

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 08 2019

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2019-00289

SHONDRE L. WILLIAMS.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

SUPPLEMENTAL APPENDIX

Elizabeth A. Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
Elizabeth@franklinbestlaw.com
(803) 331-3421
Attorney for Petitioner

Other Counsel of Record:
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent

INDEX

Additional trial transcript pages.....	1-88
--	------

INDEX

Additional trial transcript pages.....

1 any time, did you?

2 A No, sir.

3 Q Now, explain to me. You -- you testified that we
4 placed some phone calls.

5 A Yes, sir.

6 Q Okay. So this starts out in Greenville County.

7 A Yes, sir.

8 Q You have, you said, charges against the informant.

9 A Yes, sir.

10 Q What are charges? When you say we had charges, can
11 you explain that to me?

12 A Had active cases against the informant.

13 Q Okay. Did you have warrants that had been signed by a
14 magistrate?

15 A Yes, sir.

16 Q And do those warrants show up in the -- in the county
17 records?

18 A I'm not sure. County records? I'm not --

19 Q Did those show up through the judicial website or
20 somewhere, public database?

21 MR. HOLLIDAY: I'm going to object, Your Honor, as to
22 how that's relevant.

23 THE COURT: Overruled.

24 A I'm not sure if they -- I'm not sure how they're
25 entered into that database.

Travis McJunkin
Cross-examination by Mr. Wilkes

- 1 Q Where they ever served on him? Was he taken to the
2 jail and fingerprinted?
- 3 A No, sir.
- 4 Q Okay. But they were signed by the magistrate.
- 5 A Yes, sir.
- 6 Q So there'd be a record of that.
- 7 A Yes, sir.
- 8 Q And you had those pending warrants, and then he's
9 involved in something again in Greenville.
- 10 A Yes, sir.
- 11 Q Would that have resulted in yet another charge,
12 whatever it was in Greenville, the search of his house?
- 13 A Yes, sir.
- 14 Q Okay. What -- what happened at the house, at the
15 search of the house, his house?
- 16 A We recovered drugs and currency.
- 17 Q Okay. How much drugs; how much currency?
- 18 A I'm not sure of the exact amount. I don't know the
19 specific amount. That'd be in Greenville County, to
20 determine.
- 21 Q Okay. Why? Was it a lot, a large amount?
- 22 A I would say so, yes, sir.
- 23 Q Okay. Would it be a trafficking amount?
- 24 A Yes, sir.
- 25 Q All right. So Greenville County -- did Greenville

Travis McJunkin
Cross-examination by Mr. Wilkes

1 County arrest him for those charges?

2 A No, sir, they did not.

3 Q And did they not arrest him for those charges because
4 he was cooperating with you?

5 A Yes, sir.

6 Q Okay. So at that time was he also on probation?

7 A I'm not sure.

8 Q So but we do know at that time you had two trafficking
9 warrants.

10 A Yes, sir.

11 Q And you've asked Greenville County not to pursue a
12 third trafficking warrant.

13 A I don't believe I asked them not to.

14 Q Well, but that they didn't because he was cooperating.

15 A Yes, sir.

16 Q Okay. So that's potentially three trafficking charges
17 that he now has over his head. But he's not been served
18 with any of those.

19 A Yes, sir.

20 Q And would that be normal if you have traffic -- three
21 trafficking charges or the potential for three trafficking
22 charges on someone but you just -- you wouldn't serve those
23 warrants on them? Is that normal?

24 A It would depend on the circumstances.

25 Q Well, what circumstances would warrant not serving

1 that many warrants on somebody?

2 A Cooperation.

3 Q Okay. Well, does that happen a lot?

4 A I'd like to think so, yes, sir.

5 Q Okay. So he's participating in a pattern that occurs
6 pretty regularly of not having warrants served on him.

7 A He's participating in the regular occurrence of
8 cooperation.

9 Q Okay.

10 A As far as warrants, I mean, each -- each case is
11 different. I mean, it's not a static situation where it's
12 all the same.

13 Q Well, in his case would you say that that was --
14 what -- what would his trafficking charges have subjected
15 him to sentence-wise? What does this mean to him?

16 A Prison. Prison time if convicted.

17 Q And three of them, what would be the sentences based
18 on your recollection of the weights involved and his prior
19 criminal history? What would the potential sentences he
20 faced at that time be?

21 A I believe with what Greenville County had probably
22 mandatory minimum 25, but I can't without exactly, you
23 know, having the guidelines in front of me --

24 Q But that's a fair guess, that he was several mandatory
25 minimums of 25-year sentences.

Travis McJunkin
Cross-examination by Mr. Wilkes

- 1 A No, sir, not several mandatory minimums of 25. With
2 reference to what Greenville County had --
- 3 Q Okay.
- 4 A -- that's the one that I can recollect the most of
5 what the actual sentence could be --
- 6 Q Okay. To your recollection.
- 7 A -- to my best recollection, yes, sir.
- 8 Q What about your two?
- 9 A Once again, I'd have to look at the exact sentencing
10 guideline and such.
- 11 Q But can you tell me the weights on the -- the ones
12 that you had?
- 13 A Yes, sir.
- 14 Q What were the weights?
- 15 A It'd have been more than ten grams but less than 28.
- 16 Q On both of them?
- 17 A Yes, sir.
- 18 Q Okay. So we know he was facing substantial jail
19 time --
- 20 A Yes, sir.
- 21 Q -- and yet potentially a mandatory minimum of 25
22 years.
- 23 A Yes, sir.
- 24 Q Okay. Now, that becomes then motivation for his
25 cooperation.

1 A Yes, sir. I would say so.

2 Q Okay. Would you agree with me to say that the greater
3 the motivation the more he's likely to want to cooperate?

4 MR. HOLLIDAY: Objection, Your Honor. That calls for
5 speculation.

6 THE COURT: Overruled.

7 A I -- motivation is what causes anybody to do anything.
8 The more motivated someone is the more likely they are
9 toward a specific thing.

10 Q Okay.

11 A It seems like they would be more likely to do that
12 specific thing.

13 Q Okay. And had he ever worked for you before? Had he
14 done this sort of thing or similar thing that he's doing in
15 this case? Did he ever do that for y'all before that
16 you're aware of?

17 A No, sir, not that I'm aware of.

18 Q Okay. But you explained to him that you would give --
19 he would be given consideration.

20 A Yes, sir.

21 Q And there's no question that you have the power to do
22 that.

23 A Yes, sir.

24 Q Okay. Would you agree with me that your department
25 has a reputation for following through on any promises or

Travis McJunkin
Cross-examination by Mr. Wilkes

1 representations it makes?

2 A Yes, sir.

3 Q Okay. So if you indicate to him that there's
4 consideration, you'll follow through with it, and you made
5 that clear to him.

6 A Yes, sir.

7 Q Did you enter into a written working agreement with
8 him subsequent?

9 A Yes, sir.

10 Q And what did that working agreement say?

11 A If I'm not mistaken -- I don't have it here in front
12 of me -- I believe in consideration for the charges or the
13 case that he already made -- the defendant, Mr. Shondre
14 Williams -- I believe he had to complete two additional
15 investigations that culminated in trafficking over
16 100 grams of cocaine or cocaine base.

17 Q Okay. And what would that do for him in the working
18 agreement?

19 A As far as Spartanburg County goes that would
20 relinquish him or I guess relieve him of the charges that I
21 had against him.

22 Q And it says dismiss all charges.

23 A Dismiss all in reference to Spartanburg County.

24 Q Okay. And you had already indicated that Greenville
25 County didn't arrest him based on your working with him.

Travis McJunkin
Cross-examination by Mr. Wilkes

1 A Yes, sir. That is correct.

2 Q Okay. So in layman's terms if he can make the cases
3 per the agreement, he walks.

4 A Yes, sir. That is correct.

5 Q Okay. Now, when you say the cases over a hundred
6 grams, why a hundred grams?

7 A In Spartanburg County that's a substantial amount of
8 drugs, and in my opinion I've learned from my training and
9 experience, also a hundred grams carries a substantial more
10 time than, say, the trafficking over ten or the trafficking
11 over 28.

12 Q Okay. So you make big cases.

13 A We try to make big cases.

14 Q Okay. Now, under this agreement it does no good for
15 him if he's got somebody for any reason that might --
16 they've got a drug habit or whatever it is -- doesn't
17 matter -- if somebody were going to say and be talked into
18 a few grams, that would do him no good.

19 A No, sir, not necessarily.

20 Q Wouldn't do him any good under the terms of the
21 agreement though.

22 A I disagree with that.

23 Q I'm not saying you wouldn't try to give him
24 consideration, but I'm talking about the terms of the
25 agreement to dismiss his charges and he walks scot-free, it

Travis McJunkin
Cross-examination by Mr. Wilkes

1 says what? Cases over 100 grams.

2 A Uh-huh.

3 Q So to him when he reads this agreement -- he signed
4 it, didn't he?

5 A Yes, sir, he did.

6 Q And you signed it.

7 A Yes, sir, I did.

8 Q Okay. So he knows in his mind -- according to this
9 agreement it would be plain that he's going to make big
10 cases.

11 A Yes, sir.

12 Q Okay. Now, would that not create the potential that
13 he would want to talk somebody into a drug deal to help
14 himself?

15 A I don't think that would accurately describe it.

16 Q Well, if he can get anybody to take drugs from him
17 more than 100 grams, it's good, isn't it?

18 A We would have to agree to -- and typically as far as
19 getting someone to take 100 grams, we at the sheriff's
20 office would have to agree to that.

21 Once again, that's what we call a reversal. That's not
22 a common practice, and that's not something we seek out to
23 accomplish, is to agree for someone to take a hundred grams.

24 Q Okay. So he could have just as easily come to you and
25 said I'm going to go buy from a couple of people more than

1 a hundred grams. That would be the normal way that a
2 transaction would work, right?

3 A No, sir, not purchasing more than a hundred grams.

4 Q Okay. Well, you've set it up so he's going to do a
5 transaction of more -- multiple transactions of more than a
6 hundred grams, right?

7 A No, sir.

8 Q Well, tell -- tell me again. What is it that he has
9 to do per the written agreement, your agreement with him?
10 What does he have to do?

11 A The investigation has to lead -- culmination of the
12 investigation has to lead to trafficking more than
13 100 grams.

14 Trafficking more than 100 grams, if we was to purchase
15 that, which is -- let me do my math -- a minimum four
16 ounces?

17 Q Uh-huh.

18 A Powder cocaine, which is roughly 112 grams --

19 Q Uh-huh.

20 A -- the running price maybe at that time from what I
21 remember, maybe a thousand dollars roughly just for easy
22 numbers, a thousand dollars an ounce.

23 Q Uh-huh.

24 A If we try to buy \$4,000 worth of cocaine, Spartanburg
25 County Sheriff's Office as an agency, we don't have enough

1 money to complete transactions for four ounces of cocaine.

2 We don't -- we logistically don't have that money.

3 Q Okay. So the way this would work then, you intended
4 to be able to give him cocaine for him to try to sell to
5 people?

6 A No, sir.

7 Q Okay. Well, it's pretty clear in the agreement that
8 it says three traffickings, right?

9 A Uh-huh. The culmination of the investigation -- if we
10 could afford to buy three grams from inside a residence --
11 let's take for instance Joe Blow was a target
12 investigation. We'd go to Joe's house, purchase an amount
13 of cocaine using the informant, a clean sanitary buy as we
14 like to do them.

15 Q Uh-huh.

16 A Comes back. We get enough for a search warrant. We
17 go in Joe's house. Low and behold, Joe has nine ounces of
18 cocaine.

19 Q Uh-huh.

20 A That right there is participation in the
21 investigation, the culmination of it. The completion of
22 that investigation led to an amount more than 100 grams.

