 participated in a sale, or a delivery of 200 grams or more
8 of cocaine, or that a defendant did otherwise aid, abet,
9 attempt or conspire to sell or to deliver 200 grams or
10 more of cocaine, or that a defendant possessed 200 grams or
11 more of cocaine beyond a reasonable doubt, then you must
12 find that defendant not guilty of trafficking in cocaine.

13 And, on the other hand, after you have reviewed all of
14 the evidence in the case if you determine that the state
15 has proven beyond a reasonable doubt that a defendant did
16 sell or deliver or did otherwise aid, abet, attempt, or
17 conspire to sell or deliver 200 grams or more of cocaine,
18 or that a defendant did knowingly possess 200 grams or more
19 of cocaine, actually or constructively with knowledge and
20 intent, then your verdict would be guilty of trafficking in
21 cocaine.

22 Now, each of the defendants is also charged with
23 possession of a firearm during the commission of a violent
24 crime. Section 16-23-490 provides that it shall be an
25 additional criminal offense for any person to possess a

Jury charge

1 firearm during the commission of a violent crime and that
2 person is subsequently found guilty of the commission or
3 attempted commission of that violent crime.

4 An additional code section specifies those crimes
5 which are classified as violent, and that section of law
6 provides that the criminal offense known as trafficking in
7 cocaine is defined and is classified as a violent crime
8 under the law of this state.

9 Now, in order for a defendant to be found guilty of a
10 violation of this particular section it would be necessary
11 that the evidence in the case establish to your
12 satisfaction beyond a reasonable doubt that the defendant
13 did commit the crime of trafficking in cocaine 200 grams or
14 more and that during the commission or attempted commission
15 of that criminal offense he did possess a firearm.

16 The last offense with which each of the defendants is
17 charged is pointing or presenting a firearm, and that
18 particular offense is set forth in 16-23-410 of the Code of
19 Laws.

20 That particular section of law provides that it shall
21 be unlawful for a person to present or to point at another
22 person a loaded or an unloaded firearm without
23 justification or legal excuse.

24 Now, ladies and gentlemen, you are instructed further,
25 and I emphasize to you, that the fact that a defendant does

Jury charge

1 not testify during the trial of the case or the fact that a
2 defendant does not offer evidence during the trial of the
3 case or even the fact that a defendant is absent from the
4 trial of the case is not a factor that may be considered by
5 you in any fashion whatsoever during your deliberations or
6 in your determination as to whether or not a defendant's
7 guilt has been proven beyond a reasonable doubt.

8 As I have previously stated, the burden is always upon
9 the state in bringing a charge against another to establish
10 that person's guilt beyond a reasonable doubt. The burden
11 is never upon a defendant to prove that he is not guilty or
12 to prove that he is innocent.

13 Therefore you may not draw any conclusion nor draw any
14 inference from the fact that a defendant does not testify
15 during the trial of the case or is even absent from the
16 trial of the case. That is not a factor that you may
17 permit to weigh in the slightest degree against either
18 defendant in this case. You may not discuss it while you
19 are engaged in your deliberations, nor may it be considered
20 in any fashion whatsoever in your determination as to
21 whether or not a defendant has been proven guilty beyond a
22 reasonable doubt.

23 Now, ladies and gentlemen, as I told you, you have got
24 two separate indictments; you have got two separate
25 defendants.

Jury charge

1 Each of the separate indictments relates to a separate
2 defendant. Each indictment contains three separate and
3 distinct charges or offenses that the state has alleged
4 against each of the defendants. You will be called upon to
5 decide a verdict as it relates to each of the separate
6 charges and each of the separate defendants.

7 You have two possible verdict forms with respect to
8 each of the charges. If the state has proven each of the
9 essential elements of the crime alleged in that particular
10 count beyond a reasonable doubt, then your verdict would be
11 guilty of that particular charge. If the state has failed
12 to prove any one or more of the essential elements that
13 constitute the crime that's alleged in that particular
14 count, your verdict would be not guilty.

15 So as to each of the charges you have got two verdict
16 forms, guilty or not guilty. Whatever that decision is,
17 Madam Forelady, I ask that you simply indicate it on the
18 back of the indictment in the space provided.

19 Now, your verdicts with respect to each separate
20 defendant may be the same; they may be different. That
21 will depend upon your determination of fact and then your
22 application of law to the facts as you determine them to
23 be.

24 With respect to each of the separate defendants, your
25 verdicts may be the same; they may be different. That will

Jury charge

1 also depend upon your determination of fact as it relates
2 to that particular defendant and then your application of
3 law that I will have provided you.

4 In any event, as I've stated, the decisions of the
5 jury must be unanimous. All 12 of you must be in agreement
6 before a verdict may be written and returned to the Court.

7 So, Madam Forelady, you will have the verdict forms.
8 The indictments are there. Of course, as I told you, they
9 don't serve as evidence of anything, but on the back of the
10 indictment in the bottom left-hand corner I have written
11 count one and count two and count three. You can refer to
12 the inside of the indictment to understand what charge
13 relates to those counts one, two and three.

14 Indicate the jury's unanimous decision in the
15 appropriate place and also sign your name as the
16 foreperson. And once you have decided the verdicts and
17 completed the verdict form, if you will notify the bailiff
18 you have arrived at your unanimous decisions, then we will
19 bring you back to receive those decisions.

20 Now, I've got some matters I'm going to have to
21 address with the lawyers. If I don't need to bring you
22 back for any reason, I'll simply send word by way of the
23 bailiff that you may begin with your deliberations. In
24 that event he'll bring to the jury room each of the
25 exhibits which have been introduced during the trial of the

Jury charge

1 case.

2 And also, Madam Forelady, he'll bring to you the two
3 verdict forms.

4 If anybody needs to make a phone call to let your
5 family members know or whatever that you are deliberating
6 the case, let the bailiffs know. We will make arrangements
7 for you to make that call. Or you can give them the person
8 and the number that you need to have called, and they'll
9 make the call for you.

10 Understand that during jury deliberations,
11 deliberations may not take place unless all 12 jurors are
12 present in the jury room.

13 So if at any time a juror is absent because you're
14 making a phone call or you need to go outside to smoke --
15 you can smoke during the deliberations, but you have to go
16 outside. But, as I say, deliberations can only take place
17 if all 12 jurors are present.

18 So if anyone is absent, the deliberations must stop
19 and may only resume when all 12 jurors are present so that
20 all may participate.

21 With that, I'll ask you that you please retire to your
22 jury room, but await my instruction as to when to begin
23 with your deliberations.

24 (Whereupon, the jury retired to deliberate at
25 5:15 p.m.)

Jury charge

1 THE COURT: Any exceptions or additions to the
2 instruction requested by the state?

3 MR. WILLINGHAM: Your Honor, the only thing
4 additional, I may ask that the jury whenever the evidence
5 goes back be instructed that the audio and video players
6 are available for them to review the evidence if they so
7 choose.

8 THE COURT: Well, do y'all have a T. V. and a V. C. R.
9 because, I mean --

10 MR. WILLINGHAM: Yes, sir. I can bring one.

11 THE COURT: We will just send one back. We'll send
12 the box back and the T. V. back.

13 MR. WILLINGHAM: Okay.

14 MR. WARDER: Your Honor, no objections or exceptions.

15 THE COURT: All right. Mr. Gutierrez.

16 MR. GUTIERREZ: None from our defendant, Your Honor.

17 THE COURT: Let me ask y'all to verify all of the
18 exhibits, please, before they go back.

19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Bring the jury in.