23 Q Okay.

24 A It doesn't necessarily have to be a purchase.

25 Q Okay.

Travis McJunkin
Cross-examination by Mr. Wilkes

1 A Doesn't necessarily have to be a reversal type of
2 situation.

3 Q Okay. So it works good for him though if he can find
4 somebody that'll take drugs, and you give him a whole bunch
5 of them, and he can get them to take a whole bunch of them,
6 then that's good if it -- if he gets over the hundred
7 grams, and that's good for him. The more they take, the
8 better, right?

9 A Yes and no. Once again, the reversals aren't that
10 common practice. It is not something we seek to do every
11 day.

12 Q Okay. The informant never was served, correct, with
13 those warrants?

14 A Not my warrants, no, sir.

15 Q And he -- as far as you know he's never been
16 prosecuted by Greenville County either.

17 A As far as I know, no, sir.

18 Q And that's been over how long?

19 A March of 2012.

20 Q Okay. And so he did, in fact, get all of his charges
21 or get to walk scot-free.

22 A No, sir.

23 Q Okay. He did not.

24 A No, sir.

25 Q He did get prosecuted. What did he get prosecuted

Travis McJunkin
Cross-examination by Mr. Wilkes

1 for?

2 A You said he got prosecuted.

3 Q Well, I'm just asking. I'm trying to put it in
4 layman's terms. Those are my terms, to walk scot-free.
5 But to dismiss the charges. You didn't bring the charges
6 against him officially or serve him so --

7 A No, sir. They're still not -- have not been served if
8 that's what you're asking.

9 Q Okay. So, in other words, he's -- he was not
10 prosecuted on those charges. That's what it amounts to.

11 A No, sir, no, sir, not yet, no, sir.

12 Q Okay. And you didn't have an intention to, do you?

13 A It would I guess depend on the completion of the
14 working agreement.

15 Q In other words, he's going to testify today. If he
16 refused to testify, then he would be prosecuted, right?

17 A That's part of the working agreement, yes, sir, that
18 you have.

19 Q Okay. So testifying and having a successful trial --

20 MR. HOLLIDAY: Objection, Your Honor, to the term
21 successful trial.

22 THE COURT: Rephrase it.

23 Q If he testifies in the way that you anticipate he's
24 supposed to and it meets with your approval, then he's
25 done.

Travis McJunkin
Cross-examination by Mr. Wilkes

- 1 A No, sir.
- 2 Q why not?
- 3 A Has yet to fulfill the working agreement.
- 4 Q No. I mean -- okay. But the gist of it is had he
- 5 required and done enough deals and all of that other in
- 6 this case for just purposes of this case in the working
- 7 agreement, he testifies consistent with what you believe he
- 8 should be testifying to, he's met his condition.
- 9 A No, sir, not per the working agreement.
- 10 Q why?
- 11 A It's not a completed working agreement.
- 12 Q what would not be completed?
- 13 A The terms and conditions of the working agreement.
- 14 Q what's he missing?
- 15 A Remaining cases.
- 16 Q Well, yes, sir. I understand that. I'm trying to
- 17 segregate those out. Those -- notwithstanding those, he
- 18 satisfied the working agreement in relation to this
- 19 defendant once the portion of it relating to this defendant
- 20 and his charges -- once he's testified in accordance with
- 21 what you believe he should testify to.
- 22 A And let me if I may rephrase it in a -- in a way that
- 23 I think I'm understanding you.
- 24 If there was a check list --
- 25 Q Uh-huh.

Travis McJunkin
Cross-examination by Mr. Wilkes

1 A -- one, two and three, and this being one, if he
2 testifies in reference to his actions involved in it and
3 whether or not in accordance with his working agreement
4 that would, I guess, mark off one of three, if that's what
5 you're asking, yes, sir.

6 Q Yes, sir. That's it.

7 Okay. Now, were you involved in the -- in the video
8 that I've been supplied in discovery, that video?

9 A Yes, sir.

10 Q What portion of that? When we hear that video, what
11 voice are you? What portion of that video are you on?

12 A I would have been the voice in the beginning.

13 Q Okay. Before the C.I. or the informant takes off --

14 A Yes, sir.

15 Q -- in the car. Okay. And so that's your voice at
16 that time.

17 A Yes, sir, it is.

18 Q All right. And do you recognize or can you tell me
19 who the second voice is going to be of an officer at the
20 end of the tape?

21 A That would be Investigator B.J. Tillinghast, William
22 Tillinghast. We call him B.J.

23 Q Okay.

24 MR. WILKES: That's all the questions I have of
25 Investigator McJunkin.

Travis McJunkin
Redirect examination by Mr. Holliday

1 MR. HOLLIDAY: Brief redirect, Your Honor.

2 (\$4,000 cash marked State's Exhibit No. 16 for
3 Identification.)

4 REDIRECT EXAMINATION

5 BY MR. HOLLIDAY

6 Q Investigator, I'm handing you what's been premarked as
7 State's Exhibit 16. Can you identify that for us?

8 A This is a currency envelope, whenever we place
9 currency into evidence for the sheriff's office. It's
10 going to have a case number on there. It's going to be
11 marked as evidence.

12 It's got the suspect's name on it, the crime statute,
13 date found, location, who found it, their badge number, the
14 currency at the breakdown, the village -- it's ones,
15 twenties, how many of each and what not, the breakdown.

16 Down there at the bottom it has the total amount, that
17 badge number of the person who entered and sealed it by
18 their signature, the date, the time and who received it and
19 such.

20 And inside this currency envelope should be the \$4,000
21 that was exchanged to the informant in this case for the
22 cocaine.

23 Q Could you open that? Did you seal that envelope?

24 A Yes, sir. My signature is on the back, yes, sir.

25 Q Could you -- could you open it up and tell us what's

Travis McJunkin
Redirect examination by Mr. Holliday

1 inside?

2 A Bear with me for a moment.

3 (Pause.)

4 A Yes, sir. It's -- appears to be \$4,000 in the bag,
5 yes, sir.

6 Q And that's the \$4,000 that Deputy Tillinghast received
7 from the informant?

8 A Yes, sir, at which -- go ahead.

9 Q I'm sorry.

10 A And I apologize. Go ahead.

11 Q Investigator McJunkin, have you ever paid \$4,000 for
12 something you didn't intend to purchase?

13 A No, sir, I have not.

14 Q On March 2nd of 2012 how much powder cocaine could
15 \$4,000 cash buy?

16 A Approximately four or four and a half ounces.

17 Q And how much cocaine was in this deal?

18 A Nine ounces.

19 Q Okay. Can you explain the discrepancy? He paid
20 \$4,000 cash.

21 A Yes, sir.

22 Q Can you explain any discrepancy, why he didn't -- why
23 he got a bargain or why he got a deal?

24 A Yes, sir. It's not a bargain or a deal in the
25 sense -- in my training and experience, you know,

Travis McJunkin
Redirect examination by Mr. Holliday

1 there's -- there's credit out here on the streets in the
2 drug trade -- be called on the front, credit, what have
3 you.

4 In this particular course of action the agreement was
5 for four ounces and then for four and a half ounces and the
6 remaining to be fronted to be paid for at a later time.

7 It's no bargain. It's not like this is a discount.
8 This is just, you know, I give you this amount, which is
9 approximately half depending on the nature. There's a lot
10 of dynamics that go into pricing and things such as that
11 nature and, you know, personal relationships, price at that
12 time. But essentially this is I'll give you about half of
13 it, I owe you about half of it.

14 Q Down payment.

15 A Yeah. And that's very common in -- in the drug trade,
16 especially your larger amounts. We're not talking about a
17 \$20 amount, even a hundred-dollar amount. But it's
18 common -- it's not uncommon.

19 I've seen many of times someone say they purchase a
20 half ounce of cocaine and crack cocaine or heroine and be
21 fronted an additional half ounce.

22 It keeps the relationship going. It keeps it in my
23 training and experience, what I've learned, is it keeps the
24 relationship going. Somebody owes somebody money, they're
25 going to come back and give them the money. And they're

1 probably going to purchase more products, so to speak.
2 It's -- it's kind of difficult to explain, but it just
3 really keeps -- it perpetuates the relationship from my
4 training and experience.

5 Q Where do purchasers usually get the remaining money to
6 the defendants paying off their suppliers?

7 A By selling the drugs that they have had fronted to
8 them or purchased.

9 Q And is it your belief that the defendant intended to
10 pay more money for the drugs that he received?

11 A Yes, sir.

12 MR. HOLLIDAY: No further questions.

13 MR. WILKES: May it please the Court.

14 RECROSS-EXAMINATION

15 BY MR. WILKES

16 Q Have you counted that money?

17 A I would have counted it that night, yes, sir. I would
18 have witnessed it being counted.

19 Q And you say it's how much?

20 A Four thousand.

21 Q Can you check it and make sure?

22 (Pause.)

23 Q And while you're doing that let me ask you. You say
24 that's the same money that appears on the video.

25 A Yes, sir.

1 (Pause.)

2 A By my counts -- and I have these in each
3 thousand-dollar stacks -- makes it easier to manage and
4 count -- by my count I have also \$4,000 again.

5 Q Okay. Will you put that back in the bag?

6 A Yes, sir.

7 Q And that way we know what's there. Put it back for
8 the court reporter.

9 (Pause.)

10 Q Thank you.

11 Now, you said that that amount of money represents the
12 equivalent at the time of what in the amount of drugs?

13 A Roughly anywhere, four or four and a half ounces at
14 that time.

15 Q Okay. How many grams is four ounces?

16 A Just off the top of my head, I believe 112 -- 28 grams
17 to an ounce.

18 Q Okay. Now, you indicated that there was how many
19 ounces supposedly discovered behind that water heater?

20 A Approximately nine ounces.

21 Q Okay. So mathematically that would not pay for that
22 much drugs.

23 A \$4,000, no, sir.

24 Q Okay. And your reasoning was that -- and you said it
25 was difficult to explain -- but fronting some, leaving a

Travis McJunkin
Recross-examination by Mr. Wilkes

1 little out there keeps the relationship going.

2 A That's my training and experience, but that's one
3 method of how drugs are sold.

4 Q Okay. Well, is it possible that another explanation
5 could be that somebody didn't want that much to start with?
6 What -- could that indicate -- be an indication that there
7 was no desire to have that hand full of drugs to start
8 with?

9 A Are you asking if it's a possibility?

10 Q Is that a possibility?

11 A Sure, it's a possibility.

12 Q And you would agree with me that the overwhelming
13 intent of the C.I. based on his situation would be to leave
14 those drugs somewhere at someone's house.

15 A No, sir.

16 Q No?

17 A The intention of the C.I. at our direction was to
18 exchange them to the defendant, Mr. Shondre Williams, for
19 currency.

20 Q Okay. And -- and let me ask you this. Did you
21 believe Mr. Shondre Williams at the time was an easy
22 target?

23 A I don't know what you mean when you say easy target.
24 I can't answer that. I'm not sure what --

25 Q But the plan was that the C.I. was to take and leave

1 those drugs at the defendant's house. That was the plan.

2 A For him to exchange the drugs, yes, sir. That was the
3 plan.

4 Q For him to get an exchange; leave the drugs there.
5 And then what was going to happen after that?

6 A The informant was to meet back with another
7 investigator.

8 Q Okay. And then y'all were going to execute a search
9 warrant and go in and find the drugs and arrest him.

10 A And recover our drugs. The plan at that point as far
11 as an arrest goes -- there was no plan as far as whether or
12 not anyone would be arrested.

13 Q Investigator Hutchins is already at the sheriff's
14 office typing out the affidavit and most of --

15 MR. HOLLIDAY: Objection, Your Honor.

16 THE COURT: Sustained.

17 Q You're saying that there was no predetermined plan
18 which was going to occur.

19 A I said there was no predetermination as far as an
20 arrest would be made, no, sir. There was a plan for an
21 investigation. But as far as an arrest, no, sir.

22 Mr. Williams would have been a -- Shondre would have been
23 afforded the same opportunity for cooperation as anyone
24 else.