21 (Whereupon, the jury returned to the courtroom at
22 6:05 p.m.)

23 THE COURT: All right. Madam Forelady, I have your
24 note that indicates that you and your fellow jurors would
25 like to see a copy of Bryanna Rogers and Nicki Sherrill's

Jury charge

1 testimony.

2 We don't have a transcript to provide you, but the
3 court reporter does have the tapes that can be replayed, so
4 she's located the testimony of each of those witnesses.

5 What I propose to do is we will start playing the
6 testimony at the beginning of Bryanna Rogers's testimony.
7 Those witnesses testified back to back.

8 We are going to start with Bryanna Rogers' testimony,
9 and we will play it at the beginning. And if you get to a
10 point where you've heard what you need to hear, you just
11 raise your hand and we will stop it and go to the next
12 witness' testimony, and we will stop that whenever you need
13 to. But otherwise we will just play it all.

14 (Whereupon, a portion of the testimony of Bryanna
15 Rogers was replayed for the jury.)

16 THE COURT: Do you want to go to Sherrill's testimony
17 now?

18 THE FOREPERSON: Yes, sir.

19 (Whereupon, the testimony of Nicki Sherrill was
20 replayed for the jury.)

21 THE COURT: Is that all you need to hear?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: Thank you.

24 Please return to your jury room and continue with your
25 deliberations.

Verdicts

1 (Whereupon, the jury retired to deliberate at
2 6:20 p.m.)

3 THE COURT: We will be at ease while they deliberate.

4 (Question from the jury marked Court's Exhibit Number
5 Three.)

6 (Whereupon, a recess was taken.)

7 (Whereupon, the jury returned to the courtroom at
8 6:38 p.m.)

9 THE COURT: Madam Forelady, have you and your fellow
10 jurors reached a unanimous decision as to each of the
11 separate indictments and as to each of the separate charges
12 contained on those indictments?

13 THE FOREPERSON: Yes, sir, Your Honor, we have.

14 THE COURT: And have you indicated that decision in
15 the space provided?

16 THE FOREPERSON: Yes, sir.

17 THE COURT: Have you signed your name as the
18 foreperson?

19 THE FOREPERSON: Yes, sir.

20 THE COURT: If you will, please hand those verdict
21 forms up by way of the bailiff.

22 All right. You may publish the verdicts.

23 THE DEPUTY CLERK: Case number 2002-GS-42-715, the
24 State of South Carolina, County of Spartanburg, the State
25 vs. Jorge Alberto Rodriguez, indictment for trafficking in

Verdicts

1 cocaine, possession of a firearm or knife during commission
2 of an attempt to commit a violent crime, pointing and
3 presenting a firearm, verdict, count one, guilty4; count
4 two, guilty; count three guilty. Signed by the foreperson,
5 dated 12/11/2003.

6 Ladies and gentlemen, if this is your verdict and
7 still your verdict, please raise your right hand. Thank
8 you.

9 (Whereupon, all jurors responded in the affirmative.)

10 THE DEPUTY CLERK: Indictment 2002-GS-42-714, State of
11 South Carolina, County of Spartanburg, court of general
12 sessions, the State vs. Juan Enrique Rodriguez, indictment
13 for trafficking in cocaine and possession of firearm or
14 knife during commission or attempt to commit a violent
15 crime, pointing and presenting firearm, count one, guilty;
16 count two guilty; count three, guilty. Signed by the
17 foreperson. Dated 12/11/2003.

18 Ladies and gentlemen of the jury, if this is your
19 verdict and still your verdicts, please raise your right
20 hand.

21 (Whereupon, all jurors responded in the affirmative.)

22 THE COURT: Do either of the defendants wish to have
23 the jury polled?

24 MR. WARDER: No, Your Honor.

25 MR. GUTIERREZ: No, Your Honor.

Verdicts

1 THE COURT: Any other matters to address with the jury
2 present?

3 MS. THILL: None from the state, Your Honor.

4 MR. WARDER: No, Your Honor.

5 MR. GUTIERREZ: None from the defense.

6 (Whereupon, the trial jury was excused.)

7 (Question from jury that was returned to the jury
8 marked Court's Exhibit No. 4.)

9 THE COURT: Any other matters to address?

10 MR. WILLINGHAM: Not from the state, Your Honor.

11 THE COURT: All right. Court is in recess until 9:30
12 in the morning.

13 END OF PROCEEDINGS DECEMBER 11, 2003

14

15

16

17

18

19

20

21

22

23

24

25

Sentence

1 (Proceedings April 2, 2004)

2 MS. THILL: Your Honor, can we approach?

3 THE COURT: Yes.

4 (Bench conference held off the record.)

5 THE COURT: All right. Juan Rodriguez. You are Juan
6 Rodriguez.

7 DEFENDANT JUAN ENRIQUE RODRIGUEZ: Yes, sir.

8 THE COURT: Mr. Warder is your lawyer.

9 DEFENDANT JUAN ENRIQUE RODRIGUEZ: Yes, sir.

10 THE COURT: Do you understand why you are here today?

11 DEFENDANT JUAN ENRIQUE RODRIGUEZ: Yes, sir.

12 THE COURT: Mr. Juan Rodriguez, you were tried in your
13 absence on December the 11th of 2003, a jury returning
14 verdicts on Indictment 2002-714.

15 In that indictment you were charged with the crime of
16 trafficking in cocaine in count one, of possession of a
17 firearm or a knife during the commission or attempt to
18 commit a violent crime in count two, and pointing or
19 presenting a firearm in count three of that indictment.

20 As to each of the counts the jury has found you
21 guilty, and so you are here for the purpose of imposition
22 of sentence.

23 Mr. Warder, do you have anything you would like to say
24 on behalf of your client?

25 MR. WARDER: Your Honor, my client of course is here

Sentence

1 today, and at the time of trial he become scared. He
2 didn't go far. He wasn't ever out of South Carolina.

3 I think most of time, Your Honor, it's a situation
4 that he's obviously in a lot of trouble because of the
5 drugs, the conviction and mandatory sentences.

6 Your Honor, if you would give him the minimum
7 sentence, if you would impose the minimum sentence under
8 the law, he would still have lengthy incarceration.

9 He now wants to get it behind him. He tells me that
10 now he would like to go back to Mexico.

11 So, Your Honor, I ask you to be as lenient as you can.
12 You've heard the facts all through the trial, you know, and
13 I would urge you to be as lenient as you can under the
14 situation.

15 THE COURT: All right. Ms. Thill, do you have
16 anything you would like to add?

17 MS. THILL: Solely for the record purposes, Your
18 Honor.

19 Just that after being found guilty on December the
20 11th of 2003 Juan Rodriguez was tracked by deputies with
21 our sheriff's office.

22 He was almost captured in Anderson County but fled.
23 Anderson County called off the chase.

24 He was ultimately captured on January the 13th of 2004
25 in a hotel room on Jimmy Carter Boulevard in Norcross,

Sentence

1 Georgia, with multiple weapons in his possession. He was
2 taken into custody by the U. S. Marshall Service at that
3 time and brought back to Spartanburg County.

4 THE COURT: All right. Mr. Juan Rodriguez, is there
5 anything you would like to tell me?

6 DEFENDANT JUAN ENRIQUE RODRIGUEZ: Nothing but I'm
7 sorry and I would just like to go back home.

8 THE COURT: Well, you understand you are not going
9 back home.

10 DEFENDANT JUAN ENRIQUE RODRIGUEZ: Yeah, but, I mean.

11 MR. WARDER: Eventually.

12 DEFENDANT JUAN ENRIQUE RODRIGUEZ: Eventually go back
13 home because I am not a citizen from here.

14 THE COURT: All right. On Indictment 2002-714, count
15 one of the indictment, trafficking in cocaine greater than
16 200 grams, the Sentence of the Court is you, Juan Enrique
17 Rodriguez, be confined to the South Carolina Department of
18 Corrections for a period of 25 years and pay a fine of
19 \$100,000.

20 Count two of the indictment for possession of firearm
21 during the commission of a violent crime, the Sentence of
22 the Court is you be confined to the South Carolina
23 Department of Corrections for a period of five years.

24 As to count three of the indictment, pointing or
25 presenting a firearm, you are to be confined to the South

Sentence

1 Carolina Department of Corrections for a period of five
2 years.

3 MR. WARDER: Thank you, Your Honor.

4 MS. THILL: Thank you, Your Honor.

5 THE COURT: Okay. Mr. Gutierrez, where have you been?

6 MR. GUTIERREZ: Your Honor, I was in a closing. I had
7 related to the solicitor that I would try to be here at
8 11:45, and I was under the impression I was to be here at
9 11:45, and I am still a little bit late. I beg the Court's
10 indulgence.

11 THE COURT: Nobody has provided me with that
12 information.

13 In the future if you think you are going to be late
14 and I've scheduled a hearing, you need to make contact with
15 my office and not with some other lawyer or some other
16 personnel at the courthouse.

17 MR. GUTIERREZ: Yes, Your Honor.

18 THE COURT: All right. Bring the defendant around.

19 You are Jorge Alberto Rodriguez.

20 DEFENDANT JORGE ALBERTO RODRIGUEZ: Yes, sir.

21 THE COURT: Mr. Gutierrez is your lawyer.

22 DEFENDANT JORGE ALBERTO RODRIGUEZ: Yes, sir.

23 THE COURT: Do you understand why you are here?

24 DEFENDANT JORGE ALBERTO RODRIGUEZ: Yes, sir.

25 THE COURT: On December the 11th of 2003 your case was

Sentence

1 tried before a jury in your absence on Indictment 2002-715.

2 That indictment charged you with the crimes of
3 trafficking in cocaine greater than 200 grams, with
4 possession of a firearm during the commission of a violent
5 crime and with pointing or presenting a firearm.

6 The jury after consideration of the evidence and the
7 law returned verdicts of guilty as to counts one, two and
8 three of that indictment. And you are here for the purpose
9 of the imposition of sentence as to those convictions.

10 Mr. Gutierrez.

11 MR. GUTIERREZ: Yes, Your Honor.

12 Mr. Rodriguez is a young man with limited education.

13 I believe the record during the trial showed that after
14 their stop Mr. Rodriguez was the sole party of the three
15 that were arrested that actually aided the police officers
16 in the recovery of weapons and the drugs.

17 He's indeed very sorry for what he did. He realizes
18 what he stands before right now. His flight was not even
19 really a flight, more than because he really didn't go very
20 far. He didn't know what to do. He, having known that he
21 was going to be doing such a major amount of time and he
22 realized his mistake in not taking my advice, and he
23 realizes that now he is facing a large sentence.

24 We would ask the Court's mercy on Mr. Rodriguez, and
25 should the Court sentence him that perhaps the sentences

Sentence

1 could be concurrent.

2 THE COURT: Ms. Thill, do you have anything you would
3 like to add in Mr. Rodriguez's case?

4 MS. THILL: Again, solely for the record, Your Honor,
5 after being found guilty on December the 11th, 2003, on all
6 counts Jorge Rodriguez was tracked and pursued by deputies
7 with our sheriff's office.

8 He was eventually captured on December the 30th of
9 2003 in Anderson County and was taken into custody by
10 Anderson sheriff's deputies.

11 THE COURT: Mr. Rodriguez, do you have anything you
12 would like to tell me?

13 DEFENDANT JORGE ALBERTO RODRIGUEZ: No.

14 THE COURT: On Indictment 2002-715, as to count one,
15 trafficking in cocaine, sentence of the Court is you, Jorge
16 Alberto Rodriguez, be confined to the South Carolina
17 Department of Corrections for a period of 25 years and pay
18 a fine of \$100,000.

19 Count two of the indictment, possession of a firearm
20 during the commission of a violent crime, five years.

21 Count three of the indictment, pointing or presenting
22 a firearm, five years.

23 MS. THILL: Thank you, Your Honor.

24 END OF REQUESTED TRANSCRIPT OF RECORD.

25

Certificate

CERTIFICATE

1
2 I, the undersigned Linda D. Moffitt, Official Court
3 Reporter for the Seventh Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of all the
6 proceedings had and evidence introduced in the trial of the
7 captioned cause, relative to appeal, in the Court of General
8 Sessions for Spartanburg County, South Carolina, on the 9th,
9 10th and 11th days of December 2003 and the 2nd day of April
10 of 2004.

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

13

14

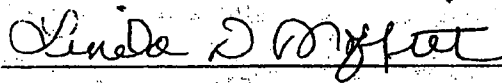
15

16

November 16, 2005

17

18



19

20

Linda D. Moffitt
Circuit Court Reporter

21

22

23

24

25

Date: Dec 4, 2020County: Spokane

VOIR DIRE

Case No: 2002-JD-42-714
2002-JD-42-715Judge: ColePl./State: StateState/Pl's. Atty: Donnie WillinghamJessica ShierDefense Atty: Richard WardenJohn GutierrezDefendant: Juan Enrique RodriguezJorge Alberto RodriguezCourt Reporter: Linda D. Moffitt

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
108	Kimberly Hughes	F	W		✓	X	no
63	Undra Honey	F	B		✓	✓	yes
130	Charles Sibley	m	B		✓	✓	yes
61	Brenda Honey	F	W		X		no
11	William Blackwell	m	W		X		no
129	Sheila Thompson	F	W		✓	✓	yes
151	Linda Horvath	F	W		✓	X	no
2	Jean Allison	F	W		✓	X	no
5	Oskey Barnett	F	W		✓	X	no
94	Kevin Painter	m	W		✓	✓	yes
19	Alan Bridgman	m	W		✓	✓	yes
159	Donald Johnson	m	W		✓	X	no
122	Cherie Sterling	F	B		X		no
51	Allen Beatter	F	B		✓	✓	yes
162	Becky Stogers	F	W		✓	X	no
165	Jessie Buckson	F	B		✓	✓	yes
85	Robbie Miller	m	B		X		no
114	Sherrin Shaw	F	W		✓	✓	yes

*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: Dec 9, 2003 455

County: Spokane

2002-SS-42-714

VOLK DIRE

Case No: 2002-40-42-715

Judge: Col

Pl./State: State

State/Pl's. Atty: Linda Wellenborn

Defendant: Juan Enrique Rodriguez

Jessica Shier

Jorge Alberto Rodriguez

Defense Atty: Richard Ward

Court Reporter: Linda D. Moffitt

John Gutierrez

[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.

1st App.