25 Q Okay. So that means that if you go in and do similar

1 to the informant, you tell the defendant you don't have to
2 face these charges if you do these things we ask you to do,
3 is that right?

4 A No attempt to -- we attempt to gain his cooperation.
5 There's no -- there's no set dialogue. There's no script
6 we read from. Each situation is different.

7 Q But he -- he could have been afforded equally the same
8 opportunity as the informant.

9 A Not only could he have been. He was.

10 Q Okay. And if he would do that and you were going into
11 the next person's house would you have afforded the same
12 opportunity to that person without discrimination, equally
13 give them that opportunity?

14 A Yes, sir, essentially.

15 Q Okay. And through all of the drug sales by the police
16 does anybody ever get prosecuted when you do that?

17 A Yes, sir.

18 Q If everybody continues to agree and cooperate, how is
19 anybody going to get prosecuted?

20 A Each situation is different. The -- some cases we
21 come to an agreement that includes jail time, prison time,
22 probation.

23 Once again, there's no set formula for these things.
24 Each situation, each person, each investigation -- you can't
25 lump them together. I mean, everything is different.

1 Everyone's different. I mean, so there's always different
2 circumstances that you can't account for, that you can't go
3 in. You gotta be flexible. You gotta be fluid.

4 Q But it's up to you. And if you agree theoretically
5 that could have continued on indefinitely -- theoretically.

6 A If you ask if it's possible. What could have
7 continued theoretically? Now I'm--

8 Q Continuing to have the same type of working agreement
9 with other people going down the chain.

10 A In what type of working agreement?

11 Q Same thing. If you -- there's nothing stopping you
12 apparently from giving the informant the same deal, this
13 gentleman the same deal, and then this gentleman to this
14 gentleman the same deal. You can do that.

15 A It's -- it's possible. Not likely.

16 Q Okay. That's all I have.

17 MR. WILKES: Thank you, Your Honor.

18 MR. HOLLIDAY: Nothing further, Your Honor.

19 THE COURT: You may step down.

20 MR. HOLLIDAY: Your Honor, could we have a brief
21 recess before the next witness?

22 THE COURT: All right. Let me ask the jury to please
23 go to your jury room.

24 As I told you earlier, you can't talk about the case
25 until deliberation time comes. So no discussions about the

1 know what a little bit is.

2 THE COURT: Let me ask you not to move around that
3 microphone. Get yourself positioned and use that
4 microphone.

5 THE WITNESS: This one right here?

6 THE COURT: And don't keep dodging around it.

7 THE WITNESS: Yes, sir.

8 BY MR. WILKES

9 Q Let me ask you this. Your goal was not to find
10 somebody to buy a tiny bit of drugs, was it?

11 A Of course not.

12 Q And your -- my question is your goal in meeting your
13 agreement with police was not to sell somebody a quarter
14 ounce of marijuana, was it?

15 A What's my goal, sell them a quarter ounce of
16 marijuana?

17 Q Yeah. What were you trying to achieve --

18 A We wasn't dealing with marijuana. We was dealing with
19 cocaine.

20 Q Okay. Okay. Exactly. And when you're dealing with
21 cocaine, how much cocaine were you supposed to be dealing
22 with?

23 A Nine ounces.

24 Q Okay. You entered into a working agreement, a written
25 agreement --

Shondrell Williams
Cross-examination by Mr. Wilkes

- 1 A Uh-huh.
- 2 Q -- that the police provided and that the police have
3 the original copy of, right?
- 4 A Yes, sir.
- 5 Q And does the working agreement indicate --
6 MR. HOLLIDAY: Objection, Your Honor. Hearsay.
7 MR. WILKES: I'm sorry?
8 THE COURT: Overruled.
- 9 Q Does the working agreement indicate that you had at
10 the time two trafficking cocaine base --
- 11 A Yes, sir.
- 12 Q -- greater than ten charges?
- 13 A Yes, sir, yes, sir.
- 14 Q Okay. And you also had -- it's not on -- not even
15 written on your working agreement. You had a monsterly
16 large trafficking from that Greenville thing.
- 17 A Oh, yes, sir.
- 18 Q Okay. So at that time you entered into an agreement
19 that they're going to dismiss all of your charges. Says in
20 writing, right?
- 21 A Uh-huh.
- 22 Q And you were going to assist in developing --
- 23 A Yes, sir.
- 24 Q -- three trafficking cocaine or cocaine base --
- 25 A Yes, sir.

Shondrell Williams
Cross-examination by Mr. Wilkes

1 Q -- over-a-hundred-gram cases.

2 A Yes, sir.

3 Q Okay. That's my point. Is -- your goal at that time
4 then was you had to make three trafficking-cocaine-
5 over-a-hundred-gram cases for that agreement to work.

6 A Yes, sir, yes, sir.

7 Q Okay. Now, if you were to -- and trafficking means a
8 hundred grams. That's the weight, right?

9 A Yes, sir.

10 MR. HOLLIDAY: Objection, Your Honor. That's --
11 that's not correct.

12 THE COURT: Mr. Holliday, you're not going to be able
13 to testify in this case. This witness is on the witness
14 stand.

15 MR. HOLLIDAY: Your Honor, he would not have knowledge
16 of what trafficking means under the law. He hasn't laid
17 any foundation --

18 THE COURT: He has to have -- he can testify as to
19 what his understanding was, his agreement with the police
20 was.

21 MR. HOLLIDAY: Yes, sir.

22 THE COURT: And that's what he's supposed to be
23 testifying to.

24 BY MR. WILKES

25 Q Your understanding is you have to make trafficking

Shondrell Williams
Cross-examination by Mr. Wilkes

- 1 cases under the agreement --
- 2 A Uh-huh.
- 3 Q -- as opposed to a simple possession case.
- 4 A Yes, sir.
- 5 Q You would understand the difference that a simple
- 6 possession case would only involve a small amount of
- 7 drugs --
- 8 A Yes, sir.
- 9 Q -- as opposed to -- okay. So when you go, you say you
- 10 go to the defendant's house. How much cocaine did you
- 11 take?
- 12 A I took nine ounces.
- 13 Q Okay. And what is the cost of nine ounces of cocaine
- 14 on the street, full price? What -- what does someone pay
- 15 for it?
- 16 A A thousand dollars a piece.
- 17 Q So that thing that you have in your hand was worth a
- 18 thousand dollars on the street?
- 19 A About \$9,000.
- 20 Q Oh, I'm sorry. I misunderstood you. \$9,000. Okay.
- 21 So if for a minute -- and you say you fronted the defendant
- 22 a portion of that --
- 23 A Yes, sir.
- 24 Q -- cocaine. Now, if he wanted that cocaine and he had
- 25 the money for that cocaine couldn't he have given you the

Shondrell Williams
Cross-examination by Mr. Wilkes

1 \$9,000?

2 A You say if he had the money?

3 Q Yeah. If he had the money couldn't he have given you
4 the \$9,000?

5 A Yeah.

6 Q Okay. You needed him to take that cocaine per your
7 agreement.

8 A No. I didn't need for him to take it. He could have
9 took anything of it. It didn't matter to me.

10 Q He's got to take -- you've got to get him to take at
11 least a hundred grams to meet your agreement. That would
12 be correct.

13 A I'm just -- I was just doing what I was told, what I
14 was told to take, is what I was doing.

15 Q Okay. That's all I have.

16 MR. WILKES: Thank you, Your Honor.

17 MR. HOLLIDAY: No further questions, Your Honor.

18 THE COURT: You may step down.

19 We are going to break for lunch. We'll resume this
20 afternoon at 2:15.

21 Keep in mind my caution. No discussions, no research,
22 no investigation.

23 Have a good lunch. Report to your jury room at
24 2:15 this afternoon -- 2:15. Everyone else remain seated.

25 (The following takes place outside the presence of the

William Tillinghast
Direct examination by Mr. Holliday

1 jury.)

2 THE COURT: Court is in recess until 2:15.

3 (Whereupon, a recess was taken.)

4 THE COURT: Are we ready for the jury?

5 MR. HOLLIDAY: Yes, sir.

6 THE COURT: All right. Bring them in.

7 Who is the next witness?

8 MR. HOLLIDAY: B.J. Tillinghast.

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

11 THE COURT: Good afternoon, ladies and gentlemen.

12 As you know, when we recessed for lunch the state was
13 in the midst of their presentation. So we will continue
14 with that.

15 I will ask you once again if you'll move down one
16 seat, and that way if we use the projector you'll be able
17 to see it a little bit better.

18 All right. Mr. Holliday.

19 MR. HOLLIDAY: Your Honor, the state would call
20 William Tillinghast to the stand.

21 WILLIAM TILLINGHAST, having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. HOLLIDAY

24 Q Investigator Tillinghast, would you give us your full
25 name, please?

William Tillinghast
Direct examination by Mr. Holliday

1 A It's William Tillinghast.

2 Q And, Investigator Tillinghast, where do you work?

3 A I work at the Spartanburg County Sheriff's Office in
4 the narcotics unit.

5 Q Okay. And how long have you worked there?

6 A I've been employed since March 3rd of 2008.

7 Q Okay. So about five years?

8 A Yes, sir.

9 Q Okay. What did you do before that?

10 A Before that I was a college student and worked in
11 production.

12 Q Okay. Where did you go to school?

13 A I went to U.S.C. Upstate and Greenville Tech.

14 Q Okay. So you went straight from a student to being in
15 law enforcement?

16 A Yes, sir.

17 Q Okay. You were involved in the investigation against
18 the defendant, Mr. Shondre Williams?

19 A Yes, sir, I was.

20 Q How were you involved in that investigation?

21 A During the investigation the transaction had been
22 arranged. My job in that was to follow our informant to a
23 location where he was to meet with Mr. Williams and then
24 follow the informant's vehicle away from that location and
25 then recover whatever contraband the informant may have at

William Tillinghast
Direct examination by Mr. Holliday

1 the time I met back with him.

2 Q When you say transaction, what do you mean?

3 A We were -- we had arranged to sell nine ounces of
4 cocaine to the defendant.

5 Q Okay. Did you see the cocaine before it was given to
6 the informant?

7 A Yes, I did.

8 Q I show you what's been marked as State's Exhibit 3.
9 There's a large white block. Is that the same cocaine that
10 you saw being given to the informant?

11 A Yes, sir. It appears to be.

12 Q Okay. When -- what instructions did you give the
13 informant before you went into the house?

14 A I actually did not give him any instructions.

15 Q Okay. You -- you saw him after he came out of the
16 house.

17 A Yes, sir.

18 Q Where is the house located?

19 A I'm not sure of the exact address at this time. The
20 house was located in Spartanburg over towards the westside.

21 Q It would be the same house that the search warrant was
22 executed on?

23 A Yes, sir.

24 Q Okay. And when the -- when the informant came out of
25 the house did he come and get in the car with you or did

William Tillinghast
Direct examination by Mr. Holliday

1 you follow him somewhere? what happened?

2 A I followed his vehicle out of the drive -- his vehicle
3 left the driveway. I was in a position where I could see
4 it as he left. I got behind him inside the residential
5 neighborhood.

6 Q Was anyone else in the car? Did you see anyone else?

7 A No, sir.

8 Q Okay. Where did you follow him to?

9 A I followed him to the Ingles at -- on 29. I'm not
10 sure of the exact location across the street, but it's the
11 large Ingles over close to Target on 29. I met him behind
12 that Ingles.

13 Q Okay. There's -- there's a video. The informant was
14 wearing a wire. There's a video that was produced. Your
15 voice -- is that your voice we hear at the end of the
16 video?