STATE OF SOUTH CAROLINA

County of SPARTANBURGJORGE RODRIGUEZ 300992

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2005-CP-42-449

APPLICATION FOR
POST-CONVICTION RELIEF

MARCO MICHENS

2005 FEB 17 AM 9:33

CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL
990 WISACKY HIGHWAY BISHOPVILLE, SC 29010
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY
OF GENERAL SESSIONS, SPARTANBURG SC
3. Name(s) of co-defendant(s) (if any) ROBERT LEATHERWOOD, JUAN E. RODRIGUEZ
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) TRAFFICKING
 - (b) POINTING & PRESENTING A FIREARM

- (c) F1 ARM PROVISION
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12/11/03
- (b) 12/11/03
- (c) 12/11/03
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. XXXXXXXXXXXXXXXXXXXX
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) (SEE OTHER SIDE)
- (b) _____

FILED
CLERK OF COURT
2005 FEB 17 PM 9:33
MARC KILBRENS

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) (SEE OTHER SIDE)
- (c) (SEE OTHER SIDE)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (SEE OTHER SIDE)
- (b) (SEE OTHER SIDE)
- (c) (SEE OTHER SIDE)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

FILED
FEB 17 AM 9:33
CLERK OF COURT
MARC KITCHENS

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

FILED
CLERK OF COURT
2005 FEB 17 AM 9 33
MARCO KITCHENS

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) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ~~NO~~ YES
 (b) your trial, if any? ~~NO~~ YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (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. JOHN C. GUTIERREZ
386 FOREST AVE. SPARTANBURG, SC 29302
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. ARRAIGNMENT, TRIAL, SENTENCING
 ii. _____
 iii. _____

MARC KITCHENS

2005 FEB 17 AM 9:33

CLERK OF COURT

19. State clearly the relief you seek in filing this application:

VACATE CONVICTION & SENTENCE

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of SPARTANBURG)

I, JORGE RODRIGUEZ 300992, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jorge Rodriguez

SWORN to and subscribed before me this 9
day of Feb, 2005.

Barbara Richardson (L.S.)
Notary Public

My Commission Expires: Oct 28, 2012

FILED
CLERK OF COURT
SOUTH CAROLINA
2005 FEB 17 AM 9:33
MARC KITCHENS

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JORGE RODRIGUEZ 300992, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jorge Rodriguez
Applicant

SWORN or affirmed to and subscribed before me this

9 day of Feb, 2005.

Barbara Richerson
Notary Public

My Commission Expires: Oct 28, 2012

FILED
CLERK OF COURT
2005 FEB 17 AM 9:33
MARC KITCHENS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2005-CP-42-449
Jorge Rodriguez, SCDC No. 300992,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed February 17, 2005, 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 Spartanburg County Clerk of Court. The Applicant was indicted at the 2002 term of the Spartanburg County Grand Jury for trafficking in cocaine, more than 200 grams, possession of a firearm or knife during the commission of or attempt to commit a violent crime, and pointing or presenting a firearm (02-GS-42-0715). He was represented by John C. Gutierrez, Esquire. On December 11, 2003, the Applicant's case proceeded to trial, and the jury found the Applicant guilty as indicted. The Honorable J. Derham Cole sentenced the Applicant to confinement for 25 years for trafficking in cocaine, five years for possession of a weapon during the commission of a violent crime, and five years for pointing or presenting a firearm. The sentences were concurrent.¹ The Applicant did not appeal his conviction or sentence.

¹ Upon information and belief, the Applicant was tried in his absence after failing to appear for trial, and the sentences were sealed. On April 2, 2004, the Applicant was brought before the trial court, at which time Judge Cole unsealed the documents and read the sentence.

Attached herewith are the records of the Spartanburg County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The transcripts are incorporated herein by reference and will be forwarded upon receipt. The Respondent reserves the right to amend this Return.

II.

In his PCR application, the Applicant alleges that he is being held in custody unlawfully for the following reason: **ineffective assistance of counsel.**²

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

² The application says "see other side" for the grounds. However, the Respondent is not in receipt of any such additional allegations.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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 v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the claim of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Therefore, the Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MOLLY R. CRUM
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

August 15, 2005.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2005-CP-42-0449

Jorge Rodriguez,

Applicant,

vs

State of South Carolina,

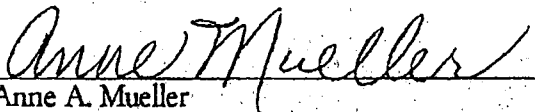
Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

David C. Alford, Esquire
Post Office Box 6326
Spartanburg, SC 29304

DATED this 15th day of August, 2005.


Anne A. Mueller
Legal Assistant for Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG } COURT OF COMMON PLEAS NONJURY

3
4 JORGE RODRIQUEZ,
5 APPLICANT,
6 vs.
7 STATE OF SOUTH CAROLINA,
8 RESPONDENT. } TRANSCRIPT
9 OF
RECORD
05-CP-42-0449

10 September 18th, 2006
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE DOYET A. EARLY, III, JUDGE.

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

16 DAVID C. ALFORD
17 ESQ.
18 Attorney for the Applicant

19 PAULA MAGARGLE
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
opening by Mr. Alford	5
JOHN GUTIERREZ	
Direct examination by Mr. Alford	6
Cross-examination by Mrs. Magargle	13
JORGE RODRIQUEZ	
Direct examination by Mr. Alford	20
Cross-examination by Mrs. Magargle	24
MARIA LEATHERWOOD	
Direct examination by Mr. Alford	28
Cross-examination by Mrs. Magargle	29
JESSICA THILL	
Direct examination by Mrs. Magargle	30
Cross-examination by Mr. Alford	34
Ruling by the Court	36
Certificate	38

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>Applicant's Exhibits</u>			
4				
5	A-1	Letter	8	
6	A-2	Letter	9	
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>State's Exhibits</u>		
3				
4	S-1	Envelope, Bond Sheet		36
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

1

2

3 THE COURT: Next case.

4 MRS. MAGARGLE: I'm Paula Magargle from the Attorney
5 General's Office just for the record.

6 THE COURT: Do I have a file on Mr. Rodriquez?

7 MRS. MAGARGLE: I'll get you one, Your Honor.

8 May I approach?

9 May I approach?

10 THE COURT: Yes, ma'am.

11 You're Mr. Alford?

12 MR. ALFORD: Yes, sir.

13 THE COURT: Ready to proceed?

14 MR. ALFORD: My name is David Alford representing Mr.
15 Rodriquez.

16 THE COURT: Ready to proceed?

17 MR. ALFORD: Yes, sir.

18 THE COURT: Tell me just a brief opening remark on what
19 your position is.20 MR. ALFORD: The -- Mr -- and I apologize, Your Honor,
21 I'm cold. So, I'm trying not to shiver too bad.

22 THE COURT: You're cold?

23 MR. ALFORD: The -- Mr. Rodriquez was noticed on a
24 trial held the week of December 8th, 2003. The trial I
25 think actually was held the 9th. He was tried in absentia.

1 His issue is he was not provided notice of the trial date.
2 Because of that he was found guilty. And also was, because
3 of that, was not able to receive any advice concerning an
4 appeal.

5 The heart of the case, and I've got case law to hand
6 up, which will be Rule 16, the, there's, and there's a
7 series of cases -- and I apologize. I don't have copies---

8 THE COURT: I just turned the air conditioner up.

9 MR. ALFORD: ---going back to State v. Jackson saying
10 that there's two linchpins or two elements in terms of
11 waiving your right for notice of trial. One, that you've
12 received the notice and that you received the warning the
13 trial will proceed in your absence. And the cases I've
14 handed up relate back to the original State v. Jackson case.
15 There's about five cases that seem to address this issue.

16 And we are going to put testimony on dealing with the,
17 what I will allege to be the absence of notice and the
18 absence of the warning concerning what happens if you don't
19 show up for your trial.