17 A Yes, sir.

18 Q Doing a debrief?

19 A Yes, sir.

20 Q Did the defendant or rather the -- I'm sorry. Did the
21 informant give you anything at that time?

22 A Yes, sir. At the time that I met with him behind the
23 Ingles the informant provided a sum of U.S. currency to me.

24 Q And this is State's Exhibit 16 for identification
25 purposes. Do you recognize that?

William Tillinghast
Direct examination by Mr. Holliday

1 A Yes, sir. That appears to be the money that I
2 received from the informant.

3 Q And when you received the money who -- do you know who
4 you gave it to after the informant gave it to you?

5 A After the informant gave it to me I provided the money
6 to Investigator McJunkin.

7 MR. HOLLIDAY: Your Honor, at this time the state
8 would seek to move Exhibit 16 into evidence.

9 MR. WILKES: May I see it?

10 THE COURT: It's the money. No objection?

11 MR. WILKES: None, Your Honor.

12 THE COURT: It's admitted.

13 (\$4,000 cash marked State's Exhibit No. 16.)

14 Q And, Investigator Tillinghouse -- Tillinghast -- I'm
15 sorry, did you search the defendant's person and vehicle
16 after the transaction went down?

17 A Yes, sir, I did. I searched his person and his
18 vehicle to make sure.

19 Q And other than the currency did you locate anything of
20 significance?

21 A No, sir, I do not.

22 MR. HOLLIDAY: I have no further of this witness, Your
23 Honor.

24

25

1 CROSS-EXAMINATION

2 BY MR. WILKES

3 Q You're the last voice on the video tape?

4 A Yes, sir.

5 Q Is that right? And when the video tape was played, I
6 believe you concluded it at what time?

7 A I -- I don't recall exactly what time. It would be
8 whatever time I stated on the video.

9 Q 1:04. Does that sound about right?

10 A Yes, sir, that sounds about right.

11 Q And what time did y'all enter the residence?

12 A I -- I don't recall. I was not on the group of
13 individuals that entered the residence.

14 Q What did you do at the residence?

15 A I did nothing at the residence.

16 Q Did you go back to the residence?

17 A No, sir.

18 Q What did you do with this -- the informant,
19 Mr. Shondrell Williams?

20 A At the time that I met with him?

21 Q Yes.

22 A I recovered the U.S. currency from him. And at that
23 time myself and Shondrell went to another location and
24 waited for other investigators.

25 Q Okay. And what location was that?

William Tillinghast
Cross-examination by Mr. Wilkes

1 A It was -- I don't remember the name of it. It was a
2 hotel at Highway -- or 290 and 85.

3 Q Okay. Why there?

4 A That was just where we had -- that's where we arranged
5 to meet.

6 Q Okay. What was your contact with the informant before
7 he got in the car?

8 A Before he got in the vehicle?

9 Q Yes.

10 A I mean, I really had no direct contact with him before
11 that. I gave him no instruction.

12 Q Okay.

13 A I -- I actually received my instructions that took my
14 part from my supervisors or other individuals. I'm really
15 not sure.

16 Q Okay. Did you see the informant when he got in the
17 car?

18 A Yes, sir.

19 Q Okay. Were you with Officer McJunkin at that time?

20 A I was with the group of people. I was not directly
21 with Officer McJunkin.

22 Q Okay. Did you have anything to do with the drugs
23 prior to the informant getting in his car?

24 A No, sir.

25 Q What was your first involvement with the case?

1 A My first real involvement with this case was to follow
2 the informant's vehicle to the house.

3 Q And you're not sure where that house was.

4 A Not -- I can't remember the name of the road right
5 off. I could drive to it, but I can't remember the name of
6 it. I'm not very familiar with that side of town.

7 Q And I believe you testified that you were the one that
8 followed the informant to the house.

9 A Yes, sir.

10 Q And you said you observed him at the house and then
11 leave the house.

12 A Yes, sir.

13 Q Did you say that you watched him park the car?

14 A Yes, sir, I did.

15 Q Where did you say he parked the car?

16 A In the driveway.

17 Q And then you went back with him and that -- once you
18 leave and meet up with him somewhere, where is that place
19 you met up?

20 A I met him behind the Ingles on Highway 29.

21 Q How far is that from the incident location?

22 A It's not very far. I'd say roughly one mile.

23 Q Okay. And is that -- of course from that point on is
24 where we hear you on the video.

25 A Yes, sir. Once I met with the informant. That is my

- 1 Q Somebody told you that.
- 2 A Yes, sir.
- 3 Q So you don't know. It could have been buried under
- 4 stuff; it could have been in the back; it could have been
- 5 anywhere. You don't know.
- 6 A That's correct.
- 7 Q Okay. And I noticed in your photographs -- did you
- 8 take those photographs?
- 9 A I believe so, yes, sir.
- 10 Q Did it -- would you agree with me -- look kind of
- 11 disheveled in there. Is that -- the stuff was all awry in
- 12 the closet.
- 13 A Yes, sir.
- 14 Q Does that sound right? Was it that way when you
- 15 walked in to take the picture?
- 16 A Yes, sir.
- 17 Q Okay. And would you agree with me that would not be
- 18 the normal way a person would probably keep a closet?
- 19 A Mr. Wilkes, I don't -- different people -- I've been
- 20 in so many houses different ones are -- you wouldn't
- 21 believe some of the stuff we've seen.
- 22 Q Is it possible that that's the photograph of what it
- 23 looked like after the search?
- 24 A It's possible.
- 25 Q Okay. And that they could have picked something up

1 from anywhere and placed it anywhere they wanted for you to
2 take the picture of.

3 A Like I say, I wasn't up there. I was called up there.

4 Q That's possible.

5 A Yes, sir.

6 Q You took a picture of what they said take a picture.

7 A Yes, sir.

8 Q Do you have a form B that you executed?

9 A Yes, sir.

10 MR. HOLLIDAY: Objection, Your Honor.

11 A I've seen it.

12 MR. HOLLIDAY: May we approach?

13 THE COURT: Okay.

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

16 Q Did you execute a form B as part of the evidence
17 gathering?

18 A Yes, sir.

19 Q What is a form B?

20 A That's the initial custody of the chain of custody.

21 Q Okay.

22 A The initial form you fill out.

23 Q What date was the search executed?

24 A On this return it says March 2nd.

25 Q So the search was executed on March the 2nd.

Dan Swad
Cross-examination by Mr. Wilkes

- 1 A Yes, sir, about.
- 2 Q Have you seen -- have you seen the drug analysis? Do
- 3 you know the date indicated received by the drug lab?
- 4 A I don't.
- 5 Q From the form -- what's the first form executed on
- 6 recovery of those drugs? Would it be yours?
- 7 A After the return, yes, sir.
- 8 Q And do you have a copy?
- 9 A I do not. I have a copy of the return, not of the
- 10 form B.
- 11 Q But you don't have a copy of the form B?
- 12 A No, sir, not with me.
- 13 Q Have you reviewed the form B lately?
- 14 A I saw it yesterday.
- 15 Q Okay. And would you agree with me that on the form B
- 16 you had indicated that supposedly this evidence that you
- 17 recovered you seized on the 3rd of March of 2012 from --
- 18 and you said Shondre Lamond Williams.
- 19 A Right.
- 20 Q Does that sound right?
- 21 A It does say March 3rd.
- 22 Q Okay. And that would be the evidence in question,
- 23 what y'all believe to be drug evidence, right?
- 24 A Yes, sir.
- 25 Q Okay. And you submit that where?

- 1 A That all goes into the BEST bag, one envelope, and
2 then it's dropped in the evidence locker.
- 3 Q The evidence drop box?
- 4 A Yes, sir.
- 5 Q And where would that be?
- 6 A At the sheriff's office.
- 7 Q Okay. Do you get it back out once you put it in?
- 8 A No, sir. It's kind of like the mailbox thing or bank
9 deposit thing, has the big metal --
- 10 Q Okay. And would you agree with me that your form B
11 indicates that on the 3rd of March of 2012 you then made
12 the delivery to the evidence drop box of Spartanburg County
13 Sheriff's Office?
- 14 A Yes, sir.
- 15 Q That's correct. And then when you -- you executed
16 that form did you have it notarized?
- 17 A I don't recall having it notarized. I don't remember
18 that. It was like 3:00 o'clock in the morning.
- 19 Q Okay. When you reviewed the form recently did you
20 notice that there was, in fact, a notary's signature on it?
- 21 A Yes, sir.
- 22 Q And what date did the notary indicate that he
23 notarize -- that your signature would have been notarized?
- 24 A I don't recall that.
- 25 Q Would you agree with me that it's the 3rd?

Dan Swad
Cross-examination by Mr. Wilkes

- 1 A If you let me look at it, I might.
- 2 Q I'll let you look at it. Is it the 3rd?
- 3 A Yes, sir.
- 4 Q Okay. So --
- 5 A It was the 3rd.
- 6 Q So what's the purpose of a notary public -- to witness
- 7 your signature.
- 8 A Yes, sir. That is it.
- 9 Q And so you give that testimony essentially under oath
- 10 to a notary public, correct?
- 11 A I -- no. I -- I signed the form. That's all I can
- 12 tell you.
- 13 Q You signed the form.
- 14 A Yes, sir.
- 15 Q But does not the notary public portion say sworn to
- 16 before me?
- 17 A Yes.
- 18 Q And that makes it an affidavit, does it not?
- 19 A Yes, sir.
- 20 Q Okay. And an affidavit is technically sworn
- 21 testimony, right?
- 22 A Yes, sir.
- 23 Q Okay. So that document that you filled out to
- 24 accompany the drugs would indicate that you seized those
- 25 drugs on the 3rd of March and turned them into the evidence

Dan Swad
Cross-examination by Mr. Wilkes

- 1 drop box on the 3rd of March, is that correct?
- 2 A That's what -- that's what it indicates, yes, sir.
- 3 Q You wouldn't lie on that form, would you?
- 4 A No, sir. I could make a mistake on it, but I wouldn't
- 5 lie on it.
- 6 Q Okay. Now, well, you would have to make a mistake,
- 7 and then you'd have to have the mistake of the notary as
- 8 well?
- 9 A Say that again.
- 10 Q It'd have to be more than one mistake, wouldn't it?
- 11 The notary dated it the 3rd also, didn't he?
- 12 A That could be.
- 13 Q Okay. Now, were you -- you were at the scene of the
- 14 search the whole time?
- 15 A Yes, sir.
- 16 Q Where were you at the time of entry?
- 17 A I was with the entry team. I went in with them.
- 18 Q Did you gather up all of the residents in the house?
- 19 Were you there when they were gathered up?
- 20 A Yes, sir.
- 21 Q Okay. And where did they -- where were they taken
- 22 when they were gathered up?
- 23 A In what I would consider the living room area.
- 24 Q And you were there?
- 25 A Yes, sir. The kitchen is kind of an open kitchen/

1 living room area.

2 Q Okay. And were you in proximity to that at the time
3 that they were brought in together?

4 A Yes, sir.

5 Q Do you remember what happened when they were all
6 brought in together?

7 A They were all seated on the couch.

8 Q Do you recall who checked the couch and did whatever
9 things y'all do before you sit people down?

10 A No, sir, not specifically. I did not.

11 Q But it would have been done. Did you see anybody do
12 it?

13 A I don't recall. I do not recall seeing it.

14 Q Do you remember how many people were in the room?

15 A It seems like there were at least three.

16 Q And do you remember what other officers were in the
17 room talking to them?

18 A Well, I've got a list here of the officers that were
19 there that night. We all have separate jobs.

20 Q I understand. But do you remember who was in there at
21 the time talking to all of the people at one time?

22 A No, sir.

23 Q Did anybody talk to all of the people at one time?

24 A I don't recall. I'm sorry.

25 Q Okay. The -- all of the photos that you took of all

Dan Swad
Cross-examination by Mr. Wilkes

1 of those, which ones were the ones that you actually first
2 discovered the evidence?

3 A The one with the small plastic bag up on top of the
4 cabinets in the kitchen.

5 Q Okay. Can you describe that small plastic bag to me?

6 A A small zip-lock, you know, about a -- I guess they
7 call it a quart zip-lock bag.

8 Q Okay. And what was -- what appeared to be inside?
9 Describe what the appearance was of the contents of the
10 bag.

11 A A white rock-like substance.

12 Q Okay. Did you pick it up?

13 A Yes, sir.

14 Q Can you describe it in more detail?

15 A No, sir.

16 Q Just a rock-like substance.

17 A Yes, sir.

18 Q Okay. Can you tell me from the time that you found
19 it -- have you examined this bag? Have you looked at it?

20 A Yes, sir.

21 Q Okay. Do you want to look at it again?

22 A Sure.

23 Q If you look at that, you say you found that smaller
24 bag in there, correct?

25 A Yes, sir.

Dan Swad
Redirect examination by Mr. Holliday

1 Q And can you tell me? Does -- does the contents of
2 that bag appear to be in the same condition as you found
3 it?

4 A Yes, sir.

5 Q Any differences you can note?

6 A No, sir.

7 Q Okay. Thank you. Did you weigh the material?

8 A No, sir.

9 Q Did you see anybody weigh it?

10 A No, sir.

11 MR. WILKES: No further questions of this witness.

12 Q Thank you, sir.

13 REDIRECT EXAMINATION

14 BY MR. HOLLIDAY

15 Q Mr. Swad, can you identify this document for me?

16 A It's a copy of our sheriff's office evidence --
17 evidence form is what we call that.

18 Q And what does that document show?

19 A It lists the date, time, case number, the owner of the
20 property, their address and the property.

21 Q And what property is listed on that?

22 A A set -- a bill counter and a set of digital scales.

23 Q So that document was prepared as part of this case?

24 A Yes, sir.

25 Q And in preparing that in the normal course of -- of

Ashley Harris
Cross-examination by Ms. Wilkes

1 item No. 1?

2 Q Yes, sir.

3 A Yes, sir. It was -- item No. 1 was wet when it came
4 in the lab, so I allowed it to air dry for 90 minutes, I
5 believe it was -- 90 minutes. And -- and it was removed
6 from the packaging and it was weighed.

7 Q Okay. So it was in a plastic bag at the time.

8 A Yes, sir. I believe -- let me see what -- my notes
9 actually tell how it was packaged. It was in a baggie that
10 was tied closed, yes, sir.

11 Q Okay. It was sealed up, and that's why you had to dry
12 it out.

13 A Yes, sir.

14 Q Okay. And the reason, if they were to weigh it
15 beforehand, the big one, and it be 249.7 and you get
16 249.71, that would be no material difference for what
17 reason?

18 A Probably the scale they were using. I mean, I really
19 don't know. The scales that we use in the lab, we have an
20 outside agency that comes in and calibrates the scales once
21 a year in Jan -- the month of January. And then they are
22 tested on a monthly basis after that to make sure that
23 they're within calibration and they're weighing properly.

24 I -- I have no idea what scales were being used by
25 anybody else that was weighing in the field.

Ashley Harris
Cross-examination by Ms. Wilkes

1 Q Isn't it -- but one is off by 50 percent, and then one
2 is almost --

3 MR. HOLLIDAY: Objection, Your Honor. He's referring
4 to items that are not in evidence. They're numbers that
5 are not in evidence.

6 THE COURT: Overruled.

7 BY MR. WILKES

8 Q If you were to weigh the large one, which is cocaine,
9 it would not contain any water, right?

10 A No, sir.

11 Q It was dry.

12 A It was dry, yes, sir.

13 Q And you could see that it was dry and did not need to
14 do anything with it special.

15 A That's correct, sir. I just removed it from its
16 packaging and obtained the weight.

17 Q Okay. And in the smaller one you observed it and
18 recognized it needed to be dried to be weighed.

19 A Yes, sir.

20 Q And can you look at the small bag now?

21 A Yes, sir.

22 Q Is it dry or wet?

23 A It appears to be dry. I may have to take it out to
24 look closer to see if it was.

25 Q Okay. Could it be noticeable?

1 A Most likely you would be able to tell from the inside
2 of the packaging having moisture, maybe a little humidity,
3 that kind of thing, yes, sir.

4 Q But it would appear different than -- than it does
5 now.

6 A Most likely, yes, sir.

7 Q Okay. Now, as far as the testing goes, do you have
8 the forms and paperwork that accompany that evidence that
9 you're responsible for?

10 A Yes. Well, in the -- in the case jacket that I have
11 here I have the copy of the report of my findings. I've
12 got the screen captures. We've gone to a digital system in
13 the lab. We don't make hand notes any more. Everything's
14 typed.

15 So I have the screen captures of the hand -- of the
16 notes that I made when I was doing the analysis; I have the
17 paperwork that came off the instrumentation; and I have the
18 chain of custodies and the original request form.

19 Q Okay. Tell -- tell me the forms that -- the people on
20 the forms, identify the forms A, B and C and who's on them.

21 A Okay. The forms --

22 MR. HOLLIDAY: Objection, Your Honor. Those forms are
23 hearsay.

24 THE COURT: Sustained.

25 Q Did you fill out a form?

Ashley Harris
Cross-examination by Ms. Wilkes

1 A Yes, sir. I fill out actually two forms on every case
2 that's worked.

3 Q What is the purpose of filling out documentation on
4 the evidence?

5 A The two forms I fill out are form one that's referred
6 to as a form A. It's about the statement of
7 qualifications, tells what training I have, what background
8 I have to be able to perform this analysis, reflects what
9 date I received it, the lab number and what tests I
10 performed on it.

11 Q Can you tell me what date you received it?

12 A Yes, sir, March the 2nd.

13 Q And who did you receive it from?

14 A I got it from Spartanburg County Sheriff's Office
15 Evidence.

16 Q Do you know whose possession it was in before that,
17 before you?

18 A From the chains. That's, I mean...

19 Q Okay. And the purpose of those are to ensure that we
20 know who had custody, correct?

21 A Yes, sir.

22 Q Okay. And you're the last person in the chain.

23 A Yes, sir. Once I completed the analysis of it it was
24 stored in the lab until it was returned back to the
25 Spartanburg County Sheriff's Office Evidence.

Ashley Harris
Cross-examination by Ms. Wilkes

1 Q Okay. And can you tell me who transported or who was
2 the last -- tell me again who the last person was that had
3 that -- those -- that evidence before you had it.

4 A Spartanburg County Sheriff's Office Evidence was the
5 last one.

6 Q And how do you know that?

7 A Because that's -- that's where I received it from.

8 Q How do you know that?

9 A I -- I went and picked it up from them. I'm not sure
10 what you're asking.

11 Q I keep looking at the documents, because it's recorded
12 in the documentation.

13 A Well, yes, sir, I mean -- and that's -- when I'm
14 dealing with the sheriff's office evidence, we receive our
15 evidence from the Spartanburg County Sheriff's Office. I
16 just wasn't quite sure what you were asking. I apologize.

17 Q There -- there -- the proper paperwork to ensure the
18 chain of custody on that is called -- there's different
19 forms and it's -- you look to see if there's a form A, form
20 B. And then you fill out a form -- no. You're the form A.

21 A Yes, sir.

22 Q Actually kinda go backward.

23 A Yeah. They start with B, go through C, and then come
24 back to A.

25 Q Okay. But those three forms and then your lab

1 I've also got to talk to him about the situation of
2 whether or not I would present evidence or whether I will
3 rest. That's kinda important because things have changed a
4 little bit.

5 THE COURT: All right. We'll take ten minutes.

6 MR. WILKES: Thank you, Your Honor.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. Mr. Wilkes, what does your
9 client indicate he wishes to do?

10 MR. WILKES: Your Honor, I've discussed my client's
11 rights as far as testifying, and he has indicated that he
12 waives his right to testify.

13 THE COURT: Okay. Mr. Williams, you understand that
14 you're charged with a crime. And any time you're charged
15 with a crime you have an absolute right to remain silent.

16 Nobody can require that you take the witness stand and
17 testify. Nobody can call you. Even your own lawyer can't
18 make you take the witness stand. But you have a right to
19 if you want to. It's simply your choice, and only you can
20 make it.

21 You have an absolute right to remain silent, but you
22 also have the right to testify and present this jury with
23 any other information that you'd like for them to have if
24 you wish to.

25 If you elect to testify you'll have to answer not only

1 your lawyer's questions, but you'll have to answer all of
2 the prosecutor's questions to the extent they're relevant
3 even if the responses to those questions might tend to
4 prove you guilty of the crimes the state claims you
5 committed.

6 If you elect not to testify I'm going to instruct the
7 jury that they can't hold that against you, they can't
8 consider it any way in their deliberations or in their
9 determination as to whether or not your guilt has been
10 proven beyond a reasonable doubt.

11 Have you and Mr. Wilkes had an opportunity to discuss
12 the advantages and disadvantages of testifying, as well as
13 not testifying?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you appreciate what those
16 advantages and disadvantages are?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you had time to reflect upon your
19 decision as to whether or not you will testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And have you reached a decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And what is that decision?

24 THE DEFENDANT: I will not testify.

25 THE COURT: And is that a decision that you reached of

1 your own free will and accord?
2 THE DEFENDANT: Yes, sir.
3 THE COURT: Has anybody forced you into it?
4 THE DEFENDANT: No, sir.
5 THE COURT: Anybody pressured you into it?
6 THE DEFENDANT: No, sir.
7 THE COURT: Has anyone even suggested that that's the
8 decision that you ought to make?
9 THE DEFENDANT: No, sir.
10 THE COURT: You made that decision on your own?
11 THE DEFENDANT: Yes, sir.
12 THE COURT: And you're satisfied with it?
13 THE DEFENDANT: Yes, sir.
14 THE COURT: Do you have any other witnesses you want
15 Mr. Wilkes to call?
16 THE DEFENDANT: No, sir.
17 THE COURT: Do you have any other evidence you want to
18 present?
19 THE DEFENDANT: No, sir.
20 THE COURT: Okay. Thank you.
21 I think we'll have to argue and charge in the morning.
22 So bring the jury back, please.
23 MR. WILKES: Your Honor, do you want me to say for the
24 record I rest?
25 THE COURT: Yes. I mean, I will ask you when they

1 come back.

2 MR. WILKES: In front of the jury.

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

5 THE COURT: All right. Ladies and gentlemen, as you
6 know, the state has concluded in their presentation. So
7 we'll now proceed with any to be offered by the defense.

8 Mr. Wilkes.

9 MR. WILKES: The defense will rest, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, that is
11 all of the testimony and evidence to be offered in the
12 trial of this case, and therefore what remains to be done
13 are the lawyers' final summations, after which I'll
14 instruct you on the law that's applicable in the case.
15 Then you'll be asked to go back and begin with your
16 deliberations.

17 All of that is likely going to take longer than what
18 we have left for the balance of the afternoon, so we're
19 going to excuse you now. We'll resume in the morning at
20 9:30 with the lawyers' final summations, my instruction on
21 the law and then your deliberations.

22 So while you are excused for the balance of the
23 afternoon, keep in mind that you're not to discuss the
24 case, not to conduct any research. Don't do your own
25 investigation or be exposed to any time of media coverage

1 that might relate to the case.

2 Have a good evening. Please report to your jury room
3 at 9:30 in the morning -- 9:30 in the morning.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Do either of you have instruction
7 requests?

8 MR. WILKES: I do, Your Honor. I would like to work
9 on them a little more if I may in light of the changing
10 evidence.

11 THE COURT: Like what?

12 MR. WILKES: The evidence of course has altered some
13 of my requests. I do have some prepared already, but if I
14 could work on them a little bit longer -- would I be able
15 to do that and submit them in the morning?

16 THE COURT: Okay. We won't have time to discuss them
17 in the morning.

18 MR. WILKES: Well, I certainly have some now that I
19 can submit.

20 THE COURT: Does the state have any?

21 MR. HOLLIDAY: Nothing other than the usual charge,
22 Your Honor.

23 THE COURT: Let me also ask y'all to verify all of the
24 exhibits that are in and those that are not, or those that
25 were just offered for purposes of the motions in limine.