20 If the Court is ready I'll call my first witness.

21 I call Mr. John Gutierrez, and I apologize. I
22 mispronounce his name every time. I think I'm around him.

23 JOHN GUTIERREZ, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

John Gutierrez - Direct examination
by Mr. Alford

1 BY MR. ALFORD:

2 Q Please state your name for the record.

3 A John Gutierrez.

4 Q And John, I apologize. I---

5 THE COURT: Just call him John G.

6 How about that?

7 WITNESS: That's what everybody does, Your Honor.

8 MR. ALFORD: Thank you, Your Honor. That's easier for
9 me.

10 Q John, what, what was your involvement with Mr.
11 Rodriguez?

12 A I was his attorney.

13 Q And, and when did you take over the -- when did you
14 start?

15 A I believe it to be around December of 2001.

16 THE COURT: Were you appointed or retained?

17 WITNESS: Retained.

18 THE COURT: Thank you.

19 Q All right. So, in December of 2001 you were retained
20 and this is for this case that we have before us that we're
21 up on this P.C.R. petition?

22 A Yes, the, the weapons charges, the trafficking cocaine
23 charges.

24 Q Now, this case proceeded to a trial, correct?

25 A Yes, it did.

John Gutierrez - Direct examination
by Mr. Alford

1 Q And when was that trial held?

2 A It was called for December 8th, 2003. But I don't
3 think it started until about the -- that's, that's a Monday.
4 Tuesday, December 9th---

5 Q Okay.

6 A ---in the afternoon.

7 Q And the transcript shows it going from December 9th
8 through the 11th?

9 A I believe that to be correct.

10 Q Okay. Now, I'm gonna hand you two -- I -- do you
11 recall -- I'll mark that as Exhibit 1.

12 (Whereupon, the letter was marked as Applicant's
13 Exhibit No. 1 for identification purposes only at this
14 time.)

15 Q Do you recall receiving that letter?

16 A Yes, I do. I believe I gave you this letter.

17 Q Okay. And then that letter also I believe came from
18 your file?

19 A Yes.

20 Q And, and just for the record, Exhibit 1 will be a
21 letter from the Solicitor's Office to you dated
22 September 5, 2003.

23 would you agree with the date?

24 A Yes, I think there were some subsequent -- I think
25 there was another notice from the Solicitor's Office some

John Gutierrez - Direct examination
by Mr. Alford

1 time in November.

2 Q Okay.

3 A Like a November 20th letter.

4 Q All right. And your letter, Exhibit 2, would be dated
5 November---

6 A Yes.

7 Q ---26th, 2003?

8 A Yes, sir.

9 Q And that's a letter addressed to Mr. Rodriguez?

10 A Yes.

11 Q I'll mark those Exhibit 1 and Exhibit 2.

12 (Whereupon, another letter was marked as Applicant's
13 Exhibit No. 2 for identification purposes only at this
14 time.)

15 Q Okay. The September 5 letter, Exhibit 1, is addressed
16 to you as the attorney for Mr. Rodriguez, is that correct?

17 A Yes, it is.

18 Q And does it notice you for a potential trial date?

19 A Yes, September 8th docket.

20 Q Okay. Now, Exhibit No. 2 is a letter to Mr. Rodriguez,
21 Rodriguez and it is dated when, November 26th?

22 A November 26th, 2003.

23 Q All right. And you had provided me previously a copy
24 of your file --

25 A That's correct.

John Gutierrez - Direct examination
by Mr. Alford

1 Q -- which I think you have a copy of it.

2 Is there any other letter you have in your file to Mr.
3 Rodriquez?

4 A Not to my knowledge. Not to my knowledge.

5 Q Okay. So, in terms of having a letter, and I realize
6 that you may of had some, some oral discussion with him, but
7 as far as a written document, the only letter would have
8 been November 26th, 2003?

9 A It's the only one I have in my file.

10 Q Okay. And you've been representing him since December
11 of 2001?

12 A I believe that's right.

13 Q Okay. And what happened to the letter, November,
14 Exhibit 2, November 26th?

15 A It was, it was returned. It was addressed to, to 246
16 Cooper Bridge Road in Woodruff and it came back that the
17 addressee had moved is the only thing it said on it and I
18 have a, I have the envelope.

19 Q You have the envelope?

20 A Would you like me to get it?

21 Q You can, yes.

22 A Yeah.

23 Q And that envelope is one that was returned to you?

24 A Yes, sir, it was returned November 30th.

25 Q Now, Wednesday was the -- well, do you know what day of

John Gutierrez - Direct examination
by Mr. Alford

1 the week the 26th was?

2 A No, sir.

3 Q All right. If -- I got a calendar.

4 But would you disagree with me it was a Wednesday?

5 A No, sir.

6 Q The 27th of November, you know what day that was?

7 Would that have been Thanksgiving?

8 A Possibly.

9 Q All right. 28th then would of been a Friday.

10 A Uh-huh. (Affirmative).

11 Q 29th, 30th.

12 30th would of been a Sunday?

13 A Uh-huh. (Affirmative).

14 Q Is that what that's showing?

15 A Yeah, this shows 11/30/03 returned to sender on it
16 right there. So, I imagine it probably didn't get to me
17 till, till the next day.

18 Q Now, I realize you said that's the only one, letter
19 that remains in your file as far as letters to Mr.

20 Rodriquez?

21 A Yes. Well, one of the things, I, I had a, I had a, a
22 Cooper Bridge Road address for Jorge and I had a Cherryville
23 North Carolina address for Jorge. Cooper, 246 Cooper Bridge
24 Road I believe is where Juan, his cousin, lived and that's
25 where I sent my correspondents to him. But, but I did not

John Gutierrez - Direct examination
by Mr. Alford

1 have a specific address for Jorge Rodriquez.

2 Q In two years did you ever ask him for one?

3 A Well, he said he lived there.

4 Q Okay.

5 A He said he lived in Woodruff. No longer lived in
6 Cherryville and in all my discussions with him were to phone
7 calls. I -- a lot of times to Maria Leatherwood to try to
8 get in touch with him. It was always pretty difficult to
9 try to get in touch with him.

10 Q Okay. And a---

11 A And he came by my office. He came by my office
12 multiple times, you know, what, if I called him or if I
13 didn't call him.