1 MR. WILKES: I'm going to find them in a second, Your
2 Honor. I wasn't expecting. I brought them up here.

3 THE COURT: That's all right. Look at the exhibits so
4 we can look the evidence up.

5 MR. SPIVEY: Your Honor, as part of your charges do
6 you include on the PWID charge a standard charge on
7 permissible inference?

8 THE COURT: Sure.

9 MR. WILKES: Your Honor, as far as what I have showing
10 in evidence is Exhibit 3, which is the drugs, Exhibit 4,
11 which is the D.V.D., Exhibits 4 through 14, which are the
12 photographs, and Exhibit 15 which is the -- I'm sorry. I
13 think that's all.

14 MR. HOLLIDAY: And Exhibit 15 which is the scale, the
15 money counter.

16 MR. WILKES: Okay. No sticker.

17 MR. HOLLIDAY: It's on the bag. And Exhibit 16 which
18 is the cash.

19 THE COURT: Is that it?

20 MR. HOLLIDAY: That's what's in evidence.

21 MR. WILKES: Okay. So that's leaves this and this and
22 this and that.

23 MR. HOLLIDAY: State's 1, 2; Defense 1, 2; and Court's
24 1 are in for identification purposes.

25 MR. WILKES: All right. That's right. There's going

1 to be two D.V.D.s. One is from in-limine and then one is
2 in evidence. So I'm going to put --

3 THE COURT: The one in evidence is No. 4.

4 MR. HOLLIDAY: State's 4.

5 MR. WILKES: That's correct.

6 THE COURT: That's what was introduced. That's not
7 in?

8 MR. WILKES: That's correct. The other one was just
9 offered in the -- in the motion.

10 THE COURT: Right.

11 MR. WILKES: Support of the motion.

12 THE COURT: All right. That's my recollection of it
13 too.

14 All right. Court is in recess until 9:30 in the
15 morning.

16 Let me see the lawyers before you go, please.

17 END OF PROCEEDINGS FEBRUARY 26, 2013
18
19
20
21
22
23
24
25

1 (Proceedings February 27, 2013)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters we need to address before the
5 jury is brought in?

6 MR. WILKES: Yes, sir. Yesterday we raised the issue
7 of jury charge requests.

8 I have also made an additional jury trial request.
9 The Court had expressed some concerns, and I have tried to
10 make a modified jury charge request on the trafficking I'd
11 like to -- along with the prior request -- mark as a
12 court's exhibit and have the Court consider; and also as a
13 court exhibit the memorandum in support of the motions that
14 were made at the very beginning of the case or near the
15 beginning of the case by Mr. Smith which put the state on
16 notice that we would at least attempt an entrapment
17 defense. So they were aware of that. I'm going to ask
18 that the Court allow us to mark it.

19 THE COURT: I think it's a close question, but I'm
20 going to resolve --

21 MR. WILKES: Yes, sir.

22 THE COURT: -- any doubt in your favor. So I'm going
23 to charge entrapment.

24 MR. WILKES: Thank you.

25 THE COURT: Anything else?

Jury charge

1 accused by the state with having committed two separate and
2 distinct offenses, although they do arise or allege to have
3 arisen out of one particular event or occurrence that the
4 state alleges occurred back on March the 2nd of 2012.

5 But there are two separate indictments. One charges
6 the defendant with the crime of trafficking in cocaine; the
7 other indictment charges the defendant with the crime of
8 possession with intent to distribute cocaine base.

9 So you'll be called upon to render separate and
10 distinct verdicts as to those separate indictments. And
11 your verdicts may be the same or they may be different.
12 That of course will depend upon your determination of fact
13 as it relates to that particular charge and then your
14 application of the law as I will have provided it to you.

15 But as to each of the indictments and the charges
16 contained therein the defendant has entered a plea of not
17 guilty, and a plea of not guilty, as I told you, places
18 upon the state the burden of proving the allegations that
19 they have set forth in each of the indictments, the burden
20 of proving each of the essential elements that constitute
21 the crimes that have been alleged against the defendant;
22 and therefore the burden is upon the state to establish the
23 his guilt to the satisfaction of you 12 jurors beyond a
24 reasonable doubt before any verdict of guilty could be
25 returned as to a particular indictment.

Jury charge

1 The burden is never upon a defendant to prove that he
2 or she is not guilty or to prove that he or she is innocent
3 because in some cases that might not be possible. The
4 burden is always upon the state because they bring the
5 accusation to establish a person's guilt beyond a
6 reasonable doubt.

7 You are instructed that it is a vital, important and
8 cardinal rule of law that every defendant in a criminal
9 trial -- no matter how serious offense might be for which
10 that person stands charged -- that person shall always be
11 presumed innocent of the charge.

12 That presumption of innocence remains with any
13 defendant, as it does with this defendant, from the time
14 that he is placed under arrest and throughout the course of
15 the criminal process and even throughout the course of the
16 trial.

17 As I told you, that presumption of innocence will be
18 with the defendant even as you go back to begin with your
19 deliberations in this case. And that presumption of
20 innocence will be with him in your jury room, and it'll be
21 with him forever unless you 12 jurors determine that he's
22 no longer entitled to the presumption of innocence.

23 In other words, after you've carefully considered all
24 of the evidence in the case and decided the facts and
25 applied the law, if you find that his guilt has been proven

Jury charge

1 beyond a reasonable doubt as to a particular charge, then
2 he would no longer be entitled to the presumption of
3 innocence as it relates to that charge. But it is only if,
4 unless and until you are satisfied of his guilt beyond a
5 reasonable doubt that the presumption of innocence would no
6 longer be applicable.

7 Now, while the state does have the burden of proving
8 the defendant's guilt beyond a reasonable doubt, that does
9 not mean that they have to prove his guilt beyond all doubt
10 or beyond any possible doubt. But it does require the
11 state to prove his guilt to your satisfaction beyond a
12 reasonable doubt.

13 The term reasonable doubt should be given its plain
14 and ordinary meaning. A reasonable doubt is the kind of
15 doubt that would cause a reasonable person to hesitate to
16 act upon the information provided.

17 A defendant is entitled to any reasonable doubt that
18 arises from the evidence or lack of evidence in a case.
19 And if upon any factual issue essential to a finding of a
20 verdict of guilty you have some reasonable doubt as to how
21 that issue should be resolved, it would your duty to
22 resolve that reasonable doubt in favor of the defendant.
23 And therefore if upon your consideration of the whole case
24 as it relates to a particular charge you have a reasonable
25 doubt as to his guilt, you must resolve that doubt in his

Jury charge

1 favor and return a verdict of not guilty.

2 And at the same time, after you've considered all the
3 evidence in the case and you've decided those facts and you
4 applied the law, if you have no reasonable doubt as to his
5 guilt as it relates to a particular indictment, then it
6 would be your corresponding duty to find him guilty. He
7 must be found guilty of any crime that you find has been
8 proven beyond a reasonable doubt.

9 Now, the same law that provides that you are the
10 judges of the facts also provides that I am the judge of
11 the law, and that simply means that nobody's going to tell
12 you how to arrive at your determination of fact in this
13 case.

14 You do that, as I've already stated, through the
15 exercise of good judgment and common sense conscientiously
16 applied to the testimony and evidence received during the
17 course of the trial.

18 You 12 jurors alone will decide what weight, value and
19 effect to give to any particular evidence or testimony that
20 has been received during the trial.

21 You must however under your oath as a juror accept the
22 law as I provide it to you as being the law that you are to
23 apply to the facts in the case. In other words, you're not
24 to concern yourself with what you thought the law was
25 before you came to serve as a juror this week or what you

Jury charge

1 think the law ought to be.

2 Under your oath as a juror you must simply accept the
3 law as I provide it to you as being the law that you are to
4 apply in the case. Then you take that law and you apply it
5 to the facts as you 12 jurors determine those facts to be
6 in order to arrive at your decision in the case.

7 Because you are the sole judges of the facts you are
8 therefore necessarily the sole judges of the credibility or
9 the believability of each witness that has testified during
10 the course of this trial.

11 You 12 jurors alone will decide what weight, value and
12 effect to give to any particular witness' testimony or even
13 a portion of that testimony. But there are several factors
14 which you should consider in arriving at your assessment as
15 to a particular witness' credibility and believability, and
16 I'm going to list those factors for you.

17 You should consider the demeanor of the witness, that
18 is how the witness appeared to you as the witness testified
19 from the witness stand. Was the witness straightforward in
20 responding to questions, or was the witness hesitant or
21 evasive in responding to questions that were asked of the
22 witness. Simply put, did the witness appear to you to be
23 telling the truth and to have knowledge of the facts to
24 which that witness has testified.

25 You should also consider whether or not the testimony

Jury charge

1 of a witness is consistent, or is it inconsistent with that
2 witness' own testimony or with other witnesses' testimony
3 or other evidence received during the course of the trial.

4 You should consider how the witness came to know the
5 facts to which a witness has testified. In other words,
6 what was that particular witness' opportunity and ability
7 to perceive the existence of those facts to which that
8 witness has testified, and then what is that witness'
9 ability to be able to come into court and to accurately
10 recollect to you as to what they have previously perceived.

11 You should also consider any bias or prejudice or
12 interest that a witness might have in the outcome of the
13 case.

14 In other words, do you find some reason that a
15 particular witness would come into court and would testify
16 one way or another to help or hurt one side or the other.
17 And you should consider any interest that the witness might
18 have in the outcome of the case if you determine that a
19 witness does have such an interest and you find that that
20 interest would bear upon that particular witness'
21 credibility.

22 You should also consider whether or not the testimony
23 of a witness is strengthened, or is it weakened by other
24 testimony or other evidence received during the course of
25 the trial.

Jury charge

1 Now, because you are the sole judges of the facts in
2 this case and because you are therefore the sole judges of
3 the credibility of each witness that has testified, you are
4 permitted to believe as much or as little of what a witness
5 has testified to as you deem is appropriate.

6 And therefore you may believe everything that a
7 witness testified to; you may choose to believe none of it.
8 You may believe one portion of a witness' testimony and
9 reject some other portion of that same witness' testimony.

10 In a given case you could believe one witness as
11 opposed to several, or several as opposed to one. But
12 whatever your good judgment and common sense tells you is
13 the most believable and credible testimony is the testimony
14 you should accept, and you should reject any testimony or
15 other evidence that you find not to be credible or
16 believable.

17 Again, your sole objective and duty in the case is to
18 render a fair and impartial decision based solely upon the
19 law and the evidence in the case.

20 Now, while there are various forms of evidence such as
21 testimony, photographs, documents, charts and other types
22 of physical exhibits, there are really only two types of
23 evidence. Either or both of those types of evidence may be
24 used to prove any fact in issue. But the two types of
25 evidence are direct evidence and circumstantial evidence.

Jury charge

1 Direct evidence is the testimony of a person who
2 testifies from actual knowledge of that fact. It is the
3 testimony of a person who has perceived the existence of
4 some fact by means of his or her senses, and they come into
5 court and they testify as to what they have previously
6 perceived.

7 Circumstantial evidence, on the other hand, is the
8 proof of some other fact or set of facts which taken either
9 singly or collectively may prove the existence of a fact in
10 question as a necessary consequence, that is through an
11 inference. And an inference is simply a deduction of fact
12 that may logically and reasonably be drawn from the proof
13 of some other fact or set of facts.

14 In other words, it's not a fact that is proven by the
15 direct testimony of a witness based upon their personal
16 perception, but it is a conclusion which might reasonably
17 be drawn from the proof of other facts.

18 In other words, you may infer that a particular event
19 occurred or that a particular fact exists based upon the
20 proof of sufficient factual circumstances which would
21 reasonably warrant your arriving at a particular
22 conclusion.

23 The law however makes no distinction between the
24 weight or value to be given to direct evidence as opposed
25 to circumstantial evidence, nor is a greater degree of

Jury charge

1 certainty required of circumstantial evidence as opposed to
2 direct evidence.

3 Whatever the type of evidence used to prove any fact,
4 you should consider all of the evidence presented during
5 the trial of this case. After carefully considering all of
6 that evidence in your minds if you are not convinced of the
7 guilt of the defendant beyond a reasonable doubt based upon
8 the law and evidence, then you must resolve that doubt in
9 his favor and return a verdict of not guilty.

10 Now, in this case, as you know, you have two separate
11 charges. You're going to have two separate indictments.

12 Mr. Foreman, on the back of each of these indictments
13 in the lower left-hand corner you'll see the word verdict.
14 It's beneath that word that you'll indicate the jury's
15 decision.

16 The indictments are going to be in the jury room, but
17 they don't serve any purpose other than serving as the
18 verdict forms. They're not proof of anything; they're not
19 evidence of anything. They don't establish anything. The
20 allegations contained therein must be proven by evidence
21 presented during the course of the trial.

22 The two separate charges, as you know, are trafficking
23 in cocaine and possession with intent to distribute cocaine
24 base.

25 Section 44-53-370, subsection (e), provides that any

Jury charge

1 person who knowingly purchases or who is knowingly in
2 actual or constructive possession of ten grams or more of
3 cocaine or any mixtures containing cocaine is guilty of the
4 crime of trafficking in cocaine.

5 In this case the state alleges that the defendant did
6 traffic in cocaine by way of a purchase and by way of
7 possession of a quantity of 200 grams or more of cocaine.

8 The defendant is also charged in a separate indictment
9 with the crime of possession with intent to distribute
10 cocaine base.

11 Section 44-53-375 provides that it shall be unlawful
12 for any person to possess with intent to distribute,
13 dispense or deliver cocaine base.

14 In this case the state alleges that the defendant did
15 constructively possess a quantity of cocaine base or crack
16 cocaine and that he had at the time that he possessed it an
17 intention to distribute the cocaine base.

18 Now, each of these separate and distinct criminal
19 offenses requires proof of possession of a particular
20 controlled substance or drug by the defendant.

21 Trafficking in cocaine requires proof of the
22 defendant's purchase or possession of the cocaine.
23 Possession with intent to distribute cocaine base requires
24 proof of the defendant's possession of cocaine base.

25 Because each of these crimes requires proof of

Jury charge

1 possession, I'm going to instruct you on the law as it
2 relates to possession of a substance. And this instruction
3 will apply to each of the separate criminal offenses that
4 are alleged against the defendant -- against the defendant
5 in the two separate indictments.

6 Before a person may be found guilty of a crime
7 involving the possession of a substance it must be proven
8 beyond a reasonable doubt that the person did knowingly and
9 intentionally have in his actual or constructive possession
10 the substance which is alleged to have been unlawfully
11 possessed.

12 Knowingly means having knowledge of the fact. It's an
13 act done wilfully, purposefully and consciously.

14 Intentionally refers to an act done purposefully, that
15 is by aim or design and not by accident, mistake or
16 inadvertence.

17 Actual possession of a substance occurs when the item
18 is shown to have been in the actual physical custody or
19 control of the person charged with possession so long as it
20 is also shown that he had knowledge of its presence.

21 Constructive possession of a substance, on the other
22 hand, occurs when a person, although not in actual physical
23 custody of the item, exercises dominion and control over
24 the item or has the right and intent to exercise dominion
25 and control over the item.

Jury charge

1 A person has possession of a substance within the
2 meaning of the law when he has both the power and the
3 intent to control the disposition or use of the substance.

4 The act of possession, as well as the fact of
5 knowledge or intent, may be proven by circumstantial
6 evidence as well as direct evidence or by a combination of
7 both types of evidence.

8 You are permitted to infer the act of possession, as
9 well as knowledge or intent, from evidence of acts,
10 declarations or conduct of the person charged with
11 possession, as well as any other circumstances established
12 by the evidence in the case from which any such reasonable
13 inference may be made in light of all of the evidence in
14 the case and in the exercise of your own good judgment and
15 common sense.

16 Proof of mere presence however of a defendant at or
17 near a location where a substance is found is not
18 sufficient by itself to prove the defendant guilty of the
19 crime of possession of it.

20 A defendant's mere presence where an item is located
21 even with knowledge of its presence is not sufficient
22 standing alone to prove his possession of it.

23 If after your review of the evidence presented in the
24 case you determine that the state has only proven that the
25 defendant was merely present at or near a place where a

Jury charge

1 substance was located but has failed to prove that the
2 defendant did actually or constructively possess the
3 substance beyond a reasonable doubt, then you must find the
4 defendant not guilty of that offense requiring proof of
5 possession of that particular substance.

6 And, on the other hand, after you have carefully
7 reviewed the evidence in the case and you've determined
8 that the state has proven beyond a reasonable doubt that
9 the defendant did actually or constructively possess the
10 substance, then you must determine whether he has been
11 proven guilty of the crime alleged beyond a reasonable
12 doubt by your determination of whether or not any other
13 essential element of the crime has been proven beyond a
14 reasonable doubt.

15 Now, before the defendant may be found guilty of
16 trafficking in cocaine as alleged in the indictment it
17 would be necessary that the state has proven to your
18 satisfaction beyond a reasonable doubt that the defendant
19 did purchase or did knowingly have in his actual or
20 constructive possession a quantity of 200 grams or more of
21 cocaine.

22 Cocaine is classified as a Schedule II controlled
23 substance and is therefore declared to be a controlled
24 substance under the law. And the weight of any controlled
25 substance includes the weight of the substance in its pure

Jury charge

1 form or any compound or any mixture containing that
2 substance.

3 The defendant is also charged in a separate indictment
4 with the crime of possession with intent to distribute
5 cocaine base.

6 Section 44-53-375 provides that it shall be unlawful
7 for any person to possess with intent to distribute or
8 deliver cocaine base.

9 Cocaine base is an alkaloidal cocaine or a freebase
10 form of cocaine which is the end product of a chemical
11 alteration whereby the cocaine in salt form is converted to
12 a form suitable for smoking. Cocaine base is commonly
13 referred to as rock or crack cocaine.

14 The offense of possession with intent to distribute
15 cocaine base necessarily includes the lesser offense of
16 possession of cocaine base as I have described that element
17 of the offense for you already accompanied by the intent to
18 distribute cocaine base.

19 We need to find out what that is and take possession
20 of it, please.

21 (Pause for cell phone.)

22 THE COURT: Okay. We'll do that once I get through
23 instructing this jury. But if that goes off again take the
24 person into custody, please.

25 In order for you to return a verdict of guilty in this

Jury charge

1 case as to the charge of possession with intent to
2 distribute cocaine base not only must they prove beyond a
3 reasonable doubt that the defendant possessed cocaine base,
4 the state must also prove beyond a reasonable doubt that
5 the defendant had a specific intent to distribute or to
6 deliver cocaine base.

7 To distribute or to deliver means to actually or
8 constructively transfer or attempt to transfer a controlled
9 substance from one person to another whether or not it was
10 in exchange for money or any other consideration or thing
11 of value.

12 Intent is a state of mind which operates jointly with
13 an act in the commission of a crime. Intent is the state
14 of a person's mind which directs his actions towards a
15 specific object or goal. And in this case it would be an
16 intent to distribute, dispense or to deliver cocaine base.

17 In determining whether or not the defendant intended
18 to distribute any substance proven to have been possessed
19 by him you should consider all of the evidence in the case
20 relevant and probative on that issue, including the
21 circumstances surrounding the defendant's possession, the
22 amount of the substance possessed, the manner in which it
23 was possessed, as well as any other facts or circumstances
24 established by the evidence in the case which you find
25 probative on the issue of the element of intent.

Jury charge

1 Intent may be proven by circumstantial evidence, as
2 well as direct evidence, as often the state of a person's
3 mind can only be proven by circumstantial evidence.

4 Section 44-53-375 of the Code of Laws of South
5 Carolina also provides that you are permitted to infer an
6 intent to distribute upon proof of possession of one or
7 more grams of cocaine base.

8 Such an inference is simply a deduction of fact which
9 may logically and reasonably be drawn from the proof of
10 some other fact or sets of facts. However, even if the
11 facts proven are sufficient to give rise to a permissible
12 inference as I have described it, such inferences are
13 merely evidentiary facts which may be taken into
14 consideration by you jurors along with all the other
15 evidence in the case, and you may give them such weight, if
16 any, that you determine they should receive.

17 In other words, you may infer that fact from proof of
18 another fact, but you are in no way required to do so.
19 Your duty is simply to determine whether or not the state
20 has proven the defendant's guilt beyond a reasonable doubt
21 based upon your careful examination and evaluation of all
22 of the evidence received during the course of the trial and
23 any reasonable inferences that might be drawn from that
24 evidence.

25 Now, in this case the defendant has raised what is

Jury charge

1 known in the law as the defense of entrapment. Entrapment
2 is a defense to a crime where it is shown that there is the
3 conception and planning of a criminal offense by a law
4 enforcement officer or governmental agent and the
5 procurement of the commission of the criminal offense by
6 one who would not have perpetrated the offense except for
7 trickery, enticement, inducement or persuasion by a law
8 enforcement officer or other governmental agent.

9 Where a criminal design originates with and is
10 conceived by a governmental agent and not the defendant,
11 and the defendant by persuasion, enticement or other
12 inducement of the governmental agent is lured into the
13 commission of a criminal offense that he would not have
14 otherwise committed, then the defendant is not guilty of
15 the criminal offense for which he has been induced into
16 committing.

17 The defense of entrapment is not however available to
18 a defendant where the evidence establishes that he had a
19 predisposition to commit the crime even in the absence of
20 the inducement or influence of the governmental agent.

21 The mere providing of the opportunity and the
22 facilities to commit the crime by a governmental agent to a
23 person otherwise disposed to commit a criminal offense does
24 not constitute entrapment.

25 In order for the defense of entrapment to be made out

Jury charge

1 it must be shown that the crime was conceived, planned,
2 initiated or instigated by a law enforcement officer or
3 someone acting as an agent of the law enforcement officer
4 and that the officer or the agent enticed, persuaded or
5 otherwise induced the defendant to commit the crime, and
6 that the defendant was not predisposed to commit the crime
7 and would not have committed the crime but for the
8 inducement or persuasion or enticement of the governmental
9 officer or agent.

10 where the defendant presents evidence tending to
11 establish the elements of the defense of entrapment it
12 becomes incumbent upon the state to prove beyond a
13 reasonable doubt that the defendant was predisposed to
14 commit the crime in the absence of any inducement or
15 persuasion of the governmental officer or agent.

16 The phrase predisposed to commit a crime means that
17 the defendant had the intent or purpose or readiness or
18 willingness to commit the crime without any inducement or
19 persuasion by the governmental officer or agent and that
20 the governmental agent merely provided an opportunity for
21 the defendant to commit the crime.

22 If you find that the defendant had the predisposition
23 without any governmental inducement or influence to commit
24 the crime alleged, then the defense of entrapment will not
25 have been made out.

Jury charge

1 In your determination as to whether the defendant had
2 a predisposition to commit the crime you should consider
3 any evidence presented during the trial relating to any
4 existing course of criminal conduct by the defendant
5 similar to the crime charged, any already formed plan by
6 the defendant to commit the crime and any willingness to
7 commit the crime charged as shown by the defendant's ready
8 response to any inducement.

9 If you find that the defendant without any
10 predisposition to commit a crime was induced or persuaded
11 to commit the crime by the governmental agent, then you
12 must find the defendant not guilty.