14 Q Is Maria Leatherwood in court today?

15 A I believe that's Maria Leatherwood.

16 Q Okay.

17 A I'm not too sure. I'm -- it's been a while. I'm
18 sorry.

19 Q Now, then going back to Exhibit No. 2, which is your
20 letter to Mr. Rodriquez.

21 A Uh-huh. (Affirmative).

22 Q It notices him for a trial date of December 8th.

23 A Uh-huh. (Affirmative).

24 Q Is that correct?

25 A Yes, it does.

John Gutierrez - Direct examination
by Mr. Alford

1 Q Does it say anything in there warning of any type as to
2 what would happen if he did not appear?

3 A It doesn't appear to.

4 Q No further questions for him.

5 THE COURT: Let me see those exhibits please.

6 Mrs. Magargle, your witness.

7 MRS. MAGARGLE: May it please the Court?

8 THE COURT: Yes, ma'am.

9 CROSS-EXAMINATION

10 BY MRS. MAGARGLE:

11 Q John, do you have a copy of the bond sheet for Jorge?

12 A I don't know.

13 Q I---

14 A I don't know.

15 Q I believe this might, it might be in your notebook.

16 A In the notebook?

17 Q Yep.

18 A Okay.

19 MRS. MAGARGLE: May I approach?

20 THE COURT: Can I see that please?

21 Q Can you tell me what the address at the bottom of the
22 bond sheet is?

23 A It says 224 Cooper Bridge Road in Woodruff.

24 Q Okay. And is that the same place that you sent the
25 letter?

John Gutierrez - Cross-examination
by Mrs. Magargle

1 A No, 246 Cooper Bridge Road is what I, where I sent the
2 letter and I---

3 Q And where did he say he was living?

4 A In Woodruff.

5 Q Okay.

6 THE COURT: When was the bond returnable?

7 When was it -- what's the, what's the bond say about
8 his, where, when he's to be in Court?

9 You got the bond.

10 WITNESS: I believe it was September 8th.

11 THE COURT: And all terms of court thereafter?

12 WITNESS: Yes, sir. Yes, Your Honor.

13 THE COURT: Mrs. Magargle, what does the bond say
14 please?

15 MRS. MAGARGLE: I apologize, Your Honor.

16 Do what?

17 THE COURT: What does the bond say as to when to be in
18 Court?

19 MRS. MAGARGLE: 1/2/03 I think is when the initial date
20 was.

21 THE COURT: Let me see the bond please.

22 MRS. MAGARGLE: All right.

23 THE COURT: Let the record reflect that the bond says
24 that he shall appear at the term of Court of General
25 Sessions beginning on January 2, 2003, at nine o'clock a.m,

John Gutierrez - Cross-examination
by Mrs. Magargle

1 the second, before the county courthouse and remain
2 throughout that term of court. If no disposition is made
3 during that term, the defendant shall appear and remain
4 through each succeeding term of court till the final
5 disposition is made of his case unless ordered otherwise by
6 the Court. And that appears to be signed by Jorge
7 Rodriquez, 224 Cooper Bridge Road, Woodruff, and also by his
8 South Carolina bail bonds, by Mr. Ashmore.

9 MRS. MAGARGLE: May I approach?

10 (The Court nods affirmatively.)

11 Q So, the first appearance was in January, correct?

12 A (Witness nods affirmatively.)

13 Q And were you here?

14 A Yes.

15 Q And was Jorge here?

16 A I believe he was.

17 Q And obviously that's months before the trial.

18 Did he continuously appear?

19 A I have no recollection of his actual attendance.

20 Q Okay.

21 A I know I would of been here.

22 Q Okay. And did you inform him of the times that he
23 needed to be here?

24 A Yes, I did beginning in September because there was a,
25 there was a plea negotiation going on with the solicitor's

John Gutierrez - Cross-examination
by Mrs. Magargle

1 office, and, and, and he and I were discussing that ad
2 nauseam.

3 Q Okay. And when -- you were discussing that and he
4 decided not to take the plea, is that correct?

5 A Uh-huh. (Affirmative).

6 Q Okay. You also discussed the fact that he had a trial,
7 is that correct?

8 A Yes.

9 Q A trial date.

10 A I told him that trial was coming. There's no way
11 around, getting, getting around it. We're gonna, we're
12 gonna have the trial.

13 Q Okay. And the trial date that he was -- was he aware
14 of that trial date?

15 A Yes, he was.

16 Q Okay. And let me ask you, although he was not here,
17 could you inform the Court as to who was here?

18 A I believe Maria Leatherwood and some other members of
19 his family or concerned friends were there. I believe Marie
20 was here for the, all three days. Well, actually all four
21 days. Monday, Tuesday, Wednesday, Thursday even though we
22 didn't have -- I think, I think I remember seeing her here
23 that initial Monday.

24 Q When you were meeting with Jorge were they all present?
25 Like when you initially were meeting with him about

John Gutierrez - Cross-examination
by Mrs. Magargle

1 the---

2 A No, whenever I would meet with him it would usually be
3 at my office and it would be some other members, but, of his
4 family, but not Maria.

5 Q So, someone would have to know that, to inform them
6 that the Court date, correct?

7 A I think, if I recall, that Marie was actually, is
8 actually related or married to the codefendant, Bo
9 Leatherwood, who was in Court. And he's the, he was the
10 codefendant/witness against Juan and Jorge Rodriguez. So---

11 Q And a lot of Jorge's family was here, correct?

12 A Correct.

13 Q And do you---

14 A I believe his girlfriend, a girl named Crystal, and, of
15 course, I might have -- I might have -- I'm sorry, Jorge. I
16 might have everybody mixed up. It's been a long time. But
17 there were people here.

18 Q Okay. Did you---

19 A There was a pregnant girl here. I remember that.

20 Q Okay. And they were all here for the trial?

21 A Yes.

22 Q Because they were aware of the defendant---

23 A Yes.

24 Q Okay. And am I correct that, that your client gave a
25 statement?

John Gutierrez - Cross-examination
by Mrs. Magargle

1 A Gave a statement?

2 Q To the police.

3 A To the police?

4 Q Uh-huh. (Affirmative).

5 A Yes, he did.

6 Q Okay. And could you just inform this Court as to what
7 that statement, in brevity, basically what the statement
8 did?

9 A Well, I think -- well, I have a, I have the statement,
10 but basically it was---

11 Q Well, let me just ask you this.

12 Isn't it correct that through his statement he took
13 them to the gun and the drugs?

14 A Yes.

15 Q Isn't that correct?

16 A Yes.

17 Q Admitted that he had the gun, he admitted he had the
18 drugs, he admitted that he threw them out---

19 A Well, he, he---

20 THE COURT: Hold on. Hold on. Hold on.

21 A He showed them where they were thrown out. He didn't
22 admit to having the drugs or the gun I don't believe. He
23 just showed him where it was thrown out the car.

24 THE COURT: How much marijuana -- how much -- what
25 kind?

John Gutierrez - Cross-examination
by Mrs. Magargle

1 WITNESS: Nine ounces of cocaine and three guns. It
2 was a, a buy bust over in Woodruff.

3 MRS. MAGARGLE: Your Honor, I believe it was two guns.

4 WITNESS: Two guns maybe?

5 Two or three.

6 MRS. MAGARGLE: It was two guns, Your Honor, just for
7 the record.

8 WITNESS: My apologies.

9 MRS. MAGARGLE: No, no.

10 WITNESS: Two guns.

11 Q But he took them and actually showed them and they were
12 able to locate where the drugs and the gun were, correct?

13 A That -- the, the very night of the arrest, which after
14 a car, after a car chase.

15 MRS. MAGARGLE: Beg the Court's indulgence.

16 (Pause.)

17 Q And, again, I just want to make sure I'm correct, you
18 were in contact with the defendant and he was very much
19 aware of the date of the trial?