13 Now, I further instruct you -- and I further instruct
14 you, and I emphasize to you, that the fact that a defendant
15 does not testify during the course of a criminal trial is
16 not a circumstance that may be considered by the jury in
17 any way whatsoever in your deliberations or in your
18 determination as to whether or not the evidence in the case
19 proves his guilt beyond a reasonable doubt.

20 As I've stated, the burden is always upon the state to
21 prove a person's guilt beyond a reasonable doubt because
22 they make the accusation.

23 The burden is never upon a defendant to prove that he
24 is not guilty or to prove that he is innocent because in
25 some cases that might not be possible. And therefore you

Jury charge

1 are not to draw any inference nor reach any conclusion from
2 the fact that a defendant does not testify during the
3 course of the trial. That fact may not -- you may not
4 allow such a fact to weigh in the slightest degree against
5 a defendant, nor may you even discuss that fact while you
6 are engaged in your jury deliberations.

7 Ladies and gentlemen, I am not in any way concerned
8 with what your decisions are, but you are instructed that
9 any verdict you reach must be unanimous. All 12 of you
10 must be in agreement.

11 Mr. Foreman, as you know, you're going to have the
12 indictments in the jury room.

13 One indictment charges trafficking in cocaine; the
14 other indictment charges possession with intent to
15 distribute cocaine base.

16 So after you and your fellow jurors have deliberated
17 the case and you've decided the facts and applied the law
18 as it relates to a particular indictment and you've reached
19 a decision, indicate that decision on the back of the
20 respective indictments beneath the word verdict.

21 With respect to each indictment, as I've said, your
22 verdicts may be the same. They may be different. That
23 will depend upon your determination of fact and then your
24 application of the law as it relates to that particular
25 charge. But with respect to each indictment you have two

Jury charge

1 potential verdict forms, and those two potential verdict
2 forms are guilty and not guilty.

3 So, Mr. Foreman, once you and your fellow jurors have
4 made that decision, just indicate the proper verdict form
5 in the space provided. Sign your name as the foreperson.
6 Place the appropriate date on it. You're the only juror
7 that needs to sign the verdict form.

8 Now, during your deliberations there may come a time
9 where you have some question about the facts or the
10 evidence or testimony. You may even wonder if there's
11 additional evidence that you can get to assist you in
12 resolving the case.

13 Please understand that the case is now closed, and
14 you're going back to begin your deliberations; and
15 therefore no additional evidence may be received even if it
16 did exist. No additional evidence may be received now that
17 you're going back to begin deliberations. So don't ask me
18 about anything that's not been introduced because even if
19 it exists you can't have it.

20 If you have a question about a witness' testimony and
21 you think that question can be answered by having testimony
22 replayed in whole or in part, you are permitted to have
23 that testimony replayed for your benefit. But we have to
24 do that in the courtroom. I don't have transcripts of the
25 testimony. But if you need to hear a witness' testimony

Jury charge

1 replayed, let us know which witness you'd like to hear.
2 And the court reporter will locate that testimony, and
3 we'll bring you back into the courtroom for the purpose of
4 having that testimony reheard. As I say, you can listen to
5 all of it or only a portion of it if that's all you need.

6 If at any time you have a question about the law that
7 you are to apply that I have provided you, I am permitted
8 to answer those questions.

9 So if you need for me to give you a reinstruction on
10 the law, I will. If you need for me to give you an
11 explanation of a particular point of law or a clarification
12 of a point of law in order to assist you, then I will.

13 So if at any time, Mr. Foreman, you or your fellow
14 jurors have some question or issue that you need to address
15 to me, if you'll write it on a piece of paper, give it to
16 the bailiff, he'll provide it to me, and I'll address the
17 issue or respond to the question.

18 I don't know if we have smokers on the jury, but if we
19 do you can smoke during deliberations, but you cannot smoke
20 in the jury room. You have to go outside for that purpose.
21 If anybody wants to smoke, let the bailiff know. He'll
22 take you outside to accomplish that purpose.

23 You are instructed however that the deliberations must
24 stop. Deliberations may only be engaged in when all 12
25 jurors are present so that all may participate.

Jury charge

1 So if at any time a juror is absent for any authorized
2 purpose, stop the deliberations, and do not resume them
3 until all 12 are present so that all may participate.

4 I don't have the slightest idea how long it will take
5 you to arrive at your decision, nor do you have that idea
6 because you've not begun deliberations yet.

7 However, I will tell you that if you get to a point in
8 your deliberations where you think it's appropriate to
9 order lunch, we will take your lunch orders and have your
10 lunch brought to the jury room where you can have it during
11 the course of your deliberations.

12 It usually takes about an hour, maybe a little bit
13 more, to order lunch, have it prepared and brought to the
14 jury room. So, an hour and ten minutes. So keep that
15 timetable in mind in the event you get to a point where you
16 determine it's appropriate to order lunch. It will take a
17 little over an hour to have that accomplished.

18 I think that covers everything, but if it doesn't I'm
19 sure one of these lawyers will remind me that I neglected
20 to tell you something. And if I did I'll bring you back to
21 provide you with that additional information or
22 instruction. And if I don't need to bring you back for any
23 reason I'll send word by way of the bailiff that you may
24 begin with your deliberations. And in that event he'll
25 bring to the jury room all of the exhibits which have been

Jury charge

1 introduced.

2 And to you, Mr. Foreman, he'll also bring the
3 indictments which serve as the verdict forms.

4 Now, there is a D.V.D. -- one or two -- that have been
5 introduced into evidence. There will also be sent back a
6 computer so that you can play those D.V.D.s in the jury
7 room instead of out here. So as that goes back if you 12
8 can't figure it out, you let me know, and we can make
9 arrangements to be certain that you can review that
10 evidence if you wish to.

11 Okay. With the exception of the alternate juror,
12 Ms. Rogers, I'll ask all of the 12 primary jurors to please
13 retire to your jury room. But do not begin deliberations
14 until I send you word to do so.

15 (Whereupon, the jury retired to deliberate at
16 10:45 a.m.)

17 (Whereupon, the alternate juror was excused.)

18 THE COURT: Are there any exceptions taken to the
19 instruction or requests for additions to the instruction by
20 the state?

21 MR. HOLLIDAY: No, sir, Your Honor.

22 THE COURT: By the defendant?

23 MR. WILKES: No, sir, Your Honor.

24 THE COURT: All right. Let me ask y'all to verify the
25 exhibits, please.

Jury charge

1 And, Mr. Holliday, you've got a clean computer?

2 MR. HOLLIDAY: Mr. Spivey is going to get that laptop
3 right now, Your Honor.

4 (Pause.)

5 THE COURT: All of the exhibits have been accounted
6 for?

7 MR. HOLLIDAY: Yes, sir, Your Honor.

8 MR. WILKES: Yes, sir.

9 THE COURT: All right. Tell the jury to begin
10 deliberations and notify us when they have concluded.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Everyone is present. Bring
13 the jury in, please.

14 (Whereupon, the jury returned to the courtroom at
15 12:23 p.m.)

16 THE COURT: Mr. Foreman, I have your latest note, and
17 it relates to the indictment for possession with intent to
18 distribute cocaine base.

19 THE FOREMAN: Yes, sir.

20 THE COURT: One thing I did neglect to tell you which
21 I intended to tell you.

22 As you know, possession with intent to distribute
23 cocaine base requires the state to prove the defendant not
24 only possessed cocaine base but that at the time he
25 possessed it he intended to distribute it.

Jury charge

1 You are permitted however to consider the lesser
2 included offense in making a decision as to a verdict. In
3 other words, if the state has failed to prove the defendant
4 possessed cocaine base with intent to distribute but the
5 state has proven that the defendant did possess cocaine
6 base you could find the defendant guilty of the lesser
7 offense of possession of cocaine base.

8 You'd have to write that out as a verdict form. Of
9 course you couldn't find him guilty of possession of
10 cocaine base unless the state has satisfied you beyond a
11 reasonable doubt that he possessed the cocaine base.

12 Okay. So please retire and continue with your
13 deliberations.

14 (Whereupon, the jury retired to deliberate at
15 12:25 p.m.)

16 (Questions from the jury marked Court's Exhibits Nos. 2
17 and 3.)

18 THE COURT: Any objection to the additional
19 instruction?

20 MR. HOLLIDAY: None from the state, Your Honor.

21 MR. WILKES: Not from the defense, Your Honor.

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. I understand the jury has
24 reached a decision.

25 (Pause.)

Verdict

1 THE JUROR: Yes, it is.
2 THE CLERK: Juror 120, Cathy Nesbitt.
3 THE JUROR: Yes, it is.
4 THE CLERK: Juror 46, Joann Dixon.
5 THE JUROR: Yes, it is.
6 THE CLERK: Juror 73, Timothy Hallyburton.
7 THE JUROR: Yes, it is.
8 THE CLERK: Juror 172, Lisa Turner.
9 THE JUROR: Yes, it is.
10 THE CLERK: Juror 39, Tommy Davis.
11 THE JUROR: Yes, it is.
12 THE CLERK: Juror 123, Peggy Oglesby.
13 THE JUROR: Yes, it is.
14 THE CLERK: And Juror 168, Tanner Taylor.
15 THE JUROR: Yes, it is.
16 THE CLERK: Your Honor, the jury has been polled.
17 THE COURT: Are there any other matters we need to
18 address with the jury present?
19 MR. WILKES: None from the defense, Your Honor.
20 MR. HOLLIDAY: None from the state, Your Honor.
21 (Whereupon, the trial jury was excused.)
22 THE COURT: All right. Let me ask y'all to step back
23 a second. I'm going to excuse this other jury and let them
24 go to lunch too.
25 (Whereupon, a recess was taken.)

Sentence

1 THE COURT: Any motions or other matters to address
2 before sentencing?

3 MR. HOLLIDAY: Your Honor, the sentencing sheets were
4 passed up before we had a chance to update the defendant's
5 address.

6 (Pause.)

7 THE COURT: All right. Any motions or other matters
8 to address prior to the imposition of sentence?

9 MR. WILKES: Your Honor, I'd make a motion to set
10 aside that verdict for an acquittal and for a new trial
11 based on the motions that we had made before, including
12 insufficient evidence to support the jury's verdict, the
13 in-limine motions that we had made. We would like to
14 assert those again. The outrageous police conduct is a due
15 process violation, and the other search warrant issues as
16 well.

17 We would ask the Court for both either a directed
18 verdict or acquittal or a new trial based on those grounds.

19 THE COURT: All right. That motion is denied.

20 Any other matters to address prior to the imposition
21 of sentence?

22 MR. WILKES: None, Your Honor.

23 THE COURT: Mr. Holliday, anything further on behalf
24 of the state.

25 MR. HOLLIDAY: Yes, Your Honor. We would just put

Sentence

1 into the record copies of certified convictions from
2 Indictment 1992-GS-42-5924, indictment for possession with
3 intent to distribute crack cocaine, Indictment
4 1996-GS-42-1058, indictment or a certified conviction for
5 possession with intent to distribute crack cocaine, and
6 2002-GS-42-0108, possession with intent to distribute crack
7 cocaine, and Indictment 2008-GS-42-2606, distribution of
8 crack cocaine.

9 (Copies of indictments marked State's Exhibit No. 17.)

10 MR. WILKES: Your Honor, if I may say one thing.

11 Your Honor, in this case my client has elected to have
12 a jury trial, which he has had. I will say in this case,
13 unlike many cases, despite the seriousness of the charge
14 that he faced he did not get on the witness stand and
15 perjure himself or lie as many people do.

16 He simply exercised his right. And I would ask Your
17 Honor to take that into consideration in giving him a
18 sentence. I know the minimum mandatory is exceedingly
19 large, and I'd ask Your Honor if you would consider giving
20 him as light a sentence as you can under the minimum
21 mandatory range.

22 THE COURT: Well, he understood and you have explained
23 to him that it requires a mandatory minimum sentence of 25.

24 MR. WILKES: He understands that.

25 THE COURT: Okay. All right.