20 A The entire Fall.

21 MRS. MAGARGLE: Thank you, Your Honor. That's all I
22 have.

23 THE COURT: Any additional questions, sir?

24 MR. ALFORD: No, Your Honor.

25 THE COURT: Thank you. You may step down.

Jorge Rodriquez - Direct examination
by Mr. Alford

1 Next witness.

2 MR. ALFORD: Call Mr. Jorge Rodriquez.

3 THE COURT: Come around, Mr. Rodriquez.

4 JORGE RODRIQUEZ, being first duly
5 sworn, testified as follows:

6 MR. ALFORD: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. ALFORD:

9 Q State your name for the Court please.

10 A Jorge Rodriquez.

11 Q Okay. When were you informed of your trial date?

12 A I wasn't informed.

13 THE COURT: Hold on a second.

14 Y'all through?

15 MRS. MAGARGLE: I'm sorry, Your Honor. Yes, sir.

16 THE COURT: Go ahead.

17 Q There was testimony that Mr. John G. was retained by
18 you back in December of 2001.

19 Would that be correct?

20 A He ain't sent me a letter or nothing. I ain't, I ain't
21 never been noticed to go to a trial or nothing.

22 THE COURT: That's not the question.

23 When did you hire him?

24 WITNESS: 2001 when I got arrested.

25 THE COURT: Okay.

Jorge Rodriguez - Direct examination
by Mr. Alford

1 Q Okay. How many letters did you receive from your
2 attorney during that time?

3 A I ain't never received one.

4 Q Okay. So, where were you living during that time?

5 A 240, 246 Cooper Bridge Road.

6 Q And that is where?

7 A In Woodruff.

8 Q In Woodruff?

9 A Yes, sir.

10 Q Okay. Do you know if you received mail at that
11 address?

12 A Every time I went to the mailbox, no, sir, not from
13 John.

14 Q All right. But did you, did you receive other mail at
15 that address?

16 A No, sir.

17 Q All right. You didn't receive any mail at that
18 address?

19 A No, sir.

20 THE COURT: Where did you get your mail?

21 WITNESS: I move in town.

22 THE COURT: Where did you get your mail?

23 WITNESS: I ain't get no mail.

24 THE COURT: Never got any mail?

25 WITNESS: No. No, sir.

Jorge Rodriquez - Direct examination
by Mr. Alford

1 THE COURT: Thank you.

2 Q Whose, whose house was that?

3 A That where my aunt stayed at.

4 Q Okay. And how many people lived there?

5 A Like my aunt and, and my cousins. Like six of us.

6 Q Okay. And I'll hand you what's been introduced as
7 Exhibit No. 2.

8 I believe you've had an opportunity to see that letter?

9 A Yes, sir.

10 Q Before you, you received the letter from me had you
11 ever seen the letter previous to my representation?

12 A No, sir.

13 Q Did you ever talk with your attorney about a trial
14 date?

15 A He told me we gonna have a trial date. But he, but he
16 never told me when we gonna have the trial date.

17 Q Okay. During the week of December 8th, 2003, where
18 were you that week?

19 A In Woodruff.

20 Q Would the attorney call you -- did you have a phone?

21 A No. Yeah, I had a phone, but he never called me.

22 Q Did you have a phone in your name?

23 A No, I had one in my cousin name.

24 Q All right. So, you -- would you get telephone messages
25 that way?

Jorge Rodriquez - Direct examination
by Mr. Alford

1 A Yeah, that's the way I was getting phone calls.

2 Q Who would -- would, would you answer the phone or would
3 people tell you about messages?

4 A No, I answered the phone sometimes.

5 Q How about other times?

6 A My cousin answered the phone. But I be with him at the
7 time though he answered the phone.

8 Q Okay. And you don't recall receiving telephone calls?

9 A No, sir.

10 Q How would you talk to John?

11 A I go to his office.

12 Q Okay. Do you remember the last time you were in his
13 office before December of 2003?

14 A I don't remember.

15 Q One month, two months?

16 A I think like two months when I got out cause my cousin
17 had to go talk to him. That's when I went up there with my
18 cousin, and that's when me and John talked.

19 Q All right. Now, you're, you're saying the time frame
20 of what happened to your cousin?

21 A No, he had to go up there to talk to John about the
22 record that he had. So, then me and John started talking
23 about it. But he ain't never let me know about the trial
24 date. I kept asking him, but he never let me know.

25 Q All right. But you don't recall when that was?

Jorge Rodriguez - Cross-examination
by Mrs. Magargle

1 A No, sir, I know that been two months.

2 Q Okay. No further questions.

3 MRS. MAGARGLE: May it please the Court?

4 CROSS-EXAMINATION

5 BY MRS. MAGARGLE:

6 Q Mr. Rodriguez, you said that you were at 246 Cooper
7 Bridge Road, correct?

8 A Yes, ma'am.

9 Q And you just didn't receive mail there, correct?

10 A Yes, ma'am.

11 Q And that's where the, where your attorney sent the
12 letter, correct?

13 A Yes, ma'am, what he say.

14 Q And your attorney talked to you on numerous occasions
15 about the date of the trial, didn't he?

16 A No, ma'am.

17 Q Okay. So, your family just somehow knew, how to E.S.P.
18 to know to show up here on December the 8th for your trial
19 even though you didn't show up?

20 A Well, I got another codefendant who came to court.

21 THE COURT: Had a what?

22 A And it's my brother-in-law.

23 THE COURT: Go ahead.

24 Q And isn't it correct that you told the police and
25 showed the police where the gun was?

Jorge Rodriquez - Cross-examination
by Mrs. Magargle

1 A No, ma'am.

2 Q Okay. And you also showed the police where the, the
3 marijuana was?

4 A The marijuana was in my pocket, ma'am.

5 Q I mean the cocaine. I'm sorry.

6 A Nope.

7 Q Okay. So, all that stuff was just made up even though
8 that's what you gave a statement to, correct?

9 A I ain't never gave a statement.

10 MRS. MAGARGLE: Your Honor, that's -- I believe the
11 record reflects that.

12 THE COURT: I've read it, yes, ma'am.

13 MRS. MAGARGLE: That's all the questions I have.

14 THE COURT: All right. You didn't give a statement?

15 WITNESS: No, I don't remember giving no statement.

16 THE COURT: Don't remember it?

17 WITNESS: All they asked me do you know how to read and
18 write and I said no.

19 THE COURT: Do you?

20 WITNESS: No, but I, I -- my -- I was read the letter,
21 you know what I'm saying, when, when I got over there at Lee
22 County, that's when my cousin and them saying, said, look,
23 he ain't never got this in the mail. I said I know I ain't
24 never got that in the mail.

25 THE COURT: Which one?

1 WITNESS: The letter saying I was suppose to be in
2 trial.

3 THE COURT: Which letter?

4 What's the date?

5 WITNESS: Huh?

6 THE COURT: What's the date of the letter?

7 WITNESS: December the 26th. November 26th, 2003.

8 THE COURT: Which one are you reading from?

9 WITNESS: Huh?

10 THE COURT: Which one are you looking at?

11 WITNESS: The one I'm suppose to be in trial.

12 THE COURT: What number's down at the bottom?

13 WITNESS: Huh?

14 THE COURT: What number's down at the bottom?

15 WITNESS: No. 2.

16 THE COURT: What's it say?

17 What does the letter say?

18 WITNESS: Saying I suppose to be in trial at the
19 certain time for the trafficking charge.

20 THE COURT: How are you reading that?

21 WITNESS: Huh?

22 THE COURT: Are you reading that?

23 WITNESS: No, I told you I don't know how to read.

24 THE COURT: You just read it to me.

25 WITNESS: Because I had my cousin read it to me and I,

1 and I quote it in my head.

2 THE COURT: Thank you. You may step down.

3 You record it in your head.

4 MR. ALFORD: I call Mrs. Maria Leatherwood.

5 MARIA LEATHERWOOD, being first duly

6 sworn, testified as follows:

7 THE COURT: Can you read and write?

8 WITNESS: Yes, sir, I graduated from high school.

9 THE COURT: Congratulations.

10 WITNESS: Woodruff High School. Thank you very much.

11 THE COURT: Graduated where, at Woodruff?

12 WITNESS: Woodruff High School.

13 THE COURT: What year did you finish?

14 WITNESS: 1997.

15 THE COURT: All right. You live here in this area?

16 WITNESS: Yes, I live in Woodruff.

17 THE COURT: What do you do for a living?

18 WITNESS: I'm a bail bondsman. Bail

19 bondsman/secretary.

20 THE COURT: Are you kin to him?

21 WITNESS: Yes, he's my cousin.

22 THE COURT: How long you been in the bail bondsman
23 business?

24 WITNESS: Four years.

25 THE COURT: And as a bail bondsman, if I get arrested

Maria Leatherwood - Direct examination
by Mr. Alford

1 and you come and get on my bail, and I don't show up for
2 Court, what do you do?

3 WITNESS: We go look for you.

4 THE COURT: Thank you, ma'am.

5 WITNESS: You're welcome.

6 DIRECT EXAMINATION

7 BY MR. ALFORD:

8 Q Mrs. Leatherwood, in December of 2003, you attended the
9 trial?

10 A Yes, sir.

11 Q Who were the defendants in that trial?

12 A My brother, my cousin, and my brother-in-law.

13 THE COURT: Who's your brother, Juan?

14 WITNESS: Juan Rodriquez, my cousin, Jorge Rodriquez,
15 and my brother-in-law, Robert Leatherwood.

16 Q So, you, you were here not just for your cousin---

17 A Not just on their behalf.

18 Q ---but you were here for your brother?

19 A Yes.

20 Q Okay. That week, do you know where they were living?

21 A They were in Woodruff.

22 Q Okay. Do you know if they were at the 246 address?

23 A No, sir.

24 Q You just knew they were in Woodruff?

25 A Yes.

Maria Leatherwood - Cross-examination
by Mrs. Magargle

1 Q All right. They hadn't left the area?

2 A No.

3 Q No further questions.

4 THE COURT: If you were on their bond, would it have
5 been hard to find them?

6 WITNESS: Not really.

7 THE COURT: Any questions by the A.G.?

8 CROSS-EXAMINATION

9 BY MRS. MAGARGLE:

10 Q What bonding company do you work for?

11 I apologize.

12 May it please the Court?

13 THE COURT: (Nods affirmatively.)

14 Q What bonding company do you work for?

15 A All Out Bail Bonding.

16 Q Okay. And have you always worked for them?

17 A Yes.

18 Q And you were here for the trial?

19 A Yes, ma'am.

20 Q Your Honor, I believe that's all I have.

21 THE COURT: Thank you. You may step down.

22 Next witness.

23 MR. ALFORD: No further witnesses from---

24 THE COURT: Anything on behalf of the State?

25 MRS. MAGARGLE: Yes, sir, Your Honor. We call the

Jessica Thill - Direct examination
by Mrs. Magargle

1 solicitor to the stand.

2 THE COURT: That would be Ms. Thill?

3 MRS. MAGARGLE: Yes, sir.

4 JESSICA THILL, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MRS. MAGARGLE:

8 Q State your name for the record please?

9 A Yes, my name is Jessica Thill, T-H-I-L-L.

10 Q And Ms. Thill, were you involved in this case?

11 A I was. I was the lead prosecutor.

12 Q Okay. And can you just tell the Court, in regards to
13 the defendant, was he required to appear in Court
14 periodically after he got out on bail?

15 A Yes, he was. He was issued a bond by I believe Judge
16 Ashmore on November 29th of 2001. At that time he
17 acknowledged all of the requirements of his bond. One of
18 which that included that he's been informed of his right to
19 be present at trial, and should he fail to attend that the
20 trial would proceed in his absence. At that time he was
21 bonded out by S.C. Bail Bonds, and he provided an address of
22 224 Cooper Bridge Road, Woodruff. Another condition of his
23 bond that he was aware of was if he was to change his
24 address at anytime he had an obligation to notify the State
25 in writing.

Jessica Thill - Direct examination
by Mrs. Magargle

1 Q So, he was aware that if he did not show up for trial
2 that it would proceed in his absence?

3 A Yes, ma'am, that's a condition of his bond.

4 Q Okay. And also was, was -- did he then routinely
5 appear or could you just inform this Court as to whether or
6 not he had to make appearances from the date of the bond
7 until the date of trial?

8 A Yes, ma'am, on the bond sheet it also notifies him of
9 his initial appearance, which required that he appear before
10 the Court on January 20th of 2000, I'm sorry, January 2nd
11 of 2003 here at the court house for his initial appearance.

12 Q And then did he have -- do y'all do roll calls or
13 anything like that at here or---

14 A Yes, ma'am, he would of been subsequently roll called.
15 Since he was represented by an attorney in this case, John
16 Gutierrez, I'm barred from contacting the defendant
17 directly. So, he would of received notice not only by
18 correspondents by me, he would of received notice through
19 the notice we sent to his bail bondsman and also the trial
20 docket which is published and published on the Spartanburg
21 County website.

22 Q So, they're -- and correct me if I'm wrong, your
23 testimony is they're three different ways he would of known
24 about the trial, is that correct?

25 A Yes, ma'am, since I'm not allowed to contact him

Jessica Thill - Direct examination
by Mrs. Magargle

1 directly I would of sent notice to his attorney, John
2 Gutierrez, which I did in the form of a letter dated on
3 September 5th of 2003 on which I noticed him that the
4 trial would take place on December 8th. I also gave
5 subsequent notice on November 20th of 2003. A letter was
6 sent to his bail bondsman who at that time was S.C. Bail
7 Bonds. And the trial docket was also published on the
8 Spartanburg County website.

9 THE COURT: Did you receive a response from the bail
10 bondsman?

11 WITNESS: When the case was called on December 8th of
12 2003, Judge Cole continued the case until the following day.
13 If my memory serves me correctly the bail bondsmen were
14 contacted by us at that point that the defendants had failed
15 to appear and that Judge Cole had continued the trial until
16 the following day in order to give them an opportunity to
17 compel the defendants to appear. And in addition, we did
18 have information through their attorneys that for certain
19 that Juan Rodriquez was actually in the courthouse and was
20 talking to Mr. Warder via his cell phone and refused to come
21 to trial even though he was on notice that the case was
22 being tried. And I believe that Jorge was with him at that
23 time.

24 Q But again, he, as far as you knew and as far as was
25 evident, he was very much aware as to when the date was?

Jessica Thill - Direct examination
by Mrs. Magargle

1 A Yes, ma'am.

2 Q And there were several family members, is that correct,
3 that were here?

4 A Yes, there was several family members that were here.
5 Also, when, post the trial, which concluded on
6 December 11th, a bench warrant had been issued for their
7 arrest. Judge Cole issued the sentence, which was under
8 seal. The deputies of the Sheriff's Office here in
9 Spartanburg County then pursued the defendants. They had
10 information, through trailing techniques that they were
11 using to hunt down the defendants, that they were aware of
12 the fact, through family members, that the trial had been
13 concluded, they had been found guilty, and that they had
14 been sentenced under seal.

15 The Sheriff's Office, in conjunction with other law
16 enforcement agencies, then tracked both Jorge and Juan
17 Rodriquez multiple different locations in South Carolina,
18 North Carolina, and Georgia. Mr. Jorge Rodriquez was
19 eventually captured in Anderson County with several of the
20 family members including Juan's girlfriend, Crystal Miller,
21 who is the pregnant woman that Mr. Gutierrez referred to
22 earlier. All those individuals were with Juan and Jorge
23 when they were captured in Anderson. Juan alluded police
24 and was eventually captured with Crystal Miller in Atlanta.
25 Q And then they were both -- he was subsequently brought